

**PROTECTING CONSUMERS OR ALLOWING
CONSUMER ABUSE? A SEMI-ANNUAL
REVIEW OF THE CONSUMER FINANCIAL
PROTECTION BUREAU**

HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION

FEBRUARY 6, 2020

Printed for the use of the Committee on Financial Services

Serial No. 116-83



U.S. GOVERNMENT PUBLISHING OFFICE

42-807 PDF

WASHINGTON : 2021

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**PROTECTING CONSUMERS OR ALLOWING
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Thursday, February 6, 2020

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

The committee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Velaquez, Sherman, Meeks, Clay, Scott, Green, Perlmutter, Himes, Beatty, Heck, Vargas, Gottheimer, Gonzalez of Texas, Lawson, San Nicolas, Tlaib, Porter, Axne, Casten, Pressley, McAdams, Wexton, Lynch, Adams, Dean, Garcia of Illinois, Phillips; McHenry, Lucas, Luetkemeyer, Huizenga, Stivers, Barr, Tipton, Williams, Hill, Emmer, Zeldin, Loudermilk, Davidson, Budd, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Gooden, Rigglesman, Timmons, and Taylor.

Chairwoman WATERS. The Committee on Financial Services will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Financial Protection Bureau."

I now recognize myself for 4 minutes to give an opening statement.

Today, we welcome back Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger for her testimony on the Consumer Bureau's semi-annual report to Congress. Let me just say at the outset that I remain very concerned about Director Kraninger's misguided leadership of the Consumer Bureau.

Director Kraninger, since your confirmation as Consumer Bureau Director, you have undertaken a series of actions that have undermined the Consumer Bureau's mission to protect consumers from harmful financial practices and products. Most recently, I am appalled by your decision to issue a policy statement that undercuts the Dodd-Frank Act's prohibition on unfair, deceptive or abusive acts or practices. You have made it harder for your own agency to crack down on abusive acts by financial institutions.

With this policy statement, you made it clear that under your watch, bad actors will come first and consumers will come last. Of course, this is consistent with your track record at the Consumer Bureau. So while I am appalled, I can't say I am surprised. In fact, at this point, I would be surprised if you actually did something meaningful to protect consumers. You have only been leading the Consumer Bureau for about 14 months, and your track record has been decidedly anti-consumer in the time that you have been there.

You delayed and weakened the Consumer Bureau's payday, small-dollar, and car title rule to curb abusive payday loans; issued a debt collection rule that only debt collectors can love, because it allows them to engage in abusive debt collection practices with few limits; weakened reporting requirements under the Home Mortgage Disclosure Act (HMDA), allowing redlining and discriminatory lending to proliferate undetected; and abandoned the Consumer Bureau's longstanding defense of the constitutionality of its structure as an independent watchdog.

You have also eased up on enforcement and supervisory activity, taking a "see no evil" approach to enforcing our nation's consumer protection laws. In some cases, you gave bad actors a free pass by failing to require them to pay any restitution to the consumers they harmed. Under your leadership, it is a great time for bad actors to rip off consumers because you have shown that if they do, you are not going to do anything about it.

To add insult to injury, as a member of the board of the Federal Deposit Insurance Corporation, you voted in favor of a harmful new rule proposed by OCC Comptroller Otting on the implementation of the Community Reinvestment Act (CRA) that would result in bank disinvestment in communities across the country.

I should not need to remind you, Director Kraninger, that Congress created the Consumer Bureau as a stalwart watchdog to protect consumers from the types of harmful, abusive practices that caused the 2008 financial crisis and led to economic catastrophe. America needs a strong Consumer Bureau that is vigilant and effective. America needs better from you.

Today, members of this committee will be scrutinizing and asking tough questions about the actions you have taken. This committee will continue to shine a light on the Trump Administration's anti-consumer activities, and we will continue to conduct rigorous oversight of the Consumer Bureau.

I now recognize the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes for an opening statement.

Mr. McHENRY. Thank you, Director Kraninger, for being here today. And I would like to first say thank you for your commitment to an open process, and to fairness of the rule of law. I think this is a long time coming for this Bureau. Though the structure is still a very poor one as a result of the Dodd-Frank Act, thank you for trying to clear this up as best you can, given the circumstances.

Since Dodd-Frank's enactment, Republicans have expressed serious concerns over the structure of the CFPB. That remains. Our concerns are driven by the fear that Congress has created one of the most powerful, unaccountable, and unconstitutional bureaucracies ever. Our concerns are driven by the funding scheme, which

comes only from the Federal Reserve without oversight of Congress; a lack of an Inspector General who is solely focused on the Bureau's activity; and a focus on eliminating waste, fraud, and abuse wherever it may be. Our concerns are driven by a Director who can only be removed by the President for cause.

Those things remain. We saw the disastrous results of this unaccountable agency's actions firsthand, and that was under former Director Cordray's regime. The limitless unaccountable authority bestowed upon the Director resulted in small businesses, community banks, and others being bullied through arbitrary enforcement actions, purely arbitrary enforcement actions, unilateral enforcement actions that were the *modus operandi* of the Bureau under the previous leadership.

However, under new leadership, under this Director's leadership, they have made necessary appropriate changes to the way the Bureau functions. That is good.

For example, the Bureau finally provided a long-needed clarification for the abusiveness standard in its supervision and enforcement work. The Dodd-Frank Act added the word, "abusive," to the existing statute, the Unfair, Deceptive, or Abusive Acts and Practices, which we call UDAAP. And while there are statutory definitions for "unfair" and "deceptive," until recently, the Bureau was working under a vague and fluid definition for "abusive." That is problematic. It is problematic for those people you regulate.

The policy clarification that you have brought forward is helpful. That clarity will help focus future cases and future actions by the Bureau around something that is quantifiable.

In addition, I support the Federal financial regulatory agencies' efforts to address and expand the use of alternative data in underwriting. I know there are also consumer protection concerns with changing underwriting standards. We debated this on the House Floor just last week, in fact. I share the view that regulators should ensure that firms understand the responsibility to use alternative sources of data, and they are consistent with consumer protection laws.

Finally, I want to commend the Bureau on its recent announcement to work with the Department of Education to help student borrowers, particularly those borrowers who are having problems in the process. Working together to better support students is a win-win for the students, for the agencies, and for the taxpayers.

But the fact remains that while we have seen more transparency over the last several years than we have seen since the inception of the Bureau, the structure of this agency still alarms me. It is run by a single individual with no real oversight or accountability. I am grateful that you are here today for your annual testimony. I am hopeful that you will follow and comply with the rule of law, and I am grateful that you have.

But I understand the structure is so limited in terms of what we can do to have oversight of your Bureau. So, I wish you well. I hope you comply with the law, and I hope that you continue to follow the structure as best you can.

With that, I yield back, and I look forward to the questions.

Chairwoman WATERS. I now recognize the Chair of our Subcommittee on Consumer Protection and Financial Institutions, Mr. Meeks, for 1 minute.

Mr. MEEKS. Thank you, Chairwoman Waters.

The agency was named the Consumer Financial Protection Bureau for a reason. It is to protect consumers. Consumers deserve a regulator who advocates solely for their interests and acts against abusive companies. This stands in stark contrast to what I am seeing from the Administration's CFPB leadership.

Instead of implementing common-sense rules, and starkly limiting payday loans, the CFPB is postponing crucial regulations. Rather than ramping up enforcement against bad actors, the agency has reduced the number of enforcement actions from 54 in 2015 to an average of 17.5 in 2018 and 2019. And whereas, the FHFA has defended its constitutionality in court, Director Kraninger has forfeited this responsibility and abdicated her duty to protect consumers.

The CFPB has swerved away from its core mission of protecting consumers. This must change.

I yield back.

Chairwoman WATERS. I now recognize the ranking member of the subcommittee, Mr. Luetkemeyer, for 1 minute.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman, and thank you, Dr. Kraninger, for testifying here today.

In my previous life, one of the jobs I held was a banking regulator, so I can tell you that any sound regulatory supervisory regime has to have a balance to it. On one hand, you must help businesses and industries comply with all of the rules and regulations, while on the other hand, you must ensure that any truly bad actors are reprimanded.

For too long under the previous Administration, the CFPB was used solely to threaten and attack financial entities. I applaud the job you have been doing in reeling in this power and bringing back a responsible regulatory approach to the Bureau. One example of common-sense reform that has come out of the CFPB is the proposed change to CFPB's UDAAP authority, specifically how the Bureau will apply the term, "abusive."

I have been fighting this vague and punitive term for years, and even introduced legislation in 2016 to remove it altogether. Conducting a cost-benefit analysis and encouraging entities to comply with the abusive standard before seeking monetary relief are the types of common-sense reform the CFPB was lacking for quite some time.

I applaud your approach, and I look forward to discussing it, along with the other issues today.

With that, I yield back, Madam Chairwoman.

Chairwoman WATERS. I now want to welcome to the committee our witness, the Honorable Kathy Kraninger, Director of the CFPB. Director Kraninger has testified before the committee previously, and I believe she needs no further introduction.

You will have 5 minutes to summarize your testimony. When you have 1 minute remaining, a yellow light will appear. At that time, I would ask you to wrap up your testimony so we can be respectful

of the committee members' time. And without objection, your written statement will be made a part of the record.

You are now recognized for 5 minutes to present your testimony.

**STATEMENT OF THE HONORABLE KATHLEEN L. KRANINGER,
DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU
(CFPB)**

Ms. KRANINGER. Chairwoman Waters, Ranking Member McHenry, members of the committee, thank you for this opportunity to provide our semi-annual update on the Bureau's important work.

It is my honor and privilege to serve and protect American consumers. To best achieve our mission for consumers, the Bureau is focused on preventing harm in the first place. We prevent harm by building a culture of compliance throughout the financial system while supporting free and competitive markets that provide for informed consumer choice.

My remarks this morning will largely focus on key recent actions the Bureau has taken to protect consumers. To start, earlier this week, the Bureau and the Department of Education announced a new Memorandum of Understanding (MOU) regarding consumer complaints about private and Federal student loans. The MOU will better serve America's students by allowing for subject matter experts from both agencies to work together to more efficiently resolve complaints.

The staff of both agencies will meet regularly to discuss trends they are observing, including the nature of the complaints received, the characteristics of borrowers, and available information about resolution of complaints. The staff of the Department of Education will have the same near real-time access to the Bureau's complaint database that other Government partners have.

The MOU also provides for the sharing of analysis, recommendations, and data analytics tools. I am confident that this increased collaboration will better protect consumers and result in better resolutions for students.

In addition, the Bureau will soon launch a revamped tool aimed at helping students understand their financial aid packages. The Paying for College Toolkit will help prospective students with financial aid offers to better understand the terms of their loan and then be able to put together a financing plan to cover the remaining cost of attendance.

By helping students understand their financial aid package, we are enabling them to make better-informed financial decisions today, and putting them in a better position for their financial future.

Another way the Bureau aims to protect consumers is by issuing clear rules of the road. Specifically, I want to point out our efforts on the QM patch. As you know, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) last year that reiterated that the patch was intended to, and will, expire.

After reviewing public comments, we have decided to propose to amend the QM rule by moving away from the 43 percent debt-to-income ratio requirement. Instead, the Bureau would propose an alternative, such as pricing thresholds, to better ensure that re-

sponsible, affordable mortgage credit remains available to consumers.

While we are moving forward with the rulemaking, we would welcome legislation through which Congress could better weigh the important policy objectives at issue.

Finally, we prevent harm by using supervision and enforcement to promote compliance with the law. To be effective, the Bureau must be consistent and transparent about our expectations of such compliance. To that end, the Bureau recently announced our policy providing a common-sense framework on how we intend to apply the abusiveness standard in supervision and enforcement matters.

For too long, this has been a gray area, creating uncertainty and hampering consumer beneficial innovation. Moving forward, the Bureau intends to cite or challenge abusive conduct when the harm to consumers exceeds the benefits. When alleging abusiveness violations, we intend to clearly demonstrate the nexus between cited facts and our legal analysis in a way that supports the development of the metes and bounds of abusive acts and practices as distinguished from unfair and deceptive acts and practices.

Further, we intend to seek certain types of monetary relief only when the entity has failed to make a good-faith effort at compliance. Restitution for consumers will be the priority in these cases.

Before closing, let me note an important effort led by our Office of Minority and Women Inclusion (OMWI). The Bureau has conducted outreach to mortgage finance organizations to assess the diversity and inclusion practices of the entities we regulate.

The outreach strategy was multipronged to engage entities to participate in the voluntary self-assessment process. From that process, the Bureau has developed an online data collection tool to collect and manage the submitted assessment data. That tool is now available on the Bureau's website. Appropriate protection of the data provided will be critical to the success of this initiative.

Again, thank you for this opportunity to discuss the Bureau's important work to protect consumers and put them first, as well as hold bad actors accountable. I look forward to your questions.

[The prepared statement of Director Kraninger can be found on page 70 of the appendix.]

Chairwoman WATERS. Thank you.

I now recognize myself for 5 minutes for questions.

Following the financial crisis more than a decade ago, Congress determined that consumer financial protection needed a major upgrade when we created the CFPB, both with respect to the rules of the road, but also which agency was tasked with enforcing the law and protecting consumers in the financial marketplace.

Director Kraninger, before the CFPB was created, do you know which Federal agency was the consumer financial protection watchdog?

Ms. KRANINGER. Congresswoman, the responsibilities prior to the Dodd-Frank Act were distributed both at the Federal level and certainly at the State level, and many of those agencies retain some of those authorities. The prudential regulators, the Federal Trade Commission, and, as noted, the State attorneys general, banking regulators at the State level, and other regulators in the financial services space at the State level.

Chairwoman WATERS. So, you do understand that it was generally shared between six Federal agencies: the Federal Trade Commission; the Federal Reserve; the Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency; the Office of Thrift Supervision; and the National Credit Union Administration. Which of those agencies do you think did the best job of protecting consumers?

Ms. KRANINGER. Congresswoman, I don't want to speak to the things that happened before, but I will say it is certainly Congress' conclusion in the Dodd-Frank Act and the actions taken that there was a need for the Consumer Financial Protection Bureau to really help coordinate and oversee compliance at least within the financial services sector. But we continue to hold very close partnerships with the other Federal agencies and certainly with the States.

Chairwoman WATERS. You do believe, however, that there was a need for the Consumer Financial Protection Bureau?

Ms. KRANINGER. I believe that Congress set out the mission very clearly for this agency. I take that mission very seriously, and I endeavor to carry out the law and carry out our responsibilities, supporting the staff—

Chairwoman WATERS. You do believe that there was a need to establish the Consumer Financial Protection Bureau? Is that what you are saying?

Ms. KRANINGER. Chairwoman, I would say it is very clear that Congress determined that, and my job is to carry out the law and to carry out the important responsibilities that Congress gave to this agency, in addition to overseeing the many staff members who are dedicated to this mission.

Chairwoman WATERS. So despite what you believe—because you won't say that you believe there was a need for it—do you believe that since you have the job, you are going to do what the job is supposed to be all about? Thank you.

Do you believe your predecessor, Director Cordray, fulfilled the agency's purpose to be a strong watchdog for consumers?

Ms. KRANINGER. I believe that Director Cordray absolutely took seriously the oath that he took, that I took, and that he was seeking to carry out the agency's mission to the best of his ability and to his understanding.

Chairwoman WATERS. Do you think he did a good job?

Ms. KRANINGER. I think he absolutely carried out the things that he intended to carry out, and I am not going to levy judgment. Congresswoman, you know that I have not done that in general on anything—

Chairwoman WATERS. Okay. Thank you very much.

Ms. KRANINGER. Yes.

Chairwoman WATERS. I would think that you would know whether or not he carried out the mandate for the Consumer Financial Protection Bureau. Do you know how much he obtained for our consumers through enforcement actions?

Ms. KRANINGER. Chairwoman, certainly the enforcement powers that we have are important. That includes getting the best remedies possible in the interest of justice. That includes restitution, which I guess is where you are going with this.

Chairwoman WATERS. Do you know how much he was able to—

Ms. KRANINGER. Restitution and civil money penalties are two different means, but there are certainly millions of dollars in both.

Chairwoman WATERS. Let me just remind you that Mr. Cordray's leadership obtained for consumers, through enforcement actions, \$12 billion for 30 million consumers. I think that is important for you to know, because I would suspect that you want to make some determination about whether or not you are able to have the same kind of strong consumer protection actions that he had, and whether or not you are able to return to consumers who have been harmed the kind of restitution that they deserve.

And so, under your leadership during the past year, the CFPB has a laundry list of unhelpful actions, including a troubling decline in consumer financial protection enforcement actions, especially with respect to fair lending. Do you agree with that statement?

Ms. KRANINGER. I agree that we have continued to carry out our enforcement actions. We have had now 25, as of yesterday, public enforcement actions announced during my tenure. And it remains, again, my commitment that we will seek the appropriate remedies in each case. That includes restitution for consumers, which, in most cases, is what we obtain. Certainly, not in all, again, fact- and circumstance-based.

Chairwoman WATERS. Thank you very much. And I would advise you to see if you can answer the Members' questions directly rather than getting around a commitment in your answers.

With that, the gentleman from North Carolina, the ranking member, Mr. McHenry, is recognized for questions.

Mr. MCHENRY. I think what we are hearing this morning is a little bit of buyer's remorse about the structure. You are Senate-confirmed, are you not?

Ms. KRANINGER. Yes.

Mr. MCHENRY. The President nominated you. The Senate confirmed you. Is that correct?

Ms. KRANINGER. That is correct, sir.

Mr. MCHENRY. Are there other folks at your agency who are Senate-confirmed?

Ms. KRANINGER. No.

Mr. MCHENRY. And under the structure of this agency, you are the sole decision-maker, is that correct?

Ms. KRANINGER. Yes, it is.

Mr. MCHENRY. You can delegate this authority under statute to other people, but your responsibility is to be the final arbiter of these cases?

Ms. KRANINGER. Yes, it is.

Mr. MCHENRY. So if we don't like it, what can we do? We can go to the courts, can't we? But you don't have a public hearing, do you? Are you required to have any public hearings about your rulemakings?

Ms. KRANINGER. No, Congressman, I am not.

Mr. MCHENRY. Okay. What is my venue by which to comment about your rulemakings?

Ms. KRANINGER. I will say it is important, and it is certainly important to me, as you well know, to engage in rulemaking appropriately using the Administrative Procedure Act, to actually have

a notice-and-comment process, to carry that out, to take those comments into consideration, as I make the best decision possible moving forward on any particular issue.

Mr. MCHENRY. Okay. So, notice and comment, you can take that into consideration. If we don't like it, there is not a public hearing. There is not a place for maybe Members of Congress to show up and protest at your hearings like some of them did at the FDIC and OCC. There is not that venue.

Okay. What I am hearing is there is buyer's remorse among Democrats because a Republican President appointed the Director of the CFPB, and they never foresaw that that could ever happen. So, there is a little bit of buyer's remorse on this. I am not asking you to opine on it, because you are a Senate-confirmed Presidential appointee.

It is our role as Members of Congress to make the policy, to make the law which you are to follow. And the way I see it, I appreciate that you are following the law. I also appreciate, as a Presidential appointee and being in an independent agency, that you don't spend time commenting about your predecessor's actions.

I can, because it is my role, my proper role here on oversight, and they did an atrocious job with the management of that team they built. And so, if you look at Mr. Cordray's regime, there was a movement to unionize because of such bad workplace practices. And we have public reports about those bad workplace practices and, on top of that, a toxic work environment that many whistleblowers had called out.

What I appreciate is your undertaking to fix those problems, to make this agency work, and that means hiring practices, good procedures so you can have staff development that is commensurate with an agency with your enormous power.

Along the lines of accountability, you are the first Director of the agency who was appointed via a recess appointment. Is that correct?

Ms. KRANINGER. Yes.

Mr. MCHENRY. Okay. And didn't the Court, in a 9-0 ruling, strike that down as unconstitutional?

Ms. KRANINGER. Yes.

Mr. MCHENRY. Okay. Now, you said before you were Senate-confirmed, that you believed the structure of this Bureau was unconstitutional. Is that correct?

Ms. KRANINGER. Yes, Congressman, we did certainly submit our request to the Supreme Court to actually hear the case—

Mr. MCHENRY. No, no. But before you were appointed, you said it was unconstitutional and the structure. And after you were appointed, you kept the same view.

Ms. KRANINGER. Just to be clear, Congressman, beforehand, I did say that it was something that I knew would come before me, but that I had not prejudged it until I was in the position.

Mr. MCHENRY. Okay. And so, based on the information you got in this big public hearing, because you were required—I'm sorry, you are not required to hear anything. But you decided after reviewing what, that the agency is unconstitutional?

Ms. KRANINGER. That is really the position that the Bureau had taken in prior court proceedings, the position that the Government

had taken in prior court proceedings, and it was certainly the opinion of judges in many prior proceedings.

Mr. MCHENRY. Okay. So based off of that, you, in court filings, were saying this Bureau is unconstitutional?

Ms. KRANINGER. That the removal provision associated with the Director of the agency is unconstitutional and that the Supreme Court really is the one that should opine on that or Congress.

Mr. MCHENRY. So getting to that, if the Supreme Court rules that that process is unconstitutional—I think it would be good to hear from my Democrat friends who have been so focused on a single Director to come up with a form of compromise so this Bureau can continue to function. And if they are interested in legislating along those lines, we are all ears over here to come around to things that we proposed when it was a Democrat who held this seat, and we have been consistent about our policy with a Republican in the seat.

We look forward to this compromise because I believe the Supreme Court will demand it of us before the summer's end.

And with that, thank you for being here today. Thank you for your openness in the process, and thank you for adhering to the rule of law, and thank you for opining about the things you should and staying away from the things you shouldn't, that are perfectly in our political arena to hash out and fight about.

So, with that, thank you, and I yield back.

Chairwoman WATERS. The gentlewoman from New York, Mrs. Maloney, is now recognized for 5 minutes.

Mrs. MALONEY. Thank you. Welcome, Director.

Director Kraninger, are you generally familiar with the Bureau's 2016 consent order with Wells Fargo over the fake accounts scandal?

Ms. KRANINGER. Yes, Congresswoman.

Mrs. MALONEY. So you know that the Bureau penalized Wells Fargo for conduct that it had determined was abusive under the law, and the Bureau also found that Wells Fargo's actions were both unfair and deceptive. The Bureau fined Wells Fargo \$100 million for these violations, and that fine would have been substantially lower if the Bureau hadn't charged Wells Fargo with abusive conduct also.

But just 2 weeks ago, the Bureau released a policy statement on its abusiveness authority, which said that the Bureau would no longer penalize a conduct as abusive if it is already penalizing the same conduct as either unfair or deceptive. Under this new policy statement, would the Bureau have charged Wells Fargo with abusive conduct, or would Wells Fargo have gotten off even easier under your new policy?

Ms. KRANINGER. I appreciate the question, Congresswoman, because it gets to the heart of this matter. What I am seeking to do with the policy statement is make sure that we clarify abusiveness and separate it from deceptiveness and unfairness, because Congress explicitly gave us those three authorities to determine those kinds of acts and practices separately or provide claims to the courts and allow them to do that.

And so, we are looking at distinguishing the facts associated, but in no way should that policy be read to say that we would not bring

abusiveness claims. The very intention, though, is to make sure that we are continuing to build on a clarity and an understanding that abusiveness is what it is. The ability to take unreasonable advantage of a consumer is something that we absolutely should go after. That is what Congress said.

But having an unreasonable advantage over a consumer and taking unreasonable advantage of a consumer is something that clearly needs some distinction and distinguishment. And so in terms of the Wells Fargo priors, I looked very carefully when we wrote this policy statement, and I signed it at the prior position the Bureau had taken to make sure that we are able to again distinguish those things.

But the goal going forward is just to say that we—

Mrs. MALONEY. Okay, reclaiming my time, it seems pretty obvious to me that Wells Fargo would have gotten off even easier under your new policy statement, and I find that deeply, deeply disturbing.

But I do want to get to overdraft. At one of our previous hearings, I asked if you would pledge to crack down on unfair, abusive, and deceptive overdraft policies, and I asked you to crack down on transaction reordering, which is where banks reorder their customers' transactions solely for the purpose of maximizing the number of overdraft fees they can charge. You agreed that this practice was unfair, and you said you would look into using every tool you had to combat this practice, including enforcement.

So my question is, have you brought any enforcement actions for unfair overdraft practices since the last time you were here?

Ms. KRANINGER. Congresswoman, there are no public enforcement actions specifically on that, but I pledge to you that I absolutely—

Mrs. MALONEY. The answer is no. Have you brought any enforcement actions over unfair overdraft practices at all since you took over as Director?

Ms. KRANINGER. No public actions, Congresswoman.

Mrs. MALONEY. So, the answer is no. I find that very, very disappointing. You are the nation's top consumer financial regulator, and yet you refuse to take strong action on one of the most abusive practices facing consumers. When can we expect action from you on overdraft fees?

Ms. KRANINGER. Congresswoman, I cannot manufacture cases. They are fact- and circumstance-specific. I absolutely am, through the enforcement staff, carrying out the rigorous investigation of facts in cases that come to us through whistleblowers, through complaints, and through our own supervisory efforts. And we will continue to monitor those things and carry through our responsibilities.

Mrs. MALONEY. I am just a Congresswoman, and I get overdraft complaints all the time. You are the Director of Consumer Protection for the entire country, and you are telling me that you have not received any complaints on overdraft practices, that many people tell me trap them in never-ending debt?

You haven't gotten any complaint on it to act? No one has complained about it in the country?

Ms. KRANINGER. To clarify that, yes. You know that we have the complaint database. We do take in complaints. There have been complaints in that area of the market. But we take those complaints, and we handle them accordingly, getting a resolution for the individual consumer with their financial institution, and then taking that information to analyze it to decide whether there should be actions on the supervisory front or the enforcement front. So, that is where we are.

Mrs. MALONEY. But you testified there has been no action.

I yield back.

Chairwoman WATERS. The gentleman from Oklahoma, Mr. Lucas, is recognized for 5 minutes.

Mr. LUCAS. Thank you, Madam Chairwoman.

And Director, thank you for attending today's hearing.

You mentioned in your testimony that a critical component of preventing harm to consumers is to help them gather financial know-how and to empower consumers to choose products and services that best serve their needs. Could you elaborate on how the Small Start, Save Up Initiative encourages people to hit savings goals? And while you are doing that, could you update us on the work of the Research and Evaluation Working Group?

Ms. KRANINGER. Absolutely, and thank you, Congressman.

It is an important area. Bolstering savings is really the number-one way that people can build their financial well-being, can build up their ability to address setbacks that happen in life, and their ability to really think through and make the best decisions for themselves is having that savings cushion.

When I came to the Bureau, we launched Start Small, Save Up. We have been having extensive meetings and outreach across the nation with employers, with communities, and bringing together all of the constituencies with communities, whether that is the consumer advocate groups, the legal aid community, the faith community, or the business community, and talking about the things that are affecting them at their community level.

And then also, financial institutions and our fellow regulators, who have a really good eye in what is the savings activity that is happening in the country? What are the barriers to savings for people? We are really looking holistically at this and trying to tackle it, again to raise the savings levels in the nation.

We're also looking at a lot of the marketing and influencer means of reaching people. The CFPB has produced fantastic financial education materials, but trying to make sure that we get those materials out is really one of the focuses, too, of this effort.

And the research is part of that, too, understanding consumer behavior, understanding what consumers see in the marketplace and what motivates those kinds of things. So, we are really looking at it from all facets.

Mr. LUCAS. During your last visit, we discussed the fact that I represent 16 different Native American tribes in the Third District of Oklahoma, and we discussed the Bureau's tribal consultation policy. Can you touch on that for just a moment?

Ms. KRANINGER. Absolutely. And I have since had the opportunity to visit Oklahoma. I visited with tribal members while I was

there and have had extensive conversations about where we go with this.

The tribal consultation policy is around our rulemaking efforts. We do have a specific responsibility to engage and ensure that entities that could be affected by our rulemaking have the opportunity to weigh in on them. That is where that is specifically ongoing, but we are looking at other ways to make sure that we are engaging with tribes and understanding what their particular needs and issues are so we can help them, and help them help their constituents and all consumers.

Mr. LUCAS. In my few remaining moments, is there anything that you would like to address before my time expires?

Ms. KRANINGER. I think, Congressman, I understand the concerns and questions around abusiveness. But I will say that there is no lack of ability to bring forward cases. I think recognizing the uncertainty that is here, there is also a responsibility to make sure that we are bringing the strongest cases forward around defining abusiveness so that we don't get bad court rulings on this.

That is another risk. It is imperative when you bring an enforcement case forward that you have the assurance of the facts and the basis for those cases, and so I am happy to be trying to provide clarity, happy to be moving forward in a way that is going to, again, add to the case law on abusiveness. And certainly, thinking towards—I did not rule out a rulemaking on this, but I think we need a little more time to work through some of the issues around how the Bureau sees abusiveness, recognizing some of the uncertainty.

Mr. LUCAS. Thank you, Director.

And certainly, being a Member of Congress, we understand the concept of wanting to win with intensity.

With that, I yield back, Madam Chairwoman. Thank you.

Chairwoman WATERS. The gentlewoman from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Madam Chairwoman.

Director Kraninger, I was pleased by the Bureau's decision to extend the QM patch, which will help millions of borrowers attain the dream of home ownership. According to media reports, the Bureau is also considering broader changes to the ability to repay qualified mortgage rule, which will be released in a Notice of Proposed Rulemaking no later than May.

How is the Bureau working to ensure that borrowers from low-to moderate-income (LMI) communities, particularly African Americans and Latinos, will not be disproportionately impacted by this proposal?

Ms. KRANINGER. Congresswoman, it is an important question and one that we struggled with as we looked at this. We knew that the patch was intended to expire. There was some expectation that the nonqualified mortgage space would actually expand, and therefore, again, you would deal with some of the very borrowers that you are concerned about through perhaps nonqualified mortgages, in addition to qualified mortgages. But that has not happened.

So I think that is really where this is. How expansive should qualified mortgages be? How do we balance the issues that you are raising? And we are really looking carefully at that.

Ms. VELAZQUEZ. The most important question for me is, how will considerations of this community be reflected in the proposed rule?

Ms. KRANINGER. I can tell you that I personally, and Bureau staff, have met extensively with consumer advocate groups and other community groups on this topic, and on other topics, and we are taking all of those things into account as we move forward.

Ms. VELAZQUEZ. Well, we are watching, and any proposal that negatively impacts Blacks and Latinos to purchase a home will be unacceptable.

So, Director, the last time that you were here, I expressed to you my concern and the concerns I was hearing from consumer lending and fair housing groups about the CFPB's decision to retire the HMDA Explorer tool. Since that time, what steps have you taken to address the concerns of these groups, and what remedies have you considered?

Ms. KRANINGER. There are myriad conversations that have been happening since that time. The HMDA Explorer tool remains available, but as you might recall, it is not something that can be used because it is just not supported anymore. We don't even have staff who can support that technology because it is older and was stood up pretty quickly to meet some of the needs.

We have a new tool that is working with the new data, and we are talking to the advocacy community and others to make sure that we get the right features into that tool that are needed for them to do the analysis they would like to do.

Ms. VELAZQUEZ. After you issued your new tool, what do you hear from the groups?

Ms. KRANINGER. It has been well-received because we have continued to build on the capabilities that are available there—

Ms. VELAZQUEZ. Yes. Excuse me. I have a letter here that was sent to you by 80 groups, including NCRC, and I am going to quote: "Our members and allies are concerned that the CFPB is implementing public dissemination of HMDA data in a manner that thwarts its statutory purpose."

What is your response to that?

Ms. KRANINGER. I can tell you, Congresswoman, I am familiar with the letter. I responded to it very quickly. We are talking about more data than has ever been available before and—

Ms. VELAZQUEZ. What did you say in your letter to them?

Ms. KRANINGER. Noting the substantial changes that were made in the rulemaking and the data collection is really what this is about. And it is hard for basic users of a system to understand all the analytical capabilities. We are going to do some webinars to help them understand how to use the new tool. We are going to talk to folks again about what kinds of things in terms of reports they want to see, but I can tell you they have better reports than they have ever had available to them before.

Ms. VELAZQUEZ. Ma'am, in your response, you agreed that the data browser posed some challenges for users, but that you were looking to breach the information gaps that users face and develop additional resources for them to use the data. This is the letter that you sent to them on Tuesday. How exactly are you working to breach this information gap, and what additional resources are you considering?

Ms. KRANINGER. We have a really talented team of people working on this and talking to consumer groups.

Ms. VELAZQUEZ. Yes, yes, yes.

Ms. KRANINGER. We are going to do some webinars.

Ms. VELAZQUEZ. Director, I know that, and I know that as Director of the CFPB, you are also a member of the FDIC Board of Directors, correct?

Ms. KRANINGER. Yes.

Ms. VELAZQUEZ. So did you vote in favor of the FDIC signing onto the OCC's recent CRA proposal?

Ms. KRANINGER. I did.

Ms. VELAZQUEZ. By eliminating the HMDA Explorer tool and making it more difficult for public dissemination of HMDA data, how are you expecting fair housing groups and even us elected officials to have access to that information? Is that how you empower consumers? That is what you said to Carolyn Maloney, that you were holding a lot of meetings around—

Chairwoman WATERS. The gentlelady's time has expired. Thank you.

The gentleman from Missouri, Mr. Luetkemeyer, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman, and welcome, Director Kraninger.

The chairwoman keeps talking about, and a number of other Members continue to throw out the figures of the amount of money that was recovered by your predecessor, Director Cordray. I have been here through this entire time, and I can tell you that the money, a lot of it, was not necessarily as a result of finding bad actors. It was about issuing guidance and enforcing that and extorting the money from those entities.

The previous Director played very fast and loose with the law. He played very fast and loose with the rules and created guidance with which he could enforce and then beat over the head the various entities. I have had numerous meetings with those individuals and groups, and that is the case. So it is very disconcerting to me to continue to hear these numbers being thrown out whenever it is very disingenuous, and misreporting actually went on.

I am very thankful that you are trying to do something with abusiveness. I have always argued that this is a very nebulous term. I don't think there is even a definition in law anywhere that actually tells you what abusiveness is. It is whatever you deem it to be. And for you to come in and give us an explanation of what you believe it to be and how you are going to enforce it, I think is very instructive, and I thank you for that.

To me, this is a great way to begin to rein in some of the egregious behavior that was there in your predecessor's Administration. So, with that, let me begin with regards to the small-dollar rule.

Last year, I, along with 24 of my colleagues, sent you a letter regarding the payments provision of the small-dollar rule. Can you give me an update on where this rule stands, and are you making changes to the payments provision?

Ms. KRANINGER. Congressman, the rulemaking, the NPRM comment period closed last year. We are working our way through an extensive number of comments, frankly, on that rule, which is un-

derstandable. We have aimed for a determination on a final rule that would be issued in April.

So, that is where that stands. There was a petition on the payment provisions that is still pending, and I expect to be able to provide clarity on that petition and response to it at the same time. So, that is the timeline for that small-dollar rulemaking effort.

Mr. LUETKEMEYER. Okay, thank you.

With regards to TRID, I want to thank you for your action reviewing the TILA-RESPA Integrated TRID rule. I think it is important to ensure that this rule is achieving its goal of combining certain mortgage disclosures. I think the amount of paperwork in a mortgage is a major issue that this committee needs to address.

If you look at the stack of papers that it takes to make a loan today, from State-mandated forms, federally-mandated forms, and lender-mandated forms, I think we need to get everyone together and really simplify the process and think about redoing it. We had an individual representing one of the entities in here not too long ago, and he had a stack of papers literally this tall.

All of the folks behind me were kind of giggling about it, saying, "I wonder how many pages are there?" So I asked him, and he said, "Congressman, we no longer measure by the page. We measure by the pound."

This has to stop. Nobody reads it. You get writer's cramp initialing all the pages. They are superfluous. They don't mean anything. We have to get together and find a way to do this.

I guess, to my point, are you examining the rules to try and find ways that you can consolidate this? And if so, how are you doing? Can you point to some of them that you are refining or getting rid of or whatever?

Ms. KRANINGER. Yes, two things. One, you mentioned the assessment. We are in the midst of the 5-year assessment of TRID since it has been issued, and we are getting comments back from a lot of entities around the cost of compliance and the utility of some of the requirements there, matching that against what is in the statute and making sure that we are meeting the statute.

But there has to be a better way to do this. I completely agree with you and the many who have noted this to me. I would offer the trial disclosure policy, which is one of the innovation policies that we issued in September. We are having a lot of conversations with different entities around that, including consumer advocates. I think we all want better understanding by consumers of what financial terms and agreements they are making, their ability to understand that, the ability to provide, frankly, the information at the right time.

Closing is not the best time for all of these types of disclosures. Looking at the timing elements of TRID, what is statutorily required and what is not, and see if we can do this in a much more simplified way. So, the disclosure policy process through our innovation policies is where I hope to be able to test some different ways to get simplified and better disclosure.

Mr. LUETKEMEYER. Are you looking at technology perhaps to be able to improve some of the things, either put stuff online or make it available or streamline it that way? Is that a possibility?

Ms. KRANINGER. Yes. There are a number of companies that are looking at electronic disclosures, again, for those consumers who want them. We know younger consumers absolutely want it electronically, and so giving them that option and figuring out again how we can match that with the timing element will be really useful.

Mr. LUETKEMEYER. To me, I think the criterion used to be, is this necessary? What are we trying to accomplish with this firm? Are you protecting the consumer, or are you protecting the lender, and is there a reason for this? And I think, hopefully, we can find a way to get through that.

I thank you very much, and I yield back.

Chairwoman WATERS. The gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. SHERMAN. Director, as often, when you come here, I remind you of Dodd-Frank Section 1022, which allows you to scale regulations, particularly when you are dealing with smaller institutions. Many have talked about the importance of having a clear QM rule and QM patch, and I think you understand that. I hope that you act well in advance of any deadline.

But I notice from your testimony that you are moving in a particular direction that I am not sure is supported by the law. You say you are moving away from a debt-to-income threshold, which looks at whether the borrower can afford the loan, to a pricing mechanism where you focus on, is the loan at a fair price?

This would lead you to the conclusion that a billionaire does not have the ability to repay a million-dollar mortgage if it is a 7 percent mortgage. And that someone working at minimum wage does have the ability to repay a million-dollar mortgage if it is offered at 4 percent.

Does the statute allow you to ignore whether this borrower can repay and substitute what could have been the rule and what in many areas perhaps should be the rule, and that is, is the interest rate a good interest rate?

Ms. KRANINGER. Congressman, first and foremost, the statutory provisions obviously carry forward and remain, so consideration of debt-to-income ratio is actually in the statute. It is a requirement.

In terms of the way that is articulated, the challenge has been with the threshold of 43 percent. And some of this gets to again whether a loan will actually end up performing well, and what is the best measure of that?

Mr. SHERMAN. If I can reclaim my time and make a couple of comments, you are kind of saying it must be something the borrower can't afford to repay, or the bank wouldn't make the loan at a good interest rate. The only way you can stay in business making loans to people who can't afford to repay is if you charge so much in interest rates that you make up for a high level of defaults.

I would also point out that there is a regional variation that certainly affects our City of Los Angeles. People in L.A. make \$7,000 a year more, and we spend it all on housing. That is the L.A. family. And so, with that lifestyle being one where you spend less on

heating and some other costs, and you spend more on your house, you may want to look at regional variations.

I want to look at PACE loans. In March, you issued a Notice of Proposed Rulemaking, but you don't seem to have taken any steps since then. The law signed in May 2018, whose title exceeds the amount of time I have to repeat it, requires you to have regulations setting out requirements, implementing at least the purposes of TILA and ability to pay requirements.

What is the stall on PACE loans? It has been about 10 months.

Ms. KRANINGER. The latest, Congressman, is actually a data collection that we are engaged in now to get better information from PACE lenders about the marketplace. That is where we are right now, and we are going to use that, that data collection, to form the basis of the rulemaking.

And we are moving as expeditiously as we can. I know it is not satisfactory, but defining the unique nature of PACE, which is what Congress asked—

Mr. SHERMAN. It is very similar to any other trust deed you get on your house. If you encumber your home to build a new bedroom, maybe you can afford that, maybe you can't. Say it is the same answer whether it is a new air conditioning system or a new bedroom.

Do you have an estimated time of arrival on this?

Ms. KRANINGER. I don't at this particular moment, Congressman, but we will get back to you. The next step is really the Notice of Proposed Rulemaking after this data collection, though.

Mr. SHERMAN. It has been several months since the comment period closed regarding the January 2021 expiration of the QM patch. What other information can you give us about your plans regarding the pending sunset, and what assurance can you give the mortgage markets?

Ms. KRANINGER. Yes. I sent the letter back to Senator Warner and others on this and made that available more broadly because I wanted to make sure we were sending signals to the marketplace about this very important market in mortgages. I know time is running out—

Mr. SHERMAN. I will ask you to pick up the pace on PACE.

Thank you very much.

Chairwoman WATERS. The gentleman from Wisconsin, Mr. Steil, is recognized for 5 minutes.

Mr. STEIL. Thank you very much, Madam Chairwoman.

And thank you, Director Kraninger, for being here.

We are about an hour into this hearing, and I think my colleague from North Carolina's comments at the beginning that there might be buyer's remorse on the structure of the CFPB just continues to get reiterated in this room. As I look at the battling PowerPoints going back and forth, it seems like there is a desire on both sides to have more transparency and accountability in the CFPB, and I think there is an opportunity for us at some point to come together and actually put the CFPB under an appropriations process and to set up a commission structure.

That is not for you. That is more editorial for the committee as a whole, that there is a real opportunity for us to improve the structure that was set up for the CFPB. Let us dive in.

The UDAAP rule in particular, Director Kraninger—your predecessor declined to clarify what the CFPB considers to be an abusive act or practice in the context of the Bureau’s UDAAP authority. And previously, the CFPB exploited this ambiguity to stretch its enforcement authority. Among other things, it caused a lot of confusion for covered firms, to the detriment of American consumers.

With that in mind, I want to commend you for issuing a policy statement last month clarifying how the Bureau intends to exercise its supervisory and enforcement authority with respect to abusive acts and practices. If I can, I would like you just to clarify something a step further that was footnoted in the remarks, that I think has an opportunity for further clarification.

The Bureau, I think, very clearly intends to apply this policy statement on a going-forward basis. But it left some ambiguity as to the discretion that the Bureau would be using in regards to those that are currently pending in court. Can you comment on how the CFPB will review prior cases in which an abusive claim has previously been made, and how cases will be prioritized?

Ms. KRANINGER. Certainly, looking at the history of abusive claims was part of the process of coming up with this policy, and at this point, we have not amended any filings in court and don’t intend to related to this specifically.

Mr. STEIL. Thank you very much, and thank you for putting forward a statement as to how you guys are going to be analyzing those. I think those were real ripe for abuse previously.

Let me ask you a question that I think you have been asked before and you have stated before, but I think it is just important to get it on the record. In particular, can you say that the CFPB does not have the legal authority to regulate the business of insurance?

Ms. KRANINGER. Yes. That is explicitly excluded from our jurisdiction in the Dodd-Frank Act.

Mr. STEIL. I appreciate it. I just think it is important to continue to reiterate that because, as noted, we don’t have the full transparency and authority in the event that you are no longer Director, and we end up with another Director in the future.

First, thank you for working with the Department of Education on a new Memorandum of Understanding regarding how student borrower complaints information will be handled. Do you anticipate the CFPB and the Department of Education negotiating additional agreements to clarify jurisdictional issues on supervisory services, for instance?

Ms. KRANINGER. Yes. Our conversation on that is ongoing, and I think as an important note in terms of where we are going with this, the Department of Education is changing through their next-gen process the way that they deal with contractors who are doing servicing of Federal loans. We want to work with them on that and support them, which is what we have tried to do all along in terms of carrying out the supervision, I guess oversight, through our examination process, making sure that we are consistent with their policies. And so that is what we are going to work with them on.

They are looking to develop a more rigorous oversight of their contractors. We are looking to do that jointly with them so that we can carry out our responsibility for overseeing Federal consumer financial law, and they can carry out their extensive responsibilities

over how program execution works and the Higher Education Act and their other authorities. So I think there is a good path forward for us to provide that certainty for students.

Mr. STEIL. Thank you very much. I appreciate your work in this area, and I yield back.

Chairwoman WATERS. The gentleman from New York, Mr. Meeks, who is also the Chair of our Subcommittee on Consumer Protection and Financial Institutions, is recognized for 5 minutes.

Mr. MEEKS. Thank you, Madam Chairwoman.

Madam Director, let me just go back briefly to a question that I think Chairwoman Waters asked. I know what the intent of Congress was. The reason they created the CFPB was to have someone to speak and to protect consumers. You are absolutely right. But her question to you was, what do you believe, not what Congress believes is the mission of the CFPB?

Ms. KRANINGER. I believe the Federal Government has a responsibility to protect consumers in the marketplace, consistent with the authorities that Congress has given us.

Mr. MEEKS. So you can't say that you believe in the mission—because most folks, when they take these jobs, whether you are working for the President or whomever, you do that because you believe in what that mission is. You want to make sure that you are fighting for a specific outcome. And if you can't state here that you believe in the mission of the CFPB, then it seems to me, Madam Director, you have taken a job that you are not committed to.

Ms. KRANINGER. Congressman, let me just clarify. I absolutely believe in the mission of the CFPB. I have been tasked with carrying it out. That is what I am definitely doing.

Mr. MEEKS. So, now, the Consumer Financial Protection Bureau—it was not named the Financial Services Protection Bureau. It was not named the Business Protection Bureau. It was not named anything else. It was named specifically the Consumer Financial Protection Bureau, because there was no other agency that had the sole mission of protecting consumers. Do you understand that?

Ms. KRANINGER. Yes, sir.

Mr. MEEKS. Okay. So, therefore, if you are the head of the Consumer Financial Protection Bureau, then part of your job would be to advocate for and to protect the rights of the consumers who may complain before your Bureau that they have been taken advantage of by a product, that might not have been an appropriate product, that is the reason why we had the financial crisis of 2008, because a lot of individuals were put into products that they should not have been put into. Is that correct? Do you understand that?

Ms. KRANINGER. I do, sir, yes.

Mr. MEEKS. Okay. So, now, it seems to me that what we have going on—let's take the industry of payday lending. It has been brought out that a number of consumers across this country have been victimized and put into debt forever because of some of the payday lenders' bad practices. Would you admit to that?

Ms. KRANINGER. I would tell you, sir, that we have taken enforcement actions against small-dollar lenders that are public and well-discussed.

Mr. MEEKS. But if you are an advocate for consumers, if you are focused on them, why would the number of cases that you bring have substantially declined over the last couple of years, as well as the fact that you have decided not to continue some of the regulations that have been put forward in regards to protecting consumers, like first principle, making sure that someone has the ability to pay back, and that you cannot, as Mr. Cordray had, you can cap the number at three of loans that lenders use in quick succession. This would be something to protect consumers so that they won't go down that path.

And it seems to me that you have decided to suspend moving in that direction those items that will protect a consumer, which is the very reason that this agency was created in the first place. And the number has gone down, and there seems not to be any advocacy, because from what I am hearing you say, it sounds to me that you are more interested in protecting the financial institutions as opposed to protecting and advocating for the very reason why you have a job, to protect consumers.

Chairwoman WATERS. The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Madam Chairwoman. Director, thank you for taking the time to be here today. I was pleased to hear you say that you want to be able to stand up for the mission of the CFPB. I think part of it is we need to be able to make sure that all people have access to capital as well, to be able to meet their needs. You had a fair conversation, one side coming at you. Would you like to maybe make a couple of responses back to my colleagues?

Ms. KRANINGER. Yes. Thank you, sir, for that opportunity. The mission of the CFPB is critical. We are carrying that out using the tools that you all gave us: education; regulation; supervision; and enforcement. Enforcement is not the only tool. We are not standing beside consumers when they make every decision, so we need to empower them with the best information possible. That is why that education tool is incredibly important.

Regulation, again, and supervision are around, setting up clarity in the rules so that entities that are engaged in financial services understand their responsibilities and are providing consumers with the information that they need.

And then, absolutely, rigorous enforcement is part of the mission. We continue to carry it out. I will not manufacture cases. So we are absolutely doing our due diligence in investigations, but ongoing cases are being worked. I can assure you of that. There are clearly bad actors in the system and we will go after them.

But we clearly have a difference of opinion regarding how the mission should be carried out.

Mr. TIPTON. Thank you for that, and I did also want to—there has been a fair amount of scrutiny on the CFPB in terms of some of the hiring. A little bit of irony. There was no concern when Director Cordray was making his hires. Do you have the authority, as Director of the CFPB, to be able to hire the people to fulfill the mission that you have been granted?

Ms. KRANINGER. I do. The authorities given to the CFPB are the same in Title 5 that were given to every other agency in the Fed-

eral Government, and I am utilizing the hiring authorities that I have been given. It's also worth noting, and appropriate to the stand-up of the agency, that the first 3 years of the agency, they had a transition authority to hire outside of civil service protections. So again, that was never criticized, to my knowledge, and was appropriate to support the stand-up. But it is not as if every employee at the Bureau was selected under civil service processes.

Mr. TIPTON. Great. I think it is notable, admirable, right now that the CFPB is priding itself on being a modern, data-driven, government agency. I think that this needs to be an integral part of being able to move forward. What is the proposal that you are seeing under the CFPB to be able to actually promote something that I have always felt is critical for government at all levels, in terms of decision-making when it comes to cost-benefit analysis?

Ms. KRANINGER. I do think it is critically important, too. We have economists in our agency. I have looked at the number of them. I would frankly like to bring in a few more to help us with cost benefit-analysis and more rigor. That doesn't necessarily mean quantified. There is a qualitative aspect to this as well. But there is a rigor to the analytic process of actually determining what the impacts are.

Very much, Congressman, you mentioned access to credit, and that is something that I think we need to better incorporate and understand as we are looking at regulatory actions, what impact that will have on the availability and access to responsible credit for consumers, the impact of any rulemaking on that.

Mr. TIPTON. I just wanted to be able to get your thoughts. We have had a number of conversations over an extended period of time in this committee, structurally, on what should the CFPB look like? A number of us have advocated, with all respect to you, and all respect to Mr. Cordray who preceded you, that you shouldn't be in full control as an individual, but to be able to have a five-member panel, was one of the proposals. Do you think that would be a better structural form for the CFPB?

Ms. KRANINGER. I appreciate why you are asking the question and I have pointedly not taken a position on this. This is absolutely something that is in Congress' purview to determine. And should Congress enact anything that the President signed and would become law, we will carry out, to the best of our abilities, whatever measures Congress wants to put in place, or changes.

Mr. TIPTON. Thank you. Just finally, I would like to give you the opportunity to be able to respond to some of our friends on the other side of the aisle in regards to settling pending lawsuits brought by the previous Bureau, and you not pursuing new actions. Would you like to comment on that? What are your policies? How are you moving forward?

Ms. KRANINGER. Again, Congress gave us broad authority to look at injunctive relief, restitution, to take the right action in any particular case, and that is what we are seeking to do. Thank you, sir.

Mr. TIPTON. Thank you. I yield back.

Chairwoman WATERS. The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Madam Chairwoman, and welcome, Director Kraninger. As you and I have discussed, and we have en-

joyed several discussions, you know of my deep concern about financial education. It is a crisis and very much needed. And I have put forward two pieces of legislation, one which in targeting, because, as I said to you, it is the Consumer Financial Protection Bureau that should be at the front of the spear on financial education, because that is the first line of defense for consumer financial protection, is consumer financial education.

And I am so delighted to know of the excellent program that is being developed at the Wharton School of Finance, my alma mater. I served on the Executive Board of Directors there for a while and I am very proud of the pilot program that they have going with the financial business sector in Philadelphia. And you and I have talked about that.

We have this second bill that we are working on, because we have to get grants and help into these public-private sector partnerships. That is the key, to be able to develop the best instructional, the best kinds of curriculums to teach in our public schools. We have to start there.

Our financial system is moving at a rapid pace. Technology is overwhelming us in that respect. I am also working very closely with Mr. Lynch, Ms. Waters, Mr. Hill, and others on making sure that we address this issue.

I wanted to give you an opportunity to express how you are working with this. Our bill is being put together as we speak. But we have to do that. As I pointed out, and I hope people across this nation are listening to me, because we only have 17 State public school systems that even offer one course in financial education, financial literacy. And we can sit up here until the cows come home, trying to write laws and legislation, you pass them, to target these predatory lenders. But if we do not put forward the kinds of innovative programs, like what the Wharton School is developing in Philadelphia with their financial business community, to get this into our schools, so we have the courses developed, to get them into our libraries, then we are putting our money where our mouth is.

We have 28 million unbanked and underbanked families in this country. Not Mama, not Daddy, sister, brother, nobody even has a bank account. Technology is moving at warp speed. We are going through a financial services revolution and we have to get money and resources to those public-private ventures which are out there in the first place, to help make this happen.

So you will be the executor of this grant-making authority, and in my last 45 seconds, I would love for you to comment on this and how much you are looking forward to getting this bill passed and getting resources out there into the public and private sector, and teach our young people financial education.

Ms. KRANINGER. Congressman, I truly appreciate and share your passion for financial education. We have had great conversations about that. Should this bill become law, we will carry it out. But I can tell you, regardless, the CFPB is committed to supporting those kinds of public-private partnerships, taking any actions we can, because, as you pointed out, we can't be with consumers when they make these decisions on their own.

Mr. SCOTT. And you will help us get this law passed, correct?

Chairwoman WATERS. The gentleman from Indiana, Mr. Hollingsworth, is recognized for 5 minutes.

Mr. HOLLINGSWORTH. Good morning. First and foremost, I wanted to associate myself with the great comments of Representative Scott. He and I have worked closely on this issue, and his passion for it is palpable in everything that he does. And I too believe that an informed, educated consumer is a consumer who is better able to protect themselves. These nefarious actors that frequently operate in this space are more creative than we are, and it seems that they can come up with more schemes than we can easily make illegal. And so, ensuring that customers are their first and foremost advocate is really, really important to me as well. So, I appreciate his work on that.

I know, in 2015, though the law was originally passed in 1975, the CFPB had expanded the number of data fields that were collected, and even expanded the scope of this to include multifamily properties. At the time, I believe they argued it should have always been included or it was always intended to be included, but certainly it was a surprise to many that they were included, and some commercial-to-commercial transactions were also included. In May of last year, the ANPR was seeking comments on whether to exempt multifamily and other business-to-business loans from HMDA was put forth. I think that closed in October of 2019. But I wanted to get a better update about that process, and whether, as of right now, the current thinking is that we should exempt multifamily properties or commercial-to-commercial loans from HMDA requirements?

Ms. KRANINGER. As you indicated, we actually extended the comment period on that ANPR on purpose, so that the respondents could have the benefit of the data that came in as a result of that rule. So, we are still going through the comments.

Mr. HOLLINGSWORTH. Great.

Ms. KRANINGER. I believe that our unified agenda said that we would entertain, potentially, a notice of proposed rulemaking if we decide to proceed in July on this.

Mr. HOLLINGSWORTH. Yes.

Ms. KRANINGER. And so, there is no posture I can tell you, but I can very much tell you we did get comments on the topic you are interested in and we are poring through them, to see what path to take on the proposed rule, should we move forward.

Mr. HOLLINGSWORTH. I would only share with you that I have had a great number of meetings with people who are very concerned about this and want to see some relief provided or exemptions provided for multifamily and commercial-to-commercial loans, and a recognition that, though perhaps it was argued in 2015 that it should have been included and it was included, it was always intended to be included, that that certainly didn't seem to be the case for the first 30 years or 40 years of the legislation itself. So, I appreciate that.

I wanted to jump really big topics for a second, though, and talk about banks offering small-dollar, short-term lending products. This is something that I have worked on since the day I walked into Congress because, frankly, many Hoosiers back home, in very rural communities, rely on these products, or at one time relied on

these products. And frankly, the banks that were offering them were offering them in good faith and creating better outcomes for these consumers. And in the absence of those products, they turned to perhaps more predatory and sundry characters for such loans, right? And ultimately, I want to ensure that they have access to these products going forward. It is something that I hear about from them on a week-to-week basis back home. And that feeling that they operate in a different economy, that they don't have access to the same products that urban and suburban consumers do is real. I wondered if you might talk about any notable points or any action that is coming on these small-dollar, short-term lending products?

Ms. KRANINGER. Certainly, one of the things that I talked about in this space is the need for competition.

Mr. HOLLINGSWORTH. Yes.

Ms. KRANINGER. That absolutely will help. Consumers do have a desire for it. There is a significant demand, and I would say a need for small-dollar lending products, and certainly ones that are responsible. Credit unions did get a carve-out in the prior rule-making, even. The banks did not. So there are some real dynamics with respect to how we can promote the kinds of competition that is going to be good for consumers in this space and give them better products to choose from.

Mr. HOLLINGSWORTH. I love that, and in a lot of the data that I have seen, consumers were: (a) very aware of the prices that they were paying for those products—it wasn't as if that was being hidden from them and there was a lack of transparency; (b) really happy with those products—by and large, they were return users of the products or alternatively had rated very highly; and then (c) importantly, there were appropriate off-ramps to ensure that they weren't frequently using them and getting dependent on them. Right? They were reporting to credit bureaus as well.

Do you have a timeline when you might make a final rule public with regard to that, and some of your thoughts on that?

Ms. KRANINGER. The final rule consideration, we have set in the unified agenda, so April would be when we are going to put that out. We are going to deal with a petition also on the payments provisions, which again, I know financial institutions have argued that there were some products pulled into that, that were—

Mr. HOLLINGSWORTH. Unintended.

Ms. KRANINGER. —unintended. So just working through all of that and certainly moving forward in a way that is transparent in April is what I am planning to do.

Mr. HOLLINGSWORTH. I really appreciate your efforts and work in that space, because it is really important to Hoosiers back home. Thank you so much, and I will yield back.

Chairwoman WATERS. The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is recognized for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. And I thank the Director for appearing.

Madam Director, I too am concerned about data collection, and my concern has to do with why we collect the data. Would you give

me your rationale for why HMDA data and the equivalent data collected, hopefully by the CFPB, is important?

Ms. KRANINGER. Yes, Congressman. The Home Mortgage Data Act really was a Disclosure Act. It is about disclosing home mortgage data so that that is available publicly, so that there is the opportunity for everyone to see the kinds of activity happening in that space. So, that was clearly part of the congressional intent, and as a fair lending statute as well.

Mr. GREEN. I do concur. But why is the data important, please? Why is it important to know the race, the sex, the ethnicity? Why are these things important?

Ms. KRANINGER. Certainly, the intent is to demonstrate that that type of lending is happening, to note if there are any disparities in that, and that is the intent.

Mr. GREEN. Do you believe that invidious discrimination exists in lending?

Ms. KRANINGER. Yes, I believe it does, and I believe it exists generally in society. It is an abhorrent thing and something that we should work to root out.

Mr. GREEN. And because you believe that it exists, are you going to push the CFPB, as the Director, to make sure that we have the level of transparency necessary to ascertain whether the discrimination of which we speak exists?

Ms. KRANINGER. Yes, Congressman. That is certainly the intent of HMDA and the intent of other actions. I am looking at some things that we can do that will help in our fair lending enforcement cases as well, to really make sure that we are taking action where we see these types of issues.

Mr. GREEN. Thank you. That is a great segue into the question that I would like to ask. Testing has proven to be a most effective means by which we can determine the existence or nonexistence of discrimination. Give me your views on using testing as a tool, please.

Ms. KRANINGER. Congressman, I think you might have even asked me about this before. We have used testing in this case, and I leave it to the enforcement staff to determine when or where or why they decide to use that as a means to suss out what might be happening at particular institutions. But it is something that is, again, a tool that we have available to us, that we use.

Mr. GREEN. I don't see, in your report, an indication of the extent to which you are using testing. I don't see an indication as to the efficacy of your efforts. Can you give me some indication as to how effective testing has been and to the extent to which you are utilizing it?

Ms. KRANINGER. Congressman, I don't want to necessarily show our hand in a public setting around how much we use it or otherwise; that is investigative information that is sensitive. I am happy to talk to you about that further, though.

Mr. GREEN. I will be honored to talk to you about it further, and I don't mean to be rude, but I have little time. You see, the deterrent impact is lost when we talk about it privately. We need to talk about the fact that there are people who are being tested, and that people are being caught engaging in invidious discrimination. So a private meeting does not help us with a deterrent impact of the

testing itself. So again, I would ask, give me some indication as to the extent that we are doing it and the impact that we are having.

Ms. KRANINGER. I can tell you that the Department of Justice and the CFPB both have that ability and authority and that we use it.

Mr. GREEN. Would you, in your next report, give some more definition to the impact that testing is having and the extent that you are utilizing it, please?

Ms. KRANINGER. I promise you, sir, I will take that back and we will talk about what additional information we can provide that will get at what you are looking for.

Mr. GREEN. I would appreciate it greatly, because again, it is the deterrent impact, knowing that there are testers out there, knowing that you must abide by the rules and regulations or you may find yourself in litigation. That is the impact that we are looking for. Aside from catching people, I would like to deter people. I would like to prevent invidious discrimination. So this would be very helpful, and I thank you.

I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you. The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Madam Chairwoman, and Director Kraninger, thank you for all the work you are doing at the CFPB. We appreciate you taking the time to come and speak with us.

I also want to thank you for the timeline on the small-dollar rule. We have been asking about that, and I know it has been very challenging to get a final date. April sounds good. Could you talk about the process? How long was the public comment period open? How many comments did you receive? What use was that? Just briefly.

Ms. KRANINGER. Certainly. The notice of proposed rulemaking, I believe was issued last April. The precise date is escaping me at the moment, but it was a 90-day comment period. We did receive 190,000-plus comments. Many are repeat comments that are organized by all sides on the issue, with multiple people submitting it, so that is something to pore through. We provide all of that on the public docket as well, so that did take a little time, again, to get some of those comments on the public docket. So, those are available fully for everyone to review, while we are reviewing them and determining what responses go to which comments. And anything that we rely on in the rulemaking process, we must address, and we will address in this process.

It is time-consuming to move through all of that, but we are moving smartly to come to resolution on this issue.

Mr. TIMMONS. It is also productive, I imagine. There are some things that you may not have included in your initial analysis and that was a productive process.

Ms. KRANINGER. Absolutely, yes. I certainly believe fully in the transparency that notice-and-comment provides, and the opportunity to go back and forth with the public and see the dialogue on that.

Mr. TIMMONS. Thank you. I want to move to the 2017 final rule on payday lending and how it would impose unnecessary regulations on bank loans that do not raise consumer protection concerns. For example, bridge loans, revolving lines of credit, and

loans secured by securities held in a brokerage account would all be subject to the same requirements as a two-week loan for \$500.

Is there any justification for using a rule targeting payday loans to regulate traditional loan products offered by banks?

Ms. KRANINGER. I can tell you, sir, that we did get a petition to assess some aspects of what you are outlining. I have certainly heard from financial institutions and others about products that may have inadvertently been pulled into the small-dollar rule. And so responding to that petition, as I mentioned to others, is something that we are going to do at the same time, in April, so that we can provide some clarity around some of these questions and a path forward there.

Mr. TIMMONS. Great. Thank you. One last question. What steps have you taken to create better relationships between the Bureau and the industry participants, supervisors, and regulators?

Ms. KRANINGER. I believe it is critically important. Again, we need financial institutions to understand what their responsibilities are, to provide consumers with the information that they need to make good decisions in compliance with the law. And so that outreach and ongoing engagement is important.

I can also tell you that I have done something a little bit differently here than what has happened in the past at the Bureau, which is bringing multiple stakeholders together so that we can solve a problem. It is not just about meeting with the financial institutions alone. It is having the advocates in the room as well so that they can provide their perspective, and the problems that they are seeing, and we can get to resolution and have a true conversation about the policy issues associated, the access issues, the problems that real individuals are having, and come to resolution.

I am excited about all of the opportunities to keep doing things like that, to have the kinds of public hearings that the ranking member mentioned, as we did on debt collection. So we are really pulling together different parts of the country, frankly, even, to talk about these things and solve problems.

Mr. TIMMONS. That is good. Thank you so much. I yield back.

Chairwoman WATERS. Thank you. The gentleman from Illinois, Mr. Casten, is recognized for 5 minutes.

Mr. CASTEN. Thank you, Madam Chairwoman. It's nice to see you again, Director Kraninger.

It has been a little over 2 years since Secretary DeVos terminated two MOUs with the CFPB to protect student loan borrowers. One facilitated sharing complaint information and one facilitated sharing supervisory information. I want to make sure I understand the MOU that you announced, I think on February 3rd. You have reestablished the MOU that allows your complaint information sharing. Is that correct?

Ms. KRANINGER. That is correct.

Mr. CASTEN. Okay. In a letter dated April 23, 2019, to Senator Warren on this topic, you said, and I quote again, and this is almost a year ago, "The Department continues to have access to the Bureau's public complaint database and Bureau staff continue to analyze complaint data and can provide that analysis as technical assistance if requested by the Department."

Does the Department of Education have more than one complaint database?

Ms. KRANINGER. I am not 100 percent sure on that, sir, but I don't think they have more than one database. I am not sure what their structure is. But we are absolutely continuing to share the information.

Mr. CASTEN. I am simply asking, on April 23rd, you said that you already had something in place that does what the MOU you just issued says you have.

Ms. KRANINGER. I understand what you are saying. It is fair to say that we continue to work together to address complaints, even without the MOU in place. That is true. But what the MOU does is provide the certainty and clarity on how this is going to work, the roles and responsibilities, so that we can move out in a way that is more formalized and agreed to.

Mr. CASTEN. Okay. I am going to take that as the current MOU does not in any way change your oversight authority.

I want to turn to the second MOU that allows for supervisory information sharing. In this same letter, April 23rd of last year, you said, "It is a priority for the Bureau to make progress on a new MOU. I want to have the Private Education Loan Ombudsman in place to have that conversation."

Have you now put that individual in place?

Ms. KRANINGER. Yes. Bob Cameron has been on board since about September, and it is one of the first things he did was the complaints MOU, and then we have a head of Supervision, Enforcement, and Fair Lending, and one of the first things he did was move with the Department of Education on supervision.

Mr. CASTEN. Who is responsible for working on the supervisory MOU?

Ms. KRANINGER. Bryan Schneider is.

Mr. CASTEN. How long has Bryan Schneider been with the CFPB?

Ms. KRANINGER. I think since October, November.

Mr. CASTEN. Of which year?

Ms. KRANINGER. November of last year.

Mr. CASTEN. Okay. So he was there before. And what progress has been made on renewing that MOU?

Ms. KRANINGER. We are still in discussions on the MOU, but I can offer at least one thing that is very, I think, positive. We are going to send detailees to the Department of Education to work together on how we can jointly go in and conduct oversight. We are going to do exams for our authorities under Federal consumer financial law, and they are going to be doing their contract oversight. And so we are looking at how we set up the process to make that happen.

Mr. CASTEN. I think that is terrific. You appreciate my concern that a year ago, we said we are going to work on the supervisory issues. A year ago, we said we are going to work on the data issues. And we have one MOU that essentially reinforces what was already done and the other one hasn't made any progress. I would like to do that now and not in the future.

I want to turn to student loan servicers. A July report submitted to the White House by Secretary Mnuchin criticized the Education

Department's oversight of the student loan servicing companies and reported that a number of loan servicing failures and inconsistent practices had caused financial harm to students. We, in Congress, have previously called on your agency to seek a court order to compel the Department of Education to provide access to information on student loans, and your agency has so far refused to do that.

I want to follow up on your exchange with Mr. Steil. Secretary DeVos has said that student loan servicers face, "appropriate federal oversight by the Department of Education." Do you agree with that statement?

Ms. KRANINGER. I agree it is their responsibility to oversee their contracts.

Mr. CASTEN. Do you agree that they are currently providing appropriate Federal oversight?

Ms. KRANINGER. I can't opine on how well they oversee the contractual terms and program requirements that they put into place that are their statutory concerns.

Mr. CASTEN. Hang on. I think you can. They are currently not providing information that the CFPB has requested on student loans. They are also, at the direction, to my understanding, of the White House, are not providing information to States attorneys general who are seeking legal action, in addition to the CFPB. So you, as the head of the CFPB, are you doing your job to protect the students or are you deferring to Secretary DeVos?

Ms. KRANINGER. Our purview of Federal consumer financial law is absolutely one that we continue to pursue. We have other authorities, as I have also pointed out. We have enforcement authority and we are using it in this space, and we have an education responsibility. And we are working through, as I said, the ability to jointly go in and oversee the services consistent with our rule and our authority.

Mr. CASTEN. I am out of time, but we expect you, within the Executive Branch, to do the oversight that you were expected to do of other Executive Branch agencies. If you do not do that, we have to.

Thank you. I yield back.

Chairwoman WATERS. The gentleman from Texas, Mr. Taylor, is recognized for 5 minutes.

Mr. TAYLOR. Thank you, Madam Chairwoman. Director, I appreciate you being here. I noticed that you didn't get to completely respond to all of the questions that you have gotten so far. Is there anything you want to add, for the record, that you feel like you didn't quite get to?

Ms. KRANINGER. I would say, on the Department of Education issue, it is important, and to distinguish the responsibilities that we have. The Department of Education has a lot of authority under the Higher Education Act. They have the responsibility, obviously, to manage their contractors. The CFPB has a lot of contractors as well, and it is our responsibility to make sure that they are acting consistently with the terms of the contracts.

When it comes to this notion of supervision and oversight, we do have a larger participant rule in place that gives us the responsibility and the ability to examine the larger participants in the stu-

dent loan servicing space, regardless of which types of loans they are servicing, Federal loans or private loans. And so, that is what we are working with the Department of Education on.

There are clearly some areas of overlap and question. They set the program parameters and requirements, but we are looking at Federal consumer financial law, and that is what we are working to finalize. It is complex. We continue to carry out our responsibility, as I said, through other means, but we will resolve the supervisory issue soon.

Mr. TAYLOR. Are those issues statutory, or—in other words, has Congress given you some laws that you are not really sure what to do with, and do you have the authority to do that, or do we need to go back to the books and give you a set of laws that you can actually implement and understand? In other words, do we need to do our job here in Congress and give you the laws that you can work on, work with?

Ms. KRANINGER. I haven't found anything, Congressman. I appreciate the question. I haven't anything in this area, but it is certainly something we will look at. And I can assure you and others on this topic that I believe the Federal Government has a responsibility, and so that is part of the effort to work together to make sure that the Department of Education and the CFPB are sending the same message to servicers about what requirements are and making that clear. That is something that we continue to do.

Mr. TAYLOR. Sure. And is there any other topic you want to just expand on?

Ms. KRANINGER. I would defer back to any questions that you have, sir.

Mr. TAYLOR. Okay. One question I had, and I know we have discussed this in the past, but just in terms of thinking about Congress reasserting oversight over agencies, which Congress does, yours is a very unique agency in the way that it was originally structured. I think I have seen that you declined to defend the constitutional structure of your agency in court. Is that correct?

Ms. KRANINGER. The removal provisions associated with the Director that are in the statute, that is what the government's position was in *Seila Law LLC v. Consumer Financial Protection Bureau* when we petitioned the Supreme Court to take the case.

Mr. TAYLOR. Do you want to go into why you chose to do that?

Ms. KRANINGER. Congressman, I can say it is something that I reviewed very carefully and took very seriously. Congress obviously provided a clear mission for this agency, but there are some questions around, again, this. And I want the uncertainty to be resolved. The Supreme Court took the case, so they will hear it shortly and will come to resolution on that. Congress will have the opportunity to make any changes or respond to that, and I think that is appropriate. I would very much like to see resolution on this question, because it has hampered the CFPB's ability to carry out its mission virtually since its inception.

Mr. TAYLOR. And so that uncertainty is really created by an unclearly written law, so that is really on Congress to write a law that is clear and that everybody can understand. The less Congress does its job, the more the courts get used, and I think that reflects

poorly on the legislative body's job of writing laws that are clear. Would you agree with that, or—

Ms. KRANINGER. I will leave that to you too, sir.

Mr. TAYLOR. That was very respectful. Just shifting over, in my remaining minute, something that is certainly important to me is you putting up signposts on a regulatory basis so that people know what to do. And the first time somebody hears about what they are supposed to do should actually be from the signpost and not people pulling them over and saying, "Hey, there was no speed limit here, but you were going too fast."

What are you doing, in your role as the Director of CFPB, to put up the signposts so that people know what the speed limits are?

Ms. KRANINGER. The clarity and transparency of the rules is critically important. We are engaging, on an ongoing basis, with entities to say, where is there uncertainty? Where is that hampering, the offering of things that are going to be consumer beneficial in the marketplace, and what is holding you back? How do we address that?

And so, ongoing dialogue about that continued provision of guidance, continued work on rulemaking matters that are going to help provide additional clarity, all of that is very important.

Mr. TAYLOR. My time is up. I yield back.

Chairwoman WATERS. The gentlewoman from Ohio, Mrs. Beatty, who is also the Chair of our Subcommittee on Diversity and Inclusion, is recognized for 5 minutes.

Mrs. BEATTY. Thank you, Madam Chairwoman, and thank you to the witness for being here today.

I won't, for the sake of time, go over some of the things that some of my other colleagues, especially Congresswoman Maloney, have asked about when we talk about the fair lending enforcement. But I will say that on page 63 of the report, it states that the Bureau filed one lending enforcement, so I think you have already gotten the gist of how we feel about that.

Let me move on to the Financial Literacy and Education Commission. As you probably know, I have spent a lot of time talking with you, your staff, and anyone who will listen about financial literacy and the benefits of it, because so many of the ramifications for those who are the least of us, whether they are unbanked, underbanked, whether they are facing many of the issues that we deal with in this committee and with the work that you are doing.

Also, as co-Chair of the House Financial and Economic Literacy Caucus, I spend a lot of time reading and looking at data. The Financial Literacy and Education Improvement Act that was passed in 2003, established a Financial Literacy and Education Commission that is chaired by the Treasury Secretary, and whose Vice Chair is the Director of the Consumer Financial Protection Bureau, so that would be you.

The law states that the Commission shall meet at least once every 4 months. Can you tell me when the last meeting was held, how many meetings that you held from 2019 to now, and what was something significant that you came up with?

Ms. KRANINGER. I can tell you there have been substantial conversations around this.

Mrs. BEATTY. No, no. Just stick with me. The law says you must have meetings. How many meetings, just give me that number first, because the clock is going to run down, and I have several questions. How many meetings, by the law, have you held within the timeframe the law asks?

Ms. KRANINGER. Within the timeframe the law passed, I—

Mrs. BEATTY. “Asks.” It tells us. So, have you had the number of meetings, let’s do a yes or no so we can move on?

Ms. KRANINGER. No.

Mrs. BEATTY. Okay. So that means, for the record, that we have not met what the law states on something that you talk about, and certainly is important to us.

So I guess if you didn’t meet as the law stated you should, and you are Vice Chair, you can’t answer the other questions of what happened within those meetings or what they asked us to do?

Ms. KRANINGER. The Act does require reporting, and we have maintained the regular reporting. We have a lot of meetings to—

Mrs. BEATTY. If the law requires you to meet, and you are telling me you have had reporting, why didn’t you meet? And you are the Vice Chair. It is not like you are just one of the members without any control. You are the Vice Chair of a major committee that we work on, and you know me. You know what my issues are. I am very transparent about standing up for the people and trying to get things done within the law, within a committee.

So let me just move on to the next question. As you know, the civil penalty fund at your agency is used to compensate consumers who have been harmed by violation of consumer financial protection law. Some of this money may also be used by your organization to fund consumer education and financial literacy programs. Can you tell me if the Consumer Bureau has used any of the civil penalty money in the last 6 months for financial literacy education?

Ms. KRANINGER. We have not, Congresswoman, because we fund that through our regular operations.

Mrs. BEATTY. Okay. So can you tell me what you have used the money for in relationship, which would help those individuals who could not be helped otherwise?

Ms. KRANINGER. The primary purpose of the civil penalty fund is to provide restitution in cases of—

Mrs. BEATTY. I am going to cut you off again, just because of time.

Ms. KRANINGER. Okay.

Mrs. BEATTY. I understand what it is designed for. The question is, did you meet what it was designed for, and to tell me and elaborate on that please.

Ms. KRANINGER. Okay. Yes, we continue to pay out in the cases—

Mrs. BEATTY. Just tell me the things. Give me three. Just give me three that you paid for.

Ms. KRANINGER. There were several cases. One was a case with respect to veterans, and the entity was basically bankrupt. But we did a civil penalty fund fine of one dollar and then we have paid out, I believe, hundreds of thousands in that case.

Mrs. BEATTY. Okay. It says to fund consumer education programs. So tell me a consumer education program, and I am sorry, my time has run out. I yield back.

Chairwoman WATERS. The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Director Kraninger, welcome back to our committee, and let me just first thank you for your testimony that last year the Bureau requested that Congress provide you with clear legal authority to supervise financial institutions for Military Lending Act (MLA) compliance. You also said that the Bureau transmitted proposed legislative language that would achieve that goal, and I would note, for the record, that I have introduced that bill, H.R. 442, the Financial Protection for Our Military Families Act, in response to your request. I regret to state, for the record, that even though we sent a letter to the chairwoman asking for a markup on this bill that you have requested, we have been denied. So I want the record to reflect that the Majority is preventing you from having supervisory authority over MLA compliance.

My question relates to UDAAP, Director Kraninger. First, I want to thank you for your responsiveness on the issue last month. I sent you a letter asking your plans to clarify the Bureau's definition of "abusive" and to outline how you would enforce the abusiveness standard on regulated entities. You responded to my letter, and I appreciate the policy statement, and I ask unanimous consent to enter into the record copies of my letter to you and your very timely response.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. BARR. First, I want to ask you to follow up on Representative Maloney's question about Wells Fargo's problem with unauthorized accounts. Her question suggests that Dodd-Frank Section 1031, which added the undefined standard of abusive to the unfair and deceptive acts and the list of prohibited activities, was essential to holding Wells Fargo accountable. Is that your position as well, or was the preexisting law that prohibited only unfair and deceptive acts and not abusive acts enough to prohibit Wells Fargo's conduct?

Ms. KRANINGER. I wanted to clarify, as well, so thank you for the opportunity, that the 2016 consent order did. Oh, okay. Understood. So there is absolutely our ability to get the same amount of restitution and other penalties associated with unfairness alone.

Mr. BARR. Right. So in other words, opening an account without the customer's permission, that would have been prohibited under the preexisting unfair and deceptive acts law?

Ms. KRANINGER. In terms of the behavior in that case, and with respect to that consent order that is public, I will say the answer is yes. I will note, though, there are facts and circumstances in different cases, so I don't want it to be generalized.

Mr. BARR. Let me get to the second question, because while the policy statement is a good first step, and you should be commended for attempting to clarify this, I do think there is still a lot of work to do to ensure that regulator firms have clear rules of the road, which I know is your intent, and I appreciate that.

The guidance outlines generally how you will and will not enforce UDAAP standards, and it is intended to ensure firms know what is expected of them. But unfortunately, I will tell you, I have heard from community banks in my district that the policy statement does not provide the clarity they need and still does not fully remove the uncertainty about what constitutes "abusive."

As you know, ambiguous regulations can cause financial institutions to opt out of providing certain products and services, and that uncertainty trickles down to consumers through higher prices and less choice.

So in the policy statement, the Bureau leaves open the potential for a rulemaking. Do you plan to conduct a rulemaking to further define “abusive,” and what is your timeline?

Ms. KRANINGER. The policy statement leaves open the ability certainly to enter into a rulemaking action around this topic. I would say at this point, the Bureau really needs some more engagement on the topic to get to a rulemaking.

Mr. BARR. Let me share some feedback from the firms that would be regulated by this. They certainly appreciate the policy statement avoiding this dual pleading idea of abusive with unfair deceptive violations arising from all the same facts. They like that.

However, given the difficulties arising from the continued absence of the clear definition of “abusive,” would you consider separating abusive from unfair and deceptive and stipulate that practices only become abusive with higher penalties if the unfair and deceptive practices persist?

Ms. KRANINGER. I understand the interest in that, and that has been raised, but I would say that Congress gave us distinct authorities in these three areas, and so there is not necessarily a relationship between abusiveness and unfairness or deception that would lead to that kind of an elevated standard, necessarily.

Mr. BARR. I hear you, but I think the concern is that we still don’t know what abusive means.

Ms. KRANINGER. Yes.

Mr. BARR. Even with the unfair and deceptive, that standard is well-defined in the law, and Wells Fargo’s conduct was prohibited under that standard. Abusive, we still don’t know what that means. I would argue that what abusive should mean is if that conduct persists, even after they violated unfair and deceptive, that would remove the ambiguity, and that’s just a friendly suggestion. I yield back.

Chairwoman WATERS. The gentleman’s time has expired. The gentlewoman from California, Ms. Porter, is recognized for 5 minutes.

Ms. PORTER. Good morning, Director Kraninger. Thank you so much for being here. I wanted to ask you if you wouldn’t mind sharing with the committee what is a HECM loan, H-E-C-M?

Ms. KRANINGER. Yes. It is a reverse mortgage.

Ms. PORTER. And what are the basic qualifications for getting a reverse mortgage or a HECM loan, HECM particularly?

Ms. KRANINGER. In terms of what?

Ms. PORTER. Could I get one?

Ms. KRANINGER. I don’t know what your financial circumstances are, in terms of whether or not you could get one.

Ms. PORTER. I am 46 years old. Could I get a HECM loan?

Ms. KRANINGER. I can tell you reverse mortgages are commonly used when an individual would like to take the equity out of their home and use it, obviously, to deal with the expenses, particularly those who have paid off their homes and would like to age in place

in their homes. And that is certainly the intended recipient of a HECM loan or a reverse mortgage.

Ms. PORTER. For a HECM loan, you have to be 62 years old, so I am getting there. I am going to get there, but I am like a decade-plus short.

What happens to the title of your home when you take out a reverse mortgage?

Ms. KRANINGER. In terms of the lender being able to take the title?

Ms. PORTER. Let's back up. What happens to the title of your home when you take out a regular mortgage?

Ms. KRANINGER. It has a lien on it.

Ms. PORTER. Okay. So what happens to the title of your home when you take out a reverse mortgage?

Ms. KRANINGER. There is a lien on it.

Ms. PORTER. Is the title transferred?

Ms. KRANINGER. I will say certainly in the financial crisis, there were a lot of challenges around where titles resided, whether people had the proper documentation—

Ms. PORTER. Let me ask you about the—

Ms. KRANINGER. I am not entirely sure where you are going—

Ms. PORTER. Reclaiming my time, I want to understand—what I am driving at here is, the questions I have been asking you are drawn from the CFPB's one-sentence basic answers on their financial literacy page about reverse mortgages. So I am trying to assess your understanding of reverse mortgages, because you are in charge of educating the public about reverse mortgages. And it is a sort of particularly confusing product.

What are the triggers for having to repay a reverse mortgage?

Ms. KRANINGER. Congresswoman, again, I appreciate the test, but that is not why I am here. We are here to talk about the policies that affect consumers in the marketplace. Having that conversation would probably be more helpful.

Ms. PORTER. With all due respect, Director Kraninger, I get to decide what is helpful in my time, but I appreciate your suggestion.

Let's go back to my question. What are the three triggers for having to repay a reverse mortgage?

Ms. KRANINGER. I will stipulate to you, Congresswoman, that I don't have it in front of me, in terms of what the CFPB has on its website, how it defines the triggers, and what kind of questions and answers there are about reverse mortgages. Among the many thousands of pieces of information that we seek to educate consumers by, I would also offer that it is generally those who would be thinking about entering into a reverse mortgage and supporting those who are actually going to enter into a reverse mortgage.

Ms. PORTER. Reclaiming my time, you stipulated that you don't know when or what triggers require someone to have to pay a reverse mortgage.

Madam Chairwoman, I would like to—

Ms. KRANINGER. I know you are looking for an answer that is printed on a piece of paper that I don't have in front of me, so that is what I would stipulate.

Ms. PORTER. Madam Chairwoman, I would like to introduce into the record the one-page, one-sentence answers from the CFPB's website about reverse mortgages.

Chairwoman WATERS. Without objection, it is so ordered.

Ms. PORTER. Let's move on to medical debt. Is it permissible for a debt collector to use LinkedIn to reach out to a consumer who owes a medical debt?

Ms. KRANINGER. With respect to debt collection and communication with consumers, there is clearly a lot of uncertainty in that space, which is why we have sought to engage in rulemaking. The Fair Debt Collection Practices Act (FDCPA) absolutely has restrictions on the communications that would be really abusive. They cannot be ongoing communications that are in the—

Ms. PORTER. Reclaiming my time, let's talk about your proposal, because you wanted to talk about the policies. That was your suggestion, so let's talk about that. Would your proposal prohibit sending a direct message to someone on social media?

Ms. KRANINGER. The only way that a debt collector could contact a consumer is if the consumer has used that means of communication in the proposal. I would tell you again, the proposal is still under consideration.

Ms. PORTER. I want to ask a clarifying question, if I may. Use that medium to communicate with the debt collector, or if I have a LinkedIn account, am I consenting to receive debt collection notifications there?

Ms. KRANINGER. Merely having that account is not approval or leave for anyone to communicate to you that way.

Ms. PORTER. Interesting. Thank you. My time has expired.

Chairwoman WATERS. The gentlewoman's time has expired, and I would say to the witness that with both Ms. Porter and Mrs. Beatty, you may respond to them in writing, for the record.

The gentleman from Arkansas, Mr. Hill, is recognized for 5 minutes.

Mr. HILL. Thank you, Madam Chairwoman. Director Kraninger, thanks for being here today, and I appreciate your chance to be in Arkansas recently and do a roundtable with our community banks and also with consumer groups in the city. That was well-received, and I appreciate you taking the time to do that.

I want to talk a bit about the qualified mortgage issue. I am sure you have addressed that this morning. With interest rates falling to historically low levels over our careers, and recently, in the last 3 years, jobs increasing and real wages increasing, do you find it concerning that we actually are seeing a deterioration in Fannie Mae's and Freddie Mac's underwriting standards? In other words, they are having DTIs, a larger percentage of the loans, well over 43 percent DTI, and they are making loans at lower credit scores, and, therefore, they are taking on more risk. And isn't that sort of counterintuitive to an environment where we have rising wages, more jobs, and the lowest interest rates in a long time?

Ms. KRANINGER. I can tell you, Congressman, we clearly pay close attention to what we think is happening in the mortgage markets. I defer to FHFA on the credit box and the policies they want to set with the GSEs around what type of underwriting they do. But I can tell you this is very much the heart of the question as

we talk about what the patch has done in the marketplace and what replacement of that going forward looks like.

It is evident that the qualified mortgage, in addition to the patch, is the vast majority of the marketplace, and so figuring out how we maintain affordable access to mortgages and, at the same time, the very clear parameters of ability to repay that were originally conceived of in the qualified mortgage, and allow for some nonqualified mortgages and that market to really expand is very much the challenge that we are looking at in this rule.

Mr. HILL. That is true, but I think this Congress was very clear back during the debates after the crash that one of the principal contributors to the crash was the competition and the laxity in underwriting, including by our Government-Sponsored Enterprises (GSEs) sadly, leading to spiraling downward pressure for people to have more and more lax underwriting standards. Do you take this debate to mean that people want laxer underwriting standards?

Ms. KRANINGER. Oh, definitely not, sir, and thank you for going there too, so I could specifically say that the requirements of the statute around ability to repay, verification of income, consideration of debt-to-income ratio, remain. Regardless of what else we take into consideration in the rulemaking process, those things continue.

Mr. HILL. I was looking at all the random—well, I shouldn't say random—all of the comments that you got in your Advance Notice of Proposed Rulemaking, and a lot of people suggest that a single factor like DTI is not satisfactory. But of course, banks that make loans on a regular basis, the ones that have an outstanding track record all have best practices for that underwriting.

And what would you say when you read that somebody says relying on a single factor is a bad idea, using a hard DTI cutoff is unwise? These are some of the comments you got. How complicated do we want to make it for our originators in terms of determining credit, ability to repay?

Ms. KRANINGER. Having a bright line test is clearly what people are looking for. But it is clear that with respect to at least the 43 percent line as to what is a qualified mortgage on debt-to-income ratio, and the requirements in Appendix Q as to how you can determine that, what type of income you can take into account, how the debt is calculated. The challenges for self-employed individuals to meet the requirements that are in Appendix Q, we have a lot of comments that came in regarding that. So, that is largely the question.

And so we looked at, where is the line? If it is not 43 percent, if we are actually keeping out what are good-performing loans from being made as qualified mortgages, what is the right answer here? Is there another lens through which we can look at that? That is why I noted in the letter that in our proposed rule, we will propose an alternative to, particularly 43 percent, and look at a pricing threshold.

Mr. HILL. Now what is your timing on responding with a proposal?

Ms. KRANINGER. I said that no later than May, we will put out our Notice of Proposed Rulemaking, and we expect and want rigorous comment on it.

Mr. HILL. Good. I thank the Director, and I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Pennsylvania, Ms. Dean, is recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chairwoman.

And thank you, Director, for being here again to report to us on the progress and questions that we have regarding the supervisory role and the mission that is the Consumer Financial Protection Bureau.

I want to go back to the issue of student loans and student loan oversight. Does your agency have a supervisory role over Federal student loans?

Ms. KRANINGER. We issued a larger participant rulemaking that provided—

Ms. DEAN. Yes or no?

Ms. KRANINGER. —the oversight of larger participants in that student loan servicing space for both Federal and private loans, yes.

Ms. DEAN. That was really a simple yes-or-no question.

Ms. KRANINGER. It is the larger—

Ms. DEAN. Do you have supervision over Federal student loans? Yes or no?

Ms. KRANINGER. We supervise the larger participants in that Federal student loan—

Ms. DEAN. That is a strange place to start. I want to follow up on my colleague's questioning, and talk about your ongoing failure to do your duty in conducting oversight of student loan servicers specifically.

On the heels of you coming here, you did, I think 3 days ago, enter into a Memorandum of Understanding (MOU) with the Department of Education for information sharing. I believe that is correct? On February the 3rd, you entered into that, because the Department of Education had torn these up previously.

I want to talk to you about the MOU that my colleague, Mr. Casten, referenced. That is the second MOU, the supervisory MOU that you have been promising us so that you could resume your oversight responsibilities. Where are you on entering in the second MOU?

Ms. KRANINGER. We are still discussing that. But what we are doing is working on a joint examination program. We are going to detail some examiners to the Department of Education so that we can work together on exactly how we are going to do this. They want to go in and oversee their contractors and all of the contract requirements.

Ms. DEAN. Can I stop you for just a moment?

Ms. KRANINGER. And we want to oversee Federal consumer financial law.

Ms. DEAN. Let us layer in that last May, you revealed that the Department of Education was entirely blocking your supervisory role over the servicers, Federal student loan servicers, because they were not giving you the information based on a decree by the Department of Education. Isn't that correct? Information was being blocked based on what the Department of Education had told servicers. Correct?

Ms. KRANINGER. Yes.

Ms. DEAN. You told us—

Ms. KRANINGER. The language is in the letter, and that is precisely why we are having the conversations with Education about the best and most productive way to go forward together.

Ms. DEAN. Did you find that categorical blocking of information and blocking of your oversight responsibilities troubling?

Ms. KRANINGER. I did, and I put that in the letter to Congress. But I would also note that we have continued—

Ms. DEAN. Did you put that in the letter to the Secretary of Education and ask her to undo what she had done in terms of blocking your oversight responsibilities?

Ms. KRANINGER. I have spoken with her, and we are working together to get to, frankly, an even more productive place around how we do this. They have a responsibility to oversee their contractors, and we need to do that in concert with them so that we are doing our requirements—

Ms. DEAN. I will reclaim my time, because a conversation with someone who said that you are not going to be able to do your oversight doesn't seem like the effective way to change that outcome.

What have you directed your Student Loan Ombudsman, Mr. Cameron, to do regarding the second MOU? Is he in direct negotiations as well?

Ms. KRANINGER. He is certainly aware of, but he is not responsible for, those negotiations.

Ms. DEAN. Who is responsible for those negotiations?

Ms. KRANINGER. Bryan Schneider, who is the head of Supervision, Enforcement, and Fair Lending.

Ms. DEAN. And why would you not have the Ombudsman be a part of it?

Ms. KRANINGER. The Ombudsman responsibility under the statute and, frankly, this has been the case since the beginning of the agency—it was also the responsibility of the prior Ombudsman—is particularly around complaints and around larger programmatic issues—

Ms. DEAN. But if you are blocked from doing a supervisory role, how can the Ombudsman actually do that job?

Ms. KRANINGER. His MOU is concluded, and he is and has been doing his job, including reporting to Congress on the issues he sees in the market.

Ms. DEAN. Speaking of the Student Loan Ombudsman, a position that was left open for 300 days until it was finally filled last year, where does the staffing stand for the Student Loan Ombudsman?

Ms. KRANINGER. He is in place, and he has a plan.

Ms. DEAN. How many people are—

Ms. KRANINGER. We are going to—

Ms. DEAN. What does his support staff look like?

Ms. KRANINGER. He has partial support staff right now, and he is about to get a full-time person soon.

Ms. DEAN. He does not have a single staffer?

Ms. KRANINGER. But he is not the only person working on student loan issues at the agency.

Ms. DEAN. We have a \$1.6 trillion student loan problem in this country. It took 300 days to appoint a Student Loan Ombudsman. You appointed somebody who came from the servicers industry.

You now have a Department of Education who has blocked your oversight ability. You have been weak in being able to change that, and he is not staffed yet. I find that strikingly against the mission of your department.

I yield back. Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you.

The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairwoman Waters, and thank you, Ranking Member McHenry, for arranging the hearing today.

And Director Kraninger, thank you for being here. It is good to see you again.

I want to start off by saying that I joined my House Republican colleagues on the amicus brief urging the Supreme Court to decide that the CFPB's structure is unconstitutional, to give Congress the opportunity to fix it and make the CFPB more accountable to Congress.

Notwithstanding these shared concerns, I do want to thank you for your work as CFPB Director to streamline overly broad regulations, to build more cooperative relationships with businesses and consumers, and to work with Members of Congress to help us protect our constituents.

Director Kraninger, I would like to ask you about something the chairwoman referenced at the start of this hearing. It seems to me that a healthy environment and an effective CFPB is one that creates an environment in which the consumer isn't harmed to begin with, and businesses comply with the law in the first place. Is the amount of money collected through restitution, in your opinion, indicative of the efficacy of the CFPB?

Ms. KRANINGER. No, it absolutely is not, and it is certainly not the only, to the extent that it is one.

Mr. ROSE. If the CFPB under the prior Director collected more money than the CFPB today, does that necessarily mean that the CFPB is doing less to protect consumers or failing to fulfill its mandate?

Ms. KRANINGER. No, I certainly posit that it is not an indication of that necessarily.

Mr. ROSE. Thank you. I am struck that if we were to measure other arms of the Government, say the Justice Department, by perhaps measuring their success or their efficacy by the length of sentences handed out to those who are convicted, that might be an analogy, and I would submit that is probably not what we should be looking at as a measure of the success of our Federal agencies and law enforcement agencies and regulators.

I also want to call attention to some of the lines of questioning that I have heard today, as I believe they might illustrate a concern, an ongoing concern, and maybe the concern I have just been expressing, kind of the pop quiz nature of some of the questions that get directed to you. And I realize you make the big bucks, so that is why you get to answer these questions. But I think that they kind of underscore the concern that I and I think other col-

leagues of mine have about regulatory approaches taken by the Federal Government, not just the CFPB, but other regulators.

And that is that I don't think it is ever useful when the regulated feel like it is a "gotcha" moment when the regulator comes to town to visit them. And so, I would encourage you in that spirit, and with that experience fresh on your mind, to encourage your staff to think of the job that they have as one of helping businesses serve customers in compliance with the regulatory framework that has been put in place, helping them succeed and, thereby, helping customers have better experiences with the service providers that they seek out. So I hope you will take that to heart, and I appreciate that.

I want to turn now for just a moment—in your testimony, you mentioned that the CFPB has asked that Congress give the CFPB authority to supervise financial institutions for Military Lending Act (MLA) compliance. But one thing I am always concerned about is when our regulators get a little too ambitious, and then we are faced with mission creep.

Under current law, who is charged with enforcing the MLA?

Ms. KRANINGER. We do have the authority to take enforcement action under the MLA, but what we don't have is that supervisory authority. And I will say the prudential regulators also have the authority with respect to the institutions under their purview.

Mr. ROSE. If the CFPB is given this explicit authority, how would you assure Congress that the CFPB, under your tenure, or otherwise, wouldn't then try to take that authority and broaden its influence over DOD policies that may have a financial services nexus?

Ms. KRANINGER. This is an important distinction certainly, Congressman. It aligns to the conversation we just had about prevention of harm. That is what this is aimed at.

Our supervisory tool is really the best way to work with institutions to ensure they understand the requirements of law and that they are in compliance with them without the "gotcha" moment, without the public fanfare or flogging. And so that is really what we are seeking is that ability to have examiners go in, particularly to nonbanks and just have that level playing field in amongst the entities that are providing loans and would need to comply with the MLA.

Mr. ROSE. Thank you. And with that, I yield back.

Chairwoman WATERS. The gentleman from Guam, Mr. San Nicolas, who is also the Vice Chair of the committee, is recognized for 5 minutes.

Mr. SAN NICOLAS. Thank you, Madam Chairwoman.

And I thank the committee for their patience. I have a delegation from Guam of nearly 50 students who are here from the other side of the world, and I just finished kind of running them around the Capitol really quickly and showing them some special sights. So I just wanted to, for the record, mention them and welcome them to our Nation's Capital.

Director Kraninger, welcome. It is nice to see you again.

When you were last here, I brought up something that I thought was pretty concerning, and that was the employee surveys with respect to their workplace, how they felt, whether or not they felt

supported. And in our conversation, I brought up how their prior surveys reflected higher figures, and their most recent survey showed a steep drop-off on some of those figures.

Have you revisited those areas, and do you have any update for us on those issues?

Ms. KRANINGER. Yes, Congressman. I think I told you that we established a workforce effectiveness committee, and really, they are working through a lot of the issues that we believe are really root causes of that. I would say that the annual employee survey is important. It is a point in time. We have actually since had another AES conducted and released.

And in fact, we have seen improvement. I am not fully satisfied with the results of the latest AES either, and I can assure you we won't rest on our laurels over this, but taking really all of that to heart, including all of the engagement with our employees. Replacing, frankly, a lot of staff. I think the end of the hiring freeze and the institution of my staffing planning is a big part of improvement.

And the survey was taken right when I made that decision in August. So I hope that we will continue to see improvement, and frankly, in my engagement with employees, we regularly continue to see that.

Mr. SAN NICOLAS. I think it is very important for us to really pay close attention to those numbers and how they track towards improvement because with all of the back-and-forth that we can have in politically charged environments, one of the areas that we can definitely find solace in is when we have employees in the rank-and-file who are very, very confident that they are effective and they are able to do their jobs as mandated.

And so, with respect to those areas that still need improvement, and with respect to your evaluation of what was impacting those responses, can you share with us what some of those general areas of concern were and what some of the remedies are that you are implementing to correct them?

Ms. KRANINGER. One of them certainly was leadership engagement with employees. And I can tell you again the way that I have served in Government and what I brought to the CFPB was very much of an approachable, accessible leader who is actually going to engage with staff and not beg away from any questions.

I have made a point of going to staff meetings and taking questions and having all hands meetings, of walking around the building and really making sure that all of our senior leaders are doing that. You can get busy the higher up in an organization you get, and so the ability to really make sure that you are accessible to everyone.

We also are doing a number of things to get more real-time employee feedback on problems and issues. We have made some real changes in just some of the main points around some of the issues like travel and some of the paperwork and bureaucratic requirements there.

But I will say the staffing planning changes are a really big difference, seeing new hires come in, seeing that support, that is something that is already making a big difference.

Mr. SAN NICOLAS. Okay. One of the lessons that I learned from some very, very talented managers is that when you bring management in, you have to give them roughly half a year to a year to really learn the organization and begin implementing changes to help make things better. And you are basically coming along on that same track.

But going forward, after all the implementation, all the analysis, I would argue that this next round of employee results with respect to how they come in on that survey is going to be a direct reflection on whether or not the improvements that you are speaking of are actually taking hold. And so I look forward to seeing those numbers and being able to get a firm snapshot of the effectiveness of your leadership with respect to how the employees perceive that.

Thank you so much for being here, Director.

I yield back the balance of my time, Madam Chairwoman.

Chairwoman WATERS. Thank you.

The gentleman from Georgia, Mr. Loudermilk, is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Madam Chairwoman.

Director Kraninger, thank you for being here.

I appreciate your leadership in the organization. I think you are doing a good job, and your engagement with Members of Congress is refreshing. I know we have sent many letters and engaged with your office on different issues, and you have been very responsive and open. And I appreciate that.

I do have three areas, and if we could hit all three of those, it would be great. The first is going to be remittance transfers. The second is going to be TRID exemptions for nonprofits and charities. And the last will be the rule on debt collection.

So thank you for what you have been doing on the remittance rule. I appreciate you taking action and making rule proposals. It is much better than the status quo. I do have some concerns, though, about the proposed caps and banks being able to estimate the exchange rates and third parties fees.

It could still cause some market disruption, which is inevitably going to affect consumers. Whenever there is a change in regulation, as most businesses try to operate within the laws and regulations, and if there is a change, it is usually the consumer who is affected.

I am not sure that the number of transfers a bank makes in a year is exactly relevant to being able to estimate properly, especially when it comes to the smaller banks, which many of those in rural communities could have an inordinate number of transfers, depending on the makeup of that community. But really, my question is, would you consider allowing banks to estimate the exchange rate and fees if they are unable to establish a necessary relationship if it is for reasons beyond their control?

Ms. KRANINGER. Congressman, we are up against the requirement in the statute on this, as you well know. That is why we are seeking to mitigate it, particularly for smaller entities that are looking to maintain their customer relationship with their customers for this service. There is the ability with certain countries, obviously, to get the country list updated, and that is the mecha-

nism by which we want to hopefully address this, or at least help and assist.

But the comment period is open for the rulemaking, or maybe it just closed, I think. Regardless, we will take in the comments on this and look to final action to try to at least mitigate some of the impacts you are concerned about.

Mr. LOUDERMILK. If you could, a big concern is especially in smaller banks in areas that may have a large number of transfers, but yet the countries they deal with there could be changing quite often.

The other is the compliance deadline of July 21st. It is short for some banks to actually get in compliance. I didn't know if you were considering maybe extending the period or extending the compliance deadline or providing a transition period for some of those banks?

Ms. KRANINGER. We are working rigorously to get that final rule out in time to support a transition, and that deadline is statutory, too, so that is something that we have to maintain.

Mr. LOUDERMILK. Okay. I appreciate that.

Quickly, on the other two issues, legislation that we passed out of this House a couple of times that is in the Senate is called the BUILD Act, which would allow nonprofits such as Habitat for Humanity—give them an exemption from complying with the new TRID rules, but be able to go back and utilize the pre-TRID disclosures because they are providing a zero-interest mortgage. And there is no reason they need to do disclosures for variable rates and things that they are not involved in. But we haven't been able to get it out of the Senate yet.

Would you consider providing administrative relief to those types of charities under TRID?

Ms. KRANINGER. We are doing the assessment of TRID now. I had certainly heard this issue from you and others, sir. They have not come entirely with us with the same articulation of the challenge, and so we want to work through the assessment process to see, what is here and get some real facts on the ground.

I encourage those who are affected by this, or if your office has some additional data around this, we absolutely want to do what we can, consistent with the law, to address it.

Mr. LOUDERMILK. And we will provide that data as quickly as possible. And quickly, the last is the debt collection. I want to just make sure we clarify whether or not the debt collection applies to first-party debt collectors. I know a lot of our banks and credit unions are concerned about that. Would you be able to clarify?

Ms. KRANINGER. The rule that the CFPB proposed is just third-party debt collectors under the FDCPA.

Mr. LOUDERMILK. And they are just concerned that it may not be as clear. If you could clarify that, we appreciate it.

Again, thank you for your service and thank you for the work you do.

Chairwoman WATERS. Thank you.

The gentlewoman from Iowa, Mrs. Axne, is recognized for 5 minutes.

Mrs. AXNE. Thank you, Madam Chairwoman.

And thank you, Director Kraninger, for being here. I appreciate it.

I want to ask a couple more questions about the Memorandum of Understanding that you just signed with the Department of Education. Just so we are clear, that MOU just covered sharing information about complaints, and that is something that we were already doing, is that correct?

Ms. KRANINGER. There was ongoing activity, but that MOU was rescinded 2 years ago, and we wanted to, obviously, formalize the relationship and the responsibilities. So, that is what has been done.

Mrs. AXNE. Okay. When was the last time that the CFPB was able to properly supervise student loan servicers?

Ms. KRANINGER. We do supervise student loan servicers on an ongoing basis, particularly in the private education loans. The issue that I understand and know you are getting to is supervision of an examination of the larger participants in the Federal student loan space. And we are in ongoing conversations with the Department of Education over that. We continue to use our enforcement authorities in this area, but I very much want to work with them to make sure that we are getting the ability to examine because that is about preventing issues from happening.

The Department of Education is going to take some detailees from us. So we are designing a program together where they can go oversee contract terms, and we can go in and oversee Federal financial consumer law.

Mrs. AXNE. Okay. Given the fact that the CFPB has received numerous complaints about student loan debt, and that is the biggest area where you are seeing complaints, can we get an answer here? Because I know a lot of my colleagues have been asking this as well.

Let me be very direct. When will the CFPB resume supervising and examining the companies who are servicing more than \$1 trillion of Federal loans, a date?

Ms. KRANINGER. I can tell you soon. I had pledged to you that by the next time I testified, which is now a little earlier than it was originally intended to be, that I would have progress. And I am excited about the fact that we have the MOU signed on complaints. We have an agreement that we are working towards on detailees and we will move forward on this.

Mrs. AXNE. Reclaiming my time, I appreciate that. I spent a decade in State Government implementing policy in departments just like yours at the highest level. So, I get what needs to be done. I was usually able to articulate a timeframe by which we would be able to deliver that service.

Tell me a timeframe. Just give us a timeframe. Not, you have had these conversations. What are we talking about here?

Ms. KRANINGER. We are talking about very soon.

Mrs. AXNE. Meaning this quarter? By June? Literally, you say, "very soon." That is —

Ms. KRANINGER. I can tell you, absolutely this year.

Mrs. AXNE. So, we could be looking at continuing to not see this examination, this oversight until December, is what I am hearing?

Ms. KRANINGER. Again, there are other tools that we are using. We are using our enforcement tool, and we can use our education tool, and we are talking to the Department of Education to resolve this as quickly as possible.

Mrs. AXNE. Okay. Well, please get back to us. That is not a good enough answer. As I mentioned, the biggest complaints to the CFPB come from the student loan servicing part of it. Our kids and adults who have gone back to school to get retrained, to relearn, are experiencing severe amounts of debt, as we all know, which is limiting them from being able to purchase homes, and to get the opportunities in life that they need.

So the fact that this is the biggest issue that we are facing in your department, and nobody can give us any timeframe around when you are going to resume actually overseeing it, is really problematic. So, please, I expect to have an answer to this body in a timely manner, and I will be following up on that.

Do you agree that the CFPB has the authority to supervise student loan servicers?

Ms. KRANINGER. We issued a larger participant rule that does extend to Federal student loan servicers in, again, that category.

Mrs. AXNE. Okay. So we have established that the CFPB has authority to do it. Then why is it acceptable that the CFPB has gone more than 2 years without the ability to properly supervise student loan servicers?

Ms. KRANINGER. Again, we are using other tools at play here to undertake our responsibilities in this space, including, as you noted, complaints are an area where we absolutely are addressing particular students' issues and what they are submitting to us and to the Department of Education. And we have transparency between those things. We continue to raise the issues that are programmatic around the challenges in this space—

Mrs. AXNE. Reclaiming my time, I absolutely appreciate that complaints piece. But this seems a heck of a lot like how you have decided to supervise the Military Lending Act. The Executive Branch is simply deciding that contrary to congressional intent, they don't want to actually supervise large corporations and protect consumers, based on extremely weak and, frankly, incorrect legal justifications.

Ms. KRANINGER. If I could tell you, though, Congress did not give us the ability—

Mrs. AXNE. Reclaiming my time. To be clear, Director, it really looks like you are abandoning your responsibilities to protect consumers.

Thank you.

Chairwoman WATERS. The gentlewoman's time has expired. The witness is requested to provide an answer in writing for the record.

The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Madam Chairwoman.

Thank you also, Director, for being here.

I would like to read some sections of an article that The Wall Street Journal's editorial board published earlier this week. "Sometimes it feels as if Richard Cordray is commanding his former minions at the Consumer Financial Protection Bureau. Witness the Bu-

reau's lawsuit last week against Citizens Bank for transgressions it long ago disclosed and rectified. Five years later, that is after Citizens Bank self-reported and then fixed their truth-in-lending issues, the Bureau is now pouncing, even though the 1-year statute of limitations that governs its legal claims has expired.

"The lawsuit recalls Mr. Cordray's drive-bys against businesses during the Obama administration." I am a small business owner. I can tell you about that. "But President Trump's appointee, Kathy Kraninger, has promised to focus on preventing consumer harm and to encourage self-reporting by financial institutions."

So I guess I would say, what is that all about?

Ms. KRANINGER. Congressman, I appreciate your raising it. I know many people have read it. I can't comment on specific cases. The filings will speak for themselves. So, I encourage people to read them.

I can tell you that everything you just said is absolutely my focus, that we are focused on prevention of harm. We absolutely want entities to be seeking to join us in being compliant with the law. But no one should mistake fairness and reasonableness for weakness.

Mr. WILLIAMS. Okay, thank you.

During Director Cordray's tenure, I was very critical personally of the way he ran the CFPB. And when I see things like this still happening, it doesn't inspire confidence that meaningful reforms have been made to get this agency under control. So I want to give you a chance to respond to this, if you want, or maybe you already have. But also specifically, I wanted to know if you personally signed off on this action before the complaint was filed in Rhode Island?

Ms. KRANINGER. I sign off on every enforcement action decision when it goes public.

Mr. WILLIAMS. Okay, good to know. Last year, some of my colleagues and I wrote a letter to you in reference to a major threat to our economy in the securitization markets. The former CFPB Director and the Administration made a significant mistake when filing a proposed consent order against 15 securitization trusts known as the National Collegiate Student Loan Trust.

This action threatens the stability of securitization markets and impacts all Americans, from people seeking loans for anything from houses to cars. The consent order wrongly penalizes investors in the trust themselves, which adds significant uncertainty that could curtail the investment, reduce consumers' access to credit, and have broad ramifications throughout the economy.

So as I mentioned earlier, some of my colleagues and I have written to you on this matter, and I am concerned that it continues to be underaddressed. Does the CFPB have plans to review cases where the Bureau has improperly applied its mandate?

Ms. KRANINGER. Congressman, because you are asking a generalized question, I can respond. I cannot respond on a specific case here beyond the filings in court. But I can tell you that absolutely we are looking at every action and stand by every action that we have put into court, and we will continue to look. If facts change and as things change, we will keep you apprised and certainly keep the courts apprised.

Mr. WILLIAMS. Okay. I recently introduced the Preserving Small Business Lending Act, which would repeal the onerous small business data collection requirement that was mandated that your agency implement in Dodd-Frank. This new rule would increase the cost of credit by forcing compliance with more regulations and more red tape for financial institutions and small businesses alike.

From your public remarks on this issue, it seems like you are aware of these potential negative effects of implementing this rule incorrectly. So while my obvious preference is that my bill will ultimately be signed into law and this rule never goes into effect, how do you plan on mitigating the negative consequences for the parties subjected to the new rule?

Ms. KRANINGER. Congress, in the Dodd-Frank Act, clearly required us to move forward with this rulemaking, and obviously, we will continue to do that until told otherwise, if told otherwise, by Congress. And we are doing this as judiciously as we can. I can tell you there is a lawsuit, so we are in litigation over precisely this issue, what is the timeline for issuance?

The next step is the Small Business Regulatory Enforcement Fairness Act (SBREFA), that process by which small businesses that are impacted have the opportunity to comment on the proposal. We are developing the proposal to put into SBREFA. We have said that would happen by the fall, and so we are going to look to see what we can do to mitigate while carrying out what Congress told us to do.

Mr. WILLIAMS. Thank you. You have a tough job. We stand here to work with you, okay?

Thank you.

Chairwoman WATERS. The gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Madam Chairwoman.

And welcome to the committee, Director. During an October 17th Senate Banking Committee hearing, you stated you would rather have an adversarial relationship with the Department of Education. Since then, the Bureau and DOE released a memorandum. Can you go into further details on what that memorandum states?

Ms. KRANINGER. Yes, sir. The MOU is regarding information sharing of complaints from students. We outlined our responsibilities and their responsibilities, depending on the type of loan and, frankly, our commitment to work together to address even things that are programmatic in their space that touch on financial consumer protection law. And so, that is where we want to make sure that we eliminate any gaps there and that we are coordinating on how we help students in this space and the direction that we give to servicers.

Mr. LAWSON. Okay. I have a lot of students in my district, and that is the reason why I am very concerned about it. So, you have a plan to work with the Secretary of Education to ensure examiners are able to investigate problems within loan servicing companies?

Ms. KRANINGER. Yes. We are going to send detailees over to the Department of Education to work jointly on how we can carry this program out. They have contract terms that do relate to Federal consumer law, and so we need to figure out how we can go in to-

gether and jointly carry out our respective responsibilities. We are going to design a program to do that, which I think is really positive. So we are going to conclude an MOU related to that as quickly as possible.

Mr. LAWSON. Do you feel with this collaboration and memorandum that you will be able to get bad actors out of the student loan process?

Ms. KRANINGER. It will certainly help prevent harm to consumers. I can tell you with respect to bad actors, we continue to maintain our enforcement authority, and we will use it and have been using it.

Mr. LAWSON. Okay. With an increase of 7 percent of consumer complaints, why has the Consumer Bureau seen a decrease in the staff by 14 percent in the last 2 years?

Ms. KRANINGER. Congressman, there was a hiring freeze instituted as part of the transition, and I actually lifted that last summer. I have a staffing plan where I have empowered managers to tell me if they need additional resources to carry out the mission, and we are in the process, frankly, of building back up to those target staffing levels.

We have had new hiring classes every 2 weeks. We added 10 more people this past Monday, too. And it is a really targeted thing to say we want clarity over roles, responsibilities, resource needs, and I have empowered, as I said, the managers to make those decisions and to really manage that on an ongoing basis. Don't just fill the position because somebody is leaving at the same level. Let us really assess if this is what we need. Okay, we are going to go try to get that.

And so it is, frankly, the flexibilities Congress has given us with respect to how we can manage ourselves that gives us the ability to do that and be really pointed and targeted. And that is where we are. I think, frankly, we are back on a build-up to get to the right staffing levels.

Mr. LAWSON. From your assessment, do you feel like it is difficult to retain staff in a particular area?

Ms. KRANINGER. There hasn't been any one particular area where it is a challenge. I can say government-wide, we have challenges in cybersecurity. There are challenges again with lawyers with particular skill sets, and because they are valuable to, frankly, other entities besides the government. So we are looking at that and making sure we are recruiting in a smart way as well.

Economists can be very hard to attract, and so we are looking at what we can do to both build the pool and certainly retain them and help them have a career ladder and trajectory that is going to be positive for them.

Mr. LAWSON. Okay. And I will try to get that soon. I recognize the Consumer Bureau's commitment to staff diversity. However, based on the numbers, the female and minority workforces have remained the same. Why is this so?

Ms. KRANINGER. We actually have increased our minority levels and female levels. We are 50–50 in the whole agency and 50–50 at the leadership level. Our level of minority leadership as well is increased. I apologize, I don't remember precisely what it is. But we

are doing very well compared to other agencies, and we will continue to make that a huge priority.

Mr. LAWSON. Okay, thank you. With that, I yield back.

Chairwoman WATERS. The gentleman from Washington, Mr. Heck, is recognized for 5 minutes.

Mr. HECK. Thank you, Madam Chairwoman.

Director, I would like to resume our discussion/argument about whether or not you, indeed, have the authority to conduct supervisory exams with respect to clients with the Military Lending Act. You are wrong. I am right.

And the consequence of that is that considerations related to national security are compromised, and servicemembers are hurt. But maybe we can start with something on which we agree. Would you agree that a 20-year-old sailor whose job it is to program a Tomahawk missile in the Persian Gulf should not be stressing out about whether their car is getting repossessed?

Ms. KRANINGER. I would agree that I definitely do not—

Mr. HECK. Would you agree that servicemembers have historically, as amply documented in a Department of Defense study, been targeted by payday lenders with predatory practices?

Ms. KRANINGER. I would say they absolutely are a vulnerable population for precisely the scenario you mention.

Mr. HECK. You would not agree that they have been targeted?

Ms. KRANINGER. I think that is a strong term, but I think there are lots of vulnerable populations who are, in fact, targeted.

Mr. HECK. Then I would submit to you, that you should read the report of our own Department of Defense.

Ms. KRANINGER. Understood. I have seen the report, sir, that you are mentioning, and I understand what you are saying. I am just—there are dated times, there are different locations when vulnerable populations do get targeted. I concede that, absolutely.

Mr. HECK. And would you agree that part of the characteristics of vulnerability for servicemembers is that we are talking about relatively young people who are in paid jobs for the first time, who are relocated often, and who, in fact, have stresses related to deployment and the like?

Ms. KRANINGER. Yes.

Mr. HECK. So you maintain that you don't have the authority to conduct supervisory exams. Are you aware that the person who wrote the bill, United States Senator Jack Reed, said specifically that you do?

Ms. KRANINGER. Yes, Congressman, I have had that conversation with the Senator as well.

Mr. HECK. Okay. Were you aware that Colonel Paul Kantwill, who was the former Director of the Office of Servicemember Affairs for your agency, said that throughout the years under Director Cordray that these exams were conducted, he never received a single complaint about them?

Ms. KRANINGER. I will concede to you, sir, that I don't think that is necessarily the measure of whether or not—

Mr. HECK. Were you aware that he said that?

Ms. KRANINGER. Yes, I am aware that he said that.

Mr. HECK. In the midst of all the litigation associated with CFPB as to the constitutionality of your governance structure and the

like, can you cite a single instance during the 6-plus years of those exams being conducted that a lawsuit was ever filed against the CFPB because you did not have the authority to conduct them?

Ms. KRANINGER. Again, not the measure that I would as to whether this is an appropriate interpretation of it.

Mr. HECK. That is not the question.

Ms. KRANINGER. But, no, it has not actually occurred.

Mr. HECK. So the prime sponsor says it was what we intended, clearly. The person in your office associated with it has said nobody ever complained. And in fact, no lawsuit has been filed. Would you not also acknowledge that under UDAAP, you have broad but unambiguous authority?

Ms. KRANINGER. There is broad authority under UDAAP certainly, but the question of which markets—Congressman, this is a question of markets and laws.

Mr. HECK. And here is the language under Dodd-Frank, which you say does not give you the authority. Dodd-Frank confirms that the Bureau can administer periodic exams—I am quoting the law, Director—“assessing compliance with the requirements of Federal consumer law; (b), obtaining information about the activities and compliance systems or procedures of such person—referring to an entity—and (c), detecting and assessing risk to consumers and to markets for consumer financial products and services.”

That is the law. You have the authority, and you should start doing it.

You also claim to like data. I like data, too. In my State alone, 737 complaints from servicemembers were sent to your office. It used to be that your office, under the Office of Servicemember Affairs, published an annual report that indicated the number of complaints that had been submitted. The last one was 13 months ago.

Do you plan to reissue another Office of Servicemember Affairs' report documenting and setting forth the number of complaints that servicemembers have submitted?

Ms. KRANINGER. We are continuing to issue that—

Mr. HECK. Do you plan to issue the report, as had been done throughout the history of the agency?

Can she answer, Madam Chairwoman?

Chairwoman WATERS. The Chair will grant the witness time to answer this question.

Ms. KRANINGER. The Office of Servicemembers Affairs annual report will be issued actually imminently, consistent with its deadline.

Mr. HECK. Thank you.

Chairwoman WATERS. The gentleman from Ohio, Mr. Davidson, is recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Director. It's great to see you here on the Hill again. I appreciate the work you and your team do to protect America's consumers. And frankly, to clarify the law as it exists.

Frankly, one of the concerns that we have had in the structure that has been shared across the aisles is everything depends on who the Director is. And we really do need to change that structure, as has been highlighted by a number of members. But frank-

ly, the concern I had is the previous Director reflected poorly on our State of Ohio by his practices, whether it was hiring practices or sue-and-settle schemes or, frankly, ways to make companies settle even in spite of the law.

So providing clarity not just for the consumers, but for the businesses that are trying in their best efforts to serve consumers. So thank you for that. I truly believe that a lot of it does go back to consumer education in terms of financial education. And you can really see the difference that it makes.

Certainly, compounding interest has changed the world. It changes the world for all sorts of people, whether that is working for good to accumulate wealth over time or working for bad to see people get on the wrong side of that debt. So, I appreciate your efforts there.

I want to highlight a couple of things. You sit in a role that was created in a way to kind of sit over top of, broadly, things that are already bad practices in every single State. So it is not like most of the things that I am hearing people criticize you for here today aren't against the law in every State in the United States of America, and attorneys general are prosecuting people for the criminal activity there.

And so, systemically, as you look across the entire financial sector of the United States from the Federal level, I am just curious, what position are you in to assess a couple of things. So when you look at things that can pass as a member of the minority, maybe we could study something, something that is bipartisan.

When you look at faster payments and you look at fintech and all the innovation that is out there and now the Fed's newfound interest in the Fed itself taking a role in faster payments, do you have a way to assess the transaction cost that consumers are paying just as a means of payment? Whether that is credit card fees or processing fees, money transmittal fees, but all the ways that people would move money between one another, how many fees are they paying?

Ms. KRANINGER. I can tell you, Congressman, that I can't, of course, answer that quite direct question at this particular moment. But the Atlanta Fed does do extensive research and surveys on payments, and they kind of have the center of gravity on some of this research.

So we have been working with them on making sure that we are looking at what is happening in this marketplace and understanding, again, the dynamics. If I go too much further, I may misspeak. But we can get back to you with some of the summaries of the research and what we have seen.

Mr. DAVIDSON. Perfect. And one of the other areas that I think is a shared sense of concern in Congress and across the United States is consumers' data. We have really failed in Congress, in my opinion, to do our duty and provide a data privacy regulation, a standard that is really foundational really to our—it is supposed to be there in a sense, the right to privacy in the Fourth Amendment.

But as times have changed, we haven't really updated it for the electronic era, for sure. And we have seen companies that have collected and monetized lots of personally identifiable information. And unfortunately, sometimes compromise that data.

So as you look at how we know companies have monetized the data, when that data is compromised, what are the impacts on consumers? Would you be in a position to assess that?

Ms. KRANINGER. We have, with respect to a couple of different enforcement actions, but I can say there are some lines amongst the Federal agencies over authorities in this space. For example, Congress explicitly took the Gramm-Leach-Bliley Act (GLBA) safeguards out of the Bureau's purview. The Federal Trade Commission has that responsibility, in addition with the prudential regulators.

But I will say, holistically, certainly we are looking at what is happening in this space, and we are certainly doing our part.

Mr. DAVIDSON. Perhaps from the consumers' perspective.

Ms. KRANINGER. Yes.

Mr. DAVIDSON. So, thank you for that.

And then I think the last thing is just on the interest of the QM rule and the upcoming piece, you are not yet into the rulemaking, but you are talking about going towards it. Certainly, that says that you have concerns about the rule as it exists today. And I guess, what kinds of things are you and the staff there trying to balance as you look at a review of this, the interests, things that are broken and things that you want to safeguard and clarify?

Ms. KRANINGER. That is definitely a longer question probably than I can answer in a short period of time. I would say very clearly carrying out the law, there is a requirement to have an ability to repay and how that is determined.

Mr. DAVIDSON. Thank you.

Chairwoman WATERS. The gentlewoman from Michigan, Ms. Tlaib, is recognized for 5 minutes.

Ms. TLAIB. Hi, Director. Thank you so much for being here.

As you know, and I have talked to you about this in the last hearing, I represent a beautifully diverse community, and lending practices are a really critical issue for my district. In 2016, I don't know if you saw the study that found Black applicants in Wayne County, Michigan, communities were almost twice as likely to be denied conventional home purchase loans, compared to white applicants.

The same study conducted by the Center for Investigative Reporting found that Detroit ranked 44th out of 48 communities nationally where Black people were denied loans at a higher rate than their white counterparts.

So I do believe there is something happening there. We used to have 70 percent home ownership in the City. Now, it is down to 50 percent, and we continue to see that decline.

So fair lending is important, do you agree?

Ms. KRANINGER. I do.

Ms. TLAIB. How long have you been in your position?

Ms. KRANINGER. Fourteen months.

Ms. TLAIB. Fourteen months. I was asking about how the investigative process goes, and I think it looks like you all opened about 32 fair lending cases or supervisory exams in 2016, and then the number fell to 24 in 2019. Is that correct? Just 24 cases that were open?

Ms. KRANINGER. I will stipulate that you are probably looking at a report that is not in front of me, so I will just concede yes right now.

Ms. TLAIB. Same here. This is something that is in front of me. That is why I wanted to confirm.

Director, after reviewing the fair lending enforcement actions taken by the agency thus far listed on the website, it appears that there have been no cases where CFPB under your leadership has found any company violating the Equal Credit Opportunity Act (ECOA). Is that correct?

Ms. KRANINGER. There have not been any public enforcement actions on ECOA. That is correct. There was one on HMDA that is very much a fair lending case.

Ms. TLAIB. What is HMDA?

Ms. KRANINGER. The Home Mortgage Disclosure Act. So, again, a fair lending law.

Ms. TLAIB. So out of all of those, what happens to those? Are these complaints? Do they go through an intake process and then you all review them? How long does that take, and then you decide you are not going to pursue any enforcement?

Ms. KRANINGER. Actually, the decision to open an enforcement case is done at the lowest level.

Ms. TLAIB. That is what I thought, yes.

Ms. KRANINGER. We are looking at research. We are looking at whistleblower feedback. We are looking at—

Ms. TLAIB. So, Director, you don't even open up a case until there is really a cause right at the beginning, right? That is when it is not like somebody can call, and it is automatic. There has to be some wrongdoing that makes you all take a stronger look or a closer look at it?

Ms. KRANINGER. Certainly the allegations, yes.

Ms. TLAIB. Yes. So according to CFPB's annual fair lending report issued last June, and I know you have been asked about this, but this is really important because that is why you exist, right, and accountability. The five regulatory agencies that make up the Federal Financial Institutions Examination Council, including the CFPB, made about 20 referrals in 2016 to the Department of Justice around enforcement, accountability, making sure we were protecting our families.

And these were potential violations to the Equal Credit Opportunity Act. However, there was only one in 2018 to DOJ and none in 2019.

Ms. KRANINGER. I believe that is the case, although there might have been one. The bottom line here, and again, to get to the key here, I am looking at this very closely. Not just because Congress has asked me about it, but because I care about it and because it is important.

I am looking at understanding better how we are getting information on which we can base the cases. And one thing that we are exploring actually is around whistleblowers. The cases that are most successful in this area do tend to come from that source in general.

Ms. TLAIB. Absolutely. I heard from—

Ms. KRANINGER. And so, yes, understanding how we incentivize that kind of reporting and that kind of insight about what is happening inside—

Ms. TLAIB. Yes. And how do you protect them, too, and the CFPB has a responsibility—

Ms. KRANINGER. I am looking very carefully at that.

Ms. TLAIB. Yes. I believe someone from Wells Fargo did come before this committee and was taught to give a higher interest rate to someone who had an accent, who was Spanish-speaking.

And what is interesting—and I want you to know this, Director—he number of lawsuits against these banks haven’t—they are consistent to what I have been hearing from residents about being denied access to mortgage loans. But the Government is not doing its part because not all of my residents can afford to bring a lawsuit. They rely on CFPB to do its job and responsibility to push back against discriminatory practices or practices that are, in essence, in violation of the Equal Credit Opportunity Act.

So I am asking, you want to take a closer look, but I think the chairwoman and others were having to continue hearings because we don’t feel like it is doing what it is supposed to be doing and holding them accountable. People deserve a home, and they deserve access. If they are working hard, they shouldn’t be denied.

Thank you so much.

Chairwoman WATERS. The gentleman from North Carolina, Mr. Budd, is recognized for 5 minutes.

Mr. BUDD. Thank you, Madam Chairwoman.

And Director Kraninger, thanks for being here. I appreciate your work.

The Bureau has made announcements around the appropriate use of compliance aids and how the Bureau intends to make clear to entities how they could comply with the rules. One area where the Bureau’s stance is still far from clear is the RESPA Section 8. In particular, the Bureau is confusing a 2015 bulletin, I believe that predates you, but the 2015 bulletin on marketing services agreements under RESPA. Are you aware of this? It appears that you might be. But are you aware of this, and do you intend to revisit that bulletin?

Ms. KRANINGER. Congressman, I am aware of that bulletin, and we are looking at what we can do on this issue because it is complicated. And I know that is not a fantastic answer here, but looking at what makes sense, and we have had a number of issues in the mortgage space that just rose to higher priority in terms of moving on them.

But this is very much on my mind in terms of something that we need to provide greater clarity on. One thing that we have done is, using our innovation policies, addressing some of the challenges at least around steering, we have issued a no-action letter to housing counseling agencies and to protect financial institutions that support them, associated with similar issues around RESPA, but we will continue to look at what we can do to provide better clarity here.

Mr. BUDD. So just to be clear, it is confusing enough, and you have enough feedback. It is worth recalling it, revising it, and re-issuing it?

Ms. KRANINGER. Certainly addressing it, but I will say recalling it becomes more complicated in terms of what to replace it with.

Mr. BUDD. Understood. Thank you.

Secondly, I want to touch on the CFPB Consumer Advisory Board. It is my understanding that the advisory board is a group of experts on consumer protection, consumer financial products or services, community development, fair lending, civil rights, underserved communities, communities that have been significantly impacted by higher price mortgage loans, a lot of the things we have mentioned.

But given the focus, I imagine there is a very diverse market intelligent and expertise on that advisory board. Is that true so far?

Ms. KRANINGER. Yes.

Mr. BUDD. Okay. So with respect to members of the board, a number of banks that are in my district that I have the privilege to represent, they are relatively large in size, but they still represent both rural and urban communities. They are constantly working to broaden their relationships with these these low- to moderate-income (LMI) communities they serve.

So my question to you, Director, is this: Why are more bankers who work at those larger institutions not represented, to my understanding, on this advisory board? And my thought is that it would be appropriate since they are key players in this LMI space.

Do you have any thoughts on that, and do you intend to add any more in the future?

Ms. KRANINGER. Yes. I can tell you our Consumer Advisory Board (CAB) has a rotating membership, with a 2-year term, but every year we have some new members. So we actually have an application period open now. We do look for diversity. We do have a mid-sized bank represented right now on the CAB.

I can tell you, though, there are many avenues by which we engage with different entities, and part of the calculus is, who do we not reach on a regular basis? Who do we not hear from on a regular basis? How do we engage that, that voice and that entity? And so those are the things that we think about and maintaining diversity and, of course, the statutory requirements for the types of representatives who need to be on the CAB.

So that gives you some sense of how we think about that, but we encourage applications for sure.

Mr. BUDD. Thank you. How many members are on that advisory board?

Ms. KRANINGER. I think the CAB is 14, off the top of my head.

Mr. BUDD. Give or take. And how many—you said there are some slots open now for application?

Ms. KRANINGER. Half.

Mr. BUDD. Half are open?

Ms. KRANINGER. Yes.

Mr. BUDD. Very good. And is the 14 a number at your discretion?

Ms. KRANINGER. It is, but it is what makes it manageable. In addition, we have a Community Banking Advisory Committee and the Credit Union Advisory Committee. And we try to bring them together so we have those different perspectives brought together, and so it gets to be, again, a larger group of people to think about.

Mr. BUDD. Thank you.

Director, I have about another half minute, plus I have been yielded a little bit of extra time. Do you have anything that you wish to clarify or go back and revisit?

Ms. KRANINGER. I do think that the fair lending question is an important one, and it is one that I am taking very seriously the ability to understand how we get information about what is happening in the marketplace. I do want to assure Congresswoman Tlaib that when we get complaints, we address them to at least the best of our ability, and understand that the financial institution gets an answer back to the consumer.

So we do have that mechanism, but we are also analyzing those complaints to say, what does that tell us about what is happening, and should we take further action?

Mr. BUDD. Very good. I yield back. I thank the Chair.

Chairwoman WATERS. The gentlewoman from North Carolina, Ms. Adams, is recognized for 5 minutes.

Ms. ADAMS. Thank you, Madam Chairwoman, and thank you, Director Kraninger, for being here.

In 2017, your predecessor, Mr. Mulvaney, decided that the CFPB would no longer write rules to govern the practices of the large private sector financial services companies that service student loans for 45 million Americans, even though the Bureau has the authority to do so.

I recently offered legislation, the Student Borrower Protection Act, to set these standards as part of the Truth-In-Lending Act and require CFPB to finally take action to halt abuses by these companies. The legislation is important, and borrowers deserve these protections.

But CFPB doesn't need to wait for Congress, and our work doesn't excuse your failure to use your existing authority to protect student loan borrowers. You have been at the Bureau now for more than a year. You have had the chance to hire a new top official to help direct the Bureau's approach on student loans. So can you explain why the Bureau is no longer planning to write rules on student loan servicing?

Ms. KRANINGER. We had a rule on the larger participants and supervising them in the student servicer space. We are working with the Department of Education on how best to do that together. So they are going to oversee their contract terms, and we will oversee Federal consumer financial law.

We are engaged in enforcement actions. I can assure you of that. So we are not absent, and we are also engaged in education of consumers to try to improve their understanding and ability to operate in this space as well.

I can tell you one more thing, because I don't want to take your time, Congresswoman. But we are sending detailees over to Education so we can design that supervisory program together, and I am excited about that development to really make this clear in this space.

Ms. ADAMS. I appreciate that response. I would certainly encourage you to use the authority that you have and would certainly offer to work with you on the legislation that I mentioned to get protection for these borrowers. It is really important to so many students across the country.

Last fall, I asked Director Calabria about concerning changes the GSEs made to their affordable lending programs, Fannie Mae's HomeReady and Freddie Mac's Home Possible. Previously, these programs had income limits of 100 percent of the area median income for the property's location, but now the income limits are 80 percent of AMI.

Many borrowers are precluded from using these programs to sensibly buy homes with conventional loan down payments and are ineligible for the LLPA waiver and reduced mortgage insurance premiums.

Are you concerned that a pricing-based QM definition and the changes to the GSEs' affordable programs could shift significant volume to the FHA and lock many borrowers out of the conventional market?

Ms. KRANINGER. I can tell you I am concerned about the current ability-to-repay qualified mortgage rulemaking and precisely the outcome you are talking about. The patch for the GSEs, of course, expires in January, and what that would lead to is a 43 percent debt-to-income ratio hardline requirement, which we know is going to be a challenge for that population.

At the same time, balancing that against what was clearly in the Dodd-Frank Act around ability to repay, verifying income, considering debt-to-income ratio, and kind of what the best way to go about this is, that is why I said I would propose a pricing threshold as an alternative. But we are going to take comments on that. That rule will be out in May, and I am very much interested in what comes back.

But there are a lot of issues to weigh here, Congresswoman, and I also encourage Congress to weigh in on this as well in terms of the policy objectives that we are trying to seek here and how best to weigh them.

I will move forward with rulemaking, but in the meantime, if Congress sought to act, that would be welcome.

Ms. ADAMS. Do you agree that it is arbitrary for borrowers to be directed into specific loan programs based simply off of regulatory arbitrage or different QM standards?

Ms. KRANINGER. I would say there is a lot to pull apart in the answer to that question, but I could tell you there are policy issues at play here that need to be weighed with affordable housing interests as well. And so, thinking about that is the important part of this.

Ms. ADAMS. Thank you very much. I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you.

The gentleman from Ohio, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman, and thank you, Director, for being here again.

I want to touch on the QM rule again. I know we have talked about it a lot. My perspective is whatever rule ultimately is adopted has enormous implications for the housing finance market, housing availability in particular, because so many things kind of fall off of the decision that you make on QM.

I guess I will start with just a basic question. When you think through the rule, have you done a lot of analysis on safety and soundness and kind of what the implications are of the shift that you are proposing with respect to the housing finance market and how stable it is? Is that an analysis that you all have done?

Ms. KRANINGER. I could tell you that is a little out of our purview on this. But at the same time, we are absolutely looking at what market impacts there would be from various options in this space, and we have taken in a lot of comments on what the market impacts would be.

We do talk to the prudential regulators, at least in terms of, to your point, safety and soundness issues that affect those institutions that they regulate. That is from that standpoint, it is part of the consideration.

Mr. GONZALEZ OF OHIO. Okay. So it's fair to say it is more done in consultation with the prudential regulators, but not an expertise that is in the CFPB?

Ms. KRANINGER. That is fair.

Mr. GONZALEZ OF OHIO. Yes. I think, frankly, that is a concern for me. Because you are going to ultimately make that decision with input, right? And I am sure it will be done thoughtfully. But again, those implications are pretty substantial. And so to not have that expertise in-house actively thinking through those implications, I think is something we, frankly, as a committee should be thinking about.

Next question, what analysis, if any, have you done with respect to what the proposed rule shift will mean for low- and moderate-income borrowers and the availability of credit?

Ms. KRANINGER. Yes. That is the heart of the matter, and I will say that there has been a lot of discussion around congressional intent, frankly, with respect to Title XIV and the Dodd-Frank Act and what ability to repay would mean or could mean with respect to that. And so that is also my concern around just allowing qualified mortgages to revert to 43 percent debt-to-income ratio to particularly around Appendix Q requirements today as to how you calculate that.

Mr. GONZALEZ OF OHIO. Got it.

Ms. KRANINGER. That is a lot of things to unpack in this space, but we are certainly looking at that. But the law is first and foremost, and remaining true to those requirements in Title XIV is where we are starting.

Mr. GONZALEZ OF OHIO. Thank you.

I want to shift to alternative data with respect to AI machine learning and, again, extending credit to folks who currently have a lot of difficulty accessing the credit markets. As you think through that issue, the alternative data machine learning issue, what expertise currently exists inside the CFPB on machine learning technology specifically?

Do you have experts on machine learning on staff? How are you going about analyzing these?

Ms. KRANINGER. I personally have spent a decent amount of time on this issue in my Federal career. I would posit that there aren't many experts in the U.S. Government on machine learning and how it works. But I would say that we do have a number of people

who at least understand it, and we are looking at, again, the implications or what other capabilities we should grow to even get a deeper understanding.

Mr. GONZALEZ OF OHIO. Okay. So would you judge the capacity at CFPB to be adequate in this regard? It is not a “gotcha” question. I am sincerely interested.

Ms. KRANINGER. No, I would say, it is always something we have to keep an eye on. I do have some folks in our T&I area, the TIO’s area that have a decent understanding of it.

Mr. GONZALEZ OF OHIO. Okay. Great. Because I think certainly as the economy evolves, I think it has become a bigger part of lending decisions. I think it is incumbent upon all of us to make sure that we have that expertise in Government, or at least have access to it.

Ms. KRANINGER. Yes.

Mr. GONZALEZ OF OHIO. It doesn’t necessarily have to be in-house, right? But it certainly needs to be considered.

And then with my final 30 seconds, I want to encourage you on all the things you are doing with respect to financial education. I think the best form of consumer protection is education and training and making sure that people can protect themselves and are self-sufficient in that regard. And I know you are doing a lot of work on it. I know others on this committee on both sides of the aisle are committed to it.

And I just encourage you and thank you for all that work. And with that, I will yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Massachusetts, Ms. Pressley, is recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Chairwoman Waters, for your continued commitment to oversight and diligent consumer protection.

Director Kraninger, just in the interest of time, if you could answer as many of these questions with a yes or a no, I would appreciate it. I am hoping just for a simple yes or no.

Do you think that choosing to attend a Historically Black College or University (HBCU), should mean paying more on a mortgage, a credit card, or any other type of loan?

Ms. KRANINGER. No, not in and of itself.

Ms. PRESSLEY. Okay. And so what I am getting at and the issue that I have here, and I am still not sure I really understand that question because you sort of—

Ms. KRANINGER. Well, you are telling me attendance

Ms. PRESSLEY. Well, you touched on it.

Ms. KRANINGER. Attendance at an HBCU. So, again, I don’t know.

Ms. PRESSLEY. Yes. Do you think that choosing to attend an HBCU should mean paying more on a mortgage, credit card, or any other type of loan? Yes or no?

Ms. KRANINGER. And I said, no, not in and of itself as one factor. It is not a factor in the process.

Ms. PRESSLEY. I have data that challenges that which you assert. The issue I have, Director, is that Upstart, a lending company that your agency effectively re-endorsed through a no-action letter in 2019, says on their own website that this is exactly what is hap-

pening to students who choose to attend a Historically Black College or University.

According to research out this week of the Student Borrower Protection Center, an HBCU graduate is identical in every way to a graduate of a non-minority-serving institution, and yet they wind up paying more for their loans. So, no amount of access to credit makes that okay.

I ask for unanimous consent to submit for the record the Student Borrower Protection Center's report entitled, "Educational Redlining."

Chairwoman WATERS. Without objection, it is so ordered.

Ms. PRESSLEY. Thank you, Madam Chairwoman.

The Center created several hypothetical applicant profiles to test various credit scoring algorithms. One case found that controlling for all factors, a 24-year-old applying to refinance a \$30,000 loan with Upstart would pay very different amounts depending on where they went to school.

Director, have you seen this report?

Ms. KRANINGER. I am aware of it. I have not yet read it. I can tell you that disparities in African-American lending is something that is of great interest to me. Congressman Clay departed, but he and Congressman Cleaver at the last hearing actually alerted me to one particular study that found that there is an inexplicable 11 percent disparity there. And that is something that I have already asked our Office of Research to dig into.

We will take this one into account, too, as we look at this.

Ms. PRESSLEY. I hope you will read this article specifically from the Student Borrower Protection Center on educational redlining. Until you have read it, I will just share with you, can you guess how much more this borrower in the hypothetical scenario that I offered a moment ago, would pay if she was a Howard graduate versus a graduate of NYU?

Ms. KRANINGER. I can't possibly—

Ms. PRESSLEY. Okay. She would pay nearly \$3,500 more over 5 years. The Howard grad would also be slammed with \$729 in origination fees that her NYU counterpart wouldn't. Do you agree that this is problematic?

Ms. KRANINGER. Again, as a factor in and of itself, if I could pull this as part of what we need to do—

Ms. PRESSLEY. Yes or no, on its face, based on what I'm sharing, do you agree that is problematic? It is really simple.

Ms. KRANINGER. I agree it is problematic. It is something that we need to understand.

Ms. PRESSLEY. So given these findings, are you willing to rescind your agency's no-action letter allowing Upstart to use educational criteria in their underwriting algorithm that they are also licensing out?

Ms. KRANINGER. I can tell you that they can explain with respect to what is happening there as to—

Ms. PRESSLEY. Director Kraninger, are you willing to rescind your agency's no-action letter?

Ms. KRANINGER. No. And I can tell you why, what we are trying to do.

Ms. PRESSLEY. Moving on, the report also found that Wells Fargo continues to disappoint when it comes to equitable treatment of customers. I want to note to proponents of community college and vocational schools on both sides of the aisle that the pattern of more favorable payment terms extends to graduates of 4-year universities as well.

Specifically, a community college borrower would pay over \$1,130 more on a \$10,000 loan than a student with the exact credit profile in a Bachelor degree's program. So, yes or no, do you agree borrowers should have protection against this type of discrimination?

Ms. KRANINGER. Congresswoman, I have already stipulated to you that we want to understand precisely what is happening in some of these studies—

Ms. PRESSLEY. Yes or no, do you agree?

Ms. KRANINGER. —and have pledged to—

Ms. PRESSLEY. On its face, this is very simple. Do you agree borrowers should have—

Ms. KRANINGER. None of it is very simple.

Ms. PRESSLEY. This is simple.

Ms. KRANINGER. These are complex—

Ms. PRESSLEY. Should borrowers have protections against discrimination?

Ms. KRANINGER. Yes.

Ms. PRESSLEY. They are being treated differently based upon—

Ms. KRANINGER. Consumers do have protections against discrimination.

Ms. PRESSLEY. —attending a community college or a 4-year college or a Historically Black College or University. The actions of your agency thus far don't suggest you actually do agree.

Thank you, Madam Chairwoman.

Chairwoman WATERS. The gentlewoman's time has expired. The witness is requested to provide an answer in writing for the record.

The gentleman from Illinois, Mr. Garcia, is recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Madam Chairwoman, and thank you, Director Kraninger, for being here again.

Over the past several weeks, we have focused a lot in this committee on the Community Reinvestment Act, the CRA. I am concerned that the recent proposal advanced by the FDIC and the OCC weakens the CRA objective of supporting investment in low- and moderate-income communities. FDIC Director Marty Gruenberg dissented from the proposal, as you know, warning that it would "fundamentally undermine" the CRA by relying on a single metric that does not take into account the quality and character of the bank's activities and its responsiveness to local needs.

As a member of the FDIC board, you voted to advance Comptroller Otting's proposal. Why did you vote for it, briefly?

Ms. KRANINGER. I could tell you, Congressman, that precisely the opposite is the intent. The intent is to drive greater transparency and clarity over those investments and to drive greater investments, including with hard metrics.

But it is a proposal, and so I voted to have a proposal published for comment, and we welcome those comments.

Mr. GARCIA OF ILLINOIS. Well, I am disappointed, I must tell you, because Chicago is the birthplace of the CRA, and I have worked on community reinvestment for years as an urban planner. As a matter of fact, I knew Gale Cincotta, who was a champion of the CRA.

We should not be moving forward with a proposed rule that allows banks to pass their CRA exams with a handful of flashy high-dollar investments. One way that we could strengthen rather than weaken the CRA is by informing examiners with a richer set of data about small business lending.

On that subject, I asked you a question last year about the CFPB's implementation of Section 1071 of Dodd-Frank, which requires financial institutions to compile and report information to the CFPB about credit applications made by women-owned, minority-owned, and small businesses. You told me then that you were committed to implementation of that section following a symposium series on that topic.

Can you please provide me with an update?

Ms. KRANINGER. Yes, Congressman. We had the symposium. We covered a lot of the very challenging issues in how to implement this effectively. And we are currently pulling together the proposal for small business impact, and that is the SBREFA process. We have said that we would issue something by the fall that will launch that SBREFA process, which is the next required step towards rulemaking.

Mr. GARCIA OF ILLINOIS. So, September?

Ms. KRANINGER. By fall, yes.

Mr. GARCIA OF ILLINOIS. Would you commit to developing a rulemaking on Section 1071 that adheres to the intent of the Dodd-Frank Act?

Ms. KRANINGER. Yes, Congressman.

Mr. GARCIA OF ILLINOIS. Okay. I appreciate that the Consumer Bureau released some data in January showing some general trends about small business data since the Great Recession. But that is not what the law mandated. When will Section 1071 be implemented, per the law? And I like the report, but that is not what the law requires.

So in September or so, we will see that?

Ms. KRANINGER. You will see the first proposal in the fall, yes.

Mr. GARCIA OF ILLINOIS. When you were before this committee last year, I also asked you about the problems of student debt, an enormous constraint that is affecting our entire economy. The student debt crisis affects young people all over this country. It disproportionately affects people in working class communities and of color, like the ones that I represent. We can't address issues like this if we don't have good, reliable data to inform us about the problem.

Last March, I asked you if you intended to reinstate the MOUs that Director Cordray established with the Department of Education, and you said you would. I was initially pleased to learn that a new MOU between the board and the Department of Education was recently announced. However, when I looked into the details, I was disappointed to find that the new agreement is limited.

So, what can we expect?

Ms. KRANINGER. The new agreement does address complaints, information sharing, and frankly is even more robust than the last one in terms of our ability to support programmatic changes and considerations by the Department of Education.

The second MOU, with respect to how we are going to supervise or oversee the larger participants in the Federal student loan space, that MOU is not yet concluded, but we have an agreement with Education. We are going to send some detailees over, and we are going to design a program to work on together.

Mr. GARCIA OF ILLINOIS. Will it approximate the Cordray MOU?

Ms. KRANINGER. I believe it is going to be better because we are going to go into these institutions together.

Mr. GARCIA OF ILLINOIS. Thank you so much.

Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Virginia, Ms. Wexton, is recognized for 5 minutes.

Ms. WEXTON. Thank you, Madam Chairwoman.

And thank you, Director Kraninger, for joining us again. It is great to see you, as always.

I do want to talk a little bit more about these MOUs with the Department of Education, and I want to go back to kind of just clarify the timeline of everything because between, I guess, January of 2014 and August of 2017, the CFPB and the Department of Education were working under these two Memoranda of Understanding. Is that correct?

Ms. KRANINGER. I don't know precisely when they were signed, but I stipulate you have a date in front of you. So, I will say yes.

Ms. WEXTON. It sounds about right?

Ms. KRANINGER. Yes.

Ms. WEXTON. Okay, good. And there were two of them. One of them was the sharing MOU, and the other was the supervisory and oversight MOU. Correct?

Ms. KRANINGER. Yes.

Ms. WEXTON. But then those were terminated on or about August 31, 2017. Correct?

Ms. KRANINGER. Yes.

Ms. WEXTON. Okay. Now that predates your time at the CFPB, right?

Ms. KRANINGER. Yes.

Ms. WEXTON. Okay. The Department of Education, in its letter, said that the CFPB is using the Department's data to expand its jurisdiction into areas that Congress never envisioned. Do you agree that they were doing that?

Ms. KRANINGER. I am not going to talk about what the Secretary thought or didn't think. I can tell you—

Ms. WEXTON. No, no. I'm sorry. I was asking if you agreed that the CFPB was expanding into areas that it shouldn't have?

Ms. KRANINGER. One thing that hasn't come out clearly is that the Dodd-Frank Act very specifically talks about the CFPB's role in private education loans. Now, the CFPB has the ability to expand supervision by rulemaking, so we expanded into larger participants in the Federal student loans.

Ms. WEXTON. But Dodd-Frank also requires the Bureau, in Title X, to implement and, where applicable, enforce Federal consumer law, does it not?

Ms. KRANINGER. Yes. But we are talking specifically about supervision and the ability to examine entities, which does have a lot of different requirements in the Act. We did issue a rulemaking, and we actually have the authority to examine larger participants in the Federal student loan space. And that is precisely the issue around which there is conversation.

Ms. WEXTON. And you have the authority to examine them. Do you have the authority to open supervisory events?

Ms. KRANINGER. That is the same thing. Yes.

Ms. WEXTON. Okay, just checking.

Ms. KRANINGER. Yes, sure.

Ms. WEXTON. So, okay, very good. Now in their 2017 letter terminating the agreement, the Department of Education made it pretty clear that they took exception to the CFPB unilaterally expanding its oversight role to include the Department's contracted Federal student loan servicers. The Department has full oversight responsibility for Federal student loans.

Do you agree that is still the case?

Ms. KRANINGER. They have their own authorities. We do have the authority and responsibility, which is precisely the one that we are finalizing an agreement around, to supervise the larger participants in the Federal student loan space. And I know that is the heart of the concern that is in that letter, but we are working through how we can do that together.

Ms. WEXTON. But from October 2017 to now, you have not had that kind of clarity, right?

Ms. KRANINGER. We continue to enforce in this space. We continue to engage in education. We continue to deal with complaints in this space. But, yes, there was a lack of clarity around the supervisory responsibilities that we have now since clarified, and we are jointly—

Ms. WEXTON. But if you have no Memorandum of Understanding that sets forth the supervisory obligations between the CFPB and the Department of Education, how could you enforce under that scheme?

Ms. KRANINGER. The MOU is specifically around examination, not around enforcement. We have ongoing litigation in this space. But what I very much want to get to is an agreement around supervision.

We are going to detail some folks—

Ms. WEXTON. I know, based on your previous answers, that there is no real timeline for that, and you are working on it and all that kind of stuff. And I know you will come before us again, and so maybe we will get some more information in the future.

But I want to talk about some of the answers that you gave about specific events in your previous testimony in writing after our event. How many fair lending supervisory events did the Consumer Bureau open in Fiscal Year 2019? And you answered 24 fair lending supervisory events out of 131 total events.

Question 14. How many supervisory events did the Consumer Bureau open in Fiscal Year 2019 against student loan servicers?

The answer was the information requested constitutes confidential supervisory information. What is confidential about that?

Ms. KRANINGER. I have been round and round with my staff about this. There is a desire for transparency. There is a desire to protect confidential information. The Bureau in the past—

I'm sorry, Madam Chairwoman. If I could finish, it would be incredibly helpful.

Chairwoman WATERS. Does the gentlewoman request an additional minute?

Ms. WEXTON. May she answer the question?

Chairwoman WATERS. Yes, please, answer. You may answer.

Ms. KRANINGER. The only supervisory event numbers that the Bureau has ever released in the past are the total number and the numbers for fair lending. We have not provided any numbers for any other type of exam, and that is something I am looking at.

Chairwoman WATERS. The gentlewoman's time has expired. The witness is requested to provide an answer in writing for the record.

Thank you.

I would like to thank Director Kraninger for her time today.

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 her 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 is adjourned.

[Whereupon, at 1:30 p.m., the hearing was adjourned.]

A P P E N D I X

February 6, 2020

Written Testimony
Kathleen L. Kraninger, Director, Consumer Financial Protection Bureau
Before the House Committee on Financial Services
February 6, 2020

Chairwoman Waters, Ranking Member McHenry, and distinguished Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's (Bureau's) most recent Semi-Annual Report to Congress.

Today, I am happy to present the Bureau's Fall 2019 Semi-Annual Report (April 1, 2019, to September 30, 2019) to Congress and the American people in fulfillment of our statutory responsibility and commitment to accountability and transparency. My testimony is intended to highlight the contents of this Semi-Annual Report (Report).

Since I last appeared before the Committee, I had the pleasure of marking my first year at the Bureau. It is an honor and privilege to serve and protect American consumers. In this last year, the Bureau greatly enhanced consumer protection by more effectively and comprehensively utilizing the agency's resources to meet our mission. I remain committed to strengthening the Bureau's ability to use all of the tools provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and I have established and communicated clear priorities to Bureau staff for our work using the authorities provided by the Dodd-Frank Act to protect consumers.

Through continued, robust engagement with all stakeholders, I remain resolved that the most productive use of Bureau resources is the prevention of harm to consumers in concert with our many partners. Empowering consumers to protect and further their own interests is where our efforts begin. The Bureau's mission, as you are aware, is to ensure access to fair, transparent, and competitive markets for consumers, and we are committed to executing the mission through:

- Empowering Consumers and Turning Financial Education into Action,
- Ensuring Clear Rules of the Road,
- Ensuring a Culture of Compliance, and
- Holding Bad Actors to Account and Deterrence through Enforcement.

Preventing harm to consumers, I believe, is the most effective, efficient way to carry out our mission of ensuring consumer access to a fair, transparent and competitive market. To me, prevention of harm comes through helping consumers gather financial know-how, fostering a culture of industry compliance where consumers know their rights and industry knows their responsibilities and limitations, and maintaining a back stop of enforcement.

Empowering Consumers and Turning Financial Education into Action

As I have said before, the Bureau cannot be everywhere, with everyone, at every transaction – nor should it try to be. Therefore, empowering consumers to help themselves, protect their own interests, and choose the financial products and services that best fit their needs is essential to preventing consumer harm and building financial well-being.

During the previous year, the Bureau has put thought into action and made strides in consumer education. The Bureau launched the *Start Small, Save Up* initiative to encourage consumers to build emergency savings and increase opportunities for more consumers to save; published two *Your Money, Your Goals* booklets on strategies to increase savings and ways to build and manage credit; launched the *CFPB Savings Boot Camp*, a multi-week email course that provides the foundation consumers need to start saving; distributed more than 6 million financial education publications and provided answers to common questions on money topics to more than 5.5 million web users of *AskCFPB* and other on-line educational tools; launched ready-to-use classroom activities for middle and high school teachers; distributed more than 2 million educational materials to help consumers and caregivers make informed financial decisions, and to better identify and prevent elder financial exploitation; provided over 200,000 financial education brochures to military consumers; educated more than 17,500 military consumers on financial products and services; expanded the financial education tool *Misadventures in Money Management* to active-duty servicemembers; and continued scholarship and research on how financial education can contribute to financial well-being.

The Bureau also published a number of reports, including an annual report on the Bureau's tax time savings initiative; four reports to share promising and prudent practices to help child savings programs increase opportunities for more low-income and low-wealth families to save for their children's post-secondary education; a state-by-state report on financial well-being using the data collected in a 2018 national survey by the FINRA Investor Education Foundation; elder financial exploitation reports, such as *Issues and Trends Based on Suspicious Activity Reports* (from financial institutions); an annual Private Education Loan Ombudsman report, covering two years of data including approximately 20,600 complaints related to private or federal student loans; and a report on mortgage issues specifically related to servicemembers and veterans. The Bureau also published nearly 80 consumer facing blogs to help consumers gain knowledge and better understand a wide spectrum of financial subjects, including mortgage closing scams, debt collection (including tips for resolution), a list of specialty credit reporting companies, and new protections for servicemembers.

In addition, the Bureau offered training to assist librarians at more than 2,700 libraries registered to receive information that can help make their libraries a "go-to" financial education resource in the community. The Bureau facilitated the training of more than 4,000 frontline staff in social services organizations working directly with lower-income consumers, providing information and action steps in money management that can be shared with the people they serve through the *Your Money, Your Goals* program. The Bureau also facilitated five convenings to establish and enhance Elder Fraud Prevention and Response Networks supporting nearly 1.6 million older Americans.

Looking forward, the Bureau continues to refresh content and create new educational materials for use by students and those who help them, including creating *Paying for College: Your financial path to graduation*, a new web tool to help students evaluate financial aid offers, which I will discuss in more detail later in my testimony.

In addition to our educational work, the Bureau also directly engages with consumers through our consumer complaint program. During the period October 1, 2018, through September 30, 2019, the Bureau received approximately 342,500 consumer complaints.¹ This is approximately a seven percent increase from the prior reporting period.² When consumers submit complaints, the Bureau's complaint form prompts them to select the consumer financial product or service with which they have a problem as well as the type of problem they are having with that product or service. The Bureau uses these consumer selections to group the financial products and services about which consumers complain to the Bureau for public reports. Credit or consumer reporting, debt collection, credit card, mortgage, and checking or savings accounts are the most-complained-about consumer financial products and services.

Complaints, along with other inputs, give us insight into people's experiences in the marketplace that we analyze and use to improve our mission execution. The analysis helps us regulate consumer financial products and services under existing Federal consumer financial laws, enforce those laws judiciously, and educate and empower consumers to make informed financial decisions. The Bureau also publishes complaint data and reports on complaint trends annually in Consumer Response's Annual Report to Congress.³

Ensuring Clear Rules of the Road

Another tool for preventing consumer harm is rulemaking and guidance – articulating clear rules of the road for those we regulate. Rules that promote competition, increase transparency, and preserve fair markets for financial products and services. The Fall 2019 Semi-Annual Report includes information on significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year. In addition, the Fall 2019 Semi-Annual Report includes a plan for rules, orders, and other initiatives we expect to undertake during the upcoming period. I would like to highlight just a few of our activities in this space.

¹ All data are current through September 30, 2019. This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. The Bureau does not verify all the facts alleged in complaints, but takes steps to confirm a commercial relationship between the consumer and the company. For more information on our complaint process refer to the Bureau's website at <https://www.consumerfinance.gov/complaint/process>.

² The prior reporting period, April 1, 2018, to March 31, 2019, reported 321,200 consumer complaints. See Consumer Fin. Prot. Bureau, Semi-Annual Report Spring 2019 (Oct. 2019), available at https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_spring-2019.pdf.

³ From October 1, 2018, to September 30, 2019, the Bureau published complaint snapshot reports about servicemembers and mortgages, and the Office of Servicemember Affairs' Annual Report. The Bureau also publishes the Consumer Response Annual Report, which provides a more detailed analysis of complaints. These reports can be viewed at <https://www.consumerfinance.gov/data-research/research-reports>.

Proposed and Final Rules: Payday, Vehicle Title, and Certain High-Cost Installment Loans. In February 2019, the Bureau released Notices of Proposed Rulemaking (NPRM) on the 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule (2017 Final Rule) to delay the compliance date and to rescind requirements that lenders make certain underwriting determinations before issuing payday, single-payment vehicle title, and longer-term balloon payment loans.⁴ In June 2019, the Bureau released a final rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date; Correcting Amendments,⁵ to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the regulation promulgated by the 2017 Final Rule. Compliance with these provisions of the 2017 Final Rule is delayed by 15 months, to November 19, 2020. The comment period on the reconsideration proposal closed on May 15, 2019. The Bureau is evaluating the comments, weighing the evidence, and will make its decision on the remaining proposal in accordance with applicable legal requirements, including the Administrative Procedure Act (APA).

*Advance Notice of Proposed Rulemaking: Residential Property Assessed Clean Energy.*⁶ Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to “Property Assessed Clean Energy” (PACE) financing. In March 2019, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) on PACE financing to facilitate the Bureau’s rulemaking process. As defined in EGRRCPA Section 307, PACE financing results in a tax assessment on a consumer’s real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA’s ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA’s general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing. The comment period on the ANPR closed on May 7, 2019. As we continue policy development for the NPRM, the Bureau is evaluating the ANPR comments, continuing to engage stakeholders, and collecting quantitative data on the effect of PACE financing on consumers’ financial outcomes.

*Request for Information: Remittances.*⁷ In April 2019, the Bureau issued a Request for Information seeking input on two aspects of the Bureau’s Remittance Rule (Rule). First, the Bureau asked for information to determine whether to propose changes to the impending expiration this July of a temporary exception in the Electronic Fund Transfer Act (EFTA), which permits insured depository institutions and credit unions to estimate the amount of currency that will be received by the designated recipient of a remittance transfer under certain circumstances.

⁴ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/payday-vehicle-title-and-certain-high-cost-installment-loans/> and <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date/>.

⁵ See <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/>.

⁶ See <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/advance-notice-proposed-rulemaking-residential-property-assessed-clean-energy-financing/>.

⁷ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/request-room/cfpb-issues-request-information-remittance-rule/>.

Second, the Bureau asked for information on a safe harbor threshold in the Rule that helps to determine whether a person is providing remittances in the normal course of its business. Although outside of the reporting period, it is worth noting that in December 2019, the Bureau issued a NPRM which, if finalized, would allow insured depository institutions and credit unions to continue to provide estimates for certain fees and exchange rate information included on disclosures under certain conditions.⁸ In addition, the Bureau proposed to increase the safe harbor threshold that helps to determine whether a company makes remittance transfers in the normal course of its business and is subject to the Rule. If finalized, the increased safe harbor threshold would reduce burden on additional providers that send a relatively small number of remittances. The comment period on this NPRM closed on January 21, 2020. The Bureau is evaluating the approximately 100 comments received and is weighing the evidence.

*Proposed Rule: Debt Collection Practices (Regulation F).*⁹ In May 2019, the Bureau issued the first NPRM to implement the requirements and prohibitions applicable to debt collectors under the Fair Debt Collection Practices Act (FDCPA) since it was passed in 1977. The proposal is intended to provide consumers with clear protections against harassment by debt collectors and straightforward options to address or dispute debts. Among other things, the NPRM would set clear, bright-line limits on the number of calls debt collectors may place to reach consumers on a weekly basis; clarify how collectors may communicate lawfully using technologies, such as voicemails, emails and text messages, that have developed since the FDCPA's passage in 1977; and require collectors to provide additional information to consumers to help them identify debts and respond to collection attempts. The comment period on this proposal closed on September 18, 2019. The Bureau is evaluating the comments, weighing the evidence, and will make its decision in accordance with applicable legal requirements, including the APA.

*Advance Notice of Proposed Rulemaking: Home Mortgage Disclosure Act (HMDA).*¹⁰ In May 2019, the Bureau issued an ANPR seeking information to determine whether to propose changes to the data points that the Bureau's 2015 HMDA rule added to Regulation C or revised to require additional information. Additionally, the Bureau solicited comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C. The ANPR sought information regarding the costs and benefits of these data points and reporting requirements. The comment period on the ANPR closed on October 15, 2019. The Bureau is evaluating the comments, weighing the evidence, and developing a NPRM.

Notice of Proposed Rulemaking: Home Mortgage Disclosure Act (HMDA). In May 2019, the Bureau issued an NPRM proposing to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans to either 50 or 100 closed-end mortgage loans. The NPRM would also extend for two years the temporary threshold of 500 open-end lines of credit for reporting data about open-end lines of credit and then set the threshold at 200 open-end lines of credit on January 1, 2022. The NPRM would also incorporate into Regulation C the

⁸ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/remittance-transfers-under-electronic-fund-transfer-act-regulation-e/>.

⁹ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/debt-collection-practices-regulation-f/>.

¹⁰ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/home-mortgage-disclosure-regulation-c-data-points-and-coverage-extension-comment-period/>.

interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and implement further Section 104(a) of the EGRRCPA. As noted below, the Bureau finalized certain aspects of this NPRM in a final rule in October 2019 and indicated that it anticipates issuing a separate final rule in 2020 addressing the NPRM's proposed changes to the permanent thresholds.

*Advance Notice of Proposed Rulemaking: Ability-to-Repay and Qualified Mortgages.*¹¹ In July 2019, the Bureau issued an ANPR asking for information relating to the expiration of a provision of the temporary Government-Sponsored Entities (GSE) provision of the Bureau's Ability-to-Repay and Qualified Mortgage Rule. Under that provision, mortgages which are eligible for purchase or guarantee by one of the GSEs and which satisfy certain statutory criteria relating primarily to features of the mortgage are generally deemed to be Qualified Mortgages (QMs). This provision is scheduled to expire in January 2021 and the Bureau's ANPR sought information to determine whether to propose changes in the general definition of QM considering that expiration. After reviewing comments submitted in response to the Bureau's ANPR, the Bureau has decided to propose an amendment to the Rule which would move away from adopting a Debt-to-Income threshold for such loans and instead include an alternative, such as a pricing threshold (i.e., the difference between the loan's annual percentage rate and the average prime offer rate for a comparable transaction). The Bureau also expects to propose to extend the expiration of the GSE Patch for a short period until the effective date of the proposed alternative or until one or more of the GSEs exits conservatorship, whichever comes first. To this end, the Bureau is working diligently to issue, no later than May 2020, a NPRM seeking comment on these possible amendments.

Although also outside of the reporting period, the Bureau recently took several notable steps in our ongoing rulemaking activity.

*Final Rule: Home Mortgage Disclosure (Regulation C) – 2019 Final Rule.*¹² In October 2019, the Bureau issued a final rule amending Regulation C to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit. The October 2019 final rule also incorporates into Regulation C the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and implements further Section 104(a) of the EGRRCPA.

*TIILA-RESPA Integration Disclosure Rule (TRID) Assessment.*¹³ In November 2019, the Bureau issued a Request for Information seeking public input to inform the Bureau's assessment of the TRID Rule, including the effectiveness of the rule in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. The Bureau will conduct industry surveys as part of the assessment. The assessment, which is being conducted pursuant to Section 1022(d) of the Dodd-Frank Act, will be completed in Fall 2020.

¹¹ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/qualified-mortgage-definition-under-truth-lending-act-regulation-z/>.

¹² See <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/home-mortgage-disclosure-regulation-c-2019-final-rule/>.

¹³ See <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/request-for-information-regarding-tila-respa-integrated-disclosures-rule-assessment/>.

Ensuring a Culture of Compliance

Another tool for the prevention of harm is the Bureau's supervision authority, which can keep violations of laws and regulations from happening in the first place. Supervision is the heart of this agency – something underscored by the percentage of our personnel and resources dedicated to conducting exams. I am focused on ensuring we use this tool as effectively and efficiently as possible, and that we apply it in a consistent way. Heading trouble off at the pass may not grab big headlines, but it will prevent a lot of headaches for consumers and industry.

During the period covered by the Fall 2019 Semi-Annual Report, the Bureau published two issues of *Supervisory Highlights: Winter 2019*, covering supervisory findings in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances,¹⁴ and *Summer 2019*, covering supervisory findings in the areas of automobile loan origination, credit card account management, debt collection, furnishing, and mortgage origination.¹⁵ Although outside the reporting period, the Bureau recently released a special edition of *Supervisory Highlights* covering supervisory findings in the consumer reporting area.¹⁶ The Bureau has also issued numerous supervisory guidance documents and bulletins as described in the Semi-Annual Report.

In addition, the Bureau's Fair Lending Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. As a result of the Bureau's efforts to fulfill its fair lending mission in this reporting period, the Bureau's Fair Lending Supervision program initiated 16 supervisory events at financial services institutions under the Bureau's jurisdiction to determine compliance with federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities, including the Equal Credit Opportunity Act (ECOA) and HMDA. In the current reporting period, the Bureau initiated 16 supervisory events, which is six more than the 10 fair lending supervisory events initiated during the prior reporting period. In the current reporting period, the Bureau issued more matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period. MRAs and MOUs direct entities to take corrective actions and are monitored by the Bureau through follow-up supervisory events.

Holding Bad Actors to Account and Deterrence through Enforcement

Education, rulemaking, and supervision alone won't prevent every violation. A purposeful enforcement regime can foster compliance, deter unlawful conduct, help prevent consumer harm, and right wrongs. Public, decisive action against wrongdoers sends a clear message to the marketplace – one that should deter unlawful behavior and support a level playing field – all while reaching a just outcome for harmed consumers. However, I am also committed to ensuring that we move as expeditiously as possible to resolve enforcement matters, whether through public action or a determination that a particular investigation should be closed.

¹⁴ Winter 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf.

¹⁵ Summer 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf.

¹⁶ Fall 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.

During the period covered by the Fall 2019 Semi-Annual Report, the Bureau brought numerous public enforcement actions for violations of Federal consumer financial law.

These activities included proceedings against a debt collection company and its owner for violations of the Consumer Financial Protection Act (CFPA), Fair Credit Reporting Act (FCRA), Regulation V, and Fair Debt Collection Practices Act (FDCPA);¹⁷ proceedings against a foreclosure relief services company, its CEO, and its auditor, for engaging in deceptive and abusive acts and practices and charging unlawful advance fees in connection with the marketing and sale of financial advisory and mortgage assistance relief services to consumers;¹⁸ an action against a debt-collection company for violating the FDCPA and CFPA;¹⁹ an action against a remittance transfer services provider for violating the Remittance Transfer Rule under EFTA and the CFPA;²⁰ two actions against brokers of high-interest credit offers for misrepresentations to veterans and other consumers in violation of the CFPA;²¹ an action against a credit reporting agency for engaging in unfair and deceptive practices in connection with a data breach that impacted approximately 147 million consumers;²² an action against a company set up to hold and manage private student loans for providing substantial assistance to unfair acts and practices;²³ an action against a mortgage lender for violating HMDA and Regulation C by submitting mortgage-loan data for 2014 to 2017 that contained errors;²⁴ an action against a mortgage servicer for violating the CFPA, RESPA, and TILA;²⁵ proceedings against a debt collection law firm for violating the FDCPA and CFPA;²⁶ proceedings against a company for violating the Telemarketing Sales Rule (TSR) by requesting and receiving payment of prohibited upfront fees for their credit repair services and for violating the TSR and CFPA by making deceptive representations or substantially assisting others in doing so;²⁷ an action against a student loan servicing company for engaging in unfair practices in violation of the CFPA by failing to adjust in a timely manner principal balances of student loans made under the Federal Family Education Loan Program;²⁸ an action against a payday retail lender for violations of the CFPA, the Gramm-

¹⁷ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-fair-collections-outsourcing-and-michael-c-sobota/>.

¹⁸ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-andrew-lehman-michael-carrigan-proposed-settlement/>.

¹⁹ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-asset-recovery-associates/>.

²⁰ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-maxitransfers-corporation/>.

²¹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-arkansas-state-ag-settle-brokers-high-interest-credit-offers/>; <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-broker-high-interest-credit-offers/>.

²² See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fic-states-announce-settlement-with-equifax-over-2017-data-breach/>.

²³ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-student-cu-connect-cuso-over-its-private-loan-program/>.

²⁴ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/>.

²⁵ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-bsi-financial-services/>.

²⁶ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-forster-garbus-llp/>.

²⁷ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-lexington-law-pgx-holdings-and-related-entities/>.

²⁸ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-conduent-education-services/>.

Leach-Bliley Act and Regulation P, and TILA and Regulation Z;²⁹ an action against an online lender for debiting consumers' bank accounts without authorization and for failing to honor loan extensions granted to consumers in violation of the CFPA;³⁰ a proceeding against a retail company offering store credit card accounts for violating the CFPA, TILA, and Regulation Z;³¹ an action against a federally chartered savings association for violating the CFPA, EFTA, and Regulation E;³² an action against a federally chartered savings association for violating the CFPA, FCRA, and Regulation V;³³ an action against a mortgage company for misleading veterans regarding its Interest Rate Reduction Refinancing Loans—loans that allow veterans to refinance their mortgages at lower interest rates with a loan guaranteed by the Department of Veterans Affairs;³⁴ an action against a consumer financial services company for engaging in deceptive acts and practices in violation of the CFPA;³⁵ an action against a small-dollar lender for violating the CFPA by making deceptive statements, and by withholding funds during check-cashing transactions to satisfy outstanding amounts on prior loans;³⁶ and an action against companies for violating the CFPA by unfairly delaying the transfer of payments that the companies received on accounts that the companies had previously sold to third-party debt buyers.³⁷

In addition to the actions taken above, the Bureau referred one matter to the U.S. Department of Justice (DOJ) about discrimination pursuant to Section 706(g) of the ECOA. Like other federal bank regulators, the Bureau is required to refer matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.

During the reporting period, the Bureau continued to work on ongoing litigation, as well as implementation and oversight of compliance with the pending public enforcement orders that were entered by federal courts or issued by the Bureau's Director in prior years.

The mission of the Bureau is to protect consumers, which, as I have discussed today, we carry out through education, regulation, supervision, and enforcement. These tools are all provided in the Dodd-Frank Act, and I am determined to use the Bureau's capabilities to carry out our mission. The Bureau is also tasked with the mission of facilitating innovation and access to

²⁹ See <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-cash-tyme/>.

³⁰ See <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-reaches-settlement-enova-international-inc/>.

³¹ See <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-claims-against-sterling-jewelers-inc/>.

³² See <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-usaa-federal-savings-bank/>.

³³ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-state-farm-bank/>.

³⁴ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-files-complaint-and-proposed-settlement-village-capital-investment-llc/>.

³⁵ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-santander-consumer-usa-inc/>.

³⁶ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-cash-express/>.

³⁷ See <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-bluestem/>.

financial products and services for consumers. To achieve this portion of our mission to protect consumers, the Bureau has been updating our innovation policies and engaging with a variety of stakeholders, as well as collaborating with other federal, state, and global regulators on these issues.

In September 2019, the Bureau issued three innovation policies on Trial Disclosure Programs,³⁸ No-Action Letters,³⁹ and the Compliance Assistance Sandbox.⁴⁰ Our hope is that these three policies will improve how the Bureau exercises its authority to facilitate innovation and reduce regulatory uncertainty. These efforts can contribute to an environment where innovation can flourish, giving consumers more options and better choices.

Innovation provides an opportunity for us to reduce regulatory uncertainty by identifying and addressing outdated, unnecessary, or unduly burdensome regulations that impede the development of new financial products and services and drive increasing costs to consumers. Innovation can benefit consumers by increasing competition, generating better and less expensive products and services for consumers. New products and services can expand access, especially to unbanked and underbanked households, giving more consumers access to the benefits of the financial system. Innovations that reduce the cost of providing financial products and services can also reduce consumer prices, especially in a market where innovation supports vigorous competition. Finally, innovation can vastly improve the functionality of existing products and services. For example, the development of online and mobile banking means that consumers can manage their financial lives any time of day from their own homes. The Bureau cannot predict the particular innovations that will develop in the coming years, but by engaging, we can help ensure that consumer protection includes having access to a vibrant, competitive consumer financial market.

Bureau Initiatives

Finally, I would like to close today by highlighting a few of the Bureau's most recent initiatives.

Taskforce on Federal Consumer Financial Law

Last month, I announced the membership of the Bureau's Taskforce on Federal Consumer Financial Law.⁴¹ The Taskforce will examine the existing legal and regulatory environment facing consumers and financial services providers and report to me its recommendations for ways to improve and strengthen consumer financial laws and regulations. The Taskforce will produce new research and legal analysis of consumer financial laws in the United States, focusing specifically on harmonizing, modernizing, and updating the Federal consumer financial laws—and their implementing regulations—and identifying gaps in knowledge that should be

³⁸ See https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf.

³⁹ See https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf.

⁴⁰ See https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf.

⁴¹ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-membership-taskforce-federal-consumer-financial-law/>; and see <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-additional-member-to-taskforce/>.

addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.

Memoranda of Understanding (MOU) with the U.S. Department of Education (Department).

On February 3, 2020, the Bureau and the Department reestablished our MOU regarding complaints that includes greater coordination to better serve student loan borrowers. Under the newly signed MOU, the agencies will share complaint information from borrowers and meet quarterly to discuss observations about the nature of complaints received, characteristics of borrowers, and available information about resolution of complaints. The MOU also provides for the sharing of complaint data analysis, recommendations, and analytical tools. In addition, the Bureau and the Department have initiated the interagency process to reestablish the MOU regarding oversight of compliance obligations. The agreement will be designed to coordinate efforts to oversee regulated entities and protect consumers.

Abusiveness

Last month, the Bureau published a Policy Statement with respect to the manner in which the Bureau intends to apply the abusiveness prohibition of the Dodd-Frank Act in its supervisory and enforcement work.⁴² This Policy Statement provides much needed guidance to the market with respect to the Bureau's approach to this novel provision of the Dodd-Frank Act.

Assessing Diversity at Regulated Entities

The Fall 2019 Semi-Annual Report also reports on the Bureau's efforts to increase workforce and contractor diversity, consistent with the procedures established by the Office of Minority and Women Inclusion (OMWI). I want to take a moment to highlight one initiative in particular, spearheaded by our OMWI, regarding the Bureau's efforts to assess diversity at regulated entities.

Pursuant to Section 342 (b)(2)(c) of the Dodd-Frank Act, the Bureau developed a process to assess the diversity policies and practices of the entities the Bureau regulates. The Bureau, along with other regulators, developed a voluntary diversity self-assessment form that aligns with the Joint Standards for Assessing Diversity Practices of Regulated Entities. The intent of the self-assessment is to allow the Bureau to gain an understanding of Diversity and Inclusion (D&I) practices within the industry. We will share best practices across the industry to help financial institutions improve their D&I practices. These financial institutions provide services to a broad range of consumers with diverse financial norms and backgrounds. It is important that their workforces are diverse so they can provide consumers with an equally diverse range of products and services that are fair, transparent, and competitive.

The Bureau conducted outreach to mortgage finance organizations for the past several years to assess the diversity and inclusion practices of the entities the Bureau regulates and published the findings from that outreach. The Bureau conducted a multi-pronged outreach strategy including

⁴² See <https://www.consumerfinance.gov/about-us/newsroom/cfbp-announces-policy-regarding-prohibition-abusive-acts-practices/>.

direct entity contact, meetings with trade organizations, and joint outreach with other federal regulators to engage entities to participate in the voluntary self-assessment process in the Fall 2019. The Bureau has developed an online data collection tool to collect and manage the submitted assessment data and the tool is available on the Bureau's website. In 2020, the Bureau will continue to conduct direct outreach to entities and work with trade organizations to encourage entities to assess their diversity and inclusion policies and practices and to submit their assessments to the Bureau. A critical piece of this effort is assuring entities that their information will be protected.

Paying for College: Your Financial Path to Graduation

One important consumer segment for the Bureau is students and parents who are seeking ways to finance higher education. The Bureau would like to be a partner in helping postsecondary institutions implement financial education on campus. Financial education can improve students' and families' financial well-being by providing resources on budgeting, repaying debt, managing credit, and saving money. The Bureau stands ready to work with colleges, universities, and vocational schools to help students improve their financial well-being.

In fact, the Bureau is currently developing our newest resource for students, a web-tool *Paying for College: Your financial path to graduation*. Prospective students with financial aid offers can use this tool to better understand the terms of their offers and then put together a financing plan to cover the remaining cost of attendance. Once the student has drafted a plan, the tool can project the student's total debt and help the student estimate its affordability by comparing it to the median salary of others who have attended that school. Students can use the tool on their own, or colleges can work with the Bureau to make it part of their financial aid communications. The Bureau will continue to seek feedback and partnership as we refine this new tool.

Legislative Reform

Last year, the Bureau requested that Congress provide us with clear legal authority to supervise financial institutions for Military Lending Act compliance. As part of that request, the Bureau transmitted proposed legislative language that would achieve this goal. I stand ready to work with members of this Committee to provide us with this authority to assist the Bureau's ongoing efforts to prevent harm to our servicemembers and their families. The Bureau continues to use its education and enforcement tools in this space, but the authority to supervise would make these efforts even more effective.

Conclusion

My testimony today does not attempt to cover all of the things the Bureau does to meet our mission. The full Report, which is enclosed with my testimony, covers more than I can highlight in the time I have today. While I have not discussed the work of every employee, I want to say that every employee is valued and a critical part of our team. Let me commend the Bureau employees who work tirelessly to achieve our mission. We stand together to use all of our tools to go after bad actors that break the law, but also to prevent harm in the first place. We are building a culture of compliance based on smart and clear rules of the road, built by smart and

devoted staff of the Bureau in partnership with fellow regulators and furthered by institutions that share our interest. And lest I forget, the work of this Committee helps all of us at CFPB meet our mission. I look forward to our continued work in the next year on behalf of American consumers.

Thank you again for the opportunity to present this Semi-Annual Report of the Bureau's work in support of American consumers.

United States Senate
WASHINGTON, DC 20510

February 13, 2020

Dave Girouard
CEO
Upstart Network, Inc.
2950 S. Delaware St.
San Mateo, CA 94403

Dear Mr. Girouard:

We write to express concern about a recent report that found lenders' use of educational data to make credit determinations could have a disparate impact on borrowers of color. While we encourage lenders to innovate to improve access to credit—particularly for marginalized borrowers who have been shut out of the credit system—all lenders must ensure that their underwriting practices comply with fair lending laws.

The Equal Credit Opportunity Act (ECOA) prohibits discrimination in any aspect of a credit transaction.¹ Under the statute, lenders can be liable if they treat applicants differently based on a prohibited basis, such as race or national origin.² In addition, lenders can also be liable if their practices have a disproportionate impact on a protected class.³

For years, regulators have raised concerns that lenders' use of educational data to make credit decisions could result in discrimination against minority borrowers.⁴ In 2007, then New York Attorney General Andrew Cuomo criticized private student lenders' consideration of a student's

¹ See 15 U.S.C. § 1691(a)(1) (prohibiting discrimination on the basis of race, color, religion, national origin, sex or marital status, age, because all or part of an applicant's income derives from public assistance, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act).

² 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1; 12 CFR Part 1002 Supp. I Sec. 1002.4(a)-1. "Disparate treatment" may be "overt" (when the creditor openly discriminates on a prohibited basis) or it may be found by comparing the treatment of applicants who receive different treatment for no discernable reason other than a prohibited basis. In the latter case, it is not necessary that the creditor act with any specific intent to discriminate.

³ See 12 C.F.R. pt. 1002, Supp. 1, § 1002.6, ¶ 6(a)-2.

⁴ In addition, according to a recent article, private student lenders that are members of the Consumer Bankers Association do not use alternative underwriting standards due to the risk of discriminating against borrowers. See <https://www.marketwatch.com/story/consumer-advocates-worry-your-college-major-could-affect-your-ability-to-get-a-loan-2019-07-24>.

school in determining creditworthiness and described the practice as “educational redlining.”⁵ In a 2012 report, the Consumer Financial Protection Bureau (Bureau) investigated private student lenders’ use of a “cohort default rate” (CDR)—which measures the rate at which students at a given institution default on their student loans—when determining creditworthiness.⁶ The Bureau found that the “[u]se of CDR to determine loan eligibility, underwriting, and pricing may have a disparate impact on minority students by reducing their access to credit and requiring those minority students . . . to pay higher rates than are otherwise available to similarly creditworthy non-Hispanic White students at schools with lower CDRs.”⁷ And in 2014, the FDIC brought an enforcement action against Sallie Mae Bank and Navient Solutions Inc., which found that use of CDR in their credit-scoring model for the pricing of private student loans violated ECOA.⁸

On February 5, 2020, the Student Borrower Protection Center issued a report finding that Upstart Network Inc.’s (Upstart) use of educational data resulted in borrowers who had graduated from Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs) paying more in interest and fees than similarly situated borrowers who graduated from non-minority serving institutions.⁹ For example, the report found that a graduate of Howard University, an HBCU, would be charged \$3,499 more over the life of five-year loan than a similarly situated graduate of New York University. Based on the racial demographics at these schools,¹⁰ these findings raise serious concerns that Upstart’s use of educational data may have a disparate impact on borrowers of color.

Upstart has stated that it does not consider the specific school that a student attended when determining creditworthiness.¹¹ But the company has acknowledged that its underwriting model considers “groups of schools that have similar economic outcomes and educational characteristics.”¹² In other words, Upstart appears to be assessing creditworthiness based on non-

⁵ See https://www.nytimes.com/2007/06/19/us/19loans.html?_r=1&oref=slogin. He also specifically criticized one lender that “divided colleges into groups based on how their alumni repaid federally subsidized loans” *Id.*

⁶ CFPB Report: Private Student Loans (Aug. 29, 2012) at 79-80, *available at* https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf.

⁷ *Id.* at 80.

⁸ *In re Sallie Mae Bank*, Consent Order, No. FDIC-13-0366b, FDIC-13-0367k (filed May 13, 2014), *available at* <https://www.fdic.gov/news/news/press/2014/salliemae.pdf>.

⁹ <https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf>.

¹⁰ According to the Student Borrower Protection Center data from the U.S. Department of Education, 89 percent of students at Howard University are African American, while African Americans and Latinos the comprise less than 20 percent of the students at NYU. See <https://protectborrowers.org/new-report-finds-educational-redlining-penalizes-borrowers-who-attended-community-colleges-and-minority-serving-institutions-perpetuates-systemic-disparities/>.

¹¹ See <https://www.upstart.com/blog/upstarts-commitment-to-fair-lending>.

¹² *Id.*

individualized factors, which the CFPB, FDIC, and New York Attorney General have found raise fair lending concerns.

So that we can better understand how Upstart has used educational data to make credit determinations, as well as how your company tests for and demonstrates compliance with fair lending laws, we request that Upstart provide responses to the following questions by February 28, 2020:

1. Describe how Upstart tests whether its credit determinations have a disparate impact on borrowers of a protected class under ECOA, and the results of any such testing.
2. Provide the following information about the use of "educational characteristics" used to determine the "groups of schools"¹³ in Upstart's model, including:
 - a. Each "educational characteristic[]" considered by Upstart;
 - b. An explanation of how Upstart selected each characteristic;
 - c. An explanation of how and the extent to which the educational characteristics factor into credit determinations.
3. Provide the following information about the use of "economic outcomes" to determine the "groups of schools" used in Upstart's model¹⁴:
 - a. Each "economic outcome[]" considered by Upstart;
 - b. An explanation of how Upstart selected each outcome;
 - c. An explanation of how and the extent to which they factor into credit determinations
4. Provide any other relevant detail regarding how these "groups of schools" were formulated, including what metrics and cutoffs are used to determine the groups.
5. Provide details on the number and characteristics of the "groups" constructed for your underwriting model, including:
 - a. The number of groups;
 - b. A list of the names or identifiers used to signify each individual group;
 - c. The total number of schools across all groups;
 - d. The number of schools in each individual group;
 - e. The total number of MSIs, including:
 - The number of HBCUs;
 - The number of HSIs;
 - The number of AANAPISI-serving institutions;
 - f. The number of women's colleges; and
 - g. The proportion of existing MSIs and women's colleges in the U.S. that are in each bucket.
6. Provide an explanation, supported by analysis, describing how grouping impacts credit determinations, including:

¹³ See *supra* n. 11.

¹⁴ *Id.*

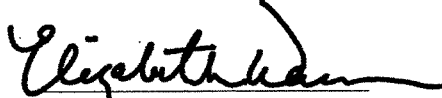
- a. How each "group" is tiered with regard to credit determinations; and
 - b. How distributions of approval rates, financing fees, and interest rates charged to borrowers differ across "groups."
7. Provide an explanation, supported by analysis, describing the impact that school grouping has on credit determinations for similarly situated borrowers across demographic groups.
 8. Identify the sources of any data concerning the relationship between educational characteristics and economic outcomes used by your model.

Thank you for your attention to this important matter. Please contact Jan Singelmann, Counsel for the Senate Committee on Banking, Housing, and Urban Affairs, at Jan_Singelmann@banking.senate.gov with any questions or concerns.

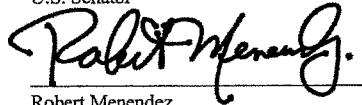
Sincerely,



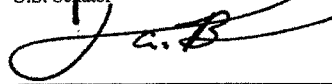
Sherrod Brown
U.S. Senator



Elizabeth Warren
U.S. Senator



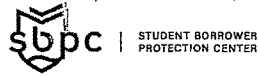
Robert Menendez
U.S. Senator



Cory Booker
U.S. Senator



Kamala D. Harris
U.S. Senator



February 18, 2020

The Honorable Maxine Waters
 Chairwoman
 U.S. House Financial Services Committee
 2129 Rayburn House Office Building
 Washington, DC 20515

Chairwoman Waters:

Thank you for the opportunity to submit this letter for the record for your February 6, 2020 hearing entitled "Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer Financial Protection Bureau."

As you are aware, during the course of questioning Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger, Congresswoman Ayanna Pressley described and introduced into the hearing record a report released by our organization entitled *Educational Redlining*. This report offered new evidence that certain consumer lenders that use education data when offering or pricing credit may be doing so in a manner that increases costs for students who attend community colleges and certain Minority-Serving Institutions, including Historically Black Colleges and Universities (HBCUs) and Hispanic-Servicing Institutions (HSIs).

Following the February 6th hearing, one lender examined in our report, Upstart, published a blog post authored by the company's cofounder calling into question certain aspects of our report's methodology.¹

We want to reaffirm we strongly stand by our research and the critical questions it raises about the potential for discrimination when educational data is used to determine access to or cost of credit. Prior to publishing *Educational Redlining*, we ran dozens of tests using Upstart's public rate checking tool and **our results consistently showed that a borrower who attended an HBCU or HSI was charged higher prices for student refinance loans solely because of where he went to school.** The increased cost for these borrowers ranged from hundreds to thousands of dollars.

To be clear, we take the claims made by Upstart seriously. Since publishing our report, we repeated our analysis, receiving rates for two similarly situated borrowers minutes apart, and the two offers provided for Upstart's student loan refinancing product showed that a student who went to North Carolina A&T (an HBCU) would be charged almost a thousand dollars more than a similarly situated student who went to UNC-Greensboro, a college just three miles away.

¹ <https://www.upstart.com/blog/upstarts-commitment-to-fair-lending>

In the days following the publication of *Educational Redlining*, we carefully monitored public statements by the companies identified in this report and, specifically with regard to Upstart, our concerns have only increased. In particular, we now understand based on Upstart's comments that the company has a policy of using "groups" of schools in its underwriting model, in effect categorizing borrowers based on "educational characteristics." This practice mirrors similar practices that have been identified by regulators as violations of the Equal Credit Opportunity Act.²

We were heartened to see Senators Brown, Warren, Harris, Booker, and Menendez press Upstart on these practices specifically last week (Tab 1) in a letter to the company. As we explained in *Educational Redlining*, our analysis was limited to publicly accessible information using Upstart's public rate checking tool and we share the Senators' commitment to further explore these critical issues. We agree that Upstart must answer the questions posed in this letter to ensure that policymakers, regulators, and the public have a complete understanding of the costs and risks associated with the company's approach to consumer lending.

As the U.S. House Financial Services Committee considers future action to address educational redlining, we also encourage the committee to closely monitor Upstart's response to your colleagues in the Senate and to consider the additional questions we posed to the consumer lending industry and to the CFPB at the conclusion of our report.

Thank you again for your commitment to protecting consumers and for your continued attention to these critical issues.

Sincerely,

/s/
Seth Frotman
Executive Director
Student Borrower Protection Center

Attachment(s)

Tab 1: Letter from Senators Brown, Warren, Harris, Booker and Menendez to Upstart CEO Paul Gu (February 13, 2020)

² <https://www.fdic.gov/news/news/press/2014/salliemae.pdf>



STUDENT BORROWER
PROTECTION CENTER

EDUCATIONAL REDLINING

Student Borrower Protection Center

February 2020

PROTECTBORROWERS.ORG

With new advances in financial products and services come age-old risks of discrimination. Without caution, the fintech revolution could perpetuate a system that has historically locked communities of color out of mainstream credit markets.

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Executive Summary

- Across the financial services sector, “alternative data” has been touted by established consumer lenders and new entrants alike as a tool to expand access to credit for historically underserved communities, including people of color. This report examines one subset of this data—education data, an umbrella term describing information related to a consumers’ higher education—when determining access to credit and the price of consumer financial products.
 - The use of education data in underwriting raises significant fair lending concerns, and its widespread adoption could reinforce systemic barriers to financial inclusion for Black and Latinx consumers. Further, the use of education data can exacerbate inequality across the American economy. Where the effects of these practices have negative economic consequences for borrowers from historically marginalized communities, these practices are known as “Educational Redlining.”
 - The following report, *Educational Redlining*, includes a detailed discussion of these practices and describes the specific risks posed to borrowers, communities, and the economy when consumer lenders rely on education data when determining access to credit and the cost of credit.
 - This report features two case studies that examine the effects of these practices on hypothetical, similarly situated consumers using publicly available information about the lending practices at two consumer lenders—Wells Fargo and the financial technology company Upstart. These case studies show:
 - **Borrowers who take out private loans to pay for college may pay a penalty for attending a community college.** Wells Fargo charges a hypothetical community college borrower an additional \$1,134 on a \$10,000 loan when compared to a similarly situated borrower enrolled at a four-year college.
 - **Borrowers who refinance their student loans through a company using education data may pay a penalty for having attended an HBCU.** When refinancing with Upstart, a hypothetical Howard University graduate is charged nearly \$3,499 more over the life of a five-year loan than a similarly situated NYU graduate.
-

- **Borrowers who refinance student loans may pay a penalty for having attended an Hispanic-Serving Institution (HSI).** When refinancing with Upstart, a hypothetical graduate who receives a Bachelor's Degree from New Mexico State University, an HSI, is charged at least \$1,724 more over the life of a five-year loan when compared to a similarly situated NYU graduate.
- Based on this analysis, SBPC has issued the following recommendations to Congress, federal and state regulators, and the consumer lending industry to address potential violations of federal and state fair lending laws and to mitigate the effects of these practices on economic inequality:
 - **Congress must enhance oversight.** Congress should examine the use of education data by consumer lenders, including monitoring for potential disparities caused by this practice and its effects on economic inequality. Further, Congress should investigate regulators' oversight over the companies engaged in these practices. This should include scrutiny of the Consumer Financial Protection Bureau's handling of the No-Action Letter awarded to Upstart—a regulatory safe harbor that may be shielding the company from violations of federal fair lending laws.
 - **Federal and state regulators must take immediate action to halt abuses.** Federal and state regulators should prioritize oversight over lenders that use education data when underwriting or pricing consumer loans and take immediate action where industry practices violate fair lending laws.
 - **The financial services industry must strengthen transparency when lending based on education data.** Firms in the financial services industry that use alternative data should immediately publish data demonstrating the effects of such practices on individual borrowers, empowering lawmakers, regulators, and the public to understand the effects of these practices on consumers.

About this Report

Credit is a key ingredient in the generation of economic opportunity, and it plays a “remarkably consequential” role in the expansion of economic mobility among marginalized populations.¹ And yet, consumers of color continue to face obstacles when seeking access to affordable credit. Research shows that African American and Latinx consumers at every income bracket are more likely to either be offered

“As more financial services companies look to adopt this approach, policymakers, regulators, and fintech companies must heed caution. The use of alternative data may further marginalize the very communities it purports to help.”

less credit than requested or denied credit outright than their similarly situated white peers.² While racial disparities in credit can be traced back to systemic discrimination underlying American society and the U.S. financial system,³ evidence suggests that traditional credit scoring models perpetuate these disparities because “even the most basic lending standards . . . ‘impact’ racial and ethnic groups differently.”⁴

Financial technology (fintech) firms have touted the use of “alternative data” as a method for overcoming biases entrenched in traditional credit underwriting models that often exclude consumers with limited credit profiles.⁵

These companies assert that creditworthiness can be gauged through factors like social media use, educational attainment, and work history.⁶ After including these alternative inputs in underwriting models, companies market their products as providing expanded access to credit to marginalized communities.⁷ However, as this report demonstrates, such statements fail to present policymakers, regulators, and law enforcement officials with full context for the potential risks associated with using alternative data.

As more financial services companies look to adopt this approach, policymakers, regulators, and fintech companies must heed caution. The use of alternative data may further marginalize the very communities it purports to help.

In 2019, Student Borrower Protection Center (SBPC) fellow Aryn Bussey documented the risks associated

with one category of alternative variables for credit underwriting: education data.⁸ Companies using education data have looked to SAT scores, sector of the institution of higher education attended (*e.g.*, for-profit, private nonprofit, public), college majors, and more as proxies for likelihood of repayment.⁹ Bussey's analysis reviewed the myriad of concerns of policymakers, academics, advocates, and law enforcement related to the use of education criteria in underwriting.¹⁰ This report builds on Bussey's work, further examining those risks, and provides two case studies highlighting disparities in outcomes when companies use education data in underwriting decisions.

Specifically, in this report, we examine the extent to which a consumer's choice of college, including attendance at a community college or Minority-Serving Institution (MSI), impacts their cost of credit. We analyze sample rate quotes from lenders that advertise the use of education criteria in credit decisions and provide case studies for two lending products: a newly originated private student loan from Wells Fargo and private student loan refinancing products offered by Upstart. Offered rates were compared across postsecondary institutions with all other inputs held constant.¹¹ Our findings from our broader analysis and the highlighted case studies are consistent: holding all else constant, borrowers who attend community colleges, Historically Black Colleges and Universities (HBCUs), and Hispanic-Serving Institutions (HSIs) will pay significantly more for credit because of people's assumptions and prejudices regarding those who sit next to them in the classroom.

“ Our findings from our broader analysis and the highlighted case studies are consistent: holding all else constant, borrowers who attend community colleges, Historically Black Colleges and Universities (HBCUs), and Hispanic-Serving Institutions (HSIs) will pay significantly more for credit, because of people's prejudices regarding those who sit next to them in the classroom. ”

Introduction

The fintech industry is rapidly changing the way that consumers participate in credit markets. Researchers estimate that the credit market excludes 45 million consumers because classic underwriting models deny credit to those with little or no scorable credit history.¹² Fintech companies increasingly seek to serve this population by incorporating new forms of data into underwriting models. In doing so, these companies claim they can offer lower cost products that are more widely available.¹³

Should this claim be realized, this approach would be encouraging, as expanded access to affordable credit is critical to improving economic opportunity and creating fairer financial markets for traditionally marginalized consumers. However, as this report shows, the use of alternative data in underwriting to predict credit risk may ultimately do just the opposite—disparately affecting marginalized consumers and exacerbating economic inequality.

Traditional underwriting algorithms use a consumer's past payment performance to predict repayment behavior and determine creditworthiness.¹⁴ As a result, these models are somewhat limited in their ability to assess the creditworthiness of young consumers and others who lack extended payment histories.¹⁵ Additionally, critics contend that classical score-based credit models overlook consumers with repayment histories concentrated outside of mainstream credit products.¹⁶ Fintech companies have sought to fill this gap and expand their base of potential customers by looking beyond these extant input variables. Fintech lenders use new input variables—commonly referred to as alternative data—in underwriting algorithms to process data “in ways that reveal correlations between seemingly irrelevant data points about a borrower and that borrower's ability to repay.”¹⁷

This report focuses on one specific class of input variables increasingly used by fintech lenders—education data. Education data includes a range of variables tied to a consumer's postsecondary education, including institutional sector and selectivity, college major, and even assessment scores. As University of Oklahoma College of Law professor Christopher Odinet explains, fintech firms “are ever-expanding their online lending activities to help students finance or refinance educational expenses. These online companies are using a wide array of alternative, education-based data points—ranging from applicants' chosen majors, assessment scores, the college or university they attend, job history, and cohort default rates— to determine

creditworthiness.”¹⁸

However, while the fintech industry argues that education data allows for expanded and more inclusive underwriting, this report illustrates how its use may lead to disparate outcomes for certain consumers.¹⁹ Specifically, the use of education data in underwriting risks discriminating against borrowers of color and exacerbating income equality across the population at large. As National Consumer Law Center staff attorney Chi Chi Wu testified before Congress:

The use of education and occupational attainment reinforces inequality, given that a consumer’s educational attainment is most strongly linked with the educational level of his or her parents. Use of educational or occupational attainment would probably top the list of mobility-impeding data, and would ossify the gaping racial and economic inequality in our country.²⁰

With new advances in financial products and services come age-old risks of discrimination, thereby perpetuating a system that has historically locked communities of color out of mainstream credit markets. Accordingly, non-individualized input variables that risk reinforcing systemic disparities and discrimination demand greater scrutiny from policymakers and law enforcement. Education data is no exception.

For example, people of color have historically been and continue to be denied equitable access to higher education, particularly at elite institutions.²¹ By considering the college or university attended by the consumer, a lender may capture disparate patterns in college attendance across class and race, thereby introducing bias in the underwriting process.²² The resulting credit decision risks producing discriminatory results. As Bussey explains:

[A]lthough degree attainment is on the rise for many racial and ethnic groups, research shows there is a shortage of minority students, particularly African-American and Latino students, at selective institutions of higher education. Only nine percent of Black students, eight percent of Indigenous American students, and twelve percent of Latino students attend America’s most elite public universities. When credit terms are tied to attendance at supposedly “elite” institutions, it can unfairly impact borrowers of color. Widespread adoption of educational criteria to determine creditworthiness will further stratify socioeconomic barriers to economic opportunity and mobility for Black and Brown consumers.²³

Education Data Use Risks Redlining

Discrimination resulting from the use of education data in underwriting is not new. For the last century, borrowers of color have been subjected to discriminatory credit terms simply because of where they live.²⁴ Despite fair lending laws prohibiting this type of practice, modern-day redlining based on geography continues to stymie economic opportunity for consumers of color.²⁵ Similar to the effects of discrimination based on geography, the use of educational data in underwriting risks redlining people of color out of the American Dream once again.

For example, in 2007, then-New York Attorney General Andrew Cuomo launched an inquiry to determine whether lenders' use of certain criteria discriminated against student loan borrowers based on their enrollment at a specific institution of higher education.²⁶ Cuomo noted the potential for educational redlining when warning that students attending minority-serving institutions (MSIs), such as historically black colleges and universities (HBCUs), may pay much higher interest rates.²⁷ Cuomo's investigation into one large lender found that its use of education data in underwriting led to interest rate spreads of up to six percent when compared to similarly situated borrowers simply because of the school attended by the applicant.²⁸

Since Cuomo's inquiry, regulators and researchers have further documented how the use of education criteria in underwriting decisions is likely to disproportionately affect protected classes.²⁹ This outcome is particularly troublesome where lenders consider the selectivity of an institution in underwriting. First, despite perceptions of institutional prestige and future earnings, researchers have repeatedly found that institutional selectivity does not broadly correspond with increased earnings, finding only a "slight effect, if any at all."³⁰ Second, as previously discussed, the use of education data risks perpetuating the deep-rooted discrimination that pervades America's higher education system. And finally, potentially discriminatory factors are unjustified where "nondiscriminatory [factors] . . . are already highly predictive of likelihood of repayment."³¹

Accordingly, it is imperative to understand and protect against the potential for discrimination against subsets of borrowers.³²

The Community College Penalty

Community colleges play a critical role in the higher education ecosystem by providing a local pathway to postsecondary learning for a broad range of students, particularly low-income, first generation, and underrepresented minority students.³³ For example, while 37 percent of Latinx college students attend a public four-year or private nonprofit four-year institution, 56 percent of Latinx students attend public two-year institutions.³⁴ Similarly while only 39 percent of white students attend a two-year public college and 56 percent attend a four-year institution, 44 percent of black students attend a two-year public college, a proportion larger than the percent of black students attending a four-year institution.³⁵

In theory, affordable, accessible post-secondary education should help mitigate the racial wealth gap and improve economic mobility. However, the increased use of education data in underwriting models threatens to do the opposite. As the following case study illustrates, rather than providing community college students with affordable credit, consumer lenders instead enforce a community college penalty. Our case study shows that, in one example of a private student loan product marketed by a large bank, borrowers attending community colleges might be charged higher interest rates and offered shorter repayment terms than otherwise identical peers at four-year schools. This penalty risks disparately impacting borrowers of color and necessarily involves judging people's individual creditworthiness based on nonindividualized factors.

In the following case study, we use publicly available information about the terms and conditions of Wells Fargo's private student loan offerings, comparing hypothetical Wells Fargo customers enrolled at select community colleges with similarly situated Wells Fargo customers enrolled at select four-year institutions. The findings of this case study highlight how this approach to pricing can adversely affect students at community colleges, and in turn, students of color.

Case Study: Wells Fargo

Wells Fargo Bank offers a series of private student loan products for higher education financing.³⁶ The following study analyzes two of these product offerings: the *Wells Fargo Collegiate* student loan, a private student loan available to all undergraduate students attending four-year schools,³⁷ and the *Wells Fargo Student Loan for Career & Community College*, a private student loan available specifically to students attending two-year schools, career-training programs, and other non-traditional schools.³⁸

Methodology

To determine how community college attendance affects private student loan product pricing, we modeled hypothetical applicants attending community colleges and four-year colleges. Applicants are identical in every respect, except for the institution of higher education attended.

Using input information for each hypothetical applicant, we submitted inquiries for private student loan product offers using Wells Fargo's publicly available "Today's Rates" tool.³⁹ We then compared the terms presented in the respective outputs from Wells Fargo. Because Wells Fargo reports a range of interest rates for each of its various student loans, we based our analysis on the average of the interest rates quoted for each credit product. We applied those averages to a model paydown sequence for a \$10,000 loan to find implied monthly payments and total payments across the loan term. We assumed that the loan has no origination fee, that the loan was disbursed in equal halves in August and January of the student's final year of study, and that a six-month grace period followed the student's graduation.

In the example below, we highlight the outputs for hypothetical applicants attending two institutions: Chapman University, a four-year university in Orange, California, and Los Angeles ORT College, a community college in Los Angeles, California. We opted to highlight these two institutions based on their proximity,⁴⁰ but note that the findings were consistent across hypothetical applicants.

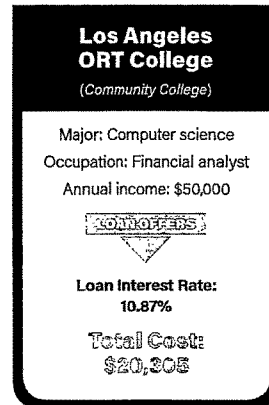
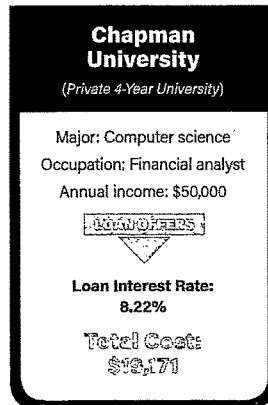
Findings

This section explores the rate and cost variation offered to borrowers of a *Wells Fargo Collegiate Loan* and *Wells Fargo Career & Community College Loan*.

Bank Lender: Wells Fargo
Product: Private Student Loan

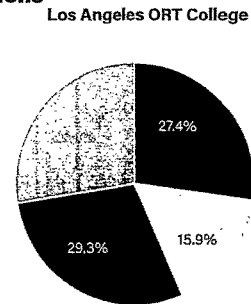
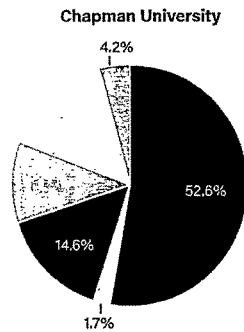


Borrower Profile



Community College Penalty: +\$1,134

Student Populations



■ White ■ Black/African American ■ Latinx/Hispanic ■ Asian ■ Other/Unknown ■ Non-Resident Alien

Demographic data from the U.S. Dept of Education

- **Wells Fargo charges higher interest rates on its community college loan than its four-year undergraduate loan for similarly situated borrowers.** Using the average of reported rates, a borrower with a community college loan would pay \$1,134 more on a \$10,000 loan than a borrower with the four-year undergraduate loan. Over the life of a \$10,000 loan, a community college borrower would pay approximately \$16,829 with the lowest rate offering and \$24,200 with the highest rate offering. In comparison, a four-year undergraduate loan borrower would pay \$14,749.40 with the lowest rate offering and \$24,335 with the highest rate offering. Even with identical credit profiles, community college borrowers would pay a higher price for credit than students at four-year institutions.
- **Wells Fargo offers shorter loan repayment terms, regardless of the borrower's creditworthiness, for its community college loans.** Wells Fargo offers a 12-year repayment term on its Career & Community College Loan. In contrast, Wells Fargo offers a 15-year repayment terms on its Collegiate Loan. However, a borrower with the community college loan would still pay more overall due to the higher interest rates they face. Both loan products offer the same terms for in-school deferment and grace periods.

The HBCU/HSI Penalty

Minority-Serving Institutions (MSIs), including Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs), play a significant role in expanding access to higher education. For example, in addition to serving underrepresented minorities, HBCUs and HSIs are also more likely to enroll women and older students.⁴¹ However, as one researcher notes, these institutions “exist at the intersection where the American Dream of unbridled possibilities meets the American Nightmare of persistent racial-ethnic subordination.”⁴²

HBCUs, HSIs, and the students they serve face obstacles that make student debt almost an inevitability for attendees. For example, these institutions notably receive less funding than non-minority serving institutions.⁴³ Additionally, students attending HBCUs and HSIs take on more student debt, on average.⁴⁴

As the following case study illustrates, fintech lenders' use of education data may impose an “HBCU/HSI penalty” on borrowers—a financial burden that has measurable, immediate economic consequences even for graduates who have already managed to overcome the obstacles described above. Our case study shows that borrowers who graduated from HBCUs or HSIs may be charged higher interest rates and origination fees than borrowers who graduated from non-minority serving institutions, thereby risking disparately impacting borrowers of color.

In the following case study, we use publicly available information about the rates offered to applicants seeking to refinance student loan debt with Upstart Network (Upstart), comparing hypothetical Upstart customers who graduated from HBCUs or HSIs, with similarly situated Upstart customers who graduated from select four-year institutions and non-minority serving institutions. The findings of this case study highlight how the use of alternative data in underwriting can adversely affect certain consumers of color in the education finance market even after they have already graduated.

Case Study: Upstart

Upstart is an online lending platform that provides financing for a range of personal loans.⁴⁵ According to the company, its platform is intended to “improve access to affordable credit while reducing the risk and cost of lending” to its partners.⁴⁶ In addition to using traditional underwriting criteria, Upstart also incorporates nontraditional factors such as educational attainment and employment history.⁴⁷ As with most fintech lenders, Upstart’s underwriting algorithm is proprietary, but Upstart has publicized its use of alternative data in lending decisions.⁴⁸

In September 2017, the Consumer Financial Protection Bureau (CFPB) issued its first No-Action Letter (NAL) to Upstart.⁴⁹ The NAL “signifies that [the CFPB] has no present intent to recommend initiation of supervisory or enforcement action against Upstart with respect to the Equal Credit Opportunity Act.”⁵⁰ In accordance with the NAL, Upstart has reported lending and compliance information to the CFPB, such as approval decisions, mitigation of consumer harm, and expansion of access to credit for underserved populations.⁵¹

Methodology

To determine how the choice of institution attended affects the pricing of private student loan refinancing products, we modeled hypothetical applicants with degrees from schools across various institutional sectors, including two- and four-year colleges with HBCU, HSI, and non-MSI designations. Inputs for prospective applicants were identical in every respect, except for the institution attended by the applicant.

Each hypothetical applicant is a 24-year-old New York City resident with a bachelor’s degree.⁵² Each applicant works as a salaried analyst at a company not listed among those offered by Upstart. Applicants have been employed by their current employer for five months, earn \$50,000 annually, and have \$5,000 in savings. Applicants have no investment accounts or additional compensation and have not taken out any new loans in the past three months. Each applicant requested a \$30,000 student loan refinancing product.

Using the above input information for each hypothetical applicant, we submitted inquiries for a private student loan refinancing product using Upstart’s publicly available rate comparison tool.⁵³ We then compared the terms presented in the respective outputs.

In the example below, we highlight the outputs for hypothetical applicants attending three institutions: New York University (NYU), a non-MSI; Howard University, an HBCU; and New Mexico State University-Las Cruces (NMSU), an HSI. We opted to highlight these three institutions based on their varied MSI designations,⁵⁴ but note that the findings were consistent across hypotheticals.

Findings

This section explores the rate and cost variation offered for private student loan refinancing products to otherwise identical borrowers who attended different colleges. Results are based on applicants seeking \$30,000 to refinance student loans, to be repaid over three- or five-year terms.

Holding all other inputs for prospective applicants constant, we find that a hypothetical refinancing applicant who attended Howard University, an HBCU, would pay more than an applicant who happened to have attended NYU. In this example, borrowers who attended the HBCU pay higher origination fees and higher interest rates over the life of their loans. Similar results are observed for applicants who attended NMSU, an HSI. In effect, borrowers who attend certain MSIs are penalized simply because of where they went to college.

Fintech Lender: Upstart Network, Inc.
Product: Private Student Loan Refinance



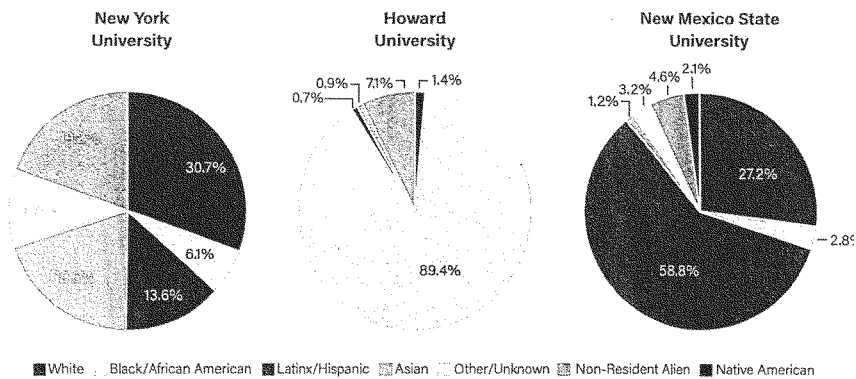
Borrower Profile

New York University (Non-MSI)	Howard University (HBCU)	New Mexico State University (HSI)
Major: Computer science Occupation: Financial analyst Annual income: \$50,000	Major: Computer science Occupation: Financial analyst Annual income: \$50,000	Major: Computer science Occupation: Financial analyst Annual income: \$50,000
Loan interest rate: 16.34% APR Origination fee: \$1,231	Loan interest rate: 21.29% APR Origination fee: \$1,960	Loan interest rate: 19.23% APR Origination fee: \$1,862
Total Cost: \$42,288	Total Cost: \$45,785	Total Cost: \$44,011

HBCU Penalty: +\$3,499

HSI Penalty: +\$1,724

Student Populations



Demographic data from the U.S. Dep't of Education

- **Howard University graduates are charged \$3,499 more than similarly situated NYU graduates.** Over a three-year repayment term, the NYU graduate would pay \$35,093, while the Howard graduate would pay \$35,676. The disparity increases over a five-year repayment term (another repayment term offered by Upstart), with the NYU and Howard borrowers paying \$42,287 and \$45,785, respectively.
- **Howard University graduates are charged an additional \$729 in origination fees than similarly situated borrowers who attended NYU.¹** In this example, Howard borrowers would pay \$1,960 to originate a loan with a five-year repayment term, whereas the NYU borrowers would pay \$1,231 to originate a loan for the same repayment term. Likewise, for a three-year loan term, Howard borrowers would pay \$1,624 in origination fees, as compared to \$1,292 for NYU borrowers.
- **New Mexico State University (NMSU) graduates are charged nearly \$1,724 more than otherwise identical NYU graduates.** Over a five-year repayment term, a NMSU graduate with a \$30,000 student loan refinancing product would pay \$44,011 in lifetime loan costs, while the otherwise identical NYU graduate would pay \$42,287. This includes the NMSU graduate being charged \$632 more in origination fees.

¹ Note that all loan applicants are modeled as requesting a \$30,000 loan refinancing product, which includes all relevant origination fees already added to the loan amount. These origination fees vary across applicants, with Upstart quoting different fee amounts for different applicants. This variance implies that while the overall loan amounts compared here are the same, the proportion of the refinancing product actually applied to underlying student loans differs, with borrowers who face higher origination fees applying less of their \$30,000 refinancing product to their outstanding student loans. The present estimates of disparities in the cost of refinancing are floor estimates, and students charged higher origination fees (that is, borrowers at HBCUs and HSIs) would need to take out larger loans to refinance the same dollar value of student loans.

Recommendations

The following recommendations to Congress, regulators, and industry highlight opportunities to address the issues outlined in this report. The industry practices discussed in detail above potentially violate a range of federal and state fair lending and consumer protection laws. More broadly, these practices may further perpetuate inequality, creating new barriers to building wealth for families across the country.

By taking immediate action, stakeholders can address the serious legal issues and far-reaching economic consequences presented by the use of education data in consumer lending.

Recommendation 1: Congress should scrutinize the use of education data in consumer lending and the No-Action Letter issued by the Consumer Financial Protection Bureau to Upstart.

In 2007, then-New York Attorney General Andrew Cuomo explained to Congress that the use of education data in consumer lending posed significant risks to borrowers of color, warning that the specter of “educational redlining” warranted immediate attention from lawmakers.⁵⁸

The findings of this report demonstrate the prescience of Cuomo's warning. Big banks and fintech “innovators” are embracing education data when making new consumer loans. In doing so, these companies may be unlawfully discriminating against people of color and exacerbating economic inequality. Given the economic consequences potentially posed by a market-wide embrace of education data in consumer lending, Congress should deploy its full suite of investigatory, oversight, and legislative tools to protect consumers.

As part of this coordinated, market-wide oversight, Congress should investigate the CFPB's handling of the 2017 No Action Letter awarded to Upstart. As described above, in 2017 the CFPB issued its first No-Action Letter (NAL) to fintech lender Upstart, pledging not to enforce federal fair lending laws so long as the company provides regular data about the company's business practices to the Bureau. The preceding

case study, constructed using Upstart's own marketing materials, plainly illustrates the potential for racial disparities in credit pricing as a result of Upstart's lending practices. As Upstart expands the licensing of its underwriting algorithm to other financial services companies, scrutiny of these practices is even more important.

Congress should immediately demand the following historical data from Upstart to assess whether CFPB's 2017 NAL is consistent with the law and meets the needs of consumers, industry, and the marketplace:^{III}

- Upstart's overall loan approval (expressed in dollars lent as well as consumers served) and denial rates for loans made using non-individualized education data (e.g., school, school sector, major) in the underwriting process.
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended an institution of higher education enrolling populations with significant percentages of undergraduate minority students.⁵⁶
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended an institution of higher education other than one enrolling populations with significant percentages of undergraduate minority students.⁵⁷
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended a community college.
- Upstart's loan approval and denial rates where a consumer indicates that he or she attended an institution of higher education other than a community college.
- Upstart's interest rate spread (25th percentile, median, 75th percentile) for loans made using non-individualized education data (e.g., school, school sector, major) in the underwriting process.
- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended an institution of higher education enrolling populations with significant percentages of undergraduate minority students.⁵⁸

^{III} To date, little public information has been produced by the CFPB about Upstart's disclosures to the Bureau under its NAL agreement. The limited disclosures made by the CFPB appear to have been based on a simulation, comparing Upstart's approach to underwriting and pricing against a hypothetical model that relies on FICO score. This approach is seriously flawed. It fails to isolate the effects of educational data on protected classes of borrowers when similarly-situated Upstart customers are compared to one another. The flaws in this design suggest a path forward for Congressional investigators—by demanding the production of data that allows for an apples-to-apples comparison across Upstart's existing portfolio of customers, including data on approvals and denials specific to each college or university attended by an Upstart customer, Congress can more accurately assess whether Upstart's approach to underwriting or pricing loans has a disparate impact. See Consumer Financial Protection Bureau, *An update on credit access and the Bureau's first No-Action Letter* (August 2019), <https://www.consumerfinance.gov/about-us/blog/update-credit-access-and-no-action-letter>.

- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended an institution of higher education other than one enrolling populations with significant percentages of undergraduate minority students.⁵⁹
- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended a community college.
- Upstart's interest rate spread (25th percentile, median, 75th percentile) where a consumer indicates that he or she attended an institution of higher education other than a community college.

Should information produced by Upstart demonstrate that the company's practices have a disparate impact on protected classes with respect to the cost of credit, or offer evidence that Upstart's approach to consumer lending perpetuates economic inequality, Congress should immediately clarify to the CFPB that these outcomes are inconsistent with the intent behind the No-Action Letter Program. Further, Congress may wish to consider new legislation to prohibit the CFPB from waiving the Equal Credit Opportunity Act (ECOA) for any companies seeking a No-Action Letter in the future, narrowing the scope of CFPB's authority to issue these types of letters.

Recommendation 2: Federal and state financial regulators should prioritize oversight of the use of education data in underwriting to ensure lenders comply with fair lending laws.

Federal and state financial regulators supervise compliance with and enforce fair lending laws. Regulated financial institutions include both large banks like Wells Fargo and nonbank specialty consumer lenders like Upstart. Based on the findings of this report, federal and state financial regulators should prioritize the oversight of consumer lending where regulated entities use education data in underwriting or pricing credit.

Federal financial regulators, including prudential regulators and the CFPB, should examine the use of education criteria in lending decisions by big banks and nonbank consumer lenders. Federal regulators, including the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Federal Trade Commission (FTC), and the CFPB, oversee or enforce laws that may apply to the use of education data in consumer lending. In particular, these regulators may enforce ECOA, which prohibits certain types of discrimination in the extension of credit.⁶⁰ As the first case study in this report demonstrates, large regulated financial institutions may use education data when determining access to credit or pricing financial products, despite the fair lending compliance

risks it creates for these financial institutions.⁶¹ This report offers ample evidence to suggest Wells Fargo's consumer lending practices, in particular, create risks for protected classes of consumers.

There is recent precedent for the CFPB and other regulators to consider the use of non-individualized education data as a fair lending compliance risk for financial institutions. In 2012, the CFPB studied the use of schools' Cohort Default Rate (CDR) in private student lending, finding that, "[g]enerally . . . lenders' consideration of CDR in either school eligibility or underwriting and pricing criteria may reduce credit access and increase costs disproportionately for minority borrowers."⁶²

Following publication of the 2012 report, the CFPB incorporated this finding into its examination procedures by instructing examiners to consider the use of CDR when evaluating both bank and nonbank private student lenders for compliance with ECOA. Shortly thereafter, the FDIC took an enforcement action against Sallie Mae Bank for violating ECOA by using this particular piece of education data in underwriting and pricing private student loans.⁶³

Based on the evidence presented in this report, other regulators should adopt the same approach as the FDIC—prioritizing scrutiny of these practices across the financial services sector and taking enforcement actions where appropriate.

States should prioritize action to stamp out educational redlining when overseeing consumer lending by banks and nonbanks. Since 2017, the CFPB has ceased to bring new enforcement actions policing discrimination in the financial sector, drawing criticism from state law enforcement officials, civil rights groups, and Members of Congress for failing to appropriately administer the nation's fair lending laws.⁶⁴ Fortunately for consumers, the Dodd-Frank Act empowers state attorneys general and state banking regulators to enforce these laws with respect to the companies they regulate. This authority presents an opportunity for state officials to scrutinize the use of education data in consumer lending within their states, stepping in where the CFPB has recently failed to act.

In addition, states may enforce and administer a wide range of state civil rights and anti-discrimination statutes. Evidence suggests that some states are already beginning to scrutinize these entities for violations of state law. As part of any expanded state oversight effort, state regulators and law enforcement should scrutinize Upstart's practices for compliance with these state fair lending laws in the context of the CFPB's Upstart No-Action Letter.

Recommendation 3: Consumer lenders, including banks and fintech specialty lenders, should regularly publish information on underwriting decisions and pricing that relies on education data.

Banks and specialty lenders such as Wells Fargo and Upstart that use education data in their underwriting decisions should make available data on the impact of these criteria on access to credit (including both approvals and denials) and on pricing of loans for consumers. This information should track access and pricing both for borrowers who attend minority-serving institutions and for borrowers who attend non-minority serving institutions. This additional information about credit decisioning and pricing should be made available to the public at large, including stakeholders inside and outside of government, through publication on the lender's website and disclosure at the time of application. For this public disclosure to be effective, it should include data that allows for comparison across a company's existing portfolio of customers, including data on approvals and denials specific to each college or university attended by an applicant for credit.

By embracing new transparency with respect to the effects of education data on lending, market participants can empower borrowers to shop for financial products with an accurate understanding of the costs and risks associated with each product. Further, such transparency efforts will empower federal and state regulators to perform more effective oversight over the industry.

Conclusion

Communities of color have historically been locked out of mainstream credit markets. But while companies tout the use of education-based criteria in underwriting as a means to broaden credit access for marginalized consumers, the use of such factors may actually undermine equitable access to credit. Indeed, by creating situations where protected classes of consumers are offered less favorable credit terms, the use of education data in credit underwriting decisions can reinforce systemic barriers to economic opportunity.

Discrimination in consumer credit markets is not new. But as this analysis shows, the use of education data in underwriting could charge borrowers more for a loan simply for choosing the most accessible path for pursuing the American Dream. Is this what is meant by a mission of 'innovation'? Access to credit should not simply mean 'more people getting more loans.' It is imperative to examine the variance in the cost of those loans. Otherwise, expanded access to credit will not expand equity.

With mortgage redlining, borrowers are given worse loans simply because of who their neighbor is. Now, with educational redlining, borrowers are given worse loans simply because of who is sitting next to them in the classroom. Just as law enforcement took action against mortgage redlining, they must do the same with education redlining. Innovation should not re-package age-old discrimination. Rather, true innovation should provide a means to equitably broaden credit access for historically marginalized communities.

Endnotes

- 1 Charles Davidson, *Lack of Access in Financial Services Impedes Economic Mobility*, Fed. Res. Bank of Atlanta Economy Matters (Oct. 18, 2018), <https://www.frbatlanta.org/economy-matters/community-and-economic-development/2018/10/16/lack-of-access-to-financial-services-impedes-economic-mobility>; see also Christopher K. Odinet, *The New Data of Student Debt*, 92 S. Cal. L. Rev. 1617, 1673 (Dec. 2019).
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- 5 See, e.g., Upstart, *Upstart Receives First No-Action Letter Issued by Consumer Financial Protection Bureau* (Sept. 14, 2017), <https://www.upstart.com/blog/upstart-receives-first-no-action-letter-issued-consumer-financial-protection-bureau> [hereinafter *Upstart Release*].
- 6 See Aryn Bussey, *Educational Redlining? The use of education data in underwriting could leave HBCU and MSI graduates in the dark*, Student Borrower Prot. Ctr (July 24, 2019), <https://protectborrowers.org/educational-redlining>.
- 7 See, e.g., *Upstart Release*, *supra* note 5.
- 8 See Bussey, *supra* note 6.
- 9 See *id.*
- 10 See *id.*
- 11 A series of lenders were examined for their use of education-based data in underwriting decisions. In particular, Wells Fargo Bank and Upstart were selected for the availability of their products' rate calculation without a credit check (Wells Fargo) and only a soft credit inquiry (Upstart).
- 12 See *Who are the credit invisibles?*, Consumer Fin. Prot. Bureau (CFPB) (Dec. 2016), https://files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf [hereinafter *Credit Invisibles*].
- 13 See, e.g., *Upstart Release*, *supra* note 5.

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- 20 *Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit: Hearing Before the H. Task Force on Financial Technology*, 116th Cong. 7 (2019) (statement of Chi Chi Wu, Staff Attorney, National Consumer Law Center).
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- 23 Bussey, *supra* note 6.
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- 26 See Kevin Drawbaugh, *Lawmakers Quiz Student Lenders on 'redlining'*, Reuters (June 7, 2007) <https://www.reuters.com/article/us-studentloans-congress/lawmakers-quiz-student-lenders-on-redlining-idUSN0724029120070607>.
- 27 See Assoc. Press, *Cuomo charges 'redlining' in student loan probe*, NBC News (June 19, 2007), http://www.nbcnews.com/id/19316230/ns/business-personal_finance/t/cuomo-charges-redlining-student-loan-probe/#.Xihm9GhKhPY.
- 28 See Drawbaugh, *supra* note 26.
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- 30 George Kuh et al., *What Matters to Student Success: A Review of the Literature at 77*, Nat. Postsecondary Educ. Coop. (July 2006), https://nces.ed.gov/npec/pdf/kuh_team_report.pdf.
- 31 Rustin, *supra* note 16.
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- 36 See Wells Fargo Private Student Loans, Wells Fargo, <https://www.wellsfargo.com/student/> (last visited Feb. 3, 2020).
- 37 See Wells Fargo Undergraduate Private Student Loans, Wells Fargo, <https://www.wellsfargo.com/student/collegiate-loans/> (last visited Jan. 30, 2020).
- 38 See Wells Fargo Private Loans for Community College, Wells Fargo, <https://www.wellsfargo.com/student/community-college-loans/> (last visited Jan. 30, 2020).
- 39 See *Today's Rates*, Wells Fargo, <https://wfs.wellsfargo.com/terms/TodaysRates> (last visited Feb. 3, 2020).
- 40 See also Ellen Wexler, *Geography Matters*, Inside Higher Ed (Feb. 3, 2016), <https://www.insidehighered.com/news/2016/02/03/when-students-enroll-college-geography-matters-more-policy-makers-think> ("At public four-year colleges, the median distance students live from home is 18 miles. That number is 46 miles for private nonprofit four-year colleges, and only eight miles at public two-year colleges.").
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- 43 See Alisa Cunningham et al., *Issue Brief: Minority-Serving Institutions Doing More with Less*, Inst. for Higher Ed. Policy (Feb. 2014), <https://vtechworks.lib.vt.edu/bitstream/handle/10919/63120/MinorityServingInstitutions.pdf?sequence=1&isAllowed=y>.
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- 45 See Upstart Network, <https://www.upstart.com/about#who-we-are> (last visited Jan. 15, 2020).
- 46 See *id.*
- 47 See *Upstart Release*, *supra* note 5.
- 48 See *id.*
- 49 See CFPB Announces First No-Action Letter to Upstart Network, Consumer Fin. Prot. Bureau (Sept. 14, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/>.
- 50 *Id.*
- 51 *Id.*
- 52 See generally Kenneth P. Brevoort & Michele Kambara, *CFPB Data Point: Becoming Credit Visible*, Consumer Fin. Prot. Bureau (June 2017), https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf (finding that the majority of consumers are credit visible by age 25).
- 53 Compare Rates With Our Loan Calculator, Upstart, <https://www.upstart.com/blog/compare-rates-loan-calculator> (last visited Feb. 3, 2020).
- 54 See United States Department of Education Lists of Postsecondary Institutions Enrolling Populations with Significant Percentages of Undergraduate Minority Students, U.S. Dep't of Educ. (accessed Feb. 3, 2020), <https://www2.ed.gov/about/offices/list/ocr/adlite-minorityinst.htm> [hereinafter *MSI List*].
- 55 See Drawbaugh, *supra* note 26.
- 56 See *MSI List*, *supra* note 54.
- 57 See *id.*
- 58 See *id.*
- 59 See *id.*
- 60 See 15 U.S.C. §§ 1691 et seq.; see also *Equal Credit Opportunity Act*, CFPB Consumer Laws and Regulations, Consumer Fin. Prot. Bureau, https://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf.

- ⁶¹ See e.g., *Equal Credit Opportunity Act*, CFPB Consumer Laws and Regulations, Consumer Financial Protection Bureau, https://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf.
- ⁶² *Fair Lending Report of the Consumer Financial Protection Bureau*, Consumer Fin. Prot. Bureau (Dec. 2012), https://files.consumerfinance.gov/f/201212_cfpb_fair-lending-report.pdf.
- ⁶³ See FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act, Fed. Deposit Ins. Corp. (May 13, 2014), <https://www.fdic.gov/news/news/press/2014/pr14033.html>.
- ⁶⁴ See Kate Berry, *Where Have all the CFPB Fair-Lending Cases Gone?*, Am. Banker (Dec. 16, 2019) <https://www.americanbanker.com/news/where-have-all-the-cfpb-fair-lending-cases-gone>.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Chairwoman Maxine Waters:

CFPB’s New Policy Regarding Prohibition on Abusive Acts or Practices

On January 24, the Bureau issued a new policy statement, clarifying how it would enforce abusive acts or practices as part of its enforcement of Section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which prohibits unfair, deceptive, or abusive acts or practices (UDAAP). The policy statement effectively rewrites Dodd-Frank to undermine the Bureau’s authority to protect consumers and punish bad actors in the financial marketplace. The new policy makes it easier for entities that engage in abusive conduct to avoid paying penalties. The new policy needlessly hinders the Bureau’s ability to hold entities accountable by requiring a cost benefit analysis when considering whether an act or practice is abusive. The policy statement also abandons the Bureau’s long-standing practice of bringing abusive claims along with unfair and/or deceptive claim based on the same set of facts.

Question 1

Director Kraninger, under the new policy, the Bureau will not impose penalties against entities that engage in abusive conduct if they made a “good faith effort” to comply with the law. Dodd-Frank presumes that the Bureau will impose penalties for violations of federal consumer law, including for abusive acts or practices. Please explain why you have rewritten the law to limit the ability of the Bureau to penalize companies that abuse consumers.

Response

As you note, on January 24, 2020, the Consumer Financial Protection Bureau (Bureau) issued a policy statement providing a common-sense framework for how it intends to apply the “abusiveness” standard in supervision and enforcement matters, “Statement of Policy Regarding Prohibition on Abusive Acts or Practices” (policy statement).¹ The policy statement does not amend the definition of abusiveness as set forth in the Consumer Financial Protection Act (CFPA). Rather, the policy statement seeks to provide greater clarity around the application of the abusiveness standard, thereby promoting compliance with the standard, since the CFPA is the first Federal law to prohibit abusive acts or practices with respect to consumer financial products and services generally. Given that, abusiveness does not have the rich, long history through legislative, administrative, and judicial actions and decisions of the unfairness and deception standards. The Bureau’s promotion of clarity and compliance are in the public interest and beneficial to all stakeholders in the consumer finance marketplace.

As set forth in the Bureau’s recent policy statement, absent unusual circumstances, the Bureau does not intend to seek civil penalties or disgorgement if a covered person made a good-faith

¹ https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf.

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effort to comply with the abusiveness standard. This policy statement is consistent with the Bureau’s statutory mandate. As set forth in the CFPB, “[i]n determining the amount of any penalty assessed . . . , the Bureau or the court shall take into account the appropriateness of the penalty with respect to” several factors including expressly “good faith of the person charged.”² Further, the Bureau emphasizes that it is committed to aggressively pursuing the full range of monetary remedies against bad actors who were not acting in good faith in violating the abusiveness standard, such as those who engage in fraudulent practices or consumer scams. The Bureau’s seeking such relief will prevent and deter the continuation or recurrence of such abusive acts or practices.

Finally, it bears emphasizing that even if a covered person makes a good-faith but unsuccessful effort to comply with the abusiveness standard, the Bureau still intends to seek legal or equitable remedies, such as damages and restitution, to redress identifiable consumer injury caused by the abusive acts or practices that would not otherwise be redressed.

Question 2

Director Kraninger, Congress explicitly included a definition of abusive conduct in Dodd Frank. The statutory definition of abusiveness makes no reference to any consideration of whether the harm to consumers from the conduct is outweighed by its benefits. In contrast, Congress explicitly required such an analysis when it defined unfairness in the statute. What authority allows the Consumer Bureaus unilaterally amend the definition of abusiveness provided in Dodd-Frank?

Response

The policy statement does not amend the definition of abusiveness as set forth in the CFPB, as outlined in the response to Question 1. The policy statement provides a framework for the Bureau’s exercise of its supervisory and enforcement authority to address abusive acts or practices. The policy statement indicates that the Bureau intends to focus on citing conduct as abusive in supervision and challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers. This focus is consistent with the priority the Bureau gives to the prevention of harm to consumers. It will help ensure that the Bureau uses its scarce resources to address conduct that harms consumers and will ensure that the Bureau’s supervisory and enforcement decisions are consistent across matters.

The Bureau’s consideration of the harms and benefits of the conduct (i.e., its effects) on consumers can be qualitative as well as quantitative. That is, a quantitative analysis is not

² 12 U.S.C. § 5565(c)(3)(A).

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necessary for every citation or challenge to conduct as being a violation of the abusiveness standard.

Question 3

Director Kraninger, double pleading is a common practice among law enforcement. Why would you hamstring the efforts of your supervision and enforcement division by limiting its ability allege abusive claims along with unfairness or deception based on the same conduct?

Response

As of the publication of the policy statement on January 24, 2020, the Bureau had brought 32 enforcement actions that included an abusiveness claim. Thirty of those 32 actions had both an abusiveness and an unfairness or deception claim, and in many of those actions, the abusiveness claim arose from the same course of conduct as the unfairness or deception claim. Given the prevalence of double pleading in previous Bureau public enforcement actions involving claims of abusiveness, along with the relatively nascent nature of this legal authority (and of the Bureau itself) and the number of matters the Bureau has resolved via settlement agreement, few reported judicial or Bureau administrative decisions address the contours of the abusiveness standard.

The Bureau believes that by avoiding double pleading it will provide more certainty to covered persons as to the conduct the Bureau determines is abusive. This approach also will facilitate the development of a body of jurisprudence as to the conduct courts conclude is abusive. This approach is not designed to hamstring the Bureau's ability to bring appropriate claims, as demonstrated by the Bureau's recent public enforcement action involving claims of both abusiveness and unfairness.

In 2016, the Consumer Bureau brought an action against Wells Fargo for its illegal sales practices. As part of that action, the Consumer Bureau fined the Bank \$100 million. The Consumer Bureau found that Wells Fargo both unfairly and abusively opened millions of fake deposit and credit card accounts. The Consent Order detailed how thousands of Wells Fargo employees engaged in illegal sales practice to satisfy the Banks' sales goals and earn incentive compensation. Based on your new guidance on your standard for abusive activities, the Consumer Bureau would not be able to bring both of these claims today, since the Bureau now believes it should only bring "stand-alone" cases to halt abusive practices. If CFPB took this approach in 2016, career enforcement attorneys would have had to make the false choice that opening fake accounts was either abusive or unfair when it was clearly both under the law.

Question 4

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Director Kraninger was it appropriate for the CFPB to prosecute Wells Fargo to the full extent of the law for such egregious consumers abuses?

Response

The Bureau has not conducted a retrospective analysis of enforcement or supervisory actions to determine whether conduct addressed as abusive in any of those actions would potentially not be the basis of an abusiveness claim under the policy statement. There are several examples of conduct previously addressed as abusive, however, that likely would not be affected by the policy statement. The Wells Fargo Sales Practices matter, for example, included findings of abusiveness related to the bank's unauthorized enrollment of consumers in online-banking services and issuance of unauthorized debit cards. That conduct was not the subject of unfairness or deception claims and did not have benefits to consumers that outweighed its harms.

Question 5

Director Kraninger, in your view, should career enforcement attorneys have the discretion to determine what claims to bring based on the facts of each case not on some arbitrary policy?

Response

The policy statement is not an arbitrary constraint on enforcement discretion. Uncertainty exists as to the scope and meaning of abusiveness. This uncertainty creates challenges for covered persons in complying with the law. The Bureau wants to make sure that such uncertainty does not impede or deter the provision of otherwise lawful financial products or services that could be beneficial to consumers.

Question 6

Under your new policy regarding the enforcement of abusiveness, would you have brought these claims?

Response

See response to Question 4.

Decline in Enforcement/Supervisory Activity

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One of the Consumer Bureau’s primary functions is to supervise large banks and credit unions in addition to certain non-banks for compliance with Federal consumer financial law. After you testified last March again after your testimony last October, you were asked to provide information on the number of exams the Consumer Bureau is performing. According to your response, the Consumer Bureau opened 174 exams in FY 2016, 171 in FY 2017, 146 in FY 2018, and only 131 in FY 2019.³ You also indicated that only 2 of the 22 public enforcement actions announced in FY 2019 were against depository institutions. This contrasts to eight such actions against depository institutions in FY 2016, under Director Cordray.⁴

Question 7

Director Kraninger, can you please explain the Consumer Bureau’s decline in enforcement and supervisory activity under your leadership?

Response

Rigorous enforcement is part of the Bureau’s mission that we continue to carry out. When the Bureau discovers violations, enforcement is essential to hold wrongdoers to account, make things right for consumers, and deter future violations. Every enforcement case we undertake is managed by our staff to ensure compliance with Federal consumer financial laws and to prevent and redress consumer harm. We pursue cases only after thoroughly reviewing the facts. And once those facts are in our possession, I am committed to ensuring that we move as expeditiously as possible to resolve cases in the interest of justice, whether through public enforcement action, a determination that a particular investigation should be closed, or through the use of our education, regulatory or supervisory tools.

In fiscal year (FY) 2019, the Bureau announced 22 public enforcement actions and settled six previous lawsuits. The final orders and judgments obtained by the Bureau during this period required a total of more than \$750 million in total consumer relief (more than \$600 million in consumer redress and more than \$150 million in other relief) and over \$150 million in civil money penalties, before adjusting for suspended amounts.

In addition to the public enforcement actions, during my tenure with the Bureau, institutions paid millions in restitution to over 247,000 consumers in connection with supervisory activities. In FY 2019, the Bureau initiated 485 supervisory events, including 133 supervisory activities with an onsite date or equivalent, at large banks and non-bank financial institutions. The Bureau also issued 433 matters requiring attention (MRAs) in FY 2019.

³ See pages 3-4 of QFR Responses from October 16, 2019 Hearing., “Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau.”

⁴ https://www.consumerfinance.gov/policy-compliance/enforcement/actions/?title=&from_date=10%2F01%2F2015&to_date=09%2F30%2F2016

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Question 8

Director Kraninger, in a recent speech before the National Association of Attorneys General Capital Forum, you stated, “supervision and enforcement are essential tools Congress gave the Bureau. A purposeful supervisory and enforcement regime can prevent consumer harm by promoting a culture of compliance and righting wrongs” – end quote.⁵ How is the significant decline in Bureau’s exam activity and public enforcement actions against depository institutions consistent with holding them accountable when they harm consumers?

Response

Consistent with the Bureau’s statutory objectives, the Bureau is committed to enforcing Federal consumer financial law consistently, without regard to the status of a person as a depository institution, in order to promote fair competition. Consistent with that statutory objective, under my leadership, the Bureau has issued MRAs and taken enforcement action against both depository and nondepository institutions.

Question 9

In your February 6, 2020 testimony before our Committee, you acknowledged that the Bureau has not launched any enforcement actions related to overdraft and stated that you could not manufacture cases.

How many checking account complaints has the Bureau received relating to overdrafts and overdraft fees in each of the past three fiscal years?

Response

In the past three fiscal years, the Bureau has received the following numbers of complaints related to overdraft and overdraft fees:

- *In FY 2017, approximately 4,600 complaints.*
- *In FY 2018, approximately 4,400 complaints.*
- *In FY 2019, approximately 4,200 complaints.*

Question 10

⁵ <https://www.consumerfinance.gov/about-us/newsroom/director-kraningers-remarks-national-association-attorneys-general-capital-forum/>

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What percentage of checking account complaints have involved overdrafts or overdraft fees in each of those years?

Response

In the past three fiscal years, the following percentages of checking account complaints have involved overdrafts or overdraft fees:

- *In FY 2017, 27.6% of checking account complaints.*
- *In FY 2018, 24.8% of checking account complaints.*
- *In FY 2019, 20.9% of checking account complaints.*

In your first full year on the job, of the 24 public enforcement actions announced in 2019, only two were against depository institutions, a decline from eight enforcement actions against depository institutions in 2016. Since you last testified before the Committee in October 2019, the Bureau announced five enforcement actions against nonbanks, most with limited penalties and fines.

Question 11

Director Kraninger, under your leadership and record of lax oversight, it appears that banks suddenly are complying with all the various consumer protection laws and regulations. Is that accurate?

Response

Consistent with the Bureau’s statutory objectives, the Bureau is committed to enforcing Federal consumer financial law consistently, without regard to the charter of an entity, in order to promote fair competition, in the interest of justice, and to prevent consumer harm.

Question 12

Director Kraninger, who should consumers turn to if they have been harmed by a bad actor?

Response

The Bureau is committed to carrying out the mission it has been given by Congress, including enforcement of Federal consumer financial law. I have made clear that enforcement is the appropriate tool to use against bad actors. Consumers have many avenues to report their concerns, including through the Bureau’s complaint database. Consumers can reach us online

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at www.consumerfinance.gov anytime or by phone at 855-411-2372 Monday - Friday 8am-8pm ET in over 180 languages.

Question 13

Director Kraninger, in your view, should more states follow California’s lead and explore setting up a state-level CFPB if the federal CFPB will not do its job?

Response:

The Bureau will not comment on what California or other states should do; the Bureau will continue to fulfill its own mission.

Decline in Fair Lending Enforcement

According to information you provided to the Committee following your last appearance in October 2019, you indicated that the Consumer Bureau opened 32 fair lending supervisory exams in fiscal year (FY) 2016, and that number fell to 24 in FY 2019. You also noted there were only 21 fair lending supervisory events planned for FY 2020.⁶

Question 14

Director Kraninger, why has the number of fair lending supervisory exams opened by the Consumer Bureau declined?

Response

The Bureau’s fair lending supervisory exams have consistently made up 15 percent to 18 percent of the total exam events opened by the Bureau since FY 2016. The Bureau remains committed to protecting consumers from discrimination.

After reviewing the fair lending public enforcement actions taken by the CFPB thus far that are listed on your website, it appears there have been no cases where the CFPB, under your leadership, has found a company of violating the Equal Credit Opportunity Act (ECOA).

Question 15

⁶ See pages 3-4 of QFR Responses from October 16, 2019 Hearing., “Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau.”

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Director Kraninger, do you believe that in 2019, there was not a single consumer that was discriminated against by a financial company pursuant to ECOA?

Response

Protecting consumers from discrimination is one of the primary objectives laid out in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), an objective that the Bureau takes very seriously. The Bureau continues to enforce fair lending laws in our jurisdiction and stands on guard against unlawful discrimination in credit. In calendar year (CY) 2019, the Bureau referred three matters to the U.S. Department of Justice (DOJ) about discrimination pursuant to Section 706(g) of the Equal Credit Opportunity Act (ECOA). Like other federal bank regulators, the Bureau is required to refer matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. In 2018 and 2019, the Bureau had a number of ongoing fair lending investigations of institutions involving a variety of consumer financial products. One key area in which the Bureau has focused its fair lending enforcement efforts is addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. At the end of CY 2019, the Bureau had pending investigations in this and other areas.

Question 16

If not, why did you not undertake any fair lending public enforcement actions pursuant to ECOA?

Response

In general, the Bureau does not comment publicly on confidential enforcement investigations or litigation. The Bureau’s mission is to ensure all consumers have access to consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. The Bureau will continue to fulfill that mission while exploring ways to increase access to credit for all. The Bureau is committed to fair lending and will continue to vigorously enforce fair lending laws within our jurisdiction.

Question 17

According to the CFPB’s annual Fair Lending Report issued last June 2019,⁷ of the five regulatory agencies that make up the Federal Financial Institutions Examination Council (FFIEC), including the CFPB, there were 20 referrals in 2016 to the Department of Justice (DOJ) for potential

⁷ https://files.consumerfinance.gov/f/documents/201906_cfpb_Fair_Lending_Report.pdf

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violations of the Equal Credit Opportunity Act (ECOA). However, there was only one such referral to DOJ in 2018, which was done by the National Credit Union Administration (NCUA).

Director Kraninger, why are we seeing so few referrals from the Consumer Bureau and other agencies to the Department of Justice with regard to allegations of discrimination pursuant to ECOA?

Response

I cannot comment on referrals from other state or federal regulatory agencies to the DOJ. On behalf of the Bureau, I can state with confidence that we are committed to fair lending and will continue to vigorously enforce fair lending laws within our jurisdiction. As noted above, in CY 2019, the Bureau referred three matters to the DOJ about discrimination pursuant to Section 706(g) of the ECOA. One key area in which the Bureau has focused its fair lending enforcement efforts is addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. At the end of CY 2019, the Bureau had a number of pending investigations in this and other areas.

Lack of Supervision Over Federal Student Loan Servicers

Student loan debt is a national crisis. According to the Federal Reserve, Americans owe more than \$1.6 trillion in student loan debt.⁸ This Committee held a hearing in September on holding student loan servicers accountable. The CFPB has a vital role in supervising the servicing of federal student loans, yet according to information you provided to this Committee after you testified in October, in FY 2018 and 2019, the Bureau did not conduct any new exams regarding the servicing of federal student loans.⁹

Question 18

Director Kraninger, you have indicated in your testimony before our Committee that the Consumer Bureau has oversight over federal student loans. Why have you not conducted any new exams regarding the servicing of federal loans?

Response

Since December 2017, while the Bureau’s supervisory activity concerning private and privately held student loans continued, examinations of student loan servicers were limited by the fact that those servicers declined to produce information requested by the Bureau for supervisory examinations related to federal Direct Loans and Federal Family Education Loan Program (FFELP) loans held by the Department of Education. That has now changed. The Bureau is

⁸ <https://www.federalreserve.gov/releases/g19/current/>

⁹ See page 9 QFR Responses from October 16 Hearing, “Who is Standing Up for Consumers? A Semi-Annual Review of the Consumer Financial Protection Bureau”

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currently conducting an examination at a student loan servicer that includes review of federal Direct Loans and federally-held FFELP loans. This examination is being conducted in coordination with the Department of Education’s own examinations of these servicers for compliance with their programmatic requirements.

Question 19

In January 2020, you announced a memorandum of understanding between the Consumer Bureau and the Department of Education on sharing information from complaints submitted by student loan borrowers. This MoU is a very limited agreement – of the two MoUs that the Department of Education revoked, one was on consumer complaints related to Section 1035 of Dodd Frank, and the other was on sharing supervisory information. The MoU you announced this week only deals with consumer complaints.

Director Kraninger, since the Consumer Bureau continued to accept student loan complaints even after the Department of Education pulled the agreement, does this MoU do anything other than reaffirm the status quo?

Response

Yes, the Bureau continued to accept Federal student loan complaints after the Department of Education terminated the prior complaints Memorandum of Understanding (MOU). In fact, the Bureau used data from those Federal student complaints in the Private Education Loan Ombudsman’s Annual Report in October 2019.¹⁰ The new complaints MOU provides a framework for the Bureau and the Department of Education to facilitate increased collaboration and to bring their complementary areas of subject matter expertise to bear on student loans in order to have better outcomes for consumers. More specifically, the new complaints MOU provides for the sharing of information about complaints and borrower characteristics. It provides for the sharing of analysis, recommendations, and data analytics tools, and provides for regular meetings between the Bureau and the Department of Education regarding complaints. With the new complaints MOU, the Department of Education will have near real-time access to the Bureau’s complaint database. Additionally, the new MOU directly addresses and balances the respective roles and responsibilities of both the Bureau and the Department of Education with respect to federal and private student complaints. Using just one example of how the new complaints MOU is more than reaffirming the status quo, if either the Bureau or the Department of Education identifies a potential issue through complaints in near-real time at one servicer, the Department of Education may notify the other eight servicers regarding the potential issue, which could potentially allow them to resolve the issue before any harm to their borrowers occurs.

¹⁰ https://files.consumerfinance.gov/f/documents/cfpb_annual-report_private-education-loan-ombudsman_2019.pdf

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Question 20

Director Kraninger, please provide an update on your negotiations with the Department of Education regarding the sharing of supervisory information that would allow the Consumer Bureau to resume exams regarding the servicing of federal student loans.

Response

See response to Question 18. In addition, to further development of the coordinated examination process, the Bureau has offered to detail two staff members to the Department of Education. Due to the pandemic crisis, the details have not yet been executed.

Question 21

Director Kraninger, how long are you willing to negotiate with the Department of Education before considering other options, including legal action?

Response

See response to Question 20. Consistent with that response, examinations including review of federal Direct Loans and federally-held FFELP loans are taking place consistent with the Bureau's risk prioritization process.

Question 22

In your February 6, 2020 testimony before our Committee, you indicated that the Bureau would be sending detailees to the Department of Education to conduct joint examinations of federal student loan servicers with the Department of Education.

When will the first such examination take place?

Response

See responses to Questions 18 and 20.

Question 23

How many examinations are planned?

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Response

The Bureau generally considers such information confidential supervisory information and has only provided the total number of supervisory events in a given fiscal year rather than any subset associated with a particular product line or law (with the exception of fair lending). The Bureau schedules supervisory events based on a robust risk prioritization process and is engaged in regularly enhancing that process. The Bureau provides insights into its supervisory priorities and findings in Supervisory Highlights, including some that have been issued associated with student loan servicing.¹¹

Question 24

How many detailees will be sent?

Response

See response to Question 20.

Question 25

Will the Bureau’s detailees be working under the supervision and direction of managers and executives of the Bureau or of the Department?

Response

As referenced above, the detailee(s) will be working on a coordinated examination process and supporting the Department of Education in building out its contract management oversight capabilities to the extent that they want to use Bureau examination techniques as a model. As in any detail, the detailee(s) will be working under the day-to-day supervision and direction of managers at the Department of Education. However, the detailee(s) are also reporting to the Bureau through the Office of Supervision Policy to ensure that the Bureau’s mission needs are met. This is separate from the ongoing examination which is being conducted simultaneously by Bureau examiners on federal student loan servicing under the supervision and direction of managers and executives of the Bureau.

Question 26

¹¹ See, e.g., Supervisory Highlights, Issue 13, Fall 2016, available at <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights/>.

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Will the Department of Education have to sign off on requests for information that the Bureau’s examiners make, or will they be able to request the data they need to evaluate whether the servicers are complying with the federal consumer financial laws?

Response

The Bureau recognizes the public interest in the conduct of the current examination. However, the level of information provided in response to this question does not set a precedent regarding what may be determined in the future as confidential supervisory information. Furthermore, the ongoing examination may not be the model for future events.

In the examination that is ongoing, the Bureau coordinated with the Department of Education on the requests for information. Information from the subject servicer is being transmitted directly to the Bureau as well as to the Department of Education.

Question 27

Will the Education Department have to sign off on findings by the Bureau’s examiners, or will the Bureau’s examiners be free to issue Matters Requiring Attention or Supervisory Recommendations to address consumer finance compliance issues even if the Education Department does not view particular conduct to be inconsistent with its contracts?

Response

The Bureau will maintain the integrity of the supervisory process and will issue the findings it determines appropriate.

Question 28

The results of several studies suggest that racial wealth inequality is exacerbated by student debt. For example, in the Sociology of Race and Ethnicity journal, researchers found that black students “take on 85 percent more education debt than their white counterparts—and that disparity compounds by 7 percent each year after the borrowers leave school, because African-Americans face unique repayment challenges.” Some of the reasons for this disparity include black students often having less family wealth than their white counterparts; a higher number of black students attending for-profit colleges; and black students being more likely to have private loans.

Director Kraninger, what actions has the Consumer Bureau taken to address the unique challenges of minority student loan borrowers?

Response

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As I discussed in exchanges with Members of the Committee, a number of studies have recently highlighted the disparities in outcomes for minority students. Some of the gaps acknowledged in those studies, particularly disparities that persist after accounting for differences in wealth and other factors, were particularly concerning to me. Earlier this year I approved a new project under the Bureau’s Research Agenda Program in which we will conduct our own research on borrowing outcomes to better understand the drivers of these disparities. We already have the relevant survey data from the Department of Education in house and we will begin work with our own data soon. The goal of this research is to develop a more complete picture of borrowers’ experiences so we can help provide borrowers the right tools at the right points to make more informed choices. Consistent with the project’s findings, we will take any other appropriate actions.

In addition, the Bureau offers a series of financial education resources to educate and engage consumers on taking out student loan debt that they can afford to repay. This summer, the Bureau will launch a new web tool, “Paying for College: Your financial path to graduation,” that focuses on preparing students to pay for college, setting a financial plan to budget to completion, and evaluating the impact of student loan debt on their future finances. The web tool allows prospective students to evaluate their financial aid packages with tips and advice to take out student loan debt they can afford based on their future plans, including choice of institution to attend, degree program, and expected salary at graduation.

As a part of the launch of the new Paying for College web tool, the Bureau will be soliciting partners from institutions of higher education to pilot the new tool with their students. The Bureau plans to conduct targeted outreach to communities of color, including Minority Serving Institutions and Historically Black Colleges and Universities, to join the pilot. In addition to institutions of higher education, the Bureau conducts outreach to high school counselors and other organizations that serve disadvantaged and/or minority high school students.

Question 29

The Bureau's Fall Unified Agenda added two new rulemakings to the longer-term agenda, one relating to Loan Originator Compensation and the other relating to electronic disclosures.

Why has the Bureau decided to prioritize those items over topics that were previously part of the Unified Agenda such as overdraft or student loan servicing?

Response

In light of feedback received in response to the Bureau’s 2018 Call for Evidence and various other outreach to stakeholders, the Bureau added new entries related to loan originator compensation and electronic disclosures to its fall 2019 long-term regulatory agenda. This

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portion of the agenda focuses on potential regulatory actions that an agency may engage in beyond the current fiscal year.

As to loan originator compensation, the Bureau has received feedback that aspects of Regulation Z's loan originator compensation requirements are unnecessarily restrictive. The Bureau is considering a rulemaking to address certain of these concerns. In particular, the Bureau plans to examine whether to permit adjustments to a loan originator's compensation in connection with originating State housing finance authority loans in order to facilitate the origination of such loans. The Bureau also plans to examine whether to permit creditors to decrease a loan originator's compensation due to the loan originator's error in order to provide clearer rules of the road for regulated entities.

As to electronic communications, a segment of the U.S. population may prefer and expect the option to receive certain information electronically, particularly about transactions that a consumer seeks to initiate from an electronic device. The Bureau has received feedback that the intersection of certain requirements of Regulation Z and the Electronic Signatures in Global and National Commerce Act (E-SIGN) are too restrictive for consumers applying for credit card accounts via electronic channels and for consumers willing, or preferring, to receive account information electronically only. Therefore, the Bureau is considering a rulemaking to address a range of issues at the intersection of E-SIGN and Regulation Z with regard to credit cards to expand options for such consumers. Further, through its innovation policies and research efforts, the Bureau is seeking to improve the timing, content, and consumer understanding of disclosures that may be enhanced through technology.

Taskforce on Federal Consumer Financial Law

On January 9, 2020 the Consumer Bureau announced the members of its Taskforce on Federal Consumer Financial Law. According to the Bureau's press release, the Taskforce “will examine the existing legal and regulatory environment facing consumers and financial services providers and report to Director Kraninger its recommendations for ways to improve and strengthen consumer financial laws and regulations.” You selected Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia Law School, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center to chair the Taskforce.

In a 2013 law review article titled “The Consumer Financial Protection Bureau: Savior or Menace?,” Professor Zywicki wrote “If one were to sit down and try to design a policy-making agency that essentially embodied all the pathologies that scholars of regulation have identified over the past several decades, one could hardly do better than that of the CFPB: an unaccountable body headed by a single director insulated from removal by the president or budgetary oversight by Congress and charged with a tunnel-vision mission to pursue one narrow goal with potential for substantial harm to the economy and consumers.”¹²

¹² <https://www.mercatus.org/publications/financial-markets/consumer-financial-protection-bureau-savior-or-menace>

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Question 30

Director Kraninger, do you agree with Professor Zywicki’s comments referenced above?

Response:

During his extensive career, Professor Zywicki has offered independent views on a wide range of issues, including those about the Bureau and its mission. My selection of Professor Zywicki as Taskforce Chair does not necessarily mean that I agree with everything that he has ever said or written. Professor Zywicki and his fellow Taskforce members represent over 150 years of collective experience related to the regulation of the consumer financial markets and they are charged with offering their independent analysis and recommendations to the Bureau. While I may or may not agree with all the recommendations they ultimately make, I believe this exercise is vitally important to ensuring that the Bureau takes a wholistic and long-term view of our important mission to ensure all consumers have access to markets for consumer financial products and services and that these markets are fair, transparent, and competitive.

Question 31

Director Kraninger, given Professor Zywicki’s prior statements, are you concerned that he will not be able to adequately or fairly lead the task force and help carry out the Bureau’s mission to protect consumers?

Response

Professor Zywicki is a highly skilled and accomplished law professor, attorney, and economist. I am confident in his ability to offer independent advice that is in the best interest of the American consumer and the Bureau’s mission with the support of his colleagues on the Taskforce.

Question 32

Professor Zywicki in 2013 filed a declaration on behalf of Morgan Drexen in a lawsuit filed against the company by the Consumer Bureau. The Consumer Bureau alleged that Morgan Drexen charged illegal fees and deceived consumers in providing debt relief services. Morgan Drexen in the course of the litigation was also accused of falsifying evidence. Professor Zywicki was paid \$500 an hour for his work on behalf of Morgan Drexen.

Director Kraninger, does Professor’s Zywicki’s past work as a hired gun for defendants being sued by the Bureau present an appearance of a conflict of interest?

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Response

As noted above, Professor Zywicki is a highly skilled and accomplished law professor, attorney, and economist. I am confident in his ability to offer independent advice that is in the best interest of the American consumer and the Bureau’s mission with the support of his colleagues on the Taskforce.

Question 33

In addition to Professor Zywicki, the other members of the Taskforce are Dr. J. Howard Beales, III; Dr. Thomas Durkin, L. Jean Noonan, and William MacLeod. Dr. Beales has served as an expert witness on behalf of Direct TV in a case filed by the Federal Trade Commission (FTC) alleging it engaged in deceptive advertising. Dr. Durkin previously served as a senior economist at the Federal Reserve Board. Ms. Noonan currently is a partner at Hudson Cook. According to her firm biography, she, “represents clients in government investigations, examinations, and enforcement actions before federal agencies, including the Consumer Financial Protection Bureau, Federal Trade Commission, and federal prudential regulators.”¹³ Mr. MacLeod is currently a partner at the firm of Kelley Drye & Warren. According to his firm biography, he “guides companies through investigations, approvals and the sophisticated challenges associated with mergers and acquisitions.”¹⁴

Director Kraninger, while the current members have academic and government experience, there does not appear to be a single individual on the Taskforce with a background working for a consumer advocacy or civil rights organization. Why is this the case?

Response

The Bureau established and followed a robust selection process, which included a public application period. An internal cross-divisional committee was created that consisted of Bureau civil servants who reviewed applications, conducted interviews, and made recommendations to me for appointment to the Taskforce. The individuals selected are highly skilled and respected professionals who have a wide range of experiences, including past public service within the federal government.

Question 34

¹³ <https://www.hudsoncook.com/attorney/jean-noonan/>

¹⁴ <https://www.kelleydrye.com/Our-People/William-C-MacLeod>

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Director Kraninger, do you think it important to have a consumer perspective on the Taskforce?

Response

It is my belief that each Taskforce member cares deeply about ensuring that all consumers have access to markets for consumer financial products and services and that these markets are fair, transparent, and competitive. I believe all perspectives are valuable to this effort, and that is why the Bureau recently issued a Request for Information to solicit public feedback on the work of the Taskforce.

Question 35

Director Kraninger, will these taskforce members keep their day jobs, or will they become employees of the CFPB?

Response

Four members of the Taskforce were appointed through the Bureau's expert hiring authority and are considered intermittent employees of the Bureau. One member was detailed to the Bureau under the Intergovernmental Personnel Act (IPA) and is considered a Bureau employee for purposes of the government ethics statutes and regulations. Each member must comply with the conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch, including the provisions governing outside employment and other outside activities found in 5 C.F.R. Part 2635, subpart H.

Question 36

Do you intend to follow the rules of the Federal Advisory Committee Act, which ensures transparency and openness in official advisory committees?

Response

The Taskforce is an intragovernmental committee and not subject to the Federal Advisory Committee Act (FACA). The Taskforce plans to seek input from the Bureau's four advisory committees, all of which are subject to FACA, in addition to the public.

Question 37

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Two of the taskforce members are practicing lawyers at two firms that represent numerous financial services industry clients, (William MacLeod, partner at Kelley Drye & Warren and L. Jean Noonan, Partner at Hudson Cook). This creates the potential for conflicts of interest. Will they recuse themselves from discussions of laws and regulations affecting their firms’ clients?

Response

Two of the conflict of interest statutes address these recusal requirements. First, under 18 U.S.C. § 208, the financial interests of the law firm are imputed to Mr. MacLeod (financial interests of Kelley Drye) and Ms. Noonan (financial interests of Hudson Cook). As a result, Mr. MacLeod and Ms. Noonan must recuse themselves from participating in any particular Bureau matter that would have a direct and predictable effect on the financial interests of the law firm where each respectively serves as a partner. Second, pursuant to 18 U.S.C. § 203, Mr. MacLeod and Ms. Noonan are prohibited from accepting any compensation for any representational services, rendered personally or by another law firm employee, in relation to a particular matter involving a specific party or parties: (1) in which Mr. MacLeod or Ms. Noonan has participated personally and substantially as a Bureau employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or (2) which is pending at the Bureau after Mr. MacLeod and Ms. Noonan has served for more than sixty days.

Question 38

Will Noonan or MacLeod, or any other member of the Taskforce, receive ethics waivers to permit their participation despite conflicts of interest?

Response

Two members of the Taskforce on Federal Consumer Financial Law have received an ethics waiver under 18 U.S.C. § 208(b)(1). As required by 5 C.F.R. § 2640.303, the Bureau formally consulted with the Office of Government Ethics prior to the issuance of each of the waivers. The Office of Government Ethics did not object to the Bureau issuing these two waivers from the financial conflict of interest statute. Neither of the section 208(b)(1) waivers issued to Taskforce members waives conflicts arising from the financial interest of the Taskforce member’s non-federal employer.

Question 39

Have any other Consumer Protection officials received ethics waivers?

Response

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Yes. The Bureau has previously issued ethics waivers under 18 U.S.C. § 208(b)(1) to other Bureau employees. With the exception of the two waivers mentioned above, the other section 208(b)(1) waivers were not issued to Taskforce members, Bureau employees detailed to the Taskforce, or other employees assigned to particular matters involving the Taskforce.

Question 40

Will the members of the Taskforce file financial disclosures?

Response

Yes. All members of the Taskforce are required to file Confidential Financial Disclosure Reports (OGE Form 450). Each of the Taskforce members meets the definition of a “confidential filer” as defined in 5 C.F.R. § 2634.904.

Question 41

Will you make Taskforce file financial disclosures available to the public?

Response

The Ethics in Government Act of 1978¹⁵ specifies which federal officers and employees are required to file a public financial disclosure report.¹⁶ None of the Taskforce members occupies an office or position that is specified in the Ethics in Government Act as requiring the filing of a public financial disclosure report.¹⁷ As noted above, each Taskforce member has been designated as a confidential financial disclosure report filer. Confidential financial disclosure reports are required to be withheld from the public, pursuant to section 107(a) of the Ethics in Government Act.

Question 42

How much will each of the members of the Taskforce be paid?

Response

The Chair of the Taskforce will not receive compensation from the Bureau, but, pursuant to the

¹⁵ See 5 U.S.C. app. § 101 *et seq.*

¹⁶ See 5 U.S.C. app. § 101(f).

¹⁷ See also 5 C.F.R. § 2634.202.

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IPA, the Bureau will reimburse his employer directly for the hours of work he performs, including for the cost of all benefits, at an hourly rate of \$141.84. The other four Taskforce members are appointed through the Bureau's expert hiring authority. Their pay was determined through the Bureau's standard compensation process and is at the CN-71 pay band. They are paid at an hourly rate of \$103.39, including locality pay.

Question 43

Whose idea was this taskforce?

Response

With the 10-year anniversary of the Dodd-Frank Act approaching, the Bureau leadership began discussing what the next 10 years of consumer finance would bring in terms of market development and consumer protection needs. We also sought to examine the structure of consumer protection authorities in anticipation of these developments and the experience of the Bureau since its inception. The model of the National Commission on Consumer Finance was raised and seemed an interesting idea. That led to the creation of the Bureau's Taskforce on Federal Consumer Financial Law.

Question 44

Director Kraninger, did you personally interview the candidates for this Taskforce?

Response

They were interviewed by a cross-Bureau selection committee of civil servants. I was not a committee participant.

Question 45

Director Kraninger, if you didn't personally interview the candidates for this Taskforce, who did?

Response

A cross-Bureau selection committee of civil servants conducted all interviews.

Question 46

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Did Deputy Director Brian Johnson interview the candidates for this Taskforce?

Response

No.

Question 47

Please provide a list of who was involved in the decision-making process for determining the members of the Taskforce. Were they career or political staff?

Response

As noted in the response to Question 33, the Bureau established and followed a robust selection process, which included a public application period. An internal cross-divisional committee was created that consisted of Bureau civil servants who reviewed applications, conducted interviews, and made recommendations for appointment to the Taskforce. Former Deputy Director Brian Johnson was involved in approving staff recommendations, though I made the final decision regarding selection.

Question 48

Who was responsible for making the final decision on who was selected for the Taskforce?

Response

As Director of the Bureau, I made the final decision to appoint the five Taskforce members.

Question 49

What credentials did the Consumer Bureau look for in the Taskforce members?

Response

Consistent with Section 11 of the Taskforce’s Charter, the Bureau sought to assemble members who were experts in consumer financial law and academics with diverse points of view, such as attorneys and economists with significant experience researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, I sought members who were

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prominent experts recognized for their professional achievements and objectivity, including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics, and experts from social sciences related to the Bureau’s mission.

Question 50

How did the Consumer Bureau decide how many members to have on the Taskforce?

Response

The size of the Taskforce was decided based on the scope of the work and consistent with the charter requirements.

Question 51

What role did Todd Zywicki play in choosing the members of the Taskforce?

Response

None.

Question 52

Consumer advocates have stated that there were many applicants for the taskforce from the community of consumer protection attorneys and scholars who were not interviewed for a slot. Was there an ideological litmus test for service on this body?

Response:

The Bureau sought to assemble members who were experts in consumer financial law and academics with diverse points of view, such as attorneys and economists with significant experience researching and analyzing consumer financial markets, laws, and regulations, and a record of involvement in research and public policy, including senior public or academic service. Additionally, the Bureau sought members who were prominent experts recognized for their professional achievements and objectivity, including those specializing in household finance, finance, financial education, public economics, econometrics, and law and economics; and experts from social sciences related to the Bureau’s mission. There was no ideological litmus test for service.

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Consumer Bureau Budget

The Consumer Bureau's FY19 annual financial report states that the Bureau drew less than 70% of the money it was entitled to draw under the Dodd-Frank Act (\$468.2MM out of \$678.9MM). The Bureau's FY 20 budget states that the Bureau intends to draw only 83% of its entitlement (\$580.1M out of \$695.9M) and its FY 21 budget likewise projects drawing only 83% of the available amount.

Question 53

How many supervisory examinations and enforcement investigations do you project this amount will fund?

Response

While this seems a simple question, it is complex. The budget for supervision tends to look at activity based on projected staffing levels and related costs, such as travel, which then translate into supervisory events. However, not all supervisory events are examinations that involve 8 examiners for 8 weeks. Certain supervisory events at certain institutions are more labor-intensive than others. Furthermore, the current pandemic has led the Bureau, responsibly, to conduct remote examinations and to reassess our current schedule and types of supervisory events planned.

For comparison, in FY 2019, the Bureau initiated 477 supervisory events, including 125 supervisory activities, at large banks and non-bank financial institutions. When building the FY 2020 budget, the Bureau projected it would be able to increase the number of supervisory events in FY 2020-2021 as it hires additional staff consistent with the staffing plan.

Enforcement's budget, similarly, is based largely on projected staffing levels though does have some accommodation for litigation support based on the caseload that may require greater or lesser litigation support. However, the budget level does not bear a direct relationship to the number of public enforcement actions. In FY 2019, the Bureau announced 22 public enforcement actions and settled 6 previously filed lawsuits.

Question 54

How many supervisory events are planned for FY 2021?

Response

Planning for supervisory events for FY 2021 is underway.

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Question 55

How many fair lending supervisory events are planned for FY 2021?

Response

Planning for supervisory events for FY 2021 is underway.

Question 56

How much is budgeted for the Start Small Save Up Initiative?

Response

The budget for the Start Small Save Up initiative in FY 2020 is \$2.5 million, of which \$900,000 is allocated to support the national engagement workstream within the Start Small, Save Up 5-Year Strategic Plan. At the time the budget was developed, it was early in the stand-up of Start Small, Save Up Initiative – though even then it was anticipated that the budget level would support multiple years of activity. The Start Small, Save Up initiative was created to address the low level of savings in the U.S. – reflected in part by the Federal Reserve’s Survey of Household Economics and Decision-making finding that 39 percent of Americans would not use savings to cover a \$400 emergency expense. The initiative is focused on increasing people’s opportunities to save and empowering them to achieve their savings goals as a step to improved financial well-being. The FY 2020 budget provides for:

- 1. Conducting market research and message testing under the national engagement workstream to understand the financial behaviors of consumers and motivations to successfully save, using earned, owned, and paid media as testing channels.*
- 2. Engaging with and learning from representatives in individual communities about the approaches they are taking to encourage saving, observations they may have about practices that are more or less promising and input they may have about changing conditions on the ground and supports that would help them to address those changes. The effort will also include developing and providing training material, consultation and support as well as data collection and analysis. From this community engagement we will identify and document best practices for replication that can be taken to scale.*
- 3. Identifying and developing resources to support employer-led efforts to encourage and support employee saving; selecting partner employers; piloting promising approaches internally and externally; and providing technical assistance to partner employers in creating programs or identifying third-party benefit plans that encourage saving.*

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Question 57

Does the Director believe that there is no need for additional resources to examine supervised entities, investigate wrongdoers, or engage in consumer education?

Response

The Bureau conducts annual staffing planning to be implemented at the start of each fiscal year and assessed on an ongoing basis as staffing changes occur. As Director, I have the discretion to approve the annual staffing plan; issue position management guidance; and in coordination with the Chief Financial Officer, adjust the Bureau's approved headcount. As a precursor to the FY 2020 Staffing Plan process, I approved a number of initiatives designed to help determine optimal staffing levels for the longer term and establish the regular cadence for assessing staffing needs. These initiatives include better aligning resources with my top policy priorities, improving how cross-Bureau legal functions are performed, and enhancing how administrative and operational functions are performed across the Bureau. The FY 2020 Staffing Plan reflects the optimal staffing levels for the Bureau and its activities. Of note, it will take time to build to the staffing targets in our plan.

Question 58

The Bureau's FY 20 budget shows a 25% reduction in "litigation support" and states that litigation costs will be declined because the Bureau has resolved a number of matters. Does that mean that the Bureau will be bringing fewer enforcement actions than it has done in the past?

Response

This reduction in litigation support funding is tied to the specific litigation needs of the Office of Enforcement, which varies over time based on the specific facts and timing of particular cases. This budget line item does not mean the Bureau will bring fewer enforcement actions.

Question 59

The Bureau's FY 20 budget shows expenses for the Office of the Director increasing by 46% over FY 19. Please provide an explanation of what is driving these cost increases.

Response

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The FY 19 amounts reported in the “Fiscal Year 2020: Annual performance plan and report, and budget overview” reflect the hiring freeze implemented in FY 17. The increases in the FY 20 budget for the Office of the Director include approximately \$2 million to reflect the full-year budget impact of moving the Office of Fair Lending and the Office of Legislative Affairs to the Office of the Director, as well as approximately \$2 million for increases in staffing levels for the Director’s office, including staffing for the Office of Innovation.

Qualified Mortgage Rule

Director Kraninger, in your January 2020 letter to Senators Warner, Rounds, Jones, and Moran and during your testimony before the House Financial Services Committee, you indicated that the Bureau plans to propose a new Qualified Mortgage (QM) definition that moves away from a debt-to-income (DTI) threshold, which is a direct measure of a borrower’s ability-to-repay and instead relies on the lenders’ pricing of the mortgage loan, which is generally a measure of an investor’s appetite for risk. Many advocates and industry stakeholders believe this is a significant and concerning departure from the current QM definition and have offered an alternative approach that mirrors the GSEs’ current practice of utilizing compensating factors for borrowers with higher DTI ratios. This framework has been used in the market since the Bureau finalized the ATR/QM rule in 2013 and the use of compensating factors has been a component of manual and automated underwriting for Government Sponsored Enterprises (GSEs) and primary market lenders for much longer. The use of a DTI bright line and compensating factors is working well in the marketplace and is a framework that has an established track record of sustainable homeownership and strong loan performance.

Question 60

Do you acknowledge that utilizing lender pricing as a proxy for a borrower’s ability to repay is an untested approach or does the Bureau possess fact-based historical evidence that would help predict the impact of basing the QM definition on the spread between a mortgage loan’s annual percentage rate (APR) and the Average Prime Offer Rate (APOR)?

Response

The Bureau is planning to propose amending the existing General Qualified Mortgage (QM) definition to remove the specific debt-to-income (DTI) threshold and use a pricing-based approach as an additional criterion to define QM. The existing rule already uses pricing as a criterion to distinguish between safe harbor QM loans and rebuttable presumption QM loans. The 2008 Home Ownership and Equity Protection Act (HOEPA) Rule also imposed additional obligations on mortgages above a pricing threshold. The Notice of Proposed Rulemaking (NPRM) will discuss the evidence the Bureau relied on in developing its proposal.

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Question 61

Can you provide a summary of the analysis and all relevant data from the Consumer Bureau that supports implementing this untested framework of utilizing lender pricing instead of DTI?

Response

See response to Question 60 and note the NPRM will discuss the evidence the Bureau relied on in developing its proposal.

Question 62

Why do you believe it is better to use this untested framework rather than leveraging years of data and evidence that the GSEs’ use of compensating factors for borrowers with higher DTI ratios has been very successful?

Response

See response to Question 60. The NPRM will discuss the rationale for the proposal to revise the definition of General QM, including its consideration of potential alternatives.

Question 63

Director Kraninger, without DTI, the other aspects of the ATR requirements are merely product features that are not specific to an individual borrower. Please respond to concerns from housing and consumer advocates that your proposal would eliminate the only metric in the ATR framework that actually measures a borrower’s ability to repay. Is it inconsistent with the ATR standard to create a QM definition that doesn’t actually measure an individual borrower’s ability to repay? What steps would the Consumer Bureau take to ensure that loans made under an APOR standard take into account individual borrowers’ Ability to Repay as required under the statute?

Response

The statute imposes certain requirements for QM related to the individual borrower’s ability to repay, including the requirement to underwrite based on the amount of the borrower’s payment schedule under the loan, and to verify and document the income and financial resources the creditor relies upon to qualify the borrower for the loan with that payment schedule. In addition, the Bureau is planning to propose that, consistent with the statute, creditors would be required

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to consider DTI or residual income but that the General QM definition would not include the 43 percent DTI threshold.

Question 64

Director Kraninger, at the February 6, 2020 testimony before our Committee, you suggested that the Dodd-Frank Act contains ability-to-repay underwriting criteria and that lenders would still be required to “consider” a borrower’s DTI. Given that “consider” is an ill-defined and subjective requirement, how would the Bureau ensure that an APOR approach meets the legislative intent that lenders analyze an individual borrower’s credit profile and ability-to-repay during the underwriting process to ensure they receive a prudently underwritten and safe mortgage?

Response

As your question notes, the term “consider” is part of the statutory requirements for Ability-to-Repay (ATR); the Bureau anticipates that, consistent with the statute, the NPRM will propose commentary to clarify what creditors must do to consider DTI as part of the requirements for QM.

Question 65

To what extent is the Consumer Bureau remaining open to other approaches during this process in order to remain compliant with the Administrative Procedures Act? Has the Consumer Bureau considered approaches other than APOR? If so, please provide us a summary of APOR alternatives the Bureau is considering.

Response

The Bureau will act in accordance with Administrative Procedure Act (APA) obligations and will consider comments and evidence submitted in response to the NPRM, including comments advocating for alternative approaches. The NPRM will discuss and seek comment on alternative approaches considered by the Bureau.

Question 66

Is the Consumer Bureau considering a QM definition based on DTI plus a set of transparent, flexible compensating factors for higher DTI borrowers along the lines of what the GSEs have been successfully implementing for the past few years? As you conduct any reform, would you agree that it is logical for the Consumer Bureau to look at

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what is currently working well in the marketplace and a framework that has a successful track record of sustainable homeownership and loan performance? If not, why not?

Response

The Bureau will consider comments and evidence submitted in response to the NPRM, including comments advocating for alternative approaches. The NPRM will discuss and seek comment on alternative approaches considered by the Bureau.

Question 67

Please respond to concerns that utilizing lender pricing as a proxy could incentivize pricing risky loans to just below the safe harbor threshold and reduce borrowers’ access to safe conventional mortgages?

Response

The Bureau is aware of concerns that lenders may price loans below pricing thresholds and will review comments and evidence raising such concerns in developing any final rule.

Question 68

Has the Consumer Bureau done research to examine the impact of an APOR approach on affordability and fair lending?

Response

Yes. The Bureau will discuss its analysis of evidence in the NPRM.

Question 69

How does the Consumer Bureau believe it can do a thorough data-driven vetting of its current proposal on the timeline it is planning?

Response

The Bureau has been considering issues related to ATR/QM and the Patch for a substantial period of time, including the five-year assessment and last year’s Advanced Notice of Proposed Rulemaking (ANPRM). The Bureau will carefully consider the evidence, including the comments and any evidence submitted in response to the NPRM, as it develops any final rule.

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Question 70

Director Kraninger, you have indicated that there will be a temporary extension of the GSE Patch until a new solution is implemented or one or both of the GSEs exit conservatorship, whichever is sooner. Housing advocates are concerned that a hard 43% DTI cutoff for QM status would significantly impair millions of families’ access to affordable mortgage financing in the conventional market.

Can you commit to not using a hard 43% DTI cutoff for QM status?

Response

The Bureau is planning to propose elimination of the 43 percent DTI threshold from the General QM definition. The Bureau looks forward to the notice and comment process and will review comments and evidence raised in developing any final rule.

Question 71

Will you commit to a sufficient implementation period of any changes to the QM rule to avoid unsettling the mortgage lending market?

Response

The Bureau recognizes that an orderly transition to any new General QM definition would be beneficial for the mortgage lending market and consumers. To allow the Bureau time to conduct a rulemaking to develop a different definition of General QM and for creditors to come into compliance with any such new definition, the Bureau anticipates that it will propose to extend the Patch until a final rule implementing changes to the General QM definition takes effect or one or both of the Government Sponsored Enterprises exit conservatorship, whichever happens sooner. The Bureau will request comment on an appropriate implementation period for changes to the General QM definition and will appropriately consider those comments in determining the implementation period for any final rule.

Question 72

How much time do you expect to give industry to adjust to the new rule between the announcement of the new rule and its mandatory compliance date?

Response

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The Bureau will request comment on an appropriate implementation period for changes to the General QM definition and will consider those comments in determining the implementation period for any final rule.

Question 73

How does CFPB plan to monitor any impacts to access to credit once an alternative to the GSE patch is implemented?

Response

The Bureau will continue to monitor the market to determine what impact any changes to the General QM definition have on access to credit.

Question 74

Director Kraninger, in your letter to Senator Warner on the QM Rule, you indicated that the Consumer Bureau is considering allowing loans to meet the QM standard if they meet a seasoning standard which would allow a loan to be presumed to meet the Ability to Repay test after a certain period of repayment by the borrower.

How would this approach be in compliance with the explicit statutory language in TILA providing that violations of ability to repay can be raised at any time as a defense to foreclosure (15 USC 1641(k))?

Response

The Bureau is considering a proposal that would allow loans to become QMs after seasoning, i.e., a period of successful repayment by consumers. The Bureau is continuing to analyze the legal and policy considerations associated with such a proposal.

Question 75

Has the Consumer Bureau researched the question of how long borrowers may make mortgage payments by liquidating savings, borrowing from family, or foregoing medicine, heat, food or other necessities even where the loan is unaffordable?

Response

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The Bureau is continuing to analyze the legal and policy considerations, including evaluating evidence about whether it may be appropriate to presume based on a successful period of repayment on certain loans that the creditor appropriately determined at the time of origination that the consumer had the ability to repay those loans.

Question 76

In any approach utilizing season, will the Consumer Bureau commit to examining these questions?

Response

The Bureau will continue to analyze issues related to seasoning, including comments and evidence presented in response to a seasoning proposal.

Question 77

In July 2019 the Consumer Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) on the “Qualified Mortgage (QM) Definition under the Truth in Lending Act” that sought stakeholder feedback on various aspects of the QM/ATR Rule as well as options that the Bureau was considering for modifications to the QM definition. The Consumer Bureau received 93 comments from a wide array of stakeholders, including trade associations, mortgage lenders, consumer protection advocates, civil rights organizations, think tanks, and Members of Congress. This diverse collection of stakeholders has expressed concerns with a pricing-based QM standard, identified issues with that proposal with regard to consumer protection and prudent underwriting, and submitted comments in support of different QM frameworks.

Of those 93 comment letters, how many of the respondents supported eliminating a bright line debt-to-income (DTI) test and creating a new QM standard based on a pricing threshold?

Response

The comments are part of the public record. Many of the comments supported removing the specific DTI threshold.

Question 78

Of the 93 comment letters, how many were supportive of a QM definition based on a bright line DTI requirement and the use of compensating factors?

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Response

The comments are part of the public record. Many of the comments supported retaining a specific DTI threshold and permitting use of compensating factors.

Payday Rule

At the February 6, 2020 testimony before our Committee, you indicated that you had concerns about the scope of the payment provisions of the payday rule and specifically that they may apply to products that were not intended to be covered. The payment provisions are specifically limited to products with an APR above 36% and there is a carve-out for certain products offered by depository institutions to their own customers.

Question 79

Director Kraninger, what products specifically do you believe are covered by the payment provisions unintentionally?

Response

The Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule’s (2017 Payday Rule) payment provisions are limited to certain installment loans that cost 36 percent annual percentage rate (APR) or more where the lender has the ability to take payment directly from the borrower’s account, in addition to short-term loans and longer-term balloon payment loans. At the same time as the release of the 2020 Payday Reconsideration Final Rule, the Bureau plans to publish some frequently asked questions addressing certain concerns raised by some stakeholders concerning the payment provisions of the payday rule. Those frequently asked questions will offer clarification for industry stakeholders as to the application of the payment provisions to certain issues or practices. The Bureau continues to conduct its analysis and market monitoring, and will consider what additional action, if any, it will take with respect to the scope of the payment provisions.

Question 80

Director Kraninger, in your testimony, you indicated that you intended to respond to a petition you had received with respect to the payment provisions of the payday rule when the Bureau issues its final rule. That petition relates to the applicability of the payment provisions to collection efforts made using debit cards. The 2017 Rule expressly decided to cover such collection efforts. Are you planning to reconsider the decision the Bureau made in 2017 in this regard?

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Response

The Bureau expects to announce its response to the petition regarding debit cards at the same time as it releases the 2020 Payday Reconsideration Final Rule.

Home Mortgage Disclosure Act (HMDA) Rule

Collecting racial and ethnic data is crucial to ensuring we have a clear picture of where mortgage lending disparities exist and in understanding which communities are being underserved. In 2018, CFPB began collecting racial and ethnic data under the Home Mortgage Disclosure Act (HMDA) rule. In its latest Rulemaking Agenda, the Bureau hopes to finalize its HMDA rule later this year.

Question 81

Director Kraninger, what is the current status the HMDA final rulemaking?

Response

On April 16, 2020, the Bureau released a final rule to follow up on aspects of the May 2019 Proposal related to the permanent thresholds for reporting data about closed-end mortgage loans and open-end lines of credit. The Bureau intends to release a proposed rule late this summer to follow up on the May 2019 ANPRM related to certain data points that are reported under the 2015 Home Mortgage Disclosure Act (HMDA) Rule and coverage of certain business- or commercial-purpose loans.

Question 82

Director Kraninger, do you believe that collecting HMDA data is important to understanding where discriminatory behavior is occurring in the lending industry?

Response

Yes. Collecting HMDA data helps agencies determine where discrimination may be occurring. The collection of data also has costs, which the Bureau must also consider.

Question 83

Consumer advocates have shared their concern that you shrinking the available data to monitor fair lending violations -- how do you respond?

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Response

The Bureau has heard and understands those concerns. In developing a final rule relating to the loan-volume coverage thresholds, the Bureau carefully considered the public’s input as well as the impact that raising the closed-end and open-end thresholds would have on achieving HMDA’s purposes, which include assisting in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. We also considered the cost of HMDA reporting for lower-volume institutions. Our final rule includes our assessment of the rule’s benefits and costs for consumers and lenders.

Question 84

Director Kraninger, what evidence did you have that the data collection was burdensome?

Response

After issuing the 2015 HMDA Rule and 2017 HMDA Rule, the Bureau heard concerns that lower-volume institutions continue to experience significant burden with the threshold set at 25 closed-end mortgage loans. The Bureau also heard reports suggesting that the one-time costs to begin open-end reporting, and the ongoing costs associated with open-end reporting, could be significantly higher than the Bureau estimated when it established the threshold of 100 open-end lines of credit in the 2015 HMDA Rule. The final rule includes the Bureau’s assessment of the benefits and costs of the rule and cite any evidence on which the Bureau relied.

Question 85

HMDA’s been around for 40 years – why did you need to scale back coverage of smaller lenders?

Response

While HMDA was enacted in 1975, the reporting requirements have changed substantially based on recent legislative and regulatory actions. For example, the Dodd-Frank Act added 13 new data points and the Bureau’s 2015 HMDA Rule added 14 more, using its discretionary authority under the Dodd-Frank Act, and revised 5 other pre-existing data points. In sum, the Act and rule approximately doubled the required data that lenders must report under HMDA. The Bureau’s 2015 HMDA Rule also made mandatory the reporting of open-end lines of credit in addition to closed-end mortgage loans. The Bureau’s final rule to permanently increase the thresholds for collecting and reporting data on closed-end mortgage loans and open-end lines of credit, respectively, explained that it was intended to reduce costs for smaller lenders while still

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providing federal regulators and other stakeholders with adequate information to fulfill HMDA’s purposes.

Question 86

Do you believe that smaller lenders precisely the people who provide credit to the protected classes and rural areas?

Response

Small lenders help provide credit to protected classes and rural areas.

Question 87

In your testimony you discussed coming improvements in the HMDA Explorer Tool. What specific changes will be made in the tool this year?

Response

The HMDA Data Browser recently added additional geographies (e.g. county) and the ability to filter by filing institution. We are working on adding mapping capability for some variables and will be holding user feedback sessions this summer to identify future improvements. To ensure users are aware of the capability of the Browser and other tools, we are adding user guides to the site and hosting webinars for users this spring.

Question 88

Will the changes be made before the 2019 HMDA data is publicly released?

Response

As noted, some improvements have been made already, and the mapping, user guides and webinars will occur before the 2019 data is released. Other improvements will occur after user feedback sessions are held this summer.

TRID Rule

In your February 6, 2020 testimony before our Committee, you were asked about the TRID Rule and you stated that “closing is not the best time for all of these types of disclosures.” As you

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know, TRID requires that disclosures about the final costs of the transaction be made three days before closing.

Question 89

Are there closing disclosures required by TRID that you do not believe should be required and, if so, what disclosures would you get rid of?

Response

My statement that “closing is not the best time,” was in reference to the challenges consumers face at the closing table when presented with all of the types of disclosures that Congressman Luetkemeyer referenced when I gave the response you quoted— including state-mandated forms, federally-mandated forms, and lender-mandated forms. As for Truth in Lending Act/Real Estate Settlement Procedure Act Integrated Disclosure Rule (TRID)-required disclosures, the Bureau is in the process of researching the effects of the TRID rule for the required five-year assessment of the rule. We expect to publish a report of our findings in the fall.

Question 90

When would you provide disclosures about final costs if not immediately prior to closing?

Response

As noted above, my statement that “closing is not the best time,” was in reference to all of the types of disclosures that Congressman Luetkemeyer pointed to during the hearing, including State-mandated, Federally-mandated, and lender-mandated disclosures that go beyond disclosing final costs.

Prepaid Rule

In December, PayPal sued to invalidate the CFPB’s final prepaid rule.¹⁸ The rule provides critical protections to prepaid users, which includes a huge number of consumers engaging with a wide range of companies. The rule was necessary because for years consumers lacked the legal safeguards their money deserves. The prepaid rule is the result of a long, thoughtful process that began under Director Cordray in 2012 and establishes a critical baseline of protections that are essential to consumer confidence.

Question 91

¹⁸ PayPal v CFPB, Civil Action No. 19-3700 DC District Court

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Will the Bureau defend the prepaid rule from PayPal’s lawsuit?

Response

The Bureau will respond to the plaintiff’s claims in court and generally does not comment on pending litigation. As indicated in joint motions for a scheduling order filed on February 21, 2020 and March 24, 2020, the Bureau expects to file a motion for summary judgment in this case.

Question 92

Before the rule, consumers who relied on prepaid accounts had only the patchwork of state money transmitter laws to keep their money safe.

If the Bureau were to decide not to defend the prepaid rule, are state money transmitter laws sufficient to ensure consumer safety in this space?

Response

The Bureau will respond to the plaintiff’s claims in court and generally does not comment on pending litigation. As indicated in joint motions for a scheduling order filed on February 21, 2020 and March 24, 2020, the Bureau expects to file a motion for summary judgment in this case.

Question 93

Virtual currencies, such as Facebook’s Libra, and cryptocurrencies such as Bitcoin, exist in a legal and regulatory grey area. Payments made with cryptocurrencies when conducted with the help of intermediaries appear to lack basic consumer protections under federal law. Facebook still appears intent on launching Libra, to be stored in its digital wallet, Calibra, which means millions, if not billions of dollars, of consumers’ funds could be at risk.

Would the protections digital wallets have under the CFPB’s Prepaid Rule extend to virtual currency or cryptocurrency wallets such as Calibra?

Response

As the Bureau explained in the 2014 notice of proposed rulemaking and the 2016 final rule governing prepaid accounts, the application of Regulation E and the prepaid rule to such products and services was outside of the scope of that rulemaking. The Bureau also stated in the

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2016 final rule that as part of its broader administration and enforcement of the enumerated consumer financial laws and title X of the Dodd-Frank Act, it would continue to analyze the nature of products or services tied to virtual currencies. Since that time, the Bureau has continued to accept consumer complaints and monitor the cryptocurrency markets as they pertain to the Bureau’s jurisdiction, including the planned launch of the Libra cryptocurrency and the Calibra wallet.

Community Reinvestment Act

In December 2019, as a board member of the FDIC, you voted in favor of the Notice of Proposed Rulemaking (NPRM) on Comptroller Otting’s proposal on gutting the Community Reinvestment Act (CRA). Notably, the Federal Reserve did not join this proposal. FDIC Board Member Martin Gruenberg voted against Comptroller Otting’s proposal, describing it as, “a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act.” And in remarks this month, Federal Reserve Board Governor Lael Brainard, said that, “given that reforms to the CRA regulations are likely to set expectations for a few decades, it is more important to get the reforms done right than to do them quickly. That requires giving external stakeholders sufficient time and analysis to provide meaningful feedback on a range of options for modernizing the regulations.”

Question 94

Can you explain why, as an FDIC board member, you voted in favor of the OCC/FDIC’s proposal on the Community Reinvestment Act?

Response

I voted to publish a proposal, using the notice and comment procedures of the APA, that I believe will make the Community Reinvestment Act (CRA) regulatory framework more objective, transparent, consistent, and easy to understand.

Question 95

Director Kraninger, since the Federal Reserve did not sign on to your proposal, are you concerned that the OCC/FDIC proposal you voted in favor of could lead to regulatory arbitrage, with companies seeking to exploit loopholes from diverging regulators?

Response

The comment period for the CRA notice of proposed rulemaking closed on April 8, 2020. The FDIC and OCC are in the process of reviewing the comments received. Accordingly, it is

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premature to speculate on the content of a final rule or whether it will lead to regulatory arbitrage.

Question 96

Director Kraninger, yes or no, do you agree with Governor Brainard’s comments that CRA reform should not be rushed and that it is important to get the details right?

Response

As a general matter, I believe all agencies should follow the valuable notice and comment procedures of the APA. The notice and comment process requires agencies proposing changes to their rules to take into consideration comments made by the public, which may reveal data, research, or arguments in favor or against the proposed changes.

Question 97

If there is less HMDA data being reported by banks, especially in rural areas, will less transparency make it harder to ensure that Community Reinvestment Act (CRA) investments are appropriately targeted at low-income communities?

Response

The Bureau established coverage thresholds under HMDA that will provide substantial visibility into rural and low-to-moderate income tracts and permit the public and public officials to identify patterns and trends at the local level. In making that determination, the final rule considered the impact that adjusting the closed-end and open-end thresholds would have on coverage and achieving HMDA’s purposes, which include (i) helping determine whether financial institutions are serving the housing needs of their communities; (ii) assisting public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) assisting in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

Question 98

How does the Bureau use CRA data in its fair lending work?

Response

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As noted above, one key area on which the Bureau has focused its fair lending enforcement efforts is addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. Although the Bureau does not have CRA jurisdiction, when investigating depository institutions for possible redlining violations, the Bureau routinely considers information produced in accordance with the CRA, including the most recent and prior CRA reports, the institution’s CRA assessment area, and the institution’s CRA public comment file. This is consistent with the FFIEC’s Interagency Fair Lending Examination Procedures,¹⁹ which identify several ways that regulators can use information produced in accordance with the CRA to examine fair lending concerns. The Bureau will always work with institutions to understand the markets, business models, and other information that could provide nondiscriminatory explanations for lending patterns that would otherwise raise a fair lending risk of redlining.

Question 99

How will the proposed changes to the CRA impact the Bureau’s CRA work if they become final?

Response

The Bureau does not have any CRA work because the Act does not place any responsibility on the Bureau or give the Bureau any authority to conduct CRA evaluations or issue CRA regulations.

Question 100

What role do you anticipate playing in your role as FFIEC chair on the important work of CRA modernization?

Response

Although the FFIEC is made up of the various regulatory agencies, not all regulations are under the purview of all FFIEC member agencies. CRA is one of those regulations where the federal banking agencies are principally responsible for its interpretation and enforcement. As FFIEC Chair, to the extent possible, I encourage discussion amongst the prudential regulators on CRA modernization and, should it be appropriate or necessary, efficient interagency implementation of any modernization effort.

¹⁹ <https://www.ffiec.gov/pdf/fairlend.pdf>.

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Consumer Advisory Board

At the February 6, 2020 testimony before our Committee, you were asked at your hearing about the composition of the Consumer Advisory Board (CAB). The Dodd-Frank Act requires the Bureau to assemble experts in particular areas.

Question 101

Who on the current CAB is expert in “community development?”

Response

Members of the Consumer Advisory Board (CAB) may serve in a number of expert categories based upon their wide-ranging expertise, and the Bureau ensures that its selection process results in meeting the statutory membership requirements. The members who fill this criterion are: (1) Nikitra Bailey, Executive Vice President at the Center of Responsible Lending; (2) Clinton Gwin, President and CEO of Pathway Lending; and (3) Timothy Lampkin, co-founder and CEO of Higher Purpose Co.

Question 102

Who on the current CAB is an expert on “fair lending and civil rights?”

Response

As noted above, members of the CAB may serve in a number of expert categories based upon their wide-ranging expertise, and the Bureau ensures that its selection process results in meeting the statutory membership requirements. The members who fill this criterion are: (1) Nikitra Bailey, Executive Vice President at the Center of Responsible Lending; (2) Nadine Cohen, Managing Attorney in the Consumer Rights Unit at Greater Boston Legal Services; and (3) Ronald Johnson, former President of Clark Atlanta University.

Question 103

Who on the current CAB represents “depository institutions that primarily serve underserved communities?”

Response

Members of the CAB may serve in a number of expert categories based upon their wide-ranging expertise, and the Bureau ensures that its selection process results in meeting the statutory

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membership requirements. The member who fills this criterion is Tim Welsh, Vice Chairman of Consumer and Business Banking at U.S. Bank.

Question 104

Who on the current CAB represents “communities that have been significantly impacted by higher-priced mortgage loans?”

Response

Members of the CAB may serve in a number of categories based upon their wide-ranging expertise, and the Bureau ensures that its selection process results in meeting the statutory membership requirements. The members who fill this criterion are: (1) Nikitra Bailey, Executive Vice President at the Center of Responsible Lending; (2) Nadine Cohen, Managing Attorney in the Consumer Rights Unit at Greater Boston Legal Services; and (3) Eric Kaplan, Director, Housing Finance Program at the Milken Institute – Center for Financial Markets.

New CFPB Assistant Director for Enforcement

In January 2020, you announced the hiring of Thomas Ward to lead the Consumer Bureau’s Office of Enforcement, a career position. Mr. Ward currently previously served as Deputy Assistant Attorney General in the Civil Division in Trump’s Justice Department. Mr. Ward also previously served as a partner at Williams & Connolly, a firm that represents numerous entities in investigation and lawsuits initiated by the Bureau.

Question 105

Had Mr. Ward previously applied for a political position at the Consumer Bureau? If so, what position?

Response

In order to maintain the integrity of our hiring processes and safeguard the privacy interests of all prospective applicants, the Bureau does not comment publicly on applicants who were not selected for any particular position.

Question 106

Did anyone at the Bureau personally reach out to Mr. Ward to encourage him to apply for the position of Assistant Director for Enforcement.?

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Response

I am not aware of any outreach done by Bureau staff to Mr. Ward encouraging him to apply for the Assistant Director for Enforcement position.

Question 107

Did Chief of Staff Kirsten Sutton reach out to Mr. Ward prior to him submitting an application for the position of Enforcement

Response

I am not aware of any outreach done by Bureau staff to Mr. Ward encouraging him to apply for the Assistant Director for Enforcement position.

Question 108

Given his prior employment at Williams & Connolly, has the Bureau granted him ethics waivers in cases where Williams & Connolly is representing the entity under investigation by the Bureau?

Response

No. The Bureau has not issued any waivers pursuant to 18 U.S.C. § 208(b)(1) to Mr. Ward, nor has it issued any authorizations pursuant to 5 C.F.R. § 2635.502(d) to Mr. Ward.

CFPB Hiring and Personnel

Last year, amid reports of low employee morale and a 15% reduction in the Consumer Bureau’s workforce,²⁰ you lifted a nearly two year hiring freeze.

Question 109

Response

Question 109 is blank, so there is no response.

²⁰ <https://www.wsj.com/articles/consumer-watchdog-starts-hiring-after-15-staff-drop-under-trump-11566929922>.

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Question 110

What weight, if any, do you give to prior subject matter expertise in consumer financial law in hiring career staff?

Response

Bureau hiring managers, in consultation with the Office of Human Capital, determine the needed qualifications for each position, based on the work that will be performed.

Question 111

Of the career staff you have hired for leadership positions, how many have experience representing consumers in a non-governmental capacity?

Response

The Bureau seeks and hires diverse, highly qualified leaders with experience that is directly related to the work they will carry out.

Question 112

How many have experience representing industry against consumers?

Response

The Bureau seeks and hires diverse, highly qualified leaders with experience that is directly related to the work they will carry out.

Question 113

Since December 11, 2018, how many openings were there for Associate Director or Assistant Director positions?

Response

The Bureau has had openings for 2 Associate Directors and 18 Assistant Directors since December 11, 2018.

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Question 114

Since December 11, 2018, how many internal candidates applied for open Associate Director or Assistant Director positions?

Response

102 internal candidates have applied for open Associate Director or Assistant Director positions.

Question 115

How many of those internal candidates were interviewed for open Associate Director or Assistant Director positions?

Response

Twenty-eight internal candidates interviewed for 18 Associate Director and/or Assistant Director positions. A total of 62 external candidates were interviewed for those same 18 positions.

Question 116

How many of those internal candidates were selected for open Associate Director or Assistant Director positions?

Response

Five internal candidates were selected for the 18 identified positions. One of the positions closed without a selection and one position is still pending a selection. Eleven of the positions were filled with an external applicant.

Question 117

Why have there been such few internal promotions?

Response

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Since December 11, 2018 the Bureau has competitively selected 115 employees across the Bureau for higher-level positions, including the five employees selected for the senior leadership positions. Generally, internal selections account for approximately half of all hiring actions.

Question 118

Do you believe your current Consumer Bureau staff to be knowledgeable enough to be promoted?

Response

Yes. Bureau employees are highly skilled and dedicated to the agency’s mission. As noted in the response to Question 117, the Bureau selects internal employees for approximately half of all posted positions.

Question 119

What specific expertise do these external hires have that your staff lacked?

Response

Hiring at every Federal agency and in every organization is always a mix of external and internal candidates. External candidates at the Bureau often bring diverse backgrounds or new perspectives and skills that complement the excellent capabilities of internal staff.

Question 120

After you lifted the hiring freeze, what is the current authorized headcount for FTEs?

Response

The authorized headcount for the Bureau is 1,612.

Question 121

How does that compare to the authorized headcount for FTEs before the institution of the hiring freeze?

Response

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The Bureau has had varying levels of authorized headcount over the years. The newly allocated headcount will bring staffing totals in line with years past and towards a more sustainable and disciplined practice of identifying and hiring the staff needed to accomplish the Bureau's mission priorities. The authorized headcount at the time the hiring freeze was announced was 1,779; of note, 1,654 staff were onboard during that pay period in December 2017.

Question 122

What is the total number of FTEs at the Bureau as of January 2020?

Response

As of January 5, 2020, the Bureau had 1,418 employees on-board.

Question 123

What is the total number of political appointees at the Bureau as of January 2020?

Response

As of January 5, 2020, the Bureau had 11 individuals appointed under Schedule C hiring authority.

Question 124

What new positions did you or Acting Director Mulvaney add?

Response

During my and Acting Director Mulvaney's tenures, over 375 positions have been approved to be filled across the Bureau. Each time a vacancy occurs, the hiring manager reviews the position description and makes any necessary adjustments to account for current Bureau priorities. Almost all of these slots were then used to create positions that perform work that was already being performed at the Bureau, with the exception of a slot used to create the position of Chief Experience Officer, which was created during my tenure.

Question 125

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How many political appointees were at the Bureau in January 2016?

Response

There were no political appointees at the Bureau in January 2016, other than the Director.

Question 126

You have said you consider “efficiency” and “redundancy” as factors in hiring and staffing at the Consumer Bureau. Please provide specific examples of what efficiencies and redundancies you consider.

Response

While I have spoken many times about efficiency, I don’t recall using the term redundancy. At any rate, I am happy to outline our staffing planning and assessment process. Each time a position vacates at the Bureau, the manager, in partnership with the Office of Human Capital, determines whether the position supports current Bureau priorities; whether the position duplicates work performed elsewhere at the Bureau; and if the position could be performed by another employee. For supervisory positions, we are also assessing whether the position still needs to be supervisory or if the position should be performed as an individual contributor. Additionally, we are conducting a Bureau-wide review of how we staff our administrative and other support positions to best assist Divisions’ and Offices’ workflows.

Question 127

Should a future Director wish to increase staffing at the Consumer Bureau, would there be adequate workspace at 1700 G Street office location for an increased staff presence?

Response

In general, there are several factors that drive space allocation and utilization decisions. For example, the frequency of telework among staff. Additionally, as staff are hired or leave the Bureau, there is a fluctuation of available workspace. At this time, there is adequate workspace available to support headcount above the amount currently approved by the Director.

Question 128

How long would it take to procure a lease in downtown DC to house additional staff, do you know?

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Response

Though such an option is unnecessary in the foreseeable future, the Bureau would coordinate with the General Services Administration to identify and lease additional workspace. The timeframe for this process depends on several factors though availability of general office space is not a constraint in the national capital region.

Question 129

Did you consider the limits on staffing when you decided to consolidate the two buildings?

Response

The primary data points relied upon for determining the consolidation were the current number of staff stationed in Washington, D.C., the 2020 staffing planning process, the cost savings for terminating the lease at 1990 K Street, and the number of available workspaces at 1700 G Street.

Question 130

How do you respond to consumer advocates who are concerned you are limiting staffing options for future Consumer Protection Directors?

Response

The Bureau conducts an annual staffing planning process at the start of each fiscal year. Just as I do, any future Director will have the discretion to approve the annual staffing plan; issue position management guidance; and in coordination with the Chief Financial Officer, adjust the Bureau's approved headcount.

Financial Literacy and Education Commission

The Financial Literacy and Education Commission (FLEC) was established under the Fair and Accurate Credit Transactions Act of 2003 and is tasked to develop a national financial education web site (MyMoney.gov) and a national strategy on financial education. It is chaired by the Secretary of the Treasury and the vice chair is the Director of the Bureau of Consumer Financial Protection. The Commission is coordinated by the Department of the Treasury's Office of Consumer Policy. In your written response to a Question for the Record, you stated that the last FLEC meeting occurred in October 2018, and you were asked about this Commission at the February 6, 2020 hearing before our Committee.

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Question 131

Director Kraninger, following up from our hearing, as Vice Chair of the Financial Literacy and Education Commission, have you spoken with the Treasury Secretary about the lack of scheduled meetings?

Response

The Department of the Treasury has tentatively scheduled a virtual meeting of the Financial Literacy and Education Commission (FLEC) for the second week of May 2020.

Question 132

Director Kraninger, following up from our hearing, please provide an update on the current work of FLEC or the Bureau’s work to implement a national strategy on financial education.

Response

The Department of the Treasury recommended significant reforms to the governance structure of the FLEC as described in their report “Federal Financial Literacy Reform: Coordinating and Improving Financial Literacy Efforts” (July 2019). Consistent with member agencies’ legal authorities and applicable law, the new structure is intended to avoid duplicative activities among federal agencies and seeks to leverage the work of nonprofit organizations, the private sector and state and local government. FLEC’s new working groups regularly meet to develop action plans and coordinate existing federal financial literacy and education programs and policy proposals for basic financial capability, retirement savings and investor education, housing counseling, postsecondary education, and military and their families. These groups also seek to identify best practices and future challenges and opportunities associated with technology and financial education.

Bureau staff lead the working group on basic financial capability and are members of each working group. The Bureau’s specific work is described in the Bureau’s 2019 Financial Literacy Annual Report to Congress.²¹

Question 133

²¹ https://files.consumerfinance.gov/f/documents/bcfp_financial-literacy_annual-report_2019.pdf.

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Numerous studies have concluded that financial education is not a one-size fits all approach and that understanding of financial issues varies across cultures, races, gender, and even age. What are you doing to ensure that the FLEC and/or the Bureau’s financial education strategy is tailored to reach diverse communities?

Response

The Bureau, through the work of its Office of Financial Education, developed (and FLEC has adopted) the “Five Principles of Effective Financial Education,” which include:

- 1. Know the Individuals and Families to be Served;*
- 2. Provide Actionable, Relevant, and Timely Information;*
- 3. Improve Key Financial Skills;*
- 4. Build on Motivation; and*
- 5. Make It Easy to Make Good Decisions and Follow Through.*

The Bureau’s Financial Literacy Annual Report to Congress describes the Bureau’s financial literacy activities and strategy to improve the financial literacy of consumers. The report details the Bureau’s financial education efforts that reached 12 million consumers in FY 2019 and highlights programs designed to reach various communities, including parents and young children, college students and student loan borrowers, older Americans and their family caregivers, servicemembers, veterans and their families, libraries, social service organizations, faith-based organizations, and other types of local service organizations, including traditionally underserved consumers and communities. In addition, the Bureau has established offices that are tailored to reach specified communities. For example:

- The Bureau’s Office of Servicemembers Affairs develops and implements initiatives for service members and their families intended to educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;*
- The Bureau’s Office of Older Americans seeks to facilitate the financial literacy of individuals who have attained the age of 62 years; and*
- The Bureau’s Office of Community Affairs provides information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.*

Question 134

Are there any plans to translate financial literacy and education tools like MyMoney.gov so that limited- English-proficient individuals can use them?

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Response

The Bureau seeks to make financial literacy and education tools available to all consumers, including those with limited English proficiency. Those efforts include significant efforts to translate both print and web materials. Currently, the Bureau has financial literacy and education tools available in 9 languages including Arabic, Chinese, French, Korean, Spanish, Russian, Tagalog, Vietnamese, and Haitian Creole. Resources for those with proficiency in languages other than English are available on Bureau’s webpage: <https://www.consumerfinance.gov/language/>.

The Department of the Treasury’s report on “Federal Financial Literacy Reform: Coordinating and Improving Financial Literacy Efforts” (July 2019) recommended that FLEC members collaborate to identify modern, highly interactive web and tools that include the best, most consumer-friendly resources from member agencies on key topics. Any future plan to translate tools like MyMoney.gov, or coordinate materials with other member agencies, such as the Bureau, may be implemented at a later date.

Diversity

In June 2015, the CFPB along with five other financial regulatory agencies issued the Joint Standards for Assessing Diversity Policies and Practices of Entities Regulated by the Agencies, which made self-assessments of diversity policies and practices of regulated agencies voluntary. In 2019, the CFPB sent out the diversity self-assessments to its regulated entities for the first time. As a result of the voluntary nature of the self-assessments, response rates by the regulated entities for the other financial agencies have been very low.

Question 135

Director Kraninger, what is the Bureau doing to ensure that its regulated entities are as responsive as possibly?

Response

Over the past year, the Bureau conducted extensive outreach on the voluntary diversity and inclusion self-assessment process with industry. Throughout the spring, summer and fall of 2019, Bureau attended and participated in industry conferences to share information about the self-assessment process and to answer questions from financial institutions. In fall 2019, the Bureau hosted a roundtable event with approximately 15 industry trade associations in order to share information about the self-assessment process, address questions and concerns from industry representatives, and to encourage financial institutions to participate in the self-assessment process. I attended the roundtable to hear firsthand from the trade representatives, express my full support, and invite them to partner with Bureau to encourage their members to participate and submit a self-assessment. Also, in fall of 2019, the Bureau co-hosted a joint

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outreach event with the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA), and the Securities and Exchange Commission (SEC), at the Federal Reserve Bank of Chicago. The event was designed to share information with financial institutions about the self-assessment process, the status of diversity and inclusion within the financial services industry, and best practices in diversity and inclusion. Over 130 financial services organizations attended the half-day event.

The Bureau created an online version of the self-assessment form to ease the submission process for financial institutions and created an online review and reporting tool to aggregate reported data in order to provide comprehensive information. The Bureau’s Office of Minority and Women Inclusion (OMWI) collaborated very closely with the Bureau’s Technology and Innovation Office to create a simple, useful online tool to make submission of the self-assessment form easy. The portal launched to entities in January 2020 and has been described by users as “easy to navigate” and “informative.” As the Bureau receives submissions, future OMWI annual reports to Congress will include aggregated data from submissions to provide insight into how the financial services industry is advancing diversity and inclusion.

Finally, the Bureau updated its website with content about the voluntary diversity self-assessment process, including a Frequently Asked Questions document and a guide for navigating the online portal to further encourage financial institutions to participate and submit a voluntary diversity and inclusion self-assessment. In addition, I recorded a video encouraging financial institutions to participate in the voluntary self-assessment process and posted it on the Bureau’s website with a recorded webinar explaining the process. Going forward, the Bureau’s OMWI plans to create guides for industry based on leading diversity and inclusion best practices.

Question 136

Is there anything the Bureau can say to its regulated entities to emphasize the importance of responding to these self-assessments?

Response

In our outreach and engagement with financial institutions the Bureau has emphasized the benefit to financial institutions of participating in the voluntary diversity and inclusion self-assessment process. The Bureau has and will continue to communicate to entities that the process provides them with a framework to identify gaps in their diversity and inclusion programming, an opportunity to learn about best practices, and a way to learn how their peers are doing, including identifying common challenges and potential solutions.

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The Bureau understands that financial institutions have concerns about how the data they provide will be used. As a result of industry feedback, Bureau has modified external communications to provide more information to industry about how we will use the data collected. The Bureau will keep the reports submitted confidential as permitted by law and in accordance with the Bureau's confidentiality regulations.²² This means the information will be treated as proprietary and confidential and may be exempt from disclosure under the Freedom of Information Act (FOIA) pursuant to 5 U.S.C. 552(b). The Bureau's OMWI will produce reports in an anonymized fashion. If regulated entities choose to submit additional information, they may designate it as confidential commercial information, as appropriate. We explained to entities that if a FOIA request is made regarding a regulated entity's information, Bureau's FOIA personnel will follow the process described in the Bureau's regulations, 12 CFR Part 1070, which includes informing the regulated entity of the request and giving the entity the opportunity to explain that the material should be withheld.

Through our ongoing outreach campaign, the Bureau has learned that financial institutions increasingly recognize diversity and inclusion as a business growth enabler and are embracing the need to expand their diversity and inclusion programming. Research shows that companies with ethnic/cultural diversity outperform peers by 33 percent.²³ The self-assessment form provides a framework that can be used to ensure that institutions are infusing diversity throughout their organizations to gain this benefit.

1071 Small Business Data Collection

Question 137

Director Kraninger, you have said that you will allow 1071 to proceed. What is the current staffing on 1071?

Response

Bureau staff within its Division of Research, Markets and Regulations (RMR), including the Office of Small Business Lending, which was established to support this rulemaking, are actively working on implementation of Section 1071. These RMR staff collaborate closely with staff in other offices within the Bureau, such as the Office of Equal Opportunity and Fairness and the Legal Division.

Question 138

Please provide an update of the timeline on when can we expect the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel?

²² 12 CFR Part 1070.

²³ Delivering Through Diversity, McKinsey & Company, January 2018

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Response

As set forth in the settlement agreement entered in California Reinvestment Coalition v. Kraninger, the Bureau agreed to release an outline of proposals under consideration as part of the small business review process by September 15, 2020. The Bureau also agreed to convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel no later than October 15, 2020 (or, if panel members are not available to convene, as soon as practicable thereafter). Pursuant to 5 U.S.C. § 609, the SBREFA panel is required to complete its report within 60 days of the panel’s convening.

See response to Question 142 for more information about the settlement agreement.

Question 139

Director Kraninger, can you explain the fair lending implications of the 1071 rulemaking?

Response

Section 1071 of the Dodd-Frank Act amends ECOA to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The purpose of this data collection, as stated in the Act, is to “facilitate enforcement of fair lending laws” and “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.”

Question 140

Has your data found that women and non-white small business owners are discriminated against?

Response

The Bureau’s fair lending supervision work continues to focus on small business lending and other markets. At one or more institutions, Bureau examinations have observed that institutions do not currently collect and maintain all of the necessary data in a useable electronic format to conduct thorough and complete statistical fair lending analyses of small business lending decisions. Limited availability of digital data could impede an institution’s ability to monitor and test for the risks of ECOA violations through statistical analyses.

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Small businesses, including those owned by women and minorities, are critical engines for economic growth. Access to financing is a crucial component of the success of these businesses. The Bureau understands that the market these businesses turn to for credit is vast and complex. Section 1071 requires, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. As stated in Section 1071, the statutory purposes of this data collection is to “facilitate enforcement of fair lending laws” and “enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.” Section 1071, once implemented by the Bureau, would increase public data about small business lending and allow the public generally to better understand the landscape for all small businesses, and specifically those owned and operated by women and minorities.

Question 141

Can you explain why the Consumer Bureau has not prioritize the Dodd-Frank mandated rulemaking under Section 1071 under your leadership?

Response

Under my leadership, the Bureau has clearly committed to implementing Section 1071 of the Dodd-Frank Act. As the Bureau's Unified Agenda reflects, this rulemaking is now in pre-rule status and has been since Spring 2019 when the Bureau reclassified the Section 1071 project from long-term status to pre-rule status. We are moving forward on implementing Section 1071.

Question 142

Director Kraninger, earlier this month, the U.S. District Court for the Northern District of California approved a settlement between the Consumer Bureau and small business representatives that will force you to finally implement long-overdue small business lending data requirements under Section 1071.²⁴ Please provide an explanation of the settlement terms and what concrete steps you will do to implement Section 1071.

Response

The Bureau's settlement agreement with the plaintiffs in the California Reinvestment Coalition v. Kraninger litigation reflects the Bureau's commitment to completing its rulemaking implementing Section 1071 of the Dodd-Frank Act promptly and thoughtfully. Under the agreement approved by the court, the Bureau will issue an outline of proposals under

²⁴ <https://www.nytimes.com/reuters/2020/02/26/us/26reuters-usa-cfpb-minoritybusinesses.html>.

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consideration in connection with the small business review process by September 15, 2020 and will convene a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel by October 15, 2020 (or, if panel members are not available to convene, as soon as practicable thereafter).

The agreement also provides a process for setting reasonable deadlines for the issuance of the proposed and final rules. After the SBREFA report is completed, the parties will have time to agree to a deadline for issuance of the proposal. If the parties cannot agree, the court will determine an appropriate deadline. Likewise, after the comment period on the proposal ends, the parties will have time to agree to a deadline for issuance of the final rule. If the parties cannot agree, the court will determine an appropriate deadline.

Predatory College Credit Card Agreements

From 2014-2016, the Consumer Bureau released an annual report studying agreements between universities and banks, including an analysis of college credit card agreements required under the CARD Act. In each of these reports, the Consumer Bureau warned that students faced risks from products other than credit cards and that debit cards, checking accounts and prepaid cards were costing students hundreds of dollars or more in fees every year.

And as you know, in 2017, your predecessor Mick Mulvaney suppressed the publication of an analysis by then-student loan ombudsman Seth Frotman showing that banks, most notably Wells Fargo, charged excessive fees to college students, far out of step with the rest of the marketplace. Since then, both in 2018 and last year, you have chosen to ignore these 2017 findings and failed to study this issue further. Instead, this Committee has received incomplete reports on college credit cards that ignore the consumer harm in the campus banking market.

Question 143

Director Kraninger, is it your belief that these high fees are no longer a problem for students?

Response

The Bureau takes careful note of any and all information that indicates that harm or risk of harm may be occurring in vulnerable or underserved populations. The Bureau is committed to vigorously monitoring markets for all financial products offered to students and ensuring that students are protected from violations of Federal consumer financial law.

Question 144

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Director Kraninger, why has the Consumer Bureau failed to look into these allegations affecting student borrowers properly

Response

Enforcement is an essential tool Congress gave the Bureau. The Office of Enforcement opened a number of investigations in fiscal year 2019, but the Bureau does not comment on the existence of specific investigations. The Bureau will continue to use all tools available to it to help protect students.

Question 145

Director Kraninger, will you commit to this Committee that next year the Consumer Bureau will study and provide Congress with a report on all instances where schools and banks cut deals that unfairly hit students with high account fees?

Response

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act) mandates annual reporting on college credit card agreements. The Bureau's reports have complied with the requirements of the CARD Act regarding reporting on college credit card agreements and will continue to do so. Additionally, the Bureau is committed to vigorously monitoring financial markets which impact students. Whenever the Bureau's market monitoring efforts uncover harm or risk of harm, the Bureau employs its most effective tool or tools, including education, regulation, supervision, and enforcement, to mitigate or remediate those harms and risks.

Faster Payments

Faster payments may prove to be both convenient and money saving for consumers. The Consumer Bureau issued its Faster Payments Principles in 2015,²⁵ emphasizing the need for consumer control over payments, strong error resolution rights, and accountability mechanisms to curb system misuse. Several critical issues need to be resolved before instant payments become widely used by consumers. Consumer benefits of faster payments could be undercut if providers tie faster payments to overdraft or other forms of expensive credit.

Question 146

Have you consulted with the Federal Reserve on its faster payments work?

Response

²⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-guiding-principles-for-faster-payment-networks/>.

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Yes. I have engaged with Federal Reserve principals, staff, and industry on faster payments. Further, Bureau staff have been engaged throughout the process. Federal Reserve staff interviewed Bureau staff prior to the publication of the Federal Reserve 2014 Payment System Improvement Public Consultation Paper. In addition, Bureau staff served on the Steering Committee of the Federal Reserve’s Faster Payments Task Force and as a member of their Secure Payments Task Force. Bureau staff also served on the Federal Reserve-facilitated effort to establish a faster payments governance function, the Governance Framework Formation Team. Federal Reserve Bank and Board staff briefed the Bureau on the Federal Reserve’s 2018 request for comment to support interbank settlement of faster payments, and Federal Reserve staff have provided subsequent briefings on their FedNow initiative.

Question 147

How should overdraft be handled in a faster payments environment?

Response

The Bureau released principles for faster payment networks in 2015. In publishing these principles, the Bureau stated that, to be safe, transparent, accessible, and efficient, faster payment systems must keep certain consumer protection concerns in mind. To ensure access and ubiquity, faster payment systems should be affordable to consumers and fee structures should not obscure the full cost of making or receiving a payment. Faster payments should bring with them faster guaranteed access to funds, which in turn can decrease risk of overdraft and declined transactions due to insufficient funds. The Bureau has closely followed developments in faster payments and will continue to monitor the market for risks to consumers.

Question 148

Countries that have implemented faster payments have seen increases in fraud. One form of fraud is victim-assisted fraud, which is fraud where a consumer is tricked into sending money to a scammer. Consumer groups have advocated that these payments be considered “unauthorized” for the purposes of ensuring that consumers can get back money lost to scammers. This is in keeping with the Bureau’s Faster Payments Principles that urge that providers are incentivized to be “accountable for the risks, harm, and costs they introduce to payment systems.”

What will the Consumer Bureau do to ensure that faster payments don’t lead to fraud losses for consumers?

Response

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Fraud detection and prevention are necessary elements of any payments system. Systems should provide mechanisms for reversing erroneous and unauthorized transactions quickly once identified and should adopt designs that help prevent errors from occurring in the first place. Systems also must provide consumers with applicable regulatory protections, such as those found in Regulation E and Regulation Z. The Bureau monitors the market for risks to consumers and violations of regulatory protections and will continue to do so.

Everyone involved in payment systems should seek to prevent and correct fraudulent, unauthorized, or otherwise erroneous transactions for consumers. The Bureau has closely followed developments in faster payments and will continue to monitor the market for risks to consumers.

Debt Collection

In May 2019, the Consumer Bureau released a notice of proposed rulemaking to establish guidelines on how communication may take place between debt collectors and consumers. On February 21, 2020, the Consumer Bureau released another proposal regarding time-barred debt to supplement the proposed debt collection rule it released in May. As debt is transferred from owner to owner, records become lost or less reliable, and some are timed out by statutes of limitations. The FTC has noted that consumers may be unaware of their legal rights or that their debt has been timed out. Some debt collectors may take advantage of this lack of knowledge when contacting consumers.

Question 149

The supplemental rule proposal attempts to address time-barred debt by suggesting debt collectors include specific enhanced disclosures when collected debt that is timed-out by the statute of limitations. These disclosures may not be enough to inform consumers of their legal rights, or what happens if they submit any payments on time-barred debt. Why did you not simply ban the collection of time-barred debts, given the increasing uncertainty of the accuracy of the debt?

Response

The Bureau is carefully considering the consumer protection concerns surrounding the collection of time-barred debt. Consumers unfamiliar with statutes of limitations may take away from a debt collector’s attempt to collect a time-barred debt the misleading impression that the debt is legally enforceable—even if the debt collector does not explicitly threaten litigation. A consumer with the misimpression that a time-barred debt is enforceable in court may pay or prioritize that debt over another debt or expense, in the mistaken belief that doing so is necessary to avoid litigation.

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The Bureau tested time-barred debt disclosures on approximately 8,000 consumers. The Bureau’s quantitative testing results suggest that disclosures can be effective in preventing the deception associated with the collection of time-barred debts and that, therefore, prohibiting the collection of time-barred debt and banning revival are not necessary to prevent deception. In addition, banning the collection of time-barred debt could have unintended consequences for consumers, such as increased litigation before expiration of the statute of limitations or reduced access to credit. Because disclosures may adequately address the risks of consumers, the Bureau proposes to require disclosures rather than to prohibit the collection of time-barred debt and ban revival. The Bureau published research reports on the testing method and results with the supplemental NPRM (SNPRM) and welcomes public comment.²⁶

Question 150

Did you consult with any debt collection companies or their representatives in proposing this rule? If so, please provide a list.

Response

The Bureau continues to monitor the debt collection industry and engage key debt collection stakeholders to improve its understanding of the market and to develop informed policies that will protect consumers without imposing unnecessary costs. Throughout this process, Bureau staff has spoken at both regional and national debt collection industry events and conducted industry site visits. The Bureau also held meetings with consumer advocates, industry groups, vendors, and government officials to better understand consumers’ experiences with debt collection as well as how the market and industry function. In addition, the Bureau has held a number of meetings with market participants and consumer advocates to inform the Bureau as part of the rulemaking process. The results of this outreach have provided Bureau staff with detailed information related to consumer experiences with debt collection, the costs of operating a debt collection business, and potential impacts of the proposals under consideration.

As noted in the previous answer, the Bureau also undertook to test time-barred debt disclosures on approximately 8,000 consumers. The Bureau published research reports on the testing method and results with the supplemental NPRM and welcomes public comment.

The SNPRM provided a 60-day public comment period that was set to close on May 4, 2020. Given the challenges posed by the COVID-19 (coronavirus infection) pandemic, we have received requests from stakeholders to give interested parties more time to conduct outreach to relevant constituencies and to properly address the many questions presented in the SNPRM. On March 20, 2020, the Bureau announced that the SNPRM comment period would be extended

²⁶ See https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf; see also https://files.consumerfinance.gov/f/documents/cfpb_icf_debt-survey_methodology-report.pdf.

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to June 5, 2020. This extension should allow interested parties more time to prepare responses to the SNPRM. We expect a robust response from all stakeholders and we will carefully consider these comments before moving forward with any potential final rule.

Question 151

Did you consult with any consumer advocates in proposing this rule? Please provide a list.

Response

Please see response to Question 150.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Ted Budd:

Question 1

The White House’s Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents (EO) clarifies that non-binding guidance documents can only clarify existing obligations and can’t provide new interpretations of law outside of the Administrative Procedures Act. CFPB Compliance Bulletin 2015-05 is a problematic, non-binding policy statement, that presents a new interpretation of the Real Estate Settlement Procedures Act and contradicts controlling case law precedent. Would the Bureau consider withdrawing it in the spirit of the EO?

Response

In its 2015-05 Compliance Bulletin, the Consumer Financial Protection Bureau (Bureau) noted that it appeared, based on the Bureau’s investigative efforts, that many marketing service agreements, “are designed to evade [the Real Estate Settlement Procedures Act’s] RESPA’s prohibition on the payment and acceptance of kickbacks and referral fees.” The Bureau is open to hearing concerns about the Bulletin and will consider whether any action should be taken to better clarify existing RESPA obligations.

Question 2

I applaud the CFPB for establishing a new category of materials designated as Compliance Aids to accurately summarize and illustrate the underlying rules and statutes. Given that existing CFPB guidance, notably CFPB Bulletin 2015-05, presents a new interpretation of the Real Estate Settlement Procedures Act that goes beyond the statute and regulation and contradicts controlling case law precedent, will the Bureau consider rescinding Bulletin 2015-05?

Response

See response to Question 1.

Question 3

Is the Bureau willing to rescind compliance bulletins that have been superseded by case law? By way of example, CFPB Bulletin 2015-05 predates subsequent controlling case law precedent (see PHH Decision, D.C. Cir. Oct. 11, 2016, panel ruling reinstated on Jan. 31, 2018). In PHH, the D.C. Circuit Court panel was unanimous in overturning then-Director Cordray’s interpretation of RESPA, holding that Section 8 permits captive

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reinsurance arrangements so long as mortgage insurers pay no more than reasonable market value for reinsurance. Specifically, the Court noted that the “CFPB’s interpretation of Regulation X is a facially nonsensical reading of Regulation X,” since a provider “makes a payment at reasonable market value for services actually provided, that payment is not a payment for a referral.”

Response

See response to Question 1.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Blaine Luetkemeyer:

Question 1

Every year, hundreds of thousands of consumers turn to federally- and state-regulated credit repair organizations for a variety of services. While many consumers do seek help to remedy inaccurate information, they also utilize these companies for services such as credit score education, counseling or assistance with disputes and reinvestigations of reported information. Because of this wide offering of services, some credit repair organizations choose to not promise their customers specific results, such as a credit score increase or the removal of certain adverse information because they are not applicable to the service offered.

- a. Does the Bureau believe that the six-month billing waiting period in the Federal Trade Commission’s Telemarketing Sales Rule applies to a company simply because it organizes as a credit repair organization under the Credit Repair Organization Act and regardless of whether the company promises a permanent elimination of adverse information on a consumer’s credit file?

Response

The Telemarketing Sales Rule (TSR) was issued by the Federal Trade Commission (FTC) pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act. The Consumer Financial Protection Bureau (Bureau) does not have rulemaking authority under that Act. The Bureau does share enforcement authority with the FTC and the Bureau has exercised that authority in accordance with guidance that the FTC has provided.

The Credit Repair Organizations Act prohibits all credit repair organizations from charging advance fees.²⁷ The TSR prohibits any telemarketer or seller from “requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person’s credit history, credit record, or credit rating” until six months after the promised results have been achieved.²⁸ Credit repair organizations that fall within this provision of the TSR are subject to the six-month billing waiting period.

- b. Has the Bureau provided guidance to credit repair organizations that offer services permitted under Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) but do not make promises of outcomes, on how they should bill their customers?

Response

²⁷ See 15 U.S.C. § 1679b(b).

²⁸ See 16 C.F.R. § 310.4(a)(2).

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The Bureau has resources that explain how the Bureau supervises compliance with the Fair Credit Reporting Act (FCRA), including Section 611 (15 U.S.C. 1681i). Examples of these resources include the Consumer Reporting Larger Participants Examination Procedures and the FCRA Examination Procedures.²⁹

Question 2

Under the previous Directors of the Bureau, the CFPB has taken varying actions regarding tribal lending. Most notably Director Cordray filed a lawsuit against tribal lenders that was later dismissed by Director Mulvaney. Given the varying treatments tribal lenders have received in the past from the Bureau, can you describe the CFPB's stance on tribal lending? What do you determine to be a legitimate tribal lending entity and do have plans to give guidance to the industry after the back and forth of previous CFPB directors?"

Response

The Bureau has investigated tribally-affiliated lending entities in the past and will continue to do so where warranted. A few years ago, the Ninth Circuit held, in the context of a Civil Investigative Demand (CID) enforcement action, “that the Consumer Financial Protection Act, a law of general applicability, applies to tribal businesses.” Consumer Fin. Prot. Bureau v. Great Plains Lending, LLC, 846 F.3d 1049, 1054 (9th Cir.), cert. denied, 138 S. Ct. 555, 199 L. Ed. 2d 436 (2017). In our opposition to the petition for certiorari, the Bureau (through the Department of Justice) maintained our position that the Consumer Financial Protection Act applies to tribally-owned lenders. Accordingly, we expect all lenders, including tribally-affiliated lenders to comply with Federal consumer financial law.

²⁹ See https://www.consumerfinance.gov/documents/4544/102012_cfpb_consumer-reporting-larger-participants_procedures.pdf; <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/fair-credit-reporting-act-fcra-examination-procedures/>.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congresswoman Katie Porter:

Question 1

In January 2020 you sent a letter to members of the Senate Banking Committee in which you indicated the route the Bureau is inclined to take with its rulemaking on the definition of a Qualified Mortgage (QM). The Bureau and some stakeholder groups have proposed moving from a QM definition based on debt-to-income (DTI) and compensating factors to one based on a loan’s pricing, thereby removing a direct assessment of a borrower’s ability to repay and leaving only the statutory ATR protections in place. On several occasions during the hearing you suggested that the ATR statute contains underwriting criteria and that lenders would still be required to “consider” a borrower’s DTI – a requirement/term that is very ill-defined and subjective. The use of DTI in conjunction with compensating factors is a QM framework that assesses individual borrowers’ ability-to-repay and has an established track record of sustainable homeownership and loan performance.

- If the Bureau decides to create a new QM definition based on pricing and the statutory ATR elements, how many of them are actually measurable?
- Is the Bureau concerned with a revised QM definition that eliminates measurable and bright line underwriting guidelines and could reduce ATR protections for borrowers?

Response

The Consumer Financial Protection Bureau (Bureau) is concerned with balancing the need for certainty of Qualified Mortgage (QM) status with ensuring that the QM requirements for loans have appropriate protections, consistent with the statute, so that such loans should be presumed to have complied with the Ability-to-Repay (ATR) requirements. The Bureau is in the process of developing its proposal to amend the definition of General QM. The Bureau anticipates that pricing thresholds would be easily measurable. The Bureau is continuing to consider other criteria for the General QM definition. The Bureau will issue a proposal subject to notice and comment pursuant to the Administrative Procedure Act and will review comments and evidence raised in developing any final rule.

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A Semi-Annual Review of the Consumer Financial Protection Bureau”
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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Denver Riggleman:

Question

Director Kraninger, as you know, the current web of cybersecurity regulation is complex and marked by overlapping requirements, guidance, and issuances from agencies, including the CFPB, with varying degrees of oversight and responsibility.

The financial sector, in collaboration with regulators and the National Institute of Standards and Technology (NIST), has developed the Financial Sector Profile based on the NIST Cybersecurity Framework, as a tool to assess cybersecurity programs and key controls, and assist with minimizing the burden of regulatory examinations.

I believe a scalable and extensible assessment that financial institutions of all types can use for internal and external cyber risk management assessment and as a mechanism to evidence compliance with various regulatory frameworks both within the United States and globally would significantly benefit the financial services industry and regulatory community.

Could you give us an update on the Bureau’s plans to make use of the Financial Sector Profile?

Response

The Financial Sector Profile was developed by the Financial Services Sector Coordinating Council, a nonprofit entity with approximately 80 members. The Financial Sector Profile is one of several profile tools derived from the NIST cybersecurity framework that entities can use to self-assess and establish a baseline for their cybersecurity posture. As a member of the Federal Financial Institutions Examination Council (FFIEC), the Bureau has emphasized the benefits of using a standardized approach to assess and improve cybersecurity preparedness in a recent press release.³⁰ The FFIEC does not endorse any particular tool, but we note that standardized tools such as the Financial Sector Profile, or the FFIEC’s Cybersecurity Assessment Tool, may support an entity in its own self-assessment activities and promote cyber preparedness.

³⁰ <https://www.ffiec.gov/press/pr0828219.htm>.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Brad Sherman:

Question

Digital redlining, which occurs through the use of technology, alternative data sets and social media behaviors, to systematically suppress the presentation of certain online and mobile advertisements to certain populations is an issue the CFPB is already aware of. It is understood that advertisers want to deliver advertisements to a targeted audience who has a greater likelihood of buying their products and services. Furthermore, online and mobile users can benefit from, and might even appreciate receiving targeted advertisements related to their social media activity.

However, this type of targeting, whether or not with the intent to discriminate, is problematic when it comes to financial services. Even the use of variables such as age and gender on online advertising platforms could result in particular groups of consumers not seeing certain ads on social media platforms unlawfully limiting their access to certain credit card and consumer loan products. Controlling the advertisement delivery process through the use of certain variables can have the unintended consequence of discrimination, as well as result in violations of fair lending laws and laws that prohibit unfair or deceptive acts and practices.

In the past couple of years, there have been a variety of investigations related to digital redlining. In addition, there have been lawsuits and increased regulatory scrutiny. Notwithstanding, some issuers and lenders continue to advertise on these online platforms while some have opted to advertise elsewhere. Responsible deployment of these technologies is not only important, it is legally required that credit card and consumer loan offers are not suppressed based on variables such as age and gender.

To what extent is the Bureau looking into digital redlining and taking action to prevent its detrimental impact on consumers seeking financial service offerings via online or mobile channels?

What is the Bureau doing to protect consumers against discriminatory pre-credit application practices where lenders and credit card issuers are advertising on certain online and mobile platforms that use variables such as age and gender in their algorithms that could result in individuals in protected classes being precluded from receiving said advertisements?

Response

The Consumer Financial Protection Bureau (Bureau) is committed to its responsibilities under fair lending laws and uses the tools Congress has provided – education, regulation (including compliance guides), supervision, and enforcement – as necessary to carry out those responsibilities. While the Bureau monitors market activity to execute this mission, I cannot

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comment on specific enforcement and supervisory actions. With that in mind, the Equal Credit Opportunity Act's (ECOA's) implementing Regulation B prohibits creditors from discouraging applicants and prospective applicants from making or pursuing a loan application. When using social media platforms, or other data and technology as described in your question, it may be helpful for lenders to approach potential fair lending risk as they would in other marketing arrangements. Further, the Bureau's ECOA Baseline Review Modules, which are publicly available, provide instructions to examiners for evaluating an entity's compliance.³¹

³¹ https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_ecoa-baseline-exam-procedures_2019-04.pdf.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Bryan Steil:

Question

I support the Administration’s objective to create a level the playing field in the housing finance system so that Fannie Mae and Freddie Mac do not have a special advantage in the marketplace. With regard to government-insured lending channels, it is important that the Federal Housing Administration (FHA) also not have special advantages in the marketplace that would both arbitrarily leave many borrowers with only an option of an FHA loan and also increase the federal government’s – and therefore American taxpayers’ – exposure to mortgage credit risk.

- As the Bureau proceeds with the rulemaking on the Qualified Mortgage (QM) definition, have you analyzed the potential market impacts (volume shifting to FHA) of moving to an approach that removes the debt-to-income (DTI) underwriting guideline and replaces it with a QM framework based on pricing?
- If so, has the Bureau concluded whether it would unlevel the market due to disparate QM frameworks for the convention and FHA markets?

Response

The Consumer Financial Protection Bureau (Bureau) is considering the potential market impact of changes to the Qualified Mortgage (QM) definition, including the potential of loan volume shifting to the Federal Housing Administration. The Bureau is in the process of developing a proposed rule and so has not reached any conclusions about the market impact of any changes to the QM definition. The Bureau will consider any comments and evidence submitted in response to the Notice of Proposed Rulemaking.