THE SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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THE SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Tuesday, March 3, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 2:36 p.m., in room HVC–210, Capitol Visitor Center, Hon. Jeb Hensarling [chairman of the committee] presiding.

Members present: Representatives Hensarling, Lucas, Garrett, Neugebauer, McHenry, Pearce, Posey, Fitzpatrick, Westmoreland, Luetkemeyer, Huizenga, Duffy, Stivers, Fincher, Stutzman, Mulvaney, Hultgren, Ross, Pittenger, Wagner, Barr, Rothfus, Messer, Schweikert, Dold, Guinta, Tipton, Williams, Poliquin, Love, Hill; Waters, Maloney, Velazquez, Sherman, Capuano, Clay, Lynch, Scott, Green, Cleaver, Perlmutter, Himes, Carney, Foster, Kildee, Murphy, Delaney, Sinema, Beatty, Heck, and Vargas.

Chairman HENSARLING. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is for the purpose of receiving the Semi-Annual Report of the Consumer Financial Protection Bureau (CFPB).

I want to thank Director Cordray for coming today to testify before us. I also want to acknowledge that votes are expected throughout his appearance today, so we will ask for your indulgence, Mr. Director.

I have been informed by the cloakroom that the next vote series will hopefully consist of only one vote. If that proves to be true, then we will not have to interrupt the hearing. And we will hopefully find some way to take turns here.

I wish to also inform Members that the Director has no hard stop of time, so he is making himself available to all Members.

I now recognize myself for 3 minutes to give an opening statement.

The CFPB undoubtably remains the single most powerful and least accountable Federal agency in all of Washington. When it comes to the credit cards, auto loans, and mortgages of hardworking taxpayers the CFPB has unbridled discretionary power, not only to make those loans less available and more expensive, but to absolutely take them away.

Consequently, Americans are losing both their financial independence and the protection of the rule of law. The Bureau is fundamentally unaccountable to the President because the Director can only be removed for a cause; fundamentally unaccountable to Congress because the Bureau's funding is not subject to appropriations; and fundamentally unaccountable to the courts because the Dodd-Frank Act requires courts to grant the CFPB deference regarding its interpretation of Federal consumer and financial law.

Thus, the Bureau regrettably remains unaccountable to the American people, and that is why we need the CFPB on budget and led by a bipartisan commission. Mere testimony is not the equivalent of accountability.

I was struck by a comment made by one of my Democratic colleagues, who argued during our committee's mark-up of our budget views and estimates that the Bureau needed to be protected from "the whim of whomever are the legislators."

I would remind all of my colleagues that the legislators are chosen by the American people under the provisions of our Constitution.

Powerful Washington bureaucrats must answer to the American people and not the other way around.

I find it most ironic to hear any Democrat arguing against democracy. I am reminded of a warning by author and theologian C.S. Lewis who said, "Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive." All of this, once again, begs the question, who will protect consumers from the overreach of the Consumer Financial Protection Bureau?

Free checking has been cut in half. QM increasingly stands for "quitting mortgages" as community bank after community bank finds that they can no longer offer mortgages to many of their deserving customers.

Now, we are to the subject of overdraft protection. I heard from one of my constituents, Tamara from Athens, Texas, in the 5th Congressional District, "I wish to keep the overdraft protection. I should have the right to choose."

And that is really what this debate is all about, protecting the rights, the fundamental and economic liberties of the American citizen, so that we can seek economic growth, and they can find their financial independence.

True consumer protection requires access to competitive, transparent, and innovative markets which are vigorously policed for force, fraud, and deception. True consumer protection empowers consumers and respects their economic freedoms to make important, informed choices free from government interference and fiat.

The Chair now recognizes the gentleman from Missouri, Mr. Clay, for 1½ minutes for an opening statement.

Mr. CLAY. Thank you, Mr. Chairman.

And thank you, Director Cordray, for your testimony today.

The CFPB's work on behalf of American consumers speaks for itself: over $5.3 billion in direct relief to over 15 million consumers; over half a million consumer complaints processed; and over 1,000 consumer questions answered. What is perhaps most remarkable about the CFPB's performance to date has been the CFPB's ability to deliver for American consumers in spite of the relentless attacks from Republicans to undermine the agency at every turn.

Any serious conversation about what contributes to the wealth gap in this country must include a frank discussion about the wealth stripping effects associated with certain financial products such as predatory auto loans, payday loans, and check cashing stores that exploit the lack of financial sophistication among economically disadvantaged populations.

Given the CFPB's role in reining in the kinds of wealth stripping products and services that exacerbate the wealth gap, the CFPB is on the front lines of reducing the wealth gap and bringing vulnerable consumers into the economic mainstream.

The fact that the important work of combating the wealth gap and protecting consumers has often been relegated to debates about renovations and fountains, and to doing the bidding of special interests, is a sad commentary on the priorities of some who ignore the commendable work of this important agency.

I thank you again, Director Cordray, and I look forward to hearing your testimony.

And, Mr. Chairman, I yield back the balance of my time.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, the chairman of our Financial Institutions Subcommittee, for 2 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Consumer protection is important to a well-functioning and sustainable financial marketplace. However, consumer protection must be done in a smart, tailored, and politically—excuse me.

Mr. Chairman, could I start over?

Chairman HENSARLING. Reset the clock please so you can start—we will give the gentleman from Texas a do-over.

Mr. NEUGEBAUER. Yes. Consumer protection is important to a well-functioning and sustainable financial marketplace, however consumer protection must be done in a smart, tailored, and politically neutral manner. It should not be used to advance ideological policies. If the pendulum of consumer protection swings too far you have nothing left to protect.

Today, we are approaching the 5-year anniversary of the Dodd-Frank Act which created the CFPB. Unfortunately, since its creation I see an agency that has yet to prove it can function in a sustainable manner. Its actions have demonstrated a lack of transparency and a lack of accountability. It has demonstrated that it is susceptible to political influence, bringing into question whether it is independent.

Some of my Democratic colleagues will allege that Republicans want to get rid of the CFPB. I look back over the last 5 years and see a field of proposals to restructure the CFPB, not to get rid of it.

This week I will introduce the first of several bills to refocus the CFPB. Perhaps one of the most important reforms is to introduce a balanced and consultative process into the decision-making process.

Many have forgotten that Elizabeth Warren, our former colleague Barney Frank, and even the President originally supported a board leadership structure. Today, I hope to reflect and focus on what consumer protection means for credit availability, the cost of credit, and consumer choice.

I remain concerned that many of the Bureau's actions demonstrate a regulatory paternalism which assumes that the American consumer doesn't know how to make the right choices for themselves. It is a dangerous scenario when the government bureaucrats start making decisions for the American people.

In my district there is a single mom with three kids who uses prepaid cards to budget finances, and overdraft protection for an occasional cash shortage scenario. This single mom is barely in the financial mainstream.

I know that each of you has constituents who face these financial circumstances, and as the Bureau moves forward with the rulemaking in these areas, we must truly understand the qualitative and the quantitative costs and benefits of each rule.

Consumer protection doesn't happen in a vacuum. New regulations and regulatory actions have real consequences for real people. If the marketplace is not allowed to innovate, doesn't have clear rules of the road, and is steered into politically influenced areas, the consumer may lose.

Today, we start examining whether the pendulum of consumer protection is starting to swing too far.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Scott, for 1 minute.

Mr. SCOTT. Well, thank you very much.

Mr. Cordray, certainly we want to welcome you back and it is good to see you. I have appreciated working with you on a number of issues that we brought to your attention and you responded to.

I also want to take this opportunity to call your attention to a letter that I have sent to you, or which is in the process of getting to you. I don't know whether or not you have received it. But it involves one of my constituent companies in Georgia, the TSYS Company, that works with consumer debit and credit card procedures.

And we wanted to express our concerns about a particular rulemaking on that. My hope is that once you get that letter—and I did put a recommendation in the letter for how we might be able to solve the problem that my constituent is facing.

The company is located and headquartered in Columbus, Georgia. It is the TSYS Company. I think you have had some correspondence with them.

Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, for one minute.

Mr. GREEN. Thank you, Mr. Chairman.

And thank you, Mr. Cordray, for being here. Mr. Cordray, I would like to associate myself with the remarks of Mr. Clay, who gave some indication as to how efficacious CFPB has been.

I would like to highlight the $5.3 billion in relief for 15 million American consumers. I think this is very important.

Your enforcement actions have amounted to $175 million in civil penalties that have been ordered to be paid. The CFPB is working and the CFPB merits some consideration. I would also like to mention that there will be some indication that you have not given timely responses. I have some indication, however, that the Bureau has made significant efforts to comply with requests.

And my hope is that you will be given an opportunity to give your explanations such that we may totally understand what is going on with reference to a request, as well as response.

Thank you. I yield back.

Chairman HENSARLING. The Chair now recognizes the gentleman from Connecticut, Mr. Himes, for 1½ minutes.

Mr. HIMES. Thank you, Mr. Chairman.

And, Director, it is a pleasure to welcome you back before the committee. Again, I want to associate myself with the comments of Mr. Clay.

The achievements of your organization as a new organization really speak for themselves. I speak of numbers, and those numbers are in the billions of dollars of relief that you have provided to consumers for behavior that frankly I think either side of the aisle would agree is not the kind of behavior to which we want our constituents subjected. So I want to say thank you for your very good work.

Frankly, Director, we have talked about this before. I don't really understand the deregulatory thrust of my friends on the other side of the aisle. I think we all agree that consumers can make their own choices, but we all know that across-the-board, whether it is our toaster or our automobile, the insulation in our house or whatever it is, we do have standards so that consumers are not taken advantage of.

Somehow my friends on either side of the aisle seem to believe that in contrast to the fact you can't buy a toaster that will burn your house down, you ought to be able, perhaps, if you so choose, to buy a mortgage that will burn your house down. I don't get that.

And of course, we see in the guise of reform ideas that would ultimately hamstring your ability to do what you have done, ideas like appropriating funds and appropriating your budget. Of course, that would make you the only regulator out there whose budget was appropriated and subject to the tender mercies of the politics of this Congress.

And so, I do want to thank you for what you do.

As I always do, Director, I also want to ask that while you go after the bad guys doing bad things, please be very, very careful of our smaller banks. I continue to hear that they sort of feel like CFPB is in there quite a bit. And you are doing great work, but please do be mindful of our smaller banks.

Chairman HENSARLING. The time of the gentleman has expired. As we are essentially in the basement of the Visitor Center, your smartphone may not be quite so smart down here, I wish to alert Members that there is a single vote taking place on the Floor now, with 12 minutes, 38 seconds remaining. But we will go ahead and hear the testimony of the Director, and perhaps Members can take turns casting their one vote and returning.

So today, we welcome the testimony of the Honorable Richard Cordray, Director of the CFPB. He has previously testified before our committee, so I believe he needs no further introduction.

Director Cordray, without objection, your written statement will be made a part of the record, and you are now recognized to give an oral presentation of your testimony.

STATEMENT OF THE HONORABLE RICHARD CORDRAY, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Mr. CORDRAY. A new place. Thank you, Mr. Chairman. And I am cheerfully at your service in terms of timing today as you indicated.

Chairman Hensarling, Ranking Member Waters, and members of the committee, thank you for the opportunity to testify today about the Consumer Financial Protection Bureau's Sixth Semi-Annual Report to Congress.

We appreciate your continued leadership and oversight as we work together to strengthen our financial system so that it better serves consumers, responsible businesses, and our economy as a whole.

As you know, the Consumer Bureau is the Nation's first Federal agency whose sole focus is protecting consumers in the financial marketplace. Products like mortgages, and student loans involve some of the most important transactions in people's lives.

Since we have opened our doors, we have focused on making consumer financial markets work better for the American people, and helping them improve their financial lives. Through fair rules, consistent oversight, appropriate law enforcement, and broad-based consumer engagement, we are working to restore people's trust and protect them against illegal conduct.

Much of the Bureau's early work centered on the mortgage market, the primary cause of the financial crisis, and thus where Congress saw reform as essential.

Our Ability-to-Repay rule, also known as the Qualified Mortgage (QM) rule, put new guardrails in place to prevent the kind of sloppy and irresponsible underwriting that brought about the crisis. Other rules addressed problems in the mortgage market also deemed in need of repair.

During this reporting period in particular we continued to provide tools and resources to help industry to implement our mortgage rules including the rule Congress required of us: to consolidate mortgage disclosure forms at the application and the closing stages, what we call "Know Before You Owe."

We also undertook considerable analysis to prepare a proposed rule that would provide more room for residential mortgage lending by small creditors such as community banks and credit unions.

The Bureau shares the committee's respect on both sides of the aisle—I have heard it again and again—for these institutions, and is committed to promoting access to credit for consumers in rural and underserved areas. And so our proposal would expand the definition of "small creditor" by adjusting the origination limit to encourage more lending by these small local institutions.

We are also proposing to expand the definition of "rural" areas to provide more access to credit in those areas. We are accepting public comments on these issues through March 30th.

During this reporting period we also issued some other proposed and final rules. We issued final clarifying revisions to the remittance rule, responding in part to concerns by industry. We moved forward on reporting requirements for the Home Mortgage Disclosure Act, along with new and improved tools to allow the public to utilize this data more effectively. And we finalized a rule to improve annual privacy notices from financial institutions to the customers which eases burdens for many companies.

In addition to our rulemaking efforts the Bureau continues to make progress in all areas of our work. Today, we have helped secure through enforcement actions more than $5.3 billion in relief to more than 15 million consumers victimized by violations of Federal consumer financial laws, including $1.6 billion during this reporting period.

We continue to build out a risk-based supervision program both for banks and non-bank financial firms to achieve more consistent treatment and ensure compliance. This will help level the playing field among competing firms in various consumer financial markets.

The premise at the heart of our mission is that consumers deserve to be treated fairly in the financial marketplace and they should have someone stand on their side when that does not happen. So far the Office of Consumer Response has received more than 540,000 consumer complaints about mortgages, credit cards, student loans, auto loans, credit reporting, debt collection, and many other consumer financial products or services.

That has resulted in relief for many consumers, both monetary and non-monetary, and it provides valuable insight for our regulatory supervisory and enforcement work.

We are also developing educational tools for consumers, including the Your Money, Your Goals toolkit. This comprehensive guide is designed to be used social workers, legal aid attorneys, and volunteers to empower the people they serve in personal financial decision-making. And we will soon be embarking on a financial coaching program for transitioning veterans and economically vulnerable populations of consumers in 60 locations all over the country.

The progress we have made has been possible thanks to the engagement of hundreds of thousands of Americans who have utilized our consumer education tools, submitted complaints, participated in rulemakings, and told us their stories through our Web site and at numerous public meetings from coast to coast.

We have also benefited from an ongoing dialogue and constructive engagement with the institutions we supervise, with community banks and credit unions with whom we regularly meet, and with consumer advocates throughout the country.

Our progress has also resulted from the extraordinary work of my colleagues at the Bureau. They are dedicated public servants from a variety of different backgrounds. And I am proud to say that they have regularly risen to the challenges we face. They have consistently delivered great results so that consumers all over the country, in every one of your districts, are treated fairly in the financial marketplace. The American people certainly deserve it.

Thank you for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Director Cordray can be found on page 84 of the appendix.]

Chairman HENSARLING. The Chair now recognizes himself for 5 minutes.

Director Cordray, we have spoken about the Qualified Mortgage rule on more than one occasion. Those of us on this side of the aisle have a great concern, ultimately, about how it will impact the ability of many of our constituents to access mortgage credit.

I will take note of the recent rules that you have respecting the rural designation. I think it is a step in the right direction. And I know that you don't often hear complimentary words from my mouth, so I thought—

Mr. CORDRAY. I also appreciate it.

Chairman HENSARLING. —I would throw you a curveball there. I want to go back though, and we have spoken about this before, but as you well know the Federal Reserve came out with a study which I think dates back almost a year ago now which showed that 22 percent of those who bought a home in 2010, one out of every five borrowers, would no longer qualify under your debt-to-income (DTI) rule. And roughly one-third of African-Americans and roughly one-third of Hispanic borrowers would not qualify as well.

So we have talked about this before, but you have had ample opportunity now to take a look at the study. Do you disagree with its methodology, or do you disagree with its conclusion, either one?

Mr. CORDRAY. I disagree with the conclusion. And I think the premise here is off-base. If we had finalized our rules solely around—

Chairman HENSARLING. If I could stop you right there, as I understand it, for 6 more years you essentially exempt the rule for any mortgage that is bought by Fannie Mae and Freddie Mac, so assuming they remain in conservatorship, in 6 years would the study be valid but for the fact that you essentially, for a lack of a better term, told the statute?

Mr. CORDRAY. Again, the premise of the study is a rule that was not adopted. The rules we adopted were more generous toward mortgage lending, recognizing access to credit is a critical need in this market now and the market is very different now than it was before the crisis. So that is important.

We are required to review our rules 5 years in and we will be doing that carefully. The other piece I want to add, and you are very aware of this, is that we needed to be careful about writing rules in light of not knowing how Congress was going to handle GSE reform.

Chairman HENSARLING. If Congress does not act on GSE reform then what is your intention 6 years hence because this gets—still, we could quibble over the percentages, but I assume that you think there is some validity to the fact that many of these people will no longer be able to access mortgage credit.

Mr. CORDRAY. Our intention 4 years hence would be that we will have completed the 5-year review of these rules and as needed we will adjust the rules to take account of the issues you raised. My point is those are legitimate issues, they are legitimate concerns. That is why we didn't adopt the rules in that form in the first place and that is why we will review them on the 5-year mark to make sure that they are calibrated to the market.

Chairman HENSARLING. So you were saying that the Fed study is inconsistent with the rule that you adopted?

Mr. CORDRAY. The point is, the study is not describing the rules we have adopted. The rules we have adopted have the Fannie and Freddie patch and that has been a very important element. Everybody has recognized it; we recognized it.

Chairman HENSARLING. I understand that, but the Fannie and Freddie patch will end one day.

Mr. CORDRAY. Yes. It will end one day, but before it ends we will have reviewed the rule and made adjustments as needed—or Congress will have enacted GSE reform and we will then have to adjust.

Chairman HENSARLING. But if you are anticipating making adjustments, why put in place such a draconian rule in the first place? How is it a good rule if you are simply going to change it once it actually impacts hardworking American taxpayers?

Mr. CORDRAY. Because that rule is not the rule that is in place. The rule that is in place is a broader rule that has blessed a considerable amount of mortgage lending, has not had much impact on the marketplace, and also gives us an ability to respond to events. When the Congress decides what to do about GSE reform, we will all need to review in light of that. That will be a major thing, but we obviously couldn't anticipate that.

Chairman HENSARLING. I simply offer the coucil, again, as you well know. And I am very glad that you have your community banking advisory council.

There is a reason that so many community bankers now refer to the QM rule as "quitting mortgages." And I think we are seeing that nationwide. In the small time I have remaining, with respect, apparently you are anticipating rolling out a payday lender rule which is discretionary under Dodd-Frank, not mandatory.

Payday lenders, as you well know, are regulated. They are just not regulated by you and your Bureau. Can you, if you are going to roll out a rule, tell me which particular States you believe do not adequately regulate payday lending so as to justify the preemption of this local power?

Mr. CORDRAY. With respect, I am going to return to your prior question for a moment, because you ended by saying that many community banks think that the QM rule requires them to quit mortgages. That is inconsistent with the small creditor provision which exempts 95 percent of them from the QM rule in the sense that their loans will be covered by the QM rule, so there is no reason—I don't want any community bank to take a message from this hearing that they should be quitting mortgages. We are encouraging them to engage in relationship lending.

Chairman HENSARLING. I think we both know that they are "quitting mortgages."

Mr. CORDRAY. I don't know that this is so in fact. As to payday lending, this is an area, as will be true in a number of respects, where we are trying to calibrate and understand the market and gauge the potential for consumer harm. We have been careful and thoughtful and thorough in our approach to this. We have done two significant White Papers that have been broader than anything that has ever been done in this area.

Chairman HENSARLING. I understand that but what is the reason to preempt the current legal structure?

Mr. CORDRAY. Okay. So when you say "preempt," that is sort of a loaded term. I don't know what "preempt" means here and we have not embarked on a specific notice-and-comment rulemaking yet.

Chairman HENSARLING. Are there specific States that you believe have inadequate protections? I believe there are roughly a dozen States that functionally outlaw it today. So, again, this is a discretionary rulemaking, as I understand it under Dodd-Frank, not mandatory. There is some reason that you are going to undertake this, so I can only assume that you feel that there are certain States that have inadequate protections, and I am curious as to which ones. And I assume that you have undertaken a study of which States are involved.

Mr. CORDRAY. Okay. What I will is say we have done a study of the market. And in the market what we find is there is a demand for small dollar credit, and we recognize the need to have access to such credit.

We have also recognized that there is a problem that many consumers experience, which is that they fall into a debt trap. They roll these loans over and over and over, and they end up living their life off of 390 percent interest, or 570 percent interest. That is of concern to us. We have made that plain in a couple of different ways.

Chairman HENSARLING. But there is no specific State that you find has an inadequate regulatory regime to protect consumers?

Mr. CORDRAY. I am not thinking about it in that way. What I am thinking about are problems in the marketplace, consumers are being harmed, what is the right response to that. That is what we are grappling with, very carefully and thoroughly I believe.

Chairman HENSARLING. The Chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the ranking member as well.

And, Mr. Cordray, I thank you for appearing. Mr. Cordray, I am confident that at some point in the course of this hearing today there will be some questions about your responses to various letters that have been written to you.

And while I think that you have given responses, I don't think I should speak for you. I think you should be accorded an opportunity to just speak for yourself. I have one document that indicates that you have made significant efforts to comply with the requests that have been made and you list some 10 or more indications of what your efforts have been.

But would you kindly now take the time that you need to explain the circumstance and the responses that you have given?

Mr. CORDRAY. Sure. And I am glad to have the opportunity. I will just simply say I think this is, in many respects, a natural back and forth between the Congress which has the rightful and important responsibility of oversight, and an Executive Branch agency like our own which is of course ultimately accountable to the Congress, both for carrying out the statute that Congress has enacted, that is the law that we are supposed to implement, and to make sure that you have the information that you need to be able to oversee our operations.

There is no disagreement about that. There is no resentment about that. It can be a lot of work to respond to aggressive oversight. But I don't begrudge it. I think it is an appropriate role of the Congress.

Beyond that, there can be individual disagreements when a document request was made to us and we responded to it, whether it was done as fast as it might have been, or whether it was done as fully as it might have been. There are a lot of reasons why some of these document requests take a fair amount of time to comply with, particularly if they involve detailed email searches or document searches. And they sometimes involve thousands and thousands of pages, particularly if they involve any kind of personally identifiable information.

We are required by Federal law to be careful about how we handle that information. But having said that, those are the parameters we all operate within. We understand that. We understand your responsibilities. I think we understand our responsibilities.

It is our every intention to make sure that this committee has all the information it needs. Whenever we are told that we haven't done that we are glad to have more discussion. We have offered in camera reviews where that is appropriate. We have provided documents where that is appropriate. We will continue to work through each issue to the point where we are both satisfied. That is my intention and it continues to be my intention.

Mr. GREEN. I am honored to know what your intentions are, and I say this to you candidly because there is an indication that a subpoena dices tecum may be issued. And of course as a lawyer you understand what that means in terms of compelling you to produce documents.

My hope is that you will be given an opportunity to explain yourself when specific questions are asked with reference to this. Now let's move to something else, let's talk about the small banks for just a moment. I am a big proponent of doing what we can to be of assistance to small banks. I have heard many concerns expressed and my desire is to give them some level of relief.

I am pleased to hear you talk about helping small banks. Small banks, for the most part consist of about 90 percent of the banks in this country because about 90 percent of the banks, a little bit more by some standards, are under a billion dollars. And in this country today, if you are under a billion dollars, you are considered a small bank, maybe even a very small bank.

I know that the public probably doesn't quite understand but by the standards that we have now, if you are under a billion dollars you are probably a very small bank. I want to do what I can and have offered to work across the aisle to help small banks.

I always find, however, that when we get engaged in this process we find ourselves with wording, language that will not only include the small banks but also the mega-banks, the banks that actually produce these exotic products, the teaser rates that coincided—the interest rates that were offered to you to get you into a contract and then have a prepayment penalty that would not allow you to get out of the contract so as to benefit from having an additional rate that would not be locked in for some period of time that would be harmful to you.

These teaser rates that coincide with prepayment penalties were a problem. So do what you can to help the small banks. I am all for that and we may have to do something to—get some other relief at a later time, but let's help those small banks, and I appreciate it.

Mr. CORDRAY. Okay.

Mr. GREEN. I yield back.

Mr. CORDRAY. Thank you, sir.

Mr. NEUGEBAUER [presiding]. Thanks, gentlemen.

The Chair recognizes himself for 5 minutes.

Director Cordray, thank you for being here. As you know, the CFPB is in the process of a major rulemaking for prepaid cards. And as you and I have previously discussed, I have serious concerns about the Bureau's direction in the rulemaking. In particular, I am concerned about the new structure and limitation placed on the overdrive features of prepaid cards and that this could possibly force some of these issuers to discontinue some of the features of their products. And I am very concerned that at some point in time, it would limit some of the choices for consumers.

Recently one of my constituents, Gracey from Lubbock, actually wrote to the CFPB to discuss her use of prepaid cards and overdraft protection, and I want to read her comments.

"As a single mother of three children, sometimes funds run tight. With the overdraft protection on my prepaid card, I have a little breathing room between paychecks and for that I am very grateful.

"I have been a prepaid user for almost 5 years now and I would love to continue to utilize this service. But if the overdraft protection coverage is no longer offered, it will absolutely put a strain on our already strained finances.

"I choose to have overdraft protection on my prepaid card. I believe I should have the right to choose to utilize the services such as overdraft protection. Please ensure that the final CFPB rules allow me to choose the features that are most beneficial to my needs."

I think the question that I have is, as you are looking into this rulemaking process, how are you balancing consumer protection with a high demand in product usage for prepaid cards and the overdraft protection. Obviously, this young woman needs that, has been utilizing it, and she has a pretty difficult task anyway of being a single mom raising three kids.

Mr. CORDRAY. Thank you for the question. I appreciate the discussion you and I have had on this subject personally one-on-one. First of all, I want to be a little careful here because that is a proposed rule, it is not yet a final rule. In fact, the comment period is not yet closed on that. That comment period extends until later this month. And I know that we are hearing a lot of comments both ways on that particular aspect of prepaid cards. So I don't want to prejudge that. We will obviously get the comments, digest them, and think carefully about how to proceed.

What I will say is in the proposal, what we set out and one of the things that we are taking input on, was that on prepaid cards that credit products would be subject to credit card-like protections which I think—frankly I think most of the public is totally unaware that prepaid cards right now have no consumer protection whatsoever. You can't get a dispute resolved, you can't get an error corrected, you have no rights, no disclosure requirements. So that is part of what we are trying to address here.

But we determined in our proposal to subject that to credit card-like protections. That is what has been imposed under the CARD Act that is working well in the credit card market. And so we are interested to hear people's reactions to whether that works or how well that would work here. So that is one of the things we are interested in getting input on and we will think more about as it relates to your question.

Mr. NEUGEBAUER. I think the question then is, when you sit down and you start looking at this rulemaking, do you sit down with industry and say, "Walk me through how your customers are using this product?" So instead of thinking about it from the regulatory standpoint of, "You must be doing something that we don't like. We are just trying to figure out what that is," that when you sit down, you analyze how this young woman is using that card and how important that is to her. And in other words, she feels like things are pretty good because she has been doing this for 5 years.

Mr. CORDRAY. Yes, we do. We have had numerous stakeholder meetings with the industry, the prepaid card industry and prepaid accounts going beyond cards, those prepaid account products which are a little broader. We will continue to hear from them and think about this, we are always interested in data that they will provide us. Some industries are more interested in doing that and some seem to be quite standoffish and do not provide us with data. When they don't, we don't have as good a foothold to go on, so I always encourage them to do so. But we have had numerous discussions and I am sure we will hear plenty more before we come to ground on this.

Mr. NEUGEBAUER. Did the Bureau do a qualitative and quantitative analysis of the cost and benefit analysis of this rule?

Mr. CORDRAY. We are required under our statute to assess the costs, burdens, and benefits of any regulation. We do take that seriously. We have done that with our rules and we will continue to do that, yes.

Mr. NEUGEBAUER. Very quickly, the CFPB is in the midst of implementing a new major rule for Truth in Lending disclosures and disclosures on RESPA which would be integrated effective August 1st.

Mr. CORDRAY. Yes.

Mr. NEUGEBAUER. There is a lot of concern out there in the industry that having new programs, integrating that so that the servicers and the closers and the lenders are all—have the system in place. I think there is a question of whether we can be ready for primetime by August 1st. Would you be amenable to a 60-day non-enforcement window once the rule becomes, in fact, effective so that—making sure the industry has had an opportunity to adequately implement the system?

Mr. CORDRAY. We always listen to people's ideas. I will say that this rule was finalized 21 months in advance of the effective date. It was finalized not last November, but November the year before, so people will have had close to 2 years to be ready for this. And we have been working with them all along. We have done what we do to make it easy for them to provide plain language guides, provide simplified guidance, respond to questions. And we have really been urging the industry to be ready for this. Nobody should be surprised by this and people are working hard to get ready so we will see how it transpires. But people have had a long time on this. This wasn't a rule that was adopted yesterday with an August deadline. It was November of 2013, so—

Mr. NEUGEBAUER. My time has expired. The Chair recognizes the gentlewoman from California, the ranking member, for 7 minutes.

Ms. WATERS. Thank you very much.

Welcome, Mr. Cordray. I am always very pleased and delighted to have the opportunity to discuss the work that you are doing at the Bureau and you have done a magnificent job. As a matter of fact, I say this time and time again, that in all of the work that was done with the Dodd-Frank reform, I believe that the creation of the Consumer Financial Protection Bureau is the most significant part of that reform. And I am very pleased with the way that you have taken on this responsibility and the way that you have produced for our consumers.

Having said that, there are two issues that I have been working on all of my career starting in the California State legislature and continuing since I have been in Congress: one is payday lending; and the other is private post-secondary schools and the way that they operate.

So, first, I would like you to share with us the research that you have done on payday lending. What have you discovered and what are your recommendations? I know that we can't simply just put people out of business, but the payday lending operation in this country is such that people are still paying 400 percent interest on these loans and they get trapped in the loans. What have you done and what do you see as possibilities for correcting the situation in the future?

Mr. CORDRAY. For me, this has been a major issue at the Bureau going all the way back to when I first became the Director in January of 2012. The very first field hearing we held after I became the Director occurred in Birmingham, Alabama. It was on the topic of small dollar lending and we heard extensive testimony from a packed house on both sides of this issue. And I made plain at that time that we were concerned about maintaining access to credit for people who have emergency needs, which is something that long pre-existed the payday lending industry, and goes back more than a century in this country since we have had a money-based economy.

But at the same time, there are people who get caught in a debt trap and a high number of payday borrowers end up rolling over the loans again and again and again and end up paying out well more in cost than the loan—they borrowed.

Ms. WATERS. So this has turned out not to be just for emergency lending. It has grown.

Mr. CORDRAY. We have done two substantial White Papers with more extensive research than has ever been done in this area over the past 3 years. And we have found that to be a key phenomenon in this industry and it is the concern that we have. We are now working toward putting out a proposal that would lead to a rulemaking on this subject. We are getting very close on that process being publicly under way. But I would say that this is a—it is a very difficult issue. It is a complicated issue, but it is an important issue that affects a lot of consumers in this country both pro and con and we hear a lot from them.

Ms. WATERS. The Department of Defense has proposed rules to close loopholes under the Military Lending Act that would limit covered credit to a 36 percent annual percentage rate. Do you agree with that?

Mr. CORDRAY. Congress spoke I thought pretty loudly and clearly on this in 2007 with the Military Lending Act. Congress then spoke I thought loudly a couple of years ago about reopening the regulations that have been adopted and suggesting that they needed to be broader, stronger, and more comprehensive. The Department of Defense has moved forward I think quite responsibly and steadily on this project. Many other agencies have been asked to collaborate with them and work with them on this. We have been among those agencies. They continue to move forward and I think it is a very important set of protections for servicemembers.

Ms. WATERS. In your research, have you discovered the role that the banks play in perhaps providing capital resources for payday lenders?

Mr. CORDRAY. I know there has been discussion of that. We also have had the opportunity now in the last several years to perform a number of examinations of payday lenders. It is the first time that has ever been done by a Federal supervisor, to really dig into their business operations and understand their business model and understand both the pros and the cons for consumers and also ensure their compliance with the law as it exists today.

Ms. WATERS. Is there a direct link between capital that is provided by major banks to payday lenders?

Mr. CORDRAY. I think that different companies and every sector of our economy get financing in different ways. Sometimes it is through loans from banks, sometimes they raise it from shareholders; it depends on their corporate model. Certainly, there is some amount of that here although there is nothing illegal about any of that.

Ms. WATERS. Do you believe that there is any way we can bring payday lending under control any time soon?

Mr. CORDRAY. So when you say bring under control, as I said we are—

Ms. WATERS. I would like to do something that would eliminate the ability for them to get 400 percent interest from people who are desperate.

Mr. CORDRAY. I hear you loud and clear on that. We are, as I said, in the late stages of—beginning of the public process to write rules with respect to this industry and it will be based on substantial research and analysis we have done. I would say check back with us soon and you will see work under way here.

Ms. WATERS. I have 2 seconds left. On Corinthian, I would like to thank you for some loan forgiveness that you had to initiate for Corinthian students. Corinthian is just one of the many private postsecondary schools that have been basically creating serious problems for consumers for a long time now.

And we also have some Corinthian students who have decided that this is predatory lending and they are not going to repay those debts. They are organizing and I support them.

It is not just Corinthian. It is a whole slew of these private postsecondary schools, many of whom have schools where they are collecting government money, they don't have credentialed teachers, and they don't really teach anything. The students end up with big debts. They then can't get loans, and we can't do anything.

What are we going to do about the issue of private postsecondary schools who have been ripping off the government for so long?

Mr. CORDRAY. We have brought two lawsuits to date that remain pending. I want to be a little careful about what I say about those because they are in front of courts, but our complaints speak for themselves in terms of what we found in our investigation and believe to be the case there.

In the Corinthian case, I will say I thought there was spectacular work by colleagues of mine at the Bureau to generate and secure significant debt relief for student loan borrowers whom, I believe, were misled into being deeply harmed by predatory loans.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Luetkemeyer, chairman of our Housing and Insurance Subcommittee.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. Director Cordray, thank you for being here today. And I want to first start off with following up on a couple of conversations we have had in the interim here, from the last time you were here, with regards to a letter that we asked you to put together and you agreed to write and sign. And it was with regards to making a statement to your examiners, not going after illegal businesses doing illegal business, to allow the marketplace to decide the viability of a business.

And through the course of conversations, you sent us the letter, finally. And I asked you at the time that we finalized this if you were going to disseminate that letter to your examiners to let them know that this was your policy.

And so my request—or my first question today is, did you disseminate that letter?

Mr. CORDRAY. I actually don't honestly know as I sit here whether that happened or not, but I will take that back and—

Mr. LUETKEMEYER. Well, my staff was talking to your staff today and they indicated that it didn't happen.

Mr. CORDRAY. Okay.

Mr. LUETKEMEYER. That has to happen, Mr. Director. If that doesn't happen, then there is no reason to have the letter. The letter going out to the staff indicates your position with regards to, basically, Operation Choke Point means something that you support and that you allowed to happen or continue to happen.

If that letter does not go out, as a policy from your office, then we have grave concerns. I have a bill to stop Operation Choke Point. We do not have you included in the bill yet. But if there is not going to be a dissemination of information to examiners, I certainly think that we are going to put you in there.

Mr. CORDRAY. I would simply say, I don't know that we have ever sent out a letter to a Member of Congress to examiners before. That is not normal. We send out guidance to our examiners through examination handbooks and the like, so it is—

Mr. LUETKEMEYER. I asked you if it was your policy to do this and you said, "No," so I said, "Therefore, you should be willing to put that in a letter to your examiners," and you said, "Yes."

Mr. CORDRAY. No. That was a letter to you. I believe we responded to you.

Mr. LUETKEMEYER. Okay. And I asked if you would be willing to send that letter as policy statement out to your—

Mr. CORDRAY. —so just a couple of things, number one, you asked for a letter to you and I have sent a letter to you. That letter represents my position and the Bureau's position. It is what it is. As for whether we send letters to Members of Congress to our examination staff that is not something we have ever done. That is not a normal thing for us to do.

Mr. LUETKEMEYER. Well, you just did. It is in your policy now.

Mr. CORDRAY. If you want—

Mr. LUETKEMEYER. And you are not going to tell your staff about your policy?

Mr. CORDRAY. If you are now talking about adopting policy, which we were often criticized for doing without notice and comment rulemaking and all the process and so forth. If I am just going to write a letter and then send it out to our examiners—I would think carefully about that.

Mr. LUETKEMEYER. —it is really clarification and the procedure—

Mr. CORDRAY. I don't think—

Mr. LUETKEMEYER. I would think that would be a normal process.

Mr. CORDRAY. —that would be how we would communicate that.

Mr. LUETKEMEYER. With regards to Choke Point, the FDIC in January, as a result of the oversight reform report—which indicated that there is a political as well as a value judgment going on within that agency with regards to the examiners and how they implement the termination of accounts and their process with regards to the banks they oversee—changed their procedures to match the tenets of a bill that I put together with regards to requesting, that when they request termination of an account, they will have it in writing, number one, cite the legal reason that it needs to be terminated and have that approved by a regional director.

My question to you today is, are you willing to do the same?

Mr. CORDRAY. I will have to take that back and consider that. I believe the FDIC had put out some—I don't remember exactly what the FDIC did but there was some sort of list of different activities or—

Mr. LUETKEMEYER. They had a list up of the activities that were reputational risks to banks. That list has since been taken down. And now they have, as a result of our discussions with them, put together a memorandum that they—and they had a conference call with the entire examiner staff as well and all of their examiners now receive this memorandum, as well as the banks, indicating this is a new process, and the procedures and protocols they are going to put in place.

Mr. CORDRAY. I see. I will be happy to look and see what the FDIC has done.

Mr. LUETKEMEYER. Okay. Thank you. One quick question while I have 30 seconds left here with regards to, you said on FSOC, and they have designated now three insurance companies, the last one being MetLife.

Can you tell me exactly why you believe that an insurance company is a systemically important institution? What other—

Mr. CORDRAY. I want to be a little careful here because my understanding is one of those companies has now sued the FSOC and has a case pending in Federal court. I wouldn't want to be affecting the case by any kind of pronouncement here.

There is a significant and voluminous record on the designations and what the rationale was for those of the FSOC as a body, so I—

Mr. LUETKEMEYER. From CFPB's point of view though, sir, what is your criteria that you used to make sure that people believe in your judgment that they are systematically important.

Mr. CORDRAY. I am a member of the FSOC, but I don't regard that as a Bureau position. That is a—

Mr. LUETKEMEYER. You represent the Bureau on the FSOC—

Mr. CORDRAY. Yes. That is correct. So the criteria I would apply and always would apply and did apply is the statutory criteria under the FSOC's statutes for designating an institution. Nothing more, nothing less.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentlelady from New York, Mrs. Maloney, ranking member of our Capital Markets Subcommittee, for 5 minutes.

Mrs. MALONEY. I thank the chairman for yielding, and I thank you, Director Cordray, for being here. As you know, I have had a overdraft bill in for several years that cracks down on unfair and deceptive practices that drive up fees—that some, not all, but some financial institutions put forward.

So I would like to ask you about these fees and what the Bureau is doing about it. You have published two excellent reports that I have seen on overdraft fees. And these reports clearly demonstrate that overdraft fees are still far too high and are eating into some of the most vulnerable citizens' savings.

There are some startling statistics from the Bureau's latest overdraft study. Most overdraft fees are incurred on purchases of just $24 or less and are paid back within 3 days. But the median overdraft fee for these small overdrafts is still a whopping $34. So you have a $24 overdraft and you pay a $34 fee for 3 days of borrowing money.

And according to your report, consumers would be paying, for these 3 days, a 17,000 percent annual percentage rate. The ranking member was concerned about a 400 percentage annual rate and I agree with you. But I think everybody in this room can agree that a 17,000 percentage annual rate for borrowing—for 3 days borrowing a $24 overdraft is outrageous.

So my question is, what do you plan to do? Or do you plan to do anything about these excessive fees? What is your plan?

Mr. CORDRAY. I would agree with you the 17,000 percent rate of interest is quite high.

Mrs. MALONEY. It is so much, it is unbelievable.

Mr. CORDRAY. Quite high. However, what I will say is as you indicated, first of all we are well-aware of your interest in this area and your legislative efforts and have had a number of discussions with your staff that have been helpful, I think on both sides, in understanding the issue better.

We have indicated on our unified agenda which is where we publish to the world in a transparent way what we see as on our agenda for rulemaking in advance. Overdraft is on that agenda.

It is a crowded agenda at the moment. We are trying to—we will work to finalize rules on prepaid cards. We will work to finalize the rules on the Home Mortgage Disclosure Act. As I indicated we are very close to starting the public process on payday and small dollar rules.

Debt collection is also on that agenda and that is a very large subject. Overdraft is on that agenda as well. Here we have as you said done a fair amount—a considerable amount of research here, again published, I think, two White Papers, both of which represent very detailed analysis of the overdraft issues.

We have also done examination work of institutions around the issues involving overdraft that has resulted in remediation to consumers, so we have come at this and begun to understand this problem from a number of different angles and it is something that we do intend to take up as we can.

Mrs. MALONEY. Thank you. And going back to the prepaid cards, many people in this committee and I would say some of the biggest players in the industry such as Wells Fargo, Green Dot, and others and I understand that they are the largest prepaid card companies in the country, it is my understanding that they called on the Bureau to simply ban overdraft programs for prepaid cards because these cards should be exactly that—prepaid. They should not be a de facto credit card.

I was pleased to see that your proposed rule took strong steps to limit overdraft on prepaid cards. But the proposed rule stopped short of an outright ban. So, I am concerned that this could incentivize companies to find loopholes in the rule that would allow them to keep collecting overdraft piece on prepaid cards.

And I understand you are still considering an outright ban on overdraft for prepaid cards. Is this something that you are going—what is your plan for this? What are we going to see in the final rule?

Mr. CORDRAY. I can't prejudge that at this point. We have a proposal out that as you indicated would put any kind of overdraft product—credit product in a framework that would be governed by the Card Act which, I think, was a very appropriate framework, frankly. I know you are a strong advocate of that and champion of it.

We have comments still coming in through the end of this month and then we will consider and digest those and move to finalize in accordance with what they raised to us so that is about all I can say at the moment.

Mrs. MALONEY. And when do you expect this to happen?

Chairman HENSARLING. Go ahead and get your question out.

Mrs. MALONEY. Just the timing, when will this rule be out?

Mr. CORDRAY. Later this year.

Mrs. MALONEY. Later this year?

Mr. CORDRAY. Yes.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Wisconsin, Mr. Duffy, chairman of our Oversight and Investigations Subcommittee.

Mr. DUFFY. Thank you, Mr. Chairman, and good afternoon, Mr. Director.

I think there are a lot of do-gooders in Washington who are out there trying to protect a lot of folks and oftentimes over here. A lot of times we applaud the effort, stopping fraud, deceit, misrepresentation, there is no disagreement on those efforts in the CFPB. We all agree in your mission to stop those practices.

But sometimes, I think you are out trying to do good but in the end what you do creates harm to an industry where people are using products where they actually know what they are getting into. There is clarity in the cause, there is clarity in the consequence, and they analyze and come up with the idea that this is a good product for them.

I have an individual in my district in Central Wisconsin, a guy by the name of Ron, who said in regard to the overdraft services on prepaid cards, "I receive Social Security direct deposit, and since this is a fixed income, there are months in which I need the overdraft protection, such as winter months. I don't want those available resources taken away from me."

See, you might not know this, but often in Wisconsin in the winter it gets really cold and our heating bills go up and for guys like—

Mr. CORDRAY. I have seen some Packers games.

Mr. DUFFY. Yes, that is cold. That is tough on him. And these are products that he knows the cost of, but he is ready and willing to accept the cost because it helps him to manage his fixed-income through Social Security.

And I think you have to analyze these things through the eyes of end-users, stopping fraud and deceit. But if there is clarity in the products, don't take them away from people who actually use them and it helps them.

So with that said, I want to switch to Mr. Luetkemeyer's topic on Operation Choke Point. You are a board member on the FDIC, right?

Mr. CORDRAY. I am.

Mr. DUFFY. And you are aware that on the FDIC, they set out a list of industries that were subject to Operation Choke Point.

Mr. CORDRAY. I don't know if that is quite accurate. Just to be clear, I am an outside Director. I am not as engaged in the day-to-day operations. I have a full time job with the CFPB.

Mr. DUFFY. I know. But?

Mr. CORDRAY. But I am aware that there was—

Mr. DUFFY. But the DOJ and at least the FDIC were targeting certain industries, whether it was payday lending, gun dealers, ammunition manufacturers, or smoke shops.

Mr. CORDRAY. I have read about that.

Mr. DUFFY. But as a director or as a board member you had no idea about it from the inside?

Mr. CORDRAY. I was not aware of that, that is correct, until it burst into public view.

Mr. DUFFY. Okay. Do you support the idea of Operation Choke Point, of choking off banking ability for certain industries?

Mr. CORDRAY. I don't think that we should be in the business of distinguishing between different kinds of economic activities that are legal merely because someone might favor or disfavor one or another.

Mr. DUFFY. And you would agree that payday lending, gun dealers, ammunition manufacturers, those are all legal businesses, right?

Mr. CORDRAY. Some are constitutionally protected.

Mr. DUFFY. So, in regard to those who are implementing these policies within the FDIC—actually, I would argue they are actually un-American policies. For me this—we are looking like the old Soviet Union, Venezuela, and Cuba, and we are using the banking sector to go after industries we don't like. Do you think those folks should have a place in our government, who are implementing the Operation Choke Point?

Mr. CORDRAY. Actually, I am not clear that is what people are actually doing. I think some of this may be—

Mr. DUFFY. Answer my question.

Mr. CORDRAY. —overdone. But?

Mr. DUFFY. So, my question for you?

Mr. CORDRAY. I don't think that.

Mr. DUFFY. Reclaiming my time, Director Cordray—

Mr. CORDRAY. I think I am agreeing with you. I don't think that people should be pressured into not lending to businesses—

Mr. DUFFY. Yes. But that is not my question. My question for you is, do you think if you are using the power given to you at the FDIC in partnership with the DOJ to put certain lines of businesses that are legal that have no due process, no judge, no jury, no trial, no due process, you have actually put them out of business. Do you think you should have a job at the FDIC or the DOJ?

Mr. CORDRAY. Again, I am not clear on that.

Mr. DUFFY. A simple question, yes or no?

Mr. CORDRAY. I am not clear that is what happened. I don't think it is what happened. And I believe if I am understanding it correctly—

Mr. DUFFY. What happened then?

Mr. CORDRAY. —that there has been a modification of policies that I think—

Mr. DUFFY. I will take that as an honest answer to the question. I would tell you; listen, if this is what you are doing, you have no place in government. I only have a minute left—40 seconds left. You and I had a private conversation. I dropped a bill which dealt with concerns about the consumer advisory council and it being open to the public.

You are not FOMC. You are not setting monetary policy and you are not the CIA. You actually called me and said, "Listen, thanks for bringing this to my attention, we are going to open it up." But lo and behold, from what I am seeing, you put out a consumer advisory board notice for September 11th on the Internet that only gives a portion of the actual schedule that was offered to those who attended the meeting.

So, actually the whole meetings are not made public. There was also a meeting from October 15th for the community bank advisory council where only a couple of hours was public but you actually—they started at 2:40 but you actually began meeting at 8:30.

Mr. CORDRAY. I don't think that is quite accurate. But number one, you talked to me about our consumer advisory board which is not governed by the Federal Advisory Committee Act (FACA) and we talked about it. And I determined that I thought you were right as a matter of appropriateness.

Mr. DUFFY. Thank you.

Mr. CORDRAY. That we should comply with the FACA which we are now doing. It used to be that none of those sessions were open to the public—

Mr. DUFFY. My time has expired. Maybe I could send you follow-up documentation, and you can respond in writing—

Mr. CORDRAY. Absolutely. But under the FACA the subcommittees are not necessarily required to be open to the public just as you are on the Floor that is open to the public but when you caucus, that is not open to the public.

Mr. DUFFY. —for the record.

Mr. CORDRAY. I would be happy to follow up.

Mr. DUFFY. Thank you. I will follow up, as well.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Ms. Velazquez, for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Director Cordray, Section 1071 of the Dodd-Frank Act requires banks and lenders to collect and report credit application data on small businesses as well as minority- and women-owned businesses.

Can you elaborate on how collecting this information will help enforce fair lending laws and enable lenders to identify opportunities for improvement in their served communities?

Mr. CORDRAY. Yes, and thank you for the question. My sense is that both the theory and the practice of this would be similar to the Home Mortgage Disclosure Act, where more data on what loans are being offered and in what locations and to what kinds of customers would give us a kind of a roadmap into whether lending is being done in some evenhanded way across different communities.

And there has been no substitute for the HMDA data, that this can be easily seen and easily analyzed and crunched. And by the way, one of the things we are required to do under the Dodd-Frank Act is to overhaul the HMDA rules and make them more effective, which we are working on right now.

And we also are bringing over from the Federal Reserve the data collection itself so that we will be the ones who are managing that data collection. I think they have done a great job over the years, and I now think there are ways we can update and improve it even further.

That, as I think we have talked about before, becomes the jumping off point for us to then fulfill what is also the requirement in the Dodd-Frank Act, but again, not on a particular deadline of going about small business data collection.

This year, we are going to undertake our first examination of a financial institution on small business lending under the authority of the Dodd-Frank Act and that will help us have guidance on this.

As the HMDA moves forward, we plan to build on that for the small business data as well. And I think this is eventually—I know it takes awhile for these things to unfold—going to be a very significant tool.

Ms. VELAZQUEZ. So when can we expect the CFPB to publish rules? Do you think before the end of the year or after?

Mr. CORDRAY. No, it could not be before the end of the year, and I honestly can't give you a date, but I can tell you that we have a process here that I think make sense, which is to complete the HMDA, which is one of the required tasks for us. Then, move to this small business data and have it build together so that the data collection is being done in the most efficient manner.

Ms. VELAZQUEZ. It is a very important part of the law and it helps us here understand the dynamics in terms of small business lending.

Mr. CORDRAY. Yes.

Ms. VELAZQUEZ. New York consumers submit thousands of debt collection complaints to the Bureau every year. As you know, onerous and illegal debt collection practices can be a significant burden to families' finances and ability to obtain credit.

It is our understanding that CFPB is in the process of drafting a rule to address these complaints. Can you describe the main tenets of the rule and the types of abusive collection activities you hope to eliminate?

Mr. CORDRAY. My experience with this subject goes back to when I was Ohio attorney general—it was the most complained about activity other than identity theft in the office at that time—and it has always been one of the most complained about activities at every level of government.

I actually would like to compliment the New York regulators, the courts, the attorney general, and the banking superintendent, who have done a lot of work around debt collection in that State. We have learned a lot from the work they are doing, we have had a lot of consultation back and forth.

We will be moving forward as Dodd-Frank authorized us to do to adopt regulations that will completely update the Fair Debt Collection Practices Act, which was enacted in 1977, that is the year I graduated from high school, and you think how much technology has changed since then, how much the practice of debt collection has changed since then.

There is a lot that we need to address. There are many abuses, people being harassed, people being bothered in the workplace when they should not be. Military servicemembers, commanding officers being pursued which is totally inappropriate and it affects the servicemember. There are a lot of things that go on out there.

We have had numerous enforcement actions. We have had numerous examinations leading to relief. There is a lot of work to be done on this.

Ms. VELAZQUEZ. Do you have a timeline as to when a rule will be released?

Mr. CORDRAY. That is also on our unified agenda along with overdraft. We will be starting on that, I imagine, later this year.

Ms. VELAZQUEZ. Thank you. Thank you, Mr. Chairman.

Chairman HENSARLING. The gentlelady yields back. The Chair now recognizes the gentleman from Michigan, Mr. Huizenga, chairman of our Monetary Policy and Trade Subcommittee.

Mr. HUIZENGA. Thank you, Mr. Chairman, and Director Cordray, I appreciate you being here. I would like to talk about the enforcement today and when Congress—I wasn't here for this, unlike a number of my colleagues—created the Bureau—

Mr. CORDRAY. I wasn't here either.

Mr. HUIZENGA. Yes, I am aware. We are both living with the echo effects here. But just like any other regulator that the Congress has created we wanted the Bureau to punish those that violate the law.

At the same time, I think Congress wanted the Bureau to help support good actors who were trying to do the right thing and comply with the law. But it seems to me when the Bureau conducts an enforcement action, typically you publish a press release.

A number of those press releases that I have gone over seem rather than offering guidance or to help the providers to how to avoid an outcome like this, they really seemed to be over the top and sort of this, well, we just stopped them from kicking the neighbor's dog kind of line of story telling that kind of comes out of the CFPB and I am curious, why is that?

Mr. CORDRAY. If they were actually kicking the neighbor's dog, then it is appropriate for a press release to say that we stopped them from doing it.

Mr. HUIZENGA. I wholeheartedly agree, but when they are not?

Mr. CORDRAY. Look, I would be glad to walk through individual press releases with your staff.

Mr. HUIZENGA. That is where it gets a little tough though because those individual companies don't want us to go over individual press releases because they are afraid of what the echo effect might be on them.

But if you look at broad stroke things that have been out there, large companies such as JPMorgan, GE Capital, and Fidelity Mortgage Corp., I think there have been a number of those very high-profile things that have been sort of over the top in my judgment and I think I am judging a lot of others.

But a lot of smaller places—I have had community banks, title companies, I have them in my own State as well where there hasn't been a violation admittedly by the Bureau, but there has been kind of an example that has been needed to be set.

And I have to tell you that the press releases just seem completely over the top.

Mr. CORDRAY. Wait a second, if we have an enforcement matter, that is a law enforcement matter. I have heard people on both sides say they want the law to be enforced and it is appropriate for there to be a press release to let the world know what happened because that determines—

Mr. HUIZENGA. Yes, but why would you?

Mr. CORDRAY. But we wouldn't do a press release if there wasn't a law enforcement matter.

Mr. HUIZENGA. So the Bureau ombudsman has an announcement they are going to be conducting an independent review with differences in the language use between consent orders and their corresponding Bureau press releases; why is that?

Mr. CORDRAY. I encouraged them to do that because we have had people who made the inquiry, but I don't think it is—

Mr. HUIZENGA. So you admit there was a problem?

Mr. CORDRAY. No, I don't think—I don't know that there was a problem, we are going to look at it and see and I am happy to do that. But, and the ombudsman has some independence from me, which is appropriate.

Mr. HUIZENGA. But hold on, my understanding of entering into these consent orders is that the Bureau has not actually proven that a respondent has actually violated statute or law, correct?

Mr. CORDRAY. I don't think that is quite right. When we enter into a consent order—

Mr. HUIZENGA. But then why not go for a jury verdict or some sort of judgment?

Mr. CORDRAY. If we can achieve all of our objectives, getting relief for consumers and stopping the conduct and the company will agree with that, then we don't need to go forward and—

Mr. HUIZENGA. But all that the respondent has agreed to in the settlement order is to end the enforcement action brought by the Bureau.

Mr. CORDRAY. No, that is not quite right. They often agree to injunctive relief going forward to stop doing what they were doing that was in violation of the law. This has always been done at the end of an investigation by us where we have established—

Mr. HUIZENGA. But there was not an admission that there was a violation.

Mr. CORDRAY. We don't necessarily require an admission, however, they stop the conduct, they come into compliance with the law, and they remediate consumers for the harm done. That is what we are going for; we don't necessarily need to drag them through a trial if we can get that.

Mr. HUIZENGA. But wait a minute, there was a trial in the press releases, because I have seen it—I have seen it where good companies, small companies, medium companies, large companies who have been out there and have had great reputations end up on the front page of their local newspaper getting dragged through the mud by the Bureau.

Mr. CORDRAY. I don't know what you are talking about in the sense that we don't enforce the law against institutions, banks of $10 billion or less. So, the notion that we are doing that with community banks is wrong, and I would like to know the specific instance you are talking about.

It is commonplace across this country that when law enforcers enforce the law, they let the public know what they have done so that other people who were considering violating the law in the same way are deterred from doing so; that is pretty important.

And as long as—

Mr. HUIZENGA. We understand but why would the Bureau insist that a company has violated the law if it has not proven that the company has done so?

And that is how I have read those press releases.

Mr. CORDRAY. We have conducted a full investigation. We think that the facts have been established. I have no doubt about that in our cases. Thank you.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Massachusetts, Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman. And thank you, Mr. Director, for being here. Mr. Director, I think you are doing a pretty good job. I like pretty much everything your agency is doing and I have been supportive from day one.

So I just want to thank you for what you have done and are continuing to do. But I, like everybody else, have a little bone to pick—I don't have a bone to pick so much as a clarification to ask.

Mr. Director, have you ever heard the term, "triple decker?"

Mr. CORDRAY. "Triple decker?"

Mr. CAPUANO. Yes.

Mr. CORDRAY. I know it is a sandwich, the Big Mac. I used to work at McDonalds, so I have heard of that.

Mr. CAPUANO. And hence, the problem.

Mr. CORDRAY. Okay.

Mr. CAPUANO. A "triple decker" in my district is housing. It is generally working class housing and look, I have a little problem, because I usually hate these things, but I did because it is necessary, okay.

There are triple deckers in my district. I know Mr. Lynch knows what I am talking about, I presume Mr. Himes knows what I am talking about. I presume Mr. Guinta knows what I am talking about, and I'm not sure, but maybe Mr. Garrett, as well. I know they have them in New Jersey.

Mr. CORDRAY. I see. We don't have those in Ohio, in my area.

Mr. CAPUANO. I know. You have missed out on some things, and that is one of them. These are housing units generally owned and occupied by working class people. My brother owns a triple decker. I have a two-family house.

And I bought a two-family house, which I still live in, because when I bought it I needed the rent to help pay the mortgage. In my brother's triple decker, he lives on the first floor, one of his sons lives on the third floor, and his other son used to live on the second floor with his two children. That is a classic situation.

And for reasons that are beyond my comprehension, except for the lack of knowledge, which is fine—that is why I am trying to educate you and your staff.

In New England, a triple decker usually is a classic entry into homeownership for working people who could not otherwise afford to buy a home, and yet for reasons that I don't understand they are exempted from the QM rule which I like.

Mr. CORDRAY. I think I see where you are going.

Mr. CAPUANO. I hope so.

Mr. CORDRAY. So the question is whether a triple decker as you describe it should be considered residential real estate or—

Mr. CAPUANO. Yes. And as I understand the rule, it is currently not considerered to be. Yet, if the same triple decker as in my district is bought by some outside investor and ripped apart and put back together on a TV show as some high-end unit, if they rip them apart and "condo-ize" them to sell them to some gentrifier, those are considered qualified.

But the working person who has it doesn't qualify which means their local bank cannot hold their mortgage.

Mr. CORDRAY. Okay. I will tell you what, I had not heard of this issue in my own experience. If we think there is an interesting animal out there in the housing field that doesn't fit easily within our definitions and we need to rethink that, we will be happy to work with your staff to try to understand the issue and consider what is the right answer to it.

Mr. CAPUANO. I would like to do this quickly because in my district, in Boston alone, there are 9,000 triple deckers, 27,000 units, and that is just Boston, never mind the rest of my district.

So, I appreciate the offer and I look forward to working with you as quickly as humanly possible not to get any advantage but to simply treat them as you treated other multi-units with two family homes like I have.

Mr. CORDRAY. We will take a good look at that.

Mr. CAPUANO. I know how to quit when I am ahead, so with that, I yield back the rest of my time.

Chairman HENSARLING. The gentleman yields back. The Chair now recognizes the gentleman from New Jersey, Mr. Garrett, chairman of our Capital Markets Subcommittee.

Mr. GARRETT. I thank the Chair and yes, we do have them, we do have triple deckers, I say triple deckers are not quite triple deckers but just slightly—

Mr. CAPUANO. You don't use that little extra, add the extra little "R," we don't use that too much, triple decker.

Mr. GARRETT. Okay. Thank you. So let's talk about—and I don't know whether this topic was covered and forgive me if it was, but I was in three other hearings—predatory lending and your work in that area to try to find the bad actors, find the bad lenders who are engaged in predatory lending. Predatory lending probably has a technical definition, but I just think of it like when you have teaser rates trying to attract people in at a rate that is lower than it is going to be later on, trying to get people into triple deckers or regular deckers that they may or may not be able to afford because the rates are going to change and so forth.

And there probably is a definition of it if you looked at the books of the company, the track record of those people that I just described who you got in there have a higher default rate, right, than everybody else.

That's a nontechnical definition of predatory lending. You are nodding your head, so yes?

Mr. CORDRAY. I think it is a pretty good one. If you are lending in such a way that the borrower is set up to fail, and you have consistently higher default rates than others, that is a pretty good indication that something is not working right.

Mr. GARRETT. Okay. So it was about a week or so ago we had the head of the FHA here and they described what they do and that is exactly what they do. So will you commit to us today, since you are charged with looking at predatory lending, to look at the practices of the FHA and their practices which you have just defined as predatory lending?

Mr. CORDRAY. I am not—well, slow down a little bit. What are you talking about with the FHA?

Mr. GARRETT. The FHA has loans and they just lowered the—basically allowed for teaser rates, lower rates now than you will be getting later on, that they will use to try to attract people by lowering the premiums by a difference of $25 or $75 as their insurance rates that they have on there.

Having a default rate that is 150 percent relative to the rates as I described with all the others, those are all the things that came out in the testimony of the FHA, which you just described as, and agree with me is, predatory lending.

Shouldn't we really be looking at that, because isn't it unfair to the 150 percent of those folks who fall in that category who are now suffering because of those loans that they got into through the FHA?

Mr. CORDRAY. To me, a teaser rate is one where you offer a rate to begin with but then it is going to change later on. I don't know if that is accurate to the FHA program.

And as for reducing premiums, if they are reduced and people can therefore afford to get a loan, that doesn't feel like—

Mr. GARRETT. Well, no, they can't afford the loan because their default rate falling into these categories is 150 percent compared to the—

Mr. CORDRAY. I see. Look, I do think high default rates would be a warning sign, but if you are talking about FHA programs that were just changed, I don't know if we have data yet as to whether they are leading to high default rates for—

Mr. GARRETT. That is a good point. So will you commit to us to examine that data and get back to us whether their data—

Mr. CORDRAY. It could be awhile before we have anything like that.

Mr. GARRETT. Will you start, will you commit to us that you will look at both data that they already have and at the new data under the plan and report back to us on a regular basis to see what they are doing?

Mr. CORDRAY. Here is what I will say: We have created the national mortgage data base and it is exactly the data that will allow this sort of thing to be looked at over time.

We will be glad to have you and your staff work with us to see how data shapes up on these and other things over time, that will give us the window on the mortgage market, I think.

Mr. GARRETT. If I told you that there was a particular institution in my town that was engaged in this, would you tell me that it will take awhile to extract the information, that they just set up the program that they are doing in the bank and you don't have to worry about getting back to us for a long period of time?

Is that how you would handle any other institution?

Mr. CORDRAY. It depends on what the "this" is. If "this" is dropping rates in a misleading way and then raising them later, that I think is problematic, but I am not clear that's what FHA is doing.

If it means lowering prices and loans become more affordable and default rates go down, that also would not be problematic.

If you are lending and consistently default rates are high and there are outliers—

Mr. GARRETT. Right. So any one of these things by itself would not be a factor when you have multiple factors you would—can you commit to us at all that you will be looking at what they are doing?

Mr. CORDRAY. We will have data in the national mortgage database.

Mr. GARRETT. But will you commit to us at all that you will look at them as you would look at any other institution? Are they somehow special that they don't deserve your attention?

Mr. CORDRAY. No. I am not allowed to enforce the law against other government entities but we do collaborate and coordinate all the time on different programs both with FHA and other aspects of the Federal and State and local governments.

Look, we are developing data just so these kinds of things can be looked at. And if your folks are interested in seeing what we can see, we will be glad to share it.

Mr. GARRETT. Thank you.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Missouri, Mr. Clay, ranking member of our Financial Institutions Subcommittee.

Mr. CLAY. Thank you, Mr. Chairman. Director Cordray, could you provide specific examples of regulatory relief measures that the Bureau has already extended to small financial institutions?

Mr. CORDRAY. Sure. And we talked about some of them today which is that in the mortgage market in particular when we were required by Congress to adapt the Qualified Mortgage rule, what we call the ability-to-repay rule, we weren't required to do so, but we determined that—and I feel strongly committed to this—we believe smaller institutions like community banks and credit unions lend responsibly.

And I believe data has shown that their default rates are lower—this is going back to the Congressman's point a moment ago—than other lenders and were especially so through the crisis, then we should try to find ways to tier our regulation such that we can encourage them to engage in that kind of lending, which is good lending and very important in our communities.

And we did adopt a provision that applied to 90-plus percent of the community banks and credit unions in the country. We then went back and I determined, I thought we hadn't drawn it broadly enough, I thought we should draw it even broader.

Because we not only want to encourage them to lend but we want to give some room to grow in that lending. And in fact, the community banks are growing in their share of the mortgage lending market now in this past year we have seen, and we have a proposal to expand that further. That is an example of it.

We have had other provisions for regulatory relief. Annual privacy notices, we adopted a new rule to reduce these burdens on many, many companies. We were working toward the ATM machine sticker problem when Congress resolved it with our support as another means of regulatory relief.

And where we can do things that we think relieve burden on industry without hurting consumer protection, we are willing to consider doing that, and if people have ideas in that regard they should share them with us.

Mr. CLAY. Can you give examples of the impact that the community bank advisory council has had on the Bureau's actions relating to community banks?

Mr. CORDRAY. What the community bank advisory council—and that is another good example—we are not required to have such a body, but I thought we weren't going to be naturally hearing enough from community banks because we don't have the examination or enforcement authority of them, so we don't engage with them day-to-day.

We did set up a community bank advisory council and a credit union advisory council, which again we are not required to have but I think they have been very helpful to us and they influence our thinking.

We talk to them about the work we are doing on mortgage and other things, they talk to us about what kind of operational effect those things have on them, they tell us about what kind of problems and concerns they have in the marketplace that we might not otherwise see.

We have spent a lot of time with them and I think it has been very valuable to us. And I personally spend a lot of time sitting through those sessions, I don't just farm that out to other people.

I want to hear from them directly and I, again, am continuing to do this because I think it is very helpful and I think it has benefited the Bureau and I think it has benefited community banks as well.

Mr. CLAY. Thank you for that response. We often hear from our colleagues that a regulated institution somehow lacks the requisite access to the CFPB to voice their concerns about actions taken by the CFPB or to shape the CFPB's policymaking process outside of formal channels like the ABA's notice-and-comment period.

Could you elaborate on the ways that institutions subject to the CFPB's jurisdiction can interface with the agency when they take issue with the agency's action?

Mr. CORDRAY. Sure. First, we do have these advisory councils. Second, we did set up—in response to concerns from industry—a new office that we call the office of financial institutions and business liaison, which is the way that people in the industry can interface with the Bureau and make sure they can navigate the Bureau and have their concerns heard.

We meet regularly with both community bankers and separately with credit union leaders in every State when we go out and around the country and when they come in to do their fly-ins to speak to all of you, they typically will come and speak to us as well.

I remember I met with Congressman Neugebauer recently and my folks had told me about meetings we had with Texas bankers and credit unions in the past year. It was five or six different meetings we had and I told him I felt like I am a member of the delegation.

But it is something that I think is important for us to do and we gain a lot of insight from it and it gives them an ability to talk to us and have us hear from them.

And it has led to things like the small creditor provision, potentially expanding that provision, rural treatment where this is really a key to supporting communities by supporting their community banks and credit unions.

Mr. CLAY. And hopefully the consumers of Texas appreciate the CFPB's efforts. I yield back.

Mr. CORDRAY. I hope so.

Chairman HENSARLING. I could bite on that one, but I won't. The Chair recognizes the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman, and thank you, Director Cordray, for being here today. I am over way on the side.

Mr. CORDRAY. Okay. But everybody is in a different place—

Mr. PEARCE. We noted with interest that the change, the revised rules on QM for rural institutions, that was a matter of comment between us during previous hearings. And I really appreciate that we are already getting feedback that has been constructive.

We are starting now to hear from people who would be affected by the title insurance section that you announced in August, so be aware there probably ought to be someone looking at how that is going to affect the market also.

So I have put up on the screen here a threat map and I would draw your attention to it because another matter that we have talked about when you were here is cyber security and data collection. This is a real-time depiction of cyber threats and it goes on 24 hours a day. I know that when you testified previously you had said that you were going to handle it internally.

Just today, Apple and Google both experienced problems, and with the constant attacks, I get deeply concerned about the inadvertent release of that data, and we kind of have the recent releases of information.

So, again, my recommendation is, if we haven't done it, to visit with the FBI, with security agencies, and be aware that this is highly sophisticated stuff.

Mr. CORDRAY. Yes. All I can say is, you are absolutely right on that, this is a major concern. It is something that a number of the agencies are all realizing that we need to work together on—Treasury is deeply involved in this as well.

And it is threatening not only banks and financial institutions but potentially government and also merchants and others. And it is a highly sophisticated way of committing crimes against the American public.

Mr. PEARCE. I appreciate that understanding there. Now, you say repeatedly, and I appreciate the chance to talk about consumer protection and the way I visualize that you are protecting every single transaction.

Would it be helpful if this body were to put the GSEs under the same limitation or under your regulation, because then you just have one source, you go to the GSEs and say, you can't relax your standards, you can't relax the underwriting.

That was a great deal of the problem back in 2008 and preceding up to the meltdown and it just seems like if you could affect that one institution, FHA or the GSEs, then you could cascade out and protect hundreds of thousands of loans with a miniscule amount of effort. Is that something that you would be opposed to if we put in legislation to that effect?

Mr. CORDRAY. That is a very interesting and insightful point because when we first started out as a Bureau we were given about seven or eight tasks by Congress. It was in our law that we had to fulfill them, which we worked to do in the mortgage market.

Since that time we have gotten to know it better, as you know, HUD has significant authority in the market through FHA and otherwise. And the FHFA, working with Fannie and Freddie, has significant authority in the market.

So it makes a lot of sense for me, for us to coordinate closely with one another so the left hand and the right hand know what they are doing. There are a lot of things as you say that the GSEs can affect in the market and people have to respond to them because there is some—

Mr. PEARCE. Yes. If the GSEs did not purchase those loans, then people would be stuck with them and they are not going to live with the abuses that you are here trying to stop and so I appreciate that.

But I know that, and it has been a previous question of mine that no government agency—you all really don't interact with them and I am not sure that is always right.

Just this month a local constituent was forced into an IRS sale forfeiture of assets and was denied due process, the local sheriff was standing beside him, and finally the guy got so nervous he said, "Hey, everybody is scaring me with what they are saying is going to happen if I persist on my rights."

And so at some point that protection for consumers from the government agencies is something that would be very effective, too. And again, I think you maybe in the past had perceived that I was picking on you or maybe not serious, but I am deadly serious in saying that I would appreciate it if you would give your commitment that you would gladly oversee some of the actions by our own government.

Mr. CORDRAY. I don't have authority in our statute but I—

Mr. PEARCE. That is assuming that we would put it into the statute, I agree with you.

Mr. CORDRAY. Yes, yes.

Mr. PEARCE. Thank you. I yield back.

Mr. PEARCE. The time of the gentleman has expired. The Chair now recognizes the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman, and thank you for your testimony, Director Cordray, we appreciate it. And I do want to support my colleague, Mr. Capuano's, concern about the language surrounding three deckers.

I have known Mr. Capuano for many years and there is an old story about his dad and his three decker. At one point when Mike was a young boy, the election commissioner got a report that there were over a hundred registered voters residing at Mr. Capuano's three decker.

And so they went out to Mr. Capuano's house and the election commissioner said, "Can you explain why there are a hundred registered voters living at this three decker?" And Mr. Capuano said, "Easy, the top floor is empty."

Anyway, I do want to talk to you about reverse—

Mr. CORDRAY. For the record, he is not here to defend himself at the moment.

Mr. LYNCH. All true, I am sure. The CFPB just completed a report on reverse mortgages and this issue is percolating in my district. It seems we are having more and more concerns among seniors about consumer risks associated with reverse mortgages.

I know there has been some outreach but it seems to be sort of hit or miss depending on the neighborhood, at least in my district. How was the CFPB going out and communicating the risk that might be present in some of these reverse mortgages, especially since we are talking about an elderly community, people who are less sophisticated, and in many cases, they have their whole life savings wrapped up in their homes?

And you have a lot of very, I would say, slick advertisements on TV, and in some cases misinformation. What are you doing at the CFPB to sort of counteract that?

Mr. CORDRAY. Yes. Okay. So, first of all, Congress required us to do research on a report on reverse mortgages as an early part of our work that we did very carefully and very thoroughly and it highlighted a number of concerns about the reverse mortgage product.

The reverse mortgage product can work well for some people, if it is appropriately customized to their situation. It means they can stay in their home for the rest of their life free from worry. But there are a lot of complexities around the product, particularly if it is only one spouse on the mortgage rather than both.

And when they think that is going to be the case, there is a lot of uncertainty about the taxes and insurance, which are typically not covered by the mortgage, and that may not be appropriately marketed to people. So, we pointed out a number of issues and worked with HUD in terms of various revisions that have been made to the reverse mortgage product that they put out.

Secondly, on the advertising—I see when I am on the road and in the hotel late at night on the TV all of these ads and it concerns me. Some of what is being represented doesn't seem to be accurate or it is misleading at best.

We took our first enforcement action against reverse mortgage advertising recently. We will consider doing more in that area. It needs to be cleaned up. As you say, some of it is pretty slick and pretty glib. And if it is misleading people into a product, that is a concern.

So, we share the concern. We have done as I said a fair amount of research in the area and we have various things that we want to make sure are not harming consumers.

Mr. LYNCH. I appreciate that. Just a couple of thoughts—one of my constituents had a provision in their reverse mortgage that if they vacated the home for any reason, including a long-term hospital stay, that would trigger the dissolution and the person would basically lose their home if they couldn't come back.

So, that was a problem and it wasn't clearly articulated. I do want to say that in connection with the Affordable Care Act, they did do a pretty good job with advocacy and outreach; that is a very complex bill as well.

Mr. CORDRAY. Yes.

Mr. LYNCH. There is a group called SHINE—what is it, the Servicing the Health Insurance Needs of Elders. And they just go out en masse and they go to these senior—in our neighborhoods it is oftentimes just a neighborhood group that is centered on seniors. But they go out and they will explain that and word goes out so that these people have the ability to defend themselves. I am not sure if you are equipped to do that type of advocacy and education but I think it is needed in this area.

Mr. CORDRAY. I don't think we have a lot of people to do it. But we have an Office for Older Americans that strategizes in this space and how to work with partners around the country and—

Mr. LYNCH. Yes. The Council on Aging is also a very effective group.

Mr. CORDRAY. Yes. That is true.

Mr. LYNCH. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Posey.

Mr. POSEY. Thank you, Mr. Chairman.

Director Cordray, last Congress I introduced legislation to require the Consumer Financial Protection Bureau to issue advisory opinions similar to what a lot of other Federal agencies do. This would allow businesses to better understand the regulations they are faced with and in turn better comply with those regulations.

According to the CBO score based on the information provided by the CFPB, it was estimated that your Bureau would issue 5,000 advisory opinions every year for 10 years. And you heard that right Members, 5,000 per year for 10 years. Not only did the estimate strike me as a little bit high but it is also perplexing that the CFPB is contending that this unusually high number of opinions will never decrease over a 10-year period.

I am interested in understanding how that number was reached and whether or not you consulted other Federal agencies that enlist similar procedures, because if you did I think you would find that the number is extraordinarily high.

For example, according to the estimates provided by my staff, in 2014 the SEC issued only 17 advisory opinions. HHS issued only 10. The only agency that I could find that is even remotely close to your estimate is the IRS and even then your estimate is roughly twice the amount that they issued in 2014. Do you still believe 5,000 per year is a realistic estimate?

Mr. CORDRAY. So, let me just understand, what you are talking about is a CBO scoring that was done. Is that what you mean?

Mr. POSEY. The CBO scoring, you know what the cost was and that is probably what killed the bill, it is the cost imputed by your agency saying they would be burdened with these 5,000 advisory opinions when I have never heard of any agency issuing that many.

Mr. CORDRAY. But we didn't score that. The CBO scored it, is that correct?

Mr. POSEY. They scored it based on your input.

Mr. CORDRAY. Okay.

Mr. POSEY. Your agency said it was required to do 5,000 a year and they tried to cost that factor out.

Mr. CORDRAY. I see. Okay. Okay. I am not fully conversant with all of that. I do know—

Mr. POSEY. No. No. Let me explain it to you clearly.

Mr. CORDRAY. Yes.

Mr. POSEY. If you say the cost is—well, you do the math, over $800,000 divided by 5,000 so they came up with that figure based on information that your agency gave them.

Mr. CORDRAY. Okay.

Mr. POSEY. They said we have to do this 5,000 and the cost of it will be over $1,000 each.

Mr. CORDRAY. I see. So, again, I am not fully clear on this and I could look into it more. But what I will say is I do know that we do receive thousands of questions and inquiries each year. That is what it has been at least, we have only been around as you know, a couple of years, 3 years.

But we are receiving thousands of questions from people who want advice about how to interpret rules, what things mean, whether they can do it this way rather than that way. And we spend a lot of full-time equivalent hours on those and they come in all the time through email and on calls. And we do our best to respond to those.

Now, whether that is the same as a sort of "formal advisory opinion," as you know, different agencies define what that means differently. When I was the attorney general in Ohio, we did advisory opinions. We did about 100 a year and those were fully written out documents that took days to research and so forth. That is a little bit different from this. Now, where we are in between I am not sure.

Mr. POSEY. I think the assertion by your agency is that is what you have to do over 5,000 times a year. We do know that is incredibly excessive. Now, what many agencies do is just a matter of common sense, I forgot the term they used, but if they find there are a lot of businesses that are asking the same question, they will post on there and they will say look?

Mr. CORDRAY. We are doing that. Yes.

Mr. POSEY. —we are not going to—so, that relieves a lot of that—

Mr. CORDRAY. We are doing that and we are still getting asked the question so—but when we get the same question repeated over time, we will try to do a webinar or we will put something up so that others can just see the answer rather than having to call in and get it.

But it may be partly a function of us being a new agency, I am not sure. People may not be as familiar with us and these processes may have not gotten in the grooves. But I do think it is accurate that we received thousands of questions last year on the mortgage rules and the like.

And it may be that will be true for some time and then let's just say maybe it will settle down. I would like to hope so. I would like to think we could speak more clearly than that over time but I don't know when that will be.

Mr. POSEY. Yes. The question was if you thought that was excessive and what your trend is on that now, and the next question was going to be, did you consult any other agencies to see why—

Mr. CORDRAY. We have looked at other agencies and, again, they have very different processes. Some of them are quite confining and they only do a very few, a handful of advisory opinions. Some do hundreds—I think the IRS does private letter rulings, but I don't know what the volume is exactly.

And then they all answer questions as well. And that is a whole different category and that is pretty large at most agencies.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Cleaver, ranking member of our Housing and Insurance Subcommittee.

Mr. CLEAVER. Thank you, Mr. Chairman. And I thank the ranking member, as well.

Mr. Cordray, let me first of all express some appreciation to the agency, CFPB, for two things, one for the rule change for many of the rural bankers, the post-financial crisis rules which I was a part of, that unintentionally saddled them with cures to ills that they did not have.

Mr. CORDRAY. Yes.

Mr. CLEAVER. And as they call themselves country bankers, they would say they really appreciate that. The other is the Ask CFPB, this interactive online portal which I think—I don't know whose idea it was but it was great. The people in my district think it was mine but—

Mr. CORDRAY. Take credit for it.

Mr. CLEAVER. Yes. And I have already done that.

Mr. CORDRAY. All the rest of you could take credit for it, too.

Mr. CLEAVER. But before I go to my other question, do you have any data on how much that is working, how well the public is responding?

Mr. CORDRAY. I know that we are getting a significant number of page views on those tools now. And I believe we had—it is in the millions of page views that we now get for these tools which is encouraging because they are only useful if they are used, right?

And I would encourage all of you to feel free to direct your constituents to look at things like Ask CFPB which has—if you are being pursued by a debt collector suddenly what are your rights, you don't know—but you can go there and get the specific answers.

You can have letters that respond to try to assert your rights. Or if you have a mortgage problem you can figure out exactly how it works. That is what these tools are for and I hope people will use them.

Mr. CLEAVER. Yes. I am doing that and I would also encourage my colleagues to do so. I think it is one of the best things that is going on in the agency. But on the other side, I want to talk about the mandatory arbitration.

Now, I am assuming that you are going to—that the agency will issue some rules with regard to the mandatory arbitration. I don't even think—most people don't even think about mandatory arbitration until they have a problem with a credit card company. And then all of a sudden, they start talking about suing and then they discover little tiny print which essentially prevents them from going to court.

Because they have agreed—it is my understanding that they agree not to go to court when they get the credit card. They sign the credit card saying, I am hereby agreeing to arbitration. Is there anything—I am sure the credit card companies are pushing back on that—that may ultimately require legislation or is this something that CFPB can deal with through rules only?

Mr. CORDRAY. I hesitate to speak to legislation. That is up to the Congress, of course. In Dodd-Frank, the Congress did two things. They did ban pre-dispute arbitration clauses in mortgage contracts. And they then said for any other consumer financial contracts, the Bureau shall—we are required to do a study and report to Congress on this study. We are getting very close—very close to that point. Then—

Mr. CLEAVER. To the study—

Mr. CORDRAY. The study being published to Congress. Yes.

Mr. CLEAVER. Okay.

Mr. CORDRAY. And then depending on what that says we should take action as we deem in the public interest consistent with the results of the study to either limit or condition such arbitration clauses. So, I want to be very careful not to—we have been careful not to prejudge the results of the study.

It will include a consumer survey as to what consumers think has happened when they sign up for products and—that have arbitration clauses. It is pretty extensive and it will be out I think I can say as I sit here very, very soon. And then we will work on how to go from there.

Mr. CLEAVER. Thank you very much. I yield back the balance of my time.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Georgia, Mr. Westmoreland.

Mr. WESTMORELAND. Thank you.

And thank you, Mr. Cordray, for being here. I represent a district that has a lot of really good, hardworking folks in it, and a lot of them live paycheck to paycheck. If you were me, what would you tell them if they came to you and said they had an emergency and they needed to get $50 or $100 for a week or 3 or 4 days, where would you tell—where would you advise them to go to get that kind of credit?

Mr. CORDRAY. I don't know, there are any number of places, but I don't generally stand in their shoes and tell consumers what to do.

Mr. WESTMORELAND. You don't?

Mr. CORDRAY. No, I don't. I don't.

Mr. WESTMORELAND. You tell them what they can't do. And that is my point. I was in the building business. I have loaned people $20 or $50 or $100, they were coming to me because a child was hurt, a transmission was out, or they had to turn on their electricity.

Mr. CORDRAY. Yes.

Mr. WESTMORELAND. And I have seen in their eyes and it seems to me like the CFPB is trying to tell these folks that they don't have enough sense to be able to manage their own affairs. And you are trying to make rules that do away with payday lenders, pawnshops, and prepaid credit cards where people can have an overdraft protection so the card wouldn't be turned down if they are going into a drugstore to buy medicine for a child or whatever.

You say you don't advise them where they can go but you are trying to make it to where they can't go to these people that they have been dealing with for years. And a lot of their families have been dealing with these people for years.

So, I would like to hear what you want to tell these folks and then I can go tell them when their sources of these small dollar loans, maybe just for 2 or 3 days, maybe for a week, maybe for 2 weeks, I want you to tell me where to tell them to go because if they go to the bank to get a $50 loan for 2 days, the bank fees will be so high they wouldn't be able to get it even if the bank would consider loaning it to them.

So, if you could just tell me what you want me to do?

Mr. CORDRAY. Sure. Okay. A couple of things, number one, you are making a judgment that we are going to do this, we are going to do that. We are at the beginning of a rulemaking process on payday and other small dollar loans and that will unfold and there will be a lot of public input into it.

I have said time and again, and I said it earlier in this hearing that we believe that people need access to credit for those purposes for exactly the kinds of things you talked about, emergency needs. But they should not—we should not easily tolerate that people end up rolling loans over and over and over and they end up paying far more in fees than they borrowed in the first place and they are in a debt trap—they tell us about it all the time in comments that they submit to our agency.

That is a concern. That is harming the consumer, not helping the consumer. How to balance that is difficult. It is a complicated thing. We have been working on this for now 3 years. It is a very difficult task, I would agree, but we are going to do our best to try to strike that balance.

Mr. WESTMORELAND. You talk about making rules to keep them from rolling over. I am sure there will be rules about what percentage rate they can be charged. And you have to understand that most of these people are not banked. They are non-banked individuals.

Mr. CORDRAY. We are well aware of that. Yes.

Mr. WESTMORELAND. Okay.

Mr. CORDRAY. Yes.

Mr. WESTMORELAND. And so, if you have ever—have you ever loaned anybody any money?

Mr. CORDRAY. Actually, we are well aware that most payday lender borrowers are banked. They have a bank account. That is where the money is coming from. That is where they write the check on. So, by definition, most of them actually are banked.

Mr. WESTMORELAND. I am sure that all of them are banked.

Mr. CORDRAY. I have not myself been an extensive lender—

Mr. WESTMORELAND. Have you ever had anybody—in my case, I would have somebody come and say hey, I need 50 bucks until Friday. And I knew—saw it in his eyes that he was going to get $50 and it was either me loaning the $50 and take a chance of getting it back Friday, or lose a saw or a generator or something of that nature. And so, I think when you are making these rules I hope that you will understand there are people who do use these types of ways to get credit and especially now that this prepaid credit card has come out then this an avenue that at least from what we have heard for people to allow their kids to have an allowance or college spending or whatever on the prepaid cards then they would much appreciate if there was just, say, a $15 overdraft fee rather than these people being denied credit at a time when they need it the most.

So with that, Mr. Chairman, I yield back.

Mr. CORDRAY. Thank you.

Chairman HENSARLING. The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman, and Ranking Member Waters.

And thank you, Mr. Cordray, for being here testifying again today. Certainly we have asked you a wide array of questions ranging from credit to payday lending, a little bit about—and the list goes on and on. And so, the good and the bad news is I am going to add to that list. But one of the things that we talked about when you were here before in the last Congress is we talked about credit reports and now, after having the opportunity to look through your document and saying on—I am going to reference, Mr. Chairman, page 28—when we look at number of complaints and the things with constituents, 76 talked about incorrect information.

And then when you look at the other pies on your chart, it made me want to ask the question because on this committee, we talk about a whole host of things and whether it is on our Housing Subcommittee, whether it is on working with banks, it all comes back to your credit and what you put into that investment in credit, if you go to purchase a home or if you are starting a business and yet we are finding out that oftentimes the information is incorrect on there. And it becomes almost impossible to the lay consumer or constituent to get that removed or get it changed.

So, you talked a lot about tools today. Can you give us any update or information on what we can say to our constituents about that?

Mr. CORDRAY. Sure. Yes. And frankly, you and I may be more sensitive to this issue because it is our hometown newspaper that has done some of the best investigative reporting on the issue of credit reports, credit scores, and accuracy.

That is something that we have been looking at very carefully and thoroughly at the Bureau. We are the first agency ever anywhere to be able to examine and go in and really get this sense of how things work within the three big national credit reporting agencies. And that has led to changes already.

They used to have a paper-based process that was reduced to a three-digit number for correcting errors on your account if you wanted to submit a dispute and they didn't necessarily pass the paper on to the furnisher that originally supplied the information.

We have worked with them to change that process. It is now changed. Your information will go in so that the furnisher can see what the basis for the dispute is. It is not reduced to a three-digit number. That is a significant improvement.

We also indicated late last year that we would begin requiring regular credit reporting accuracy reports—akin to call reports to the banks—that we are moving forward with. And we are doing a great deal of work around improving accuracy in these numbers.

The other thing we are doing that I think is important is we have been encouraging the open credit score initiative which a few lenders got started with with FICO and now has grown to more than 50 million Americans who now have free access to their credit scores on their credit card bills and other potential loan documents.

That is going to create a lot more awareness on behalf of the public that, this is my information and it matters to me and it may be changing and I need to find out more about it. I think that is going to be a sea change for the entire industry and that is something that we are really encouraged about.

As consumers know more, as they can stand up for themselves more, they will be getting more responses from these companies and we also are putting pressure on this to see to it that happens.

Mrs. BEATTY. Thank you. My last question is, this past week I have had a lot of—all of us have had a lot of people come in to see us over this whole issue with cyber threats. Is there any more that maybe you haven't said or that I did not hear—we had a lot of our community banks and regional bank folks come in and say that with the number of credit cards that are being compromised, and I know firsthand, because I used my credit card, went to pay the bill, and my private banker said to me oh, there is something wrong with your credit card.

Now, I was pretty sure that was inaccurate. She told me it had been compromised. And so, they cut it in two. That was the good news. My sister's was compromised that same day but someone had used hers repeatedly to the tune of thousands of dollars.

Now, the banks are telling me they are making that whole versus the Neiman Marcus or the Targets or wherever you used it get off free. Any thoughts on what we should say back to our bankers?

Mr. CORDRAY. I know that this has been a subject of potential legislation by the Congress and I know people talk about how powerful this agency is, but when it comes to merchants and security of the information, that is not something we have authority over.

There is a battle going on between the merchants and the banks over who should bear the cost of these kinds of breaches. Everybody is going to have to do a better job and there are improvements coming in card security and other things. But it is—I could just say it is a big problem. It affects consumers. It affects all of us.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Ohio, Mr. Stivers.

Mr. STIVERS. Thank you, Mr. Chairman.

Welcome, Mr. Cordray. It is not every day I have a constituent testify, so it is good to have you here. And apparently it is Central Ohio time because Mrs. Beatty went and now I am going. In the back you will see some folks from the Mid-Ohio Foodbank in Grove City, your hometown, that I am going to meet with after this.

I want to thank you for what you are doing to try to protect consumers. But I will tell you I do have some concerns about some of the methods your agency is using. And I would like to kind of—if I have time—talk about auto dealers, prepaid cards, and then if we get to it, TILA and RESPA.

Mr. CORDRAY. Okay.

Mr. STIVERS. You may know that the Department of Justice has created a framework and I think both the national automobile dealers and the minority-owned—the minority auto dealers have developed a fair credit compliance program around the Department of Justice model. But I don't think any of that was used in the CFPB rule you are creating around participation of auto dealers. I am just curious, do you think the DOJ model doesn't work or it is not good or did that just not enter into your thinking?

Mr. CORDRAY. The way Congress drew our statute—again, this is another area where supposedly we are so powerful, but we did not have jurisdiction over auto dealers.

Mr. STIVERS. But you do have and you are working on getting information on their participation with lenders. So, you are using the lender to get into the dealers.

Mr. CORDRAY. No. We have responsibility to oversee fair lending by auto lenders but not by auto dealers. So, the dealer program that they have developed may well be an excellent program and we have talked to them about it at their suggestion. It is really more for the Justice Department to say what they think of that; it is not really within my jurisdiction.

Mr. STIVERS. I do want to share that I talked with one of my auto dealers and they gave me some stories about some folks from my area—your area—who actually got car loans through work at one of the auto dealers in our town, Reicart Automotive just down from where you live.

Mr. CORDRAY. Sure—

Mr. STIVERS. And a lot of college students, a lot of first time buyers, a lot of people with damaged credit have actually been able to secure car loans. I want to tell the story of a lady who needed a car to get back to work.

She was a young lady in her 30s, recently divorced. Her husband had ruined their credit. She had three children. She needed to get back to work. She couldn't find a loan to get a car and that dealership helped connect her with a lender that gave her a loan.

And I think that is a really good outcome. But they are worried that under your proposed rules, they might not be able to work with that lender to help increase the competition and get people like this lady who needed to go back to work a loan so—

Mr. CORDRAY. Yes. I actually agree with you on that.

Mr. STIVERS. Yes.

Mr. CORDRAY. I think it is a good outcome. I think people need—at least where we live—cars to be able to transport themselves to work and keep a job. But if they can't do that, it is worse than having a mortgage problem because they can always rent if they don't own a home.

Mr. STIVERS. Right.

Mr. CORDRAY. But here, they do need these loans and I do think the auto industry is going gangbusters right now. Sales of cars are up.

Mr. STIVERS. It is but there are still people who can't get access to loans right now for cars.

Mr. CORDRAY. Yes.

Mr. STIVERS. If you can't get access to a loan, you can't get access to a car, so?

Mr. CORDRAY. I certainly don't want that to be as tight as—

Mr. STIVERS. I certainly wouldn't want your unintended consequences to be that you allocate loans away from the people who are most in need.

Mr. CORDRAY. Fair enough. That is not what I intended.

Mr. STIVERS. I would use the Soviet grocery store as an example. So, sure, a Soviet grocery store never sold anybody bad vegetables or bad meat because they never sold anybody vegetables and meat. They were always out of it.

Mr. CORDRAY. Yes. Yes.

Mr. STIVERS. So, you can—that is not the right way to protect—

Mr. CORDRAY. That is right. That is not what we intended either.

Mr. STIVERS. —consumers, so it is really important that I get that across and that transitions me to my next issue with regard to people who are in prepaid. And you talked about the short term lending. And many of the folks who do short-term lending, so called payday lending, might be banked, but for a lot of people on prepaid cards, that is their bank account.

Mr. CORDRAY. Agreed.

Mr. STIVERS. Their card is their bank account.

Mr. CORDRAY. Yes.

Mr. STIVERS. And the way that the proposed rules—and I know you are still taking—I think you are still taking comments?

Mr. CORDRAY. We are.

Mr. STIVERS. The way the proposed rules work is that overdraft protection would be treated as a credit card or a loan but it is really—and so, they have to take an application. They have to do some underwriting.

It really will deny real access to these people and I would ask you as strongly as I can to take a look and see if there are practices you want to limit, if you think there is something that are best practices you want to encourage, you can do that. But don't take away people's access to this because if you make them opt in through an application, it will never happen. And these people will get denied access to that overdraft protection that they would have gotten if it was in a bank.

But because their card is their account, they are being denied access. So, I would ask you to look at the unintended consequences every time you do things from the car loans to the prepaid cards to TILA and RESPA, which unfortunately I didn't get to because my time is up. But please, look at it because you could become the—you could make us the Soviet finance system if you deny access.

Thank you, Mr. Chairman. I yield back.

Mr. CORDRAY. Okay. I would be glad to talk to you further about these issues.

Mr. STIVERS. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you.

Director Cordray, thanks for being here. On August 1st, the new TILA–RESPA integrated disclosure home closing forms now known as TRID—a nice catchy name—

Mr. CORDRAY. I don't particularly like that acronym, frankly.

Mr. SHERMAN. —Okay, are scheduled for implementation. What does the Bureau have to do to support industry in implementation right in August and are you considering announcing a short-term restrained enforcement like HUD previously used on other disclosure changes? This might help small businesses work through the kinks that they may find in the properly or improperly acronymed TRID.

Mr. CORDRAY. Okay. We haven't heard very much about that and we did give a 21-month implementation period. This rule was actually passed in November of 2013 so people have had a long time to lead up to this.

We have worked hard—this is something that has been a hallmark of the Bureau on all of our rules is we don't just pass a rule and then sort of say to the industry it is your problem now, we are no longer interested.

We care about their ability to implement the rule effectively because if they can't then it is not going to work for people. And we do a lot of work around taking what is pretty dense legalese of the Federal Register and turning it into plain language guides, "how to" guides, guidance and we answer and respond to questions.

We have done webinars for hundreds, if not thousands—I think thousands of folks on these rules. And we are trying to make sure that they will be ready to go because that is what we want. If the rules are an improvement—and here they are—consumer surveys have shown us that this is more intelligible and understandable disclosure than existed before. Plus, we have taken two forms at each stage and boiled it down to one form which is what Congress told us to do. That is all a good thing. We are working hard—

Mr. SHERMAN. Would you consider the idea of a restrained enforcement at the beginning?

Mr. CORDRAY. Look, what I would say is the effective date is August of this year. That is 21 months from when the whole thing was finalized. And by the way, there was plenty of time before it was finalized when people could see it coming.

It is not like we are going to come in the very next day and say, "Aha, now, we can bring the hammer down on people." But at the same time, people should be getting ready for this. They should take it seriously and that is the date as I understand it.

Mr. SHERMAN. Okay. You don't regulate insurance companies. You don't regulate depository institutions winding up in bankruptcy. But you are the closest thing we have to a national advocate for insurance consumers and the consumers of other financial products.

When AIG had certain affiliates go bankrupt, their regulated insurance companies stood strong. They had been regulated by the

State governments. Have you thought of taking a position to try to protect the insurance consumers of this country to say that when you have an insurance company and you have a related depository institution, that the folks who regulate the depository institution can't reach in and grab the assets of the insurance company to the disadvantage of the insurance consumers?

Mr. CORDRAY. That is not an issue that has come to my attention before. I know that very explicitly in our statute, we do not have jurisdiction over insurance companies—if there is mortgage insurance and it is part of the mortgage that is something different, but typically that is outside of our range, so I haven't—I have neither thought about that nor do I have any real comment.

Mr. SHERMAN. On the theory that you are looking for more things to do, I hope you would look at the sorts of restraint legislation because you are the closest thing to a national advocate of the consumer as of—

Mr. CORDRAY. Right. I appreciate that. You know we have a lot to do.

And we are going to be very careful of our jurisdiction.

Mr. SHERMAN. I have one more question to sneak in. I am interested in knowing about your forthcoming small dollar payday loan rule, which I know you haven't proposed yet. Will it target all forms of small dollar credit or be limited to payday, and what are your chief concerns about the small dollar loans, rollovers, ability to repay, and cycle of debt?

Mr. CORDRAY. We published two extensive White Papers on this subject and they have indicated both our appreciation for this credit in certain circumstances and also our concerns about how this credit can trap people in debt in other circumstances.

We have been working to try to square the circle between those two in any kind of policy intervention we would do. That will begin with small business review panels under our statute and that is when this will become public as the beginnings of what will eventually be rules.

People will have, I am sure, plenty of say on that, on all sides. It is obviously of extreme interest. And it is something that we are working on very carefully.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Illinois, Mr. Hultgren.

Mr. HULTGREN. Thank you, Mr. Chairman.

And thank you, Director Cordray. Director, I would like to focus on CFPB's proposed changes to the Home Mortgage Disclosure Act rule. I thoroughly support the original goal of the legislation preventing discriminatory lending practices.

However, I am concerned that these changes will pose a significant burden on mortgage lenders, including community banks and credit unions. The small financial institutions are a key way that many people access the American Dream and yet they are struggling under a tsunami of burdensome and needless regulation.

CFPB's efforts thus far to narrowly tailor proposed HMDA requirements have been insufficient; even Dodd-Frank mandates 17 new data fields. CFPB has proposed an additional 20 required fields, imposing meaningful compliance costs on struggling small banks.

Director Cordray, will the CFPB do more to provide much needed HMDA regulatory relief to these small financial institutions that need the most help?

Mr. CORDRAY. As you are clearly aware, and I appreciate your interest in this subject, we have proposed rules that were out for comment and we have received extensive comment, hundreds of comments on them.

They do include some additional fields that were required by the Congress in the statute and some additional fields that we thought were necessary to help monitor the mortgage market along the lines of what was discussed earlier and at the same time, we have done some other things that we are trying to relieve burden, such as exempting certain small creditors from having to report at all and also updating the technology, so it should be easier for people to report with less burden.

So how all that mixes together in the grand scheme of things is something that we are trying to figure out and we appreciate the comments we have had and we will do our best to digest those and—

Mr. HULTGREN. I really do hope you take them into consideration. The concern has been bipartisan, of really the weight on, especially community banks, smaller banks, credit unions.

Mr. CORDRAY. Yes.

Mr. HULTGREN. It is not just this side, but really both sides have recognized that. And I do recognize the exemption that is there. I would say that the exemption is too low and I would encourage you to look at a larger number there.

Mr. CORDRAY. Sure. You are not alone in that suggestion, so yes.

Mr. HULTGREN. That is right. Director, does CFPB still expect to finalize the HMDA rule in July? If so, when would companies be expected to comply? Given the immense resources expended in implementing the mortgage roles in TILA–RESPA, would the CFPB consider maybe a conformance period, similar to the one granted by the Federal Reserve for the Volcker Rule where during this period banks would not be subject to enforcement actions if they showed a good faith effort to comply with the new rule.

Mr. CORDRAY. I don't want to say specifically that it will be July, but it will be somewhere in that timeframe. I also would say there will be a significant implementation period.

It is not like it is going to go into effect immediately. So as to whether people will need a further relief from that, that it is pretty premature at this point, but again there will be a fair amount of time for people to comply, I believe.

Mr. HULTGREN. Well, again—

Mr. CORDRAY. And we have comments on that.

Mr. HULTGREN. We are hearing from people who are concerned, so don't think it is not a concern.

Mr. CORDRAY. That is right.

Mr. HULTGREN. I think there is concern there. I think there are precedents for something as I mentioned where there is a window if they are making a good faith effort to comply, and this conformance period, to me, seems realistic and the proper thing to do to accept that.

Let me go on. By including home equity lines of credit and commercial loans secured by dwelling, the CFPB is going far beyond the HMDAs statutory purpose: to ensure customers have access to mortgage credits. This will greatly distort the HMDA data; not only will you be comparing apples and oranges but the systems and loan process is completely different for those different types of loans.

Given these concerns, wouldn't customers be better served if the HMDA continued to apply solely to mortgages?

Mr. CORDRAY. This is a good example of the kinds of things we are wrestling with. We wrestled with this and came out with our proposal. There is comment on it, lots of comments on both sides. Again, I think hundreds of comments, we are wrestling with what people are saying around that.

We are trying to make sure that this will effectively give the right window into the lending market. HELOCs, as you say, are often not for purposes of the mortgage itself, but they are secured by the home.

Mr. HULTGREN. You want to serve customers and protect them.

Mr. CORDRAY. Yes.

Mr. HULTGREN. That is the idea, I think. But when you so protect them that they can't even have access to this, be able to apply, I think there is a real problem there.

Mr. CORDRAY. Right.

Mr. HULTGREN. I would also just mention—my time is almost expired, so I will just say I am also concerned about protecting highly sensitive consumer information. I know much of this is a part of the application process and I am very concerned. I am hearing back from my constituents about concerns of potential breaches with that information.

My time has expired. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Director Cordray, I have a real concern regarding the Bureau's December 23, 2014, proposed rulemaking for prepaid accounts under the Electronic Fund Transfer Act Regulation E and the Truth in Lending Act Regulation Z.

My specific concern involves the proposed changes required for overdraft features associated with the general purpose reloadable GPR cards. In particular, defining GPR cards that offer draft features as credit cards subject to the requirement of Regulation Z is concerning to me.

So what I want to request is that the Bureau consider as it reviews comments adjusting this to allow an optional opt-in approach consistent with the requirements currently in place for similar overdraft products regulated under Regulation E. Is that possible?

Mr. CORDRAY. That is one of a number of approaches that could be taken to this. We have worked this through as carefully as we can and came out with a proposal. We are still taking comments on that and we will continue to take comments until later this month when the period ends.

And then we will digest those comments. It was again, our thinking that where you have credit on a prepaid card and it is credit, it is a loan of funds that could be treated similar to the way it is treated under the credit card rules in the CARD Act.

I am sure there are going to be favorable comments on that approach. And there are going to be unfavorable comments on that approach and we are going to listen carefully to what exactly people say and how convincing it is. And if anybody is giving us data, we are interested in that as well. But this will be all part of our thinking as we work toward a final rule.

Mr. SCOTT. I just want you to understand how important this is to me. I represent Georgia. NetSpend Inc. is a leading provider of GPR cards groups. And it is a subsidiary of Total System Services, a corporation that is located in my State of Georgia, so quite naturally I am very concerned about that.

I have taken the liberty of writing you a letter concerning this. I also wrote one along with my colleague, Congressman Gregory Meeks, concerning the same issue a while back.

The impact that this is having is very negative for our industry. NetSpend, for example, currently offers an optional opt-in overdraft feature for eligible cardholders that includes a number of consumer safeguards that should be there.

Customers must opt-in and meet direct deposit requirements. Customers must provide an email address or text number for real-time notifications about overdraft. Customers pay no fee when they repay, moreover NetSpend's overdraft fee is well below the average bank overdraft fee.

Consumers are able to use NetSpend's overdraft features to meet short-term liquidity needs such as purchasing extra groceries and in emergency situations, handling medical emergencies, and covering unexpected car repairs.

The proposed rules, however, make it impractical for my consumers and for NetSpend to continue to offer this feature. Not only may this limit NetSpend's ability to compete with similar financial products in the marketplace but it may most notably also harm consumers who benefit most from this short-term liquidity.

And so, I wanted to use this example, so that you could see the seriousness of this and I appreciate your addressing my constituents' concern.

Mr. CORDRAY. We have actually sat down and heard directly from NetSpend about their issues here. That is all part of the comment process and we are going to hear as I say quite a bit from a large number of people—we already have—and I am sure we will hear much more before the deadline. That is all what we will take into account and try to reach the right balance in the end.

Mr. SCOTT. Thank you very much, Director. I appreciate that. And keep me informed, please. Thank you.

Chairman HENSARLING. The gentleman yields back. The Chair now recognizes the gentleman from Tennessee, Mr. Fincher.

Mr. FINCHER. Thank you, Mr. Chairman.

And, Director, thank you for being here with us today. I have a couple of questions. I am going to go through them quickly to give you enough time to respond to me.

Mr. CORDRAY. Right.

Mr. FINCHER. The first one, I am no stranger to manufactured housing.

Mr. CORDRAY. Yes.

Mr. FINCHER. I talked about this. It is a bipartisan effort. In response to a question by Ranking Member Waters during last year's hearing when you were before the committee, during 2014, regarding what the CFPB was doing to solve the ongoing issues with CFPB's HOEPA Rule and its impact to manufactured housing lending, you said the CFPB was going to address their concerns and monitor the market, to see what the actual effect is. And we want to know what is actually happening and we will work with them to address those concerns. We know what is happening. We have seen some of the manufactured housing lenders reducing the amount of loans being offered.

We know that one of the companies that offers manufactured housing loans, and there are only a few, is no longer making loans for $20,000 or less. And we know that one of the banks that once offered such loans has completely pulled out of the manufactured housing lending market.

We have heard countless examples of consumers being impacted by the rule. And even the CFPB recognized in its own White Paper released last year on manufactured housing that the HOEPA Rules will have a disproportionate impact on the manufactured housing industry.

The report specifically states the Bureau has recognized certain provisions of the Dodd-Frank Act the Bureau implemented through the rules, which took effect in January 2014, may affect the market for smaller-sized mortgages, and more specifically the manufactured housing segment of the market in ways that differ from the rule's effect on other market segments.

So I ask you, what have you done besides issue a White Paper that proves our point that the majority of manufactured housing loans being made are being impacted by the rule, and what are you doing to protect my constituents and those looking for rural housing in America?

Now, before you answer, we do have a bipartisan solution, a bill, the Preserving Access to Manufactured Housing Act—Mr. Barr and Ms. Sewell and Ms. Sinema are original co-sponsors—that we are trying to move. But it would be much better if it could be done through your agency and not through legislation. You could help us out a lot by taking care of this at your level and not making us do legislation.

Mr. CORDRAY. Okay. There are several things. It is a long question, so I will try to not to make too long an answer. Number one, it was in response to a number of questions from people on both sides who are on this committee that we did set out to do a White Paper and a deeper analysis in manufactured housing industry, because I said at the time as I was hearing the questions, I didn't think we knew enough about it. So we dug in and did take a close look at it.

Now, one of the things it showed was that there has been a decline in manufactured housing going back 20 years and there was a kind of cliff that it fell off about 16, 18 years ago and it has been low ever since.

So that doesn't necessarily indicate that the Dodd-Frank Act itself somehow created some new problem. It has just been a problem for a while. We also were interested in getting more data on this and we worked with Vanderbilt and 21st Century to get data from them.

We had a little bit of a problem importing the data, but we now have it and we are able to dig into it and see what more is going on. So, to the extent that HOEPA itself is constraining this market.

That is worth us thinking about. At the same time, as I say it, is a longer trajectory here that doesn't suggest that it is Dodd-Frank in particular that is causing the problem, so I think that is worth everybody thinking about as well.

In terms of whether we should take some particular action, we will look again at the legislation you have introduced, but I don't know what is the right answer for us here.

Mr. FINCHER. Again, this goes back to—we have talked about this before. I will get to my last question. The folks at the top for the last 6 years have continued to do pretty well under this President.

But the guys and the gals in the middle and at the bottom are the ones being crushed by all of these rules and regulations. And whether it is Republican or Democrat and whether it is well-intentioned or not, growing the size of government never helps folks get on their feet and do better.

It always hurts, whether it is Republicans or Democrats. So let me get to my last question in 20 seconds. The mortgage rate checker is something that has been released. It is really muddying the waters. Why is it that ahead of this effort, the Bureau posted an incomplete and imprecise rate checker to help consumers when it is not accurate. Where are you getting that information and why did you do it prematurely?

Mr. CORDRAY. It actually is quite accurate and it is up-to-date daily information. But our concern is that we found through extensive looking at this that consumers don't shop for mortgages; they shop for houses, but they don't shop for mortgages.

They could save a lot of money if they did shop for mortgages. What we are doing here is not unique. Google is now coming into this market with a tool—

Mr. FINCHER. Where are you getting that information to set the rates? Where are you pulling that data from?

Mr. CORDRAY. It is the same information lenders themselves have, the same databases they are using.

It is accurate information. I don't think that is—

Mr. FINCHER. But it doesn't include APR. It hides important information in fine print, and makes critical assumptions that impact rates. It could be very misleading to a consumer's actual transaction—

Mr. CORDRAY. Yes. And these are all things that have been suggested to us, particularly by MBA, and we are looking at and thinking about, but at the same time, others are coming to this—into this space. Google now has a tool. That is a rate comparison tool. There were at least a couple of others in a story I saw today.

Mr. FINCHER. Google is different than the CFPB. I yield back, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlemen from Washington, Mr. Heck.

Mr. HECK. Thank you, Mr. Chairman. Director Cordray, over here—

Mr. CORDRAY. Got it. Okay.

Mr. HECK. Usually I am way down there.

Kudos for your stamina.

Mr. CORDRAY. Right.

Mr. HECK. I want to switch subjects on you and ask about student loans.

Mr. CORDRAY. Okay.

Mr. HECK. You have responsibility as I understand it for processing the consumer complaints with respect to the private sector portion of student loans which have that—

Mr. CORDRAY. I think we take all student loan complaints. Yes.

Mr. HECK. Whether they are private sector or the Federal Government ones?

Mr. CORDRAY. Yes. People don't often distinguish very easily in their minds, so yes.

Mr. HECK. So you actually receive and act upon complaints from consumers regarding their student loans even if their student loans are government or government-guaranteed student loans?

Mr. CORDRAY. I think we get a lot of complaints on all types of student loans.

Mr. HECK. I think I read correctly—and correct me if I am wrong—in your semi-annual report that about 3 percent of your total was associated with student loans. My math, back of the envelope math, says over 7,000. Does that sound about right?

Mr. CORDRAY. Yes. I don't know exactly how many. It is definitely in the thousands and probably not in—not above 20,000. So yes, it is—

Mr. HECK. Yes. Are there any trends there that you take note of that should be brought to our attention?

Mr. CORDRAY. Yes. We learn a lot from consumer complaints. It is something that we really pay close attention to because it is really the voice of your constituents telling us about their concerns in the marketplace or where they think they have been mistreated.

A lot of what we hear about student loans has to do with people expressing a lot of regret. They didn't appreciate what they were getting into or what their rights were and they don't know what their rights are or what they can do about dealing with the debt and they are struggling to repay it.

There are problems with student loan servicing, so that they are not getting the right information or the payments aren't being allocated properly or sometimes they are being allocated not to the highest cost loan, but something else which isn't what a consumer would intend.

So we hear a great deal from them. And that is informing our approach to this, and one of the things we realized is people just don't know enough about what their rights and opportunities are with student loans and repaying student loans and getting into debt.

That has led to our Paying for College tool. It is on our Web site. I encourage you to spotlight it with all of your constituents, if somebody and some family for the first time in their life is thinking about, how do I send my kid to college?

How do I compare different offers from different schools, what might be the best value? This will help people work through that process which otherwise can be pretty intimidating for people the first time around. So those are all things that we are working on.

Mr. HECK. And to the best of your recollection, is the overall number of complaints associated with student loans growing, decreasing, or staying about the same?

Mr. CORDRAY. It is growing, I think as people become more aware that that is an avenue over time.

Mr. HECK. All right. Changing the subject on you again, I noted with interest and appreciation that you acknowledged in your prepared testimony the valuable role that your credit union advisory committee and your community bank advisory committee have played, and as you know last year Congressman Pittenger introduced legislation which just yesterday we reintroduced, to codify those business councils and to create one for other financial sector representatives, namely the escrow appraisal title company.

Mr. CORDRAY. Yes.

Mr. HECK. Obviously, you see a benefit in this. You took the time to praise and laud it. What would you describe as those benefits as they might exist for the other business groups to help provide you with input?

Mr. CORDRAY. Look, I can spend my whole life meeting with advisory councils and we cover so many markets that I wouldn't want to have too many of them. But it was pretty clear to me that community banks and credit unions are not only pretty important, they were going to be largely outside of our view, the smaller ones. And they deal with a great deal of products, so there is a lot of input to get as they do deal with mortgages, they deal with student loans, they deal with auto loans. They deal with, you name it, everything that depository institutions do.

Now, whether we would want to have too many more advisory councils, it is very time-consuming to have people come and meet with us. We spend—I spend the whole day with them. We spend time with them in between meetings hearing from them and getting their thoughts.

I would not want to do too many of those. But at the same time, as long as I am there, we are going to continue with the community bank advisory council and the credit union advisory council because they have shown their worth and I think they have been very valuable to us.

And they have improved their—

Mr. HECK. I have 8 seconds left, so let me just say, neither Mr. Pittenger nor I are giving up. We think listening is time-consuming but of incredible value. And I might just add that as somebody that you full well know sits up here—and often praises, compliments, expresses a appreciation for the work of your agency, neither are Mr. Posey and I going to give up on the value and utility of advisory opinions or no-action letters.

And I just want to say for the record and publicly, I am disappointed in the way in which you characterize a tool that you would use frequently. We think there is considerable benefit here for the private sector and for the stakeholders to make the process work better, which I know as a former attorney general, you know full well, if constructed appropriately can be a positive tool available to everyone, and make the whole system work better.

My time has expired.

Mr. CORDRAY. Could I have just 10 seconds?

Mr. HECK. Not if you are going to tell me you are not going to do it.

Mr. CORDRAY. No, no. We put out a proposal on that and we have gotten comment back that it is too narrow. It may not be sufficient, but it is something we are thinking hard about. As I said, I used to do a hundred a year when I was Ohio attorney general. I don't know if we struck the right balance here. We are going to think more about it.

Mr. HECK. I appreciate that very much.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Colorado, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. Director Cordray, thank you for taking the time to be here. I had a few areas that I would like to be able to try and cover.

Mr. CORDRAY. Okay.

Mr. TIPTON. The first area would be in regards to the prepaid card proposed rules that you have and my understanding under the Bureau's proposal. I would like to ask how many separate disclosures would a card issuer have to make to a customer?

Mr. CORDRAY. On prepaid cards?

Mr. TIPTON. Yes.

Mr. CORDRAY. We have tried to do a couple of things. First, recognize that with prepaid cards there is packaging and there is limited real-estate there. So—

Mr. TIPTON. So how many is it going to be—three or four disclocures?

Mr. CORDRAY. Whatever fits on the packaging and that is not a whole lot. And then the rest will be on the inside and people may never really see that because they typically will have bought the card before they ever get to the inside packaging.

So, the key things, in terms of fees and charges and the like and certain protections are on that outside. We have several model forms that people have been able to give us feedback on.

Mr. TIPTON. No, I am just trying to find out—

Mr. CORDRAY. It is very little room. There is not a lot of disclosure there, at least on the outside packaging.

Mr. TIPTON. And what about on the inside. That somebody is going to pay for that—

Mr. CORDRAY. Yes. We are not really—we are not mandating a whole lot of that. Most of these disclosures are institutions doing it themselves for their own legal protection. It is not required by the agency.

Mr. TIPTON. —it is not a "gotcha" thing. I am just trying to figure out how many you are requiring.

Mr. CORDRAY. Yes. It is all in our proposed rule, specifically what is being required and then everything else is being added by the companies themselves.

Mr. TIPTON. I guess the information we had; it could be up to three disclosures, depending on the State and their State law. Would that be fairly accurate?

Mr. CORDRAY. State law can matter. That is possible. What I am saying is on prepaid cards, the number of disclosures is going to be pretty limited on the outside of packaging which to me is what matters most, because that is what people are going to see before they actually decide which card to purchase. That is where we are really focused on that.

Mr. TIPTON. I guess, kind of, my point on this and a little follow up to maybe some of the previous line of questioning here is—

Mr. CORDRAY. Yes.

Mr. TIPTON. You are talking about simplifying it, trying to make it understandable.

By your own words, you just made comments that people were confused. They didn't understand. But you are putting in more disclosures. We have long forms. We have short forms.

Mr. CORDRAY. No.

Mr. TIPTON. And, I guess, basically, is that really simplifying the process?

Mr. CORDRAY. I want to be really clear. On the prepaid cards, the amount of disclosures that people will have before they decide which card to buy are going to be very limited. There is limited real estate there and we have been very careful about what is on there and what is not.

It is a real boiled-down summary of the key terms of the product. I think it is in line with what you are saying in terms of making it accessible and understandable for people.

Mr. TIPTON. Thanks for that.

I am new to the committee, and on February 12th, I happened to write down what the national debt was, and from February 12th to today, we have seen that rise over $31 billion.

And it is pretty much my sense that whether it is by fee or by appropriation, the ultimate payer is hardworking folks in my district who are frankly struggling right now to be able to keep a roof over their head and to be able to make some of those car loans that have been discussed.

But we are looking over some of the expenditures that you have made through the CFPB and it is my understanding that you have spent over $60 million in business management, is that relatively close?

Mr. CORDRAY. Yes. And one of the things I would say is we started off as an agency from nothing in 2011 and we have been an agency over the last 3½ years.

Mr. TIPTON. That is what—

Mr. CORDRAY. We had—

Mr. TIPTON. —you are building Washington.

Mr. CORDRAY. Yes—we have had to contract for a lot of services as we have been building out our own personnel, so?

Mr. TIPTON. Yes. Tell me, what is "business management?" That is kind of a nondescript sort of a term to spend $60 million on.

Mr. CORDRAY. It has to do with all of the apparatus of running an organization. It can range from things like human capital to finances to technology and infrastructure. There is a lot that—

Mr. TIPTON. So this infrastructure is included in your business management?

Mr. CORDRAY. Actually, I don't know offhand exactly what document you are referring to or what the definition of that term would be, but I would be happy to work with your staff to make sure you get—

Mr. TIPTON. I think that would be in those sorts of things.

Those all come into play as well.

Mr. CORDRAY. Okay. If you will show us, we will work with your staff and if we understand the document and what the—what we are saying, we will try to make it clear to you.

Mr. TIPTON. And just for my own edification, even though you have been in business just a short period of time.

Mr. CORDRAY. Yes.

Mr. TIPTON. Do you have any former CFPB employees who are now working for some of these business management groups?

Mr. CORDRAY. I really would not know the answer to that question. Not that I know of, but I don't know.

Mr. TIPTON. Okay. Would that be a conflict of interest? Is there any kind of a delay period on that?

Mr. CORDRAY. There are the same statutes and rules and we have our own provisions in terms of people potentially being able to go out and engage in a conflict of interest with their former employment for a period of time.

The same as you would have in the Congress I imagine, maybe it is somewhat different for a Congressman, I don't know. But, yes, we are careful about that.

Mr. TIPTON. Great. I appreciate the clarity on that.

Mr. CORDRAY. Yes.

Mr. TIPTON. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Texas, Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And thank you, Director Cordray, for your testimony today. I am a small business owner. I am one of those auto dealers. My father bought his first dealership when I was very young after moving to Texas to start a new life for his family.

When I got older, I chose to follow in his footsteps and have been in the automobile business for 44 years. Now, my daughter is running the business. Last week, in a Bloomberg News story you insinuated that auto dealers determine financing rates by eyeballing a customer. And that the practice was regrettable.

Let me tell you a quick story, and you have heard some stories like this. I had a single mother come into my dealership not long ago. She didn't have a lot of money for her downpayment and her credit was poor. And she had been turned away by her bank but needed a car to get to work, needed a car to take the kids to school.

Guess what, we didn't judge her based on the color of her skin or her ethnicity, or her gender. Our job that day was to get her into a car that was reliable and that she could afford.

Now myself, like everybody else in my industry, have hundreds of stories like this and most come out really, really well. And in my business, I have found in the years I have been in business, you have one thing at the end of the day when you go home and lock the door, and that is your reputation. And I wouldn't trade that for anything.

Now Director Cordray, Congress has directed a statute that the Federal Reserve Board and the Federal Trade Commission regulate dealers who are engaging in direct vehicle financing. Congress has also empowered the Federal Trade Commission and the Department of Justice to bring enforcement actions against auto dealers.

All 50 State attorneys general, as you would know, also enforce the Article of Statutes against auto dealers.

Mr. CORDRAY. Yes.

Mr. WILLIAMS. So the question I have is this: Do you recognize that in Section 1029 of the Dodd-Frank Act Congress preserved the exclusive authorities of these agencies to regulate auto dealers at the Federal level?

Mr. CORDRAY. Yes. And we have been very careful to observe that line, very careful.

Mr. WILLIAMS. I hope you mean that because sometimes we don't feel it.

Mr. CORDRAY. Okay. We have been very careful and—we didn't even talk to auto dealers at all until they came to us and wanted to talk to us a bit about this whole marketplace. So I think we have been—we have not brought any enforcement actions against auto dealers other than Buy Here Pay Here, which is within our statute.

We don't supervise any of them and we recognize the jurisdiction there lies, as you say, with the FTC, the DOJ and of course, as you say, with the States.

Mr. WILLIAMS. Okay. My second question is, do you further recognize that any effort by the Bureau that may impact auto dealers must be fully coordinated with the appropriate Federal regulatory agency in advance of that activity?

Mr. CORDRAY. We work closely with the Justice Department in the area of enforcing the Equal Credit Opportunity Act and that applies to auto lenders, not other auto dealers, where we do have a responsibility. And I think there is quite a bit of coordination there, yes.

Mr. WILLIAMS. Third question: When the March 2013 auto finance guidance was issued did CFPB consolidate it with the FTC, the Fed, or the Justice Department beforehand?

Mr. CORDRAY. I know that we have pretty constant communication with the Justice Department. We, as you no doubt have seen, have taken joint enforcement action with the Justice Department in this area.

I believe we have also had coordination and consultation with the FTC, what exactly would have happened when that came out, I don't recall offhand now. But I know there has been discussion back and forth about these issues, recognizing that our jurisdiction is limited and others have jurisdiction that we don't.

Mr. WILLIAMS. Mr. Chairman, I remind my colleagues that over 5 years ago the dealer exemption in Dodd-Frank was vigorously debated and passed by Congress and passed by this committee. I think it is irrelevant whether or not a Member is for or against the CFPB eliminating dealer discounts in the showroom.

Congress has spoken clearly on this issue. I find it incredible myself that an agency which under Federal law has no supervisory, enforcement or regulatory authority over auto dealers is still attempting, I believe, to dictate the manner in which auto dealers are compensated and how much they should be compensated for facilitating an auto loan for their customers.

Mr. CORDRAY. I just want to be really clear on this. As I understand that statute, and we have looked at it very carefully, we have a responsibility and we have jurisdiction over auto lenders. We do not have responsibility and we do not have jurisdiction over auto dealers.

To the extent that they are combining with each other, we still are responsible for governing auto lenders and their compliance with the law and we will continue to do that, and I think we have to do that vigorously.

So beyond that, we have tried to be very mindful of the jurisdictional issues here but the notion that we have a responsibility to auto lenders it may have some effect on auto dealers but that is the way the statute was written. That is how I have to enforce the law.

If Congress changes the statute, then of course I will follow the statute, as Congress might change it.

Mr. WILLIAMS. Thank you for being here today.

Mr. Chairman, I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Maine, Mr. Poliquin.

Mr. POLIQUIN. Thank you, Mr. Cordray, for being here. I appreciate it.

Now my understanding, sir, is that you run a new agency here in Washington that is an independent agency within the Federal Reserve with roughly 1,450 employees in Washington. Is that correct, sir?

Mr. CORDRAY. It is about 1,400, yes.

Mr. POLIQUIN. Yes. And my understanding is that you really—because the regulations that you folks go through whether it be automobile loans, the car loans or someone wanting to add on a convenience store you really—you regulate all of the finances that reach into all of our families across America.

Would you say that is about right?

Mr. CORDRAY. With the exception that if it is a business loan, a convenience store, you said adding on the convenience store we have consumer—

Mr. POLIQUIN. Okay. That is close enough, but you can see where I am going with this, Mr. Cordray, can't you?

Mr. CORDRAY. Yes. I would say that we affect—in America, yes—

Mr. POLIQUIN. Okay. So you are essentially the consumer protection agency within Dodd-Frank that is responsible for making sure that taxpayers don't get ripped off, right?

Mr. CORDRAY. Consumers don't get ripped off.

Mr. POLIQUIN. Okay. My understanding, Mr. Cordray, is that you have a 5-year term appointed by the President. Is that correct, sir?

Mr. CORDRAY. And confirmed by the Senate—

Mr. POLIQUIN. Okay, great. And during that—

Mr. CORDRAY. It took me a while—

Mr. POLIQUIN. And during your period of time I believe you don't report to anybody. Do you have a board of directors to report to?

Mr. CORDRAY. I do not have a board of directors—

Mr. POLIQUIN. Okay, fine. And the Federal Reserve, through their earnings, funds your operations, but since there is no appropriation from Congress, there is no oversight from Congress on how you spend your money. Is that correct, sir?

Mr. CORDRAY. Not correct.

Mr. POLIQUIN. That is not correct.

Mr. CORDRAY. Not correct.

Mr. POLIQUIN. Tell me why?

Mr. CORDRAY. We are like every other banking agency in the Federal Government where we are not appropriated, but we are subject to oversight—

Mr. POLIQUIN. By whom?

Mr. CORDRAY. We are doing it right now.

Mr. POLIQUIN. Yes.

Mr. POLIQUIN. The board of directors is also—for the 5-year term, you can't be fired, correct? You can't be replaced.

Mr. CORDRAY. Hold on. Hold on. Do you want the oversight?

Mr. POLIQUIN. Quickly, I am—

Mr. CORDRAY. The GAO audits our finances annually. We have an independent audit by statute. We have an Inspector General who looks at us carefully. I testify in front of this committee twice a year—

Mr. POLIQUIN. Twice a year—

Mr. CORDRAY. I do a briefing with the House Appropriations—

Mr. POLIQUIN. Okay. Okay. So you claim this play of oversight. Would you explain to me, sir, so I can explain to the hardworking families that I represent in western, central, northern, and downeast Maine—who happen to be the most frugal, hardworking people you can possibly imagine, and who can stretch a dollar further than you can ever imagine—why you have a plan to spend $216 million to renovate an office building that you don't own?

Now also, if I may—

Mr. CORDRAY. Do you want me to answer the question or not answer it?

Mr. POLIQUIN. No, not yet.

Mr. CORDRAY. Okay.

Mr. POLIQUIN. If I am not mistaken, I think there is supposed to be a two-story waterfall in the building with a splash pool and a daycare center downstairs and a playground on the roof, is that correct? Do I have this right or do I have this wrong?

Mr. CORDRAY. Okay. So I think you got a number of things wrong. And by the way I was the State treasurer in Ohio and I represented frugal people, just as frugal as the people that you were talking about on the Maine north shore—

Mr. POLIQUIN. Tell me how wrong.

Mr. CORDRAY. Yes, so. Number one, it is apples and oranges to talk about spending $215 million. The core construction costs as we have said all along are in the range of $95 million to $100 million—

Mr. POLIQUIN. Are you folks in the office building right now?

Mr. CORDRAY. I am trying to answer your question. Am I going to answer your question or not?

Mr. POLIQUIN. I want to make sure that we get to the point why you think it is prudent to take taxpayer dollars and spend $216 million to renovate a building that you don't own.

Mr. CORDRAY. Okay. Number one, we are not spending $216 million to renovate a building. It is less than half that, okay. So that is the apples and oranges difference.

Second—

Mr. POLIQUIN. So it is a $110 million—

Mr. CORDRAY. Second, the government owns this building. And we got a break on our rent where we are going to pay Class C rent for the next 30 years to take into account the renovation cost. And overall, it is a market deal, okay. So it is sensible.

Mr. POLIQUIN. $110 million is a market deal. Okay, fine. To me, it doesn't work that way.

Let's try to end this on a positive note—

Mr. CORDRAY. Okay.

Mr. POLIQUIN. Okay. There are a bunch of small community banks in our district and a bunch of credit unions and they have very long, deep relationships with our families in the second district. And we have a lot of seasonal workers up there.

Maybe someone is dragging for flounder, or someone is lobstering, or someone is working for the tourist industry, but our banks and our credit unions know these people, and they want to be able to lend to these families. Maybe someone needs to put a new diesel on his lobster boat. And they have known this family for many years.

Why don't we exempt any small community bank and credit union from what I call these character loans, such that we make sure your agency, your Bureau does not choke off credit to our families who really, really need it?

I am very concerned about making sure our small businesses and our families can get the loans they need to live better lives and grow their businesses and take care of their families.

Don't you think it is a good idea to go down that path, sir?

Mr. CORDRAY. That is exactly what we are doing.

Mr. POLIQUIN. Terrific. Well—

Mr. CORDRAY. That is exactly what we are doing. Okay. So it is not a criticism what we are doing that is what we are doing and you tell me and I will be interested to know which banks in Maine have more—less than $2 billion in assets and make more than 2,000 mortgage loans a year, not counting anything they keep in portfolio. Those are all—those are given special treatment under our rule.

Mr. POLIQUIN. I have an idea for you, instead of having thresholds where the number of loans that deal with the—or relate to the QM, why don't we just say if these community banks are traditional banks and they are taking deposits and they are lending out money, there is no risk to the secondary market, they are taking full responsibility and the rest of those loans, why aren't they all exempt?

Mr. CORDRAY. That is right. You tell me which bank in Maine is not exempt under our proposed rule. I would be interested to know. I believe there are very few, if any—

Mr. POLIQUIN. There shouldn't be any—

Chairman HENSARLING. The time of the gentleman has expired.

Mr. POLIQUIN. Thank you.

Chairman HENSARLING. The Chair now recognizes the gentleman from Colorado, Mr. Perlmutter.

Mr. PERLMUTTER. Mr. Cordray, thank you for being here and thank you for your service to the United States of America and the position that you have taken on.

And certainly, CFPB as a regulator has its protagonists and its antagonists. I just thank you guys—and I am looking at the TILA–RESPA disclosure statements and it is a lot simpler than other forms that I have seen in a long time. I would ask you to just make sure that everybody can deal with these things. They just—we have been working with them for a long time and the industry is getting ready. But please take into consideration the mortgage bankers, the title companies and all that will have to use these things and just make sure that everybody is ready.

Mr. CORDRAY. Okay.

Mr. PERLMUTTER. And that will be a day when everybody has to accept them and move forward, but let's just make sure we have as many people included as possible.

And I really do congratulate you on your stamina today, and the work that the agency is doing. There are some places where I disagree with you. Mr. Williams was discussing one of those.

As you know, I was here when we passed Dodd-Frank. And I actually carried the exemption for auto dealers. And so, or I was a co-sponsor but I remember it and I was involved in the discussion of it.

And what I am concerned about, sir, is just doing an end-around. Okay. That while we do have jurisdiction over lenders and therefore we are going to scrutinize and make sure that there is no disparate impact by some lending that the lenders do to the auto dealers because the auto dealers negotiate on price and they negotiate on rates. That is how they do it.

And so, what I am concerned about is CFPB stepping into something that I consider to be the purview of the Department of Justice, whether or not there is some discrimination in setting rates—that really is something that they look at on a continuing basis across a whole variety of fields. And I would just ask you all to stay in your lane—

Mr. CORDRAY. But so do we.

Mr. PERLMUTTER. Okay.

Mr. CORDRAY. In the Equal Credit Opportunity Act, both the Justice Department and the CFPB have enforcement authority there over lenders. As I see it, we have a responsibility. Congress told us we have that responsibility. We do not have authority over dealers and we have been careful not to exercise that.

Mr. PERLMUTTER. And that is why I am saying to you I appreciate that but I also see this is kind of an end-around, that—

Mr. CORDRAY. Yes. I don't think so. We have been very, very careful—

Mr. PERLMUTTER. I am telling my perspective.

Mr. CORDRAY. Yes. I got it. Yes.

Mr. PERLMUTTER. And so, you understand why I have carried or co-sponsored some legislation to make it clear that this is a place, in my opinion, for the Department of Justice, given what we did in Dodd-Frank.

And I guess my question to you is, does CFPB, is it something you desire that in effect there would be a flat rate and that really auto dealers only negotiate as to price? Everybody gets the same rate?

There are some in the industry who think that might be a simpler and easier way to go, but many in the industry like to be able to negotiate on both levels, believing that it helps the consumer. Maybe it does and maybe it doesn't.

We have all been in negotiations at auto dealerships. It is not a lot of fun, but you can work through it.

Mr. CORDRAY. Yes.

Mr. PERLMUTTER. Are you all focused on just trying to get a flat rate?

Mr. CORDRAY. That would be one of the ways in which this issue could be resolved but we have come to understand that is by far not the only way.

We have been open to other suggestions, and people can have a compliance management system that feels to me pretty onerous and burdensome. I do think that when the customer comes in to a dealership and the dealer gets a buy rate for the customer and then marks it up without the customer having any idea what is going on, or why that is happening, that is problematic.

And the Justice Department and we both believe that this has caused a certain amount of discrimination in the market. It is something that should be addressed. But a flat fee is not the only approach. I think there are a number of possible approaches and we have talked to lenders extensively about this. And to the extent that dealers have wanted to talk to us about it, we have listened to them as well. But, then no, that is not the only means by which this can be addressed.

Mr. PERLMUTTER. Okay. I would like to work with you all. I know you are familiar with the Charles River study which—

Mr. CORDRAY. Yes.

Mr. PERLMUTTER. —calls into question the methodology of the CFPB. And I just think we should be able to work this out but if we can't, then I am going to continue to pursue the legislation that I have co-sponsored and—

Mr. CORDRAY. I understand that.

Mr. PERLMUTTER. All right, thank you very much for your time and thank you for your service.

Mr. CORDRAY. Thank you.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Arkansas, Mr. Hill.

Mr. HILL. Thank you, Mr. Chairman. Director Cordray, thank you for being with us today. Thanks for your stamina. Prior to joining Congress in January, I spent the last 2 decades in the financial services industry both in the brokerage business and in the commercial banking business.

And during that period of time, I never once saw the FDIC or the Fed or the OCC or the State securities department or the State insurance department ever shirk their consumer obligation under both Federal and State statutes.

And so I really do come to Congress and it wouldn't be a surprise to you feeling that the mission of your agency under Dodd-Frank is duplicative of that effort, because I learned when I got here that no budget authority or positions were eliminated from the existing banking or securities or consumer agencies when CFPB was formed.

Was that true or not?

Mr. CORDRAY. The Office of Thrift Supervision was completely extinguished.

Mr. HILL. It was, yes, but it had been on its way to extinction for a long time.

Mr. CORDRAY. Well, yes.

Mr. HILL. We will take time. We can have a drink and talk about that one.

Mr. CORDRAY. All right.

Mr. HILL. I am concerned though about that duplication and expense, so it calls me just to look at your budgeting compared to the other agencies. And my friend Jim Himes from Connecticut referenced that no agencies are subject to appropriation and credential supervision area, but obviously the SEC and the CFTC are.

But looking at your budget, Mr. Poliquin noted about 1,400 employees and there is about an $618 million budget for Fiscal Year 2015, is that true?

Mr. CORDRAY. That is the cap, but we are not spending at that level.

Mr. HILL. What are you spending, approximately?

Mr. CORDRAY. We are more in the 500 range based on last year, it is 498, I believe.

Mr. HILL. In looking at, even at that level, it would be on a per-employee basis, so the highest agency I looked at on a total spending to per capita basis.

Mr. CORDRAY. Yes, although I don't—

Mr. HILL. Respond to that for me.

Mr. CORDRAY. Yes, I don't think that is a good way to look at it. As I said, 3 years ago when we started from scratch we had no employees and we had to basically contract for many services, all of our IT, all of our HR, all of our budgeting and all of our structure.

Over time we have started to move toward our own employees doing things and less dependence on Treasury and outside contractors, but it is still the case that the total work of the agency goes beyond the number of full-time employees that we have. So I don't think that is yet a right average. In a few years, it will be a fair average.

Mr. HILL. I do think looking at a productivity basis is a good way, and I would ask you to take that into account and maybe even establish a goal of being the lowest in government and have something to brag about.

But it causes me to think about, if you spend $600 million on selling, general and administrative expenses (SG&A), I thought about, what would that buy in Arkansas?

And I found a publicly traded company with operations in Arkansas—Hormel makes Skippy peanut butter in Little Rock and they only have 20,000 employees and spend $600 million SG&A expense or about $30,000 per employee.

And they generate, obviously, almost $10 billion in revenue. I think this gets compensation in our Federal agencies. That is how it compares to the private sector in that productivity angle.

And I don't want there to be an incentive for people to leave the private sector and go to the regulated sector. Would you reflect, take a minute and talk about pay practices at your agency and how those compare?

Mr. CORDRAY. Yes. And I will say that I don't have a lot of background in the Federal Government. I came here from State and local government in the private sector in Ohio.

And salaries are higher in the Federal Government, they are higher in the banking agencies, and my understanding is the reason for that is to compete against the financial industry for good people.

But in our case, we are constrained by law, the Congress set this and it is the framework we have to operate in. We are required to have salaries that are comparable to those of the Federal Reserve.

I am obliged by law to do that whether I think that is right or not right. That is what we are trying to do to carry out the law that is in our statute.

Mr. HILL. If Congress wanted to make your agency subject to the annual appropriations process, would you support that?

Mr. CORDRAY. I would not.

Mr. HILL. Why not?

Mr. CORDRAY. None of the banking agencies, as I understand it, are appropriated. And the cautionary tale here is the Office of Federal Housing Enterprise Oversight which up until 2008, was supposed to be overseeing Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac, as I understand it, this history that has been described to me, had so much political power that they were able to constrain their regulator and the regulator didn't rein them in.

And in 2008, the new statute was passed to create the FHFA and one of the major changes that was made was to make FHFA not appropriated in order to give it the independence so that it could ride herd on the GSEs.

And that was the Congress' judgment and if that is the judgment, then the same logic should apply here.

Mr. HILL. But do you think the SEC is not independent because it is subject to appropriations?

Mr. CORDRAY. Look, I don't know all the ins and outs of why agencies are as they are, that thing has been around since the 1930s and I assume that judgment was made at that time and I don't really know what to say about it.

Mr. HILL. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger.

Mr. PITTENGER. Thank you, Mr. Chairman. Director Cordray, I represent the Charlotte, North Carolina, region, a major financial center in the country and home of the Bank of America, and a major presence for Wells Fargo and many other financial institutions, large and small.

Mr. CORDRAY. Yes.

Mr. PITTENGER. As I recognize how the major banks have sought to absorb the new burdensome regulatory environment, I have also been added in the market speaking to lenders that are mid-sized and small community banks.

A couple of weeks ago, I was visiting a one small bank, a $265 million bank. They have 60 employees. They have six locations.

Mr. CORDRAY. Sixty or sixteen?

Mr. PITTENGER. Sixty, 6–0.

Mr. CORDRAY. Yes.

Mr. PITTENGER. They are a good bank, with a good balance sheet, less than 1 loan losses; this is not a problem bank. Only a few weeks before they had 14 regulators come in their bank and spend 2 weeks plowing through everything, which was enormously disruptive, and in the process of going through everything in the bank, they would change opinions of things that they were told the previous time.

So it was an enormous amount of human capital required to facilitate all the demands of these auditors and regulators. And it really imposed on their ability to function as a business.

Have you ever been in the banking business, Director Cordray?

Mr. CORDRAY. I haven't been a banker, but I have been a county and State treasurer and I worked closely with large and small banks in central Ohio.

Mr. PITTENGER. I can tell you being in the consumer business and I have been on a bank board and have served for—the time we formed the bank until the time we sold it.

It is consumer-driven and it is a people business and you have to be ready and accessible to your clients. These banks are hiring people to deal with all the demands and the requirement of these regulators and they are hiring loan officers.

And I would hope that you would go out in the field, come down to my district, I invite you to be there. I would like to take you to some of these banks that I hear time and again tell me of the compliance issues, the requirements, the time, the effort that it takes to deal with it.

What in the world are 14 regulators doing in a bank, a $265 million bank for 2 weeks? This is not a problem child.

Mr. CORDRAY. I don't know the answer to that, but none of them are from the CFPB. So, it has nothing to do with my agency. We don't examine any banks with less than $10 billion in assets.

Mr. PITTENGER. Forgive me for saying that.

Mr. CORDRAY. So that wouldn't be us.

Mr. PITTENGER. But it is the process of oversight. It is nonsense for these banks to have the required amount, the decent amount of oversight, yet the burden of it today is such that it is really impeding these banks to function.

Mr. CORDRAY. I am sympathetic to that point of view.

Mr. PITTENGER. As well, I would like to just bring again this while notion of the SIFI requirements and I want to go back to that again. It just deals with the lack of the government's awareness in terms of what is needed and required for MetLife to be assigned that rule in the SIFI requirement.

Where are you in terms of having the right personnel with the experience from the real world who can give you advice on who should be identified as a SIFI?

Mr. CORDRAY. That is the FSOC, the council, I am one member of the council.

Mr. PITTENGER. And you represent that. We are here because we need to speak with you.

Mr. CORDRAY. Okay. I'm sorry, what was the question?

Mr. PITTENGER. I think it is just a matter of having the people inside an organization, on the boards giving council who really understand the business.

And that is my concern about the regulators coming in to the small banks or identifying who should be a SIFI and who shouldn't when they have absolutely no experience.

You have one insurance person on that board and they voted against it and everyone else did and he understood the business.

Mr. CORDRAY. Look, that may be—the council worked on that, on that process of the designation which was an extensive process over, I believe, a year or more period.

There is extensive analysis done to try to determine whether the statutory requirements are met. You may disagree that was the right answer. I understand they are now suing and that will be carried forward in the court and they will make a judgment on it.

Mr. PITTENGER. My point, sir, is just that there is a disconnect between the reality of what is happening in the real world and the burden of the regulatory environment.

Chairman HENSARLING. The time—

Mr. CORDRAY. We try to minimize that as much as possible, but when you see it, please point it out to us.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Kentucky, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. Director Cordray, welcome back to the committee. And the first question I would like to ask you relates to the Qualified Mortgage rule. I appreciated that in your testimony, you indicated that the responsible lending by community banks and credit unions did not cause the financial crisis.

I also appreciate your views here that the traditional model of relationship lending has been beneficial for many people in rural areas and small towns across the country.

I agree with your testimony there and I appreciate the Bureau's recognition of this in the exemptions as to small creditors and more recent efforts to provide flexibility in that area, particularly for rural lenders.

As you may recall, we have talked about this before. We have the kind of ridiculous situation in my district with Bath County, which is literally one of the most rural places in America, designated by your agency as non-rural.

I appreciate that you have acknowledged that and taken remedial action. We still think the petition process would be helpful.

But given your recognition of the importance of relationship lending, let me ask you this question, would you support or oppose legislation, additional legislation that I have introduced called the Portfolio Lending and Mortgage Access Act, which would extend the QM safe harbor to portfolio loans, that is those mortgages that lenders originate and then hold on their books instead of selling off into the secondary market.

And if you would oppose that approach or modification to the QM rule, why?

Mr. CORDRAY. What we have done here is we have created a provision to cover small creditors, small lenders, and it is 95, maybe 98 percent of community banks and credits unions.

If you simply extend that logic to anyone, you are losing the concept of small and you are potentially taking into account folks like Washington Mutual and Countrywide who in the height of the lead-up to the financial crisis were making hundreds of thousands of loans, keeping them in portfolio and then they blew up the whole system.

Mr. BARR. Okay. Let me—

Mr. CORDRAY. That keeping it small keeps it safer.

Mr. BARR. Let me follow up that point with the following: As you may know, FHFA has reasonably relaxed the standard for mortgages eligible for purchases by GSEs. Director Watt and I had a discussion about this in this very committee room a few weeks ago.

And Director Watt admitted to me that because of the GSE exemption to the Qualified Mortgage rule, these relaxed standards would likely result in Fannie Mae and Freddie Mac backing mortgages that exceeded the QM 43 percent debt-to-income limitation.

If these non-QM mortgages are too risky for banks like the ones that you cited, shouldn't they also be too risky for taxpayers?

Mr. CORDRAY. No, I don't think that is the way the rule works. The way the rule works is anything that can be sold to Fannie or Freddie counts as a Qualified Mortgage even if it is above the 43 debt-to-income ratio.

Mr. BARR. Exactly, and that is what we are talking about—

Mr. CORDRAY. No, we deliberately wrote that—to provide that QM applies to those mortgages.

Mr. BARR. Let me just ask the question this way. Wouldn't it be safer for the financial system to put the risk on shareholders than on taxpayers?

In other words, wouldn't the shareholders and the bank board have a vested interested in properly underwriting these loans instead of having these huge, massive exemptions for GSEs that incents the origination of risky loans, loans that your agency deems to be risky, and then putting that on taxpayers?

Mr. CORDRAY. That might be and I will say that the Washington Mutual and Countrywide fiascos which flagrantly blew up our system are a cautionary tale that even shareholder or investor protection is—it has to be looked at carefully.

Mr. BARR. Let me just submit that an institution is far more likely to underwrite that loan properly if they portfolio that loan. But I would, I think, the whole point here illustrates the need.

And I talked to Director Watt about this, the need for you to coordinate with FHA and the GSEs and FHFA because there is an inconsistency in these mortgage rules and it does not make sense that we are putting the risk on taxpayers, but we are unwilling to acknowledge the relationship lending model that you say should work.

Mr. CORDRAY. I actually agree with you very much on that. I think there is a lot of room for coordination between ourselves and FHFA. We are meeting much more regularly with them.

Mr. BARR. Thank you.

Mr. CORDRAY. And even with HUD and—

Mr. BARR. And if I may, my time is running out, just really quickly. Let me just share a quick story about payday lending. This is from your field hearing in Alabama, Mr. Thomas is the gentleman's name.

"I did have to use a payday loan once before. It was because of a family emergency. The fees that I accrued from the payday loan were actually cheaper than getting a cash advance from my credit card. So it actually benefited me and I was really glad it was there, an option available to me. And I would like to know in the future it would be there for me in the event that I need it."

Also, I hope you are taking into account some of these personal stories that credit availability in the short-term lending market is something that you would not overreact to.

Mr. CORDRAY. We get those every week on our tell-your-story function from all over the country. That is why we want to preserve access to credit here, but not with consumers caught in a debt trap, which happens to many of them. It doesn't sound like that happened in this particular instance, but it often occurs to others.

Mr. BARR. Thank you, Director. I yield back.

Mr. CORDRAY. Thanks.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Arizona, Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman, and thank you, Director Cordray, for your stamina. We are all appreciative of it.

A lot of the best questions have been asked, so we will go to the next tier down. And also, being a former treasurer, I have some empathy for some of your background.

Mr. CORDRAY. Yes.

Mr. SCHWEIKERT. Can I bank through a number of, just sort of, bullet points and give me what you have?

Mr. CORDRAY. Sure.

Mr. SCHWEIKERT. Owner carry-back, there was a discussion. Some of the rules sets up I am selling my home, I own it free and clear, I choose to take that property, right, which is my equity, and carry the payments back.

There was discussion about restricting, if I had more than a couple of properties, I was selling that way. For those of us out West, this has been a very common practice. Do you know where that is at?

Mr. CORDRAY. What do you mean carrying the payments back?

Mr. SCHWEIKERT. You act as the owner of the property, you accept the payments. You act as the, we will call it, the lender.

Mr. CORDRAY. I see. So I actually—

Mr. SCHWEIKERT. Owner carry—

Mr. CORDRAY. I actually sell that property but act as a lender for some period of time before—

Mr. SCHWEIKERT. Yes. Because if I remember, there was a restriction saying I could not do a 5-year due payment. After I was going to be restricted to the number of transactions, I was going to end up—

Mr. CORDRAY. All right.

Mr. SCHWEIKERT. If I did more than three, I was going to have to do—

Mr. CORDRAY. Yes.

Mr. SCHWEIKERT. Meet the know-my-customer rules.

Mr. CORDRAY. Yes, I see.

Mr. SCHWEIKERT. And for many of us, that is how we got our first home.

Mr. CORDRAY. My understanding of this—and I am happy to have our staff talk to your staff and clarify it further—is there is a line that has to be drawn at some point as to whether somebody is sort of selling their own home or whether they are becoming an actual lender.

And if you are selling once or twice in a year, that is fine—

Mr. SCHWEIKERT. What do you mean—

Mr. CORDRAY. But at some point, you become a lender if you are rolling houses—

Mr. SCHWEIKERT. I can see the intellectual line on the number of transactions.

Mr. CORDRAY. Yes, yes. Whether the lines are in the right place—

Mr. SCHWEIKERT. But on the due on sale are—as the popular vernacular is a balloon after a certain bid of time to restrict that.

Mr. CORDRAY. I will tell you what. We will be glad to talk further with you and to understand some of the details of these concerns or meet with people that you want to talk to us about it and understand whether—just as we talked before about, this is a mess too.

Mr. SCHWEIKERT. Yes.

Mr. CORDRAY. Think triple-deckers, whether we—

Mr. SCHWEIKERT. Yes, my fear for those is in deeds-of-trust States.

Mr. CORDRAY. Okay.

Mr. SCHWEIKERT. This is actually somewhat more common.

Mr. CORDRAY. All right.

Mr. SCHWEIKERT. So, also, there was a previous discussion about how your rate-checker platform could encourage you to approach this a different way.

Mr. CORDRAY. Okay.

Mr. SCHWEIKERT. Out there in the market, there are now a dozen different platforms, whether they would be—

Mr. CORDRAY. At least three in the last month.

Mr. SCHWEIKERT. Yes.

Mr. CORDRAY. Yes.

Mr. SCHWEIKERT. But having been a broker in my previous life, there are many now offering platforms saying, click this, give us your zip code and we will give you your mortgage brokers, your bankers, your institutions. Maybe it would be better off just putting a list of all the different services that do that type of aggregation so you know you are hitting a robust sampling of the market.

Mr. CORDRAY. I want to think carefully about that. A lot of them have rates, but they may or may not be accurate or current.

Some of them are acting as lead generators just to acquire customers.

Mr. SCHWEIKERT. Yes, yes, I accept that, but you also have to be very careful on the samples being taken.

Mr. CORDRAY. Yes.

Mr. SCHWEIKERT. Are you actually getting a true sample of underlying loan clause, all the mechanics there. I just—it is a path that is going to require probably a lot more staff and mechanics than maybe the agency appreciates—

Mr. CORDRAY. Yes, when—

Mr. SCHWEIKERT. —when it is actually being done out in the marketplace already.

Mr. CORDRAY. Yes, we will keep an eye on that as we go. Yes.

Mr. SCHWEIKERT. I am just going to bounce to title insurance. You were also accounting treasurer. I beg you to be respectful for those of us from States where we had worked on title insurance rules that is a State-regulated entity.

Mr. CORDRAY. Yes.

Mr. SCHWEIKERT. Be respectful for how we address it in States. As accounting treasurer, we did a big, big project to go after partials that were delinquent, only to find out many of them were bad deed recordings, mistakes, splits that hadn't been caught. And we went from an environment—Maricopa County is, what, the third or fourth biggest county in the United States where we had very few title insurance claims to hundreds and hundreds and hundreds that we created by doing this cleanup. So we want to be respectful. There is a reason that is out there, both protecting the lenders, the property owners, but also the way a State regulates and approaches that. And I would hate to think there is a Federal solution that tries to crush those of us at the State level and how we do that.

My friend over here also touched on payday loans and access to capital. A quick example that you might appreciate having been accounting treasurer, we were having a little bit of a problem a decade ago on the fees on check cashing. People were walking in and for cash or a check for 5 days, they were almost giving up a day of labor.

Mr. CORDRAY. Yes, yes.

Mr. SCHWEIKERT. And we had two options, one was to go and regulate that. The other was to go out and encourage everyone to get in the check cashing business, and we took that approach, where even our local convenience markets were doing check cashing, and the price fell through the floor. It is almost free.

May I beg of you when you look at things like payday lending and these, maybe the solution is more players in the market driving down the cost instead of a regulatory command and control system.

With that, Mr. Chairman, I yield back.

Mr. CORDRAY. That is a very good point. And actually banks and credit unions may be the low-cost providers here, and I would like to think that they could present a suitable product. They don't seem to be doing so right now.

But you made several good points. I am trying to get all my notes down here.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Rothfus.

Mr. ROTHFUS. Thank you, Mr. Chairman. And thank you, Director Cordray, for spending your afternoon with us today.

The gentleman from Colorado, Mr. Perlmutter, mentioned that Charles River Associates studied, this is a research paper from November, that examined the Bureau's disparate impact methodology for any direct auto lending. As you may recall, the study concluded that there were significant flaws in the Bureau's methodology that led to an overestimating of minority populations by as much as 41 percent.

To date, the Bureau has yet to publicly acknowledge the study. Can you comment on whether you would agree with the conclusions of the report that the Bureau's methodology is error-prone?

Mr. CORDRAY. Yes, we don't agree with the conclusions with the report and we have looked at it fairly carefully.

Mr. ROTHFUS. Has the Bureau—have the results of the study caused the Bureau to undertake any changes or consider undertaking any changes with respect to its fair lending investigations or evaluations?

Mr. CORDRAY. We actually sat down and had a discussion with the folks from Charles River and the sponsors of the study to both discuss the study and be presented with the results. We have looked at the results pretty carefully. We don't find some obligation to respond to studies out there all the time in all aspects of our work.

But as we always will do with any kind of analysis of data, we have looked carefully at it to think about what it might mean for our program. And that is where we are at this point.

Mr. ROTHFUS. So you are not—are you going to make changes or not going to make changes? Are you considering making changes?

Mr. CORDRAY. I think we are still looking at and thinking about that study, but I don't know whether we are going to make any changes, not at this point.

Mr. ROTHFUS. Would you find some merits in the conclusions of the study or no merits in the conclusions of the study?

Mr. CORDRAY. I don't want to try to turn it into some subjective judgment. The people who work on this stuff are more expert than I. I think we disagree with the results of the study is what I would just say.

Mr. ROTHFUS. I would like to quickly revisit a topic that you have addressed in prior hearings, the Bureau civil penalty fund. As you know, unlike most Federal regulatory agencies, the Bureau does not remit the fines it imposes in its enforcement actions back to the American taxpayers, to the Treasury.

Instead, the Bureau collects that money in its civil penalty fund so it can be paid to victims if they can be located. If these individuals cannot be located, however, the Bureau can use the funds for financial literacy or consumer education programs of its choosing.

In the past, the Bureau's administration of the fund has been widely criticized for the small amount that actually has gone to victims and the significant amount that has been spent on administrative expenses.

According to the committee's most recent calculations in December of last year, the unobligated balance of the Bureau's fund now stands at approximately $136 million. This is up from $116 million in June 2014 and $126 million in October 2014. And of the roughly $182 million that the Bureau has imposed in fines thus far, it has only allocated $31 million to compensating victims or around 17 percent.

Why does this unobligated balance remain so high while the amounts paid to victims have remained so low?

Mr. CORDRAY. I don't think that is an accurate picture of where the fund stands and where it is going. I actually think it is a success story that you will appreciate. First of all, we are merely following our statute. Our statute says that we would have a civil penalty fund. A couple of other agencies under Dodd-Frank also have civil penalty funds. The statute specifies what the money is used for—

Mr. ROTHFUS. What is the current balance of the fund?

Mr. CORDRAY. At this point, what I would say is, we have collected close to $200 million in civil money penalties over the life of the agency.

Mr. ROTHFUS. Do you know what the current balance—

Mr. CORDRAY. Yes, at this point, yes, what I will say is, about $180 million of it now is allocated toward compensating uncompensated victims. So the vast majority, above 90 percent, is going for that purpose.

Mr. ROTHFUS. So there is $20 million in the fund right now?

Mr. CORDRAY. I beg your pardon?

Mr. ROTHFUS. How much is in the fund right now?

Mr. CORDRAY. I can get you those numbers. But it is allocated and then it is a matter of getting it to victims. And sometimes it is easy and sometimes it is—

Mr. ROTHFUS. So it is sitting there right now. You say—you don't know what—you will get back to us about how much is in there.

Mr. CORDRAY. Yes. We have the numbers, but what I will say is that it is allocated.

Mr. ROTHFUS. Have you identified specific victims to whom it will go?

Mr. CORDRAY. We have identified specific cases for which it will go to victims and then sometimes—

Mr. ROTHFUS. Have you identified the specific individuals?

Mr. CORDRAY. Yes. Sometimes, that takes some effort. I will give you an example, okay? We have a case of essentially rampant fraud against a particular defendant and there was no money available to pay those victims. So that money to these victims will be paid out of the fund. But the paperwork at this fraudulent entity is pretty sloppy, as you might imagine.

So figuring it out is hard—

Mr. ROTHFUS. To reclaim my time—

Mr. CORDRAY. It takes some time and effort.

Mr. ROTHFUS. You say it is allocated. Roughly how much is being spent on administrative expenses?

Mr. CORDRAY. Very little, and in fact in terms of consumer education, there is only one project that has been approved. So it is less than 10 percent of the funds. And it is going to transitioning veterans, financial education for transitioning veterans back into society and other vulnerable populations. So I think it is a good program.

Mr. ROTHFUS. We would like to follow up with you on the balance—

Mr. CORDRAY. Absolutely.

Mr. ROTHFUS. And what percentage.

Mr. CORDRAY. Absolutely.

Mr. ROTHFUS. Okay, thank you.

Mr. CORDRAY. Yes.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Missouri, Mrs. Wagner.

Mrs. WAGNER. Thank you, Mr. Chairman. And thank you, Director Cordray, for being with us today.

Mr. CORDRAY. Sure.

Mrs. WAGNER. Director Cordray, this committee has expressed its views on multiple occasions and in multiple ways about the wasteful renovations of your building. And there is one outstanding question that we have asked of you directly and certainly have asked in several different letters: a letter on July 18th of last year; a second letter on December 3rd of last year; and a third letter on January 12th of this year.

More than 7 months have passed and we still haven't received the answers, sir. So I ask you here again today: Which individual made the decision to renovate the building?

Mr. CORDRAY. It is not an easy question to answer. This decision occurred before I became the Director of the Bureau and it is a decision that I have since reaffirmed and I think is an appropriate decision, and I think economically and financially, it is an appropriate decision.

So, you can continue to ask that question, but I don't really see what is accomplished—

Mrs. WAGNER. To reclaim my time, let me be clear here then. What you are saying is that the decision was made prior to your leadership by previous leadership. Would that have been the gentleman who was just briefly acting Director, Raj Date, or was it made by the woman who was in charge of setting up the CFPB, Elizabeth Warren?

Mr. CORDRAY. What I would say is this, there were different people in the position of setting up the Bureau at different times.

Mrs. WAGNER. Is there a record somewhere?

Mr. CORDRAY. But the—

Mrs. WAGNER. There is no record?

Mr. CORDRAY. No. What I am saying is for the first year, the Bureau did not exist; it was part of Treasury. So exactly whether there are people in Treasury who contributed to that decision because they actually were in charge, not Elizabeth Warren and not Raj Date—

Mrs. WAGNER. Director Cordray, I am just asking you a simple question. If you are not going to answer the question, then just say you are not going to answer the question. Are you going to tell us who is responsible and who directed—

Mr. CORDRAY. I am just saying it is not an easy question to answer.

Mrs. WAGNER. And why is that?

Mr. CORDRAY. Because the Bureau didn't even exist. It was Treasury who was in charge of all Bureau operations—

Mrs. WAGNER. Someone made a decision to spend upwards, as the Fed IG said in an estimate, of $215.8 million. And you are telling me there is no record, no one responsible—

Mr. CORDRAY. I didn't say that.

Mrs. WAGNER. Then who is it? What individual?

Mr. CORDRAY. No. There are lots of records on this including my reaffirmation of the decision—

Mrs. WAGNER. Who signed off? Who gave the authorization for such an incredible—

Mr. CORDRAY. And why does it matter to you?

Mrs. WAGNER. Because it is $215 million of taxpayers' money.

Mr. CORDRAY. No, it is not $215 million.

Mrs. WAGNER. That is why it matters to me.

Mr. CORDRAY. That is not correct. It is not $215 million. It is between $95—

Mrs. WAGNER. Reclaiming my time, I will move on. Clearly, the Director does not choose to answer this question. I find that amazing since it has been asked multiple times at this committee.

For the past 3 years, Director Cordray, the CFPB has made a name for itself by frankly expanding its own authority while limiting consumer choice and raising costs for American families. At the same time, the agency has remained insulated from accountability, clearly, for its actions, leaving it free to continue on its power grab without any ability for Congress to conduct oversight, from mortgages to credit cards, to short-term lending, we have heard it all today.

The CFPB has time and time again displayed a Washington-knows-best mentality, allowing the government to deem what financial products are good for hardworking Americans and leaving them without the freedom to make their own choices when it comes to their personal economy.

Continuing with those past examples of overreach, I was disappointed, although not surprised, when last Monday you appeared at an event with both President Obama and Senator Elizabeth Warren, supporting a new proposal from the Department of Labor which would once again limit choices and raise costs on consumers regarding their retirement savings. However, it remains unclear exactly how the CFPB is involved in this misguided rulemaking.

Director Cordray, why exactly was the CFPB invited to the event last Monday and how does this agency have a role in this new potential rulemaking?

Mr. CORDRAY. We do—I do support that proposal which I think will help protect consumers against fraudulent investment advice and conflicts of interest.

Mrs. WAGNER. What is your role?

Mr. CORDRAY. And we are required by this Congress to have an Office of Older Americans, which one of its first assignments was to do a report on financial investors for seniors and their credentials and make sure that those were not being misrepresented to consumers, and we have done considerable work to protect older American since. That is—

Mrs. WAGNER. Reclaiming my time.

Mr. CORDRAY. —statutory.

Mrs. WAGNER. I understand from Title X of Dodd-Frank that the CFPB under statute is unable to regulate retirement savings except through financial literacy. The SEC regulates the sale of securities and investment advice, while the Department of Labor regulates retirement plans.

Specifically, I will say in Section 1027 of Dodd-Frank, right here in paragraph (g)(3) under "Limitations on the Bureau Authority," it states that the Bureau may not exercise any rulemaking or enforcement authority with respect to products or services that relate to any specified plan or arrangement. And it defines that as, "Any employee benefit or compensation plan or arrangement, including a plan that is subject to Title I of the Employment Retirement Income Securities Act of 1974." This definition also include IRAs.

So with that being said, aside from financial literacy, how do you see the CFPB fitting in here, sir?

Mr. CORDRAY. Actually, I don't think that is what it says. What it says is we can work on regulations in conjunction with the Department of Labor and the Department of Treasury. That is what it actually says in Section 1027(g).

Mrs. WAGNER. I just quoted you, sir, the exact words that comprise Section 1027(g).

Mr. CORDRAY. Yes, I know exactly what it says. I have looked at it very carefully.

Mrs. WAGNER. Again, what is your role? Is it financial literacy or are you going to do another overarching rulemaking regarding—

Mr. CORDRAY. Okay, so again, going back, there are a number of different provisions in the statute. One of them required our Office of Older Americans to do a study—the Bureau to do a study and report to Congress, to you on investor credentials for senior financial advice to help protect consumers in that area. That goes beyond just financial education.

Mrs. WAGNER. So you are going to go beyond financial literacy and education?

Mr. CORDRAY. And reverse mortgages.

Mrs. WAGNER. Is that what you are saying here?

Mr. CORDRAY. And reverse mortgages, required to do another—Congress on reverse mortgages that we had—

Chairman HENSARLING. The time—

Mrs. WAGNER. My time has expired.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman. Am I last?

Mr. GUINTA. No.

Mr. MULVANEY. Not last, goodness gracious. Well, then, I will go quickly.

Mr. Cordray, before I get to my questions, I couldn't help but enjoy the exchange you just had with Mrs. Wagner, and I want to ask the same question she just asked to see if I can do it a little bit differently.

Mr. CORDRAY. Sure.

Mr. MULVANEY. There are only three possible answers to her question about who authorized renovations, right? It is either you, Ms. Warren, or Mr. Date, correct?

Mr. CORDRAY. No, not correct.

Mr. MULVANEY. So that decision could have been made without the approval of the Director?

Mr. CORDRAY. Dodd-Frank was passed in July of 2010.

Mr. MULVANEY. No, I don't need a history lesson. I just—

Mr. CORDRAY. You do.

Mr. MULVANEY. Who else?

Mr. CORDRAY. You do, because it was passed in July 2010.

Mr. MULVANEY. Who else—let me ask you this today. Who else—

Mr. CORDRAY. And for the first year the Bureau did not exist.

Mr. MULVANEY. Mr. Chairman, I reclaim my time please. Okay, who else besides the Director can authorize that kind of expenditure?

Mr. CORDRAY. Okay, during the first year we existed, Treasury was—

Mr. MULVANEY. I don't need the beginning of time. Who else besides the Director can do it? I am not trying to—

Mr. CORDRAY. Now or then?

Mr. MULVANEY. Then.

Mr. CORDRAY. Okay, then. It was part of Treasury. Treasury was running our operations.

Mr. MULVANEY. So somebody at Treasury could have authorized that?

Mr. CORDRAY. That is quite possible. That is why I say I can't be sure. I can't say that it was one of the—

Mr. MULVANEY. All right.

Mr. CORDRAY. Yes.

Mr. MULVANEY. Then I am going to get to the questions I want to ask, because I have heard you talk a little bit today about access to credit. We heard some good questions. I thought about payday lending and some other facilities that are available to people.

And I remember, I think back when I was in the State Senate in South Carolina, the State of North Carolina had just passed some rather sweeping restrictions on payday lending, and we decided to look at the topic ourselves. And I remember meeting a woman from—we put out a letter about folks who used it. We went to talk to people who used payday lending.

And a woman called me up and she started talking to me and she said, well, I use it. And I knew who she was, okay? I live in a small town.

Mr. CORDRAY. Yes.

Mr. MULVANEY. More importantly, I knew where she worked. She worked at a local credit union. And I asked the question, why don't you just get it at work? And she said, well, Mr. Mulvaney, everybody knows me there, right? I am kind of embarrassed that I have to do this. I need this, but I don't want everybody to know that I need this.

And I know you said you have heard the stories, I know that we had a field hearing with a bunch of folks who said that they wanted to use things like payday lending and they had been able to use them successfully. And then I heard you say that you want to make sure that folks like that, ordinary people, have access to this type of credit, but you wanted to make sure that folks didn't get caught in a debt trap.

Mr. CORDRAY. Correct.

Mr. MULVANEY. Is that an accurate—okay.

Mr. CORDRAY. Absolutely correct.

Mr. MULVANEY. So here is my question. I think we would agree, right, that not everybody gets caught.

Mr. CORDRAY. That is correct.

Mr. MULVANEY. Some people can use these facilities without getting caught in a debt trap.

Mr. CORDRAY. Absolutely.

Mr. MULVANEY. How do you know which ones are going to get caught and which ones won't?

Mr. CORDRAY. What we can know is what happens to consumers over time. We have done two extensive studies, the most extensive studies ever done on the subject with considerable data. And what we found is that the vast majority of payday loans are made to people who roll them over 6, 8, 10 times.

Mr. MULVANEY. Okay.

Mr. CORDRAY. And they end up paying more in cost, far more in cost than—

Mr. MULVANEY. But let me back you up. I don't want to cut you off.

Mr. CORDRAY. That is fine.

Mr. MULVANEY. But we live in a world of limited time.

Mr. CORDRAY. Yes.

Mr. MULVANEY. If I walk into a payday lender, how do you know if I am one of those people who is going to get caught?

Mr. CORDRAY. One way, one possible way would be by trying to determine your ability to repay. That would be one way to do it. It wouldn't be foolproof, but it would be the kind of underwriting we do for many other kinds of loans in our society, some of which—

Mr. MULVANEY. I thought you said earlier today—

Mr. CORDRAY. —get turned down and some of which get approved.

Mr. MULVANEY. I thought you said earlier today in the response to a question by Mr. Stivers that you don't stand in the consumer's shoes or at least you don't try to. Was that your testimony earlier today?

Mr. CORDRAY. That is kind of a general question. What I have said consistently is, we can't make consumers' decisions for them. They have to decide for themselves. What we can do is try to protect consumers in the marketplace so that they are not taken advantage of.

Mr. MULVANEY. But you would agree with me, Mr. Cordray, that when you make a facility, a tool, something, entirely unavailable that you are making the consumer's decision for them as to that facility.

Mr. CORDRAY. And Congress did that with all kinds of mortgage products like no-doc loans and liar loans and teaser rates—

Mr. MULVANEY. Thank you, sir. Let's get back to that for a second.

Mr. CORDRAY. Yes.

Mr. MULVANEY. Because I think you defined a teaser rate. Somebody asked you that earlier today and you said a teaser rate was one that starts low and goes up. Do you remember that testimony?

Mr. CORDRAY. And may not be adequately disclosed to the consumer so that they are tricked by it.

Mr. MULVANEY. Okay, because using the definition of just going up, that is an adjustable rate, right?

Mr. CORDRAY. No, no. But going up if it is fully disclosed and the consumer goes in with eyes wide open is one thing. A teaser rate that is going to jump up based on an arbitrary finding and so forth—

Mr. MULVANEY. So you don't have a problem with adjustable rate mortgages, for example—

Mr. CORDRAY. No, not at all. No. That can be a very good product. Yes.

Mr. MULVANEY. Let me ask you this. Because we talk about payday lending a lot, we talk about mortgage lending, but I never heard anybody ask this question.

Mr. CORDRAY. Okay.

Mr. MULVANEY. One of the greatest examples of using something financial to prey on the poor, in my opinion, is the lottery. Do you have the right to regulate those?

Mr. CORDRAY. You mean State government lotteries?

Mr. MULVANEY. State lotteries, yes.

Mr. CORDRAY. No, I do not.

Mr. MULVANEY. Why not? They prey on consumers, they prey on the poor. Why not?

Mr. CORDRAY. Under our statute, we have no authority to enforce against other government agencies—

Mr. MULVANEY. Yes, but you don't have authority to go after the car dealers either. Why don't you go after the folks who bank the folks who run the lotteries?

Mr. CORDRAY. I'm sorry. So you want me to enforce the law against banks who are engaged in a perfectly legal enterprise under State law of the lottery?

Mr. MULVANEY. No, I am asking you why you don't since you are doing it in other areas.

Mr. CORDRAY. I am not sure what other areas you are talking about?

Mr. MULVANEY. You don't have jurisdiction to go after the automotive dealers, but you go after their banks. So if you don't have jurisdiction to go after State lotteries—

Mr. CORDRAY. We do have jurisdiction to pursue auto lenders. It is clear on our statute. We do not have jurisdiction for auto dealers. We have carefully walked that line, tried hard to carefully walk that line. I don't see how your example applies.

Mr. MULVANEY. Okay. Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Ross.

Mr. ROSS. Director Cordray, thank you. I thought I was going to be the last one, but I see my good friend, Mr. Guinta, has taken—

Mr. CORDRAY. It may be perpetual. I may be here tomorrow. We will see.

Mr. ROSS. Yes. I appreciate your testimony today, but I want to follow up on what my colleague from South Carolina, Mr. Mulvaney, is inquiring about with regard to payday loans. And I understand that you are in the process of proposing new rules and that you have a small business review panel to reach out and get feedback from the industry.

Are there any members of that from Florida on that small business—

Mr. CORDRAY. I don't know if that panel has been finalized yet in terms of exactly who is on it and who is not.

Mr. ROSS. When you were testifying at the beginning here earlier today, you commented about your first field hearing being in Birmingham, Alabama. Have you had any field hearings in Florida?

Mr. CORDRAY. We did. We had one in Miami on student loan issues.

Mr. ROSS. With regard to, specifically, payday lending though.

Mr. CORDRAY. By the way, we were also going to have one in Tampa on mortgage issues.

Mr. ROSS. Good.

Mr. CORDRAY. And it got canceled by a hurricane 2 years ago.

Mr. ROSS. I understand. Just as an aside, I think that it wouldn't hurt to have a hearing, a field hearing in Florida with regard to payday lending, because, as you know, Florida has probably one of the best regulatory environments for payday lending. In fact, I think that Florida some time ago recognized that there is a market demand and there is a market supply to meet this need on a regulatory fashion that could be set up to make sure that we preserve and protect the consumers.

And I think—I don't know if your office has any statistics that would show whether there has been any abuse in the State of Florida with regard to payday loan.

Mr. CORDRAY. Yes, actually—and since you raise that—because I have actually become friendly and know pretty well your banking superintendent, Drew Breakspear, who is first rate.

Mr. ROSS. Right.

Mr. CORDRAY. When we did our first White Paper on payday lending, he had his office do a similar analysis based on their data about how things were in Florida and shared that report with me.

Mr. ROSS. It is good.

Mr. CORDRAY. And I shared it with our folks.

Mr. ROSS. For example, if you are looking at parameters, limit the loans to $500. That works. They are going to only have one outstanding loan at any one time. Their fees are 10 percent of the amount borrowed plus the $5 verification. They have to wait 24 hours before they have another one. There are protections in there.

So all I am suggesting to you is, please, take a look at Florida.

Mr. CORDRAY. Yes.

Mr. ROSS. And I think that if you look at other States, even your State of Ohio, they have the ability, and I think they have the foresight, to regulate this industry without having to be preempted by the Federal Government.

Also, I am going to talk to you just briefly about your role on FSOC and specifically with regard to systemically important financial institutions. Let's talk about asset managers.

Do you feel, both personally and professionally, that asset managers, managers that don't carry any assets themselves but are managing for others, pose a risk to the financial environment?

Mr. CORDRAY. I want to be careful about not trying to purport to speak for FSOC. I am not the—

Mr. ROSS. I understand. I am not asking you to. Just in your role as a member of it.

Mr. CORDRAY. What I think has been publicly stated is that there is more research and analysis going on into those issues and in forums like that.

Mr. ROSS. And don't you think we should have some—in other words, preventative maintenance, preventative medicine, if you will, is so much better than remedial medicine, being able to identify early on with the financial institution through a transparency process and let them know if they are moving into that direction so that they can self-correct, don't you think that is a pretty good way to avoid having to have the connotation and the label of being a SIFI and then not knowing how you got there or how you are going to get out of there?

Mr. CORDRAY. I would agree with that, but I do think that the designation process that the FSOC has followed has been pretty careful and thorough and comprehensive to date.

Mr. ROSS. But transparent?

Mr. CORDRAY. The FSOC is working on that.

Mr. ROSS. And we should have transparency.

Mr. CORDRAY. There are new proposals for it.

Mr. ROSS. And I think—

Mr. CORDRAY. I do agree with you on that. But, yes.

Mr. ROSS. Thank you. And lastly, just recently I sent you a letter, on February 24th. You probably haven't had a chance to read it. But I am curious about how you determine and select companies, both depository and non-depository, for examination. Is there a written procedure? Do you have a checklist? Is it based on size? Is it based on revenues? Is it based on location? Is it based on number of employees? Things of that nature?

Mr. CORDRAY. It is actually pretty sophisticated now. Early on it wasn't because we were just building up and we didn't have these things in place, but some very impressive people have worked on this.

It is a risk-based system. It depends on things like market size, market penetration, if it is an individual product line, what that size is, is it a risk and harm to consumers—

Mr. ROSS. It is a set of guidelines, if you will.

Mr. CORDRAY. You build market research—yes, I wouldn't say—it is full of—not necessarily entirely science, but that is how we try to prioritize the things that should be prioritized.

Mr. ROSS. And in regards to levies of fines, is there a guideline as to how much a fine should be or is it a range—how is it—

Mr. CORDRAY. Like a penalty or something?

Mr. ROSS. Yes.

Mr. CORDRAY. Yes. We have a statutory range of penalties depending on how serious a violation is and whether it is knowing or whether it was—

Mr. ROSS. Thank you. I see my time is up. I look forward to the response to the letter and I thank you for being here.

Mr. CORDRAY. Okay, right. Thanks. Sure.

Mr. ROSS. I yield back.

Chairman HENSARLING. The Chair now recognizes the gentleman from New Hampshire, Mr. Guinta.

Mr. GUINTA. Thank you, Mr. Chairman. And thank you, Mr. Cordray, for being here.

Mr. CORDRAY. Sure.

Mr. GUINTA. I have been in and out of the hearing, but I appreciate the opportunity to speak with you.

I wanted to just read one component of prior testimony in 2012.

Mr. CORDRAY. All right.

Mr. GUINTA. In an open field hearing in Alabama relative to payday loans—it is not really the balance of what I want to talk about, but I think it is important to amplify some of the favorable stories, because sometimes this is—I think there is one side of the story that tends to be communicated.

And I will just read a portion of what Mr. Tangie Thomas stated. He said at this hearing, again, in Alabama in 2012, I just wanted to say that I am, I did have the use to a payday loan once before and it was because of a family emergency. He went on to say, in the fees that I accrued from that payday loan were actually cheaper than getting a cash advance on my credit card. So it actually benefitted me. And I was really glad that it was there, an option available for me. I would like to know that in the future that, it would be there in the event that I needed it also.

So his point was, I had multiple options, and this is the option that I chose; it was cheaper for me in that emergency situation. So I would ask you to consider his testimony and that of others that I am sure are in that circumstance.

In the State of New Hampshire, we have payday lending, and we have what I would consider rather rigorous rules around it and I think, for the most part, it works fairly well.

Secondly, I wanted to get to on the semi-annual report of the CFPB, page 127. 8.1 is entitled, "open government," and it reads, "A critical part of making financial markets work is ensuring transparency in those markets. The CFPB believes that it should hold itself to that same standard and strives to be a leader by being transparent with respect to its own activities." I agree with that statement. I think that makes sense.

So my first question would be relative to the concerns that my constituents have expressed about the cost associated with running the CFPB. Can you tell me in this book where you specifically identify the cost of building renovations that taxpayers have spent?

Mr. CORDRAY. You are talking about the most recent semi-annual report?

Mr. GUINTA. Yes.

Mr. CORDRAY. I don't know if that would have been relevant to that period. The money was actually allocated for that purpose 2 fiscal years ago.

Mr. GUINTA. Okay.

Mr. CORDRAY. But we have budget documents on our Web site and we put them out every quarter. We have responded to numerous document requests and other things from this committee. I would be happy to get you whatever you want on any of that to make sure that is clear to you.

Mr. GUINTA. Since I am returning after a couple of years away from this institution, would you be kind enough to remind me how much you have spent to date?

Mr. CORDRAY. Spent to date on what?

Mr. GUINTA. On building renovations.

Mr. CORDRAY. On building renovations, I believe we allocated approximately $120 million. It is in that range. I will get the specific numbers for you. Just to cover actual construction cost estimated and contingencies that have to be held that may or may not be spent based on how—

Mr. GUINTA. And you feel that is somehow within—part of the mission of the CFPB to help consumers to spend that kind of money on a renovation?

Mr. CORDRAY. To have a reasonably decent place for employees to work, absolutely.

Mr. GUINTA. $120 million is a reasonably decent place?

Mr. CORDRAY. GSA, who are the experts on this, tell us it comes in at about $250 per square foot, which is well within the range of reasonableness for this—

Mr. GUINTA. And there has been no other alternative that would be cheaper that you would consider reasonable?

Mr. CORDRAY. None that we have found. And I would say at this point we have bid out the construction contract. It has been awarded through a fair and competitive bid and we are well down the road on this.

Mr. GUINTA. And so I actually found something—reclaiming my time.

Mr. CORDRAY. Imagine that we would have reversed course now, that would be very wasteful.

Mr. GUINTA. Reclaiming—if I found something that was cheaper moving forward, is that something you would consider?

Mr. CORDRAY. What do you mean found something cheaper?

Mr. GUINTA. If I found something that was cheaper in Washington, D.C., that was suitable for CFPB, would you consider that alternative?

Mr. CORDRAY. Any input you want to give us I am happy to have. But at this point we have already—

Mr. GUINTA. Would you consider the input?

Mr. CORDRAY. Look, we have already entered into a construction contract.

Mr. GUINTA. Would you consider the input?

Mr. CORDRAY. The notion that we would abandon this project based on something that you tell me you just found could be very wasteful of taxpayer money at this point.

Mr. GUINTA. Okay. The final question I have and I understand that I have only a few seconds left—I spoke with Rick Wallis, president of Piscataqua Savings Bank in Portsmouth, New Hampshire, a $230 million bank.

He is concerned with the cost associated with the rules that are associated under the $10 billion. He is a $230 million bank. He has been affected by these very rules. I would love to get a sense from you maybe offline or in writing what can be done to help that community bank, what I consider a community, one branch—

Mr. CORDRAY. What is his name?

Mr. GUINTA. His name is Rick Wallis, president of Piscataqua Savings Bank.

Mr. CORDRAY. Rick Wallis, I will call him and talk to him.

Mr. GUINTA. It is a $230 million bank, 50 employees, one location. He is hampered by the same rules that CFPB is instituting for institutions under $10 billion.

Mr. CORDRAY. Okay. I would like to know his specifics and I will be glad to reach out and talk to him.

Mr. GUINTA. Thank you. I yield back.

Mr. CORDRAY. And I will give your office a readout on what we find.

Mr. GUINTA. Thank you.

Mr. CORDRAY. Okay.

Chairman HENSARLING. The time of the gentleman has expired. There are no other Members in the queue, so I would like to thank—

Mr. CORDRAY. I'm sorry—

Chairman HENSARLING. Yes.

Mr. CORDRAY. Could you spell the bank name; it sounded kind of complicated?

Chairman HENSARLING. Perhaps we could do that off—

Mr. GUINTA. I will give it to you.

Mr. CORDRAY. All right. That is fine. We will get it. All right.

Chairman HENSARLING. That can be communicated to the office. But I do wish to thank you, Dr. Cordray. Four hours is a long time to sit at a witness table.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing stands adjourned.

[Whereupon, at 6:24 p.m., the hearing was adjourned.]

A P P E N D I X

March 3, 2015

Testimony of Richard Cordray
Director, Consumer Financial Protection Bureau
Before the House Financial Services Committee
March 3, 2015

Chairman Hensarling, Ranking Member Waters, and Members of the Committee, thank you for the opportunity to testify today about the Bureau's Semi-Annual Report to Congress. We appreciate your continued leadership and oversight. I look forward to getting to know the new Members of the Committee as we all work together to strengthen our financial system so that it better serves consumers, responsible businesses, and our economy as a whole.

As you know, the Consumer Financial Protection Bureau is the nation's first federal agency whose sole focus is protecting consumers in the financial marketplace. Financial products like mortgages, credit cards, and student loans involve some of the most important financial transactions in people's lives. In the wake of the financial crisis, Congress created the Bureau to stand on the side of consumers and ensure they are treated fairly in the financial marketplace. Since we opened our doors, we have been focused on making consumer financial markets work better for the American people, and helping them improve their financial lives.

In this, our sixth Semi-Annual Report to the Congress and the President, we describe the Bureau's most recent efforts to achieve this vital mission. Through fair rules, consistent oversight, appropriate law enforcement, and broad-based consumer engagement, we are working to restore people's trust in consumer financial markets and protect them against illegal conduct.

Of course, much of the early work of the Bureau has centered on the mortgage market, which was the primary cause of the financial crisis and thus was where reform was deemed essential by the Congress and most policymakers. Our Ability-to-Repay rule, also known as the Qualified Mortgage rule, put new guardrails in place to prevent the kind of sloppy and irresponsible underwriting that had precipitated the crisis. Our mortgage servicing rules offered new and stronger protections to homeowners facing foreclosure. And our other rules addressed significant problems in the mortgage market deemed in need of repair. During this period, we continued our extensive work on regulatory implementation by providing tools and resources to assist industry in implementing our final rule to consolidate and streamline mortgage disclosure forms at both the application stage and the closing stage.

We also undertook considerable analysis to set the stage for a more recent development, which is a proposed rule we released to provide further latitude for residential mortgage lending by small creditors such as community banks and credit unions. The Bureau shares the Committee's respect for these institutions, as well as a commitment to promoting access to credit for consumers in rural and underserved areas. And so our proposal would expand the definition of "small creditor" by making certain adjustments to the origination limit to allow for more lending by these small local institutions. We also propose to expand the definition of "rural" areas to provide more access to credit in those areas. As we have demonstrated again and again, we are committed to an even-handed approach to rulemaking that maintains important protections for consumers while listening to all stakeholders and making changes where appropriate to get things as right as we can. We look forward to public comments on these issues, which we are accepting through March 30.

As I have said many times, responsible lending by community banks and credit unions did not cause the financial crisis. These institutions play a vital role in many communities and in our economy. Their traditional model of relationship lending has been beneficial for many people in rural areas and small towns across this country, including the small town in Ohio where I was born and raised. We reinforce our commitment to this model of responsible lending by meeting regularly with community bankers and credit union leaders in all 50 states. We also receive valuable insight and feedback from members of our Credit Union Advisory Council and Community Bank Advisory Council, which consist of more than 30 credit union and community bankers from every region.

During the period of our most recent Semi-Annual Report, we also issued a number of other proposed and final rules. We issued final revisions to the remittance rule to clarify some of the new consumer protections while providing federally insured institutions more time to allow for more accurate disclosures in certain cases. We also moved forward with one of the tasks that Congress set for us by proposing a rule to overhaul the reporting requirements for the Home Mortgage Disclosure Act. It includes a proposed exemption of approximately 25 percent of banks and credit unions that are currently required to submit HMDA reports from the obligation to do so. In related activity, we released new and improved tools to allow the public to access and utilize this data more readily and effectively. And we finalized a rule to promote more effective annual privacy disclosures from financial institutions to their customers. The approach we took considerably eases the burdens of such notices for many companies. We estimate that the industry could save about $17 million annually if the new online disclosure method is widely adopted.

In addition to our rulemaking efforts, the Bureau continues to make progress in all areas of our work. To date, we have helped secure orders through enforcement actions for more than $5.3 billion in relief to more than 15 million consumers who fell victim to various violations of Federal consumer financial laws. During the period of the Semi-Annual Report, we brought enforcement actions that secured $1.6 billion in relief for consumers. Those actions included $727 million in relief to consumers who were harmed by a company's deceptive marketing of credit card add-on products. They included $92 million in debt relief for 17,000 servicemembers and other consumers who were harmed by a predatory lending scheme. And they included $225 million in relief for consumers who were harmed by other deceptive and discriminatory credit card practices. We also filed suit to hold a company accountable for operating a debt collection lawsuit mill that intimidated consumers with deceptive court filings, totaling more than 350,000 lawsuits in four years in Georgia alone.

Our supervision program continues to be refined, improved, and expanded. We consult and collaborate closely with our fellow federal regulators as well as with state regulatory officials to carry out our work. Part of our statutory mandate is to address consumer financial issues in an even-handed manner across all market participants. During this reporting period, we continued to build out our risk-based supervision program both for banks and for non-bank financial firms. That approach is enabling us to provide more consistent treatment that ensures compliance with Federal consumer financial laws and helps level the playing field among competing firms in mortgage origination, mortgage servicing, debt collection, student loan servicing, and other markets.

The premise at the heart of our mission is that consumers deserve to be treated fairly in the financial marketplace, and they should have someone stand on their side when that does not happen. Since opening our doors, the Bureau's Office of Consumer Response has accepted more than 540,000 consumer complaints related to a variety of financial products and services, including mortgages, credit cards, student loans, auto loans, credit reporting, debt collection, and a number of other consumer financial products or services. That has resulted in relief of various kinds, both monetary and non-monetary, for many consumers. It also generates a rich trove of information from individual consumers in real-time about the most urgent problems and challenges they are confronting in the financial marketplace, all of which informs our regulatory, supervisory, and enforcement work.

To promote informed financial decision making, we have continued to develop educational tools for consumers, including the *Your Money, Your Goals* toolkit. This comprehensive guide is designed to be used by trusted public and private sector intermediaries – such as social workers, legal aid attorneys, and volunteers – to empower the people they serve in personal financial decision-making by covering topics such as budgeting daily expenses, managing debt, and avoiding financial tricks and traps. We are also about to embark on a financial coaching program for transitioning veterans and economically vulnerable populations of consumers in sixty locations all over the country.

The progress we have made has been possible thanks to the engagement of hundreds of thousands of Americans who have utilized our consumer education tools, submitted complaints, participated in rulemakings, and told us their stories through our website and at numerous public meetings from coast to coast. We have also benefited from an ongoing dialogue and constructive engagement with the institutions we supervise, with community banks and credit unions with whom we regularly meet, and with consumer advocates throughout the country.

Our progress has also resulted from the extraordinary work of my colleagues at the Bureau. They are dedicated public servants from a variety of different backgrounds who are committed to promoting a healthy consumer financial marketplace. In standing up the new Bureau from ground zero at almost break-neck speed to meet the expectations and deadlines set by the Congress, we put ourselves under enormous pressure to meet these goals. When we have recognized from time to time that we got things wrong, we have been determined to do what we can to make them right. I am proud to say that our colleagues have regularly risen to the challenges we face. They have consistently delivered great results so that consumers all over the country – in every one of your districts – are treated fairly in the financial marketplace. The American people certainly deserve it.

Thank you for the opportunity to testify today. I look forward to your questions.

Congress of the United States
Washington, DC 20515

March 4, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray:

We are writing in support of strong, effective rules governing payday loans. The Consumer Financial Protection Bureau (CFPB) has a responsibility to protect consumers from these predatory and exploitive financial products, and we urge you to implement rules that would prohibit fraudulent and abusive payday loans that threaten the economic well-being of so many Americans, especially those from low-income communities of color.

While several states have recently passed new laws and others have increased the enforcement on the abusive nature of these loans, the need for federal regulation is pressing. As of 2014, at least 36 states still permit these abusive loans, and many do so without restriction.[i] Moreover, the prevalence of internet payday lending has grown tremendously in recent years. In fact, one in every three payday loans originates online, some with rates as high as 700% APR or more.[ii]

What is particularly concerning is that payday lenders target low-income communities and communities of color. According to a four state study conducted by Howard University's Center on Race and Wealth, 12 million people living in low-income communities use payday loans annually. Those individuals averaged eight payday loans each year with an average interest rate of 400 percent for each loan. Nearly 90 percent of payday lenders referenced in the study were located in low-income communities of color.

The prevalence of such predatory and abusive practices is unacceptable. The payday loan industry robs borrowers of the opportunity to secure a foothold in the mainstream financial services market by locking borrowers into a long-term debt trap and by increasing the likelihood that a borrower will suffer other harmful financial consequences, such as bankruptcy, excessive overdraft fees, and involuntary bank account closures. The resulting adverse impact on credit scores, which lenders use to determine a borrower's eligibility, can make it even harder for individuals to avail themselves of mainstream financial services. This means that the millions of individuals from low-income communities and communities of color are further disadvantaged and further unable to break free of existing socio-economic barriers.

That is why we need a clear, consistent, national standard that ensures that no one in this country is subject to predatory lending practices. To that end, we urge the CFPB to implement rules to stem predatory practices that are based on exorbitant interest rates and fees that draw consumers into a harmful cycle of repeat lending. Specifically, we ask that the CFPB meaningfully reform the marketplace by implementing rules governing both storefront and online payday lending that would:

1. Require the lender to determine the borrower's ability to repay the loan, including consideration of both income and expenses;

2. Not sanction any series of repeat loans or provide any safe harbor;

3. Recognize that borrowers need small dollar loans with good terms, not short-term loans that are difficult for them to repay. The CFPB should establish an outer limit on length of indebtedness that is at least as short as the FDIC's 2005 guidelines – 90 days in a twelve-month period; and

4. Prohibit lenders from using post-dated checks of electronic access to a borrower's checking account as evidence of ability to repay the loan.

We thank you for your leadership and consideration of our suggestions for strong protections for consumers in the financial market. We look forward to working with you and the Bureau to establish clear rules for the payday lending industry in order to protect consumers from products that have been shown to be financially damaging.

Very truly yours,

Keith Ellison
Co-Chair, Congressional Progressive Caucus

Raúl M. Grijalva
Co-Chair, Congressional Progressive Caucus

Linda T. Sánchez
Chairwoman, Congressional Hispanic Caucus

G.K. Butterfield
Chairman, Congressional Black Caucus

Judy Chu
Chairwoman, Congressional Asian Pacific American Caucus

[i] The Pew Charitable Trusts, *How State Rate Limits Affect Payday Loan Prices*, April 10, 2014, *available at* *http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2014/04/10/how-state-rate-limits-affect-payday-loan-prices*.

[ii] The Pew Charitable Trusts, *Key Findings About Internet Payday Lending: Harmful Practices, Fraud, and Abuse Abound in a Growing Industry*, Oct. 02, 2014, *available at http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/key-findings-about-internet-payday-lending.*

The Semi-Annual Report of the Consumer Financial Protection Bureau Hearing
House Committee on Financial Services
March 3, 2015
Questions for the Record

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Barr:

Question 1
I have received complaints recently that the CFPB is pursuing enforcement actions against companies in the field of debt collection or that rely upon debt collection services at the same time that the Bureau is finalizing new rules for that industry. While the companies are following all existing laws and regulations, they are being held to a standard that does not yet exist. Do you think it is appropriate to use enforcement in this way? Do you think it is appropriate for CFPB to hold companies accountable for rules not yet in place?

Response

In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress provided the Consumer Financial Protection Bureau (Bureau) a number of tools – including rulemaking and enforcement – to address and prevent consumer harm. In each action the Bureau takes, we endeavor to choose the appropriate tool to protect consumers and honest businesses in the marketplace. The Bureau has taken enforcement actions where violations of existing law warranted that response. When it comes to specific enforcement actions, there are a number of factors that go into each filed action and negotiated resolution. In all cases, the Bureau aims to deter unlawful behavior and return money to harmed consumers. The Bureau is not using standards that do not yet exist, but rather applying the law that Congress charged us with enforcing. Pending rulemaking activity does not preclude enforcement of these existing statutes to protect consumers.

Question 2
The CFPB has accused indirect vehicle finance companies of disparate impact (unintentional, statistical discrimination), even though the borrower's race is unknown to the CFPB or the financial institution by law. According to Charles River Associates, the CFPB's proxy method misidentifies the borrower's race 41% of the time. Has the CFPB adjusted its error-prone analysis to address this critique?

Response

On September 17, 2014, the Bureau published a white paper, entitled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*, that details the methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

The Bureau and the paper you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup and compensation policies, and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

The Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

Question 3
Can the Bureau explain the relevance of conducting a fair lending analysis of a financial institution's nationwide portfolio when there are clear distinctions between how each dealer manages their originations? When no disparities exist on an individual dealer basis, which is where the credit is transacted and the most direct measure of disparities, what is the relevance of conducting an analysis on a portfolio basis to determine discrimination?

Response

As explained in our March 2013 compliance bulletin, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, when analyzing whether discrimination has occurred at a particular lender based on the overall composition of the lending program that it has established, that lender's entire portfolio is the relevant focus.[1] If a lender's policies are resulting in certain racial or ethnic groups paying more for auto loans from that lender, then the fair lending issue exists across all the loans where that policy applies, and not simply for a disaggregated slice of loans. The Bureau's analysis is tailored to reflect the institution's particular policies, practices, products, and channels that exist in its lending program, and we appropriately adjust our analysis for each institution that is subject to review. As part of the Bureau's overall analysis of auto lender pricing, we carefully consider the specifics of each individual case, including factors such as regional pricing differences, in addition to a number of other factors such as consumers' credit scores and debt to income ratios; characteristics of the collateral; and terms of the deal, such as the amount financed, down payments, the existence of a manufacturer discounted rate, and loan term.

[1] *See* CFPB Bulletin 2013-02, at 3 ("The disparities triggering liability could arise either within a particular dealer's transactions or across different dealers within the lender's portfolio.").

Question 4
Will the CFPB's forthcoming small-dollar/payday loan rule (which has yet to be proposed) target all forms of small-dollar credit or be limited to payday loans? What are the CFPB's top concerns about small-dollar loans: rollovers, testing for ability to repay, cycle-of-debt issues, or affordability and size of payments relative to income?

Response

The Bureau is considering rulemaking proposals that would cover payday loans, vehicle title loans, and other similar forms of credit, including certain types of installment loans. The Bureau has not released a notice of proposed rulemaking and is still considering the appropriate scope of the rulemaking. The Bureau is concerned that many consumers are taking out unaffordable loans because lenders are offering the types of loans covered by the proposals under consideration without determining whether consumers have the ability to repay the debt while meeting other major financial obligations and living expenses. When loans are structured with unaffordable payments, many consumers struggle to repay their loans and have to reborrow, default on the loan, or fall behind on other obligations. The Bureau is also concerned about practices that make it difficult for consumers to retain control over their payment accounts.

Question 5
In December, the CFPB expressed support for the Department of Defense's proposed rule under the Military Lending Act. However, would the CFPB acknowledge that such a proposed rule will be counterproductive if it eliminates access to safer and more responsible alternatives to high-cost, short-term loans?

Response

Servicemembers have access to many low-cost sources of credit that are alternatives to high-cost, short-term credit. For example, the military relief societies provide no-interest loans and grants for household expenses and emergencies. Some credit unions and banks operating on and near military installations also have programs to provide such forms of credit.

The Bureau strongly supports the work of the Department of Defense (Department) to revise the Military Lending Act (MLA) regulations. The Department struck a sensible balance with the proposed rule and the rule, if finalized, would go a long way towards better protecting military families from predatory lending. Through the MLA, Congress sought to protect servicemembers from high-cost credit. The Department's proposed rule would extend the scope of products covered by the MLA protections, helping to level the playing field and provide more consistent protection for servicemembers across the country in their credit transactions.

Question 6
The DOD rule would require lenders to verify the military status of each and every applicant for a loan using a database administered by the Defense Manpower Data Center, which is known to be plagued by errors and chronic outages. According to the Pentagon, the system could be

implicated in 300 million transactions per year. Are you concerned that this could inadvertently and unfairly interrupt access to credit for all Americans – military and civilian alike?

Response

The Department's proposed rule would not require lenders to verify the military status of applicants for credit by querying the Department's MLA Database. Instead, the proposal would provide a safe harbor for liability for creditors that choose, at their discretion, to query the Department's MLA Database to assess whether an applicant for credit is a covered servicemember or dependent. Thus, creditors that, for example, generally extend credit with an interest rate in excess of the limitation in the MLA may choose to make such a determination and gain the protection of the safe harbor (so long as they do not subsequently make impermissible loans to applicants identified in the database as covered servicemembers or dependents).

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Duffy:

Question 1
Please explain how The General Dynamic Information Technology (GDIT) customer management system works. Is this a database or a customer management system?

Response

Collecting, investigating, and responding to consumer complaints are integral parts of the Consumer Financial Protection Bureau's (Bureau) work. The system the Bureau's Office of Consumer Response (Consumer Response) uses to handle consumer complaints is a customer relationship management (CRM) system constructed under a contract with the Information Technology Department of General Dynamics. Using the CRM system, Consumer Response receives complaints from consumers through a variety of channels (i.e., web, telephone, mail, fax, and referral) about a range of consumer financial products and services.

Consumers who have submitted complaints with the Bureau can log on to the secure consumer portal available on the Bureau's website, which is supported by the CRM, or call a toll-free number, to receive status updates, provide additional information, and review responses received from the company against whom the complaint was filed.

Consumer Response screens all complaints submitted by consumers through the CRM system based on several criteria, including whether the complaint should be routed to another regulator, whether the complaint is complete, and whether the complaint is duplicative of a prior submission by the same consumer. Screened complaints are sent via a secure web portal to the appropriate company using the CRM. The company reviews the information, communicates with the consumer as needed, and determines what action to take in response. The company then reports back to the consumer and the Bureau via the secure company portal, which is supported by the CRM. The Bureau invites the consumer to review the response and provide feedback about company responses through the secure consumer portal. Consumer Response uses this feedback, along with other information such as the timeliness of the company's response, for example, to help prioritize complaints for investigation.

Throughout this process, the CRM records data. Certain de-identified individual-level complaint information is published in the Bureau's Consumer Complaint Database. Complaint information is published upon the earlier of: (1) an initial response to the consumer and the Bureau (confirming a commercial relationship with the consumer), or (2) 15 calendar days after the complaint is sent to the company. A complaint is not published in the database if, among other reasons, the company suspects the complaint was submitted in furtherance of fraud or the company indicates to the Bureau that it does not have a commercial relationship with the consumer.

Question 2

Do you collect personally identifiable information (PII) from consumers when they enter a complaint? If the answer is yes, are they aware of the PII being collected? And how is the PII protected?

Response

To fulfill the Bureau's statutory mandate to collect, monitor, and respond to consumer complaints, Consumer Response collects information necessary to facilitate complaint handling, including some information related to the individual consumers who submit complaints and their relationships with financial institutions. Consumers provide some personally identifiable information (PII) when they submit complaints, which is used to route and respond to consumers' complaints.

The Bureau notifies consumers that information is collected when they submit a complaint. A Privacy Act Statement on each complaint intake form describes the reason for the collection of information and how the information is used. Consumers who submit complaints over the telephone are read this Privacy Act Statement. The information collection is discussed in the Consumer Response System of Records Notice (SORN)[2] and the related Privacy Impact Assessment (PIA).[3]

The Bureau protects PII in a number of ways. Complaint intake forms include fields designated for collecting contact information to structure the data and minimize the collection to data necessary to process the complaint. The Bureau limits access to the complaint system to employees and contractors with job functions related to responding, referring, or otherwise investigating a complaint, and removes access to information from employees and contractors who no longer have a defined business need due to change in job function, termination, or

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[2] *The Systems of Records Notice (SORN):* http://www.consumerfinance.gov/privacy/consumer-response-database

[3] *Privacy Impact Assessment (PIA):* http://files.consumerfinance.gov/f/201303_CFPB_PIA-Consumer-Response-System.pdf

resignation. The Bureau also grants limited system access to non-Bureau users, such as employees of the company that is the subject of the complaints. These users may access the consumer complaint system through portals that allow them to view information from relevant complaints about the company. These portals are only accessible via a secure channel using a Bureau issued login and password, where users are advised of their responsibilities for protecting PII. These portals enable the company to respond to both the consumer and the Bureau about a complaint.

Question 3

The CFPB Website states that your agency uses the information for four purposes: 1) to forward each complaint to the company for a response, 2) to share data with state and federal agencies, 3) to analyze data to help supervise companies and enforce laws, 4) to publish complaints in the Consumer Complaint database. In that regard:

a. How much has been spent to purchase, maintain, and utilize the GDIT system?

Response

The actual amounts the Bureau will pay will depend on usage. Through February 2015, the Bureau has spent $28.3 million to purchase, maintain, and operate the system.

b. How many consumer complaints have been received since the GDIT system was established?

Response

From July 21, 2011 through March 31, 2015, the Bureau has received approximately 582,600 consumer complaints.

c. How did you arrive at that total? If a consumer makes multiple complaints against the same company or about the same issue, how are they counted? If one company receives multiple complaints on the same issue, how is that counted?

Response

This total is a count of complaints. As noted in our reports to Congress, complaint counts exclude duplicates from the same consumer and non-consumer complaints (e.g., industry whistleblowers).

d. How many of those complaints were deemed incomplete, and how were the consumers notified so that they may complete the complaint?

Response

Approximately 54,400 complaints (9%) were found to be incomplete and 9,800 (2%) are pending with the consumer or the Bureau.

Consumers are notified by email or postal mail, depending on the contact information provided by the consumer, if Consumer Response does not have enough information to forward to the company for response or to refer the complaint to another regulator. Consumers can call, mail, or fax the missing information to complete their complaints.

e. How many of those complaints were forwarded [to] the company, state and federal agencies, and used to help supervise companies and enforce laws? How were those consumers notified of this progress?

Response

Approximately 398,700 complaints (68%) of complaints received through March 31, 2015 have been sent to companies for response and another 119,800 complaints (21%) have been referred to other regulatory agencies. These individual complaints can result in remedies to individual consumers, and also provide insight and identify trends that have resulted in supervisory inquiries and enforcement investigations. Consumers are notified by email or postal mail, depending on the contact information provided by the consumer, when their complaints have been sent to a company for response or referred to another federal agency and when a response is received from the company. The Bureau also lets consumers know that complaints help us identify trends and problems in the marketplace and understand the challenges people are facing so that the Bureau can do a better job looking for these problems when we supervise companies, enforce Federal consumer financial laws, and write rules and regulations. In addition, the Bureau shares complaints with state and federal agencies through secure portals to inform their efforts.

f. How many of those complaints were closed favorably to the consumer, and how was "favorably" determined?

Response

The Bureau's complaint handing process does not specifically define a "favorable" determination of a complaint. As of March 31, 2015, companies have responded to approximately 380,100 complaints (95%) of the complaints sent to them for response, and consumers have disputed approximately 75,200 (21%) company responses to complaints.

g. How many of those complaints resulted in monetary relief to the consumer? What was the average of the reward?

Response

Through our complaint process, consumers have received both monetary relief and non-monetary relief, such as cleaning up their credit reports, stopping harassment from debt collectors, and correcting account information. Companies have reported monetary relief in responses to approximately 30,800 complaints sent to them for response. The median amount of monetary relief provided to consumers is $148, and the average amount of monetary relief provided to consumers is $1,193.

h. How many consumers were satisfied with the complaint process?

Response

The Bureau gathers feedback from consumers and other stakeholders about the complaint process to inform continuous improvement efforts, but does not currently track how many consumers are satisfied with the complaint process.

Question 4
As you know, the Department of Justice and Federal Deposition Insurance Commission (FDIC), of which you are a Board Member, were engaged in a program known as Operation Choke Point. The two agencies used something called "reputational risk" to assess business relationships between financial institutions and their clients. Were you aware of Operation Choke Point and the use of "reputational risk"?

Response

The Bureau is aware of Operation Choke Point and of the concept of "reputational risk." Reputational risk goes to the safety and soundness of a financial institution – a primary concern for prudential regulators, but one outside the Bureau's principal responsibilities. The Bureau's focus is on risk to consumers and markets for consumer financial products and services, not risk to individual financial institutions.

The Bureau was created to ensure evenhanded oversight that secures compliance with consumer financial law. Businesses that operate in compliance with the law are essential to operating a fair, transparent, and competitive marketplace and in our view they are good for consumers because they make available to people the kinds of opportunities that credit and other financial products and services are essential to provide. We are pleased to see that those types of businesses are able to compete successfully by serving consumers with responsible financial products and services. The Bureau is committed to carrying out its supervisory and enforcement mandates with consistent recognition of these principles.

Question 5
Had you been aware that Operation Choke Point was happening, and that the FDIC and Department of Justice were knowingly targeting legal and constitutionally protected businesses in the US, would you have used your capacity as a member of the FDIC to stop it?

Response

The Federal Deposit Insurance Corporation (FDIC) operates with delegations of authority to its division directors and staff for certain operational and policy actions. As you know, the Board consists of a chairman, vice chairman, and FDIC director, as well as two *ex officio* directors specified by statute – the Comptroller of the Currency and the Director of the Consumer Financial Protection Bureau. The Chairman authorizes and sets the agenda for all meetings of the board, and manages and directs the daily executive and administrative functions and operations of the FDIC. Generally the *ex officio* board members, such as myself, are fully occupied with our statutory responsibilities at our own agencies and are engaged in such matters at the FDIC only when they rise to the level of the Board of Directors level by being discussed at Board meetings. In my role as an outside Director of the FDIC, I carefully review the particular facts and circumstances brought to the FDIC Board of Directors for consideration, anything else would be necessarily speculative.

Question 6
Does the CFPB use "reputational risk" as a metric? If not, why?

Response

Much like regulatory capital, earnings power, or any number of key prudential metrics, which may strongly influence the safety and soundness of a bank and are therefore the focus of other federal regulators, "reputational risk" is not a measure that directly impacts consumers. The Bureau's focus is not on risk to individual financial institutions, but on risk to consumers and markets for consumer financial products and services. The Bureau uses a number of metrics to evaluate risks of financial harm to consumers from providers of consumer financial services. These metrics include (but are not limited to), size, market share, number of consumers served, growth, and metrics derived from our collection of consumer complaints.

Question 7
In previous testimony you stated that a government should be looking at businesses in the sense of being legal or illegal. Would you agree a short-term installment lender (such as payday lenders, title lenders, pawn shops, and others) licensed by the state and operating under the rules and regulations of state law is operating legally?

Response

To operate legally, all businesses must comply with both the state and federal laws applicable to them. The Dodd Frank Wall Street Reform and Consumer Protection Act authorizes the Bureau to, among other things, assess compliance with Federal consumer financial law. In order to determine whether a lender – or any firm – is operating in compliance with the law, it is necessary to carefully investigate the facts and circumstances surrounding potential violations. Consequently, the Bureau makes determinations about whether firms are carrying out their operations in a legal manner on a case-by-case basis. By doing so, the Bureau helps ensure that the consumer financial markets function in a fair and competitive way.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Fincher:

Question 1
I am concerned about the CFPB's rigid insistence that an auto lender's portfolio have no pricing imbalance. Pricing imbalances can and do exist for reasons that have nothing to do with a

consumer's background. For example, consider a bank that purchases credit contracts from dealers where every single dealer charges a set price for arranging financing. However, the price that these dealers charge differs solely on local costs and competition considerations. In our diverse country it is very likely the demographic makeup of the customers in each of those dealer's locations will also differ. Then the lender that purchases those contracts will likely have a pricing imbalance in its portfolio even though no pricing imbalance exists between different groups of customers at the retail level. What public policy justification can support CFPB threats to bring an enforcement action against a lender for unlawful discrimination in this scenario?

Response

As explained in the Consumer Financial Protection Bureau's (Bureau) March 2013 compliance bulletin, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act,* when analyzing whether discrimination has occurred at a particular lender based on the overall composition of the lending program that it has established, that lender's entire portfolio is the relevant focus.[4] If a lender's policies are resulting in certain racial or ethnic groups paying more for auto loans from that lender, then the fair lending issue exists across all the loans where that policy applies, and not simply for a disaggregated slice of loans The Bureau's analysis is tailored to reflect the institution's particular policies, practices, products, and channels that exist in its lending program, and we appropriately adjust our analysis for each institution that is subject to review. As part of the Bureau's overall analysis of auto lender pricing, we carefully consider the specifics of each individual case, including factors such as regional pricing differences, in addition to a number of other factors, such as consumers' credit scores and debt to income ratios; characteristics of the collateral; and terms of the deal, such as the amount financed, down payments, the existence of a manufacturer discounted rate, and loan term.

Question 2
Director Cordray, when asked by Representative Stivers what you thought about the workability of the Department of Justice (DOJ) fair credit risk mitigation model that is set forth in the *NADA Fair Credit Compliance Policy & Program*, you provided the following response:

> "We have responsibility to oversee fair lending by auto lenders but not by auto dealers. So, that the dealer program that they've developed may well be an excellent program and we've talked to them about it at their suggestion. It's really for -- more for the Justice Department to say what they think of that not really within my jurisdiction."

However, the CFPB did not demonstrate a similar reluctance to assert its jurisdiction over dealer level transactions in its March 2013 fair lending guidance to auto lenders, where it stated:

> "The disparities triggering liability could arise either *within a particular dealer's transactions* [emphasis added] or across different dealers within the lender's portfolio. Thus, an indirect auto lender that permits dealer markup and compensates dealers on that

[4] *See* CFPB Bulletin 2013-02, at 3 ("The disparities triggering liability could arise either within a particular dealer's transactions or across different dealers within the lender's portfolio.").

> basis may be liable for these policies and practices if they result in disparities on a prohibited basis."

Similarly, the Bureau's guidance also stressed to indirect lenders the importance of regularly analyzing "both *dealer-specific* and portfolio-wide loan pricing" as well as "ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (*such as controls on dealer discretion*)."

Given these statements in your guidance, please explain in detail why you believe that the Bureau is unable to address the value of the DOJ fair credit risk mitigation model when assessing the need for *indirect lenders* (not dealers) to impose controls on dealer discretion and to prevent dealer-level pricing imbalances as set forth in the Bureau's guidance.

Response

The Bureau welcomes proactive proposals that demonstrate a commitment to fair lending. However, lenders should be careful about assuming that individual dealer-level actions will fully address their own fair lending risks. As you note, in general, the National Automobile Dealers Association's (NADA) Fair Credit Compliance Policy and Program is based on two Department of Justice (DOJ) cases from 2007, where that model was negotiated in settlements involving dealers, over which the DOJ has jurisdiction. The Bureau's focus is on indirect auto lenders. The Bureau remains concerned about indirect lending programs built around discretion and financial incentives that create fair lending risks. The NADA proposal would permit indirect lending programs built around dealer discretion and financial incentives to provide adjustments or exceptions to the established interest rate, which can create fair lending risks. In general, lenders who choose to implement such programs may want to review the Spring 2014 edition of *Supervisory Highlights*,[5] which includes guidance related to documenting exceptions to established credit standards to mitigate fair lending risk.

Our March 2013 bulletin, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*, was issued to provide clarity and guidance for institutions regarding the application of Equal Credit Opportunity Act and Regulation B, and our attendant supervisory and enforcement approach in this area. The bulletin provided examples of internal controls, program features, and compliance management systems that institutions might use to mitigate legal risk. The bulletin also indicated that lenders may choose to adopt non-discretionary pricing policies as an alternative method of mitigating fair lending risks.

Question 3
On February 23, Director Cordray said before the National Association of Attorneys General Annual Winter Meeting in his prepared remarks:

> "In addition, the Bureau has focused significant resources on rooting out discrimination in indirect auto lending. Examination and enforcement teams have reached resolutions to address practices that resulted in discrimination at several supervised institutions, which

[5] Supervisory Highlights: Spring 2014, *available at* http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.

collectively are paying out approximately $136 million to provide redress for up to 425,000 consumers who were discriminated against on the basis of race."

a. A peer review of the CFPB's proxy methodology found that method to be "conceptually flawed… and subject to significant bias and estimation error" (see the Charles River Associates Report entitled *Fair Lending: Implications for the Indirect Auto Finance Market* (November 19, 2014)). In light of these findings, what corrections and safeguards has the CFPB employed to ensure that the CFPB, when reviewing fair lending compliance by indirect auto lenders, is making accurate determinations concerning the amount of dealer participation paid by different groups of similarly situated consumers?

Response

On September 17, 2014, the Bureau published a white paper, entitled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*, that details the methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

The Bureau and the paper you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup and compensation policies, and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

The Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

b. If you do not accept – in whole or in part – the findings and conclusions of this peer review, state in detail the basis upon which you reject its finding(s) and conclusion(s).

Response

The paper you cite does not undermine either the importance of the Bureau's anti-discrimination work in indirect auto lending or our confidence in our use of the BISG methodology. That paper does not provide reassurance that the fair lending risk presented by discretionary dealer markup is less significant than we—and other regulators and consumer advocates—believe. Rather, the paper takes issue with the manner in which its authors think the Bureau is assessing that risk, using the BISG methodology, in order to determine whether violations have occurred. The authors do not reject the use of a BISG methodology itself, they simply offer a variety of recommendations based on their beliefs regarding the Bureau's use of the BISG proxy. These beliefs reflect a potential misunderstanding of how the Bureau conducts its analysis, which is based on the specific business practices of individual lenders.

The paper you cite presumes the Bureau applies the same analysis to all lenders, in all contexts, including recommending statistical controls the Bureau should use in every case, regardless of whether those controls apply to an individual lender's business model. At the Bureau, each supervisory examination or enforcement investigation is based on the particular facts presented. In analyzing lending data for statistical disparities on a prohibited basis, examination teams typically construct regression models based on the particular institution's specific policies and practices, which vary from institution to institution and may also vary by product and channel. For this reason, for each institution subject to review, examination teams may construct multiple regression models by including controls that reflect the institution's various policies, practices, products, and channels, as well as any additional factors identified by the examination team or the institution.

The Bureau engages with individual lenders to better understand their policies and products. As such, we have considered, on a case-by-case basis, many of the controls and recommendations listed in the paper you cite. Many of the controls and recommendations are already incorporated into our analysis, both to test the robustness of our results and to anticipate (and respond to) lender concerns. This process is an ongoing dialogue between specific institutions and the Bureau.

Once the Bureau has found disparities in outcomes by race, ethnicity, or another prohibited basis under the Equal Credit Opportunity Act for a particular lender, the Bureau needs to consider whether these disparities result from legitimate business needs that are actually incorporated in the lender's pricing policies and practices. Where lenders have demonstrated this, the Bureau has incorporated controls into our analysis, and as a result the disparities may be reduced or eliminated altogether. However, where lenders simply offer up controls without justification or proof that these factors in fact reflect legitimate business needs and are actually incorporated into decisions about discretionary markup, it is not appropriate for the Bureau to include these factors in our analysis. That determination is one that the Bureau needs to make on a case-by-case basis and based on actual evidence.

c. The Bureau's own White Paper on its proxy methodology reveals in Table 10 that the number of consumers it estimated to be African American exceeds the number of consumers who identified themselves as African American by 20%. Explain in detail how the CFPB corrects for this error.

Response

As noted in our previous response, the Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument they make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

With respect to the Bureau's finding that, as applied to a dataset of mortgage borrowers whose racial identity was known, the proxy overestimates the number of minority borrowers, particularly African Americans, the Bureau's study explained its likely cause: the racial and ethnic makeup of mortgage applicants is not particularly representative of the general population. When the proxy is applied to data where the applicants are more representative of the general population, such as data on auto loan borrowers, this perceived overestimation may disappear or decrease significantly.

d. Explain in detail how the CFPB determined both the cumulative number and the individual identity of the consumers referenced in your statement that several supervised institutions "collectively are paying out approximately $136 million to provide redress for up to 425,000 consumers who were discriminated against on the basis of race."

Response

In September 2014, the Bureau published an edition of *Supervisory Highlights* dedicated to our work in indirect auto finance. We reported that, as a result of the Bureau's supervisory and enforcement resolutions with several indirect auto lenders, those lenders would collectively provide redress to up to 425,000 consumers who paid more to finance their cars or trucks based on their race or national origin.

As reported in December 2013, in connection with the public enforcement action against Ally Financial Inc. and Ally Bank (Ally), the Bureau and the Department of Justice (DOJ) determined that more than 235,000 minority borrowers paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system. In addition, as of September 2014, confidential supervisory resolutions with several additional lenders were expected to result in redress to up to 190,000 more borrowers.

The overall borrower numbers were determined based on whether individual consumers were likely to be minorities and whether they paid a markup greater than the average Non-Hispanic White markup. The individual identity of consumers who receive redress may be determined in various ways, typically as a result of negotiations with each lender. For example, redress may go to all consumers with a high likelihood of being in one of the affected groups who also paid a higher-than-average markup. Alternatively, consumers may be asked to self-identify or otherwise affirm that they are members of one of the affected groups.

e. Explain in detail how the CFPB determined both the cumulative number and the individual identity of the "more than 235,000 minority borrowers [who] paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system," as set forth in the CFPB's press release dated December 20, 2013.

Response

Demographic information, such as race and ethnicity, is not collected by non-mortgage lenders. The Equal Credit Opportunity Act generally forbids the collection of this kind of demographic information outside of the mortgage context. However, this information is vital to assessing fair lending compliance. Thus, federal regulatory and enforcement agencies have long used proxy methods in non-mortgage data analysis.

As you note, the Bureau and DOJ ordered Ally to pay $80 million in damages to harmed African-American, Hispanic, and Asian and Pacific Islander borrowers and $18 million in penalties. The Bureau and DOJ determined that more than 235,000 minority borrowers paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system.

The Bureau and the DOJ currently are overseeing Ally's compliance with the requirements set out in the Consent Order, and are working together with Ally to analyze loan data, identify victims, and provide remediation.

f. As of March 13, 2015, state whether – and to what extent - the CFPB has positively identified the minority borrowers who will receive damages as a result of the Ally consent order referenced above.

Response

As a result of Ally's auto lending discrimination settlement with the Bureau and the DOJ, Ally contracted with a settlement administrator to distribute the $80 million settlement fund to the over 235,000 harmed consumers. The Bureau and the DOJ have been working closely with the administrator and Ally to implement consumer outreach and participation methods and materials to effectively distribute the settlement fund. Remediation payments cannot be sent until all affected consumers have been given a full opportunity to participate in the settlement, which requires extensive preparation and outreach.

Given that the Bureau found that more than 235,000 African American, Hispanic, and Asian and Pacific Islander borrowers were affected by Ally's discretionary pricing and compensation policies, outreach to consumers is being conducted in seven languages to hundreds of thousands of consumers, specifically in English, Spanish, Mandarin, Cantonese, Vietnamese, Korean, and Tagalog. The Bureau's Consent Order requires the settlement administrator to make all reasonable efforts to provide effective translation services to affected consumers. Once the settlement administrator makes this information available to the public, the Bureau will also make contact information for the settlement administrator, as well as information on how affected consumers can participate, available on our website.

g. Regarding the consent order that the government entered into with Ally Financial and Ally Bank in December 2013, how much of the $80 million in damages that Ally was required to pay has been distributed to consumers you contend were harmed by disparate impact?

Response

Remediation payments cannot be sent until all affected consumers have been given a full opportunity to participate in the settlement, which requires extensive preparation and outreach. Given that the Bureau found that more than 235,000 African American, Hispanic, and Asian and Pacific Islander borrowers were affected by Ally's discretionary pricing and compensation policies, outreach to consumers is being conducted in seven languages to hundreds of thousands of consumers, specifically in English, Spanish, Mandarin, Cantonese, Vietnamese, Korean, and Tagalog. Once the settlement administrator makes this information available to the public, the Bureau will also make contact information for the settlement administrator, as well as information on how affected consumers can participate, available on our website.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Fitzpatrick:

Question 1
Do you agree with Sheila Bair's proposal (Former FDIC Director) for a legislative fix to reduce the regulatory burden on community banks with less than $10 billion in assets from some existing and new regulations?

Response

The Consumer Financial Protection Bureau (Bureau) has already established exceptions and special provisions for small creditors, *e.g.*, a category of Qualified Mortgages (QM) available only to small creditors and a category of balloon QMs available only to small creditors who operate predominantly in rural or underserved areas. The Bureau strives to implement its statutory mandates faithfully and fairly. Although the Bureau does track pending legislative proposals to be aware of the potential implications on our work and resources, we generally do not take a position on pending legislation.

Question 2
What are your predictions on how QM lending rules will affect credit availability?

Response

In implementing the mandates of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau is very conscious of the need to consider credit availability along with consumer protection. The Bureau monitors the markets for the impacts of our rules on credit availability and conducts an assessment of our significant rules no later than five years after each such rule takes effect. When the Bureau adopted the ability-to-repay (and QM) rule we did a forward-looking analysis of the rule's likely impact. We concluded that the rule would not lead to a significant reduction in consumers' access to mortgage credit. Indeed, we anticipated that because mortgage credit was already restricted, the rule would have only a very small impact on access to credit in the near term. Although it has been only 15 months since the rule took effect, the Bureau has seen no information thus far to contradict that assessment. Bureau staff will continue to monitor the mortgage market and will complete the required backward-looking assessment based on the more extensive information that more time will provide (and by our deadline in January of 2019).

The Bureau's ultimate goal is to ensure that responsible, affordable mortgage credit remains available to consumers by providing sufficient incentives to encourage QMs that are affordable, as intended by Congress, while also leaving room for the development of a non-QM market to serve consumers who do not meet the requirements for a QM who nonetheless have the ability to repay a mortgage loan. The Bureau has carefully calibrated the QM definition to avoid unnecessary disruption of the mortgage market and to protect consumers' access to credit during the housing market recovery, including a temporary QM definition to cover a greater percentage of the mortgage market. The Bureau expects a healthy market for non-QMs to develop over time.

Question 3
Some community bankers in my district are concerned that while credit availability appears to be increasing, the question of the CFPB's rules on "qualified mortgages" and the ability to repay rules continue to be a question. These individuals worry that down the pike, legal challenges will arise. Can you comment on this?

Response

The Bureau conducted an analysis of overall litigation costs that we included in the preamble of in the ability-to-repay final rule. The analysis estimated that an increase in overall loan pricing to account for such litigation risks of only a few basis points would result.

We continue to believe that our analysis projecting a negligible likely impact of litigation risks, set forth in the final rule, is accurate—and we have yet to see any contrary evidence, including any dramatic increase in TILA litigation. We will continue to monitor the market, however, and we will continue to review and assess our initial analysis as more information becomes available.

Question 4
Increasing the amount of information for HMDA reports adds to the cost of doing business for community bankers. Do you believe that these demands translate to better homeowner lending?

Response

Yes. Today Home Mortgage Disclosure Act (HMDA) data provide a broadly representative picture of home lending in the nation unavailable from any other data sources. There is general agreement that the information available through HMDA has helped to bring greater fairness, transparency, and efficiency to the residential loan market. Serious inadequacies exist in the information currently collected under the HMDA regulations. In the Bureau's proposed HMDA rule, we addressed thoroughly the potential benefits and costs of the regulatory and operational changes under consideration, including the numerous ones that were added by the statute as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act. The changes that will be included in the final rule will be the result of additional careful analysis and consideration of public comment.

Unlike many rules related to the mortgage market, HMDA is not principally focused on regulating interactions between financial institutions and borrowers. Instead, HMDA requires financial institutions to report to the public and Federal agencies information they collect about mortgage applications, originations, and loan purchases at the transaction level. Such information helps the public and public officials understand whether financial institutions are serving the housing credit needs of their communities, among other things. The proposed changes to the HMDA regulations will allow greater public understanding of mortgage market lending dynamics through more visibility into market practices, and will help the public and public officials better identify emerging risks in the market that could potentially harm consumers.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Foster:

Director Cordray, thank you for all the great work that you do and for appearing before so regularly before the Financial Services Committee. I would also like to commend your staff for their responsiveness and for all the great work they do every day to protect consumers. I'd like to turn your attention to Bureau's foray into cracking down on predatory and unaffordable short-term loans. I personally have some concerns about news reports of increasing auto loans to subprime borrowers and hope that this is an area you will take a close look at. On a related issue, I know that the Bureau is crafting regulations to govern a wide range of short-term loans. Can you talk a little about the Bureau's process for promulgating a rule for small-dollar lenders that is data-driven and based on empirical analysis and do you expect to look at applying stronger underwriting and ability to repay standards across the board?

Response

On March 26, 2015, the Consumer Financial Protection Bureau (Bureau) released an outline of the proposals that the Bureau is considering as part of the process of soliciting input from small business representatives and other stakeholders. The proposals under consideration reflect the Bureau's analysis of risks to consumers in the markets for payday, vehicle title, and similar loans. To develop rulemaking proposals, the Bureau relies on extensive quantitative analysis of available data, monitoring the market for risks to consumers, our supervisory and enforcement experience, consumer complaints, and the experience of the states and of other federal agencies. After considering the feedback from stakeholders in this phase of the process, the Bureau will publish a notice of proposed rulemaking and solicit formal comment from the public.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Kildee:

Director Cordray, I understand that Charles River Associates conducted a study last November that examines the methodology used by the CFPB in determining disparate impact. The study concluded that the CFPB methodology is flawed. When the report was released, a CFPB spokesman said the agency would "review it carefully." I understand that as of the end of February, the CFPB has still not given any concrete feedback on the study.[6]

This report raises serious concerns. For example, the study found that CFPB's "proxy methodology creates significant measurement error, which results in overestimations of minorities in the population by as much as 41 percent."[7]

- While I understand that the Bureau may disagree with the conclusions of this study, will the Bureau respond in writing to the findings set forth in the Charles River study?

In addition to the study, the CFPB's 2013 auto guidance suggested that finance sources consider compensating auto dealers for arranging financing via a flat fee, which is a fee that cannot be discounted.

It seems to me that removing the possibility that a customer can negotiate a lower APR on an auto loan in the showroom may have the unintended consequence of harming consumers. Other than implementing monitoring programs whose cost will be borne by consumers, is there a way the Bureau can enforce fair credit laws without eliminating a dealer's ability to discount credit in the showroom?

I want to make sure that we are ensuring consumers are protected from potential unscrupulous auto dealers, but at the same time, we need to make sure that we are not preventing costumers from accessing the best deal that they can.

I appreciate your time and conscientiousness in responding to these questions.

Response

The Consumer Financial Protection Bureau (Bureau) and the paper you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup compensation and pricing policies and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

The Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has

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[6] Jim Henry, "*Lender groups want answers from the CFPB*", Automotive News, February 25, 2015. http://www.autonews.com/article/20150225/BLOG13/150229902/lender-groups-want-answers-from-the-cfpb

[7] Industry letter to Mr. Cordray, from the American Bankers Association, American Financial Services Association, Consumer Bankers Association, Financial Services Roundtable and U.S. Chamber of Commerce. http://www.nadafrontpage.com/upload/wysiwyg/JointTradeLetterCordray_02.18.15.pdf

adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

With respect to the Bureau's finding that, as applied to a dataset of mortgage borrowers whose racial identify was known, the proxy overestimates the number of minority borrowers, particularly African Americans, the Bureau's white paper, *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*, explained its likely cause: the racial and ethnic makeup of mortgage applicants is not particularly representative of the general population. When the proxy is applied to data where the applicants are more representative of the general population, such as data on auto loan borrowers, this perceived overestimation may disappear or decrease significantly.

This same overestimation would be present in the Charles River Associates' assessment of the proxy, which also relies on mortgage data. As noted, when the proxy is applied to data (e.g., non-mortgage products) where the applicants are more representative of the general population, there may not be overestimation or it may be much less pronounced.

Regarding our March 2013 *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act Bulletin* (Bulletin), which reminded indirect auto lenders of their existing responsibilities under the Equal Credit Opportunity Act, but did not mandate flat fees or any other particular system of dealer compensation. Flat fees are mentioned in the bulletin merely as one example of a non-discretionary compensation mechanism. The Bulletin focused on the heightened fair lending risks associated with lenders' pricing and compensation policies that allow auto dealers the discretion to increase (or "markup") the consumer's interest rate and benefit from the increased interest revenue.

In addition, as noted in the Summer 2014 issue of *Supervisory Highlights*,[8] when addressing discrimination in indirect auto lending, a key component of the Bureau's supervisory resolutions has been to direct the lender to adopt policies and practices that effectively mitigate fair lending risk, while avoiding the creation of new risks of discrimination or other consumer harm. Supervisory and enforcement experience has identified three possible methods of mitigating the fair lending risk associated with auto lending policies that allow discretionary pricing adjustments; however, there may be other methods, and examination teams recognize that the appropriate program will vary among financial institutions. As you note, one alternative is to monitor and, if necessary, correct disparities through a strong compliance management system. Another alternative is to implement policies that limit the maximum discretionary pricing adjustment to an amount that significantly reduces or eliminates disparities and fair lending risk, for example, imposing limits of 100 basis points, rather than the more common limits of 200 or 250 basis points. This option may significantly reduce but will not eliminate compliance activities related to discretionary pricing. Finally, a third alternative is to eliminate discretionary dealer adjustments to risk-based buy rates altogether and fairly compensate dealers using a non-discretionary mechanism that does not result in discrimination. By eliminating dealer pricing

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[8] Supervisory Highlights: Summer 2014, *available at* http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.

discretion, the lender eliminates the need for monitoring of discretionary dealer pricing adjustments.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congresswoman Moore:

Has the Bureau considered not applying credit card regulations to providers that cap the total amount a consumer is able to overdraft at a lower threshold (*e.g.* say below $100)? Outside of applying credit card regulations, which the Director has acknowledged will limit the ability to offer overdraft protection, would certain guardrails suffice in protecting consumers. For example, could balance alerts, overdraft notifications, small dollar buffers, fee-free cure periods, and limits to the number of fees an option?

Response

The Consumer Financial Protection Bureau (Bureau) evaluated a range of potential approaches to regulating overdraft services and credit features offered in connection with prepaid accounts. The Bureau believes its proposed approach appropriately balances the need and desire of some consumers to access credit in connection with a prepaid card and the need for guard rails to make sure such credit is offered with protections similar to those that apply to other card-based credit (i.e., credit cards). The comment period for the prepaid accounts proposal closed on March 23, 2015, and Bureau staff are currently reviewing and carefully considering the more than 35,000 comments received on this proposal from industry, trade associations, consumer advocacy groups, consumers, and other interested stakeholders. The Bureau will consider possible modifications to its proposal based on comments received, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedures Act.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Pittenger:

Last Congress the Congressional Budget Office released an estimate of the costs associated with implementing HR 4383, The Bureau of Consumer Protection Small Business Advisory Board Act, from information given to CBO by the CFPB. The bill, which I have just reintroduced as HR1195, would create a permanent Small Business Advisory Board, similar to those already established within the CFPB, and would also make permanent the Credit Union and Community Bank Councils. Could you please provide me with all records your employees provided to CBO for purposes of generating a cost estimate? In addition to that information, specifically, I would like to know:

How many additional staff members the CFPB foresees it would need to hire,
The salary, or estimated salary, for each staff member associated with the Small Business Advisory Board, Credit Union and Community Bank Councils,
The reimbursement figures for the existing boards and their members,

Why, and to what extent, would the cost of the existing Credit Union and Community Bank Councils change should their status be changed to permanent councils?

Response

On April 3, 2015, the Congressional Budget Office (CBO) published its assessment of the cost to implement H.R. 1195, the Bureau of Consumer Financial Protection Advisory Boards Act. In that report, CBO estimated that the Consumer Financial Protection Bureau (Bureau) would spend approximately $850,000 per year, including two new staff positions, to support three new statutorily-mandated advisory groups: (1) Small Business Advisory Board; (2) Credit Union Advisory Council; and (3) Community Bank Advisory Council.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the Bureau to establish the Community Advisory Board (CAB). The Dodd-Frank Act also requires the Bureau to reimburse members of the CAB for travel expenses, including transportation and subsistence (12 U.S.C. 5494).

While not required by Congress, in 2012 the Bureau elected to voluntarily establish the Community Bank Advisory Committee (CBAC) and the Credit Union Advisory Committee (CUAC). Unlike the CAB, the Bureau provides only partial reimbursement to members of the CBAC and CUAC for travel and subsistence. Also, the CAB convenes three times per year, typically outside the DC-metro area, whereas the CBAC and CUAC meet biannually, typically at the Bureau headquarters. As a result, the Bureau's expenses associated with these voluntary advisory committees are currently considerably less than the statutorily-mandated CAB.

Similar to the Dodd-Frank Act, H.R. 1195 would require the Bureau to cover travel expenses, including transportation and subsistence for members of the three new advisory groups, bringing the projected costs more in line with current CAB costs than with current CBAC and CUAC costs.

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Schweikert:

Question 1
The Bureau's Notice of Proposed Rulemaking for prepaid cards includes new requirements on providers that would change how they deliver disclosures to consumers. Under the proposed rules, could these new requirements significantly disrupt the ability of prepaid card providers to offer their products? If so, does the proposal serve the best interest of the consumer or further assist in providing unbanked Americans access to the modern payments marketplace?

Response

The Consumer Financial Protection Bureau (Bureau) has proposed requiring financial institutions to make certain disclosures available to consumers before a consumer agrees to acquire a prepaid account ("pre-acquisition" disclosures). In particular, two separate disclosures would be required. The first required disclosure would be a "short form," highlighting key fees that the Bureau believes are most important for consumers to know about prior to acquisition.

The second required disclosure would be a "long form," setting forth all of the prepaid account's fees and the conditions under which those fees could be imposed. However, if certain conditions are met for prepaid cards that are offered for sale in retail stores or over the phone, the proposed rule would provide an exception to the requirement that financial institutions provide the long form disclosure in writing before the consumer agrees to acquire the account, so long as such institutions provide consumers with the ability to access to the long form disclosure information by telephone or internet.

As the Bureau explained in its proposal, it does not believe that the proposed disclosure requirements would "significantly disrupt the ability of prepaid card providers to offer their products." The Bureau understands that prepaid providers typically include some version of a short form disclosure on prepaid card packaging currently, and also provide consumers with a detailed list of fees at some point in time. The Bureau seeks to standardize such disclosures and the delivery thereof, so as to assist consumers in comparison shopping and to ensure that consumers have access to fee information before agreeing to acquire a prepaid account.

The comment period for the prepaid accounts proposal closed on March 23, 2015, and Bureau staff are currently reviewing and carefully considering the more than 35,000 comments received on this proposal from industry, trade associations, consumer advocacy groups, consumers, and other interested stakeholders. The Bureau will consider possible modifications to its proposal based on comments received, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedures Act.

Question 2
In today's hyper-efficient smartphone economy, it is imperative that the Bureau ensure maximum optionality for consumers. Companies use lead methods to reach consumers looking for products online, including coupon, deal and promotion sites, which consumers access via mobile device. Consumers can request a card while using these sites, free apps, and social media, and then companies mail the consumer a packet at no cost which includes the terms and conditions, a description of the fees, and an unactivated, unfunded card.

How will the Bureau alter the proposed rules so that companies and consumers can continue to efficiently interact in an online environment?

Response

The Bureau's prepaid account notice of proposed rulemaking (proposal) specifically addresses electronic disclosures for prepaid accounts acquired through the internet, including via mobile phone apps. For example, see proposed 12 CFR 1005.18(b)(3)(i)(B). In particular, the Bureau believes that a benefit of its proposed short form pre-acquisition disclosure is that its focus on key fees makes it easily readable on a smartphone screen.

As noted above, the Bureau will consider possible modifications to its proposal based on comments received, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedures Act.

<u>Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congresswoman Sinema:</u>

Director Cordray, I appreciate the CFPB's ongoing efforts to ensure that there are appropriate consumer protections in place for credit products (such as payday, overdraft, prepaid etc.) and support the goal of weeding out unfair, deceptive, and unscrupulous practices, but I also believe there is a real need for a vibrant consumer-focused lending industry. Can you tell me what the Bureau is doing to encourage new, viable and sustainable services in that sector?

Response

The proposals under consideration by the Consumer Financial Protection Bureau (Bureau) for payday, vehicle title, and similar loans include common sense protections that would enable a consumer-focused lending industry to extend loans that consumers have the ability to repay. The proposals would permit lenders to either determine at the outset of a loan that a consumer can repay the loan while continuing to meet her other major financial obligations and living expenses or to take steps to make sure that a consumer is not already in a cycle of debt and then extend a loan structured in a way that allows the consumer to taper off her debt. As long as lenders satisfy these baseline protections, the proposals under consideration would not prevent lenders from developing innovative products and practices to meet consumers' needs for credit products.

The Bureau appreciates the need for innovative financial products and services that serve consumers in the markets for various credit products. The Bureau's Project Catalyst supports innovators creating consumer-friendly financial products. The Bureau works with groups that need a partner to try out an innovative service or to run trials to improve disclosures. The Bureau also shares consumer complaints about financial products and services so that lenders and others can explore ways to improve the consumer financial marketplace.

<u>Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Westmoreland:</u>

Question 1
Director Cordray, in your testimony before the House Financial Services Committee on March 3, 2015, you stated that you were worried about consumers ending up in a "debt trap":

(a) What is the Bureau's office definition of "debt trap"? If no official definition exists, please describe in detail the meaning as used in your testimony.

Response

The Consumer Financial Protection Bureau (Bureau) is concerned about debt traps that arise when consumers struggle to repay unaffordable loans. These loans may result in an extended sequence of reborrowing, defaults and collections, and other harms. An outsized loan payment or series of payments that are unaffordable to the consumer can cause a consumer to need to reborrow in order to cover other obligations and living expenses. The Bureau considers these circumstances to be debt traps.

(b) Does the Bureau have any data/reports/studies indicating specifically that overdraft fees on prepaid products have caused consumers to fall into a "debt trap"? If so, please provide these reports/data/studies for the record.

Response

The Bureau has not stated that overdraft fees on prepaid products have caused consumers to fall into "debt traps."

The Bureau believes that its proposal, if finalized, would implement guard rails to protect consumers who may want to access credit features in connection with a prepaid account. In developing its proposal, the Bureau evaluated a range of potential approaches to overdraft services and credit features in connection with its prepaid accounts proposed rulemaking. The Bureau believes its proposed approach appropriately balances the need and desire of some consumers to access credit in connection with a prepaid card and the need for guard rails to make sure such credit is offered with protections similar to those that apply to other card-based credit (i.e., credit cards).

In the Bureau's evaluation of credit features offered in connection with prepaid accounts, the Bureau carefully considered multiple sources of information and various other factors, including: existing relevant consumer protection regulations governing overdraft services and a range of credit products subject to Regulation Z; consumers' use of those features to the extent offered in today's market, and consumer expectations and understanding of prepaid accounts and credit features offered in connection therewith (including through discussion in the Bureau's consumer testing); comments received from industry, consumers, and consumer advocacy groups in response to the Bureau's May 2012 advanced notice of proposed rulemaking regarding prepaid cards; analysis of data from the Bureau's overdraft research on deposit accounts and other available research; further outreach to industry, consumer advocacy, and other groups; and ongoing market analysis.[9]

In addition, the comment period for the prepaid accounts proposal closed on March 23, 2015, and Bureau staff are currently reviewing and carefully considering the more than 35,000 comments received on this proposal from industry, trade associations, consumer advocacy groups, consumers, and other interested stakeholders. The Bureau will consider possible modifications to its proposal based on comments received, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedures Act.

Question 2
Has the Bureau studied whether the application of Regulation E rules to prepaid overdraft products (consistent with the application of those same rules and guidance to debit cards for deposit accounts), as opposed to the application of Regulation Z, would address the concerns

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[9] *See, e.g.*, 79 FR 77102, 77204 (Dec. 23, 2014).

the Bureau has with "debt traps"? If the Bureau has done so, please provide copies of the applicable studies, reports and data for the record.

Response

Please see response to Question 1(b).

Questions for Director Cordray, Director, Consumer Financial Protection Bureau, from Congressman Williams:

Question 1
In 2012, the Bureau released its advanced notice of proposed rulemaking (ANPR) for prepaid cards. The Bureau clearly indicated it would issue rules on general purpose reloadable cards, otherwise known as GPR cards. However, the 870-page Notice of Proposed Rulemaking you released in December amends Regulation E and Regulation Z and applies those regulations to other types of prepaid cards such as student cards, insurance proceeds cards, transit cards, and disaster relief cards to name a few.

When it comes to potential federal regulations, there's a rulemaking process: I get notice I may be subject to new rules, then I'm allowed to comment on how they will impact me, a proposed rule is then released, then I comment on that, and then the rule becomes final.

Forgive me, but I'm new to this committee, but is it common practice by the CFPB to issue an ANPR that mentions only one type of card for regulation, then to issue a sweeping, 870-page Proposed Rule that applies new regulations to numerous other products?

Response

Federal agencies, including the Consumer Financial Protection Bureau (Bureau), often take a number of preliminary steps to gather information and learn more about specific issues before issuing a proposed rule. This process may include issuing an advanced noticed of proposed rulemaking (ANPR).[10] An ANPR, however, is not required as part of the rulemaking process under the Administrative Procedures Act (APA), and the more limited scope of an ANPR does not preclude the Bureau from issuing a more inclusive proposed rule.

In May 2012, the Bureau issued an ANPR which posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable (GPR) cards. The first question the Bureau asked was on the scope of a potential prepaid rulemaking: "How should the CFPB define GPR cards in the context of Regulation E? Should certain prepaid products not be included in this definition, such as cards that may serve a limited purpose (e.g., university cards or health spending cards)? Why or why not?" The Bureau received approximately 225 comments and reviewed them prior to developing its prepaid account

[10] *See, e.g.*, https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf at 4.

proposal. In addition, the Bureau notes that transit cards (mentioned in your question above) generally would not be covered by the proposal, unless those cards also have an open-loop (general use) feature.

In addition, the comment period for the prepaid accounts proposal closed on March 23, 2015 and Bureau staff are currently reviewing and carefully considering the more than 35,000 comments received on this proposal from industry, trade associations, consumer advocacy groups, consumers, and other interested stakeholders. The Bureau will consider possible modifications to its proposal based on comments received, in accordance with its obligations for notice-and-comment rulemaking pursuant to the APA.

Question 2
As a business owner, I try to plan for the unknown. It's critical for long-term success. At least that doesn't appear to be the case in this particular rule that your agency issued. It would be extremely hard to plan for the future if I'm not included in a notice of proposed rulemaking, then I magically end up in one. You may be indifferent to the plight of small business owners and the effect of your rulemaking on them, but I'm not.

I'm told that one of the consequences of this rulemaking is that the new regulations apply to all prepaid cards – a one size fits all approach that does not take into account the many unique products offered to consumers today. Will you ensure regulations that don't make sense for certain prepaid card products do not end up applying to them? How will you ensure that?

Response

The Bureau's proposed rule on prepaid accounts would not apply to all prepaid cards. The Bureau proposed to exclude a number of products from coverage, including gift cards; loyalty, award, or promotional cards; health spending account, flexible spending account, health reimbursement arrangement, and medical savings account cards; and cards used to distribute state and local needs-tested benefits. For other products that would be covered by the proposal, the Bureau has proposed varying obligations depending on certain circumstances. For example, the Bureau has proposed more limited disclosure obligations for certain prepaid accounts sold in retail stores or over the telephone. The Bureau also has proposed unique requirements for payroll card accounts and government benefit accounts.

In addition, the Bureau specifically sought comment on the scope of its proposed definition of a "prepaid account," including as to the specific types of prepaid products that should be included or excluded from coverage, as well as the rationale for such inclusion or exclusion. In particular, the Bureau sought comment on whether the definition as proposed could have the unintended consequence of including products that do not warrant protection by the Bureau, as well as any additional concerns regarding products covered by the proposed definition.[11]

[11] *See* 79 FR 77102, 77129 (Dec. 23, 2014).

The comment period for the prepaid accounts proposal closed on March 23, 2015, and Bureau staff are currently reviewing and carefully considering the more than 35,000 comments received on this proposal from industry, trade associations, consumer advocacy groups, consumers, and other interested stakeholders. The Bureau will consider possible modifications to its proposal based on comments received, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedures Act.

Question 3
There are millions of consumers using prepaid cards and doing so for a variety of reasons. Prepaid cards are much more than just a transactions product. Companies are offering person-to-person transfers, free Direct Deposit, budgeting tools, including text message and email balance alerts, mobile apps, and savings accounts. Companies are also offering optional, opt-in overdraft service. These choices make the product a good fit for many different types of consumers.

I'm concerned that the CFPB proposal would limit access to overdraft protection by applying credit card regulations to the service. If the CFPB applies credit card provisions to overdraft protection on prepaid, would consumers currently opted-in to overdraft protection lose access? What percent of consumers currently opted-in to overdraft protection want a credit card and would qualify for credit, if prepaid companies are required to go through ability-to-repay and underwriting standards? For those consumers that lose overdraft protection and who cannot qualify for a traditional line of credit, what alternatives are available and could they end up costing consumers more?

Response

The Bureau evaluated a range of potential approaches to overdraft services and credit features in connection with the prepaid accounts rulemaking. The Bureau believes its proposed approach appropriately balances the need and desire of some consumers to access credit in connection with a prepaid card and the need for guard rails to make sure such credit is offered with protections similar to those that apply to other card-based credit (i.e., credit cards).

The Bureau believes the proposal, if finalized, would protect consumers who may want to access credit in connection with a prepaid account. That said, the Bureau recognized that the proposal's requirements could impose certain costs and impact consumer choice. In an effort to best understand the impact of the proposal, the Bureau sought comments on this subject, which are currently being reviewed.

The Bureau believes that consumers, including subprime consumers, need access to affordable credit. Prepaid providers (including banks that issue prepaid accounts) may be a likely source of that credit since (a) they have an existing customer relationship and do not have to incur acquisition expense; (b) they have unique information about the customer (i.e., prepaid transaction history); and (c) they often have low overhead costs (no physical branches, etc.).

On the other hand, the Bureau also wants to ensure that any credit product offered to prepaid customers is distinct from a prepaid account in a way that the terms of each are clearly presented to consumers; prepaid customers can get credit without offering the lender electronic access to the funds in their prepaid account for repayment (i.e., a free, transparent and informed choice as to whether to authorize automatic deductions to repay the loan; and the lender cannot gain a preferred position by sweeping funds from the prepaid account as soon as the money comes in.

Question 4
Currently some prepaid cards offer opt-in overdraft protection to help consumers meet their short-term spending needs. However, it is my understanding that a consumer is never forced to use the feature. Are consumers required to affirmatively opt-in to overdraft protection on a prepaid card?

Response

The Bureau understands that the small number of prepaid providers currently offering overdraft services require consumers to affirmatively opt-in to the service and do not automatically add this feature to consumers' accounts.

The Bureau's proposed rule would provide clarity regarding the terms on which overdraft services and other credit features may be offered in connection with prepaid accounts. Among other things, the proposed provisions would help to ensure that credit would be offered to consumers in a transparent manner and that consumers would obtain certain important protections. Furthermore, consumers would only be able to access such features if they opted-in, and consumers could not be solicited for or offered the ability to opt-in until thirty days after registering the prepaid account.

Question 5
It is also my understanding that companies offering consumers the choice to opt-in provide wireless balance alerts and immediate notification to cardholders when they overdraft. Are consumers using this information in their decision to overdraft? Companies also give consumers a buffer before incurring a charge and time to cure overdrafts fee free. In your review of the data, are consumers taking advantage of the cure periods and buffers?

Response

The Bureau is aware that some companies that currently offer overdraft services on prepaid accounts also offer wireless alerts of balances, transactions, and overdrafts, as well as an opportunity to prevent the imposition of an overdraft fee, either through a buffer amount under which a fee is not imposed and/or a cure period before which a fee is imposed. The Bureau's proposed rule would not prohibit such alerts and notifications.

As discussed in the prepaid accounts proposal, the Bureau considered the possibility of requiring additional, real-time notifications of transactions that trigger an overdraft or access a linked credit feature, or requiring real-time opt-in by consumers in order to approve each overdraft or other credit transaction. The Bureau understands that there may be technological, operational, and procedural challenges to the timing and delivery of such a notice or compliance with such an opt-in requirement, particularly in the point-of-sale retail environment. Notifications and/or consent might require multiple communications among financial institutions, card networks, and merchants, and as such, the Bureau is looking into whether, and how, such features might be effectively implemented. The Bureau did not propose any requirements related to real-time notification or real-time opt-in, but solicited comment on possible options and suggestions for what it might require in this regard for prepaid accounts.[12]

[12] *See* 79 FR 77102, 77187 (Dec. 23, 2014).