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THE SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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THE SEMI-ANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Tuesday, January 28, 2014

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

The committee met, pursuant to notice, at 10:04 a.m., in room 2128, Rayburn House Office Building, Hon. Jeb Hensarling [chairman of the committee] presiding.

Members present: Representatives Hensarling, Bachus, Royce, Capito, Garrett, Neugebauer, McHenry, Pearce, Posey, Fitzpatrick, Luetkemeyer, Huizenga, Duffy, Hurt, Grimm, Stivers, Fincher, Stutzman, Mulvaney, Hultgren, Ross, Pittenger, Wagner, Barr, Cotton, Rothfus; Waters, Maloney, Velazquez, Sherman, Meeks, Capuano, Clay, Lynch, Scott, Green, Cleaver, Ellison, Perlmutter, Himes, Peters, Carney, Sewell, Foster, Kildee, Murphy, Sinema, Beatty, and Heck.

Chairman HENSARLING. The committee will come to order.

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

This hearing is for the purpose of receiving the testimony of the Director of the Consumer Financial Protection Bureau (CFPB) concerning the Bureau's semi-annual report.

I now recognize myself for 4½ minutes to give an opening statement.

This morning, we welcome back Mr. Richard Cordray, Director of the CFPB, for one of his two statutory semi-annual appearances before our committee. It is an important appearance because, by design, the CFPB is perhaps the single most powerful and least accountable Federal agency in all of Washington and demands rigorous oversight.

First, let's speak of its power. When it comes to credit card loans, auto loans, and mortgages of hardworking taxpayers, the CFPB has unbridled discretionary power not only to make them less available and more expensive, but to absolutely take them away. This is not the rule of law; it is the rule of rulers, and the rulers are unaccountable.

The Bureau is fundamentally unaccountable to the President since the Director can only be removed for cause, fundamentally unaccountable to Congress because the Bureau's funding is not subject to appropriations, and fundamentally unaccountable to the courts because the Dodd-Frank Act requires courts to grant the

CFPB deference regarding its interpretation of Federal consumer financial law. Thus, the Bureau regrettably, remains unaccountable to the American people.

The American people deserve better. They now have witnessed a failed stimulus plan, trillions of dollars of unsustainable debt that we can witness on the monitors, revelations of NSA domestic data collection, and a broken promise of, "If you like your health insurance, you can keep it." The American people rightfully demand accountability from this Administration.

Therefore, our committee took common-sense steps in November to make the Bureau more accountable and transparent when we passed six bills that reform the CFPB's flawed structure, such as replacing its single unaccountable Director with a bipartisan board; putting Bureau employees on the civil service pay scale; introducing a safety and soundness check on its regulations; and giving American citizens greater control over their personal financial data that the Bureau is collecting and maintaining on them at this time.

Our committee took another modest step towards greater accountability for the CFPB when we announced that the committee's Web site now offers an easy way for the American people to let us know how the Bureau's works affect them, good or bad. And since many citizens today justifiably fear reprisals when it comes to speaking their mind about big government agencies, citizens' stories and comments will be treated confidentially, upon request.

We are already hearing a lot of feedback concerning the harmful impact on consumers of the Bureau's Qualified Mortgage (QM) rule, which went into effect just days ago.

Let me share a couple of those messages with you. One is from Doyle Cooper, a small-town banker in Royse City, Texas. He used our Web site and gave his permission to quote him: "The results of Dodd-Frank in the CFPB continue to be a burden on us each and every day. We have just this past week decided to suspend any and all mortgage products. We know our customers and their businesses. But yet, we are being asked to use a one-size-fits-all underwriting criteria to allow the loan to be a Qualified Mortgage. The customers in our community have come to rely on us to help their dreams happen, and now we are being forced to say, 'No, we can no longer help you.'"

Another small-town community banker wrote in to say this about the QM rule: "Our bank has had to exit this line of business"—meaning mortgage lending. "The bank cannot find a way to generate these small-balance loans in a profitable manner under the existing regulatory environment. I can't tell you the number of times we have had to tell our good, low- to moderate-income customers that we can no longer loan them money to purchase a home to live in."

I have one more story from a small-town community banker out West. The community bank, due to the QM rule, discontinued making owner-occupied home loans. The banker said, "A typical customer is one without a credit score but whom we have known all of his or her life and have made many personal loans to them over the years. Often, these are Hispanic customers—60 percent of our population. And many are more stable than so-called qualifying secondary market individuals who are simply overleveraged."

The CFPB has a very important mission. Properly designed and led, it is capable of great good, but stories like these dramatically show the very real harm that the CFPB can inflict on low- and moderate-income Americans. We can all imagine a brighter day with abundant economic opportunity for all, competitive markets, and where consumers' freedom to choose is respected—a day when these consumers are protected not only from deceptive practices and fraudulent claims that may come from Wall Street, but they are protected from the power grabs and excesses of Washington as well. Until that day comes, this committee will do everything in its power to hold the CFPB accountable to the American people.

The Chair now recognizes the ranking member, Ms. Waters, for 4 minutes.

Ms. WATERS. Thank you, Mr. Chairman.

Welcome, Director Cordray, on the Consumer Financial Protection Bureau's 46th appearance before Congress since its inception in 2011. Despite the Bureau's extensive engagement with this committee over the past few years, the CFPB has managed to do more than just testify before Congress. To the contrary, the CFPB has built an unprecedented record of success protecting our Nation's customers and consumers and servicemembers who have been victimized by unscrupulous corporations and financial institutions.

In fact, the Bureau's enforcement actions have resulted in over $3 billion being directly refunded to nearly 10 million consumers and servicemembers. And the CFPB has earned the trust of the American public. It has received more than 269,000 consumer complaints, resolved tens of thousands of individual problems, and answered more than 1,000 questions posed through its online portal.

Director Cordray, you are here today to discuss findings of your semi-annual report, which shows the Bureau's continued success and effectiveness on behalf of consumers. In fact, the reports shows that in just 1 year—1 year's period—the CFPB received approximately 122,000 consumer complaints on issues ranging from mortgages, credit cards, and banking services, to credit reporting and student loans. These issues matter to our Nation's consumers and the CFPB is ensuring that when it comes to these industries, protecting consumers is the Bureau's top priority.

Moreover, we know that when consumers complain, companies listen. Recently, the CFPB has issued a number of important regulations that protect consumers from predatory financial practices. Most notable is the Qualified Mortgage rule, which protects consumers by requiring that lenders only make mortgage loans to those who can afford to repay them over the loan term.

The semi-annual report also indicates the Bureau has continued this unprecedented success in enforcement actions against a wide range of institutions for unscrupulous actions. In Fiscal Year 2013, the CFPB was a party to 13 enforcement actions related to deceptive marketing, unlawful debt collection, discrimination, unlawful fees, and fraudulent mortgage relief schemes.

I am truly proud of the CFPB's outstanding success on behalf of our Nation's active duty military, restoring more than $12.5 million to servicemembers.

I was particularly pleased to see that in November of last year, the CFPB took its first enforcement action against a payday lender,

ordering Cash America to refund $14 million to consumers for overcharging our servicemembers and robo-signing court documents and debt collection lawsuits. These actions are important and must continue.

In the midst of significant Republican scrutiny, and to potential data breaches at the CFPB and other agencies, the CFPB has actually helped consumers protect themselves from fraud and identity theft and actual breaches, such as the recent incidents at Target and other major retailers.

So, Director Cordray, I would like to take this moment to commend you for the CFPB's impressive track record in these short years. But despite all these successes, Republican attacks on the CFPB continue, unrelenting. Their campaign to undermine the Bureau is nothing more than a disservice to our Nation's consumers and our men and women in uniform.

So I look forward to the witnesses' testimony, and I yield back the balance of my time.

Chairman HENSARLING. The Chair now recognizes the gentlelady from West Virginia, the Chair of our Financial Institutions Subcommittee, Mrs. Capito, for a minute-and-a-half.

Mrs. CAPITO. Thank you, Mr. Chairman. And I would like to thank Director Cordray for joining the committee this morning.

For the last 9 months, my subcommittee has spent a significant amount of time learning about the Bureau's new mortgage rules, and what impact they will have on consumers. Community bankers and credit unions are very concerned about their ability to offer targeted programs to help low- and moderate-income borrowers.

Last June, the chairman of WesBanco, which is in Wheeling, West Virginia, raised concerns about the ability of his bank to continue administering a charitable trust that helps low-income borrowers to realize that dream of home ownership.

Just 2 weeks ago, the executive from Orion Federal Credit Union in Memphis raised the same concerns that many of his members who benefited from the Orion Homerun Program, a tailored rent-to-purchase program, will not fit the Qualified Mortgage standard. And during that same hearing, the CEO of Habitat for Humanity of Charlotte testified that, "As the regulations stand today, Habitat affiliates remain at risk of a debilitating liability."

In each of these cases, a local lender is losing their ability to serve their community. Lenders who previously assessed a borrower's ability to repay will be handcuffed by arbitrary thresholds and a one-size-fits-all approach.

I am very concerned that what we are going to end up doing with this QM rule is hurting those low- and moderate-income borrowers who so desperately need the flexibility and the ability to attain a mortgage.

So I look forward to hearing your comments on that, and I want to make sure that these borrowers are not left out of the system.

I yield back.

Chairman HENSARLING. The Chair now recognizes the gentlelady from New York, Mrs. Maloney, for a minute-and-a-half.

Mrs. MALONEY. I thank the ranking member and the chairman for calling this hearing.

And I welcome Director Cordray.

In just 2½ years, the CFPB has made huge strides on a number of important consumer protections, from mortgage disclosures to credit cards to remittance transfers to protecting our servicemembers.

The CFPB has also established itself as a data-driven agency. Its rule-writing process has won praise from industry and consumer advocates, and both Democrats and Republicans. The Bipartisan Policy Center described the CFPB's QM rule writing process as "open, driven by data and research, and focused on practical application in the mortgage market."

And there is still plenty of work left to do. The Bureau is working on some very important issues such as prepaid card regulation, payday lending, debt collection, and credit card overdraft policies. These are clearly issues that merit attention from the CFPB because they affect a large number of our constituents and consumers on a day-to-day basis.

As one who helped author the requirement of the semi-annual report to Congress and other provisions in the CFPB law, I look forward to Director Cordray's testimony today.

Thank you for your hard work.

Chairman HENSARLING. The Chair now recognizes the gentleman from New Mexico, Mr. Pearce, for 1 minute.

Mr. PEARCE. Thank you, Mr. Chairman.

And, again, Director Cordray, we appreciate your appearance here today. We have heard in previous hearings, and in this one, that your job is to protect the consumers, that you, in fact, yourself state that you are focused on making financial markets work better. My belief is that in rural States like New Mexico, you are making the market worse.

I would quote from a banker in Otero County: "Hardworking people in rural New Mexico are being denied access to credit for purchasing a manufactured home because of CFPB policies. Their policies are hurting the small guys." That is what I have maintained in every hearing that we have had with you so far.

In your attempts to protect the small guy, you are actually limiting access to credit. Fifty percent of the homes in New Mexico are trailer houses, and now, almost all of our lenders are out of that market.

Twenty-five percent have gotten out of loaning money for houses completely, so you are hurting—your war on the poor is hurting New Mexico, and we would like to express our position in this hearing.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, for a minute-and-a-half.

Mr. GREEN. Mr. Chairman, I would like to yield 30 seconds initially to Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Green.

Mr. Cordray, I just wanted to say I think you are doing a great job. Keep it up.

Mr. GREEN. Thank you.

Thank you, Mr. Chairman.

And I thank the Director for appearing.

I would like to also thank Mr. Dodd and Mr. Frank. And I would like to thank Mr. Dodd and Mr. Frank because I liken them to Benjamin Franklin, who was questioned after the Constitutional Convention of 1787. The question was whether we have a monarchy or we have a republic. And his response was, "We have a republic if you can keep it."

Today, we have a Consumer Financial Protection Bureau. And the question is, can we keep it?

My hope is that what Mr. Dodd and Mr. Frank have done in requiring the semi-annual reports will give us enough empirical evidence so as to convince the public and Members of Congress that this agency is vital and important.

With this agency having returned $3 billion to 9.7 million consumers, I think that speaks volumes. And I would also add, the question is whether or not we would have received this $3 billion placed back in the hands of consumers if we did not have the Consumer Financial Protection Bureau. My suspicion is probably not, but I will ask the Director to elaborate on that at a later time.

We have it. The question is, can we keep it?

I yield back.

Chairman HENSARLING. The Chair now recognizes the gentleman from Wisconsin, Mr. Duffy, for 1 minute.

Mr. DUFFY. Thank you, Mr. Chairman.

I am here with a hopeful heart that the Director is going to renew his commitment to providing us open and transparent testimony, consistent with his promise and the promise that has been made from the CFPB to the American people.

I am specifically interested in hearing testimony in regard to the data collection program at the CFPB—specifically, the extent of the information that is being collected on the American people and the extent of the disclosure that the American people get when you collect and monitor information on their financial transactions.

I am also interested in hearing about the civil penalties fund, how you find victims, designate victims, and decide to reimburse victims. We are aware that you have provided $14.6 million in victim compensation.

I am also interested in hearing about the Consumer Education and Financial Literacy Program, where you have designated $13.4 million for that education. But I also want to know about the $96 million that has been unobligated and what the intent is for the use of those dollars.

With that, I yield back.

Chairman HENSARLING. The Chair now recognizes the gentleman from Connecticut, Mr. Himes, for a minute-and-a-half.

Mr. HIMES. Thank you, Mr. Chairman, and welcome, Director Cordray. I am glad you are here.

I was very heartened by the lengthy discussion we had some time ago in which you were obviously committed to your mission and had an appreciation for the limits of your mission and the need you had, of course, to not overly regulate in ways that would be harmful for our economy.

I am glad you are here. You will sense that is not a sentiment universally shared in this room.

As the chairman said, they offered up the opportunity to the American public to offer stories about the work you do. I have been reading this survey. Apparently, you can help—they helpfully point out that you are engaged in a massive data-collection effort, gathering confidential financial information on millions of Americans, adding piles of new burdensome regulations on job creators—it goes on and on.

In my business, this is called "push-pulling." It is certainly leading the witness. It is certainly fear mongering. And apart from the entertainment value of this white-hot partisanship, I got to thinking, what about the stories that can't be told?

How does one tell the story of a predatory loan that didn't bankrupt an American family? How does one tell the story of a liar's loan that didn't get made and of a family who is not sitting on the curb, bewildered, surrounded by their meager belongings? This is, of course, where we were, where the Majority would put us back to, and I think it is worth remembering that.

It is also worth pointing out that the Dallas Fed produced a report just recently putting a price tag on that tragedy. And the Dallas Fed said that the price tag per American household was $50,000 to $120,000 per household.

Director Cordray, I thank you for the efforts you are going to make to make sure that never happens again.

And I yield back the balance of my time.

Chairman HENSARLING. The Chair now recognizes the gentleman from Tennessee, Mr. Fincher, for 1 minute.

Mr. FINCHER. Thank you, Mr. Chairman.

And welcome, Mr. Cordray. I read in your bio that you are from Ohio, so you are somewhat familiar with rural America. I, too, live in a small county in Tennessee where we don't have a red light in the entire county. I have spent my life farming and working in rural communities.

You may not realize it, but manufactured housing plays a significant role in the lives of many folks who live in rural communities in my district and across my State. For many families, this may be the only home they can afford, and when they are just starting out, sometimes rental properties are not always abundant in rural areas. Starting this month, though, it will be a lot harder for those families to get a loan to buy manufactured housing homes.

I am concerned the CFPB is cutting off access to credit for low- and moderate-income home buyers due to the Home Ownership and Equity Protection Act (HOEPA) Loan rules implemented this month. I have introduced legislation, H.R. 1779, the Preserving Access to Manufactured Housing Act, to correct this problem, and it has received bipartisan support with over 100 cosponsors and a companion bill in the Senate.

Clearly, this is a problem for a lot of Members, and I am hopeful we can work this out before families across America are left without access to financing.

Chairman HENSARLING. The Chair now recognizes the gentlelady from Arizona, Ms. Sinema, for a minute-and-a-half.

Ms. SINEMA. Thank you, Mr. Chairman.

And thank you, Ranking Member Waters.

Director Cordray, thank you for recognizing the difficulties faced by homeowners in my State, and specifically in Phoenix, and for choosing to hold a field hearing there to kick off the Consumer Financial Protection Bureau's new mortgage rules.

As you know, one in five Arizona homeowners with a mortgage still owes more than their home is even worth. And across the country, that number is roughly one in ten.

As of December 31st, the CFPB has received almost 6,000 consumer complaints from Arizonians, including over 2,500 mortgage-related complaints.

And my constituent, Mary, was one of these homeowners. Mary lost her job. She was attempting to negotiate a short sale with her bank but the bank refused to accept the terms of the deal, delaying and unnecessarily preventing the sale of her property. The problems were endless, and Mary felt like she had no recourse. She was at the mercy of her bank until the CFPB stepped in and helped facilitate a favorable outcome, which allowed Mary to move on with her life.

Arizona's homeowners are still struggling, and we feel like we must do everything we can to help them. The CFPB's new mortgage rules protect Arizonians like Mary at every stage of the process, from getting the right mortgage to paying back the loan, and they provide hardworking families reasonable safeguards against bad mortgage deals that ruin credit and cost families their homes and financial security.

In addition to protecting homeowners, the Bureau has also vigorously enforced protections for active duty military families, restoring millions of dollars to servicemembers under the Military Lending Act. This is a huge issue in Arizona.

Thank you.

Chairman HENSARLING. The Chair now recognizes the gentlelady from Missouri, Mrs. Wagner, for 1 minute.

Mrs. WAGNER. Thank you, Mr. Chairman.

Welcome, Director Cordray.

It is unfortunate, but by no means surprising, that some of the worst fears and predictions regarding the Bureau of Consumer Financial Protection have already come true.

Earlier this month, our committee learned that organizations such as Habitat for Humanity, as Mrs. Capito referenced, are finding it more difficult to help low-income families attain homeownership. Many of us have heard from our community banks that are altogether leaving the mortgage business or are seeing their compliance costs absolutely skyrocket.

Regrettably, news such as this has become all too common since the Bureau's inception, whether it is the unfair way in which low- and moderate-income Americans are harmed under the Qualified Mortgage rule, the deceptive public database of unverified complaints maintained by the Bureau that only serves to mislead consumers, or the abusive manner in which the Bureau is spending money and irresponsibly gathering the sensitive financial information of American families.

It is clear by now that this Federal bureaucracy is crying out for reform. And I hope that today's hearing helps to shine further light on the Bureau.

I thank you, and I yield back.

Chairman HENSARLING. That concludes our opening statements.

Today, we welcome Richard Cordray, the Director of the CFPB. Director Cordray has appeared before this committee before, so I believe he needs no further introduction.

Without objection, the Director's written statement will be made a part of the record.

Again, Director Cordray, welcome, and you are now recognized for your testimony.

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

Mr. CORDRAY. Thank you, Chairman Hensarling, Ranking Member Waters, and members of the committee. Thank you for inviting me to testify about the fourth semi-annual report of the Consumer Financial Protection Bureau. Since we opened our doors just over 2 years ago, the Bureau has been focused on making consumer financial markets work better for consumers and honest businesses.

Representative Himes, you said you are not sure that everybody is glad to see me today. My sense is different. I think everybody here is glad to see me; they just may have different reasons.

[laughter]

The report we are discussing today describes the Bureau's efforts to achieve this vital mission. Through fair rules, consistent oversight, appropriate enforcement of the law, and broad-based consumer engagement, the Bureau is helping to restore trust in consumer financial markets.

Through our collaborative enforcement work with fellow regulators, we are putting approximately $3 billion back into the pockets of millions of consumers who fell victim to various violations of consumer financial protection laws. This includes a refund of more than $6 million to thousands of U.S. servicemembers based on failure to properly disclose costs associated with repaying auto loans through the military allotment system and expensive auto loan add-on products sold to active duty military.

Because of our supervisory work, financial institutions are making changes to their compliance management systems that have prevented violations, reduced risk to consumers, and resulted in financial restitution to many thousands of additional consumers. That is good work by our supervision team, good business practice for the companies, and good for consumers, who deserve to be treated fairly under the law.

Over the past year we have enacted a number of new rules to meet the mandates of the Dodd-Frank Act, including the Qualified Mortgage rule, which I understand we will be talking about today. This important rule requires mortgage lenders to make a good-faith, reasonable determination that borrowers can actually afford to pay back their loans. It is a back-to-basics approach to mortgage lending. We also enacted the mortgage servicing rules, which are designed to clean up sloppy practices and ensure fair and more effective processes for troubled borrowers who may face the loss of their homes. And we adopted a remittance rule that provides transparency and consumer protections for international money transfers for the very first time.

During this period, the CFPB has also been closely focused on making sure that businesses—both small and large—have what they need from a practical and operational standpoint to understand and comply with the new mortgage rules. We have put up plain language versions of the rules, created and posted video guidance, and met with major market players and the full range of industry stakeholders, including vendors and smaller lenders. We have worked with our fellow regulators to publish interagency examination procedures well before the implementation date so that industry understands our expectations and has time to make necessary adjustments. We have also coordinated with other regulators to ensure we all have a shared understanding to promote consistent supervision of compliance with these rules.

While we work on all of these important efforts, we also recognize that consumers bear their own share of responsibility for how they participate in the financial marketplace. We need to promote informed financial decision-making. So we are providing consumers with useful tools, including the "Ask CFPB" section of our Web site, where we have developed answers to more than 1,000 frequently asked consumer questions. I encourage you to encourage your constituents to use these resources. Send them to consumerfinance.gov to gain the benefit of this expertise, and unbiased, helpful financial information.

The premise that lies at the very heart of our mission is that consumers deserve to have someone stand on their side and see that they are treated fairly. To this end, the Bureau strengthened its Office of Consumer Response, and we have now received over 270,000 consumer complaints on mortgages, credit cards, student loans, auto loans, bank accounts, credit reporting, debt collection, and money transfers, I venture to say, from constituents in every one of your districts across the country.

In the past year, in fact, we have received thousands of private student loan complaints and nearly 30,000 comments in response to our request for public information about how student debt is affecting individual consumers and the economy more generally. At a field hearing we held in Miami last May on student loan debt, it became clear that there are many troubling similarities to the mortgage market before the financial crisis. The burden of student debt is having a domino effect on our economy by jeopardizing the ability of young Americans to buy homes, start small businesses, and save for the future. We consider it a priority to continue to monitor this market closely as it develops over time.

The progress we have made in the past 2 years has been possible thanks to the engagement of thousands of Americans who have used our consumer education tools, submitted complaints, participated in rulemakings, and told us their stories through our Web site and at numerous public meetings from coast to coast. Our progress also reflects the cooperation of those we regulate, and we attempt to remain considerate of the challenges they confront. Each day, we work to accomplish the goals of renewing consumers' trust in the marketplace and ensuring that markets for consumer financial products and services are fair, transparent, and competitive. These goals not only support consumers as they climb the economic ladder of opportunity, but also help responsible businesses

compete on an evenhanded basis, and reinforce the stability of our economy as a whole.

Mr. Chairman, I saw with interest yesterday the announcement that this committee would be accepting stories from the American people about the effects of the CFPB on their daily lives. That will provide good data on what our work has been and how it is affecting people across this country, and we hope and expect for transparency in understanding what stories you are receiving from people across the country. We have confidence in the stories they will tell.

Thank you for the invitation to appear before you today. If we are quoting Ben Franklin, he said during the Revolution that, "We must all hang together or, most assuredly, we will hang separately." As always, we welcome your oversight, and I am glad to have the opportunity to hear and address your concerns.

Thank you very much.

[The prepared statement of Director Cordray can be found on page 78 of the appendix.]

Chairman HENSARLING. Thank you, Mr. Cordray.

The Chair now recognizes himself for 5 minutes.

Mr. Cordray, I have no doubt that you have figured out that the Majority of this committee feels that your agency is unaccountable by design, but we are increasingly concerned it may be unaccountable by practice, as well.

As you can tell from the monitors, the Majority also is very focused on the unconscionable, unsustainable, and, frankly, immoral debt that is being left to our children. So how you expend the people's funds is a very salient issue.

You were last before the Senate Banking Committee on November 12th, where Senator Coburn asked you, "Can you tell me why you need a $95 million building?" I believe he was referring to your renovation budget.

You answered, "By the way, we do not own it, and I would rather not spend a penny on it." You went on to say, "The HVAC and electrical apparently has to be brought up to snuff." And finally, "It is not like we are building some palace for the Bureau over the long term."

Mr. CORDRAY. That is correct.

Chairman HENSARLING. I discovered on December 16th of last year, it says the Bureau released its financial report. Is it not true that on page 39 of the report, it says that the headquarter's renovation costs have now jumped to $145.1 million?

Mr. CORDRAY. I don't believe that is correct in terms of construction costs. There are additional costs. We are using—

Chairman HENSARLING. That is not part of the renovation costs on page 39 of the report?

Mr. CORDRAY. I am just saying we are using GSA now to oversee this renovation because it has, as we understood, received scrutiny, and we want to make sure things are being done right, so—

Chairman HENSARLING. Let me ask you about the GSA, then, because as I understand it, the GSA owns or leases 354 million square feet in 9,600 buildings across 2,000 communities, and that your $145 million renovation budget now is equivalent to over half of their entire annual budget nationwide. Were you aware of that?

Mr. CORDRAY. I don't know much about GSA's operations. That is not the agency I run. I know a lot about the CFPB's operations. What I would say is they are the experts at dealing with these types of projects, so we got them involved.

Chairman HENSARLING. Okay, so is the $145 million merely to update the HVAC and electrical?

Mr. CORDRAY. No, and there have been different numbers here, and the most recent number that I have seen is $114 million for construction. What I am told is that about two-thirds of it is required in order to upgrade the basic structure—the building. We bought a tough building, apparently, and when I say "bought," we have leased a tough building. It is—

Chairman HENSARLING. So, it is not your building, and you are—

Mr. CORDRAY. That is correct.

Chairman HENSARLING. —renovating a building that you do not own—putting in almost as much as the entire value of the building.

I have tried to get some comparable real estate costs. As you say, "We are not building some palace for the Bureau over the long term."

Apparently, your renovation cost is now $483 per square foot, which is triple the typical Washington, D.C., luxury commercial class-A luxury renovation rate of $150 per square foot—3 times as much as the D.C. Metro area.

You are spending more per square foot than the Trump World Tower, which came in at $334 per square foot. You are spending more than the Bellagio Hotel and Casino which, at the time it was completed, was the most expensive hotel ever built—$333 per square foot.

And if I am pronouncing this correctly, you are more expensive than the Burj Khalifa, the tallest skyscraper in the world, located in Dubai, which came in at $450 per square foot, and which is known as a "world class destination," a " New York urban masterpiece, superlative in every respect," designed by "the world's most esteemed designers," one of which was the architectural firm Skidmore, Owings & Merrill LLP, while the Bureau paid $7.5 million for architectural and engineering services at your headquarters.

So, here is the deal—what on God's green earth is going on here?

Mr. CORDRAY. It is a—

Chairman HENSARLING. Explain to me, Mr. Director, why I shouldn't be outraged and why the American people shouldn't be outraged.

Mr. CORDRAY. Thank you for asking a question, Mr. Chairman, and let me restate.

First of all, we do not own this building. It is an asset of the Federal Government. It is owned by the Comptroller of the Currency.

We have leased the building. The renovations that are performed there will make the building serviceable for years to come, probably far outlasting the time of our lease.

The notion that we would try to build some palace that we don't even own or control doesn't make much sense to me.

I am told that in order to—

Chairman HENSARLING. I don't think it makes much sense to the taxpayers, but you are spending the money.

Mr. CORDRAY. If I might finish, I am told that we have to do certain things so that the building can be brought up to code and work properly. We are going to have to vacate the building while this is going on. None of this is convenient for myself and our employees; none of this is something that we would prefer to do.

We worked with GSA to try to understand what space was available in Washington, D.C., and there is very limited space for an agency with over 1,000 employees, so—

Chairman HENSARLING. My guess is cheaper space could have been found in Reston, and the American taxpayers would have appreciated—

Mr. CORDRAY. We—

Chairman HENSARLING. I am beyond—

Mr. CORDRAY. We looked around at surrounding areas, as well.

Chairman HENSARLING. I am beyond my time.

The Chair now recognizes the ranking member for 5 minutes.

Ms. WATERS. Thank you very much.

Mr. Cordray, allow me to apologize for my chairman with his, "I got you" politics. You are here to give your semi-annual report and supposedly, as Members of Congress, we are here for oversight and to try and work out problems.

I could ask and talk a lot about all the good work that you are doing with students, our men and women in uniform, predatory lending, payday lending. We have alluded to some of that in our opening statements. But I wish to talk about solving problems, not give political messages.

I heard some of the Members on the opposite side of the aisle talk about manufactured housing. To tell you the truth, if the chairman and I are really interested in providing leadership, we would be working with you and the members to deal with an issue that keeps being brought to our attention.

Would you please give me your take on what is happening with manufactured housing? What are the differences here? What can we do to solve this problem?

Mr. CORDRAY. Thank you, Ranking Member Waters.

I do think that the chairman's questions are fair, and I want to have a chance to address them fully because as far as I am concerned, this is an unavoidable one-time expense that we simply want to put behind us.

And again, it is not something I would choose to do if we could avoid it.

In terms of manufactured housing, I appreciated the gentleman's comments—the Representative from Tennessee. I have family who have lived and live in manufactured housing. I went to school with many of my friends and other children who grew up in manufactured housing in my area in Ohio. It is a useful, beneficial, and often important housing alternative for people, particularly in rural areas.

My understanding is that some of the issues around manufactured home loans go back to the changes in the HOEPA rule and before, that there was a certain retreat from manufactured home lending at that time. We had executives from the American Bankers Association come in recently and say that many of the people who retreated at that time because they feared the ability-to-repay

regime under the HOEPA rules have now come back into the market, realizing that they overreacted.

There is further concern now with the ability-to-pay regime and the Qualified Mortgage rule. I personally have met with leaders from the manufactured home community, both builders and lenders.

We will continue to meet with them, and I want to understand their concerns and what we can do to address them. I do recognize that in parts of America this is the premiere alternative for putting a roof over peoples' heads and giving them a chance, and we want to make sure that happens. To the extent that we can address their concerns and monitor the market to see what the actual effect is, as opposed to doomsday predictions that are easy to make in the early days of a rule in a room like this, we will. We want to know what is actually happening, and work with them to address those concerns.

Ms. WATERS. I give you the rest of the time to address those concerns. And I want to work with you.

If my chairman does not care enough about this issue to spend some time on it, we will work with you and see if we can't convince him that his Members on his side of the aisle really do have some concerns about manufactured housing.

If you would like to address some of those concerns you alluded to, please do that now.

Mr. CORDRAY. There are special difficulties with the kinds of properties on which you would put a manufactured home, and then the loans around those.

Almost inevitably, those are specialty properties. I refer to the Representative from West Virginia and Southeastern Ohio that I am familiar with in my area of Ohio. There are lots of places where you cannot necessarily build a home and dig down a foundation. A manufactured home provides an alternative to that. Some of them are pretty basic; some of them are more elaborate.

But the bottom line is it is a useful piece of the housing market, and it is a necessary piece in certain areas.

Many of those loans are lower dollar loans, so there are particular issues around the points and fees cap that Congress imposed, which does become larger as you get to a smaller dollar loan, and that is how we attempted to build it.

To the extent that there is any modification or change that needs to be made to make sure that this market can work, we are all ears, and we will continue to be all ears, both to the Members of this committee and also to industry and consumers who are affected by the rule.

Ms. WATERS. You have done such a great job on solving problems and providing leadership.

I would like to meet with you on this issue because I think we need to demonstrate that we can solve difficult problems, no matter the chairman's unwillingness to work on this issue and to resolve it, but rather to simply do the political messaging. I will meet with you on behalf of not only our constituents on this side of the aisle, but his constituents that he fails to pay attention to.

Thank you very much.

Chairman HENSARLING. The Chair now recognizes the gentlelady from West Virginia, the Chair of our Financial Institutions Subcommittee, Mrs. Capito.

Mrs. CAPITO. Thank you, Mr. Chairman.

Mr. Director, let's start with the Habitat for Humanity issue. I have expressed this to you in a private meeting and I am very concerned about the impact on folks who have the nonprofits that are—either a rent-to-own program or one like they have at WesBanco or Habitat for Humanity.

They still don't feel like they are on firm ground in terms of the rules to be able to move forward with their programs and give themselves a level of comfort that they can move forward in the way that they have conducted business in the past, which is working with families individually.

They think they need more legislation in this issue. We are ready to do that. What is your response to that?

Mr. CORDRAY. I actually share your concern about these issues, and let me go back and review.

Last year when we were first finalizing the Qualified Mortgage rule, Habitat for Humanity came to us and they had several concerns about that rule. We told them that we shared those concerns if they had them.

We worked with them. We sat down, we did a supplemental proposal that was proposed and then finalized in May or June of last year that provided a broad provision for coverage for 501(c)(3) charitable organizations such as Habitat.

My understanding at the time was that addressed their concerns.

Now we come to the end of last year, beginning of this year, and they have identified some additional concerns that they did not present to us at that time. These are new concerns; I understand circumstances change and new experiences can occur.

We have been working to figure out how we can address those concerns through further activity. I had a conversation with Jonathan Reckford, the CEO of Habitat for Humanity, yesterday to walk through specifically three issues that they have.

Mrs. CAPITO. If I could cut you off here, just quickly—

Mr. CORDRAY. Yes.

Mrs. CAPITO. Do you think these can be solved in your space or is it—

Mr. CORDRAY. We do.

Mrs. CAPITO. —legislation?

Mr. CORDRAY. We do. And that—

Mrs. CAPITO. How quickly can you respond to this?

Mr. CORDRAY. We can respond during the course of this year. And I asked Jonathan that directly: what kind of timeframe are they looking at where this will start to pinch them?

And by the way, the main one involves how you characterize first and second liens, which was an issue that—

Mrs. CAPITO. Right. It seems to me if you have already identified the problem, we could go ahead and have the fix if we—if you already know what it is—

Mr. CORDRAY. Yes.

Mrs. CAPITO. —and you think you could fix it—

Mr. CORDRAY. There are processes—

Mrs. CAPITO. I would encourage you to do it.

Mr. CORDRAY. —that we have to work through, in terms of notice and comment, rulemaking, and the like.

But there are only six of their affiliates of the thousands of affiliates nationwide that are affected by that. I will just say that.

Mrs. CAPITO. —the large one—

Mr. CORDRAY. And of those six, they all would be addressed by the discussion we had yesterday. So, we will—

Mrs. CAPITO. I will—

Mr. CORDRAY. —move forward to address those.

Mrs. CAPITO. Okay, I—

Mr. CORDRAY. I think we can, in fact, address these by regulatory means and we have made a commitment to work with them to do that—

Mrs. CAPITO. I would heavily encourage you to do that, but there are other programs out there that don't have the voice that Habitat had who are—

Mr. CORDRAY. Yes.

Mrs. CAPITO. —deeply affected by this.

In your statement, you mentioned that the Qualified Mortgage rule requires mortgage lenders to "make a good-faith, reasonable determination that borrowers can afford to pay back their loans."

Now, if I was just reading that and didn't know anything about this, I would think that you are giving the bankers or the lenders the flexibility to make those determinations and yourself, and really, that is not what the QM rule does. It says, "Here is a box. You write the mortgage within it and if it doesn't fall within that, then you are going to"—and this is not just me speaking. That is coming from testimony after testimony after testimony from credit unions and community banks who feel that they are not going to be able to have the flexibility to give the farmer, to give the med student, to give the single mother the ability to get the home because they are not going to fit into this QM box.

So my question is, what is plan B here? How long do you think it is going to take before you see and we see what effect this is having and when are you going to be able to react to this or—

Mr. CORDRAY. I could not disagree more with that characterization of our rule. I remember at the time we finalized the rule, we saw a press release from this committee before anybody had even read what we did saying it is one-size-fits-all.

That has been a narrative from the beginning. It is not true.

We had a special provision that we added for small creditors, community banks and credit unions, which covers thousands of them—exactly the people you are talking about—and says if they keep loans in portfolio they can do anything that they traditionally have done in terms of lending. They have carte blanche because we trust them on the lending that they do.

Many of them, when we hear these complaints and I call them and I speak to them, they just haven't understood that was added to the rule. And we will continue to try to get the message out to them.

Mrs. CAPITO. So the question is—

Mr. CORDRAY. For a small lender, with less than $2 billion in assets, who makes fewer than 500 mortgages a year, every mortgage

they make is covered by the Qualified Mortgage rule, either in its main provisions, or the small creditor provision. And this is just an unreasoned and irrational—

Mrs. CAPITO. So the best thing for the two of us is to wait and see when the data comes out. How long will that be?

Mr. CORDRAY. That is fine. Absolutely.

Mrs. CAPITO. Two months, 30 days, 6 months, 1 year? These are families who are affected by this.

Mr. CORDRAY. There is data that comes out every month on the mortgage market—

Mrs. CAPITO. So, monthly.

Mr. CORDRAY. —and the housing market. And as I have said, and I said to you when we met, we are very open to hearing what that data shows, and also stories. Frankly, we are interested in hearing stories—

Mrs. CAPITO. But by your own comments, though, you have said publicly that we are going to have flexibility here. That signals to me that you know there are problems ahead. With that, my time—

Mr. CORDRAY. No, that is not correct. From the beginning, we have made further changes in the rule. We made a number last year in response to what we heard from people. We are an open-minded agency. We are listeners. As we hear more, we don't want to have some sort of unexpected effect on this market.

Chairman HENSARLING. The time of the gentlelady has expired. The Chair now recognizes the gentlelady from New York, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Director Cordray, since 2012 the CFPB has been supervising credit bureaus. As you know, the personal credit rating of small business owners can have a direct impact on their ability to obtain financing for their businesses.

Can you provide an update on CFPB supervision of the consumer credit reporting market and whether it is having a positive impact on small business owners' access to credit?

Mr. CORDRAY. Thank you for the question. We have now undertaken, as the Bureau, for the first time, to provide Federal supervision of the major credit-reporting agencies. It is an adjustment for them because they are not used to this.

We have had examination teams into each of the three largest credit-reporting agencies and there are various issues that we have been discussing with them, and areas of concern.

As a result of our efforts, you may have seen that the credit-reporting agencies, for the first time, are forwarding the information that consumers send them about problems and potential errors in their credit reports to the furnishers to be evaluated.

Before they were simply taking all that information, translating it into one number code, and not actually sending the information along, so there was no way for furnishers to actually evaluate whether you were right in saying there was an error in your credit report.

That is a big change, and that change continues to evolve. But we are concerned about errors. We are concerned about error resolution. And we are concerned about the handling of data.

I think they know that we are—I know they know that we are concerned and that we are going to work hard with them to see that these things are fixed.

For years, that industry was pointed away from consumers. It was a business-to-business industry with credit reporters dealing with furnishers and then providing information to lenders.

It has a dramatic impact on consumers, many of whom now have their credit report checked when they go to apply for a job, and all of whom have their credit report checked when they go to apply for a loan. And it is an industry that needs to take very seriously its obligations to the American public.

Ms. VELAZQUEZ. I am really concerned about access to capital for small businesses. And if there are errors and they don't have any recourse, it is going to have a negative impact on their ability to access capital financing.

Mr. Director, Section 1071 of the Dodd-Frank Act requires banks and lenders to collect and report credit application data on small businesses as well as minority- and women-owned businesses. Can you elaborate on how collecting this information will help enforce fair lending laws and enable lenders to identify opportunities for improvement in underserved communities?

Mr. CORDRAY. We do understand that is the intent and purpose of that provision of the law. It is a difficult area for us, frankly, because the Bureau has no interaction with business lending, or commercial lending, or any kind of small business lending other than that single provision.

What we have determined is that as we undertake the rule-making that we are also required to do under the Act to update the Home Mortgage Disclosures Act rule, which is under way now, we will see how we can try to fold the small business lending element into that as we develop. We are going to be overhauling that whole database and working with the Fed on that, which we believe is the right approach.

But we also very much want to work with the Small Business Administration, the people who are more expert in this area than we are.

Ms. VELAZQUEZ. And when can we expect the CFPB to publish the rules implemented in this section?

Mr. CORDRAY. The HMDA overhaul will be getting under way this year. It feels to me that the right spot for this, and we have talked to a number of folks both from industry and consumer side groups, is to make the HMDA overhaul part of the later stages of that. So, it is coming, but not immediately.

Ms. VELAZQUEZ. Okay. As required by Section 1451 of the Dodd-Frank Act, HUD is currently developing information on materials to educate borrowers on the importance of home inspections. These inspections are a simple, cost-effective way for borrowers to identify problems with a property prior to purchase and reduce their future risk of foreclosure.

Do you expect CFPB to adopt similar regulations to help educate and protect homeowners under your jurisdiction?

Mr. CORDRAY. I am not entirely sure what our authority and what HUD's authority would be and how they overlap, but I find it remarkable that you are asking that question, because when I

was in the Ohio legislature, now 23 years ago, one of my very first bills there was called the Residential Real Estate Disclosure Act, and it was exactly the problem you are describing.

I am going to sell my property. I may know it has termites. But the buyer doesn't know any of that. If I don't say anything, they are going to get a raw deal. Or maybe there are problems in the plumbing or electrical that I have experienced but they wouldn't know.

And it was about making disclosure of those items required so that there would be fair information back and forth across the table.

I find it remarkable that 20 years later, we are still talking about the same thing that was State legislation in Ohio, which we enacted at that time. That seems like the basic principle of fairness to me, and if we can work with HUD—I don't know who should do what on that—that seems to me the right—

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the chairman emeritus of the committee, Mr. Bachus, from Alabama, for 5 minutes.

Mr. BACHUS. Thank you.

Director, first of all, I appreciate your remarks about manufactured housing, what is commonly referred to sometimes as mobile homes.

In the South, they replaced tar-paper shacks, and often without indoor plumbing or electricity. So they are, many times, the only affordable alternative for people.

Mr. CORDRAY. Yes.

Mr. BACHUS. And I would like to continue to work with you as you refine your approach to lending.

We have had many conversations, and I know you have also had conversations with Jerry Moran in the Senate, about automobile lenders—indirect automobile lenders who go through auto dealers to make loans on auto loans.

You have issued a directive or a bulletin, and I think it is clear that you can compensate these dealers with a flat fee per transaction. And there is some move in the market to go to that.

You have also indicated there are other nondiscriminatory practices to compensate automobile dealers other than the flat fee, and I know you have been asked before to be more specific about maybe what some of those are.

You have said, because of—I think there was a legal action, which I think was resolved in December, you didn't want to go into more detail, but could you give me some other examples of what indirect auto lenders can use, other than the flat fee system?

Mr. CORDRAY. Yes. And in fact, I would say that is a good example of what I was trying to respond to Representative Capito, who was saying that if you think you are considering changes, it must mean that you think there are problems.

It doesn't mean that. It simply means that we don't know it all. We were making our best judgment at the time, but if there is new information and it turns out that there is something that occurs to us and is brought to our attention that we didn't understand or appreciate at the time, we are open to making changes.

Here, too, in our bulletin we made it clear that flat fees are one mechanism by which lenders could address this issue, but it is by no means necessarily the only mechanism.

And my real answer to your question is, I don't know that we know all the mechanisms yet that would be satisfactory, and we are open to auto lenders and others bringing those to our attention.

But we did say flat fees are one possibility. A flat percentage of the loan might be a possibility. Some combination of that with different durations of the loan, different levels, and potentially other things that we haven't thought of but others in the industry may think of and bring to our attention. So, we are open-minded on that.

Mr. BACHUS. As you make determinations on some alternatives, can you make those public, too?

Mr. CORDRAY. We will. As we know more and we become convinced of more and, frankly, some of the other alternatives I just described have come from further discussions with auto lenders who said, "Well, what about this? What about that?" And we are open to having those further discussions.

We also have tried to be very careful in this space, because as you no doubt recall, in Dodd-Frank it was very clearly defined that we do not have jurisdiction over auto dealers.

Mr. BACHUS. The separation—

Mr. CORDRAY. We have jurisdiction over auto lenders.

Mr. BACHUS. Sure. And I understand that is limited due to—but I appreciate that. I think they just want to be—they want to know there are some alternatives.

Mr. CORDRAY. We are open to having discussions with them. We just wanted to be careful and not have people think that we were—

Mr. BACHUS. And I think before we enforce some of this, it needs to get to the point of them knowing what they can do and what they can't.

Mr. CORDRAY. Yes. Fair enough.

Mr. BACHUS. Many people—my constituents and others—get calls from card servicers, which are—it is a fraudulent enterprise, I think. And I know the FTC made a settlement in December with some of those people, but I can tell you that the calls have continued.

I know you advise and work with the Federal Trade Commission (FTC), and I have talked to Chairwoman Ramirez. Are you aware of that problem? They are promoting a financial scheme which is absolutely fraudulent.

Mr. CORDRAY. We are aware of it, and particularly when it comes to advertising these schemes, the Federal Trade Commission has more jurisdiction than we do. I would say, actually, they advise us more than we advise them. They have been around for 100 years; we have been around for 2 years.

But we have a very good working relationship with them. We are trying to make sure that we don't duplicate resources and that we think there are more problems out there than both of us can handle. It has been a very good working relationship so far, and I appreciate that very much.

Mr. BACHUS. Let me end with this. Almost every day I get solicitations, as do most Americans, for financial products that appear

to be sponsored or promoted by the government or approved by the government.

Mr. CORDRAY. Yes.

Mr. BACHUS. I have one example that just came. This was actually yesterday.

Mr. CORDRAY. That looks pretty good.

Mr. BACHUS. And if you will keep an eye—I would like some discussions on that. It is just getting overblown.

Mr. CORDRAY. Yes.

Mr. BACHUS. Where the U.S. Government is inviting you to do this, and Congress is authorizing this at a certain price.

Mr. CORDRAY. It is a terrible practice. I started seeing it when I was Attorney General in Ohio. People will mimic the government because it has a certain amount of credibility, although not everybody agrees.

When we have the opportunity to enforce against those things we take them very seriously, because what it does is it pollutes the market for all of the legitimate programs that are being offered. And it undermines all of the honest, self-respecting businesses that are trying to do things right.

Mr. BACHUS. I appreciate that—

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from California, Mr. Sherman, for 5 minutes.

Mr. SHERMAN. A financial institution must hit an incredible low in its credibility if it thinks that cloaking itself in Congress is a step up.

Mr. Cordray, on ability to repay, if somebody wants to mortgage their house to start a business—say, a risky business. Will your rules in effect imperil the bank which makes that loan, knowing that if the business doesn't work out, it is going to be very difficult to repay the loan?

Mr. CORDRAY. That would be the very same consideration that the bank or lending institution has always given, which is they try to assess your ability to repay. They make a reasonable determination—

Mr. SHERMAN. What if there is a one in ten chance you are going to be a billionaire and buy the bank, and there is a 50 percent chance your business is going to go down and we are going to—and you are going to have to sell the house in order to pay this loan or you are going get foreclosed on. Is the bank, in effect, punished for making that loan?

Mr. CORDRAY. No, I don't see—

Mr. SHERMAN. They have made a loan that, in all likelihood, the borrower cannot repay.

Mr. CORDRAY. The bank has to make a reasonable determination in good faith whether that loan would be repaid, but that is their judgment to make.

Mr. SHERMAN. Gotcha.

Mr. CORDRAY. All they have to do under our rule is document that they did that. And if it is a reasonable, good-faith determination, then that is totally satisfactory. Banks have to make these judgments about the risks that they are taking with their capital—

Mr. SHERMAN. Okay.

Mr. CORDRAY. —and it is up to—

Mr. SHERMAN. And that is a different kind of loan, when you know that there is a good chance you are going to have to take the home or force the sale of the home, but—

Mr. CORDRAY. At some point what you are describing may become an actual commercial loan as opposed to a residential loan. I am not entirely clear on what you are describing.

Mr. SHERMAN. I want to pick up on Mrs. Capito's questioning with regard to the affiliated title company versus unaffiliated. Are you formally studying this—the discrimination on the affiliated—as a consumer, I couldn't care less whether my title company is affiliated or unaffiliated, I just want the best possible deal. So are you looking formally at how to fix that?

Mr. CORDRAY. Congress did seem to care, and in Dodd-Frank—

Mr. SHERMAN. Yes.

Mr. CORDRAY. —they, in various places, wrote in concerns and protections about sometimes affiliated entities, where there would be steering and—

Mr. SHERMAN. Yes. You certainly don't want the steering.

Mr. CORDRAY. On the other hand, affiliated entities can provide more efficient one-stop shopping as well, so that is something that we are aware of, as I have talked to a number of the people in the industry who are affected by different aspects of these rules. That is one where we have said very clearly, "We are very interested in what the data will show us in terms of what impact this has and how that intersects with the 3 percent point and fee cap," and we are interested to have them come and show us what they are finding and what their experience is.

Mr. SHERMAN. And I hope that if you see a need for a legislative fix, you will be back to us with a clear proposal.

Mr. CORDRAY. Certainly. We will be receptive to thinking about that as well.

Mr. SHERMAN. Okay. With regard to automobile dealers, there is a lot of controversy about whether to even cover anything that the automobile dealers did and do. Of course, the Equal Credit Opportunity Act is something for you to focus on.

As it happens in our society, those with lower incomes and lower credit scores pay more for credit. It is more difficult to arrange the loan, it takes more time, and of course, there is a greater risk.

In the work you are doing, do you believe that the CFPB has sought and considered adequate input from the stakeholders on the issue of fair lending in vehicle finance?

Mr. CORDRAY. I think we are always interested in having more input from stakeholders. And frankly, I will say that we have had more in the last 6 months than we had in the 6 months before that. I think it has refined our thinking and it is helpful to us.

It is, as you say, typically the way of the world that the tougher it is to make the loan, the more people have to pay. And that is a creditworthiness determination. That is fair enough.

What we think is problematic is when a creditworthy determination has been made and there is a rate that is gauged, that somehow that rate will be pushed up because of financial incentives for people to push that up higher at the expense of the consumer. That

is the yield spread premium we saw in the mortgage market, which Congress acted to stamp out.

It is not quite the same dynamic in the auto lending market, but there are some similar concerns.

Mr. SHERMAN. I yield back.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the Chair of our Capital Markets Subcommittee, Mr. Garrett of New Jersey, for 5 minutes.

Mr. GARRETT. Thank you, Mr. Chairman.

Mr. Director, you started your comments out by saying that someone needs to stand beside the consumer. After hearing the chairman's questioning on the flagrant spending by the CFPB, I guess we should also agree that someone needs to stand beside the American taxpayer, between them and you.

I come here today because there are a number of questions that were put to you months ago and still have not been answered. And that is perhaps because your agency, as someone else from your agency once testified, is not accountable to Congress or to anyone else.

One of the questions we sent to you back in September was, why is it necessary for the CFPB to collect consumer credit card information on so many—literally millions?

According to the CFPB, the combined data collected from the 18 card issuers represents 80 to 90 percent of credit card accounts. The Census Bureau projects there were approximately over a billion credit card accounts in the United States, held by over 100 million card holders last year.

It would appear that the CFPB is collecting account-level data on at least 991 million credit card accounts, which would account for literally 60 percent of the adult population here in the United States.

So, I will ask the question from September: Why is it necessary to collect so many credit card accounts on so many Americans?

Mr. CORDRAY. A couple of things, Congressman. First of all, I do strongly believe that the Bureau is needed and Congress passed the measures that created the Bureau to stand on the side of consumers and see that they are treated fairly.

I also very much agree with you that the Bureau needs people looking over our shoulder to see that we are called to account for how we do what we do. And that is the role of this committee and others, and that is why I am here today, and I am here regularly, as you know.

Mr. GARRETT. Right. So let—

Mr. CORDRAY. Now on the credit card industry, as I said at the time, the purpose of information-gathering by any agency is to be able to make informed judgments about policy.

Mr. GARRETT. Let me get into the—

Mr. CORDRAY. You would not want us shooting darts at a board; you want us to be informed.

Mr. GARRETT. Director, it is my time.

Since you did not answer the question, and you still haven't, I ask the chairman, by unanimous consent, to submit my letter to Dr. Thomas Stratmann, professor of economics and law at George Mason University, and his response, for the record.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. GARRETT. He is an expert in econometric analysis and he looked at what you have been doing. We asked him to review the CFPB credit card data collection efforts on over 900 million credit card accounts, which represents over 60 percent of the American public, and this is what he said about what you are doing. He said, "The CFPB is collecting far more data than is necessary," and that, "It is both expensive and risky."

He concluded that if the CFPB limited its sampling to 1 percent of the population, like the Census Bureau does, the CFPB would achieve its monitoring goals as well as bring the CFPB more in line with the Census Bureau, which makes anonymized granular data available to researchers and only provides 1 to 5 percent samples for statistical analysis.

Why is the CFPB overcollecting credit card data by over 70,000 percent, more than what the Census Bureau does for their data?

Mr. CORDRAY. With all due respect to Professor Stratmann, and I don't mean to disparage him in any way, I have learned that there are economic experts on about 16 sides of every issue.

But on this one, what we have found when we work with industry, and we are collecting information for them in the very same way that other agencies have done so, they often prefer to provide it wholesale rather than having to go in themselves and develop a sampling device, every piece of which costs them money. It is a little easier sometimes for them just to provide the information. That has been our experience with them, and that is why we have proceeded as we have.

Mr. GARRETT. Do you tell the consumer that you are collecting this data on them. Do you inform them? I have never received a notice from you that you have collected data on me.

Mr. CORDRAY. We have had this conversation a number of times, myself, with you and your colleagues. We are not collecting information about Mr. Garrett or Mr. Cordray. We are collecting aggregated information that is aggregated before it comes to us about what credit card issuers are doing to their customers and how they are treating their customers. That is our focus.

Mr. GARRETT. Let me just clear the record on that. I dug into some of the contracts you have where you collect some of this data, not necessarily on the credit card data but other type of data.

Some of the information that you are collecting, true, you don't have my name and my address, but with regard to one of the contracts you do provide the zip code and the four digit zip code after it. And you also get the date of birth.

So let me tell you, if you have my zip code and my last four digits, and you know what my date of birth is, well there is only one guy in my house who has that.

If you go to my neighbor and you go to his house, you will know what his—and know what his daughter's birth date is.

Mr. CORDRAY. No. No. No.

Mr. GARRETT. You are collecting that type of data, according to your contracts.

Mr. CORDRAY. Look, you are not the only house in your zip code. There are thousands—tens of thousands of houses in your zip code.

Mr. GARRETT. No, you are also collecting a four-digit zip code afterwards. That goes right to my house.

Mr. CORDRAY. Look, we don't have information where we are trying to reverse-engineer anything.

Mr. GARRETT. This is in your contract, Mr. Director. This is in your contract.

Mr. CORDRAY. I am not sure what you are talking about at this point. You said this is no longer the credit card, it is some other data collection.

Mr. GARRETT. Experian Information Solutions is the contract that you have.

Mr. CORDRAY. Okay, so you are talking about credit reporting at that point. Yes. Again, we aggregate the data, and that is what we are doing.

I have no interest in where you spend money and on what and why and how. I have no interest in what I do.

The private industry does; that is exactly what they are about. They want to know exactly what you are doing so they can market to you.

But we are about aggregate information so we can determine what is going on in these markets, so that we can bring law enforcement actions against people for violating the law. We can get money back to consumers.

If you don't want us to do that—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from New York, Mr. Meeks, for 5 minutes.

Mr. MEEKS. Thank you, Director Cordray. And I appreciate you being here. I think our State is number three—we are keeping you busy—in complaints, especially in regards to mortgage complaints. So we know that we are keeping you busy, but we appreciate the work that you are doing.

I want to also just briefly say that I look forward to continuing to work with you, and to work with you in the area of manufactured housing. I think that it is important that we have a voice and work together and try to fix and work collectively together. So I wanted to add my voice to the many that are looking forward to working collectively in resolving and working with you on manufactured housing. So I look forward to doing that. I think that it is important for us to work together to get that done.

My issue is trying to help the unbanked. I come from an area up—since I come—I have lived the life myself from coming from my parents, who were struggling, and banks—they didn't—weren't qualified or did not have enough money, but still they needed certain credit to make ends meet.

Working paycheck to paycheck is a common thing. And I find that I know many Americans are working paycheck to paycheck. And going to a bank is not available to them, and so therefore, they go to products that are nonbankable.

I have been working very closely, trying to make sure that they still have access to some credit, to nonbank institutions. And I have been working with my colleagues on the other side there to try to get something done there.

But I want to make sure that the products are safe. I want to make sure, because there is a statement that it is extremely expensive to be poor.

So I was wondering if you could tell us how the CFPB is making sure that underserved consumers will be able to access affordable and better-suited products from some of the regulated credits?

Mr. CORDRAY. Thank you for the question, and also for the background. We have known for years that it is expensive to be poor, particularly where you don't have good products and services being offered to you.

We recognize that there is a real need and demand among the public for small-dollar credit and, as you say, particularly for people who don't have direct access to the banking system, for a variety of reasons.

We have been careful in trying to assess the actual dynamics of that marketplace. We put out a White Paper last year on payday lending and on the deposit advance product by banks that has been very similar to payday lending, and looked at the need for that credit, and how it is being met. One of the problems and concerns that we have is that the business model seems to depend on a significant lump of consumers who end up rolling loans over 6, 8, 10 times. They end up living their lives off of 390 or 520 percent rate of interest, which is not benefiting or helping them.

Now, there are others who use these products, and can get in and out of them responsibly. And it is not solely payday loans. It is car title loans; it is certain types of installment loans. There is pawn brokering. It is a somewhat complicated, dynamic market.

We have indicated that we are going to move ahead with making some policy judgments and regulations in this area, and we will. But our concern is exactly yours. We want people to have access to the credit they need, but the kinds of products that are going to make things better for them, not worse. And there are many complicated dynamics around that.

Mr. MEEKS. But that is important, because I can tell you some—you hear the word just get rid of these—all the products, but then those folks have no resource. And then they end up, as I have seen—some of my friends' parents do when I was growing up—there is the old loan shark. That is the person I would want to make sure stays out of business, because not only—they come in, they do some bad things.

Mr. CORDRAY. Yes.

Mr. MEEKS. The American Banker reported last week that T-Mobile will be joining a growing list of companies which are enabling consumers to bank without going to banks also by offering the reloadable prepaid Visa cards. Can you tell me what—has the CFPB done any research on that? And any comments on those kind of products?

Mr. CORDRAY. Yes, that is a great question. It is something we watch very closely. A concern of mine is, can we stay ahead of how fast moving some of these markets are? There are many innovators trying to make their way into the space of mobile banking and various products, and many of them of them may be offered by phone. There may be other mechanisms, as well, such as peer-to-peer lending.

We are trying to stay close to that. Some of it is happening more quickly, some of it less quickly. It is very difficult to predict how that is going to evolve. But you can look around the world and see that it is arriving in various ways in other countries and likely will arrive here, as well. And it poses challenges to a regulatory system that is built on a more physical notion of banks or phones. And the FCC does phones, and so forth and so on.

So it is something that we are both trying to be very aware of, trying to stay on top of, and also recognize we are going to need to work with other regulators if we are going to be effective in this space. And probably we will need help from Congress addressing this.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, Chair of our Housing and Insurance Subcommittee, for 5 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Director Cordray, thank you for coming this morning.

Several high-profile data breaches at major U.S. retailers, including the most recent breach at Target, have raised Americans' anxiety levels about the security of their personal financial information. Yet, I think most Americans would be surprised to learn that one of the largest repositories of financial data in the country is maintained not by a retailer or a financial institution but by the CFPB.

The Bureau is tracking, as my colleague from New Jersey mentioned, 991 million credit card accounts, at least 8.6 million individual credit reports, and now as many as 227 million mortgages. We know that the Bureau has already experienced three breaches at its consumer complaint portal, and the government's less-than-stellar track record in this area suggests that there may be many more to come.

So my question to you, Mr. Cordray, is, can you personally guarantee that consumers' personal financial information is 100 percent secure?

Mr. CORDRAY. First of all, there are a lot of comparisons made, some of them very casually, in relation to us to the stimulus bill, which we have nothing to do with, us to the NSA, which we have nothing to do with, us to health care, which we have nothing to do with.

What we do have to do with is the work that we are doing on behalf of consumers and the issues we can control. And the issue you raise is an important one, and it is one that I take very seriously, just as you take it very seriously. And it would be pretty bad for our agency if we didn't take it very seriously.

What I can say is we attempt to safeguard any information we have about the American public in two ways. First of all, wherever possible, we are trying to gather aggregated information. I don't really care or want to know anything about your personal spending habits. All that does is get in my way because there are provisions in the Federal law for that kind of personal information, and how carefully you have to safeguard it.

Where we do gather that information necessarily, like through our consumer response function, where people have to give us their

details in order to have their complaint handled, we are complying with all of the security and privacy provisions that are pretty extensive in Federal law. We are trying to do that very carefully, and people are looking at us to see how we are doing that, including our Inspector General and the GAO. It is something that I personally am very mindful of and we will do our absolute best not to have a problem in this area, because I recognize that a problem would hurt this agency, hurt our mission, and not be what you or we want.

Mr. NEUGEBAUER. So, you are collecting a lot of data. You are doing the best you can, obviously.

I want to quote the President. He said recently, "All of us understand that the standards for government surveillance must be higher. Given the unique power of the State, it is not enough for leaders to say, 'Trust us, we won't abuse the data we collect.' For history has too many examples of when that trust has been breached."

And so, you are saying you are not doing it, but the President is saying, we can't always take that at face value.

I think the question that I want to follow up with is something Mr. Garrett mentioned, can this data be reverse-engineered?

Mr. CORDRAY. First of all, again, you are giving me quotes about the NSA, which is not us, and not what we are doing, and I don't think there is any comparability there, so—

Mr. NEUGEBAUER. But you are still collecting—almost as—I think you and the NSA are in a contest of who can collect the most information. And I think the jury is still out as—

Mr. CORDRAY. I fundamentally reject that—

Mr. NEUGEBAUER. —to who is going to win that contest.

Mr. CORDRAY. —categorization. However, in terms of what we are doing, we are making every effort to be very careful, both in satisfying the Federal law in terms of security and privacy, and in terms of treating consumers properly. If we are careless with their information, that is not consistent with our mission, and we are not.

Mr. NEUGEBAUER. And so the question is, can this data be reverse-engineered? That was the question.

Mr. CORDRAY. The issue of whether data can be reverse-engineered is a complicated one. That is why we try to aggregate as much as we can at a very high level. There may be information-gatherings that the government has done across many sectors that at one time could not be reverse-engineered but may become more capable of having that happen. That is something we are very careful about and mindful of and thinking about.

My point is, that is not an issue that you can answer at one time for all time. It is something that may change over time.

Mr. NEUGEBAUER. So the fact that you are concerned about it—does that mean that you think it can be reverse-engineered?

Mr. CORDRAY. I think we are concerned about making sure that could not happen as much as possible. Nobody at the Bureau, I can tell you, is reverse-engineering anything. Nobody has the time or interest to do that. It would only cause us trouble.

However, we are trying to be mindful of, as we gather information, making sure that it wouldn't be subject to reverse-engineering

by us or anyone, because I don't need that kind of headache, frankly.

Mr. NEUGEBAUER. I think it is one of the things that you evidently have some concern about, because in one of your contracts with CoreLogic, you say they must agree not to attempt or directly or indirectly reverse-engineer. So evidently that capability exists or you wouldn't have that in your contract.

Chairman HENSARLING. The time of the gentleman has expired.

Mr. CORDRAY. Again, we try to make sure that will not happen. And that is a term in our contract and we are going to hold our contractors to that—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Clay, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman.

And thank you, Director Cordray, for your testimony this morning.

The ranking member and several members of the Majority have expressed interest in working with the CFPB to solve challenges like making sure that manufactured housing remains a viable alternative for the many families who benefit from this important product.

As you know, many times when we attempt to address these types of issues, we unintentionally create loopholes that undermine consumer protections instead of fixing the problem.

Can you commit to working with us to address the concerns of the manufactured housing industry while continuing to protect our constituents from the actual bad actors that the rules are meant to target?

Mr. CORDRAY. I do commit to that. I believe I have committed to it today already, but I commit to it now.

We have been open and accessible to representatives from both the building and lending industries. They have made a strong case for why this fits a particular need in the population. And it was a case that, as I said, I am familiar with from my own personal experience and where I grew up and my family, particularly in Eastern Ohio.

So yes, we are very interested in those issues.

Mr. CLAY. Thank you for that response.

In the area of mortgage rules, what steps has the CFPB taken to educate and help lenders as well as consumers understand your new rules?

Mr. CORDRAY. I am actually really proud of the work we have done in that area, because when we finalized our rules last January we could have easily said, and it would have been a classic response to industry, "Well, we are done, and it is your problem now, and we are moving on to other things."

But instead, we dug in alongside with them and made it clear that we had a whole project around regulatory implementation. We wanted to hear from them about what kind of practical problems they might be running into that we hadn't foreseen, and they hadn't foreseen, because they told us everything that they thought they had problems with before we finalized the rules.

And there have been a number of things, including the small creditors that I talked about with Representative Capito and the special provision we made that covers thousands of community banks and credit unions. That was in addition to the original rule and it was meant to address concerns we heard that we absolutely found to be valid and legitimate.

The examination protocols were done 6 months in advance so people could get familiar with them. We continue to work with industry. In fact, by the fall, they said to us, "We appreciate that you have been so helpful. Please stop being so helpful until January 10th because we now need to finalize." But we have been taking further comments and issues, and we will address some of those this year as well.

And again, there will be new circumstances people will run into that we didn't quite anticipate, and they didn't quite anticipate. We will listen to them and see what they have to tell us and see what the data shows about actual impacts on the market.

We do not want to upset the housing or mortgage market. We are here to help—

Mr. CLAY. Do we have any data yet on any decline in the issuance of mortgages or—

Mr. CORDRAY. It is so soon that it is very hard to say anything. The rules took effect January 10th. It is now January 28th.

I will say, I did see that mortgage lending was up for each of the first 2 weeks under our rule, but that is such a small slice that it is very hard to make anything of that over the week before we finalized our rule.

Mr. CLAY. Thank you for that response.

In the area of servicemembers, the Dodd-Frank Act created the Office of Servicemember Affairs to address the specific challenges faced by servicemembers, veterans, and their families. This office, which monitors complaints from servicemembers in conjunction with consumer response, received approximately 3,800 complaints between July 1, 2012, and June 30, 2013.

What are some of the most common grievances expressed by servicemembers, and what has the Bureau done or can it do to address their concerns?

Mr. CORDRAY. Congressman, I am lucky with the people I get to work with at the Bureau, and one of the best we have is Holly Petraeus, who runs that office, and has tremendous credibility across the country with servicemembers, their families, and veterans. And she has lived that life herself.

We had a gentleman from Massachusetts tell us about his son whom he thought was treated unfairly on an auto lending program. We looked into it, and found a lot of complaints. We addressed that through an enforcement action and got $6.5 million back to thousands of servicemembers.

We have addressed a lot of individual complaints. We have addressed problems like permanent change of station orders, which didn't qualify people for the kinds of adjustments that other people were getting in the mortgage market.

And the Department of Defense and Veterans Affairs, I will say, to their great credit, have been very responsive to the problems we identify to them that we hear from servicemembers and veterans

and they have solved a lot of problems. It is a great partnership that we have with them.

Mr. CLAY. And thank you for your advocacy on behalf of consumers in this country.

I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from North Carolina, Mr. McHenry, the Chair of our Oversight and Investigations Subcommittee.

Mr. MCHENRY. Director Cordray, to follow the chairman's opening line of questions about your building renovation, would you provide the committee with the occupancy agreement between the Bureau and the OCC?

Mr. CORDRAY. I don't know that there would be any reason why we could not provide that, and I would be surprised if we haven't provided it, but I don't know offhand if we have—

Mr. MCHENRY. You haven't. So if you would, that would be helpful for us to understand this.

Mr. CORDRAY. Yes. That was an agreement signed after I became Director, but it is what we are going to be living under for the next—

Mr. MCHENRY. Even easier then.

Mr. CORDRAY. —30 years, so—

Mr. MCHENRY. No, even easier—

Mr. CORDRAY. Well—

Mr. MCHENRY. —since it is a 20-year contract that you have disclosed in your report.

The reason why we ask this is because you spent $12 million a year in rent. You disclosed that. And we appreciate the fact you disclosed that.

We also know from a Treasury audit that the value of the building that you are occupying is $153.7 million as of 2011. And yet, you are spending—first, we find out $55 million, based on your disclosures, then $95 million, then $150 million. So it looks very odd to us, and that is why we would like to know the details of this. Don't you think that is reasonable?

Mr. CORDRAY. I do think that is reasonable, yes.

Mr. MCHENRY. Okay. Thank you.

You said today that you will actually have to move out of this building that you are leasing—you don't own it, you are leasing it. And you are going to have temporary space.

Mr. CORDRAY. Yes, it is a very annoying problem for us, and it hasn't made anybody happy, including me.

Mr. MCHENRY. But, you think about the cost of it and seems a little insane that you are spending $150 million of taxpayer money and spending $12 million in rent and you are not even going to be in it.

Mr. CORDRAY. Look, there is much that I am unhappy with about this situation. It is a building that is a deteriorated building. It is a classic white elephant.

Mr. MCHENRY. How old is it?

Mr. CORDRAY. It is going to cost a fair amount of money to bring it back up to standard.

Mr. MCHENRY. How old is it?

Mr. CORDRAY. It is not that old.
Mr. MCHENRY. No?
Mr. CORDRAY. It must have been used pretty heavily. It was built in the 1970s—
Mr. MCHENRY. Yes, this place looks pretty—
Mr. CORDRAY. —or the 1960s, I think, but—
Mr. MCHENRY. Yes. You know, Kennedy laid the cornerstone on this little building.
Mr. CORDRAY. Yes.
Mr. MCHENRY. It is a little heavily used here, too. So anyway—
Mr. CORDRAY. If I were a consumer—
Mr. MCHENRY. —I just want to find out—
Mr. CORDRAY. —I would be complaining a lot about that building if I owned it.
Mr. MCHENRY. —if you would provide us with the details of this arrangement for space, and what it is going to cost? Would you do that?
Mr. CORDRAY. I think—as you have seen—
Mr. MCHENRY. Not today, but—
Mr. CORDRAY. As you have seen, our budget and spending has become more and more transparent as we build up this agency.
Mr. MCHENRY. Sure.
Mr. CORDRAY. All of that is available on our Web site each quarter.
Mr. MCHENRY. Okay. And let me follow up on that.
Mr. CORDRAY. Yes.
Mr. MCHENRY. I wrote you a letter at the beginning of the month. I appreciate your responding in a timely manner.
You provided back—and my question—and I know you receive letters—a few. And I understand that my letter request was about the details of your budget. You responded back with some links on your Web site, and I appreciate that. One was a newly-issued report on your financials for the year.
What I asked for was the resource detail and operating levels detail within your budget. Now, the report you sent me a link to—I went to it, looked at it, and the level of detail there is fairly nonspecific. And I will give you an example.
What I am asking for is a line item structure of this and you have a $166 million line item that has 3 lines of description in order to add up to $166 million. And it has a great name: "Prevent financial harm to consumers while promoting good practices that benefit them."
I don't know that we oppose that idea, we would just like to know what it is. Now, your Bureau has also done something I think is proper. You disclose contracts. So, we are able to ask you about contracts.
Mr. CORDRAY. Right.
Mr. MCHENRY. Right? So I know that you spent $2.5 million to pay for Web ads to drive traffic to your Web site. I know that. And I know you contracted with well-known firms. Now, I also know whether it is a no-bid contract, a bid contract, right? And I appreciate that—
Mr. CORDRAY. And you have seen that we have placed a real emphasis on competition in our contracts.

Mr. MCHENRY. Yes, and I appreciate that. I also saw the no-bid contracts, and we could have questions about that.

Now, as a policymaker you are also spending a substantial amount in salaries and benefits. You disclose that, but not in the detailed level. In your budget estimates, we know you have 238 people working on one area, but we don't know anything more than that.

So what is going to happen to you is you are going to come before Congress, and we are going to have a lot of questions about your contracts, even if you have enormous amounts of wasteful spending to the tune of $300 million, $400 million a year, and we don't know the details of it.

What I would ask you to submit to us is that budget line item that other agencies who have to go through the appropriation process submit on a regular basis. Would you submit that to our committee?

Mr. CORDRAY. So what I would say is, as I said, the extent of detail of our budget has grown greater as we have been staffing the agency—

Mr. MCHENRY. It is still insufficient, sir.

Mr. CORDRAY. —and have the ability to do that.

It is my understanding that the amount of information we provide about our budget is comparable to that of other agencies, and we are now providing it on our Web site on a quarterly basis, which other agencies do not do. If you have other views about how much detail we should be providing, I am—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Over here, Mr. Cordray. How are you?

Mr. CORDRAY. Good.

Mr. SCOTT. Mr. Cordray, I want to ask you about the Bureau's March 2013 fair lending guidance for our automobile dealers. This is very important to me. I represent a district that represents the six largest counties around Atlanta, which means the suburbs, which means transportation, which means auto dealers and auto consumers.

Now, I am very concerned about this because I, along with 12 other members of this committee, wrote you a letter expressing our concerns on May 28th, and asked you to respond, but we haven't gotten a response as of yet.

This is very, very critical. Number one, there was no study that was done on the impact of flat fees for consumers or how it would affect consumers and the availability of them getting credit. This is very serious.

I am very concerned about the Bureau's actions because they have had unintended consequences of: one, raising credit costs for consumers; and two, pushing the marginally creditworthy out of the market entirely.

And if, for example—if you learn, as many of us here in Congress have learned, that the broad adoption of dealer compensation methods that do not permit consumers to negotiate lower prices would hurt marginally creditworthy consumers, including many

minorities, of which you are admirably trying to make sure have fairness—but if you knew this, would the Bureau review this guidance that it has used to finance sources that you issued last March?

Mr. CORDRAY. I am trying to follow all of what you described.

First of all, I believe we have responded to your May 28th letter, and we will get to the bottom of that and make sure that we are on the same page. I would be very surprised if we had let 7, 8 months go by without responding—

Mr. SCOTT. Just to correct you, I have checked with my staff in my office and you didn't. But I understand. That is not the point here. I just mentioned that so you could see the urgency of moving forward.

Mr. CORDRAY. Yes.

Mr. SCOTT. We need to treat both our auto dealers and our consumers with fairness and the March 23rd guidance is not fair.

Mr. CORDRAY. Let me say a couple of things about that. The problem that we are trying to address is one where people walk in to get a loan to buy a car, which, as you say, is a critical thing in suburban and rural areas in order to get around. And we find that they are treated differently. They are required to pay different amounts, higher amounts, based solely on the color of their skin or their ethnic background.

That is not right. That is what we are trying to address.

Now, in terms of how we are trying to address it, it becomes a more complicated issue. The bulletin we put out last March, there was nothing unfair about it.

It was restating law that has been on the books and followed by all the other agencies, including the Department of Justice, for almost 20 years. We, as a new agency, laid out that we also felt that we were going to take the same approach.

The auto industry has a lot of concern about this, but the auto lending industry is doing just fine. In fact, it had a banner year in 2013 and I expect it will have a banner year in 2014. So the notion that we are somehow destroying lending or killing off the ability of people to compete in this market, we are not.

We are going to continue to work with people to address concerns. You saw that we had an enforcement action that did bear fruit against Ally for $98 million—

Mr. SCOTT. But, Mr. Cordray, please, my time is running out. Here is the point—and all your points are here—and I want you to do a great job. But if the people—if what you are doing is not great within the auto industry and the consumers between the people who are buying the cars and are not—and if they have input, which, in fact, they did not—considering how controversial this guidance was and has become, wouldn't it have been more prudent for you to receive input from them, which you didn't, to hear concerns from them, to hear their concerns directly who are directly impacted by this guidance before it was issued?

This could have been avoided.

Mr. CORDRAY. Look, the guidance itself is exactly a restatement of existing law. That is all it is. I don't know what people are telling you, but if they are making more of it than that, they are wrong.

We have had lots of discussions with lenders over whom we have jurisdiction. We were careful about not trying to reach out to dealers over whom we don't have jurisdiction and respecting the line that Congress drew.

Mr. SCOTT. Allow me to say this, please—my time is up.

But this is one Congressman who represents probably per capita—certainly my area, because I represent the suburbs where the action is—where they have to get fair treatment. If you could work with my office more closely to make sure my dealers and consumers are treated more fairly—

Chairman HENSARLING. The time—

Mr. CORDRAY. I am happy to do that.

Chairman HENSARLING. —of the gentleman has expired.

The Chair now recognizes the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

And thanks again, Director, for being here.

Just a follow up to Mr. Neugebauer's questions—a Federal judge ruled the metadata collection by the NSA was unconstitutional, and my question is, will you submit a request for the Federal judge to look at your data collection and see if it is constitutional? Would you do that?

Mr. CORDRAY. We will follow our statute, which is the law Congress gave us, and that is what we will do.

Mr. PEARCE. That was not my question.

Mr. CORDRAY. And by the way, I will say that we have an enforcement action in which—

Mr. PEARCE. If I could reclaim my time, sir—

Mr. CORDRAY. —the constitutionality of the Bureau was raised—

Mr. PEARCE. I just asked you a simple question. I asked a simple question.

Mr. CORDRAY. —in the Federal district court in California—

Mr. PEARCE. Mr. Chairman, if I could reclaim my time?

Chairman HENSARLING. The time belongs to the gentleman from New Mexico.

Mr. PEARCE. I know that Mr. Snowden was not a planned asset of the agency, and I know that the IRS didn't plan for things to be released, but I will say that the collection of data like you are collecting has tremendous value in political campaigns, and I worry that there might just be someone down the system who might release that information. And you are saying that, no, you are not going to ask a judge if it is constitutional.

I found your testimony almost amusing where you described how many of your friends live in manufactured housing. That smacks of a condescension that was rejected two generations ago, and I wonder, have you personally talked to any people who deal with manufactured housing?

On January 23rd, I got this unsolicited e-mail from a friend of mine. I didn't tell him I was looking for information.

"Good morning, Steve. I just returned from an educational seminar that explained how we have to conduct our business as manufactured home retailers now that the new laws are in effect. I honestly can't believe what I have to do to sell homes and how difficult it will be not to trip up. It just takes the wind out of my sail and

all others that are in my industry. It just keeps getting more and more difficult to operate a business and more and more easy to get sued for not dotting I's or crossing a T."

That is the legacy which lives in the manufactured housing industry that you have given lip service to today and for the last year.

But I will tell you that I found amusing your indignation that the one-size-fits-all characterization, before you even came here, was so offensive. And yet, you are doing the same thing today.

You are declaring today that many times the mobile home, the manufactured housing—that a regular house can't be built there. Now, my county is flat from one end to the other; 50 percent of the homes are manufactured homes. And to declare that one lot is not suitable for regular homes but is suitable for those that many of your friends live in, I found to be generalistic thinking—one-size-fits-all thinking.

You characterized that even your initial rules were coming because you feared the ability to repay. Now, I wonder how many banks who lend to manufactured home buyers you actually talked to, because they tell me that they have the highest rate of repayment of any form of home.

And you still have one-size-fits-all in the balloon payments, which then kicks us out—kicks a lender out of the Qualified Mortgage market without a secondary. When you do that in New Mexico—we have 70 days of capital to lend for houses in the entire State, and when you kick them out of the secondary mortgage market, you then say that you have to lend that money for that piece of property, and when it pays off 30 years from now you can lend for a new house.

You are going to choke, then, the rural, small areas—the areas that don't fit your definition of what is really right for people to live in and your idea that balloon mortgages aren't somehow okay.

None of your people from Wall Street are going to come to New Mexico and lend on a trailer house and give them a 30-year note because they can deteriorate or they can be held in good condition for 50 years.

And so I find your indignation that we might have said or might even be saying still that one-size-fits-all is not working, it is a war on the poor that is being conducted by you and this Administration and it is one where low-income people suffer the most. They don't have other options.

So I find your testimony today to be diminishing, demeaning to the people who are suffering the most. I wish that you would change the rules instead of coming here and giving lip service.

Thank you, Mr. Chairman. I yield back.

Mr. CORDRAY. Mr. Chairman, point of personal privilege as the witness at this hearing for the 5-minute filibuster that resulted in no questions to me—

Chairman HENSARLING. The gentleman—

Mr. CORDRAY. That is some of the most offensive—

Mr. PEARCE. I asked a question early on.

Mr. CORDRAY. —some of the most offensive comments I have heard from this committee—

Chairman HENSARLING. The committee will come to order.

It is the gentleman from New Mexico's time. As a courtesy to the witness, if he would like a brief moment to respond, the Chair will yield him a brief moment.

Mr. CORDRAY. I would.

The completely unfounded suggestion that we are using data for political campaigns, which you have not a shred of evidence for, this is an independent agency and—

Mr. PEARCE. I did not say that, Mr. Chairman.

Mr. CORDRAY. —is not subject to be controlled like—

Mr. PEARCE. I said the possibility—

Mr. CORDRAY. That is what you said.

Mr. PEARCE. —of Snowden, who would release that information without your consent—

Mr. CORDRAY. And the notion that I am being condescending in talking about manufactured housing because, in fact, I have friends and family members who have lived and live in manufactured housing—I don't begin to understand where you are coming from on that.

You are being blunt with me—

Chairman HENSARLING. Your brief moment—

Mr. CORDRAY. —and I will be blunt with you.

Chairman HENSARLING. —has expired.

Mr. CORDRAY. And I expect courtesies from this committee—

Chairman HENSARLING. The Chair—

Mr. CORDRAY. —of reasonable discussion.

Chairman HENSARLING. —now recognizes the gentlelady from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. I thank the Chair for yielding.

And I thank Mr. Cordray for your hard work.

I would like to yield him as much time as he would like to respond to the line of disrespectful questioning.

Mr. CORDRAY. So the notion that we are being condescending in trying to take account of these issues and recognize that there are different guides of properties that have different needs in rural, suburban, and urban areas is—and that is somewhat amusing to you, it is not amusing to me.

We are trying to take this seriously. We are trying to meet the needs of consumers across this country.

That is the mandate of this Bureau, and we will do it as best we can. The notion that we are somehow going to take information and use it for political campaigns is deeply offensive.

You haven't a shred of evidence on which you are basing that. That is just a wild allegation, and it is not befitting of this committee, Mr. Chairman.

Thank you.

Mrs. MALONEY. Okay.

Mr. Cordray, as you and my colleagues know, we created the CFPB to protect consumers. We saw in the financial crisis that consumers were often not thought about at all, or as an afterthought. And it is highly appropriate to have one agency whose prime focus is to make sure that abusive practices and unfair deceptive practices are not out on the market.

I believe your record speaks for itself in really coming forward with well-thought-out, researched positions that help the economic

security of our country by being fair to people and giving notice to people about the products that they are purchasing.

I would also like to ask specifically about an area that you are working on which is becoming an emerging important market, and that is prepaid cards. Prepaid cards hold a lot of potential, but they are not subject to uniform Federal protections or disclosure standards, and that makes it difficult for consumers to be able to do comparison shopping.

I know that your office has been working on a proposed rule for prepaid cards for quite a while and I look forward to seeing what you come out with.

So I have two basic questions in this area. First, when does the Bureau plan to release its prepaid card proposal?

And second, based on your research into this market, how should we as policymakers think about the prepaid card policies? Should we focus primarily on clear, consistent disclosure of fees to consumers, or are there other limitations that need to be placed on prepaid cards?

Mr. CORDRAY. Thank you, Representative Maloney.

The issue you raise is a very important one, and an increasingly important one for many low- and moderate-income consumers for whom a general purpose, reloadable prepaid card may increasingly become some sort of alternative mechanism to a bank account or check cashing or other things that can be very costly at times for low- and moderate-income individuals.

The state at which the prepaid card issue is at at the Bureau, is the proposed rule state. This means that we are on the verge of undertaking to write rules governing prepaid cards, which, as you know, and I know from your attention to this, is right now a hole in the fabric of consumer protection.

Just as remittances had no consumer protections before we acted to adopt those rules, prepaid cards are the same. Most consumers don't realize the differences when they reach in their wallet and pull out a credit card, a debit card, or a prepaid card. I think they think they have the same protections across all of those cards. It is not true. Prepaid cards are not protected at all.

So we will be writing rules to take account of the importance of providing protections in that area.

And what I would say is you are asking about kind of the balance between: Do you simply proceed through improving disclosures or is there some substance to be provided here?

My general impression is that in most of these markets, we need better disclosures and we need better substance in the rules. I don't want to prejudge the rulemaking process. We will be putting out a proposal for comment and then finalizing it.

But action here is very much needed and it is an emerging market that is now well over $100 billion being loaded onto these cards every year and people need protections in a balanced way.

We will welcome the input of members of this committee, as well as consumers and industry, on getting those rules right.

Mrs. MALONEY. And where do we stand on your rule on overdraft protections? I understand you were reviewing that.

Overdraft would not be part of a prepaid card. That would not be part of it. But the overdraft protection rule, where do you stand on working on that area?

Mr. CORDRAY. In the Unified Agenda, which we publish, and we publish on our Web site, actually in response to a suggestion Representative McHenry made about a year ago, maybe a couple of years ago now, that is at the pre-rule stage. It is not as far along as prepaid cards but it is something that we are looking at and trying to figure out. We are doing analysis right now of the market to try to understand.

There are many ways in which the overdraft product is good for consumers, like helping them avoid NSF fees. There are some practices that concern us in that area, so we are moving forward in trying to figure out how to approach those issues, but it is not as far along as prepaid cards.

Mrs. MALONEY. My time has expired. Thank you.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from California, Mr. Royce, the Chair of the House Foreign Affairs Committee.

Mr. ROYCE. Thank you. Thank you very much, Mr. Chairman.

And, Director, thank you.

I wanted to raise some concerns, but maybe in the process lower the blood pressure a little bit over this issue on the question of the Bureau's National Mortgage Database project with the FHFA. I think you understand that beyond this room there are others who have concerns with the privacy—

Mr. CORDRAY. I do.

Mr. ROYCE. —issue here, and at the end of the day you put together a database like that and it is going to include credit information on 50 million people here in the United States. That is just the project.

Now, in your opinion, this information—the data collected from market monitoring—does not include personally identifiable information?

Mr. CORDRAY. That is my understanding. Yes.

Mr. ROYCE. Yes. And the real question here is, is it searchable? Can it be reverse-engineered? And I assume that you don't believe that you can identify a single individual through that process.

But if we look at the actual risk that consumers have, we saw the recent Target breach, which in theory should not, could not happen. We saw what happened with Michael's. Even with the best of intentions, even with high security—in these cases you have companies with great reputational risk on the line. They had done everything they could do to make sure that a breach of personal information didn't happen, and it happened.

But now we are talking about the Federal Government. And breaches of information at the Federal Government level—according to the GAO, in 2012, there were 22,000 data breaches. Now, some of that is small in terms of breaches of personally identifiable information, but some of them were very large.

It was a 42 percent increase from the year before. It was over a 100 percent increase from the year before that.

I would like to play a short video clip from a presentation given last year by Bob Avery. He is the FHFA's Project Director for the National Mortgage Database—that is this database.

So let's go to that if we could, Mr. Chairman.

[Video plays.]

Mr. ROYCE. So Mr. Avery states, in fact, the information included in the database is, in his words, easily reverse-engineered. And even more troubling, it will be available to any Federal employee in the country and possibly others.

Now, this is why from the perspective of privacy advocacy, there is this concern about consumer privacy in this case. And personally, I don't believe that the project should move forward until these issues are adequately addressed.

So I guess my question is, from your standpoint, you are weighing the assumed benefits of the database. Do you believe that outweighs the real privacy concerns here?

Mr. CORDRAY. Ultimately, it is a judgment and a balance. But I would say two things in response to your line of questioning.

The first is, in fact, the homeowner market is one where there is a tremendous amount of information freely available to the public. I don't know quite how they do things in California, but in Ohio, the home that I own is on our county auditor's Web site. There are pictures of it. There is a valuation of it. There is the amount of taxes I pay. At a time when I had a mortgage, there was the amount of the mortgage that I owed.

All of that information was public information.

I had a law school class that told me back in 1990 how much information there is out there. I wasn't sure I understood. They brought in and they knew all about all of my homeowner transactions. It was available on the Internet. That was true 20 years ago.

So nonetheless, it doesn't lessen the privacy concerns.

But let's get the paradox here of how important this is. I am getting questions from you and your colleagues, in your case, so far, your colleagues, about what we should be doing in the mortgage market. Have we drawn too tightly the box around QM? Is manufactured housing being unfairly affected or undermined here?

In order to make judgments about that, in order to respond to you, in order to get this right and for you to get it right and us to get it right, we have to have information about the market.

What we found with the mortgage database was that we didn't always have the kind of information we would have liked to have had about the mortgage market. This will help us provide it.

Then we will be able to all have confidence as to whether we are getting this right or should adjust it. That is what your colleagues are crying for. It depends on information.

Mr. ROYCE. And I am pointing out we had 20,000 breaches.

Mr. Chairman, I would like to submit something else for the record, a recent letter from the National Association of Federal Credit Unions to House leadership on data security and protection, if I could?

Chairman HENSARLING. Without objection, it is so ordered.

Mr. ROYCE. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

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

Mr. GREEN. Thank you, Mr. Chairman.

And, Mr. Cordray, I thank you again for coming before us today. I look forward to your visits. I am up here, Mr. Cordray.

Mr. CORDRAY. You moved on me.

Mr. GREEN. I relocated temporarily.

I am appreciative of the fact that you are willing to stand up for consumers. And when I say stand up, I mean you take a firm position. You really believe in what you do. And it comes through, and that is important to consumers.

I want to visit with you about the $3 billion in refunds—$3 billion. That is a lot of money, impacting 9.7 million consumers.

Can you give just a brief overview of this $3 billion that 9.7 million consumers have had an opportunity to receive?

Mr. CORDRAY. Thank you, Congressman. This is essentially basic law enforcement work. On both sides of the aisle in this committee, I know one basic principle everybody agrees with is that people should have to comply with the law, and if they violate the law, they should be held accountable.

And if they violate the law in a way that hurts people, harms people financially, those people should have a right, if possible, to get their money back. That is something we are trying to do.

We have been engaged in addressing violations of the law with credit card add-on products, which has been a big source of redress for consumers. Hundreds of millions of dollars are going back into people's pockets who were victims of fraudulent, deceptive, and misleading marketing of products. And that has been, I think, well-established. And it is not unique to the United States; they had similar problems in the United Kingdom.

The large mortgage servicing settlement we reached recently with a large nonbank mortgage servicer, again, for violations of the law, and practices that were unfair and deceptive to consumers.

These are things that in a marketplace that works, the good, honest businesses are also protected against those who violate the law and potentially get a competitive advantage by doing so. So, it is in everybody's interest for us to do this work.

It does depend, I will say, on having information, being able to analyze what is going on in the markets, not just shooting blindly at problems. And that is part of why we feel so strongly about having the information on which to base this.

But we will continue to do that work. We will continue to be, I think, appropriately aggressive, while not unreasonable. Where people are violating the law, it is our job to make sure that they are held accountable.

Mr. GREEN. You received 122,000 complaints between July 1st of 2012 and June 30th of 2013, over half of which or thereabouts relate to mortgages; 3,800 of these complaints dealt with service people.

I am sure that these complaints would have gone someplace if the CFPB did not exist. I am sure they would have gone someplace.

Mr. CORDRAY. Maybe to you.

Mr. GREEN. Probably.

Mr. CORDRAY. And your colleagues.

Mr. GREEN. But I am not sure that they would have received the kind of attention that they have received by virtue of the CFPB being there. And I am curious about the types of complaints. I want to give you a chance to just talk about some of them, because we will always hear about things that don't go well. We don't hear enough about the things you do that benefit the consumer.

So this is an opportunity for you to just take a moment, and tell us about some of these complaints that have been successful, where you have helped people, if you would?

Mr. CORDRAY. Sure. And Congressman, I know you understand this. Stories that we hear from people when they file a complaint are very similar and in fact, in many cases, are exactly the same stories they are telling people in your offices and your staff get all the time: somebody struggling with their mortgage and they can't get anybody to respond to them; they submitted the paperwork, it got lost again and again; people won't answer the phone. Those are some of the things we hear and we help cut through that.

We hear people who feel like they had an improper charge on their credit report. They can't get the credit reporting agency to pay attention and take it off and get it corrected, but it is affecting them. They can't now get a mortgage or a car loan because that blights their credit. And we get those things fixed and get them removed.

People harassed by debt collectors. Debt collectors have every right to do their job and collect money that people owe and people should pay, but there are laws that say you can't call after 9 p.m.

You can't harass people at their workplace if they ask you not to. You are not supposed to do that. It is a violation of the law. It is cheating and giving you an unfair advantage over some other debt collector who actually abides by the law.

Those are the kinds of things that we are addressing and dealing with every day. And again, a number of these are being referred by your offices, people on both sides of the aisle here. And we are happy to address these issues for all consumers, all constituents, wherever the complaint comes from. And we regard it as part of our job.

The other thing is, we learn from it. As we get hundreds of complaints about a particular issue, then we know it is a real big problem and we ought to address it more systematically. Maybe we should write a rule about it. Maybe we should bring an enforcement action to clean it up. Those are the kinds of things we are trying to do.

Mr. GREEN. Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Mr. Cordray, let me change speeds here a little bit and talk to you a little bit about a different issue here. I sponsored an annual privacy notice bill and you were kind enough to—I wrote you a letter with regards to that in October of this past year. You sent a letter to me and agreed that it was something that we needed to do.

You supported it and I thank you for that. It was a timely letter. And we may need your help in trying to get it pushed through the Senate. They seem to be dropping the ball on the issue over there.

But in your letter you also made the comment that you may be able to do this by some rulemaking authority that you have. Could you elaborate on that just for a moment?

Mr. CORDRAY. Yes. And thank you for asking about that. I will say that sometimes processes move kind of slowly because of different provisions in our law, in terms of how we proceed.

I do know that internally, we have been working on that issue, and I believe that there is a presentation going to be made to me fairly soon on it.

I am hopeful we can move forward on that. One of the things I will find from the presentation is, do we think we can comprehensively address the issues you are trying to raise through your legislation? If so, you may not need the legislation. On the other hand, if you move the legislation and that resolves it and we don't need to work further on it, that is fine too.

I don't care how we proceed, but I do think there are issues, you have identified some of them and I think we are identifying others, that need to be addressed and fixed. And there can be a reasonable balance struck here that doesn't burden institutions unnecessarily in ways that don't necessarily benefit consumers.

Mr. LUETKEMEYER. Very good. I appreciate that. With unanimous consent, I would like to enter the letter into the record, Mr. Chairman.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. LUETKEMEYER. Thank you.

With regards to another subject, Director, we have—online lending is something that is very concerning to me. A lot of it is offshore, and we need to be regulating it to make sure that our consumers aren't being taken advantage of.

By the same token, there is a lot of discussion right now within the FDIC and the DOJ about payday lending, online lending, and those sorts of things. And we have actually found people within those agencies who, because of personal bias, have tried to basically shut down those industries.

And they have admitted such to us, and we had them on record to that effect and have had lengthy discussions with the FDIC and the DOJ. And both of them have, as a result of those discussions and the investigations of the oversight committee—or I should say potential investigations—have given a letter to not only us but the industries, saying that they are going to allow these industries to continue. They believe that they are worthwhile.

Any abuse that has taken place will stop. These are legitimate industries. As long as they behave within the confines of the law, they will be allowed to continue to do so.

And I would like your opinion on that. And if we could perhaps get you to also do a letter similar to that, as what they have done, to say that as long as these lenders are behaving within the law, they have every legitimate reason to be in business and provide credit to a lot of folks who can't get it.

I know we had a lengthy discussion a minute ago with Mr. Meeks, who brought this issue up as well, at least on the periph-

eral parts of it, and indicated this is a very necessary area of lending. Whether you like it or not, there are a lot of folks for whom this is the only way they can get lending.

And I think as long as we regulate it properly, it doesn't need to be here with things like Operation Choke Point, trying to choke it off. So could you respond?

Mr. CORDRAY. Much economic activity is gravitating online. That is the way of the world, and it seems to be in our society.

A lot of commerce is going online. My wife orders a lot of things now online, and I do, that before, we would have gone somewhere to get. It is natural that lending would gravitate there as well.

There are, however, important law enforcement issues. And I struggled with them when I was attorney general of Ohio. And I hear from my colleagues, former colleagues, that they struggle with them now because online Internet activity doesn't have clear jurisdiction, as there is nothing physical or tangible about it.

It can be originating in a different State but not complying with State laws here. It can be originated in a different country and not complying with any American laws.

I think law enforcement officials are grappling with a strategy for how to deal with that, because online lenders that are legitimate and valid deserve protection against online lenders that are undercutting them by violating the law and not complying with the same requirements with which they comply.

So it is definitely a difficult subject and one that we have been trying to hash out and understand with the State attorneys general and others. We will continue to do that.

I definitely agree that there is a lot of online lending that is perfectly proper and valid and may even cut some costs over physical, in-person lending. There are also risks there, and there is a risk of being able to evade law enforcement.

Mr. LUETKEMEYER. Would you be willing to put that in writing?

Mr. CORDRAY. I would be happy to. You mentioned a letter? I would be happy to take a look at it. I don't obviously know—

Mr. LUETKEMEYER. Okay. Without objection, I ask unanimous consent to place in the record a copy of the letter from DOJ indicating their concerns and their willingness to also allow these businesses to be lawfully there as long as they are behaving within the confines—

Chairman HENSARLING. Without objection, it is so ordered. The time of the gentleman has expired.

The Chair now recognizes one of the committee's reputed, most rabid Seattle Seahawks fan, Mr. Perlmutter, from—

Mr. PERLMUTTER. I thank the chairman, and I want to thank the gentleman from Missouri—

Mr. LUETKEMEYER. A point of order, Mr. Chairman, for the choice of the color of his tie in support of the Denver Broncos. So with that, I will stop breaching the decorum of this committee and just, I want everybody to know I am united in orange against the Seattle Seahawks.

Chairman HENSARLING. We see the gentleman's cap. Now, he may remove it.

Mr. PERLMUTTER. Mr. Cordray, thank you for your testimony today. And thank you again for your fairly even-keeled testimony.

I did appreciate your response to Mr. Pearce, because there is a lot of data out there, and in your position, whether it is gathering mortgage data, or anything else, there is just a lot of data out there. We don't want it abused. We have seen politicians in the past abuse it, and at the top of the list would be Richard Nixon.

So I do understand your response. I understand his fear that it can be abused because it has been in the past. But there is a lot of mega data out there.

Mr. Royce brought up the Target Corporation. My wife and I are Target shoppers. And she has a saying, if Target doesn't have it, she doesn't need it.

But I also used my Target card—or I used my debit card in Target in that period where their data was breached. So I am one of 100 million people, apparently, or 100 million cardholders who was affected by this. And when I went to Wells Fargo and I said that I had used my card, they immediately took my card and switched it out for a new card.

What is the CFPB's role in something like this, where there has been a major data breach that affects millions of consumers?

Mr. CORDRAY. We have been looking at that since this occurrence. Of course, this is not, as you know, the first occurrence of this kind. It is just one of the largest and most stunning ones, and the most recent one.

In the past few days, we issued a bulletin to consumers: If you are one of the people who is or feels that you may have been victimized or affected by this, here are some steps you can take to protect yourself, the kinds of information you need to respond to this situation.

There are broader issues here for the credit card industry and for retailers in terms of how they manage information. Frankly, a lot of the same concerns that people have raised appropriately, I think, with me about our agency today.

Everybody who has information is going to need to jealously safeguard it in order to protect consumers. And there is real consumer harm that happens, whether somebody steals your identity or not.

Even switching out your card, as you did, involves inconvenience and time and effort. You may have to change accounts and account information may cause you to miss a payment on something here or there. That can cause real harm to people as well.

So, I think that the guidance we have provided to consumers is meant to be very helpful. It is drawing, again, on some of that expert, neutral information and advice I indicated is available to your constituents on our Web site at consumerfinance.gov, and we urge you to take advantage of it. That is intended to help people.

Mr. PERLMUTTER. Thank you.

And, Mr. Chairman, if I could, I would like to introduce for the record a letter that we—a number of Democrats—sent to you on January 10th concerning some kind of hearing on this breach of data.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. PERLMUTTER. Mr. Cordray, I would like to also ask you a little bit about the QM situation. You have had a number of questions already, but because you and I have had this conversation on QM, the 43 percent debt-to-income ratio. Were there other ways

that a lender, if it didn't fit into that 43 percent box—were there other ways a loan might be considered eligible under your rules? And if so, what are they?

Mr. CORDRAY. Okay, so there are actually three main boxes, and sometimes it does get misstated and people either intentionally or unintentionally don't quite get the purpose of the debt-to-income ratio of 43 percent or less, which is a pretty generous number by historic standards. We used to advise people not to spend more than a third of their income on housing, and then 36 percent was the number, and now people use 43 percent. It is meant to be broad—to provide a broad area for mortgage lending. That is one box.

A second box—and this is very notable—any mortgage loan that would qualify to be purchased by any of the GSEs—Fannie Mae or Freddie Mac, if it qualifies as an FHA loan, if it qualifies under VA or Ginnie Mae—all of those are also Qualified Mortgages. That significantly extends and then covers a lot of loans that are above a 43 percent debt-to-income ratio. That is second.

As long as they are in conservatorship, that is a temporary measure. This Congress may act on housing finance reform at some point. We weren't sure where that was going, so we had to sort of take account of that and draw that into our calculations. That is a second box.

And it is very easy for a lender: 43 DTI or you just plug it in, and you get a yes or no. You don't have to sell it to Fannie or Freddie, it is just if it is eligible for sale.

The third box is the small creditor provision that I have mentioned before. It covers thousands of community banks and credit unions. Any mortgages they make, if they sell them in the secondary market to Fannie or Freddie, are covered by that second box. If they keep them in portfolio, they are covered by this third box.

Mr. PERLMUTTER. Thank you sir, for your testimony.

I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Michigan, Mr. Huizenga.

Mr. HUIZENGA. Thank you, Mr. Chairman. I appreciate that.

And, Director Cordray, I appreciate you being here. Obviously, you have heard a lot of concern, some of it a little more heated than others, but concern on both sides of the aisle, frankly, about everything from auto loans to the security of the data that is being collected.

QM has really sort of dominated this Qualified Mortgage definition, and I would like to head a little in that direction, and point out that there had been an American Banker article entitled, "Blacks and Hispanics Likely To Be Hurt by Qualified Mortgage Rule," which reported on a Federal Reserve Board report that found that "roughly one-third of Black and Hispanic borrowers would not meet the requirements of a QM loan based solely on its debt-to-income requirement." That is what we were just addressing.

I am a former REALTOR® myself. I have dealt with those. Frankly, I come from an area where the median income and the

median mortgage and household transaction, home sale transaction, is far below any of those major markets like California or New York or other places that might be falling into a jumbo-loan trap.

But frankly, whether it is jumbo or whether it is small loan borrowers, what we are anecdotally hearing, and it is only half-funny, is that QM is quickly becoming "quit mortgages," and I am very concerned about that. For those people out there trying to lend, this—these assets, there is a real fear that there is too much of that constriction on there.

Sort of the response, one of the things that was part of the original Dodd-Frank bill was the 3 percent cap on affiliated mortgages. I recognize that the CFPB has sought to limit the impact of the 3 percent cap by providing more generous "points and fees allowance for loans under $100,000." But frankly, it is not enough.

That has brought me to introduce H.R. 1077, and H.R. 3211. My friend from New York, Mr. Meeks, is a cosponsor of that. It is a bipartisan bill. We also have been working with Senator Vitter and Senator Manchin. There is a Senate companion to that, S.949 and S.1577.

Based on a survey conducted by the Real Estate Settlement Providers Council, the inclusion of title charges causes 60 percent—60 percent of loans under $60,000 to fail as Qualified Mortgages. These loans actually become high-cost, as we were discussing earlier, these HOEPA loans, because of points and fees that exceed 5 percent of the loan amount. The survey also found that 45 percent of affiliated loans between $60,000 and $125,000—so we are not talking massive jumbo-loans—failed to qualify as Qualified Mortgages.

In fact, 97 percent of the loans that failed as QMs were under $200,000, simply due to the inclusion of title insurance on that. And if title insurance is excluded, only 3 percent of those same loans would fail as QMs.

Now, the States by and large regulate most of this, and as I have been working with people in the industry, I have had some conversations with colleagues across the Capitol, some who may or may not, not to name names, have been very involved in creating your Bureau, who constantly bring up title insurance, apparently not understanding that this is regulated by the States, those amounts of what people are having to go in and pay for their title insurance.

So introducing the Mortgage Choice Act is trying to seek relief for the major players, like the Quicken Loans and Flagstars of the bank, which are doing these across the Nation. Both are headquartered in Michigan but do business in virtually all 50 States, to the small firms, like myself, which was a small real estate firm that put together its own title company, not because they were trying to be out gouging consumers, not because they were trying to charge more than what the other guy down the road was going to charge for their title insurance, but for the ease and convenience of the consumers.

And I know that is one of your stated goals of the Bureau, but I am curious if you could comment on that.

And then I am—you had mentioned earlier about waiting for data. How long are we going to have to wait for that data to address this as well, that I believe is going to show that there has been a reduction in mortgages offered?

Mr. CORDRAY. Yes. So again, as you say, we attempted to alleviate some of the concern about the 3 percent points and fees cap, which was a pretty blunt instrument in the statute, by providing for graduated, higher levels on loans of under $100,000. It is not clear to me exactly what we will all think a year from now, whether that should be somewhat higher, whether it should be $150,000 or where that should be set. That is a question.

I have had discussions with Bill Emerson from Quicken about their model, which they touted, and which is a very efficient one-stop shopping model. And affiliate models can be that. He also was very frank in acknowledging there had been some affiliate abuses over the years, and we have all seen them. Congress drew a line on that, we thought, and we are trying to respect that line.

I think the—

Chairman HENSARLING. I'm sorry, the time of the gentleman has expired.

Mr. HUIZENGA. Mr. Chairman, I know my time has expired, but I would—in writing, I would like to ask, how long are we going to be able to wait? We think we have evidence now, after 30 days, so do we need 30 days of evidence, 60 days of evidence, because the longer that we wait the more people are going to be impacted and hurt by that.

Mr. CORDRAY. I haven't seen any data yet, but within a few months I think we will get a sense of the impact.

Chairman HENSARLING. Now, the time of the gentleman has really expired.

Mr. CORDRAY. Sorry.

Chairman HENSARLING. The Chair now recognizes the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

I want to thank the ranking member as well.

And, Director Cordray, I appreciate your willingness to come here and help the committee with its work.

Just as—at the outside, I would just like to say that I think you present—well, the CFPB presents far less risk to American security than, say, Target or some of these credit card companies that actually have the specific data on individual consumers as opposed to the aggregated, anonymous data that is presented to the CFPB.

Now, I think we all understand, because of the housing crisis, the need to have Qualified Mortgage regulations and standards. That much being said, where the line is drawn, I guess, is open to interpretation, and I guess it is a bit subjective.

I do share some of the concerns with my colleagues across the aisle, especially with respect to community banks and making sure that the creditworthy population has that opportunity to get a mortgage.

And there is the danger, I guess, if we use this bright line, 43 percent, that there may be people in some of our neighborhoods, especially communities of color, who might not meet that bright line

test but nevertheless, because of their individual circumstances, should get a mortgage.

And I am just wondering, as my previous colleague just mentioned, is there some ability going forward to look at the data to see if we are boxing out some meritorious segment of the population who should be getting mortgages but are getting shut out, either because of demographics or urban versus suburban versus rural? Is there some opportunity here going forward to sort of tweak this in a way that we make sure that folks aren't left out?

Mr. CORDRAY. Thank you, Congressman, and I agree with you, and there will be and is opportunity to consider further those provisions and the effect they are having. And I will just point back to when we finalized this rule a year ago, we did not have a provision for small creditors. We added that on.

That was the first very significant tweak of the rule and it was meant to address exactly what you say. There are people who won't qualify on some sort of boxed-up metric analysis, but community banks and credit unions will work with people in their community that they know and they have the personal relationship to understand their situation, and will make that loan.

The whole point of the small creditor exemption was to give thousands of community banks and credit unions the flexibility to continue doing the same kind of traditional lending they have always done, which works well, pays attention to the person's ability to repay, and makes good judgments about it. They have that latitude under the rule.

Now, whether we have drawn all the lines exactly in the right places or whether we could move them is something that we will continue to hear from people about and listen to people about. Over the course of the year, we will start to get a sense of how this is affecting the market, and if it is affecting the market in ways that you and I think were not what we are trying to accomplish, then we will be open to thinking further about it.

We have said that many a time, and I am happy to say it again today.

Mr. LYNCH. Are we hearing anything from our smaller credit unions, smaller community banks right now in terms of—what is the feedback so far?

Mr. CORDRAY. I hear from them all the time. We heard from them before we adopted the rule last January and we heard from them after we adopted the rule. We solicited their input and comments on the small creditor provision and incorporated a lot of what they told us.

They talk to us constantly. I have a Community Bank Advisory Council and a Credit Union Advisory Council I didn't have to set up, but I did, because I wanted to have more feedback from them.

I think we have our ear pretty close to the ground. I think a lot of what you hear we are also hearing. There is a fair amount of concern, some of which is justified and some of which is not. But as we go, if we need to make adjustments we are open to considering that, as we have already shown that we have been willing to do.

Mr. LYNCH. Lastly, I know this is not necessarily in your wheel house, but I am hearing from my constituents. I represent a coastal

area. There is a lot of pressure on REALTORS® with respect to these new flood maps. Have you encountered any feedback in terms of what it is doing to the real estate market?

I know it is—for folks on low income or fixed income, I know it has had a dramatic impact on them. I am just wondering if you are hearing anything on that end.

Mr. CORDRAY. Contrary to those who think we are all-powerful, that is not in our wheel house. I don't know much about it. We are probably hearing some things about it, but I don't have a perspective on it at the moment.

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

Chairman HENSARLING. The time of the gentleman has expired.

The Chair recognizes the gentleman from Wisconsin, Mr. Duffy.

Mr. DUFFY. Thank you, Mr. Chairman.

I would just lend my voice and concern to the QM rule, especially its impact on low- and moderate-income families and the impact of the rule. And when you have banks—financial institutions that are holding these loans in portfolio, we have concern how that is working, especially across our districts.

But I am not going to spend my time there. I do want to move to data and data collection.

We are all aware that the Bureau is collecting and monitoring financial information on millions of Americans. That is clear.

Earlier today, I forget who the exchange was with, but you indicated that you weren't sure that the information that is collected from individuals or third-party contractors could be reverse-engineered, which concerns me because Mrs. Capito and I, on July 9th of last year, asked you if it is possible for the CFPB or any third-party vendor working on behalf of the CFPB to reverse-engineer raw data to identify individual consumers. That was the question.

And part of the response was: "The Bureau purposely reduces the likelihood of data being re-identified by restricting access to data to those whose work requires it and providing privacy and security training to Bureau personnel on how to handle and protect data appropriately."

So your response over half a year ago indicates, yes, you do get information that can be reverse-engineered and identify individuals, and today you are not as clear about that in the question and answer. My—

Mr. CORDRAY. Do you want me to respond and clarify that for you?

Mr. DUFFY. Let me ask you a question.

Mr. CORDRAY. Okay.

Mr. DUFFY. I think today you also said that you work on behalf of consumers. You would agree with that, right?

Mr. CORDRAY. That is how I view my job, yes.

Mr. DUFFY. Would you object to getting permission from consumers, those people you work for, before you collect or monitor their information?

Mr. CORDRAY. So, a couple of things. First of all, as to whether there is any inconsistency in my testimony today with that letter, I don't believe there is. I don't want to have you mix apples and oranges, peaches and plums here. You have had a big focus with

us on the credit card data and we are very careful about avoiding any prospect of reverse-engineering on that.

The question to me earlier had to do with mortgage data, where there is zip code information. And what I have said is I think we are always concerned and want to be very careful about the prospect of reverse-engineering. It is something that is going to continue to evolve over time as more information is publicly available, that it can be matched against and so forth. So it is something we are going to be very mindful of and very careful about.

As to your question of would we go to individual consumers and ask their permission before we seek, say, aggregate data about the credit card market, that is, I believe, intended to and certainly would have the purpose of completely making it impossible for the agency to have any kind of data to know what is going on in these markets. Because to ask many, many consumers for their permission before we could aggregate data about them would mean that I wouldn't know anything about the mortgage market when you want me to get the QM rule right, I wouldn't know anything about the credit card market when you want me to report to Congress on that, and how would that—

Mr. DUFFY. I am going to reclaim my time.

Mr. CORDRAY. —and how—

Mr. DUFFY. —I reclaim my time.

I don't know if you have done any polling to see what the American consumer thinks about you monitoring and collecting information. So I am concerned that you may not be aware of where the American population is.

I would bet if you asked them, they would love to have the opportunity to give you permission to access their information or deny you permission, or in the least, I don't think you have an opt-out provision on your Web site. So if you say, "Listen, I am one who doesn't want the group of people who claim to be working for me—I don't want to give them my information," you can't even opt out, which would be very easy for consumers, and that concerns me.

And there has been some comparison to the Bureau and the NSA, and I know that is a burr under your saddle and you don't like it. The NSA does not ask Americans permission to collect their phone records and e-mails and texts. And the CFPB does not ask permission to collect information on the American financial consumer.

I would love if you would differentiate yourself from the NSA and actually ask the people that you work for, for permission before you access information, or at least give America an opportunity to opt out.

And I will ask you another question here. As you go to your Web site—I pulled it up and looked at the disclosure of what the information that you collect. It is horrible that you have this much data on the American consumer that can be reverse-engineered and they don't have that information and that disclosure clearly and crisply delineated on the Web site is of concern.

Mr. CORDRAY. Wait, what are you talking about there? Are you talking about our consumer response function or what?

Mr. DUFFY. On the bottom of your Web site—consumer—when you talk about the data information on the Web site. If you want

a copy if you haven't looked at it, I can provide it to you. Privacy policy and legal notices is what I am referring to.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Michigan, Mr. Peters, for 5 minutes.

Mr. PETERS. Thank you, Mr. Chairman.

And thank you, Director Cordray, for appearing before the committee today. Certainly, I appreciate all of your hard work in protecting American consumers in relation to these financial products. I know it is a difficult task and you are doing a wonderful job.

To me, however, college affordability is probably one of the top priorities we need to be focused on. And I believe that the CFPB has done an excellent job of shining the light on some of the difficulties that so many of our students are facing now.

A CFPB report from last summer cited stakeholder comments suggesting that it might be useful to allow for the rehabilitation of private student loans on which borrowers have defaulted. And as you know, there are currently more than 850,000 private student loans in default in the amount of about $8 billion.

For many, student loans are a young person's first experience with credit. And after graduation, many students struggle for months and sometimes even years to find their first good-paying job, especially as our economy continues to recover.

This is why I have worked across the aisle, with my colleague Michael Grimm, to introduce the Federal Adjustment in Reporting Student Credit Act, which would allow seriously delinquent private student loan borrowers a one-time offer to remove a default from their credit report after making a series of on-time payments.

This already exists for Federal student loans, which make up a significant majority of the student loan market. Our proposal basically allows private student loan furnishers to offer a rehabilitation program similar to what is already available for the public student loan borrowers, but doesn't require them to do so. The bill creates no new regulations and actually gives private lenders another tool to help borrowers get back on track once they get that first job and are able to make those payments.

I appreciate having the Financial Institutions Subcommittee Chair, Shelley Capito, as a cosponsor of the legislation and that both she and Chairman Hensarling have agreed to work with me on putting together a hearing on this issue.

And I appreciate that, Mr. Chairman.

But, Director Cordray, I realize that it is difficult for you to talk about a specific piece of legislation, particularly one that is not in front of us right now, but maybe if you could just generally discuss how harmonizing the public and private loan rehabilitation policy would help recent graduates get back on track?

Mr. CORDRAY. And thank you for saying that, Congressman, because I do want to always be careful about just responding off the top of my head to legislative ideas when I haven't seen the text. But in general, I think I have a positive reaction to what you have described.

As we have found in the mortgage market, with mortgage servicers, the more tools that are available for them to give people opportunities to get back on track, first, they have the opportunity

to collect money where they otherwise were going to get none, and second, often people do need a second chance and circumstances change. Maybe now they are employed, whereas at the time they defaulted, they were not employed. That is obviously going to be a big difference for people.

And the fact that it is analogous to what is being done with Federal student loans, actually we would like to see more of the practices that exist on Federal student loans, such as income-based repayment and other things, be taken up in the private sector on private student loans.

So in general, we think that private student lenders could be doing more to provide options to their borrowers. We think they would benefit by doing so. They would probably collect more money.

At the same time, there is a tremendous overhang in our economy right now. I described it as a domino effect earlier about the student loan millstone around the neck of some of our biggest achievers in society who have managed to get a higher education and training and just happened to graduate into a tough job market or didn't have the means and therefore have to come out of college with tens of thousands of dollars in debt.

We want those people to be able to succeed, and giving them some options to respond to their circumstances seems to me to be a good thing.

Mr. PETERS. I appreciate those comments. In fact, I have heard from a number of private lenders who believe that if this bill passes, they can start offering loan rehabilitation shortly after enactment. This would be an incentive for folks to really step up and move forward and rehabilitate their credit and pay those loans down.

Do you agree that this is a market-driven policy change that would help a significant number of borrowers, as far as you know, from at least hearing it on the surface of this item?

Mr. CORDRAY. I would be happy to have our very strong office of students and our student ombudsmen work with your office—maybe they already are, for all I know—in terms of ironing out some of the details and seeing if something could be moved on this.

It is a crying need in our society right now. The student loan problem is weighing down a generation of young people who should be our next generation of leaders.

Mr. PETERS. I appreciate your support of this legislation. We will look forward to working closely with you. And hopefully, we can get it passed with the help of Chairman Hensarling.

Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Ohio, Mr. Stivers, for 5 minutes.

Mr. STIVERS. Thank you, Mr. Chairman.

And thank you, Director Cordray, for being here. I want to thank you for your service to our home State of Ohio, as well as your service to the Federal Government as the Director of the CFPB.

I have three sort of big area questions around mostly organizational culture.

The first question I have for you involves a bipartisan bill that Representative Tim Walz and I have introduced which would create a standalone Inspector General for the CFPB. I am curious if you would oppose that bill or not.

Mr. CORDRAY. So this—

Mr. STIVERS. If you can be brief in these answers—

Mr. CORDRAY. Yes. Yes, I will. You know I have that problem, Congressman. He is my Congressman, so he knows that I am not always brief.

We have an Inspector General now. That Inspector General has a strong staff and is doing a very good job with us. We are subject to, I think, 10 open inquiries and supervision processes right now. I think they are doing an excellent job.

Obviously, we will live by whatever Congress makes the law. And the law that we have right now has us with a strong Inspector General who is, I think, doing the kind of work that you want him and his staff to be doing.

Mr. STIVERS. And I can say, our bill is not an indictment on the Fed's Inspector General. This is about an organization that now has 1,300 people, is growing in size and scope. And we just believe you deserve your own Inspector General.

The sort of second area I want to go through is the role of your agency. Can you tell me, if I was to poll your 1,300 employees, would you say they would tell me that you are an enforcement agency or a supervisory agency primarily?

Mr. CORDRAY. I believe I know exactly what they would say—the same thing I would say: We are both.

Mr. STIVERS. The problem that I have with your culture and the way I believe it is going—you are both, but I believe you need to make the rules of the road clear first and then enforce those rules of the road.

I want to share with you a conversation I had with a bank in my area recently where they told me their interactions with the CFPB. The CFPB identified a problem area, and the compliance officer asked for guidance on how they could make it right, and the CFPB official said to them—and I will give you this quote: "You do what you think is right and we will tell you later if it was okay or not."

I have a problem with that. I believe you need to make it clear what the rules of the road are first, and then use your enforcement actions to focus on those and get that done.

I also noticed in your written testimony that you said, "Through our enforcement and supervisory actions," so you put enforcement first, too. And I just would ask you to think about that, when you are building an organizational climate and culture, about what comes first.

I have a couple other questions. I want to follow up on a question that Representative Luetkemeyer had, and this is just a yes-or-no question. Will you put in writing the same thing the DOJ and the FDIC have done that makes it clear what your guidance is for small-dollar, short-term lenders? I would love it sooner rather than later, but I guess what I would like is a commitment that you will ultimately put something in writing that gives them guidance with

regard to whether they can do business with banks and processors and all that.

Mr. CORDRAY. Again, I don't have a yes-or-no answer. It is actually a fairly complicated issue. How they should do business is not just a simple matter of a one-page sheet.

I would be happy to look at the letters you are talking about.

Mr. STIVERS. That would be great. The DOJ and the FDIC have managed to do it, so I would hope you would try to do it.

The next thing I—and this all goes to sort of organizational culture. I hope you will solicit input from the folks you are charged with regulating. In fact, the CFPB's Section 1011 actually says you are supposed to solicit and get input. I know you are supposed to get representation from these covered groups.

And I would just ask you to take a look whether some—you can have somebody from somewhere in these short-term loan marketplace—somebody who has knowledge in it on one of your existing groups that you have for input. So that is just me urging you. It is not really a question, but take a look at that again. You and I have had this conversation for—

Mr. CORDRAY. Yes.

Mr. STIVERS. —a year.

Mr. CORDRAY. I think we are doing that, Congressman, and we will continue to. I have probably spoken to some of the same executives you are speaking to.

Mr. STIVERS. Great.

Mr. CORDRAY. In defense of my folks, if they said, "you do this, and then we will tell you afterwards," that is not our attitude. Sometimes, things are more complicated. That is all.

Mr. STIVERS. I have one more question I want to follow up on really quick.

Mr. Scott actually brought up a really good point about the Bureau, and this goes to my bigger point of supervisory versus enforcement—and I would ask you to do what you can with regard to indirect auto lending to create a more formal rulemaking process, because what is happening is, as you do enforcement actions and not rulemaking, they don't get input. And so, I would ask you to look at your overall organizational culture.

I am going to submit a few other questions in writing. I apologize for going over my time.

I yield back the balance of my nonexistent time.

Mr. CORDRAY. Thank you.

Chairman HENSARLING. The gentleman's nonexistent time has expired.

The Chair now recognizes the gentleman from Illinois, Mr. Foster.

Mr. FOSTER. Thank you.

And thank you, Director Cordray, for your service.

I would like to return to this issue of the National Mortgage Database and databases more generally. I believe this will be, over time, a tremendously valuable feature of our government. During the collapse of the housing bubble, homeowners in America lost roughly $9 trillion, which is $30,000 for every man, woman, and child in the United States.

And one of the things that drove the housing bubble was simply that regulators did not have the information to know what was going on. Basic information like consolidated loan to value, including second liens and stuff, was not available to the Federal Reserve and others who, at the time, had the authority to control mortgage origination in this country.

I would also like to point out that the PATH Act that passed out of this committee, with the unanimous support of the Republicans on the committee, in fact, had provisions to adjust the underwriting requirements for mortgages on a county-by-county basis in response to market conditions. That would have required exactly the sort of a database that you are talking about developing for the National Mortgage database.

But there are questions about statistical sampling, I think, that were raised by Congressman Garrett, and I think that they are actually valuable. This business with personally identifiable data is a problem in the commercial world, and it is a problem in the—and it is a problem for any federally-held data set.

I think it was an interesting question of why you have chosen 60 percent sampling, roughly, for credit cards and the National Mortgage Database is a 5 percent sample, if I understand correctly.

But I also understand that you have—a lot of the abuses you are trying to identify are micro-targeted with the same sort of micro-targeting that you are seeing for legitimate marketing. You can easily imagine—and I am sure it has happened—that you find abuses practices targeting, for example, unmarried Asian women in manufactured housing.

So you are trying to track down abuses in small statistical corners. You will have to slice and dice the data tremendously and you get into statistical problems when you look for these.

And so how do you view that problem, and how do you intend to handle it managing these data sets?

Mr. CORDRAY. First of all, it is a very fair concern, and the smaller the category gets, the less confidence you can have in trying to extrapolate patterns from it. So I think that is just a general challenge in the work that we are doing and, frankly, for the industry and everybody concerned about what is happening in these markets.

I don't have much to say. You aptly, and I think very eloquently, described the importance of having the information, that people missed what was happening in the mortgage market and caused all the harm that resulted from the financial crisis, is—continues to be a scar on this entire generation, and we are still trying to build back both household wealth, and people trying to get their jobs back, and so forth.

If we can avoid that, by having information and knowing what is happening in real time, I think it is clear what the choice should be. We should make sure that we know what is going on, so we can try to respond to it and prevent it where we can.

Mr. FOSTER. I also think that you are correct in making the distinction between you and the NSA. The NSA is interested in targeting individual terrorists. You are looking for patterns of abusive behavior in the market, and I think that is a fundamental difference.

Mr. CORDRAY. Again, said better than I said, so thank you.

Mr. FOSTER. Listen, I want to change gears a little bit. Having to do with—many immigrant communities—this is a question of notarios and fraudulent advice being provided, specifically targeting immigrant communities.

Many immigrant communities across the country fall victim to what are sometimes called notarios. As you know, in many Latin American countries a notario or a notario publico refers to State-appointed lawyers whose qualifications are equal or may even exceed those of an attorney. But in the United States, a notary public, obviously, has only the authority to witness certain documents.

But the linguistic discrepancy is being abused by a number of fraudulent or simply incompetent advisers. Much of this is on immigration issues, but a significant fraction overlaps financial services. And I was wondering what you are doing—what is on your radar screen in this area?

Mr. CORDRAY. Yes, I actually appreciate your asking about that.

I first ran into notario fraud when I was the county treasurer in Franklin County, which would have been about 2003, 2004. And we were working with our Latino community on foreclosure issues and starting to translate some of our stuff into Spanish, which seemed like not a normal thing in Central Ohio at that time. But it has become very much a part of dealing with these markets.

The notario fraud is just as you described it. Many people—especially when it comes to things like land contracts, which is often common as a means of securing housing—have fallen victim to it.

We continue to work with people like State attorneys general and the Federal Trade Commission, who often have more to say about advertising types of fraud that aren't linked specifically, sometimes, to mortgages and other products that we oversee.

We have some information that we have been developing on our Web site for consumers to be careful about this.

It is, I think, a broadly enough known scam now that there is a lot of effort in the Latino community to make people aware of it, but it is a problem of language and it is one that people have exploited wrongly and hurt poor people as a result.

Mr. FOSTER. Thank you. My time has expired.

I yield back.

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

Mr. FINCHER. Thank you. Thank you, Mr. Chairman .

And, Director Cordray, I appreciate you taking time for us again today. It has been almost 3 hours now.

I learned a few minutes ago that you are a five-time "Jeopardy" champion. Is that—

Mr. CORDRAY. That was a long time ago, sir.

Mr. FINCHER. Wow. Well. Phrase your answers in the form of a question.

[laughter]

Mr. FINCHER. On a lighter note. I'm sorry.

So, Director Cordray, we talked a lot today about manufactured housing—and I am from Tennessee, a rural State—and how important it is that we try to fix this problem.

I appreciate the chairman allowing us to put this fix in the PATH Act. And so many of us were elected for solutions to problems, and that is what we have been working with the industry and with the CFPB to try to solve this problem.

You would agree that the CFPB is a data-driven agency, correct?

Mr. CORDRAY. That is what we strive to be, yes.

Mr. FINCHER. So I guess our concern is we, along with the industry, have been actively engaged in providing you with many, many pages of data, trying to fix this issue so that an estimated 6 million people don't—are not able to access credit to buy manufactured housing.

I guess our problem is as we have been giving you the data, and you have responded to us from requests back in September, and this is the response from the CFPB: "The Bureau has met with the representatives from the manufactured housing industry and has requested additional data from a set of manufactured housing lenders to gain more complete understanding of this market and the potential effects of this and other rules on the market for manufacturing home loans."

What my question to you is—and we are willing, my staff, industry folks, me, to come down to the CFPB, to sit down, as the ranking member said a few minutes ago, whatever we can do to try to fix this issue—but why would you go on and let the rules go into effect not having all of the documentation or the data that you need to have complete clarification of this issue? Why could you not just delay the rule until we figured out or you figured out or the agency figured out exactly what to do?

Mr. CORDRAY. Thank you, Congressman. And I believe it was your comments that kicked off this entire subject today, which has gained a lot of attention in this hearing.

In terms of delaying the rules, there is a lot of pressure on us to delay various aspects of the rules and we could keep delaying, delaying, delaying, and go on forever. All that does is preserve a lot of uncertainty in the marketplace, and we thought it was very important to go forward with the rules on January 10th.

But let me say this: You raised this issue in your opening remarks. It was seconded by—and I have made some stars here—Representative Pearce, Representative Waters, Representative Bachus, Representative Meeks, and Representative Clay. A number of you want to work with us on this issue. We will reach out to work with you on it.

As I said, we have had a number of meetings with top representatives from the industry to try to understand how this affects parts of the country that don't always have an easy voice—

Mr. FINCHER. Right.

Mr. CORDRAY. —in the halls of Washington.

So we will work with you over the next several months to try to understand what we are seeing, what we are finding, again, what the concerns are, many of which I think we have heard and begun to think about, and see what may need to be done.

Mr. FINCHER. Thank you. And again, we want everyone to understand that we are willing to come down, we are willing to sit down and do everything we can to resolve it.

And just wrapping up, when I go back home to my district almost every weekend and sit down with constituents who don't understand the process and don't understand what the CFPB is and all of these different things, and I try to explain to them why they are being harmed and the unintended consequences, I think that is what is critical.

I don't think your intention or the intention of the agency is to knock folks out of buying manufactured housing, but what happens, and whether it is Republican, Democrat, any government that is as big as the government that we are—we have turned into, there is a problem. The right hand doesn't know what the left hand is doing. So that is why we are trying to keep this small, and hopefully work out these problems going forward.

So, I appreciate that. We will be in touch. And—

Mr. CORDRAY. I worry about what you described as well. Yes.

Mr. FINCHER. Okay. Thanks.

Chairman HENSARLING. The gentleman yields back his time.

The Chair now recognizes the gentlelady from Alabama, Ms. Sewell, for 5 minutes.

Ms. SEWELL. Thank you, Mr. Chairman.

And thank you so much, Director Cordray. I know that it has been a long day for you. But I also wanted to echo the sentiment—

Mr. CORDRAY. A lot of people work a lot more than 3 hours. Thanks, though.

[laughter]

Ms. SEWELL. I wanted to echo the sentiment of that litany of folks who are concerned about manufactured housing. I represent the State of Alabama, and in my State, just like Representative Fincher's, sometimes manufactured housing is the only available option. And I appreciate that the Bureau is going to work with us. And you can add my office as one of the—

Mr. CORDRAY. I will put a star next to your name, as well.

Ms. SEWELL. Thank you so much, sir.

Can you also talk to us a little bit about the steps that the Bureau is going to take to make sure that the voices of industries are heard as well as being an advocate for consumers, especially on this issue that seems to have taken up the topic of the day?

Mr. CORDRAY. Okay.

Ms. SEWELL. Can you sort of talk to us a little bit about any of the steps—I know you said meeting with industry members and with Members of Congress—

Mr. CORDRAY. First of all, we have had several insightful and productive meetings with representatives of the manufactured housing community.

I think number one was for them to lay out the narrative of who this is, how it affects them. Let's face it, when you talk about the mortgage market, people typically think about a house. They don't naturally, in many parts of the country, think about a motor home or a manufactured home. There are lots of places in the country where that is what they would immediately think about. And as I said, I am familiar with those areas from my own background and my own life.

The fact that there are some special issues around many of the manufactured home loans, like a distinction between the dwelling

and the underlying property which may or may not be related to it, creates complexities, which is not, again, the normal real estate transaction, where you buy a home and the land it sits on.

And the fact that many of these loans come at higher cost—many of them are for lower amounts, but at higher cost—for years has triggered the HOEPA rules. And that is something that the industry had been adjusting to, and I think it goes back at least 4 or 5 years, maybe longer, and now these rules to deal with them as well.

So, we will sit down. We will talk more back and forth. We will try to understand, as this is unfolding, exactly what the impact is on people, get a sense of whether that is what is intended and to what extent that is affecting consumers. That is going to be our major concern.

But we do understand, and one of the things that we have come to appreciate is that there are a lot of ways in which the lending industry serves consumers. If consumers don't have credit available, if they don't have opportunities, then you don't have anything to protect anyway. So, writing great protections is kind of beside the point.

That is why when it comes to the mortgage rules, I think fair-minded people will say that we worked hard to try to balance access to credit and consumer protections and try to provide both as much as we can.

Sometimes, there is a tradeoff. In many cases, there is not necessarily a tradeoff between them.

We may not always have gotten those lines right. We may need to redraw some of them as we go. We are open-minded to recognizing that. We don't think that we know it all or that one-size-fits-all.

And, as I have said, over the last year we have shown ourselves open to making practical changes that help these rules actually work. We continue to do that and we will continue to think about how this affects consumers, which is really our pole star on all issues.

Ms. SEWELL. Yes. I just wanted to make sure that we say thank you for being open-minded. I think that in jurisdictions like mine, where we are mostly rural, sometimes manufactured housing is the only option.

Mr. CORDRAY. Yes.

Ms. SEWELL. And we want to make sure that we are protecting the consumer, and we are also providing access to credit or helping that process so that folks have the best shot of getting a home that they possibly can.

So, I thank you for your willingness. Do add my office as one of the offices willing to help out.

Thank you, sir.

And I yield back the rest of my time.

Mr. CORDRAY. Thank you, Congresswoman.

Chairman HENSARLING. The gentlelady yields back.

The Chair now recognizes the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Mr. Cordray, first a couple of questions about the indirect auto lending bulletin, and then I want to ask you a couple of questions about the Qualified Mortgage rule.

On the indirect auto lending bulletin, will failure to conform to that bulletin bring adverse consequences to noncompliant auto dealers?

Mr. CORDRAY. So again, the bulletin on indirect auto lending governs lenders. It does not govern dealers.

And again, this is the landscape that we have been given and we are trying to be very mindful of it.

Mr. BARR. Can auto dealers disregard the bulletin?

Mr. CORDRAY. The bulletin covers and is addressed to auto lenders. It is not addressed to auto dealers, over whom we do not have jurisdiction.

Now, when you have a transaction in today's market, the way it often works is you will have a lender and a dealer engaged in that transaction. But the Congress drew a line here and they said dealers are subject to the jurisdiction of others; lenders are subject to our jurisdiction, so—

Mr. BARR. Right. This does impact—

Mr. CORDRAY. So lenders have to worry about it and comply with—

Mr. BARR. Sure. But it impacts the dealers' markup practices, obviously.

Mr. CORDRAY. It could, depending on exactly what actions are taken in response, yes.

Mr. BARR. Is it the intent of the Bureau to make this legally binding on the auto lenders and, by extension, the auto dealers?

Mr. CORDRAY. Again, we have a responsibility under our statute to govern fair lending practices by auto lenders. We have no ability to govern fair lending practices of auto dealers.

Mr. BARR. I understand.

Mr. CORDRAY. No ability.

Mr. BARR. That is really not where I am going. Is it the intention of the Bureau to make this legally binding on auto lenders?

Mr. CORDRAY. Auto lenders are already bound to comply with the law. This is a clarification of what the law is. We didn't create that; we didn't change it. It is what it has been.

Mr. BARR. The point of my question, and I think you understand what I am getting at, is why are you not using notice-and-comment rulemaking here? If the intent is to make this legally binding, why don't you give auto lenders and auto dealers the opportunity—and the American people the ability to comment on what it is that you are doing?

Mr. CORDRAY. We use notice-and-comment rulemaking when we are actually changing the law. This is not a change in the law. It is a restatement of law that other agencies have followed for 20 years. They had a guidance document in 1994 or 1995 that we were simply restating, so—

Mr. BARR. So can auto lenders disregard it since it is not a restatement or a new law?

Mr. CORDRAY. No. They always had to regard it. They had to regard it for 20 years. We are simply, again, reaffirming that they still have to regard it.

Mr. BARR. Let me talk about the details of the bulletin, and whether or not—and the question that really wasn't answered in your response to the letter that we sent you, about the analytical controls that you believe are appropriate in implementing this.

We asked what were the controls that you were going to use in applying the rule. Is the Bureau going to be using, for example, nondiscriminatory factors—taking into account nondiscriminatory factors, such as the creditworthiness of borrowers?

Mr. CORDRAY. Creditworthiness of borrowers is always relevant to these considerations and very, very valid criteria.

Mr. BARR. And the amount financed?

Mr. CORDRAY. The amount financed would matter because the extent of harm to consumers is going to be potentially greater with the greater amount financed.

Mr. BARR. And the length of time of the loan?

Mr. CORDRAY. That is a relevant factor, sure.

Mr. BARR. And what about the presence of a manufacturer's subvention of a right?

Mr. CORDRAY. I believe that could be relevant criteria. What you are laying out is that it is a somewhat nuanced analysis and not so easy to say one-size-fits-all. It depends a lot on circumstances.

Mr. BARR. If I may, with the remaining time, let me just move quickly to the Qualified Mortgage rule. As you know, the rule provides greater flexibility for lenders in rural and underserved areas, particularly to originate balloon loans, for example.

But we have heard from our constituents that there is a problem in certain rural areas which have been improperly designated as non-rural. My question to you would be whether or not the Bureau would be open to allowing a process whereby clearly wrongly designated rural areas could petition your agency for a proper designation of rural status.

Mr. CORDRAY. So here is what we did: I was convinced that we got the rural designation wrong or that it merited reconsideration, so we took that off the table. None of these lenders have to worry about that for the next 2 years while we rethink it.

So I think we have done exactly what they wanted, which is nobody is being affected by that designation now. We will rethink it, and potentially it will end up being a different designation when we are through working through this. And we are interested in hearing from them in the meantime.

I heard a lot from them initially, and that is what caused us to pull back on it.

Mr. BARR. Whether it is in the case of an auto lending bulletin or in the case of the QM rule, I would encourage the Bureau to allow more participation, whether it is notice-and-comment or whether it is a petition process where the American people can actually correct—

Mr. CORDRAY. If you know of anybody who is having trouble getting a meeting with us, you let me know. We are pretty widely accessible.

Mr. BARR. Thank you.

Thank you. I yield—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman.

And thank you, Director Cordray, for your testimony. And thank you for what you and the Bureau do to protect consumers.

Regarding Habitat for Humanity, as you know, it is a charitable organization, which represents part of what makes America great: neighbors all coming together with a simple idea that affordable homeownership strengthens communities and helps break the cycle of poverty.

Habitat homeowners enjoy no-interest, charity mortgages, designed not to make a profit on the underlying loan, or affect the risk of the homeowner, but simply to build communities and promote affordable homeownership.

I have been working closely with my good friend and fellow United Solutions Caucus Member Meadows, from North Carolina, and the gentlelady from West Virginia, Chairwoman Capito, on legislation to improve Wall Street reform by protecting Habitat for Humanity and other such charity organizations from a regulatory risk, which should be reserved for banks and credit unions.

The process has benefited from the Bureau's responsiveness and ongoing willingness to address legitimate concerns. One of those concerns is whether forgivable loans actually count as an extension of credit. If a borrower will not be expected to repay a loan, as in the case for many downpayment assistance loans, that borrower should not have that loan count against them for the purposes of determining ability to repay.

Can you explain to the committee the Bureau's position on whether forgivable loans are considered an extension of credit for the purposes of determining ability to repay debt-to-income ratio?

Mr. CORDRAY. Yes. And to go back, when we first finalized the Qualified Mortgage rule in January of last year there was not yet any provision that took account of 501(c)(3)'s like Habitat. They spoke to us. They had several concerns.

We went back and did an additional rulemaking process, which resulted in the small-creditor provision, which was very important to community banks and credit unions, and a provision that governed Habitat. The Bureau took care of their concerns, or so I thought.

By the end of this year, as they worked through other problems, they found that they have identified three other concerns. This is the leading one, as I understand it. I had a discussion with the CEO, Jonathan Reckford, yesterday, and we talked back and forth. He had his lawyers in the room explaining the details of the issues and we pledged to work to see that we can resolve these issues through our rulemaking authority.

Representative Capito, with whom you are working, knows full well that we can resolve these issues because we had this problem with stay-at-home moms under the credit card rules that we inherited, that she raised. I agreed that it was a very valid concern and we addressed that through rulemaking, it always takes a little longer than we would like, but I think we can do the same here.

Mr. MURPHY. Thank you for your responsiveness to these consumer concerns. When should we expect a formal, workable position from you all?

Mr. CORDRAY. We are already working with Habitat to understand the granular details of their concerns, including this one. As you say, the big-picture issue on this one is very much: do second liens have to count in the very peculiar circumstances of Habitat, where they put a second lien on often as a safeguard to avoid the homeowner getting themselves into trouble on a second lien of their own.

We are working with them already. I think over the course of this year, we will solve this problem, and if that is not fast enough, we can work with them further to try to organize the timeframe.

But I know in my area, it is a former colleague of mine from the State legislature who runs the Habitat in our area. They do a very good job. It is something we want to encourage and they help a lot of people. So, we are mindful of protecting their model.

Mr. MURPHY. Thank you. And as you examine how to best protect consumers in the short-term, small-dollar credit sphere, I would be remiss to avoid sharing the benefit of good regulation and great enforcement that we have in Florida, where they are pulled away from unlawful and short-term loans by real access to a functional market without castigating or endorsing the industry.

The State of Florida has really demonstrated a workable way to protect access and consumers. I hope, as we move forward, that you recognize the States that are doing it right.

And my question is how, in an extremely well-regulated market, do you protect consumers by keeping them from the black market?

Mr. CORDRAY. We are looking at a number of States that have developed different provisions on short-term, small-dollar payday lending. Florida is one; Colorado is one; Washington is one. There are some interesting new approaches.

I have been in direct contact with Drew Breakspear, who is your banking commissioner, and they actually, in the interest of the importance of data and information, when we did our White Paper on payday lending, they then applied the same analysis to their Florida data and were able to show us differences in consequences because of their provisions.

Those are all things we are looking at as we are trying to formulate the right approach.

Mr. MURPHY. You are considering it.

Mr. CORDRAY. Yes.

Mr. MURPHY. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman.

Mr. Cordray, I wanted to ask you a few questions about the time periods the CFPB provides for certain requests.

This is a set of regulations containing the rule relating to investigations—that is 12 CFR 1080. When the CFPB initiates a case, it serves a civil investigative demand requesting certain information, including answers to questions, documents, written reports, and testimony before an investigator.

Once they receive a civil investigative demand, do you know how many days that person has before they have to meet with a CFPB investigator?

Mr. CORDRAY. So first of all, what I know is this is standard—

Mr. POSEY. A one-or two-word answer, please. I only have 5 minutes. You don't know.

Mr. CORDRAY. No, no. It is more than that. Number one, it is a standard practice. All attorneys general use the same approach—

Mr. POSEY. It is 10 days. It is my time. Ten days is what they have.

Mr. CORDRAY. Secondly—

Chairman HENSARLING. Sir, the time belongs to the gentleman from Florida.

Mr. CORDRAY. He asked a question. Don't I get a chance to answer?

Chairman HENSARLING. The time belongs to the gentleman from Florida.

Mr. POSEY. I asked you how many days. It doesn't take a book to answer that.

Mr. CORDRAY. We negotiate.

Mr. POSEY. If a person wants to challenge the civil investigative demand or modify the scope of the investigation, do you know how many days they have to file an appeal with the CFPB?

Mr. CORDRAY. There is a specified time in—

Mr. POSEY. Twenty days is the answer. It could really be answered that simply.

If a person wants more time to prepare a challenge to the CFPB investigative demand, do you know what the CFPB regulations say about the extension?

Mr. CORDRAY. What I know is our practice has been to negotiate that timing with the party and to give them a reasonable amount of time. We have done it many times.

Mr. POSEY. Your literature says they are "disfavored."

Do you know what the penalty is for failure to comply entirely or only in part with civil investigative demand?

Mr. CORDRAY. What I know is we had an example of this recently. We investigated a payday lender. It resulted in our first enforcement action. They were actually destroying documents as they were under investigation.

Mr. POSEY. Okay. The answer to my question is—

Mr. CORDRAY. That was totally inappropriate. It resulted in a $5 million penalty.

Mr. POSEY. —the Federal district court.

This is a set of regulations that governs the investigation of nonbank-covered persons. It is 12 CFR 1091. When the CFPB issues a notice of reasonable cause against a person who offers consumer financial products, how much time do they have to respond?

Mr. CORDRAY. —in our rules.

Mr. POSEY. Thirty days. If that person fails to respond to the notice of reasonable cause, do you know what happens to them then?

Mr. CORDRAY. What I know is these are law enforcement activities. People need to take them seriously.

Mr. POSEY. —right to respond and have a decision in order automatically entered against them.

Mr. CORDRAY. These are law enforcement activities and people need to comply with the law.

Mr. POSEY. Do you know what happens to a person if they give vague or incomplete answers in their responses to a notice of reasonable cause?

Mr. CORDRAY. That is something that we negotiate in terms of—

Mr. POSEY. They lose the right to rely upon any legal argument, document, or other information that they could have used in their defense if they fail to include it in their response.

This is a letter from me to you, dated December 21, 2012, containing 19 questions about the CFPB consumer data collection program.

This is a CFPB response dated February 21st. This is a letter responding to my questions. As you can see, it is three paragraphs long. Nineteen questions I asked—the answer is three paragraphs long. Paragraph three is a two-sentence conclusion, actually.

How many days do you think it took the CFPB to respond to me?

Mr. CORDRAY. So let me say, at the time that you submitted—

Mr. POSEY. Sixty-two days—

Mr. CORDRAY. At the time that you submitted 19 questions, others submitted questions. There were well over 150 questions that we had to respond to—

Mr. POSEY. Listen, the people that you regulate can have a lot of people asking them questions at the same time.

Mr. CORDRAY. And nobody got favorable treatment. They all were responded to together.

Mr. POSEY. Do you think a three-paragraph, one-page letter provided complete and satisfactory answers to my 19 questions?

Mr. CORDRAY. I would like to see the letter, but many of them were incorporating by reference. Other questions—

Mr. POSEY. The answer is clearly no.

Mr. CORDRAY. Other questions were being answered at the same time.

Mr. POSEY. This, for the record, as marked, is the 19 questions I resubmitted in December 2012. Would you like to guess when I got the answers to those questions?

Mr. CORDRAY. Again, I recall at one period—

Mr. POSEY. These were July 9, 2012, questions for the record, and the responses arrived on September 17, 2013.

Do you know how many days it took to respond to my question from July? That is 70 days.

Do you know how many days it took for me to finally get a response to the questions I originally sent you in December? That is 270 days.

It is a bad case of, I think, democracy here—

Chairman HENSARLING. The time of the gentleman has expired.

Mr. CORDRAY. What I understand is we have answered all your questions. If it takes longer than you like, we will look at that again.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty, for 5 minutes.

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

And I apologize for my voice—I am losing it. But you can also imagine when you are at the end of a 3-hour-plus hearing, much has been said.

But, Director Cordray, let me say how honored I am to have entered into the record that I can say something that people here can't say—that I have had the opportunity to work with you for several decades and witnessed your leadership and administration. So, for the record, I could tell you that condescending is not a word that you would find with this Director.

Let me also say—we have heard a lot about protecting consumers—how proud I am that in the capital city of my great State of Ohio, that you and our mayor, Mayor Coleman, have set up a 311 constituency line, which I think is very rare—that you would have a Director and a mayor working together, that individuals in my district can actually dial 311 and be connected directly to the Bureau to talk about their concerns.

I would also like to thank you for your attention to ending the broken system. And I was very pleased to read about how you are working with consumers to make sure that when they are getting a mortgage, they are not hit with surprises.

You have also heard from a lot of my colleagues on manufacturing. I have had the opportunity to work with our colleague—a Republican colleague who we both serve within the House with Habitat for Humanity.

So it is also important for me to express my support for efforts by the Bureau to address the manufacturing housing issues without diluting important consumer financial protection.

And lastly, we have heard a lot about the automotive association. I have read your reports. The National Automotive Dealers Association yesterday came out with a report and suggests that its members set up a single markup rate for all loans and only reduced the rate for documented reasons such as a match or to beat a competitive rate.

I wanted to know if you have seen that report, and if you think that it is something you will work with them on.

Mr. CORDRAY. We have just seen it, and to me, it is encouraging that people are taking seriously and trying to explore ways to address these kind of fair lending concerns, and that the Auto Dealers Association, which I have come to know as a very respectable body that is interested in solving these kinds of problems, is trying to develop a solution for dealers as notable.

The difficulty we have, again, is one that we oversee lenders; others oversee dealers. We do not oversee dealers.

But we are happy to—if everybody understands that we are respecting that line—we are happy to try to work together to get to a broader solution of this issue and I think we have made that plain.

Mrs. BEATTY. Okay, thank you.

Mr. Chairman, I would like to yield the balance of my time to the Director if there are any comments about anything he would like to say, or to respond to any of the other questions.

Mr. CORDRAY. I appreciate that offer. I will pass at this time. Thank you. Thank you very much, Congresswoman.

Mrs. BEATTY. I yield back my time.

Chairman HENSARLING. The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

And thank you, Director Cordray, for being here. We are near the end of this hearing, so it is time for Double Jeopardy.

Mr. CORDRAY. Or Final Jeopardy.

[laughter]

Mr. PITTENGER. Or final—how about that? That is even better, isn't it?

Mr. Director, the Dodd-Frank Act established the Civil Penalty Fund and the purpose of this was, of course, for penalties that were levied to establish this fund. And unlike the Federal Reserve or the OCC or the FDIC, you are in a position to deposit these funds in your own account.

And to that end, I would like to ask this: Based on the committee calculations that we have today, the unobligated balance of this fund currently stands at about $96 million, and roughly $124 million of that you have imposed in fines, which would be allocated about $15 million—so, that is about 11.7 percent. Of that, about $1.5 million has been spent on administrative costs.

I would just like to ask, why are you not using more of these funds to compensate victims, as it was designed to be set up? And can you not identify these people?

Mr. CORDRAY. Thank you, Congressman, for asking about that. It is a provision in our statute that we are trying to be very careful about and puzzled through.

What you are referring to, I think, at the moment is simply a timing issue. In order to set up this fund and make sure that it is subject to appropriate oversight by our Inspector General and by the GAO, all of whom audit us, and that you would all have confidence in it, we actually put out, as suggested on many occasions for notice and comment, a rule on how we would administer the fund.

That took some time setting it up. We now have made the first allocations. We are able to compensate some victims in matters where they did not get full compensation from the perpetrator, often because funds were not available or on their way out of business from scams and frauds.

Second, we have allocated some money for the first financial education program, which is financial coaching for servicemembers as they transition into civilian life. That is something we will be working on with people on military bases across the country.

I think that it is going to be an important initiative, and it is very much within the letter and spirit of this law.

Mr. PITTENGER. All right. I just want to clarify, because I would like to move on—

Mr. CORDRAY. Yes.

Mr. PITTENGER. —that the purpose of the fund—designed that you have sole autonomy in—is to benefit these individuals and to have educational programs. So, we would just encourage you to use it for that.

Let me go ahead and ask you—

Mr. CORDRAY. Subject to oversight by you, the Inspector General, GAO, and others.

Mr. PITTENGER. Yes, right. Next question.

Mr. CORDRAY. Right.

Mr. PITTENGER. On September 12, 2013, the Bureau announced the creation of four advisory groups: the Consumer Advisory Group; the Community Bank Advisory Council; the Credit Union Advisory Council; and the Academic Research Council

Director Cordray, I would like you to discuss with us these advisory boards and the councils. And why are the boards' advisory group meetings held behind closed doors?

I understand that portions of the Consumer Advisory Board meetings are public—

Mr. CORDRAY. Right.

Mr. PITTENGER. —but most all other portions are private and all other advisory groups meet in secret. Why deny the public the right to observe these meetings?

Mr. CORDRAY. First of all, the only advisory council we are required to have by law is the Consumer Advisory Board that is set up by—

Mr. PITTENGER. I am asking really more, as not by law but as a matter of policy.

Mr. CORDRAY. No, I am trying to get there.

Mr. PITTENGER. Okay.

Mr. CORDRAY. That one is by statute. And as you say, we always make it a point with every meeting to have an open portion and then there is a closed portion where we can get their unvarnished advice and we can speak candidly about matters that the Bureau is working on, including enforcement actions and the like.

Second, in terms of the other councils, I created a Community Bank Advisory Council and a Credit Union Advisory Council because we wanted to hear more from them. We don't oversee them in the normal course of things—all of those under 10 billion, which is thousands of them.

We are not covered by the Federal Advisory Committee Act—

Mr. PITTENGER. I understand.

Mr. CORDRAY. —which exempts the Federal Reserve—

Mr. PITTENGER. Director, let me just insert—we only have a few minutes—

Mr. CORDRAY. Yes.

Mr. PITTENGER. —a few seconds left.

In the spirit of transparency, will you commit yourself now to at least some portions of these meetings being held up to the public or permitting Congressional Representatives to be there? We, as members of the Financial Services Committee, have requested to be there in the past and those requests were denied.

Will you commit yourself to more openness to allow for the public to review what takes place in these meetings?

Mr. CORDRAY. These are advisory meetings to discuss matters that often are not yet public, so they cannot—

Mr. PITTENGER. Just yes or no.

Mr. CORDRAY. They cannot be made—

Mr. PITTENGER. Sir—

Mr. CORDRAY. —public easily.

Mr. PITTENGER. So, your answer is no?

Mr. CORDRAY. We do release minutes on the meetings and members who come to speak to us from credit unions and community banks can, if they want, go back and talk about what we said—

Mr. PITTENGER. Mr. Cordray, is your answer no?

Mr. CORDRAY. So I don't think it works for us to do that, sir.

Mr. PITTENGER. Thank you.

Mr. CORDRAY. And get their candid advice.

Mr. PITTENGER. I yield back my time.

Chairman HENSARLING. The time of the gentleman has expired.

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

Mr. HECK. Director Cordray, I would like to start out by apologizing on behalf of the committee. I think there are instances where individual behavior in this committee does not live up to the great heritage of this institution or this committee, and I think earlier, there was an egregious breach of protocol.

Indeed, I think the gentleman from Colorado's shameless promotion of his individual sports franchise was way over the line. And for my part, sir, I will simply allow the Seahawks' performance to speak for itself. Let the record show that the lady whose husband once played for the Denver Broncos just turned my microphone off.

Mr. Chairman, I noted that Mr. Perlmutter got to start his 5 minutes over after his shameless self-promotion.

Chairman HENSARLING. Reset the clock to 5 minutes. The Chair is feeling rather indulgent at the moment.

Mr. HECK. I have been here for 3 hours.

Director Cordray, when you were here before I complimented you and the agency, in particular the Office of Servicemember Affairs, for the good work that we had done with them on behalf of the men and women who wear a uniform. In particular, Holly Petraeus has been just outstanding, and her staff. I thank you again.

One of the issues that we continue to get exposed to in my area is behavior on the part of high-interest-rate lenders. And as you know, in accordance with the NDAA of 2013, the Department of Defense was charged with updating the rules and regulations associated with the Military Lending Act.

I recognize that you serve in an advisory capacity to that effort, but it was due at the end of the last calendar year. It is not here. I think it has recently been announced that it will now be out probably by the end of the first quarter, or so indicated. But as somebody who does indeed act in an advisory capacity, could you provide us with any insight about what the holdup is all about? People's lives are being affected every day.

Mr. CORDRAY. I think I can, yes. We have actually been actively engaged in writing new rules with the Department of Defense. They have been actively engaged in this, as well as our fellow agencies, including the Federal Reserve, the FDIC, the OCC, the Treasury Department, and the FTC. And we are well along in that process.

But I will just say it is always difficult to get multiple agencies to work together. It is not so easy to do. It always takes longer than we think.

Everything that you in Congress can do to keep our feet to the fire and make it clear that you want to see that quickly. However, we are trying to balance speed against getting it right. We have made tremendous progress and I know the Department of Defense wants to proceed on this. If you all just keep attending to it and make sure that everybody knows that we are on a timeframe and we need to move on that timeframe, that is very helpful to all of us trying to get the work done, so—

Mr. HECK. I think Mr. Perlmutter just reentered the room. I am just guessing.

Chairman HENSARLING. The Chair is not going to reset the clock again, so if I was the gentleman, I would keep on trucking.

Mr. HECK. I am a little nervous right now, Director Cordray.

Mr. CORDRAY. Do you have a hat like he does? You might want to have a hat like he does.

Mr. HECK. I want to follow up on the earlier exchange about mobile payments. I am pretty excited about mobile payments because from my perspective, it removes friction from the marketplace. And things that do that, if they are balanced against consumer protection, I believe are inherently good. I think it accelerates the velocity of a transaction; it benefits retailers; and it is an increased convenience to the consumer.

But I note that we are in the embryonic stages and this is growing in dozens of different ways. There is different technology, different user interfaces, and different underlying payment systems.

And it just seems to me that as the number one protector of consumers' interests, it might be good on the front end of this if we had had some kind of an in-depth analysis, I think best conducted by your agency, about the pros and cons of developing more harmonious consumer protections across these different platforms.

Could I persuade you to be interested in such a thing and get out ahead of the curve before—and I realize that you have been fairly busy the last couple of years, but this could explode on us. Let's get ahead of it.

Mr. CORDRAY. Yes. The trouble is that it is a hard area. Exactly where it is going and when, and which platforms are going to be the ones that get great take-up from the American people. People have been working at this for several years already and I still couldn't predict to you which ones are going to be the dominant technologies of tomorrow and maybe even, as you say, tomorrow on the calendar, not just tomorrow metaphorically.

So we are trying to be very attentive to this. We recognize prepaid cards have exploded very fast. It is just in the last few years that they have ramped—

Mr. HECK. Sir, may I interrupt with a question in that regard?

Mr. CORDRAY. I'm sorry, yes.

Mr. HECK. I apologize.

Mr. CORDRAY. No, that is fine.

Mr. HECK. I understand you have jurisdiction over prepaid cards for banks.

Mr. CORDRAY. Yes.

Mr. HECK. But I kind of got lost—

Mr. CORDRAY. Not always—not—

Mr. HECK. Do you have jurisdiction over prepaid cards for retailers?

Mr. CORDRAY. Yes.

Mr. HECK. If not, who does?

Mr. CORDRAY. We have jurisdiction over the offering of financial products and services, and prepaid cards typically are, especially the general purpose reloadable cards. So yes, I think we do have jurisdiction over prepaid cards, and not just banks, but also nonbanks.

Mr. HECK. Good.

So I think I am about done, Mr. Chairman, but I wonder, do we have a sergeant at arms? I am not feeling particularly safe right now.

Mr. CORDRAY. The generous Congresswoman who shared a microphone with you, she and I wish we could talk about the Browns, the Bengals, or the Buckeyes, but we will just have to say wait until next year, so—

Chairman HENSARLING. The apparent last questioner will be the gentleman from Delaware, Mr. Carney, who is recognized for 5 minutes.

Mr. CARNEY. Thank you, Mr. Chairman. I was expecting somebody from the other side, but I appreciate the opportunity to be here. I apologize for having to leave and come back.

And I want to thank you for your service and for your patience in this hearing. It has been trying, I am sure, and a little disappointing to me, just the tone of it. It just seems to me that consumer protection ought to be something that we all care about, right?

And I know there are a lot of differences of opinion over the agency and how it was created. I was not here when that happened. It seems like now, though, we ought to be able to move beyond that.

I did want to come back to ask you some questions about the mortgage lending standards in particular. Something that many of us on this side are working on is some of the unfinished business, we think, from the near financial collapse—the reform of Fannie Mae and Freddie Mac and the GSEs and so on.

Of course, the committee has passed a bill that would address that, we feel like, by eliminating a government backstop, which we think will be the end of the 30-year fixed-rate mortgage and actually cause mortgage interest rates to go up and make affordability more difficult.

I am curious. Obviously, the QM standards are important for any kind of securitizing platform, but I want to revisit some of the questions that were asked by Members on both sides about how the QM rule that you—we are operating under now and ability to pay. And you answered to I think Mrs. Capito's question some time ago, a couple of hours ago, that you feel like it was in a box.

Could you take a minute or 2 here at the end of the hearing to explain why you think that is a good rule and why you think it is something that we can work within as we attempt to reform our system to address the problems that, frankly, that got us into this financial mess the last time, and leading up to a reform of the GSEs?

Mr. CORDRAY. Sure. No matter what the explanation of all the background, and it differs among different people, I know, everybody recognizes it was the mortgage market that collapsed and caused the financial crisis and all the harm and misery we have seen in this country over the last 5 years. And reforming the mortgage market was, therefore, the highest priority Congress set for us with the Qualified Mortgage rule.

There are several different ways that a loan can meet the Qualified Mortgage test. And by the way, nothing prevents banks and others from lending outside the Qualified Mortgage boxes—

Mr. CARNEY. As long as they hold the—

Mr. CORDRAY. —as long as they make a good-faith reasonable determination of the ability to repay. And many of them are going to be doing so and have said so.

But the boxes—

Mr. CARNEY. Have you gotten feedback if—sorry for interrupting, but have you gotten feedback from the banks, positive or negative, about that piece of it? Do they have enough flexibility to make that determination? We will hear from our community banks and we have heard some testimony earlier today that "the box is too tight" is the term being used.

What kind of feedback do you get?

Mr. CORDRAY. Yes. I think everybody always wants more flexibility. They want to do whatever they want to do. We had way too much before the crisis and there were a lot of loans made that should not have been made.

Mr. CARNEY. Correct.

Mr. CORDRAY. And Goldman Sachs did a report, not a big fan of government regulation, that said that 50 percent of the loans that defaulted in 2005, 2006, and 2007 would not have been made if the QM rule had been in place. It would have been a very different story in the economy of this country.

But, we drew a box around a 43 percent debt-to-income ratio. That is very generous by historical standards, but that is one box.

We drew a box around loans eligible for sale to the GSEs, which gives you all latitude to determine what you are going to do about GSE reform. This is while they remain in conservatorship over the next 5 to 7 years if nothing else happens.

And when we went back and drew another box for small creditors, hearing from them and recognizing that their lending practices are very important in a lot of communities around this country. Thousands of community banks and credit unions are covered by those provisions and they have complete latitude, whether they sell on the secondary market or keep in portfolio, to lend in accordance with their traditional mode. And that was an important adjustment that we needed to make and we were convinced that we should make.

Mr. CARNEY. So, one last thing. You have mentioned a couple of times that we will see. We will look at the data.

Mr. CORDRAY. That is right.

Mr. CARNEY. What will the benchmarks be? What do you think will tell us whether it is working or not? Do you have a sense of that or what you are going to be looking at in terms of benchmarks there?

Mr. CORDRAY. Data and information about what is happening in the mortgage and housing market will tell us how this is going. The thing we will have to be careful of is there are a lot of other factors here.

If the Congress acts on GSE reform, that will be a dominating factor in terms of what goes on in the mortgage and housing markets. If interest rates go on a sustained period of rising which, you never know when or whether things happen in that regard, that will obviously dominate this market. There are other things that matter, clearly.

But in terms of our rules, we are going to continue to listen closely, as we have all along, both to the consumer side and to the industry side, about whether we are getting the balance right. I think people have recognized that we have tried hard to draw a balance. Many people think we have done well at drawing the balance. To the extent we are not sure and they are not sure, we are interested in seeing and hearing more as we go.

Mr. CARNEY. My time is up, but let me thank you again for your service, and I hope that we can have an ongoing conversation about these issues. Thanks.

Chairman HENSARLING. The time of the gentleman has expired.

The new apparent last questioner is the gentleman from Minnesota, Mr. Ellison, who is recognized for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman.

And thank you to the ranking member.

Mr. Cordray, as we wrap up, I just want to offer my thanks to the CFPB for the great work that you all do. I know this has been a tough hearing in many ways. Of course, we are in a pretty polarized political environment nowadays, and you are in the crossfire. But I just want to say to the millions of people that you have helped, I hope that you will continue to do the hard work that you are doing, and I just want to let you know that you have the support of many of us, including me.

Let's talk about manufactured housing, if we may. What is up on the board is my district and all the little dots are manufactured housing. In my congressional district we are very proud to represent Hilltop, which is a manufactured housing community.

Let me ask you this about manufacturing—or make these points and then get your reflections. We have more than 68,000 manufactured homes in Minnesota, more than 3 percent of our housing stock. And we also have about 900 manufactured home communities. One of them, North Country Cooperative, is a resident cooperative. And I have asked this chart for manufactured homes to be posted on the screen just for your reference.

I want to congratulate the CFPB for taking steps to improve the finance options for manufactured home owners. Manufactured homes offer attractive, safe, and affordable homes for millions of people. But pre-crisis, too many manufactured home buyers were only offered high-cost loans with completely inadequate consumer protections.

Recently, I presented a question for the record to you asking what data the industry has shared to justify those high fees and high interest rates. And I know there are great manufactured home loan providers, such as New Hampshire Community Home Loan

Fund and ROC USA. We should ask them to come and testify before this committee.

I have a bill that strengthens CDFIs, H.R. 3656, which invests in manufactured homes. And another of my bills, the Common Sense Housing Investment Act, also helps manufactured home buyers. I encourage my colleagues to cosponsor the bills.

Will you work with us to improve housing finance options for manufactured home buyers?

Mr. CORDRAY. I would be happy to do that. And as I count it, there are maybe half a dozen to a dozen Members today who have raised these specific issues and we have heard about them directly from both industry and consumers, and we are interested in knowing more about whether the rules we have written that mostly, again, have typical residential housing in mind, are fitting in appropriate ways to this particular method of housing.

Mr. ELLISON. Good. I would like to introduce for the record this report entitled, "Toward a Sustainable and Responsible Expansion of Affordable Mortgages for Manufactured Homes." This is a report I think would certainly elucidate and elaborate on the issues we have.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. ELLISON. Finally, let me just ask you about title insurance. In the Qualified Mortgage rule, the CFPB includes title insurance costs paid to affiliates in the fee cap. Nonaffiliated title insurers are outside of the cap. What was the CFPB's reasoning for making this distinction?

Mr. CORDRAY. It is a distinction that is drawn several places in the statute. There were concerns, as I understand it—I wasn't here for the debates on Dodd-Frank—about abuses where people were steered toward affiliated companies and people benefited financially from that.

It is not unique to title insurance. It is true of various fees that are considered under the 3 percent points and fees cap. It has been singled out by some as wondering whether the same rationale should apply to title insurance as to other things.

It is a fair question. It is something that we considered as we were writing the rules. It is something that we will continue to consider what the impact is as we look at how the rules are operating going forward.

But it is the same general rationale as the other fees that are treated in the same manner under the statute and under the rule.

Mr. ELLISON. I have had a number of constituents come to me, and I just want to commend your staff on the fines against the sham title agents. I am concerned about consumers, particularly when they are being overcharged for the service, and it is wrong, I think, for consumers to pay hidden commissions and kickbacks.

So with that, I just want to say again, thank you. Your work is very much appreciated around here by some, and we look forward to your future success on behalf of American consumers.

Mr. CORDRAY. Thanks.

Chairman HENSARLING. I am assuming the gentleman is yielding back his 5 seconds.

I would like to thank Director Cordray for his testimony today.

Before excusing you, Mr. Cordray, I would like to bring to your attention several questions that are still pending, including one from our Chairman Emeritus Bachus, dated June 21st, requesting all the studies, analysis, and information relied upon by the Bureau in its compliance bulletin for indirect auto lenders; one dating back to September 18th from myself requesting a list of senior managers who have utilized private e-mail accounts to conduct official business; one from myself and Chairman McHenry requesting all documents relating to the Bureau's awarding a $5 million research contract to ideas42; and one dating back to October 22nd, where we have requested all data upon which the Bureau relied in preparing its April 2013 White Paper on payday lending and deposit advance products.

I would note that, indeed, this committee has given the CFPB many, many questions. We have received a number of answers.

I know you find this sometimes voluminous and bothersome but, Mr. Director, we consider it to be a critical check and balance. This committee would like to continue to work with you cooperatively and respectfully, and so I would respectfully request that no later than the end of February, we receive full answers. Otherwise, you will force us to rely upon our compulsory process, which I prefer not to do.

Mr. CORDRAY. I will just say that sometimes the requests are voluminous. We don't find them bothersome. It is part of the vigorous oversight that I have come to expect, and appreciate, and I would be disappointed if I didn't get that from this committee.

On each of the four or so matters that you have pinpointed, I know there have been multiple rounds of back and forth on most, if not all of those. We have a job to do to try to determine how best to manage this information. You have a job to do, I understand, to oversee us.

We will try to make sure we can get as much as possible on the same page. Sometimes these are not easy things to work through, as you know.

Chairman HENSARLING. If you could, Mr. Director, if you would pay personal attention to these matters, that would be greatly appreciated.

Mr. CORDRAY. Okay. Thank you.

Chairman HENSARLING. The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing stands adjourned.

[Whereupon, at 1:42 p.m., the hearing was adjourned.]

A P P E N D I X

January 28, 2014

Testimony of the Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
Before the House Committee on Financial Services
January 28, 2014

Chairman Hensarling, Ranking Member Waters, and Members of the Committee, thank you for inviting me to testify today about the fourth Semi-Annual Report of the Consumer Financial Protection Bureau. Since we opened our doors just over two years ago, the Bureau has been focused on making consumer financial markets work better for the American people, and helping them improve their financial lives.

The report we are discussing today describes the Bureau's efforts to achieve this vital mission. Through fair rules, consistent oversight, appropriate enforcement of the law, and broad-based consumer engagement, the Bureau is helping to restore families' trust in consumer financial markets, protect consumers from improper conduct, and ensure access to fair, competitive and transparent markets.

Through our enforcement and supervisory actions, and together with our fellow regulators, our efforts so far will be putting approximately $3 billion back in the pockets of millions of consumers who fell victim to various violations of consumer financial protection laws. This includes a refund of over $6 million to thousands of U.S. servicemembers based on failure to properly disclose costs associated with repaying auto loans through the military allotments system and expensive auto loan add-on products sold to active-duty military. CFPB's supervisory actions have also caused financial institutions to make changes to compliance management systems that prevented violations, reduced risks to consumers, and resulted in financial restitution to many thousands of additional consumers.

Over the past year, we have enacted a number of new rules to meet the mandates of the Dodd-Frank Act, including the Qualified Mortgage rule, which requires mortgage lenders to make a good faith, reasonable determination that borrowers can afford to pay back their loans; the mortgage servicing rules, which are designed to clean up sloppy practices and ensure fairer and more effective processes for troubled borrowers who may face the loss of their homes; and the remittance rule, which provides consumer protections for international money transfers for the first time ever. Since then, the Bureau has focused on making sure that businesses – both small and large – have what they need from a practical and operational standpoint to understand and comply with our new regulations, which are designed both to help consumers and create a level playing field for all companies that play by the rules.

The central concept behind this undertaking is our belief that compliance with regulations is a concern we all share, because successful compliance is good for everyone – consumers, industry, and regulators. So we have put out plain language versions of the rules, created and posted video guidance, met with major market players and the full range of industry stakeholders (including vendors), and responded directly to industry input about points needing to be clarified or modified to take account of practical and operational concerns. With respect to the mortgage rules, we worked with our fellow regulators to publish inter-agency examination procedures on the new rules, well before the implementation date, to familiarize industry stakeholders with our

expectations. With respect to our international money transfer rules, the Bureau has coordinated with other regulators to ensure we all have a shared understanding of the new rules to promote consistent supervision of remittances providers.

At the same time, we recognize that consumers bear their own share of responsibility for how they participate in the financial marketplace. To promote informed financial decision-making, we have continued providing consumers with useful tools, including the AskCFPB section of our website, where we have developed answers to over 1,000 frequently asked consumer questions. In July, we issued our financial literacy report describing the Bureau's strategy and the financial literacy activities it has undertaken during its first two years of operation. The Bureau is uniquely positioned to help bridge the gap between people's current levels of financial understanding and the increasingly complex financial decisions they have to make. Our financial education agenda is focused on providing consumers with tools and information to develop practical skills and support sound financial decision making. These include tailored approaches to address financial decision-making circumstances for specific populations, including servicemembers and veterans; students and young adults; older Americans; and low-income and economically vulnerable Americans. The Bureau's strategy to increase consumers' financial literacy and capability includes foundational research, collaborative education initiatives with stakeholders who can reach consumers where they are, and providing tools and information directly to the public to help them navigate the financial choices they face.

The premise that lies at the very heart of our mission is that consumers deserve to be treated fairly and to have someone stand on their side when they have been treated unfairly. We have strengthened our Office of Consumer Response, and we have now received over 270,000 consumer complaints on credit reporting, debt collection, money transfers, bank accounts, and services, credit cards, mortgages, vehicle and other consumer loans, and private student loans since we began taking complaints.

In the past year, we have received thousands of private student loan complaints and nearly 30,000 comments in response to our request for public information about how student debt is affecting individual consumers and the economy more generally. At a field hearing we held in Miami last May on student loan debt, it became clear that too many borrowers took out loans with less attractive rates and terms than they could have qualified for, and many struggle to find refinancing and loan modification options. We have seen too many of these troubling similarities to the broken mortgage market before the crisis, and we will continue to monitor this market closely. The burden of student debt is jeopardizing the ability of young Americans to buy homes, start small businesses, and save for the future.

The progress we have made in the past two years has been possible thanks to the engagement of thousands of Americans who have utilized our consumer education tools, submitted complaints, participated in rulemakings, and told us their stories through our website and at numerous public meetings from coast to coast. Our progress has also resulted from the extraordinary work of the Bureau's employees – dedicated public servants of the highest caliber who are committed to promoting a healthy consumer financial marketplace. I am proud to work alongside them and to serve now as their confirmed Director. Our progress also reflects the cooperation of those we regulate, and we attempt to remain considerate of the obstacles they confront. Each day, we

work to accomplish the goals of renewing consumers' trust in the marketplace and ensuring that markets for consumer financial products and services are fair, transparent, and competitive. These goals not only support consumers as they climb the economic ladder of opportunity, but also help responsible businesses compete on an evenhanded basis and reinforce the stability of our economy as a whole.

Thank you for the invitation to appear before you today. I am, as always, very glad to answer your questions and have the benefit of your active interest and oversight.



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Mr. Chairman and Members of the House Financial Services Committee, my name is Steve Jordan, Executive Vice President of the National Independent Automobile Dealers Association ("NIADA") headquartered in Arlington, Texas. On behalf of the Association, I appreciate the opportunity to submit this statement for the record regarding the Committee's January 28th hearing on the Consumer Financial Protection Bureau ("CFPB").

The NIADA represents more than 17,000 members who are connected to the automobile industry in some form or fashion, but primarily independent dealers who own dealerships across America that are not affiliated with a manufacturer.

They are businessmen and women who subscribe to the NIADA Code of Ethics that emphasizes honor, integrity and fair dealing. More than 40 percent of these dealers have been in business for more than 20 years, and almost 50 percent have five or fewer employees. They are the small car store that survives in the best of times and the worst of times because they are a part of their communities as fathers, mothers, Better Business Bureau members, Chamber of Commerce members, city councilmen, school board members, churchgoers, youth organization sponsors and coaches, and task force members who look for ways to make our cities and our towns better places to live.

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 and the creation of the Consumer Financial Protection Bureau ("CFPB") drastically changed the regulatory landscape for those engaged in the financial services industry. Not only did the CFPB become a new cop on the beat, it became a cop with significant power and virtually limitless resources.

At the time of the Dodd-Frank debate, NIADA voiced concerns about the structure and budget of the CFPB, which was unlike other agencies in Washington, D.C., and vastly different than the agency automobile dealers were most accustomed to dealing with: the Federal Trade Commission ("FTC"). Unlike the FTC which has five commissioners from both political parties each with an equal vote on how the Commission will conduct business, all power of the CFPB is vested in one director appointed by the President.

Moreover, because the CFPB's budget is ensconced in the Federal Reserve, it not subject to the appropriations process. This effectively precludes Congressional oversight of the Bureau's finances and operations. Additionally, one could even argue that the CFPB is not subject to

Presidential oversight. The primary fear that results from vesting all authority in one director and giving that individual financial latitude without any real restraint is that the CFPB will function in a shroud of secrecy and drift from its statutory mandate with an undue burden of influence from unchecked consumer advocates.

In fact, reviewing the Bureau's actions as it relates to the automotive financing industry, NIADA believes that the CFPB's perfunctory efforts have not statistically identified any meaningful automotive finance related problem that would merit additional enforcement or oversight outside of the current myriad of federal laws and regulations to which auto finance companies and dealers must abide.

In an effort to justify its existence and the redundancies of federal regulatory oversight in which it now sits, the CFPB has not adequately created a need for itself in the automotive finance space and as such is attempting to create a problem where none exists. In March 2013, the CFPB released a guidance document to lenders engaged in indirect auto lending (i.e. dealer assisted financing.) The document purports to provide guidance about compliance with the Equal Credit Opportunity Act ("ECOA") to those lenders that engage in dealer-assisted financing where the dealer is permitted to adjust the interest rate at which the lender is willing to buy the contract. The CFPB asserts these compensation policies create significant risk that pricing disparities will result based on race, national origin, or other factors that violate the ECOA; an assumption that has not been proven through consumer complaints. Without disclosing their methodologies, the CFPB suggests that these practices will result in a negative "disparate impact" to consumers in a protected class and that "disparate impact" can only be proven by a statistical evaluation of past credit transactions.

The CFPB's guidance document additionally suggests that a flat fee compensation model for financing profit would alleviate this concern. NIADA categorically rejects the concept of a flat fee as a way to assuage any attempts to adhere to the ECOA. In fact, the CFPB boldly goes so far as to instruct consumers to pay a flat fee, as if markup is illegal on its face. (See, http://www.consumerfinance.gov/askcfpb/727/what-buy-rate.html).

Although the CFPB guidance document gives the appearance that discrimination is their concern, the reality of their actions, coupled with the lack of evidence and methodology disclosure, suggests the CFPB's true desire is to limit dealer profit. Specifically, that because a dealer is compensated in the form of a mark-up at their own discretion that fraud must exist. Discretion to legally and fairly earn a profit rendering financial services does not also mean that fraud exists. Discretion does not equal fraud.

From the moment the CFPB released this guidance document, industry stakeholders, including NIADA, have asked the CFPB to provide empirical evidence that this disparate impact actually exists. Moreover, NIADA and others in the industry have repeatedly asked the CFPB to reveal the statistical method it uses to determine whether "disparate impact" is present in an automotive lender's portfolio. In addition to industry demands for information behind the CFPB's conclusions, multiple members of both chambers of Congress have asked the CFPB to provide this same information. To date, the Bureau continues to withhold this critical information that

would provide the industry, Congress, and public with evidence that a meaningful consumer problem exists and that the CFPB is not in search of a problem to justify its existence.

In addition to the withholding of information, NIADA joins with others who have raised the concern that the CFPB issued this guidance document without holding any public hearing or soliciting public comment. It was not until after a bipartisan letter from 22 Senators was sent to Director Cordray did the Bureau conduct its first public forum on the matter, a full 7 months after the guidance document was issued.

The secrecy with which the CFPB is operating is either intentional or not. Neither is acceptable for any federal agency, much less for one with the wide-swath of oversight, enforcement and funding capacity as the CFPB. The CFPB expects, as they should, that the consumer be treated fairly. NIADA agrees. Consumers cannot adequately purchase or finance a car if material information is willfully withheld or misrepresented. NIADA and its dealers support this standard of open and honest dealing. But, just as that expectation is placed on a dealer or financier; it should certainly be expected of the regulators overseeing the industry.

While NIADA does not believe additional regulations and a new cop on the beat are warranted, we do believe that anything the CFPB does should be open and readily discernible. Only then, can NIADA adequately answer the question it gets more frequently than any other: "What do I need to do to comply?"

Although dealers are not subject to the CFPB's jurisdiction, ultimately, everything the CFPB touches in the auto financing industry will affect NIADA members. To that end, NIADA will continue to engage the CFPB in the discussions that we hope will provide the Bureau with needed information about the industry so they can make informed, open decisions consistent with its statutory mandate. Moreover, when appropriate, NIADA welcomes the opportunity to work with the Bureau on initiatives that educate the public on the car buying and financing experience. This is especially true for our nation's military personnel whom the CFPB has gone to great lengths to protect.

As we recently shared with the Senate Committee on Commerce, Science & Transportation, NIADA stands ready to use our current resources, including our education and training staff, state association directors – many of whom are veterans – and our Automotive Consumer Television Network, which is available to anyone via the Internet at http://niadatv.com/autoconsumer/, to address the needs of car-buying military personnel – active or retired.

In that regard we have produced a simple to understand video that explains the car-buying process for active service members or those returning to civilian life. The video, "Car Buying Tips for Military Service Members," is available for viewing on Automotive Consumer Television, our Internet TV network providing industry information and education for consumers, as well as NIADA.TV and NIADA.com

By way of conclusion, in remarks given in November at the Auto Finance Forum, Director Cordray underscored the CFPB's tenacity by saying,

> "...if anyone is uncertain about our resolve, let me do my best to dispel that uncertainty this morning. We will make every effort to do the job that Congress has set out for us, which is to identify and root out unlawful, discriminatory lending practices, including practices that, in the words of the Supreme Court, are "fair in form but discriminatory in operation." We intend to create a fair marketplace for all consumers. Illegal discrimination in all forms is simply wrong. No one should have to worry about having to pay more to finance a vehicle because of race, ethnicity or any other protected characteristic under federal law."

We agree, with one exception: NIADA believes a fair marketplace already exists for all consumers in the automotive finance industry. NIADA and its members are committed to lawful and non-discriminatory practices, and we are as equally steadfast in our resolve to defend the right of automotive lenders and dealers to lawfully and fairly make a profit in collaboration with their valued customers. NIADA believes this agency has not justified their position of disparate impact in fair lending and by extension they have fallen short of their own Supreme Court litmus test of conducting practices that are "fair in form and discriminatory in operation."

We encourage the Committee to look at fundamental structural changes to the CFPB that will provide for greater openness and accountability for the Bureau's operations. NIADA stands ready to assist the Committee in any way we can.

TOWARD A SUSTAINABLE AND RESPONSIBLE EXPANSION OF AFFORDABLE MORTGAGES FOR MANUFACTURED HOMES



By Howard Banker and
Robin LeBaron
Fair Mortgage Collaborative

FMC FAIR MORTGAGE COLLABORATIVE

A Report from the I'M HOME
Loan Data Collection Project

MARCH 2013

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expanding economic opportunity

I'M HOME
Innovations in Manufactured Homes

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Howard received an M.S. in Urban and Regional Planning from Pratt Institute and a B.A in Medieval Studies from Fordham University.

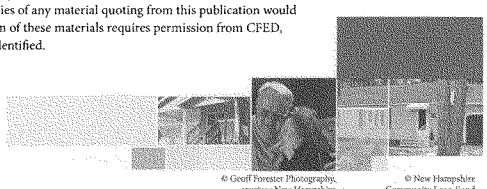
Robin LeBaron is the Deputy Director of the Fair Mortgage Collaborative. He also serves as the Managing Director of the National Home Performance Council, a national nonprofit organization that promotes residential energy efficiency through research and stakeholder engagement, where, among other projects, he has promoted reform of utility cost-effectiveness tests and national data standards. Robin has spent the past twenty years working in the fields of affordable housing, community development and residential energy efficiency. Prior to joining the Fair Mortgage Collaborative and the National Home Performance Council, he served as Executive Director of Hope Community, Inc., an East Harlem-based nonprofit that owned and managed more than 1,200 units of affordable housing.

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The authors welcome comments and suggestions regarding these issues, particularly regarding ways to improve or add to the paper's recommendations. All comments should be sent to **hbanker@fairmortgage.org** or **rlebaron@fairmortgage.org**.

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A special acknowledgement is extended to Data Project participants, both for sharing loan data and permitting their names to be used in this Report. In each case, both senior management and staff were interested in furthering greater understanding of manufactured home loan performance through data aggregation and analysis. While partly motivated by an interest in how their portfolios performed compared to similar portfolios, their enthusiastic support of the I'M HOME Loan Data Collection Project effort and their attention to and interest in our follow-up questions strongly suggest a keen desire to continuing to support affordable MH lending. These organizations include: BECU; Bank2; Community Development Bank; Delaware State Housing Authority; Hope Credit Union; Idaho Housing and Finance Agency; MaineHousing; Minnesota Housing; Montana Board of Housing; New Hampshire Community Loan Fund; New Hampshire Housing Finance Authority; New Mexico Community Development Authority; Pennsylvania Housing Finance Authority; Self-Help Credit Union; State of New York Mortgage Authority; Texas Department of Housing and Community Affairs; Vermont Housing Finance Agency; Wyoming Community Development Authority; the United States Department of Agriculture, and Washington State Housing Finance Commission. New Hampshire Community Loan Fund was and remains an enthusiastic Project participant and is an engaged and evolving MH lender: their ongoing enthusiasm and interest is infectious. Jennifer Hopkins, SF Program Manager, New Hampshire Community Loan Fund; Brian Hudson, Executive Director & CEO Pennsylvania Housing Finance Agency; Susan Semba, VP Homeownership Lending Idaho Housing and Finance Association; and Joyce Allen, Deputy Administrator Rural Housing Service - Single Family Division, United States Department of Agriculture were particularly generous in support of this project.

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FAIR MORTGAGE COLLABORATIVE (FMC)

FMC provides consumers and nonprofit financial intermediaries and lenders with education, research and support built around providing Fair and Safe loans to qualified low and moderate income individuals and families for all homeownership options including manufactured housing. We support the design and delivery of affordable and sustainable loan product offerings for low and moderate income families and identify and advocate against predatory lending products. We pilot national, regional and local lending programs to demonstrate the efficacy of lending to our target population.

FMC was established in 2008 and works from its offices in New York City, New York. www.fairmortgage.org

I'M HOME

Innovations in Manufactured Homes (I'M HOME) is a national initiative managed by CFED which seeks to ensure that owners of manufactured homes have the opportunity to build wealth through homeownership by improving the quality of new and replacement development, enhancing homeowners' ability to enjoy long-term land security, expanding access to safe home financing and encouraging a supportive policy environment.

Since 2005, CFED, national partners including the Ford Foundation, Fannie Mae, NeighborWorks® America, NCB Capital Impact, Next Step ® and ROC USA™, and the I'M HOME network have worked to unlock manufactured housing's potential through I'M HOME.

www.cfed.org/programs/innovations_manufactured_homes

CFED

CFED empowers low- and moderate-income households to build and preserve assets by advancing policies and programs that help them achieve the American Dream, including buying a home, pursuing higher education, starting a business and saving for the future. As a leading source for data about household financial security and policy solutions, CFED understand what families need to succeed. We promote programs on the ground and invest in social enterprises that create pathways to financial security and opportunity for millions of people.

Established in 1979 as the Corporation for Enterprise Development, CFED works nationally and internationally through its offices in Washington, DC; Durham, North Carolina; and San Francisco, California. www.cfed.org

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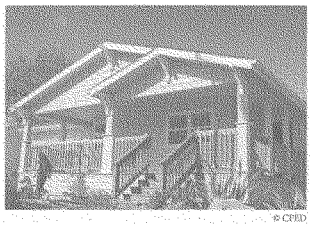
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Executive Summary

The I'M HOME Loan Data Collection Project was initiated in 2011 to collect and analyze origination and performance data for manufactured home (MH) single family loans with the goal of answering the following questions:

- To what extent and from what sources can low- and moderate-income (LMI) households obtain MH single-family loans?
- How well do manufactured housing loans perform, and how does their performance compare with that of mortgage loans for site-built homes?
- Are there products or underwriting features that are correlated with more successful loan performance?



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The Project's long-term goal is to expand access to and availability of affordable financing to low- and moderate-income (LMI) owners and buyers of manufactured homes to enhance household financial security and opportunities for wealth building. As an early step toward this goal, CFED and the Fair Mortgage Collaborative (FMC) addressed the need for more information about MH loans by collecting a large set of data about origination and performance of manufactured homes mortgage loans, totaling $1.7 billion at origination.

We analyzed this data with the goal of identifying best practices in the finance of affordable and sustainable MH homeownership to share with lenders, investors and government insurance and loan programs with the ultimate aim of expanding high quality, affordable MH finance products and practices.

The data analysis produced the following main findings:

1. A variety of lenders and investors provide home mortgage products to owners and buyers of manufactured homes
2. Manufactured home mortgage performance is comparable to general mortgage performance and certain manufactured housing mortgage portfolios ***outperform*** comparable general mortgage portfolios
3. Conventional underwriting criteria such as higher FICO scores, low loan-to-value (LTV) and debt-to-income (DTI) ratios are strongly related to higher loan performance; however, certain MH products and providers demonstrate that conventional underwriting is ***not necessary*** for strong performance
4. Strong performance can be achieved by manual underwriting even with less restrictive downpayment and credit requirements

5. Servicing loans with "high-touch" protocols achieves the strongest performance even with low downpayments and other features perceived to involve higher risk

6. As an investor group, Housing Finance Agencies demonstrate superior performance to others with the same loan product

7. The research conducted for the project resulted in indirect evidence suggesting that homeowner education and counseling result in better loan performance, but the data obtained through the Project was inadequate to properly test this relationship

8. Data shortcomings are widespread and a serious barrier to understanding the factors that contribute to loan performance; improved and standardized data collection and reporting is an urgent need whose importance goes beyond loan underwriting and investment practices to the shape of the nation's future affordable housing landscape

The Report contains recommendations that fall into three major categories:

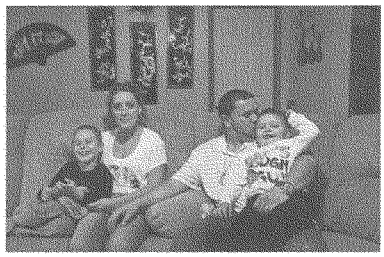
- Improve the quality of data and analysis on affordable loans for manufactured homes to build the evidence base needed to attract more lenders and investment
- Promote product development and innovation among lenders and investors to generate higher volume of affordable MH loans with sustainable performance
- Mobilize a range of stakeholders to integrate the comprehensive MH value proposition – one that accounts for energy efficiency, cost savings, housing choice and more – into mainstream policies shaping the future of housing affordability in the United States

A number of specific steps to consider are described in the Report's Section VI. "Recommendations."

I. Introduction

The I'M HOME Loan Data Collection Project (the Data Project) was initiated in 2011 to collect and analyze origination and performance data for manufactured home (MH) single-family loans with the goal of answering the following questions:

- To what extent and from what sources can low- and moderate-income (LMI) households obtain MH single-family loans?
- How do manufactured housing loans perform, and how does their performance compare with that of mortgage loans for site-built homes?
- Are there products or underwriting features that are correlated with more successful loan performance?



© Geoff Forester Photography, courtesy New Hampshire Community Loan Fund

Innovations in Manufactured Homes (I'M HOME) is a national initiative managed by the Corporation for Enterprise Development (CFED) which seeks to ensure that owners of manufactured homes have the opportunity to build wealth through homeownership by improving the quality of new and replacement development, enhancing homeowners' ability to enjoy long-term land security, expanding access to safe home financing and encouraging a supportive policy environment. As an initiative of I'M HOME, the Data Project's long-term goal is to expand access to and availability of affordable financing for low- and moderate-income (LMI) owners and buyers of manufactured homes so as to enhance their household financial security and opportunities for wealth building.

Finding an almost complete lack of public and relevant MH loan data to answer our questions, CFED and its Data Project partner, the Fair Mortgage Collaborative (FMC) invited a wide set of institutions to share data about origination and performance of manufactured home loans in existing portfolios. The resulting usable dataset totals $1.7 billion in loan volume at origination. We analyzed this data to understand loan performance and to gain insights into best practices in the finance of affordable and sustainable MH homeownership. Through this Report, we seek to share our findings and recommendations for next steps with lenders, investors and government insurance and guarantee programs to move toward our overarching goals by expanding high quality MH finance products and practices.



II. Manufactured Housing Single-Family Finance

More than seventeen million Americans – approximately 5% of the U.S. population – live in a manufactured home. Manufactured homes are constructed in factory conditions to the specifications of the "HUD Code," a national standard first implemented by the U.S. Department of Housing and Urban Development (HUD) in 1976 to ensure the "safety, quality and durability of manufactured homes." Manufactured homes are built in a wide range of sizes and styles for many different market segments, from families with children to singles and retirees. Manufactured homes are well suited to rural locations, although they can also be found in urban and suburban settings, and they are marketed to a broad range of incomes, from low- and moderate-income to affluent households.

Manufactured housing is particularly important as an affordable housing resource, and currently represents the largest supply of new affordable housing units in the U.S. In 2009, the median household income of households in manufactured homes was under $30,000 – well below the national average of $49,777. More than one-fifth (22%) of manufactured housing residents have incomes at or below the federal poverty level.[1]

Access to affordable financing is an important part of the affordable housing equation. Financing that has affordable rates and fees, combined with fair terms and monthly payments that allow for other living expenses and a margin for saving, is essential for lower-income households to attain and maintain financial security. Affordable, long-term financing is also necessary so that homeowners have the opportunity to build wealth through asset appreciation.

There are two serious challenges for households seeking to finance manufactured homes:

- Owners and buyers of manufactured homes tend to pay more for financing, in part due to the way many manufactured homes are titled
- Even when manufactured homes can be titled in the same way as site-built homes, there are many fewer options for mortgage financing

Differences in titling

The majority of the manufactured homes in the U.S. are titled as "personal property" – the same type of property as a car or boat – as opposed to the way that site-built homes are titled as real estate or "real property." In 2008, for example, approximately one third of new manufactured homes were titled as personal property.[2] Titling is governed by state laws that reflect the origins of the industry in the mobile camping trailers of the 1920s and 1930s. This convention has not reflected reality for decades: modern manufactured homes (i.e., those built to the HUD Code) are designed to be permanent homes, and the vast majority is never moved from their original sites. Nevertheless, most manufactured homes are titled as personal property.

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[1] "Manufactured Housing Fact Sheet." CFED. March 2, 2013. http://cfed.org/assets/pdfs/manufactured_housing/Manufactured_Housing_Fact_Sheet_10.17.2011.pdf.

[2] "Manufactured Housing Resource Guide: Conventional Mortgage Financing." CFED & National Consumer Law Center. June 2010. http://cfed.org/assets/pdfs/ ConventionalMortgageFinancing_June2010.pdf.

Manufactured homes titled as personal property are not eligible for long-term mortgages[3] like most homes. These homeowners and buyers can only access "chattel" or personal property loans. Chattel loans generally feature maximum terms of fifteen to twenty years, in contrast to the common 30-year mortgage. Chattel loans typically feature higher interest rates than mortgages: current rates range between 6% and 14%, depending on the borrower's credit history and the size of the downpayment, compared to 2.5% to 5% for mortgages at the present time. Higher interest rates and shorter terms combine to create significantly higher monthly payments for chattel loan borrowers. Chattel loans generally involve lower closing costs than mortgage loans because mortgages typically require more expensive appraisal, title insurance and other services, but the higher closing costs can typically be recovered through lower monthly payments within a matter of months.[4]

Many state laws allow owners to convert the title on their manufactured home from personal property to real property under certain circumstances; however, those provisions are not a solution to the problem. The requirements for conversion of title effectively prevent many homes, such as those on leaseholds in communities, for example, from becoming titled as real property. Differences in provisions from state to state discourage government-sponsored enterprises (GSEs) and other national financial institutions from creating national investment programs for MH loans.

A major recent development is expected to transform this picture. In July 2012, the Uniform Law Commission unanimously adopted a Uniform Manufactured Housing Act that would give all manufactured housing owners and buyers the option of titling their homes as real property.[5] Once adopted by states, the Uniform Manufactured Housing Act will provide a clear and consistent process for owners and buyers to choose the real property titling option and thereby qualify for mortgage finance. The market for mortgages for manufactured homes can be expected to grow significantly with more homes titled as real property, and because of consistency across states that is sought by lenders and investors, including secondary markets.

Fewer options for mortgage financing

An estimated one-quarter to one-third of manufactured homes are already titled as real property and therefore can qualify for mortgage financing.[6] However, even these manufactured housing buyers and owners typically have many fewer options than buyers seeking to finance site-built or even other forms of factory-built homes, such as modular homes, because many mortgage lenders exclude or avoid providing mortgages on manufactured homes. In some cases, lenders may avoid MH on the grounds that MH loans are "difficult" to make or sell. Indeed, Fannie Mae and Freddie Mac, the government-sponsored entities (GSEs) that purchase a substantial majority of the mortgage loans made in the U.S., distinguish between manufactured housing

[3] "Mortgage" is used to mean a legal document by which the owner (or buyer) transfers to the lender an interest in real estate to secure the repayment of a debt, and the mortgage note evidencing the debt.

[4] See Appendix A for calculations comparing costs for a chattel loan to a mortgage.

[5] The Uniform Manufactured Housing Act provides that the homeowner or buyer has the option (not the requirement) to title a manufactured home as real property whether it is on land owned in fee simple or on leased land. See the Uniform Law Commission's website for more information at http://www.uniformlaws.org/NewsDetail.aspx?title=Uniform%20Manufactured%20Housing%20Act%20Approved.

[6] "Manufactured Housing Resource Guide."

loans and other mortgage loans. Fannie and Freddie maintain a distinct set of criteria for mortgages secured by manufactured housing that include more demanding appraisal requirements[7] and, for some lenders, an extra pricing charge. Fannie Mae does not permit state housing finance agencies (HFAs) to include MH mortgages in their preferred pricing programs for securitized loan sales. Most lenders follow the lead established by the GSEs (whether or not they actually sell loans to the GSEs) and treat manufactured housing mortgages as different than mortgages for site-built homes. Many lenders simply avoid MH entirely.

It seems that the predominant reason that lenders do not make MH mortgage loans is a widespread perception that manufactured housing mortgage loans do not perform as well as mortgages secured by site-built homes. Since very little quantitative research has been conducted on manufactured housing loan performance, such assumptions about manufactured housing mortgage loan performance are likely to have been based largely on conjecture or on the performance of individual portfolios.

While many mortgage lenders exclude manufactured housing, there are a number of lenders and investors that currently offer mortgages on manufactured homes. These are an important segment that serves thousands of households each year, many of low- and moderate-income. To our great appreciation, some of the lenders, investors and government programs serving this market participated in the Data Project, making it possible to take an objective look at the performance of MH mortgages.

7. Robin LeBlanc, *Real Homes, Real Value Challenges, Issues and Recommendations Concerning Real Property Appraisals of Manufactured Homes* (Washington, DC: OTED, 2012), 13, 17-24.



III. Methodology

Data Project Participants and the MH Mortgage Dataset

For the Data Project, CFED and FMC made requests for data from a wide range of organizations known to originate or purchase manufactured housing loans. Organizations were invited to participate voluntarily and without remuneration;[8] they were assured that their identities would not be disclosed without their permission.[9] Twenty-three organizations responded. Generally speaking, participants in the Data Project were interested in improving their own understanding of MH loan performance as well as in contributing to an improved body of knowledge on this subject. As part of the Data Project, each data provider was given a confidential analysis comparing their portfolio to comparable ones which included the same or similar loan product types and underwriting requirements, allowing for useful comparisons to support their better understanding of some of the underlying reasons for loan performance.

Although the Data Project originally intended to study both chattel and mortgage loans, chattel loan providers, with one exception, did not respond with data. One organization reported a small number of chattel loans, as well as a larger set of mortgage loans. Due to the small number, the chattel loans were not included in our analysis.[10] Three organizations submitted mortgage loan information that did not contain data that were necessary to analyze loan performance; their data was not included in the analysis. In the end, the dataset (hereinafter known as the "MH Mortgage Dataset") analyzed here contains only mortgage loan information from 20 organizations: the United States Department of Agriculture (USDA), 13 state Housing Finance Agencies (HFAs), three credit unions, two banks, and one community loan fund which is also a community development financial institution (CDFI).[11]

An alphabetical listing of Project participants that have given us permission to list their names includes:

BECU
Bank2
Community Development Bank
Delaware State Housing Authority
Hope Credit Union
Idaho Housing & Finance Association
MaineHousing
Minnesota Housing Finance Agency
Montana Board of Housing
New Hampshire Community Loan Fund
New Hampshire Housing Finance Authority
New Mexico Community Development Authority
Pennsylvania Housing Finance Agency
Self-Help Credit Union
State of New York Mortgage Agency
Texas Department of Housing & Community Affairs
U.S. Department of Agriculture
Vermont Housing Finance Agency
Washington State Housing Finance Commission
Wyoming Community Development Authority

[8] Data from one participant were received through a Freedom of Information Act request.

[9] Listed participants subsequently granted permission for the Data Project to list their names.

[10] Compiling and analyzing chattel data, not possible in this Report due to the lack of chattel data shared, will be important to improving the understanding of how MH loans perform. (See Section VI, Recommendations.)

[11] CDFIs are financial institutions certified by the U.S. Treasury Department CDFI Fund as serving low and moderate-income (LMI) population's needs, as well as meeting a number of other requirements. In addition to the loan fund, other Project participants are CDFIs.

Tables showing data by provider use "Organization Numbers" that were assigned anonymously and not in alphabetical order. While there are 20 data providers, the USDA data were divided into Direct and Guaranteed sets and assigned two Organization Numbers, for a total of 21 Organization Numbers.

Data Elements Requested

From each organization, CFED and FMC requested data that would enable analysis of manufactured housing loan origination and performance. A total of 50 data fields were requested, none of which included nonpublic personal information.[12]

Basic loan characteristics requested included:

- Date (year) of origination
- First payment date
- Loan amount at origination
- Interest rate, fixed or adjustable
- Location of home and property securing loan by state
- Loan product type
- Type of mortgage insurance, coverage and company, if any

Underwriting parameters recorded for each loan requested included:

- Middle FICO score
- Loan-to-value (LTV) ratio
- Debt-to-Income ratios (DTI) (front- and back-end)
- Loan interest rate
- Monthly payment (both principal & interest, "P&I," and principal, interest, taxes and insurance, "PITI")

Loan performance and delinquency details were also requested. Project participants were asked to identify whether loans were paid in full (PIF), current, late, or in foreclosure. If loans were late, participants were asked by how many days: 30, 60, 90, 120 or more than 120.[13]

Participants were invited to provide the data to the extent that they were able, with the understanding that they might not be able to provide all fields, or might have information in a format different than that requested. In some cases, participants indicated that they needed to compile information from more than one database system; for example, an origination system and a servicing system. No participant was able to provide all the data fields requested.

Data Review and "Clean-up"

Each participant's total loan set was reviewed for usability and internal consistency. All second mortgages (equity loans), site-built mortgages and other non-MH loans were removed (900 loans totaling $1.338 billion). The remaining loans were reviewed to ensure that sufficient information for analysis was provided about each loan. (Three providers' datasets totaling 703 loans for $75.1 million were removed because they did not provide enough data for analysis. Individual records from other providers were also removed for this reason.) After removing unusable loans, the MH Mortgage Dataset contains useable data on 16,557 loans totaling $1.652 billion at origination.

[12] A full list of all requested data fields is provided as Appendix B.

[13] See section, "Performing versus Nonperforming Loans," on p. 16.

Years of Loan Origination

Loan data were received for loans originated as far back as 1982. Loans with significant remaining balances are concentrated in years from 2001 through 2012. The totals by year are shown in the following table.[14]

TABLE 1 – NUMBER, VOLUME AND PERFORMANCE OF LOANS BY YEAR

YEAR	LOANS (#)	ORIGINAL BALANCE	CURRENT BALANCE	PERFORMANCE (% OF CUR. BAL.)
1982	11	$266,875	$0	N/A
1983	2	$57,925	$0	N/A
1984	4	$162,550	$0	N/A
1985	4	$171,900	$0	N/A
1986	6	$282,930	$0	N/A
1987	0	$0	$0	N/A
1988	11	$499,301	$24,706	100.0%
1989	28	$1,335,606	$45,898	100.0%
1990	17	$836,539	$49,581	100.0%
1991	16	$837,429	$0	N/A
1992	40	$2,153,226	$144,385	100.0%
1993	44	$2,288,363	$135,866	100.0%
1994	75	$4,887,060	$474,851	100.0%
1995	125	$8,351,049	$522,338	100.0%
1996	111	$7,532,782	$660,111	100.0%
1997	162	$13,421,157	$2,009,260	93.2%
1998	158	$10,788,871	$4,168,410	84.9%
1999	227	$16,281,248	$6,773,542	86.0%
2000	510	$41,910,513	$17,390,624	53.4%
2001	638	$52,275,435	$24,938,528	56.3%
2002	722	$62,338,099	$34,638,789	67.1%
2003	971	$82,134,070	$48,131,192	70.5%
2004	1,143	$103,292,635	$70,553,119	75.5%
2005	1,402	$138,456,773	$103,249,791	77.9%
2006	1,486	$162,773,382	$127,022,192	78.0%
2007	1,647	$189,167,808	$158,933,368	79.9%
2008	1,461	$161,517,122	$141,338,822	79.6%
2009	1,663	$187,458,217	$176,382,218	89.5%
2010	2,079	$230,843,176	$225,187,637	95.6%
2011	1,021	$113,370,637	$111,959,935	98.8%
2012	36	$3,767,923	$3,762,307	100.0%
Not Provided	737	$54,390,635	$45,361,840	94.2%
TOTAL	16,557	$1,651,851,735	$1,203,859,311	84.1%

[14] "Performance" in Table 1 is defined in the following section.

Performing versus Nonperforming Loans

While information on the number of days late (30, 60, 90, 120 or more than 120) was requested, it was determined that in many cases a simple binary distinction between "performing" and "nonperforming" loans better served many of the analytical purposes of this study. Accordingly, all loans paid in full (PIF), current, and 59 days late or less are classified in this Report as "performing," and all loans 60 or more days late or foreclosed are categorized as "nonperforming." The term "performance rate" is used in the following discussion to indicate the percentage of performing loans compared to total loans in a given portfolio or category of mortgages.

Percentages and Averages

Tables showing loan performance as percentages calculate those percentages using the current balances of the loans, as opposed to origination amounts (i.e., principal balances on the day the loans closed). Percentages are shown unless the loan number is 10 or less, when the actual number of loans and the total number of loans (e.g., "9 of 10") is given.

Where other percentages appear in tables, unless otherwise specified, these are percentages of loan volume by dollar amount (and not by number of loans). Where tables for loan and underwriting characteristics show weighted averages, these averages are weighted by loan size in dollars. The implication of this weighting is that the characteristics of larger loans are weighted more heavily than those of smaller loans.

Treatment of Loan Underwriting Parameters

Data about underwriting parameters were not consistently reported by data providers for all loans. Loans that were missing one or two underwriting characteristics, but contained other relevant data fields, were included in the total dataset, and were included for tables in which the missing characteristic was not directly relevant. For example, a loan record that contained most of the loan characteristics, including interest rate, loan-to-value ratio (LTV), debt-to-income ratio (DTI), and loan size, but did not include the borrower's middle FICO score, was included in tables dealing with general performance of a product or lender, but was not included in tables showing average FICO score by institution or product type.

Table 2 shows the number and percentage by number of loans that included data on three key underwriting characteristics: FICO score, LTV and DTI by Project participant (DTI is broken out as Front-End and Back-End DTI).

Only eight organizations provided information on FICO score for 95% or more of loans, although most provided this information for some of them. (USDA and one other organization did not provide FICO scores.) Virtually all Project participants provided LTV information on all or almost all loans. Twelve out of 20 organizations provided DTI information; however, most did not specify whether the DTI was a front- or back-end ratio, a critical piece of information for analysis.[15] So in the end, only five organizations provided useable DTI information.

[15] See debt-to-income ratio discussion on pages 29-30.

TABLE 2 - NUMBER AND PERCENTAGE OF LOANS FOR WHICH UNDERWRITING PARAMETERS ARE AVAILABLE BY ORGANIZATION[16]

	FICO		LTV		FRONT-END DTI		BACK-END DTI		TOTAL
	(#)	(%)	(#)	(%)	(#)	(%)	(#)	(%)	(#)
Org_1	26	96.3%	27	100.0%	0	0.0%	0	0.0%	27
Org_2	621	82.8%	750	100.0%	0	0.0%	0	0.0%	750
Org_4	178	100.0%	178	100.0%	178	100.0%	178	100.0%	178
Org_5	5	10.0%	50	100.0%	0	0.0%	0	0.0%	50
Org_6	1312	100.0%	1312	100.0%	0	0.0%	0	0.0%	1,312
Org_7	434	59.7%	727	100.0%	0	0.0%	0	0.0%	727
Org_8	48	98.0%	49	100.0%	0	0.0%	0	0.0%	49
Org_9	53	21.2%	250	100.0%	0	0.0%	249	99.6%	250
Org_10	45	31.0%	145	100.0%	0	0.0%	0	0.0%	145
Org_11	0	0.0%	534	98.7%	0	0.0%	0	0.0%	541
Org_12	45	5.5%	825	100.0%	0	0.0%	825	100.0%	825
Org_13	2,209	95.4%	2,309	99.7%	2,315	100.0%	0	0.0%	2,315
Org_14	155	100.0%	155	100.0%	155	100.0%	155	100.0%	155
Org_15	51	39.5%	129	100.0%	0	0.0%	0	0.0%	129
Org_16	42	93.3%	45	100.0%	0	0.0%	0	0.0%	45
Org_17	535	97.6%	0	0.0%	0	0.0%	0	0.0%	548
Org_18	0	0.0%	61	100.0%	0	0.0%	0	0.0%	61
Org_19	737	100.0%	737	100.0%	0	0.0%	0	0.0%	737
Org_20	0	0.0%	5,638	99.7%	0	0.0%	0	0.0%	5,654
Org_21	0	0.0%	2,057	99.9%	0	0.0%	0	0.0%	2,059
TOTAL	6,496	39.2%	15,978	96.5%	2,648	16.0%	1,407	8.5%	16,557

Analyzing Data by Provider Type

For a number of analyses, the data providers are grouped into three categories:

- **Originators**, which make mortgage loans to qualified borrowers and either hold these loans in their portfolios or sell them to GSEs or other investors, including HFAs. Some of their loans may be guaranteed by FHA Title II[17], USDA Rural Development 502 or Veterans Administration. The Originator category includes banks, credit unions and CDFIs.

- **State housing finance agencies (HFAs)**, which, to further their specific mission requirements to help low- and moderate-income households achieve homeownership, purchase manufactured housing loans from approved originators (lenders) in their state or originate these loans themselves. Some of these loans are guaranteed by FHA Title II, USDA Rural Development 502 or Veterans Administration. Some of these loans may be sold by the HFA to a GSE; others may be held in the HFA's portfolio.

- **United States Department of Agriculture (USDA)**, which offers the USDA Rural Development (RD) 502 program that both originates manufactured housing mortgage loans ("USDA Direct") and guarantees loans made by originators ("USDA Guaranteed"). As a provider type, "USDA" refers to the data received from the USDA, as distinguished from data on USDA Guaranteed loans purchased by HFAs, which are labeled as "HFA-USDA."

[16] In Table 2 and other tables showing data by organization, participants are designated by anonymously-assigned number in non-alphabetical order. Although there were 20 Project participants, USDA is assigned two numbers, one for the 502 Direct and one for the 502 Guaranteed loans, so there are 21 numbered organizations. Org 3 is omitted from this table.

[17] FHA Title II requires the homeowner to own their land in fee simple, thereby allowing a mortgage to be made to home, land and improvements.

For some analyses, Originators and HFAs were grouped together to compare with USDA and non-MH datasets.

Analyzing Data by Product Type

For some analyses, the dataset was divided into six mortgage loan product types for comparative purposes:

- **Conventional mortgages (Conventional)**: Loans that have 80% or less loan-to-value (LTV) at the time of origination, requiring a high downpayment by the borrower; lenders and investors generally consider conventional loans to be lower risk than other loan types
- **Conventional mortgages with private mortgage insurance (Conventional with MI or CMI)**: Loans that have LTV ratios between 80 and 98%; the portion of the loan above 80% LTV is insured by a third party (mortgage insurer), and the borrower covers the cost of the insurance through one of several forms of payment
- **Self Insured mortgages (SI or Self Insured)**: Loans that are permitted to go up to 100% LTV but do not have third party-provided mortgage insurance. The borrower pays a higher interest rate than they would for a similar loan with mortgage insurance in order to cover the increased risk
- **FHA-insured mortgages (FHA)**: Loans that meet FHA Title II requirements and have up to 97.5% LTV; they are made by FHA-approved lenders and insured by FHA for a premium
- **USDA Guaranteed and Direct mortgages**: Loans to eligible rural borrowers that meet USDA RD 502 requirements which allow up to 100% LTV; they are either originated by USDA ("Direct" loans), or originated by another lender and guaranteed by USDA ("Guaranteed" loans)
- **VA mortgages (VA)**: Loans to eligible veteran and military borrowers that meet Veterans Administration (VA) requirements which allow up to 102% LTV; made by VA-approved lenders and guaranteed by the VA

Table 3 shows the same information as Table 2, this time by product type.

TABLE 3 - NUMBER AND PERCENTAGE OF LOANS FOR WHICH UNDERWRITING PARAMETERS ARE AVAILABLE BY PRODUCT TYPE

	FICO		LTV		FRONT-END DTI		BACK-END DTI		TOTAL
	(#)	(%)	(#)	(%)	(#)	(%)	(#)	(%)	(#)
Conventional	1,551	86.0%	1,794	99.5%	723	40.1%	110	6.1%	**1,803**
Conventional with MI	2,044	68.4%	2,981	99.8%	944	31.6%	660	22.1%	**2,988**
Self Insured	272	28.2%	956	99.3%	132	13.7%	156	16.2%	**963**
FHA	2,197	87.2%	2,043	81.1%	644	25.6%	373	14.8%	**2,520**
VA	268	77.7%	284	82.3%	80	23.2%	73	21.2%	**345**
USDA	164	2.1%	7,920	99.8%	125	1.6%	35	0.4%	**7,938**
Total	**6,496**	**39.2%**	**15,978**	**96.5%**	**2,648**	**16.0%**	**1,407**	**8.3%**	**16,557**

For some comparisons, FHA, USDA and VA loans purchased by HFAs are shown to illustrate the performance of HFAs as investors in those types of loan products. In those cases, the designations used are "HFA-FHA," "HFA-USDA" and "HFA-VA."

Comparing MH to Non-MH Loan Performance

Because one of the goals of this study was to compare the performance of manufactured housing mortgage loans with mortgage loans secured by site-built homes, FMC obtained data from the Office of the Controller of the Currency (OCC) on first lien loans originated during the last ten years. As of the end of 2011, the institutions reporting to and regulated by OCC serviced 31.4 million mortgages secured by one- to four-family homes totaling more than $5.4 trillion in unpaid balances. The OCC dataset represents 60% of outstanding first mortgages in the U.S. The OCC dataset does not identify which or how many of its loans are secured by manufactured housing, but the large majority are not MH.

The primary reason for selecting the OCC dataset for use in this study was that it contains loan performance data. While it does not provide the same degree of loan level data as the MH Mortgage Dataset, it provides loan groupings by FICO scoring and contemporary credit risk categories (prime, Alt A, and Subprime) that allow comparisons with the manufactured housing mortgage loans in the MH Mortgage Dataset. In the OCC dataset, Prime loans are loans with FICO scores of 660 or higher, Alt A loans have FICO scores between 620 and 659, and Subprime loans have FICO scores below 620.

The total OCC dataset can be divided into three different categories: GSE loans (i.e., loans purchased by Fannie Mae or Freddie Mac), government guaranteed loans (i.e., loans guaranteed by FHA or VA), and loans privately owned by banks and thrifts. The GSE loans are the least risky and highest performing group, primarily because of the generally more conservative underwriting policies used in origination. The banks and thrift loans are the riskiest, largely due to the inclusion of a high number of legacy subprime loans made before the housing credit crisis changed the market.

The government guaranteed loans category is the most similar in terms of loan type, underwriting characteristics and borrower profile to the loans in the MH Mortgage Dataset. In both loan sets, loan sizes (and thus property values) are low to moderate, the average loan-to-value ratio is relatively high, and the borrowers are middle- to low-income households with slightly higher than average DTI ratios and lower than average credit scores. Accordingly, in Table 4, the government guaranteed OCC loan set was used for comparison with the MH Mortgage Dataset.

Use of Statistical Analyses

In several cases, our analyses revealed products and practices that appeared to be strongly associated with excellent loan performance. To further test these associations, a series of statistical tests were conducted to test the extent to which performance could be explained by traditional underwriting criteria (e.g. FICO and LTV), and the extent to which it appeared likely that another factor, such as the nature of the specific product or practice in question, might reasonably be considered to be causing strong loan performance. (See Appendix C. Statistical Analysis.)

Information not part of the original data request

The original data request focused on loan origination and performance. Information about underwriting guidelines and product marketing, about fees and costs (other than interest rate), about applicant and borrower counseling and education, and about servicing procedures (e.g., methods of notification and collection) were not part of the original request for data. However, FMC subsequently found anecdotal evidence suggesting that both servicing procedures and applicant/borrower counseling/education might influence loan performance, and issued follow-up requests for information, particularly regarding how loans were serviced.

Geographical analysis not performed

Analysis by geography was not performed because most of the data providers served specific and limited areas, and, as a result, any variations observed are more likely to result from differences among providers than as a result of geographic variation. Future studies involving larger national datasets could support regional analyses.[18]

Analyses that could not be performed

Some data fields that were requested were not reported by any participant because the data had not been recorded or maintained by the lender, the investor or the third party servicing company charged with maintaining performance data for the loan originator or investor. We believe that these missing data fields could contribute to better understanding loan program outcomes and loan performance. In addition, during the course of the Data Project, there were additional kinds of information that were not part of our original data request that we have come to understand to be important to capture and analyze.

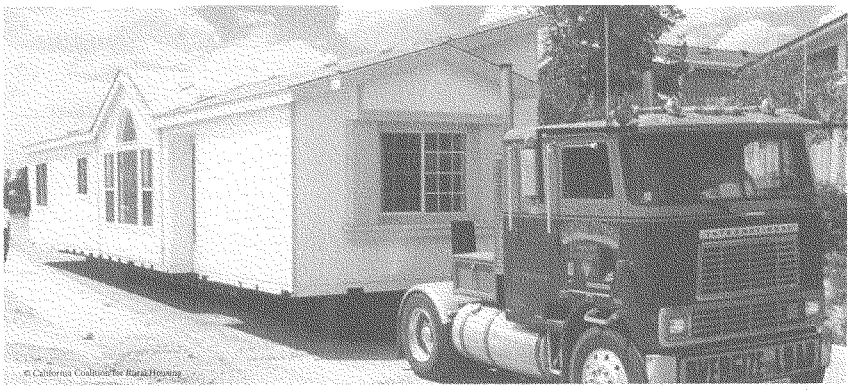
Some of the parameters that could not be analyzed because of lack of data include:

- Borrower income (very low, low and moderate-income)
- New home purchase versus refinance
- Age of home
- Size of home (single-, double-, multi-section)
- ENERGY STAR® (yes or no)
- Whether applicant/borrower received counseling or education
- Whether borrower received downpayment assistance, and what amount and type
- Net loss (loss severity)

A further discussion of the need for more data and analyses can be found in Section V. "Need for Better Data Collection and Analysis."

All conclusions presented in this Report, unless otherwise noted, are drawn from data tables included in the Report.

[18] Such geographical analyses would be desirable, as further discussed in Section V. "Need for Better Data Collection and Analysis."



IV. Findings

1. A variety of lenders and investors provide home mortgage products to owners and buyers of manufactured homes

The Data Project found that mortgages on manufactured homes are offered by a variety of types of financial institutions including credit unions, banks[19] and community development loan funds.[20] These institutions either retain these MH mortgages on their balance sheets and/or sell loans to investors, including Fannie Mae, Freddie Mac, Ginnie Mae and state housing finance agencies, among others.

Three major federal programs insure or make loans on manufactured homes: FHA Title I (chattel loans) and Title II (mortgage loans), USDA Rural Development 502 program Guaranteed and Direct mortgages, and Veterans Administration mortgages. There are a number of additional loan programs in particular states and for certain eligible applicants, including a number of state housing finance agency first-time homebuyers programs. Another federal program, HUD Section 184, supports mortgages, including those for manufactured homes, on tribal lands.

The Data Project received data on mortgages made in all 50 states and the District of Columbia. While the Data Project was not designed to be and is not an exhaustive or statistically representative sampling of MH loan originators, the Project's outreach to participants and others, and the data compiled, suggest that mortgages are available to at least some owners and buyers of manufactured homes in most parts of the country. GSEs and many state HFAs purchase MH mortgages. They have approved anywhere from hundreds to thousands of loan originators of all lender types, able to sell MH loans to them under acceptable terms and conditions. We did not seek nor did we collect a list of names for the subset of those GSE and HFA-approved originators who originate MH loans.

[19] Notable among banks are smaller community banks in certain local markets.

[20] Notable among community development loan funds is New Hampshire Community Loan Fund, which in 2012 expanded its successful MH lending in that state from serving only homeowners in resident-owned communities (ROCs) to also serving fee-simple homeowners and buyers.

2. MH mortgage loans can perform as well as mortgage loans secured by site-built homes

As described in Section II, lenders and investors frequently believe that loans secured by manufactured housing perform badly. Fannie Mae, for example, is so skeptical about manufactured housing mortgages that it does not allow state HFAs to include them in loan sales or securitized sales with preferred pricing. To study this issue objectively, FMC compared the MH Mortgage Dataset to a dataset from the Office of the Comptroller of the Currency (OCC) of home mortgages, primarily secured by site-built homes.[21]

a. Comparing general mortgage performance to the MH Mortgage Dataset

As an initial comparison, the MH Mortgage Dataset was divided into two broad categories by data provider: the USDA loans in one category, and the Originator and HFA loans in the other ("non-USDA Dataset"). This separation allows direct comparisons between and among these specific types of participating providers.

These datasets were compared to the government guaranteed loans in the OCC portfolio report, which, as discussed in the Methodology section, are the most similar in make-up to the types of loans in our MH dataset – low to moderate property values, middle- to low-income borrowers with slightly higher than average DTI ratios and lower-than-average credit scores.

TABLE 4 - PERFORMANCE OF MH AND OCC MORTGAGES

DATA PROVIDERS	PERCENT PERFORMING AS OF 12/31/12
OCC Government Guaranteed Dataset	89.2%
MH Mortgage non-USDA Dataset	90.3%
MH Mortgage USDA Dataset	77.9%

The performance of the MH Mortgage non-USDA (Originator plus HFA) MH Dataset has a performance profile that is very similar to, but slightly better than, that of the OCC Government Guaranteed loans: for OCC 89.2% of loans are performing and for the MH Mortgage non-USDA Dataset 90.3% are performing. The performance of the USDA loans from the MH Mortgage Dataset, by contrast, is not as strong: only 77.9% of the loans are performing.

This comparison indicates that some MH loans do, in fact, perform poorly, as indicated by the weak performance of the USDA dataset relative to that of the OCC dataset. However, the performance of the non-USDA MH loans, which is very similar to the loans in the OCC dataset, indicates that ***significant numbers of MH mortgage loans perform as well as mortgages made to site-built homes.***

It should be noted that the fact that the USDA portfolio performed relatively poorly does not indicate that USDA manufactured housing loans always perform badly. As discussed below under Finding 6, some originators and investors have portfolios of USDA loans that perform well.

[21] The OCC dataset is more fully described in the Methodology section, page 19.

b. MH and general home mortgage comparison by three categories

As discussed in the Methodology section above, the OCC dataset is divided into three sets: "Banks" (loans retained by lending institutions in their own portfolios), "Guaranteed" (loans guaranteed by government agencies), and "GSE" (the highest-performing loans purchased by Fannie Mae and Freddie Mac). In Table 5, we divided the MH Mortgage Dataset's Originator and HFA loans into three comparable categories to look at performance relative to the OCC categories. The MH "Banks" category includes banks and credit unions; the MH "Guaranteed" category includes HFA-purchased FHA, VA and USDA loans; and the MH "GSE" category includes Originator loans sold to GSEs.

The fourth column, "MH Mtg Dataset" represents the total MH Mortgage Dataset -- including USDA loans and loans that did not fit into the three preceding categories -- rather than the sum of the three preceding columns.

TABLE 5 - PERFORMANCE FOR OCC AND MH MORTGAGE DATASET BY THREE CATEGORIES

OCC DATASET	BANKS[1]	GUARANTEED[2]	GSE[3]	ALL OCC
Current	82.6%	84.2%	93.1%	87.9%
30-59 Days DQ	3.8%	5.0%	3.0%	3.0%
Subtotal Performing:	**86.4%**	**89.2%**	**96.1%**	**90.9%**
Seriously DQ:				
60-89 Days DQ	1.5%	2.0%	0.7%	1.2%
90+ Days DQ	3.4%	4.7%	1.2%	2.8%
30+ Days in BK	1.6%	1.1%	0.6%	1.0%
Subtotal Seriously DQ:	**6.5%**	**7.8%**	**2.5%**	**5.0%**
Foreclosure	7.2%	3.0%	2.4%	4.1%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

MH MORTGAGE DATASET	BANKS[4]	GUARANTEED[5]	GSE[6]	MH MTG DATASET
Current	85.8%	84.3%	97.5%	78.7%
30-59 Days DQ	6.0%	4.1%	0.0%	5.4%
Subtotal Performing:	**91.8%**	**88.5%**	**97.5%**	**84.1%**
Seriously DQ:				
60-89 Days DQ	2.1%	1.4%	1.0%	1.9%
90+ Days DQ	3.2%	0.8%	0.5%	0.9%
30+ Days in BK	2.9%	8.7%	1.0%	11.8%
Subtotal Seriously DQ:	**8.2%**	**11.0%**	**2.5%**	**14.7%**
Foreclosure	0.0%	0.6%	0.0%	1.3%
Total	**100.0%**	**100.0%**	**100.0%**	**100.0%**

(1) Banks as listed in OCC. Notes file per OCC report
(2) FHA or VA
(3) Fannie and Freddie
(4) Includes credit unions
(5) FHA, VA, USDA
(6) Fannie and Freddie

The table shows that MH loans outperformed the OCC dataset in two out of three categories. While the Guaranteed category performed very similarly (89.2% for OCC versus 88.5% for MH Mortgage Dataset performing at 59 or less days late), in the Bank category, MH outperforms the OCC loans (91.8% versus 86.4% performing, respectively). Similarly, the MH GSE loans outperform the OCC GSE loans (97.5% versus 96.1% performing, respectively).

While the overall OCC dataset outperforms the MH Mortgage Dataset by 90.9% to 84.1%, it is interesting to note that a significant number of MH lenders (HFAs and Originators) can originate loans that perform significantly better than the comparable set of (primarily) site-built mortgages. Indeed, it is clear that MH loans can perform extremely well.

The remainder of this paper identifies some of the characteristics of MH mortgage lenders and loans that result in strong performance.

3. Performance is driven by loan type, data provider type and underwriting parameters

We turn now to analysis and comparisons within the MH Mortgage Dataset. FMC compared the basic underwriting parameters and performance of manufactured housing mortgages loans by product type and by data provider type. These comparisons indicate that MH mortgage loans can perform well, with performance varying significantly by both product and provider type.

a. MH loan performance and loan characteristics by product type

TABLE 6 - LOAN PERFORMANCE COMPARISON BY PRODUCT TYPE

	CONVEN.	CONVEN. MI	SELF-INSURED	HFA FHA
CHARACTERISTICS:				
WTD. AVG. LOAN SIZE	$ 89,211	$ 100,190	$ 60,754	$ 105,984
WTD. AVG. LOAN AGE (MOS)	45	58	39	34
WTD. AVG. INTEREST RATE (%)	5.3	5.9	7.0	5.5
WTD. AVG. AGE AT DEFAULT (MOS)	23	21	48	24
UNDERWRITING:				
WTD. AVG. FICO	742	716	675	676
WTD. AVG. LTV	69	94	93	97
PERFORMANCE:				
PERFORMING LOANS ($MM)	$ 129	$ 190	$ 34	$ 185
PERFORMING LOANS (#)	1,923	2,138	675	2,216
PERFORMING LOANS (%)	98.1%	88.8%	91.6%	87.9%
NON-PERF LOANS ($MM)	$3	$27	$4	$28
NON-PERF LOANS (#)	32	244	38	276
NON-PERF LOANS (%)	1.9%	11.2%	8.4%	12.1%
PIF	-	-	-	-
CURRENT	$ 129,333,482	$ 190,384,787	$ 34,330,671	$ 184,734,214
60-120 DAYS	$ 1,273,796	$ 5,170,086	$ 1,553,100	$ 4,841,826
120+ DAYS	$ 1,073,618	$ 7,025,854	$ 1,602,150	$ 18,318,994
FORECLOSURE	$ 211,675	$ 11,910,098		$ 7,495,683
PERFORMING LOANS	$ 129,333,482	$ 190,384,787	$ 34,330,671	$ 184,734,214
NON-PERFORMING LOANS	$ 3,287,745	$ 22,154,104	$ 3,837,517	$ 28,213,337
TOTAL	$ 131,890,571	$ 214,490,825	$ 37,485,921	$ 210,160,717

	HFA VA	HFA USDA	USDA GUAR	USDA DIRECT
CHARACTERISTICS:				
WTD. AVG. LOAN SIZE	$ 122,821	$ 115,829	$ 111,122	$ 88,168
WTD. AVG. LOAN AGE (MOS)	42	40	38	NO
WTD. AVG. INTEREST RATE (%)	5.5	5.2	6.0	5.1
WTD. AVG. AGE AT DEFAULT (MOS)	23	43	41	52
UNDERWRITING:				
WTD. AVG. FICO	674	682	Not Provided	Not Provided
WTD. AVG. LTV	101	99	97	94
PERFORMANCE:				
PERFORMING LOANS ($MM)	$25	$49	$398	$116
PERFORMING LOANS (#)	303	205	4,835	1,773
PERFORMING LOANS (%)	84.5%	88.9%	76.8%	82.3%
NON-PERF LOANS ($MM)	$6	$3	$121	$29
NON-PERF LOANS (#)	42	20	1,044	286
NON-PERF LOANS (%)	15.5%	11.1%	23.2%	17.7%
PIF				$ 7,049,519
CURRENT	$ 24,832,893	$ 18,823,733	$ 298,163,339	$ 114,608,410
60-120 DAYS	$ 1,993,260	$ 587,293	$ 15,721,062	$ 6,530,340
120+ DAYS	$ 2,201,546	$ 1,158,090	$ 104,658,785	$ 18,386,412
FORECLOSURE	$ 1,449,025	$ 609,439	$ 158,129	
PERFORMING LOANS	$ 24,832,893	$ 18,823,733	$ 298,163,339	$ 115,657,929
NON-PERFORMING LOANS	$ 5,609,964	$ 2,880,813	$ 120,537,976	$ 29,376,800
TOTAL	$ 29,376,724	$ 21,778,553	$ 418,701,315	$ 140,574,681

Table 6 demonstrates that, as expected, there is a general relationship between traditional underwriting criteria and performance: loan types with traditional underwriting generally performing well. Specifically, the Conventional loans, with high average FICO (742) and low LTV (69%), perform extremely well, with 98.1% of all Conventional loans performing. Surprisingly, Self Insured loans also perform well (91.6% performing) despite lower average FICO score (675) and much higher average LTV (93%). Self Insured loans are the second-highest performing loan type, performing better than Conventional with MI (88.8% performing). The strong performance of the Self Insured product type is further explored and discussed in Finding 4.

It appears that the when the Data Provider is an HFA, there is a difference in results for the Product Type. That is, USDA loans purchased by HFAs, broken out as HFA-USDA in the table above, also perform reasonably well, despite the fact that they are characterized by high average LTV (99%) and low average FICO scores (682): 88.9% are performing. This performance rate compares well to the 98.1% for Conventional loans and about the same as the 88.8% for Conventional with Mortgage Insurance. It also compares favorably with the performance of the OCC government-guaranteed loans (89.2% performing) from Table 5. The performance of HFA portfolios is further discussed in Finding 6.

These comparisons suggest that while traditional underwriting approaches are important determinants of performance, other factors can also influence the success of a loan portfolio, in that a loan portfolio can be successful even if it characterized by relatively low average FICO scores and high LTVs.

b. MH loan performance and loan characteristics by provider type

TABLE 7 - LOAN CHARACTERISTICS AND PERFORMANCE BY PROVIDER TYPE

	HFAs			ORIGINATORS		
Characteristics		(#)	(%)		(#)	(%)
Wtd. Avg. amount	97,481			95,911		
Wtd. Avg loan age	46			40		
Wtd. Avg. Interest Rate	5.57			5.80		
Wtd. Avg. Age at Default(yrs)	24			47		
Underwriting:						
Average FICO	691			740		
LTV	94			75		
Front-end DTI	24			Not Provided		
Back-end DTI	40			Not Provided		
Product Breakdown:						
Conventional		1,189	16.2%		614	40.3%
Conventional with MI		2,780	38.0%		208	13.7%
Self Insured		290	4.0%		673	44.2%
FHA		2,492	34.0%		28	1.8%
VA		345	4.7%		-	0.0%
USDA		225	3.1%		-	0.0%
Performance:						
PIF		1,466	0.0%		224	0.0%
Current	431,690,379	4,839	93.0%	118,221,003	1,223	94.9%
30 Days Delinquent	31,162,227	343	6.0%	1,668,036	24	1.3%
60 Days Delinquent	7,338,690	73	1.4%	1,501,257	19	1.2%
90 Days Delinquent	4,326,009	48	0.8%	1,413,405	25	1.1%
120+ Days Delinquent	29,480,436	263	5.7%	1,737,816	18	1.4%
Foreclosure	16,375,920	291	3.1%	-	-	0.0%
Performing Loans	**462,652,506**	**6,646**	**88.9%**	**119,889,039**	**1,471**	**96.3%**
Non-Performing Loans	**57,491,055**	**675**	**11.1%**	**4,652,478**	**62**	**3.7%**
Total	**$20,143,562**	**7,321**	**100.0%**	**124,541,517**	**1,533**	**100.0%**

A comparison of loan performance by two categories of Data Providers – Originators and HFAs – shows that traditional underwriting criteria have a predictable correlation with performance. Originators, including the participating banks, credit unions and CDFIs, reported a combined dataset with a significantly higher weighted average FICO score than that of all loans purchased by HFAs (740 vs. 691, respectively). Similarly, the average weighted loan-to-value ratio reported by the Originators is significantly lower than that required for all loans purchased by HFAs (75% to 94%, respectively). The Originators dataset performed better than the HFA dataset: 96.3% of loans in the Originator set were performing, while only 88.9% of HFA loans were performing. This is understandable, given HFAs' mission to serve low- and moderate-income households and first-time homebuyers. Furthermore, as discussed in Finding 5, a closer look shows that certain HFAs experienced loan performance comparable to that of the Originators group.

c. Underwriting parameters and loan performance; variability of performance

The data on loan performance by data provider (Table 8) show great variations. Several data providers of all types and sizes achieve exceptional loan performance of 96% to 99%. Performance rates for other data providers ranged from 71% to 94% with most in the eighties and low nineties.

Many of the best performing portfolios included loans associated with the traditional characteristics of "strong" credit criteria: that is, average FICO scores above 700 and LTV below 80%; however, this was not always true. Some of the best performance was associated with serving relatively hard-to-reach borrowers: for example, an average FICO score of 687 and average LTV of 95. This indicates that it is possible to offer MH mortgages with sustainable and even superior performance to lower-income borrowers, who tend to have less ability to make large downpayments.

(c.1) Variability of performance by product type

Difference in the mix of products offered is one possible explanation for differences in portfolio performance. The data, however, suggest that the same product can perform very differently by data provider. For example, Table 8 shows that performance for Conventional mortgages ranges from 100% to 92.1%, while for Conventional with Mortgage Insurance, performance ranges from 98.3% to 71.8%.

TABLE 8 – LOAN PERFORMANCE BY DATA PROVIDER AND PRODUCT TYPE

(loan amounts in millions of dollars)

	CONVEN	CONV W MI	SELF INSURED	FHA	VA	USDA	TOTAL	ASSET RANGE[22]
Org_1	N/A	N/A	N/A	65.7%	N/A	N/A	**100.0%**	<$25MM
Org_2	98.2%	95.4%	N/A	1 of 1	N/A	N/A	**97.5%**	>$25MM
Org_3	N/A	N/A	N/A	N/A	N/A	N/A	**10 of 10**	<$25MM
Org_4	N/A	2 of 2	N/A	65.7%	82.9%	N/A	**67.5%**	<$25MM
Org_5	N/A	88.3%	N/A	N/A	N/A	N/A	**88.3%**	<$25MM
Org_6	100.0%	97.1%	100.0%	98.9%	95.2%	100.0%	**98.4%**	>$25MM
Org_7	97.8%	86.7%	90.8%	87.9%	80.8%	82.1%	**88.2%**	>$25MM
Org_8	1 of 1	7 of 7	5 of 5	90.7%	1 of 1	31.6%	**91.1%**	<$25MM
Org_9	N/A	89.4%	97.8%	84.0%	75.8%	91.9%	**84.9%**	>$25MM
Org_10	1 of 1	1 of 2	N/A	87.2%	4 of 4	N/A	**86.6%**	<$25MM
Org_11	N/A	N/A	91.3%	N/A	N/A	N/A	**91.3%**	<$25MM
Org_12	92.1%	71.8%	100.0%	82.1%	58.8%	78.7%	**74.8%**	>$25MM
Org_13	99.2%	98.3%	N/A	95.6%	94.0%	89.3%	**97.0%**	>$25MM
Org_14	100.0%	N/A	89.7%	N/A	N/A	N/A	**91.2%**	<$25MM
Org_15	100.0%	95.3%	N/A	N/A	N/A	N/A	**95.3%**	<$25MM
Org_16	N/A	N/A	N/A	86.6%	N/A	N/A	**86.6%**	<$25MM
Org_17	4 of 8	2 of 2	N/A	82.0%	85.5%	N/A	**82.1%**	>$25MM
Org_18	N/A	N/A	N/A	100.0%	1 of 1	100.0%	**100.0%**	<$25MM
Org_19	96.3%	93.7%	N/A	N/A	N/A	N/A	**94.1%**	>$25MM
Org_20	N/A	N/A	N/A	N/A	N/A	88.9%	**88.9%**	>$25MM
Org_21	N/A	N/A	N/A	N/A	N/A	82.3%	**82.3%**	>$25MM
Total	**98.1%**	**88.8%**	**91.6%**	**87.9%**	**84.5%**	**88.9%**	**84.1%**	
Loan Amt	**$131.9**	**$214.5**	**$37.5**	**$210.2**	**$29.4**	**$701.6**	**$1,304.0**	
Max	**100.0%**	**98.3%**	**100.0%**	**100.0%**	**95.2%**	**100.0%**	**100.0%**	
Min	**92.1%**	**71.8%**	**89.7%**	**65.7%**	**58.8%**	**31.6%**	**67.5%**	

There is even more variation with FHA and USDA loans, generally considered to be relatively higher credit-risk products. Performance for FHA loans ranged from 100% to 65.7% performing. Performance for USDA loans ranged from 100% to 31.6%.

(c.2) Variability of performance by FICO band

More detailed comparisons illustrate how significant traditional underwriting can be in determining the success of a MH loan across loan types. Table 9, for example, shows the differences in the performance of loans made to borrowers with FICO scores in different "bands" (720+, 680 to 719, 640 to 679, 600 to 639, and < 600) across all product types. Considering the total of all loans, performance consistently declines as expected, as the FICO band scores decline. However, the decline is not uniform across product types. Conventional loans, for example, maintain a high level of performance through the top four FICO bands, but fall off significantly for borrowers with FICO scores of less than 600. Self Insured loans perform well even for borrowers in the 640-679 FICO band (a 97.9% performance rate), but do not perform nearly as well for borrowers with lower credit scores. The performance of FHA-insured loans purchased by HFAs, by comparison, falls significantly with each FICO band: loans made to borrowers in the 720+ FICO band have a performance rate of 95.7%, but the rate falls progressively to 93.9% for the 680-719 FICO band, 88.9% for the 640-679 FICO band, 78.8% for the 600-639 band, and 74.1% for the <600 band.

[22] In Table 8 "asset range" refers to the asset size of the organization.

TABLE 9 - LOAN PERFORMANCE BY FICO BANDS ACROSS ALL PRODUCT TYPES

(loan amounts in millions of dollars)

FICO BAND	CONVEN	CONV MI	SF	HFA FHA	HFA VA	HFA USDA	USDA G	USDA D	TOTAL	LOAN AMT	LOAN #
720+	98.7%	98.1%	98.1%	95.7%	90.8%	97.6%	N/A	N/A	**97.6%**	$194	2,471
680-719	99.3%	94.8%	100.0%	93.9%	94.6%	90.9%	N/A	N/A	**95.4%**	$96	1,180
640-679	96.6%	95.0%	97.9%	88.9%	87.1%	92.1%	N/A	N/A	**91.7%**	$100	1,184
600-639	98.7%	90.0%	83.4%	78.8%	80.1%	74.9%	N/A	N/A	**82.2%**	$61	726
<600	80.2%	84.9%	81.9%	74.1%	87.3%	1 of 1	N/A	N/A	**78.0%**	$20	330
Not Provided	95.9%	77.9%	90.3%	85.6%	74.6%	86.9%	N/A	N/A	**79.0%**	$833	10,666
Total	**98.1%**	**88.8%**	**91.6%**	**87.9%**	**84.5%**	**88.9%**	**76.8%**	**82.3%**	**84.1%**	**$1,304**	**16,557**
Loan Amount	$132	$214	$37	$210	$29	$21	$519	$141	**$1,304**		
Loan #	1,803	2,988	963	2,520	345	225	5,654	2,059	**16,557**		

Similar variability is observed when loans are reviewed by institution and FICO band. Five organizations achieved performance in the nineties or better even for the lowest scores (< 600 FICO band). Thus, while FICO is strongly related to performance, it is neither consistently determinative, nor the only factor in determining a loan's success.

TABLE 10 - LOAN PERFORMANCE BY ORGANIZATION AND FICO BAND

(loan amounts in millions of dollars)

	720+	680-720	640-680	600-640	<600	BLANK	TOTAL	ASSET RANGE
Org_1	6 of 6	6 of 6	9 of 9	2 of 2	3 of 3	1 of 1	**27 of 27**	<$25MM
Org_2	98.5%	95.7%	98.1%	92.3%	70.7%	97.0%	**97.5%**	>$25MM
Org_3	76.7%	95.1%	83.8%	44.4%	61.4%	1 of 3	**67.5%**	<$25MM
Org_4	0 of 1	N/A	N/A	1 of 2	100.0%	91.1%	**88.3%**	<$25MM
Org_5	99.1%	98.6%	98.4%	96.4%	98.0%	100.0%	**98.4%**	<$25MM
Org_6	97.2%	88.9%	92.6%	73.8%	91.8%	83.5%	**88.2%**	>$25MM
Org_7	93.1%	100.0%	100.0%	3 of 6	100.0%	100.0%	**91.1%**	>$25MM
Org_8	89.5%	100.0%	94.0%	6 of 6	2 of 2	82.0%	**84.9%**	<$25MM
Org_9	6 of 6	5 of 5	68.3%	73.0%	73.3%	90.0%	**86.6%**	>$25MM
Org_10	N/A	N/A	N/A	N/A	N/A	91.3%	**91.3%**	<$25MM
Org_11	100.0%	100.0%	86.2%	4 of 5	1 of 1	72.6%	**74.0%**	<$25MM
Org_12	99.2%	97.5%	96.0%	92.3%	85.7%	95.3%	**97.0%**	>$25MM
Org_13	9 of 9	100.0%	93.4%	84.1%	83.3%	93.9%	**91.2%**	>$25MM
Org_14	100.0%	100.0%	7 of 8	1 of 1	94.4%	93.9%	**95.3%**	<$25MM
Org_15	6 of 6	2 of 3	6 of 7	75.7%	87.7%	3 of 3	**86.6%**	<$25MM
Org_16	91.6%	88.9%	82.8%	77.6%	45.1%	61.1%	**82.1%**	<$25MM
Org_17	N/A	N/A	N/A	N/A	N/A	100.0%	**100.0%**	>$25MM
Org_18	96.9%	95.4%	92.4%	86.9%	79.6%	92.4%	**94.1%**	<$25MM
Org_19	97.6%	90.9%	92.1%	74.9%	1 of 1	86.9%	**88.9%**	>$25MM
Org_20	N/A	N/A	N/A	N/A	N/A	82.3%	**82.3%**	>$25MM
Org_21	N/A	N/A	N/A	N/A	N/A	77.9%	**77.9%**	>$25MM
Total	**97.6%**	**95.4%**	**91.7%**	**82.2%**	**78.0%**	**79.0%**	**84.1%**	
Loan Amt	**$193.5**	**$96.4**	**$100.1**	**$61.2**	**$19.6**	**$833.0**	**$1,304.0**	
Max	**100.0%**	**100.0%**	**100.0%**	**96.4%**	**100.0%**	**100.0%**	**100.0%**	
Min	**76.7%**	**88.9%**	**68.3%**	**44.4%**	**45.1%**	**61.1%**	**67.5%**	

(c.3) Variability of performance by LTV band

There is a relationship between higher LTV and poor performance, although it is not as clear as for FICO. For the most part, loans of all product types with low LTV ratios perform better than those with higher ones. But, contrary to expectation, for the overall portfolio, the performance of loans with LTV ratios of 80% or less is 89.8% -- slightly worse than the 90.2% performance rate of loans with the next higher LTV band of 80 to 90%.

TABLE 11 – LOAN PERFORMANCE BY LTV BAND AND PRODUCT TYPE

(loan amounts in millions of dollars)

LTV BAND	CONVEN	CONV MI	SI	HFA FHA	HFA VA	HFA USDA	USDA G	USDA D	TOTAL	LOAN AMT.	LOAN #
100+	0.0%	86.7%	10 of 10	95.2%	83.6%	87.8%	76.5%	0.0%	**79.0%**	$309	3,157
95-99	0.0%	84.4%	91.9%	89.6%	87.4%	91.5%	73.2%	0.0%	**81.7%**	$402	5,099
90-94	0.0%	93.9%	87.4%	92.4%	7 of 7	91.5%	81.4%	0.0%	**86.7%**	$118	1,646
80-89	0.0%	97.2%	94.0%	91.3%	3 of 3	100.0%	85.1%	0.0%	**90.2%**	$105	1,560
Less than 80	98.3%	0.0%	92.0%	90.2%	2 of 2	2 of 4	86.7%	82.3%	**89.8%**	$300	4,398
Not Provided	74.8%	90.0%	100.0%	82.0%	85.5%	N/A	42.5%	2 of 2	**82.3%**	$70	697
Total	**98.1%**	**88.8%**	**91.6%**	**87.9%**	**84.5%**	**88.9%**	**76.8%**	**82.3%**	**84.1%**	**$1,304**	**16,557**
Loan Amount	$132	$214	$37	$210	$29	$21	$519	$141	**$1,304**		
Loan #	1,803	2,988	963	2,520	345	225	5,654	2,059	**16,557**		

Thus, while LTV is clearly strongly related to performance, it is not the only factor in determining a loan's success.

(c.4) Performance by debt-to-income ratio band; front-end and back-end ratios

While a significant number of the loans in the MH Mortgage Dataset (13,723 loans) reported a debt-to-income ratio (DTI), only a small number of these loans included information indicating whether the ratio was a ***front-end*** or ***back-end*** ratio. The issue is significant because the same ratio has a very different meaning if it is a front-end ratio than if it is back-end. Front-end ratios indicate the ratio of monthly housing debt (including principal, interest, real estate taxes and property insurance expenses or PITI) to the borrower's monthly gross income. Back-end ratios indicate the ratio of all monthly debt payments, including auto, credit card and student loan payments, as well as housing payments, to the borrower's monthly gross income.

For both front- and back-end ratios, a low number is better, indicating that the borrower has more resources to cover living expenses and emergencies. Underwriters generally do not want to see a borrower with a front-end DTI above 33, but a back-end ratio of up to 45 may be acceptable. As a result, it is crucial to know whether a given DTI number represents a front- or back-end ratio for it to be interpreted correctly: 37 would be unusually high for a front-end ratio, but quite acceptable for a back-end ratio.[23] It is generally understood by experienced underwriters and analysts that front-end ratios no higher than 31% to 33%, when coupled with avoidance of high back-end ratios (no more than 43%) tend to be good predictors of performance, and are seen by some as having more predictive power than FICO score.

[23] For low-income families, high DTIs can be especially dangerous, because as incomes fall the margin of remaining income also falls in absolute terms. For example, a family earning $1,000 per month with a total (back-end) debt-to-income ratio of 50% would have only $500 of gross income remaining after housing and other debt expenses -- and because this is gross income, take-home income would be even lower. A family earning $2,000 per month with the same DTI ratio by contrast, would have twice as much gross income for these same expenses. The lower actual income "cash remaining" that low-income families have after debt and housing expenses may not provide them income to offset sickness or temporary unemployment events.

TABLE 12 – LOAN PERFORMANCE BY FRONT- AND BACK-END DTI BAND

DTI BAND	FRONT END	BACK END
20 or less	95.4%	89.6%
21-30	92.3%	81.6%
31-40	91.7%	80.6%
41-50	82.0%	74.2%
Above 50	Not Provided	81.3%
# of loans	2,648	1,907

For the relatively small number of loans for which the DTI ratio was specified as either front- or back-end, or where both front- and back-end ratios were provided, the expected patterns were generally observed. For both front- and back-end ratios, performance declines as the ratios rise, so that loans with a front-end DTI of less than 20% have a 95.4% performance rate, but loans with a front-end DTI of 41-50% have only an 82.0% performance rate. The only exception to this trend is that loans with a very high back-end ratio of 50+% perform significantly better (81.3%) than the loans in the 41%-50% DTI band (74.2%). We do not possess more detailed information, such as by-line item credit information, which might illuminate why this may be the case. Furthermore, we do not have the data to explain why the performance rates for all DTI bands are lower for the back-end ratio than for the front-end ratio for the corresponding DTI band, when one might expect that relationship to be the reverse.

From the limited data we received, there is a suggestion that underwriting to front-end DTI at traditional levels will be associated with healthy loan performance as well as sustainable homeownership costs for the borrower.

The majority of provider datasets were not capable of providing accurate readings of front- and/or back-end DTIs. As further discussed in Section V. "Need for Better Data Collection and Analysis," because DTI is such an important underwriting criterion, better data would be of great value for analysis.

(c.5) Performance by interest rate band

It was theorized that higher interest rates on MH mortgages might be associated with poorer performance, either because the higher monthly payments forced more borrowers into default, or because high interest rates are associated with more risky loans. Accordingly, the relationship between performance and interest rate was reviewed.

It should be noted that interest rate is only one component in the effective cost of a mortgage. A more complete look would consider the combination of interest rate and all fees paid by the borrower. However, as discussed in the Methodology section, the Data Project did not collect information on fees.

Contrary to the hypothesis, Table 13 shows no relationship between interest rate and performance for Conventional loans, which performed similarly regardless of interest rate. For most other product types, performance, as expected, tends to decline as interest rates increase, although the relationship is not nearly as clear as the relationship between FICO band and performance. The Direct and Guaranteed loans reported by USDA show a surprising exception: the loans with very low interest rates (less than 4%) performed worse than those with higher interest rates. (On the other hand, HFA-USDA loans show the expected pattern.)

In the case of USDA Direct, this result may be related to the program design, which sets the interest rate and monthly payments by the ability of the borrower to pay. As interest rates are aligned to an applicant's ability to pay using USDA Direct DTI ratios, those borrowers with lower interest rates may have had lower "remaining cash" margins to support all other living expenses and therefore fewer savings or other financial resources to weather temporary financial difficulties.[24]

TABLE 13 – LOAN PERFORMANCE BY INTEREST RATE BAND BY PRODUCT TYPE

(loan amounts in millions of dollars)

INTEREST RATE (%)	CONVEN	CONV MI	SI	HFA FHA	HFA VA	HFA USDA	USDA G	USDA D	ALL	LOAN AMT	LOAN #
<4	97.9%	92.5%	100.0%	100.0%	100.0%	100.0%	81.4%	62.6%	**79.5%**	$34	604
4 to 5	97.3%	94.1%	100.0%	94.5%	94.4%	95.9%	93.8%	92.7%	**94.5%**	$207	2,012
5 to 6	98.7%	92.7%	87.7%	87.9%	85.0%	84.7%	87.0%	79.4%	**88.5%**	$572	6,216
6 to 8	97.3%	83.8%	96.9%	82.9%	73.3%	88.3%	66.7%	83.2%	**76.6%**	$388	4,946
8+	100.0%	87.3%	89.9%	79.4%	100.0%	23.8%	49.4%	83.1%	**67.7%**	$99	2,706
Not Provided	100.0%	100.0%	100.0%	86.6%	N/A	N/A	N/A	1 of 1	**92.1%**	$4	73
Total	**98.1%**	**88.8%**	**91.6%**	**87.9%**	**84.5%**	**88.9%**	**76.8%**	**82.3%**	**84.1%**	**$1,304**	**16,557**
Loan Amount	$132	$214	$37	$210	$29	$21	$519	$141	**$1,304**		
Loan #	1,803	2,988	963	2,520	345	225	5,654	2,059	**16,557**		

SUMMARY TO FINDINGS SECTION 3

The data, in summary, indicate that MH loans can perform extremely well, but often do not. One of the clear drivers of these very different performance records is underwriting. Traditional underwriting criteria – credit history (as reflected by FICO score), LTV and DTI – are clearly associated with loan performance. However, the data suggest that traditional underwriting criteria are not the only predictors of MH loan performance, and that MH loans can be extremely successful even if not underwritten to traditional criteria.

4. Self Insured loan product stands out as associated with excellent performance and ability to reach LMI borrowers

In general, strong results are associated with the traditional characteristics of conservative underwriting: good credit scores (i.e. high FICO scores) and low debt-to-income (DTI) and lower loan-to-value (LTV) ratios. The problem is that many low- and moderate-income borrowers – an important market for MH loans – cannot qualify for loans with strict underwriting guidelines (e.g. FICO scores averaging higher than 720 and LTV ratios at or lower than 80%). One problem is amassing a large downpayment from a low income to support a low LTV for the borrower and the lender/investor.

There is a loan product included in the MH Mortgage Dataset which is notable in achieving excellent performance without requiring traditional underwriting or a reliance on government insurance. Self Insured loans, originated or purchased by eight organizations[25] in the MH Mortgage Dataset, combine more flexible underwriting parameters with better performance than comparable products. In fact, the Self Insured loan product is the second-best performing loan product after Conventional loans.

[24] See Footnote 23.

[25] Hope Credit Union, Idaho Housing and Finance Association, MaineHousing, Minnesota Housing Finance Agency, Montana Board of Housing, New Hampshire Community Loan Fund, Pennsylvania Housing Finance Agency and Self-Help Credit Union.

Self Insured loans require lenders to manually underwrite the loan and consider alternative credit criteria, rather than automatically using FICO scores to accept or deny applicants. The lender prices the loans to cover the additional risk of offering loans up to 98% LTV (low downpayment) without private mortgage insurance coverage. These loans can be retained (not sold to an investor) by the originating lenders, and also some HFAs will purchase them. Importantly, these loans have also been included in securitized pools by some state HFAs, which indicates that rating agencies, which are required to review the loan assets contained in a securitized pool and judge/price their risk rating, have judged these loans and their pricing within a portfolio an acceptable risk for investors.

As shown in Table 6, Self Insured loans feature a relatively low weighted average FICO score (675) and a relatively high weighted average LTV (93%), yet achieve the second best percentage of performance (91.6%) for any of the loan products for which data were received.

A closer comparison between Self Insured mortgages (SI) and Conventional mortgages with Mortgage Insurance (CMI) allows an "apples to apples" comparison. The two loan types are similar because in each case the borrower has a strong enough credit profile to meet the relevant underwriting protocols but does not have the resources for a 20% downpayment. Since the CMI product generally releases insurance when home values fall below 80% LTV, Table 14, which provides a comparison between SI and CMI, shows only SI loans with LTVs greater than 80%.[26]

[26] Table 14 therefore only contains SI current balances of $32.7 million as opposed to a total current balance of $37.5 million when all SI loans are included.

TABLE 14 – LOAN PERFORMANCE COMPARISON: SELF INSURED VS. CONVENTIONAL WITH MI

("Grand Total" designates a sum when referring to volume; it represents a weighted average for other characteristics. Amounts in thousands)

LOAN STATUS	SELF INSURED	CONV W MI	SELF INSURED	CONVEN. W MI	SELF INSURED	CONVEN. W MI
	Vol ($MM)	Vol ($MM)	% Total	% Total	Avg Size ($)	Avg Size ($)
PIF			0.0%	0.0%	$54,157	$81,858
Current	$28,502	$172,786	87.1%	80.6%	$62,305	$96,049
30 Days	$1,444	$17,598	4.4%	8.2%	$68,062	$97,498
60 Days	$0.559	$3,048	1.7%	1.4%	$50,553	$96,513
90 Days	$0.661	$2,122	2.0%	1.0%	$49,807	$88,151
120+ Days	$1,570	$7,026	4.8%	3.3%	$74,749	$112,564
Foreclosed	$0.000	$11,910	0.0%	5.6%	$97,700	$108,321
Performing Loans	$29,946	$190,385	91.5%	88.8%	$60,830	$93,539
Non-Perf Loans	$2,790	$24,106	8.5%	11.2%	$61,918	$105,870
Grand Total	**$32,736**	**$214,491**	**100.0%**	**100.0%**	**$60,907**	**$94,653**

LOAN STATUS	SELF INSURED	CONV W MI	SELF INSURED	CONVEN. W MI	SELF INSURED	CONVEN. W MI
	# of Loans	# of Loans	Wtd DTI	Wtd DTI	WTD IR	WTD IR
PIF	135	501		N/A		N/A
Current	498	2,018	35.4	37.5	7.0	5.8
30 Days	23	199	35.1	42.1	7.0	6.2
60 Days	12	34	31.0	38.8	7.3	6.3
90 Days	15	27	34.7	34.2	8.5	6.2
120+ Days	22	67	36.8	41.2	6.6	5.9
Foreclosed	1	142	N/A	43.3	N/A	6.3
Performing Loans	656	2,718	35.4	38.0	7.0	5.8
Non-Perf Loans	50	270	34.8	41.7	7.2	6.2
Grand Total	**706**	**2,988**	**35.3**	**38.4**	**7.0**	**5.9**

LOAN STATUS	SELF INSURED	CONV W MI	SELF INSURED	CONVEN. W MI	SELF INSURED	CONVEN. W MI
	Wtd FICO	Wtd FICO	Wtd Age	Wtd Age	Wtd LTV	Wtd LTV
PIF						
Current	682	715	46.0	53.6	92.8	94.1
30 Days	575	674	Not Provided	70.3	91.6	96.3
60 Days	608	693	49.4	61.8	92.4	98.3
90 Days	Not Provided	677	56.0	47.0	90.7	96.1
120+ Days	620	705	36.4	49.9	93.6	95.8
Foreclosed	N/A	671	N/A	37.5	N/A	97.7
Performing Loans	679	714	46.0	53.9	92.8	94.3
Non-Perf Loans	617	690	40.2	44.0	92.7	97.1
Grand Total	**675**	**713**	**43.2**	**51.4**	**92.8**	**94.6**

"# of Loans" indicates loans originated; balances are current portfolio balances. Wtd DTI is Front-End

Self Insured loans have a lower average LTV than Conventional loans with Mortgage Insurance loans (92.8% versus 94.6%), and the average FICO score is significantly lower for Self Insured loans (675 versus 713) than for Conventional loans with MI. Interest rates are higher for Self Insured than for Conventional with MI (7.0% versus 5.9%).

Average loan sizes are substantially lower for Self Insured ($60,907) than for Conventional with MI ($94,653). Weighted DTI is lower for Self Insured loans compared to conventional with MI (35.3% versus 38.4%). The lower average FICO and lower average loan size together suggest that borrowers of the Self Insured product are of lower income than Conventional with MI borrowers.[27]

[27] Borrower income was not reported by most providers.

Despite underwriting metrics that are less stringent, and borrowers apparently relatively of lower incomes, the Self Insured loans in the MH Mortgage Dataset perform better than the Conventional loans with Mortgage Insurance, with a 91.5% performance rate versus a 88.8% performance rate.[28] The performance results suggest that the Self Insured product, with its manual underwriting of applicants, produces results that are highly competitive with Conventional mortgages with Mortgage Insurance, and allows nontraditional but creditworthy borrowers to access affordable financing.[29]

It is true that for lenders originating loans, manual underwriting costs more than the use of automated underwriting systems. In general, a loan officer working with an applicant can deliver an earlier outcome through automated underwriting systems which are designed to deliver pre-qualifications on the spot. Manual underwriting, by contrast requires experienced loan underwriters to parse individual trade line items in an applicant's credit report, and to review and understand nontraditional credit. Because of speed and cost considerations, most lenders do not use products that require manual underwriting.

To offset potential higher costs of manual underwriting, Self Insured loans are priced higher (based on review of weighted averages) than Conventional with MI (7.0% for Self Insured versus 5.9% for Conventional with MI). The higher interest rates provide additional margin, while the slight edge in loan performance of the Self Insured product suggests that manual underwriting can pay for itself and even lead to better investor yields. At the same time, the Self Insured product's relatively lower FICO scores and higher LTVs suggest that its marginally higher interest rates may not be a barrier to effectively meeting the home finance needs of LMI borrowers.

In addition to manual underwriting, another factor that may affect the Self Insured product's successful performance is homeownership education and counseling. Some of the organizations providing this product offer this service, however, the Data Project did not collect adequate information to analyze its possible effect.[30]

TABLE 15 - WEIGHTED AVERAGE FICO BY YEAR OF ORIGINATION FOR SELF INSURED AND OTHER PRODUCT TYPES

("NP" signifies "Not Provided")

	CONVEN	CONV MI	SI	HFA FHA	HFA VA	HFA USDA	TOTAL
1998	714	655	NP	717	726	NP	**686**
1999	711	702	NP	660	663	720	**695**
2000	719	709	NP	660	NP	674	**695**
2001	719	701	NP	671	662	692	**691**
2002	727	698	NP	687	627	629	**695**
2003	725	716	NP	673	626	708	**701**
2004	744	716	NP	655	496	688	**697**
2005	728	720	706	665	712	686	**703**
2006	731	718	621	675	675	694	**699**
2007	725	715	665	663	668	687	**693**
2008	739	712	659	663	686	647	**692**
2009	751	725	657	676	605	695	**708**
2010	759	727	709	686	694	680	**706**
2011	752	717	696	698	713	713	**720**

[28] The SI performance rate here is different than in Table 6 because loans with LTVs under 80% were removed to provide for a better comparison to CMI, as described on page 32.

[29] To gain additional insight into the factors driving the relative performance of Self Insured and Conventional loans with Mortgage Insurance, several statistical tests were performed. The results are described in Appendix C.

[30] A study of state HFAs found that 80% of HFAs require homeownership education and counseling for some or all of their products and that 93% do so because they believe it reduces loan delinquencies and foreclosures. Doug Dyllla and Dean Caldwell-Tautges, *Winning Strategies: An Analysis of State Housing Finance Agency Support for Homeownership Education and Counseling Services* (Ithaca, NY: Doug Dylla Consulting, LLC, 2012), 1.

In Table 15, we look at a 14-year period, 1998 through 2011, during which the large majority of loans in the MH Mortgage Dataset were originated, in order to see how average weighted FICO scores by product type fluctuated by year and to compare the Self Insured product to others. Self Insured mortgages, relatively young as a product, were first reported in 2005. In general, the average weighted FICO score for Self Insured loans by year is in the same range (mid 600s to low 700s) as the scores for FHA, VA and USDA loans purchased by state HFAs during the same period. This suggests that SI can support lower-credit borrowers in a manner similar to the government insured programs.

Although Self Insured loans have not yet achieved parity in terms of scale with Conventional with Mortgage Insurance loans, their performance and their ability to reach low downpayment, lower FICO and seemingly lower-income families suggest that this loan product deserves more attention from originators and investors. Further, since Conventional with Mortgage Insurance products are currently difficult to obtain in many markets, and when available often do not support low downpayment applicants with lower FICO scores, the use of Self Insured loans can meet a significant market demand in supplementing government insured loans to finance affordable homeownership.

5. Performance is driven by high-touch loan servicing

Several of the lenders and investors that participated in the Data Project retain servicing rights to their loans rather than relying upon third-party servicers. Instead, they use their own servicing divisions to employ what recent improvements in the loan servicing industry would call "high-touch" servicing protocols.[31] The data suggest that such "self-serviced" loans owned by these lenders and investors perform significantly better than those serviced by unaffiliated third party servicers that use traditional loan servicing approaches. "Self-serviced" loans perform better regardless of loan type, and perform better even when underwriting metrics are considered.

This was an unexpected and significant finding from the loan data, as information about loan servicing was not a part of the initial data request. Initial reviews of loan performance indicated that some organizations had particularly strong performance; follow-up with these organizations suggested that their approach to servicing was driving superior loan performance.

For the purposes of comparison, the lenders and investors were divided into three groups to facilitate comparison. All members of the Originator group retain their servicing and/or use "high touch" servicing protocols, and so the Originator group is one category (All Originators.)[32] A second group includes two HFAs, Pennsylvania Housing Finance Agency and Idaho Housing and Finance Association (PA & ID). Both these HFAs require loans to be sold to them servicing-released, meaning that the HFA purchases both the loan asset and the ability to service the loan themselves – to collect payments from the borrower(s), manage escrows and work with the borrower(s) if they become late on payments – or to hire an outside third party servicer to do the work. Both Pennsylvania and Idaho HFAs use their own internal divisions to service the loans using very high-touch protocols. Together, they form a second group for analysis.

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31 "High Touch" servicing includes using Fannie Mae-, Freddie Mac- and/or Ginnie Mae-approved and compliant processes that allow the loan servicer to reach out early and often to late paying borrowers and to offer short and long term loan adjustments and loan modifications as may be required. Failure of loan adjustments and/or modifications leads to a second and even third try if the borrower is willing to work with the servicer; legal action is the last approach to be used.

32 Originators include BECU, Bank3, Community Development Bank, Hope Credit Union, New Hampshire Community Loan Fund and Self-Help Credit Union.

The other state HFAs in the MH Mortgage Dataset, by contrast, retain outside, national third-party loan servicers to provide services for a fee. These other HFAs, other than Pennsylvania and Idaho, constitute the third group for comparative purposes (All Other HFAs).

Two caveats should be noted in the comparisons between the Originator group and the two HFA groups.

- Two of the Originators offer a more limited number or type of loan products (not all the product types listed in the following tables); and
- One large Originator by volume uses underwriting approaches that are more conservative than those of either HFA group.

TABLE 16 - PRODUCT PERFORMANCE BY SERVICING GROUP

(amounts shown in millions)

	CONVEN	CONV MI	SI	FHA	VA	USDA	ALL	LOAN AMT	LOAN #
PA & ID HFAs	99.3%	98.0%	100.0%	97.5%	94.6%	90.5%	**97.5%**	**$201.5**	**3,627**
All Other HFAs	94.2%	82.6%	92.1%	82.2%	80.1%	86.8%	**83.5%**	**$318.6**	**3,694**
Originators	98.3%	94.5%	90.6%	100.0%	N/A	N/A	**96.3%**	**$124.5**	**1,533**

The two groups using high-touch servicing, Originators and PA & ID, show better performance than the third group. These results hold across all six loan product types except, in the case of Originators, for the SI product, where Originator performance (90.6%) is slightly worse than for the other two groups. The PA & ID group's performance is significantly better than that of All Other HFAs, and slightly better than that of the Originators.

TABLE 17 - LOAN PERFORMANCE BY SERVICER GROUP AND LTV AND FICO BANDS

(amounts shown in millions)

LTV BANDS	PA & ID	ALL OTHER	ALL ORIG
100+	94.7%	94.7%	88.9%
95-99	99.0%	94.8%	95.4%
90-94	98.5%	93.2%	92.5%
80-89	98.2%	87.8%	95.5%
Less than 80	97.3%	81.3%	97.9%
Not Provided	100.0%	100.0%	89.8%
Total	**97.5%**	**83.5%**	**96.3%**
Loan Amount	**$201.5**	**$318.6**	**$124.5**
Loan #	**3,627**	**3,694**	**1,533**

FICO BAND	PA & ID	ALL OTHER	ALL ORIG
720+	99.2%	94.2%	98.5%
680-719	98.0%	92.1%	96.1%
640-679	96.9%	86.9%	97.8%
600-639	94.0%	70.8%	88.7%
<600	92.3%	64.3%	83.0%
Not Provided	97.8%	80.0%	93.7%
Total	**97.5%**	**83.5%**	**96.3%**
Loan Amount	**$201.5**	**$318.6**	**$124.5**
Loan #	**3,627**	**3,694**	**1,533**

Across virtually all FICO and LTV bands, ID & PA loans perform better than the All Other HFAs group. The Originator (All Orig) group generally also outperforms the All Other HFAs.

TABLE 18 – LOAN PERFORMANCE BY SERVICER GROUP AND UNDERWRITING CHARACTERISTICS

(amounts shown in millions)

	PERFORM.	IR	LTV	FICO	AGE	DTI	LOAN AMT	LOAN #
PA & ID HFAs	97.5%	5.5	91.6	701	50	37.3	$201.5	3,627
All Other HFAs	83.5%	5.7	94.7	691	46	39.1	$318.6	3,694
Originators	96.3%	5.8	75.0	740	40	NP	$124.5	1,533

One possible explanation for the superior performance of the portfolios of the PA & ID HFAs and Originators is that they use more demanding underwriting criteria. Table 18 shows details for some of the differences in the underwriting used among the three comparison groups. Loans owned by PA & ID have slightly higher weighted average FICO scores (a 10 point difference) than All Other HFAs, but have weighted average FICO scores that are 39 points lower than the Originators group. They have lower weighted average LTV (3.1% lower) in comparison to All Other HFAs. Interest rates are lower for PA & ID than for All Other HFAs (16 basis points difference). The weighted average age at default (Age) for these two datasets indicate that PA & ID loans take longer (four months on average) to become nonperforming, which could mean either that the applicants had greater resilience from stronger underwriting criteria, or that the early intervention by the servicing systems for PA & ID support better loan performance in the long run.

The PA & ID portfolio and the Originator portfolios perform very similarly, with 97.5% and 96.3% performance rates, respectively. PA & ID achieve slightly better performance even though their underwriting parameters are significantly less conservative than those of the Originators group (i.e., average LTV is higher and average FICO score is lower).

The differences in underwriting parameters between PA & ID on one hand, and All Other HFAs on the other are modest. So, while more conservative underwriting may be a factor in the better performance of the Originator group compared to the All Other HFA group, the difference in the performance of the PA & ID portfolios compared to those of All Other HFAs is so large that it cannot be fully explained by modest differences in underwriting between the two. The loan servicing protocols used by PA & ID thus appear to be the primary driver in their improved loan performance.

6. HFA-purchased USDA loans perform better than the USDA-provided dataset

Lower-income families with lower downpayments and lower credit scoring often rely on government insured or provided loan programs for their mortgage finance options. In looking at one such program, the USDA Rural Development 502 Guaranteed program, the loans purchased by state housing finance agencies perform better than the total set of loans originated through this program. Table 19 compares USDA 502 Guaranteed loans purchased and reported by HFAs to the Data Project to the data received from USDA under the FOIA request for both the 502 Guaranteed and the 502 Direct programs.[33]

In its FOIA request, the Data Project requested the data elements, including FICO scores, shown in Appendix B; however, the response did not include FICO scores. Consequently, Table 19 does not show weighted average FICO scores in the USDA Guaranteed and USDA Direct columns. The relatively low weighted average FICO score for the state HFA-purchased USDA loans of 682, even though there is no data for comparison in the USDA columns, suggests that the participating state HFAs do not only purchase high-credit borrower USDA loans from their approved lenders.

[33] USDA RD 502 Guaranteed loans are originated by approved lenders and guaranteed by USDA; some of these are purchased by HFAs. USDA Guaranteed loans purchased by HFAs and reported to the Data Project are denoted "HFA-USDA." USDA RD 502 Direct loans are originated by USDA. While both are designed for qualified low-income households in eligible rural areas, USDA Guaranteed and USDA Direct have different program and underwriting details.

TABLE 19: UNDERWRITING AND PERFORMANCE CHARACTERISTICS OF USDA LOANS FROM FOIA REQUEST AND FROM HFA PORTFOLIOS

	HFA-USDA	USDA GUAR	USDA DIRECT	ALL HFAS
CHARACTERISTICS:				
WTD. AVG. LOAN SIZE	$ 115,829	$ 111,122	$ 88,168	$ 97,481
WTD. AVG. LOAN AGE (MOS)	40	38	ND	46
WTD. AVG. INTEREST RATE (%)	5.2	6.0	5.1	5.6
WTD. AVG. AGE AT DEFAULT (MOS)	43	41	53	54
UNDERWRITING:				
WTD. AVG. FICO	682	Not Provided	Not Provided	691
WTD. AVG. LTV	99	97	94	94
PERFORMANCE:				
PERFORMING LOANS ($MM)	$ 19	$ 398	$ 116	$ 463
PERFORMING LOANS (#)	205	4,835	1,773	6,846
PERFORMING LOANS (%)	88.9%	76.8%	82.2%	88.9%
NON-PERF LOANS ($MM)	$3	$121	$29	$57
NON-PERF LOANS (#)	20	1,044	286	675
NON-PERF LOANS (%)	11.1%	23.2%	17.7%	11.1%
PIF	-	-	$ 1,049,519	-
CURRENT	$ 18,823,733	$ 398,163,339	$ 114,608,410	$ 462,652,506
60-120 DAYS	$ 587,293	$ 15,721,062	$ 6,530,340	$ 11,674,699
120+ DAYS	$ 1,158,090	$ 104,658,785	$ 18,386,412	$ 29,440,436
FORECLOSURE	$ 609,439	$ 158,129	-	$ 16,375,920
PERFORMING LOANS	$ 18,823,733	$ 398,163,339	$ 115,657,929	$ 462,652,506
NON-PERFORMING LOANS	$ 2,880,813	$ 120,537,976	$ 29,376,800	$ 57,491,055
TOTAL	$ 21,178,555	$ 518,701,315	$ 140,574,681	$ 520,143,562

The weighted average LTVs for these data providers allow direct comparisons. The LTVs are higher for state HFA-purchased USDA loans than for the general market data provided by USDA for the Guaranteed program by two percentage points (97% for the general USDA market and 99% for state HFAs), which suggests that the superior performance of loans purchased by state HFAs is not the result of the use of more conservative underwriting criteria. Weighted average interest rates are lower for the state HFA loans by a full 80 basis points (6.0% for the general market versus 5.2% for state HFAs). Lower interest rates can improve loan performance outcomes, although they may also be a reflection of higher loan risk.

It is interesting to note that the USDA Direct loans report better performance than USDA Guaranteed (82.3% compared to 76.8% performing).

In summary, HFA-purchased USDA Guaranteed loans perform significantly better than the USDA Guaranteed general market data provided through the FOIA request (88.9% compared to 76.8% performing, respectively). From available data, it does not appear that more conservative underwriting is the driver for this improved performance. Factors underlying superior HFA performance as discussed in Finding 5, including manual underwriting and "high touch" loan servicing, and possibly homeowner education and counseling,[34] are likely to also play a role here. Additional data will be needed to more fully analyze this question.

[34] See Footnote 30.



V. Need for Better Data Collection and Analysis

One of the most clear and pressing recommendations that emerges from the Data Project research and findings is for better data collection and analysis. Despite the limitations of the data and the challenges involved in their interpretation, this study demonstrates how data compilation and analysis can produce findings that will benefit lenders, investors, government programs, homebuyers and homeowners. More and better data will allow even more questions to be analyzed and answered.

As a starting point, it is critical for lenders and others to compile and analyze basic loan characteristics and performance data, such as the data fields used by the Data Project (see Appendix B for a full list). The Data Project found that existing systems do not consistently capture and report such data, with the result that some questions could not be answered, and that a great deal of effort was required to clean and standardize the data that were collected. Some Data Project participants had difficulty extracting basic information, sometimes externally maintained and sometimes from multiple databases. Not even a single Data Project participant was able to provide all of the requested basic data fields.

Within the basic data fields, debt-to-income ratios, and whether they are front-end or back-end ratios, is one notable example where basic data collection and reporting needs improvement. Whether or not the home meets ENERGY STAR® criteria is another basic data field that was not available, but which will provide essential information about the increasingly important issue of the relationship of energy efficiency to loan performance. Basic data that most participants could not report also included such important indicators as whether the home is new or existing; the age of the existing home; whether the home is single-, double- or multi-section.

In addition to the basic elements listed in Appendix B, we recommend that the following additional data indicators be consistently recorded and reported.

- Applicant counseling and education
- Borrower counseling and education[35]
- Whether borrower received downpayment assistance, what amount and type[36]
- Identification for regulators and investors whether retained self-servicing or third-party loan servicing; and whether standard or high-touch
- Itemized fees, points and other costs, and whether they are included in the financing
- Net loan recovery after foreclosure
- Type of land tenure: fee simple, resident-owned or cooperatively-owned community or other community[37]
- Specific MH loan identification for Home Mortgage Disclosure Act (HMDA) and other regulated and nonbank mortgage lender reporting requirements

Data and analysis are fundamental to understanding the factors that contribute to loan performance. Improved and standardized data collection and reporting is an urgent need, which can provide important support to the nation's affordable housing sectors in many ways, including finds that can improve loan underwriting and investment practices.

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[35] One study found that foreclosure rates for homebuyers who used Individual Development Account (IDA) matched savings toward their downpayments were one-half to one-third the rate for other low-income homeowners in the same communities. Ida Rademacher Kasey Wiedrich, Signe-Mary McKernan, Caroline Ratcliffe and Megan Gallagher *Weathering the Storm: How IDAs Helped Low-Income Homebuyers Avoid Foreclosure* (Washington, DC: CFED & The Urban Institute, 2010), 2, 12-13.

[36] For both applicant and borrower counseling and education, a consistent methodology for reporting is needed that reflects quality and intensity. The National Industry Standards for Homeownership Education & Counseling (http://homeownershipstandards.com) and HUD's system for approving housing counselors may provide useful guides.

[37] One study found that foreclosure rates for homebuyers who used Individual Development Account (IDA) matched savings toward their downpayments were one-half to one-third the rate for other low-income homeowners in the same communities. Ida Rademacher Kasey Wiedrich, Signe-Mary McKernan, Caroline Ratcliffe and Megan Gallagher. Weathering the Storm: How IDAs Helped Low-Income Homebuyers Avoid Foreclosure (Washington, DC: CFED & The Urban Institute, 2010), 2, 12-13. Type of land tenure should be recorded because mortgage loans are already available in resident-owned communities (ROCs), for example, in New Hampshire, and are expected to become more widely available in leaseholds in the future.

VI. Recommendations

Our recommendations for action fall into three major categories:

- Improve the quality of data and analysis on affordable loans for manufactured homes to build the evidence base needed to attract more lenders and investment
- Promote product development and innovation among lenders and investors to generate higher volume of affordable MH loans with sustainable performance
- Mobilize a range of stakeholders to integrate the comprehensive MH value proposition – one that accounts for energy efficiency, cost savings, housing choice and more – into mainstream policies shaping the future of housing affordability in the United States

Specific steps to consider under each heading follow.

1. Improve the quality of data and analysis on affordable loans for manufactured homes to build the evidence base needed to attract more lenders and investment

Using data-based analyses to increase understanding of how loans perform will reduce uncertainty and quantify risk. Our efforts to date show that improvements are needed in three main areas:

- Collecting specific data elements, many of which are common to both MH and non-MH loans, that can enhance our understanding of factors that affect loan performance and the ability of products to effectively serve low- and moderate-income borrower populations
- Standardizing data collection, and doing so to the extent possible for both MH and non-MH loans, to ensure greater consistency and to reduce the expense of conflicting reporting requirements
- Providing for the regular reporting and sharing of data for research and analysis

Specific steps to consider:

- GSEs, investors, lenders and regulators adopt data collection protocols that provide for more complete and reliable data (See Section V of the Report for a complete list and discussion).
  - Since borrower counseling and homeowner education appear to be correlated with improved loan performance, appropriate indicators should be included in standard data collection protocols

- NeighborWorks® America, HUD and HUD-certified housing counselors and others should help to identify the two to three datapoints that will reflect quality and intensity of borrower counseling and homeowner education, such as compliance with National Standards for Homeownership Education & Counseling and HUD approved housing counselors
- Net loan recovery after default data are needed to measure loss severity

- In cosponsoring the National Mortgage Database (NMDB), the Federal Housing Finance Agency (FHFA) and Consumer Financial Protection Bureau (CFPB) ensure that MH -- both mortgage and chattel loans -- is fully represented
  - Distinctions in the MH finance landscape (for example, the market penetration of specialized chattel lenders and the exclusion of much MH from MLS-type databases) are recognized and appropriate adjustments made as needed to capture MH in the NMDB
  - Datasets from HFAs/National Council of State Housing Agencies (NCSHA) (i.e. State Street HFA database for Treasury), GSEs and others are used to enhance the NMDB
- Fannie Mae and Freddie Mac, with oversight from FHFA, Ginnie Mae and others work with the Mortgage Industry Standards Maintenance Organization (MISMO) and others toward uniform loan data delivery protocols that ensure that MH is fully reflected with sufficient detail to track and analyze MH loan performance, and that the data elements proposed in Section V of the Report are included. MH should also be fully reflected in the Uniform Appraisal Dataset. These efforts are facilitated by the support and cooperation of
  - HFAs and the NCSHA
  - Banks and non-depository institutions of all sizes and their associations
  - Credit unions, their organizations and the National Credit Union Administration (NCUA)
- Chattel lenders, American Bankers Association, Community Bankers Association, GSEs, NCUA, Housing Finance Agencies not already participating, lenders and investors join the original Data Project Participants to share and support the sharing of non-personally identifiable information on MH loan origination and performance on a regular basis with the MH Loan Data Collection Project, to be managed by I'M HOME or a successor organization, in order to increase the body of understanding and contribute to product innovation. To the extent that the National Mortgage Database demonstrates that a separate MH Loan Data Collection effort may no longer be needed in the future, this effort can be redirected toward data interpretation, analysis and applied research.
- HUD, CFPB, USDA, private foundations and other stakeholders provide financial and in-kind support (such as research and software support) to continue the MH Loan Data Collection effort on an ongoing basis and financial support for ongoing research that analyzes loan origination and performance, including geographical and other variations, based on improved data reporting

II. Promote product development and innovation among lenders and investors to generate higher volume of affordable MH loans with sustainable performance

As illustrated in the Report, a number of lenders and investors have already successfully demonstrated product innovations for manufactured housing mortgages that produce sustainable performance. As the result of future trends such as state-by-state adoption of the Uniform Manufactured Housing Act, demographic pressures for housing affordability and the fact that MH delivers the lowest unsubsidized cost of all single family homeownership types, the market can be expected to grow, as will the need for product innovations.

Specific steps to consider:

- GSEs, USDA, HUD, FHFA, CFPB and others work to eliminate barriers to MH loans and ensure equal treatment of MH for financing, downpayment assistance and other programs and supports
- Agencies, institutions and associations, such as but not limited to HUD, CFPB, Fannie, Freddie, NCSHA, NFCDCU, CUNA, NCUA, share the findings of the Report widely through conferences and publications both within their own organizations and with other key audiences (such as Ginnie Mae, other secondary market players, private mortgage insurers, financial trade associations) to make the case that MH lending can be done sustainably and to encourage product innovation growing from the Report's findings about specific factors that are associated with exemplary loan performance
- Industry leaders such as Pennsylvania Housing Finance Agency and Wyoming Community Development Authority attract matching funds in support of their stated willingness to commit some of their own capital in order to create and expand sustainable MH mortgage products, and they are joined by others in similar efforts on regional and national levels
- Private mortgage insurers, other intermediaries and investors, supported by GSEs, NCSHA, NFCDCU, CUNA, NCUA and others, utilize the Report's findings to develop and expand products that incorporate features such as lower downpayments with "high-touch" loan servicing, manual underwriting and applicant/borrower education and counseling on a profitable basis
- NCSHA encourages HFAs to proliferate "best practices" in MH products among their members through educational efforts and support of credit enhancement strategies to increase sustainable MH lending among HFAs
- GSEs incorporate MH into their "standard and premium price" offerings and contracts with HFAs and others
- NFCDCU, CUNA and others work to develop products and approaches to increase credit union offerings with support from NCUA for sustainable MH lending by the credit unions it regulates
- CDFI Fund and others support the development of social enterprise-driven product innovations to spur the growth of affordable MH single family lending by CDFIs, community banks and others to meet LMI household needs
- GSEs, HFAs, other investors and lenders provide informed and positive input as states consider adoption of the Uniform Manufactured Housing Act

III. Mobilize a range of stakeholders to integrate the comprehensive MH value proposition – one that accounts for energy efficiency, cost savings, housing choice and more – into mainstream policies shaping the future of housing affordability in the United States

The value proposition for manufactured housing is compelling and multi-faceted. In today's environment, in which budget deficits and fiscal austerity share the stage with an imperative to find a path toward economic growth and financial security for working- and middle-class Americans, manufactured housing represents an important, positive factor. Some of the many policy opportunities to incorporate the MH value proposition include:

- Disaster planning and recovery;
- Veterans and military households' need for affordable housing and financial security;
- Reduction of federal funds for affordable housing; and
- Energy efficiency, which will reduce overall housing costs.

Specific steps to consider include:

- Department of Energy, HUD, utility companies and others join with practitioners, researchers, state energy offices, and industry to identify and measure the economic impact of MH energy efficiency
- HUD, other Federal and state agencies, planning groups, utility companies and housing organizations review MH technology, by studying the work of Systems Building Research Alliance and others and commissioning additional research for its potential applicability to issues of health, aging, density, job creation, disaster response, etc.
- HUD requires that MH should be incorporated into Comprehensive Plans where appropriate; state, regional and metropolitan planning offices and commissions, including transit-oriented and "smart growth" efforts, incorporate MH into plans where appropriate
- Lenders and investors, including GSEs, work with The Appraisal Institute, state appraisal organizations and others to expand training programs for appraisers on how to better incorporate energy efficiency into valuation of homes, including manufactured homes, and to implement other recommendations from the report, *Real Homes, Real Value: Challenges, Issues and Recommendations concerning Real Property Appraisals for Manufactured Homes*[58]
- HUD, CDFI Fund and others provide financial and in-kind support to research into ways to expand affordable mortgage finance to MH serving Native American households, including MH on tribal lands
- I'M HOME Network members join with affordable housing networks, housing counseling organizations, Assets & Opportunity Network state and local lead organizations and members and others to educate themselves about MH and to incorporate MH into planning, policy and advocacy activities
- Assets & Opportunity Network organizations and members are educated about and integrated into state efforts that emerge around the Uniform MH Act

[58] LeBaron, op. cit.

APPENDIX A
COMPARISON OF CHATTEL AND MORTGAGE LOAN COSTS AND PAYMENTS

Comparisons between the costs of an MH Mortgage loan and an MH Chattel loan are not an easy "apples to apples" comparison. For the purposes of this effort we will say the loan applicant is purchasing a multi-section MH home with a number of accessories from a broker/dealer who is moving it, building a foundation acceptable for chattel loans and placing it on a lot. The "all in" price will total an amount that allows for $100,000[39] in loan financing. The broker/dealer financing arm is offering the applicant either Mortgage or Chattel financing.

To support a better comparison, the following are some assumptions about the transaction about the loan applicant and the lender/investor:

APPLICANT/TRANSACTION ASSUMPTIONS: The applicant has a mid-FICO score between 650 – 680 and a 5% downpayment. We will assume the applicant, and the transaction is "approved" for this loan under all requisite debt-to-income ratios and all other underwriting requirements (although the lower monthly payment that the Mortgage loan provides would allow a much lower-income applicant to be qualified).

MH HOME FOUNDATION ASSUMPTIONS: MH home foundation requirements for a Mortgage loan are more stringent than for a Chattel loan. We will add an additional $6,000 to the Mortgage loan amount to accommodate these more stringent requirements.

LOAN PRODUCT COMPARISONS: This applicant will be offered an FHA-insured Mortgage loan for this purchase (through a wholesale lender) and a Chattel loan through a major chattel lender[40] Current rates may be different. Both loans are presented with zero origination (no points) fees.

LOAN FEE COMPARISONS: There is a variation among rates and fees charged by different lenders. The Chattel and mortgage loan fees used are from published and available schedules. There may be other fees and expenses involved in specific circumstances that can significantly increase Chattel or Mortgage fees including: lot rent(s); prepaid interest; HUD or other Mortgage insurance; others.

TIGHTENING OF CREDIT STANDARDS IN LOAN UNDERWRITING: We believe that in the current market environment, an applicant with a FICO score below 650 will have a very difficult time securing a Mortgage but could get a Chattel loan provided his/her FICO score is not lower than 630 (or the equivalent of 630 using alternative credit underwriting allowances). There is then a thin slice of applicants who can only access financing in the Chattel, but not Mortgage, market (generally, between 630 – 650 FICO). This generalization may not hold for all applicants but does for the vast majority, as each homebuyer brings many strengths (and weaknesses) which could allow a lender to waive certain loan underwriting requirements.

There are Chattel lenders whose loan interest rates are lower than those provided below, however these lower rates require a much higher FICO score, which over 70% of home buyers do not possess.

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[39] $100,000 may be high for a chattel loan amount, but allows a more direct comparison with a mortgage amount of an equal size.

[40] The chattel rate comes from USBank's August 2010 schedule.

MONTHLY PRINCIPAL AND INTEREST CALCULATIONS

1) FHA insured real estate $106,000 mortgage with a 5.375% fixed rate with a 30 year term through a wholesale lender,
P & I (monthly) = $594

2) Chattel loan of $100,000 with a 10.99% fixed rate with a 15 year term (maximum term allowed) through their wholesale division,
P & I (monthly) = $1,136

CLOSING COSTS (NOT INCLUDING DOWNPAYMENT)

1) The FHA mortgage loan, on average (national) closing costs are approximately 3 – 5% of the sales/loan size. Mortgage loans require many fees including: title insurance; recording; appraisal; flood cert; tax transfer and/or sales tax =
FHA Closing Costs = $3,250

2) Chattel loans require lower closing fees, but these fees vary widely depending upon the state in which the closing takes place. These fees can include: appraisal; flood cert; title cert and tax transfer and/or sales tax. Very often these and other fees can be added into the financing by the chattel lender so it can be difficult to compare chattel loan closing costs to mortgage closing costs. If the above costs were not added to financing they would approximately equal =
Chattel loan Closing Costs = $1,275

CONCLUSIONS:

From these assumptions and this comparison, the closing costs for a Chattel loan are much cheaper than the closing costs for a Mortgage loan, approximately $2,000 less in total.

However, the difference in monthly payments between an FHA Mortgage loan ($594) and a Chattel loan ($1,136) equals $642 per month. In less than four months ($642 x 4 = $2,568), the borrower using the Mortgage loan would have recovered the higher closing costs and would continue to save $642 per month during the remaining loan term.

APPENDIX B
FULL SET OF DATA FIELDS IN THE ORIGINAL PROJECT DATA REQUESTS

Property – Real Estate or Chattel
Fee Simple – Y/N
Occupancy – Primary Y/N
Property Zip Code
State
County
Mid FICO
Purchase Y/N
MI Company
MI Coverage (85, 90, etc.)
Single-, double- or multi-section
Loan Type – Conventional, FHA, VA, etc.
Principal & Interest (only)
PITI
Lien Position, first – Y/N
Loan – Chattel, Mortgage or RISC
Documentation – Note or Mortgage
Self Employed – Y/N
Debt-to-Income Ratio
Interest Rate @ Closing
Appraisal Type
Downpayment (actual amount)
Original Appraised Amount
Loan-to-Value Ratio
Loan Amount
Amortization Term
Original Term
Model (home) Year
Manufacturer
Home Sales Company Unit Invoice Cost
New Home – Y/N
Prior Bankruptcy
Current Loan Amount
Remaining Term
Balloon – Y/N
First Payment Date
Paid Through Date (as of)
Mid FICO Update
Current Months Delinquent
Interest Paid Through Date
If ARM, current rate
Date of Foreclosure
Outstanding Principal @ Foreclosure
Costs Accrued from Foreclosure
Disposition of Foreclosure

APPENDIX C
STATISTICAL ANALYSIS

To gain additional insight into the factors driving the performance of the Self Insured and Conventional Loans with Mortgage Insurance, several statistical tests were performed. As discussed in Finding 4, the descriptive statistics suggest that the Self Insured loan product performed better than Conventional loans with Mortgage Insurance despite a lower average FICO score and higher average LTV. It was decided that further statistical tests should be conducted to explore these relationships in greater detail.

RESULTS OF PEARSON'S CHI-SQUARE TEST

To provide a more rigorous analysis of whether there was difference in the performance of the two loan types (Conventional mortgages with Mortgage Insurance and Self Insured mortgages), the Chi-Square test for association of two categorical variables was conducted. The analyses indicated that there was no statistically significant relationship between loan type and loan performance. In other words, Self Insured loans perform no worse than Conventional despite the differences in the borrower profiles (i.e. the borrowers of Self Insured loans having higher LTV ratios and lower FICO scores on average than borrowers of Conventional loans with Mortgage Insurance).

RESULTS OF SPEARMAN'S RHO TEST

Bivariate analysis (the Spearman's r test) was conducted to test the relationship between interest rate, LTV, FICO and performance for both Conventional loans with Mortgage Insurance and Self Insured loans. Similar results were obtained for both loan types (see Table 20). LTV and interest rate were moderately correlated with performance for both loan types. FICO score was weakly correlated with performance for both loan types.

Because interest rate is correlated with FICO and LTV, it was decided that a multivariate analysis would be more useful in looking at the relationships between the dependent and independent variables. In multivariate analysis, one is able to examine the relationship between each independent variable and the dependent variable, controlling for all of the other independent variables in the model.

RESULTS OF LOGISTIC REGRESSION TEST

Logistic regression was conducted to test the relationship between interest rate, LTV, FICO score and performance for both loan types (i.e. LTV, FICO and interest rate were independent variables, and performance, expressed as a binary variable, was the dependent variable).[41]

The results for the Conventional loans with Mortgage Insurance indicated that higher FICO scores and lower LTV ratios were correlated with better performance. Interest rate was not a statistically significant driver of performance. (The results for FICO and LTV were statistically significant.)

The results for same tests on the Self Insured loans were considerably different. Higher FICO scores were correlated with better performance, although the relationship was not as strong as was the case with Conventional loans with Mortgage Insurance. There was no statistically significant relationship with either LTV or interest rate.

[41] Interest rate, which is often collinear with FICO score, was controlled for by adding FICO score and LTV into the model separately. A logistic regression of interest rate alone produced significant results for each loan type, but the results became increasingly insignificant as FICO and LTV were added to the model.

Moreover, there is a striking difference in the relationship between LTV and performance for Self Insured loans: as LTV increases, the Self Insured loans are more likely to perform well. This contrasts with the typically observed relationship between loan performance and LTV: that, all other things being equal, lower LTV ratios are correlated with better loan performance.

SUMMARY OF FINDINGS OF STATISTICAL ANALYSIS

These findings support the premise that Self Insured loans perform as well as or better than Conventional loans with Mortgage Insurance in spite of the less conventionally desirable underwriting profiles, and because of factors other than traditional underwriting variables. The results of this statistical analysis lend support to the premise that factors other than these traditional underwriting variables may be more strongly associated with loan performance for Self Insured loans.

TABLE 20: RESULTS OF SPEARMAN'S R AND LOGISTIC REGRESSION ANALYSES

	BIVARIATE ANALYSIS SPEARMAN'S			MULTIVARIATE ANALYSIS LOGISTIC REGRESSION			
CMI LOANS	SPEARMAN'S R	R SQUARED	P	B	P	EXP(B)	ODDS
FICO	0.30	9%	<0.001	0.015	0.000	1.015	1%
LTV	0.44	19%	<0.001	-0.057	0.008	0.944	-6%
Interest Rate	0.46	21%	<0.001	-0.192	0.302	0.825	-18%
SI LOANS	SPEARMAN'S R	R SQUARED	P				
FICO	0.22	5%	<0.001	0.008	0.088	1.009	1%
LTV	0.42	17%	<0.001	0.063	0.303	1.065	6%
Interest Rate	0.48	23%	<0.001	-0.448	0.151	0.639	-36%

Dependent Variable = Performance

APPENDIX D
TABLES NOT INCLUDED IN NARRATIVE

TABLE APP. D:1 PERCENTAGE OF NON-PRIME LOANS BY YEAR (PRIME = 680 FICO OR BETTER)

	CONVEN	CONV. MI	SI	HFA FHA	HFA VA	HFA USDA	TOTAL
1998	13.2%	45.3%	Not Provided	0.0%	0.0%	0.0%	**27.4%**
1999	21.6%	23.4%	Not Provided	26.5%	68.6%	0.0%	**25.9%**
2000	12.3%	22.7%	Not Provided	46.0%	Not Provided	19.9%	**26.2%**
2001	14.9%	7.5%	Not Provided	36.6%	42.0%	50.0%	**24.0%**
2002	13.0%	22.0%	Not Provided	33.3%	78.5%	61.5%	**29.2%**
2003	18.4%	18.6%	Not Provided	45.4%	64.8%	29.8%	**29.3%**
2004	4.3%	14.8%	Not Provided	40.3%	49.5%	26.9%	**21.8%**
2005	11.5%	16.8%	0.0%	55.2%	33.2%	31.1%	**28.3%**
2006	14.7%	19.1%	82.7%	46.0%	46.0%	26.2%	**31.9%**
2007	13.8%	18.6%	44.1%	50.7%	50.7%	44.4%	**32.1%**
2008	13.0%	26.8%	45.8%	51.0%	28.9%	53.3%	**35.5%**
2009	3.9%	16.3%	59.3%	39.8%	73.0%	30.7%	**25.1%**
2010	5.1%	16.8%	25.2%	38.5%	19.9%	46.2%	**27.9%**
2011	4.9%	17.1%	32.3%	33.0%	20.6%	4.8%	**19.2%**

(1) Percentages based on current loan volume of only those loans with FICO data available

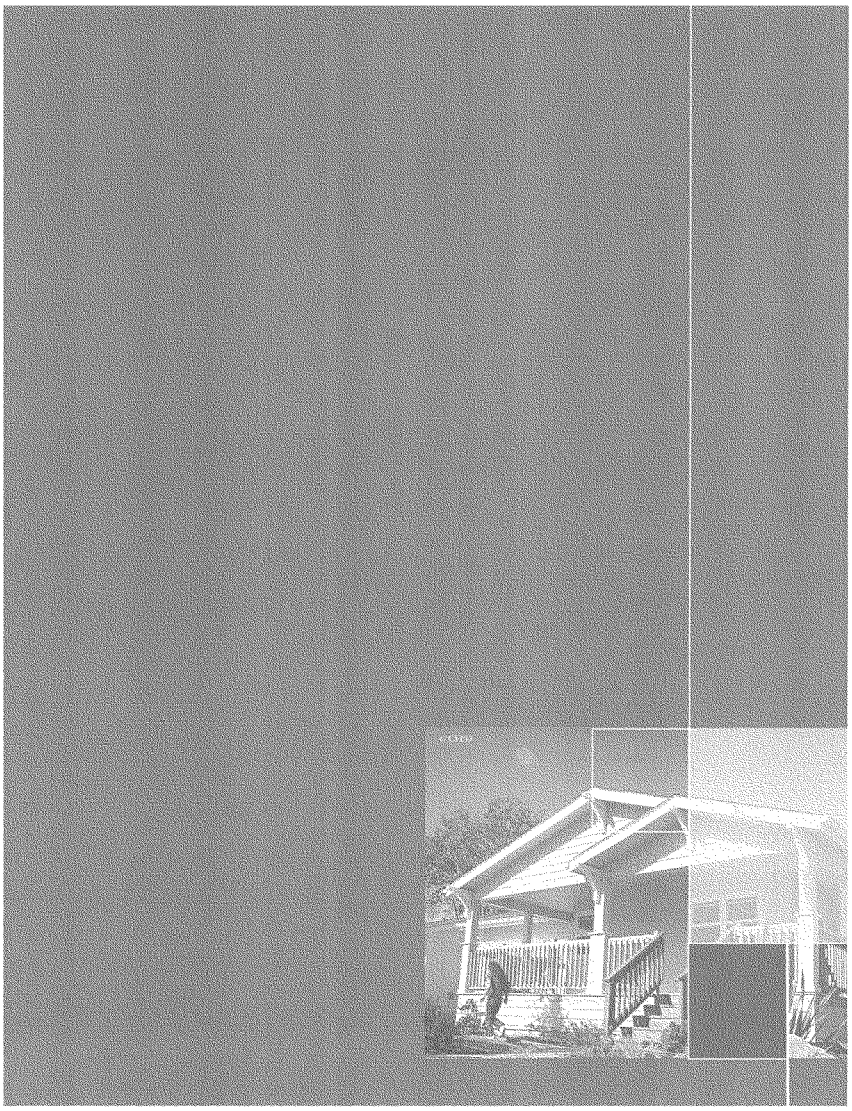
TABLE APP. D:2 AVERAGE AGE AT DELINQUENCY BY ORGANIZATION

	AGE (MOS)
Org_1	49.3
Org_2	Not Provided
Org_3	Not Provided
Org_4	32.9
Org_5	Not Provided
Org_6	36.2
Org_7	34.1
Org_8	21.0
Org_9	25.9
Org_10	33.4
Org_11	Not Provided
Org_12	43.5
Org_13	57.9
Org_14	Not Provided
Org_15	52.0
Org_16	Not Provided
Org_17	24.9
Org_18	Not Provided
Org_19	Not Provided
Org_20	35.5
Org_21	57.8
TOTAL	40.2

Notes:

These are all the results for delinquent loans that had a value for "first payment date," "interest paid to"

N = 2058 of a possible 2230 nonperforming loans



SCOTT GARRETT
5TH DISTRICT, NEW JERSEY

FINANCIAL SERVICES COMMITTEE
CHAIRMAN
CAPITAL MARKETS AND GOVERNMENT SPONSORED ENTERPRISES SUBCOMMITTEE

BUDGET COMMITTEE

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www.house.gov/Garrett

January 22, 2014

Dr. Thomas Stratmann
University Professor of Economics and Law
Department of Economics, George Mason University
Fairfax VA 22030

Dear Professor Stratmann:

As you may know, the House Committee on Financial Services is charged with overseeing the activities of a number of federal financial regulatory institutions, including the Consumer Financial Protection Bureau (CFPB), an agency established by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). In support of its rulemaking and other functions, Section 1022(c) of the Dodd-Frank Act empowers the CFPB to "monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services."

In the exercise of its authority the CFPB is obtaining account-level data on a monthly basis with respect to all credit card accounts maintained by nine of the largest card issuers. Through a Memorandum of Understanding, the CFPB is also able to access data that is collected by a partner prudential regulator from an additional set of nine credit card issuers. To facilitate its collection, transmission, validation, aggregation, reporting, storage, and analysis of the data it receives, the CFPB awarded a contract to Argus Information and Advisory Services, LLC following the issuance of a request for proposals (RFP) on February 14, 2012. Copies of the original RFP and accompanying attachments and amendments are publicly available at:

https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=61f9e255acb3ac044ffeb4ae10c6ec00

According to the CFPB, the combined data collected from the 18 card issuers represent approximately 85-90% of the outstanding card accounts. The U.S. Census Bureau projects that there were approximately 1.167 billion credit cards in the United States held by 156 million card holders in 2012. Accordingly, the CFPB appears to be collecting account-level data on at least 991 million credit card accounts, which would correspond to roughly 60% of the adult U.S. population.

It is unclear to the Committee why the CFPB requires such a large dataset for purposes of monitoring risks to consumers and developments in the credit card market. We humbly request your professional opinion regarding:

(1) Whether, upon review of the data fields and metrics sought by the CFPB in its RFP and consistent with the RFP's stated background and purpose, a sample consisting of 85-90% of all

credit cards is necessary to support meaningful statistical inferences about risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services; and

(2) If not, the actual number of credit card accounts required to sample to obtain statistically significant inferences about developments in the credit card market.

Sincerely,

SCOTT GARRETT
Member of Congress



Thomas Stratmann
Mercatus Center Scholar
Professor of Economics, George Mason University

to

Representative Scott Garrett
Chairman of the Capital Markets and Government Sponsored Enterprises Subcommittee
US House of Representatives
2232 Rayburn House Office Building
Washington, DC 20515

January 23, 2014

Dear Chairman Garrett:

Thank you for this opportunity to comment on the necessity of the scope of data collection of sensitive financial information by the Consumer Financial Protection Bureau (CFPB). I believe that the CFPB is collecting far more data than necessary. This expansive data collection is both expensive and risky. As will be demonstrated, a one percent sample will achieve the CFPB's goals while alleviating concerns about consumer privacy and costs.

The CFPB's Current Practice

The CFPB has been collecting individual loan and credit card data from major US banks as part of its authorization under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The letter of request from the House Committee on Financial Services dated January 22, 2014 states:

> According to the CFPB, the combined data collected from the eighteen card issuers represent approximately 85–90 % of the outstanding card accounts. The U.S. Census Bureau projects that there were approximately 1.167 billion credit cards in the United States held by 156 million card holders in 2012.[1] Accordingly, the CFPB appears to be

[1] US Census Bureau, *Statistical Abstract of the United States: 2012* (Washington, DC: 2011), Table 1188, http://www.census.gov/prod/2011pubs/12statab/banking.pdf.

> collecting account-level data on at least 991 million credit card accounts, which would correspond to roughly 60% of the adult U.S. population.

According to a CFPB request for proposals, "Account-level information provides unique insight into understanding changes in the credit card market. [. . .] Such information maintained in a database can be used to create both present-day snapshots and historical trend data and help the CFPB understand the cost of credit and how the costs are realized by consumers."[2]

It is my opinion that the CFPB is collecting much more data than necessary to conduct a valid statistical analysis of consumer financial markets. There are costs and potential harms to collecting and maintaining massive, comprehensive databases of personal financial information; these include storage and transmission requirements, potential for abuse or violation of consumer privacy, and security concerns in the event of a data breach. These costs and potential harms can be significantly reduced by using sampling methods to conduct an analysis of these data.

Sampling Techniques

Sampling involves collecting data for random smaller subsets of individuals instead of collecting data for the entire population. CFPB researchers can use the averages from these subsets—along with some aggregates reported from the banks—to create valid estimates for all the variables currently being used while collecting far fewer individual accounts' data.

Almost all of the data referred to in a CFPB example report from the month of September (attachment 8) are totals (counts and sums), averages, or percentages.[3] Counts and sums include the number of total accounts, the number of active accounts, and totals for commitments and outstanding loans. One cannot determine the total number of accounts, or total credit outstanding from information about a subset, but these totals could be easily reported as totals and so do not require granular data. The descriptive statistics, such as percent of balances 30+ days delinquent, average credit line, average original FICO score, etc., can all be accurately estimated from samples. The CFPB could use much smaller samples to estimate averages that would still be very precise.

In general, when analyzing averages and percentages the average of a subsample can be a very good estimate for the actual average in the population. With a large enough subsample, the expected error in estimates can be brought within any predefined tolerance for error. With the information the CFPB has already collected, researchers at the CFPB can easily determine how

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[2] Consumer Financial Protection Bureau, *Request for Proposals: RFP # CFP-12-R-00001, Collection, Transmission, Validation, Aggregation, Reporting, Storage, and Analysis of Credit Card Data (CCD Services)* (Washington, DC: January 27, 2012), 5, https://www.fbo.gov/index?s=opportunity&mode=form&tab=core&id=61f9e255acb3ac044ffeb4ae10c6ec00.

[3] CFPB, *Collection, Transmission, Validation, Aggregation, Reporting, Storage, and Analysis of Credit Card Data (CCD Services), Amendment 1, Attachment 8*, July 14, 2011, https://www.fbo.gov/utils/view?id=00c122f39215846c6512612f816d749f.

large is a "large enough" sample size using the standard deviation and tolerance for error of each variable.

The term *standard deviation* describes a commonly used statistic that indicates how "spread out" the data is relative to its average value. The standard deviation is calculated routinely from any set of numbers. The term *tolerance* describes something a little more nuanced than a simple formula, and the value of the tolerance used is context dependent. Tolerance is used in experimental statistics where one conducts "power-analysis" before deciding how many subjects to enroll (and pay for). If one has a treatment that one thinks will increase a variable by some amount, power analysis looks at how likely one is to find statistically significant differences from the null hypothesis for different hypothetical "true values" of that variable for a given sample size. The key is to figure out how small of an effect one wants to be able to reliably detect—with that information, one can fairly easily determine how large is "large enough."

For an example in the matter at hand, consider the "average balance per account" variable. If CFPB researchers are using this variable to inform their analysis, then there is a level of tolerable imprecision that still allows for a valid statistical analysis. That is, if the actual average balance for some subset of accounts is $3,000, then it probably does not drastically alter research findings or policy recommendations if statistical sampling of a smaller subset yields an estimate of $3,001 or even (probably) $3,010. But it is easy to see how estimates that are off by $500 or some other large amount could negatively impact the bureau's ability to perform research and monitor credit markets.

If the bureau switched to statistical sampling to gather its data, researchers could determine the necessary sample size by fixing a tolerance (e.g., not wanting estimates to be off by more than $100 for 95 percent of the time) and applying some calculations based on the standard deviations in their existing data. If the standard deviation was usually $1,000 (i.e., at least 75 percent of accounts have balances within $2,000 of the average account),[4] then samples of 400 random accounts per subgroup would be sufficient for estimates that meet the required tolerance based on common, reasonable statistical assumptions.[5,6]

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[4] Per Chebyshev's inequality, which states that at least $1 - \frac{1}{x^2}$ of any distribution will be within x standard deviations of its mean.

[5] Specifically, the Central Limit Theorem, as discussed on page 29 in George E. P. Box, J. Stuart Hunter, and William G. Hunter, *Statistics for Experimenters: Design, Innovation, and Discovery*, 2nd ed. (Hoboken, NJ: Wiley-Interscience, 2005).

[6] These numbers come from calculating $\text{standard error} = \frac{\text{standard deviation}}{\sqrt{\text{sample size}}}$ and assuming that the distribution of sample means will be approximately normally distributed about a population mean. I determine 95 percent or 99 percent confidence intervals as +/- the standard error times two or three, respectively.

While I chose the numbers in the example above for their simplicity, they reflect the ease with which sample sizes can be determined by tolerance for error and standard deviation. The general rule of thumb is $\min(sample\ size) = (2 * \frac{standard\ deviation}{tolerance})^2$ for 95 percent confidence intervals, or $\min(sample\ size) = (3 * \frac{standard\ deviation}{tolerance})^2$ for 99 percent confidence intervals. Presumably, the CFPB could set its cohort sample sizes based on the variables with the highest standard deviation and lowest tolerance for imprecise estimates.

Although I do not have access to data the CFPB collected, I can draw some inferences regarding the maximum number of data points that have to be collected, based on worst-case scenario estimates. Many of the variables in the example September document (attachment 8) are reported as percentages. These are convenient variables for my estimation, because for percentages, the maximal variance is 0.25,[7] so the maximal[8] standard deviation is 0.5. With only 40,000 observations, the 95 percent confidence interval is approximately +/- 0.005 (half a percent), and even the 99 percent CI is less than +/- 0.0075.[9]

Therefore, if the CFPB researchers decide their estimates of percentage variables need to be within one percent of the true value at least 99 percent of the time, then that would be achievable with sample sizes of 40,000 per subgroup of consumers.

The example report from September shows accounts broken up by FICO score (10 categories), origination channel (7 categories), bank and risk profile (9 categories each). Even if the CFPB were treating each of these categories as independent and drawing 40,000 new observations per category, that would still only require collecting data for 1.4 million accounts for the 35 divisions (the sum of subcategories in the categories "Mix by Origination Channel," "Mix by Refreshed FICO Score," "Bank Profile," and "Risk Profile" in Attachment 8). This number of 1.4 million accounts is well short of the reported 991 million accounts for which they are currently collecting data. If one were to collect data from 1.4 million individuals, instead of accounts, then these 1.4 million observations would be approximately one percent of the credit card holding public.

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[7] Because percentages are bounded from 0 to 1.

[8] The standard deviations will nearly always be lower if the observation-level variable can take values besides 0 or 1 (e.g., percent of total unpaid balance) as opposed to variables like percent of full pay accounts. But somewhat more importantly, most percentages (e.g., percent of accounts that pay in full, percent of balances over limit) should be easily obtainable from the banks without requiring granular aggregation at the CFPB.

[9] $95\%\text{Conf. Int.} \cong \pm 2 * std.err = \pm 2 * \frac{.5}{\sqrt{40{,}000}}$ and $99\%\text{Conf. Int.} \cong \pm 2 * std.err = \pm 3 * \frac{.5}{\sqrt{40{,}000}}$.

Conclusion

Limiting their sampling to one percent of the relevant population would bring CFPB more in line with the US Census Bureau, which makes anonymized granular data available to researchers through the Public Use Microdata Sample (PUMS) and only provides one percent and five percent samples to researchers for statistical analysis. I see no a priori reason to think that credit data are any different than data collected by the Census, in terms of means relative to variance, so collecting a much smaller credit card sample should suffice.[10] Because of these factors, I believe that the CFPB should be able to conduct its research with data sampling, which may alleviate some of the concerns about cost and consumer privacy.

Sincerely,

Thomas Stratmann

[10] Additionally, the large-scale data that has been collected so far gives the CFPB anchoring values to ensure that sampling is giving them reasonable estimates. If initial estimates of averages (from smaller samples) are way off from the previous (near total) population averages, that would let the CFPB know which parts of the sampling procedure may need to be tweaked. Presumably, this is similar to how the Census Bureau uses the decennial census to complement and calibrate their survey sampling.



1700 G Street N.W. Washington, DC 20552

October 31, 2013

The Honorable Blaine Luetkemeyer
U.S. House of Representatives
2440 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Brad Sherman
U.S. House of Representatives
2242 Rayburn House Office Building
Washington, D.C. 20515

Dear Representatives Luetkemeyer and Sherman,

Thank you for your letter about the annual privacy notice requirement under the Gramm-Leach-Bliley Act. I welcome the opportunity to address the Consumer Financial Protection Bureau's authority in this area in more detail.

The Bureau has the authority to commence a rulemaking proceeding to determine whether there are less burdensome means available for providing annual notices of privacy policies. Section 6803(a) of the Gramm-Leach-Bliley Act states that "[a]t the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer" of the institution's privacy policies and procedures. Section 1016.5(a)(1) of the Bureau's implementing Regulation P requires that financial institutions "must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship." Some financial institutions have expressed concern that providing the annual notice under Regulation P is not helpful to consumers and creates unnecessary burdens for institutions if their privacy practices have not changed since the last time they sent an annual notice to consumers and they do not share nonpublic personal information with other firms. The Bureau has rulemaking authority to refine the standards for how financial institutions provide annual notices. As I indicated at the recent hearing before the House Financial Services Committee, the Bureau does intend to commence a rulemaking proceeding in the relatively near future that will consider addressing such standards. If in the meantime Congress decides instead to move forward with a legislative amendment on annual notices, then of course we would take any actions necessary to implement that change in the law.

Thank you for the opportunity to respond. I appreciate our shared interest in reducing paperwork burdens on institutions while ensuring consumer protection through meaningful disclosures, and I

look forward to collaborating on other consumer financial protection issues that are important to you and your constituents.

Sincerely,

Let's stay in touch on these issues, Thanks.
Rich

Richard Cordray
Director

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 28, 2014

The Honorable Blaine Luetkemeyer
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin Yoder
U.S. House of Representatives
Washington, DC 20515

Dear Congressmen Luetkemeyer and Yoder:

This letter follows the January 9, 2014, briefing conducted by Stuart Delery, the Assistant Attorney General for the Civil Division, and ongoing conversations between your offices and the Department of Justice (the Department) on investigations targeting financial institutions and payment processors that have facilitated consumer fraud.

You and your staff have indicated concerns regarding the nature of these investigations. Assistant Attorney General Delery noted in his meeting with you that the Civil Division would reiterate the goals of our investigations to interested external parties. We therefore call your attention to the attached letter from Assistant Attorney General Delery to the American Bankers Association and the Electronic Transactions Association.

The letter reiterates that the Department does not target businesses operating within the bounds of the law. Specifically, Assistant Attorney General Delery noted that:

> The Department has no interest in pursuing or discouraging lawful conduct. Our policy is to take the steps necessary to prevent financial institutions from knowingly assisting fraudulent merchants that harm consumers or processing transactions while deliberately ignoring evidence that they are fraudulent.

To be clear, our purpose is to investigate violations of federal law, especially those involving fraudulent conduct that threatens to harm the American public. We want to protect the public from this mass-market consumer fraud by holding accountable those banks and payment processors that violate federal law by facilitating fraudulent transactions. We agree, of course, that it is important for the Department's public statements to be both consistent with this policy and sufficiently clear as to avoid any confusion on this point.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

Enclosure

U. S. Department of Justice

Civil Division

January 22, 2014

Mr. Jeff L. Plagge
Chairman
American Bankers Association
1120 Connecticut Avenue, NW
Washington, D.C. 20036

Mr. Jason Oxman
Chief Executive Officer
Electronic Transaction Association
1101 16th Street, NW, #402
Washington, D.C. 20036

Dear Messrs. Plagge and Oxman:

I am writing concerning an issue that may be of interest to your members, and specifically to clarify the Department of Justice's policy and approach regarding certain investigations into banks, payment processors, and other institutions that process payments for merchants engaged in fraudulent activities.

The Department of Justice is committed to protecting the American people from fraudulent practices in all industries – without exception. To the extent we have evidence that an entity is violating federal law by engaging in or facilitating fraudulent conduct, we will take appropriate measures to combat that conduct.

As you may be aware, the Department has engaged in various efforts to eliminate fraud in the payment system by holding financial services entities accountable where such entities (contrary to their responsibilities under federal law) engage in fraud or aid others who are engaging in fraud. The Department wishes to make clear that the aim of these efforts is to combat fraud. The Department has no interest in pursuing or discouraging lawful conduct. Our policy is to take the steps necessary to prevent financial institutions from knowingly assisting fraudulent merchants that harm consumers or processing transactions while deliberately ignoring evidence that they are fraudulent. It may be relevant to our inquiry that a financial institution is intentionally disregarding other obligations under federal law.

As the FDIC has recently clarified, "Facilitating payment processing for merchant customers engaged in higher risk activities can pose risks to financial institutions and requires due diligence and monitoring, as detailed in prior FDIC and interagency guidance and other information. Financial institutions that properly manage these relationships and risks are neither prohibited nor discouraged from providing payment processing services to customers operating

in compliance with applicable federal and state law." FIL 43-2013. Moreover, as the FDIC stated, "Those that are operating with the appropriate systems and controls will not be criticized for providing payment processing services to businesses operating in compliance with applicable law." *Id.*

We share these views. The aim of our investigations is to identify and hold accountable financial institutions that are engaged in or facilitate fraud. Our policy is not to prohibit or discourage financial institutions from providing payment processing services to customers operating in compliance with applicable federal and state law, and we are committed to tailoring our investigative efforts accordingly. Finally, we will continue to review our efforts to minimize any impact and collateral consequences on institutions we are not investigating.

We look forward to further engagement with you and your colleagues concerning consumer protection issues of mutual concern.

Sincerely,

Stuart F. Delery
Assistant Attorney General

FDIC

Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-43-2013
September 27, 2013

FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities

Summary: The FDIC is clarifying its policy and supervisory approach related to facilitating payment processing services directly, or indirectly through a third party, for merchant customers engaged in higher-risk activities. Facilitating payment processing for merchant customers engaged in higher-risk activities can pose risks to financial institutions; however, those that properly manage these relationships and risks are neither prohibited nor discouraged from providing payment processing services to customers operating in compliance with applicable law.

Statement of Applicability to Institutions With Total Assets Under $1 Billion: This Financial Institution Letter applies to all FDIC-supervised banks and savings associations, including community institutions.

Distribution:
FDIC-Supervised Banks (Commercial and Savings)

Suggested Routing:
Board of Directors, Senior Executive Officers, Chief Credit Officer, Chief Information Technology Officer, Bank Secrecy Act Officer

Related Topics:
Guidance for Managing Third-Party Risk, FIL-44-2008;
Guidance on Payment Processor Relationships, FIL-127-2009;
Managing Risks in Third-Party Payment Processor Relationships, Supervisory Insights Journal, Summer 2011;
Payment Processor Relationships, Revised Guidance, FIL-3-2012;
FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual; and
FFIEC Information Technology Hand book, Retail Payments Systems Booklet.

Attachment:
FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities

Contacts:
Michael Benardo, Section Chief, Division of Risk Management Supervision at MBenardo@FDIC.gov or 703-254-0450; Surge Sen, Section Chief, Division of Depositor and Consumer Protection at SSen@FDIC.gov or 202-898-6699

Note:
FDIC Financial Institution Letters (FILs) may be accessed from the FDIC's Web site at http://www.fdic.gov/news/news/financial/2013/index.html.

To receive FILs electronically, please visit http://www.fdic.gov/about/subscriptions/fil.html.

Paper copies may be obtained via the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200).

Highlights:

- Financial institutions that provide payment processing services directly or indirectly for merchant customers engaged in higher-risk activities are expected to perform proper risk assessments, conduct due diligence to determine merchant customers are operating in accordance with applicable law, and maintain systems to monitor relationships over time.
- Proper management of relationships with merchant customers engaged in higher-risk activities is essential. Financial institutions need to assure themselves that they are not facilitating fraudulent or other illegal activity. Institutions could be exposed to financial or legal risk should the legality of activities be challenged.
- FDIC's examination focus is on assessing whether financial institutions are adequately overseeing activities and transactions they process and appropriately managing and mitigating risks. Financial institutions that have appropriate systems and controls will not be criticized for providing payment processing services to businesses operating in compliance with applicable law.

FDIC Supervisory Approach to Payment Processing Relationships With Merchant Customers That Engage in Higher-Risk Activities

The FDIC is issuing this letter to clarify its policy and supervisory approach related to facilitating payment processing[1] services directly, or indirectly through a third party, for merchant customers engaged in higher-risk activities.[2] Facilitating payment processing for merchant customers engaged in higher-risk activities can pose risks to financial institutions and requires due diligence and monitoring, as detailed in prior FDIC and interagency guidance and other information.[3] Financial institutions that properly manage these relationships and risks are neither prohibited nor discouraged from providing payment processing services to customers operating in compliance with applicable federal and state law.

The FDIC and other agency guidance indicate that financial institutions that provide payment processing services directly or indirectly for merchants engaged in higher-risk activities are expected to perform proper risk assessments, conduct due diligence sufficient to ascertain that the merchants are operating in accordance with applicable law, and maintain appropriate systems to monitor these relationships over time. The proper management of relationships with merchant customers engaged in higher-risk activities is essential. Financial institutions need to assure themselves that they are not facilitating fraudulent or other illegal activity. Institutions could be exposed to financial or legal risk should the legality of activities be challenged.

The FDIC is aware that some payment processors or merchants may target institutions that are unfamiliar with the related risks or that lack proper due diligence or controls to manage these risks. Thus financial institutions that engage or plan to engage in these activities should review this guidance. The focus of FDIC examinations is to assess whether financial institutions are adequately overseeing activities and transactions they process and appropriately managing and mitigating related risks. Those that are operating with the appropriate systems and controls will not be criticized for providing payment processing services to businesses operating in compliance with applicable law.

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[1] Payments may be in the form of remotely created checks (also known as "Demand Drafts"), Automated Clearing House transactions, or similar methods.

[2] Higher-risk activities are those that tend to display a higher incidence of consumer fraud or potentially illegal activities than some other businesses. Higher-risk activities are typically characterized by high rates of return, high rates of unauthorized transactions, consumer complaints, or evidence of state or federal regulatory or criminal actions against the business customer, which indicate that the activity needs to be reviewed to determine whether fraudulent or illegal activity is occurring. See FDIC, Financial Institution Letter, FIL-3-2012, *Payment Processor Relationships, Revised Guidance* issued January 2012.

[3] FDIC guidance and other information on this topic includes:

- Financial Institution Letter, FIL-44-2008, *Guidance for Managing Third-Party Risk* issued June 2008.
- Financial Institution Letter, FIL-127-2008, *Guidance on Payment Processor Relationships* issued November 2008.
- *Managing Risks in Third-Party Payment Processor Relationships* Summer 2011 Supervisory Insights Journal.
- Financial Institution Letter, FIL-3-2012, *Payment Processor Relationships, Revised Guidance* issued January 2012.

FFIEC guidance on this topic includes:

- The *FFIEC Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual*.
- *The FFIEC Information Technology Handbook*, "Retail Payments Systems Booklet."

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

January 10, 2014

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hensarling:

The Target Corporation recently acknowledged that from November 27 to December 15, 2013, hackers stole credit and debit card information including card numbers, expirations dates and security codes for 40 million accounts, and other personally identifiable information for as many as 70 million customers. Accordingly, we respectfully request that you convene a full Financial Services Committee hearing to review the recent data breach including the adequacy of current consumer financial data security protection laws, and what Congress and industry stakeholders can proactively do to ensure the future security of consumers' card information.

We note that the Committee's oversight plan for the 113th Congress states that "building on the Committee's long-standing role in developing laws governing the handling of sensitive personal financial information about consumers including the Gramm-Leach-Bliley Act and the Fair and Accurate Credit Transactions Act (FACT Act), the Committee will continue to evaluate best practices for protecting the security and confidentiality of such information from any loss, unauthorized access, or misuse."

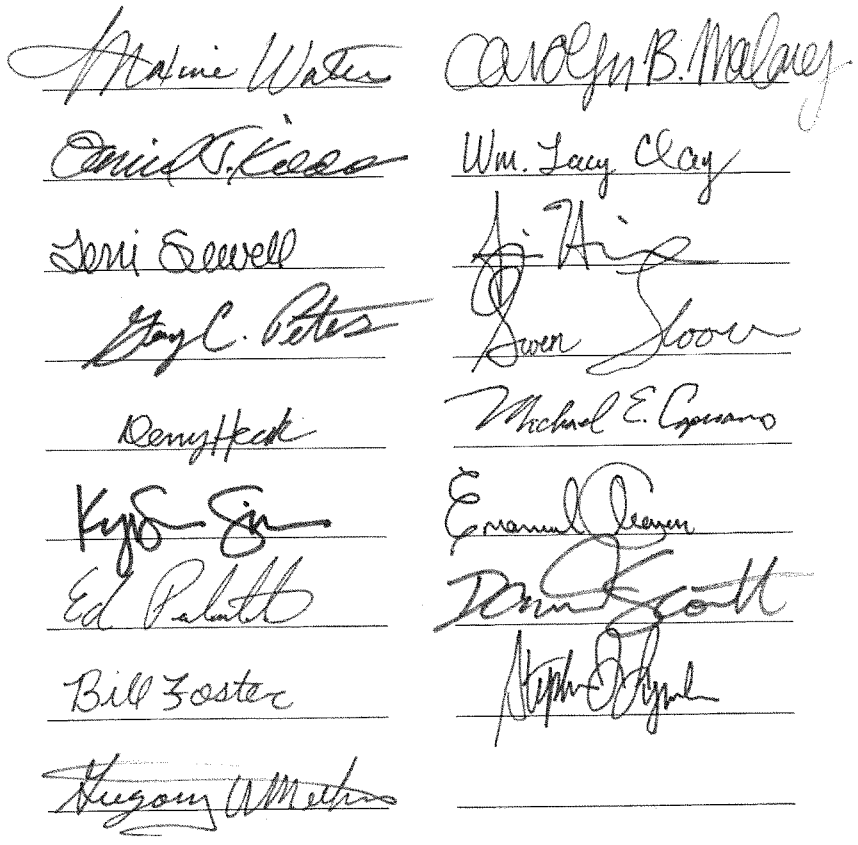
The Target breach—which industry analysts say is among the largest recorded financial data security breaches—raises important questions about what merchants who suspect a data breach has occurred must disclose, when they must disclose it, and who has the right to be notified. Quick notification of a breach increases the likelihood that consumers can take measures to protect themselves from fraudulent activity and is similarly critical to successfully reducing the ultimate fraud losses that financial institutions incur.

It is incumbent upon our Committee to explore whether industry data protection standards are appropriate, and examine whether heightened regulatory standards are needed to more effectively protect consumers. A hearing would provide members the opportunity to hear from regulators and the industry to learn what steps merchants, financial institutions, payment processers, card networks and others should take to reduce vulnerabilities in the payment system, and strengthen measures that protect consumers from fraud.

Consumers deserve reasonable assurances that the use of their credit or debit card will not jeopardize their financial and other personally identifiable information. This is increasingly important as companies continue to amass vast amounts of consumers' sensitive personal information.

We appreciate your attention to this request.

Sincerely,



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National Association of Federal Credit Unions | www.nafcu.org

B. Dan Berger
President & Chief Executive Officer

January 22, 2014

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Re: Ongoing Data Security Breaches at U.S. Retailers Warrant Strong Federal Data Security and Breach Notification Standards

Dear Speaker Boehner and Leader Pelosi:

As the number of data breaches at U.S. retailers continues to climb, so does the emotional toll and financial burden on tens of millions of consumers across the country. The breadth and scope of the massive Target Corporation breach exemplifies the need for Congressional action. On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing our nation's federal credit unions, I write today to continue to urge you and your colleagues to act on federal data security and breach notification standards. As noted by a retailer trade group in a letter earlier this week, there is agreement among many industry stakeholders that federal breach notification laws are desperately needed to keep consumers safe.

As you know from previous correspondence, NAFCU believes it has never been more critical for Congress to hold hearings and craft legislation that will better protect consumers and ensure all entities handling their sensitive financial and personal information are held to the same high standards that financial institutions already are.

While large breaches, like the massive Target Corporation breach, draw national attention and make the nightly news, the reality is that data breaches are happening all the time, often on a smaller scale. An April 2013 survey of NAFCU-member credit unions found that credit unions were notified dozens of times in 2012 of possible breaches of their members' financial information. That same survey found that nearly 80% of the time those notifications led to the credit union issuing a new plastic card to the member because of the security breach, at an average cost of more than $5.00 per card.

As we first wrote to you last February as part of NAFCU's five-point plan on regulatory relief, these incidents must be addressed by lawmakers. Every time consumers choose to use plastic cards for payments at a register or make online payments from their accounts, they unwittingly put themselves at risk. Many are not aware that their financial and personal identities could be stolen or that fraudulent charges could appear on their accounts, in turn damaging their credit scores and reputations. Consumers trust that entities collecting this type of information will, at

the very least, make a minimal effort to protect them from such risks. Unfortunately, this is not always true.

Financial institutions, including credit unions, have been subject to standards on data security since the passage of *Gramm-Leach-Bliley*. However, retailers and many other entities that handle sensitive personal financial data are not subject to these same standards, and they become victims of data breaches and data theft all too often. While these entities still get paid, financial institutions bear a significant burden as the issuers of payment cards used by millions of consumers. Credit unions suffer steep losses in re-establishing member safety after a data breach occurs. They are often forced to charge off fraud-related losses, many of which stem from a negligent entity's failure to protect sensitive financial and personal information or the illegal maintenance of such information in their systems. Moreover, as many cases of identity theft have been attributed to data breaches, and as identity theft continues to rise, any entity that stores financial or personally identifiable information should be held to minimum standards for protecting such data.

While some argue for financial institutions to expedite a switch to a "chip and pin" card, the reality is that it is no panacea for data security and preventing merchant data breaches. Many financial institutions that issue "chip and pin" cards had those cards stolen in the Target data breach as the retailer only accepted magnetic stripe technology at the point of sale where the breach occurred. Furthermore, "chip and pin" cards can be compromised and used in online purchase fraud, as the technology is designed to hinder card duplication and card information can still be compromised. This fact highlights the need for greater national data security standards as the way to truly help protect consumer financial information.

Again, recent breaches are just the latest in a string of large-scale data breaches impacting millions of American consumers. The aftermath of these and previous breaches demonstrate what we have been communicating to Congress all along: credit unions and other financial institutions – not retailers and other entities – are out in front protecting consumers, picking up the pieces after a data breach occurs. It is the credit union or other financial institution that must notify its account holders, issue new cards, replenish stolen funds, change account numbers and accommodate increased customer service demands that inevitably follow a major data breach. Unfortunately, too often the negligent entity that caused these expenses by failing to protect consumer data loses nothing and is often undisclosed to the consumer.

NAFCU once again reiterates its call on Congress to make the issue of data security a priority in 2014 by convening hearings on the data protection standards of merchants and what can be done to strengthen them and how retailers can better assist financial institutions when breaches occur. Furthermore, we recommend Congress take action to enact provisions to protect consumers from breaches that compromise their financial and personally identifiable information. Data security is a common-sense bipartisan issue that must be addressed.

With that in mind, NAFCU specifically recommends that Congress make it a priority to craft legislation and act on the following issues related to data security:

- **Payment of Breach Costs by Breached Entities:** NAFCU asks that credit union expenditures for breaches resulting from card use be reduced. A reasonable and equitable way of addressing this concern would be to require entities to be accountable for costs of data breaches that result on their end, especially when their own negligence is to blame.

- **National Standards for Safekeeping Information:** It is critical that sensitive personal information be safeguarded at all stages of transmission. Under Gramm-Leach-Bliley, credit unions and other financial institutions are required to meet certain criteria for safekeeping consumers' personal information. Unfortunately, there is no comprehensive regulatory structure akin to Gramm-Leach-Bliley that covers retailers, merchants and others who collect and hold sensitive information. NAFCU strongly supports the passage of legislation requiring any entity responsible for the storage of consumer data to meet standards similar to those imposed on financial institutions under the Gramm-Leach-Bliley Act.

- **Data Security Policy Disclosure:** Many consumers are unaware of the risks they are exposed to when they provide their personal information. NAFCU believes this problem can be alleviated by simply requiring merchants to post their data security policies at the point of sale if they take sensitive financial data. Such a disclosure requirement would come at little or no cost to the merchant but would provide an important benefit to the public at large.

- **Notification of the Account Servicer:** The account servicer or owner is in the unique position of being able to monitor for suspicious activity and prevent fraudulent transactions before they occur. NAFCU believes that it would make sense to include entities such as financial institutions on the list of those to be informed of any compromised personally identifiable information when associated accounts are involved.

- **Disclosure of Breached Entity:** NAFCU believes that consumers should have the right to know which business entities have been breached. We urge Congress to mandate the disclosure of identities of companies and merchants whose data systems have been violated so consumers are aware of the ones that place their personal information at risk.

- **Enforcement of Prohibition on Data Retention:** NAFCU believes it is imperative to address the violation of existing agreements and law by merchants and retailers who retain payment card information electronically. Many entities do not respect this prohibition and store sensitive personal data in their systems, which can be breached easily in many cases.

- **Burden of Proof in Data Breach Cases:** In line with the responsibility for making consumers whole after they are harmed by a data breach, NAFCU believes that the evidentiary burden of proving a lack of fault should rest with the merchant or retailer who incurred the breach. These parties should have the duty to demonstrate that they took all

necessary precautions to guard consumers' personal information but sustained a violation nonetheless. The law is currently vague on this issue, and NAFCU asks that this burden of proof be clarified in statute.

On behalf of our nation's credit unions and their 97 million members we thank you for your attention to this important matter. If my staff or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact myself, or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

B. Dan Berger
President and CEO

cc: Members of the United States House of Representatives

"The Semi-Annual Report of the Consumer Financial Protection Bureau"
House Committee on Financial Services Hearing
January 28, 2014

Questions for the Record Submitted by Chairman Jeb Hensarling:

Hensarling 1:
Director Cordray, page 39 of the Bureau's Financial Report for Fiscal Year 2013, released December 16, 2013, disclosed that the Bureau has entered into an "interagency agreement between the General Services Administration…to provide for services related to the planned renovation of CFPB's Headquarters office space located in Washington, D.C." Additionally, on December 19, 2013, the Bureau released its "CFO update report for the fourth quarter of fiscal year 2013," the first page of which disclosed that Bureau obligations made during the fourth quarter included:

> "$145.1 million to the General Services Administration to provide for a range of services related to the renovation of CFPB's headquarters building. In addition to the actual renovation of both the interior and exterior of the building, services also include project management, contract management, environmental management, construction oversight and administration, and other technical services."

a. Please produce a copy of the interagency agreement that the Bureau has entered into with the GSA regarding the Bureau's planned renovation. Please produce copies of all renovation-related documents the Bureau has filed with the National Capital Planning Commission and U.S. Commission on Fine Arts.

Response:

Attached are the following documents:

- "CFA Concept Submission," January 2, 2014,
- "NCPC Project Plans Preliminary Submission," January 3, 2014,
- "NCPC Project Plans Preliminary Submission, Part E: Appendix, Revised," January 3, 2014,
- Memorandum of Understanding between the Consumer Financial Protection Bureau and U.S. General Services Administration National Capital Region, October 18, 2013, and
- Reimbursable Work Authorization No. N0800763, September 24, 2013.

b. When do you plan to file the Bureau's final plans with the National Capital Planning Commission?

Response:

The final design documents will be filed with the National Capital Planning Commission upon completion of the Design/Build-Bridging general contractor's creation of the final construction documents. At this time, we expect this to occur in early 2015.

Hensarling 2:
The Occupancy Agreement between the Office of the Comptroller of the Currency (OCC) and the Bureau was signed on February 17, 2012, the month following your recess appointment as Director of the Bureau, which occurred on January 4, 2012. Yet in your testimony, you stated "That was an agreement signed before I became director." Were you mistaken about the date upon which the Occupancy Agreement was signed, or were you indicating that the circumstances of your recess appointment did not yet endow you with the legal authority to act as the Director of the Bureau?

Response:

As a point of clarification, I took the question asked to refer to the interim agreement with the OCC to occupy the 1700 G Street, NW building. That Interagency Agreement was signed on July 21, 2011, before I became Director of the Consumer Financial Protection Bureau (Bureau), and represented our first commitment to this building. The current Occupancy Agreement with the OCC was signed on February 17, 2012, after my appointment as Director of the Bureau on January 4 of the same year.

Hensarling 3:
The Occupancy Agreement between the OCC and the Bureau provides that "The CFPB will be responsible for the cost of any improvements it may make to the Premises" and "The CFPB bears the responsibility for the cost of operation, maintenance, repair of the space as well as the capital improvement cost of replacement of all base building structures and systems necessary to keep the building structures and systems in good maintenance and repair." Why would you agree to these contract terms for a building the Bureau does not own?

Response:

The Consumer Financial Protection Bureau (Bureau) reviewed two outside reports in connection with this Occupancy Agreement. The first was a valuation by Ernst & Young for the Office of the Comptroller of the Currency entitled, "Office of the Comptroller of the Currency: 1700 G Street NW as of 1 February 2011 Valuation for internal-decision making purposes." This document estimated a lease rate for the building in as-is condition with no improvements paid for by the owner, of $29.75 to $38.00 per square foot. The second report, by Gensler for the Office of Thrift Supervision (OTS) in 2010, compared three renovation scenarios estimated at $67 million, $86 million, and $107 million respectively. Based on these independent reports, the

terms of the Occupancy Agreement contemplated the condition of the building as well as the estimated cost to renovate the building.

Hensarling 4:
In your testimony, you described your headquarters building as a "tough building," a "deteriorated building" and a "classic white elephant" that "must have been used pretty heavily." You further stated that "If I were a consumer I would be complaining a lot about the building if I owned it."

a. Did you have any inspection or appraisal reports or other information available to you at the time you committed the Bureau to its long-term Occupancy Agreement with the OCC that would have given you an indication of the condition of the building? If so, please produce dated copies of any such documents.
b. If not, why did you not conduct due diligence on the condition of the building before committing the Bureau to an investment of over $250 million in total annual rent payments over the Occupancy Agreement's 20-year term?

Response:

See response to Question 3. Attached are the following documents:

- Gensler, et al. Report, "Office of Thrift Supervision Building Evaluation," June 2010,
- Gensler, et al. Report, "Office of Thrift Supervision Building Evaluation Final Report," June 2010, and
- Ernst & Young, "Office of the Comptroller of the Currency: 1700 G Street NW as of 1 February 2011 Valuation for internal-decision making purposes."

Hensarling 5:
Regarding the Bureau's Occupancy Agreement with the OCC:

a. Which specific Bureau employees were responsible for negotiating and approving the Bureau's Occupancy Agreement with the OCC?

Response:

The negotiation of the Occupancy Agreement with the OCC was led by then-Chief Operating Officer Catherine West, with the support of staff from across the Consumer Financial Protection Bureau and the Department of the Treasury.

b. Does the buck stop with you or were other Treasury or Bureau employees also responsible for committing the Bureau to this Occupancy Agreement?

Response:

As the Director of the Consumer Financial Protection Bureau (Bureau), I am responsible for final Bureau agreements.

Hensarling 6:
According to an audit report released by the Treasury Department's Office of the Inspector General on December 20, 2013, the OCC engaged a private consulting firm in 2011 to perform a study to value the building at 1700 G Street, NW for sale and rental purposes. The Treasury IG report further states that:

> "The study valued the building at approximately $153.7 million. At the time of the study, OCC knew that CFPB was willing to occupy the entire building under triple-net rent terms, which requires the lessee to pay for net real estate taxes on the leased asset, net building insurance, and net common area maintenance. The results of the study found that the net present value of renting the property under a triple net rent contract for 10 years slightly exceeded the net present value of selling the building."

This IG report would seem to indicate that the Bureau's willingness to enter into lease terms favorable to the OCC induced the OCC to rent the building to the Bureau rather than sell it to another party. Do you agree or disagree with the Treasury IG's characterization of these events?

Response:

The Consumer Financial Protection Bureau has not drawn any inferences from the Treasury Department's Inspector General's report and takes the factual statements in the report at face value.

Hensarling 7:
The study referenced in the Treasury IG report was conducted by Ernst & Young and completed on February 4, 2011.

a. Which individual served as the leader or acting Director of the Bureau on this date?

Response:

On February 4, 2011, Elizabeth Warren was the Special Advisor to the Secretary of the Treasury on the Consumer Financial Protection Bureau.

b. Which Bureau or Treasury employee(s) negotiated or communicated with the OCC on behalf of the Bureau regarding lease terms during this time period?

Response:

The negotiation of the Occupancy Agreement with the OCC was led by then-Chief Operating Officer Catherine West, with the support of staff from across the Bureau and the Department of the Treasury.

Hensarling 8:
In your testimony regarding the Bureau's decision to lease the OCC building at 1700 G Street, NW, you indicated that "we worked with GSA to try to understand what space was available in Washington, D.C., and there's very limited space for an agency with over a thousand employees." You also stated that "we looked around at surrounding areas as well." Please provide this Committee with copies of all documents prepared by the Bureau, the General Services Administration or any private contractor or consultant prior to February 17, 2012 that reference or evaluate the Bureau's commercial real estate lease or purchase opportunities.

Response:

As a point of clarification, in my testimony, which you reference, I was discussing the Consumer Financial Protection Bureau's (Bureau) search for space to occupy during the renovations of the building at 1700 G Street NW.

In regards to the documents requested, the Bureau has not, to date, found documents that can be responsive to this request.

Hensarling 9:
In your testimony regarding the Bureau's planned renovation of the OCC building at 1700 G Street, NW, you indicated that "We're going to have to vacate the building while this is going on."

a. When will the Bureau relocate its first employee from the headquarters building?

Response:

At this time, we anticipate that the first group of employees will move from the Consumer Financial Protection Bureau (Bureau) headquarters building at 1700 G Street NW, in May 2014.

b. How many total employees will be reassigned to another office location while the building at 1700 G Street NW is under renovation?

Response:

Approximately 950 employees and contractors will move into temporary space.

c. Will all impacted employees be reassigned to a new location on a rolling basis or all at once?

Response:

Employees will move on a rolling basis in waves of approximately 180-250, depending on the size of each work group.

d. How long will CFPB employees currently working at 1700 G Street, NW be reassigned to a temporary location?

Response:

At this time, we anticipate that employees will remain at the temporary space until the summer of 2017.

e. What will be the total costs of vacating the building and renting an alternate facility?

Response:

Based on the draft version of the Occupancy Agreement for 1275 First Street NE, the cost of renting temporary space in the first year was estimated at $31.73 per square foot, which includes base rent, operating expenses, real estate taxes, and the Public Building Service (PBS) fee. The Bureau recently awarded a contract to a company to provide moving and storage services for an amount just under $400,000.

f. What alternate office location has been selected for vacated employees?

Response:

The Bureau will be using a vacant building under lease to the General Service Administration (GSA). It is located at 1275 First Street, NE.

g. When was the contract for an alternate office location signed?

Response:

A draft version of the Occupancy Agreement was executed on March 8, 2013. The final version has not been signed.

h. Please provide us with a copy of these lease agreement.

Response:

Attached is the draft version of the Occupancy Agreement dated March 8, 2013. The final version has not been signed.

i. How many square feet of office space will be occupied by the Bureau and at what cost?

Response:

During the renovation, the Bureau will occupy approximately 306,000 rentable square feet at 1275 First Street NE. Based on the draft version of the Occupancy Agreement for 1275 First Street NE, the cost for this space in the first year was estimated at $31.73 per square foot, which includes base rent, operating expenses, real estate taxes, and the Public Building Service (PBS) fee. The Bureau will also retain approximately 72,000 rentable square feet in 1625 Eye Street at a cost of $40.56 per square foot through March 31, 2014, increasing to $42.18 per square foot on April 1, 2014.

j. Please provide this Committee with all relevant details and documents substantiating your responses to these questions.

Response:

In response to Questions 9(a), 9(b), 9(c), and 9(d), the Bureau's relocation timeline is attached. Regarding Question 9(e), the Bureau recently awarded a contract to a company to provide moving and storage services for an amount just under $400,000, and that contract is attached. And responses to Questions 9(f), 9(g), and 9(i) contain information that can be found in the draft version of the Occupancy Agreement dated March 8, 2013, provided in response to Question 9(h).

Hensarling 10:
Please provide this Committee with copies of the Bureau's contract(s), including all amendments, with the architecture firm Skidmore, Owings & Merrill LLP.

Response:

Attached are the following contracts:

- CFP-12-D-00011 MOD 001
- CFP-12-D-00011 SOM Task Order 0003 Mod 3
- CFP-12-D-00011 Task Order 0001 Mod 1
- CFP-12-D-00011 Task Order 0001 Mod 2
- CFP-12-D-00011 Task Order 0001 Mod 3
- CFP-12-D-00011 Task Order 0001 Mod 4
- CFP-12-D-00011 Task Order 0003 Mod 001
- CFP-12-D-00011 Task Order 0003 Mod 002
- CFP-12-D-00011 TO 002 MOD 001
- CFP-12-D-00011 TO 002 MOD 002
- CFP-12-D-00011, TO 003 MOD 004
- Task Order 0001 SOM
- SOM IDIQ

- Task Order 0002
- Task Order 0003

Hensarling 11:
Please provide this Committee with copies of any documents, including but not limited to any architectural or design plans, renderings, illustrations, electronic files and e-mail communications, provided to the Bureau by Skidmore, Owings & Merrill concerning the renovation 1700 G Street, NW.

Response:

Attached are the following architectural and design documents representative of the Bureau's current plans concerning the renovation of 1700 G Street NW:

- "Bridging Documents, 80% Progress Submission"
- "Bridging Documents, Design Objectives & Criteria, 80% Progress Submission," February 28, 2014
- "Bridging Documents, Drawing List & Specifications, 80% Progress Submission," February 28, 2014

We are in the process of trying to identify any communications that might be responsive to this request.

Hensarling 12:
Regarding the Bureau's planned renovations:

a. When does the Bureau expect to award a design build contract to renovate 1700 Street, NW?

Response:

The Consumer Financial Protection Bureau is using the General Services Administration (GSA) to procure the Design/Build-Bridging general contractor. At this time, the GSA estimates that the final award will be issued in September 2014.

b. What procurement process will be used?

Response:

The selection procedures will utilize the Best Value Tradeoff process in accordance with the Federal Acquisition Regulation (FAR) Part 15 and the Two-Phase Design/Build-Bridging Procedures in FAR Part 36.3. Stage I, Request for Qualifications (RFQ), shall result in a short list of offerors who will be invited to participate in Stage II of the procurement. Stage II, Request for Proposals (RFP), shall result in the selection of the Design/Build-Bridging contractor whose offer provides the best value to the Government.

c. When will construction commence?

Response:

The construction will begin after the final award is issued.

Hensarling 13:
During your testimony before the Committee on September 12, 2013, Rep. Rothfus asked you about salary levels for Bureau employees, and you responded by stating:

> "Again, the federal banking agencies are on a different pay scale than the GS scale. One of the things I want to note that's very important here – our statute requires us, it requires us – this is the law of the land that we're bound to follow – that we are to have a pay scale comparable to that of the Federal Reserve. Last I checked on our statistics, we're one percent lower average salary than the Federal Reserve. So we're complying with the law."

a. So that the Committee may properly compare the Bureau's compensation structure with that of the Board of Governors of the Federal Reserve System, please provide a copy of the Bureau's salary structure, including all pay classes, grades, steps, and locality adjustments.

Response:

Attached is a document containing 2013 Consumer Financial Protection Bureau Pay Tables.

b. Additionally, please provide a Microsoft Excel file containing Bureau employee salary data, organized by the following column headings:

- Employee, Fellow, Intern Name,
- Title,
- Pay Class,
- Pay Grade,
- Division,
- Office,
- Hire Date,
- Starting Salary or Hourly Wage at Hire Date,
- Amount of any Signing Bonus Awarded,
- Amount of any Relocation Incentive Awarded,
- Amount of any additional financial incentive awarded,
- Date(s) of any Raises(s) Awarded
- Amount(s) of any Raise(s) Awarded
- Date of Promotion (if applicable),
- New Title after Promotion (if applicable),

- New Salary or Hourly Wage after Promotion (if applicable),
- Current Annual Salary or Hourly Wage,
- Departure Date (if applicable),
- Annual Salary or Hourly Wage at Departure Date (if applicable),
- Annual Bonus awarded in 2011 (indicate calendar or fiscal year),
- Annual Bonus awarded in 2012, and
- Annual Bonus awarded in 2013.

Response:

Attached is an updated version of an Excel file that we have previously shared with your office in response to past requests for salary data on Consumer Financial Protection Bureau employees.

Hensarling 14:
The Bureau's contract service inventory list for FY 2013 shows that the Bureau paid Harvard University for two different programs held in Cambridge, Massachusetts: $37,500 for a "Harvard Law School Executive/Legal Education Program" and $69,000 for "registration fees for Bureau staff members to attend senior executive seminar(s)."

a. Please produce copies of all records associated with these programs, including but not limited to any pre-solicitation requests for quotes, the quotes submitted to the Bureau by Harvard, any contracts signed between Harvard and the Bureau, any travel, lodging, and meal vouchers associated with any Bureau employee, a complete list of every Bureau employee who attended either of these programs, and any materials provided to program participants.

Response:

These courses are off-the-shelf (OTS) programs, and are commercially available for open enrollment by employees of Federal Government agencies, private-sector companies, and non-profit entities. They constitute an expense, however not a traditionally contracted pursuit such as custom products or services to the Government, as they are OTS.

For these OTS commitments, no actual contracts exist between Harvard Law School and the Consumer Financial Protection Bureau (Bureau), except for a single transaction of $12,500. The original planned $37,500 was reduced to the single amount above. Similarly, no actual contracts exist between Harvard Kennedy School of Government (HKSG) and the Bureau, except for a Purchase Order which indicated that the Bureau budgeted funding to support "up to $69,000" if Bureau executives and/or senior managers committed to these external courses. The actual program expense consisted of three transactions of $6,900 each in 2013 (with one of those participants attending in 2014), and two more transactions at this level to date in 2014. Market research conducted by the Bureau's Office of Human Capital determined that, as compared to like offerings, these courses for executives and senior managers were competitively priced.

The following Bureau staff attended, or will be attending, external courses:

- Meredith Fuchs: Attended "Leadership in Corporate Counsel," 2013
- Edwin Chow: Attended "Strategic Management of Regulatory Enforcement Agencies," 2013
- Paul Sanford: Attended "Strategic Management of Regulatory Enforcement Agencies," 2013
- Abeshek Agarwal: Scheduled to attend "Strategic Management of Regulatory Enforcement Agencies," 2014
- Chris D'Angelo: Scheduled to attend "Strategic Management of Regulatory Enforcement Agencies," 2014
- Scott Pluta: Scheduled to attend "Strategic Management of Regulatory Enforcement Agencies," 2014

Attached are travel, lodging, and meal vouchers, where applicable, as well as course outlines, for the "Leadership in Corporate Counsel" and "Strategic Management of Regulatory Enforcement Agencies" programs, which include reading assignments for participants.

b. Why were these programs not mentioned in the Bureau's December 2013 report on "Growing our Human Capital," even though the report listed fifteen other "training and workforce development initiatives" instituted by the Bureau in 2013?

Response:

These programs were included in the December 2013 report, just not specifically referenced as off-the-shelf suppliers. We also did not list by course or curricula name all of the internal development and training programs that we are currently building, which are referenced in the report ("...design, development, and production of customized programs...").

Relatedly, the following sections in the report refer to training and development investments:

"Section 3.2: Key Accomplishments" includes reference to:
"Offering increased quantity and scope of learning programs for employees and leaders."[1]

Also, "Section 3.3: Future Action Items" includes reference to:
"Procurement of off-the-shelf programs, supplemented by the design, development, and production of customized programs, incorporating online references and resources (all as appropriate)."[2]

c. Why did you select Harvard to provide this program?

[1] Growing our Human Capital: Human Capital Annual Report to Congress, Consumer Financial Protection Bureau, Jan. 13, 2014, p 16, *available at* http://files.consumerfinance.gov/f/201312_report_annual-human-capital-report-to-congress.pdf
[2] *Id.* at 20.

Response:

The selected programs met the specific needs and aims of the Consumer Financial Protection Bureau leaders' roles and development goals. The Harvard Law course, "Leadership in Corporate Counsel," was taken by our General Counsel, and balances legal content and strategic leadership topics, both of which constitute critical content for her role. The Harvard Kennedy School of Government course, "Strategic Management of Regulatory Enforcement Agencies," focuses specifically on management challenges within regulatory agencies and among government leaders in building a cohesive organization with diverse functional responsibilities and risks.

d. There are many nationally-recognized Universities in the greater DC area with similar capabilities, the selection of which would have minimized travel expenses. Did you not consider these universities to provide the programs for your senior employees? Why was it necessary to send your senior employees to Cambridge, MA to receive this training?

Response:

While there are strong, nationally-recognized universities in the Washington D.C. area, these courses were selected to address specific leadership development areas, which were not covered in the same way by programs found in the area. These courses met the needs of our General Counsel and Bureau leaders focusing on supervisory and enforcement activities at that time. The Harvard Kennedy School of Government, in particular, offers a blend of strategic leadership, public-sector focus, and the specificity of regulatory and enforcement topic areas, which were not found to be fully combined in other programs' courses. Additionally, these courses were concentrated residential programs over just a few days, as compared to other programs that take place over several weeks, which even if local can require a significant time commitment. Lastly, the fees included in these courses include course materials, accommodations, and meals; therefore incremental travel expenses were expected to be minimal.

e. Why was this seminar not held at the Bureau's headquarters instead of in Cambridge, MA?

Response:

These courses are considered off-the-shelf and commercially available to all government leaders. More critically, the interactions between leaders in the program from a variety of regulatory agencies are a key component of the case method learning model employed by the Harvard Kennedy School of Government. This learning model exposes participants to the different perspectives of leaders from agencies other than the Bureau. As there were only a couple of Bureau attendees planned for 2013 and 2014 to date, hosting a seminar for the small number of Bureau leaders at headquarters would not facilitate a similarly full and diverse class discussion.

f. How much money would have been saved if the Bureau had hosted this program rather than sending its employees to Harvard?

Response:

While we did not request that Harvard provide us with a supplier quote for a custom, on-site, development course, we understood that if the senior leaders engaged in the course found it valuable there would be future opportunities to evaluate more widespread training opportunities on-site in Washington, D.C.

Hensarling 15:
On May 28, 2013, the CPFB published a pre-solicitation notice to solicit quotes for "various Senior/Executive Manager workshops similar to the Harvard Kennedy School of Government programs."

a. Was this the pre-solicitation notice that resulted in the awards and programs referenced in question 14 above?

Response:

This pre-solicitation notice referred to the two Harvard Kennedy School of Government (HKSG) programs that the Human Capital team considered for executive education opportunities.

b. How many quotes did the Bureau receive?

Response:

Research of commercial pricing was conducted prior to the purchase order award, which included a comparison of executive education course programs from known providers. This was to ensure fair value would ultimately be obtained for the educational services provided. HKSG, once determined as offering best value, received a purchase order from the Consumer Financial Protection Bureau in order to provide the executive education on an as-needed basis at set pricing, up to a financial ceiling of $69,600. A formal quote was not received, as commercial off-the-shelf pricing and course descriptions were publically available from all firms considered.

c. With a pre-solicitation notice phrased in this way, it would appear that the Bureau's selection of Harvard's quotes was a foregone conclusion, was it not?

Response:

The Bureau would have selected a comparable, lower-priced option if one had been available. As noted above, a research comparison revealed that HKSG was the best-valued option when compared to similar offerings by other universities. Additionally, the pre-solicitation notice was posted with the intent to solicit additional vendors regarding their interest in providing executive education similar to HKSG.

Hensarling 16:
The Bureau's contract service inventory lists for FY 2012 and FY 2013 list a number of contracts the Bureau has awarded to companies for "paid search marketing services." Please produce copies of any such contracts, including but not limited to the contracts associated with the following awards.

- $122,513 paid to Fleishman-Hillard, Inc. on 3/16/2012;
- $94,692 paid to PCG Enterprises on 6/8/2012;
- $237, 300 paid to Digital Firefly Marketing on 8/21/2012; and
- $280,637 paid to Fleishman-Hillard, Inc. on 6/14/2013.

Response:

Attached are the following contracts, respectively:

- CFP-12-K-00007
- CFP-12-C-0005
- CFP-12-C-00003
- CFP-13-K-00021

Hensarling 17:
The Bureau's contract service inventory lists for FY 2012 and FY 2013 list a number of contracts the Bureau has awarded to a company named IDEO, LLC for "branding services." Please produce copies of any contracts awarded to any company for "branding services," including copies of all contracts awarded to IDEO, LLC.

Response:

Attached are the following contracts:

- TPDCFPBPA110006, Order 0001
- TPDCFPBPA110006, Order 0002
- TPDCFPBPA110006, Order 0003
- TPDCFPBPA110006, Order 0004
- TPDCFPBPA110006, Order 0005
- TPDCFPBPA110006
- CFP-14-Z-00001, Order 0001
- CFP-14-Z-00001

Please note that the awards of CFP-14-Z-00001, Order 0001 (Blanket Purchasing Agreement) and CFP-14-Z-00001 (underlying task order) were made to IDEO, LLC, but are not for branding services. They are for assisting the Consumer Financial Protection Bureau in implementing statutory requirements related to developing and implementing initiatives intended to educate

and empower consumers to make better informed decisions; and responding to consumer complaints regarding consumer financial products or services.

Hensarling 18:
Please produce copies of any contracts awarded to GMMB, Inc., the Corporation for Enterprise Development, and the National Consumer Law Center.

Response:

Attached are the following contracts awarded to GMMB, Inc.:

- CFP-13-Z-00006, Order 0001
- CFP-13-Z-00006, Order 0002
- CFP-13-Z-00006, Order 0003
- CFP-13-Z-00006, Order 0004
- CFP-13-Z-00006

Attached are the following contracts awarded to the Corporation for Enterprise Development:

- CFP-12-Z-00019, Order 0001
- CFP-12-P-00008
- CFP-12-Z-00019, Order 0002
- CFP-12-Z-00019

Attached are the following contracts awarded to the National Consumer Law Center:

- CFP-12-P-00003
- CFP-12-P-00012
- CFP-12-P-00006
- TPDCFP13C0004

Hensarling 19:
Section 1017(d)(2) of the Dodd-Frank Act provides that amounts deposited in the Bureau's Consumer Financial Civil Penalty Fund may be used only for "payments to the victims of activities for which civil penalties have been imposed" or "for the purpose of consumer education and financial literacy programs." However, page 25 of the Bureau's Fiscal Year 2013 Financial Report discusses the Bureau's Civil Penalty Fund and states that in Period 1, "$1.6 million was set aside for any administrative costs."

a. What is the legal authority upon which the Bureau relied for using funds in the Civil Penalty Fund for "any administrative costs"?

Response:

Under well-established fiscal law principles[3], an agency may use funds for administrative expenses related to the purpose for which the funds were made available.

b. Please provide a full accounting of all administrative costs incurred specifically related to the Civil Penalty Fund.

Response:

As of March 31, 2014, $10,811.26 in administrative expenses was invoiced to and paid from the Civil Penalty Fund. Of the $10,811.26, $10,661.26 relates to the Payday Loan Debt Solution, Inc. case and $150.00 relates to the Gordon, *et al.* case.

c. Please indicate whether the administrative costs will solely be used for purposes of the Civil Penalty Fund.

Response:

Funds set aside from the Civil Penalty Fund for administrative expenses are used only for the administrative costs of hiring third-party administrators to distribute Civil Penalty Fund payments to victims.

Hensarling 20:
On a subpage of the Bureau's website entitled "Doing Business With Us," the Bureau discloses that it plans to build a "national database on US households' use of consumer financial products." Further, the Bureau discloses that it planned to solicit bids for this database in the first quarter of Fiscal Year 2014. Please produce all records referencing or relating to this "national database on US households use of consumer financial products."

Response:

The Consumer Financial Protection Bureau is not building a national database on every U.S. household. The Bureau's Office of Research has purchased a commercially available nationally representative survey of U.S. households' use of consumer financial products and services from Strategic Business Insights (SBI) (order attached). The data procured by the Bureau does not contain any directly identifying information of respondents.

[3] Government Accountability Office, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 4-19–4-35 (3d ed.).

Hensarling 21:
On April 24, 2013, the Bureau released a "White Paper" on Payday Loans and Deposit Advance Products. Page 4 of this document states: "This white paper summarizes the *initial findings* of the CFPB's analysis of payday loans and deposit advance." (Emphasis added).

a. In light of the fact that the Bureau's White Paper only presented "initial findings," why does the Bureau's unified rulemaking agenda already list "Payday Loans and Deposit Advance Products" in the Bureau's "Prerule" stage of rulemaking?

Response:

As you may know, the Consumer Financial Protection Bureau (Bureau) released additional research on March 25, 2014, that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan. The Bureau will continue to collect and analyze information about the payday loan market. Subsequent findings will be reflected in any rulemaking pertaining to this market. These findings may be presented either through publications or presentations in advance of a rulemaking or through information presented as part of a rulemaking itself.

b. Why is the Bureau, according to the Office of Information and Regulatory Affairs (OIRA), "considering whether rules governing these products are warranted under CFPB authorities, and if so what types of rules would be appropriate" without first completing its research and issuing a White Paper containing finalized research and findings?

Response:

The initial findings shared in the Bureau's White Paper have led to concerns that certain features of payday loans may cause harm to some consumers. The Bureau's determination as to whether or not to issue rules pertaining to payday loans – and the scope and substance of any such rules – will be informed by these and subsequent research findings and by public comment.

c. Will you commit to finalizing the Bureau's research before proposing any rule to regulate these products?

Response:

As a data-driven agency, the Bureau is committed to seeking to obtain a comprehensive understanding of the markets for the financial services products it has the authority to regulate, and of how consumers experience those products. Indeed, the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Bureau to research, analyze, and report on "developments in markets for consumer financial products or services," "consumer behavior with respect to consumer financial products or services," and "risks to consumers in the offering or provision of consumer financial products or services." The Bureau conducts research and analysis on an ongoing basis. When ongoing research and market monitoring activities by the

Bureau identifies harm to consumers, the Bureau will use its various authorities, including its rulemaking authority, as appropriate, to address that harm.

d. The Bureau often cites its objective, data-driven approach to policy research and analysis. In the name of transparency, will you immediately make all data, methodologies and analysis underlying the Bureau's initial research and findings available to the public for peer review?

Response:

The Bureau released additional research on March 25, 2014, that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan. This report provides additional discussion of various methodological approaches that can be used to assess these data. To assure the integrity of its supervision program, the Bureau generally does not publicly share un-aggregated information obtained from supervised entities through the examination process.

Hensarling 22:
On December 12, 2013, the Bureau released a report entitled "Arbitration Study Preliminary Results." The Committee understands that the Bureau obtained information that formed the basis of its findings by issuing orders to financial institutions to provide it with copies of their standard-form consumer account agreements.

a. To how many financial institutions did the Bureau issue these orders?

Response:

Regarding the prevalence of arbitration clauses in consumer checking account agreements, the Consumer Financial Protection Bureau (Bureau) requested that certain financial institutions return one copy of the standard-form account agreement that they provided to consumers who opened the institution's core consumer checking account product. The Bureau issued orders to the following financial institutions (and/or, where applicable, relevant subsidiaries), only if the Bureau was unable to obtain current agreements via Internet searches: the 100 largest bank holding companies or subsidiaries based on consolidated deposits less than $250,000 (i.e. the deposit insurance threshold); a random sample of 150 bank holding companies or subsidiaries not among the 100 largest; and the 50 largest credit unions based on the amount of insured deposits. We ultimately sent the requests to 240 holding companies or relevant subsidiaries, and received responses from 92 percent of the recipients.

b. Why was this information collection not noticed in the *Federal Register*?

Response:

The Office of Management and Budget's (OMB) regulations specify categories of items that are not subject to OIRA (Office of Information and Regulatory Affairs)/OMB review and approval under the Paperwork Reduction Act, which include among other things, samples of products

(5 C.F.R. 1320.3(h)(2)). The Bureau's orders were promulgated pursuant to its authority under Section 1022(c)(4)(B)(ii) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and sought only the recipient covered-persons' standard form account agreements in the same form and format as they are provided to potential customers. Accordingly, the orders are exempt from the Paperwork Reduction Act's requirements for notice and comment within the *Federal Register* and OIRA/OMB approval.

c. Why was this collection not first approved by the Office of Information and Regulatory Affairs (OIRA)?

Response:

See response to Question 22(b), above.

d. Why did these orders not contain a valid OMB approval number?

Response:

See response to Question 22(b), above.

e. When does the Bureau plan to release a follow-up or subsequent study regarding arbitration?

Response:

The Bureau currently anticipates completing its study in the fall of 2014.

f. Will you make all data, methodologies, and analysis underlying this report available to the public for peer review?

Response:

All published work will comply with the Bureau's Information Quality Guidelines, which are published on our website at http://www.consumerfinance.gov/informationquality/.

Hensarling 23:
Will you please provide the Committee with a current list of every Bureau employee or contractor who has access to information contained within the Bureau's credit card database, national mortgage database, loan-level database, and consumer credit panel?

Response:

In general, access to the Consumer Financial Protection Bureau's (Bureau) data is controlled, and access logs to Bureau systems are kept and maintained in accordance with Bureau policy based on National Institute of Standards and Technology Special Publication 800-53

Recommended Security Controls for Federal Information Systems and Organizations (NIST SP 800-53) guidelines.

For security reasons, the Bureau's Technology & Innovation (T&I) staff continually update access rights to these databases, and the identity and number of personnel with access change as a result. The Bureau conducts regular reviews of user access for in-house databases, including the Credit Card Database and Consumer Credit Panel. As part of these reviews, the Bureau verifies that all access to a given dataset has been approved by senior Bureau leadership and is of continuing necessity to users' work.

As of February 2014, 20 Bureau personnel have access to the Credit Card Database for purposes of analysis and 11 have access to the Consumer Credit Panel for purposes of analysis. An additional 19 members of the T&I staff have access to both databases for technical assistance and support. The National Mortgage database is currently under construction as a joint project between the Bureau and the Federal Housing Finance Agency (FHFA), and FHFA manages the staff involved in the construction. A single member of the Bureau's staff currently has access to that database, solely for testing purposes. We are not familiar with your reference to a particular dataset known as the "loan-level database."

Hensarling 24:
Has any data collected as part of the Bureau's market monitoring efforts, including data collected or retained in its credit card database, national mortgage database, loan-level database, and consumer credit panel, ever led directly or indirectly to a Bureau investigation or enforcement action? If so, please fully describe all such instances in which this has occurred.

Response:

Teams within the Consumer Financial Protection Bureau's (Bureau) Offices of Research and Markets are charged with understanding consumer financial markets and consumer behavior. Their work contributes to the Bureau's evaluation of the need for consumer financial protection regulations, supervision, or enforcement actions. The analysis of consumer financial data and markets performed by these teams is essential to informing the work and decisions of the Bureau as a whole.

Hensarling 25:
Does the Bureau have a memorandum of understanding (MOU) with the Financial Stability Oversight Council, Office of Financial Research, U.S. Department of the Treasury or Internal Revenue Service? If so, please provide copies of all such memoranda to this Committee.

Response:

The Consumer Financial Protection Bureau (Bureau) entered into a Memorandum of Understanding (MOU) with the Financial Stability Oversight Council and its members (attached), including the Department of Treasury and the Office of Financial Research, setting

forth the treatment of any non-public information shared amongst the signatories to the MOU. The Bureau also has an MOU with the Department of Treasury's Financial Crimes Enforcement Network (attached) related to access to information collected pursuant to the Bank Secrecy Act. The Bureau does not have an MOU with the Internal Revenue Service.

Hensarling 26:
Are you open to creating an advisory opinion process whereby lenders and other regulated entities can petition the Bureau for an opinion on whether a proposed product or service is likely to be found lawful and compliant by the Bureau? This process is used by many other regulatory agencies and provides greater certainty to market participants and encourages product innovation, which benefits consumers. In your view, could the Bureau adopt such an advisory opinion process by rule, or is legislation required?

Response:

We agree that consumer-friendly innovation and entrepreneurship is important for ensuring that all consumers have access to fair, transparent, and competitive consumer financial markets. The Consumer Financial Protection Bureau (Bureau) has taken steps to encourage and facilitate such innovation. In November 2012, the Bureau launched Project Catalyst, a program of working together with innovators to make sure they have good communication to understand the regulatory implications of their products and to help the Bureau understand what ideas do and don't work for consumers. The Bureau has also implemented a policy for authorizing companies to test disclosures (or disclosure delivery methods) that might work better than what regulations currently call for. As we continue our efforts, we welcome input about how best to foster innovation.

Hensarling 27:
Are you open to providing the public advance notice of the release of any enforcement bulletin and regulatory guidance and affording the public the chance to comment on any such bulletin or guidance? Such a process could provide the public with an additional opportunity to provide the Bureau with helpful feedback, even in instances where the Bureau is simply restating its view of existing law and regulations. If you do not support providing the public with this opportunity, please articulate your reasons for opposing such a process. In your view, could the Bureau adopt such a notice-and-comment process by rule, or is legislation required?

Response:

The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity and in applicable cases calls for comments from affected parties and the general public concerning an agency's activity. The APA does not impose a notice and comment requirement for a general statement of policy, a non-binding informational guideline, or an interpretive memorandum.

We value public input in our formulation of policy, and the Consumer Financial Protection Bureau (Bureau) engages stakeholders using a variety of mechanisms, ranging from informal consultations between industry and market specialists in the Bureau to published notices with a specified comment period. The Bureau has elected to engage in notice-and-comment rulemaking in a number of cases that would not have been required under the APA. In some circumstances a formalized notice-and-comment process is not the optimal vehicle. For example, in September 2013 the Bureau issued a bulletin explaining the meaning of certain provisions in its mortgage servicing rules. The Bureau issued that bulletin in response to requests from various stakeholders that we provide additional clarity about certain topics before the mortgage rules came into effect. A notice-and-comment process could have taken until after institutions were required to comply with the provisions at issue, and thus could have impeded the attempt to provide the needed clarity.

Hensarling 28:
I am concerned that the Bureau is undertaking investigations that duplicate similar efforts undertaken by other state and federal agencies, which is an inefficient use of limited law enforcement resources.

a. Without revealing the identity of any company under current investigation, please state the number of Bureau investigations currently underway in which another state or federal agency is conducting an investigation of the same company or of the same or similar activities.
b. Please state the percentage of Bureau investigations in which another state or federal agency issued a subpoena, civil investigative demand, or otherwise obtained information from the same company being investigated before the Bureau did so?
c. Finally, is the Bureau currently investigating any company that is not currently considered to be a financial services company? If so, please describe the products or services provided by any such company and the legal basis for the Bureau's authority to investigate such companies.

Response:

Coordination and collaboration with our law enforcement counterparts on both the state and federal level is a high priority for us. The Consumer Financial Protection Bureau (Bureau) is committed to working with law enforcement partners for many reasons. Strong lines of communication ensure that we are aware of emerging harm to consumers and that we address these issues in a timely and appropriate fashion. In addition, effective coordination and collaboration helps us avoid duplication of efforts. In some cases, this coordination is directed by statute or Memorandum of Understanding (MOU), but it is, in all cases, the type of good government we strive to practice. With partners such as the states and the Federal Trade Commission (FTC), the Bureau seeks to avoid duplication of efforts, and has entered into several interagency agreements that reflect this objective. The Bureau also works closely with prudential regulator partners to avoid duplication and burden. The fact of our investigating the same entity as a law enforcement partner does not itself reflect inefficiency; indeed it often

represents these coordinated efforts. In fiscal year 2013, the Bureau shared and received information with state and/or federal law enforcement partners in 80 matters.

The Bureau's enforcement authority is not limited to solely financial services companies. As appropriate, the Bureau may investigate other types of persons' possible violations of the laws the Bureau enforces.

Questions for the Record Submitted by Representative Bill Huizenga:

Huizenga 1:
On January 14, 2014, the Financial Services Subcommittee on Financial Institutions and Consumer Credit held a hearing on the recently enacted Ability to Repay rule and its Qualified Mortgage (QM) definition.

In testimony, Bill Emerson, the Vice Chairman of the Mortgage Bankers Association (MBA) and CEO of Quicken Loans, which is headquartered in my home state of Michigan, made a series of recommendations for how the CFPB could improve the Ability to Repay rule so it better serves consumers and promotes the vibrant flow of safe and affordable mortgage credit. Among MBA's recommendations are increasing the threshold for smaller balance loans, establishing a "right to cure" calculation errors and other processing mistakes, providing better written guidance, and raising the APOR tolerances.

I understand the CFPB is considering making adjustments to the Ability to Repay rule later this year.

a. What is the Bureau's timeframe for publishing amendments to the Ability to Repay (APR/QM) rule?

Response:

The Consumer Financial Protection Bureau (Bureau) is considering various issues for possible rulemaking during calendar year 2014, including under the Ability-To-Repay (ATR)/Qualified Mortgage (QM) rule. Some issues may be addressed more quickly, either because we recognize that they are more urgent or because they are easier and more straightforward to address than others – or in some cases both. Accordingly, the Bureau may conduct more than one rulemaking process in 2014 with different timelines for each.

b. Is the CFPB considering revising the "points and fee" threshold for smaller loans? Currently, loans with a balance of less than $100,000 are able to qualify as QM loans with higher "points and fees," ranging from 3 percent to as high as 8 percent for the smallest loans. Would you agree that setting the definition closer to the national average of $219,000 would improve access to credit for low- and moderate-income Americans?

Response:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the basic three percent points and fees limit for qualified mortgages (QM), but it also required the Bureau to prescribe rules adjusting this limit to permit lenders that extend smaller loans to meet the QM requirements. Prior to the transfer of its consumer financial protection functions to the Bureau, the Board of Governors of the Federal Reserve System (Board) initially proposed the smaller loan limit as $75,000. In response to comments on the Board's proposal, the Bureau raised the smaller loan limit to $100,000. It was estimated that this increase would

double the percentage of loans eligible for the adjusted limit from approximately 10 percent to 20 percent. This resulted in a substantial increase in loans eligible for an adjusted limit while still giving deference to the statutory norm for most loans. The Bureau is monitoring the market for evidence about the effect of the rule on consumers, including any impact on their access to credit.

c. Is the CFPB considering providing lenders with the ability to "cure" mortgages that were intended to be QMs but, through a calculation error or other processing mistake, did not fit into the strict definition? Without such a procedure, lenders will tend to avoid transactions at the boundaries of QM – an outcome at odds with your stated goals for the new rule.

Response:

The Bureau has heard this concern from creditors and is thinking carefully about the different types of issues that may arise with regard to different types of errors and different types of thresholds under the Qualified Mortgage (QM) definition. For example, the types of errors that may occur and the types of correction mechanisms – if any – that might be appropriate could be different for the limit on points and fees than for the threshold for debt-to-income ratio that applies to certain types of QMs. The Bureau wants to be sensitive to consumers' interests in assessing any cure mechanism, as well as how to maintain strong compliance incentives. We realize that creditors and secondary market actors may have different concerns. In light of the complexity of the issues, we expect to be inviting public comment soon.

d. Is the CFPB considering establishing a better process for the provision of written guidance? In his testimony, Mr. Emerson noted that the absence of timely, authoritative written guidance has resulted in industry confusion and understandable reluctance to offer consumers certain beneficial loan features such as bona fide discount points that help them reduce their interest rate and monthly payment.

Response:

The Bureau provided the mortgage industry with an extraordinary level of implementation support and guidance, through the auspices of a major initiative dedicated to just that purpose, during calendar year 2013. This included several rounds of written clarifications, amendments, and guidance. The Bureau undertook that initiative because we recognize that, without timely and smooth implementation of new rules, those rules do not deliver to consumers the intended benefits and protections. Accordingly, assistance to industry in interpreting and implementing our rules has been and remains a high priority for the Bureau. In performing this function, we must be careful to balance legal requirements and practical considerations; there is often a trade-off between the speed and the reliability of answers provided. A notice and comment process provides all stakeholders an opportunity to weigh in on complex issues. The Bureau continues to examine our experiences in providing industry implementation support, while also remaining mindful of our obligations under the Administrative Procedure Act, and expect to apply any

lessons learned in implementation of additional rulemakings, such as the integrated federal mortgage disclosure forms required by the Dodd-Frank Act.

e. Is the CFPB considering raising the APOR/APR thresholds to qualify as QM safe harbor loans? Only mortgages where the APR is less than 150 basis points over the applicable benchmark APOR qualify. Increasing the spread to 200-250 basis points would extend QM loans to a greater number of borrowers, satisfying their credit needs with sustainable and affordable loans.

Response:

As a point of clarification, when a (first lien) loan's annual percentage rate (APR) exceeds the applicable average prime offer rate (APOR) by 150 basis points it does not automatically become non-QM. If it meets the criteria for a QM, the loan remains a QM but is subject to the rebuttable presumption of compliance with ability-to-repay requirements under the Dodd-Frank Act and Bureau regulations rather than being subject to a safe harbor that attends a QM with lower overall loan pricing. The consumer's ability to rebut that presumption is limited to a showing, based on information of which the creditor was aware, that the creditor left insufficient residual income to meet daily living expenses after making the scheduled mortgage payments. We believe this approach strikes the right balance. We continue to monitor the effects of the rules on the market and we remain open, as always, to new empirical information.

Questions for the Record Submitted by Representative Mick Mulvaney:

Mulvaney 1:

A recent report issued by the Philadelphia Federal Reserve Bank under its Working Paper Series found that stricter regulation of third-party collectors is associated with creditors extending fewer lines of credit and reducing the amount of credit offered – all of which ultimately harms consumers. The report concluded that "financial regulation that institutes strong consumer protection must be balanced with creditor rights in order for the latter to extend consumer credit in the first place." As the Bureau engages in its rulemaking on the debt collection industry, how will you ensure that there is balance between strong consumer protection and creditor rights?

Response:

The Consumer Financial Protection Bureau (Bureau) has been considering and will continue to consider the potential costs to industry (including creditors) of any debt collection rule that may develop. Section 1022(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires that the Bureau consider the potential benefits and costs of its rules to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services (such as credit) resulting from any such rules. In addition, the Paperwork Reduction Act requires that the Bureau obtain Office of Management and Budget (OMB) approval for information collections, a debt collection rule. To obtain such approval, the Bureau would have to justify its collections of information by, among other things, establishing the need and intended use of the information, estimating the burden the collection will impose on those subject to the proposed rules, and showing that the collection is the least burdensome way to gather the information. The Regulatory Flexibility Act further requires the Bureau to conduct certain analyses regarding the impact of its rules on small businesses. All of these legal requirements ensure that the Bureau will consider the costs of debt collection rules, including their effects on creditors, as part of the process of developing rules.

The Bureau has already begun soliciting and considering information about the potential costs, benefits, and impacts of regulation in the debt collection area. In November 2013, the Bureau published an Advanced Notice of Proposed Rulemaking (ANPR) relating to debt collection. The ANPR posed many questions about the costs of possible restrictions and limitations on debt collection and solicited information from stakeholders, including debt collectors and creditors, describing and documenting the potential costs associated with various proposals. The deadline for public comments in response to the ANPR was February 28, 2014, and the Bureau received many detailed responsive industry comments. The Bureau is also compiling and considering available empirical research that may bear on the costs and effects of proposed debt collection rules. In particular, economists in the Bureau's Office of Research have closely reviewed the Philadelphia Federal Reserve Bank Working Paper referenced in your question and have discussed with its author his analysis, findings, and conclusions.

Mulvaney 2:

In response to a question from Rep. Meeks about the importance of ensuring access to small-dollar credit, you mentioned several different products, including payday loans and "certain

types of installment loans." I share your understanding that small-dollar lending serves an important function for many borrowers, especially those who may not utilize traditional banking services, and hope the Bureau will work to ensure the continued viability and availability of these products.

You indicated that the Bureau plans to "move ahead with making some policy judgments and regulations in this area." As you do so, please provide to me:

a. The Bureau's definition of "installment loan" and how the Bureau is distinguishing between the different types of installment loans that you referred to during the hearing.

Response:

An installment loan is repaid over the term of the loan through a fixed number of periodic payments. The Consumer Financial Protection Bureau (Bureau) recognizes that there are a variety of different installment loans. For example, installment loans may be secured or unsecured, may vary in length, and may be used for a variety of different purposes, including asset purchases or meeting short-term expenses.

b. The features of installment loans that, in the opinion of the Bureau, provide value to consumers.

Response:

Installment loans may benefit consumers by allowing them to borrow money and repay over time consistent with their budgetary needs and preferences.

c. The features of installment loans that are of concern to the Bureau.

Response:

The Bureau continues to research and monitor the market to evaluate the extent to which features or practices associated with installment loans present risks of consumer harm. The Bureau is concerned that, at least with respect to some installment loans, lenders may not rigorously underwrite the loans to determine whether consumers are likely to be able to repay the loan. The Bureau is also concerned that front-loaded fees and charges may create incentives for lenders to encourage borrowers to refinance their loans, even if it would not be in the consumers' interest to do so. In addition, the Bureau is concerned that some lenders may market add-on products, such as credit insurance, that provide little benefit to consumers and raise the cost of borrowing.

Mulvaney 3:
In response to questions from Rep. Luetkemeyer, you emphasized that "online lenders that are legitimate and valid deserve protection against online lenders that are undercutting them,

violating the law, not complying with the same requirements that they comply with." I applaud you for this statement, and for your recognition that "there's a lot of online lending that is perfectly proper and valid, and may even cut some costs over physical, in-person lending."

You also mentioned that you have been working with state attorneys general to resolve issues that arise from the complex nature of online regulation. In addition to state attorneys general, are you working on these issues in cooperation with the Federal Deposit Insurance Corporation or the Department of Justice?

As the primary regulator for payday lenders, how will you ensure that recourse is available to legitimate online lenders who may have been negatively impacted by enforcement or regulations intended to stamp out illegitimate lenders?

Response:

The Consumer Financial Protection Bureau (Bureau) works collaboratively with others in the federal government, including the Department of Justice and the Federal Deposit Insurance Corporation, on a variety of issues, including issues related to online lending. As the Bureau has stated repeatedly, all lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. This is true for online lenders, just as it is for lenders operating out of physical storefronts. The Bureau will continue to make clear that it is committed to addressing unlawful online lending activities and is not seeking to prevent online lenders who comply with the law from continuing to operate.

Mulvaney 4:
The CFPB's April 2013 white paper on "Payday Loans and Deposit Advance Products" looks at "sustained use" of payday loans, and then states that such use "may become harmful for consumers when they are used to make up for chronic cash flow shortages."

a. If "chronic cash flow shortages" are the underlying problem, it seems unlikely that regulating "sustained use" is the solution. Do you agree?

Response:

The Consumer Financial Protection Bureau's (Bureau) White Paper raised concerns that payday loans could be harmful for consumers when such loans are used to make up for chronic cash flow shortages. Payday loans are unlikely to help consumers with persistent gaps between their expenses and their income. Moreover, consumers with chronic cash flow shortages are likely to have difficulty repaying their loans without re-borrowing repeatedly. As a result, many such consumers experience sustained use of what are ostensibly short-term loans and thus end up incurring substantial costs.

b. Isn't the potential regulation of sustained use simply another way of regulating the cost that consumers may pay for a particular financial product, in this case payday loans?

Response:

The Bureau's concerns about sustained use of payday loans stem from the finding that many consumers who obtain ostensibly high-cost, short-term loans end up in high-cost, long-term debt. The Bureau has not determined what, if any, steps it should take to address sustained use of payday loans.

c. Doesn't Dodd-Frank, by prohibiting the CFPB from setting a usury rate, prohibit regulation of the cost of a financial product?

Response:

Section 1027(o) of the Dodd-Frank Wall Street Reform and Consumer Protection Act provides that the Bureau does not have the authority to establish a usury limit.

d. The same white paper also fails to provide sufficient granular data to explain the measure of sustained use, which is necessary in order to determine if such use is beneficial or harmful to the consumer. How do you respond to this significant oversight, and don't you agree it must be addressed before the white paper can be part of the basis for CFPB rulemaking?

Response:

The White Paper provides substantial data about consumer usage patterns for payday loans, including the sustained use of such loans by many consumers. The Bureau released additional research on March 25, 2014 that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan.

e. Do you foresee any other research being released by CFPB regarding payday lending prior to any rulemaking?

Response:

The Bureau released additional research on March 25, 2014 that provides detailed analysis of consumers' use of a payday loans, with a focus on loan sequences, the series of loans borrowers often take out following a new loan. The Bureau will continue to collect and analyze information about the payday loan market. Subsequent findings will be reflected in any rulemaking pertaining to this market. These findings may be presented either through publications or presentations in advance of a rulemaking or through information presented as part of a rulemaking itself.

Mulvaney 5:
The Bipartisan Policy Center published a report in September 2013 that listed several concerns with the CFPB's transparency efforts. In part, BPC found that after a June 2013 forum, "CFPB held an ostensibly public follow-up meeting. The meeting, however, was open only to those consumer groups, industry members and government officials who received a personal invitation from the CFPB."

> BPC also noted that CFPB fails to publish notices of its field hearings in the *Federal Register* without providing the level of disclosure found in Federal Register notices from other regulators. BPC also criticized the CFPB for occasionally providing vague descriptions of the hearing topics.
>
> Alarmingly, BPC found that there were instances where CFPB did not provide any notice at all of public hearings, including for its hearings on overdraft fees and payday lending.

a. What federal regulations must CFPB comply with regarding notice of public meetings and hearings?
b. Does CFPB have any additional internal requirements for publishing notice of public meetings?
c. How does the CFPB define a public meeting? Does a meeting where attendance was limited to invitees meet the definition of a public meeting?
d. If the public is excluded from CFPB meetings, either directly by exclusive invitations or indirectly by inadequate notice, how is the Bureau accomplishing your stated goal of increased transparency?
e. Are you willing to submit to the Committee a plan of action for the upcoming months to improve transparency at the CFPB?

Response:

The Consumer Financial Protection Bureau (Bureau) is proud of its record of openness, transparency, and engagement with the public. We have hosted between eight to eleven public events per year. We arranged these events in the interest of public input and accountability. To ensure robust participation, we promote these field hearings through visible placement on our website, press releases, email notices, and calls to congressional delegations near the hearing location. Given that our target audience for these hearings is the general public, we have not published notices in the *Federal Register* because it is not a publication widely read by the general public.

With respect to the Bipartisan Policy Center report, we note several inaccuracies as to our record for publicizing events. Contrary to the report, the Bureau gave advance notice of both of the field hearings on February 22, 2012 and January 19, 2012. The Bureau publically announced the February 22, 2012 hearing 12 days before the event.[4] The Bureau released a media advisory statement entitled, "Consumer Financial Protection Bureau to Convene Field Hearing in Birmingham, Alabama on Payday Lending," a week before the January 19, 2012 event. In fact,

[4] http://www.consumerfinance.gov/blog/save-the-date-new-york/

demand to attend our January 19th payday hearing was so high that the Bureau had to announce a move to a larger venue to accommodate the public.[5] For individuals who could not attend the January 19th hearing, the Bureau also invited public comments to be submitted for the record after the hearing.[6] In addition, whenever possible, the Bureau has streamed its public hearings so that geography and timing do not interfere with the ability of the public to view events. Recordings of these public events are posted on the Bureau's website[7] after the events have concluded. Finally, with regard to publication of hearing agendas, given that our target audience for field hearings is the general public, the Bureau intentionally provides a broad topic agenda so that all members of the public feel welcome to attend and voice their experiences. Constraining the agenda to specific technical or regulatory issues could discourage a broad exchange of ideas from the general public.

The Bureau has adopted a number of operating norms to ensure transparency such as publicizing public hearings on our website and through the media, live Internet streams where possible, and transcripts. For our Consumer Advisory Boards, established by the Dodd-Frank Wall Street Reform and Consumer Protection Act to advise and consult with the Director, we also publish meeting agendas, minutes, annual reports, and videos of the public portions of these meetings.[8] Consumer Advisory Board meetings are also published in the *Federal Register* prior to the meeting. Like other government entities, including departments and agencies, federal regulators, and Members of Congress, the Bureau hosts some events with stakeholders that are open to the public, and others that are not.

The Bureau always welcomes input and advice from Congress and the public on how we can make our field hearings and other open meetings more accessible and robust forums for the public to provide input.

[5] http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-convenes-field-hearing-in-birmingham-alabama-on-payday-lending/

[6] http://www.consumerfinance.gov/blog/share-your-input-on-payday-lending-for-the-official-record/

[7] http://www.consumerfinance.gov

[8] http://www.consumerfinance.gov/advisory-groups/advisory-groups-meeting-details/

Questions for the Record Submitted by Representative Andy Barr:

Barr 1:
As the CFPB is aware, many community banks originated balloon loans as the bulk of their consumer real estate lending portfolio. These banks must take action when a balloon loan they currently have in their portfolio matures.

Unfortunately some borrowers may not show a verifiable income sufficient to qualify for a new loan under the ability-to-repay standards, even though they have never actually missed a payment on their existing balloon loan and have a clean credit history.

a. The community banks in my district are wondering whether the ability-to-repay rule requires them to foreclose on a borrower who has never missed a payment. Should the community bank, mindful of past performance of the loan, willfully disregard the ability-to-repay rule and rewrite the loan based on its best judgment and close knowledge of the borrower, or should the bank begin foreclosure proceedings, notwithstanding the borrower's prior record, since the borrower cannot pay off the matured loan?

Response:

Congress made a decision in the Dodd-Frank Wall Street Reform and Consumer Protection Act to impose certain special safeguards on the way that balloon mortgage loans are underwritten to address concerns that consumers were being left without the ability to repay or refinance such loans. At the same time, Congress also recognized that small creditors in rural and underserved areas were more likely to make balloon loans and that such restrictions might create access to credit issues in such areas. Accordingly, the statute provides that balloon loans can be Qualified Mortgages if they are made and held on portfolio by small creditors that operate predominantly in rural or underserved areas.

In implementing these provisions, the Consumer Financial Protection Bureau (Bureau) concluded that it was appropriate to provide a two-year transition period during which balloon loans made by any small creditor – regardless of that creditor's location – could be designated as Qualified Mortgages if they are held on portfolio and meet certain other conditions. This should help consumers and creditors address the refinancing of existing balloon loans during this period. The Bureau is also using this two-year period to study a broad range of issues with regard to balloon loans, small creditors' ability to transition to making adjustable rate mortgages, and the definition of "rural or underserved areas." The Bureau intends to work with both consumers and creditors to preserve access to refinancing options on performing existing loans.

b. Given these concerns, would you support a legislative fix that would grandfather into the qualified mortgage safe harbor balloon loans with a history of performance and which are currently held in portfolio by the community bank?

Response:

The Bureau generally does not take a position for or against prospective legislation. As noted above, the Bureau is already working to analyze and address concerns on this topic, and would implement any such statutory amendments faithfully if they were enacted into law.

Barr 2:
In addition, during the hearing, I asked you about a series of nondiscriminatory factors that could explain why one consumer might pay less for an auto loan obtained through an auto dealer, compared to another consumer. If one of these factors is the reason why prices vary from consumer to consumer, there is no unlawful discrimination. Hence, to do a proper comparison, these variables need to be pulled out of the CFPB's analysis when alleging disparate impact.

You conceded during the hearing that some of these factors are "relevant." My question concerns whether these "relevant" factors were properly considered in CFPB's analysis of disparate impact.

Please answer Yes or No to the following (if "No" please state a reason why):

a. Is the amount financed considered when CFPB is alleging disparate impact discrimination in indirect auto financing?
b. Is borrower creditworthiness considered, including the efforts by the dealer to arrange financing for the consumer?
c. Is the presence of a competing offer from another financing source considered?
d. Is the length of the loan considered?
e. Is the presence of a manufacturer's discount of the rate considered?

Response:

Yes, the Consumer Financial Protection Bureau's (Bureau) analysis considers creditworthiness factors, like credit scores and debt-to-income ratios; characteristics of the collateral; and terms of the deal, like the amount financed, down payments, the existence of a manufacturer discounted rate, and term of the loan. These factors are typically taken into account by lenders in arriving at the appropriate "buy rate," and thus the Bureau's analysis of dealer markup accounts for them by focusing only on the difference between the buy rate and the added cost of the discretionary dealer markup. Because the above-cited factors are already taken into account when determining the appropriate buy rate and are, therefore, considered in the overall interest rate the consumer receives, they are generally, absent additional evidence of legitimate business need in conjunction with their consideration in setting the dealer markup, not appropriate to use as "controls" again for an analysis of only dealer markup.

To date, the Bureau has not been provided with supporting documentation that would justify inclusion of controls for efforts by the dealer to arrange financing for the consumer or the presence of a competing offer from another financing source, and so has not considered them in

its analysis. Variables that lack supporting documentation as to their consideration in setting the dealer markup are generally not appropriate to use as "controls."

Each supervisory examination or enforcement investigation is based upon the particular facts presented by the entity under review. Thus, in our analyses we consider analytical controls which are appropriate to each particular entity. Any controls are dependent upon the particular lender's policies, practices, and procedures. When lenders share with us the nature and results of their own analyses, we are open to hearing specific explanations for the decisions they have made to include particular analytical controls that reflect a legitimate business need. In the credit context, a creditor practice is discriminatory in effect if it has a disparate impact on a prohibited basis, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact.

Lenders can and should take creditworthiness and terms of the loan into account in the pricing of credit. The Bureau's focus is on the fair lending risk created by policies that allow dealers the discretion to mark up each consumer's buy rate after the lender has taken these factors into account in determining the risk-based buy rate for a particular loan, and then compensating dealers by giving them a share of that mark up.

Barr 3:
Finally, the Bureau has repeatedly asserted, including in a response to my office, that the Indirect Auto Bulletin is exempted from the Administrative Procedure Act's (APA) Notice of Proposed Rulemaking (NPRM) requirements. Specifically, the Bureau stated that the Bulletin falls under the exemption "for general statements of policy, non-binding informational guidelines, or interpretive memoranda."

a. Under which of these exceptions to the APA does the Bureau feel it can circumvent the standard rulemaking procedures, particularly NPRM? Simply, which of the following categories does the Bulletin fall under: a general statement of policy, a non-binding informational guideline, or interpretive memoranda?
b. Even under this exemption, the APA requires agencies to publish these rules within the *Federal Register*. Has the Bureau published a notification of the issuance of the Bulletin in the *Federal Register?* If not, does the Bureau intend to?
c. It is clear from the legislative history of the APA that Congress did not intend for these exceptions from the law's notice and comment requirements to be a loophole for the agencies to expedite the promulgation of rules. What is the agency's rationale for using this exception?
d. Since the Bulletin appears to be intended to change behavior with the force of law, how can the Bureau claim that it only applies to intra-agency behavior in the manner of a statement of policy, informational guidelines, or rules of agency organization, procedure or practice?
e. How does the agency intend to keep Congress, the public, and industry stakeholders notified on the proposal, promulgation, and implementation of rules addressing disparate impact and the justification of these rules?

Response:

The Equal Credit Opportunity Act (ECOA) and Regulation B, which was the result of notice and comment, make it illegal for a "creditor" to discriminate in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, receipt of income from any public assistance program, or the exercise, in good faith, of a right under the Consumer Credit Protection Act.

The Administrative Procedure Act (APA) sets out the principles by which federal agencies engage in regulatory activity, and in applicable cases, allows for comments from affected parties and the general public concerning an agency's activity. The Auto Bulletin principally reminded institutions of their legal responsibilities under existing law and provided suggestions for mitigating legal risks. The Bulletin did not establish additional legal requirements for either the public or for the Consumer Financial Protection Bureau (Bureau). Rather, the Bulletin provided examples of internal controls, program features, and compliance management systems that institutions might use to mitigate legal risk. While the Bureau regularly engages in extensive dialogue with stakeholders, our issuance of the Bulletin to provide clarity and guidance for institutions regarding the application of ECOA and Regulation B, and our attendant supervisory and enforcement approach, did not necessitate notice and comment under the APA.

The Bureau made the Auto Bulletin available to the public via numerous means, including its website and public speeches. The Bureau is committed to following the requirements of the APA across all its rulemakings.

Questions for the Record Submitted by Representative Steve Stivers:

Stivers 1:
A recent *Washington Post* story quoted Deepak Gupta, the Bureau's former Litigation Counsel and Senior Counsel for Enforcement Strategy as saying:

> "Sometimes you couldn't write down your thinking, because it could wind up in front of some hostile congressional committee…I would use the word paranoia, except paranoia implies that it's not justified."

This admission comes on the heels of a July 2013 report that the Bureau is coaching its employees to "FOIA-proof" their Outlook calendars by instructing them to "avoid annotating entries with agendas, detailed discussions," and "minimize attachments to your calendar appointments."

a. Is it a widespread practice at the Bureau to avoid documenting its activities so as to evade Congressional scrutiny? Was Professor Gupta acting contrary to Bureau policy? Have you made it clear to Bureau staff that it is not in the Bureau's interest to frustrate a Congressional inquiry?

Response:

The Consumer Financial Protection Bureau (Bureau) does not encourage employees to avoid documenting their activities for any reason. In fact, the Bureau publishes the Director's complete schedule with descriptions of meetings on the Bureau's website every month. Indeed, employees at every level are counseled regularly on their duty to preserve records that document the organization, functions, policies, decisions, and procedures of the Bureau. The Bureau's policy with respect to congressional inquiries, which has been communicated to all staff, is to respond to such inquiries with timely, accurate, complete, and consistent information.

b. I have a bill that creates a Senate confirmed independent inspector general for the CFPB (H.R. 3770). Would you agree or support this bill which would provide Congress additional oversight of your agency?

Response:

The Bureau does not generally take positions on legislation. We currently have a very strong, experienced Inspector General who is in engaged in rigorous oversight of the Bureau.

Stivers 2:
In the same *Washington Post* story, Leonard Chanin, the former head of rulemaking at the CFPB made the following comments about your organization: "I lost faith that the agency would become a truly independent entity and carefully balance consumer costs and access to credit with

consumer protection," Chanin said..." There is great risk in assuming you know what is best for the consumer..."

Do these comments trouble you in any regard? Do you see it as your job to remove decision making ability from consumers and transfer it to the Bureau staff? Why would Mr. Chanin make these comments if this was not an issue at the Bureau?

Response:

Section 1022(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act calls for the Consumer Financial Protection Bureau (Bureau) to consider the potential benefits, costs, and impacts of its consumer protection regulations, including the potential reduction of access by consumers to consumer financial products and services. The Bureau continually seeks to improve our understanding of consumer preferences and decision-making. The Bureau supports its efforts in rulemaking, supervision, enforcement, consumer education, and research and reporting by carefully integrating direct input and advice from consumers, as well as industry.

The Bureau's efforts to gather consumer input is not limited to notice-and-comment periods during the rulemaking process. For example, prior to issuing a recent rule to integrate mortgage disclosure forms under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA), the Bureau conducted testing with consumers to gauge their understanding and decision-making to craft better disclosure forms. The Bureau also tested the forms with industry and gathered extensive stakeholder feedback through our website. We also hold regular meetings, roundtables, field hearings, and various other events across the country where consumers have an opportunity to share their insights with the Bureau both generally and in the context of specific initiatives and rulemakings. The Bureau's Office of Consumer Response also has provided the Bureau with a unique opportunity to hear directly from consumers, and has received over 300,000 complaints since July 2011. The Bureau has also engaged extensively with various advisory groups, such as our Consumer Advisory Board, Community Bank Advisory Council, and the Credit Union Advisory Council, to provide multi-faceted views of the consumer financial experience.

Mr. Chanin, of course, is entitled to his own opinions. The broad acceptance of the mortgage rules by both consumer advocates and industry indicates satisfaction with the way in which the Bureau balanced the competing concerns in its most important set of rulemakings to date. As a data-driven organization, we want to be sure that our analysis of particular segments of the industry is based on current and solid facts about that industry, its business practices, and its participants. The Bureau carefully considers potential effects of rules we are considering on consumers' costs and access to credit and other financial services. This has been and continues to be the Bureau's approach with planned rulemakings, as evidenced in the Bureau's balanced approach to the remittance and mortgage final rules it has adopted.

Stivers 3:
In response to questions about forms of "nondiscretionary compensation" of dealers that indirect auto lenders can evaluate, Bureau staff has indicated that "flat fees" are but one form of such

compensation. At the auto finance forum in November 2013, Bureau staff said that other forms of "nondiscretionary compensation" could include flat percentages per amount financed and/or tying dealer compensation to the amount financed and the loan term. Both of these options seem like variation of flat fees.

a. Are there examples of "nondiscretionary compensation" that the CFPB can share with industry?

Response:

Regarding the types of alternative dealer compensation systems that would be acceptable to the Consumer Financial Protection Bureau (Bureau), the answer depends on the specifics of each lender's business. As the Bureau has indicated, in our experience, permitting discretion in pricing and tying compensation to the exercise of that discretion may often significantly increase fair lending risk. Potential nondiscretionary compensation systems could vary in design and sophistication, depending on the needs of an individual lender's business.

Industry participants have identified several possible models of nondiscretionary dealer compensation. One model compensates dealers using the same flat amount for each loan. Under another model, dealers are paid a flat percentage of the amount financed. Alternatively, a lender could develop a hybrid system in which compensation was tied to both the amount financed and the duration of the contract. Both of these latter approaches are nondiscretionary compensation systems that allow for differences in compensation based on loan amount and potentially term and hence differ from a flat fee approach. These represent only a few examples of potential non-discretionary compensation systems that mitigate fair lending risk. There could be many other possibilities.

As a general matter, lenders will likely consider a variety of factors in designing a dealer compensation system, including the extent to which the fair lending risk presented by discretionary compensation is mitigated, whether the system would create new risks of discrimination or other consumer harm, and the economic sustainability of the system.

b. Should the vehicle finance industry expect a "large participant" rulemaking in 2014?

Response:

Yes. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorized us to supervise "larger participants" of markets for consumer financial products and services that we define by rule. So far, the Bureau has issued three rules defining larger participants in the consumer reporting, consumer debt collection, and student loan servicing markets. The Bureau has also issued a proposed rule defining larger participants in the international money transfer market. Defining larger participants in the auto lending market is a priority for the Bureau, and we hope to publish a proposal on this topic by the end of 2014.

Questions for the Record Submitted by Representative Blaine Luetkemeyer:

Luetkemeyer 1:
The No FEAR Act requires federal agencies to post quarterly summaries on its public website pertaining to EEO complaints filed with the agency. Is it correct that in the most recent No FEAR Act report 23 employees filed an Equal Employment Opportunity complaint against the bureau?

Response:

There were not 23 formal Equal Employment Opportunity (EEO) complaints filed by employees against the Consumer Financial Protection Bureau (Bureau) from the period fiscal year (FY) 2012 through Quarter 1 of FY 2014. In FY 2012, the Bureau received 11 formal complaints; in FY 2013, the Bureau received nine formal complaints; and in FY 2014, the Bureau received three formal complaints. Formal EEO complaints can be filed by employees, former employees, or applicants for employment. Of the 23 formal EEO complaints filed since FY 2012, nine of the complaints were filed by applicants for employment.

Luetkemeyer 2:
The No FEAR Act disclosure indicates 11 out of the 23 complaints are either pending or have been withdrawn. This means that 12 of these complaints have been disposed of in some manner. What happened with these complaints, and were they resolved favorably for the employees?

Response:

Of the 23 formal complaints, 10 cases have been settled on terms mutually agreeable to the parties; five cases received Final Agency Decisions issued by the Consumer Financial Protection Bureau's (Bureau) Equal Employment Opportunity (EEO) Office (three merit decisions found that the filer did not succeed on the merits of the claim asserted and two procedural dismissals in accordance with 29 C.F.R. § 1614.107(a)(1) for failure to state a claim); four cases are pending hearing before the Equal Employment Opportunity Commission; three cases are pending investigation through the Bureau's administrative complaint process; and one case was withdrawn by the filer.

There have been no findings of discrimination in any of the formal EEO complaints filed.

Luetkemeyer 3:
The Bureau seems to have taken it upon itself to regulate certain financial products based on the notion that they could contain an element of discrimination. Should Congress be conducting more rigorous oversight of CFPB to ensure the Bureau is not violating principles it claims to represent?

Response:

Congress included many oversight provisions for the Consumer Financial Protection Bureau (Bureau) in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), including certain oversight measures not applicable to any other regulator.

Among other things, the Bureau's Director is appointed by the president but must be confirmed by the U.S. Senate. The Director can also be removed by the president for cause.

Additionally, the Director must testify before the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs twice a year. The Bureau must also submit Semi-Annual Reports to both Committees pursuant to Dodd-Frank Act, which must include a justification for the Bureau's budget, a list of rules the Bureau has adopted, and a list of supervisory and enforcement actions in which the Bureau has been involved, among other things.

The Director and other Bureau officials testify before various congressional committees on a number of issues, allowing Members of Congress additional opportunity to exercise public scrutiny and oversight of the Bureau and its work. Since the inception of the Bureau, its officials have testified 47 times at congressional hearings before bodies of Congress.

Like other independent banking regulators, the Bureau has an independent source of funding. However, the Bureau is the only independent regulator with a cap on its funding, as mandated by Congress.

The Bureau's financial statements are required to be audited annually by the Government Accountability Office (GAO). The Bureau's operations and budget must be audited annually by an independent auditor, and the Bureau is audited regularly by its Inspector General.

Like all other regulatory agencies, the final actions of the Bureau, including final rules, are subject to judicial review under the Administrative Procedure Act (APA), and may be set aside. Congress may also overturn any rule the Bureau promulgates. Additionally, and unique to any other federal financial regulator, the Financial Stability Oversight Council can overturn any Bureau regulation.

The Bureau is also required to consult with other regulators about prudential, market, and systemic objectives during its rulemaking. And, unlike any other federal financial regulator, Bureau rulemakings are subject to the Small Business Regulatory Enforcement Flexibility Act (SBREFA) review panel process, which requires consultation with affected small businesses prior to the publication of proposed rules for public comment. The Bureau is also required to assess significant rules every five years, and is required to consider not only the potential costs and benefits of our rules for industry and consumers, but also the specific impact of our proposed rules on banks and credit unions with $10 billion or less in assets, as well as the impact on consumers in rural areas. These latter provisions are also unique to the Bureau.

Luetkemeyer 4:
After meeting with officials from both the Department of Justice (DOJ) and the Federal Deposit Insurance Corporation (FDIC), both agencies have admitted to some sort of wrongdoing by their respective staffs regarding online lenders. DOJ and FDIC have both clarified in writing that legal lenders should have no problem maintaining relationships with financial institutions. Will you issue any formal or informal guidance or correspondence which indicates that it is acceptable for institutions to do business with online lenders operating within the law?

Response:

The Consumer Financial Protection Bureau's (Bureau) role is, among other things, to ensure that payday lenders comply with Federal consumer financial law. To this end, the Bureau works collaboratively with other regulators in the markets where more than one governmental entity may have authority to take action. However, the Bureau is not the sole regulator of financial products and services providers. Other agencies operate under statutory mandates distinct from those conferred upon the Bureau.

To the extent that consumers may experience injury from violations of laws within our authority, we will take appropriate action to ensure consistent implementation and enforcement across the small dollar credit marketplace. However, all lenders must comply with the laws applicable to them. This is true for online lenders, just as it is for lenders operating from physical storefronts.

Luetkemeyer 5:
A report recently released by the Inspector General of the United States Postal Service (USPS) suggested that USPS move into the lending space and offer small dollar short-term loans. How do you respond to this report? Does CFPB support the notion that USPS is a qualified lender or should consider entry into the lending and/or financial services space? If it was to move into this or a similar business, how would CFPB oversee USPS?

Response:

The Consumer Financial Protection Bureau (Bureau) takes no position on whether the United States Postal Service should engage in small dollar short term lending. However, we would expect any party offering consumer financial products to do so responsibly and in conformity with all applicable laws. Where consumers experience injury from violations of laws within our authority, we will take appropriate action to remedy that harm.

Luetkemeyer 6:
I found several of your responses to my Questions for the Record, submitted following your appearance before the Committee on September 12th, troubling and nonresponsive. Below, you will find one such response illustrating my concern:

> Luetkemeyer Question: "Do you believe that tribal governments have the right to use the internet to make loans".

> Cordray Response: "All lenders should be mindful of state and federal law and must comply with all of the laws applicable to them. Full compliance with the law is essential to the operation of a fair, transparent, and competitive market."

Please answer the following question with either "yes" or "no": Do you believe tribal governments have the right to use the Internet to make loans?

Response:

Yes, tribal governments may use the Internet to make loans, to the extent permitted by applicable laws.

Luetkemeyer 7:
It has come to my attention that there has been and continues to be coordination between the Department of Labor (DOL) and CFPB on the DOL fiduciary rulemaking. Please explain in detail the coordination that exists on this matter between DOL and your Bureau, and all roles, including formal and information roles, CFPB is taking in conjunction with this rulemaking.

Response:

Consumer Financial Protection Bureau staff members have met several times with representatives of the Employee Benefits Security Administration of the Department of Labor (DOL). DOL staff members have mentioned several times that they are working on a conflict of interest rule, but have not shared the content of the rulemaking.

Luetkemeyer 8:
Has CFPB coordinated with the Securities and Exchange Commission (SEC) on the SEC fiduciary rulemaking? If so, in what capacity?

Response:

The Consumer Financial Protection Bureau has not coordinated with the Securities Exchange Commission (SEC) on the SEC fiduciary rulemaking.

Questions for the Record Submitted by Representative Nydia Velazquez:

Velazquez 1:
We have learned that as a consequence of CFPB implementation of Dodd-Frank requirements for background checks under the Loan Officer Compensation provisions, lenders and loan servicing companies have started to add additional employee validation requirements as a standard for any and all vendors, including subcontractors and their sub-agents. In fact, such requirements are now being applied to such routine property preservation services as mowing lawns or inspections of vacant property that are performed by thousands of small businesses. These activities are well outside the normal duties performed by a loan officer. Overly-broad application of the background checks policy is costly to small businesses and does not materially affect the quality of lending practices. Can and will CFPB issue a guidance document that will clarify the intent and scope of the DFA Loan Officer Compensation provisions regarding background checks, clarifying that the employee validation requirements are limited to loan officers and individuals who perform the normal duties of loan officers?

Response:

Neither the Consumer Financial Protection Bureau's (Bureau) Loan Officer Compensation rules nor its Mortgage Servicing rules specifically require that lenders and loan servicing companies perform background checks on all employees of third party service providers. The final rule issued in September 2013 provides clarifying details about the requirements' coverage. The Bureau currently does not plan to issue an additional guidance document regarding additional service provider oversight.

The Mortgage Servicing rules do, however, require servicers to have policies and procedures reasonably designed to ensure that the servicer can facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law. The Bureau also issued a Bulletin in April 2012 clarifying that supervised financial institutions must have an effective process for managing the risks of service provider relationships and recommending that supervised financial institutions take steps to ensure that business arrangements with service providers do not present unwarranted risks to consumers.

The Bureau's expectations regarding service provider oversight will take into account the level of risk of consumer injury presented by a particular service provider. Factors that could increase the risk of harm include:

- Significant direct contact with consumers,
- Performing multiple services related to a single mortgage loan account,
- Whether the quality of the service provider's performance impacts consumers, and
- Whether the service provider's failure to comply with contractual or regulatory obligations could result in violations of Federal consumer financial law or injury to a consumer.

Conversely, when a service provider presents a low risk of harm, the Bureau expects that a servicer's due diligence will include, at a minimum, ensuring that the service provider has in place appropriate policies and procedures, as described above, and for the tracking of consumer complaints about the service provider. The Bureau expects that certain forms of due diligence may be unnecessary in low risk situations. For example, the Bureau does not expect that servicers would require criminal or other background checks on every single one of a service provider's employees when the servicer has determined that the service provider presents a low risk of harm, as the cost to both the servicer and service provider could likely significantly outweigh any potential benefits to consumers.

Questions for the Record Submitted by Representative Dennis Ross:

Ross 1:
In your last visit, I questioned you on the April White Paper on Payday lending. I'm still concerned about the Bureau's activities in this area, particularly as it might unduly prevent the good actors in that space from fulfilling the financial needs of the underbanked.

The CFPB's fall 2013 list of upcoming rulemakings, payday loan products were listed, indicating that your agency intends to take action in the near term. Can you provide the committee with any indication on the timing of proposing regulations for alternative or payday loan products?

Response:

The Consumer Financial Protection Bureau (Bureau) anticipates that it will take action in the near term regarding small dollar lending. The Bureau will give more specific indications of its timing when it publishes the next update of its Unified Agenda.

Ross 2:
Another area of concern for many Americans is access to mortgage credit and restriction of consumer choice. A woman from Brandon, Florida called my office the other day, nearly in tears because of the skyrocketing premiums she faces with her new Obamacare-approved plan. She had been unable to keep the healthcare she liked and confessed to my office "I'm afraid of my government." I'm worried that in telling families we know what is best for them--we are making the same mistakes in mortgages that were made in health insurance.

- Example: A credit union in my area made a loan to a credit worthy, self-employed individual. That credit union is doubtful they would have had the confidence to make the loan under the new QM regulations.
- Another example—Bay Cities Bank in Tampa recently announced it would stop originating mortgages all together, according to the banks President: "When you make it hard enough for a company to offer residential loans, eventually they are going to say we can't make economic sense of this line of business anymore."

What is the legal liability a lender faces for originating a non-QM loan that does not comply with the ability-to-repay requirement? If you operated a bank and were responsible for the fiscal health of that institution, would you take on that liability?

Response:

Lenders that have long upheld sound underwriting standards have little to fear from the Ability-to-Repay (ATR) rule; the strong performance of their loans over time demonstrates their care in underwriting to borrowers who have the ability to repay. Nothing about their traditional lending model has changed, and they can continue to offer the same kinds of mortgages to borrowers whom they evaluate as posing reasonable credit risk -- whether or not they meet the criteria to be classified as Qualified Mortgages (QM). A reasonable, good faith determination of a borrower's

ability to repay has always been the hallmark of responsible, lending, and this common-sense approach is what informs the ability to repay requirement.

There is no requirement that a creditor has to make a QM loan. If a loan is a QM, there is a legal presumption that the ability to repay requirement has been met. But there is no presumption that the ability to repay requirement is not met if the loan is not a QM. We did an analysis for our ATR/QM rule with very conservative assumptions that we think would tend to overestimate the risk. The analysis concluded the ability to repay liability risk was small and would increase the interest rate on a $210,000 loan by no more than 3 to 10 basis points. We realize that, however small the additional risk, every lender must take it into account. But we think risk is managed by responsible lending. It should be kept in mind that making a reasonable and good faith determination is not a guarantee that the borrower will repay the loan, and it should not be considered as such. It is only a determination that the borrower has the ability to repay the loan at the time the loan is made.

Ross 3:
Short of providing financial education and preventing fraud, why should it be the CFPB's job to determine which products and terms will be provided to consumers?

Response:

The marketplace determines what products, terms, and services will be offered and provided to consumers. One of the Consumer Financial Protection Bureau's (Bureau) responsibilities is to ensure that the products and services within its jurisdiction comply with Federal consumer financial laws. For example, the Bureau generally is tasked with ensuring that consumer financial products and services provided in the marketplace are not unfair, deceptive, or abusive, and that access to credit is nondiscriminatory under the Equal Credit Opportunity Act. In addition, the Truth in Lending Act, as amended by the Dodd-Frank Act, requires a creditor to make a reasonable assessment of a borrower's ability to repay before using a mortgage loan.

Ross 4:
Won't the overall effect of the QM rule be to advantage certain types of products and certain terms in the market place over others?

Response:

Congress made a policy judgment in adopting the Dodd-Frank Wall Street Reform and Consumer Protection Act that creditors should make a determination of a consumer's ability to repay a mortgage loan based on verified and documented information. In so doing, Congress effectively banned "no doc" and "low doc" loans. Congress also made policy judgments that certain loans with certain features should not be treated as Qualified Mortgages (QM). However, the Bureau believes that non-QM loans can be made responsibly and, indeed, that responsible non-QM loans are a critical component of the overall market. The Bureau crafted the rule very carefully to encourage responsible lending and a vibrant market for both QM and non-QM loans.

Ross 5:
As a father of college-age sons, I'm concerned about the effect of the Debt-to-Income qualification for QM loans. It seems to me that mortgage credit options for young people with student loan debt will be severely limited, if not eliminated, by the 43% Debt-to-Income threshold. The Federal Reserve did not require lenders to consider this ratio, why did the CFPB?

Response:

A debt-to-income (DTI) ratio is a basic tool that creditors use regularly to assess consumers' ability to repay new debt, and the Consumer Financial Protection Bureau (Bureau) believed that it was appropriate to use the authority granted by the statute to require creditors to consider this ratio in order to meet Qualified Mortgage (QM) requirements. One type of QM further requires that consumers' DTI ratio not exceed 43 percent. The Bureau chose the 43 percent threshold for the basic QM definition in part because it has long been used by the Federal Housing Administration (FHA) as a general boundary for defining affordability, and is more liberal than benchmarks used by some other market players. We believe that it allows ample room for consumers to qualify for qualified mortgages. At the same time, we recognized that because some creditors might be reluctant initially to make loans that are not QMs, it would be helpful to create transition mechanisms to ensure that qualified borrowers above the 43 percent threshold could access responsible credit while the market adjusted to the rule. Accordingly, we also adopted provisions allowing loans that are eligible for insurance or purchase by the government-sponsored entities or certain federal agencies to be designated as QMs even if they exceed a 43 percent DTI. We believe that this mechanism will address short-term concerns about access to credit while allowing room for a vibrant and responsible market for non-qualified mortgages to develop over time. Among other restrictive thresholds, we could have included in the rule a threshold to limit loans by credit score, or by loan-to-value ratio, neither of which the Bureau incorporated into the rule.

Ross 6:
Once the GSE exemption expires, where will consumers with DTI's above 43% go to get a loan?

Response:

We fully expect that responsible lending can and will continue outside of the 43 percent debt-to-income (DTI) qualified mortgage (QM). The GSE/federal agency QM – which is not really an exemption but a different category of QM – was developed as a temporary measure that expires in a maximum of seven years, depending on certain conditions, and will not require a DTI ratio of 43 percent or less. It provides QM coverage until the covered federal agencies develop their own QM rules, as provided for in the Dodd-Frank Wall Street Reform and Consumer Protection Act. As the other federal agencies adopt their own QM rules, it will bring more certainty and stability into the markets those agencies serve. The Department of Housing and Urban Development, which serves a significant market through the FHA, has already finalized its own QM rule. The temporary QM also gives creditors and the market time to develop familiarity and comfort with operating outside the QM space. We expect the market to recognize the business

opportunity outside of QM and to make that adjustment before the temporary QM definition expires.

In addition, there is another form of QM that does not require a DTI ratio of 43 percent or less, and that does not expire, which requires that the loan be made by a small creditor, satisfy certain other limitations on points and fees and restrictions on risky loan features, and be retained in portfolio by the creditor. Although this QM definition does require that the creditor consider the consumer's DTI ratio, it does not set any specific cap on DTI. This covers the vast majority of community banks and credit unions, and makes their mortgages QM with the safe harbor from any legal liability. The addition of this extra provision was designed to protect relationship lending by smaller institutions, and has been greeted with favor by thousands of those institutions.

