S. Hrg. 114–520

THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

ON

A REVIEW OF THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

APRIL 7, 2016

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C O N T E N T S

THURSDAY, APRIL 7, 2016

WITNESS

Additional Material Supplied for the Record

THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

THURSDAY, APRIL 7, 2016

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:17 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Richard Shelby, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. Mr. Cordray, welcome again to the Committee. You have seen this before here. We welcome you, and I will proceed with an opening statement.

On Tuesday, the Committee heard testimony from private sector experts on consumer finance regulations. We heard a number of concerns regarding the Bureau's actions in areas such as indirect auto lending, arbitration, the consumer complaint database, and small dollar short-term lending. We also heard broader critiques of the Bureau's approach to regulating, including its use of enforcement actions to set market standards rather than the rulemaking process. There was also concern expressed regarding the Bureau's current structure and the lack of accountability inherent in it.

I have said many times that regulatory independence should never mean independence from accountability or vigorous Congressional oversight. The drafters of Dodd–Frank immunized, I believe, the Bureau from any meaningful Congressional influence, leaving it free to engage in questionable practices and unreasonable expansions of its jurisdiction. The only effective restraint available now resides in the courts.

Fortunately, this week, a Federal Court of Appeals has directed the CFPB to defend the constitutionality of its basic structure. This particular case follows what is now becoming a string of court decisions criticizing or striking down this administration's implementation of Dodd–Frank provisions, including the FSOC's so-called systematically important designation of MetLife, the SEC's cost-benefit analysis, and the SEC's conflict of minerals rule.

I believe that future legal challenges will lead to the invalidation of many parts of Dodd–Frank. That is what happens when a 2,300-page bill is forced through Congress without sufficient process and before the lessons of the financial crisis were fully understood. Congress did not even wait for the Financial Crisis Inquiry Commission's work to be completed or its report to be released before it passed Dodd–Frank and created the CFPB.

And while the Committee held a number of hearings in the lead-up to the passage of Dodd–Frank, I can assure you that the thousands of pages of text were being drafted, or were already drafted well before we ever had a single hearing. We often hear about the importance of data and data-driven decision making at our hearings. I would like to highlight once again my concerns about the striking lack of data and data-driven decision making that produced the law we now know as Dodd–Frank.

It still strikes me as stunning that this Committee approved this massive piece of legislation without deposing a single market participant. The Committee did not subpoena a single document from a single person or financial institution. And now, we are starting to see the results of this partisan, uninformed effort.

There is now growing concern that despite the Bureau's mission, its rules and regulations actually restrict access to credit, increase costs, and deny financial products to the consumers who need them. Last year's survey by the Federal Reserve found that 47 percent of U.S. households are unable to come up with $400 in emergency funds without selling something, going into credit card debt, or using a short-term loan. By targeting some of these products in its rulemakings, the Bureau may be blocking access to the very financial services many Americans may need in a crisis. Consumer protection should not mean limiting a consumer's options by substituting the Bureau's judgment for the consumer's.

Today, again, we will hear from CFPB Director Richard Cordray so that we can have what we hope will be a productive discussion on these important topics and concerns.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Chairman Shelby, for holding this important hearing.

Today's hearing is one example of how the CFPB is accountable to Congress. You almost cannot turn on C-SPAN and not see Director Cordray speaking to the House Finances Services Committee or the Senate Banking Committee, it seems. So, the issue of accountability bewilders me that anybody would say you are anything but that.

The law requires the Director to be available twice a year to testify before this Committee. Director Cordray has been available every time this Committee has wanted, and I assume, I am almost certain, for any of you individually that want to talk to him or try to persuade him of something.

CFPB is subject to three separate annual audits. The banking agencies have unprecedented authority to veto CFPB rules that threaten the safety and soundness or financial stability of our system. Yet, the CFPB's existence continued to be attacked, now 5, 6 years later, with false arguments that it lacks accountability.

The industry—and it is the industry—continues to fight CFPB's existence, and those in Congress who are advocating for the industry join them to fight their existence, fight their actions, most recently by trying—unsuccessfully, and I am glad of that—to attach riders to end-of-year funding legislation. One of these riders would require a commission of Senate-confirmed members. Just imagine that. This Committee has gone now 15 months and we have not seen one person coming out of this Committee who has been confirmed on the Senate floor, yet some of my colleagues on the other side of the aisle want a commission of Senate-confirmed measures.

In a dysfunctional Senate Banking Committee and a dysfunctional Senate, it is strange credibility to think that would be good Government. Maybe that is how they want it to be, the opponents to the Bureau want it to be, that they cannot simply act because they would not have enough Senate-confirmed members, since the purpose of the rider is obviously to turn the CFPB into ideological road kill.

Today's hearing on consumer finance rules, we heard from—excuse me, at Tuesday's hearing, we heard from three witnesses representing the financial industry—three—and one witness representing everyday Americans. The business witnesses claimed CFPB is hurting people it is supposed to help. But bipartisan polling shows that three in four voters support this agency. Just this morning, the Committee received petitions from literally hundreds of thousands of Americans supporting the Consumer Bureau. Many of you are in the room today. I thank you for showing your support for the CFPB.

CFPB has been a strong watchdog for consumers since it started just 5 years ago. The agency has obtained $11 billion in relief for 25 million people in our country. Nearly one million people, including 25,000 in Ohio, submitted complaints to the agency about their problems with mortgages, student loans, credit reports, debt collection, or bank accounts. What amazed me about the Tuesday hearing was that at least one, maybe two of those three corporate representatives on the panel complained about these one million people that were sending in complaints, amazingly enough, because they were not—I guess because they were not industry lobbyists that sent in their complaints.

We saw in the crisis that regulators ignored their consumer protection duties and did not have the authority to act. They focused on the financial industry's soundness and ignored the plight of consumers. In my view, these are complementary, not competing, responsibilities. If people are treated fairly, the financial system is far less likely to run off the rails.

A former Fed official claimed on Tuesday it did not have evidence to act against predatory lending. Imagine that. It is a fact that foreclosures in my home of Cuyahoga County doubled from 1995 to 2000. They doubled again by 2006. And according to that former Fed consumer protection official, who was one of our witnesses Thursday on the corporate side, there was no data that showed any kinds of problems.

Local officials begged the Fed to act in 2001. The same story played out across the country. Prior to the CFPB, there was no centralized place for individuals to file complaints about consumer financial products. There was no centralized place for Congress to determine what consumers were experiencing in the marketplace. There was no centralized place for regulators to determine when a financial product had become so abusive that Americans all across the country, a million of them, as I said, would file complaints about it.

Today, we all have that place. CFPB has exposed bad behavior by financial companies that had no Federal regulator, such as credit reporting, student loan servicing, auto finance. We finally have strong mortgage rules and disclosure designed for people who have to pay the mortgage.

More is needed. The Bureau is working on rules to regulate prepaid cards, debt collection, arbitration, and payday loans. The payday loan market is a prime example. States have fought predatory lending with mixed results. More than a dozen States in our country do not allow payday lending. My State did not until a Republican majority came in the 1994 elections in Ohio and payday lending, in essence, in my State was created. But even that legislature, because of abuses, a decade later enacted a 28 percent rate cap.

The industry attempted to repeal the cap through a ballot initiative. Ohioans by almost a 2-to-1 vote defeated that ballot initiative, even though payday lenders were outspending in that campaign 40-to-one. Since then, unfortunately, the legislature has caved to those interests, and unfortunately, it means that payday lending is alive and well in Ohio again.

I hope the CFPB will finish these rules soon on payday lending. The costs of delay demand it.

I look forward to hearing from Director Cordray about their priorities. I understand, Director, this is the 61st time that you have testified before Congress. I hope we can focus on substantive issues before allowing you to, as we say around here, do your job.

So, thank you.

Chairman SHELBY. Mr. Cordray, your written testimony will be made part of the hearing record. You proceed as you wish.

STATEMENT OF RICHARD CORDRAY, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CORDRAY. Thank you, Mr. Chairman, Ranking Member Brown, Members of the Committee, for the opportunity to testify today about the Consumer Financial Protection Bureau's Semiannual Report to Congress.

I appreciate our continued dialogue as we work together to strengthen our financial system and ensure that it serves consumers, responsible businesses, and the long-term foundations of the American economy.

As we continue to build this new agency, we have made considerable progress on our core responsibilities to exert supervisory oversight over the Nation's largest banks and nonbank financial companies and to enforce the consumer financial laws enacted by the Congress. Our analytical approach to risk-based supervision is leading to more systematic consumer-friendly changes at these financial institutions, and we are making progress on leveling the playing field for all market participants.

During this reporting period, our supervisory actions resulted in financial institutions providing more than $95 million in redress to over 177,000 consumers. Our enforcement actions are based on careful and thorough investigations and most have identified deceptive practices by the parties involved. During this reporting period, the orders entered on enforcement actions led to approximately $5.8 billion in total relief for consumers victimized by violations of the law. These consumers are located in every one of your States across the country.

We are also working to provide tools and information to develop practical skills and help people understand the choices they will be making to manage the ways and means of their lives. Our "Ask CFPB" resource provides guidance and response to inquiries across the entire spectrum of consumer finance. Our major moment in time-decisional tools now include paying for college, owning a home, and planning for retirement. We have developed a new partnership with the Financial Services Roundtable to work together on financial education in the schools, in the workplace, and on behalf of older Americans, which is proving to be productive.

Listening and responding to consumers is central to our mission. We continue to refine the capabilities of our Office of Consumer Response to receive, process, and facilitate responses to consumer complaints. We also continue to expand our public Consumer Complaint Database, which updates nightly, and is now populated by over half-a-million complaints from consumers about a broad range of consumer financial products and services.

We marked a milestone for consumer empowerment when we began to publish Consumer Complaint Narratives, which allows people to share in their own words their experiences in the consumer financial marketplace.

Reasonable regulations are essential to protect consumers from harmful practices and ensure that consumer financial markets operate in a fair, transparent, and competitive manner. We focused our efforts on promoting functioning markets, such as the all-important mortgage market, in particular, where consumers can shop effectively for financial products and services and are not subject to unfair, deceptive, or abusive acts or practices.

During this reporting period, we issued several proposed rules, final rules, or requests for information. To support industry compliance with our rules, we publish plain language compliance guides and other resources to aid in their implementation. We are also seeking to streamline, modernize, and harmonize financial regulations that we have inherited from other agencies.

Over this reporting period, the Bureau has continued to expand its efforts to support and protect consumers in the financial marketplace. Recent data indicates that sound consumer protections in our major markets are strengthening them for consumers and providers alike.

The mortgage market has been expanding briskly for 2 years now since our major rules have taken effect. The credit card market has greatly improved, with strong consumer protections, better industry performance, and increasing customer satisfaction. The auto lending market is supporting record sales of cars and trucks to meet consumer demand.

The growing sense of consumers that these markets can actually work for them, without fear of tricks and traps and other predatory conduct, and is stoking their confidence and restoring their trust. These developments reflect well on the work being done by the Consumer Bureau, and taken as a whole, they are making substantial contributions to the continued recovery of the American economy.

Mr. Chairman, Ranking Member Brown, Members of the Committee, thank you again for the opportunity to be here today and to discuss the work we are doing on behalf of consumers. We will continue to listen closely to our stakeholders and attend carefully to your oversight in order to ensure that all Americans can be assured of fair treatment in the consumer financial marketplace.

I look forward to your questions.

Chairman SHELBY. Thank you, Director Cordray.

I would like to summarize my understanding here today of your enforcement actions regarding the indirect auto lending and then get some of your impressions, if I could. As I understand it, Mr. Director, you do not have any statutory authority to regulate auto dealers. In fact, Dodd–Frank specifically proscribes that.

Mr. CORDRAY. That is correct. We have never brought any action——

Chairman SHELBY. I know.

Mr. CORDRAY. ——against a single auto dealer. Correct.

Chairman SHELBY. You do, however, have the authority to regulate indirect auto lenders.

Mr. CORDRAY. Not only the authority, but we feel a responsibility. Congress gave us that task, yes.

Chairman SHELBY. The CFPB, in other words, you, recently approved an enforcement action against certain lenders using the theory of disparate impact. In these cases, you argued that the lenders' policies created a significant risk—these are your words—that they will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases.

I presume that you pursued the disparate impact theory because the lender actually has no idea whether the borrower belongs to a protected class. Unlike mortgage lending that is subject to HMDA data collection, auto lending is not. In other words, it is my understanding that the lender cannot intentionally discriminate on the basis of race because the borrower's race is unknown to them.

Nevertheless, it is my understanding that you did determine—you, the agency—you did determine that certain racial groups were being charged the higher rate for their loans and, hence, the disparate impact. The bad act, for lack of a better term here, was the lender's policy, not the fact that they intentionally discriminated against anyone because they actually could not, even if they wanted to. They did not know who they were. If anyone was in a position to actually discriminate, it was the person selling the car. But, the law does not allow you to regulate the dealer, only the lender, as you acknowledged. As a result, the indirect lenders were penalized to the tune of $162 million for what may or may not have been the action of someone else.

Assuming here that your conclusion of disparate impact was valid, it would seem to me that this would be a poster child for a rulemaking as opposed to an enforcement action. There is a big difference. The lenders did nothing to intentionally discriminate against anyone, and yet it would appear that you treated them as such because you do not have the authority to go after your real target here. Your own press release is entitled, and I will quote, "CFPB To Hold Auto Lenders Accountable for Illegal Discriminatory Markup." That is your press release.

I understand that you make these decisions on a case-by-case basis, but here today in this Committee, tell us in detail why you chose to go after these lenders as if they were knowingly discriminating against certain individuals as opposed to pursuing a rulemaking that would give the lenders some clarity and some certainty in the area.

Mr. CORDRAY. So, I would say a couple of things, and I would put the matter, I think, somewhat differently than how you just stated it, but, first of all, auto lenders set up their lending programs. They can lend directly or they can lend indirectly. They set up those programs. The results of those programs are their responsibility. If, in fact, there is a systematic pattern or practice, in their programs of people being given higher rates based on race or ethnic origin, that is against the law.

As to disparate impact, there are two things I would say. First of all, we enforce the Equal Credit Opportunity Act in the same way and with overlapping jurisdiction of as the Justice Department. The Justice Department only has enforcement authority. All of these matters have been taken jointly with the Justice Department and they have led to findings of disparate impact discrimination.

As to whether this is the law, my job is to enforce the law, whatever it is, whether somebody disagrees with it or not.

Chairman SHELBY. Your job is also to follow the law, is it not?

Mr. CORDRAY. Yeah. This law——

Chairman SHELBY. Is it not——

Mr. CORDRAY. ——was reaffirmed by the U.S. Supreme Court last June.

Chairman SHELBY. Excuse me.

Mr. CORDRAY. I am sorry.

Chairman SHELBY. Your job is also to follow the law.

Mr. CORDRAY. Absolutely, and the U.S. Supreme Court——

Chairman SHELBY. Respect the law.

Mr. CORDRAY. ——last June reaffirmed that disparate impact discrimination is the law of the land.

Chairman SHELBY. OK.

Mr. CORDRAY. That is the law we are required to enforce. We will enforce it vigorously, and we believe to root out discrimination, which nobody supports, in any of these markets.

Chairman SHELBY. There has been a lot of talk here before the Committee and in the discussion a couple of days ago about your agency using enforcement as a tool rather than rulemaking, that some people believe that what you all are after, money rather than justice. What do you say to that?

Mr. CORDRAY. I think if you are enforcing the law, there are people who are not going to like it because they would rather get away with violating the law, cutting corners, and saving money. But, if people are violating the law, they should be made to pay. They should be made to reimburse consumers who are harmed. That is a basic premise of any law enforcement agency. I know you were a prosecutor early in your career. I am sure you took seriously your obligation to make people follow the law. That is all we are doing.

It is what we should be doing, and if it has not been done previously and people are used to it not being done, then that is not correct. That is not the way things should be.

Chairman SHELBY. But everybody should have respect for the law and the rules, and that includes you and your agency, is that correct?

Mr. CORDRAY. Absolutely, yes.

Chairman SHELBY. OK. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Director Cordray, again, thank you. We heard a lot 2 days ago about the Bureau's arbitration study. I would like to give you a chance to talk about the study, specifically, its methodology and its findings. What did you find? What does the Bureau plan to do to allow consumers to seek justice in court?

Mr. CORDRAY. OK. And, it is very important to understand the authority here. Congress spoke in the Dodd–Frank Act and they spoke loudly on this issue of arbitration agreements in consumer finance contracts. And what they said, what Congress said—this is the law of the land now—is that those arbitration agreements were harmful in most mortgage contracts and would be banned flat out in most residential mortgage contracts.

Congress also said in the statute that as to the rest of consumer finance, we are going to task this new agency, our agency, with the job of studying this problem carefully and reporting to Congress about it, and then based on the results of that study, to consider whether policy interventions are warranted, consistent with the study, and—they gave broad latitude here—consistent with the public interest to protect consumers.

So, our first job, a mandatory job, was to conduct a study of arbitration clauses in consumer finance contracts. We took that very seriously. It took us a couple of years to do that study. We assembled and brought in data that no one had ever had a chance to look at before about arbitration matters, about court cases, about every manner in which different disputes may be resolved in the consumer finance arena. Those who have criticized the study acknowledge that it was the single most comprehensive, really groundbreaking study that had ever been done and that continues to have ever been done in the history of arbitration agreements, which go back under Federal law to the 1920s.

And, the study found that in consumer finance issues in particular, very often, what you have is a small amount of harm to individual consumers on a broad basis. Maybe millions of consumers are harmed to the tune of $50 or $100. That is enormously profitable for financial institutions, but it is not worth it to individual consumers, in most cases, to pursue either an arbitration or a court case. And, in fact, what we found is arbitration agreements in these contracts tends to cutoff people's remedies pretty much altogether, in particular because it bans their ability to group together and bring group claims so that financial institutions who harm on a broad basis cannot be held accountable.

That is essentially what our study found. There is a lot of detail in there, and it is not easily subject to a 30- or 60-second discussion because it runs to hundreds and hundreds of pages. But, it continues to be discussed and debated and we continue to discuss and debate it and consider all of the input we have gotten.

We offered to speak to the authors of one critical study. One of them was willing to speak to us about it, the other was not. And, we will take input from all sides on this.

But, we are moving forward. We have indicated that we are contemplating a proposed rulemaking to build on the results of that study and to address this issue and I expect that to be in a proposal stage at some point this spring.

Senator BROWN. Thank you, Director.

Our panel Tuesday claimed that regulations are reducing access to products like free checking and, therefore, they say, pushing consumers into payday loans. However, Americans have a record $3.5 trillion in consumer debt, a full trillion dollars more than just 6 years ago. Talk, if you would, about the availability of credit and the research that the Bureau has done on this topic.

Mr. CORDRAY. Sure. I had a chance to review the transcript from Tuesday and there were comments made about free checking that I think are dubious. I saw some of it was being pinned on the Durbin Amendment and I thought you were right to be skeptical of that claim, which has not been established as a cause or effect.

In fact, access to credit is expanding, by the way, there was also a lot of looseness around dates in some of that testimony. Some of the testimony talked about things that have happened since 2008, like credit being restricted. Credit was restricted immediately in the wake of the financial crisis because households lost $12 trillion in household wealth. Mortgages became tight.

Credit cards became tight. But, what has been happening since the Dodd–Frank Act was passed in 2010 and the CARD Act in 2009, and also the Consumer Bureau, which did not open its doors until July of 2011, is that we now see credit begin to expand again, in the mortgage market and in the credit card market. The Federal Reserve studies have shown that credit is expanding. And, I would say, in the credit card market, in particular, there is broadly increasing consumer satisfaction with these products.

We think that is a good thing. We are not just pro-consumer protection at the CFPB, we are pro-consumer, and if consumers have access to responsible credit, that is a very good thing, and we do see that expanding across markets.

Senator BROWN. Could I do one more question?

Chairman SHELBY. Go ahead.

Senator BROWN. Thank you, Mr. Chairman.

Last year, the Bureau announced it was considering proposing rules, and we have talked about this in the past, that would cover payday lending, vehicle title loans, other high-cost loans. Our home State of Ohio, as you know, attempted to block payday lending. Its law has been ineffective. Talk about how these companies have skirted State laws. Talk about the importance of the rule. And, you have also commented in the past that there are a dozen States that do not allow payday lending, and in those States, how have they done with small dollar credit in those States without the access to payday lenders, if you will.

Mr. CORDRAY. Yeah. There has been no research, and it ranges, depending on people's definitions here, from 12 to possibly 18

States that restrict payday lending because they have usury caps in place to indicate that consumer welfare is harmed in those States. And, in fact, there are studies indicating that both credit scores may be higher and bankruptcies may be lower. So, that is a question.

I think as to circumvention, the best example is one that this Committee can understand very readily because you have been involved in the Military Lending Act. The Military Lending Act was passed in 2006 with the promise Congress made to cut off some of the predatory credit that was being offered to servicemembers, active duty servicemembers. The rules that were then implemented by the Federal agencies at that time were pathetic. They were narrow. They were easily circumvented. And you can still see to this day predatory products being offered outside military bases and online at 500-, 700-, 900-percent rates of interest.

Congress reopened that a couple years ago. The Consumer Bureau was part of the discussions about creating new rules, and we now have strong rules in place—some took effect last October, and the rest of the rules will take effect this October—that will bring the meaning of the Military Lending Act to fruition for servicemembers and their families across the country.

But, if loopholes are allowed and if rules are flimsy, then the industry will circumvent those rules, and, in fact, they have shown their ability to do so.

Senator BROWN. Thank you. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Crapo.

Senator CRAPO. Thank you, Mr. Chairman.

Director Cordray, as you know, I have privacy concerns about the CFPB's big data collection efforts and the ability to reverse engineer this information.

Mr. CORDRAY. Yeah.

Senator CRAPO. Last Congress, I requested an official review of the CFPB's data collection by the Government Accountability Office. The report acknowledged CFPB's ongoing collection of up to 600 million credit cards, 11 million credit reports, 700,000 auto sales, 10.7 million consumers, cosignors, and borrowers, 29 million active mortgages, and 5.5 million private student loans.

I do not want to get into it now, but I would like you to verify that data with me. I want to know if the data that I just put out is accurate or whether the numbers are higher or lower.

Mr. CORDRAY. So, as you know, when we discussed it, we were glad to have you commission the GAO study. They issued their report. They made a number of recommendations to us. They have now indicated to us that we have successfully implemented all of those recommendations and they will be moving to close those out, so that is good news, and I think the result has been it improves our process as an agency.

As we have discussed before, the last thing I want is for our agency to mishandle data and to be criticized for that. You have been apprehensive on this issue, I think with legitimate reason, from the beginning, but we have handled this data responsibly and carefully and we are looking, in response to some of the dialogue and oversight we have had from you and Members of this Committee and House committee, we are looking to do sampling of data wherever possible. We are now looking at how we can do that with credit cards.

Senator CRAPO. I appreciate your efforts on that. And, what I was saying, though, is I want to verify with you the data that I just put out. For example, are you actually only looking at 600 million credit cards? Are you looking at more or less or what have you? So, the data I put out, I would like—I do not want to get it and use my time——

Mr. CORDRAY. So, I mean, the reality is, that is actually in a state of flux right now and we are looking to find ways, and I believe that we will be able to report successfully to you over time that we will be doing——

Senator CRAPO. That you are reducing——

Mr. CORDRAY. ——a sampling of that data——

Senator CRAPO. I appreciate that.

Mr. CORDRAY. ——rather than comprehensive——

Senator CRAPO. As of October 31, 2015, the CFPB has issued eight mandatory data collection requests under its Section 1022 market monitoring authority, and six of those mandatory data collection requests were sent to fewer than nine companies, the significance of which is that that effectively avoids the review of the request by the Office of Management and Budget and circumvents the opportunity for public comment on the information request.

The feedback I received from the CFPB's mandatory data collection request on deposit advance products was that it was voluminous and sought a number of data fields, including the use of deposit advance products, overdraft protection, and nonsufficient fund fees. While it did include a caveat that the financial institution should not produce any personally identifiable information that directly identifies the consumer or the account, I understand that the data collection request effectively required these institutions to scan customer accounts line by line for their financial behavior going back years. It would seem to me that this is a large-scale data collection into the individual consumer's use of financial products on a transaction by transaction basis.

Can you confirm to me how many data fields were collected through this request and how many customer accounts were scanned to get this data?

Mr. CORDRAY. So, there were different requests with different data fields, but what I want to say is I think the story you tell, which I agree with, actually vindicates and shows careful concern by us to comply with the Paperwork Reduction Act and Congress' purpose in that Act. The fact that we would limit ourselves to a small number of institutions in order to get data is sampling of a kind, and we are doing that, in part, because the Paperwork Reduction Act provides the incentive to do sampling. Rather than going out to 400 institutions, we may go to nine. If we are going to try to go to 400 institutions, if that becomes essential, there are heavier burdens to bear, and we have done that at times and gone through the OMB process.

Senator CRAPO. Well, I understand that, but if you look at credit cards, for example, my understanding is, and this is obviously a rough number, that there are somewhere over a trillion credit cards in the United States—credit card accounts in the United

States. If you are looking at 600 million of them, that is half, at least. And, I understand that you may be far above the 600 million level, which is why I asked for that number earlier.

Mr. CORDRAY. Yeah, sure, but the credit card database is different from the 1022s. The 1022s——

Senator CRAPO. Understood.

Mr. CORDRAY. ——where you think it is circumventing the PRA, it is actually compliance with the PRA and it leads to sampling, which is a good thing.

On the credit card issue, as I said, we are working to go to a sampling process for that. I believe we will be able to do that over time and we will continue to report to you on that, and that is in response to your oversight and your concern, which I share.

Senator CRAPO. Well, thank you. And, again, my question specifically was how many data fields were collected and how many customer accounts were scanned to get this data, so I would like to——

Mr. CORDRAY. OK. I am happy to follow up with you, again, depending on which 1022 you are talking about or which database you are talking about, and we will be glad to brief your staff and make sure that you are satisfied.

Senator CRAPO. All right. Thank you very much.

Chairman SHELBY. Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman, and thank you, Mr. Cordray, for your great work.

I worked very hard with my colleagues on the Committee to ensure that the Office of Servicemember Affairs was included in the Consumer Financial Protection Bureau, and I must say, under your leadership and the leadership of Holly Petraeus, it is doing a remarkable job. Just last year—in 2015, you returned over $5 million to service men and women and their families. And, one of the reasons this is so critical to me is that when I was a younger person, I was an XO of a paratrooper company and most of my time was consumed fending off creditors coming after my troops based on very suspicious credit arrangements that they had worked out.

So, I really appreciate what you are doing, and I do not think there is anyone in this Congress that would object to protecting the financial well-being of men and women who are wearing the uniform of the United States. And, I would go further, saying that I do not think there should be a difference for their brothers and sisters who may not be wearing the uniform of the United States but are being exploited by other people.

Mr. CORDRAY. Amen to that.

Senator REED. Thank you. One of the things, though, that your inquiries have uncovered is a practice that seems to be, if not growing, very disturbing, and that is creditors contacting commanders and threatening the security clearance of an individual member of the Armed Forces based on a debt, and this has huge ramifications. It can prevent promotion. In fact, in some cases, because of their job, they might be separated if this comes about. Can you comment on that and what you are doing?

Mr. CORDRAY. Sure. It is flatly against the law for a debt collector to threaten anyone, let alone a servicemember, with consequences that a debt collector has no ability to carry out. So, for example, it is common for debt collectors, those who push the envelope, those who do not care about compliance, to threaten arrest or imprisonment, which they have no ability to effectuate.

In the servicemember context, the ominous activity that many debt collectors engage in is to threaten to go to the commanding officer of the servicemember and threaten their security clearance, which would threaten their ability to remain on active duty in the military and perhaps lead to a dishonorable discharge. That is an execrable practice. It is against the law. We have taken strong enforcement actions against it.

And, by the way, when people talk about regulation by enforcement, when we take an enforcement action against a debt collector for doing that, threatening the security clearance of a servicemember, I hope that people do take that as regulation by enforcement, and every other debt collector out there understands they are at risk, they are violating the law, and we will come down hard on them if we become aware of the fact that they continue to do that. Everybody should be on notice in this marketplace, no one should be doing that.

Senator REED. Well, I really appreciate that, because I saw it from the perspective of an executive officer in an infantry company where I was getting barraged. The commander would hand—that was my job. I did that stuff for the commander. And, letters every day of young men—at that point, all young men—who had been really goaded into buying vehicles they could never afford at extraordinary interest rates and then being hounded and beaten up, finally going to the commander and threatening that their status in the military would be impaired. So, what you are doing there is absolutely critical. As the Ranking Member on the Armed Services Committee, it is critical to our readiness and the ability of our troops to concentrate on their jobs, so thank you.

There is one other thing, too, that I must commend you on. Through your work, we have made improvements in the Military Lending Act. We had an Act that capped interest rates for active duty personnel at 36 percent, but people went in—the Consumer Federation of America, and found that because of the loopholes in the previous regulation, in fact, some lenders were charging 400 percent for a title insurance loan, 584 percent for an open end line of credit, 360 percent for an online installment loan—these are to men and women in the military.

And, thank you for your efforts, because I think now we have got a better hold on keeping the level at 36 percent. And, by the way, 36 percent interest in today's interest economy is still pretty plush for the lenders, but that is the law. Thank you.

Mr. CORDRAY. I think that, actually, the regulations that were first adopted in the wake of the MLA were disrespectful of the Congress. Congress clearly indicated its purpose, to protect servicemembers in this area, and the rules did not get that job done. And, I am grateful to the Congress for reopening this issue several years ago so that we could do it right this time, and I am proud of our team that worked with other agencies and with the Department of Defense, and I am proud of the Department of Defense for their determination to make this work for their servicemembers.

Senator REED. For the record, it was title installment loan, not title insurance loan. Thank you.

Chairman SHELBY. Senator Corker.

Senator CORKER. Well, thank you, Mr. Chairman, and Mr. Cordray, it is good to see you again.

Mr. CORDRAY. Thank you.

Senator CORKER. I had written you a letter about TILA RESPA, and I know we—and I appreciate your efforts to try to make that more simplified for folks. Because of the line of work I have been involved in in the past, I closed a lot of loans in the past, and, candidly most of the times, I did not see the sheet until I was actually at the closing table——

Mr. CORDRAY. Yeah.

Senator CORKER. ——and I was OK with that, because it sped up the closing process. At the same time, I know that the attempt here is to make sure that people know what they are doing in advance and have the opportunity to see it. And, yet still, things are pretty fluid with most loans, and there are some calculations that take place at the last minute for lots of reasons.

And, what we found, and I know that you know this, we found that what is happening is you have got responsibility or legal obligations shifting to the settlement agent, which really is just collecting the information and putting it in a closing statement. And, I am just wondering, I know that they can correct this within 60 days or a period of time, but there is some confusion over what is something that is just a little clerical error and something that matters. I know that right now, attorneys are litigating over this and we are finding that sometimes people are having difficulty selling these loans in the secondary market.

Mr. CORDRAY. Mm-hmm.

Senator CORKER. I am just wondering if you are considering making a ruling of some kind to alleviate the problems that I know you are aware of that are existing out there.

Mr. CORDRAY. Yeah. So, several things. First of all, it is a great example of Congressional oversight and how these hearings matter. We received that letter from you. Because I am testifying today, we did respond to that letter, it may have been late last night, it may have been early this morning that your office received it. You probably have not seen it yet, and I apologize for that.

Senator CORKER. No, I read it. I read it.

Mr. CORDRAY. OK. And, that is because we knew that you would want to raise this issue again with me, or likely would.

In terms of the Know Before You Owe rule, the purpose of that rule, and this is something Congress mandated, it was not something we just dreamed up on our own—and there was a good purpose, and everybody acknowledged it was a good purpose—there used to be two different application forms, one issued by the Federal Reserve, one issued by HUD, that occurred at the application stage, and two different closing forms, again, by each of those agencies under different statutes, and it was inherently confusing for consumers.

Senator CORKER. Right.

Mr. CORDRAY. Why am I getting two forms? What is the difference between them?

Senator CORKER. No, I got that. I understand that.

Mr. CORDRAY. You know all that.

Senator CORKER. I understand the reasoning and I applaud——

Mr. CORDRAY. And the purpose here was to streamline those forms. You all had a hand in making sure this happened. But, our agency was given the job and we have completed that job.

Now, having said that, that is a big transition for mortgage lenders, who have to work with lots of others in the industry and all of their IT systems have to work together. We have recognized that. We have said that we are going to be understanding and diagnostic about the oversight of this in the early period. The early period now has stretched past 6 months. We still feel the same way, and I will reemphasize that today.

There are some concerns that we want to be very mindful of. We convened recently the leading trade associations, the Mortgage Bankers, American Bankers Association, others, to hear from them about specific concerns they have that we can address. We have held webinars. We have another one coming up next week on these issues. We have compliance guides out. We do want to make sure that although this is better for consumers, and they tell us that it is, that it works for industry, as well.

Senator CORKER. Right.

Mr. CORDRAY. I was pleased to see mortgage lending was up 12 percent year over year in January from a year before. That is a good thing. As I say, it is something we like to see, because this is good, responsible lending. And, the closing times initially ticked up on this, but they ticked back down, and in February, the Ellie Mae folks said that this is, you know, kind of status quo as far as that is concerned. It is not necessarily for every institution, though. I get that, and we hear that.

Senator CORKER. But, I want to ask you another question, if I could.

Mr. CORDRAY. All right.

Senator CORKER. I think when you get to a point, and hopefully very soon, you will be able to issue some clarifying language——

Mr. CORDRAY. Yes.

Senator CORKER. ——so that people know, you know, whether something is a minor error or something that, you know, is something that is major and actually taints the loan, if you will. I just think that would be helpful to industry and I appreciate your concern in responding to my——

Mr. CORDRAY. We have been doing that. We will continue to do that. And, if you are hearing things that we are not addressing, we are glad to have you continue to bring them to our attention. We are probably hearing them directly, but we are glad to hear them from you——

Senator CORKER. I want——

Mr. CORDRAY. ——because we sit up and take notice of that.

Senator CORKER. I am trying to adhere to the time here.

Mr. CORDRAY. Yeah.

Senator CORKER. Payday lending—I know in our State, if you continued a loan, ad infinitum, for an entire year, the interest rate would be 459 percent. And, obviously, we want to make sure that people have access to loans at affordable rates. We have had our

Commissioner of Banking was in yesterday talking about this. It is just an observation.

Mr. CORDRAY. Mm-hmm.

Senator CORKER. What is it that you see that are potential outlets down the road for people whose credit has been tarnished and has issues? Is it through FinTech? I mean, what are you seeing out there? I would love to hear what your thoughts are relative to people having access to loans that are a little different from that if they are in the capacity, if you will, to be able to execute on them.

Mr. CORDRAY. Sure. A number of things. And, some of these, we are trying to sort out and understand.

First, there is the payday lending industry itself, which could reform in light of potential regulations at the Federal level, just as they have often changed their practices at the State level in response to changes. And, frankly, nobody wants to cut off people's ability to get one or two loans when they need them. It is the debt trap, when people get stuck in the loans for 8, 10, 12——

Senator CORKER. I understand the problem——

Mr. CORDRAY. Yes.

Senator CORKER. ——and I really do. I am understanding—what I would like to understand is what the solution is——

Mr. CORDRAY. Yeah.

Senator CORKER. ——so you do not cut people off from——

Mr. CORDRAY. Let me be real specific. I think there are possibly three different solutions here. One is reform of the payday industry itself.

A second is community banks and credit unions. Credit unions do offer a small dollar product called a PAL product. It is blessed in law. We think it is a good product and we want to make sure that there is room for that under any regulations we would adopt. And community banks could do that. We want to allow room for that—responsible products, not payday-type products.

The third piece is FinTech, and there are real opportunities here, although small dollar lending is tricky. It is difficulty. And we will see if that develops over time. But, whatever FinTech innovations occur, we want them to be consumer friendly and we will be mindful of that and watchful for that, and I think those in the industry know that. Many of them have met with us and they are mindful of the CFPB's role here.

Senator CORKER. Thank you.

Chairman SHELBY. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Director, let me say, I came today in part, unlike others, maybe, to praise the Consumer Financial Protection Bureau, not to bury it, and let me say that I think an example of what you and your colleagues at the Bureau are doing is embodied in something I fought very hard as a Member of this Committee, which is the Credit Card Act. The Bureau noted in its most recent evaluation that since enactment, consumers have saved more than $9 billion in over-limit fees, $7 billion in late fees, and the total cost of credit has dropped almost 2 percentage points, and all the while, the availability of credit card credit has increased. And that, in my mind, is just one example of why consumer financial protection laws and regulations create a fairer marketplace.

In that regard, as I think you know, I have been very engaged in the question of prepaid cards, which has exploded over the last few years, especially among households who lack access to traditional banking services. And, I have introduced legislation which would require clear disclosure of fees and prohibit the most abusive kinds of charges. It would also require prepaid cards to have FDIC insurance, like a traditional bank account, and comparable protections to a bank account if a card is lost or stolen.

Many card providers have already voluntarily provided such measures and standards, which shows it can be done, but it also highlights the need for strong, consistent protections across the full market.

So, could you give us an update on the status of the Bureau's work on prepaid cards, and particularly, since I see that the rule did not include, or the proposed rule did not include the issue of FDIC, how will we create the type of protection necessary in that regard.

Mr. CORDRAY. Sure, and we have had some discussions around this previously. We have been very attentive to the legislation that you introduced and to the thought and care and research that went into thinking about those issues, which we have attempted to incorporate into our own approach to these issues. That rulemaking is pending. It was out for notice and comment. We have digested those comments and we expect to finalize that, or we will finalize that rule sometime this spring.

On the issue of FDIC insurance, in particular, that is one of the issues that is under submission there. I do not want to overstep proper bounds here, but we have had discussions with the FDIC about it and we understand the concern there.

Many of these general purpose reloadable prepaid cards now effectively serve as substitute bank accounts for people who are unbanked, and they can be pretty effective bank accounts if they have consumer protections. Right now, as you know, we have no consumer protections. This rule will provide consumer protections for the first time, very similar to those for bank accounts, the Reg E protection.

The other thing I would say on this issue that is new since we last talked in committee about it is we did have the RushCard fiasco, and the Consumer Bureau was very engaged in addressing—these people had prepaid money loaded onto cards and then thousands of them found that they could not get their money off the cards because of an operational glitch by the company, some sort of problem that we continue to sort through from a standpoint of an investigation and making sure consumers are made whole.

And, you know, that is outrageous. People prepay money onto a card in order to be able to use it when they need it, and if they cannot use it when they need it, then they have been cheated of their service. So, that, if anything, shows all the more to me the need for strong protections in this area.

Senator MENENDEZ. Well, I appreciate that. I know that Senator Brown and I wrote to you about that and I am glad to see that the Bureau is pursuing it.

Mr. CORDRAY. Yeah.

Senator MENENDEZ. Two last issues. One is zombie mortgages, zombie foreclosures, I should say. Unfortunately, my State of New Jersey has the highest rate of zombie foreclosures, which is basically a bank begins a foreclosure action, but then, because of the low value of the house, chooses to abandon the foreclosure without providing any notice to the homeowner that they are still on the hook for repaying mortgage debt, taxes, and other expenses. So, can you talk to me about what steps, if any, the Bureau has taken or is looking to take to address this issue? At least can homeowners receive notice when the bank has decided not to pursue it?

And, last, the National Council La Raza reported that 48 percent of counselors reported that mortgage servicers rarely or ever provide written communications in the preferred language of a borrower with limited English proficiency. I know the Bureau has identified the provision of language services as an issue in its mortgage servicing examination procedures, but particularly for homeowners who encounter trouble on their mortgage, it seems to me that more is needed to ensure they receive the type of comprehensive loss mitigation assistance that is necessary.

Can you address those two issues.

Mr. CORDRAY. Sure. I will take the second one first, in terms of preferred language. There was a very helpful provision in the statute that Congress passed on remittances that said that if you are basically selling a product and marking in a preferred language, then you ought to follow up in all respects through the product in that language. That is probably a good principle across the board, but it was specified there and so we were able to implement it.

In terms of preferred language, that is something we are working on with FHFA and others, and we recognize the issues there and the importance and the vital elements of that for communities that are affected. And, of course, it is not only Spanish-speaking, but it is a wide variety of languages in different parts of the country, we have come to understand.

In terms of zombie foreclosures, it is a difficult issue. It is often an issue for investor properties, but—sometimes there are properties taken over by banks. And what you are talking about is starting a foreclosure, then stopping the foreclosure at some point. The consumer does not necessarily have any notice. They do not realize they are still going to be on the hook legally, since the property was never foreclosed on and sold, for taxes and insurance and other payments. They may well have left the home in the meantime, because if you are being foreclosed—if you think you are being foreclosed on, often, you start examining your options and you take one when you can find it.

So, it is a difficult problem. I do think you are right, that notice is a basic problem there. It often will not be effective for consumers, entirely effective, because they may have already left the home. And, it is worse, frankly, in the States with the longest foreclosure processes because there is more chance of a bank starting and then stopping maybe 200, 300, 400, 500 days in, at which point the consumer may have left the home.

So, we understand there is consumer harm here. There are complexities around it, but it is something that we are looking to see what we can do and maybe what others can do, as well, and how we can work together on that, including with State courts.

Senator MENENDEZ. Thank you. I look forward to working with you. Thank you.

Chairman SHELBY. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman.

Thank you, Mr. Cordray, for being here this morning. You made a speech to the credit unions and talked about how the mortgage market was good news for all around, that more opportunity for more consumers and a wider path to the American dream in a mortgage market made stronger by the changes we have made. But, the evidence for first-time homeowners over the last 3 years is that the first-time homeowners have been in decline, and that disproportionately impacts minority would-be homeowners, since the fact of the matter is that about 74, 75 percent of the majority population owns homes. About 45 percent of African Americans own homes. About 55 percent of Hispanics own homes.

So, my question really is, when you look at the rules and Dodd–Frank being put in place, how do we reconcile the mortgage market specifically is good news for all around, when, in fact, for first-time homebuyers, who are disproportionate minority, the news is not nearly as good? But, what we have seen throughout the country, and specifically at home in South Carolina, is that the rental market is far more expensive and the growth, really, an explosion, in apartments is nearing an all-time high in the last decade or so.

Mr. CORDRAY. Yeah. So, this is—and I know you raised that issue on Tuesday and I had a chance to review the transcript of the hearing, and it is an important and interesting—it is actually a very interesting issue, a lot of pieces to it.

So, first of all, I would say, in terms of first-time homebuyers, I think if you look at the statistics on the mortgage market, what you will find is that of owner-occupied real estate, first-time homebuyers are still maintaining about the same share that they have. The difference that is affecting the market is that there are many more investor-owned and investor-purchased properties than there had been before the crisis. It appears that investors have seen their opportunity as prices plummeted and they have bought up a lot of properties, and this is going to be a problem in a number of communities, because although it helped find a bottom in certain markets and maybe create equilibrium, it has pulled inventory off the market and made it unavailable to, say, you and me, if we were going to go try to buy a house tomorrow.

There are also inventory problems in local markets around the country. Sometimes, many houses are tied up in the foreclosure process, depending on the State. Sometimes, many houses remain underwater, depending on local valuations, so it is difficult for someone to sell if they are underwater on their mortgage. And, homebuilders have been kind of reluctant to come back in with a rush to the market and build new inventory, although that is starting to happen.

So, by the way, I do not want to be viewed as some sort of happy talker who sees a glass half full if there are just a few drops in it. But, what I do see in the mortgage market is that the share of the mortgage market that is taken right now by credit unions and community banks together has risen since Dodd–Frank, has risen since our rules took effect, and is at levels that are the highest they have been in 20 years. That is a good thing. Those institutions did do the best lending right through the crisis. When everybody else was deteriorating, they stayed firm. They had low default rates. And we have tailored our rules to give them advantages and recognize their model in the mortgage market, and I think that is a good thing.

Senator SCOTT. It certainly appears to me that the consolidation within the banking space has led to more access and opportunities for smaller credit unions to continue to grow——

Mr. CORDRAY. I think so.

Senator SCOTT. ——and, frankly, in Section 1022 of Dodd–Frank, it states plainly that the Bureau, by rule, may conditionally or unconditionally exempt any class or covered persons, service providers, or consumer financial products or services from any provision of this title or from any rule issued under this title. Do you think if the credit unions or community banks were being detrimentally impacted—we have talked about the mortgage market specifically, but generically speaking—by the rules of your agency, this section would allow there to be more tailoring of regulations? Do you see that as a possibility that you are going to take hold of, or do you see the need of it or not?

Mr. CORDRAY. We have been doing that since the beginning, and we tailored our mortgage rules, in particular, which, of course, is the most significant finance market for all players, at around $10 trillion, we tailored our rules in notable ways for smaller providers, and we continue to do that. We have just implemented Congress', I thought, helpful legislation on definition of "rural" in a way that was very broad for smaller institutions.

What I will say about the exemption authority is we tend to be fairly careful about it. We do not regard Congress as having said to us, you have broad exemption authority. You can do whatever you want despite what Congress said. That would be too much. But, where we have evidence that we think we can build on, in particular, rulemaking, such as the mortgage origination rules, the mortgage servicing rules, the remittance rules, we will tailor for smaller institutions because, very often, that is the right answer. They are responsible. They are close to their customers. They provide good service.

But, the notion that we would simply countermand—I mean, Congress set its own limits here in terms of we have authority over banks over $10 billion but not under, in terms of supervising them, and the like, and Congress did not just exempt credit unions from all laws and regulations, and, therefore, I do not feel that I can just come in as a matter of opinion or ideology and overrule that.

But, where I can see that, say, in mortgage rules and the mortgage market, they have done well and we should try to tailor our rules accordingly, we have done that and we will continue to do that. And, I would be glad to take your and your colleagues' input on how you think we should be doing that. And, we get that input directly from ICBA, from NAFCU, from CUNA all the time.

Senator SCOTT. I would be happy to have that conversation with you offline, if you are open to it.

Mr. CORDRAY. Sure.

Senator SCOTT. My main concern, as I wrap up, Mr. Chairman——

Chairman SHELBY. Thank you.

Senator SCOTT. Yes, sir—is that when you look at the number of households that are unbanked or underbanked, I know that we talked on Tuesday, about a million households——

Mr. CORDRAY. Yes.

Senator SCOTT. ——the fact of the matter is that with better information provided by staff, the number is around four million under- and unbanked households, because the more—the regulatory burden impacts the institutions. The higher the cost, the higher the cost, the lower the access. And, for the unintended consequences—I assume unintended—is the fact of the matter is that 4.4 million households are now either unbanked or underbanked than was at the beginning of Dodd–Frank.

Mr. CORDRAY. Yeah. Well, actually, I would be interested in knowing exactly what the numbers and the dates are, because since the crisis, certainly that number has gone up, because the crisis blew up the economy for people. Whether it can actually be pinned on Dodd–Frank when we did not even open our doors until July of 2011—that is where I get off the train on some of the commentary I have seen on this.

Senator SCOTT. Happy——

Mr. CORDRAY. Yeah.

Senator SCOTT. One of the things that we did was make sure that the numbers that we used did not start in 2008 and immediately after the crisis.

Mr. CORDRAY. Yeah. That is 3 years before we came along.

Senator SCOTT. Exactly. That is why we did not use the 2008 numbers.

Mr. CORDRAY. By the way, I think we certainly——

Senator SCOTT. I am happy to——

Mr. CORDRAY. I know we would agree that the fact that credit unions reached an all-time high in membership nationally last year is a good thing. I am very supportive of that. I am sure you are, too. But, again, it is notable that if our rules are supposedly killing the credit unions, how is their membership now at an all time high? It does not really make sense.

Senator SCOTT. There is no doubt that the number of members at credit unions are higher. The number of credit unions themselves are lower, so the fact that——

Mr. CORDRAY. Yeah, although that has been a decline that has been steady for 30 years.

Senator SCOTT. The contraction of credit unions and banks, obviously, are happening, and there is a consequence that comes with the regulations that may be contributing to that fact, as well.

Mr. CORDRAY. Maybe, although that has been a consistent trend for 30 years, and the evidence I have seen is that it has not accelerated since Dodd–Frank, although there was a Lux–Greene study that I think is, in my view, discredited, that seems to suggest that. I do not think it bears out when you do the analysis more carefully.

Senator SCOTT. Happy to continue to the debate.

Mr. CORDRAY. All right, sure.

Senator SCOTT. Thank you.

Mr. CORDRAY. Thank you.

Chairman SHELBY. Senator Warner, thank you for your patience.

Senator WARNER. Appreciate that, Mr. Chairman.

Director Cordray, great to see you again, and I also want to commend you for your service. I would point out that if you look behind you, you will see a lot of folks who are supporters of the Bureau, many of them actually from the Commonwealth of Virginia brought in by Virginia Organizing who will, I think—it is a shorter commute for them than some of the people from around the country.

Mr. CORDRAY. Amen.

Senator WARNER. Although, still, something needs to be done about that traffic in this region. I wish I knew somebody who was still Governor.

[Laughter.]

Senator WARNER. I want to pick up on where Senator Corker was. I think there would be actually bipartisan sense that some of the more egregious actions on payday lenders needs to be stopped, and people are taken advantage of, and we look forward to your guidance and rulemaking.

But, an area, as we have discussed before, I have spent some time looking into is FinTech, and there remains opportunities in this new area, as we think about more and more of our banking is going to be put, frankly, with the supercomputing power you have got on your phone, I have looked at a number of firms who are looking at tools around income smoothing, around differential ways of paying folks. Many low- and moderate-income people, because of managing their finances on a regular basis, fall off that cliff at the end of a pay period and end up then having to resort to a payday lender or others that will put them in that debt spiral.

Mr. CORDRAY. Yeah.

Senator WARNER. The challenge, though, is when you have got these new technology tools, how do you balance the innovation, but at the same time, as we have seen entities like Dwolla, who did not do a very good job of protecting consumer information, get this right, and what standard are we going to hold them to. They are not full financial-banking institutions, but I think there is going to be the same kind of disruption from FinTech that we have seen perhaps with Uber with taxis, or Airbnb with hotels. I think it is one of the next areas to be disrupted. Good, but there are also possibilities for abuse.

Mr. CORDRAY. True. That is true. The nature of innovation is that it is neutral, but hopeful and encouraging, and some innovations have been very bad for consumers. The exotic mortgages that were developed in the lead-up to the crisis were innovative, no doubt about that. They were also terrible for consumers, as it turned out.

As we look at FinTech, and I am very interested in these issues, as I know you are, and we have a team that we call Project Catalyst at the Bureau that is very engaged with the financial innovation community, not just in Silicon Valley, but across the country, and also innovations that are occurring within larger institutions that are constantly researching how to improve their products.

What I would say is we believe it would not be appropriate for new FinTech startups to be getting an advantage in the marketplace because they are arbitraging the regulatory system. They are not complying, they are not taking seriously, or as seriously what the banks and regulated institutions have to do.

Our enforcement action against Dwolla has been much remarked upon, but it was actually a rather modest action. It simply said that if you are telling your prospective customers and consumers that you are going to handle data security in a certain way that gives them confidence and then they want to deal with you, and, in fact, you are not, then you are deceiving your customers and you are getting an unfair advantage by doing so and that should stop. And, that should be a signal to the whole market that, at a minimum, deliver on your promises to your customers.

But, I do think it is going to be interesting to see how this develops. There is a lot of promise in FinTech. It could lower costs in some areas. It could promote convenience, may well do that, which is great for people. That is a different kind of cost for them. It may be that the banking system and the FinTech companies will converge in some ways so that there is better compliance, but also we get the benefit of the innovation. We will see. But, we are trying to stay on top of it, because if we fall behind it, this could dramatically affect markets over time and we could end up thinking that we are dealing with a market that is very different from the one that is actually happening.

Senator WARNER. And, I guess I think there will be somewhat of a distinction. There is a lot of research out now about the amount of income volatility that is affecting——

Mr. CORDRAY. Yes.

Senator WARNER. ——close to half of Americans, and some of these tools that could even and level some of that income volatility—and, I guess, I would simply point out that I hope Catalyst is also working with the regulators around the rest of the world. This is a worldwide phenomena.

Let me get one last question and——

Mr. CORDRAY. I think our team has actually been leading regulators around the world. Operation—Project Sandbox in Britain is modeled after our program.

Senator WARNER. I actually want to stay close to my timeline, though, because I want to get in my last question. Something we raised a year or so ago here, and you had a response, I would like to reraise it again, the different level of credit protections between debit cards and credit cards, and particularly debit cards being with younger persons. I did not realize until we got into the data breach issues, and we have got legislation to try to equalize those credit protections. Would you like to speak to that? I know I had to go back and try to change out my daughter's cards from debit cards to credit cards because it is——

Mr. CORDRAY. These are always the best stories, when we are talking about some specific issue we dealt with within our own lives and we find it to be vastly more complicated than we might have hoped.

But, look, this is exactly what we are doing with prepaid cards, as well. We are trying to bring them from a standard of no protection to comparable to debit cards and not exactly credit cards. There are some specialized provisions for credit cards. But, there should be—you reach into your wallet, you pull out a card. You may not distinguish that well between what kind of card it is. You should be protected in all three areas

And if there are some special protections for credit cards, those are sometimes—those are applicable. They may be applicable in some cases to prepaid cards. That is something we have under consideration, debit cards—again, I am not sure that all the same provisions should apply to all cards, but they all should be subject to protection. Certain provisions should apply to all cards, and that is a subject we can continue to discuss. And, I appreciate your interest in it, because it is a hard issue, but it is an important one.

Chairman SHELBY. Senator Cotton.

Senator COTTON. Thank you.

Mr. Cordray, I want to discuss the CFPB's actions on indirect auto lending and specifically the Ally case.

Mr. CORDRAY. OK.

Senator COTTON. So, in this matter, since auto lenders are not permitted by law to collect race, you did not have the actual race of potential claimants available, is that correct?

Mr. CORDRAY. We did not have it through Ally's own records, that is correct.

Senator COTTON. OK. So, in administering the settlement funds from the CFPB's enforcement action, you used a two-tiered approach to notify potential victims of discrimination based on a statistical determination of race using the customer's last name and address, is that correct?

Mr. CORDRAY. So, and this is consistent with how redress has been handled in these types of cases in every instance where you do not have, say, the granular mortgage data, which is true only for the mortgage market.

Senator COTTON. Yes. So, yes. And, as I understand it, if someone had a 95 percent chance of being nonwhite by the Bureau's model, he or she would have received mailing information informing them of eligibility for and forthcoming receipt of a remuneration check unless they returned an opt-out notice?

Mr. CORDRAY. And discussing what the criteria were for eligibility and making it plain that they should satisfy those criteria, yes.

Senator COTTON. And then there was a second tier threshold of a 50 to 95 percent likelihood of being nonwhite and that mailing required them to return a form opting into the settlement, is that——

Mr. CORDRAY. That is correct. I think you are accurately stating all pieces of this thus far, yes.

Senator COTTON. In neither group, though, were individuals required to affirmatively identify the protected minority race or ethnicity to which they belonged?

Mr. CORDRAY. So, then, there is always a question, how much specificity do you want them to actually provide. I mean, there are various things you could make them do, and you could also require them to swear under oath and other things. Everything that makes the whole transaction more complex, you know, there is a dropoff rate of people who do not bother.

Senator COTTON. Well, since you raised that, were they required to make any kind of statement or affirmation under penalty of perjury that they did, in fact, belong to a protected class under the settlement?

Mr. CORDRAY. So, they were required to make an opt-in, which essentially was a statement that they belonged to the protected class.

Senator COTTON. Did they have to make that statement under penalty of perjury or——

Mr. CORDRAY. I do not believe that was the case, but I could clarify with my staff for you if I have that wrong.

Senator COTTON. I recently discovered a very handy program on the *Wall Street Journal* that is similar to the methods that you use to evaluate the race of buyers of cars in pursuit of this enforcement action. You just plug in the name and the zip code and out pops a statistical likelihood of race. Now, the website on the *Journal* does caveat that they do not have the exact method you do, and, of course, the address is more reliable than the zip code.

But, coincidentally, at a hearing on Tuesday, Senator Brown revealed his zip code in Ohio to be 44105. Shockingly, the program says that Senator Brown has an 89 percent likelihood of being black——

Mr. CORDRAY. Mm-hmm.

Senator COTTON. ——based on that name and zip code.

Mr. CORDRAY. Mm-hmm.

Senator COTTON. Senator Shelby turns out to have a 70 percent probability of being black. Tom Cotton, in the zip code where we sit, has an 88 percent probability of being black.

So, using this example, Senator Brown financed his vehicle through Ally. He fell within the racially guessed threshold you just confirmed, and he had no legitimate business reason that existed to discount the APR he was offered. Would the CFPB have sent him a remuneration check?

Mr. CORDRAY. OK. So, let us take those specific examples and let us also take this back to what we are talking about. In each of those three examples, they would have to affirmatively opt in to receive a check.

Senator COTTON. They would have——

Mr. CORDRAY. They would have to state——

Senator COTTON. They would have been in the second tier.

Mr. CORDRAY. They would have to respond and state that they were a minority borrower. I assume that each of you would not do that, or otherwise, you are committing fraud.

But, let us go back here. What we have is we have a discrimination matter against Ally Financial. Three-hundred-and-twenty-five thousand or so consumers were affected. They were charged higher rates based on a pattern or practice that systematically showed that minorities in certain categories paid higher rates. And then the question becomes——

Senator COTTON. No, I am not——

Mr. CORDRAY. I am just——

Senator COTTON. I am not disputing the underlying facts.

Mr. CORDRAY. I just want to——

Senator COTTON. No, no. I am not disputing any of the underlying facts.

Mr. CORDRAY. But—but the——

Senator COTTON. I am talking about the redress——

Mr. CORDRAY. Sure——

Senator COTTON. ——the redress that potential claimants receive.

Mr. CORDRAY. But, then, what do you do for those 325,000 people?

Senator COTTON. So, Senator——

Mr. CORDRAY. Do you set up a system that is difficult for them to comply and get their money, or do you set up a system that is reasonable for them to comply and get their money? Now, if there turns out to be some systematic large number of people who fraudulently got checks under this settlement, that is something we will take very close account of——

Senator COTTON. But——

Mr. CORDRAY. ——and consider responding to. But, 325,000 people did qualify for appropriate redress here, and, you know, I have not seen the large number of fraud cases. It is just all this hypothetical—people have an apprehension—people think it could have occurred——

Senator COTTON. Well, it is hypothetical like your model is hypothetical, that says Senator Brown has an 89 percent chance of being black——

Mr. CORDRAY. Yeah, but there is nothing hypothetical about 325,000 consumers who were systematically discriminated against——

Senator COTTON. But, Senator Brown would have been in the second tier. He would have had to opt in.

Mr. CORDRAY. And you would have had to opt in, and Senator Shelby would have had to opt in. I assume you would not have done so——

Senator COTTON. But he would not have had to make a statement——

Mr. CORDRAY. ——you would have been committing fraud.

Senator COTTON. He would not have had to make any statement under penalty of perjury or other kind of punishment for making a false statement.

Mr. CORDRAY. So, you tell me, would you have committed fraud simply because it did not say you had to do it under penalty of perjury?

Senator COTTON. Did the Department of Justice recommend that you require some kind of oath or affirmation under penalty of perjury?

Mr. CORDRAY. We worked with the Justice Department on these remedies, so——

Senator COTTON. I did not ask if you worked with them. I asked if they recommended it.

Mr. CORDRAY. I do not recall——

Senator COTTON. The Department of Justice——

Mr. CORDRAY. ——and I do not——

Senator COTTON. The Obama Department of Justice suggested that you require what is—you routinely require it on Federal forms.

Mr. CORDRAY. So, I would not speak to any internal deliberations here. In the end——

Senator COTTON. We do not have to speak to them.

Mr. CORDRAY. ——we agree.

Senator COTTON. The House Financial Services Committee has released the documents.

Mr. CORDRAY. We are not doing something differently than the Department of Justice in this case. We are acting together. We are on the same page. But, again, I do not think you would have committed fraud.

Senator COTTON. Did you personally decline the Department of Justice recommendation that a penalty of perjury attach to such——

Mr. CORDRAY. I do not believe I did. I would be happy to have my staff follow up with you. But, again, I do not want to characterize internal discussions with them, but I do not believe I did. I have no recollection of having done that, and I do not believe that was the case.

Senator COTTON. I would like to——

Mr. CORDRAY. And I do think that—let me just say, I stand by and believe this was a reasonable approach to how to get relief to hundreds of thousands of consumers who were discriminated against under the disparate impact theory that I know some people disagree with, but the Supreme Court has reaffirmed is the law of the land.

Senator COTTON. Well, 330 members of the House of Representatives, to include many Members of the Congressional Black Caucus, disagree. My time has expired.

Chairman SHELBY. Thank you, Senator Cotton.

Senator Merkley.

Senator MERKLEY. Thank you very much, Mr. Chair, and thank you, Mr. Cordray, for your testimony.

I wanted to make sure I have the numbers right. It seems like every time you come here, I am underestimating the amount of money you have returned to consumers, either in the form of direct restitution after—because of predatory practices or principal reductions or canceled debts. I believe that number is now over $11 billion.

Mr. CORDRAY. I believe it is also true that every time I come here, my age gets a little older, but now it is—I believe it is over $11.2 billion in relief made available to consumers.

Senator MERKLEY. It is a pretty phenomenal thing, that support for fairness in financial transactions have returned so much to hard working American families who were victims of predatory financial practices.

I also was reading recently an estimate of the savings, and these are the savings that occur because of practices were discontinued on credit cards, an estimate of about $16 billion in saved fees, and I believe that is independent from the $11 billion, is that correct?

Mr. CORDRAY. Yes, and, in fact, that was the CARD Act that put, or kept $16 billion in consumers' pockets over a period of time. But, there is another point that I have heard Senator Warren make many times that is very powerful, which is when we talk about looking backward, $11 billion was made available to consumers in relief, or $16 billion was saved to consumers over a backward-looking period of time.

It is also the case that those changes, as lasting changes, mean that every month, every year going forward, people are saving the same amount of money, which over time results in tens—eventually hundreds of billions of dollars for consumers. That is really meaningful. It is hard to add that up because it is prospective——

Senator MERKLEY. Yes.

Mr. CORDRAY. ——but it is very meaningful.

Senator MERKLEY. Which leads right into the question I was going to ask you, was in terms of the mortgage reforms that have been undertaken, do we have an estimate of what have been saved because people got fair, square, fair deal mortgages rather than predatory mortgages?

Mr. CORDRAY. I actually do not begin to know how to count that, but I will ask our Office of Research, who are a lot smarter than I am about such things, about how they might be able to go about doing that. Clearly, the mortgage market, when you compare markets, the mortgage market is about $10 trillion, the largest single consumer finance market in the world. Credit cards are under a trillion. Student loans are a little over a trillion. And auto loans are somewhat around a trillion. So, if there are savings from our rules, and I am sure there are, but it may be heard to document them, they are going to be at a much higher scale for people.

Senator MERKLEY. Well, it sure is a wonderful thing to have so much good done for hard working American families by having fair practices in the financial markets, and sometimes that just seems to get lost in the conversation in this Committee, so I wanted to emphasize that point.

I wanted to turn——

Mr. CORDRAY. Could I say, just briefly, one other thing? You know, people often talk about, and it's true in this hearing at times, the Bureau, you, meaning me personally. We have about 1,500 people who do this work and achieve these results that people can be very proud of and that benefit every one of your constituents. They benefit constituents in every one of your States. And, I am very proud of them, and when you say nice things about the Bureau, it is them you are talking about, not so much me.

Senator MERKLEY. Thank you. Now, I have two more questions and only a minute and a half, so I will try to be very quick here.

Mr. CORDRAY. OK.

Senator MERKLEY. But, one is you did a study of arbitration clauses, a very thorough study, the Ross v. Bank of America settlement that affects Bank of America, Capital One, Chase, and HSBC. I read through that, and it sounded like the conclusion was that, contrary to what is often asserted, there were no particular costs, if you will, raised in terms of the products when the use of arbitration clauses was discontinued. Is that a fair summary of—statistically significant, that could be identified within your study?

Mr. CORDRAY. It is a fair summary, and it was notable that there were institutions we could isolate, some of whom had arbitration clauses all along, some of whom did not have them at all, some of whom had them for a while and then stopped, particularly in response to the class action litigation.

Senator MERKLEY. Let me just make the point here that, right now, across the country, citizens are so frustrated by this system that is rigged against them, from Citizens United on to the actions of the House and the Senate under current leadership. It is—but this is a real example, an arbitration clause in a contract where, essentially, the judge of asserting your rights when there is a predatory action goes before someone who is hired by the person on the other side of the issue and only keeps getting hired if they find in favor of the folks who are hiring them. That is the system that is rigged. So, I applaud your work on arbitration.

I have a few seconds. Let me turn to payday loans. In State after State after State, the States have gone to work to say, these are unfair practices—and, by the way, just yesterday in our Chairman's State, 28 to one, the State weighed in, the State legislators weighed in and said, we absolutely want to curtail the abuses of the payday loan industry. And, often, the payday loan industry says this reduces access to credit and they cite a reduced number of loans being made after these State actions. But, what that does not take into account is a family that gets a fair loan gets one loan instead of getting ten in the course of a year, and so on and so forth.

I found in Oregon, after we cracked down on payday lending and put an interest rate cap on and a rollover cap, that we still have payday loan companies operating, but citizens do not have to get continuously rolled over and they get a much fairer deal, and they still have access to credit, but they have access to credit at a much lower interest rate. So, it is a complete win. And the pastor who testified this week noticed that and certainly many of the pastors in my State, working directly with poor families, see that.

Is that your impression, as well, that the consumer gets a much better deal when they get a low interest rate than when they get a high interest rate that can be 500 percent or more?

Mr. CORDRAY. I think some of that is probably simple mathematics. But, what I would say is that I think a point you made that is quite powerful is there is often this comment made, well, there are not a lot of complaints about payday loans, I mean, people going in and being treated well by being rolled over, rolled over, and rolled over. Ultimately, it can damage their finances beyond repair.

But, I would say that talk to the faith community. Talk to—I would like each of you to talk to ministers and leaders in your States. They can tell you the stories they hear, where people come to them not because they are financial experts, but because they know they care about them, and we hear horrendous stories of the effects of this on people's lives and they are repeated in massive volume across the country. That is a good place to start in trying to understand this issue.

Senator MERKLEY. Amen to that, and thank you, Mr. Chairman.

Chairman SHELBY. Senator Toomey.

Senator TOOMEY. Thank you, Mr. Chairman.

Mr. Cordray, welcome back.

Mr. CORDRAY. Thank you.

Senator TOOMEY. Thanks for being here.

As you know, Section 1071 of the Dodd–Frank Act instructs the Bureau to collect data on small business lending, and I noticed recently that the CFPB has posted a job listing with reference to Section 1071. It described the job as, and I quote, "once in a career opportunity to make the market for small business finance fairer and more transparent," end quote. So, is it your intent that the market will become fairer and more transparent by virtue of the disclosure of data? Is that——

Mr. CORDRAY. I think that is clearly what Congress said to us by mandating this test in the statute——

Senator TOOMEY. Well, but it is your words in the job description, so that is why I want to understand your intent.

Mr. CORDRAY. I think it is a great opportunity——

Senator TOOMEY. OK.

Mr. CORDRAY. ——and I hope you will recommend candidates to us.

Senator TOOMEY. So, my question is, is it your intention that the Bureau will limit its work in the small business lending space to the compilation of data?

Mr. CORDRAY. So, what I would say is, first of all, we do not have much authority in the small business lending area, and so that is what our focus under our statute is, individual consumers——

Senator TOOMEY. Right.

Mr. CORDRAY. ——products for household purposes. But, there are a couple of places in our statute—you know, again, Congress said it, not me.

Senator TOOMEY. Right.

Mr. CORDRAY. We have jurisdiction over small business lending under the Equal Credit Opportunity Act and we have this 1071 that you identified here, which is a mandatory job Congress gave us——

Senator TOOMEY. Yes.

Mr. CORDRAY. ——to set up a reporting, data collection, and data publishing regime for small business lending comparable to what HMDA has created for the mortgage market, yes.

Senator TOOMEY. Yeah. So, my understanding is that what Dodd–Frank does in Section 1071 is exclusively about data collection. That is the only authority that I read for the CFPB with respect to small businesses in Section 1071. Is that your——

Mr. CORDRAY. Yeah. Ten-seventy-one speaks for itself. We are doing our best to implement it faithfully. It is going to be a big job for us, but it is a task Congress instructed us to do and so we follow the law.

Senator TOOMEY. Yeah. Getting back to this issue of your approach to enforcement, you gave a speech before the Consumer Bankers Association in which you were essentially defending your enforcement approach, and one of the things you said in the speech, and I will quote, it says, "Any agency is bound to recognize that they should develop a thoughtful strategy for how to deploy their limited resources. That means working toward a pattern of actions," by which I think is meant enforcement actions——

Mr. CORDRAY. Correct.

Senator TOOMEY. ——“that conveys an intelligible direction to the marketplace so as to create deterrence that can be readily understood and implemented.”

That reads to me—that sounds to me like we are talking about enforcement as a substitute for rulemaking, at least in some cases, and one of the things that concerns me about that is that the rulemaking is an entire process that requires a level of transparency and gets input and there is a cost-benefit analysis, and my worry is that if we are using enforcement instead of rulemaking, that we are going to miss those pieces. What is your response to that?

Mr. CORDRAY. So, if I may, I would be glad to speak to this, and I saw a lot of testimony on Tuesday about this, where people make sort of perfunctory nods to, of course, we have to root out fraud, but, you know, should not do much more than that. Ninety percent of the $11 billion in relief made available through our enforcement actions has been in cases where one or more of the claims involved deception, lying to customers or prospective customers. That is good solid law enforcement, as far as I am concerned.

Now, as to the pattern of orders, I think everybody would agree that basic fairness in law enforcement is that if person A or institution, bank A, say, is doing these things and they are found to violate the law, an action has to be taken in consequence, that everybody else in the market that is doing these things——

Senator TOOMEY. Yeah.

Mr. CORDRAY. ——is also violating the law and should stop doing what they are doing.

Senator TOOMEY. I get that. Let me——

Mr. CORDRAY. So, signaling the marketplace very clearly around each enforcement action is an important thing, but it is basic.

Senator TOOMEY. Yeah. I am going to run out of time here, but in the case in which you guys discovered discrimination on the basis of protected class being committed by people who were not aware of the protected class status of the people they were supposedly discriminating against, you are applying a, what seems to me, a novel new approach to interpreting the ECOA, which has been a law since 1974. The Justice Department never took your approach, that I am aware of——

Mr. CORDRAY. That is not true——

Senator TOOMEY. The Justice Department has your model and it uses your methodology——

Mr. CORDRAY. In 1994——

Senator TOOMEY. ——to determine discrimination?

Mr. CORDRAY. In 1994, joint guidance was put out by the banking agencies and the Justice Department—we were not around then—that said, this is the law of the land, that wewould enforce.

Senator TOOMEY. That your model would be the law of the land. So, you are using that model?

Mr. CORDRAY. Yeah. Disparate impact is the law of the land.

Senator TOOMEY. And the methodology that you use in developing that——

Mr. CORDRAY. The methodology——

Senator TOOMEY. ——and determining the probability of people’s race, that is all from 1994, is it?

Mr. CORDRAY. It actually goes back to the 1970s and employment discrimination law and the like. But, the other agencies all said that—and the guidance that we issued early on simply said, we are a new agency, so people might not know what our position is. We join our fellow agencies and the Justice Department in believing disparate impact is the law of the land. That was then challenged up to the Supreme Court, and the Supreme Court reaffirmed that it is the law of the land, and to me, that is pretty conclusive on the subject.

Senator TOOMEY. So—OK. So, I am now learning something new, which is that the methodology that you have learned for identifying race and identifying people's status in these protected classes is decades old, and there is nothing new there. You did not come up with a new approach, no new models, no new methodology——

Mr. CORDRAY. No, that is not—that is not what I said.

Senator TOOMEY. So, it is new, then.

Mr. CORDRAY. No, no. Let me just—if I may—disparate impact is the law of the land. It has been recognized since at least——

Senator TOOMEY. That is not what I am talking about.

Mr. CORDRAY. ——since well before 1994, explicitly recognized by agencies in 1994. It continues to evolve. There have been cases since then and there have been modifications in this or that approach, this or that methodology. But, the law is clear, and people who want us not to enforce that——

Senator TOOMEY. No, you are changing the subject. The point is, you developed a new methodology. You have described it as an evolution. However you choose to describe it is fine. But, it is a new methodology that was not being used before and it was not subject to the transparency of a rulemaking process.

Mr. CORDRAY. I do not think that is true. If you looked at yourself 10 years ago, you are the same person then as you are now. But have you changed in certain ways between then and now? Very likely. I mean, you may look a little different. You may think a little different. But, you are the same person.

Disparate impact has been the law of the land for decades. It has been reaffirmed by the Supreme Court. Methodological approaches have evolved over time. There has been case law on this. People have adjusted to the case law. There have been—people have actually taken input from Congressional leaders and others and thought, maybe that is a better approach, and thought to refine that. We should certainly continue to do that, I would think. You are trying to do that with me today.

Senator TOOMEY. And all I am suggesting is if you are going to do that and you are going to develop a new methodology for identifying people's status in a protected class, it ought to be in a transparent process, and that is part of the way the rulemaking process is designed and what it is meant to achieve, and you chose not to use it.

Mr. CORDRAY. No, it is certainly fair game as to whether you think, or others think, and whether we agree, that we have or should be as transparent as we should be. And, that is always a legitimate grounds for discussion. I would be happy to have our staff talk with you further about what we have tried to do around transparency.

But, to say that this is a brand new methodology, that it is somehow radically different from anything done before, it is modifications and developments on law that has been around for decades, law that was resoundingly reaffirmed by the Supreme Court just last June, and is law that I believe we are required to enforce. And why are we required to enforce it? Because it is supposed to root out discrimination against individuals based on their racial or ethnic origin or gender and that is very un-American. And, this is the way in which Congress developed this law and the Supreme Court has interpreted and we believe that it is our job to enforce it.

Senator TOOMEY. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

Thank you for being here today, Director Cordray. Welcome to your 61st hearing.

As you know, the payday lending industry is now doing $7 billion a year in loans. There are now more payday loan storefronts in America than there are Starbucks, plus all of the online payday lenders, often charging 200, 300, even 400 percent interest. Now, when emergencies arise, people need access to credit, but payday lenders that build business models around trapping people in the never ending cycle of debt are throwing bricks to a drowning man.

Director Cordray, I know the CFPB is close to issuing its payday lending rules, so I want to ask you three questions about this process.

Mr. CORDRAY. OK.

Senator WARREN. First, can you describe the research and data gathering that the CFPB has done to try to figure out where to draw the line between preserving access to credit and trapping people in never ending cycles of payday loans?

Mr. CORDRAY. Yes. So, here, as with arbitration, we have engaged in the most comprehensive research ever done by anyone on this marketplace. We have done two significant white papers, analyzed millions—millions—of payday loans across all types of lenders, and what we found is that the model here is to, in particular on payday balloon loans, is to get someone into a payday balloon loan, and if they had to borrow $300 today, the notion they are going to be able to repay $345 two weeks from now is not very likely, although some do and great for them, and maybe it works for them. But, many others end up rolling it over and rolling it over, because they can pay the $45 at the end of the 2 weeks, but they cannot pay the $345, and they can never pay the $345.

And, by the way. you described these products as 200, 300, 400 percent interest rates. In Missouri, we have seen products, loan products, that go as high as 1,950 percent rate of interest. You can actually lend where the fees amount to 75 percent of the face value of the loan. That is a $1,000 loan that becomes $18,000 or $20,000 by the end of the first year and goes on from there, and this is from a class action decision by a Missouri appellate court in which they read out of the record some of the actual instances of people who borrowed $100 and ended up paying back thousands of dollars and still owing thousands of dollars. That is not a recipe for financial success for people.

Senator WARREN. Thank you very much.

Let me ask a second question around this. States currently have different standards for regulating small dollar lending, but the CFPB would create a single national floor. So, States could still issue stronger payday lending restrictions if they wanted to, but they could not drop below the CFPB standard. Can you explain the benefits of having a single baseline rather than just a lot of different local rules?

Mr. CORDRAY. Yeah, sure. In fact, this is the same approach we took in our mortgage servicing rules, where we established a baseline of requirements on mortgage servicers—not on States, by the way, but on mortgage servicers—and said that States were free to add further requirements on mortgage servicers if they deemed it appropriate to do so.

And, by the way, this is an approach that has been common in American law in our system of federalism. It is true of securities law. It is true of environmental law. It is true of antitrust law. It is true in many different areas of law, where the Federal Government may intervene to a certain degree and set certain requirements on individual citizens and companies. The States are free to have their own regimes, and they do, and they set requirements on individuals and companies and the two systems coexist. There is nothing unusual about this. It has been described as cooperative federalism and it works reasonably well. It can be a little complicated at times, I suppose, but a Federal system is bound to be a little complicated at times.

Senator WARREN. All right. Good. Thank you.

And, let me ask my third question here. The CFPB has been working in this area now for 3 years. You have been gathering data as you have described. You have drafted different approaches, talked about it with industry. Now certain Members of Congress has proposed imposing an additional 2-year delay on your efforts. Can you give us some idea about the impact of that delay and estimate how many more families will get stuck in a debt trap during that time?

Mr. CORDRAY. So, I feel keenly already the amount of time that it takes to embark on a Federal rulemaking in an area that has a baseline of no research previously. It has taken us several years to do the kind of detailed research that you asked me about and I described. It is taking us time to go through the processes in our statute, including a small business review panel and report and so forth, and we are now on the verge of actually proposing the rule. And it will take time to work through it and finalize it.

I feel keenly that every day that passes—if you think a rule is going to improve life, and it may or may not, but if you think it is going to improve life, you would like that to happen as soon as possible.

Senator WARREN. Mm-hmm.

Mr. CORDRAY. And, delay for delay's sake simply means that if there are harms here, and our research has identified harms to consumers, then they will go on, and that anybody should feel like that is no big deal means that they simply disagree with the findings around the country of what this does for people and for families, and——

Senator WARREN. So——

Mr. CORDRAY. ——and I cannot agree with that.

Senator WARREN. We are talking about perpetuating a lot of misery here.

Mr. CORDRAY. Yes. That is right.

Senator WARREN. Well, I want to thank you. I want to thank all of the people who work at the CFPB for their terrific efforts in this area.

You know, I know that the payday lending industry hires a lot of lobbyists and they make a lot of political contributions to try to protect their multibillion dollar business. I also know that families that get cheated by payday lenders do not have lobbyists and they do not have Political Action Committees, which is why the independence of the CFPB is so important.

You know, I hope you will move quickly to complete your rulemaking on payday loans. You are the best hope for millions of American families to avoid these debt traps in the future. Thank you for your work.

Chairman SHELBY. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Good morning, Director Cordray.

Mr. CORDRAY. Good morning.

Senator ROUNDS. It is not too much longer and it will be good afternoon.

Mr. CORDRAY. I was wondering myself. I did not know.

Senator ROUNDS. Director Cordray, in a recent speech before the Consumer Bankers Association, one which Senator Toomey alluded to a little earlier——

Mr. CORDRAY. Mm-hmm.

Senator ROUNDS. ——you discussed your philosophy on consent orders. You had said that, and I will briefly lay this out, our public enforcement actions have been marked by orders which specify the facts and the resulting legal conclusions. These orders provide detailed guidance for compliance officers across the marketplace about how they should regard similar practices at their own institutions.

What I want to talk about a little bit, my concern is that the consent orders without a finding or even an admission of guilt—the Ally settlement is an example of that—could mean little more than a company's business decision to settle a lawsuit with minimal expense.

My question is, do you agree that for compliance officers to consider following a decree from another company, that decree should be a part of either a court finding or contain an admission of guilt, or if not, come from, as Senator Toomey was alluding to, perhaps a rulemaking process laid out clearly, definitively, and I am—just your thoughts on it.

Mr. CORDRAY. Sure. Well, first of all, Ally is a great example because we worked there in partnership with the Justice Department and they, as part of their process, were obliged to file an order in court that the judge had to sign off on. So, if that is your issue, then Ally is not a good example of it.

But, let me say this. If you are trying to address harm to consumers out there in society, there are a number of ways you can go about it. You can do your own research and try to think about what you think is best and then go through a process to adopt a rule. But another way, and one tool that Congress gave us very specifically and emphatically, is to investigate facts of individual circumstances, and if you find an actual violation of law, clean it up, and that is what we do all the time in enforcement.

And, what I say about sort of rulemaking by enforcement, which is kind of a nice slogan people like and somehow that is a bad thing, if we find through a thorough investigation, and the institution typically does not dispute the facts that we find, that there is a violation of law, then everybody in the country should be able to see transparently that if they have similar facts and similar practices and similar situations, they are violating the law and they ought to stop it right now.

And what I said in that speech, and I stand by it, is it would be—it is compliance malpractice for other institutions not to look carefully at our orders in these cases, whether they are entered in administrative order or court order, and not to think about, am I doing the same thing, and am I violating the law, and, therefore, should I clean that up? That is a basic of consistent uniform law enforcement. And people can call it regulation by enforcement. I call it good, solid law enforcement.

Senator ROUNDS. Even though there was no admission of guilt in this particular case——

Mr. CORDRAY. That does not have to be an admission of guilt. We did a thorough investigation. We found the facts. Our decree will state the facts as we know them to be. Whether the institution agrees with that or not does not matter to me. In the end, the facts are the facts, and if other people find the same facts in their organization, they are on notice to clean it up. And when we come to supervise them, we will be looking to see if they have similar practices and they will be treated similarly.

The key principle here is a basic principle of justice, which is similar situations should be treated in the same way, and it should not just be that one institution gets whacked and other institutions go blithely on doing the same things that violate the law. Everybody should be treated the same.

And we try to be very transparent to the marketplace as quickly as we can through detailed enforcement orders, and when we act through supervision, which is a confidential process, without violating the confidentiality for individual institutions, periodically, we put out our supervisory highlights that tells you what we found in general at banks and other institutions, what we thought violated the law, what we did about it——

Senator ROUNDS. Well——

Mr. CORDRAY. ——and people should take account of that, as well.

Senator ROUNDS. OK, then let me just slide this in a little bit——

Mr. CORDRAY. OK.

Senator ROUNDS. ——on a little bit different approach, and that is with regard to the way that you have looked at offering no action letters.

Mr. CORDRAY. OK.

Senator ROUNDS. I know that you finalized your rules on the no action letters, but it seems like what we are really challenged with here is do you start out by saying, look, heads up on your enforcement actions and that is the way that we are going to be basically laying out the guidance of how we are going to be interpreting and enforcing the issues, and yet when you have companies that step back in and ask for guidance—and by that, I mean in the Bureau's rulemaking it is estimated that it would issue no action letters only in extraordinary circumstances and anticipated issuing about one to three letters per year. By contrast, the SEC is issuing—has issued 104 no action letters in 2015. It looks to me that if companies are asking for guidance on this, would it not be fair to say, rather than going through the process of trying to adjudicate it—I mean, would you consider thinking twice about really not issuing no action letters as a——

Mr. CORDRAY. Yeah. I actually think this is a very legitimate line of questioning and I am not sure that I am satisfied with where we appear to have landed on this, although we did issue that to get something going in the area.

There are different agencies—we looked at a lot of agencies. Some of them do a lot of this, like the IRS does private letter rulings. They do them by the hundreds. Others do very, very few. The banking agencies tend to do very, very few.

I do not know what the right answer is for us, but I feel keenly, and I have had this discussion on the other side with Representative Heck, who has been very persuasive on the subject, that a process like this that ends up not really amounting to anything is not really worth anybody's while. I tend to agree with that and I want us to think more about that as we go. We are leery of how much volume we can handle, but we have begun to get inquiries and we are setting up a process for how to try to figure out what to do with those inquiries and see where we——

Senator ROUNDS. I think if there are questions out there and they are asking for guidance on it, it seems like it would be reasonable to find a way to try to work with them rather than end up in an adjudication process in front of a court.

Mr. CORDRAY. Yeah. By the way, another thing I would say is, on the enforcement and regulation differential, regulation is something more where we feel the law needs to be changed in certain ways, and we have authority to do that, subject to Congressional authorization and oversight. Enforcement is more the law is what it is and it is applying it to specific facts and finding specific facts. And the facts are powerful. You know, when the facts show that in the——

Senator ROUNDS. Mr. Cordray, I hate to cut you off——

Mr. CORDRAY. I am sorry.

Senator ROUNDS. ——but I know the Chairman's time is valuable, as well, and I appreciate your temperance with me, sir. Thank you.

Chairman SHELBY. Thank you.

Senator ROUNDS. Thank you, Mr. Cordray.

Chairman SHELBY. Senator Donnelly.

Senator DONNELLY. Thank you, Mr. Chairman, and we can now officially say good afternoon, Mr. Cordray.

Mr. CORDRAY. Thank you.

Senator DONNELLY. Director, one of your recent undertakings has been related to auto finance companies. The CFPB finalized a rule last year to supervise large nonbank auto finance companies and also reached separate agreements with several auto finance companies to limit loan pricing and compensation.

I have been hearing from a number of auto dealers in my State with their concerns on this issue and I just want to ask to make sure that you work with all the stakeholders involved in this issue, including auto dealers, to make sure we get this right, to make sure there is continued access and that everybody be treated fairly in this process.

Mr. CORDRAY. OK. And, by the way, I would say that in the early going, we were kind of leery about talking to auto dealers because we did not want anybody to think that we were crossing that line and trying to enforce the law against auto dealers, which we do not have authority to do. But, we have always understood ourselves to have authority and, therefore, responsibility to address auto lenders. I mean, I would not necessarily have drawn the statute up the way it was drawn up, where there was a distinction made between the two, because they tend to work together in the marketplace. But, I do not see how we can address practices of auto lenders without having some effect on auto dealers. So, we are quite willing to engage with taking input from dealers now, as long as they are very clear that we respect that line.

Senator DONNELLY. Understood, but like you said, these are some of our small businesses that employ the most people in our towns.

Mr. CORDRAY. Yeah.

Senator DONNELLY. They are our friends and our neighbors.

Mr. CORDRAY. Yeah.

Senator DONNELLY. And they want to get it right for their customers, as well.

Mr. CORDRAY. And, by the way, I worked closely with them in Ohio. I was the Ohio Attorney General. We had a program where they had the opportunity to correct problems before we took action that worked fairly well. We had the General Motors and Chrysler bankruptcies that unfolded while I was Attorney General. We worked to save dealerships across the State who were being cutoff by the manufacturers and we created procedures for them to appeal and many of them were saved.

I understand and very much agree with you on the importance of auto dealers in our local communities. At the same time, if we find problems in auto lender lending programs, we have to deal with them. That is part of our job. We are a law enforcement agency. But, I am quite willing to have that discussion and engage in it vigorously and I hope you will find that nobody says that they are unable to talk to the Consumer Bureau if they have a concern. That is not what I intend.

Senator DONNELLY. Another area I wanted to mention is an area important to my State, because we have so much manufacturing in this area, and that would be manufactured housing. We have previously discussed the impact of CFPB rules on manufactured housing lending, and I do have concerns that new rules would negatively impact the ability of consumers to buy, sell, or refinance these homes, as financing for smaller balance loans is becoming more difficult. And, there has been a seeming acknowledgment of some of these challenges by the CFPB.

The 2014 HMDA mortgage data shows high-cost manufactured housing loans have basically evaporated at this point since the rules went into effect, and my question is, does that mean that lenders have reduced rates to get under the threshold, do you think, or is it that lenders have just stopped taking applications that they have previously accepted?

Mr. CORDRAY. I actually do not think there was ever much high-cost lending in the manufactured housing market, so I do not think it would be fair to say that there was a lot and then it evaporated. I think there never was much and people have shied away from that. I do think there is a lot of pricing that does, as you said—exactly what you just said—comes in just under the threshold so that it does not qualify as high-cost loans, and that is the nature of this market, it seems.

Having said that, you have raised this issue with me and some House colleagues have raised the issue with me and we went back and did a white paper to try to understand it better, because we realized we did not understand it as well as we would like, and I would acknowledge, in Ohio, my background, I have seen, and I am sure it is true in Indiana, as well, and in many States, there are areas of the State where this is going to be the practical means of finding housing on difficult properties, rural properties, topography issues and the like.

A white paper showed that there has been a long-term decline in manufactured housing. I do not know what all the causes are. I think our folks did not really feel that they understood that. But, it has been true for about 20 years. It has not been a new phenomenon.

Senator DONNELLY. I would suggest that a good portion of that, as you look at your white paper, is access to capital, capital challenges that are out there——

Mr. CORDRAY. Mm-hmm.

Senator DONNELLY. ——because, as you said, it is not fair to the rest of the country to think the rest of the country is all Washington, DC, townhouses——

Mr. CORDRAY. That is right.

Senator DONNELLY. ——that sell for a million dollars.

Mr. CORDRAY. Agreed.

Senator DONNELLY. And, that family back in Indiana, that family in Ohio, they very much, just as much as a family here——

Mr. CORDRAY. Absolutely.

Senator DONNELLY. ——wants to have a place to call home——

Mr. CORDRAY. Yes.

Senator DONNELLY. ——and to raise their family.

Mr. CORDRAY. And, by the way, wants to have a place they can call home and not be gouged on it. That is important, too.

Senator DONNELLY. Yeah.

Mr. CORDRAY. But, how to balance those things is an ongoing issue.

Senator DONNELLY. We agree on that, and in most every case, I do not assume my local community banker is out to gouge anybody.

Mr. CORDRAY. I would agree with that, although there are some sharp practices in the manufactured housing market we have seen, yes.

Senator DONNELLY. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Moran.

Senator MORAN. Mr. Chairman, I know we are out of time. I will be very brief. In fact, I will not ask Director Cordray any questions.

Director Cordray and I have had a long-time exchange in these settings about this issue that seems to be getting a lot of attention, indirect auto financing, today in this hearing, and I would again indicate to the Director that rulemaking, not enforcement, would be a better path for the CFPB to pursue.

And then I want to associate my remarks with you, Mr. Chairman, in what you had to say about indirect auto financing. None of us agree that discrimination has a place. We just—we want discrimination out of our economy. This agreement extends the need for vigorous enforcement of the Equal Credit Opportunity Act. However, I am concerned that the CFPB auto financing bulletin has resulted in more adversarial relationships between the Bureau and the industry.

And, I wanted to highlight, finally, Mr. Chairman, that I have introduced S. 2663, Reforming the CFPB Indirect Auto Financing Guidance Act, and this is legislation identical to what passed the House in a bipartisan way, 332 to 96, and I would encourage my colleagues to join me in accomplishing that legislation. It is simply an opportunity not to eliminate CFPB's indirect auto financing guidance. It is a way to improve the process and include the industry and consumers, Members of Congress, in the process.

Thank you, Mr. Chairman.

Chairman SHELBY. Thank you.

Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman, and thank you, Mr. Cordray.

I know our vote has been called on the floor, so I will be brief——

Mr. CORDRAY. OK.

Senator VITTER. ——summarizing two real areas of concern, and if, Mr. Cordray, if you could give a general response, and if you care to, follow up in more detail perhaps in writing, that would be great.

Mr. CORDRAY. OK.

Senator VITTER. The first area of concern is remittance transfers, international money transfers. I think CFPB has spent a lot of time and money and man hours on rulemaking for that, but has been criticized by GAO and others for not setting to bed abuses yet. And, so, I have a three-part question. What is the summary of resources that have been spent on that, number one. Number two, what is your response to criticism like GAO about not adequately handling problems in that remittance transfer area. And, number three, has your oversight quantified and looked at the widespread use of this by folks in the country and working in the country illegally and sending money overseas, which by all accounts is a very widespread practice.

The second area of concern is conflicts of interest involving Corey Stone. As you know, he is Assistant Director, Office of Deposits, Cash Collections, and Reporting Markets at CFPB, and he is the lead staffer on the payday rule. Now, I am concerned about conflicts there because he was a senior executive before CFPB, was a senior executive for a company he started which sold out to a rival called MicroBilt, and they worked with folks within credit files seeking financing, the type payday lenders would perhaps have as customers.

Corey Stone sold his stock in that company to his brother to avoid a conflict as he was coming to CFPB, for $18,000. That stock has been valued recently at between $250,000 and $500,000. It seems to have been way undervalued in order to allow him to get rid of it to come to CFPB. That is number one.

Number two, he is in charge of this payday rule, and depending on how that rule is written, that could increase significantly the business, the market, the profitability of his former company, his brother's company. Have you looked at those serious conflict issues?

Mr. CORDRAY. So, I will take that one first. I have never heard any charges against Mr. Stone. I think this is baseless. I think it is bogus to raise it. If you want our staff to talk to you about that situation, we will be glad to do so. He is one of the finest public servants I know. He has been commuting and gone extra lengths to make his work at the Bureau work. I do not believe there is anything to anything you have just said about him. He is a public official with great integrity, and if there is more that we need to talk about about this, I will be happy to talk about it with you offline.

Senator VITTER. OK. Can I follow up on that?

Mr. CORDRAY. Yeah.

Senator VITTER. Are you aware of the stock issue?

Mr. CORDRAY. Look, people who come to work at the Bureau, some number of them came from the private sector. Usually, you all think that that is a good thing. You do not want us to have everybody not coming from the private sector——

Senator VITTER. But I am saying, are you——

Mr. CORDRAY. ——and they divest——

Senator VITTER. ——aware of the specific stock valuation——

Mr. CORDRAY. ——they divest assets when they come and they divest them for fair market value. Now, at the time he came to the Bureau, it would have been right in the wake of the crisis. It may be—you know, the entire stock market was down more than 50 percent at that time. So, I do not know what the details are, but I can assure you, we will be glad to look into it if you want.

Senator VITTER. OK.

Mr. CORDRAY. Everything Corey does is with high integrity.

Senator VITTER. What I am asking is, have you looked into that issue and come to a conclusion or not?

Mr. CORDRAY. Our Ethics Department vets everybody's divestiture of assets before they are hired at the Bureau. It is a painstaking process. I do not believe there is anything to this, but we will be glad to follow up with you if you want to pursue it.

Senator VITTER. Well, if you will follow up in writing, that would be great.

Mr. CORDRAY. Yeah.

Senator VITTER. And then the second issue, the first one I mentioned, is this remittance issue.

Mr. CORDRAY. Yeah. On the remittance issue, this was the first rulemaking we did. We were required to do it by Congress, again, not a task that we set for ourselves but a task you all set for us. The rulemaking is in place. Whether it solved all the ongoing abuses, it may or may not have. We will take enforcement actions as needed against the industry if we find abuses.

If you are aware of abuses or hearing about abuses that are specific that we should know about, we will follow up with you and be glad to hear what they are so that we can consider whether to investigate them. But, I do think it is quite possible our rulemaking has not solved every problem in the marketplace, and to the extent it has not, we want to continue to pursue problems in the marketplace.

And, then I forgot the third part of your question, but——

Senator VITTER. Well, related to that was does your rulemaking address and does your enforcement and tracking address what seems to be massive use of this money transfer opportunity for folks being in and working in the country illegally and sending money overseas.

Mr. CORDRAY. Our rulemaking does not address that. Congress did not direct us to direct that, and those would be issues, I would assume, for other parts of the Federal Government, not for us.

Senator VITTER. OK, and so you do not track any of that activity?

Mr. CORDRAY. I do not believe we do, no.

Senator VITTER. OK. Would the same apply if we were talking about organized crime or some illegal sector using the same remittance opportunity?

Mr. CORDRAY. I do not think we track undocumenteds in any of the markets, credit cards, mortgages, et cetera. We are not trying to dig into Bank of America or Citibank and ask them what kind of documentation you asked for. If those are issues for someone in the Federal Government, it would be elsewhere. They are not issues for us.

Senator VITTER. But, I am saying, for you, would the same response apply to illegal activity, say, organized crime?

Mr. CORDRAY. Usually, I come here and people are criticizing us for trying to expand our jurisdiction. We are looking at mobile cramming on cell phone companies, et cetera. You are now telling us you would like us to look into organized crime and undocumenteds——

Senator VITTER. I am asking if——

Mr. CORDRAY. We do not. That is not typically——

Senator VITTER. ——organized crime activity would be something you would care about or look at.

Mr. CORDRAY. That is not part of our consumer finance—limited consumer finance jurisdiction.

Senator VITTER. OK. Thank you. We will follow up on this, as well.

Mr. CORDRAY. OK.

Senator VITTER. Thank you.

Mr. CORDRAY. Thank you.

Senator VITTER. Thank you, Mr. Chairman.

Chairman SHELBY. Yes, sir. Thank you, Senator Vitter.

I would like to take a moment to respond to comments made earlier here at the hearing by the Director to the Ranking Member. He is correct that aggregate credit availability has been increasing recently, as you said.

Mr. CORDRAY. Mm-hmm.

Chairman SHELBY. But, that is what you would expect in a near zero interest rate environment. This does not mean that there are not specific issues, I would hope, in certain credit markets that may be exaggerated by some of the Bureau's actions.

For example, more categories of credit may actually be in decline. Multiple studies have found that small business lending has declined, while the volume of loans to large businesses has risen.

In addition, research from Harvard University finds that credit cards issued to certain lower-income consumers have fallen by 50 percent. These are economic trends that I hope the Bureau takes into serious consideration in your day-to-day work over there.

Another thing I——

Mr. CORDRAY. That would be——

Chairman SHELBY. Do you want to comment?

Mr. CORDRAY. Could I? Yes, sure.

Chairman SHELBY. Go ahead.

Mr. CORDRAY. So, small business lending, you know, we have not adopted any regulations that relate to small business lending. We have very limited capacity there, although we will be——

Chairman SHELBY. But you alluded to small business lending earlier.

Mr. CORDRAY. Beg your—yeah, we have a job that Congress gave us that we have not yet fulfilled to develop the reporting and data collection for this. But, none of that small business change could be ascribed to the CFPB.

And as for credit cards for low income, again, I want to take issue with this. In, I believe it was Mr. Zywicki's testimony, he said from 2008 to 2012——

Chairman SHELBY. Do you take an issue with the Harvard study that I alluded to?

Mr. CORDRAY. If that is the Lux–Greene study, it is not a very credible study and I would be glad to give you a briefing on that.

Chairman SHELBY. Is it not a credible study because you disagree with it, or you just do not believe it is a credible study?

Mr. CORDRAY. Because it is not very well done and it is not very credible on the supposed evidence. It is just a——

Chairman SHELBY. Would you furnish your concerns about the study to the Committee?

Mr. CORDRAY. I would be glad to do that. But, I would say that on the credit cards for low income, which was something Mr. Zywicki alluded to, he was talking about 2008 through 2012. Most all of that crash is due to the fact that households lost $12 trillion in net worth in the wake of the crash, and he says at one point in a sort of muddled way, it is hard to separate that out from the effects of new rules. Well, you know, we did not even come into existence until July of 2011, so trying to pin all this on us is pretty flim-flam, if you ask me.

Chairman SHELBY. Just for the record, now, without objection, I would like to enter into the record statements from the following groups that wrote the Committee in conjunction with Tuesday's hearing on Assessing the Effects of Consumer Finance Regulations and today's hearing on this Consumer Financial Protection Bureau's Semiannual Report to Congress. The statements include statements from the Independent Community Bankers of America, the Consumer Bankers Association, the National Association of Federal Credit Unions, the Credit Union National Association, the American Financial Services Association, the Electronic Transactions Association, the Chamber of Commerce of the United States, the National Automobile Dealers Association, the Mortgage Bankers Association, an article by Leonard Chanin published in the American Banker, and, finally, an article from the *New York Post* regarding Ally's financial experiences with the Bureau. Without objection, it is so ordered.

Mr. Cordray.

Mr. CORDRAY. I would be glad to have access to those so we can consider them for improving our work.

Chairman SHELBY. Well, we have a public record. We will share with you. We want you to share with us, too.

Mr. CORDRAY. Yeah. But, again, going back to that credit card so-called data, at the time a tsunami hit the beach, the financial crisis, that somebody's garden hose might have been pouring a little water on the beach at the same time is hardly very relevant, in my view.

Chairman SHELBY. Mr. Cordray, thank you for your appearance before the Committee.

Mr. CORDRAY. Thank you.

Chairman SHELBY. The Committee is adjourned.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF RICHARD CORDRAY

DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

APRIL 7, 2016

Chairman Shelby, Ranking Member Brown, and Members of the Committee, thank you for the opportunity to testify today about the Consumer Financial Protection Bureau's Semiannual Report to Congress. I appreciate our continued dialogue as we work together to strengthen our financial system and ensure that it serves consumers, responsible businesses, and the long-term foundations of the American economy.

The Bureau presents this Semiannual Report to Congress and the American people in fulfillment of its statutory responsibility and commitment to accountability and transparency. This report provides an update on the Bureau's mission, activities, accomplishments, and publications since the last Semiannual Report, and provides additional information required by the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank or Dodd–Frank Act).[1]

The Dodd–Frank Act created the Bureau as the Nation's first Federal agency with a mission of focusing solely on consumer financial protection and making consumer financial markets work for American consumers, responsible businesses, and the economy as a whole. In the wake of the financial crisis of 2008–2010, the President and Congress recognized the need to address widespread failures in consumer financial protection and the rapid growth in irresponsible lending practices that preceded the crisis. To remedy these failures, the Dodd–Frank Act consolidated most Federal consumer financial protection authority in the Bureau.[2] The Dodd–Frank Act charged the Bureau with, among other things:

- Ensuring that consumers have timely and understandable information to make responsible decisions about financial transactions;
- Protecting consumers from unfair, deceptive, or abusive acts and practices, and from discrimination;
- Monitoring compliance with Federal consumer financial law and taking appropriate enforcement action to address violations;
- Identifying and addressing outdated, unnecessary, or unduly burdensome regulations;
- Enforcing Federal consumer financial law consistently in order to promote fair competition;
- Ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation; and
- Conducting financial education programs.[3]

The Bureau has continued its efforts to listen and respond to consumers and industry, to be a resource for the American consumer, and to develop into a great institution worthy of the responsibilities conferred on it by Congress.

Listening and responding to consumers is central to the Bureau's mission. The Bureau continues to provide consumers with numerous ways to make their voices heard. Consumers nationwide have engaged with the Bureau through public field hearings, listening events, roundtables and town halls, and through our website, *consumerfinance.gov*. Consumer engagement strengthens the Bureau's understanding of current issues in the ever-changing consumer financial marketplace and informs every aspect of the Bureau's work, including research, rule writing, supervision, and enforcement.

The Bureau has continued to improve the capabilities of its Office of Consumer Response to receive, process, and facilitate responses to consumer complaints. Consumer Response has also continued to expand a robust public Consumer Complaint Database. The database updates nightly and as of September 30, 2015, was popu-

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[1] Appendix B provides a guide to the Bureau's response to the reporting requirements of Section 1016(c) of the Dodd–Frank Act. The Bureau's most recent Semiannual Report, published in November 2015, and covered April–September 2015. The report may be viewed at: *http://files.consumerfinance.gov/f/201511_cfpb_semi-annual-report-fall-2015.pdf.*

[2] Previously, seven different Federal agencies were responsible for rulemaking, supervision, and enforcement relating to consumer financial protection. The agencies which previously administered statutes for which authority transferred to the Bureau are the Federal Reserve Board (and the Federal Reserve Banks) (Board or FRB), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS).

[3] See Dodd–Frank Act, Pub. L. No. 111-203, Sec. 1021 (b) and (c).

lated by over 465,000 complaints from consumers about financial products and services from all over the country.

On June 25, 2015, the CFPB marked a milestone for consumer empowerment when the Bureau began to publish consumer complaint narratives in the Consumer Complaint Database.[4] Consumers now have the choice to share in their own words their experiences with the consumer financial marketplace. Only those narratives for which opt-in consumer consent is obtained and to which a robust personal privacy scrubbing process is applied are eligible for disclosure. The CFPB gives companies the opportunity to respond publicly to the substance of the consumer complaints they receive from the CFPB by selecting from a set list of public-facing response categories. Companies are under no obligation to avail themselves of the opportunity. The Bureau also issued a Notice and Request for Information[5] to seek input from the public on best practices for "normalizing" the complaint data it makes available via the database to make the complaint data easier for the public to use and understand.

On July 16, 2015, the Bureau launched the first in a new series of monthly reports to highlight key trends from consumer complaints submitted to the Bureau. The monthly report includes data on complaint volume, most-complained-about companies, State and local information, and product trends. Each month, the report highlights a particular product and geographic location and will provide insight for the public into the hundreds of thousands of consumer complaints on financial products and services expected to be handled by the CFPB. The report uses a 3-month rolling average, comparing the current average to the same period in the prior year where appropriate, to account for monthly and seasonal fluctuations. In some cases, month-to-month comparisons are used to highlight more immediate trends.

The Bureau is also working to provide tools and information to develop practical skills and support sound financial decision making directly to consumers. These skills include being able to ask questions and to plan ahead. One way we are doing this is with our online tool, *Ask CFPB*.[6] This tool provides answers to over 1,000 questions about financial products and services, including on topics such as mortgages, credit cards, and how to dispute errors in a credit report. We are also focusing on helping consumers build the skills to plan ahead. For example, our Paying for College[7] set of tools helps students and their families compare what their college costs will be as they decide where to pursue a college education. Our Owning a Home[8] set of tools helps consumers shop for a mortgage loan by helping them understand what mortgages are available to them, explore interest rates, compare loan offers, and by providing a closing checklist. The *Money Smart for Older Adults*[9] curriculum, developed with the Federal Deposit Insurance Corporation (FDIC), includes resources to help people prevent elder financial exploitation and prepare financially for unexpected life events.

The Bureau is working with other Government agencies, social service providers, and community service providers to develop channels to provide decision-making support in moments when consumers are most receptive to receiving information and developing financial decision-making skills. This support includes integrating financial capability into other programs and services where consumers may be seeking assistance. We are also tailoring our approaches to financial decision-making circumstances, challenges, and opportunities for specific populations, including servicemembers and veterans, students and young adults, older Americans, and lower-income and other economically vulnerable Americans.

When Federal consumer financial protection law is violated, the Bureau's Supervision, Enforcement, and Fair Lending Division is committed to holding the responsible parties accountable. In the 6 months covered by the most recent report, our supervisory actions resulted in financial institutions providing more than $95 million in redress to over 177,000 consumers.

During that timeframe, the Bureau also announced orders through enforcement actions for approximately $5.8 billion in total relief for consumers who fell victim to various violations of consumer financial protection laws, along with over $153 million in civil money penalties. The Bureau brought numerous enforcement actions for various violations of the Dodd–Frank Act, including an action against a company for blocking consumers' attempts to save their homes from foreclosure, an action

[4] See "Final Policy Statement on Consumer Narratives"; 80 *FR* 15572, March 24, 2015.

[5] See "Request for Information Regarding the Consumer Complaint Database: Data Normalization"; 80 *FR* 37237, June 30, 2015.

[6] Available at: *http://www.consumerfinance.gov/askcfpb/*.

[7] See *http://www.consumerfinance.gov/paying-for-college/*.

[8] See *http://www.consumerfinance.gov/owning-a-home/*.

[9] See *https://www.fdic.gov/consumers/consumer/moneysmart/olderadult.html*.

against a lender for the failure to furnish clear information regarding the student loan interest consumers paid, and actions against two companies for mobile cramming. In joint actions, we worked with the New York Department of Financial Services to take action against two companies for deceiving consumers about the costs and risks of their pension advance loans. We also worked with the Office of the Comptroller of the Currency and the FDIC to take action against a depository institution for failing to credit consumers for the full amounts of their deposits, and worked with the Department of Justice to resolve actions with an auto finance company and a depository institution that will put in place new measures to address discretionary auto loan pricing and compensation practices. The Bureau also took action against a company for engaging in unfair, deceptive, and abusive acts or practices to collect debt from servicemembers, in violation of the Consumer Financial Protection Act. In addition, the Bureau continues to develop and refine its nationwide supervisory program for depository and nondepository financial institutions, through which those institutions are examined for compliance with Federal consumer financial protection law.

The Bureau also released one edition of *Supervisory Highlights* during this reporting period. The *Supervisory Highlights* series is intended to inform both industry and the public about the development of the Bureau's supervisory program and to discuss, in a manner consistent with the confidential nature of the supervisory process, broad trends in examination findings in key market or product areas. This edition reported examination findings in the areas of consumer reporting, debt collection, student loan servicing, mortgage origination, mortgage servicing, and fair lending. It also included information about recent public enforcement actions that were a result, at least in part, of CFPB's supervisory work.

The Bureau has also published new guidance documents, in partnership with other regulators where appropriate, to help institutions know what to expect and how to become, or remain, compliant with the law, including bulletins on private mortgage insurance cancellation and termination, the Section 8 housing choice voucher home ownership program, and interstate land sales.

Reasonable regulations are essential for protecting consumers from harmful practices and ensuring that consumer financial markets function in a fair, transparent, and competitive manner. The Research, Markets, and Regulations Division has focused its efforts on promoting markets in which consumers can shop effectively for financial products and services and are not subject to unfair, deceptive, or abusive acts or practices. During this reporting period, the Research and Markets teams released a data point on "credit invisibles" and technical reports regarding the National Survey of Mortgage Borrowers and the National Mortgage Database. The Regulations office issued regulations modifying and clarifying a number of rules implementing changes made by the Dodd–Frank Act to the laws governing various aspects of the mortgage market, including amendments relating to small creditors and rural or underserved areas under Regulation Z, which, among other things, increased the number of financial institutions able to offer certain types of mortgages in rural and underserved areas, a rule moving the effective date of the Know Before You Owe mortgage disclosure rule to October 3, 2015, and an interpretive rule on home ownership counseling organizations lists and high-cost mortgage counseling.

During this reporting period, the Bureau issued several other proposed or final rules or requests for information under the Dodd–Frank Act, including a final rule defining larger participants of the automobile financing market and defining certain automobile leasing activity as a financial product or service, which extends the Bureau's supervision relating to consumer financial protection laws to any nonbank auto finance company that makes, acquires, or refinances 10,000 or more loans or leases in a year, and a request for information regarding student loan servicing.

To support the implementation of and industry compliance with its rules, the Bureau has published a number of plain-language compliance guides summarizing certain rules, and it has actively engaged in discussions with industry about ways to achieve compliance.[10] The Bureau also continued its efforts to streamline, modernize, and harmonize financial regulations that it inherited from other agencies.

In addition to implementing the Dodd–Frank Act, the Bureau continues to explore other areas where regulations may be needed to ensure that markets function properly and possibly harmful or inefficient practices are addressed. Over the next 6 months, the Bureau will continue implementing the Dodd–Frank Act and using its regulatory authority to ensure that consumers have access to consumer financial markets that are fair, transparent, and competitive.

The Bureau continues to grow and evolve as an institution. As of September 30, 2015, the CFPB team consisted of 1,486 employees working to carry out the Bu-

[10] See *http://www.consumerfinance.gov/guidance/#compliance.*

reau's mission. It has worked to build a human and physical infrastructure that promotes diversity, transparency, accountability, fairness, and service to the public.

The Bureau recognizes that the best way to serve consumers is to ensure that its workforce reflects the ideas, backgrounds, and experiences of the American public. The Bureau's Office of Minority and Women Inclusion supports the Bureau's mission by working with the offices of Human Capital and Civil Rights to continue building a diverse and inclusive workforce that can foster broader and better thinking about how to approach markets. [11]

Over the last year, the Bureau has continued to expand its efforts to support and protect consumers in the financial marketplace. The Bureau seeks to serve as a resource, by writing clear rules of the road, enforcing consumer financial protection laws in ways that improve the consumer financial marketplace and by helping individual consumers resolve their specific issues with financial products and services. While the various divisions of the Bureau play different roles in carrying out the Bureau's mission, they all work together to protect and educate consumers, help level the playing field for participants, and fulfill the Bureau's statutory obligations and mission under the Dodd–Frank Act. In all of its work, the Bureau strives to act in ways that are fair, reasonable, and transparent.

Chairman Shelby, Ranking Member Brown, and Members of the Committee, thank you for the opportunity to provide the Bureau's Semiannual Report. The Bureau will continue working to ensure that the American people are treated fairly in the consumer financial marketplace. I look forward to your questions.

[11] During the previous reporting period, the Bureau's Office of Equal Employment and Opportunity transitioned to the Office of Civil Rights (OCR), and it and the OMWI office moved under the umbrella of the newly created Office of Equal Opportunity and Fairness (OEOF), housed in the CFPB Director's Office and reporting directly to the Director.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN SHELBY FROM RICHARD CORDRAY

Q.1. In a recent speech before the American Constitution Society, you stated, "[a]rbitration clauses, as they are used today both in the field of consumer finance and more generally, often have been deliberately designed to block Americans from effective means of vindicating their rights." The CFPB's outline of proposals under consideration favors requiring these clauses to allow class litigation. In a class action lawsuit, however, individual class members give up their right to sue, a large number of cases are settled out of court, the average reward is very small, and the individual class members generally play no role in the judicial process.

How did you determine that a class action lawsuit is better than arbitration for consumers?

A.1. On July 10, 2017, the Consumer Bureau issued a Final Rule regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration. The Final Rule was based on and consistent with the Bureau's Arbitration Study and Report to Congress pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act §1028, submitted in March 2015.

The Final Rule is not based on a determination that a class action lawsuit is necessarily a better option for a consumer than arbitration. Rather, the rule reflects the conclusion that consumers are better off when both individual and class remedies are available. Indeed, the Final Rule does not prohibit providers from using pre-dispute arbitration agreements with respect to claims filed by individual consumers. Instead, the Final Rule prohibits providers from using pre-dispute arbitration agreements to block consumer class actions in court.

The Bureau adopted this provision of the Final Rule in part because it found that individual dispute resolution alone (which includes, among other things, individual arbitration and individual litigation filed in court) is insufficient in enforcing laws applicable to contracts for consumer financial products and services. This finding is supported by the Arbitration Study, which found that a very small number of consumers seek individual redress either through arbitration or the courts relative to the size of the market for consumer financial products and services. According to the Arbitration Study, the total number of individual consumer financial claims in the specified markets was approximately 2,400 per year.[1] Even multiplying those 2,400 claims by 10 or 100 to account for the markets and jurisdictions the Study did not analyze would amount to less than 250,000 individual claims. The result would still be a low number of individual claims in relation to the hundreds of millions of individual consumer financial products and services.

By contrast, as set out in the Final Rule and consistent with the Arbitration Study, the Bureau found that a much larger number of consumers derive substantial benefits from class action settlements. Over a 5-year period, the Arbitration Study analyzed the results of 419 Federal consumer finance class actions that reached

[1] The Bureau's arbitration study found in the jurisdictions studied 1,200 individual cases in Federal court, 800 in small claims court, and 400 in arbitration.

final class settlements. These settlements involved, conservatively, about 160 million consumers and about $2.7 billion in gross relief of which, after subtracting fees and costs, made $2.2 billion available to be paid to consumers in cash relief or in-kind relief. Further, as set out in the Study, nearly 24 million class members in 137 settlements received automatic distributions, meaning they received payments without having to file claims. In the five years of class settlements studied, at least 34 million consumers received $1.1 billion in cash payments.

In addition to the monetary relief awarded by class action settlements, consumers also received nonmonetary relief from those settlements. Specifically, the Study showed that there were 53 settlements covering 106 million class members that mandated behavioral relief that required changes in the settling companies' business practices beyond simply to comply with the law.

Perhaps most importantly, the threat of class action proceedings not only facilitates relief to consumers in specific cases, but also strengthens incentives for consumer financial service providers to engage in robust compliance on an ongoing basis. As discussed in the preamble to the Final Rule, the Bureau found that the rule will incentivize greater compliance with the law by covered providers. Absent the rule, providers may be more likely to engage in potentially unlawful business practices because they know that any potential costs from exposure to putative class action filings have been reduced if not effectively eliminated. Due to this reduction in legal exposure (and thus a reduction in risk), providers have less of an incentive to invest in compliance management in general, such as by investing in employee training with respect to compliance matters or by carefully monitoring changes in the law. Therefore, the Bureau believes that consumers are better protected and the market is fairer for those companies that comply with the law when consumers also are able to obtain relief by grouping their own disputes against providers of consumer financial products or services.

Q.2. Why do you believe that arbitration clauses that ban class action lawsuits deny consumers the ability to vindicate their legal rights but other arbitration clauses do not?

A.2. In the Final Rule, the Bureau did not find that the terms of arbitration agreements in today's consumer financial marketplace generally prevent consumers from seeking and obtaining individual relief. However, the Bureau found that the terms of arbitration agreements do prevent groups of consumers from seeking and obtaining relief on a class basis. As noted above, the Bureau believes that consumers get substantial relief and other benefits from having the ability to seek and obtain relief on class basis.

Q.3. Please explain how class action lawsuits that are settled out of court and result in tiny rewards for class members give people a "day in court."

A.3. As the Bureau explained in the preamble to the Final Rule, class actions generally aggregate claims for smaller damage amounts. As noted above, consumers generally do not pursue smaller harms that they suffer individually. That means that where an arbitration agreement is used to stop a class action, harmed consumers will often be left without remedy. The Bureau believes that the very substantial relief that consumers get through class actions (detailed above) is a better result for harmed consumers than no relief.

Q.4. A year ago, the CFPB issued an outline of proposals to regulate small dollar loans. The outline contemplates regulating certain small dollar loans with a duration of more than 45 days and an annual interest rate above 36 percent.

If the Bureau issues a rule that does not outright ban these products, but makes it unprofitable to make such loans above 36 percent, would that violate the Dodd–Frank Act's prohibition on the CFPB imposing a usury limit?

If not, does the Bureau believe Section 1027(o) of the Dodd–Frank Act imposes any limits on the Bureau's ability to set restrictions on the offering of financial products above a certain interest rate? Why or why not?

A.4. The Consumer Bureau is not prohibiting charging interest rates or annual percentage rates (APRs) above the demarcation for coverage of certain longer-term loans. Rather, the Consumer Bureau is proposing to require that lenders make a reasonable assessment of consumers' ability to repay certain longer-term loans above the 36 percent demarcation, in light of evidence of consumer harms in the market for loans with this characteristic. It is appropriate to focus regulatory attention on the segment of longer-term lending that the Consumer Bureau believes poses the greatest risk to consumers in the form of potential unfair and abusive practices and to recognize that price is an element in defining that segment.

The Consumer Bureau believes that the term "usury limit" in section 1027(o) of the Dodd–Frank Act is reasonably interpreted not to prohibit such differential regulation given that the Consumer Bureau is not proposing to prohibit lenders from charging interest rates above a specified limit.

The Consumer Bureau's considerations concerning section 1027(o) of the Dodd–Frank Act are described in the notice of proposed rulemaking in the section-by-section analysis of proposed §1041.3.

Q.5. You have repeatedly stated that the Bureau would be sensitive to good faith efforts by companies to comply with the CFPB's TILA–RESPA mortgage disclosure rule. In December, however, the American Banker quoted a senior Bureau official telling mortgage lenders at a conference, "I want to be perfectly clear. There is no grace period from the Bureau."

Why won't the Bureau provide a formal "hold harmless" period to clarify mixed messages delivered by the Bureau's officials and more clearly delineate its expectations?

A.5. The Consumer Bureau has continuously reaffirmed its commitment to support a smooth transition for the mortgage market, including its commitment to be sensitive to the efforts made by institutions to come into compliance. We recognize that the mortgage industry needed to make significant systems and operational changes to adjust to the new requirements and that implementation required extensive coordination with third parties. We appreciate that the mortgage industry dedicated substantial resources to understand the rules, adapt systems, and train personnel in a serious effort to get it right. As with any change of this scale, despite the best of efforts, there inevitably will be inadvertent errors in the early days. While complete and accurate use of the Regulation Z forms is the ultimate compliance goal, we recognize that a certain level of minor errors in the early days of implementation is to be expected.

That is why the Consumer Bureau and the other regulators have made clear that our initial examinations for compliance with the rule will be sensitive to the progress industry has made. In particular, the Consumer Bureau has indicated our examiners will be squarely focused on whether companies have made good faith efforts to come into compliance with the rule. The Consumer Bureau has stated that early examinations will focus on an entity's implementation plan, including actions taken to update policies, procedures, and processes; the training of appropriate staff; and its handling of early technical problems or their implementation challenges. All of the regulators have indicated that their examinations for compliance in the initial period of implementing the new rule will be corrective and diagnostic, rather than punitive. This position is consistent with our approach to supervision and enforcement of the rules implementing title XIV of the Dodd–Frank Wall Street Reform and Consumer Protection Act, which has worked out well.

While implementation has posed challenges to industry, industry reports indicate that implementation is now proceeding more smoothly.[2] Data published by one leading provider of loan origination services as well as a research survey conducted by a major trade association, confirm these observations.[3] Moreover, a recent homebuyer survey by another trade association suggests that the new disclosures are, indeed, helping consumers understand their loan terms.[4] The Consumer Bureau will continue to adjust its approach to the experience of implementation.

Q.6. During the hearing, I asked you about research from Harvard University that finds that credit card accounts originated to certain lower-income consumers have fallen by 50 percent. You replied, "[i]f that is the Lux–Greene study, it is not a very credible study . . . [b]ecause it is not very well done and it is not very credible on the supposed evidence."

To the extent you are referring to the study published in April 2016, please elaborate on your views on the study and the under-

[2] See, e.g., Ben Lane, "Mortgage Defects Fall for First Time in a Year as TRID Issues Subside", *Housingwire*, Dec. 7, 2016, available at *http://www.housingwire.com/articles/38696-mortgage-defects-fall-for-first-time-in-a-year-as-trid-issues-subside*; Brena Swanson, "Ellie Mae CEO: Initial Discomfort of TRID Now Over, Time To Close Finally Tumbles", *Housingwire*, March 21, 2016, available at *http://www.housingwire.com/articles/36563-ellie-mae-ceo-initial-discomfort-of-trid-now-over*; Ken Frears, "TRID: Back on Track in June", National Association of Realtors®, July 12, 2016, available at *http://economistsoutlook.blogs.realtor.org/2016/07/12/trid-back-on-track-in-june/*.

[3] See Ellie Mae, "Origination Insight Report" (May, 2016), available at *http://www.elliemae.com/origination-insight-reports/Ellie_Mae_OIR_MA_Y2016.pdf*; National Association of Realtors®, Survey of Mortgage Originators, First Quarter 2016: TRID After 6 Months and Changes to FHA's Cancellation Policy, available at *http://www.realtor.org/reports/survey-of-mortgage-originators-first-quarter-2016*.

[4] Press Release, American Land Title Association, "American Land Title Association Survey Shows More Homebuyers Reviewing Mortgage Disclosures", May 16, 2016, *http://www.alta.org/press/release.cfm?r=260*.

lying research, and explain what research and evidence the Bureau has relied upon to refute the findings of that study.

A.6. According to an April 2016 paper prepared by Marshall Lux and Robert Greene, the post-2007 fall in credit balances and accounts held by consumers with lower credit scores should be attributed to regulatory constraints. [5] The Lux–Greene list of such hypothesized supply-side constraints include the Credit CARD Act of 2009, the Consumer Bureau's credit card enforcement actions, the lack of a commission structure at the Consumer Bureau, and an alleged explosion in Bureau credit card regulation.

In the Bureau's assessment, the Lux–Greene paper underweights the impact of the Great Recession on the supply and demand for credit in the consumer credit card market. To control the massive credit losses associated with the downturn, credit card issuers reduced supply, closing or reducing lines and tightening their underwriting standards. That severely restricted the availability of credit, especially to consumers with lower credit scores. On the demand side, consumers reacted to the Great Recession and its aftermath by becoming more conservative in their use of credit cards. [6]

As the economy picked up, the picture changed. [7] The Consumer Bureau publishes a review of the consumer credit card market every 2 years. [8] The Consumer Bureau's 2015 credit card study showed that account growth from 2012through 2015 was skewed towards consumers with lower credit scores. [9] Major mainstream media have reported the same trends. [10] Results recently published by the Consumer Bureau show that, for the most recent 12 months for which the Bureau has published data, year-over-year growth in total line originated to borrowers in both low-income neighborhoods and moderate-income neighborhoods has outpaced growth in total line originated to borrowers in high-income neighborhoods. [11]

The Consumer Bureau recognizes that it is hard to disaggregate the different effects of the Great Recession on the supply and demand for consumer credit. However, there is substantial evidence that shows that the reduction in card balances held by consumers

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[5] The full title of the paper is "Out of Reach: Regressive Trends in Credit Card Access". The authors are Marshall Lux and Robert Greene.

[6] The share of borrowers utilizing all available credit across their cards has actually fallen for credit card borrowers with subprime scores, from roughly 48 percent of active card users in early 2007 to roughly 44 percent in 2010 through 2013.

[7] Figures 2 and 3 in the Appendix to the Bureau's December 2015 Credit Card Market Report (the "2015 Report") show the close relationship through the recession between the unemployment rate and charged off or delinquent balances.

[8] The CARD Act formally requires the Bureau to carry out biennial reviews of the consumer credit card market. These reviews address a number of issues, including the question of credit availability to consumers with lower credit scores. We published associated reports to Congress at the end of 2013 and 2015. The reports are available on the Bureau's website, available at: (2015 Report) *http://files.consumerfinance.gov/f/201512 cfpb__report-the-consumer-credit-card-market.pdf*; and here (2013 Report): *http://files.consumerfinance.gov/f/201309__cfpb__card-act-report.pdf*. We also published key findings from a 2011 Bureau conference on the CARD Act, which also addressed this same issue of availability. The findings are available on the Bureau's website here: *https://www.consumerfinance.gov/data-research/research-reports/card-act-conference-key-findings/*.

[9] See 2015 Report at pages 90 through 94, especially figures 4 and 8. The Bureau's analysis takes account of private label accounts, which Lux and Greene ignore despite the significance of such accounts to consumers with lower credit scores.

[10] See *Wall Street Journal* (May 20, 2016), "Balance Due: Credit Card Debt Nears $1 Trillion as Banks Push Plastic", available at *https://www.wsj.com/articles/balance-due-credit-card-debt-nears-1-trillion-as-banks-push-plastic-1463736600.*

[11] See *http://www.consumerfinance.gov/data-research/consumer-credit-trends/credit-cards/lending-neighborhood-income-level/* (December 2016).

with lower scores is not attributable to credit card regulation. For example:

- Credit availability and price trends in the small business credit card market and the consumer credit card market have been broadly similar through the Great Recession and its aftermath.[12] The small business credit card market, however, has not been subject to relevant portions of the CARD Act. Indeed, the vast majority of the Consumer Bureau's regulatory activity does not apply to business-purpose credit cards at all. If Lux and Greene were correct about the impact of consumer protection law on the consumer credit card market, the small business credit card, which was free of such "constraints," should have performed differently. But on core performance metrics for price and credit availability, it did not.
- Lux and Greene compare originations in the auto loan and credit card market. The auto loan market, however, is the only major consumer credit market that has recovered faster than the credit card market. Originations growth since 2009 in general purpose credit cards outstrips all other major consumer credit markets, and the recovery in private label credit card growth has been substantially stronger than for home-secured loan markets. In fact, when looking only at consumers with lower credit scores, the recovery in originations growth for general purpose credit cards has outstripped even the auto loan market.[13]
- The share of subprime borrowers holding mortgages changed by approximately the same amount—20 percent relative to 2005–07 levels—as did the share of subprime consumers holding credit cards.

In addition, Lux and Greene's characterization of the Consumer Bureau's actions in the credit card market is often imprecise or incomplete. In significant cases, the regulatory constraints that they identify do not, in fact, exist.

- Lux and Greene claim an apparent explosion in the Consumer Bureau's level of credit card regulation from 2011; the red area in the paper's figure 9 purports to show a significant expansion in the Consumer Bureau's regulatory activity from that point through 2014. In fact, from its inception through the end of that period, the Consumer Bureau issued two new substantive credit card rules. One made it easier for stay-at-home spouses and partners to obtain credit cards, thereby expanding the availability of credit.[14] The other substantive change, made in response to a legal challenge against one of the Board's rules, reduced fee restrictions on cards marketed to consumers with subprime credit scores.[15] It is therefore not accurate to claim

[12] This point is detailed in the Bureau's 2015 Report at 80–82 and 117–18, and in the 2013 Report at 35–36 and 54–60.

[13] See 2015 Report at 95–97.

[14] See *http://www.consumerfinance.gov/about-us/newsroom/the-cfpb-amends-card-act-rule-to-make-it-easier-for-stay-at-home-spouses-and-partners-to-get-credit-cards/* (April 2013). This new regulation revised certain credit card ability-to-pay rules issued by the Board of Governors. Several parties—including credit card issuers—had sought this change.

[15] See *http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-finalizes-credit-card-act-rule/* (March 2013). The Bureau's action was taken in response

that the Consumer Bureau's regulatory activity has limited consumers' access to credit. [16]

- Lux and Greene focus on the supposedly regressive effect of the Consumer Bureau's reliance on its "abusiveness" authority. The Dodd–Frank Wall Street Reform and Consumer Protection Act's creation of new authority in this respect, however, has played a minimal role in the Consumer Bureau's credit card work. Lux and Greene's main complaint in this area seems to be with the Bureau's enforcement actions against credit card add-on products. But those enforcement actions did not rely on abusiveness authority. They relied instead on the requirement that issuers not market add-on products deceptively or unfairly charge consumers for add-on products that they are not actually receiving. [17]

Q.7. Finally, the Lux–Greene paper sometimes makes factual assertions contradicted by the available record. For example, they contend that Consumer Bureau enforcement actions are "driving" issuers to "only offer 'plain vanilla'" credit cards. But Lux and Greene cite no such cards or any evidence that such cards are becoming the sole product offering in this space. In fact, as the Consumer Bureau's 2015 Report documents, the credit card market shows continued innovation, whether in rewards, security, or mobile functionality, giving consumers a wide range of benefits and functionalities to consider when card shopping.

Does the Bureau have any plans to further clarify what actions are unfair, abusive, or deceptive to provide clarity to lenders in order to increase the availability of credit cards for lower-income consumers? If not, why not?

A.7. The Consumer Bureau does not agree that the credit card market has been hampered since the Great Recession by a supposed lack of clarity around regulatory standards. To the contrary, the Consumer Bureau's rule writing in this market has been appropriate because the Board of Governors undertook a clear and comprehensive regulatory effort to implement the important consumer protections enacted by Congress in the CARD Act. [18] As noted

to a legal challenge against one of the Board's rules on fee-harvester cards marketed to consumers with subprime credit scores. That change excluded certain fees that were charged to consumers before account opening from the requirements of the Board's rule. To the Bureau's knowledge no commenter has ever claimed that this change limited access to credit.

[16] Since its inception the Bureau has issued nonsubstantive revisions to the credit card rules, but these kinds of technical or "housekeeping" adjustments could not possibly create any supply-side constraint to the issuance of consumer credit card line. For example, these revisions effectuated the transition of regulatory authority from the Board of Governors to the Bureau, meaning that the rules were renumbered and references to the "Board" were replaced with references to the "Bureau," or effectuated adjustments for inflation.

[17] Lux and Greene note only one instance in which the Bureau has in fact cited its abusiveness authority in connection with the credit card market. The Bureau's September 2014 bulletin on interest rate promotions points out that when an issuer markets such a promotion on the basis of the interest rate savings to the consumer from revolving a promotional balance at lower rates, the issuer risks engaging in a deceptive or abusive practice if it fails to disclose clearly that revolving such balances may also increase the consumer's interest rate charges on new purchases made during the promotion. Lux and Greene do not explain or offer any evidence for their claim that this commonsense observation has "discouraged certain product features." Some issuers have made efforts to improve their disclosures on this point, but that development should be welcomed.

[18] Although Lux and Greene appear to oppose most or potentially all of that Board effort, many of the Board's CARD Act rules duplicated earlier rules proposed by the Board in 2008 under its "UDAP" authority to regulate unfair and deceptive practices. (See *http://*

Continued

above, when necessary, the Consumer Bureau has acted to revise or build on those rules. In one case, a legal challenge to a Board rule caused the Consumer Bureau to issue a revised rule. On another, the Consumer Bureau revised a Board-issued rule that was having the unintended consequences of limiting access to credit by spouses and partners who did not work outside the home but who did have the ability to pay for a credit card account.

When the Consumer Bureau has brought credit card enforcement actions on the basis of its authority to regulate Unfair, Deceptive, and Abusive Acts and Practices (UDAAP), it has focused on well-established legal norms. Thus, as noted above, the credit card add-on cases attacked deceptive marketing and the unfair "sale" of products that were not in fact received.

Q.8. Section 1022(b)(2)(A) of the Dodd–Frank Act requires the Bureau to perform a cost-benefit analysis when prescribing rules.

Is it important for the CFPB to conduct high quality economic analysis as part of its rulemaking and cost-benefit analysis?

A.8. Yes, the Consumer Bureau considers it to be good policy to conduct economic analysis as part of the rulemaking process. Section 1022(b)(2)(A) of the Dodd–Frank Wall Street Reform and Consumer Protection Act calls for the Bureau to consider the potential benefits, costs, and impacts of its consumer protection regulations. Specifically, the Consumer Bureau considers the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services, the impact of proposed rules on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd–Frank Act, and the impact on consumers in rural areas.

Q.9. Is the CFPB's economic analysis currently sufficiently robust and thorough? If the answer to (a) and (b) are both "yes," will the Bureau commit to publishing guidance on economic analysis in CFPB rulemakings, similar to what the SEC [19] has already done? If not, why not?

A.9. Yes, these analyses are an important tool to help evaluate potential regulatory burdens, and our practice is to seek public comment on our analyses of potential benefits, costs, and impacts, and to seek comment on our additional sources of data. Like other Federal agencies, the Consumer Bureau is required to conduct a written analysis of the potential impacts and alternatives at both the proposal and final rule stage.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM RICHARD CORDRAY

Q.1. We heard on Tuesday about regulation leading to bank consolidation. But the number of financial institutions in this country has been declining for decades, way before Dodd–Frank. That being said, it is important that small financial institutions are not dis-

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www.federalreserve.gov/newsevents/press/bcreg/20080502a.htm) Their complaint that the Bureau has not issued rules to implement its own "UDAAP" authority, therefore, is hard to reconcile with their apparent opposition to earlier Board rules that effectively did just that.

[19] *https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf*

proportionately impacted by regulation. Would you describe what the Bureau has done to address the concerns of small financial institutions and reduce their regulatory burden?

A.1. Section 1022(b)(1) of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) authorizes the Consumer Bureau to prescribe rules and issue orders and guidance, as may be necessary or appropriate to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. In doing so, Section 1022(b)(2) requires that the Consumer Bureau consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access to consumer financial products and services to consumers. Section 1022(b)(2) also requires the Consumer Bureau to consider the impact of a proposed rule on insured depository institutions and credit unions with total assets of $10 billion or less as well as the impact on consumers in rural areas. Moreover, Section 1022(3)(A) gives the Consumer Bureau the authority to create exemptions from the Consumer Financial Protection Act of 2010 or rules issued under that Act for any class of covered persons, service providers, or consumer financial products or services if the Consumer Bureau determines an exemption is necessary or appropriate to carry out the purposes and objectives of the Consumer Financial Protection Act after taking into consideration a set of factors specified in the statute.

To date, the Consumer Bureau has sought to carefully calibrate its efforts to ensure consistency with respect to consumer financial protections across the financial services marketplace, while accounting for the different business models and classes of financial institutions. For example, as part of the Consumer Bureau's commitment to achieving tailored and effective regulations, we have taken the following actions for different models and classes of institutions:

Mortgage Origination Rules (Title XIV)

- *Expanded safe harbor for small creditors.* A small creditor has a broader safe harbor for its Qualified Mortgage (QM) loans than non-small creditors. The Consumer Bureau's rules provide a safe harbor for QMs with annual percentage rate (APR) spreads over Average Prime Offer Rate (APOR) up to 350 basis points, whereas non-small creditors have a safe harbor for spreads up to 150 basis points. The Consumer Bureau's rules also allow a small creditor to make QMs with debt-to-income ratios that exceed the otherwise applicable 43 percent cap. (Small creditors must hold these loans in portfolio for 3 years.)
- *Exempted small creditors in rural and underserved areas.* Small creditors that operate (or operated "predominantly" before implementation of the Helping Expand Lending Practices in Rural Communities Act in March 2016) in rural or underserved areas are exempt from requirements to establish escrow accounts for higher priced mortgage loans and from restrictions on offering QMs and Home Ownership and Equity Protection Act (HOEPA) loans ("high cost" mortgages as defined in the HOEPA) that have balloon payment features. QMs and HOEPA loans generally cannot have balloon payments.

- *Implemented a 2-year pause for small creditors.* The Consumer Bureau established a 2-year transition period (until January 10, 2016) allowing small creditors to make balloon-payment QMs and balloon-payment HOEPA loans regardless of whether they operated predominantly in rural or underserved areas, while the Consumer Bureau revisited and reconsidered the definition of "rural" for this purpose.
- *Expanded exemptions for creditors in rural and underserved areas.* In connection with other changes to amend the definitions of "small creditor" and "rural area," the Consumer Bureau published a final rule in October 2015 that extended this 2-year transition period from January 2016 until April 2016. The Bureau's final rule also provided a significant expansion of "rural," as well as an expansion of which entities can qualify as "small creditors." The Consumer Bureau's final rule took effect on January 1, 2016, before the 2-year transition period expired. In March 2016, the Consumer Bureau issued an interim final rule that implements the Helping Expand Lending Practices in Rural Communities Act, and makes these provisions available to small creditors that extend at least one covered transaction secured by property located in a rural or underserved area in the previous calendar year. The Bureau estimated that about 6,000 additional small creditors would be eligible as a result of this change.
- *Relaxed requirements for appraisals.* Small creditors have relaxed rules regarding conflict of interest in ordering appraisals and other valuations.

Mortgage Servicing Rules (Title XIV)

- *Exempted small servicers from providing periodic statements.* Small servicers are exempt from the Truth in Lending Act requirement to provide periodic statements.
- *Exempted small servicers from loss mitigation requirements.* Small servicers are exempt from all of the Real Estate Settlement Procedures Act provisions on policies and procedures; early intervention; continuity of contact; and loss mitigation, except that a small servicer may not file for foreclosure unless the borrower is more than 120 days delinquent on the mortgage. Small servicers may also not file for foreclosure (or move for a foreclosure judgment or order of sale, or conduct a foreclosure sale) if a borrower is performing under the terms of a loss mitigation agreement.
- *Excluded certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate from being counted toward the small servicer loan limit.* This allows servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

Home Mortgage Disclosure Act Rule (Reg C)

- *Exempted lower-volume depository institutions from Home Mortgage Disclosure Act reporting.* In October of 2015, the Consumer Bureau adopted a final rule revising Regulation C, which implements HMDA. HMDA and Regulation C, among other things, require covered mortgage lenders to report data concerning their mortgage lending activity. Changes to coverage in the final rule will reduce the number of banks, savings associations, and credit unions that are required to report HMDA data. The revisions will relieve about 22 percent of currently reporting depository institutions from the burden of reporting HMDA data. Also, by final rule issued in late August of 2017, the Consumer Bureau expanded the volume-based exemption from reporting of open-end lines of credit under HMDA for institutions with fewer than 500, instead of 100, annual originations in each of the two preceding years of such lines of credit. This expanded exemption applies for calendar years 2018 and 2019, during which the Consumer Bureau will consider whether to reexamine the appropriate volume level at which to set the exemption permanently.

- *Reduced HMDA error submission threshold for certain small entities.* New Federal Financial Examination Institution Council guidelines, of which the Consumer Bureau is a member, provide a more lenient 10 percent HMDA field error resubmission threshold (to determine whether the lender must resubmit a particular HMDA data field) for financial institutions with lower lending volumes, including many small institutions, for data collected beginning in 2018. Previously, all institutions were subject to the same error thresholds. The new guidelines make other burden-reducing changes that apply to all lenders, which may be particularly beneficial to small institutions.

Remittances Rule (Regulation E subpart B)

- *Provided regulatory certainty for small entities under the Electronic Fund Transfer Act.* In the Bureau's rules implementing the Dodd–Frank Act's amendments to the Electronic Fund Transfer Act, regarding remittance transfers, the Bureau recognized that certain entities do not provide remittances in the normal course of their business and determined that the remittance requirements do not apply to transfers sent by entities that provide 100 or fewer remittances each year.

Small financial institutions play a vital role within many communities across the Nation, as well as within the economy. Their traditional model of relationship lending has been beneficial to many people in rural areas and small towns throughout the country. For these reasons, the Consumer Bureau attempts to ensure that rules and regulations are not burdensome to these smaller financial institutions.

Q.2. A survey from the National Association of Realtors found that the most frequent errors in mortgage disclosure documents were missing concessions and incorrect names or addresses. What outreach did the Bureau done to ensure that industry was ready for these changes? What will the CFPB do going forward?

A.2. Prior to issuance of the Know Before You Owe mortgage disclosure rule in November 2013, the Consumer Bureau conducted extensive outreach and testing of prototype forms with consumers and industry, provided the public with the opportunity to comment on the forms through the Consumer Bureau's website, and convened a panel to consider the impact of the forms and rules on small financial services providers.[1]

Since the Know Before You Owe mortgage disclosure rule was issued in November 2013, the Consumer Bureau has taken many steps to support industry implementation and to help creditors, vendors, and others affected by the Know Before You Owe mortgage disclosure rule to better understand, operationalize, and prepare to comply with the Know Before You Owe mortgage disclosure rule's new streamlined disclosures. We have made it a point to engage directly and intensively with financial institutions and vendors through a formal regulatory implementation project.

The Consumer Bureau's regulatory implementation efforts include the following:

- *Interagency coordination.* In-depth exam procedures were approved by the Federal Financial Institutions Examination Council (FFIEC) in February 2015 and published by the Bureau on April 1, 2015. The Consumer Bureau's own examination procedures incorporating the FFIEC exam procedures were initially published on May 4, 2015.
- *Publishing a "readiness guide," plain-language guides, and other resources.* The "readiness guide" includes a wide-ranging questionnaire to help industry come into and maintain compliance with the rule. The Consumer Bureau has also published a compliance guide, a guide to the new integrated disclosure forms, an illustrative timeline, and annotated versions of the new integrated disclosure forms, providing references to the TILA statutory disclosures implemented on the Loan Estimate and Closing Disclosure.[2]
- *Publishing materials targeted to real estate professionals.* The Consumer Bureau published, on its website, a real estate professional's guide to the Know Before You Owe mortgage disclosure rule.[3] These webpages provide links to materials real estate professionals and others can download for their own use or to share with consumers.
- *Publishing materials targeted to settlement professionals.* The Consumer Bureau published, on its website, a settlement professional's guide to the Know Before You Owe mortgage disclosure rule.[4] These webpages provide links to materials settlement professionals and others can download for their own use or to share with consumers.
- *Maintenance of an implementation website.* The Consumer Bureau's regulatory implementation webpage, *http://www.consumerfinance.gov/policy-compliance/__guidance/implementation-guidance/tila-respa-disclosure-rule/*, is designed to be responsive to industry concerns and provides a central location for all the implementation support provided by the Bureau.

[1] For more information on the Bureau's Small Business Review Panel, see *http://www.consumerfinance.gov/blog/sbrefa-small-providers-and-mortgage-disclosure/*.

[2] These resources are available at *http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/*.

[3] *http://www.consumerfinance.gov/know-before-you-owe/real-estate-professionals/*

[4] *http://www.consumerfinance.gov/policy-compliance/know-you-owe-mortgages/settlement-professionals-guide/*

- *Regular internal meetings.* An implementation support team meets weekly to discuss industry feedback and identify appropriate responses.
- *Publishing amendments and updates to the rule in response to industry requests.* In January 2015, after extensive outreach to stakeholders, the Consumer Bureau adopted two minor modifications and technical amendments to the rule.[5] In July 2015, we extended the rule's effective date by 2 months and made some minor clarifications to smooth industry implementation.[6] In February 2016, we corrected a typographical error in the Supplementary Information to the Know Before You Owe mortgage disclosure final rule.[7] In April 2016, we announced that we have begun the process of drafting a Notice of Proposed Rulemaking (NPRM) to incorporate some of the Bureau's informal guidance into the regulation text and commentary, as well as provide greater certainty and clarity in certain areas of the rule. That NPRM was issued on July 29, 2016. The comment period ended on October 18, 2016.
- *Finalizing final rule to facilitate implementation of Know Before You Owe.* On July 7, 2017, the Consumer Bureau finalized updates to the Know Before You Owe rule to provide greater clarity and certainly. The rule addressed issues including: the tolerances for the total of payments, housing assistance lending, cooperatives and privacy and sharing of information.[8]
- *Providing unofficial staff guidance.* Bureau staff continues to provide guidance directly to creditors, vendors, their trade associations and legal representatives, and other stakeholders. These efforts have been ongoing since the rule was issued.
- *Engaging with stakeholders.* Bureau staff has provided remarks and addressed questions about the rule and related implementation matters at over 70 formal events and over 80 informal stakeholder meetings since the rule was issued. In addition, as part of its ongoing engagement with stakeholders, the Consumer Bureau has supported implementation of the rule in over 300 more general meetings with stakeholders.
- *Conducting webinars.* The Consumer Bureau has conducted seven free, publicly available webinars, available for viewing through the Consumer Bureau's website,[9] that provide guidance on how to interpret and apply specific provisions of the rule. All of these industry-facing webinars are indexed to assist users in quickly finding the relevant material. The Consumer Bureau has also conducted a free, publicly available webinar targeted to housing counselors.

While implementation has posed challenges to industry, industry reports indicate that implementation is now proceeding more

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[5] 80 *FR* 8767 (Feb. 19, 2015).
[6] 80 *FR* 43911 (July 24, 2015).
[7] 81 *FR* 7032 (Feb. 10, 2016).
[8] 82 *FR* 37656 (Aug. 11, 2017).
[9] These webinars are available at *http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/*.

smoothly.[10] Data published by one leading provider of loan origination services as well as a research survey conducted by a major trade association confirm these observations.[11] Moreover, a recent homebuyer survey by another trade association suggests that the new disclosures are, indeed, helping consumers understand their loan terms.[12] The Loan Estimate and the Closing Disclosure have been praised by many as improvements to the existing forms.[13] The Consumer Bureau will continue to adjust our efforts to the experience of implementation.

Q.3. Several members criticized your auto lending enforcement actions, including the use of disparate impact theory. Yet, as you noted in the hearing, disparate impact has been recognized for decades as a tool to ensure fair lending. For example, the Federal financial regulators detailed how financial institutions should monitor for disparate impact in a 1994 interagency guidance. Can you describe why it is important for financial institutions to monitor for disparate impact?

A.3. Disparate impact is the law and has been used by Federal agencies for decades and upheld by courts. The applicability of the disparate impact doctrine, also known as the "effects test," to credit transactions is reflected in the legislative history of the ECOA. Regulation B, which the Federal Reserve Board originally drafted to implement the ECOA, provides that:

> The legislative history of the Act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of Griggs v. Duke Power Co., 401 U.S. 424 (1971), and Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

The Commentary explicating Regulation B further elaborates:

> The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even

[10] See, e.g., Ben Lane, "Mortgage Defects Fall for First Time in a Year as TRID Issues Subside", *Housingwire*, Dec. 7, 2016, available at *http://www.housingwire.com/articles/38696-mortgage-defects-fall-for-first-time-in-a-year-as-trid-issues-subside*; Brena Swanson. "Ellie Mae CEO: Initial Discomfort of TRID Now Over, Time To Close Finally Tumbles", *Housingwire*, March 21, 2016, available at *http://www.housingwire.com/articles/36563-ellie-mae-ceo-initial-discomfort-of-trid-now-over*; Ken Frears, "TRID: Back on Track in June", National Association of Realtors®, July 12, 2016, available at *http://economistsoutlook.blogs.realtor.org/2016/07/12/trid-back-on-track-in-june/*.

[11] See Ellie Mae, "Origination Insight Report" (May, 2016), available at *http://www.elliemae.com/origination-insight-reports/Ellie__Mae__OIR__MAY2016.pdf*; National Association of Realtors®, "Survey of Mortgage Originators, First Quarter 2016: TRID After 6 Months and Changes to FHA's Cancellation Policy", available at *http://www.real__tor.org/reports/survey-of-mortgage-originators-first-quarter-2016*.

[12] Press Release, American Land Title Association, "American Land Title Association Survey Shows More Homebuyers Reviewing Mortgage Disclosures", May 16, 2016, *http://www.alta.org/press/release.cfm?r=260*.

[13] Brian Honea, "How Satisfied Are Borrowers With the Origination Process?" The M Report (July 13, 2016), available at *http://www.themreport.com/news/origination/07-l3-2016/how-satisfied-are-borrowers-with-the-origination-process*; "STRATMOR: TRID Is Boosting Customer Satisfaction", March 29, 2016, available at *http://www.mortgageorb.com/stratmor-trid-is-boosting-customer-satisfaction*; "New ClosingCorp Survey Gauges Early Consumer Reaction to New Real Estate/Mortgage Rules", *Businesswire* (March 15, 2016), available at *http://www.businesswire.com/news/home/20160315005228/en/ClosingCorp-Survey-Gauges-Early-Consumer-Reaction-Real*; Trey Garrison, "Here's How TRID Is Changing the Mortgage Industry", *Housingwire* (October 12, 2015), available at *http://www.housingwire.com/articles/print/35319-heres-how-trid-is-changing-the-mortgage-industry*.

though the creditor has no intent to discriminate and the practice appears neutral on its face, 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.

In accordance with the foregoing authorities, as the Consumer Bureau exercises our supervisory and enforcement authority, we consider evidence of disparate impact as one method of proving lending discrimination under the ECOA and Regulation B.

In addition, since the Consumer Bureau did not exist when the Federal law enforcement and prudential regulatory agencies issued the policy statement in 1994, the Bureau, in 2012, publicly reaffirmed that the legal doctrine of disparate impact remains applicable as the Bureau exercises its supervision and enforcement authority to enforce compliance with the ECOA and Regulation B. The Consumer Bureau's ECOA Examination Procedures, Mortgage Origination Examination Procedures, and Mortgage Servicing Examination Procedures also adopt and reference the Interagency Fair Lending Examination Procedures, including those designed to identify evidence of disparate impact.

Q.4. A series of class actions were filed against auto finance companies in the 1990s and 2000s, which alleged that dealer markup resulted in unfair pricing for minority borrowers. The CFPB has extensively studied arbitration clauses in consumer financial contracts. What did you learn, if anything, about arbitration clauses in auto finance contracts? How might this impact the ability of consumers to file class actions in the future?

A.4. The Consumer Bureau's Arbitration Study reviewed arbitration filings in the years 2010, 2011, and 2012 relating to a number of consumer financial products and services before the American Arbitration Association. This analysis found 293 individual filings before the American Arbitration Association regarding what the Arbitration Study describes as "auto purchase loans." [14] The Arbitration Study did not study the prevalence of arbitration provisions in automobile finance contracts. The Consumer Bureau's review of arbitration filings, however, found that that in addition to the 293 individual filings, a class arbitration dispute against an auto dealer and lender alleging various deceptive practices was one of the two class arbitration disputes across the six product markets studied. [15] The claimants specified that they sought damages in excess of $1 million. Although the case was filed in 2010, the AAA case file did

[14] The Study's count of auto purchase loans does not include disputes relating to automobile title loans. It also excluded disputes against auto dealers unless: (1) it was clear that the auto dealer was also the issuer of the consumer's auto purchase loan (erring on the side of overstating the number of disputes that focused on the automobile loans, as opposed to the automobiles being purchased); or (2) the consumer brought a claim relating to an auto purchase loan and only named the auto dealer as a respondent (suggesting that either the auto dealer was the lender or that the consumer potentially named the auto dealer in error, believing that the auto dealer was the lender); or (3) the consumer also named the lender as a defendant. We did not include in our case count claims against car dealers relating to "spot financing" or similar disputes that do not involve an actual auto purchase loan, as opposed to a representation that such financing would be forthcoming. We also did not include disputes about motorcycles or motorhomes. We use this classification of "auto purchase loans" only for the limited purposes of this report. It is not related to any other Bureau initiative, current or future, which may address similar loans.

[15] See Arbitration Study, Section 5, p. 86.

not contain any substantive records beyond the arbitration demand, the arbitration agreement, and the State court order on the respondent's successful motion to compel arbitration.[16]

In a separate study of class action settlements in Federal and selected State courts from the years 2008 through 2012, the Consumer Bureau found 18 class action settlements relating to auto purchase loans.[17] These 18 settlements led to over $202 million of cash relief to class members.[18] Although the Consumer Bureau did not explore the number of consumers who received payments in these 18 settlements, available information showed that the settlements included more than 560,000 class members.[19] Ten such settlements reported that they used automatic methods to distribute funds to consumers, rather than requiring "claims made" processes. Over 17,000 consumers in those ten settlements received automatic distributions.[20] Information about attorneys' fees was available in all 18 settlements, totaling approximately $9.5 million, or 5 percent of the total gross relief.[21] For the impact of arbitration provisions on consumers' ability to file class actions, some commenters have observed that arbitration clauses may be particularly targeted at class actions.[22] In the Consumer Bureau's review of class action litigation filings in Federal court and selected State courts from 2010, 2011, and 2012 companies moved to compel arbitration in 94 of 562 class action cases relating to the six consumer financial product markets reviewed.[23] 21 of those 94 motions to compel involved auto purchase loans.[24]

On July 10, 2017, the Consumer Bureau issued a final rule on arbitration agreements that will apply to agreements that are entered into on or after March 19, 2018. Companies subject to the final rule are prohibited from using a pre-dispute arbitration agreement to block consumer class actions in court and requires providers to insert language into their arbitration agreements reflecting this limitation. This final rule is based on the Bureau's findings—which are derived from the Study—that pre-dispute arbitration agreements are being widely used to prevent consumers from seeking relief from legal violations on a class basis, and that consumers rarely file individual lawsuits or arbitration cases to obtain such relief.

In addition, the Bureau's Final Rule includes several provisions extending coverage to certain automobile finance companies. The final rule's Comment 2(c)–1.ii clarifies that an automobile dealer that provides consumer credit is a covered person under Dodd–Frank section 1002(6)—and such a person's contracts may contain pre-dispute arbitration agreements as that term is defined in §1040.2(c). Yet an automobile dealer that is excluded from the Bureau's rulemaking authority in circumstances described by Dodd–Frank section 1029 would not be required to comply with the re-

[16] Arbitration Study, Section 5, p. 20.
[17] Arbitration Study, Section 8, p. 12 table 1.
[18] Arbitration Study, Section 8, p. 25 table 8.
[19] Arbitration Study, Section 8, p. 17 table 4
[20] Arbitration Study, Section 8, p. 22 table 6.
[21] Arbitration Study, Section 8, p. 33 table 10.
[22] See, e.g., Thomas B. Hudson, "Arbitration: Use It or Lose It, Spot Delivery" (July 2014); Arbitration Study, Section 6, p. 54 n.91.
[23] Arbitration Study, Section 6, p. 57.
[24] See id.

quirements in §1040.4, because those requirements apply only to providers, and such automobile dealers, while they are covered persons, are excluded by §1040.3(b)(6) and therefore are not providers under §1040.2(d). The requirements in §1040.4 would apply, however, to the use of the automobile dealer's pre-dispute arbitration agreement by a different person that meets the definition of provider, such as a servicer, or purchaser or acquirer of the automobile loan, where the agreement was entered into after the compliance date.

Section 1040.3(a)(2) extends coverage to brokering or extending consumer automobile leases as defined in 12 CFR 1090.108, which applies to leases of automobiles with an initial term of at least 90 days and either of the following two characteristics: (1) The lease is the "functional equivalent" of an automobile purchase finance arrangement and is on a "non-operating basis" within the meaning of Dodd–Frank section 1002(15)(A)(ii); or (2) the lease qualifies as a "full-payout lease and a net lease" within the meaning of the Bureau's Larger Participant rulemaking for the automobile finance market.[868] The Bureau believes that the final rule should reach brokering or extending consumer automobile leases, consistent with the definition of that activity in the Bureau's larger participant rulemaking for the automobile finance market. The Bureau had explained in that prior rulemaking that, from the perspective of the consumer, many automobile leases function similarly to financing for automobile purchase transactions (which generally would have been covered by proposed §1040.3(a)(1)) and have a similar impact on the consumer and his or her well-being.

Q.5. The OCC recently came out with a white paper detailing its approach to FinTech and financial innovation with regard to the institutions it regulates. Can you describe the CFPB's approach to FinTech companies? How will the CFPB work with the other prudential regulators to coordinate supervision of FinTech activities?

A.5. The Consumer Bureau recognizes that evolving technologies are driving constant change in today's financial marketplace. The developments in consumer financial products and services can present both significant benefits and potential risks to consumers. As part of the Consumer Bureau's mission to facilitate consumer access to innovative products and services, the Bureau launched its Project Catalyst initiative in 2012.

Through Project Catalyst, the Consumer Bureau engages and collaborates with companies and other persons pursuing consumer-friendly financial innovations, including established financial institutions as well as newer FinTech companies. The Consumer Bureau was the only Federal agency explicitly mentioned in the Office of the Comptroller of the Currency's (OCC) white paper on the subject of regulatory collaboration. Bureau staff working on Project Catalyst have an open line of communication with OCC staff working on the OCC's Responsible Innovation initiative. We expect ongoing collaboration and coordination between the two teams in the future.

The Consumer Bureau also coordinates closely with Federal prudential and State bank and nonbank regulators regarding a broad array of supervisory matters, including FinTech activities as appropriate. Representatives of the Consumer Bureau and the Federal prudential regulators meet regularly to coordinate supervisory and other activities, and supervisory staff at the Consumer Bureau and the Federal prudential regulators confer on a routine basis to discuss examinations and other supervisory matters regarding particular institutions. The Consumer Bureau also participates in the Federal Financial Institutions Examination Council (FFIEC) and coordinates further with the Federal prudential regulators through the FFIEC.

Q.6. Nearly 1 in 4 Americans either does not have access to a checking account or has an account but may rely on alternative financial services. Some of those who cannot get a bank account cannot do so because they are reported to financial institutions by specialty consumer reporting agencies. What work have you done to ensure that these specialty consumer reporting agencies are reporting accurate information to financial institutions? More generally, can you detail what work the CFPB has done to increase individuals' access to the financial system, particularly checking and savings accounts, and what plans you have for the upcoming year on this topic?

A.6. The Consumer Bureau is using its supervisory authority to review the accuracy of information furnished to and reported by Nationwide Specialty Consumer Reporting Agencies (NSCRAs) to financial institutions.

As an example, our reviews have found that one or more NSCRAs had internal inconsistencies in linking certain identifying information (e.g., Social Security numbers and last names) to consumer records associated with negative involuntary account closures, such as checking account closures for fraud or account abuse. These inconsistencies in some cases resulted in incorrect information being placed in consumers' files. Based on the weaknesses identified, Supervision directed one or more NSCRAs to develop and implement internal processes to monitor, detect, and prevent the association of account closures to incorrect consumer profiles, and to notify affected consumers.

Our reviews have also focused on NSCRAs' oversight of furnishing practices. Examiners have found that one or more NSCRAs had weaknesses in their systems and processes for credentialing of financial institutions before they were allowed to supply consumer information to the NSCRAs. Based on these findings, Supervision directed one or more NSCRA to strengthen its oversight and establish documented policies and procedures for the timely tracking of credentialing and re-credentialing of financial institutions.

The Consumer Bureau has also conducted reviews at financial institutions to assess compliance with furnisher obligations under the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V. The reviews focused on entities furnishing information (furnishers) to NSCRAs that specialize in reporting in connection with deposit accounts. Based on supervisory findings, the CFPB issued a bulletin in February 2016 that emphasized the obligation of furnishers under Regulation V to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to Consumer Reporting Agencies (CRAs).[25]

Examinations have also found issues with how certain furnishers verify data through automated systems and with one or more institutions updating of deposit account information. For example, the Consumer Bureau found that one or more financial institution failed to correct and update the account information they had furnished to NSCRAs and/or did not institute reasonable policies and procedures regarding accuracy, including prompt updating of outdated information. The Consumer Bureau has also taken enforcement action against a furnisher for failures related to the lack of proper processes necessary to report accurate information to the NSCRAs concerning checking account application details.[26]

In October of 2014, the Consumer Bureau held a public forum on Access to Checking Accounts to discuss how financial institutions screen applicants for consumer checking accounts and to generate recommendations for improving consumer access to lower-risk accounts, consumer financial safety, and institutional risk mitigation.

In February 2016, the Consumer Bureau took a number of additional steps to improve checking account access. Specifically, the Bureau sent a letter to the Nation's top 25 retail banking companies urging them to do more to create or promote deposit accounts designed to meet consumers' financial needs.[27] The Consumer Bureau urges banks and credit unions to offer consumers accounts that help them manage their spending and maintain their accounts in good standing. In the letter, the Consumer Bureau encouraged banks and credit unions to offer products that are designed to prevent overdrafts and overdraft fees. The Consumer Bureau also urged banks and credit unions in the letter to feature such products prominently in their marketing efforts, their online and in-store checking account menus, and during sales consultations.

Supervision examinations also found that furnisher(s) of deposit account information had enterprise-wide FCRA policies, but the policies were inadequate to address furnishing activity for consumer deposit accounts. The furnishers failed to establish, implement, and maintain reasonable written policies and procedures consistent with Regulation V regarding the accuracy and integrity of consumer deposit account information furnished. Additionally, they had policies for furnishing consumer deposit account information that were overly broad and not supplemented with sufficiently-detailed operating procedures and guidance for consumer deposit-related furnishing. They had procedures that did not address the requirement to notify a consumer of the results of a dispute investigation; and had procedures that failed to address the requirement to update and correct inaccurate consumer deposit information. The

[25] See CFPB Compliance Bulletin 2016-01 at: *http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-fumisher-accuracy-obligations.pdf.*

[26] See the Bureau's press release on the action against JPMorgan Chase for failures relating to check account screening information at: *https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-jpmorgan-chase-failures-related-checking-account-screening-information/.*

[27] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau Takes Steps To Improve Checking Account Access" (February 3, 2016), available at *http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-steps-to-improve-checking-account-access/.*

Consumer Bureau directed the furnisher(s) to correct these deficiencies.[28]

In February 2016, the Consumer Bureau also released resources to encourage consumers to shop for lower-risk checking and prepaid accounts that will not authorize them to exceed their account balances. Additionally, the Consumer Bureau released a consumer advisory and a series of guides to help people know what to do if they have been denied a deposit account or have an involuntary account closure.[29] The advisory tells consumers how to obtain a copy of their checking account history, dispute items with the consumer reporting company, dispute items with a bank or credit union that reported inaccurate information, and shop around for lower-risk products.

In addition, in February 2016, the Consumer Bureau held a field event in Louisville, KY, that featured remarks from Director Cordray and panels of industry and consumer interest organization representatives to discuss the consequences consumers face without a checking account or upon losing a checking account and several initiatives that have helped consumers enter or regain entry into the banking system.

The Consumer Bureau's supervision of financial institutions and NSCRAs is ongoing. The Bureau will continue to monitor consumer access of the banking system, including the availability of lower-risk accounts in the marketplace and the challenges faced by consumers.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TOOMEY FROM RICHARD CORDRAY

Q.1. The CFPB's Fiscal Year 2015 financial report notes that the Bureau spent $5 million to advertise via digital media.

Was this the total advertising budget for the year? If not, how much did the CFPB spend on advertising?

A.1. The $5 million reference in the Fiscal Year 2015 (FY15) financial report refers to funding for a contractor to provide informational messages via digital media related to the CFPB's free online financial education tools and resources. The Consumer Bureau obligated a total of $7 .9 million in FY 2015 for the category of goods/services identified as Support-Management Advertising contracts.

Q.2. What are the CFPB's strategy and goals for advertising?

A.2. Dodd–Frank Wall Street Reform and Consumer Protection Act requires the Consumer Bureau to provide timely and understandable financial information to consumers.[1] To fulfill our legislative mandate, the Consumer Bureau has focused on a strategy to make more consumers aware of the Bureau as a place to turn to for information and assistance in living their financial lives. Directing consumers to use our tools and resources fulfills our statutory edu-

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[28] CFPB Supervisory Highlight: Spring 2017 available at: *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703__cfpb__Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf*.

[29] Consumer Financial Protection Bureau, "Guides To Help You Open and Manage Your Checking Account" (February 3, 2016), available at *http://www.consumerfinance.gov/about-us/blog/__guides-to-help-you-open-and-manage-your-checking-account/*.

[1] Dodd–Frank Act Section 1021(b)(1).

cational mandates and strategic goals and creates real and measurable beneficial outcomes for American consumers.

Q.3. Does the CFPB advertise on specific websites, target specific consumers through tools such as AdWords, or pursue some other strategy? If advertising is targeted, specifically what consumer groups are being targeted?

A.3. The Consumer Bureau focuses its marketing strategy on consumers who are currently seeking or are most likely to be seeking information regarding consumer financial decision making for which we have tools and resources available. These tools include: Paying for College, Owning a Home, and more than 1,000 frequently asked financial questions available on the Ask CFPB site.

Q.4. In 2013 the CFPB issued an Advance Notice of Proposed Rulemaking for debt collection practices, and the "Fall 2015 rulemaking agenda" notes that the CFPB continues to conduct research on debt collection.

What steps has the CFPB taken to assess how a debt collection rule could reduce access to credit? Has the CFPB solicited input from creditor groups, such as manufacturers and retailers, about their views on how a rule could affect the continued availability of credit?

Does the CFPB expect to issue a proposed rule soon? When should we expect a finalized rule?

A.4 The Consumer Bureau generally recognizes that regulations that impose costs on the credit system can have an adverse effect on consumer access to credit. Section 1022(b)(2) of the Dodd–Frank Wall Street Reform and Consumer Protection Act expressly requires the Bureau, in prescribing a rule under the Federal consumer financial laws (such as the Fair Debt Collection Practices Act), to consider, among other things, "the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule." Consistent with the Dodd–Frank Wall Street Reform and Consumer Protection Act, the Consumer Bureau routinely considers the effects of its regulations on access to credit during its rulemaking process.

The Consumer Bureau has issued an Advanced Notice of Proposed Rulemaking to commence a debt collection rulemaking proceeding. The Consumer Bureau is developing the factual information necessary to assess the costs of possible debt collection regulations and their effect on consumer access to credit. The Consumer Bureau conducted a qualitative survey of debt collection firms. The study included a written questionnaire sent to 60 debt collection firms and then phone interviews with more than 30 of the original 60 debt collection firms and vendors to the collections industry.[2] The objective of the study is to obtain a baseline understanding of the operational costs of debt collection firms, and the Consumer Bureau anticipates using the results of the study to better understand the likely impact on the debt collection industry of any potential regulations. This study is in addition to Consumer Bureau

[2] From the Bureau's "Study of Third-Party Debt Collection Operations", at: *https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/20160727cfpb__Third__Party__Debt__Collection__Operations__Study.pdf.*

meetings with key industry stakeholders to discuss their current costs as well as their concerns about changes in costs that might be associated with our contemplated debt collection rulemaking, market changes, and/or changes attributed to other regulations. These meetings have included creditor groups to better understand how the regulation of third-party debt collectors could affect their ability to recover unpaid debts and to extend credit.

The next step in the debt collection rulemaking was the convening of a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The SBREFA process provides a mechanism for the Bureau to obtain input directly from small business representatives early in the rulemaking process. At a SBREFA panel meeting, the Bureau seeks information from small business representatives about the potential economic impacts of complying with possible regulatory options, as well as regulatory alternatives that would achieve the Bureau's objectives while minimizing the costs imposed on small entities. The Bureau released an Outline of Proposals under Consideration and Alternatives Considered in July 2016 in advance of convening a SBREFA panel. The panel met on August 25, 2016, and focused on companies that are considered "debt collectors" under the Fair Debt Collection Practices Act.

The review panel issues a report on the input received from small businesses during the panel process. If the Bureau proposes a rule, the panel's final report will be placed in the public rulemaking record. The Consumer Bureau discusses and considers the panel's report and the comments and advice provided by small businesses when it prepares a proposed rule.

The Consumer Bureau's proposed debt collection rules will be put out for public comment, which will provide ample opportunity for stakeholders (including creditors) to provide the Consumer Bureau with information about their potential cost and its effect on consumer access to credit. This information will be very valuable to the Consumer Bureau in developing final debt collection rules that protect consumers without imposing unnecessary or undue costs on debt collectors or the credit system.

Q.5. During the hearing, you stated that the CFPB has jurisdiction over small business lending under the Equal Credit Opportunity Act and Section 1071 of Dodd–Frank. In the Policy Priorities Over the Next Two Years document, the CFPB indicated that it is exploring the establishment of a complaint intake system for small business lending. Does the CFPB plan to publish these complaints as it does with the Consumer Complaint Database? Will the CFPB only accept small business lending complaints related to ECOA? If not, what other types of complaints does the CFPB intend to accept and potentially publish?

A.5. The Equal Credit Opportunity Act (ECOA) and Regulation B, which protect applicants from discrimination in credit transactions, apply to both consumer and business-purpose credit. Collecting these complaints would assist the Consumer Bureau's ongoing supervision and enforcement work. Currently, the Consumer Bureau's Office of Consumer Response is exploring the feasibility of accepting small-business-lending discrimination complaints and will need to complete that work before assessing publication.

Q.6. At the March 16 House hearing, you stated that "[t]here are areas where the line between commercial and consumer lending is blurry," and indicated that you would like the CFPB to protect small businesses. Please provide a comprehensive list of small business lending issues that you believe fall within the CFPB's authority.

A.6. While most of the lending laws Consumer Bureau enforces apply to consumer credit, the Consumer Bureau does have certain authority related to business-purpose credit transactions. The Equal Credit Opportunity Act (ECOA) and Regulation B, which protect applicants from discrimination in credit transactions, apply to both consumer and business-purpose credit. ECOA also has requirements related to, among other things, providing timely notice to applicants of actions taken in connection with their applications for credit, statements of reasons for adverse action concerning an application, and copies of appraisals and other valuations for applications related to certain dwelling-secured loans.

Section 1071 of the Dodd–Frank Wall Street Reform and Consumer Protection Act amended ECOA to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau is in the early stages with respect to implementing Section 1071, and is currently focused on outreach and research to further develop its understanding of the small business lending market, including the institutions, credit products, data systems, underwriting approaches, distribution channels, and types of applicants in that market. The Bureau intends to work closely with industry leaders, community advocates, Government agencies, and other stakeholders in the rulemaking process. We issued a Request for Information (RFI) on May 10, 2017. We have asked for comments by September 14, 2017. Information submitted as part of this RPI will be instrumental as we move forward in developing informed policy decisions.

Our Office of Fair Lending has added small business lending to its priorities to address fair lending risks in that market. Small businesses are a backbone of our Nation's economy and access to credit is critical to their operation and growth. Unlike large businesses, many small businesses are sole proprietorships where the owner's personal credit—and potentially that of family and friends—may be on the line. With so much at stake, and in light of the heightened fair lending risk acknowledged by the enactment of Section 1071 of the Dodd–Frank Act, we will continue to focus on small business lending in our Fair Lending work going forward.

Some business purpose dwelling-secured loans are also part of the reporting requirements under the Home Mortgage Disclosure Act (HMDA) and Regulation C, such as certain loans related to multifamily lending and investment properties. Multifamily and rental housing has always been an essential component of the Nation's housing stock. In the wake of the housing crisis, multifamily and rental housing has taken on an increasingly important role in communities, as families have turned to rental housing for a variety of reasons, and the HMDA data can provide important information about that market to Government, industry, and community stakeholders.

In addition, provisions of other statutes that the Consumer Bureau enforces, such as certain provisions related to credit cards under the Truth in Lending Act and Regulation Z, are not limited to consumer lending and may be implicated in small business-purpose lending transactions. As some of our rules, including Regulation Z, make clear, there is ordinarily no precise test for what constitutes credit offered or extended for personal, family, or household purposes. However, many of the Consumer Bureau's rules provide illustrative examples and interpretations for making such determinations across a range of products, including in some cases noting factors that should be considered. Moreover, in some instances credit extended primarily for consumer purposes may occasionally be used for business purposes. Small business lending transactions may therefore implicate a range of the Consumer Bureau's authorities.

Q.7. In a May 2013 memo, Patrice Ficklin acknowledged there was a "serious risk" that releasing the CFPB's proxy methodology would "provid[e] fodder to defendants to show how our methods are inferior to other proprietary proxies" and "if we choose not to publish, we will be more likely to consult an outside expert for litigation purposes and our internal methodological deliberations will not be discoverable." In the same memo, Ficklin noted that "out of 100 applicants that are identified by the proxy methodology as African Americans, only 54 of them actually are African Americans according to HMDA data."

Why did the CFPB pursue enforcement action based on a methodology that may be flawed? Wouldn't an opportunity for public notice and comment have improved the CFPB's methodology and reduced doubts about its potential flaws?

A.7. The statistics you quote in the premise of your question are not representative of analysis conducted by the Bureau. The memo you reference is a pre-decisional draft document that did not represent the Consumer Bureau's final analysis.

The Consumer Bureau has been transparent about the details of the proxy methodology used in its fair lending analysis, including the risks and limitations. On September 17, 2014, the Consumer Bureau published a white paper, Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity, that details the Bayesian Improved Surname Geocoding (BISG) methodology the Bureau uses to calculate the probability that an individual is of a specific race or ethnicity using publicly available information regarding surname and geographic location. [3]

In choosing its methodology, as part of a robust deliberative process, the Consumer Bureau did careful analysis of other available methods based on publicly available data, and determined that this

[3] Available at: *http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.*

proxy methodology was the method best suited to accurately estimate the full scope of consumer harm.[4]

As stated in our white paper, the Consumer Bureau is committed to continuing our dialogue with other Federal agencies, lenders, advocates, and researchers regarding the Consumer Bureau's methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. The Consumer Bureau expects the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance.

Q.8. From 2013 to 2014, the Home Mortgage Disclosure Act (HMDA) data reveal a clear decline in manufactured home loans, raising concerns that the CFPB's Home Ownership and Equity Protection Act (HOEPA) rules may be constraining lending in this market. In comparison, overall mortgage loan data show a year-over-year increase during the same time period. Is the CFPB concerned that its rule may be constraining access to credit, particularly in rural and low-income communities? What actions will the CFPB take to ensure that access to financing for the purchase of manufactured housing remains readily available to consumers?

A.8. The HMDA data show similar trends in originations for manufactured housing and site-built homes. Total originations fell between 2013 and 2014 overall as well as for manufactured homes specifically. The HMDA data show an increase in home purchase loans for manufactured housing from 2013 to 2014 from 73,820 to 75,826 and a similar trend in home purchase loans for site-built homes. The decline in total originations reflects the high level of refinancing in 2013 for both manufactured homes and site-built homes.[5] The Consumer Bureau does not believe the HMDA data on home purchase loans between 2013 and 2014 necessarily indicate that manufactured housing lending is constrained compared with site-built home lending. As the Consumer Bureau stated in its 2014 white paper on manufactured housing, it continues to monitor the effect of its rules on the manufactured housing industry and on consumers who purchase or seek to purchase manufactured homes.[6] As part of this ongoing monitoring, the Consumer Bureau will continue to engage with stakeholders and will encourage others to build greater knowledge of the manufactured housing market, the consumers in that market, and the differences between the site-built and manufactured housing markets.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HELLER FROM RICHARD CORDRAY

Q.1. In February, during Federal Reserve Chair Yellen's testimony in the Senate Committee on Banking, Housing, and Urban Affairs, she told me she believes that there should be some effort to ensure

[4] Available at: *http://files.consumerfinance.gov/f/documents/201604_cfpb_Fair_Lending_Report_Final.pdf/*.

[5] See Neil Bhutta, Jack Popper, and Daniel R. Ringo, Bd. of Governors of the Fed. Reserve Sys., 101 Fed. Reserve Bulletin 4, The 2014 Home Mortgage Disclosure Data, at 2, 5 (Nov. 2015), available at *http://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf*.

[6] See CFPB, Manufactured-Housing Consumer Finance in the United States (Sept. 2014), available at *http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf*.

that regulations meant for big banks are not burdening community lenders. Do you share that same viewpoint?

A.1. Section 1022 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) authorizes the Consumer Bureau to engage in rulemaking and issue orders and guidance to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. In doing so, Section 1022 requires that the Consumer Bureau consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access to consumer financial products and services to consumers. Section 1022 also requires the Consumer Bureau to consider the impact of a proposed rule on insured depository institutions and credit unions with total assets of $10 billion or less as well as the impact on consumers in rural areas. Moreover, Section 1022 gives the Consumer Bureau the authority to create exemptions from the Consumer Financial Protection Act of 2010 or rules issued under that Act for any class of covered persons, service providers, or consumer financial products or services if the Consumer Bureau determines an exemption is necessary or appropriate to carry out the purposes and objectives of the Consumer Financial Protection Act after taking into consideration a set of factors specified in the statute.

To date, the Consumer Bureau has sought to carefully calibrate its efforts to ensure consistency with respect to consumer financial protections across the financial services marketplace, while accounting for the different business models and classes of financial institutions. For example, as part of the Consumer Bureau's commitment to achieving tailored and effective regulations, the Bureau has taken the following actions for different models and classes of institutions:

Mortgage Origination Rules (Title XIV)

- *Expanded safe harbor for small creditors.* A small creditor has a broader safe harbor for its Qualified Mortgage (QM) loans than non-small creditors. The Consumer Bureau's rules provide a safe harbor for QMs with annual percentage rate (APR) spreads over Average Prime Offer Rate (APOR) up to 350 basis points, whereas non-small creditors have a safe harbor for spreads up to 150 basis points. The Consumer Bureau's rules also allow a small creditor to make QMs with debt-to-income ratios that exceed the otherwise applicable 43 percent cap. (Small creditors must hold these loans in portfolio for three years.)
- *Exempted small creditors in rural and underserved areas.* Small creditors that operate (or operated "predominantly" before implementation of the Helping Expand Lending Practices in Rural Communities Act in March 2016) in rural or underserved areas are exempt from requirements to establish escrow accounts for higher priced mortgage loans and from restrictions on offering QMs and Home Ownership and Equity Protection Act (HOEPA) loans ("high cost" mortgages as defined in the HOEPA) that have balloon payment features. QMs and HOEPA loans generally cannot have balloon payments.

- *Implemented a 2-year pause for small creditors.* The Consumer Bureau established a 2-year transition period (until January 10, 2016) allowing small creditors to make balloon-payment QMs and balloon-payment HOEPA loans regardless of whether they operated predominantly in rural or underserved areas, while the Consumer Bureau revisited and reconsidered the definition of "rural" for this purpose.
- *Expanded exemptions for creditors in rural and underserved areas.* In connection with other changes to amend the definitions of "small creditor" and "rural area," the Consumer Bureau published a final rule in October 2015 that extended this 2-year transition period from January 2016 until April 2016. The Bureau's final rule also provided a significant expansion of "rural," as well as an expansion of which entities can qualify as "small creditors." The Consumer Bureau's final rule took effect on January 1, 2016, before the 2-year transition period expired. In March 2016, the Consumer Bureau issued an interim final rule that implements the Helping Expand Lending Practices in Rural Communities Act, and makes these provisions available to small creditors that extend at least one covered transaction secured by property located in a rural or underserved area in the previous calendar year. The Bureau estimated that about 6,000 additional small creditors would be eligible as a result of this change.
- *Relaxed requirements for appraisals.* Small creditors have relaxed rules regarding conflict of interest in ordering appraisals and other valuations.

Mortgage Servicing Rules (Title XIV)

- *Exempted small servicers from providing periodic statements.* Small servicers are exempt from the Truth in Lending Act requirement to provide periodic statements.
- *Exempted small servicers from loss mitigation requirements.* Small servicers are exempt from all of the Real Estate Settlement Procedures Act provisions on policies and procedures; early intervention; continuity of contact; and loss mitigation, except that a small servicer may not file for foreclosure unless the borrower is more than 120 days delinquent on the mortgage. Small servicers may also not file for foreclosure (or move for a foreclosure judgment or order of sale, or conduct a foreclosure sale) if a borrower is performing under the terms of a loss mitigation agreement.
- *Excluded certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate from being counted toward the small servicer loan limit.* This allows servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

Home Mortgage Disclosure Act Rule (Reg C)

- *Exempted lower-volume depository institutions from Home Mortgage Disclosure Act reporting.* In October of 2015, the Consumer Bureau adopted a final rule revising Regulation C, which implements HMDA. HMDA and Regulation C, among other things, require covered mortgage lenders to report data concerning their mortgage lending activity. Changes to coverage in the final rule will reduce the number of banks, savings associations, and credit unions that are required to report HMDA data. The revisions will relieve about 22 percent of currently reporting depository institutions from the burden of reporting HMDA data. Also, by final rule issued in late August of 2017, the Consumer Bureau expanded the volume-based exemption from reporting of open-end lines of credit under HMDA for institutions with fewer than 500, instead of 100, annual originations in each of the two preceding years of such lines of credit. This expanded exemption applies for calendar years 2018 and 2019, during which the Consumer Bureau will consider whether to reexamine the appropriate volume level at which to set the exemption permanently.

- *Reduced HMDA error submission threshold for certain small entities.* New Federal Financial Examination Institution Council guidelines, of which the Consumer Bureau is a member, provide a more lenient 10 percent HMDA field error resubmission threshold (to determine whether the lender must resubmit a particular HMDA data field) for financial institutions with lower lending volumes, including many small institutions, for data collected beginning in 2018. Previously, all institutions were subject to the same error thresholds. The new guidelines make other burden-reducing changes that apply to all lenders, which may be particularly beneficial to small institutions.

Remittances Rule (Regulation E Subpart B)

- *Provided regulatory certainty for small entities under the Electronic Fund Transfer Act.* In the Bureau's rules implementing the Dodd–Frank Act's amendments to the Electronic Fund Transfer Act, regarding remittance transfers, the Bureau recognized that certain entities do not provide remittances in the normal course of their business and determined that the remittance requirements do not apply to transfers sent by entities that provide 100 or fewer remittances each year.

Small financial institutions play a vital role within many communities across the Nation, as well as within the economy. Their traditional model of relationship lending has been beneficial to many people in rural areas and small towns throughout the country. For these reasons, the Consumer Bureau attempts to ensure that rules and regulations are not burdensome to these smaller financial institutions.

Q.2. Please provide a list of all the regulations that the Consumer Financial Protection Bureau has finalized that included a full cost-benefit analysis study prior to implementation.

A.2. Section 1022 of the Dodd–Frank Wall Street Reform and Consumer Protection Act authorizes the Bureau to engage in rulemaking and issue orders and guidance to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. In doing so, Section 1022 requires that, when prescribing a rule under the Federal consumer financial laws, the Consumer Bureau consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access to consumer financial products and services to consumers. Section 1022 also requires the Consumer Bureau to consider the impact of a proposed rule on insured depository institutions and credit unions with total assets of $10 billion or less as well as the impact on consumers in rural areas. Moreover, Section 1022 gives the Consumer Bureau the authority to create exemptions from the Consumer Financial Protection Act of 2010 or rules issued under that Act for any class of covered persons, service providers, or consumer financial products or services if the Consumer Bureau determines an exemption is necessary or appropriate to carry out the purposes and objectives of the Consumer Financial Protection Act after taking into consideration a set of factors specified in the statute.

The Consumer Bureau's final rules that considered potential benefits, costs, and impacts under section 1022, as well as the dates these were rules published in the *Federal Register* are below:

1. *Alternative Mortgage Transaction Parity (Regulation D)*, July 22, 2011
2. *State Official Notification Rules*, July 28, 2011
3. *Rules of Practice for Adjudication Proceedings*, July 28, 2011
4. *Rules Relating to Investigations*, July 28, 2011
5. *Disclosure of Records and Information*, July 28, 2011
6. *Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (Regulation I)*, December, 16, 2011
7. *Fair Debt Collection Practices Act (Regulation F)*, December 16, 2011
8. *Mortgage Acts and Practices-Advertising (Regulation N); Mortgage Assistance Relief Services (Regulation O)*, December 16, 2011
9. *Home Mortgage Disclosure (Regulation C)*, December 19, 2011
10. *Consumer Leasing (Regulation M)*, December 19, 2011
11. *S.A.F.E. Mortgage Licensing Act (Regulations G and H)*, December 19, 2011
12. *Real Estate Settlement Procedures Act (Regulation X)*, December 20, 2011
13. *Equal Credit Opportunity (Regulation B)*, December 21, 2011
14. *Fair Credit Reporting (Regulation V)*, December 21, 2011
15. *Privacy of Consumer Financial Information (Regulation P)*, December 21, 2011
16. *Interstate Land Sales Registration Program (Regulations J, K, and L)*, December 21, 2011
17. *Truth in Savings (Regulation DD)*, December 21, 2011
18. *Truth in Lending (Regulation Z)*, December 22, 2011
19. *Electronic Fund Transfers (Regulation E)*, December 27, 2011
20. *Electronic Fund Transfers (Regulation E)*, February 7, 2012
21. *State Official Notification Rule*, June 29, 2012
22. *Rules Relating to Investigations*, June 29, 2012
23. *Rules of Practice for Adjudication Proceedings*, June 29, 2012

24. *Confidential Treatment of Privileged Information*, July 5, 2012
25. *Defining Larger Participants of the Consumer Reporting Market*, July 20, 2012
26. *Electronic Fund Transfers (Regulation E)*, August 20, 2012
27. *Defining Larger Participants of the Consumer Debt Collection Market*, October 31, 2012
28. *Delayed Implementation of Certain New Mortgage Disclosures*, November 23, 2012
29. *Procedure Relating to Rulemaking*, December 28, 2012
30. *Escrow Requirements Under the Truth in Lending Act (Regulation Z)*, January 22, 2013
31. *Electronic Fund Transfers (Regulation E) Temporary Delay of Effective Date*, January 29, 2013
32. *Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)*, January 30, 2013
33. *Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B)*, January 31, 2013
34. *High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)*, January 31, 2013
35. *Appraisals for Higher-Priced Mortgage Loans*, February 13, 2013
36. *Mortgage Servicing Final Rules Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)*, February 14, 2013
37. *Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X)*, February 14, 2013
38. *Disclosure of Records and Information*, February 15, 2013
39. *Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z)*, February 15, 2013
40. *Disclosures at Automated Teller Machines (Regulation E)*, March 26, 2013
41. *Truth in Lending (Regulation Z)*; Amendment relating to credit limits, March 28, 2013
42. *Truth in Lending Act (Regulation Z)*; Amendment relating to consumer ability to repay, May 3, 2013
43. *Consumer Financial Civil Penalty Fund Rule*, May 7, 2013
44. *Electronic Fund Transfers (Regulation E)*, May 22, 2013
45. *Amendments to the 2013 Escrows Final Rule Under the Truth in Lending Act (Regulation Z)*, May 23, 2013
46. *Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums*; Delay of Effective Date, May 31, 2013

47. *Ability-to-Repay and Qualified Mortgage Standards Exemptions Under the Truth in Lending Act (Regulation Z)*, June 12, 2013
48. *Procedural Rule To Establish Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination*, July 3, 2013
49. *Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, July 24, 2013
50. *Rules of Practice for Issuance of Temporary Cease-and-Desist Orders*, September 26, 2013
51. *Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)*, October 1, 2013
52. *Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, October 23, 2013
53. *Defining Larger Participants of the Student Loan Servicing Market*, December 6, 2013
54. *Appraisals for Higher-Priced Mortgage Loans*, December 26, 2013
55. *Rules of Practice for Issuance of Temporary Cease-and-Desist Orders*, June 18, 2014
56. *Electronic Fund Transfers (Regulation E)*; Amendments, September 18, 2014
57. *Defining Larger Participants of the International Money Transfer Market*, September 23, 2014
58. *Amendment to the Annual Privacy Notice Requirement Under the Gramm–Leach–Bliley Act (Regulation P)*, October 28, 2014
59. *Amendments to the 2013 Mortgage Rules Under the Truth in Lending Act (Regulation Z)*; November 3, 2014
60. *Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)*, February 19, 2015
61. *Submission of Credit Card Agreements Under the Truth in Lending Act (Regulation Z)*, April 17,2015
62. *Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service*, June 30, 2015
63. *2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments*; Delay of Effective Date, July 24, 2015
64. *Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z)*, October 2, 2015

65. *Home Mortgage Disclosure Act (Regulation C)*, October 28, 2015
66. *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, February 10, 2016
67. *Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule*, March 25, 2016
68. *Finalization of Interim Final Rules (Subject to Any Intervening Amendments) Under Consumer Financial Protection Laws*, April 28, 2016
69. *Amendments to Filing Requirements Under the Interstate Land Sales Full Disclosure Act (Regulations J and L)*, May 11, 2016
70. *Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, October 19, 2016
71. *Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)*, November 22, 2016
72. *Appraisalsfor Higher-Priced Mortgage Loans Exemption Threshold*, November 30, 2016
73. *Truth in Lending (Regulation Z)*, November 30, 2016
74. *Consumer Leasing (Regulation M)*, November 30, 2016
75. *Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)*; Delay of Effective Date, April 25, 2017
76. *Arbitration Agreements*, July 19, 2017
77. *Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)*, August 11, 2017

Q.3. Director Cordray, do you believe Americans are better served by having fewer banking and financial options to choose from?

A.3. No. Small financial institutions play a vital role within many communities across the Nation, as well as within the economy. Their traditional model of relationship lending has been beneficial to many people in rural areas and small towns throughout the country. For these reasons, the Consumer Bureau attempts to ensure that rules and regulations are not unduly burdensome to these smaller financial institutions.

Since the passage of the Dodd–Frank Act the share of the mortgage market serviced by credit unions and community banks has risen. That increase in participation, represented by these two groups since the Consumer Bureau's rules took effect, represents levels that are the highest they have been in 20 years. These institutions had low default rates during this time period and the Consumer Bureau tailored our rules to recognize the need to ensure balance and competition in the mortgage market.

Further, to support the implementation of and industry compliance with its rules, the Consumer Bureau has published a number of plain-language compliance guides summarizing certain rules, and it has actively engaged in discussions with industry about ways to achieve compliance.[1] The Consumer Bureau also continues its efforts to streamline, modernize, and harmonize financial regulations that it inherited from other agencies.

Q.4. Director Cordray, do you believe that the Consumer Financial Protection Bureau's collection of Americans' personally identifiable information is necessary for the Bureau's statutory mission?

A.4. The Consumer Bureau collects personally identifiable information when such information is necessary for the statutory mission. In general the information the Consumer Bureau collects for research purposes does not contain data that directly identifies individuals. We are interested in monitoring the behavior of the markets, not of particular individual consumers. The Consumer Bureau needs individual-level data to understand how consumer markets perform and proactively monitor consumer financial markets to make sure they are working for consumers. However, this data is generally de-identified so that any particular individual is not identified. A lesson from the 2008 financial crisis was that trends and problems can often be spotted in analyzing microdata (individual or institution level data) long before it can be seen in industry aggregates.

In addition, there are other purposes where identifying information is necessary to carry out our statutory mission such as enforcement actions and consumer complaints. Individual-level data enable the Consumer Bureau to successfully bring enforcement actions and provide relief to consumers. These actions have resulted in approximately $11.6 billion in redress to victims of illegal practices like mortgage servicing errors, discriminatory home and auto lending, and deceptive credit card practices. The handling of consumer complaints by the Consumer Bureau has helped individual consumers get responses and resolutions to their issues.

Q.5. Director Cordray, do you believe that the data the Bureau has collected on U.S. consumers is 100 percent secure from being breached by hackers and cybercriminals?

A.5. The Consumer Bureau works to ensure the best possible protection for the information in an environment where threats will continue to evolve. The Federal Information Security Modernization Act of 2014 states that agency heads are responsible for "providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction" of information assets. Further, agency officials are charged with providing "information security for the information and information systems that support the operations and assets under their control, including through . . . implementing policies and procedures to cost-effectively reduce risks to an acceptable level."

While no organization can ensure that the data they have is 100 percent secure from being breached by hackers and cybercriminals, the Bureau continues to appropriately manage risk to consumer data and has performed its duties responsibly over its relatively brief history. The guidance provided under FISMA requires that Federal agencies manage their cybersecurity risks proactively, take

[1] See *http://www.consumerfinance.gov/guidance/#compliance.*

appropriate action when a risk is unacceptable, and constantly exercise due diligence to increase their situational awareness of new cyber threats and vulnerabilities. The CFPB is executing on all of these activities on a continual basis to demonstrate due protection of consumer data.

The Consumer Bureau's commitment to data protection is demonstrated through a risk-based approach to implementing security controls and countermeasures, through our active and voluntary participation in Federal cybersecurity initiatives such as the Department of Homeland Security (DHS) Cyber Hygiene and Continuous Diagnostics and Mitigation programs, and in the focus and dedication we place on addressing recommendations from the Office of the Inspector General and other auditors. Between August 2016 and August 2017, DHS reported zero critical or high vulnerabilities for the CFPB under the Cyber Hygiene program. The Consumer Bureau also successfully closed 27 recommendations in FY 2016 and 25 in FY 2017 from independent audits of our technology management and information security programs. Our progress in establishing and executing on a risk-based information security program has been acknowledged by our Office of the Inspector General in the FY16 Annual FISMA Report to Congress, where the CFPB's maturity in each of the Cybersecurity Framework areas was rated as equal or higher than the Federal Government-wide median.

Like other Federal information security programs, the policies, principles and security controls that form the Consumer Bureau information security program are based on guidance and standards provided by the National Institute of Standards and Technology (NIST). We are continuously improving the processes and capabilities to safeguard all Consumer Bureau data, adapting to the rapidly changing risk landscape, and working to ensure that we are protecting consumer information.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SASSE FROM RICHARD CORDRAY

Q.1. I'd like to discuss the CFPB's upcoming proposed arbitration rule.

(a.) My understanding is the CFPB is expected to issue a proposed rule that would ban pre-dispute arbitration clauses that waive a consumer's right to a class action lawsuit and to further regulate individual arbitration. Is that correct?

(b.) At your April 7, 2016, Senate Banking Committee appearance, you said that the arbitration rule is expected to come out in the spring. Can you provide a more specific timeline?

(c.) Why does it insufficiently protect consumers to allow them to "opt-out" of an arbitration agreement with a class action waiver? Are consumers incapable of making the right decision for themselves regarding whether they would prefer vindicating their rights through arbitration or a class action waiver?

(d.) What percentage of companies do you expect will stop offering arbitration altogether under this new proposed regime? How does this conclusion impact the pending proposed rule?

(e.) Has the CFPB conducted a cost-benefit analysis of the pending proposed regime? If so, can you share the results of this study?

(f.) At your April 7, 2016, appearance before the Senate Banking Committee, you explain that the pending arbitration rule is important because arbitration agreements "tend[] to cut off people's remedies pretty much all together . . . because it bans their ability to . . . bring group claims so that financial institutions who harm on a broad basis cannot be held accountable." In other contexts, you have spoken of the efficacy of the CFPB's enforcement actions to hold financial institutions accountable for their actions. Are the CFPB's enforcement actions insufficient in this context? If so, why?

(g.) Has the CFPB studied the extent to which the threat of class action lawsuits changes firm behavior to better comply with consumer laws? If so, please share the results of that study.

(h.) Does the CFPB believe there is a risk that encouraging class action lawsuits actually encourages "frivolous" lawsuits that companies settle instead of challenge, given the costs associated with going to court in a class action lawsuit? How does this possibility impact the degree to which the CFPB believes that class action lawsuits encourage firms to comply with the rule of law, instead of merely imposing unnecessary costs on companies whose actions should not have been punished?

(i.) If the CFPB found that the class action lawsuits do not change firm behavior in a meaningful way, how would that change the CFPB's pending arbitration rule?

(j.) Please describe the extent to which the CFPB consulted with any advocacy groups describing themselves as representing plaintiff attorneys during the development of the pending proposed rule.

A.1. (a.) On May 5, 2016, the Consumer Bureau released a Notice of Proposed Rulemaking regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration.

After a 90-day comment period that ended on August 22, 2016, the Consumer Bureau reviewed and considered the 110,000 comments it received in response to the Notice of Proposed Rulemaking in accordance with its obligations for notice-and-comment rulemaking.

On July 19, 2017, the Consumer Bureau published in the *Federal Register* the Final Rule regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration. In the Final Rule, the Consumer Bureau finalized the proposed rules in the Notice of Proposed Rulemaking, with adjustments made to respond to the concerns of stakeholders expressed in the comments they made during the notice-and-comment process.

The Final Rule imposes two sets of restrictions on the use of predispute arbitration agreements by providers offering or providing consumer financial products and services that are covered by the Final Rule (referred to herein as providers). First, it prohibits providers from using a pre-dispute arbitration agreement to block consumer class actions in court and it requires providers to insert language into their arbitration agreements reflecting this limitation. The Consumer Bureau bases its findings on the Arbitration Study as well as the Consumer Bureau's further analysis. These include findings in support of the final rule that pre-dispute arbitration agreements are being widely used to prevent consumers from seeking relief from legal violations on a class basis, and that consumers rarely file individual lawsuits or arbitration cases to obtain such relief.

Second, the Final Rule does not prohibit providers from maintaining arbitration agreements with their customers, but it does require covered financial services providers that continue to use them to submit certain records with appropriate redactions, relating to arbitral proceedings to the Consumer Bureau. The Consumer Bureau's Final Rule also provides for the publication of this redacted information on its website, to provide greater transparency into the arbitration of consumer disputes. The Consumer Bureau also will use this information to continue monitoring arbitral proceedings to determine whether there are developments that raise consumer protection concerns that may warrant further Consumer Bureau action. The Final Rule applies to agreements entered into by providers after March 19, 2018, the compliance date of the rule. [1]

(b.) On May 5, 2016, the Consumer Bureau released a Notice of Proposed Rulemaking regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration. July 19, 2017, the Consumer Bureau published in the *Federal Register* a Final Rule regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration.

(c.) In the Arbitration Study, the Consumer Bureau learned that most consumers were unaware of whether their contracts contained arbitration agreements. The Arbitration Study found that more than 75 percent of credit card consumers surveyed did not know whether they were subject to an arbitration clause, and fewer than 7 percent of those covered by arbitration clauses realize that those clauses restrict their ability to sue in court. Even fewer were aware of whether the contracts permitted them to opt out of their arbitration agreements. While the Arbitration Study found provisions permitting consumers to opt out of arbitration were not uncommon, very few consumers in the telephonic survey conducted were aware of the opt-out provisions, far fewer than 1 percent of respondents believed that they had been given an opportunity to opt-out of the arbitration agreements.

(d.) The Consumer Bureau received feedback from industry groups, before the issuance of the Notice of Proposed Rulemaking (for instance, during the SBREFA panel), that a rule that prohibited the use of class action waivers in arbitration agreements would likely cause some or many providers of consumer financial products and services to eliminate their arbitration agreements completely. The Consumer Bureau also received comments in response to its Notice of Proposed Rulemaking from some industry groups and providers indicating they intend to drop arbitration clauses altogether if the proposed rule is adopted. The Consumer Bureau took such feedback into account in promulgating its Final Rule. In its

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[1] The Final Rule explains how the rule applies to various types of contractual relationships. See 80 *FR* 33325-58 (section by section analysis of 12 CFR 1040.3), 33428-29 (text of 12 CFR 1040.3), 33431-32 (official commentary for 12 CFR 1040.3), The Bureau also adopted a temporary exception for pre-packaged general-purpose reloadable prepaid card agreements under 12 CFR 1040.5(b). 80 *FR* 33388-90 (section by section analysis of 12 CFR 1040.S(b)), 33430 (text of 12 CFR 1040.S(b)), 33434 (official commentary to 12 CFR 1040.S(b)).

Final Rule, the Bureau acknowledged that providers may choose to drop arbitration agreements altogether.

As set out in final rule, the Bureau believes that, even if providers do remove their arbitration agreements, harm to consumers would be negligible because so few consumers pursue arbitration today. The Study showed that very few individual consumers filed claims in arbitration about consumer financial products; as noted, there were just over 600 arbitration filings per year in the six product markets studied and just over 400 of those were filed by consumers. By contrast, more than 60 million consumers per year were eligible for either cash or in-kind relief from class actions in the 5-year period covered by the Study. Indeed, more than 34 million of these consumers obtained cash relief over 5 years studied, or more than six million per year. Thus, the number of consumers who sought relief in arbitration pales in comparison to the number who actually obtained relief through class actions. The number of consumers who sought relief in arbitration also pales in comparison to the benefits to consumers from the deterrent effect of class actions, discussed in Part VI.C.1 of the Final Rule.

In any event, even if consumers do not have access to arbitration for individual claims those claims still can be filed in court, including small claims court. Consumers would not be left without a forum to prosecute their individual claims. Given the extremely low number of consumer-filed AAA and JAMS arbitrations, the Bureau believes that the magnitude of consumer benefit, if any, of individual arbitration over individual litigation would need to be implausibly large for the elimination of some, or even all, arbitration agreements to make a noticeable difference to consumers in the aggregate.

Therefore, the Bureau believes that preserving consumers' right to participate in a class action is for the protection of consumers even if providers will no longer include arbitration agreements in their consumer contracts.

(e.) The Bureau conducted a cost-benefit analysis, as set out in the Notice of Proposed Rulemaking and the Final Rule. Under this analysis, the Consumer Bureau's class action rule would benefit consumers in two main ways. First, consumers will benefit from increased legal compliance by providers. The Consumer Bureau believes that, because more providers will face class action liability for violations of law they commit, they will increase their compliance with the law to reduce the risk of facing a class action—resulting in less consumer harm. The Consumer Bureau is not aware of, and commenters did not provide, reliable methods to quantify these benefits. Second, consumers will benefit from the relief provided in the class action settlements that will now occur because providers will no longer be able to use an arbitration agreement to block class actions. This relief will include both monetary relief and changes in business practices. The Consumer Bureau estimates monetary relief to be $342 million per year for additional Federal class settlements; the Consumer Bureau lacks the information needed to quantify the relief in State court settlements and is not aware of reliable methods to quantify the benefits to consumers from changes in business practices.

The cost to consumers will mostly result from financial institutions "passing through" at least some portion of the increased costs they may face to consumers. In the Consumer Bureau's view, the extent to which this will occur cannot be reliably predicted, especially because research is mostly unavailable for the markets covered.

The Consumer Bureau believes that providers that will be exposed to class action liability as a result of the final rule will have an increased incentive to take steps to reduce their risk of facing a class action. The Consumer Bureau believes providers will generally respond to this incentive by increasing their attention to activities designed to reduce their class litigation exposure, such as reviewing policies and procedures, discontinuing risky products, and obtaining more comprehensive insurance coverage. The Consumer Bureau is unaware of, and commenters did not provide, reliable methods for quantifying these costs.

Providers will incur costs related to additional class litigation that will occur because they can no longer use arbitration agreements to block class actions (and because the compliance investments described above will not eliminate additional class litigation completely). The Consumer Bureau estimates that the Final Rule will result in about 103 additional class settlements per year in Federal court (no estimate is made for State court because of the above-mentioned lack of information). In those class settlements, the Consumer Bureau estimates that providers will pay an additional $342 million to consumers; an additional $66 million to plaintiffs' attorneys; and an additional $39 million for their own attorneys' fees and internal staff and management time for only these Federal court cases. The Consumer Bureau believes providers will enter a similar number of settlements in State court, with lower amounts at stake, although there is insufficient data to quantify these costs. Providers may also incur costs due to changes in business practices resulting from class settlements, but the Consumer Bureau is unaware of reliable methods for quantifying these costs. Further, the Bureau also estimates that providers will spend an additional $76 million per year in defense costs related to Federal class cases that do not settle.

Providers will incur costs related to changing their contracts to comply with the proposed rule. The Consumer Bureau believes that the average provider's expense to be about $400 per provider. Given the Consumer Bureau's estimate of about 48,000 providers that use arbitration agreements, the Final Rule's required contractual change will result in a one-time cost of $19 million. (The Consumer Bureau's estimate for the number of providers is different here than above because debt collectors would not incur costs related to changing agreements.)

Providers will incur costs related to submitting arbitration records to the Consumer Bureau. However, because arbitrations are so infrequent, the total cost to all providers is unlikely to reach $1 million per year.

(f.) The Consumer Bureau's enforcement actions are a powerful tool to address violations of the law and to make consumers whole. Since opening in July 2011, the Consumer Bureau has ordered that almost $12 billion be returned to 29 million consumers and imposed about $600 million in civil penalties. The Consumer Bureau has also shut down illegal practices, protecting other consumers from suffering similar financial harm in future years.

While the Consumer Bureau and other public enforcement agencies can act to remedy some consumer harms, public resources are limited. The various consumer finance markets consist of tens of thousands of companies interacting with hundreds of millions of consumers. The Consumer Bureau has limited resources and authority and cannot obtain relief for all violations of law that may occur. As the Arbitration Study has noted, there appears to be little overlap between enforcement actions by the Consumer Bureau, or other Federal or State regulators, and private class actions brought against companies. The Consumer Bureau therefore believes that consumers are better protected and markets are fairer when consumers can group their disputes together in private proceedings, typically through class proceedings in court.

(g.) The cost-benefit analysis in the Consumer Bureau's Final Rule, mentioned above in response to Question 1(f), sets out some of the Bureau's analysis of the impact of the proposed rule on provider compliance with consumer financial laws. Further, in the Consumer Bureau's 2012 Request for Information regarding the appropriate scope of the Arbitration Study, the Bureau sought "specific suggestions from the public to help identify the appropriate scope of the Study, as well as appropriate methods and sources of data for conducting the Study." [2] Despite raising concerns about the costs to defendants of class action litigation, no commentators writing in response to the Consumer Bureau's query identified a data set that would facilitate such an analysis. Nor did the Bureau receive such data in comments received after the Notice of Proposed Rulemaking.

In conducting the Arbitration Study, the Consumer Bureau decided not to compel the production of data reflecting firms' internal response to the risk of class actions because, among other concerns, the data may be considered privileged or sensitive information. A joint comment letter by several major trade associations stated that assessing the economic impacts of class actions on businesses might be difficult or impossible and suggested that the Consumer Bureau instead look at fees paid by firms to plaintiffs' lawyers as part of a class action settlement. In response, the Consumer Bureau obtained data from the public records on fee awards in all of the class action settlements that the Study analyzed and reported on these fees in the Arbitration Study.

The Arbitration Study also sheds considerable light on the benefits of a class action system as compared to the benefits most consumers derive from individual resolution of their disputes. The Arbitration Study found, for example, that few consumers of financial products and services seek relief individually, either through the arbitration process or in court. In its review of all American Arbitration Association consumer disputes from 2010 to 2012 relating to credit card, checking/debit account, payday loan, prepaid card, auto purchase loan, and student loan products, the Consumer Bureau found an average of over 600 arbitration proceedings a year

[2] RFI, supra note 4.

were filed for all six product markets combined, of which only over 400 were recorded as filed by consumers acting alone. Only 25 disputes a year involved consumers bringing affirmative claims for $1,000 or less than that amount.

In contrast, the Arbitration Study found that consumers derive substantial benefits from class action settlements. As noted, the Consumer Bureau identified a significant volume of consumer financial class settlements that were approved between 2008 and 2012.[3] In the more than 400 settlements that the Consumer Bureau analyzed, there were about 160 million total class members (excluding the TransUnion settlement noted above).[4] These settlements included cash relief, in-kind relief, and relief relating to fees and other expenses that companies paid. The total amount of gross relief in these settlements that is, aggregate amounts promised to be made available to or for the benefit of damages classes as a whole, calculated before any fees or other costs were deducted—was about $2.7 billion.[5] This estimate included cash relief of over $2 billion and in-kind relief of nearly $650 million.[6] About two-thirds of the settlements reporting some cash relief contained enough data for the Consumer Bureau to calculate the value of cash relief that, as of the last document in the case files, either had been or was scheduled to be paid to class members. Based on this subset of cases alone, the value of calculable cash payments to class members to that point was about $1.1 billion.[7] This excludes payment of in-kind relief and any valuation of injunctive relief.

The Consumer Bureau explained in the Final Rule its belief that based on the data from the Arbitration Study set out above, the class rule, by reversing the status quo, creating incentives for greater compliance, and restoring a means of broad relief and accountability, will be for the protection of consumers for several reasons.

The Consumer Bureau explained in the Final Rule its belief that the class rule is likely to induce greater compliance with the law by covered providers. When laws cannot be effectively enforced (in this instance because of the use of arbitration agreements), providers may be more likely to engage in potentially unlawful business practices, because they know that any potential costs from exposure to putative class action filings have been reduced if not effectively eliminated. Due to this reduction in legal exposure (and thus a reduction in risk), providers have less of an incentive to invest in compliance management in general, such as by investing in employee training with respect to compliance matters or by carefully monitoring changes in the law.

Thus, the class rule is based on the Consumer Bureau's belief that the availability of class actions affects firms' compliance incentives. The standard economic model of deterrence holds that individuals who benefit from engaging in particular actions that violate

[3] Arbitration Study, supra note 7, section 8 at 3.

[4] Arbitration Study, supra note 7, section 1 at 16. This figure excludes one large settlement (In re: TransUnion Privacy Litigation) with 190 million class members.

[5] Arbitration Study, supra note 7, section 8 at 24. The Arbitration Study defined gross relief as the total amount the defendants offered to provide in cash relief (including debt forbearance) or in-kind relief and offered to pay in fees and other expenses.

[6] These figures represent a floor, as the Bureau did not include the value to consumers of making agreed changes to business practices.

[7] Arbitration Study, supra note 7, section 8 at 28.

the law will instead comply with the law when the expected cost from violation, i.e., the expected amount of the cost discounted by the probability of being subject to that cost, exceeds the expected benefit. Consistent with that model, Congress and the courts have long recognized that deterrence is one of the primary objectives of class actions.

The Consumer Bureau believes that consumers are better protected from harm by consumer financial service and product providers when they are able to aggregate claims. Accordingly, the class rule is based on the Consumer Bureau's belief that ensuring that consumers can pursue class litigation related to covered consumer financial products or services without being curtailed by arbitration agreements protects consumers, furthers the public interest, and is consistent with the Arbitration Study.

(h.) The judicial process—especially as expressed by the Federal Rules of Civil Procedure—has mechanisms to prevent or mitigate any harm businesses may face from baseless class actions. As the Bureau noted in its final rule, courts dismiss claims that fail to state a plausible claim for relief and can sanction attorneys that file frivolous claims without evidentiary support for the allegations. In addition, Congress, through amendments to the Federal Rules of Civil Procedure and enactment of CAFA, has and continues to consider further adjustments to class action procedures. The Supreme Court has also rendered a series of decisions making clear that Federal Rule 23 "does not set forth a mere pleading standard" and establishing a number of requirements to subject putative class claims to close scrutiny. Thus the law expects courts to act to limit frivolous litigation. Further, the Bureau understands that class action attorneys will typically earn nothing for the time invested in developing, filing, and litigating a class case that is dismissed on a dispositive motion. The Bureau believes this may serve as an incentive not to bring cases that would be dismissed for lacking merit.

While trial verdicts in consumer financial class action cases are rare, they do occur. A bench trial in Gutierrez v. Wells Fargo Bank, N.A., led to a judgment on the merits in favor of the plaintiff class. 730 F. Supp. 2d 1080, 1082 (N.D. Cal. 2010). This case was not included in the Study's analysis of consumer financial litigation in court because it was filed in 2007 and the Study analyzed cases filed from 2010 through 2012. Although that judgment was limited to a California class of the bank's consumers, the bank thereafter appears to have also changed its overdraft practices in other jurisdictions in the United States, presumably out of concern regarding other State's laws. [8]

(i.) As set out in the Consumer Bureau's responses to 1(d) and 1(g), the Bureau believes the data it has gathered shows that it is likely class action lawsuits change firm behavior in meaningful

[8] See Danielle Douglas-Gabriel, "Big Banks Have Been Gaming Your Overdraft Fees To Charge You More Money", *Wash. Post Wonkblog* (July 17, 2014), *https://www.washingtonpost.com/news/wonk/wp/2014/07/17/__wells-fargo-to-make-changes-to-protect-customers-from-overdraft-fees/* ("Half of the country's big banks play this game, but one has decided to stop: Wells Fargo. Starting in August, the bank will process customers' checks in the order in which they are received, as it already does with debit card purchases and ATM withdrawals.").

ways. The Consumer Bureau considered relevant evidence and data it received during the comment period.

(j.) The Consumer Bureau has been open to feedback from all stakeholders in the course of working on the Arbitration Study and since the study was made available. In this process, the Consumer Bureau has received written and spoken comments from some stakeholders representing class action lawyers on the same terms as other stakeholders, including trade and industry representatives, public interest and consumer groups, academics, and State governments. Further, the Consumer Bureau specifically sought out feedback, in writing and in-person, from small businesses in the SBREFA Panel process. Finally, the Consumer Bureau met with stakeholders, including tribal governments, after the release of the Notice of Proposed Rulemaking and before the publication of the Final Rule. Summaries of these ex parte consultations with stakeholders will be published on the Consumer Bureau's website.

Q.2. At your April 7, 2016, appearance before the Senate Banking Committee, you testified—regarding a letter that Senator Corker sent to you on TILA–RESPA—that "*[b]ecause* I'm testifying today, we did respond to that letter . . . " (emphasis added). Please review the Congressional letters sent to you during your tenure at the CFPB and the timing of your responses, along with the same for questions for the record, as of the date of this hearing.

(a.) Does the CFPB have a practice of responding only to letters before it is scheduled to appear before a Congressional committee, of which the writer was a member?

(b.) To how many letters have you not yet responded?

(c.) Of these letters, how many of them are from members who do not sit on a Congressional committee with jurisdiction over the CFPB?

(d.) Of these letters, what was your average response time?

(e.) What was your average response time for Republican caucus members?

(f.) What was your average response time for Democrat caucus members?

(g.) What percentage of your responses were sent less than a week before a Congressional hearing, when the writer was a member of the Committee where the CFPB was appearing?

(h.) What percentage of your responses were sent less than a week before a Congressional hearing, of which the recipient was a member, for Republican caucus members?

(i.) What percentage of your responses were sent less than a week before a Congressional hearing, of which the recipient was a member, for Democrat caucus members?

(j.) Please provide the average response time to questions for the record, for Republican caucus members.

(k.) Please provide the average response time to questions for the record, for Democrat caucus members?

A.2. The Consumer Bureau is an independent Federal agency created by Congress responsible for implementing, and where necessary, enforcing, Federal consumer financial law consistently and for the purpose of ensuring that consumer financial markets are fair, transparent, and competitive. As an independent Federal agency, the Consumer Bureau routinely handles correspondence, requests for information, and other inquiries from Members of Congress and Congressional Committees on a variety of topics that are related to the Consumer Bureau and the Bureau's work. The Consumer Bureau's Office of Legislative Affairs (OLA) is responsible for managing the responses to both Members of Congress and Committees, as well as collaborating with other divisions within the Bureau to answer questions that have been posed.

The Consumer Bureau attempts to send a response to each request within a 30-day period following receipt of the incoming letter. This drafting period allows OLA to collaborate amongst different internal divisions prior to finalizing a response to ensure that the information provided is thorough and accurate. The actual time required for each response depends on the unique characteristics of the incoming letter, including the complexity of the subject matters and the depth and number of questions posed. Often, the process will require additional follow up with the Member's office to clarify any outstanding questions OLA may have prior to drafting a response. Additional questions or issues posed may create a delay in answering the question. The Consumer Bureau does not track average response times, response times by political party affiliation, percentage of responses in fewer than one week, or percentage of responses sent during time periods surrounding hearings by Congress.

Q.3. I'd like to discuss the CFPB's pending rule regarding "payday, auto title, and similar lending products" (payday lending). [9]

(a.) In March of 2015, the CFPB announced that it was considering ways to regulate payday loans. That notice said that the CFPB was considering prohibiting longer-term products with a monthly payment that exceeded 5 percent of a consumer's gross monthly income. Please provide the economic research that the CFPB produced and consulted to reach the conclusion that a monthly payment in excess of this amount is unaffordable.

(b.) Many have argued that the alternative to payday lending is not accessing credit at a lower interest rate, but either using higher interest rate forms of "credit" (such as overdrawing from a checking account) or losing access to credit altogether. Please provide the economic research that the CFPB produced and consulted regarding alternative forms of credit beyond current payday lending practices.

(c.) Please provide the economic research that the CFPB produced and consulted regarding the possibility that further regulating the payday lending industry will force some payday lenders to stop offering products altogether.

(d.) Are consumers better off not having the option of accessing payday lending, even if it means they will lose access to credit overall?

(e.) Does the CFPB trust consumers to evaluate the risks associated with payday lending?

(f.) What research has the CFPB conducted or identified that indicates consumers are unable to evaluate the risks associated with payday lending?

[9] *http://www.consumerfinance.gov/blog/fall-2015-rulemaking-agenda/.*

A.3. In its Outline of Proposals under Consideration and Alternatives Considered, which was released in March 2015 as part of the Small Business Review Process, the Consumer Bureau noted that it was considering whether to propose exempting from the ability-to-repay requirements under consideration longer-term loans with payments equal to or less than 5 percent of a consumer's gross monthly income. The proposed rule released in June 2016 did not propose to include this exemption. The March 2015 Outline did not indicate that the Consumer Bureau was considering whether to prohibit longer-term loans with monthly payments that exceeded 5 percent of a consumer's gross monthly income. The proposed rule similarly would not prohibit longer-term loans with a monthly payment that exceeds 5 percent of a consumer's gross monthly income.

In the lead up to the proposed rule on payday, vehicle title, and certain high-cost installment loans, the Consumer Bureau released several research publications. These reports looked at use patterns of payday loans and vehicle title loans, online lending, high-cost installment lending, and the impact of various State approaches to regulating payday lending. The Consumer Bureau's research and analysis is included in the notice of proposed rulemaking and supplemental report released alongside the proposed rule in June 2016. In considering the scope and content of the proposed rule, the Consumer Bureau studied the forms of liquidity loan products on the market today, including forms of credit beyond typical payday lending. The Consumer Bureau's findings in this regard are included in part II of the Notice of Proposed Rulemaking (81 *FR* 866 et seq.). The Consumer Bureau discusses research and analysis on the harms associated with payday loans in *Market Concerns—Short-Term Loans* (81 *FR* 47919 et seq.).

Consistent with section 1022(b)(2) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, the Consumer Bureau considered the potential benefit, costs, and impacts of the proposals. Additionally, consistent with section 603(a) of the Regulatory Flexibility Act, the Bureau prepared an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. These estimates of the impact of the proposed rule on payday lenders and on access to credit are presented in parts VI (81 *FR* 48115 et seq.) and VII (81 *FR* 48150 et seq.) of the notice of proposed rulemaking.

Q.4. I'd like to discuss the CFPB's efforts to tailor regulations for community banks and credit unions.

Please describe the criteria and processes by which you decide when and how to exempt small financial institutions from certain regulatory requirements.

At your April 7, 2016, appearance in front of the Senate Banking Committee, you testified, regarding tailoring regulations for small financial institutions, that "we tend to be fairly careful about it. We don't regard Congress as having said to us you have broad exemption authority." However, Section 1022(b)(3) of Dodd–Frank authorized the CFPB to "conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services" from the CFPB's rules and regulations, taking into account the entity's "total assets," "volume of transactions," and the extent to which existing laws already protect consumers. Please explain why the CFPB does not believe the statute confers at least a significant authority to tailor regulations.

How much does the CFPB value "relationship banking," where a financial institution makes a lending decision based upon their personal knowledge of a customer, instead of mere statistical analysis?

A.4. Section 1022 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) authorizes the Consumer Bureau to engage in rulemaking and issue orders and guidance to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. In doing so, Section 1022 requires that the Consumer Bureau consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access to consumer financial products and services to consumers. Section 1022 also requires the Consumer Bureau to consider the impact of a proposed rule on insured depository institutions and credit unions with total assets of $10 billion or less as well as the impact on consumers in rural areas. Moreover, Section 1022 gives the Consumer Bureau the authority to create exemptions from the Consumer Financial Protection Act of 2010 or rules issued under that Act for any class of covered persons, service providers, or consumer financial products or services if the Consumer Bureau determines an exemption is necessary or appropriate to carry out the purposes and objectives of the Consumer Financial Protection Act after taking into consideration a set of factors specified in the statute.

To date, the Consumer Bureau has sought to carefully calibrate its efforts to ensure consistency with respect to consumer financial protections across the financial services marketplace, while accounting for the different business models and classes of financial institutions. For example, as part of the Consumer Bureau's commitment to achieving tailored and effective regulations, the Bureau has taken the following actions for different models and classes of institutions:

Mortgage Origination Rules (Title XIV)

- *Expanded safe harbor for small creditors.* A small creditor has a broader safe harbor for its Qualified Mortgage (QM) loans than non-small creditors. The Consumer Bureau's rules provide a safe harbor for QMs with annual percentage rate (APR) spreads over Average Prime Offer Rate (APOR) up to 350 basis points, whereas non-small creditors have a safe harbor for spreads up to 150 basis points. The Consumer Bureau's rules also allow a small creditor to make QMs with debt-to-income ratios that exceed the otherwise applicable 43 percent cap. (Small creditors must hold these loans in portfolio for 3 years.)
- *Exempted small creditors in rural and underserved areas.* Small creditors that operate (or operated "predominantly" before implementation of the Helping Expand Lending Practices in Rural Communities Act in March 2016) in rural or underserved areas are exempt from requirements to establish escrow accounts for higher priced mortgage loans and from restrictions on offering QMs and Home Ownership and Equity Protection Act (HOEPA) loans ("high cost" mortgages as defined in the

HOEPA) that have balloon payment features. QMs and HOEPA loans generally cannot have balloon payments.

- *Implemented a 2-year pause for small creditors.* The Consumer Bureau established a 2-year transition period (until January 10, 2016) allowing small creditors to make balloon-payment QMs and balloon-payment HOEPA loans regardless of whether they operated predominantly in rural or underserved areas, while the Consumer Bureau revisited and reconsidered the definition of "rural" for this purpose.
- *Expanded exemptions for creditors in rural and underserved areas.* In connection with other changes to amend the definitions of "small creditor" and "rural area," the Consumer Bureau published a final rule in October 2015 that extended this 2-year transition period from January 2016 until April 2016. The Bureau's final rule also provided a significant expansion of "rural," as well as an expansion of which entities can qualify as "small creditors." The Consumer Bureau's final rule took effect on January 1, 2016, before the 2-year transition period expired. In March 2016, the Consumer Bureau issued an interim final rule that implements the Helping Expand Lending Practices in Rural Communities Act, and makes these provisions available to small creditors that extend at least one covered transaction secured by property located in a rural or underserved area in the previous calendar year. The Bureau estimated that about 6,000 additional small creditors would be eligible as a result of this change.
- *Relaxed requirements for appraisals.* Small creditors have relaxed rules regarding conflict of interest in ordering appraisals and other valuations.

Mortgage Servicing Rules (Title XIV)

- *Exempted small servicers from providing periodic statements.* Small servicers are exempt from the Truth in Lending Act requirement to provide periodic statements.
- *Exempted small servicers from loss mitigation requirements.* Small servicers are exempt from all of the Real Estate Settlement Procedures Act provisions on policies and procedures; early intervention; continuity of contact; and loss mitigation, except that a small servicer may not file for foreclosure unless the borrower is more than 120 days delinquent on the mortgage. Small servicers may also not file for foreclosure (or move for a foreclosure judgment or order of sale, or conduct a foreclosure sale) if a borrower is performing under the terms of a loss mitigation agreement.
- *Excluded certain seller-financed transactions and mortgage loans voluntarily serviced for a non-affiliate from being counted toward the small servicer loan limit.* This allows servicers that would otherwise qualify for small servicer status to retain their exemption while servicing those transactions.

Home Mortgage Disclosure Act Rule (Reg C)

- *Exempted lower-volume depository institutions from Home Mortgage Disclosure Act reporting.* In October of 2015, the Consumer Bureau adopted a final rule revising Regulation C, which implements HMDA. HMDA and Regulation C, among other things, require covered mortgage lenders to report data concerning their mortgage lending activity. Changes to coverage in the final rule will reduce the number of banks, savings associations, and credit unions that are required to report HMDA data. The revisions will relieve about 22 percent of currently reporting depository institutions from the burden of reporting HMDA data. Also, by final rule issued in late August of 2017, the Consumer Bureau expanded the volume-based exemption from reporting of open-end lines of credit under HMDA for institutions with fewer than 500, instead of 100, annual originations in each of the two preceding years of such lines of credit. This expanded exemption applies for calendar years 2018 and 2019, during which the Consumer Bureau will consider whether to reexamine the appropriate volume level at which to set the exemption permanently.

- *Reduced HMDA error submission threshold for certain small entities.* New Federal Financial Examination Institution Council guidelines, of which the Consumer Bureau is a member, provide a more lenient 10 percent HMDA field error resubmission threshold (to determine whether the lender must resubmit a particular HMDA data field) for financial institutions with lower lending volumes, including many small institutions, for data collected beginning in 2018. Previously, all institutions were subject to the same error thresholds. The new guidelines make other burden-reducing changes that apply to all lenders, which may be particularly beneficial to small institutions.

Remittances Rule (Regulation E Subpart B)

- *Provided regulatory certainty for small entities under the Electronic Fund Transfer Act.* In the Bureau's rules implementing the Dodd–Frank Act's amendments to the Electronic Fund Transfer Act, regarding remittance transfers, the Bureau recognized that certain entities do not provide remittances in the normal course of their business and determined that the remittance requirements do not apply to transfers sent by entities that provide 100 or fewer remittances each year.

Small financial institutions play a vital role within many communities across the Nation, as well as within the economy. Their traditional model of relationship lending has been beneficial to many people in rural areas and small towns throughout the country. For these reasons, the Consumer Bureau attempts to ensure that rules and regulations are not burdensome to these smaller financial institutions.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN FROM RICHARD CORDRAY

Q.1. I know that everyone agrees that discrimination has no place in our economy. That agreement extends to the need for vigorous enforcement of the Equal Credit Opportunity Act. However, I'm concerned that the CFPB's 2013 auto finance bulletin has resulted in a more adversarial relationship between the bureau and the auto industry rather than a relationship based on cooperation toward a shared goal of rooting out discrimination.

That is part of my reasoning in introducing S.2663, the Reforming CFPB Indirect Auto Financing Guidance Act, the Senate companion legislation to H.R.1737 which passed the House by a vote of 332–96. The name of the legislation is not the ELIMINATION of the CFPB Indirect Auto Financing Guidance Act, thereby disqualifying the CFPB from further exploring the issue. Rather, the process can be improved by creating greater collaboration on the CFPB's pursuit of discrimination by adding Congress, industry stakeholders, and consumers to the fold as we all work together to achieve a fair marketplace.

You and I have had exchanges on this topic since the spring of 2013. During that time, additional information has been brought forth.

Auto loan volume numbers aside, has the Bureau studied the price effects that will impact all consumers due to the 2013 guidance?

A.1. The Consumer Bureau is working hard to ensure that lending practices are fair and equitable for all consumers and honest businesses. Our March 2013 *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act Bulletin* [1] reminded indirect auto lenders of their existing responsibilities under the Equal Credit Opportunity Act, but did not mandate any particular method for mitigating fair lending risk.

We have examined over a dozen of the Nation's largest auto lenders and achieved important market awareness and movement, and we believe that a wide range of supervisory compliance solutions tailored to each lender will work to secure and advance our progress in protecting consumers. The Consumer Bureau takes a data-driven approach to our work and we are always interested in reviewing analyses of the impact of this work.

Q.2. Is it fair to say that the CFPB's view on this indirect auto finance leaves open the possibility that all consumers may find themselves paying higher costs for auto loans due to the lenders' management of fair credit risk?

A.2. No. The Consumer Bureau is working to ensure that lending practices are fair and equitable and that credit markets function competitively and efficiently for all consumers and businesses. We take a data-driven approach to our work and would be interested in any analyses of the impact of greater lender adoption of nondiscretionary compensation programs, lower caps, or more stringent compliance management systems.

The Consumer Bureau has seen no indication that our work in indirect auto lending has resulted in credit being restricted or made more costly for consumers. To the contrary, the number of new auto loans originated in the first half of 2015 was up 8 percent over the prior year; for auto loans, this marks a 45 percent increase since 2011 and a 9-year high. [2]

[1] *http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf*

[2] See Financial Report of the Consumer Financial Protection Bureau for Fiscal year 2015, available at *http://files.consumerfinance.gov/f/201511_cfpb_report_fiscal-year-2015.pdf.*

Further, a November 2015 press release from the National Automobile Dealers Association (NADA) predicts that sales of new cars and light trucks will continue their post-recession climb, reaching an all-time high of 17.71 million vehicles in 2016.[3] A July 2017 press release from NADA predict new vehicle sales will remain unchanged in 2017.[4]

Q.3. Does the CFPB's approach, at the very least, prevent reimbursements or restitution to borrowers who were not actually discriminated against in the financing of a vehicle?

A.3. With regard to the distribution of settlement funds, the Consumer Bureau works hard to ensure that as many eligible consumers as possible receive appropriate remuneration, while at the same time putting in place important safeguards to ensure that eligible consumers are the recipients of relief.

Q.4. Would you please list the considerations that go into the calculation the CFPB uses to determine whether an enforcement action or a rulemaking process is the right course of action? Please be specific.

A.4. The Consumer Bureau's approach to regulation and enforcement is consistent with the Administrative Procedures Act and the practices of other Federal agencies. The Dodd–Frank Wall Street Reform and Consumer Protection Act gave the Consumer Bureau a number of tools—including rulemaking and enforcement—to address and prevent consumer harm. In each action the Consumer Bureau takes, we endeavor to choose the appropriate tool to protect consumers and honest businesses in the marketplace. The Consumer Bureau has taken enforcement actions where we believe violations of existing laws warranted that response.

When it comes to specific enforcement actions, the Consumer Bureau considers a number of factors in each filed action and negotiated resolution. These include, but are not limited to: (a) the number of victims affected; (b) the amount of individual consumer harm; (c) the type of harm, including whether such harm is temporary, likely to or likely to affect the broader economy; (d) whether consumers have the ability to avoid the conduct or "shop" for the product or service; (e) whether the harmful conduct creates market distortion; and (f) whether the conduct targets or significantly affects a vulnerable population.

On the other hand, where our research and analysis suggests the need for regulatory intervention, the Consumer Bureau seeks to develop regulations that will protect consumers without unintended consequences or unnecessary costs. As part of the rulemaking process, the Consumer Bureau carefully assesses the benefits and costs that the regulations we consider may have on consumers and fi-

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[3] National Automobile Dealers Association. (2015). NADA forecasts 17.71 million new vehicle sales in 2016, citing, in part, because of low interest rates on auto loans [Press release]. Retrieved from: *https://www.nada.org/Custom__Templates/DetailPressRelease.aspx?id=21474842879*; see also National Automobile Dealers Association. (2016). NADA declares new vehicle sales for cars and light trucks are on pace to reach forecast of 17.7 million vehicles in 2016. [Press release]. Retrieved from: *https://www.nada.org/2016Convention/EconomicForecast/*;

[4] See also National Automobile Dealers Association. (2017). NADA declares new vehicle sales forecast remains unchanged at 17.1 million for 2017. [Press release]. Retrieved from: *https://blog.nada.org/2017/07/06/nadas-new-vehicle-sales-forecast-remains-unchanged-at-17-1-million-for-2017/*.

nancial institutions. Balanced regulations are essential for protecting consumers from harmful practices and ensuring that consumer financial markets function in a fair, transparent, and competitive manner.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED FROM RICHARD CORDRAY

Q.1. There is a need for student loan refinancing opportunities for both Federal student loans and private student loans.

Is the private market providing sufficient access to high quality, safe student loan refinancing products for a broad range of borrowers who could benefit? What are the gaps in consumer protections for student loan refinancing?

A.1. We have observed considerable growth in new student loan refinancing activity—both refinancing of private student loans and Federal student loans. This growth has been driven by the expansion of refinance programs at large financial institutions, specialty refinancing providers and State lending authorities.

Although refinancing has expanded, the market is oriented to serve consumers with prime and super-prime credit profiles. In contrast, these products may be effectively unavailable for consumers with limited or negative credit histories. As a result, the interest rate savings offered to certain consumers through private refinancing may be unavailable to broad segments of the student loan market.

An additional key concern is whether those borrowers who have access to private refinancing are aware of and understand the inherent trade-off when converting one or more Federal loans into a private student loan. These may include risks when converting a fixed-rate loan to a variable-rate loan and the loss of access to a wide array of Federal consumer protections, including: Income-driven repayment plans, death and disability discharge, loan forgiveness, deferment and forbearance, loss of benefits on pre-service obligations for active-duty servicemembers.

The Consumer Bureau has advised borrowers with Federal student loans considering refinancing to be sure to understand what they are giving up before making this choice. In general, lenders may warn borrowers about the benefits they are giving up when refinancing out of a Federal student loan. For consumers who have a secure job, emergency savings, strong credit, and are unlikely to benefit from forgiveness options, refinancing may be a choice worth considering.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MERKLEY FROM RICHARD CORDRAY

Q.1. Over the past several years, financial technology firms (or FinTech firms) have expanded their online lending presence to consumers and small businesses. FinTech has the potential to offer a new source of credit for borrowers and a potential investment opportunity for those with capital to lend.

According to Morgan Stanley, FinTech firms funded an estimated $5 billion in small-business loans in 2014 and will grow 50 percent annually through 2020.[1] And according to the *Wall Street Journal*, in recent years alternative lenders increased their market share to 26 percent from 10 percent.[2]

The industry's growth did not go unnoticed by the Treasury Department which put out Request for Information (RFI) on FinTech companies last summer. Senators Brown and Shaheen joined me in writing to Treasury asking for more specifics of their findings.[3] San Francisco Federal Reserve President Williams has also taken notice of the growing FinTech industry. In an interview with the *American Banker*, Fed President Williams noted that while there is promise in alternative lending products, there does exist the potential to leave low-and middle-income borrowers behind or make it easier to engage in predatory lending.[4] And the OCC recently released a white paper on "responsible innovation," taking a look into FinTech.[5]

What we do know is that FinTech firms operate in a largely undefined regulatory space. Given this industry's sudden emergence and exponential growth, there is concern that they are operating outside the boundaries of regulation and there is a potential for individuals and small businesses to become targets of predatory practices.

In February, the CFPB finalized a new policy to issue no-action letters to FinTech firms. Companies must apply for a no-action letter and if they are granted, these letters offer assurances from the CFPB that it has no intention of taking enforcement action against the company for introducing a new financial service. However, no-action letters can be revoked at any time should the CFPB changes its mind.

It is my understanding that the CFPB's policy is aimed at reducing regulatory uncertainty hanging over companies that develop untested financial products and services with the potential for "significant consumer benefit." However, the CFPB estimated that it would receive an average of only two or three "actionable" applications per year and that approvals would be given only "rarely."

Director Cordray, the CFPB recently finalized a new policy to issue no-action letters to firms with "innovative financial products or services." Why did the CFPB decide to take this step?

A.1. The Consumer Bureau decided to use No-Action letters as one possible means of reducing regulatory uncertainty, specifically in cases where doing so would facilitate consumer access to innovative

[1] "Global Marketplace Lending: Disruptive Innovation in Finance", Morgan Stanley Blue Paper, Morgan Stanley Research, May 19, 2015, Accessed April 7, 2016. Available at: *http://www.synthesis-sif.lu/wp-content/uploads/2015/07/GlobalMarketplaceLending.pdf.*

[2] Ruth Simon, "Big Banks Cut Back on Loans to Small Business", *The Wall Street Journal*, November 26, 2015. Accessed April 7, 2016. Available at: *http://www.wsj.com/articles/big-banks-cut-back-on-small-business-1448586637.*

[3] "Merkley, Brown, Shaheen Press for Information on Financial Technology Market's Impact on Small Businesses and Consumers", Press Release, The Office of Senator Jeff Merkley. Accessed April 7, 2016. Available at: *https://www.merkley.senate.gov/news/press-releases/merkley-brown-shaheen-press-for-information-on-financial-technology-markets-impact-on-small-businesses-and-consumers.*

[4] John Heitman, "Ten Questions for San Francisco Fed President John Williams", *American Banker*, March 28, 2016. Accessed April 7, 2016. Available at: *http://www.americanbanker.com/news/law-regulation/ten-guestions-for-san-francisco-fed-president-john-williams-1080114-1.html.*

[5] United States, Department of Treasury, Office of the Comptroller of the Currency, "Supporting Responsible Innovation in the Federal Reserve Banking System: An OCC Perspective", March 2016, Accessed April 7, 2016. Available at: *http://www.occ.treas.gov/news-issuances/news-releases/20l6/nr-occ-2016-39.html.*

financial products or services. The Consumer Bureau finalized the policy to establish a process for companies to apply for a No-Action letter in February 2016. The policy lays out the information a company should provide in an application, as well as the criteria the Consumer Bureau would use to assess applicants.[6]

The Consumer Bureau views the No-Action Letter policy as a means of fulfilling its objectives under the Dodd–Frank Act, which include "facilitating [consumer] access" to and "innovation" in markets for consumer financial products. The No-Action Letter program is not designed solely for FinTech startups, but for any firm, including Consumer Bureau supervised entities the Consumer Bureau supervised entities, looking to offer an innovative financial product or service that holds the promise of consumer benefit, but facing regulatory uncertainties. We have estimated that only a limited number of no-action letters would be released, given the limited scope of the No-Action Letter policy and the limited resources available to devote to the consideration and issuance of No-Action Letters at this time. However, the Consumer Bureau is committed to devoting substantial resources to improve regulatory clarity more broadly through other means, such as extensive interpretive guidance, official interpretation, plain-language guides and other similar resources for industry.

Q.2. Why did you decide to open up the CFPB's complaint database to FinTech?

A.2. Millions of consumers take out personal loans online. Marketplace lending—often referred to as "peer-to-peer" or "platform" lending—is a relatively new kind of online lending. A marketplace lender uses an online interface to connect consumers or businesses seeking to borrow money with investors willing to buy or invest in the loan. Generally, the marketplace lending platform handles all underwriting and customer service interactions with the borrower. Once a loan is originated, the company generally makes arrangements to transfer ownership or the right to receive payments to the investors while it continues to service the loan. Some marketplace lenders enter into arrangements with depository institutions whereby the bank sets underwriting standards and originates the loans and the marketplace lending platform handles marketing, underwriting, and customer service. All lenders, from online startups to large banks, must follow consumer financial protection laws. By accepting these consumer complaints, the Consumer Bureau is giving consumers a greater voice in these markets and a place to turn to when they encounter problems.

Q.3. The CFPB has created an office to examine FinTech called Project Catalyst. What are they specifically looking for?

A.3. We believe that good, consumer-friendly innovation holds great potential for achieving our mission of making the consumer finance market work for consumers. Project Catalyst closely monitors the developments in the FinTech space and educates the Consumer Bureau at large so that the Consumer Bureau is always up to date with the latest innovations. Project Catalyst also looks for

[6] Consumer Financial Protection Bureau Policy on No-Action Letters; information collection, 81 *FR* 8686 (Feb. 22, 2016), also available at *http://files.consumerfinance.gov/f/201602_cfpb_no-action-letter-policy.pdf.*

opportunities for the Consumer Bureau to engage and collaborate with innovators of consumer-friendly products. In particular, Project Catalyst searches for opportunities to collaborate with innovators by either engaging in research collaborations partnerships, considering trial disclosure waivers under the Bureau's authority under section 1032(e) of the Dodd–Frank Act, or considering No-Action Letters.

Q.4. Mr. Cordray, I want to thank you for continuing the effort to protect consumers from the many different predatory mortgage products which caused millions of Americans to lose their homes during the recent housing crisis. But I'm troubled by recent press reports in *The Wall Street Journal*[7] and *Washington Post*[8] that "alt-doc" or "low-doc" loans are making a minor resurgence thanks to a renewed appetite from industry looking for riskier assets with higher returns.

While this market's resurgence is still small, at an estimated $18 to $20 billion in 2015, compared to $767 billion for conventional mortgages, the one thing we learned from the mortgage crisis is that these tidal waves must be stopped while they're small or they can threaten the entire economy.

Director Cordray, are these types of loans on the CFPB's radar?

A.4. We routinely monitor consumer financial services markets, and the types of mortgage product being offered are one part of that monitoring. We conduct this monitoring through various means, including analysis of published and unpublished data that we have available as well as regular outreach and other informational meetings with industry participants, consumer advocates, and other stakeholders. In addition, we review our consumer complaints and information submitted to our whistleblower hotline for relevant information.

As you know, the Truth in Lending Act, as amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act, generally prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the loan according to its terms. These documentation and verification requirements effectively prohibit no documentation and limited documentation loans that were common in the later years of the housing bubble. For example, the Consumer Bureau's rules require a creditor to verify the information relied on in considering a consumer's debts relative to income or residual income after paying debts, using reasonably reliable third-party records, with special rules for verifying a consumer's income or assets. To the extent creditors evade or ignore these verification and documentation requirements, we are prepared to bring supervisory and enforcement attention to them.

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[7] Kirsten Grind, "Remember 'Liar Loans'? Wall Street Pushes a Twist on the Crisis-Era Mortgage", *The Wall Street Journal* (subscription), February 1, 2016. Accessed April 7, 2016. Available at: *http://www.wsj.com/articles/crisis-era-mortgage-attempts-a-comeback-1454372551.*

[8] Editorial Board, "Talk About Breaking Up Big Banks Ignores Reforms Made Since the Recession", Op-Ed, *Washington Post*, February 3, 2016, Accessed April 7, 2016. Available at: *https://www.washingtonpost.com/opinions/talk-about-breaking-up-big-banks-ignores-reforms-made-since-the-recession/2016/02/03/e0043618-c9e9-11e5-a7b2-5a2f824b02c9_story.html.*

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

SEMIANNUAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU, OCTOBER 1, 2015–MARCH 31, 2016

October 1, 2015 – March 31, 2016

Semi-annual report of the Consumer Financial Protection Bureau

cfpb Consumer Financial Protection Bureau

Message from Richard Cordray

Director of the CFPB

At the Consumer Financial Protection Bureau, we are deeply committed to achieving our mission as the nation's first federal agency whose sole focus is protecting consumers in the financial marketplace. Financial products like mortgages, credit cards, and student loans involve some of the most important financial transactions in people's lives. Through the Dodd-Frank Wall Street and Consumer Protection Act, Congress created the Bureau to stand on the side of consumers and ensure they are treated fairly in the financial marketplace. Since we opened our doors, we have been focused on making consumer financial markets work better for the American people, and helping consumers improve their financial lives.

In this, our ninth Semi-Annual Report to Congress and the President, we provide an update on 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 American families' trust in consumer financial markets, protect consumers from improper conduct, and ensure access to fair, transparent, and competitive markets.

In the six months covered by this report, our supervisory actions resulted in financial institutions providing more than $44 million in redress to over 177,000 consumers. During that timeframe we also announced orders through enforcement actions for approximately $82 million in total relief for consumers who fell victim to various violations of consumer financial protection laws. We brought numerous enforcement actions for various violations of the Dodd-Frank Act, including actions against Security National Automotive Acceptance Company and EZCORP for engaging in illegal debt collection tactics; a default judgment against Corinthian Colleges for engaging in a predatory lending scheme; a proceeding against online lender

Integrity Advance for misrepresenting the cost of loans; an action against Frederick J. Hanna & Associates for running an illegal debt collection lawsuit mill; an action against T3 Leads and Lead Publisher for reselling sensitive personal information to lenders and debt collectors that it had not properly vetted; actions against "buy here, pay here" dealer CarHop for providing damaging, inaccurate customer information to credit reporting companies and Herbies Auto Sales for abusive financing schemes, hiding auto finance charges, and misleading customers; an action against Clarity Services for illegally obtaining consumer credit reports and failing to appropriately investigate consumer disputes; and an action against Citibank for illegal debt sales and debt collection practices. Additionally, the CFPB and the Department of Justice reached a resolution with Toyota Motor Credit Corporation in which minority borrowers who paid higher rates than non-Hispanic White borrowers for their auto loans, without regard to their creditworthiness or other objective risk criteria, will receive up to $21.9 million in restitution.

The Bureau also issued a number of proposed and final rules. In October 2015, we issued a final rule to implement amendments to the Home Mortgage Disclosure Act (HMDA), adding new reporting requirements and clarifying several existing requirements. In December 2015, we issued a final rule making technical corrections to Regulation Z with respect to the Know Before You Owe rule. In January 2016 the Bureau published a notice and request for information regarding HMDA resubmission guidelines, which describe when supervised institutions should correct and resubmit HMDA data. Finally, the Bureau issued two rules in March 2016 to address the HELP Rural Communities Act, which was enacted on December 4, 2015. First, the Bureau issued a procedural rule that established a process to apply for an area to be designated as a rural area for purposes of a Federal consumer financial law. Second, the Bureau issued an interim final rule that expanded eligibility for special provisions and an exemption from requirements provided to certain small creditors operating in rural or underserved areas under the Bureau's mortgage rules.

As a data-driven institution, the Bureau published several reports and other publications during this reporting period. These reports highlighted several important topics in the consumer finance area, including the annual report of the CFPB student loan ombudsman, the CFPB Diversity and Inclusion Strategic Plan for 2016 – 2020, the 2015 financial literacy annual report, the CFPB's financial report for FY 2015, the Office of Servicemembers Affairs' semi-annual snapshot of servicemember complaints, the CFPB's biennial report on the consumer credit card market, the CFPB's report on college credit card agreements under the CARD Act, and an independent audit of the CFPB's operations and budget for FY 2015.

The premise that lies at the very heart of our mission is that consumers should have someone standing on their side to see that they are treated fairly in the financial marketplace. From July 21, 2011 through March 31, 2016, the CFPB has handled approximately 859,900 consumer complaints, including complaints on credit reporting, debt collection, money transfers, bank accounts and services, credit cards, mortgages, vehicle loans, payday loans, student loans, and certain other consumer financial products or services, including prepaid cards, debt settlement services, credit repair services, and pawn and title loans. We now also disclose consumer complaint narratives where consumers have "opted in" to share their accounts of what happened and optional public responses by companies.

The progress we have made has been possible thanks to the engagement of hundreds of thousands of Americans who have utilized our consumer education tools, submitted complaints, participated in rulemakings, and told us their stories through our website and at numerous public meetings from coast to coast. We have also benefited from an ongoing dialogue and constructive engagement with the Bureau's advisory groups, the institutions we supervise, with community banks and credit unions with whom we regularly meet, and with consumer advocates throughout the country. Our progress has also resulted from the extraordinary work of the Bureau's employees—dedicated public servants who are committed to promoting a healthy consumer financial marketplace. Each day, we work to accomplish the goals of renewing people's 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 in all financial circumstances, but also help responsible businesses compete on a level playing field, which helps to reinforce the stability of our economy as a whole.

In the years to come, we look forward to continuing to fulfill the vision of an agency dedicated to ensuring a consumer financial marketplace marked by transparency, responsible practices, sound innovation, and excellent customer service.

Sincerely,

Richard Cordray

Richard Cordray
Director

Table of contents

1. Executive summary

The Consumer Financial Protection Bureau (CFPB or Bureau) presents this Semi-Annual Report to the President, Congress, and the American people in fulfillment of its statutory responsibility and commitment to accountability and transparency. This report provides an update on the Bureau's mission, activities, accomplishments, and publications since the last Semi-Annual Report, and provides additional information required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act), for the period of October 1, 2015 through March 31, 2016.[1]

The Dodd-Frank Act created the Bureau as the nation's first federal agency with a mission of focusing solely on consumer financial protection and making consumer financial markets work for American consumers, responsible businesses, and the economy as a whole. In the wake of the financial crisis of 2008-2010, the President and Congress recognized the need to address widespread failures in consumer protection and the rapid growth in irresponsible lending practices that preceded the crisis. To remedy these failures, the Dodd-Frank Act consolidated most Federal consumer financial protection authority in the Bureau.[2] The Dodd-Frank Act

[1] Appendix B provides a guide to the Bureau's response to the reporting requirements of Section 1016(c) of the Dodd-Frank Act. The last Semi-Annual Report was published in November 2015 and may be viewed at: http://files.consumerfinance.gov/f/201511_cfpb_semi-annual-report-fall-2015.pdf.

[2] Previously, seven different federal agencies (the Federal Reserve Board (and the Federal Reserve Banks) (Board or FRB), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision) were responsible for rulemaking, supervision, and enforcement relating to consumer financial protection.

charged the Bureau with, among other things:

- Ensuring that consumers have timely and understandable information to make responsible decisions about financial transactions;
- Protecting consumers from unfair, deceptive, or abusive acts and practices, and from discrimination;
- Monitoring compliance with Federal consumer financial law and taking appropriate enforcement action to address violations;
- Identifying and addressing outdated, unnecessary, or unduly burdensome regulations;
- Enforcing Federal consumer financial law consistently in order to promote fair competition;
- Ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation; and
- Conducting financial education programs.[3]

The Bureau has continued its efforts to listen and respond to consumers and industry, to be a resource for the American consumer, and to develop into a great institution worthy of the responsibility conferred on it.

1.1 Listening to consumers

Listening and responding to consumers is central to the Bureau's mission. The Bureau continues to provide consumers with numerous ways to make their voices heard. Consumers nationwide have engaged with the Bureau through public field hearings, listening events, roundtables and town halls, and through our website, consumerfinance.gov. Consumer engagement strengthens

[3] See Dodd-Frank Act, Pub. L. No. 111-203, Sec. 1021 (b) and (c).

the Bureau's understanding of current issues in the ever-changing consumer financial marketplace and informs every aspect of the Bureau's work, including research, rule writing, supervision, and enforcement.

The Bureau has continued to improve the capabilities of its Office of Consumer Response to receive, process, and facilitate responses to consumer complaints. Consumer Response has also continued to expand a robust public Consumer Complaint Database. The database updates nightly and as of March 31, 2016 was populated by over 543,800 complaints from consumers about financial products and services from all over the country. Our consumer complaint narrative database includes over 50,000 narratives. The CFPB gives companies the opportunity to respond publicly to the substance of the consumer complaints they receive from the CFPB by selecting from a set list of public-facing response categories. Companies are under no obligation to avail themselves of the opportunity.

Launched initially in July 2015, the Bureau's series of monthly complaint reports continues to highlight key trends from consumer complaints submitted to the Bureau. The monthly report includes complaint data on complaint volume, most-complained-about companies, state and local information, and product trends. Each month, the report highlights a particular product and geographic location and provides insight for the public into the hundreds of thousands of consumer complaints on financial products and services expected to be handled by the CFPB. The report uses a three-month rolling average, comparing the current average to the same period in the prior year where appropriate, to account for monthly and seasonal fluctuations. In some cases, month-to-month comparisons are used to highlight more immediate trends.

1.2 Delivering for American consumers and leveling the playing field

The Bureau has continued to expand its efforts to serve and protect consumers in the financial marketplace. The Bureau seeks to serve as a resource on the macro level, by writing clear rules of the road and enforcing consumer financial protection laws in ways that improve the consumer financial marketplace, and on the micro level, by helping individual consumers resolve their specific issues with financial products and services. While the various divisions of the Bureau play different roles in carrying out the Bureau's mission, they all work together to protect and educate consumers, help level the playing field for participants, and fulfill the

Bureau's statutory obligations and mission under the Dodd-Frank Act. In all of its work, the Bureau strives to act in ways that are fair, reasonable, and transparent.

We are working to provide tools and information directly to consumers to enable them to develop practical skills and support sound financial decision-making. These skills include being able to ask questions and to plan ahead. One way we are doing this is with our online tool, *Ask CFPB*. This tool provides answers to over 1,000 questions about financial products and services, including on topics such as mortgages, credit cards, and how to dispute errors in a credit report statement. This resource is found at consumerfinance.gov/askcfpb/. We are also focusing on helping consumers build the skills to plan ahead. For example, our Paying for College set of tools helps students and their families compare what their college costs will be down the road as they decide where to pursue a college education. Our Owning a Home set of tools helps consumers shop for a mortgage loan by helping them understand what mortgages are available to them, explore interest rates, compare loan offers, and by providing a closing checklist. The Money Smart for Older Adults curriculum, developed with the FDIC, includes resources to help people prevent elder financial exploitation and prepare financially for unexpected life events.

We are working with other government agencies, social service providers, and community service providers to develop channels to provide decision-making support in moments when consumers are most receptive to receiving information and developing financial decision-making skills. This support includes integrating financial capability into other programs and services where consumers may be seeking assistance. We are also tailoring our approaches to financial decision-making circumstances, challenges, and opportunities for specific populations, including servicemembers and veterans, students and young adults, older Americans, and lower-income and other economically vulnerable Americans.

When Federal consumer financial protection law is violated, the Bureau's Supervision, Enforcement, and Fair Lending Division is committed to holding the responsible parties accountable. In the six months covered by this report, our supervisory actions resulted in financial institutions providing approximately $44 million in redress to over 177,000 consumers. During that timeframe, we also have announced enforcement actions that resulted in orders for approximately $200 million in total relief for consumers who fell victim to various violations of consumer financial protection laws, along with over $70 million in civil money penalties. We brought numerous enforcement actions for various violations of the Dodd-Frank Act, including actions against Security National Automotive Acceptance Company and EZCORP for engaging in illegal debt collection tactics; a default judgment against Corinthian Colleges for engaging in a predatory lending scheme; a proceeding against online lender Integrity Advance for misrepresenting the cost of loans; an action against Frederick J. Hanna & Associates for running an illegal debt collection lawsuit mill; an action against T3 Leads and Lead Publisher for reselling sensitive personal information to lenders and debt collectors that it hadn't properly vetted; actions against "buy here, pay here" dealer CarHop for providing damaging, inaccurate customer information to credit reporting companies and Herbies Auto Sales for abusive financing schemes, hiding auto finance charges, and misleading customers; an action against Clarity Services for illegally obtaining consumer credit reports and failing to appropriately investigate consumer disputes; and an action against Citibank for illegal debt-sales and debt-collection practices. Additionally, the CFPB and the Department of Justice reached a resolution with Toyota Motor Credit Corporation in which minority borrowers who paid higher rates than non-Hispanic White borrowers for their auto loans, without regard to their creditworthiness or other objective risk criteria, will receive up to $21.9 million in restitution. The Bureau has also continued to develop and refine its nationwide supervisory program for depository and nondepository financial institutions, through which those institutions are examined for compliance with Federal consumer financial protection law.

Continuing the CFPB's policy of transparency, the Bureau has released two editions of *Supervisory Highlights* during this reporting period. The Fall 2015 edition reported examination findings in the areas of consumer reporting, debt collection, mortgage origination, mortgage servicing, student loan servicing, and fair lending. The Winter 2016 edition shared recent examination findings related to consumer reporting, debt collection, mortgage origination, remittances, and student loan servicing. This issue also shares important updates to past fair lending settlements reached by the Bureau. This publication is intended to inform both industry and the public about the development of the Bureau's supervisory program and to discuss, in a manner consistent with the confidential nature of the supervisory process, broad trends in examination findings in key market or product areas.

The Bureau has also published new guidance documents, in partnership with other regulators where appropriate, to help institutions know what to expect and how to become, or remain, compliant with the law, including bulletins on Real Estate Settlement Procedures Act (RESPA) compliance and marketing services agreements, the revised supervisory matters appeal process, requirements for consumer authorizations for preauthorized electronic fund transfers, and on the furnisher Fair Credit Reporting Act (FCRA) obligation to have reasonable written policies and procedures.

Reasonable regulations are essential for protecting consumers from harmful practices and ensuring that consumer financial markets function in a fair, transparent, and competitive manner. The Research, Markets, and Regulations Division has focused its efforts on promoting markets in which consumers can shop effectively for financial products and services and are not subject to unfair, deceptive, or abusive acts or practices. During this reporting period, the Research and Markets teams released reports on the consumer credit card market, which is described in detail in Section 2.3, mobile financial services, and college credit card agreements. The Regulations office issued regulations modifying and clarifying a number of rules implementing changes made by the Dodd-Frank Act including a final rule to implement amendments to HMDA, adding new reporting requirements and clarifying several existing requirements; a final rule making technical corrections to Regulation Z with respect to the Know Before You Owe (KBYO) rule; and a final rule adopting a procedural rule establishing an application process under which a person may identify an area that has not been designated by the Bureau as a rural area for the purposes of a Federal consumer financial law and apply for such area to be so designated. In addition, the Bureau issued an interim final rule that expanded eligibility for special provisions and added an exemption from requirements provided to certain small creditors operating in rural or underserved areas under the Bureau's mortgage rules. The Bureau also issued a notice and request for information regarding HMDA resubmission guidelines, which describe when supervised institutions should correct and resubmit HMDA data.

To support the implementation of and industry compliance with its rules, the Bureau has published a number of plain-language compliance guides summarizing certain rules, and it has actively engaged in discussions with industry about ways to achieve compliance.[4] The Bureau also continued its efforts to streamline, modernize, and harmonize financial regulations that it inherited from other agencies.

In addition to implementing the Dodd-Frank Act, the Bureau continues to explore other areas where regulations may be needed to ensure that markets function properly and possibly harmful

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[4] http://www.consumerfinance.gov/guidance/#compliance.

or inefficient practices are addressed. Over the next six months, the Bureau will continue implementing the Dodd-Frank Act and using its regulatory authority to ensure that consumers have access to consumer financial markets that are fair, transparent, and competitive.

1.3 Building a great institution

The Bureau continues to grow and evolve as an institution. As of March 19, 2016, the CFPB team consisted of 1,519 employees working to carry out the Bureau's mission. It has worked to build a human capital and organizational infrastructure that promotes – and will continue to promote – diversity, transparency, accountability, fairness, and service to the public. That infrastructure includes:

- Demonstrating a strong commitment to openness by utilizing the Bureau's website to share information on its operations;
- Recruiting highly-qualified, diverse personnel;
- Providing training and engagement opportunities for CFPB staff to improve skills, increase knowledge, and maintain excellence; and
- Further promoting diversity and inclusion in the CFPB's workforce and among its contractors, including through the Bureau's Office of Minority and Women Inclusion (OMWI).

The Bureau recognizes that the best way to effectively serve consumers is to ensure that its workforce reflects the ideas, backgrounds, and experiences of the American public. OMWI supports the Bureau's mission by working with the offices of Human Capital (OHC) and Civil Rights (OCR) to continue building a diverse and inclusive workforce that can foster broader and better thinking about how to approach markets.

We will continue working hard to ensure that the American people are treated fairly in the consumer financial marketplace. We encourage you to visit consumerfinance.gov for updates.

2. Consumer challenges in obtaining financial products and services

The challenges consumers face in navigating and obtaining financial products and services are a driving force behind the CFPB's efforts to make consumer financial markets work better. Listening and responding to consumers are integral components of our mission, and the Bureau provides numerous ways for consumers to make their voices heard.

2.1 Consumer concerns

The Bureau's long-term vision for consumer finance markets is one where consumer protections and business opportunities work in tandem, where financial firms lead through responsible business practices, and where educated consumers can make well-informed decisions. It is critical for the stability of the marketplace and the well-being of consumers to ensure that everyone is playing by the same rules.

As markets and consumers continue to emerge from the continuing effects of the devastating financial crisis of 2008, the Bureau finds that debt collection is central and cuts across virtually all credit products: credit cards, mortgages, student loans, payday loans, and other consumer loans. Currently, about 30 million consumers – nearly one out of every ten Americans – are subject to debt collection, for amounts that average about $1,500 each.

Many companies in this industry play by the rules. But others cut corners and seek to gain an advantage by ignoring the rules. These bad actors are a detriment to every company that is faithfully following the law, and their actions harm consumers.

During the reporting period covered by this report, consumers shared with the CFPB their experiences – positive and negative – with financial products and services. Consumers have the opportunity to provide the Bureau with such feedback through a variety of forums, including the Tell Your Story feature on the CFPB's website, and by participating in roundtables, town halls, and field hearings. This feedback is critical to our efforts to understand the challenges consumers face in obtaining access to the financial products and services they need.

The Bureau's monthly complaint reports highlight problems faced by consumers for various financial products. These reports indicate that consumers continue to experience issues with credit card late fees, debt collectors' communication tactics, and bank account and overdraft fees.

In addition to Tell Your Story, consumers have opportunities to voice concerns and share their experiences in person at field hearings and public meetings, which focus on particular consumer finance issues. During this reporting period,[5] consumers and advocates participated in large Bureau-sponsored field hearings in Denver, CO and Louisville, KY. These events drew hundreds of participants, many of whom shared their personal experiences with arbitration agreements, checking accounts, and other consumer financial issues.

The CFPB's Office of Community Affairs has also hosted roundtable conversations with leaders of consumer, civil rights, community, housing, faith-based, student, and other organizations. The roundtables provided opportunities for stakeholders to meet with Director Cordray and other senior Bureau staff to share their first-hand perspectives on key consumer finance issues that affect their communities.

Collecting, investigating, and responding to consumer complaints are integral parts of the CFPB's work, as set forth in the Dodd-Frank Act.[6] The Bureau hears directly from consumers about the challenges they face in the marketplace, brings their concerns to the attention of companies, and assists in addressing their complaints.

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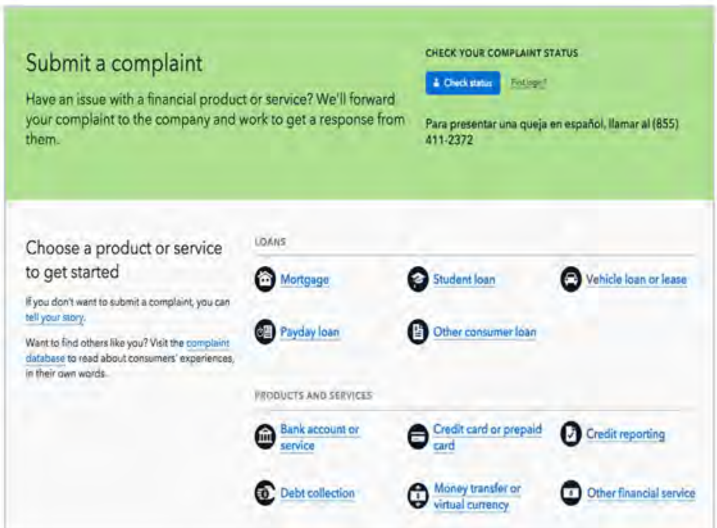
[5] Between October 1, 2015 and March 31, 2016.

[6] See Dodd-Frank Act, Pub. L. No. 111-203, Sec. 1021(c)(2).



consumerfinance.gov/complaint

The CFPB began Consumer Response operations on July 21, 2011, by accepting consumer complaints about credit cards. The Bureau now accepts complaints about mortgages, bank accounts and services, student loans, vehicle and other consumer loans, credit reporting, money transfers, debt collection, payday loans, prepaid cards, additional nonbank products (including debt settlement services, credit repair services, and pawn and title loans), and digital currency. Consumers may also contact the CFPB with questions about other products and services. The Bureau answers questions and refers consumers to other regulators or additional resources as appropriate.

consumerfinance.gov/complaintdatabase

Information about consumer complaints is available to the public through the Bureau's public Consumer Complaint Database (the database), launched on June 19, 2012. The database was initially populated with credit card complaints received on and after June 1, 2012, and has been expanded over time:

- October 2012: added credit card complaints dating back to December 1, 2011;
- March 2013: added mortgage complaints dating back to December 1, 2011, bank account and service complaints, student loan complaints, vehicle and other consumer loan complaints, all dating back to March 1, 2012;
- May 2013: added credit reporting complaints dating back to October 22, 2012 and money transfer complaints dating back to April 4, 2013;
- November 2013: added debt collection complaints dating back to July 10, 2013;
- July 2014: added payday loan complaints dating back to November 6, 2013;
- January 2015: added prepaid cards, other consumer loans (pawn and title), and other financial services dating back to July 19, 2014;
- June 2015: added consumer complaint narratives and optional company public responses;

- February 2016: added tags to identify complaints submitted by older Americans and servicemembers and a field indicating whether the consumer consented to the publication of the narrative; and
- March 2016: added consumer loans from marketplace lenders.

A complaint is listed in the database when the company responds to the complaint, or after the company has had the complaint for 15 days, whichever comes first. Complaints are not published if they do not meet all of the publication criteria.[7]

The database updates nightly, and contains certain individual complaint-level data collected by the CFPB, including the type of complaint, the date of submission, the consumer's state, and the company that the complaint concerns. The database also includes information about the actions taken by a company in response to a complaint – whether the company's response was timely, how the company responded, and whether the consumer disputed the company's response. The database does not include confidential information about consumers' identities.

On June 25, 2015, the CFPB began to publish consumer complaint narratives in the Consumer Complaint Database. Consumers now have the choice to share in their own words their experiences with the consumer financial marketplace. Only those narratives for which opt-in consumer consent is obtained and to which a robust personal information scrubbing process is applied are eligible for disclosure. The CFPB gives companies the option to respond publicly to the substance of the consumer complaints they receive from the CFPB by selecting from a set list of public-facing response categories.

Web-based features of the database facilitate the ability to filter data based on specific search criteria, to aggregate data in various ways, such as by complaint type, company, state, date, or any combination of available variables, and to download data. Information from the database has been shared on social media and evaluated using other new applications.

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[7] *See* Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. 37,558 (June 22, 2012).

The Bureau continually strives to improve data quality and protect sensitive information, while making data increasingly available through reports to Congress and to the public about the complaints the CFPB receives and by sharing certain data with the public through the Consumer Complaint Database.

2.2 How the CFPB handles complaints

In keeping with the CFPB's statutory responsibility and its commitment to accountability, the following pages provide an overview of the handling and analysis of complaints received by the Bureau from April 1, 2015 through March 31, 2016.[8]

The CFPB's Consumer Response team screens complaints submitted by consumers based on several criteria, including whether the complaint falls within the Bureau's authority and whether the complaint is complete. Screened complaints are forwarded via a secure web portal to the appropriate company.[9] The company reviews the information, communicates with the consumer as needed, and determines what action to take in response. The company then reports back to the consumer and the CFPB via the secure company portal, and the Bureau invites the consumer to review the response and provide feedback.[10] Consumers who have submitted complaints to

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[8] While the reporting period for this Semi-Annual Report is six months, Dodd-Frank Act § 1016(c)(4) requires "an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year." Therefore, this section reports on the time period April 1, 2015 through March 31, 2016.

[9] In some cases, Consumer Response refers or sends a complaint to another regulator, for example, if a particular complaint does not involve a product or market that is within the Bureau's jurisdiction or one that is not currently being handled by the Bureau, or in cases where the company is not yet registered to respond to complaints in our system. Complaints handled by the Bureau, including those sent to other regulators, serve to inform the Bureau in its work to supervise companies, to enforce consumer financial laws, to write better rules and regulations, and to educate and engage consumers.

[10] The CFPB requests that companies respond to complaints within 15 calendar days. If a complaint cannot be closed within 15 calendar days, a company may indicate that its work on the complaint is "In progress" and provide a final response within 60 calendar days.

the Bureau through Consumer Response can log onto the secure consumer portal available on the CFPB's website, or call a toll-free number, to receive status updates, provide additional information, and review responses provided to the consumer by the company. Consumer Response analyzes complaints, company responses, and consumer feedback to spot trends and identify risks to consumers, and to inform the Bureau's overall work, including the identification of supervisory and enforcement priorities that lead to resolutions that benefit large numbers of consumers.

The process seeks to ensure that consumers receive timely responses to their complaints and that the Bureau, other regulators, consumers, and the marketplace have the complaint information needed to improve the functioning of the consumer financial markets for such products and services.

Throughout this process, subject-matter experts help monitor certain complaints. For example, the Office of Servicemember Affairs coordinates with Consumer Response on complaints submitted by servicemembers or their spouses and dependents.

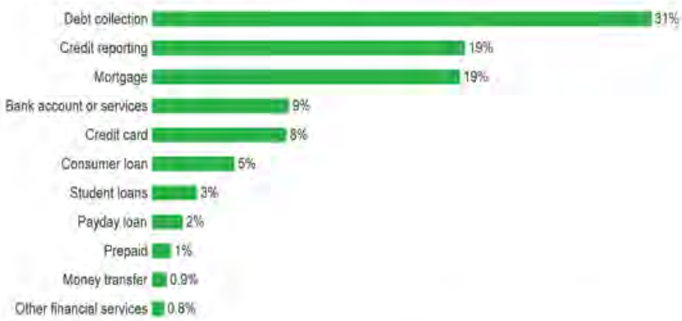
2.2.1 Complaints received by the CFPB

Between April 1, 2015 and March 31, 2016, the CFPB received approximately 277,700 consumer complaints.[11] Approximately 71% of all consumer complaints were submitted through the CFPB's website and 7% via telephone calls. Referrals accounted for 13% of all complaints

[11] Unless otherwise noted or the context suggests otherwise, the various tables and complaint tabulations appearing herein cover this period.

received, with the remainder submitted by mail, email, and fax.[12]

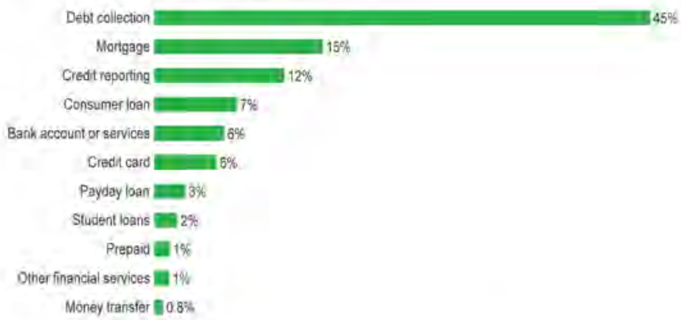
FIGURE 1: CONSUMER COMPLAINTS BY PRODUCT



The Dodd-Frank Act created the Office of Servicemember Affairs to address the specific challenges faced by servicemembers, veterans, and their families (collectively "servicemembers"). The Office of Servicemember Affairs monitors complaints from servicemembers in conjunction with Consumer Response. Between April 1, 2015 and March 31, 2016, approximately 18,400 complaints were submitted by servicemembers.

[12] This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. All data are current through March 31, 2016. Since launching Consumer Response operations on July 21, 2011 through March 31, 2016, the CFPB received approximately 859,900 consumer complaints.

FIGURE 2: SERVICEMEMBER COMPLAINTS BY PRODUCT



The tables and figures presented below show complaints by type, actions taken, company responses, and consumers' feedback about company responses.[13]

Consumers' debt collection complaints

Figure 3 and Table 1 show the types of debt collection complaints reported by consumers for the approximately 86,100 debt collection complaints the CFPB has received. Approximately 39,500 (or 46%) of all debt collection complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (41%), found to be incomplete (6%), or are pending with the consumer or the CFPB (1% and 7%, respectively).

[13] Percentages may not sum to 100% due to rounding.

FIGURE 3: TYPES OF DEBT COLLECTION COMPLAINTS REPORTED BY CONSUMERS

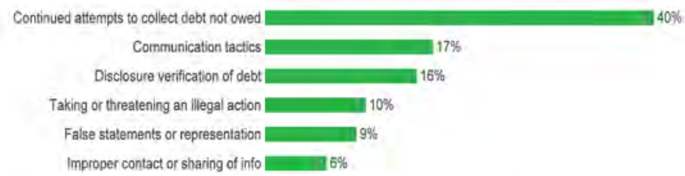


TABLE 1: TYPES OF DEBT COLLECTION COMPLAINTS REPORTED BY CONSUMERS

Types of Debt Collection Complaints	%
Continued attempts to collect debt not owed (Debt was discharged in bankruptcy, debt resulted from identity theft, debt was paid, debt is not mine)	40%
Communication tactics (Frequent or repeated calls, called outside of 8am-9pm, used obscene, profane or other abusive language, threatened to take legal action, called after sent written cease of communication notice)	17%
Disclosure verification of debt (Did not receive notice of right to dispute, not enough information to verify debt, did not disclose communication was an attempt to collect a debt)	16%
Taking/threatening an illegal action (Threatened to arrest me or take me to jail if I do not pay, threatened to sue me on debt that is too old to be sued on, sued me without properly notifying me of lawsuit, sued me where I did not live or did not sign for the debt, attempted to/collected exempt funds, seized or attempted to seize property)	10%
False statements or representation (Attempted to collect wrong amount, impersonated attorney, law enforcement or government official, indicated committing crime by not paying debt, indicated should not respond to lawsuit)	9%
Improper contact or sharing of information (Contacted me after I asked not to, contacted my employer, contacted me instead of my attorney, talked to a third party about my debt)	6%
Total debt collection complaints	98%

The most common type of debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed. In many of these cases, the attempt to collect the debt is not itself the problem; rather, consumers assert that the calculation of the amount of underlying debt is inaccurate or unfair. In other cases, the consumer complains about the furnishing of information to credit reporting agencies. These complaints, which are often consistent with complaints consumers submit to the Bureau about credit reporting, suggest that consumers frequently only learn about debt collection accounts when they check their credit reports.

Complaints about debt collectors' communications tactics (telephone collections especially) are also still very common. In addition to the frequent complaints about collection calls, which consumers say are too frequent or at inconvenient times of the day, there were a significant number of complaints about calls to third parties, calls to the consumer's place of employment, or calls where the collector threatened to take legal action.

Consumers also complained about the lack of debt validation received from debt collectors. Consumers often ask collectors for additional documentation to support the debt. The lack of documentation provided by some debt collectors appears to frustrate consumers, especially when the documentation is a simple invoice or bill for the services or goods that were the subject of the debt being collected. There are a number of collectors who reportedly respond to any consumer complaints by closing the account and returning it to their client.

Consumers' mortgage complaints

Figure 4 and Table 2 show the types of mortgage complaints reported by consumers for the approximately 53,100 mortgage complaints the CFPB has received. Approximately 45,100 (or 85%) of all mortgage complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (10%), found to be incomplete (3%), or are pending with the consumer or the CFPB (0.4% and 2%, respectively).

FIGURE 4: TYPES OF MORTGAGE COMPLAINTS REPORTED BY CONSUMERS

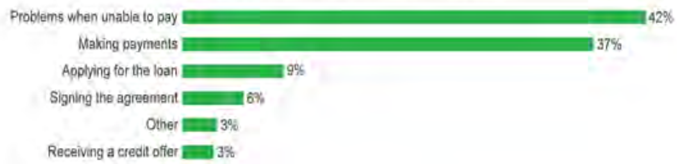


TABLE 2: TYPES OF MORTGAGE COMPLAINTS REPORTED BY CONSUMERS

Types of Mortgage Complaints	%
Problems when you are unable to pay (Loan modification, collection, foreclosure)	42%
Making payments (Loan servicing, payments, escrow accounts)	37%
Applying for the loan (Application, originator, mortgage broker)	9%
Signing the agreement (Settlement process and costs)	6%
Other	3%
Receiving a credit offer (Credit decision/Underwriting)	3%
Total mortgage complaints	100%

The most common type of mortgage complaint involves problems consumers face when they are unable to make payments, such as issues relating to loan modifications, collections, or foreclosures. In particular, consumers continue to complain about delays and ambiguity in the review of their modification applications. Some consumers complained that they were not considered for all available loss mitigation options, were incorrectly denied a modification, or that the terms of the approved modification were unfavorable. Consumers with successfully completed loan modifications have complained that some servicers do not amend derogatory credit reporting accrued by consumers during trial periods although documents provided to the consumers by servicers indicated that they would do so.

Other common types of mortgage complaints address issues related to making payments, including loan servicing, posting of payments, or management of escrow accounts. For example, consumers expressed concerns over difficulties they experience when the servicing of their loan is transferred, including complaints about fees charged by the prior servicer, unexplained escrow deficiencies, issues with the new servicer accepting the previous servicer's modification, and communication between the old and new servicer (especially when loss mitigation efforts are ongoing).

Consumer complaints about mortgage originations tend to involve the lengthy application and approval processes and unauthorized credit inquiries. Consumers also complained about delayed loan denials that occurred just before settlement but were based upon information that was disclosed early in the application process (*e.g.*, bankruptcy, lack of employment history, etc.). They expressed frustration that fees were charged even though they believe the loan originator knew that the loan would not be approved. A number of complaints involved the lender's refusal to honor rate-locks, and concerns about disclosure of the terms of loans with variable interest rates.

Consumers' credit reporting complaints

Figure 5 and Table 3 show the types of credit reporting complaints reported by consumers for the approximately 54,000 credit reporting complaints the CFPB has received. Approximately 36,600 (or 67%) of all credit reporting complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (1%), found to be incomplete (30%), or are pending with the consumer or the CFPB (2% and 1%, respectively).

FIGURE 5: TYPES OF CREDIT REPORTING COMPLAINTS REPORTED BY CONSUMERS

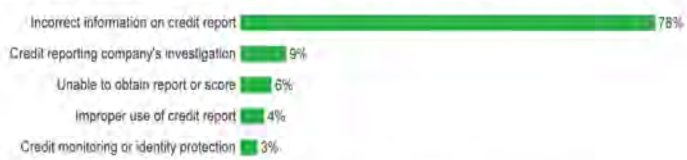


TABLE 3: TYPES OF CREDIT REPORTING COMPLAINTS REPORTED BY CONSUMERS

Types of Credit Reporting Complaints	%
Incorrect information on credit report (Information is not mine, Account terms, Account status, Personal information, Public record, Reinserted previously deleted information)	78%

Types of Credit Reporting Complaints	%
Credit reporting company's investigation (Investigation took too long, did not get proper notice of investigation status or results, did not receive adequate help over the phone, problem with statement of dispute)	9%
Unable to get my credit report or credit score (Problem getting free annual report, problem getting report or credit score)	6%
Credit monitoring or identity protection services (Problem cancelling or closing account, billing dispute, receiving unwanted marketing or advertising, account or product terms and changes, problem with fraud alerts)	4%
Improper use of my credit report (Report improperly shared by credit reporting company, received marketing offers after opting out, report provided to employer without written authorization)	3%
Total credit reporting complaints	100%

This table illustrates that the most common type of credit reporting complaint is about incorrect information appearing on the consumer's credit report, such as information that does not belong to the consumer, incorrect account status, and incorrect personal information. Of the approximately 42,100 such complaints submitted by consumers, approximately 29,500 (70%) were submitted against the three nationwide credit reporting companies.

Other common complaints are about issues with credit reporting companies' investigations of information disputed by consumers and difficulties in obtaining a credit report or credit score. Consumers report that credit reporting companies sometimes return findings on their disputes within only a few days, and consumers question the depth and validity of such quick investigations. Additionally, consumers report frustration when they have submitted documentation that they believe proves that the information provided by the data furnisher was inaccurate, but no change is made to their credit report.

Consumers' bank account and service complaints

Figure 6 and Table 4 show types of bank account and service complaints, such as complaints about checking and savings accounts, reported by consumers for the approximately 23,600 bank account and service complaints received by the CFPB. Approximately 18,300 (or 77%) of all bank account or services complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (16%), found to be incomplete (4%), or are pending with the consumer or the CFPB (0.5% and 1.5%, respectively).

FIGURE 6: TYPES OF BANK ACCOUNT AND SERVICE COMPLAINTS REPORTED BY CONSUMERS

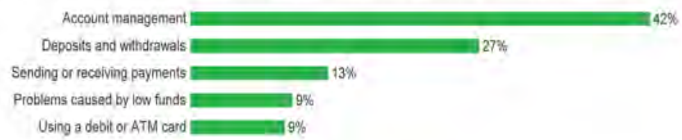


TABLE 4: TYPES OF BANK ACCOUNT AND SERVICE COMPLAINTS REPORTED BY CONSUMERS

Types of Bank Account and Service Complaints	%
Account opening, closing, or management (Confusing marketing, denial, disclosure, fees, closure, interest, statements, joint accounts)	42%
Deposits and withdrawals (Availability of deposits, withdrawal problems and penalties, unauthorized transactions, check cashing, payroll deposit problems, lost or missing funds, transaction holds)	27%
Making or receiving payments, sending money to others (Problems with payments by check, card, phone or online, unauthorized or fraudulent transactions, money/wire transfers)	13%
Problems caused by my funds being low (Overdraft fees, late fees, bounced checks, credit reporting)	9%
Using a debit or ATM card (Disputed transaction, unauthorized card use, ATM or debit card fees, ATM problems)	9%
Total bank account and service complaints	100%

As the table illustrates, the most common type of bank account and service complaint relates to opening, closing, or managing the account. These complaints address issues such as account maintenance fees, legal processing fees for judgments and levies, changes in account terms, confusing marketing, early withdrawal penalties for certificates of deposit, and involuntary account closures. Other common complaints relate to deposit and withdrawal issues, such as transaction holds, the company's right to offset deposit accounts, and unauthorized debit card charges. In this area, many consumers are frustrated by companies' handling of error disputes and requests to stop payment on preauthorized electronic debits. Another common type of complaint relates to problems caused by a consumer's funds being low, including overdraft fees, bounced checks, charged-off accounts, and negative reporting to credit reporting agencies. In this area, many consumers are frustrated by the way some companies appear to manipulate the order in which deposits and withdrawals are posted to consumers' accounts to maximize overdraft fees.

Consumers' credit card complaints

Table 5 shows the most common types of credit card complaints that the CFPB has received as reported by consumers. About 75% of the approximately 23,100 credit card complaints fell into these 10 categories. Approximately 18,200 (or 79%) of all credit card complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (15%), found to be incomplete (4%), or are pending with the consumer or the CFPB (0.6% and 1.6%, respectively).

TABLE 5: MOST COMMON CREDIT CARD COMPLAINTS REPORTED BY CONSUMERS

Complaint	%
Billing disputes	17%
Other	14%
Identity theft/Fraud/Embezzlement	12%
Closing/Cancelling account	7%
APR or interest rate	5%
Advertising and marketing	5%
Customer service/Customer relations	5%

Complaint	%
Delinquent account	4%
Late fee	4%
Bill Statement	3%
Credit card complaints in top 10 types	76%

As the table illustrates, billing disputes are the most common type of credit card complaint. Consumers continue to be confused and frustrated by the process and by their limited ability to challenge inaccuracies on their monthly credit card billing statements. For example, some consumers realize only after their claim has been denied that they needed to notify their credit card companies within 60 days of any billing errors. In other cases, consumers are not aware that companies typically do not stop a merchant charge once the cardholder has authorized it, or do not override a merchant's "no-return policy." Other common types of credit card complaints relate to identity theft, fraud, or embezzlement; closing or cancelling an account; and annual percentage rates or interest rates.

Consumers' consumer loan complaints

Figure 7 and Table 6 show the types of consumer loan complaints, such as complaints about installment loans, vehicle loans and leases, personal lines of credit, and pawn and title loans reported by consumers for the approximately 14,200 consumer loan complaints received by the CFPB.[14] Approximately 8,400 (or 59%) of all consumer loan complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (29%), found to be incomplete (6%), or are pending with the consumer or the CFPB (1% and 4%,

[14] The Bureau began handling complaints about pawn and title loans as part of the consumer loan complaint category on July 19, 2014.

respectively).

FIGURE 7: TYPES OF CONSUMER LOAN COMPLAINTS REPORTED BY CONSUMERS

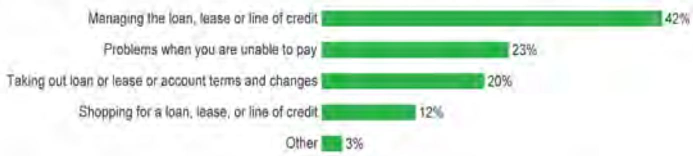


TABLE 6: TYPES OF CONSUMER LOAN COMPLAINTS REPORTED BY CONSUMERS

Types of Consumer Loan Complaints	**%**
Managing the loan, lease, or line of credit (Billing, late fees, damage or loss, insurance (GAP, credit, etc.), credit reporting, privacy)	42%
Problems when you are unable to pay (Debt collection, repossession, set-off from bank account, deficiency, bankruptcy, default, fraud)	23%
Taking out the loan or lease / Account terms and changes (Term changes (mid-deal changes, changes after closing, rates, fees, etc.), required add-on products, trade-in payoff, fraud)	20%
Shopping for a loan, lease, or line of credit (Sales tactics or pressure, credit denial, confusing advertising or marketing)	12%
Other (Charged fees or interest I did not expect, identity theft/fraud/embezzlement, billing disputes, credit reporting, other)	3%
Total consumer loan complaints	100%

The table illustrates that the most common type of consumer loan complaint pertains to managing the loan, lease, or line of credit. Other common types of complaints address problems consumers have when they are unable to pay (including issues related to debt collection, bankruptcy, and default) and problems when taking out the loan or lease, such as term changes.

Consumers' student loan complaints

Figure 8 and Table 7 show the types of student loan complaints reported by consumers for the approximately 7,700 student loan complaints received by the CFPB. Approximately 5,300 (or 69%) of all student loans complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (21%), found to be incomplete (5%), or are pending with the consumer or the CFPB (1% and 3%, respectively).

FIGURE 8: TYPES OF STUDENT LOAN COMPLAINTS REPORTED BY CONSUMERS

TABLE 7: TYPES OF STUDENT LOAN COMPLAINTS REPORTED BY CONSUMERS

Types of Student Loan Complaints	%
Dealing with my lender or servicer (Making payments, getting information about my loan, managing my account)	65%
Can't repay my loan (Deferment, forbearance, default, bankruptcy, payment plan, refinancing)	30%
Getting a loan (Confusing terms, rates, denial, confusing advertising or marketing, sales tactics or pressure, financial aid services, recruiting)	4%
Total student loan complaints	99%

The most common type of student loan complaint concerns problems consumers confront when they are dealing with lenders or servicers. Consumers also report problems when they are unable to pay, such as issues related to default, student debt collection, and bankruptcy. Consumers report that they continue to struggle with the limited affordable payment options permitted in their loan agreements. Specifically, some consumers say they are unable to refinance or restructure the repayment terms of their loan, either to lower monthly payments during periods of financial hardship or to improve existing terms based upon the consumer's improved credit profile and credit-worthiness. Some consumers also express confusion about the difference between their private loans and public loans, specifically when it comes to forbearance and deferment options.

Consumers' payday loan complaints

Figures 9-10 and Table 8 show the types of payday loan complaints reported by consumers for the approximately 5,300 payday loan complaints the CFPB has received. Approximately 1,800 (or 33%) of all payday complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (40%), found to be incomplete (13%), or are pending with the consumer or the CFPB (1% and 12%, respectively).

FIGURE 9: TYPES OF PAYDAY LOAN COMPLAINTS REPORTED BY CONSUMERS

FIGURE 10: TYPES OF PAYDAY LOANS CONSUMERS COMPLAIN ABOUT

TABLE 8: TYPES OF PAYDAY LOAN COMPLAINTS REPORTED BY CONSUMERS, BY TYPE OF LOAN

Type of Payday Complaint	In person / at a store	Online	Not Stated	Total
Cannot contact lender	29%	30%	40%	33%
Charged fees or interest I did not expect	33%	31%	16%	27%
Received a loan I did not apply for	7%	12%	29%	17%
Applied for a loan, but didn't receive money	5%	10%	6%	8%
Payment to account not credited	11%	6%	4%	6%

Type of Payday Complaint	In person / at a store	Online	Not Stated	Total
Can't stop lender from charging my bank account	9%	7%	2%	6%
Lender charged my bank account on wrong day or for wrong amount	6%	3%	2%	3%
Total	100%	99%	99%	100%

Of the 5,300 payday loan complaints submitted by consumers, approximately 55% were about problems consumers experienced after obtaining a payday loan online. Approximately 15% reported problems when obtaining a payday loan in person or at a store. For the remaining approximately 30% of complaints, the consumer did not indicate how the loan was obtained.

The most common type of payday loan or deposit advance (*i.e.*, bank payday advance loan) complaint is about problems with contacting the lender. Consumers also complain about being charged unexpected fees or interest. Other common types of consumer complaints involve receiving loans for which they did not apply and issues with applying for the loan, but not receiving the money.

Consumers also submit debt collection complaints to the Bureau that are related to payday loans. In addition to the 5,300 payday complaints received during this reporting period, the CFPB also handled approximately 9500 debt collection complaints related to a payday loan or loans.

Consumers' money transfer complaints

Figure 11 and Table 9 show the types of money transfer complaints reported by consumers for the approximately 2,500 money transfer complaints the CFPB has received. Approximately 1,700 (or 69%) of all money transfer complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (21%), found to be incomplete (7%), or are pending with the consumer or the CFPB (0.5% and 2.5%, respectively).

FIGURE 11: TYPES OF MONEY TRANSFER COMPLAINTS REPORTED BY CONSUMERS

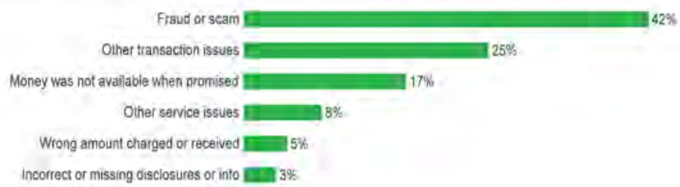


TABLE 9: TYPES OF MONEY TRANSFER COMPLAINTS REPORTED BY CONSUMERS

Types of Money Transfer Complaints	%
Fraud or scam	42%
Other transaction issues (Unauthorized transaction, cancellation, refund, etc.)	23%
Money was not available when promised	17%
Other service issues (Advertising or marketing, pricing, privacy, etc.)	8%
Incorrect/missing disclosures or info	5%
Wrong amount charged or received (Transfer amounts, fees, exchange rates, taxes, etc.)	3%
Total money transfer complaints	98%

This table illustrates that the most common type of money transfer complaint was about fraud or scams. In these cases, the consumer is prompted to send funds as a result of a scam, and someone other than the consumer's intended recipient ultimately receives the funds. For example, consumers often complain that they were prompted to transfer funds in response to a request for help from a family member or friend; for the purchase of goods or services, the rental of an apartment, a loan, or a job opportunity; or to pay taxes on lottery earnings. In response to such complaints, companies engaged in money transfers suggest that they have no liability when someone other than the intended recipient receives the funds, as long as the company complied with its policies and procedures and the minimum identification requirements were satisfied by the recipient. Another common type of complaint involves issues with other transactions, such as the refusal to cancel transactions or honor refunds when the consumer believes the company should provide them.

Consumers' prepaid card complaints

Figure 12 and Table 10 show the types of prepaid card complaints reported by consumers for the approximately 3,200 prepaid card complaints the CFPB has received.[15] Approximately 1,900 (or 59%) of all prepaid complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (30%), found to be incomplete (7%), or are pending with the consumer or the CFPB (1% and 3%, respectively).

FIGURE 12: TYPES OF PREPAID CARD COMPLAINTS REPORTED BY CONSUMERS

TABLE 10: TYPES OF PREPAID CARD COMPLAINTS REPORTED BY CONSUMERS

Types of Prepaid Card Complaints	%
Managing, opening, or closing your account	34%
Unauthorized transactions or other transaction issues	31%
Fraud or scam	20%
Fees	6%

[15] CFPB began accepting complaints about prepaid cards on July 19, 2014.

Types of Prepaid Card Complaints	%
Adding money	6%
Advertising, marketing, or disclosures	3%
Overdraft, savings or rewards features	1%
Total prepaid card complaints	100%

The most common types of prepaid card complaints involved managing, opening, or closing a prepaid card account and unauthorized transactions or other transaction issues. Another common type of complaint is about unauthorized transactions or other transaction issues. Consumers also complain about frauds and scams in relation to prepaid cards. Consumers are frustrated that they are charged an inquiry fee when they call to obtain the balance on the card. Consumers appear to be confused about the application of various fees related to the maintenance of the account, including fees that are assessed when funds are deposited on the card or withdrawn from the card. The remaining complaints involved issues with adding money to a reloadable prepaid card, dealing with misleading advertising or marketing, or not being properly compensated on rewards.

Other financial services complaints

Figure 13 and Table 11 show the types of other financial services complaints reported by consumers for the approximately 2,100 other financial services complaints the CFPB has received.[16] Approximately 400 (or 17%) of all other financial services complaints received from April 1, 2015 through March 31, 2016 were sent by Consumer Response to companies for review and response. The remaining complaints have been referred to other regulatory agencies (60%), found to be incomplete (12%), or are pending with the consumer or the CFPB (1% and 10%,

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[16] CFPB began accepting complaints about check cashing, credit repair, debt settlement, foreign currency exchange, money orders, refund anticipation checks, and travelers' and cashiers' checks on July 19, 2014.

respectively).

FIGURE 13: TYPES OF OTHER FINANCIAL SERVICES COMPLAINTS REPORTED BY CONSUMERS

TABLE 11: TYPES OF OTHER FINANCIAL SERVICES COMPLAINTS REPORTED BY CONSUMERS

Types of Other Financial Services Complaints	%
Fraud or scam	53%
Customer service or customer relations	18%
Unexpected or other fees	8%
Excessive fees	7%
Advertising and marketing	5%
Disclosures	5%
Lost or stolen check	2%
Lost or stolen money order	1%
Incorrect exchange rate	0.5%

Total other financial services complaints	99%

Of the 2,100 other financial services complaints submitted by consumers, approximately 53% dealt with fraud or scams. Approximately 18% of complaints were about customer service issues, while approximately 8% of complaints dealt with unexpected or other fees. The remaining complaints for other financial services involved issues with excessive fees, advertising and marketing, disclosures, lost or stolen checks or money orders, and incorrect exchange rates.

How companies respond to consumer complaints

Approximately 177,100 (or 64%) of all complaints received between April 1, 2015 and March 31, 2016 were sent by Consumer Response to companies for review and response.[17] Table 12 shows how companies responded to these complaints during this time period.

Company responses include descriptions of steps taken or that will be taken, communications received from the consumer, any follow-up actions or planned follow-up actions, and a categorization of the response. Response category options include “Closed with monetary relief,” “Closed with non-monetary relief,” “Closed with explanation,” “Closed,” “In progress,” and other administrative options. “Monetary relief” is defined as objective, measurable, and verifiable monetary relief to the consumer as a direct result of the steps taken or that will be taken in response to the complaint. “Closed with non-monetary relief” indicates that the steps taken by the company in response to the complaint did not result in monetary relief to the consumer that is objective, measurable, and verifiable, but may have addressed some or all of the consumer’s complaint involving non-monetary requests. “Non-monetary relief” is defined as other objective and verifiable relief to the consumer as a direct result of the steps taken or that will be taken in response to the complaint. “Closed with explanation” indicates that the steps taken by the company in response to the complaint included an explanation that was tailored to the

[17] The remaining complaints have been referred to other regulatory agencies (22%), found to be incomplete (10%), or are pending with the consumer or the CFPB (1% and 4%, respectively).

individual consumer's complaint. For example, this category would be used if the explanation substantively meets the consumer's desired resolution or explains why no further action will be taken. "Closed" indicates that the company closed the complaint without relief – monetary or non-monetary – or explanation. Consumers are given the option to review and dispute all company closure responses.

Companies have responded to approximately 94% of complaints[18] sent to them and report having closed 90% of the complaints sent to them. Table 12 shows how companies have responded to consumer complaints, and Table 13 shows untimely company responses as a percentage of complaints sent to companies for response.

TABLE 12: HOW COMPANIES HAVE RESPONDED TO CONSUMER COMPLAINTS

	Closed with monetary relief	Closed with non-monetary relief	Closed with explanation	Closed (without relief or explanation)	Administ-rative response	Company reviewing	Company did not provide a timely response
Debt collection	<1%	14%	67%	4%	2%	4%	8%
Credit reporting	<1%	23%	70%	<1%	<1%	5%	<1%
Mortgage	3%	4%	80%	2%	3%	6%	1%
Bank account or services	19%	5%	67%	3%	1%	4%	<1%
Credit card	19%	11%	64%	<1%	1%	4%	<1%
Consumer loan	6%	8%	75%	1%	2%	5%	3%

[18] Companies have responded to approximately 167,200 of the 177,100 sent to them for response.

	Closed with monetary relief	Closed with non-monetary relief	Closed with explanation	Closed (without relief or explanation)	Administrative response	Company reviewing	Company did not provide a timely response
Student loans	4%	5%	79%	<1%	<1%	9%	1%
Payday loan	5%	3%	60%	3%	16%	3%	10%
Prepaid	36%	20%	38%	<1%	1%	3%	1%
Money transfer	10%	4%	79%	<1%	<1%	3%	2%
Other financial services	11%	3%	67%	2%	1%	8%	7%
All	6%	11%	71%	2%	2%	5%	3%

TABLE 13: UNTIMELY COMPANY RESPONSES AS A PERCENTAGE OF COMPLAINTS SENT TO COMPANY

	Closed with monetary relief	Closed with non-monetary relief	Closed with explanation	Closed (without relief or explanation)	Administrative response	Company reviewing	No response
Debt collection	<1%	5%	51%	11%	<1%	<1%	31%
Credit reporting	3%	13%	52%	6%	0%	3%	23%
Mortgage	3%	2%	62%	7%	2%	2%	22%
Bank account or services	17%	2%	73%	3%	1%	<1%	4%
Credit card	12%	6%	62%	4%	1%	0%	15%
Consumer loan	3%	7%	52%	5%	<1%	1%	30%
Student loans	5%	1%	76%	1%	0%	1%	15%
Payday loan	1%	<1%	49%	5%	0%	<1%	43%

	Closed with monetary relief	Closed with non-monetary relief	Closed with explanation	Closed (without relief or explanation)	Administ-rative response	Company reviewing	No response
Prepaid	15%	15%	70%	0%	0%	0%	0%
Money transfer	5%	0%	63%	0%	0%	0%	32%
Other financial services	4%	4%	42%	8%	0%	4%	38%
All	2%	4%	54%	9%	1%	<1%	29%

After Consumer Response forwards complaints to companies, the company has 15 days to respond and 60 days to provide a final response, where applicable. Company responses provided outside of these windows are deemed untimely. As shown in Table 12, consumers did not receive a timely response in 3% of cases. Where companies eventually responded to the consumer, most often they provided a response of "Closed with explanation." However, Table 13 shows that 29% of complaints with untimely company responses never received a response. Payday loan complaints were the most likely to receive no response, with 43% of complaints with an untimely company response never receiving a response.

Companies also have the option to provide non-monetary relief in response to complaints. Consumers have received a range of non-monetary relief in response to their complaints, such as:

- providing mortgage foreclosure alternatives that did not include direct monetary payments to the consumer, but that help them to keep their home;
- stopping harassment from debt collectors;
- cleaning up consumers' credit reports by correcting submissions to credit bureaus;
- restoring or removing a credit line;
- correcting account information, including in credit reports; and
- addressing formerly unmet customer service issues.

Companies also have the option to report an amount of monetary relief, where applicable. From April 1, 2015 through March 31, 2016, companies provided relief amounts in response to more than 10,400 complaints. For companies which have reported monetary relief, the median amount of relief reported was $122; however, the amount varies by product.

TABLE 14: MONETARY RELIEF REPORTED BY COMPANIES

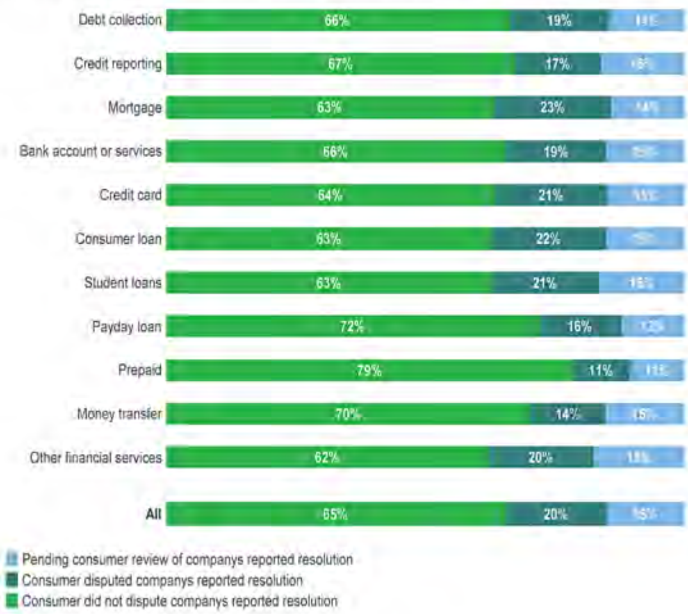
Product	Number of complaints	Median amount
Debt collection	370	$301
Credit reporting	170	$24
Mortgage	1,220	$500
Credit card	3,530	$100
Bank account or service	3,470	$105
Consumer loan	480	$202
Student loans	210	$216
Payday loan	80	$380
Money transfers	170	$100
Prepaid	680	$25
Other financial services	40	$219
Overall	10,420	$122

Consumers' feedback about companies' responses

Once the company responds, the CFPB provides the company's response to the consumer for review. Where the company responds "Closed with monetary relief," "Closed with non-monetary relief," "Closed with explanation," or "Closed," consumers are given the option to provide feedback on the company's response. Figure 14 shows how consumers responded to the approximately 159,900 complaints where they were given the option to provide feedback.

Approximately 65% of such consumers did not dispute the responses provided, while approximately 20% of consumers did dispute the response provided. The rest were pending with consumers at the end of this period.

FIGURE 14: CONSUMER FEEDBACK ABOUT COMPANY RESPONSES



Consumer response investigation and analysis

Consumer Response analyzes consumer complaints, including the accuracy, completeness, and timeliness of a company's responses as well as consumers' feedback about that company's responses, to ensure that consumers receive timely responses to their complaints and that the Bureau and other regulators, consumers, and the marketplace have the complaint information needed to improve the functioning of the consumer financial markets for such products and services. Consumer Response uses a variety of approaches to analyze consumer complaints including, for example, cohort and text analytics to identify trends and possible consumer harm. Complaint analysis may prompt investigation of individual complaints or groups of complaints and possible referral to colleagues in the CFPB's Division of Supervision, Enforcement, and Fair Lending for further consideration.

Consumer Response shares complaint data, analyzes, and offers insights to other offices to help the Bureau:

- Understand problems consumers are experiencing in the marketplace and the impact of those experiences on their lives;
- Develop tools to empower people to know their rights and protect themselves;
- Scope and prioritize examinations and ask targeted questions when examining companies' records and practices;
- Identify and stop unfair practices before they become major issues; and
- Investigate issues and take action when we find problems.

Listening to consumers and reviewing and analyzing their complaints is an integral part of the CFPB's work in understanding issues in the consumer financial marketplace, and in helping the market work better for consumers. The information shared by consumers and companies throughout the complaint process informs the Bureau about business practices that may pose risks to consumers and helps the Bureau supervise companies, enforce federal consumer financial laws, and write better rules and regulations.

2.3 Shopping challenges

The challenges that consumers face in the marketplace highlight the importance of a tenet that is central to the CFPB's mission – promoting markets in which consumers can understand and anticipate the risks, costs, and other terms of financial products and services. When the costs, risks, and other key features of financial products are transparent and understandable, consumers are better able to compare products and choose the best ones for their situation.

Prior Semi-Annual reports highlighted challenges consumers faced shopping for a particular lending or deposit product, including the markets for mortgages, credit cards, student loans, checking accounts, and small-dollar credit. In the Fall 2015 Semi-Annual report, we focused on how consumers with limited credit histories can face substantially reduced access to credit. Work completed by the CFPB over the past six months sheds light on areas of concern for consumers in the credit card market. The following describes findings from the Bureau's Consumer Credit Card Market report, published in December 2015.

2.3.1 Consumer credit card market

Overall, the credit card market is a success story for consumers. Since the recession, by almost all metrics, the market has recovered for consumers across the credit spectrum. Costs are lower than they were, and many of the most troublesome forms of back-end pricing have declined in prominence or vanished altogether. Approval rates and credit lines are both increasing. However, there are still risks for consumers in this market. The report highlighted challenges consumers face related to deferred interest pricing, credit card debt collection, and rewards programs.

Deferred Interest

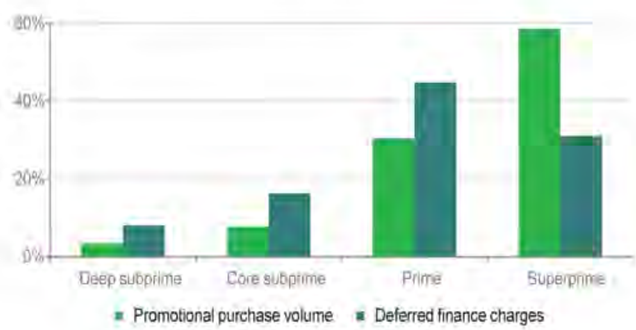
Many consumers are offered and accept "deferred interest" promotional financing on private label cards. These programs generally offer "0% interest if paid in full" during a defined promotional period, which is generally six or 12 months. Consumers who repay the full promotional purchase in this window obtain free financing on what is often a large purchase. Those consumers who do not fully pay off the promotional balance by the end of the promotion, however, are subject to the same interest rate they would have paid on that credit card in the absence of the promotion, which is assessed retroactively for the entire period. Given that the interest rate on these cards is generally around 25%, the magnitude of the interest charge—if and when it is assessed—can be substantial.

Data available to the Bureau indicate that nearly 90% of deferred interest promotional spending is made by consumers with prime or superprime credit scores. Consumers with deep subprime scores and core subprime scores account for 3% and 8% of deferred interest promotional spending, respectively. In addition, payoff rates vary significantly according to the credit score of the consumer holding the account. (Payoff rates capture the share of accounts or of promotional balances that are paid in full before the expiration of the promotional period.) Promotional offers taken by consumers with superprime scores consistently have payoff rates well in excess of 80%. Those offers taken by consumers with deep subprime scores fall below 50% on some payoff measures. Those consumers are not getting the "no interest" benefit that they may have expected when they accepted the promotion.

Some data suggest that error or confusion may be playing a part in non-payment. Consumers who fail to pay off their promotion in the promotional period tend to repay the full remaining balance, including the deferred finance charge, quite rapidly. Almost a third do so within two months and almost half within four months. That rapid repayment does not prove consumer error. But it appears to be in some tension with the behavior that might be expected of a consumer who understood that interest would be assessed retroactively if the balance was not paid in full by the end of the promotional period and who nonetheless chose to revolve that balance beyond the promotional period. We were able to discern little if any evidence that consumers improve their payoff rates by "learning" from repeated use of the product.

Non-payment in the promotional period can be costly. The longer the promotional period, the higher the cost. While the aggregate costs assessed to all deferred interest users are comparable, or even less expensive, than revolving the same balances on general purpose cards, the costs are almost all concentrated on a small share of promotions. These promotions are taken, disproportionally, by consumers with lower credit scores. Figure 15 compares the share of promotional purchase volume accounted for by consumers in each credit score range with their share of deferred interest charges. It shows that while consumers with subprime scores comprise only 11% of total promotional spending in our dataset, they incur 24% of the aggregate deferred interest charges. Consumers with prime scores also incur a share of deferred interest charges greater than their share of promotional spending. Consumers with superprime scores, however, have a share of promotional spending that is nearly double their share of deferred interest charges.

FIGURE 15: SHARE OF PROMOTIONAL SPENDING AND DEFERRED INTEREST CHARGES, BY CONSUMER CREDIT SCORE, 2009-2013 (DI)



Preliminary results show that accounts with promotions that are not paid in full during the promotional period experience significantly higher delinquency rates after the promotion ends than accounts that pay in full during the promotion. They also experience delinquency well above background rates for private label balances generally. These same results hold across all credit score ranges.

Rewards

Credit card rewards programs have rapidly increased in prevalence over the past decade. As of 2014, accounts with rewards programs represent nearly two-thirds of all credit card balances and four-fifths of all credit card spending. Issuer are offering a greater diversity of rewards programs—and in many cases more compelling value propositions—to match the increasing popularity of these products with consumers. For many consumers, rewards have become central to the decision of which credit cards to acquire and how to use them.

There are also areas for potential concern in this market. It is not always clear when, where, and from whom consumers can expect to find or receive key program terms and conditions. Seemingly simple programs may have caveats or complexities glossed over by marketing materials. Consumers may not understand when and why rewards might expire or be forfeited, or what their options are when they do. Many rewards cards are based on partnerships between issuers and other companies, such as airlines and hotels, and it may not always be clear to consumers which institutions determine and control certain aspects of the product that they are using. The less that consumers can evaluate the value proposition associated with different rewards programs, the less able they are to select between cards on a rational basis—especially if they are likely to carry a balance on the card at some point in the future.

3. Delivering for American consumers and leveling the playing field

The CFPB exercises its authorities under Federal consumer financial laws to administer, implement, and promote compliance with those laws. The Bureau also works to expand the resources it makes available to consumers to build the foundation necessary to empower consumers to take control over their financial lives.

3.1 Resources for consumers

The CFPB provides financial education initiatives designed to provide consumers with opportunities to access a broad range of financial information, tools, services, and other resources to support financial capability. The Bureau provides tools, resources, and information to consumers based on their specific issues with financial products and services, with a goal of improved financial literacy and capability – among the public as a whole, and among consumers who have experienced particular challenges in the financial markets.

3.1.1 Consumer response

As detailed in the previous section, Consumer Response receives complaints and inquiries directly from consumers. Complaints are accepted through the CFPB website, consumerfinance.gov, and by telephone, mail, email, fax, and referral.

Consumers submit complaints on the CFPB website using complaint forms tailored to specific products, and can also log on to the secure consumer portal to check the status of a complaint and review a company's response. While on the website, consumers can chat with a live agent to receive help completing a complaint form. Consumers can also call the Bureau's toll-free number to ask questions, submit a complaint, check the status of a complaint, and more.[19] The CFPB's U.S.-based contact centers handle calls with little-to-no wait times, provide services to consumers in more than 180 languages, and serve hearing and speech-impaired consumers via a toll-free telephone number. Cutting-edge technology, including the secure company and consumer portals, makes the process efficient and user-friendly for consumers and companies. The CFPB also provides secure channels for companies to communicate directly with dedicated staff about technical issues.

The CFPB's phased-in approach to taking complaints has allowed Consumer Response to develop strong foundations over time. By applying the lessons learned through previous complaint function rollouts, Consumer Response has continued to improve its intake process, enhanced its communication with companies, and ensured the system's ease-of-use and effectiveness for consumers. Based on feedback from consumers and companies, as well as from its own observations, Consumer Response identifies new opportunities to improve its processes and implement changes with each product launch.

3.1.2 Consumer education and engagement

An essential part of the mission of the CFPB is to empower consumers to take control over their financial lives. The CFPB's Consumer Education and Engagement Division (CEE) develops and implements initiatives to educate and empower consumers to make choices about money to meet their own life goals. Despite the availability of a wide range of information about managing money and about financial products and services, many consumers still struggle to make the financial decisions that serve their life goals. The Bureau hears every day from people experiencing difficulty in their financial lives, who often express regret that they did not know more about the risks involved in particular financial decisions at the time they made those decisions. Research indicates that significant numbers of Americans are worried about their

[19] To find more information about submitting a complaint, please see Appendix A.

household finances – from not being able to cover regular expenses, to not having savings to cover a financial shock, to not having enough money to retire.

The Bureau works to improve the financial literacy of consumers in America. The Bureau has developed a strategy and a range of initiatives to help consumers take more control over their financial lives. Broadly, this strategy recognizes that financial literacy and financial capability require more than simply providing consumers with more information. Being able to manage one's financial life and make the financial decisions that will serve one's life goals requires a combination of knowledge, skills, and action.

The Bureau's strategy to improve financial literacy has two key aspects. First, the Bureau is seeking to provide assistance to consumers at important points in their financial lives. This includes building channels with a broad range of entities that consumers trust and may look to for financial and related guidance. Second, the Bureau is moving forward on research to identify effective approaches to financial education and better define how to measure and develop financial well-being. Fundamental to this strategy is developing approaches to provide youth with opportunities to develop the knowledge, skills, and attitudes that will serve them as adults. This strategy has been informed by the Bureau's consultations with the Financial Literacy and Education Commission (FLEC), and is aligned with FLEC's guiding vision of sustained financial well-being for U.S. individuals and families.

The Bureau's financial education strategy focuses on identifying opportune moments to engage consumers about their financial decisions and providing information, tools, or other decision-making supports to help with those decisions. The Bureau strives to provide consumers with financial decision-making resources and skills that will serve them today and in the future. The Bureau is working to address financial decision-making issues that affect consumers generally, and also issues that affect specific populations – servicemembers, students and young adults, older adults, and consumers who are low-income or economically vulnerable.

The Bureau seeks to provide consumers with assistance directly, and also works with others who can provide consumers with financial educational assistance in connection with other types of services consumers may seek. The Bureau is targeting its direct-to-consumer educational tools and resources toward assisting consumers with the financial aspects of large life decisions, starting with going to college, moving on to buying a home and, later in life, retiring; and on smaller decisions that can have large life consequences, such as starting a habit of savings, managing debt, and developing financial life skills to pass on to one's children. The Bureau also provides a robust tool, *Ask CFPB*, to answer common consumer questions that arise as people make choices about their financial lives and about financial products and services.

As part of its efforts to assist consumers in their financial lives, the Bureau engages in a rich and ongoing dialogue with stakeholders to share information, learn about promising practices, and identify opportunities to create or strengthen channels to bring financial education and financial capability programming to consumers. These stakeholders include financial education practitioners; federal, state, and local government agencies; and various other private and nonprofit organizations.

The Bureau's financial education research program focuses on: determining how to define and measure financial well-being as the end goal of financial education; identifying the knowledge, skills, and habits associated with financially capable consumers; and identifying effective approaches to improving financial capability and well-being. The Bureau will use the results of this research to refine how it supports consumers' financial decisions. The Bureau is sharing the results as they become available so others can look to the Bureau's findings as they make choices about how to provide financial education that can lead to better outcomes for consumers in America.

Highlights of financial education initiatives

The Bureau has undertaken a broad array of financial education initiatives this reporting period, as well as continued or expanded upon prior initiatives. Highlights of these initiatives are described below.

Bureau tools and information to assist consumers directly in making financial decisions:

- *Ask CFPB* (consumerfinance.gov/askcfpb/) is an interactive online tool that gives consumers "when you need it" answers to questions about financial products and services including credit cards, mortgages, student loans, bank accounts, credit reports, payday loans, and debt collection.
- *Paying for College* (consumerfinance.gov/paying-for-college/) is a set of online tools for students and families evaluating their higher education financing options – comparing college costs and financial aid, learning about college money and loan options, and assessing repayment options.

- *Owning a Home* (consumerfinance.gov/owning-a-home/) is a set of online tools for consumers to use as they begin and pursue the process of finding a home mortgage product that fits their needs and their budget. It helps consumers understand the basics of mortgages, orient themselves in the market and process, and consider various factors that may affect their own mortgage decision.

- *CFPB en Español* (consumerfinance.gov/es/) provides Spanish-speaking consumers, who make up the second largest language group in the United States, a central point of access to the Bureau's most-used consumer resources available in Spanish.

- *Planning for Retirement* (consumerfinance.gov/retirement/before-you-claim/) is a new interactive tool launched during the reporting period to help consumers make an informed decision about when to claim Social Security. Users see an estimate of how their claiming age affects their benefits and get tips relevant to their situation, which can help them prepare for a secure retirement.

- *Money Smart for Older Adults* (consumerfinance.gov/f/201306_cfpb_msoa-participant-guide.pdf) is a stand-alone module in the FDIC's *Money Smart* financial education program that provides information for older adults and their caregivers on preventing and responding to financial exploitation such as scams and identity theft, and resources on how to prepare financially for unexpected life events.

The Bureau is working with community institutions, government agencies, and other organizations to integrate financial education or capability strategies into existing service programs or consumer relationships:

- Schools provide the opportunity to transform the financial lives of a generation of Americans by introducing key money and finance-related concepts early, and building on that foundation consistently through the kindergarten through grade 12 (K-12) school years. The Bureau has launched a youth financial education initiative to build on existing efforts to integrate financial education into K-12 curricula and undertake other approaches to improving youth financial capability. This work includes a guide to help policymakers connect with tools, information, and insights to enhance K-12 financial education efforts available at consumerfinance.gov/reports/advancing-k-12-financial-education-a-guide-for-policymakers/; and a tool for analyzing and identifying appropriate and promising youth financial education curricula available at consumerfinance.gov/reports/youth-financial-education-curriculum-review-tool/.

- The Bureau is working with the FDIC to engage teachers, parents and caregivers, and financial institutions to improve the financial futures of young people. With the Bureau's participation, the FDIC released a new education series for youth, *Money Smart for Young People*, along with a new series of guides for parents and caregivers. *Money Smart for Young People* is available for download from the FDIC website at fdic.gov/consumers/education/torc/curriculumtools.html; the guides for parents and caregivers are also available at consumerfinance.gov/parents/. The collaboration includes a CFPB-hosted web page for parents and caregivers at consumerfinance.gov/parents/, and an FDIC-hosted web page for teachers at fdic.gov/teachers.

- Employers, including the federal government as an employer, can play an important role in helping people avoid financial distress and in promoting long-term financial well-being. Employers can do this by implementing practices in the workplace that strengthen financial capability, including making it easier for employees to adopt positive saving and investing habits. The Bureau has developed information about these practices in its report, *Financial wellness at work*. The report is available at consumerfinance.gov/reports/financial-wellness-at-work/.

  - The Bureau continues its workplace initiative focused on empowering public service organizations to help their employees tackle their student debt. As part of this initiative, the Bureau developed a toolkit, *Employer's guide to assisting employees with student loan repayment*. Public service organizations can use the toolkit to help employees learn about their options and work toward qualifying for federal loan repayment benefits available for student debt, including public service loan forgiveness. The Bureau is asking public service employers to take a pledge to help their employees in this effort. The pledge can be found at consumerfinance.gov/pledge/.

  - The Bureau is working with the Department of Labor's Employment and Training Administration to assist municipal leaders and local workforce boards in 25 communities over the next two years to integrate financial capability services into their year-round youth employment programs. Innovations and lessons from this work will be shared with the Department of Labor's broader Workforce System, which includes American Job Centers nationwide.

- Community organizations often serve as first responders in times of financial crisis for American families. Libraries are trusted institutions, and serve as a central neighborhood resource. The Bureau is working with libraries and national organizations with community networks to identify resources and community partnerships that can help libraries develop financial education programming. The Bureau is providing information and trainings for librarians. These efforts will help libraries build the expertise to help consumers research their financial questions. Resources for libraries are available at consumerfinance.gov/library-resources/. The Bureau is also working with faith communities and other neighborhood organizations to inform them about CFPB resources that individuals and community groups may use.

- Volunteer Income Tax Assistance (VITA) sites assist more than 3.5 million low-income households each year to prepare and file their tax returns free of charge and, if the filer is eligible, apply for the Earned Income Tax Credit. For the fourth year, the Bureau offered training and materials that site managers and volunteer tax preparers at VITA sites could use to encourage consumers to save a portion of their tax refunds. The Bureau also engaged in a large-scale pilot with 41 VITA programs around the country to test promising practices for promoting tax time savings. The training was offered to VITA site managers and their volunteer tax preparers via four webinars presented in late 2015 and early 2016. After the end of the tax season, participating sites will help the Bureau assess how to support the saving behavior of tax customers. The Bureau offered an array of educational materials for taxpayers as well, in English and Spanish, explaining available savings options, such as enrollment in new myRA starter retirement account product, and suggestions for purchasing Series I savings bonds. The Bureau made these materials available free via download or order at http://www.consumerfinance.gov/tax-preparer-resources/.

- To support consumers and the mortgage industry in transitioning to new residential mortgage disclosure forms effective for applications for home purchase mortgage loans received beginning October 3, 2015, the Bureau developed a new consumer information booklet, *Your home loan toolkit: A step-by-step guide (The Toolkit)*. The *Toolkit* is designed to help consumers purchasing a house to use the new forms to guide them through the process of shopping for a mortgage and buying a home. The *Toolkit* integrates new requirements under the Dodd-Frank Act. Lenders can use the *Toolkit* to satisfy requirements under RESPA, Regulation X, and Regulation Z, requiring them to provide special information booklets to help consumers better understand the nature and costs of real estate settlement services. Because the booklet is delivered to millions of consumers each year, it will help spread plain-language educational information at a time when consumers are entering into a major financial transaction. The *Toolkit* is available in print-ready and web-ready versions, in English and Spanish, at consumerfinance.gov/learnmore/#respa.

- The Bureau expanded its offerings for financial education practitioners by establishing the *CFPB Financial Education Exchange* (*CFPB FinEx*). *CFPB FinEx* is an online and in-person information exchange designed to provide financial education practitioners with centralized access to CFPB tools, resources, and research on consumer financial behavior and effective practices. *CFPB FinEx* facilitates discussion among financial educators and allows the Bureau to gather feedback on financial education tools and approaches. Financial educators can access CFPB tools, resources, and research through a *Resources for financial educators* web page, which is available at consumerfinance.gov/adult-financial-education/. This web page includes a printable, shareable inventory of Bureau tools, resources, and reports, which is available at consumerfinance.gov/f/201505_cfpb_finex-resource-inventory.pdf.

- The Bureau launched a toolkit, *Your Money, Your Goals*, for use by frontline staff in social services organizations. The toolkit allows social services organizations to help the people they serve strengthen their financial capability and personal money management skills. Entities, including federal, state, tribal, and local agencies and national organizations, participated in the initial rollout by training frontline staff across the country. The Bureau also developed, field-tested, and released versions adapted for specific types of users – legal aid organizations, community volunteers, and workers – and has worked with various entities to expand the reach of these adapted versions. More information is available at consumerfinance.gov/your-money-your-goals/.

- The *ROADS to Financial Independence* initiative (*Reach Outcomes. Achieve Dreams. Succeed.*) was developed so that more Americans with disabilities have the tools, resources, and support to improve their financial lives and build a brighter economic future. This initiative integrates financial education counseling with employment, independent living, and other support services provided to individuals with disabilities. Participants obtained the opportunity to make more informed financial decisions, set financial goals, and work toward improving their financial lives through improved credit, reduced debt, and increased savings.

- The Bureau hosted a series of virtual *Military financial educator forums* on consumer financial topics for service providers who deliver financial, educational, or legal counseling to servicemembers and their families worldwide. The Bureau makes these forums available as on-demand video trainings on the Bureau's website at consumerfinance.gov/servicemembers/on-demand-forums-and-tools/. These trainings currently cover issues in debt collection, credit reporting, veteran consumer issues, the consumer complaint process, and solutions for servicemembers with troubled mortgages.

- The Bureau and the FDIC collaborate in serving older adults and distribute a financial education tool, *Money Smart for Older Adults* (MSOA), as a stand-alone module in the FDIC's *Money Smart* financial education program. MSOA provides information for older adults and their caregivers on preventing and responding to financial exploitation such as scams and identity theft, and resources on how to prepare financially for unexpected life events. MSOA is offered by community organizations around the country that interact with older adults, family members, or caregivers. The FDIC and CFPB released the Spanish version of this program in 2014. Participant guides are available for download at consumerfinance.gov/f/201306_cfpb_msoa-participant-guide.pdf and are available for order through promotions.usa.gov/cfpbpubs.html. Community organizations that wish to offer the course in their communities can order the instructor materials from the FDIC at fdic.gov/consumers/consumer/moneysmart/olderadult.html.

- The Bureau developed educational guides, *Managing Someone Else's Money*, designed to help financial caregivers of older adults to manage money or property of someone who is unable to make their own financial decisions. We created guides tailored to the needs of people in four different fiduciary capacities: agents under a power of attorney, court-appointed guardians, trustees, and government fiduciaries (Social Security representative payees and VA fiduciaries). Each guide contains information on the fiduciary's responsibilities and tips on how to spot financial exploitation and avoid scams. We also created six sets of state-specific *Managing Someone Else's Money* guides to provide information on state law, practice, and resources, as well as a set of tips and templates to help legal and aging experts in the remaining states create state-specific versions. Guides and tips for states are available for download at consumerfinance.gov/managing-someone-elses-money.

- The Bureau launched a *Safe Student Account Toolkit* to assist colleges and universities seeking to enter into agreements with financial institutions to provide safer and more affordable co-branded financial products for students. This toolkit can help schools when developing a request for proposals to solicit bids to provide these financial products by empowering schools to solicit bids that clearly outline account features, fees and costs to students and, based on this information, to select a vendor that meets their students' needs. This toolkit is available for download at http://files.consumerfinance.gov/f/201512_cfpb_safe-student-account-toolkit.pdf and interested schools are encouraged to contact the Bureau at students@cfpb.gov.

The Bureau is conducting evidence-based research to build on current knowledge of what approaches to financial education are effective and how to measure effectiveness:

- A growing consensus is emerging that the ultimate measure of success for financial literacy efforts should be improvement in individual financial well-being. The Bureau has formally defined financial well-being in a way that allows it to be measured and for meaningful comparisons among approaches to achieving it, and identifies the specific types of knowledge, behavior, and personal traits that help people achieve greater financial well-being. The Bureau released the first findings of this research in a report entitled *Financial well-being: The goal of financial* education, which is available at consumerfinance.gov/reports/financial-well-being/.

- The Bureau developed and tested a set of questions – a "scale" – to measure financial well-being. The scale is designed to allow financial education practitioners and researchers to accurately and consistently quantify, and therefore observe, something that is not directly observable – the extent to which someone's financial situation and the financial capability that they have developed provide them with security and freedom of choice. The Bureau's user guide describes the research behind the CFPB *Financial Well-Being Scale* and provides detailed steps for using it, including how to score individuals' responses and compare their scores. The scale and guide are available at consumerfinance.gov/reports/financial-well-being-scale/.

3.2 Outreach

In addition to its efforts to engage specific populations, the CFPB regularly hosts public events across the country to discuss CFPB initiatives and to solicit input about issues related to consumer financial products and services. During this reporting period, the public participated in a field hearing on arbitration in Denver, CO and on checking accounts in Louisville, KY.

An audience member participates during the public session at a field hearing on checking accounts in Louisville, KY.

In conjunction with these public events, Director Cordray and senior Bureau officials held roundtables with community leaders, legal services attorneys, housing counselors, state and local officials, community banks, credit unions, housing industry participants, and others as part of the CFPB's commitment to engage with the public. The CFPB also hosted two public meetings of its Credit Union Advisory Council; both were located in Washington, D.C. and occurred on October 8, 2015 and March 24, 2016. Additionally, the CFPB held two public meetings of its Consumer Advisory Board in Washington, D.C., on October 22, 2015 and February 25, 2016.

The Bureau has also actively solicited the perspectives of consumer and civil rights groups, including holding roundtables with community-based organizations across the country. During this reporting period, the Bureau's Office of Community Affairs has engaged thousands of community group representatives through hundreds of meetings, briefing calls, and public appearances.

The Bureau's Office of Financial Institutions and Business Liaison was established in April 2013 to facilitate and coordinate dialogue with all industry participants, and has hosted hundreds of meetings, briefing calls, and public appearances with financial institutions and financial industry trade associations.

Director Cordray and senior CFPB leadership have also delivered several speeches at widely-attended industry and nonprofit conferences.[20] In addition to direct outreach through field events, roundtables, public meetings, speeches, and briefing calls, the CFPB launched Project Catalyst in November 2012 to support innovators in creating consumer-friendly financial products and services. The Bureau believes that markets work best when they are open to new ideas, and that the insights and innovations that come from looking at problems and solutions from new angles hold great potential in our efforts to achieve our mission of making the consumer finance market work for all consumers. Project Catalyst is designed to open lines of communication and foster collaborations that promote consumer-friendly innovation.

To these ends, Project Catalyst has continued to develop its outreach efforts and policy tools. Through popular "office hours" events, which are held in San Francisco, CA; New York, NY; and Austin, TX four to five times per year, the CFPB is able to keep up to date with the fast-paced development in the FinTech space while the FinTech startups benefit from the Bureau's knowledge of the regulatory environment and other considerations. Project Catalyst has developed three policy tools over the years. The first policy tool is the "research collaboration" program in which CFPB subject matter experts work with entrepreneurial companies to better understand what works for consumers and to inform our policy making. Since its launching, Project Catalyst has entered six such collaborations with companies large and small. The second policy tool is a trial disclosure program in which the CFPB provides waivers of federal disclosure

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[20] A list of speeches given in this reporting period by CFPB personnel may be found in Appendix H of this report.

requirements for successful applicants to allow them to develop and test innovative and consumer-friendly disclosures. More recently, the Bureau published a third tool, a no-action letter policy which aims to reduce regulatory uncertainty for new products and services that offer the potential for significant consumer benefit. More information about Project Catalyst is available on the CFPB's website.[21]

3.3 Partnerships

The Bureau has furthered many existing partnerships and formalized several new ones.

To date, the Bureau has signed numerous memoranda of understanding (MOUs) with intergovernmental partners, including federal agencies, state financial regulatory entities, state and tribal attorneys general, and municipal law enforcement agencies. The Bureau has also actively solicited the perspectives of consumer and civil rights groups.

3.3.1 Office of the Consumer Advisory Board and Councils

The CFPB's Office of the Consumer Advisory Board and Councils is charged with managing the Bureau's advisory groups and serving as the liaison between advisory group members and the Bureau.[22] In addition to its regular engagements with external stakeholders, the Bureau's outreach also includes the:

- Consumer Advisory Board (CAB);
- Community Bank Advisory Council (CBAC);
- Credit Union Advisory Council (CUAC); and

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[21] http://www.consumerfinance.gov/ProjectCatalyst/.

[22] http://www.consumerfinance.gov/blog/category/consumer-advisory-board/.

- Academic Research Council (ARC).

Among its responsibilities, the Office of the Consumer Advisory Board and Councils:

- Manages the policies and procedures for the constitution and management of the advisory board and councils;
- Manages the selection process for the Bureau's advisory board and councils;
- Conducts agenda setting for advisory board and council meetings;
- Regularly facilitates discussions between the Bureau and advisory board/council members; and
- Recommends policy and associated strategies as suggested by the advisory board and councils.

The Consumer Advisory Board and Councils offer vital insight and perspective of financial service providers as the Bureau strives to issue thoughtful, research-based rules.

The Consumer Advisory Board meets at least twice per year. The Credit Union Advisory Council and Community Bank Advisory Council each meet, on average, twice per year in person and twice per year by conference call. The Academic Research Council meets once a year.

Board members at the Consumer Advisory Board meeting on October 22, 2015 in Washington, D.C.

Role of the Consumer Advisory Board

Section 1014(a) of the Dodd-Frank Act states:

> *The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.*[23]

The Advisory Board and Councils help the Bureau solicit external stakeholder feedback on a range of topics, including consumer engagement, policy development, and research, and from a

[23] Dodd-Frank Act, Pub. L. No. 111-203, § 1014(a).

range of actors, including academics, industry, community members, and advocates. The advisory boards and councils consult on a variety of cross-cutting topics and report on meetings, and the CFPB provides minutes and/or summaries of their meetings on the Bureau's website. Members of the Bureau's board and councils serve for limited, specified terms.

Membership and public application process of the Consumer Advisory Board and Councils

Section 1014(b) of the Dodd-Frank Act states:

In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.[24]

Membership to all of the Bureau's advisory groups is facilitated through a public process whereby members of the public may apply to serve on a board or council. The Bureau will accept applications for these four advisory groups on a yearly basis. New CAB members will serve a three-year term and new ARC, CBAC, and CUAC members will serve two-year terms. On September 18, 2015, the Bureau was pleased to announce the appointment of these new board and council members.[25]

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[24] Dodd-Frank Act, Pub. L. No. 111-203, § 1014(b).

[25] http://www.consumerfinance.gov/newsroom/cfpb-announces-new-members-of-the-consumer-advisory-board-community-bank-advisory-council-and-credit-union-advisory-council/.

Meetings of the Consumer Advisory Board and Councils

The Bureau has held four meetings of the Advisory Board and Councils during this reporting period:

- Two CAB meetings – October 2015 and February 2016 in Washington, D.C.
- Two CUAC meetings – October 2015 and March 2016 in Washington, D.C.

Generally, Director Cordray provides remarks at Bureau Board and Council meetings, which are made available on our website. The Bureau now makes full advisory committee meetings open and accessible to the public. These meetings provide an opportunity for members of the public to hear the information and expertise CAB and Council members provide to the Bureau on the financial issues affecting their communities or constituencies. Any subcommittee meetings or discussions are also reported out and posted to consumerfinance.gov in meeting minutes and the CAB's annual report to the Bureau.

Topics covered with our Consumer Advisory Board and the other councils

In October 2015, the CBAC met to discuss reaching limited English speaking consumers, trends and themes in the marketplace, and arbitration.

In February 2016, the CAB met to discuss the Bureau's strategic outlook for the next two years as well as tools for measuring financial well-being.

In March 2016, the CUAC met to discuss the Bureau's strategic outlook for the next two years as well as ways for preventing and responding to elder financial abuse.

For more information about the CAB and the other CFPB advisory groups, please visit our website.

4. Regulations and guidance

The Bureau has continued to issue a number of proposed and final rules that relate to the Dodd-Frank Act, including a final rule amending Regulation C, implementing HMDA, and to work on proposed and final rules on various other matters within its authority that would address longstanding consumer protection concerns in a number of consumer financial services markets. In addition, the Bureau continues to follow up on an earlier Request for Information seeking public comment on potential projects to streamline regulations. The Bureau also continues its efforts to assist industry with the implementation of Dodd-Frank Act requirements, including the Bureau's KBYO and HMDA regulations.

4.1 Implementing statutory protections

The CFPB continues to engage in significant activities designed to implement the Dodd-Frank Act consumer protection provisions. Following the Bureau's issuance of mortgage rules in January 2013[26] and the KBYO rule in November 2013, the Bureau has continued to engage in activities to support the implementation process for these rules with both industry and consumers, as described further in Section 4.3. Other statutory implementation efforts have

[26] In January 2013, the Bureau issued several rules implementing changes made by the Dodd-Frank Act to the laws governing various aspects of the mortgage market, including assessments of consumers' ability to repay their loans, mortgage servicing, loan originator compensation, and other topics. These rules, all of which took effect by January 18, 2014, are now providing significant improvements in the mortgage process that benefit both consumers and the mortgage industry alike through strengthened consumer protections and increased efficiencies. The Bureau's implementation activities for these rules are further discussed in section 4.3.

included issuing additional rules pursuant to Dodd-Frank Act mandates. Much of the Bureau's recent activity continues to be mortgage-related:

- In October 2015, the Bureau finalized amendments to Regulation C to, among other things, implement Dodd-Frank Act revisions to HMDA. On October 28, 2015, these changes were published in the *Federal Register*. Prior to issuing the finalized rule, the Bureau, along with the Small Business Administration's Office of Advocacy and the Office of Management and Budget, launched a small business review panel process to gather input on the rulemaking in February 2014. The comment period for the proposed rule closed at the end of October 2014. The Bureau is also planning efforts to assist the industry with implementation of a final HMDA rule, similar to the Bureau's efforts on the KBYO rule and the 2013 mortgage rules.

- In November 2014, the Bureau proposed amendments to certain mortgage servicing rules issued in 2013 in part to implement Dodd-Frank Act amendments to RESPA and the Truth in Lending Act (TILA). These proposed amendments focus primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X's servicing provisions; and periodic statement requirements under Regulation Z's servicing provisions. The proposed amendments would also address proper compliance regarding certain servicing requirements when a consumer is a potential or confirmed successor in interest, is in bankruptcy, or sends a cease communication request under the Fair Debt Collection Practices Act (FDCPA). The proposed rule would also make technical corrections to several provisions of Regulations X and Z.

- The Bureau issued two rules in March 2016 to address the HELP Rural Communities Act, which was enacted on December 4, 2015. First, the Bureau issued a procedural rule that established a process to apply for an area to be designated as a rural area for purposes of a Federal consumer financial law. Second, the Bureau issued an interim final rule that expanded eligibility for special provisions and an exemption from requirements provided to certain small creditors operating in rural or underserved areas under the Bureau's mortgage rules.

4.2 Addressing longstanding consumer protection and regulatory burden concerns in other markets

In addition to work implementing Dodd-Frank Act mandates relating to mortgages, the Bureau has continued to focus attention on a number of issues in other consumer financial products and services markets. This work includes rulemakings to revise regulations the Bureau inherited from other agencies and the issuance of a proposed rule governing prepaid accounts, as well as continued research and other preparations for rulemakings to address several longstanding issues regarding debt collection, payday loans and deposit advance programs, and overdraft features on deposit accounts.

As reflected in its Fall 2015 regulatory agenda, the Bureau has continued work on a number of projects to address longstanding concerns in other consumer financial services markets. For example:

- In November 2014, the Bureau proposed amendments to Regulations E and Z to create a comprehensive set of consumer protections for prepaid financial products, which are increasingly being used by consumers in place of traditional checking accounts. The proposed rule would expressly bring prepaid products within the ambit of Regulation E, which implements the Electronic Fund Transfer Act (EFTA), as prepaid accounts and create new provisions specific to such accounts. The proposed rule would also amend Regulation E and Regulation Z, which implements TILA, to regulate prepaid accounts with overdraft services or credit features. The comment period for the proposed rule closed at the end of March 2015, and the Bureau is reviewing the feedback provided by the public.
- The Bureau is considering developing a proposed rule on debt collection, building upon the comments received concerning an Advance Notice of Proposed Rulemaking on debt collection issued in November 2013, and is conducting research, analysis, and outreach as appropriate on this topic. Debt collection generates more complaints to the Federal Government each year than any other consumer financial services market. The Bureau distributed a survey to consumers to learn about their experiences with credit and debt, including debt collection. The results of the survey will provide information related to debt collection on a broad cross-section of consumers that is not available elsewhere. The

Bureau has conducted further industry outreach by soliciting cost information from debt collection industry participants. The Bureau is also undertaking consumer testing initiatives to determine what information would be useful for consumers to have about debt collection and their debts and how that information should be provided to them.

- The Bureau is developing a proposed rule to address consumer harms from practices related to payday, vehicle title, and certain high-cost installment loans, including failure to determine whether consumers have the ability to repay their loans and certain payment collection practices. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Bureau released in March 2015 an outline of proposals under consideration for the rulemaking. As part of the SBREFA process, in April 2015, the Bureau along with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, met with small lenders that may be affected by the rulemaking to obtain feedback on the proposals. This rulemaking builds on Bureau research, including a white paper the Bureau published on these products in April 2013, a data point providing additional research in March 2014, and ongoing analysis. The Bureau expects to issue a Notice of Proposed Rulemaking during Spring 2016 after additional outreach and analysis.

- Building on Bureau research and other sources, the Bureau is engaged in policy analysis and further research initiatives in preparation for a rulemaking on overdraft programs on checking accounts. The CFPB issued a white paper in June 2013 based primarily on supervisory data from several large banks that highlighted a number of possible consumer protection concerns, including how consumers opt in to overdraft coverage for ATM and one-time debit card transactions, overdraft coverage limits, transaction posting order, overdraft and insufficient funds fee structure, and involuntary account closures. In July 2014, the CFPB released a report, based on data from the same sources, providing additional information about the outcomes of consumers who do and do not opt in to overdraft coverage for ATM and one-time debit card transactions. The July 2014 report also explored the transactions that overdraw consumer accounts. The CFPB is continuing to engage in additional research and has begun consumer testing initiatives relating to overdraft disclosure forms.

- The Bureau is developing regulations concerning the use of pre-dispute arbitration agreements in connection with the offering or providing of consumer financial products or services. In October 2015, the Bureau released an Outline of Proposals under

Consideration and convened a Small Business Review Panel, through which it obtained feedback from small entity representatives on the proposals under consideration. After additional outreach and analysis of the feedback provided by the Small Business Review Panel, the Bureau expects to issue a Notice of Proposed Rulemaking in Spring 2016.

The Bureau has continued to work on defining larger participants in markets for consumer financial services and products. Under Title X of the Dodd-Frank Act, the Bureau is authorized to exercise supervisory authority over larger participants that it defines by rule.

With regard to regulations that the CFPB inherited, the Bureau issued a Request for Information in December 2011 seeking comment on opportunities to streamline, modernize, and harmonize regulations inherited from other federal agencies. The Bureau has sought to address such issues in the course of its rulemakings; for instance, by using the rulemakings to consolidate mortgage disclosures under TILA and RESPA to clarify or reduce the burden of existing regulations, and by exploring opportunities to reduce unwanted regulatory burden as part of the HMDA rulemaking.

The Bureau has also continued to launch other rulemaking and guidance initiatives designed to streamline existing regulations and reduce regulatory burden.

4.3 Facilitating implementation of new regulations

As the Bureau has issued regulations to implement Dodd-Frank Act requirements, it has focused intently on supporting the implementation process for these rules with both industry and consumers. The Bureau has continued to provide implementation support, including engaging in public outreach, speaking at industry conferences, and providing training to housing counselors. The Bureau has developed regulatory implementation materials and reference aids that support and assist regulatory implementation efforts for the mortgage rules issued under Title XIV of the Dodd-Frank Act, which went into effect by January 18, 2014, the KBYO mortgage disclosure rule, which went into effect in October 2015, the recently-issued Home Mortgage Disclosure Act rule, the rule revising the definitions of small creditor and rural area under Regulation Z, and other rules. These implementation materials, which are publicly available on a section of the Bureau's website dedicated to regulatory implementation,[87] along with other communications and outreach efforts, facilitate industry access to information on regulatory requirements and developments, particularly for smaller businesses that may have limited legal and compliance staff. The Bureau plans to develop additional tools and resources to facilitate implementation and compliance with new rules, and to update existing resources to reflect regulatory amendments.

In October 2015, the Bureau issued the HMDA rule along with a number of resources to assist industry with understanding and implementing the new rule's requirements:

- A summary and overview of the final rule;
- A timeline of the rule's effective dates;
- Coverage charts to assist a financial institution in determining whether it is a HMDA reporter for purposes of the final rule;
- A summary of reportable data explaining the HMDA data points required to be collected, recorded, and reported under the rule;
- A reference chart explaining when data points may be reported as "not applicable" for certain loan types; and
- A Small Entity Compliance Guide providing a plain-language explanation of the rule in a form that makes the content more accessible for industry constituents, especially smaller businesses with limited legal and compliance staff.

The Bureau also engaged in outreach activities, including speaking at conferences and other events, to support the implementation of new HMDA mortgage lending data reporting rules and

[87] http://www.consumerfinance.gov/regulatory-implementation/.

to identify and address implementation issues. The Bureau will monitor implementation progress and publish additional regulatory implementation tools and resources on its website to support implementation needs. The Bureau is also developing a number of data submission resources for HMDA reporters and vendors which will be published on the Resources for HMDA Filers website at http://www.consumerfinance.gov/hmda/.

The Bureau has also continued to support the implementation of the KBYO rule, which took effect in October 2015. Since the issuance of the KBYO rule, the Bureau has released a plain-language small entity compliance guide providing an overview and summary of key aspects of the KBYO rule; a plain-language guide to forms providing detailed, illustrated instructions on completing the new Loan Estimate and Closing Disclosure forms; a number of sample forms and timelines; examination manual and readiness materials; and other resources. The Bureau created a special real estate web page with information and resources to help professionals understand regulatory changes and work with consumers to ensure smooth and on-time closings. The Bureau also released an "Owning a Home" website, which features an interactive guide to the mortgage loan process and loan options, a calculator to explore interest rates, checklists, and other resources to help consumers and others understand the loan process and disclosure requirements.

In conjunction with the Federal Reserve System, the Bureau has conducted a series of webinars on the KBYO rule, which are available to the public through the regulatory implementation section of the Bureau's website. In March 2016, the Bureau conducted a webinar on construction lending. In addition, in January 2016 the Bureau published a construction loan factsheet providing a written overview of how the integrated disclosure rule may be applied to construction loans.

Bureau staff continues to speak at a number of industry conferences, roundtables, and other formal events, and to engage in extensive outreach to discuss the mortgage rules, identify and address implementation issues as they arise, and provide informal oral guidance in response to interpretive inquiries from a myriad of stakeholders. Bureau staff is monitoring implementation of the new rules to promote a consistent regulatory experience for industry. With respect to the KBYO rule, the Bureau continues to ensure that institutions have made any business process, operational, and technological systems changes that may be necessary to comply with requirements of the rule and generate the new forms, and to assess the impacts of the rule over time. This information will assist the Bureau in assessing the need for follow up with the mortgage markets participants and for improving its rulewriting process. The Bureau will also continue to coordinate with other Federal Government regulators that also conduct examinations of mortgage companies to develop examination procedures for the KBYO rule and to promote a consistent regulatory experience for industry.

Finally, the Bureau continues to develop online tools to support industry compliance efforts. In December 2015, the Bureau released an automated, online Rural and Underserved Areas tool to assist creditors in determining whether a property is in a "rural or underserved" area. Creditors may rely on this tool to provide a safe harbor determination that a property is located in a rural or underserved area. In addition, the Bureau continues to develop and expand its eRegulations project, which is a web-based, open source tool that aims to make regulations easier to navigate, read, and understand. eRegulations presents regulation text and commentary in a clear format, and allows users to compare different versions to identify changes. The Bureau began this effort in October 2013 with the online release of Regulation E (including the new remittance transfer rules) with the goals of increased compliance, more efficient supervision, and improved accessibility.[28] The Bureau unveiled Regulation Z in May 2014 and Regulations B, D, J, K, L and M in November 2015.[29]

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[28] http://www.consumerfinance.gov/eregulations/1005.

[29] http://www.consumerfinance.gov/eregulations/1026.

5. Supervision

The CFPB's supervisory authority extends to banks, thrifts, and credit unions with assets of more than $10 billion, as well as affiliates of those institutions. In addition, the CFPB supervises nonbank mortgage originators and servicers, payday lenders, and private student lenders of regardless of size, and also supervises larger nonbank participants of other markets as the CFPB defines by rule. To date, the CFPB has promulgated larger-participant rules with respect to the following nonbank markets: debt collection, consumer reporting, student loan servicing, international money transfers, and automobile financing.

The CFPB's Offices of Supervision Examinations and Supervision Policy are located within the Division of Supervision, Enforcement, and Fair Lending. These two offices develop and administer the CFPB's nationwide supervisory program for depository and nondepository financial institutions. In conducting its supervisory activities, the CFPB focuses on maintaining consistency across markets, industries, charters, and regions, as well as on ensuring efficient and effective examinations and supervisory work. The CFPB follows a risk-based approach to examinations, prioritizing consumer products and markets that pose significant risks to consumers.

5.1 Supervisory activities

Since the last Semi-Annual Report was released in November 2015, the CFPB has issued the following public documents:

Supervisory Highlights

Supervision periodically publishes a document entitled "Supervisory Highlights," that discusses the CFPB's supervisory program and identifies examination findings in key markets, industries, and product areas.

In November 2015,[30] the Bureau issued the Fall 2015 edition of Supervisory Highlights, which covered supervision work generally completed between May 2015 and August 2015. This edition reported examination findings in the areas of consumer reporting, debt collection, mortgage origination, mortgage servicing, student loan servicing, and fair lending. The Winter 2016 edition, issued in March 2016,[31] shared recent supervisory findings related to consumer reporting, debt collection, mortgage origination, remittances, student loan servicing, and fair lending.

Both editions also included information on supervision program developments, such as updated mortgage origination examination procedures reflecting upcoming mortgage disclosure rule changes, new automobile finance examination procedures, and more information on recently released bulletins and guidance documents.

5.2 Supervisory guidance

Guidance on submission of credit card agreements under the Truth in Lending Act (Regulation Z)[32]

TILA and Regulation Z require credit card issuers to submit their currently-offered credit card agreements to the Bureau, to be posted on the Bureau's website. In April 2015, the Bureau suspended that submission obligation for a period of one year. That suspension has expired, and the next submission is due on the first business day on or after April 30, 2016. Credit card issuers should visit the Bureau's website for instructions on submitting credit card agreements

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[30] http://www.consumerfinance.gov/reports/supervisory-highlights-fall-2015/.

[31] http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.

[32] http://files.consumerfinance.gov/f/201604_cfpb_submission-of-credit-card-agreements-under-the-truth-in-lending-act-regulation-z.pdf.

Bulletin on furnisher Fair Credit Reporting Act obligation to have reasonable written policies and procedures

In February 2016, the CFPB issued this bulletin[33] to emphasize the obligation of furnishers under Regulation V to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to consumer reporting agencies.

Bulletin on in-person collection of consumer debt

In December 2015, the CFPB issued a compliance bulletin[34] to provide guidance to creditors, debt buyers, and third-party collectors about compliance with sections 1031 and 1036 of the Dodd-Frank Act and the FDCPA when collecting debt from consumers.

Bulletin on requirements for consumer authorizations for preauthorized electronic fund transfers

In November 2015, the CFPB issued a compliance bulletin[35] to remind entities of their obligations under the EFTA and Regulation E when obtaining consumer authorizations for preauthorized electronic fund transfers from a consumer's account.

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[33] http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf.

[34] http://files.consumerfinance.gov/f/201512_cfpb_compliance-bulletin-in-person-collection-of-consumer-debt.pdf.

[35] http://files.consumerfinance.gov/f/201511_cfpb_compliance-bulletin-2015-06-requirements-for-consumer-authorizations-for-preauthorized-electronic-fund-transfers.pdf.

Revised Supervisory Matters Appeal Process

On November 3, 2015, the CFPB issued revised guidance[36] to supervised entities regarding the process by which entities may appeal final CFPB compliance ratings that are less than satisfactory (a 3, 4, or 5) or any underlying adverse finding, or adverse findings conveyed to an entity in a supervisory letter.

Bulletin on RESPA compliance and Marketing Services Agreements

In October 2015, the CFPB issued a compliance bulletin[37] to remind participants in the mortgage industry of the prohibition on kickbacks and referral fees under RESPA[38] and to describe risks posed by entering into marketing services agreements.

5.3 Coordination and information sharing with other government agencies

The CFPB and state regulators coordinate on examinations under a framework for coordination on supervision and enforcement entered into by the CFPB and the Conference of State Bank Supervisors (CSBS), acting on behalf of state financial regulatory authorities.[39] Examination coordination under the framework may occur where the CFPB and state regulators each have supervisory jurisdiction over particular depository or nondepository financial institutions. The framework is an outgrowth of information sharing MOUs entered into by the CFPB and 63 state financial regulatory authorities in all 50 states, Puerto Rico, the District of Columbia, and Guam.

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[36] http://files.consumerfinance.gov/f/201510_cfpb_appeals-of-supervisory-matters.pdf.

[37] http://files.consumerfinance.gov/f/201510_cfpb_compliance-bulletin-2015-05-respa-compliance-and-marketing-services-agreements1.pdf.

[38] 12 U.S.C. 2601, *et seq.*

[39] http://files.consumerfinance.gov/f/201305_cfpb_state-supervisory-coordination-framework.pdf.

The MOUs provide that state regulators and the CFPB will work together to achieve examination efficiencies and to avoid duplication of time and resources expended. The MOUs also establish safeguards and restrictions on the treatment of any shared information.

In addition, the CFPB coordinates with federal prudential regulators[40] on examination planning and policy considerations. Representatives of the CFPB and the federal prudential regulators meet regularly to coordinate supervisory and other activities. The CFPB also coordinates and collaborates with federal prudential regulators and federal law enforcement agencies, such as the DOJ, HUD, and the FTC, in enforcement investigations and actions, including in the fair lending context.

The Director of the CFPB is a member of the Federal Financial Institutions Examination Council (FFIEC). As part of its mission, the FFIEC facilitates the development of consistent examination principles, standards, procedures, and report formats, and otherwise makes recommendations to promote uniformity in the supervision of financial institutions. As discussed in Section 4.3, in 2015, the FFIEC member agencies updated examination procedures for TILA and RESPA. The updated procedures reflect regulatory amendments, including those related to the KBYO rule.

5.4 Examiner training and commissioning

The CFPB's Supervision Learning & Development team is responsible for training and commissioning the CFPB's field examination staff. The primary vehicle for commissioning is the Examiner Commissioning Program (ECP), which became effective as of October 27, 2014. The finalized ECP policy replaced the previous Interim Commissioning Policy (ICP), which allowed regional directors to submit executive review nomination memos for highly experienced examiners and field managers. The CFPB issued 173 commissions under the ICP to examiners, field managers, and headquarters staff. Under the new ECP, an additional 20 examiners have

[40] FRB, FDIC, NCUA, and OCC.

achieved commissioned examiner status, bringing the total number of commissioned examiners to 187, which accounts for attrition through retirement and departures from the CFPB.

The ECP includes five instructor-led, classroom-based courses, as well as formal on-the-job training modules, Acting Examiner-in-Charge (EIC) assignments, and a comprehensive multiple-choice test. The ECP finishes with a case study assessment. Within 12-18 months of achieving commissioned examiner status under ECP, examiners will complete a 120 day rotational assignment in any of a variety of offices in the Washington D.C. headquarters. Completed and fully-implemented components of the ECP currently include the following instructor-led classroom-based courses: Operations and Deposits/Prepaid Products, Lending Principles, Fair Lending Examination Techniques, Advanced Communications, and EIC Capstone course.

Now that all parts of the ECP are finished and fully implemented there are two paths to a commission. One is through successful completion of the ECP, including the comprehensive test and case study assessment. The second is an abbreviated program for examiners commissioned at other agencies that are required to complete the two-week EIC Capstone course within one year of joining the CFPB in order to better understand processes and reports specific to CFPB.

5.5 Technology

The CFPB is working to replace its existing examination management software (known as the "Supervision and Examination System"). The new system will aid the CFPB in supervising and enforcing Federal consumer financial law by utilizing current technology to support monitoring of bank and nonbank entities and collaboration across Bureau offices, and to improve the efficiency of the supervisory process.

The CFPB is using a Compliance Tool (the Tool) to assist in conducting examinations of entities subject to CFPB supervision. The Tool provides for secure and standardized data submissions to the CFPB, and supports consistency in the examination process across institutions. The Tool is a software system that collects, validates, and analyzes loan portfolio and deposit account data through an electronic system. It enables covered entities to upload data securely and improves the ability of CFPB examiners to conduct risk-based and targeted compliance reviews.

5.6 Reporting on Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)[41]

The SAFE Act requires the CFPB to report annually on the effectiveness of the provisions of the Act, including legislative recommendations, if any, for strengthening consumer protections, enhancing examinations standards, and streamlining communications between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers. In 2015, the SAFE Act was effective in all of these areas, and particularly in streamlining communications, which has primarily been accomplished through regular coordination between CFPB officials and the management of the Nationwide Mortgage Licensing System and Registry (NMLSR). The streamlined communications have, for example, resulted in faster and more efficient responses to consumer and industry questions and concerns about the SAFE Act. CFPB and NMLSR officials also successfully negotiated a comprehensive review and renewal of the contract for the operation of the NMLSR, which strengthens the system and its operations.

The NMLSR is the system established under the SAFE Act to accomplish several objectives, including providing uniform license applications and reporting requirements for State-licensed loan originators and a comprehensive licensing and supervisory database. The NMLSR is also used by the public to access public information about loan originators. The NMLSR is managed by the CSBS through its wholly owned subsidiary, the State Regulatory Registry, LLC.

During 2015, NMLSR officials, in coordination with the CFPB, began the development of plans to modernize the technology used to operate the NMLSR. The technology modernization includes improvement and enhancement to the way stakeholders access and use information in the NMLSR. The modernization is intended to, among other things, provide mortgage financial institutions and their loan originators with more user-friendly reporting functions and provide

[41] The SAFE Act calls for an annual report to Congress on the effectiveness of the Act. 12 U.S.C. § 5115(a). This section of the CFPB's Semi-Annual Report constitutes the annual SAFE Act Report for 2015.

consumers public information about loan originators that is easier to read by presenting it with more clarity.

The modernization effort will include changes related to issues identified by the CFPB through various channels including inquiries and consultation with industry and consumers. The CFPB's regulations guidance function and the SAFE Act Inquiries email box continue to be a primary tool for identifying issues related to the operation of the NMLSR. During 2015, there was an increase in activity of the SAFE Act Inquiries email box with an average of 30 inquiries each month. Many of the inquiries are from compliance officers at small banks. The CFPB typically responds within two business days, and works with NMLSR officials to the extent systemic issues are highlighted by the inquiries.

Officials from the CFPB and the CSBS continue to meet monthly, and CFPB staff regularly participates in trainings offered by the CSBS related to the operation of the NMLSR.

6. Enforcement

The CFPB aims to enforce the consumer protection laws within the Bureau's jurisdiction consistently and to support consumer-protection efforts nationwide by investigating potential violations both independently and in conjunction with other federal and state law enforcement agencies.

6.1 Conducting investigations

Since the CFPB's launch, the Offices of Enforcement (Enforcement) and Fair Lending and Equal Opportunity (Fair Lending) have been investigating potential violations of federal consumer financial laws. Some investigations were transferred to the Bureau by the prudential regulators and HUD, while the Bureau initiated other investigations based on potentially problematic practices that Bureau staff identified or consumers and others reported. In utilizing its investigation resources, the Bureau considers many factors, including amount of consumer harm and the significance of the potential law violation. Investigations currently underway span the full breadth of the Bureau's enforcement jurisdiction. Further detail about ongoing investigations will not generally be made public by the Bureau until a public enforcement action is filed.

6.2 Enforcement actions

Section 1016(c)(5) of the Dodd-Frank Act requires the Bureau to include in the semi-annual report "a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year." The Bureau was a party in 65 public enforcement actions from April 1, 2015 through March 31, 2016, detailed as follows:

In the Matter of Student Aid Institute, Inc. (File No. 2016-CFPB-0008) (consent order entered March 30, 2016)

The CFPB took action against a student loan debt relief company that tricked borrowers into paying fees for federal loan benefits and misrepresented to consumers that it was affiliated with the Department of Education. The company ultimately reaped millions of dollars in advance fees from thousands of consumers. The Bureau's consent order requires Student Aid Institute and its chief executive officer, Steven Lamont, to shut down debt-relief operations, cancel all contracts with consumers and stop charging them, stop participating in the debt relief industry, ensure student loan borrowers do not miss important repayment benefits, and pay a $50,000 Civil Monetary Penalty.

In the Matter of Dwolla, Inc. (File No. 2016-CFPB-0007) (consent order entered March 2, 2016)

The CFPB took action against an online payment platform, Dwolla, for deceiving consumers about its data security practices and the safety of its online payment system. This was the Bureau's first case addressing data security practices. From December 2010 until 2014, Dwolla misrepresented the security of its systems and the steps it took to protect consumers' information and thereby violated the Consumer Financial Protection Act's (CFPA) prohibition against deception. The Bureau's consent order requires Dwolla to stop misrepresenting its data security practices, train employees on the company's data security policies and procedures, and pay a $100,000 Civil Monetary Penalty.

In the Matter of Citibank, N.A., Department Stores National Bank, and Citifinancial Servicing, LLC (File No. 2016-CFPB-0004) (consent order entered February 23, 2016); ***In the Matter of Faloni & Associates, LLC*** (File No. 2016-CFPB-0006) (consent order entered February 23, 2016); ***In the Matter of Solomon & Solomon*** , P.C. (File No. 2016-CFPB-0005) (consent order entered February 23, 2016)

The CFPB took action against both Citibank and two debt collection law firms it used that falsified court documents filed in debt collection cases in New Jersey state courts. Citibank retained Faloni & Associates, LLC, and Solomon & Solomon, P.C. to collect credit card debt on its behalf in New Jersey state courts. Citibank prepared sworn statements attesting to the accuracy of the debt allegedly owed. Citibank then provided the affidavits to their attorneys to file with New Jersey courts. The two firms altered the dates of the affidavits, the amount of the debt allegedly owed, or both, after the affidavits were executed in violation of the Fair Debt

Collection Practices Act. The CFPB ordered Citibank and the law firms to comply with an existing court order that Citibank refund $11 million to consumers and forgo collecting about $34 million from nearly 7,000 consumers. Faloni & Associates, LLC, must pay a penalty of $15,000, and Solomon & Solomon, P.C., must pay a penalty of $65,000.

In the Matter of Citibank, N.A. (File No. 2016-CFPB-0003) (consent order entered February 23, 2016)

The CFPB took action against Citibank for illegal debt sales and debt collection practices. The CFPB found that Citibank violated the CFPA by providing inaccurate and inflated APR information on almost 130,000 credit card accounts it sold to debt buyers who then used the exaggerated APR in debt collection attempts. Citibank also failed to promptly forward to debt buyers approximately 14,000 customer payments totaling almost $1 million. The Bureau's order requires Citibank to refund all payments consumers made from Feb. 1, 2010 to Nov. 14, 2013 to debt buyers that referenced an inflated APR provided by Citibank in their collection efforts where the discrepancy was more than 1 percent; provide certain account documents when it sells debt; stop selling debt it cannot verify; include provisions in its debt sales contracts prohibiting the debt buyer from reselling the debt; give consumers basic information about debt that it sells; and pay $3 million in penalties.

In the Matter of Toyota Motor Credit Corporation (File No. 2016-CFPB-002) (consent order entered February 2, 2016)

After a joint investigation, on February 2, 2016, the CFPB and DOJ announced a settlement with Toyota Motor Credit Corporation, requiring Toyota Motor Credit to pay up to $21.9 million in relief to consumers harmed by discriminatory auto lending practices. The Bureau found that Toyota Motor Credit charged African-American and Asian and Pacific Islander consumers more in dealer markup for auto loans than similarly-situated non-Hispanic White consumers in violation of the Equal Credit Opportunity Act (ECOA). Going forward, Toyota Motor Credit is required to reduce dealer discretion to markup the interest rate to only 1.25% above the buy rate for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or to eliminate discretionary markup all together. The violations of ECOA are further discussed in the Fair Lending Enforcement section of this report.

In the Matter of Herbies Auto Sales (File No. 2016-CFPB-001) (consent order entered January 21, 2016)

The CFPB took action against Herbies Auto Sales, a buy-here pay-here used car dealer, for abusive financing schemes, hiding auto finance charges, and misleading consumers in violation of TILA and CFPA. The Bureau's consent order requires Herbies to pay $700,000 in restitution to harmed consumers, with a suspended civil monetary penalty of $100,000. Under the terms of the order, Herbies is required to stop deceiving consumers during the financing process; post automobile prices; and provide consumers certain financing information (including the actual APR) before or at the time financing is offered.

In the Matter of Eric V. Sancho d/b/a Lead Publisher (File No. 2015-CFPB-0033) (consent order issued December 17, 2015)

The CFPB took action against Eric V. Sancho, who operated a company called Lead Publisher that sold leads to fraudulent debt collectors without regard for how they would use the data. The Bureau found that from 2011 to 2014, Sancho failed to vet his leads' sources or buyers. He sold roughly three million leads to two related companies that used the information to harass and deceive consumers into paying alleged debts they did not actually owe. The CFPB ordered Sancho to disgorge $21,151 he made illegally and banned him from the financial products and consumer leads industries.

In the Matter of D and D Marketing, Inc., d/b/a T3Leads, Grigor Demirchyan, and Marina Demirchyan (C.D. Cal. File No. 2:15-cv-09692) (complaint filed December 17, 2015)

The CFPB filed a complaint in federal court against T3 Leads, a lead aggregator, and its President and Vice President, Grigor and Marina Demirchyan. The complaint contains allegations that T3 does not vet or monitor its lead purchasers for illegal activity, does not require data managers or data brokers to disclose the end purchasers of leads, and deprived consumers of the opportunity to assess the reliability of lenders with which they were matched, exposing them to substantial risks. The complaint also alleges that two of T3's executives unlawfully aided the company's violations. The complaint seeks monetary relief, injunctive relief, and penalties.

In the Matter of Interstate Auto Group, Inc. aka. CarHop, and Universal Acceptance Corporation (File No. 2015-CFPB-0032) (consent order entered December 17, 2015)

The CFPB took action against CarHop, one of the country's biggest "buy-here, pay-here" auto dealers, and its affiliated financing company, Universal Acceptance Corporation, for providing damaging, inaccurate consumer information to credit reporting companies. CarHop and its affiliate also failed to provide accurate, positive credit information that it promised consumers it would supply to the credit reporting companies. The Bureau's order requires the companies to cease their illegal activities and pay a $6,465,000 civil penalty. CarHop must develop and implement written consumer information furnishing policies and procedures; must identify inaccurate information, notify the CRAs of the inaccuracies, and either provide the correct information to the CRAs or delete the inaccurate information if accurate information is not available; must provide notice to consumers of the inaccuracies, the remedial measures taken, and the process for obtaining a free credit report; and must implement monthly auditing and monitoring processes.

***In the Matter of EZCORP, Inc.*, et al.** (File No. 2015-CFPB-0031) (consent order entered December 16, 2015)

The CFPB took action against EZCORP, Inc., a payday and other small-dollar lender, for illegal debt collection practices. These practices related to sending debt collectors to consumers' workplaces and homes, which risked disclosing the consumer's debt to third parties and causing adverse employment consequences; empty threats of legal action; misrepresenting consumers' rights; and exposing consumers to bank fees through multiple electronic withdrawal attempts on consumer accounts. The Bureau ordered EZCORP to pay $7.5 million in refunds to approximately 93,000 consumers, pay $3 million in penalties, and stop all further collection efforts on its remaining payday and installment loans, owed by roughly 130,000 consumers and estimated to include tens of millions of dollars in debt. It also bars EZCORP from future in-person debt collection, prohibits EZCORP from attempting to debit a consumer's account after a previous attempt failed because of insufficient funds without the consumer's permission, and includes various other injunctive terms.

In the Matter of EOS (D. Mass. File No. 1:15-cv-14024) (stipulated final judgment and order entered December 8, 2015)

The CFPB filed a complaint in federal court against Collecto, Inc. d/b/a EOS CCA, a Massachusetts debt collection firm, for reporting and collecting on old cellphone debt that consumers disputed and EOS did not verify. The company also provided inaccurate information to credit reporting companies about the debt and failed to correct inaccurate information that it reported. The stipulated final judgment and order requires EOS to refund at least $743,000 to consumers and pay a $1.85 million penalty. The order also requires EOS to cease collecting and reporting on certain disputed debt; stop collecting unsubstantiated debt and, for five years, review original account-level documents to verify a debt before collecting on it in certain circumstances; and ensure accuracy when providing information to credit reporting companies. For five years, EOS will also be subject to restrictions on re-selling debt.

In the Matter of Clarity Services, Inc. (File No. 2015-CFPB-0030) (consent order entered December 3, 2015)

The CFPB took action against a nationwide credit reporting company, Clarity Services, Inc., and its owner, Tim Ranney, for illegally obtaining consumer credit reports. The company, which focuses on the subprime market, also violated the law by failing to appropriately investigate consumer disputes. The Bureau's consent order requires the company and its owner to halt their illegal practices, fully investigate consumer disputes and improve the way they investigate consumer disputes and obtain, sell, and resell consumer credit reports. The company and Ranney must also pay an $8 million penalty.

In the Matter of Integrity Advance, LLC (File No. 2015-CFPB-0029) (notice of charges filed November 18, 2015)

The CFPB took action against an online lender, Integrity Advance, LLC, and its CEO, James R. Carnes, for deceiving consumers about the cost of short-term loans. The Bureau alleges that the company's contracts did not disclose the costs consumers would pay under the default terms of the contracts. The Bureau also alleges that the company unfairly used remotely created checks to debit consumers' bank accounts even after the consumers revoked authorization for automatic withdrawals. The CFPB filed an administrative lawsuit seeking redress for harmed consumers, as well as a civil money penalty and injunctive relief.

In the Matter of Student Financial Resource Center (College Financial Advisory) (File No. 2013-0831-02) (S.D. Ca. Case No. 3:15-cv-02440) (complaint filed October 29, 2015)

The Bureau filed a complaint in federal court against a company operating a nationwide student financial aid scam and the individual who owns and operates the scheme. The Bureau alleges that the company, which operates under the names Student Financial Resource Center and College Financial Advisory, issued marketing letters instructing students to fill out a form and pay a fee in exchange for the company conducting extensive searches to target or match consumers with individualized financial aid opportunities. In reality, consumers received nothing or a generic booklet that fails to provide individualized advice. The Bureau also alleges that the companies misrepresented their affiliation with government and university financial aid offices and pressured consumers to enroll through deceptive statements. The complaint seeks to stop these practices and obtain restitution and penalties.

In the Matter of General Information Services, Inc. (File No. 2015-CFPB-0028) (consent order entered October 29, 2015)

The CFPB took action against two of the largest employment background screening report providers, General Information Services and its affiliate, e-Background-checks.com, Inc., for failing take basic steps to assure the information reported about job applicants was accurate. The companies also failed to exclude impermissible information in their consumer reports. These practices potentially affected consumers' eligibility for employment, caused reputational harm, and violated FCRA. The Bureau's order requires the companies to correct their practices, provide $10.5 million in relief to harmed consumers, and pay a $2.5 million civil penalty.

In the Matter of Westlake Services, LLC & Wilshire Consumer Credit, LLC (File No. 2015-CFPB-0026) (consent order entered September 30, 2015)

The CFPB took action against an indirect auto finance company and its auto title lending subsidiary for pressuring borrowers using illegal debt collection tactics. The CFPB found that Westlake Services, LLC and Wilshire Consumer Credit, LLC deceived consumers by calling under false pretenses and using phony caller ID information, falsely threatened to refer borrowers for investigation or criminal prosecution, and illegally disclosed information about debts to borrowers' employers, friends, and family. The Bureau ordered the companies to overhaul their debt collection practices and to provide consumers $44.1 million in cash relief and balance reductions. The companies will also pay a civil penalty of $4.25 million.

In the Matter of Fifth Third Bank (File No. 2015-CFPB-0025) (consent order entered September 28, 2015)

The CFPB took action against Fifth Third for deceptive acts or practices in the marketing and sales of its "Debt Protection" credit card add-on product. From 2007 through February 2013, Fifth Third marketed and sold the product to its customers during telemarketing calls and online. The Bureau found that Fifth Third's telemarketers deceptively marketed the add-on product during calls. Among other things, Fifth Third's misrepresented costs and fees for coverage and misrepresented or omitted information about eligibility for coverage. The CFPB's order requires that Fifth Third provide $3 million in relief to roughly 24,500 customers, cease engaging in illegal practices, and pay a $500,000 penalty to the CFPB civil penalty fund.

In the Matter of Fifth Third Bank (File No. 2015-CFPB-0024) (consent order entered September 28, 2015)

Following a Bureau examination and subsequent joint investigation with the DOJ, the Bureau and the DOJ reached a settlement with Fifth Third Bank to provide $18 million in relief to consumers harmed by illegal discriminatory auto lending practices. The Bureau found that Fifth Third charged African-American and Hispanic consumers more in dealer markup for auto loans than similarly-situated non-Hispanic White consumers based on race and national origin. Such conduct violates ECOA, which prohibits creditors from discriminating on certain prohibited bases, including race and national origin, in any aspect of a credit transaction. Going forward, Fifth Third is required to reduce dealer discretion to mark up the interest rate to only 1.25% above the buy rate for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or to eliminate discretionary markup all together. The violations of ECOA are further discussed in the Fair Lending Enforcement section of this report.

United States of America and Consumer Financial Protection Bureau v. Hudson City Bank, F.S.B. (D.N.J. No. 2:15-cv-07056-CCC-JBC) (final consent order entered on November 4, 2015)

On September 24, 2015, the CFPB and the DOJ filed a joint complaint and proposed consent order to address unlawful redlining in Hudson City Bank's mortgage business. The court entered the order on November 4, 2015. Based on a CFPB examination followed by a joint investigation with the DOJ, the complaint alleges that from 2009 to 2013 Hudson City unlawfully redlined in violation of ECOA by structuring its business so as to avoid majority-Black-and-Hispanic neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania, thereby discouraging applications from those neighborhoods. The consent order requires Hudson City to pay $25 million in loan subsidies to qualified borrowers in the affected communities, $2.25 million in community programs and outreach, and a $5.5 million penalty. The order will also require Hudson City to open two new branches, revise its compliance management system, expand its assessment area under the Community Reinvestment Act, and assess the credit needs of majority-Black-and-Hispanic communities. The violations of ECOA are further discussed in the Fair Lending Enforcement section of this report

Consumer Financial Protection Bureau v. World Law Group (S.D. Fla. No. 1:15-cv-23070-MGC D) (preliminary injunction orders entered by the court on September 2, 2015 and September 14, 2015)

The CFPB filed a federal court complaint against World Law Group for running a debt-relief scheme that charged consumers exorbitant, illegal upfront fees. The Bureau alleges that the debt-relief scheme falsely promised consumers a team of attorneys to help negotiate debt settlements with creditors, failed to provide legal representation, and rarely settled consumers' debts. World Law is alleged to have taken $67 million from at least 21,000 consumers before providing any debt-relief services. The Bureau alleges that the conduct violated EFTA, the Telemarketing Sales Rule (TSR), and the CFPA's prohibition against unfair and deceptive acts and practices. The Court issued the preliminary injunction because it found that the Bureau is likely to prevail and that the public interest is served by granting the Order. The case will proceed until the court makes a final determination or the parties settle the matter.

Consumer Financial Protection Bureau v. Student Financial Aid Services, Inc. (E.D. Cal. No. 2:15-cv-01581) (consent order entered on September 11, 2015)

The CFPB took action against Student Financial Aid Services, Inc. for its sales and billing practices. The Bureau alleged that the company gave consumers misleading information about the total cost of its subscription financial services and imposed on consumers undisclosed and unauthorized automatic recurring charges for those services. The Bureau alleged that the conduct violated the EFTA, the TSR, and the CFPA's prohibition against unfair and deceptive acts and practices. The court entered an order requiring Student Financial Aid Services, Inc. to pay $5.2 million to the Bureau for consumer redress, pay a civil penalty of $1, and end the sales and billing practices described in the complaint.

In The Matter of Portfolio Recovery Associates, LLC (File No. 2015-CFPB-0023) (consent order entered September 9, 2015)

The CFPB took action against Portfolio Recovery Associates (PRA), one of the two largest debt buyers in the country. As a debt buyer, PRA purchases delinquent or charged-off accounts for a fraction of the value of the debt, but has the right to collect the full amount claimed by the original lender. The Bureau found PRA bought debts that were potentially inaccurate, lacking documentation, or unenforceable. Without verifying the debt, the company collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents. The Bureau ordered PRA to cease reselling debts, stop collections on $3 million worth of judgments, and halt collection of future debts that cannot be verified. PRA is also required to pay $19 million in consumer relief and $8 million civil monetary penalties.

In The Matter of Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset Acceptance Capital Corp. (File No. 2015-CFPB-0022) (consent order entered September 9, 2015)

The CFPB took action against Encore Capital Group, one of the nation's two largest debt buyers. The Bureau found violations of the FDCPA, the FCRA, and the CFPA related to Encore's collection of bad debts, litigation practices, and other collections activities. Among other things, the Bureau found that Encore threatened and deceived consumers to collect on debts the company should have known were inaccurate or had other problems. The Bureau ordered Encore to cease reselling debts, stop collections on $125 million worth of judgments, and halt collection of future debts that cannot be verified. Encore is required to pay up to $42 million in consumer relief and $10 million in civil monetary penalties.

Consumer Financial Protection Bureau and Anthony J. Albanese, Acting Superintendent of Financial Services of the State of New York v. Pension Funding, LLC; Pension Income, LLC; Steven Covey; Edwin Lichtig; and Rex Hofelter (C.D. Cal. No. 8:15-cv-01329) (complaint filed August 20, 2015; stipulated final judgment and consent order entered February 10, 2016)

The CFPB joined with the New York Department of Financial Services to take action against two companies, Pension Funding, LLC and Pension Income, LLC, and three of the companies' individual managers for deceiving consumers about the costs and risks of their pension-advance loans. The complaint alleges that from 2011 until about December 2014, Pension Funding and Pension Income offered consumers lump-sum payments for agreeing to redirect all or part of their pension payments for eight years and that the individual defendants, Steven Covey, Edwin Lichtig, and Rex Hofelter, designed and marketed these loans and were responsible for the companies' operations. The complaint alleges that the companies and individuals violated the CFPA's prohibitions against unfair, deceptive, and abusive acts or practices. On January 8, 2016 the court appointed a receiver over defendants Pension Funding and Pension Income. The receiver's responsibilities include taking control over all funds and assets of the companies and completing an accounting of all pension-advance transactions that are the subject of the action. On February 10, 2016 the court entered a consent order with the agreement of Pension Funding, Pension Income, and two of the individual defendants.

In the Matter of Springstone Financial, LLC (File No. 2015-CFPB-0021) (consent order entered August 19, 2015)

From January 2009 through December 2014, Springstone, a wholly owned subsidiary of Lending Club Corporation, administered a health-care-financing program that offered consumers two credit products: an installment loan and a deferred-interest loan product. Consumers used these products to pay for medical care, including dental care. The Bureau found that providers who were trained and monitored by Springstone to market the deferred-interest product misled consumers about the terms and conditions of the product during the application process. To ensure that harmed consumers are appropriately compensated and that consumers will no longer be subject to these illegal practices, the Bureau's order requires Springstone to refund $700,000 to more than 3,200 consumers.

In the Matter of: RBS Citizens Financial Group, et al. (File No. 2015-CFPB-0020) (consent order entered August 11, 2015)

The CFPB joined with the OCC and FDIC to take action against Citizens Financial Group, Inc., Citizens Bank, N.A., and Citizens Bank of Pennsylvania for failing to credit consumers for the full amounts of their deposits and thus violating the CFPA's prohibition against unfair and deceptive conduct. The Bureau's consent order requires the banks to pay $7.5 million in civil money penalties. In addition to the Bureau's penalty, the OCC and FDIC imposed their own penalties totaling $13 million. The Bureau's Order also requires the bank to redress consumers harmed by the practice. Expected redress is approximately $11 million.

In the Matter of Residential Credit Solutions, Inc. (File No. 2015-CFPB-0019) (consent order entered July 30, 2015)

The CFPB took action against Residential Credit Solutions, Inc. (RCS) for blocking consumers' attempts to save their homes from foreclosure. The mortgage servicer failed to honor modifications for loans transferred from other servicers, treated consumers as if they were in default when they weren't, sent consumers escrow statements falsely claiming they were due a refund, and forced consumers to waive their rights in order to get a repayment plan. The CFPB ordered RCS to pay a $100,000 penalty and $1.5 million in redress to consumers whose loan modifications were delayed or not honored. The order also requires RCS to honor loan modifications with prior servicers, end all mortgage servicing violations, obtain detailed account level documents from the prior servicers, create a home preservation program, and put in place other reforms.

In the Matter of: LoanCare, LLC. (File No. 2015-CFPB-0018) (consent order entered July 28, 2015)

The CFPB found that LoanCare, LLC, a Virginia-based mortgage servicing company, violated the CFPA by falsely claiming that consumers would experience greater interest savings under the Equity Accelerator Program through more frequent mortgage payments. In fact, the Program did not result in more frequent payments. LoanCare paid a $100,000 penalty.

In the Matter of: Paymap, Inc. (File No. 2015-CFPB-0017) (consent order entered July 28, 2015)

The Bureau found that Paymap, Inc., a Colorado-based payment processing company, violated the CFPA by falsely claiming that consumers would experience greater interest savings under the Equity Accelerator Program through more frequent mortgage payments. However, the Program did not result in more frequent payments. Paymap also falsely claimed that a typical consumer saved thousands of dollars using the program when that was not true. In fact, a tiny fraction, if any, of consumers achieved this level of interest savings. Paymap was required to return $33.4 million to consumers, which represents all fees paid by every consumer who enrolled in the Equity Accelerator Program since July 21, 2011, approximately 125,000 consumers. Paymap also paid a $5 million penalty.

Consumer Financial Protection Bureau v. Gordon, et al. (C.D. Cal. No. 12-cv-06147) (stipulated judgment and order entered against various defendants on February 1, 2013; order granting the Bureau's motion for summary judgment against other defendants entered June 26, 2013; notice of appeal filed August 23, 2013)

This action involves a nationwide mortgage relief scheme in which the CFPB alleged that the defendants took advantage of financially distressed homeowners by promising to help them obtain loan modifications and charging them advance fees ranging from $2,500 to $4,500. On February 1, 2013, the court entered a stipulated final judgment and order for permanent injunction as to defendants Abraham Michael Pessar, Division One Investment and Loan, Inc., and Processing Division, LLC. On June 26, 2013, the court granted summary judgment in favor of the CFPB against defendants Chance Edward Gordon and the Gordon Law Firm, P.C., finding that those defendants violated the Dodd-Frank Act by falsely representing: (1) that consumers would obtain mortgage loan modifications that substantially reduced consumers' mortgage payments or interest rates and (2) that defendants were affiliated with, endorsed by, or approved by the U.S. government, among other things. The Court also found that Gordon violated Regulation O by receiving up-front payments, failing to make required disclosures, wrongly directing consumers not to contact lenders, and misrepresenting material aspects of defendants' services. The court awarded an $11,403,338.63 judgment for equitable monetary relief against Gordon. The United States Court of Appeals for the Ninth Circuit held oral argument in the appeal in October 2015, and the case remained pending as of the close of the reporting period.[42]

Consumer Financial Protection Bureau v. Borders & Borders, PLC, et al. (W.D. Ky. No. 3:13-cv-01047-JGH) (complaint filed October 24, 2013)

The CFPB filed a complaint alleging that Borders & Borders, a real estate closing law firm, had set up joint ventures with local real estate and mortgage brokers for the purpose of funneling

[42] The U.S. Court of Appeals for the Ninth Circuit affirmed the grant of summary judgment against Gordon on April 14, 2016 and remanded for the court to consider whether the monetary judgment amount should be reduced. While outside the reporting period, the information became available prior to publication.

kickbacks to those brokers in exchange for referrals to Borders & Borders. The complaint seeks injunctive and other equitable relief. On February 12, 2015, the Court denied the defendants' motion for judgment on the pleadings.

Consumer Financial Protection Bureau v. Discover Bank, The Student Loan Corporation, and Discover Products, Inc. (File No. 2015-CFPB-0016) (consent order filed entered July 22, 2015)

The CFPB took action against Discover Bank, The Student Loan Corporation, and Discover Products, Inc. (Discover) for unfair and deceptive acts and practices related to the failure to furnish clear information regarding the student-loan interest consumers paid, unfair practices related to initiating collection calls at inconvenient times, deceptive acts and practices related to overstating the amounts due in billing statements, and violations of the FDCPA related to collection activities on acquired student loans. Discover was ordered to pay a $2.5 million civil money penalty for these violations and to pay up to $16 million in redress to consumers affected by these practices.

In the Matter of: Citibank, N.A., et al. (File No. 2015-CFPB-0015) (consent order entered July 21, 2015)

In a joint action with the OCC, the CFPB ordered Citibank, N.A. and its subsidiaries Department Stores National Bank and Citicorp Credit Services, Inc. (USA) (collectively, Citibank) to provide an estimated $700 million in relief to consumers. The Bureau found Citibank marketed and enrolled consumers in several debt protection add-on products, as well as credit monitoring, credit report retrieval services, and wallet protection services and that Citibank or its service providers engaged in deceptive marketing of these add-ons products. Citibank or its vendors also billed for these products even though it could not provide the promised services. When collecting payments on certain credit card accounts, Department Stores National Bank and its service provider misrepresented the fees charged or failed to disclose no-cost payment alternatives. The CFPB ordered Citibank to pay a $35 million penalty.

In the Matter of American Honda Finance Corporation (File No. 2015-CFPB-0014) (consent order entered July 14, 2015)

After a joint investigation, on July 14, 2015, the CFPB and DOJ announced a settlement with American Honda Finance Corporation to provide $24 million in relief to consumers harmed by discriminatory auto lending practices. The Bureau found that Honda charged African-American, Hispanic, and Asian and Pacific Islander consumers more in dealer markup for auto loans than similarly-situated non-Hispanic White consumers based on race and national origin in violation of ECOA. Going forward, Honda is required to reduce dealer discretion to markup the interest rate to only 1.25% above the buy rate for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or to eliminate discretionary markup all together. The violations of ECOA are further discussed in the Fair Lending Enforcement section of this report.

In the Matter of: Chase Bank, USA N.A. and Chase Bankcard Services, Inc. (File No. 2015-CFPB-0013) (consent order entered July 8, 2015)

The Bureau found that Chase violated the CFPA's prohibition on deceptive and unfair acts and practices when selling delinquent credit card accounts. Chase sold erroneous and unenforceable charged-off credit card accounts to debt buyers. These debts sometimes overstated the amount owed, were not actually owed by the borrower named, or could not be lawfully enforced. The Bureau also found that Chase filed sworn documents that were not executed or notarized lawfully, that contained inaccurate amounts, or were not based on the direct knowledge of the signer. The Bureau ordered Chase to pay $50 million in restitution to consumers and a $30 million civil penalty. Chase has also agreed that it will not collect on or sell over 500,000 credit card accounts, and that it will reform its practices, including by prohibiting its debt buyers from reselling the debts they purchase from Chase. The Bureau was joined by 48 state attorneys general who filed similar orders simultaneously, and the OCC, who announced a civil penalty.

Consumer Financial Protection Bureau v. NDG Financial Corp., et al. (S.D.N.Y. No. 15-cv-5211) (complaint filed July 6, 2015)

The CFPB filed a complaint against the NDG Financial Corporation and nine of its affiliates for engaging in unfair, deceptive, and abusive practices relating to its payday lending enterprise. The complaint alleges that the enterprise, which has companies located in Canada and Malta, originated, serviced, and collected payday loans that were void under state law, represented that U.S. federal and state laws did not apply to the Defendants or the payday loans, and used unfair and deceptive tactics to secure repayment, all in violation of the Dodd-Frank Act.

Consumer Financial Protection Bureau v. Intersections Inc. (E.D. Va. No. 1:15-cv-835) (stipulated final judgment and order entered on July 1, 2015)

The CFPB took action against Intersections Inc. for unfair acts and practices that violated the CFPA. Intersections provided credit monitoring and identify theft products to consumers primarily through relationships with large depository institutions. Intersections authorized the billing of consumers during times when the company knew that those consumers were not receiving all, or in some cases any, of the benefits of the credit monitoring service. The majority of the consumer harm had already been remediated through prior Bureau actions against the depository institutions. The Intersections order requires the company to provide remediation to the remaining consumers, totaling approximately $55,000, and to pay a civil money penalty of $1.2 million.

Consumer Financial Protection Bureau v. Affinion Group Holdings, Inc. et al. (D. Conn. No. 5:15-cv-01005) (proposed stipulated final judgment filed July 1, 2015, stipulated final judgment and consent order entered October 27, 2015)

On July 1, 2015, in the U.S. District Court for the District of Connecticut, the CFPB filed a lawsuit and proposed settlement with Affinion Group Holdings, Inc. and its affiliated companies (collectively, Affinion) for violating the CFPA's prohibitions against unfair and deceptive acts or practices. Affinion advertised, sold, and delivered identity theft and credit monitoring products as add-ons to consumer credit card accounts by establishing marketing and service agreements with banks. The complaint alleged that Affinion enrolled consumers in add-on products that claimed to provide consumers with benefits but that Affinion or its partner banks billed full product fees to at least 73,000 accounts while failing to provide the full promised services. The complaint also alleged that during customer retention calls, some Affinion employees misled consumers about product benefits. On October 27, 2015, the Court entered the stipulated final judgment and order. That order required Affinion to pay an estimated $6.8 million in restitution and imposed $1.9 million in civil money penalties, and required Affinion to end its unfair billing and barred Affinion from engaging in telephone-based retention for certain products.

Consumer Financial Protection Bureau v. Cellco Partnership d/b/a Verizon Wireless (D.N. J. No. 3:15-cv-03268)(consent order entered June 9, 2015); Consumer ***Financial Protection Bureau v. Sprint Corporation*** (S.D.N.Y. No. 14-cv-9931) (consent order entered June 30, 2015)

On May 12, 2015, the Bureau announced settlements with Sprint and Verizon based on lawsuits alleging the wireless companies operated billing systems that allowed third parties to "cram" unauthorized charges on customers' mobile-phone accounts and ignored complaints about the charges. The complaints allege that Sprint and Verizon, as payment processors for third parties, violated the CFPA's prohibition against unfair practices by outsourcing payment processing for digital purchases to vendors but failing to properly monitor them, thereby allowing vendors unfettered access to cram illegitimate charges onto consumers' wireless bills. As a result, Sprint and Verizon will pay $120 million in redress, clearly and conspicuously disclose third-party charges on wireless bills, obtain consent from consumers prior to third-party billing, improve dispute resolution procedures, and enhance customer-service training programs. The companies will also pay $38 million in fines and penalties to the state attorneys general and the Federal Communications Commission, which joined the Bureau in these actions.

United States of America and Consumer Financial Protection Bureau v. Provident Funding Associates, L.P. (N.D. Cal. 4:14-cv-02373) (consent order entered on June 18, 2015)

On May 28, 2015, the CFPB and the DOJ filed a joint complaint and proposed consent order to address discrimination in Provident Funding's wholesale mortgage business. The court entered the proposed order on June 18, 2015. Based on the agencies' investigation, the complaint alleges that from 2006 to 2011, Provident's discretionary broker compensation policies resulted in mortgage brokers charging approximately 14,000 African-American and Hispanic borrowers higher total broker fees than similarly-situated non-Hispanic White borrowers, on the basis of race and national origin, in violation of ECOA. The consent order requires Provident to pay $9 million to harmed borrowers. Provident will also maintain its current non-discriminatory policies and procedures, including a fair lending training program and broker monitoring program. The violations of ECOA are further discussed in the Fair Lending Enforcement section of this report.

In the Matter of: Syndicated Office Systems, LLC, d/b/a Central Financial Control (File No. 2015-CFPB-0012) (consent order entered June 18, 2015)

The CFPB took action against Syndicated Office Systems, LLC, a medical debt collector, for mishandling consumer credit reporting disputes and preventing consumers from exercising important debt collection rights. The Bureau found that the company failed to: (1) investigate and respond to more than 13,000 consumer credit reporting disputes within the 30-day timeframe required by FCRA; and (2) send a "debt validation notice" to more than 10,000 consumers, as required by the FDCPA. Under the terms of the consent order, the company is required to provide over $5.4 million in total relief to harmed consumers and pay a $500,000 civil penalty.

Consumer Financial Protection Bureau v. Security National Automotive Acceptance Company, LLC (S.D. OH. No. 1:15-cv-401) (complaint filed June 17, 2015, administrative consent order entered October 28, 2015, federal district court order entered October 26, 2015)

The Bureau settled its lawsuit against Security National Automotive Acceptance Company, LLC, (SNAAC) an Ohio auto lender, addressing its collection of debt from servicemembers throughout the United States. The Bureau's order requires the company to refund or credit about $2.28 million to servicemembers and other consumers who were allegedly harmed, and pay a penalty of $1 million. A separate court order bans SNAAC from using aggressive tactics, such as exaggeration, deception, and threats to contact commanding officers, to coerce servicemembers into making payments.

Consumer Financial Protection Bureau v. RPM Mortgage, Inc. and Erwin Robert Hirt (N.D. Cal. No. 4:15-cv-02475) (stipulated final judgement and order entered on June 9, 2015)

The CFPB brought an enforcement action against RPM Mortgage, Inc., a California mortgage lender, and its CEO, Erwin Robert Hirt, for providing RPM's loan officers with compensation that was derived in part from the interest rates of the loans they closed. The CFPB found that RPM paid or financed millions of dollars in unlawful bonuses, pricing concessions, and supplemental commissions to loan officers that were based on loan interest rates, which violates the FRB's Loan Originator Compensation Rule. For his role in managing the design and implementation of RPM's illegal compensation plan, Hirt was liable as a "related person." In addition to injunctive relief prohibiting the unlawful practices, RPM and Hirt were ordered to jointly pay $18 million in redress and each defendant was ordered to pay a $1 million penalty.

Consumer Financial Protection Bureau v. Guarantee Mortgage Corporation (File No. 2015-CFPB-0011) (consent order entered June 5, 2015)

The CFPB took action against Guarantee Mortgage Corporation for paying loan originators in part based on the interest rates charged on loans they had originated, in violation of the Federal Reserve Board's Loan Originator Compensation Rule. Guarantee Mortgage Corporation was ordered to pay $228,000 in civil penalties and prohibited from paying compensation in a manner that would violate the Loan Originator Compensation Rule.

Consumer Financial Protection Bureau & the State of Florida v. Harper, et al. (S.D. Fla. No. 9:14-cv-80931 JIC) (final judgment entered on May 28, 2015)

The CFPB, jointly with the Florida Attorney General, alleged that defendants took advantage of financially distressed homeowners in violation of Regulation O. Under the name of the Hoffman Law Group, the defendants promised homeowners that, in exchange for fees, they would include the homeowners as plaintiffs in mass-joinder lawsuits against their lenders and servicers to obtain mortgage modifications or foreclosure relief. The defendants rarely, if ever, obtained meaningful mortgage assistance relief for the consumers. The court issued a temporary restraining order on July 16, 2014, halting the defendants' business practices, placing the corporate defendants into receivership, and freezing the defendants' assets. On September 12, 2014, the clerk entered default against the five corporate defendants who had failed to appear, and entered orders adopting the stipulated preliminary injunctions on September 15, 2014 and September 23, 2014, as to the three remaining individual defendants. On May 28, 2015, the U.S District Court for the Southern District of Florida found the corporate defendants liable for $11,730,579 and ordered them to pay a $10 million civil penalty, in addition to penalties to the State of Florida.

Consumer Financial Protection Bureau v. PayPal, Inc., and Bill Me Later, Inc. (D. Md. No. 1:15-cv-01426) (stipulated final judgment and order entered on May 21, 2015)

The CFPB took action against PayPal and Bill Me Later (collectively PayPal) for violations of the CFPA related to the companies' online credit product once called Bill Me Later and now called PayPal Credit. The CFPB alleged that PayPal deceptively advertised promotional benefits that it failed to honor, signed consumers up for credit without their permission, made them use PayPal Credit instead of their preferred payment method, charged deferred interest in a way that took unreasonable advantage of consumers, failed to post payments in a timely manner, and mishandled billing disputes. The CFPB alleged that this conduct violated the CFPA's prohibitions against unfair, deceptive, and abusive acts and practices. In addition to injunctive relief prohibiting the unlawful practices and requiring PayPal to make specific changes to improve its practices, the order requires PayPal to pay $15 million in consumer redress and a $10 million penalty.

Consumer Financial Protection Bureau v. Nationwide Biweekly Administration, Inc., et al. (N.D. Cal. No. 3:15-cv-2106) (complaint filed May 11, 2015)

The CFPB sued Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, and Daniel S. Lipsky. The complaint alleges that Defendants' marketing and administration of Nationwide's "Interest Minimizer" program violates the CFPA's prohibition against deceptive and abusive acts or practices and the TSR. In particular, it alleges Nationwide and Lipsky guarantee that consumers will save money on their mortgages when they know that a substantial majority of consumers will never save anything. The complaint also alleges that Defendants misrepresent the interest savings consumers will achieve through their program and misleads consumers about the cost of the program. The complaint seeks a permanent injunction, consumer redress, and civil penalties.

Consumer Financial Protection Bureau and Consumer Protection Division, Office of the Attorney General of Maryland v. Genuine Title, LLC, Brandon Glickstein, Gary Klopp, Adam Mandelberg, William J. Peterson, III, Angela Pobletts, Jay Zukerberg, All County Settlements, LLC, BTS Management and Consulting, LLC, Carroll Abstracts, Inc., Marc LLC, and R&R Marketing Group, LLC (D. Md. No. 1:15-cv-01235-JFM) (complaint filed April 29, 2015; stipulated final judgments and orders entered May 5, 2015)

The CFPB and the State of Maryland filed a lawsuit in federal court against a title company, its principals, and several loan officers and their affiliated companies for violating RESPA and the CFPA. The complaint alleged that the title company and its principals provided cash or marketing services in exchange for the referral of settlement work. On May 5, 2015, the Court approved settlements with 10 of the 13 defendants. On November 16, 2015, the Bureau resolved claims against the remaining defendants. Under the settlements, the title company and its two principals are limited from participation in the mortgage industry for five years, three loan officers and four affiliated companies are limited from participation in the mortgage industry for two years, and the defendants will pay redress in the amount of $562, 500 and penalties in the amount of $175,000.

In re: International Land Consultants, Inc., Rocco Toscano, Joseph Mazzucco, James Vincent, and James Tague (No. 2015-CFPB-0010) (consent order entered May 1, 2015)

The CFPB resolved an enforcement action against International Land Consultants, Inc.; Rocco Toscano; Joseph Mazzucco; James Vincent; and James Tague. The CFPB found that the respondents made misrepresentations to consumers related to the roads in a property development in Tennessee, in violation of the Interstate Land Sales Act. The respondents misrepresented in marketing materials and Housing and Urban Development-registered Property Reports that they would maintain the roads until they were accepted by Van Buren County, Tennessee. In fact, the roads were not maintained, and were not accepted by the county. The consent order in the matter requires the respondents to repair certain roads in the development to the CFPB's satisfaction, and consistent with an engineering report prepared by an independent consultant.

In the Matter of: Regions Bank (File No. 2015-CFPB-009) (consent order entered April 28, 2015)

Regulation E prohibits depository institutions from charging overdraft fees on certain transactions without first obtaining consumers' opt-in. In violation of that provision, Regions Bank failed to obtain opt-ins from certain of its customers before charging them fees. The Bank also charged overdraft fees in connection with its deposit advance credit product when it had represented in disclosures to consumers that it would not do so. The CFPB ordered Regions to refund consumers charged illegal overdraft fees. Regions had voluntarily begun to redress consumers and, under the order, it will continue to pay redress, which will total approximately $49 million. Regions will also pay a $7.5 million penalty for violations of both Regulation E and the CFPA's prohibition against deceptive conduct.

Consumer Financial Protection Bureau v. Green Tree Servicing, LLC (D. Minn. No. 0:15-cv-02064-SRN-JSM) (stipulated order for permanent injunction entered April 23, 2015)

The CFPB, accompanied by the FTC, obtained a Stipulated Order for Permanent Injunction requiring the mortgage servicer Green Tree Servicing LLC, to pay a $15 million penalty and $48 million in redress to consumers whose loan modifications were not honored, who had their short sales decisions delayed because of Green Tree's poor servicing, or who were deceptively charged convenience fees when paying their mortgage. The order also requires Green Tree to honor loan modifications with prior servicers; obtain detailed account level documents from the prior servicers; create a home preservation program; and put in place other reforms. Green Tree's mortgage servicing practices violated the CFPA's prohibitions again unfair and deceptive practices, as well as the FDCPA, FCRA, and RESPA.

***Consumer Financial Protection Bureau v. Fort Knox National Company and Military Assistance Company*, LLC** (File No. 2015-CFPB-008) (consent order entered April 20, 2015)

The CFPB took action against Fort Knox National Company and Military Assistance Company, a processor of military allotments, for charging servicemembers fees without adequate disclosures. The CFPA found that their failure adequately to disclose fees to servicemembers constituted unfair, deceptive, and abusive acts and practices in violation of the CFPA. Fort Knox National Company and Military Assistance Company were ordered to pay $3.1 million in redress to affected servicemembers and required them clearly to disclose consumer fees in their payment processing businesses.

Consumer Financial Protection Bureau and Navajo Nation v. S/W Tax Loans, Inc. formerly d/b/a/ Fast Refund Loans, J Thomas Development, Inc. formerly d/b/a H&R Block, Dennis R. Gonzales, and Jeffrey Scott Thomas (D. N.M. No. 1:15-cv-00299) (stipulated final judgment and order entered April 16, 2015)

The CFPB and the Navajo Nation filed a lawsuit in federal court against a tax preparation firm, an affiliated tax refund anticipation loan company, and their principals for violating the CFPA and Regulation Z. The complaint alleged that the tax preparation company steered consumers to the loan company for refund anticipation loans without disclosing that the principal of the firm and the tax company stood to gain financially from each loan the consumers received. In addition, the complaint alleged that the tax refund loan company provided inaccurate APR disclosures for numerous tax loans and extended additional high-cost refund anticipation loans to consumers without disclosing that the consumers' tax refunds had been received by the company and would be available shortly. On April 16, 2015, the Court approved a settlement permanently barring the corporate defendants from offering refund anticipation loans and imposing the same bar on the individual defendants for five years, as well as providing for $254,000 in consumer redress (on top of $184,000 in refunds that Southwest had already provided consumers) and $438,000 in penalties.

In the matter of RMK Financial, Corp. (File No. 2015-CFPB-0007) (consent order entered April 9, 2015)

The CFPB took action against RMK Financial Corporation for deceptive mortgage advertising practices and failure to comply with the disclosure requirements for variable-rate mortgage products. The CFPB found that RMK Financial made material misrepresentations in its advertisements that improperly suggested that RMK Financial was, or was affiliated with, a United States government entity, or that the advertised mortgage credit products were endorsed or sponsored by a government program. In addition, RMK Financial's ads contained misrepresentations about the loans' interest rates and estimated monthly payments. RMK Financial was ordered to pay $250,000 in civil money penalties and to comply with applicable federal laws.

Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions, LLC, et al. (N.D.GA No. 1:15-CV-0859) (complaint filed March 26, 2015; preliminary injunction issued April 7, 2015)

On April 7, 2015, the Bureau obtained a preliminary injunction that froze the assets and enjoined unlawful conduct related to a phantom debt collection scheme. The Bureau's suit against a group of seven debt collection agencies, six individual debt collectors, four payment processors, and a telephone marketing service provider, alleges violations of the FDCPA and the CFPA's prohibition on unfair and deceptive acts and practices, and providing substantial assistance to unfair or deceptive conduct. The complaint alleges that the individuals, acting through a network of corporate entities, use threats and harassment to collect "phantom" debt from consumers. Phantom debt is debt consumers do not actually owe or debt that is not payable to those attempting to collect it. Their misconduct was facilitated by the substantial assistance of the payment processors and the telephone service provider. The Bureau is seeking a permanent injunction, redress for consumers, and a monetary penalty.

Consumer Financial Protection Bureau v. All Financial Services, LLC (D. Md. No. 1:15-cv-00420) (complaint filed February 12, 2015; stipulated final judgment and order entered on October 21, 2015)

On February 12, 2015, the Bureau filed a lawsuit against All Financial Services, LLC in federal court. The complaint alleges that All Financial Services, LLC disseminated deceptive and misleading advertisements for mortgage credit products in violation of Regulation N and the deceptive acts and practices prohibition in the CFPA. Additionally, the Bureau alleges that All Financial Services, LLC failed to maintain copies of disseminated advertisements as required by Regulation N. The Bureau sought a monetary penalty and injunctive relief. On October 21, 2015, the Court entered a stipulated final judgment. The judgment imposes a $13,000 civil money penalty, prohibits the company from violating Regulation N and the CFPA and requires the company to implement a compliance plan to ensure that the company's mortgage credit product advertisements comply with all applicable Federal consumer financial laws.

Consumer Financial Protection Bureau v. IrvineWebWorks, Inc., et al. (C.D. Cal. No. 8:14-cv-1967) (complaint filed December 11, 2014; stipulated final judgment and order entered March 15, 2016)

The CFPB filed suit in federal court against Irvine Web Works, Inc., d/b/a Student Loan Processing.US (SLP) and its owner, James Krause (Krause). The complaint alleged that SLP and Krause violated the TSR and CFPA by falsely representing an affiliation with the Department of Education (ED), including through the use of a logo very similar to the ED logo, the claim that the company "work[s] with" ED, and the appearance of SLP's direct mailings. The complaint also alleged that the defendants charged illegal advance fees for their student debt relief services in violation of the TSR, and failed to disclose or misrepresented the cost of their services, in violation of the TSR and CFPA. On March 15, 2016, the court entered a stipulated final judgment and order against SLP and Krause. The order requires SLP to shut down operations within 45 days; immediately stop charging consumers fees; and process necessary paperwork for 30 days after entry of the order for consumers who have upcoming recertification or renewal deadlines relating to income-driven repayment plans. In addition, the order imposes a judgment for $8.2 million, a large portion of which will be suspended based on inability to pay. Accordingly, under the terms of the order, the defendants are ordered to pay $326,000 in consumer redress to the Bureau to be distributed to compensate victims of the defendants' illegal activities. The order also bans Krause and SLP permanently from marketing or providing debt relief and student loan services and imposes a $1 civil monetary penalty.

Consumer Financial Protection Bureau v. Richard F. Moseley, Sr., et al. (W.D. Mo. No. 4:14-cv-00789DW) (complaint filed September 8, 2014; stipulated preliminary injunction entered on October 3, 2014)

The CFPB filed a lawsuit against a confederation of online payday lenders known as the Hydra Group, its principals, and affiliates, alleging that they used a maze of interrelated entities to make unauthorized and otherwise illegal loans to consumers. The CFPB alleged that the defendants' practices violate the CFPA, TILA, and EFTA. On September 9, 2014, a federal court in Kansas City issued an *ex parte* temporary restraining order against the defendants, ordering them to halt lending operations. The court also placed the companies in temporary receivership, granted the appointed receiver and the CFPB immediate access to the defendants' business premises, and froze their assets. On October 3, 2014, the court entered a stipulated preliminary injunction against the defendants pending final judgment in the case. On February 10, 2016, the U.S. Attorney's Office for the Southern District of New York announced criminal charges against Richard F. Moseley, Sr. concerning the same online payday lending enterprise. On March 4, 2016, the judge in the CFPB's case against the Hydra Group stayed the civil proceeding until resolution of the criminal case against Richard F. Moseley, Sr.

Consumer Financial Protection Bureau v. Corinthian Colleges, et al. (N.D. Ill. No. 1:14-cv-07194) (complaint filed September 16, 2014; final judgment entered on October 27, 2015)

On September 16, 2014, the CFPB filed a lawsuit against Corinthian Colleges, Inc. in federal court. The complaint alleges that Corinthian induced students to take private student loans by deceptively describing the job and career prospects of its graduates as well as Corinthian's career services, and by misrepresenting its job placement rates. Corinthian also engaged in aggressive debt collection practices in violation of the CFPA and the FDCPA. On October 27, 2015, the court entered a final default judgment against Corinthian Colleges, Inc. The court determined that Corinthian was liable for more than $530 million in consumer redress and prohibited the company from engaging in future misconduct. Partial relief for borrowers was provided in February 2015 when the CFPB and the U.S. Department of Education announced more than $480 million in forgiveness for a large portion of Corinthian's high-cost private student loans.

Consumer Financial Protection Bureau v. Frederick J. Hanna & Associates, P.C., et al. (N.D. Ga. No. 1:14-cv-2211-AT) (complaint filed July 14, 2014; final judgment entered on January 6, 2016)

In January, the court entered a consent order to resolve a lawsuit that the CFPB filed in 2014 against Frederick J. Hanna & Associates. The Bureau alleged that the Georgia-based law firm and its three principal partners operated an illegal debt collection lawsuit mill. More specifically, the Bureau's lawsuit alleged that the defendants relied on deceptive court filings and faulty evidence to churn out those lawsuits.

The consent order bars the firm and its principal partners from illegal debt-collection practices, like filing lawsuits without being able to verify the consumers' debt and intimidating consumers with deceptive court filings. Furthermore, the order requires the firm and its principals to pay a $3.1 million civil penalty. The order follows an earlier order issued in July 2015 that rejected the defendants' motion to dismiss the case. Among other things, that court ruling held that attorneys have an obligation to meaningfully review the facts of a lawsuit before filing it and that the CFPB has the authority to take action against attorneys engaged in illegal consumer debt-collection practices.

Consumer Financial Protection Bureau v. CashCall, Inc., et al. (C.D.Cal. File CV 15-7522-JFW) (complaint filed December 16, 2013 in D. Mass. No. 1:13-cv-13167)

In 2013, the Bureau filed a lawsuit against online loan servicer, CashCall Inc., its owner, a subsidiary, and an affiliate, for collecting money consumers do not owe, because the underlying loans were void under state lending or licensing laws. In December 2015, the court denied the defendants' motion to dismiss, holding that a CFPA claim could be predicated on the defendants' taking and demanding payment for amounts that consumers do not actually owe under the governing state laws and that the CFPA prohibition against establishing a usury cap does not prevent the CFPB from seeking to enforce the UDAAP prohibition on collecting void debts. This action is still pending.

Consumer Financial Protection Bureau v. Morgan Drexen and Walter Ledda (C.D. Cal File SACV13-01267 JLS) (complaint filed August 20,2013, stipulated final judgment and consent order against Ledda entered on October 19, 2015; final judgment entered against Morgan Drexen on March 16, 2016)

In March, the court entered a final judgment resolving a lawsuit that the Bureau filed in 2013 against Morgan Drexen. The Bureau alleged that the company violated the CFPA and the TSR by charging illegal upfront fees for debt-relief services and making misrepresentations in advertisements. The court found that the company violated federal law, prohibited Morgan Drexen from collecting any further fees from its customers, and ordered it to pay more than $132 million in restitution and a $40 million civil penalty. This decision follows a stipulated final judgment against Morgan Drexen's president and chief executive officer, Walter Ledda, which the court approved in October. The court found that Ledda violated federal law, banned him from providing debt relief services, and required him to pay restitution and a civil money penalty.

7. Fair lending

As part of its mandate, the CFPB's Office of Fair Lending (Fair Lending) is charged with "providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities" that are enforced by the CFPB, including ECOA and HMDA.[43] This part of Fair Lending's mandate is accomplished primarily through fair lending supervision and enforcement work. Interagency coordination[44] and outreach to industry groups and fair lending, civil rights, consumer and community advocates[45] are also important elements of our mandate. The Bureau recently published its spring 2016 fair lending report to Congress[46] on the efforts of the Bureau and the fulfillment of our fair lending mandate. This report of the CFPB[47] provides an overview of the Bureau's risk-based fair lending prioritization process; supervision tools; recent public enforcement actions; interagency coordination efforts and reporting; and outreach activities during calendar year 2015. In this Semi-Annual Report update, we focus on highlights from our fair lending supervision and enforcement activities, and continued efforts in interagency coordination and

[43] Dodd-Frank Act, § 1013(c)(2)(A).

[44] Dodd-Frank Act, §1013(c)(2)(B).

[45] Dodd-Frank Act, §1013(c)(2)(C).

[46] Dodd-Frank Act, § 1013(e)(2)(D).

[47] See Consumer Financial Protection Bureau, Fair Lending Report of the Consumer Financial Protection Bureau (Apr. 29, 2016), available at http://files.consumerfinance.gov/f/documents/201604_cfpb_Fair_Lending_Report_Final.pdf. While outside the timeframe of this reporting period, it was available as of publication, and so is included here.

outreach.

7.1 Fair lending supervision and enforcement

7.1.1 Fair lending supervision

The CFPB's Fair Lending Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. Supervision activities range from assessments of the institutions' fair lending compliance management systems to in-depth reviews of products or activities that may pose heightened fair lending risks to consumers. As part of its Fair Lending Supervision program, the Bureau continues to conduct three types of fair lending reviews at Bureau-supervised institutions: ECOA baseline reviews, ECOA targeted reviews, and HMDA data integrity reviews. The Bureau's supervisory work has focused on the areas of mortgage, auto lending, credit cards, and small business lending, but has included other product areas as well.

In conducting reviews, CFPB examination teams have observed violations of ECOA and HMDA, as well as various factors that indicate heightened fair lending risk, including:

- Weak or nonexistent fair lending compliance management systems;
- Underwriting and pricing policies that consider prohibited bases in a manner that violates ECOA or presents a fair lending risk;
- Discretionary policies without sufficient controls or monitoring to prevent discrimination;
- Inaccurate HMDA data; and
- Noncompliance with Regulation B's adverse action notification requirements.

When the CFPB identifies situations in which fair lending compliance is inadequate, it directs institutions to establish fair lending compliance programs commensurate with the size and complexity of the institution and its lines of business. If fair lending violations have occurred, the CFPB will require remediation and restitution to consumers, and may pursue other appropriate relief.

Although the Bureau's supervisory activity is confidential, the Bureau publishes regular reports on its website called *Supervisory Highlights*. These reports provide information to all market participants on supervisory trends the Bureau observes as well as information on public enforcement matters that arise from supervisory reviews. The Fall 2015 edition of *Supervisory Highlights*[48] detailed one aspect of the Bureau's supervisory work in ECOA targeted mortgage reviews, by describing the Bureau's methodologies used to evaluate underwriting disparities and providing guidance to institutions on managing fair lending risks in underwriting. The Winter 2016 edition of *Supervisory Highlights*[49] shared updates to past fair lending settlements reached by the Bureau, and described recent public enforcement actions that resulted from or were supported by the Bureau's supervisory activity, including two from fair lending.

On October 30, 2015, the CFPB published an update to the ECOA Baseline Review Modules, which are part of the CFPB Supervision and Examination Manual. Examination teams use the ECOA Baseline Review Modules to conduct ECOA Baseline Reviews, which evaluate how well institutions' compliance management systems identify and manage fair lending risks. The fifth module, "Fair Lending Risks Related to Models," is a new addition that examiners will use to review empirical models that supervised financial institutions may use.

When using the modules to conduct an ECOA Baseline Review, CFPB examination teams review an institution's fair lending supervisory history, including any history of fair lending risks or violations previously identified by the CFPB or any other federal or state regulator. Examination teams collect and evaluate information about an entity's fair lending compliance program, including board of director and management participation, policies and procedures, training materials, internal controls and monitoring and corrective action. In addition to responses obtained pursuant to information requests, examination teams may also review other sources of

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[48] Consumer Financial Protection Bureau, *Supervisory Highlights Fall 2015* at 27 (November 3, 2015), *available at* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.

[49] Consumer Financial Protection Bureau, *Supervisory Highlights Winter 2016* at 19 (March 8, 2016), *available at* http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.

information, including any publicly-available information about the entity as well as information obtained through interviews with institution staff or supervisory meetings with an institution.

The updated ECOA Baseline Review Modules and the CFPB Supervision and Examination Manual can be found on the Bureau's website at www.consumerfinance.gov.

7.1.2 Fair lending enforcement[50]

The CFPB has the authority to bring enforcement actions pursuant to HMDA and ECOA. Specifically, the CFPB has the authority to engage in research, conduct investigations, file administrative complaints, and hold hearings and adjudicate claims through the CFPB's administrative enforcement process. The CFPB also has independent litigating authority and can file cases in federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other Federal bank regulators, the CFPB also is required to refer matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. Over the past year, the CFPB announced five fair lending public enforcement actions--two involving mortgages and three involving auto lending. The Bureau has also made significant progress in administration of prior fair lending enforcement actions.

Mortgage

HUDSON CITY SAVINGS BANK

On September 24, 2015, the CFPB and the DOJ filed a joint complaint against Hudson City Savings Bank (Hudson City) alleging discriminatory redlining practices in mortgage lending and a proposed consent order to resolve the complaint.[51] The complaint alleges that from at least

[50] Section 1016(c)(5) of the Dodd-Frank Act requires the Bureau to include in the semi-annual report public enforcement actions the Bureau was a party to during the preceding year, which is April 1, 2015 through March 31, 2016, for this report.

[51] *Consumer Financial Protection Bureau v. Hudson City Savings Bank, F.S.B.*, No. 2:15-cv-07056-CCC-JBC (D.N.J. Sept. 24, 2015) (complaint), *available at* http://files.consumerfinance.gov/f/201509_cfpb_hudson-city-joint-

2009 to 2013 Hudson City illegally redlined by providing unequal access to credit to neighborhoods in New York, New Jersey, Connecticut, and Pennsylvania. Specifically, Hudson City structured its business to avoid and thereby discourage residents in majority-Black-and-Hispanic neighborhoods[52] from accessing mortgages. The consent order requires Hudson City to pay $25 million in direct loan subsidies to qualified borrowers in the affected communities, $2.25 million in community programs and outreach, and a $5.5 million penalty. This represents the largest redlining settlement in history as measured by such direct subsidies. On October 30, 2015, Hudson City was acquired by M&T Bank Corporation, and Hudson City was merged into Manufacturers Banking and Trust Company (M&T Bank), with M&T Bank as the surviving institution. As the successor to Hudson City, M&T Bank is responsible for carrying out the terms of the Consent Order.

Hudson City was a federally-chartered savings association with 135 branches and assets of $35.4 billion and focused its lending on the origination and purchase of mortgage loans secured by single-family properties. According to the complaint, Hudson City illegally avoided and thereby discouraged consumers in majority-Black-and-Hispanic neighborhoods from applying for credit by:

- Placing branches and loan officers principally outside of majority-Black-and-Hispanic communities;
- Selecting mortgage brokers that were mostly located outside of, and did not effectively serve, majority-Black-and-Hispanic communities;
- Focusing its limited marketing in neighborhoods with relatively few Black and Hispanic residents; and
- Excluding majority-Black-and-Hispanic neighborhoods from its credit assessment areas.

complaint.pdf, and in Section 6.2 above, Enforcement actions, for more information.

[52] "Majority-Black-and-Hispanic neighborhoods" or "majority-Black-and-Hispanic communities" means census tracts in which more than 50 percent of the residents are identified in the 2010 U.S. Census as either "Black or African American" or "Hispanic or Latino."

The consent order which was entered by the court on November 4, 2015,[53] requires Hudson City to pay $25 million to a loan subsidy program that will offer residents in majority-Black-and-Hispanic neighborhoods in New Jersey, New York, Connecticut, and Pennsylvania mortgage loans on a more affordable basis than otherwise available from Hudson City; spend $1 million on targeted advertising and outreach to generate applications for mortgage loans from qualified residents in the affected majority-Black-and-Hispanic neighborhoods; spend $750,000 on local partnerships with community-based or governmental organizations that provide assistance to residents in majority-Black-and-Hispanic neighborhoods; and spend $500,000 on consumer education, including credit counseling and financial literacy. In addition to the monetary requirements, the decree orders Hudson City to open two full-service branches in majority-Black-and-Hispanic communities, expand its assessment areas to include majority-Black-and-Hispanic communities, assess the credit needs of majority-Black-and-Hispanic communities, and develop a fair lending compliance and training program.

PROVIDENT FUNDING ASSOCIATES

On May 28, 2015, the CFPB and the DOJ filed a joint complaint against Provident Funding Associates (Provident) alleging discrimination in mortgage lending, along with a proposed order to settle the complaint.[54] The complaint alleges that from 2006 to 2011, Provident discriminated in violation of ECOA by charging over 14,000 African-American and Hispanic borrowers more in brokers' fees than similarly-situated non-Hispanic White borrowers on the basis of race and national origin. Provident is required under the order to pay $9 million in damages to harmed African-American and Hispanic borrowers.

Provident is headquartered in California and originates mortgage loans through its nationwide

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[53] *Consumer Financial Protection Bureau v. Hudson City Savings Bank, F.S.B.*, No. 2:15-cv-07056-CCC-JBC (D. N.J. Sept. 24, 2015) (consent order), *available at* http://files.consumerfinance.gov/f/201511_cfpb_hudson-city-consent-order.pdf, and in Section 6.2 above, Enforcement actions, for more information.

[54] *United States and Consumer Financial Protection Bureau v. Provident Funding Associates, L.P.*, No. 3:15-cv-023-73 (N.D. Cal. May 28, 2015) (complaint), *available at* http://files.consumerfinance.gov/f/201505_cfpb_complaint-provident-funding-associates.pdf, and in Section 6.2 above, Enforcement actions, for more information.

network of brokers. Between 2006 and 2011, Provident made over 450,000 mortgage loans through its brokers. During this time period, Provident's practice was to set a risk-based interest rate and then allow brokers to charge a higher rate to consumers. Provident would then pay the brokers some of the increased interest revenue from the higher rates – these payments are also known as yield spread premiums. Provident's mortgage brokers also had discretion to charge borrowers higher fees. The fees paid to Provident's brokers were thus made up of these two components: payments by Provident from increased interest revenue and through the direct fees paid by the borrower.

The CFPB and the DOJ alleged that Provident violated ECOA by charging African-American and Hispanic borrowers more in total broker fees than non-Hispanic White borrowers based on their race and national origin and not based on their credit risk. The DOJ also alleged that Provident violated the Fair Housing Act, which also prohibits discrimination in residential mortgage lending. The agencies alleged that Provident's discretionary broker compensation policies caused the differences in total broker fees, and that Provident unlawfully discriminated against African-American and Hispanic borrowers in mortgage pricing. Approximately 14,000 African-American and Hispanic borrowers paid higher total broker fees because of this discrimination.

The consent order, which was entered by the court on June 18, 2015, requires Provident to pay $9 million to harmed borrowers, to pay to hire a settlement administrator to distribute funds to the harmed borrowers identified by the CFPB and the DOJ, and to not discriminate against borrowers in assessing total broker fees.[55] Provident will maintain the non-discretionary broker compensation policies and procedures it implemented in 2014. Provident's current policy does not allow discretion in borrower- or lender-paid broker compensation because individual brokers are unable to charge or collect different amounts of fees from different borrowers on a loan-by-loan basis. The consent order also requires that Provident continue to have in place a fair lending training program and broker monitoring program.

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[55] *United States v. Provident Funding Associates, L.P.*, No. 3:15-cv-02373 (N.D. Cal. June 18, 2015) (consent order), *available at* http://files.consumerfinance.gov/f/201505_cfpb_consent-order-provident-funding-associates.pdf, and in Section 6.2 above, Enforcement actions, for more information.

Provident must hire a settlement administrator to distribute the $9 million to harmed borrowers.

Auto Finance

TOYOTA MOTOR CREDIT CORPORATION

On February 2, 2016, the CFPB resolved an action with Toyota Motor Credit Corporation (Toyota Motor Credit)[56] that requires Toyota Motor Credit to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination. On that same date, the DOJ also filed a complaint and proposed consent order in the U.S. District Court for the Central District of California addressing the same conduct. That consent order was entered by the court on February 11, 2016. Toyota Motor Credit's past practices resulted in thousands of African-American and Asian and Pacific Islander borrowers paying higher interest rates than similarly-situated non-Hispanic White borrowers for their auto loans. The consent orders require Toyota Motor Credit to pay up to $21.9 million in restitution to affected borrowers.

Toyota Motor Credit Corporation is the U.S. financing arm of Toyota Financial Services, which is a subsidiary of Toyota Motor Corporation. As of the second quarter of 2015, Toyota Motor Credit was the largest captive auto lender in the United States and the fifth largest auto lender overall. As an indirect auto lender, Toyota Motor Credit sets risk-based interest rates, or "buy rates," that it conveys to auto dealers. Indirect auto lenders like Toyota Motor Credit then allow auto dealers to charge a higher interest rate when they finalize the deal with the consumer. This is typically called "discretionary markup." Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Over the time period under review, Toyota Motor Credit permitted dealers to mark up consumers' interest rates as much as 2.5%.

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[56] *In re. Toyota Motor Credit Corporation*, File No. 2016-CFPB-0002 (Feb. 2, 2016) (consent order), *available at* http://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf, and in Section 6.2 above, Enforcement actions, for more information.

The enforcement action was the result of a joint CFPB and DOJ investigation that began in April 2013. The agencies investigated Toyota Motor Credit's indirect auto lending activities' compliance with ECOA. The Bureau found that Toyota Motor Credit violated ECOA by adopting policies that resulted in African-American and Asian and Pacific Islander borrowers paying higher interest rates for their auto loans than non-Hispanic White borrowers as a result of the dealer markups that Toyota Motor Credit permitted and incentivized. Toyota Motor Credit's pricing and compensation structure meant that for the period covered in the order, thousands of African-American borrowers were charged, on average, over $200 more for their auto loans, and thousands of Asian and Pacific Islander borrowers were charged, on average, over $100 more for their auto loans.

The CFPB's administrative action and DOJ's proposed consent order require Toyota Motor Credit to reduce dealer discretion to mark up the interest rate to only 1.25% above the buy rate for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or to move to non-discretionary dealer compensation. Toyota Motor Credit must also to pay $19.9 million in remediation to affected African-American and Asian and Pacific Islander borrowers whose auto loans were financed by Toyota Motor Credit between January 2011 and February 2, 2016. Toyota Motor Credit will pay up to an additional $2 million into the settlement fund to compensate any affected African-American and Asian and Pacific Islander borrowers in the time period between February 2, 2016, and when Toyota Motor Credit implements its new pricing and compensation structure. The Bureau did not assess penalties against Toyota Motor Credit because of its responsible conduct, namely the proactive steps the institution is taking to directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Toyota Motor Credit must hire a settlement administrator who will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation.

FIFTH THIRD BANK

On September 28, 2015, the CFPB resolved an action with Fifth Third Bank (Fifth Third) that, like Toyota Motor Credit, requires Fifth Third to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination. On that same date, the DOJ also filed a complaint and proposed consent order in the U.S. District Court for the Southern District of Ohio addressing the same conduct. That consent order was entered by the court on October 1, 2015. Fifth Third's past practices resulted in thousands of African-American and Hispanic borrowers paying higher interest rates than similarly-situated non-Hispanic white borrowers for their auto loans. The consent orders require Fifth Third to pay $18 million in restitution to affected borrowers.[57]

As of the second quarter of 2015, Fifth Third was the ninth largest depository auto loan lender in the United States and the seventeenth largest auto loan lender overall. As an indirect auto lender, Fifth Third sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Fifth Third then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. As described above, this is typically called "discretionary markup." Markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Fifth Third's policy permitted dealers to mark up consumers' interest rates as much as 2.5% during the period under review.

From January 2013 through May 2013, the Bureau conducted an examination that reviewed Fifth Third's indirect auto lending business for compliance with ECOA and Regulation B. On March 6, 2015, the Bureau referred the matter to the DOJ. The CFPB found and the DOJ alleged that Fifth Third's indirect lending policies resulted in minority borrowers paying higher discretionary markups, and that Fifth Third violated ECOA by charging African-American and Hispanic borrowers higher discretionary markups for their auto loans than non-Hispanic White borrowers without regard to the creditworthiness of the borrowers. Fifth Third's discriminatory pricing and compensation structure resulted in thousands of minority borrowers paying, on average, over $200 more for their auto loans originated between January 2010 and September 2015.

The CFPB's administrative consent order and the DOJ's consent order require Fifth Third to reduce dealer discretion to mark up the interest rate to a maximum of 1.25% for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or move to non-discretionary dealer compensation. Fifth Third is also required to pay $18 million to affected African-American and Hispanic borrowers whose auto loans were financed by Fifth Third between

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[57] *In re, Fifth Third Bank*, No. 2015-CFPB-0024 (Sept. 28, 2015)(consent order), *available at* http://files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf, and in Section 6.2 above, Enforcement actions, for more information.

January 2010 and September 2015. As in the case of Toyota Motor Credit, the Bureau did not assess penalties against Fifth Third because of the bank's responsible conduct, namely the proactive steps the bank is taking that directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Fifth Third Bank must hire a settlement administrator who will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation.

AMERICAN HONDA FINANCE CORPORATION

On July 14, 2015, the CFPB resolved an action with American Honda Finance Corporation (Honda) that, like Toyota Motor Credit and Fifth Third Bank, requires Honda to change its pricing and compensation system by substantially reducing or eliminating discretionary markups to minimize the risks of discrimination.[58] On that same date, the DOJ also filed a complaint and proposed consent order in the U.S. District Court for the Central District of California addressing the same conduct. That consent order was entered by the court on July 16, 2015. Honda's past practices resulted in thousands of African-American, Hispanic, and Asian and Pacific Islander borrowers paying higher interest rates than similarly-situated non-Hispanic White borrowers for their auto loans. As part of the enforcement action, Honda is required to pay $24 million in restitution to affected borrowers.

Honda is wholly-owned by American Honda Motor Co., Inc. and as of the first quarter of 2015, Honda was the fourth largest captive auto lender in the United States and the ninth largest auto lender overall. As an indirect auto lender, Honda sets a risk-based interest rate, or "buy rate," that it conveys to auto dealers. Honda then allows auto dealers to charge a higher interest rate when they finalize the transaction with the consumer. As described above, this is typically called "discretionary markup." The discretionary markups can generate compensation for dealers while giving them the discretion to charge similarly-situated consumers different rates. Honda permitted dealers to mark up consumers' risk-based interest rates as much as 2.25% for contracts with terms of five years or less, and 2% for contracts with longer terms.

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[58] *In re, American Honda Finance Corp.*, No. 2015-CFPB-0014 (July 14, 2015) (consent order), *available at* http://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf, and in Section 6.2 above, Enforcement actions, for more information.

The enforcement action was the result of a joint CFPB and DOJ investigation that began in April 2013. The agencies investigated Honda's indirect auto lending activities' compliance with ECOA. The CFPB found and the DOJ alleged that Honda's indirect lending policies resulted in minority borrowers paying higher discretionary markups and that Honda violated ECOA by charging African-American, Hispanic, and Asian and Pacific Islander borrowers higher discretionary markups for their auto loans than similarly-situated non-Hispanic White borrowers. Honda's discriminatory pricing and compensation structure resulted in thousands of minority borrowers paying, on average, from $150 to over $250 more for their auto loans originated from January 2011 through July 14, 2015.

The CFPB's administrative consent order and the DOJ's consent order require Honda to reduce dealer discretion to mark up the interest rate to a maximum of 1.25% for auto loans with terms of five years or less, and 1% for auto loans with longer terms, or move to non-discretionary dealer compensation. Honda is also required to pay $24 million to affected African-American, Hispanic, and Asian and Pacific Islander borrowers whose auto loans were financed by Honda between January 2011 and July 14, 2015. As in the cases of Toyota Motor Credit and Fifth Third, the Bureau did not assess penalties against Honda because of Honda's responsible conduct, namely the proactive steps the company took to directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion altogether. In addition, Honda, through American Honda Motor Co., will contact consumers, distribute the funds, and ensure that affected borrowers receive compensation.

Settlement Administration

SYNCHRONY BANK, FORMERLY KNOWN AS GE CAPITAL RETAIL BANK

On June 19, 2014, the CFPB, as part of a joint enforcement action with the DOJ, ordered Synchrony Bank, formerly known as GE Capital, to provide $169 million in relief to about 108,000 borrowers excluded from debt relief offers because of their national origin.[59]

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[59] *In re. Synchrony Bank, f/k/a GE Capital Retail Bank*, No. 2014-CFPB-0007 (June 19, 2014) (consent order).

As previously reported, Synchrony Bank had two different promotions that allowed credit card customers with delinquent accounts to address their outstanding balances, one by paying a specific amount to bring their account current in return for a statement credit and another by paying a specific amount in return for waiving the remaining account balance. However, it did not extend these offers to any customers who indicated that they preferred to communicate in Spanish and/or had a mailing address in Puerto Rico, even if the customer met the promotion's qualifications. This practice denied consumers the opportunity to benefit from these promotions on the basis of national origin in direct violation of ECOA. This public enforcement action represented the federal government's largest credit card discrimination settlement in history.

In the course of administering the settlement, Synchrony Bank identified additional consumers who were excluded from these offers and had a mailing address in Puerto Rico or indicated a preference to communicate in Spanish. Synchrony Bank provided a total of approximately $201 million in redress including payments, credits, interest, and debt forgiveness to approximately 133,463 eligible consumers. This amount includes approximately $4 million of additional redress based on its identification of additional eligible consumers. Synchrony completed redress to consumers as of August 8, 2015.

PNC BANK, AS SUCCESSOR TO NATIONAL CITY BANK

As previously reported, on December 23, 2013, the CFPB and the DOJ filed a joint complaint against National City Bank for discrimination in mortgage lending, along with a proposed order to settle the complaint. Specifically, the complaint alleged that National City Bank charged higher prices on mortgage loans to African-American and Hispanic borrowers than similarly-situated non-Hispanic White borrowers between 2002 and 2008. The consent order, which was entered on January 9, 2014 by the U.S. District Court for the Western District of Pennsylvania, required National City's successor, PNC Bank, to pay $35 million in restitution to harmed African-American and Hispanic borrowers. The consent order also required PNC to pay to hire a

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available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.

settlement administrator to distribute funds to victims identified by the CFPB and the DOJ.[60]

In order to carry out the Bureau's and the DOJ's 2013 settlement with PNC, as successor in interest to National City Bank, the Bureau and the DOJ worked closely with the settlement administrator and PNC to distribute $35 million to harmed African-American and Hispanic borrowers. On September 16, 2014, the Bureau published a blog post (available in English[61] and Spanish[62]) announcing the selection of the settlement administrator and providing information on contacting the administrator and submitting settlement forms. Under the supervision of the government agencies, the settlement administrator contacted over 90,000 borrowers who were eligible for compensation and made over 120,000 phone calls in an effort to ensure maximum participation. As of the participation deadline of February 17, 2015, borrowers on approximately 74% of the affected loans responded to participate in the settlement. The settlement administrator mailed checks to participating borrowers totaling $35 million plus accrued interest on May 15, 2015.

ALLY FINANCIAL INC. AND ALLY BANK

On December 19, 2013, the CFPB and the DOJ entered into the federal government's largest auto loan discrimination settlement in history[63] which required Ally Financial Inc. and Ally Bank (Ally) to pay $80 million in damages to harmed African-American, Hispanic, and Asian and Pacific Islander borrowers. The CFPB found and the DOJ alleged that minority borrowers on more than 235,000 auto loans paid higher interest rates than similarly-situated non-

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[60] *Consumer Financial Protection Bureau v. National City Bank*, No. 2:13-cv-01817-CB (W.D. Pa. Jan. 9, 2014) (consent order), *available at* http://files.consumerfinance.gov/f/201312_cfpb_consent_national-city-bank.pdf.

[61] Patrice Ficklin, Consumer Financial Protection Bureau, *National City Bank Settlement Administrator Will Contact Eligible Borrowers Soon* (Sept. 16, 2014), *available at* http://www.consumerfinance.gov/blog/national-city-bank-settlement-administrator-will-contact-eligible-borrowers-soon/.

[62] Patrice Ficklin, Consumer Financial Protection Bureau, *El administrador de negociación del National City Bank pronto se pondrá en contacto con los prestatarios elegibles* (Sept. 16, 2014), *available at* http://www.consumerfinance.gov/blog/el-administrador-de-negociacion-del-national-city-bank-pronto-se-pondra-en-contacto-con-los-prestatarios-elegibles/.

[63] *In re. Ally Financial Inc.*, No. 2013-CFPB-0010 (Dec. 20, 2013) (consent order), *available at* http://files.consumerfinance.gov/f/201312_cfpb_consent-order_ally.pdf.

Hispanic White borrowers between April 2011 and December 2013 because of Ally's discriminatory discretionary markup and compensation system.

Ally hired a settlement administrator to distribute the $80 million in damages to harmed borrowers. On June 15, 2015, the Bureau published a blog post announcing the selection of the settlement administrator and providing information on contacting the administrator and submitting settlement forms.[64] On June 26, 2015, the settlement administrator sent letters to Ally borrowers identified as potentially eligible for remediation from the settlement fund. Consumers had until October 2015 to respond, after which the agencies determined the final distribution amount for each eligible borrower. Following the conclusion of the participation period, Ally's settlement administrator identified approximately 301,000 eligible, participating borrowers and co-borrowers—representing approximately 235,000 loans—who were overcharged as a result of Ally's discriminatory pricing and compensation structure during the relevant time period. On January 29, 2016, the Ally settlement administrator mailed checks totaling $80 million plus accrued interest to harmed borrowers participating in the settlement.[65] In addition to the $80 million in settlement payments for consumers who were overcharged between April 2011 and December 2013, Ally paid roughly $38.9 million to consumers that Ally determined were both eligible and overcharged on auto loans issued during 2014, pursuant to its continuing obligations under the terms of the orders.

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[64] Patrice Ficklin, Consumer Financial Protection Bureau, *Ally Settlement Administrator Will Contact Eligible Borrowers Soon* (June 15, 2015), *available at* http://www.consumerfinance.gov/blog/ally-settlement-administrator-will-contact-eligible-borrowers-soon/.

[65] Patrice Ficklin, Consumer Financial Protection Bureau, *Harmed Ally Borrowers Have Been Sent $80 Million in Damages* (January 29, 2016), *available at* http://www.consumerfinance.gov/blog/harmed-ally-borrowers-have-been-sent-80-million-in-damages/.

Referrals to DOJ

During this reporting period[66] and pursuant to Section 706(g) of ECOA, the CFPB has referred eight matters to the DOJ with regard to:

- Discrimination on the bases of receipt of public assistance income, sex, marital status race, color, and national origin in mortgage lending; and
- Discrimination on the bases of age, receipt of public assistance income, sex, marital status, race, and national origin, in auto finance.

7.2 Interagency fair lending coordination and outreach

7.2.1 Interagency coordination

The Bureau's fair lending activity involves close partnerships and coordination among the Bureau's Federal and state regulatory and enforcement partners. Fair Lending continues to lead the Bureau's fair lending interagency coordination and collaboration efforts by working with partners on the Financial Fraud Enforcement Task Force's Non-Discrimination Working Group, the Interagency Task Force on Fair Lending, the Interagency Working Group on Fair Lending Enforcement, and the FFIEC Subcommittee on HMDA and the Community Reinvestment Act.

7.2.2 Fair lending outreach, speeches, presentations and publications

The CFPB is committed to communicating directly with stakeholders including policymakers; industry; and fair lending, civil rights, consumer and community groups and the public, on its policies, compliance expectations, and priorities. Outreach is accomplished through issuance of

[66] April 1, 2015 – March 31, 2016.

Reports to Congress, Interagency Statements, *Supervisory Highlights*, Compliance Bulletins, and blog posts, as well as through the delivery of correspondence, speeches, and presentations addressing fair lending and access to credit matters.

On October 15, 2015, along with federal partners from the FRB, DOJ, FDIC, OCC, HUD, and NCUA, the Office of Fair Lending staff participated in and presented at the 2015 Federal Interagency Fair Lending Hot Topics webinar. The webinar covered several fair lending topics, including the use of data in evaluating fair lending risk, compliance management, maternity leave discrimination, post-origination risks, and auto lending settlements.

As noted in the Fair Lending Supervision section 7.1.1 above, the Bureau released on November 3, 2015, the Fall 2015 edition of *Supervisory Highlights* that included discussion on fair lending topics including analyzing underwriting practices at financial institutions in ECOA targeted reviews and an update on settlement administration under the Ally Financial Inc. and Ally Bank consent order. On March 8, 2016, the Bureau released the Winter 2016 edition of *Supervisory Highlights* that included updates on past fair lending settlements reached by the Bureau and recent fair lending public enforcement actions resulting from or supported by the Bureau's supervisory work.

CFPB leadership and staff continue to deliver briefings, correspondence, testimony, speeches, panel remarks, webinars, and in-person presentations to diverse audiences, including Members of Congress and staff, industry, bar associations, national and state fair lending and fair housing groups, and community and consumer advocates.

The Bureau looks forward to continued dialogue with these and other stakeholders on important matters related to fair lending and access to credit.

7.3 Home Mortgage Disclosure Act

On October 28, 2015, the Bureau published in the Federal Register a final rule to implement the Dodd-Frank Act amendments to HMDA[67]. The rule also finalizes certain amendments that the Bureau believes are necessary to improve the utility of HMDA data and further the purposes of HMDA. The Bureau believes that implementation of the rule will enhance transparency in the mortgage market. The rule modifies the types of institutions and transactions subject to Regulation C, adds new data reporting requirements and clarifies several existing data reporting requirements, and modifies the processes for reporting and disclosing the required data.

The final rule changes what data financial institutions are required to provide in order to improve the quality of HMDA data in today's housing market. The Dodd-Frank Act mandated that the Bureau update the HMDA regulation by having lenders report specific new information that improves public understanding of market conditions and could help identify emerging risks and potential discriminatory lending practices in the marketplace. This new information includes the property value, term of the loan, and the duration of any teaser or introductory interest rates. Financial institutions will be required to provide more information about mortgage loan underwriting and pricing, such as an applicant's debt-to-income ratio, the interest rate of the loan, and the discount points charged for the loan. This information will enhance the ability to screen for possible fair lending problems.

One of the goals in updating the reporting requirements is to identify opportunities to streamline reporting and make it easier for financial institutions to comply with the law. The final rule retains the existing provisions that ease the burden on small banks and credit unions, and adds a new standardized reporting threshold so that small depository institutions with low loan volume will no longer have to report HMDA data. Additionally, many of the amended requirements align with well-established industry data standards, including definitions that are already in use by a significant portion of the mortgage market.

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[67] 80 Fed. Reg. 66,128 (Oct. 28, 2015), *available at* https://www.gpo.gov/fdsys/pkg/FR-2015-10-28/pdf/2015-26607.pdf.

7.3.1 HMDA data resubmission RFI

In response to comments from industry and other stakeholders, the Bureau is considering modifications to its current HMDA resubmission guidelines. In comments on the Bureau's proposed changes to Regulation C, some stakeholders asked that the Bureau adjust its existing HMDA resubmission guidelines to reflect the expanded data the Bureau will require certain financial institutions to collect, record, and report under the HMDA Rule. Accordingly, on January 12, 2016, the Bureau published in the Federal Register a Request for Information (RFI) asking for public comment on the Bureau's HMDA resubmission guidelines.[68] The 60-day comment period ended on March 14, 2016. As of this report's publication date, the Bureau was reviewing the comments received in response to the RFI.

[68] 81 Fed. Reg. 1,405 (Jan. 12, 2016), *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-01-12/pdf/2016-00442.pdf.

8. Building a great institution: Update

The CFPB seeks to promote transparency, accountability, and fairness. Built on these values, the CFPB is better able to make consumer financial markets work for consumers, honest businesses, and the economy.

8.1 Open government

The Bureau's mission is to be an agency that helps consumer finance work by making rules more effective, by consistently and fairly enforcing the rules, and by empowering consumers to take more control of their economic lives. A critical part of making financial markets work is ensuring transparency in those markets. The CFPB believes that it should hold itself to that same standard and strives to be a leader by being transparent with respect to its own activities. To accomplish this, the Bureau utilizes its website, consumerfinance.gov, as the primary vehicle to share information on the operations and decisions the CFPB undertakes every day.

Recent information posted on our website that illustrates the Bureau's commitment to openness includes:[69]

[69] The open government section of the Bureau's website is consumerfinance.gov/open/, and all documents and pages referenced in this section may be found there.

- **Freedom of Information Act (FOIA)**
  Transparency is at the core of the CFPB's agenda and is an essential part of how the CFPB operates. The public deserves to know what the CFPB is doing and how it is doing it. Earlier this year, the CFPB posted the Annual FOIA Report for 2015 and the Chief FOIA Officer Report for 2016. During this reporting period, the CFPB also published quarterly reports.[70]

- **Leadership Calendars**
  The CFPB remains committed to providing information to the public regarding the daily work of the Bureau's senior leadership by sharing their daily calendars. The Bureau consistently posts the monthly calendars of Director Richard Cordray to its website. The calendars of past leaders Elizabeth Warren, Raj Date, and Steven Antonakes are archived on the Bureau's website for the public to view as well.

- **Procurement Opportunities**
  The Bureau remains committed to publishing its future procurement needs by listing a description of the requirement, forecasted solicitation fiscal year and quarter, and forecasted acquisition method.

- **Procurement Transparency**
  The Bureau's Office of Procurement introduced a Contract Transparency Clause in February 2011 to each of its solicitations and contracts. The clause gives notice to all prospective trading partners that the Bureau will publish contracts on our website to enhance the visibility to any interested party in how the public money entrusted to us is being spent.

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[70] http://www.consumerfinance.gov/foia/.

- **General Reports**
  The CFPB also continues to post a variety of reports to illustrate progress in several areas of the Bureau's operations and activities. Recent reports posted to the CFPB's website include the annual report of the CFPB student loan ombudsman, the CFPB Diversity and Inclusion Strategic Plan for 2016 – 2020, the 2015 financial literacy annual report, the Fall 2015 edition of Supervisory Highlights, the CFPB's financial report for FY 2015, the Fall 2015 Semi-Annual Report, the Office of Servicemembers Affairs' semi-annual snapshot of servicemember complaints, the CFPB's bi-annual report on the consumer credit card market, the CFPB's report on college credit card agreements under the CARD Act, the CFPB's annual appropriations report, and an independent audit of the CFPB's operations and budget for FY 2015.

- **Regulations and Guidance Updates**
  The CFPB periodically provides updates on regulations and guidance. During this reporting period, the Bureau posted updates to its Supervision and Examination Manual and various bulletins.[71]

[71] The full list of guidance updates during this reporting period may be found in Appendix C, and on the Bureau's website at http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/.

9. Budget

The Bureau is committed to fulfilling its statutory responsibilities and delivering value to American consumers by being accountable and using our resources carefully. The CFPB's Operations Division is responsible for coordinating activities related to the development of the CFPB's annual budget. The Office of the Chief Financial Officer within the Division has primary responsibility for developing the budget, and works in close partnership with the Office of Human Capital, the Office of Procurement, the Technology and Innovation team, and other program offices to develop budget and staffing estimates in consideration of statutory requirements, performance goals, and priorities of the Bureau. The CFPB Director ultimately approves the CFPB budget.

9.1 How the CFPB is funded

The CFPB is funded principally by transfers made by the Board of Governors from the combined earnings of the Federal Reserve System, up to the limits set forth in the Dodd-Frank Act. The Director of the CFPB requests transfers from the Federal Reserve System in amounts that he has determined are reasonably necessary to carry out the Bureau's mission. Annual funding from the Federal Reserve System was capped at a fixed percentage of the total 2009 operating expenses of the Federal Reserve System, equal to:

- 10% of these Federal Reserve System expenses (or approximately $498 million) in fiscal year (FY) 2011;

- 11% of these expenses (or approximately $547.8 million) in FY 2012; and
- 12% of these expenses (or approximately $597.6 million) in FY 2013 and each year thereafter, subject to annual adjustments.[72]

If the authorized transfers from the Federal Reserve were not sufficient in FY 2010-2014, the CFPB had the authority in those fiscal years to ask Congress for up to $200 million in additional funds, subject to the appropriations process.[73] The CFPB did not request an appropriation in FY 2011, FY 2012, FY 2013 or FY 2014. That authority has now expired.

The inflation-adjusted transfer cap for FY 2016 is $631.7 million. The adjusted transfer cap for FY 2016 is $631.7 million. The CFPB requested transfers from the Federal Reserve totaling $374.7 million to fund CFPB operations and activities through the second quarter of FY 2016.[74]

Funds received from the Federal Reserve are held in an account for the Bureau at the Federal Reserve Bank of New York.

Bureau funds that are not funding current needs of the CFPB, however, are invested in Treasury securities. Earnings from those investments are also deposited into the Bureau's account.[75]

9.1.1 Fiscal year 2016 spending through second quarter

As of March 31, 2016, the end of the second quarter of FY 2016, the CFPB incurred approximately $354 million in obligations[76] to carry out the authorities of the Bureau under Federal financial consumer law. Approximately $145.6 million was spent on employee

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[72] *See* Dodd-Frank Act, Pub. L. No. 111-203, Sec. 1017(a)(2).

[73] *See id.* Sec. 1017(e).

[74] The Bureau posts all funding request letters on its website at consumerfinance.gov/budget.

[75] *See* Dodd-Frank Act, Pub. L. No. 111-203, Sec. 1017(b).

[76] An obligation is a transaction or agreement that creates a legal liability and obligates the government to pay for goods and services ordered or received.

compensation and benefits for the 1,536 CFPB employees who were on-board by the end of the second quarter.

In addition to payroll expenses, the largest obligations made through the end of the second quarter were related to contractual services. Some of the Bureau's significant obligations that occurred through the first two quarters of FY 2016 included:

- $16.4 million for maintaining ongoing operations of CFPB's consumer contact center and the case management system;
- $14.0 million for consumer awareness and engagement tools and resources communications;
- $12.6 million for IT portfolio and project management support services;
- $12.5 million for a one-year building occupancy agreement with the OCC;
- $11.7 million for a one-year building occupancy agreement with the General Services Administration for CFPB's temporary headquarters office space;
- $8.8 million for enterprise-wide cloud hosting infrastructure, system administration support and associated services;
- $7.1 million for IT customer relationship management system tools and support; and
- $5.8 million for development of next generation consumer response system to support the future state scalable model for complaint processing, documentation and investigation.

Tables 15 and 16 categorize CFPB obligations incurred through the first two quarters of FY 2016 by expense category and division/program area:

TABLE 15: FY 2016 SPENDING BY EXPENSE CATEGORY

Expense Category	FY 2016
Personnel Compensation	$108,346,000
Benefit Compensation	$37,277,000
Travel	$9,173,000
Transportation of Things	$29,000
Rents, Communications, Utilities & Misc.	$17,675,000
Printing and Reproduction	$2,642,000
Other Contractual Services	$161,001,000
Supplies & Materials	$2,971,000
Equipment	$14,913,000
Land and Structures	-
Total (as of 03/31/16)	$354,027,000

TABLE 16: FY 2016 SPENDING BY PROGRAM AREA

Division/Program Area	FY 2016
Office of the Director	$3,867,000
Operations	$78,374,000
Consumer Education & Engagement	$31,413,000
Research, Markets & Regulations	$20,465,000
Supervision, Enforcement, Fair Lending	$78,055,000
Legal Division	$8,036,000
External Affairs	$4,371,000
Other Programs[77]	$1,278,000
Centralized Services[78]	$128,168,000
Total (as of 03/31/16)	$354,027,000

9.1.2 Civil Penalty Fund

Pursuant to the Dodd-Frank Act, the CFPB is also authorized to collect and retain for specified purposes civil penalties collected from any person in any judicial or administrative action under

[77] Other Programs comprises the costs of the CFPB Office of Ombudsman, Administrative Law Judges, and other CFPB programs.

[78] Centralized services include the cost of certain administrative and operational services provided centrally to other Divisions (e.g., building space, utilities, and IT-related equipment and services).

federal consumer financial laws.[79] The CFPB generally is authorized to use these funds for payments to victims of activities for which civil penalties have been imposed, and may also use the funds for consumer education and financial literacy programs under certain circumstances. The CFPB maintains a separate account for these funds at the Federal Reserve Bank of New York.

Civil penalty funds collected in 2016

In the first quarter of FY 2016, the CFPB collected civil penalties from 11 defendants totaling $33.1 million. In the second quarter of FY 2016, the CFPB collected $8,130,001 from seven defendants.

TABLE 17: FY 2016 CIVIL PENALTY FUND COLLECTIONS

Defendant name	CMP collected	Collection date
Fifth Third Bank	$500,000	October 6, 2015
Westlake Services, LLC, and Wilshire Consumer Credit, LLC	$4,250,000	October 7, 2015
Morgan Drexen, Inc., and Walter Ledda[80]	$1	October 23, 2015
Security National Automotive Acceptance Company, LLC	$1,000,000	November 2, 2015
Affinion Group Holdings, Inc.	$1,900,000	November 13, 2015
Hudson City Savings Bank, F.S.B.	$5,500,000	November 13, 2015

[79] *See* Dodd-Frank, Pub. L. No. 111-203, Sec. 1017(d).

[80] The $1 civil penalty was collected pursuant to a final order against Walter Ledda, one of two defendants in this case. The case against Morgan Drexen, Inc., the corporate defendant, concluded on March 16, 2016.

Defendant name	CMP collected	Collection date
All Financial Services, LLC[81]	$13,000	November 24, 2015 December 10, 2015
General Information Services, Inc., and e-Backgroundchecks.com, Inc.	$2,500,000	November 25, 2015
Clarity Services, Inc., and Timothy Ranney	$8,000,000	December 24, 2015
EZCORP, Inc.	$3,000,000	December 24, 2015
Interstate Auto Group, Inc., aka "CarHop," and Universal Acceptance Corporation	$6,465,000	December 30, 2015
Collecto, Inc. d/b/a EOS CCA	$1,850,000	January 5, 2016
Fredrick J. Hanna & Associates, P.C.	$3,100,000	January 7, 2016
Solomon & Solomon, P.C.	$65,000	February 24, 2016
Citibank, N.A.	$3,000,000	February 26, 2016
Faloni & Associates, LLC	$15,000	March 4, 2016
Dwolla, Inc.	$100,000	March 9, 2016
IrvineWebWorks, Inc. d/b/a Student Loan Processing.US	$1	March 23, 2016
Total	$41,258,002	

[81] The final order required All Financial Services, LLC, to pay a total of $137,000 in civil penalties in two installments of $6,500 each.

Civil penalty fund allocations in FY 2016

Period 6: April 1, 2015 – September 30, 2015

On November 27, 2015, the Bureau made its sixth allocation from the Civil Penalty Fund. As of September 30, 2015, the Civil Penalty Fund contained an unallocated balance of $136.6 million. The Fund Administrator set aside $1 million for administrative expenses, leaving $135.6 million available for allocation pursuant to 12 C.F.R. § 1075.105(c).

During Period 6, final orders in Bureau enforcement actions imposed civil penalties in 22 cases. For two cases with final orders from Period 6, the civil penalties were received after September 30, 2015, and were not included as funds available for allocation in Period 6. Under the Civil Penalty Fund rule, the victims of the violations for which the civil penalties were imposed in these 22 cases were eligible to receive payment from the Civil Penalty Fund to compensate their uncompensated harm.

Of those 22 cases, 20 cases had classes of eligible victims with no uncompensated harm that is compensable from the Civil Penalty Fund, and two cases had classes of eligible victims with uncompensated harm that is compensable from the Civil Penalty Fund.

The two cases with compensable uncompensated harm, Hoffman Law Group and Student Financial Aid Services, received an allocation from the Civil Penalty Fund. The Bureau allocated $11.1 million to the Hoffman victim class and $9.3 million to the Student Financial Aid Services class, enough to compensate fully those victim classes' uncompensated harm.

The total allocation to classes of victims from Period 6 cases was $20.4 million, leaving $115.2 million available for allocation to prior-period cases. Global Client Solutions, a Period 4 case, received an allocation of $108 million in Period 4. As of the time of the Period 6 allocation, there was insufficient information to determine whether additional funds should be allocated to the victims in the Global Client Solutions case.

In accordance with section 1075.106(d) of the Civil Penalty Fund rule, $101.8 million remained available for allocation for Consumer Education and Financial Literacy purposes. During Period 6, $15.4 million was allocated for Consumer Education and Financial Literacy purposes.

TABLE 18: PERIOD 4 ALLOCATION SUMMARY

Type	Allocation
Victim Compensation	$20,374,842.02
- The Hoffman Law Group, P.A. f/k/a The Residential Litigation Group, P.A.	
Victim Class Allocation: $11,074,842.02	
- Student Financial Aid Services, Inc.	
Victim Class Allocation: $9,300,000.00	
Consumer Education and Financial Literacy Programs:	$15,432,809
Total Allocation	$35,807,651.02

The remaining unallocated Civil Penalty Fund balance will be available for future allocations. The unallocated amount in the Fund as of March 31, 2016 will be available for allocation following the conclusion of Period 7 in accordance with 12 C.F.R. § 1075.105(c)

9.1.3 Bureau-administered redress

Dodd-Frank Act section 1055 authorizes a court in a judicial action, or the CFPB in an administrative proceeding, to grant any appropriate legal or equitable relief for a violation of Federal consumer financial law. Such relief may include redress for victims of the violations, including refunds, restitution, and damages. Relief that is intended to compensate victims is treated as fiduciary funds and deposited into the "Legal or Equitable Relief Fund" established at the Department of the Treasury.

BUREAU ADMINISTERED REDRESS COLLECTED IN FY 2016:

In the first quarter of FY 2016, the Bureau collected $500,000 in Bureau-Administered Redress funds from Walter Ledda, one of the defendants in the Morgan Drexen matter. These funds will be distributed in accordance with the terms of the final order. In the second quarter of FY 2016, the Bureau collected $326,000 in Bureau-Administered Redress funds from IrvineWebWorks, Inc. d/b/a Student Loan Processing.US. These funds will be distributed in accordance with the terms of the final order.

For additional information on CFPB's Civil Penalty Fund, see http://www.consumerfinance.gov/budget/civil-penalty-fund/.

10. Diversity and inclusion

10.1 Recruiting and hiring

The CFPB continues its commitment to recruit and hire highly qualified individuals from diverse backgrounds to fill positions at the Bureau's headquarters in Washington, D.C., and in its examiner workforce distributed across the country. The Bureau's examiners are organized by regions and anchored by key strategic satellite offices in three of the nation's financial hubs – Chicago, IL; New York, NY; and San Francisco, CA; and the fourth regional team of examiners is anchored in Washington, D.C. As of March 19, 2016[82], there are 1,519[83] staff on-board and working to carry out the CFPB's mission.

To meet current and future staffing requirements, the Bureau will continue to evolve its talent acquisition strategies to build a pipeline of talent through the following methods.

10.1.1 Recruiting strategically to build a diverse workforce

The Bureau is committed to recruiting highly-qualified, diverse applicants for CFPB positions; it

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[82] March 19, 2016 is the last full pay period of the reporting period. As workforce data is reported by pay period, March 19th data is utilized for the purposes of reporting workforce composition for this report.

[83] There are 1,519 staff on-board as of pay period 05 (March 19, 2016). This employee count excludes interns and any employees who may have separated from the Bureau during the pay period. It only represents active workforce employees at the end of the reporting period in question and may differ from counts which utilize other methods of counting Bureau employment.

leverages multiple sources for recruitment to ensure access to wide candidate pools. The Bureau deploys a comprehensive outreach approach and achieves its recruiting goals through:

- Utilizing digital platforms to maximize engagement reach, including the Professional Diversity Network – a digital platform that enables the publication of CFPB job opportunities to a broad array of diverse target populations;
- Engaging in external outreach, which includes participation at professional conferences and university events, with a special focus on building relationships and marketing with diverse affinity organizations, such as the National Black MBA Association, the National Society of Hispanic MBAs, the Association of Latin Professionals in Finance and Accounting, Ascend Pan Asian Leaders, and the National Association of Black Accountants;
- Enlisting senior leadership and Bureau champions to promote the Bureau's employer identity at outreach events to attract candidates to the CFPB as a "best place to serve";
- Engaging existing staff as ambassadors of the Bureau and providing them with the tools, messages, and resources to reach out to their own professional networks;
- Continuing to utilize professional development programs to build a robust pipeline of talent to meet current and emerging workforce needs, including through the Federal Pathways Program; and
- Leveraging and promoting flagship development programs, such as the Technology and Innovation Fellows Program, the Director's Financial Analyst Program, and the Louis Brandeis Honors Attorney Program, to find the best and brightest mid-and entry-level talent, and promoting the Bureau as an employer of choice.

10.1.2 Solidifying identity as an employer of choice

The CFPB continues to build its reputation as an employer that offers challenging work in direct support of American consumers. The Bureau's inspiring mission, willingness to innovate and collaborate, and insistence on excellence serve as strong platforms on which to recruit exceptional talent. The CFPB recruits inspired, goal-oriented professionals who derive intrinsic value from professional accomplishment and public service. Once onboard, CFPB employees work with diverse, dedicated colleagues while protecting consumers, further solidifying the Bureau's identity as an employer of choice.

10.1.3 Enhancing the candidate experience

CFPB is committed to engaging candidates throughout the hiring process in accordance with Federal hiring goals and standards.

The Office of Human Capital (OHC) uses tailored assessment methods (e.g., structured interviews and work sample reviews) to support selections for target positions, and offers training to hiring managers on how to conduct structured interviews effectively. These assessment strategies enhance the pool of highly-qualified candidates, enable hiring managers to make objective, data-driven employee selection decisions, and build a workforce that demonstrates the key competencies necessary for success at the Bureau.

OHC also administers its New Employee and Hiring Manager Surveys to identify processes that are working well, as well as areas for improvement to provide a seamless onboarding experience for all new hires.

10.2 Staff education, training, and engagement

Since its creation, the CFPB has focused on strong engagement with existing and potential Bureau staff by utilizing education, training, and engagement programs. As the CFPB matures, both the reach and depth of these programs have evolved.

During the reporting period, the Bureau has taken the following actions:

- Increased quantity and scope of targeted learning programs and development resources for employees and leaders, including new learning support resources for managers;
- Delivered additional sessions of internal custom training courses for new CFPB supervisors to cover basic managerial duties as a Federal supervisor or manager;
- Delivered additional sessions of our custom CFPB Leadership Development series, the *Leadership Excellence Seminars*, designed to train all levels of CFPB managers on managerial practices and desired and expected leadership behaviors;
- Increased the reach, number of engagements, and completions of the leadership

coaching program available to middle managers and senior CFPB leaders;

- Increased internal learning and professional development opportunities open to all CFPB employees;
- Continued to leverage thousands of titles of on-demand learning resources, including self-paced eLearning courses, on-line books, articles, and video vignettes, aligned with CFPB core competencies, basic supervisory tasks, and managerial leadership skills;
- Operated a library of online reference materials through the CFPB library;
- Provided guidance, and interactive learning events to support both individual development planning and career development including:
  - Team briefings and individual consultations to employees and supervisors on individual development planning and career planning resources, to assist employees in career development
  - Development and initial deliveries of two new interactive workshops on individual development planning and career development resources, open to all employees;
- Revised the current Performance Management Program based on recommendations from a joint labor-management working group to offer a more engaging, positive, and productive team member and manager experience;
- Initiated multi-year deployment of our revised Performance Management Program which emphasizes coaching for success beginning in FY16 and implements revised performance standards for leaders in FY17 and for all team members in FY18; and
- Delivered *Strategies for Non-Monetary Recognition*, an optional consultative training session to support fair, meaningful, and personal recognition practices.

10.3 Diversity and inclusion

The CFPB's Office of Minority and Women Inclusion (OMWI) was created in January 2012 to lead the diversity and inclusion strategy at the Bureau. OMWI's mandates are outlined in Section 342 of the Dodd-Frank Act (12 U.S.C. § 5452). Organizationally, OMWI is part of the Office of Equal Opportunity and Fairness, which reports directly to the Bureau's Director.

The statutory mandate requires that OMWI:

- Be responsible for all matters of the Bureau relating to diversity in management, employment, and business activities.
- Develop standards for:
  - Equal employment opportunity, and the racial, ethnic and gender diversity of the workforce and senior management of the Bureau; and
  - Increased participation of minority-owned and women-owned businesses in the programs and contracts of the Bureau, including standards for coordinating technical assistance to such businesses.
- Assess the diversity policies and practices of entities regulated by the Bureau.
- Advise the Director of the CFPB on the impact of the policies and regulations of the Bureau on minority-owned and women owned businesses.

10.3.1 Diversity in the CFPB's workforce

The CFPB is committed to having a workforce that is diverse by gender, and by race and ethnicity, at all levels of the organization. As of March 19, 2016, the Bureau had 1,519 total employees. After controlling for attrition, that represents an increase of 82 employees from March 2015. Women represent 48% of the Bureau's workforce. The CFPB is committed to promoting strong workforce demographics by gender, race and ethnicity and to increasing the number of women and minorities in leadership positions.

As Table 19 shows, minorities constituted 36% percent of the workforce as of March 19, 2016.

TABLE 19: CFPB WORKFORCE DIVERSITY AS OF MARCH 19, 2016

Demographic group	CFPB MARCH 2016 #	CFPB MARCH 2016 %
Male	783	52%
Female	736	48%
Non-Minority	972	64%
Total Minority	547	36%

Demographic group	CFPB MARCH 2016 #	CFPB MARCH 2016 %
Total Workforce	1,519	100%

Table 20 shows the CFPB workforce by race and ethnicity. Of the 1,519 employees at the end of the reporting period, 64% self-identify as White, 19% as Black/African-American, 9% as Asian American, and 4% as another racial group or belonging to two or more racial groups. In terms of ethnicity, 6% of employees self-identify as Hispanic, and 94% as Non-Hispanic.

TABLE 20: CFPB WORKFORCE BY ETHNICITY AND RACE AS OF MARCH 19, 2016

Ethnic and racial group	CFPB MARCH 2016 #	CFPB MARCH 2016 %
Non-Hispanic	1,429	94.08%
White	972	63.99%
African American	279	18.37%
Asian	130	8.56%
American Indian or Alaska Native	6	0.39%
Native Hawaiian or Pacific Islander	2	0.13%
2 or More Races	40	2.63%
Hispanic	90	5.92%
White	56	3.69%
African American	8	0.53%
Asian	2	0.13%
American Indian or Alaska Native	1	0.07%
2 or More Races	5	0.33%
Not Identified	18	1.18%

10.3.2 Workplace Initiatives

During the reporting period, OMWI continued to develop and implement strategies to increase diversity and to foster an inclusive work environment for all employees. Specific initiatives included the following:

- Created a three-year diversity and inclusion strategic plan that outlined specific goals and strategies to increase diversity and support inclusion at the Bureau;
- Worked with each Division to include a diversity and inclusion goal in Divisional strategic plans aimed at increasing the diversity among their staff, and ensuring that the work environment is inclusive for all employees;
- Continued to provide a mandatory two-day training workshop on diversity and inclusion and a two-day training working on EEO compliance through OCR for all supervisors and managers to help them strengthen their skills in leading and managing a diverse and inclusive workforce;
- Continued to provide mandatory training for all non-supervisory employees to increase their awareness and understanding of the importance of diversity and inclusion and how it enhances the overall effectiveness of the Bureau;
- Continued to collaborate with OHC and OCR to enhance supervisory and employee training offered by them to ensure that compliance, diversity and inclusion concepts are addressed, such as in the supervisory development sessions, leadership effectiveness seminars, and structured interview training;
- Collaborated with the OCR to present a seminar to managers on identifying and utilizing effective strategies for mitigating unconscious bias and ensuring compliance with civil rights mandates in performance evaluations;
- Continued to work with OHC to establish and maintain relationships with, and outreach to, professional organizations that represent Veterans, Disabled Veterans, Hispanics and other minority constituencies. This includes attending career fairs and professional association meetings throughout the year to meet and provide information on CFPB, and on employment opportunities to these groups, including posting vacancies on bulletin boards geared to these groups of professionals;
- Established, and selected members for, the inaugural term of Diversity and Inclusion Council of Employees (DICE). The DICE members represent employees from throughout the Bureau, from both the Headquarters and the Regional offices. (DICE

is an advisory body to OMWI and will serve as an important feedback mechanism to the OMWI);

- Created an Employee Resource Group policy to serve as a guide to employees who want to form interest-based groups to assist the Bureau in understanding and considering various perspectives in our service to the diverse spectrum of consumers, and to serve as a vehicle to assist in networking, recruiting and retaining a diverse workforce; and
- Partnered with OHC to conduct analysis of the Annual Employee Survey to further analyze employee perceptions of the Bureau across demographic groups.

Diversity and inclusion at regulated entities

Under the Dodd-Frank Act, OMWI is required to create standards for assessing the diversity and inclusion policies and practices of the entities regulated by the CFPB. The OMWI Director worked with fellow OMWI Directors at the FDIC, FRB, NCUA, OCC, and SEC to develop interagency standards[84] which were published in June 2015.

Minority-owned and women-owned business initiatives

OMWI and the Bureau's Procurement Office are committed to greater economic empowerment for women and minorities and aim to promote procurement opportunities for minority-owned and women-owned businesses.

OMWI and Procurement have engaged in outreach efforts to raise awareness of procurement opportunities available at CFPB. These efforts include:

- Creating and developing relationships with key business stakeholders, industry groups, and trade groups;
- Speaking at and attending supplier diversity events and co-locating with other federal

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[84] https://www.federalregister.gov/articles/2015/06/10/2015-14126/final-interagency-policy-statement-establishing-joint-standards-for-assessing-the-diversity-policies.

partners at events when available; and

- Distributing literature and educational materials aimed at minority- and women-owned businesses.

The CFPB is a regular participant in an interagency working group consisting of other OMWI staff from the FDIC, Federal Housing Finance Agency, FRB, Treasury, NCUA, OCC, and SEC.

Procurement is currently measuring obligations for certain small business contracts awarded to minority-owned small disadvantaged businesses, women-owned small businesses, service-disabled-veteran-owned small businesses, and HUBZone small businesses. From the beginning of the first quarter to the end of the second quarter in FY 2016,[85] the Bureau awarded 25% of contract dollars to small businesses. As shown in Table 21, of the total contract dollars awarded in FY 2016, 7% went to small disadvantaged businesses. The total contract dollars awarded to woman-owned small businesses during this period was also 7%.

TABLE 21: CONTRACT DOLLARS AWARDED TO SMALL BUSINESS BY TYPE

Type of Small Business	Obligated dollars*
Small business	$24,124,835
Small disadvantaged business	$6,502,336
Woman-owned small business	$6,540,481
Service disabled veteran owned small business	$919,083
HubZone small business	$1,663,080

*Dollars may apply to multiple socio-economic categories.

[85] Data source is from the Federal Procurement Data System (FPDS) for FY 2016 from October 1, 2015 through March 31, 2016. The data was pulled, and is current, as of June 2, 2016. FPDS data is subject to an OMB annual validation each January for the previous fiscal year.

To assist vendors interested in contracting opportunities at the Bureau to better understand upcoming business opportunities, Procurement lists a forecast of procurement opportunities for the year on its external-facing website. Procurement and OMWI jointly present important tips for potential businesses at the workshops for vendors new to government or CFPB contracting opportunities, and provides email addresses to foster communication between the office and potential business vendors.

In an effort to increase transparency and enhance understanding, the CFPB has developed a number of practical resources for small, minority-owned, and women-owned businesses. OMWI created brochures and pamphlets aimed specifically at educating diverse suppliers. These materials include information on historical obligations by products and service categories, a forecast of future procurements, and information on small business set-asides. OMWI works with Procurement to make these resources available digitally and to update them regularly on the CFPB website.[86]

The Office of Procurement has continued its vendor outreach efforts in 2016, attending the 26th Annual Government Procurement Conference in April.

In furthering OMWI's mandate to ensure fair inclusion among its suppliers, OMWI and Procurement are finalizing a contractual provision requiring contractors and subcontractors, when applicable, to make "good-faith efforts" to ensure, to the maximum extent possible, the "fair inclusion of women and minorities in the[ir] workforce," as required under Section 342(c)(2)-(3) of the Dodd-Frank Act.

During the period covered by this semi-annual report, OMWI has also begun creating tools to assist vendors understand the requirements around this provision and to create a process for submission and evaluation of such materials.

Finally, the statement of Director Cordray's commitment to Supplier Diversity remains available for the public and interested vendors to view on CFPB Website located here:

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[86] http://www.consumerfinance.gov/doing-business-with-us/

http://files.consumerfinance.gov/f/201409_cfpb_supplier-diversity-statement.pdf.

External Affairs/Consumer Education and Engagement

In collaboration with External Affairs and Consumer Education and Engagement, OMWI conducts outreach to consumer groups, advocacy organizations, and other stakeholders to develop strong and productive partnerships. These offices collaborate to reach consumers and potential candidates at recruiting, community outreach, and other events. These offices also engage in meetings with various consumer groups, advocacy organizations, and other stakeholders to discuss concerns and issues such as how policies may impact consumers, to discuss how the organizations may increase their participation in contracting opportunities for minority-owned and women-owned businesses, and to learn about the experience of minority consumers firsthand. OMWI will continue to develop productive relationships with the representatives of the communities served.

APPENDIX A:

More about the CFPB

GENERAL INFORMATION:

Email address: info@consumerfinance.gov
Phone number: (202) 435-7000

WEBSITE:

www.consumerfinance.gov

MAILING ADDRESS:

Consumer Financial Protection Bureau
ATTN: Employee name, Division, and/or Office Number
1700 G Street, NW
Washington, D.C. 20552

CONSUMER COMPLAINTS AND QUESTIONS:

Webpage: consumerfinance.gov/complaint

Toll free number: (855) 411-CFPB (2372)
TTY/TDD: (855) 729-CFPB (2372)
Fax number: (855) 237-2392

Hours of operation: 8 a.m. - 8 p.m. EST, services in 180+ languages

Consumer Financial Protection Bureau
PO Box 4503
Iowa City, Iowa 52244

WHISTLEBLOWERS:

Email: whistleblower@consumerfinance.gov

Toll free number: (855) 695-7974

PRESS & MEDIA REQUESTS:

Email: press@consumerfinance.gov

OFFICE OF LEGISLATIVE AFFAIRS:

Legislative Affairs: (202) 435-7960

CFPB OMBUDSMAN'S OFFICE:

Email: CFPBOmbudsman@cfpb.gov

Webpage: consumerfinance.gov/ombudsman

Toll free number: (855) 830-7880

TTY number: (202) 435-9835 Fax number: (202) 435-7888

APPENDIX B:

Statutory reporting requirements

This Appendix provides a guide to the Bureau's response to the reporting requirements of Section 1016(c) of the Dodd-Frank Act. The sections of the report identified below respond to Section 1016(c)'s requirements.

Statutory Subsection	Reporting Requirement	Section	Page
1	A discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services	Consumer challenges in obtaining financial products and services – shopping challenges	46-49
2	A justification of the Bureau's budget request for the previous year	Budget Appendix I – Financial and budget reports	131-40 181-84
3	A list of significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year, and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period	Appendix C – Significant rules, orders, and initiatives	155-67
4	An analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year	Consumer challenges in obtaining financial products and services – Consumer concerns	15-45

Statutory Subsection	Reporting Requirement	Section	Page
5	A list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year[87]	Enforcement actions Fair lending enforcement actions	83-108 112-23
6	The actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions	Appendix D – Actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions	168-72
7	An assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law	Appendix E – Significant state attorney general and regulator actions	173
8	An analysis of the Bureau's efforts to fulfill its fair lending mission	Fair lending	109-27
9	An analysis of the Bureau's efforts to increase workforce and contracting diversity consistent with the procedures established by OMWI	Diversity and inclusion	141-51

[87] Supervisory actions are not public. Periodically, the Bureau shares supervisory actions with the public in *Supervisory Highlights*, which may be found in Appendix F.

APPENDIX C:

Significant rules, orders, and initiatives[88]

Section 1016(c)(3) requires "a list of significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders or other initiatives to be undertaken during the upcoming period."

Below is a list of rules and other initiatives that the Bureau proposed, adopted, or finalized during the preceding year.[89] Rather than limiting the list to significant items, the Bureau has, in order to be transparent and provide complete information about its activities, included a more expansive set of rules, guidance, and initiatives:[90]

- Interim final rule: Operations in Rural Areas under the Truth in Lending Act (Regulation Z); Interim Final Rule;[91]

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[88] Many links in this section are to documents published in the *Federal Register*. However, links to final rules, proposed rules, and guidance documents may also be found on the CFPB's website, consumerfinance.gov/regulations/ and consumerfinance.gov/guidance.

[89] The preceding year is defined as April 1, 2015 – March 31, 2016.

[90] To better inform the public, this Appendix contains a discussion of a broad range of rulemakings, orders, and initiatives, which may not be defined as "significant" for other purposes. Items are listed in reverse chronological order of *Federal Register* publication, beginning with the most recently-published document.

[91] https://federalregister.gov/a/2016-06834.

- Final rule: Application Process for Designation of Rural Area under Federal Financial Law; Procedural Rule;[92]
- Final Policy Statement: Policy on No-Action Letters; Information Collection;[93]
- Request for Information: Request for Information Regarding Home Mortgage Disclosure Act Resubmission Guidelines;[94]
- Final rule: 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction;[95]
- Final rule: Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold;[96]
- Final rule: Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold;[97]
- Final rule: Appraisals for Higher-Priced Mortgage Loans Exemption Threshold;[98]
- Final rule: Consumer Leasing (Regulation M);[99]

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[92] https://federalregister.gov/a/2016-04643.

[93] https://federalregister.gov/a/2016-02390.

[94] https://federalregister.gov/a/2016-00442.

[95] https://federalregister.gov/a/2015-32463.

[96] https://federalregister.gov/a/2015-32285.

[97] https://federalregister.gov/a/2015-32293.

[98] https://federalregister.gov/a/2015-30097.

[99] https://federalregister.gov/a/2015-30071.

- Final rule: Truth in Lending (Regulation Z);[100]
- Notice: Fair Credit Reporting Act Disclosures;[101]
- Agency Information Collection: Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies;[102]
- Policy Guidance: Joint Statement of Principles on Student Loan Servicing;[103]
- Final rule: Home Mortgage Disclosure (Regulation C);[104]
- Final rule: Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z);[105]
- Notice: Notice of Availability of Translated Consumer Information Booklet;[106]
- Final rule: Truth in Lending (Regulation Z) Annual Threshold Adjustments (CARD Act, HOEPA and ATR/QM);[107]
- Final rule: 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and

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[100] https://federalregister.gov/a/2015-30091.

[101] https://federalregister.gov/a/2015-29664.

[102] https://federalregister.gov/a/2015-28369.

[103] https://federalregister.gov/a/2015-27775.

[104] https://federalregister.gov/a/2015-26607.

[105] https://federalregister.gov/a/2015-24362.

[106] https://federalregister.gov/a/2015-24031.

[107] https://federalregister.gov/a/2015-22987.

Amendments; Delay of Effective Date;[108]

- Final rule: Defining Larger Participants of the Automobile Financing Market and Defining Certain Automobile Leasing Activity as a Financial Product or Service;[109]
- Request for Information Regarding the Consumer Complaint Database: Data Normalization;[110]
- Proposed rule: 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date;[111]
- Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulation by the Agencies;[112]
- Final rule: Minimum Requirements for Appraisal Management Companies;[113]
- Request for Information Regarding Student Loan Servicing;[114]
- Final rule: Homeownership Counseling Organizations Lists and High-Cost Mortgage Counseling Interpretive Rule;[115]

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[108] https://federalregister.gov/a/2015-18239.

[109] https://federalregister.gov/a/2015-14630.

[110] https://federalregister.gov/a/2015-16096.

[111] https://federalregister.gov/a/2015-15836.

[112] https://federalregister.gov/a/2015-14126.

[113] https://federalregister.gov/a/2015-12719.

[114] https://federalregister.gov/a/2015-12276.

[115] https://federalregister.gov/a/2015-09244.

- Final rule: Submission of Credit Card Agreements Under the Truth in Lending Act (Regulation Z);[116] and
- Notice: Notice of Availability of Revised Consumer Information Publication.[117]

In the upcoming period, the Bureau also intends to propose or adopt the following rules and orders, and conduct the following initiatives:

- Rules finalizing the restatement of regulations implementing consumer financial protection laws transferred from other regulatory agencies to the Bureau by the Dodd-Frank Act;
- Continue work to address issues in connection with implementation of the Dodd-Frank Act's mortgage requirements and implementation of the Bureau's 2013 Mortgage Rules;
- Continued expansion of the Bureau's capacity to handle consumer complaints with respect to all products and services within its authority;
- Enforcement of nondiscrimination on the basis of disability in programs receiving financial assistance from the Bureau;
- Propose additional rules to further define the scope of the Bureau's nonbank supervision program; and
- Rules finalizing a proposal from the Board of Governors of the Federal Reserve on the Expedited Funds Availability Act as implemented by Regulation CC.

The Bureau has issued the following bulletins and guidance documents over the past year:[118]

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[116] https://federalregister.gov/a/2015-09090.

[117] https://federalregister.gov/a/2015-06568.

[118] The past year is defined here as April 1, 2015 – March 31, 2016. The Bureau posts all bulletins and guidance documents on its website, http://www.consumerfinance.gov/guidance/.

- Submission of credit card agreements under the Truth in Lending Act (Regulation Z);[119]
- Compliance Bulletin: the FCRA's Requirement that Furnishers Establish and Implement Reasonable Written Policies and Procedures Regarding the Accuracy and Integrity of Information Furnished to All Consumer Reporting Agencies;[120]
- Supervision and Examination Manual Update on ECOA Baseline Modules;[121]
- Supervision and Examination Manual Update on ECOA procedures;[122]
- The CFPB Dodd-Frank mortgage rules readiness guide, Version 4.0;[123]
- Supervision and Examination Manual Update on Mortgage Origination exam procedures;[124]
- Supervision and Examination Manual Update on TILA Procedures;[125]
- Supervision and Examination Manual Update on RESPA Procedures;[126]

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[119] http://files.consumerfinance.gov/f/201604_cfpb_submission-of-credit-card-agreements-under-the-truth-in-lending-act-regulation-z.pdf.

[120] http://files.consumerfinance.gov/f/201602_cfpb_supervisory-bulletin-furnisher-accuracy-obligations.pdf.

[121] Equal Credit Opportunity Act Baseline Review Modules (applicable for examinations after December 1, 2015). http://files.consumerfinance.gov/f/201510_cfpb_ecoa-baseline-review-modules.pdf.

[122] Equal Credit Opportunity Act (ECOA). http://files.consumerfinance.gov/f/201510_cfpb_ecoa-narrative-and-procedures.pdf.

[123] http://files.consumerfinance.gov/f/201509_cfpb_readiness-guide_mortgage-implementation.pdf.

[124] http://files.consumerfinance.gov/f/201509_cfpb_mortgage-origination-examination-procedures.pdf.

[125] TILA RESPA Integrated Disclosures (applicable for examinations after the October 2015 effective date) http://files.consumerfinance.gov/f/201509_cfpb_truth-in-lending-act-exam-procedures.pdf.

[126] TILA RESPA Integrated Disclosures (applicable for examinations after the October 2015 effective date) http://files.consumerfinance.gov/f/201509_cfpb_regulation-x-real-estate-settlement-procedures-act-exam-

- Supervision and Examination Manual Update on Automobile Financing examination procedures;[127]
- Supervision and Examination Manual Update on Mortgage Origination examination procedures;[128]
- Supervision and Examination Manual Update on RESPA Procedures;[129]
- Supervision and Examination Manual Update on TILA Procedures;[130]
- Bulletin on Interstate Land Sales Full Disclosure Act amendment;[131]
- Bulletin on Private Mortgage Insurance Cancellation and Termination;[132] and
- Bulletin on Section 8 Housing Choice Voucher Homeownership Program.[133]

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procedures.pdf.

[127] http://files.consumerfinance.gov/f/201506_cfpb_automobile-finance-examination-procedures.pdf.

[128] http://files.consumerfinance.gov/f/201505_cfpb_mortgage-origination-exam-procedures.pdf.

[129] TILA RESPA Integrated Disclosures (applicable for examinations after the August 2015 effective date) and Mortgage Servicing Requirements. http://files.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf.

[130] TILA RESPA Integrated Disclosures (applicable for examinations after the 2015 effective date) and Higher-Priced Mortgage Loan Appraisals (January 2014), Escrow Accounts (January 2014), and Mortgage Servicing Requirements (January 2014). http://files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf.

[131] This document was issued by the CFPB on August 17, 2015. http://files.consumerfinance.gov/f/201508_cfpb_bulletin-on-interstate-land-sales-full-disclosure-act-amendment-federal-register.pdf.

[132] CFPB Bulletin 2015-03 was published on the Bureau's website on August 4, 2015. http://files.consumerfinance.gov/f/201508_cfpb_compliance-bulletin-private-mortgage-insurance-cancellation-and-termination.pdf.

[133] CFPB Bulletin 2015-02 was published on the Bureau's website on May 11, 2015. http://files.consumerfinance.gov/f/201505_cfpb_bulletin-section-8-housing-choice-voucher-homeownership-program.pdf.

The Bureau has issued the following orders to remedy violations of Federal consumer financial law over the past year:[134]

- *In the Matter of Student Aid Institute, Steven Lamont;*[135]
- *In the Matter of Dwolla, Inc.;*[136]
- *In the Matter of Faloni & Associates, LLC;*[137]
- *In the Matter of Solomon & Solomon, P.C.;*[138]
- *In the Matter of Citibank, N.A., Department Stores National Bank, and Citifinancial Servicing, LLC;*[139]
- *In the Matter of Citibank, N.A.;*[140]
- *In the Matter of Toyota Motor Credit Corporation;*[141]

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[134] April 1, 2015 – March 31, 2016.

[135] File No, 2016-CFPB-0008. Consent order entered March 30, 2016. http://files.consumerfinance.gov/f/201603_cfpb_consent-order-student-aid-institute-inc-steven-lamont.pdf.

[136] File No. 2016-CFPB-0007. Consent order entered on March 2, 2016. http://files.consumerfinance.gov/f/201603_cfpb_consent-order-dwolla-inc.pdf.

[137] File No. 2016-CFPB-0006. Consent order entered on February 23, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-faloni-and-associates-llc.pdf.

[138] File No. 2016-CFPB-0005. Consent order entered on February 23, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-solomon-and-solomon-pc.pdf.

[139] File No. 2016-CFPB-0004. Consent order entered on February 23, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-solomon-and-solomon-pc.pdf.

[140] File No. 2016-CFPB-0003. Consent order entered on February 23, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-citibank-na.pdf.

[141] File No. 2016-CFPB-0002. Consent order entered February 2, 2016.

- *In the Matter of Herbies Auto Sales;*[142]
- *In the Matter of Eric V. Sancho d/b/a Lead Publisher;*[143]
- *In the Matter of Interstate Sales Group, Inc., also doing business as "CarHop" and Universal Acceptance Corporation;*[144]
- *In the Matter of EZ Corp;*[145]
- *In the Matter of Clarity Services, Inc.;*[146]
- *In the Matter of General Information Services, Inc.;*[147]
- *In the Matter of Security National Automotive Acceptance Company, LLC;*[148]
- *In the Matter of: Westlake Services, LLC and Wilshire Consumer Credit, LLC;*[149]

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http://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf.

[142] File No. 2016-CFPB-0001. Consent order entered January 21, 2016. http://files.consumerfinance.gov/f/201601_cfpb_consent-order_y-kings-corp-also-doing-business-as-herbies-auto-sales.pdf.

[143] File No. 2015-CFPB-0033. Consent order entered December 17, 2015. http://files.consumerfinance.gov/f/201512_cfpb_eric-v-sancho-consent-order.pdf.

[144] File No. 2016-CFPB-0032. Consent order entered December 17, 2015. http://files.consumerfinance.gov/f/201512_cfpb_carhop-consent-order.pdf.

[145] File No.2015-CFPB 0031. Consent order entered December 16, 2015. http://files.consumerfinance.gov/f/201512_cfpb_ezcorp-inc-consent-order.pdf.

[146] File No. 2015-CFPB-0030. Consent order entered December 3, 2015. http://files.consumerfinance.gov/f/201512_cfpb_consent-order_clarity-services-inc-timothy-ranney.pdf.

[147] File No. 2015-CFPB-0028. Consent order entered October 29, 2015. http://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf.

[148] File No. 2015-CFPB-0027. Consent order entered October 28, 2015. http://files.consumerfinance.gov/f/201510_cfpb_consent-order-administrative-snaac.pdf.

- *In the Matter of: Fifth Third Bank;*[150]
- *In the Matter of: Fifth Third Bank;*[151]
- *In the Matter of: Portfolio Recovery Associates, LLC;*[152]
- *In the Matter of: Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset Acceptance Capital Corp.;*[153]
- *In the Matter of: Springstone Financial, LLC;*[154]
- *In the Matter of: RBS Citizens Financial Group, et al.;*[155]
- *In the Matter of: Residential Credit Solutions, Inc.;*[156]
- *In the Matter of: LoanCare, LLC;*[157]

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[149] File No. 2015-CFPB-0026. Consent order issued on September 30, 2015. http://files.consumerfinance.gov/f/201509_cfpb_consent-order-westlake-services-llc.pdf.

[150] File No. 2015-CFPB-0025. Consent order entered on September 28, 2015. http://files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf.

[151] File No. 2015-CFPB-0024. Consent order entered on September 28, 2015. http://files.consumerfinance.gov/f/201509_cfpb_consent-order-fifth-third-bank.pdf.

[152] File No. 2015-CFPB-0023. Consent order entered on September 9, 2015. http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.

[153] File No. 2015-CFPB-0022. Consent order entered on September 9, 2015. http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf.

[154] File No. 2015-CFPB-0021. Consent order entered on August 19, 2015. http://files.consumerfinance.gov/f/201508_cfpb_consent-order-springstone-financial-llc.pdf.

[155] File No. 2015-CFPB-0020. Consent order entered on August 12, 2015. http://files.consumerfinance.gov/f/201408_cfpb_consent-order-rbs-citizens.pdf.

[156] File No. 2015-CFPB-0019. Consent order entered on July 30, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order_residential-credit-solutions.pdf.

- *In the Matter of: Paymap, Inc.;*[158]
- *In the Matter of: Discover Bank, The Student Loan Corporation, and Discover Products, Inc.;*[159]
- *In the Matter of: Citibank, N.A., et al.;*[160]
- *In the Matter of: American Honda Finance Corporation;*[161]
- *In the Matter of: Chase Bank, USA N.A. and Chase Bankcard Services, Inc.;*[162]
- *In the Matter of: Syndicated Office Systems, LLC, d/b/a Central Financial Control;*[163]
- *In the Matter of: Guarantee Mortgage Corporation;*[164]

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[157] File No. 2015-CFPB-0018. Consent order entered on July 28, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order_loan-care.pdf.

[158] File No. 2015-CFPB-0017. Consent order entered July 28, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order_paymap.pdf.

[159] File No. 2015-CFPB-0016. Consent order entered July 22, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf.

[160] File No. 2015-CFPB-0015. Consent order entered July 21, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order-citibank-na-department-stores-national-bank-and-citicorp-credit-services-inc-usa.pdf.

[161] File No. 2015-CFPB-0014. Consent order issued July 14, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf.

[162] File No. 2015-CFPB-0013. Consent order entered July 8, 2015. http://files.consumerfinance.gov/f/201507_cfpb_consent-order-chase-bank-usa-na-and-chase-bankcard-services-inc.pdf.

[163] File No. 2015-CFPB-0012. Consent order entered June 18, 2015. http://files.consumerfinance.gov/f/201506_cfpb_order-syndicated.pdf.

[164] File No. 2015-CFPB-0011. Consent order entered June 5, 2015.

- *In the Matter of: International Land Consultants, Inc.;*[165]
- *In the Matter of: Regions Bank;*[166]
- *In the Matter of: Fort Knox National Company and Military Assistance Company, LLC;*[167] *and*
- *In the Matter of: RMK Financial Corporation.*[168]

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http://files.consumerfinance.gov/f/201506_cfpb_consent-order-guarantee-mortgage-corporation.pdf.

[165] File No. 2015-CFPB-0010. Consent order entered May 1, 2015. http://files.consumerfinance.gov/f/201505_cfpb_consent-order-international-land-consultants.pdf.

[166] File No. 2015-CFPB-0009. Consent order entered April 28, 2015. http://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf.

[167] File No. 2015-CFPB-0008. Consent order entered April 20, 2015. http://files.consumerfinance.gov/f/201504_cfpb_regulation-fort-knox-mac-settlement.pdf.

[168] File No. 2015-CFPB-0007. Consent order entered April 9, 2015. http://files.consumerfinance.gov/f/201504_cfpb_consent-order_rmk-financial-corporation.pdf.

APPENDIX D:

Actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions

Section 1016(c)(6) requires a report on "the actions taken regarding rules, orders and supervisory actions with respect to covered persons which are not credit unions or depository institutions." Between April 1, 2015 and March 31, 2016, the Bureau has taken the following actions with respect to such covered persons:

- The Bureau's *Supervisory Highlights* publications provide general information about the Bureau's supervisory activities at banks and nonbanks without identifying specific companies. The Bureau published three issues of Supervisory Highlights between April 1, 2015 and March 31, 2016;[169]
- *In the Matter of: RMK Financial Corporation* (File No. 2015-CFPB-0007) (consent

[169] Spring 2015: http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf; Summer 2015: http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf; Winter 2016: http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.

order entered April 9, 2015. 2015);[170]

- *In the Matter of: Fort Knox National Company and Military Assistance Company, LLC* (File No. 2015-CFPB-0008) (consent order entered April 20, 2015);[171]
- *In the Matter of: International Land Consultants, Inc.* (File No. 2015-CFPB-0010) (consent order entered May 1, 2015);[172]
- *In the Matter of: Guarantee Mortgage Corporation* (File No. 2015-CFPB-0011) (consent order entered June 5, 2015);[173]
- *In the Matter of Syndicated Office Systems, LLC, d/b/a Central Financial Control* (File No. 2015-CFPB-0012) (consent order entered June 18, 2015);[174]
- *In the Matter of: American Honda Finance Corporation* (File No. 2015-CFPB-0014) (consent order entered July 14, 2015);[175]
- *In the Matter of: Paymap, Inc.* (File No. 2015-CFPB-0017) (consent order entered July 28, 2015);[176]
- *In the Matter of: LoanCare, LLC.* (File No. 2015-CFPB-0018) (consent order entered on

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[170] http://files.consumerfinance.gov/f/201504_cfpb_consent-order_rmk-financial-corporation.pdf.

[171] http://files.consumerfinance.gov/f/201504_cfpb_regulation-fort-knox-mac-settlement.pdf.

[172] http://files.consumerfinance.gov/f/201505_cfpb_consent-order-international-land-consultants.pdf.

[173] http://files.consumerfinance.gov/f/201506_cfpb_consent-order-guarantee-mortgage-corporation.pdf.

[174] http://files.consumerfinance.gov/f/201506_cfpb_order-syndicated.pdf.

[175] http://files.consumerfinance.gov/f/201507_cfpb_consent-order_honda.pdf.

[176] http://files.consumerfinance.gov/f/201507_cfpb_consent-order_paymap.pdf.

July 28, 2015);[177]

- *In the Matter of: Residential Credit Solutions, Inc.* (File No. 2015-CFPB-0019) (consent order entered on July 30, 2015);[178]
- *In the Matter of Springstone Financial, LLC.* (File No. 2015-CFPB-0021) (consent order entered on August 19, 2015);[179]
- *In the Matter of: Encore Capital Group, Inc., Midland Funding, LLC, Midland Credit Management, Inc. and Asset Acceptance Capital Corp.* (File No. 2015-CFPB-0022) (consent order entered on September 9, 2015);[180]
- *In the Matter of: Portfolio Recovery Associates, LLC* (File No. 2015-CFPB-0023) (consent order entered on September 9, 2015);[181]
- *In the Matter of Westlake Services, LLC & Wilshire Consumer Credit, LLC* (File No. 2015-CFPB-0026) (consent order entered September 30, 2015);[182]
- *In the Matter of Security National Automotive Acceptance Company, LLC* (File No. 2015-CFPB-0027) (consent order entered October 28, 2015);[183]
- *In the Matter of General Information Services, Inc.* (File No. 2015-CFPB-0028)

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177 http://files.consumerfinance.gov/f/201507_cfpb_consent-order_loan-care.pdf.

178 http://files.consumerfinance.gov/f/201507_cfpb_consent-order_residential-credit-solutions.pdf.

179 http://files.consumerfinance.gov/f/201508_cfpb_consent-order-springstone-financial-llc.pdf.

180 http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf.

181 http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.

182 http://files.consumerfinance.gov/f/201509_cfpb_consent-order-westlake-services-llc.pdf.

183 http://files.consumerfinance.gov/f/201510_cfpb_consent-order-district-snaac.pdf.

(Consent order entered October 29, 2015);[184]

- *In the Matter of Clarity Services, Inc.* (File No. 2015-CFPB-0030) (consent order entered December 3, 2015);[185]
- *In the Matter of EZCORP, Inc.* (File No.2015-CFPB 0031) (consent order entered December 16, 2015);[186]
- *In the Matter of Interstate Auto Group, Inc. aka. CarHop, and Universal Acceptance Corporation* (File No. 2015-CFPB-0032) (consent order entered December 17, 2015);[187]
- *In the Matter of Eric V. Sancho d/b/a Lead Publisher* (File No. 2015-CFPB-0033) (consent order entered December 17, 2015);[188]
- *In the Matter of Herbies Auto Sales* (File No. 2016-CFPB-0001) (consent order entered January 21, 2016);[189]
- *In the Matter of Toyota Motor Credit Corporation* (File No. 2016-CFPB-0002) (consent

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[184] File No. 2015-CFPB-0028. Consent order entered October 29, 2015. http://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf.

[185] File No. 2015-CFPB-0030. Consent order entered December 3, 2015. http://files.consumerfinance.gov/f/201512_cfpb_consent-order_clarity-services-inc-timothy-ranney.pdf.

[186] File No.2015-CFPB 0031. Consent order entered December 16, 2015. http://files.consumerfinance.gov/f/201512_cfpb_ezcorp-inc-consent-order.pdf.

[187] File No. 2015-CFPB-0032. Complaint filed December 17, 2015. http://files.consumerfinance.gov/f/201512_cfpb_carhop-consent-order.pdf.

[188] File No. 2015-CFPB-0033. Consent order entered December 17, 2015. http://files.consumerfinance.gov/f/201512_cfpb_eric-v-sancho-consent-order.pdf.

[189] File No. 2016-CFPB-0001. Consent order entered January 21, 2016. http://files.consumerfinance.gov/f/201601_cfpb_consent-order_y-kings-corp-also-doing-business-as-herbies-auto-sales.pdf.

order entered February 2, 2016);[190]

- *In the Matter of Solomon & Solomon, P.C.;*[191]
- *In the Matter of Faloni & Associates, LLC;*[192]
- *In the Matter of Dwolla, Inc.;*[193] and
- *In the Matter of Student Aid Institute, Steven Lamont.*[194]

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[190] File No. 2016-CFPB-0002. Consent order entered February 2, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf.

[191] File No. 2016-CFPB-0005. Consent order entered on February 23, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-solomon-and-solomon-pc.pdf.

[192] File No. 2016-CFPB-0006. Consent order entered on February 23, 2016. http://files.consumerfinance.gov/f/201602_cfpb_consent-order-faloni-and-associates-llc.pdf.

[193] File No. 2016-CFPB-0007. Consent order entered on March 2, 2016. http://files.consumerfinance.gov/f/201603_cfpb_consent-order-dwolla-inc.pdf.

[194] File No, 2016-CFPB-0008. Consent order entered March 30, 2016. http://files.consumerfinance.gov/f/201603_cfpb_consent-order-student-aid-institute-inc-steven-lamont.pdf.

APPENDIX E:

Significant state attorney general and regulator actions

Dodd-Frank Section 1016(c)(7) requires "an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law." The reporting period for this information is April 1, 2015 – March 31, 2016.

For purposes of the Section 1016(c)(7) reporting requirement at this early period in the Bureau's development, the Bureau has determined that any actions asserting claims pursuant to Section 1042 of the Dodd-Frank Act are "significant." The Bureau aware of the following State attorney general or State regulator actions that were initiated during the reporting period and that asserted Dodd-Frank Act claims:

- Consumer Financial Protection Bureau and Navajo Nation v. S/W Tax Loans, Inc. formerly d/b/a Fast Refund Loans, Inc.; J Thomas Development of NM, Inc. formerly d/b/a H&R Block; Dennis R. Gonzales; and Jeffrey Scott Thomas, No. 15-cv-0099 (D.N.M. Apr. 14. 2015).
- Commonwealth of Pennsylvania v. Think Finance, Inc., TC Loan Service, LLC, Payday One, LLC, Tailwind Marketing, LLC, TC Decision Sciences, LLC, Financial U, LLC and Kenneth Rees, National Credit Adjusters, LLC, Selling Source, LLC and Partner Weekly, LLC d/b/a Money Mutual.com, No. 14-7139-JCJ (E.D.P.A. July 2, 2015).

APPENDIX F:

Reports

The CFPB published the following reports from April 1, 2015 through March 31, 2016, which may be found at consumerfinance.gov/reports/.

April 1, 2015: No FEAR Act Annual Report for Fiscal Year 2014;

April 2, 2015: Equal Employment Opportunity (EEO) Program Status Report for Fiscal Year 2014;

April 7, 2015: Advancing K-12 Financial Education: A Guide for Policymakers;

April 27, 2015: Complaints Received from Servicemembers and their Families 2011-2014;

April 28, 2015: 2014 Fair Lending Report;

April 29, 2015: 2014 Office of Minority and Women Inclusion Annual Report to Congress;

May 5, 2015: Data Point: Credit Invisibles;

June 3, 2015: A Closer Look at Reverse Mortgage Advertisements and Consumer Risks;

June 15, 2015: Semi-Annual Report Spring 2015;

June 18, 2015: 2015 Mid-Year Update on Student Loan Complaints;

June 23, 2015: Supervisory Highlights: Summer 2015;

July 7, 2015: Overseas & Underserved: Student Loan Servicing and the Cost to Our Men and Women in Uniform;

July 16, 2015: Monthly Complaint Report, Vol. 1;

August 3, 2015: Plain Writing Act Compliance Report 2015;

August 5, 2015: Leveraging Technology to Empower Consumers at Closing;

August 25, 2015: Monthly Complaint Report, Vol. 2;

August 28, 2015: Technical Reports: National Survey of Mortgage Borrowers and National Mortgage Database;

September 22, 2015: Monthly Complaint Report Vol. 3;

September 24, 2015: Increasing Saving at Tax Time and Promising Practices for the Field;

September 29, 2015: Student Loan Servicing;

October 14, 2015: Annual Report of the CFPB Student Loan Ombudsman 2015;

October 21, 2015: Youth Financial Education Curriculum Review Tool;

October 27, 2015: CFPB Diversity and Inclusion Strategic Plan 2016 – 2020;

October 27, 2015: Monthly Complaint Report Vol. 4;

October 29, 2015: Financial Literacy Annual Report;

November 3, 2015: Supervisory Highlights: Fall 2015;

November 4, 2015: Mobile Financial Services: A Summary of Comments from the Public on Opportunities, Challenges, and Risks for the Underserved;

November 16, 2015: Financial Report Fiscal Year 2015;

November 20, 2015: Semi-Annual Report Fall 2015;

November 23, 2015: OSA Semi-Annual Snapshot of Servicemember Complaints;

November 24, 2015: Monthly Complaint Report, Vol. 5;

December 3, 2015: The Consumer Credit Card Market;

December 10, 2015: Measuring Financial Well-Being: A Guide to Using the CFPB Financial Well-Being Scale;

December 14, 2015: 2015 CFPB Annual Employee Survey Results;

December 16, 2015: 2015 College Credit Card Agreements;

December 22, 2015: Monthly Complaint Report, Vol. 6;

January 4, 2016: Report of the Consumer Financial Protection Bureau Pursuant to Section 1017(e)(4) of the Dodd-Frank Act;

January 13, 2016: Consumer Financial Protection Bureau Independent Audit of Selected Operations and Budget, Fiscal Year 2015;

January 28, 2016: Monthly Complaint Report, Vol. 7;

March 1, 2016: Monthly Complaint Report, Vol. 8;

March 8, 2016: Supervisory Highlights: Winter 2016;

March 22, 2016: Servicemembers 2015: A Year in Review;

March 22, 2016: Fair Debt Collection Practices Act Annual Report 2016; and

March 29, 2016: Monthly Complaint Report, Vol. 9.

APPENDIX G:

Congressional testimony

Senior CFPB staff has testified before Congress a total of 61 times since the Bureau began in 2011, including on the following seven occasions between April 1, 2015 and March 31, 2016, which may be found at http://www.consumerfinance.gov/newsroom/?type=testimony.

April 23, 2015: David Silberman before the House Committee on Financial Services, "Examining Regulatory Burdens – Regulator Perspective";

July 15, 2015: Richard Cordray before the Senate Committee on Banking, Housing, and Urban Affairs, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress";

September 29, 2015: Richard Cordray before the House Committee on Financial Services, "The Semi-Annual Report of the Bureau of Consumer Financial Protection";

October 23, 2015: Stacy Canan before the House Committee on Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade, "Fighting Fraud Against the Elderly, an Update";

December 8, 2015: Richard Cordray before the House Committee on Financial Services, "Oversight of the Financial Stability Oversight Council";

February 11, 2016: David Silberman before the House Committee on Financial Services Subcommittee on Financial Institutions and Consumer Credit, "Short-Term, Small Dollar Lending: The CFPB's Assault on Access to Credit and Trampling of State and Tribal Sovereignty"; and

March 16, 2016: Richard Cordray before the House Committee on Financial Services, "The Semi-Annual Report of the Bureau of Consumer Financial Protection".

APPENDIX H:

Speeches

Director Richard Cordray spoke at the following public events between April 1, 2015 and March 31, 2016:[195]

April 2, 2015: Prepared Remarks by Richard Cordray at the Ohio College Presidents' Conference in Washington, D.C.;

April 23, 2015: Prepared Remarks by Richard Cordray at the Jump$tart Coalition Awards in Washington, D.C.;

April 27, 2015: Prepared Remarks by Richard Cordray at the White House Conference on Aging Regional Forum in Washington, D.C.;

April 28, 2015: Prepared Remarks by Richard Cordray at the Your Money, Your Goals Launch in Washington, D.C.;

May 7, 2015: Prepared Remarks by Richard Cordray at the Academic Research Council in Washington, D.C.;

May 12, 2015: Prepared Remarks by Richard Cordray at the National Association of Realtors in Washington, D.C.;

May 14, 2015: Prepared Remarks by Richard Cordray at the Field Hearing on Student Loans in Milwaukee, WI;

[195] All speeches by CFPB senior staff are available at: Link to all speeches by CFPB senior staff.

May 21, 2015: Prepared Remarks by Richard Cordray at the Financial Literacy and Education Commission Meeting in Washington, D.C.;

June 3, 2015: Prepared Remarks by Richard Cordray at the Roads to Financial Independence Launch in Washington, D.C.;

June 18, 2015: Prepared Remarks by Richard Cordray at the Consumer Advisory Board Meeting in Omaha, NE;

July 13, 2015: Prepared Remarks by Richard Cordray at the White House Conference on Aging in Washington, D.C.;

July 16, 2015: Prepared Remarks by Richard Cordray at the Americans for Financial Reform Event in Washington, D.C.;

August 5, 2015: Prepared Remarks by Richard Cordray at the CFPB Forum on eClosings in Washington, D.C.;

August 17, 2015: Prepared Remarks by Richard Cordray at the Managing Someone Else's Money Event in Springfield, VA;

September 17, 2015: Prepared Remarks by Richard Cordray at the National Association of Realtors in Washington, D.C.;

September 25, 2015: Prepared Remarks by Richard Cordray at the Ohio State University John Glenn Leadership Forum in Columbus, OH;

September 30, 2015: Prepared Remarks by Richard Cordray at the Community Bank Advisory Council Meeting in Washington, D.C.;

October 7, 2015: Prepared Remarks by Richard Cordray at the Arbitration Field Hearing in Denver, CO;

October 8, 2015: Prepared Remarks by Richard Cordray at a Meeting of the Credit Union Advisory Council in Washington, D.C.;

October 19, 2015: Prepared Remarks by Richard Cordray at the Mortgage Bankers Association Annual Convention in San Diego, CA;

October 22, 2015: Prepared Remarks by Richard Cordray at the Meeting of the Consumer Advisory Board in Washington, D.C.;

November 10, 2015: Prepared Remarks by Richard Cordray at the American Bankers Association Annual Convention in Los Angeles, CA;

November 12, 2015: Prepared Remarks by Richard Cordray at the Brookings Institution in Washington, D.C.;

November 18, 2015: Prepared Remarks by Richard Cordray at the Financial Literacy and Education Meeting in Washington, D.C.;

December 3, 2015: Prepared Remarks by Richard Cordray at the Consumer Federation of America in Washington, D.C.;

February 3, 2016: Prepared Remarks by Richard Cordray at a Field Hearing on Checking Account Access in Louisville, KY;

February 4, 2016: Prepared Remarks by Richard Cordray at the Financial Literacy and Education Meeting in Washington, D.C.;

February 18, 2016: Prepared Remarks by Richard Cordray at the American Constitution Society in New York, NY;

February 23, 2016: Prepared Remarks by Richard Cordray at the Credit Union National Association in Washington, D.C.;

February 25, 2016: Prepared Remarks by Richard Cordray at the Consumer Advisory Board Meeting in Washington, D.C.; and

March 9, 2016: Prepared Remarks by Richard Cordray at the Consumer Bankers Association Meeting in Phoenix, AZ.

APPENDIX I:

Financial and budget reports

The CFPB has published the following financial reports from January 1, 2012 through March 31, 2016 which are all available at consumerfinance.gov/budget:

January 20, 2012: CFO update for the first quarter of FY 2012;

May 11, 2012: CFO update for the second quarter of FY 2012;

July 27, 2012: CFO update for the third quarter of FY 2012;

November 15, 2012: Financial Report of the CFPB – FY 2012;

December 15, 2012: CFO Update for the fourth quarter of FY 2012;

February 15, 2013: CFO Update for the first quarter of FY 2013;

May 15, 2013: CFO Update for the second quarter of FY 2013;

August 15, 2013: CFO Update for the third quarter of FY 2013;

December 15, 2013: Financial Report of the CFPB – FY 2013;

December 15, 2013: CFO Update for the fourth quarter of FY 2013;

February 14, 2014: CFO Update for the first quarter of FY 2014;

May 15, 2014: CFO Update for the second quarter of FY 2014;

August 15, 2014: CFO Update for the third quarter of FY 2014;

November 15, 2014: Financial Report of the CFPB – FY 2014;

November 15, 2014: CFO Update for the fourth quarter of FY 2014;

February 18, 2015: CFO Update for the first quarter of FY 2015;

May 25, 2015: CFO Update for the second quarter of FY 2015;

September 11, 2015: CFO Update for the third quarter of FY 2015;

November 16, 2015: Financial Report of the CFPB – FY 2015;

November 20, 2015: CFO Update for the fourth quarter of FY 2015; and

February 16, 2016: CFO Update for the first quarter of FY 2016.

The CFPB has published the following Budget Documents, which are all available at consumerfinance.gov/budget:

- Fiscal Year 2012 Budget in Brief;
- Fiscal Year 2012 Congressional Budget Justification;
- Fiscal Year 2013 Budget in Brief;
- FY 2013 Budget Justification;
- CFPB Strategic Plan, Budget, and Performance Report – April 2013;
- CFPB Strategic Plan, Budget, and Performance Report – March 2014;
- CFPB Strategic Plan, Budget, and Performance Report – February 2015; and
- CFPB Strategic Plan, Budget, and Performance Report – February 2016.

The CFPB has published the following funding requests to and funding acknowledgements from the Federal Reserve Board, from January 1, 2012 through March 31, 2016, which are all available at consumerfinance.gov/budget.

January 6, 2012: Funding Acknowledgement from the Federal Reserve Board;

March 30, 2012: Funding Request to the Federal Reserve Board;

April 5, 2012: Funding Acknowledgement from the Federal Reserve Board;

July 2, 2012: Funding Request to the Federal Reserve Board;

July 9, 2012: Funding Acknowledgement from the Federal Reserve Board;

October 2, 2012: Funding Request to the Federal Reserve Board;

October 18, 2012: Funding Acknowledgement from the Federal Reserve Board;

January 7, 2013: Funding Request to the Federal Reserve Board;

January 16, 2013: Funding Acknowledgement from the Federal Reserve Board;

April 2, 2013: Funding Request to the Federal Reserve Board;

April 8, 2013: Funding Acknowledgement from the Federal Reserve Board;

October 7, 2013: Funding Request to the Federal Reserve Board;

October 15, 2013: Funding Acknowledgement from the Federal Reserve Board;

January 7, 2014: Funding Request to the Federal Reserve Board;

January 22, 2014: Funding Acknowledgement from the Federal Reserve Board;

April 7, 2014: Funding Request to the Federal Reserve Board;

April 11, 2014: Funding Acknowledgement from the Federal Reserve Board;

July 9, 2014: Funding Request to the Federal Reserve Board;

July 28, 2014: Funding Acknowledgement from the Federal Reserve Board;

October 8, 2014: Funding Request to the Federal Reserve Board;

October 15, 2014: Funding Acknowledgment from the Federal Reserve Board;

January 14, 2015: Funding Request to the Federal Reserve Board;

January 16, 2015: Funding Acknowledgment from the Federal Reserve Board;

April 10, 2015: Funding Request to the Federal Reserve Board;

April 13, 2015: Funding Acknowledgment from the Federal Reserve Board;

July 16, 2015: Funding Request to the Federal Reserve Board;

July 21, 2015: Funding Acknowledgement from the Federal Reserve Board;

October 8, 2015: Funding Request to the Federal Reserve Board;

October 14, 2015: Funding Acknowledgment from the Federal Reserve Board;

January 26, 2016: Funding Request to the Federal Reserve Board; and

February 5, 2016: Funding Acknowledgement from the Federal Reserve Board.

APPENDIX J:

CFPB organizational chart

APPENDIX K:

Defined terms

ACRONYM	DEFINED TERM
ARC	The CFPB's Academic Research Council
BUREAU	The Consumer Financial Protection Bureau
CAB	The CFPB's Consumer Advisory Board
CARD ACT	Credit Card Accountability Responsibility and Disclosure Act of 2009
CBAC	The CFPB's Community Bank Advisory Council
CEE	The CFPB's Division of Consumer Education and Engagement
CFPA	Consumer Financial Protection Act of 2010
CFPB	The Consumer Financial Protection Bureau
CFPB FinEx	The CFPB Financial Education Exchange
CONSUMER RESPONSE	The CFPB's Office of Consumer Response
CSBS	Conference of State Bank Supervisors
CUAC	The CFPB's Credit Union Advisory Council
DICE	Diversity and Inclusion Council of Employees
DODD-FRANK ACT	Dodd-Frank Wall Street Reform and Consumer Protection Act
DOJ	The U.S. Department of Justice
ECOA	Equal Credit Opportunity Act
ECP	Examiner Commissioning Program
ED	The U.S. Department of Education

ACRONYM	DEFINED TERM
EFTA	Electronic Fund Transfer Act
EIC	Examiner–in-Charge
EMPOWERMENT	The CFPB's Office of Financial Empowerment
FAIR LENDING	The CFPB's Office of Fair Lending and Equal Opportunity
FCRA	Fair Credit Reporting Act
FDCPA	Fair Debt Collection Practices Act
FDIC	The U.S. Federal Deposit Insurance Corporation
FEDERAL RESERVE BOARD	The U.S. Board of Governors of the Federal Reserve System
FFIEC	The U.S. Federal Financial Institutions Examination Council
FLEC	The Financial Literacy and Education Commission
FOIA	Freedom of Information Act
FRB	The U.S. Board of Governors of the Federal Reserve System
FTC	The U.S. Federal Trade Commission
FY	Fiscal Year
HMDA	Home Mortgage Disclosure Act of 1975
HUD	The U.S. Department of Housing and Urban Development
ICP	Interim Commissioning Policy
KBYO	Know Before You Owe
M&T	Manufacturers and Traders Trust Company
MOU	Memorandum of Understanding
MSA	Marketing Services Agreement
MSOA	Money Smart for Older Adults
NCUA	The National Credit Union Administration

ACRONYM	DEFINED TERM
NMLSR	National Mortgage Licensing System and Registry
OCC	The U.S. Office of the Comptroller of the Currency
OHC	The CFPB's Office of Human Capital
OMWI	The CFPB's Office of Minority and Women Inclusion
PRA	Paperwork Reduction Act
RCS	Residential Credit Solutions
RESPA	Real Estate Settlement Procedures Act of 1974
RFI	Request for Information
SBREFA	The Small Business and Regulatory Enforcement Fairness Act
SLP	Student Loan Processing
SNAAC	Security National Automotive Acceptance Company
TILA	Truth in Lending Act
TOOL	CFPB's Compliance Tool
TREASURY	The U.S. Department of the Treasury
TSR	Telemarketing Sales Rule
VITA	Volunteer Income Tax Assistance

STATEMENTS AND LETTERS SUBMITTED FOR THE RECORD

AFSA
Protecting Credit Since 1916
American Financial Services Association

April 5, 2016

The Honorable Richard Shelby, Chairman
Banking, Housing, and Urban Affairs Committee
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown, Ranking Member
Banking, Housing, and Urban Affairs Committee
United States Senate
713 Hart Senate Office Bldg.
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Brown:

In November 2014, AFSA released a comprehensive study of the indirect vehicle finance model. The study, Fair Lending: Implications for the Indirect Auto Finance Market, conducted by Charles River Associates (CRA), found that the disparity alleged by the Consumer Financial Protection Bureau (CFPB) between the amount of dealer reserve charged to minorities and non-minorities is not supported by data. Below are the key findings of the study, which we are sending to you in advance of the April 7 hearing, The Consumer Financial Protection Bureau's Semi-Annual Report to Congress.

The research illustrates the complexities of indirect automobile financing and evaluates current regulatory fair lending practices. Utilizing a wide array of industry data and a database consisting of approximately 8.2 million new and used vehicle contracts originated during 2012 and 2013, the study measured disparities in dealer reserve using the CFPB's methodology to proxy for race/ethnicity (BISG).

The study concludes there is little evidence that dealers systematically charge different dealer reserves on a prohibited basis. Rather, variations in dealer reserves across contracts can be largely explained by objective factors other than race and ethnicity. In addition, the use of race and ethnicity proxies creates significant measurement errors, overestimates minority population counts, and results in overstated disparities. These overestimates and overstatements can contribute to inflated estimates of alleged consumer harm.

The key findings of the CRA study are:

1. **When appropriately considering the relevant market complexities and adjusting for proxy bias and error, the observed variations in dealer reserve are largely explained.** When analyzing dealer reserve, the CFPB did not control for relevant factors (e.g. credit worthiness, the differences in new versus used vehicles, etc.). The CFPB's consistent position is that these controls are inappropriate, notwithstanding significant evidence that they have a causal relationship on dealer reserve.

2. **The Bayesian Improved Surname Geocoding (BISG) proxy methodology is conceptually flawed in its *application* and subject to significant bias and estimation error.** The CFPB acknowledges that the BISG proxy methodology overestimated minorities in the mortgage market. However, the CFPB asserts that it does not know if the BISG proxy

methodology overestimates minorities in auto loans. Despite the CFPB's assertion, there is no strong evidence that the BISG proxy methodology works any better when applied to the auto lending market.

3. **The use of biased race and ethnicity proxies creates significant measurement error, which likely results in overstated disparities.** Internally, the CFPB tested a number of CRA's suggested methods for reducing the measurement error. In test after test, the CFPB found substantively reduced disparities by as much as 50%, particularly with respect to African American and Hispanic borrowers. Nonetheless, the CFPB continues to use its original method, without adjustment.

4. **The Department of Justice (DOJ) recognizes that dealer reserves depend on objective, observable business factors. Failure to consider legitimate business factors for observed disparities increases the potential for reaching erroneous conclusions.** The key business factor is the presence of a competitive offer. In settlements almost a decade ago, the DOJ recognized the importance of this factor in understanding differences in dealer reserve. More recently, the CFPB has acknowledged this factor in consent orders by allowing financial institutions to adjust rates to reflect competitive offers. Furthermore, the Center For Responsible Lending (CRL) concurs. In a November 2015 policy brief, CRL stated, "[Customers] who did not pay a markup or paid a small amount of markup likely had a competing credit offer in hand." CRL correctly points out that the competitive offer, rather than race/ethnicity, is what results in customers receiving zero or low dealer reserve contracts. Yet despite this, the CFPB continues to use its original method without adjustments – and thereby attributes to race/ethnicity, disparities that reflect the effect of competitive offers.

5. **Aggregating contracts originated by individual dealers to the portfolio level may create the appearance of differential pricing on a prohibited basis when none exists.** When the CFPB tested the effect of dealer aggregation (another robustness test), they found that aggregation alone explained about one-third of the observed disparities measured in the CFPB's method. Yet still the CFPB continues to use its original method, without adjustment. Again, this results in the CFPB attributing to race/ethnicity disparities that are reflected in aggregation.

We hope you keep in mind the CRA study in your exchange with CFPB Director Richard Cordray on April 7. Please contact me at 202-466-8616 or bhimpler@afsamail.org with any questions.

Sincerely,

Bill Himpler
Executive Vice President
American Financial Services Association

CBA | CONSUMER BANKERS ASSOCIATION

April 7, 2016

The Honorable Richard Shelby
Chairman, Committee on Banking,
Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member, Committee on Banking,
Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Shelby and Ranking Member Brown:

The Consumer Bankers Association (CBA)[1] appreciates the Banking Committee's continued oversight of the Consumer Financial Protection Bureau and its activities. We would like to take this opportunity to submit the following comments on the hearing entitled, "Consumer Financial Protection Bureau's Semi-Annual Report to Congress." CBA is the voice of the retail banking industry whose products and services provide access to credit for consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

Over the next year, the CFPB is expected to finalize a set of regulations and propose others that will have the potential to restrict the American consumer's ability to exercise free will over the financial products they use. The actions by the CFPB could place additional regulatory constraints on an already heavily regulated industry, ultimately limiting consumer choice and access to credit.

Small-Dollar Lending

In 2013, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) issued overly restrictive guidelines on bank-offered small-dollar loan alternatives, sometimes known as a deposit advance products. These safe and affordable bank-offered products were successfully serving bank customers, but the regulators practically forced them out of existence. The elimination of the deposit advance product significantly reduced consumer choice leaving consumers with fewer credit options in their time of need, making them more vulnerable to those who would take advantage of their economic situation.

In the coming months, the Bureau is expected to issue a proposed rule that would cover payday loans, certain loans secured with a vehicle title, "high-cost" installment loans, and lines of credit. CBA understands consumers should be protected from harmful predatory lending that can lead to a seemingly never-ending cycle of debt.

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[1] Founded in 1919, the Consumer Bankers Association is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

We appreciate the Bureau recognizing the beneficial role banks could play and we are hopeful that the Bureau is actively exploring viable products for banks to offer customers who need access to safe and available forms of small-dollar credit. Unfortunately, the Bureau's current outline, published last year in advance of its small business review panel process, would make it difficult for any lender to offer affordable, easy-to-use products.[2] Specifically, the Bureau would require overly restrictive underwriting and unrealistic terms of use, including limits on frequency of use and limited loan-to-income ratios. For example, short-term loans (45 days or less) would require lenders to verify the consumer's income, "major financial obligations," and borrowing history, using third-party records. "Major financial obligations" would include such obligations as housing payments, car payments, and child support payments. Using this information, the lender would then have to make a determination whether the consumer has the ability to repay the loan after covering other major financial obligations and basic living expenses. This level of underwriting complexity ignores the cost of providing this type of loan. Requiring a level of underwriting similar to a home mortgage, would make it too costly to offer these much needed products. Additionally, consumers cannot afford to wait long periods of time for an underwriting decision when they have emergency expenses that need to be paid.

Consumers have demonstrated a strong demand for safe, small-dollar loan products. Regulators need to recognize that if banks are permitted to offer these products, competition will help keep prices affordable. We encourage the CFPB and prudential regulators to work with Congress, banks, and other stakeholders in the financial services industry to ensure the availability of properly regulated small-dollar loan products that will continue to meet the credit needs of consumers.

Arbitration

Arbitration is oftentimes the best way for consumers and banks to resolve disputes. It is regularly cheaper, faster, and easier for the consumer than going to court. Under the Dodd-Frank Act, the CFPB is charged with undertaking a study of mandatory pre-dispute arbitration, and subsequently deciding, based on the outcome of the study, if it is necessary to regulate or restrict the use of arbitration in consumer financial contracts. The CFPB has concluded its study and is now signaling an intention to effectively prohibit the availability of these terms in consumer financial agreements.

We believe the study, which was not peer-reviewed, lacked some critical elements necessary for a thorough analysis. In a letter to Director Cordray (see attached letter in Appendix A), CBA and other trade associations asked the Bureau to conduct additional research to complete its study before making any final policy decisions on arbitration, and we do so again here. Due to the inconsistency and concerns that have emerged from the CFPB's study, we provide several suggestions on how to clarify the data: the CFPB should perform a comparison between litigation and arbitration on the basis of accessibility, cost, fairness, and efficiency; the CFPB should determine if consumers would benefit from becoming more informed about arbitration; the Bureau should examine the net benefit of class actions to consumers in light of the supervisory or enforcement authorities of the regulatory and enforcement agencies; and finally, the Bureau should determine if prohibiting or restricting the availability of mandatory pre-dispute arbitration provisions would effectively eliminate arbitration as an alternative dispute resolution process for the majority of consumers.

[2] http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf

Even with its limitations, a strong argument could be made that the study demonstrates that consumers are better served taking their disputes through arbitration rather than participating in a class action to resolve a dispute. The study shows that very few class actions are tried on the merits and 60 percent of class actions produce zero benefit to putative class members. Moreover, while the CFPB highlighted that consumers obtained $2.7 billion through class action settlements between 2008 and 2012, this only amounts to $79.41 per consumer on average (and just $32.35 in cash recoveries), compared with the $5,389 on average consumers recover in a favorable arbitration decision. In summary, we believe the arbitration study provides an insufficient basis for prohibiting the use of arbitration and encourage Congress to work with the CFPB on the issue of arbitration so consumers can choose their best legal course of action.

Home Mortgage Disclosure Act Privacy

Since 1975 when HMDA was enacted, our members have strived to responsibly and fairly serve the housing needs of their communities and are committed to the purposes of HMDA: "1. help determine whether financial institutions are serving the housing needs of their communities; 2. assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and 3. assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[3]

The Dodd-Frank Act mandated the expansion of information collected under Regulation C, HMDA's governing regulation. However, the final HMDA rule, written by the CFPB, almost tripled the number of data fields and greatly increased the complexity of reporting. This is in addition to increased compliance pressures stemming from the Dodd-Frank Act's strengthened enforcement monitoring due to the uncertainty of what is an Unfair, Deceptive, and Abusive Acts and Practice ("UDAAP"), and additional rules and requirements that have inundated the banking industry, including the implementation of the Qualified Mortgage rules and TILA-RESPA Integrated Disclosure. The compliance burden placed on banks requires expenditures of resources that inevitably are reflected in the cost and availability of credit for consumers.

As institutions begin implementing the sweeping changes, we would like to raise our concerns about the sensitive data that CFPB intends to collect, store, and publish. We ask that the Bureau keep all the new HMDA data confidential and refrain from publishing it on the Federal Financial Institutions Examination Council (FFIEC) website. Consumers buying a home are forced to relinquish their most sensitive information often without understanding this information is being handed over to a governmental agency. The new data fields are *even more* sensitive than many of those currently collected, with the addition of credit score, debt to income ratio, and property address, among other new fields. It is the CFPB's duty to protect consumers from risks associated with data breaches and re-identification. In a 2005 speech, former Federal Reserve Board Senior

[3] CFPB Bulletin 2013-11 "Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement" (October 9, 2013) http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf

Advisor Glenn Canner raised concerns about HMDA's privacy risks, noting "approximately 95 percent of loan records are "unique," meaning loan amount and census tract can be attributed to a single person. With a cross match to private lien transfer records, one can identify these individuals in 95 percent of the cases."[4]

Simply put, "privacy in HMDA data: there is none."[5] With the inclusion of even more sensitive information under the new rule, it is critical that the CFPB protect consumers' information by establishing robust data security protections and decrease re-identification risks by not publishing the new information—even anonymized—to the FFIEC website.

Indirect Auto Lending Settlements

Our member banks are unequivocally committed to providing access to credit fairly and responsibly to qualified borrowers. To this end, our members maintain robust compliance programs and stringent internal procedures to ensure they are meeting that goal. Indirect vehicle lending poses a unique challenge in that regard, since the bank does not come into contact with the consumers obtaining a loan at the dealership and has no knowledge of their race or ethnicity. Therefore, the bank must ensure fair lending compliance under a disparate impact theory, using complex statistical approaches, which are, at their best, imperfect. Banks need clearer guidance from the CFPB on how best to maintain a strong and effective compliance program that meets its expectations in this area.

Since 2013, the CFPB, along with the Department of Justice, has recovered more than $140 million from settlements in indirect auto finance cases using disparate impact claims. These settlements provide a broad outline of the CFPB's expectations for banks and finance companies, but they do not detail what monitoring and restitution are necessary to be in satisfactory compliance. Nor do they clearly describe how banks should best make use of sophisticated statistical methodologies and proxies for customer race and ethnicity, in order to make credit available fairly and responsibly in today's competitive marketplace.

It is concerning that the Bureau appears to be comfortable forcing marketplace change though enforcement actions that are then left up to interpretation. In order to confidently operate, banks need to ensure they are in compliance with the law. Only through a rulemaking process can these complex issues be addressed, giving certainty to banks and others that they are meeting regulatory expectations.

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[4] Glenn Canner, Senior Advisor, Federal Reserve Board, at the Georgetown Credit Research Center Conference: *Ensuring Fair Lending: What do we know about pricing in mortgage markets and what will the new HMDA data fields tell us?* (March 14, 2005).

[5] Anthony Yezer, Professor of Economics and Director of the Center for Economic Research at George Washington University, at the Georgetown Credit Research Center Conference: *Ensuring Fair Lending: What do we know about pricing in mortgage markets and what will the new HMDA data fields tell us?* (March 14, 2005).

Complaint Portal

CBA appreciates the Bureau heeding feedback from CBA member banks and releasing a revised Company Portal Manual earlier this month to clarify and update several items pertaining to its complaint portal. Specifically, CBA was pleased to see the more accurate definition of what constitutes a "duplicate" complaint, additional categories and "Administrative Response" options, and improved disclosure for companies that do not publically respond to complaint narratives, which better captures banks' commitment to customer relationships and maintenance of customer privacy. Though we applaud these improvements, we continue to ask the Bureau to follow the Consumer Product Safety Commission model and institute an appeals process where companies have the ability to flag and potentially eliminate materially inaccurate complaints.

Overdraft Services

Later this year, the CFPB will begin the process of writing a new rule for bank overdraft protection services. This widespread and longstanding service at depository institutions covers the amount a consumer overdraws from his or her deposit account, and charges the customer a fee for the service. If the bank does not cover the overdraft when there are insufficient funds, the customer's check will bounce or debit card will be denied, and the consequences, depending on the transaction, could involve a significant cost and inconvenience.

The existing federal regulation addressing this service, written five years ago by the Federal Reserve Board after long study, leaves the choice squarely in the hands of the consumer. It requires banks to give consumers the opportunity to affirmative opt-in to overdraft services for most typical debit transactions after a full disclosure, which is mandated by the regulation. Consumers are given the right to opt-in to the service when they open the account, or they can do so later at any time, or change their minds as they wish. Studies, such as one by Novantas,[6] have shown consumers make highly informed choices about whether and when to use overdraft services.

We urge the Bureau to take into consideration that without such access to short-term liquidity by depository institutions, consumers are left with few options other than the less well-regulated and supervised non-bank lenders, and more consumers will become "unbanked." The Bureau should work closely with the prudential regulators and the industry to ensure that consumers continue to have flexibility and choice from the banking industry.

Regulatory Overlap, Duplication, and Inefficiencies Persist

Despite Congressional efforts to streamline financial regulations, a March 28, 2016 Government Accountability Office (GAO) report finds that the financial regulatory framework is still too complex and fragmented. While the current structure allows for effective financial regulation in some key areas, the fragmentation and overlap "have created inefficiencies in regulatory processes,

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[6] Novantas, "Understanding Consumer Choice: A Review of Consumer Overdraft Behaviors," October 2015, https://novantas.com/industry_insight/understanding-consumer-choice/.

inconsistencies in how regulators oversee similar types of institutions, and differences in the levels of protection afforded to consumers."[7]

The report further contends that although the Dodd-Frank Act consolidated some activities, the act failed to address many fragmentation and overlap concerns that persist throughout financial regulators, resulting in (1) inefficient and ineffective oversight, (2) inconsistent financial oversight, and (3) inconsistent consumer and investor protections.

Specifically, GAO found that "the sheer number of regulatory bodies and differences in their regulatory approaches continue to make coordination challenging," resulting in inefficient and inconsistent safety and soundness and consumer protection oversight. Such inefficiencies and inconsistencies make tracking violations, identifying emerging trends, and providing the same high levels of protections to consumers difficult. Fair lending laws, unfair and deceptive acts and abusive practices, and data collection are a few examples of where the GAO found either inconsistency in application and treatment across institutions and/or duplication in regulation and enforcement.

According to GAO, this kind of inconsistency and duplication can result in varying levels of consumer protection and delays in regulatory action, ultimately hurting the consumers the Bureau aims to protect. When multiple regulators are charged with similar goals but apply varying practices, procedures, and standards, it becomes challenging to hold agencies accountable for when they fail to protect consumers and achieve their regulatory objectives.

As the Bureau continues to fulfill its mission in protecting consumers, it should make a concerted effort to work in close coordination with the OCC, FDIC, and the Federal Reserve to reduce and eliminate fragmentation, overlap, and duplication that result in inefficient and ineffective regulation.

CFPB Commission

Improving the financial lives of consumers is a goal we share with the CFPB. The best way to ensure that shared outcome for consumers is to establish a governance structure at the CFPB that promotes debate and deliberation among leaders with diverse experiences and expertise so rules and regulations are written for the financial betterment of consumers.

Ensuring that the Bureau is an objective and neutral regulator that will issue rules based on consumer safety with input from a diverse array of perspectives, devoid of political volatility and bias, is the ultimate purpose of a commission. Serving as a source of balance and stability for consumers and the financial services industry, a commission would encourage internal debate and deliberation, ultimately leading to financial products that benefit the consumer.

The Financial Product Safety Commission Act (H.R. 1266), introduced this Congress, is commonsense, bipartisan legislation that would create a bipartisan five-member, Senate-confirmed board at the CFPB charged with the responsibility to provide a balanced and deliberative approach to

[7] GAO Study, "Financial Regulation: Complex and Fragmented Structure Could Be Streamlined to Improve Effectiveness," March 28, 2016, http://www.gao.gov/assets/680/675400.pdf.

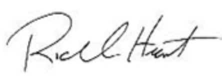
supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector. The passage of H.R. 1266 would transition the CFPB's governance structure to a bipartisan commission that would increase certainty, ensure greater collaboration from all stakeholders, improve consumer protection, and result in financial products that are safe, affordable, and meet the credit demands of our customers.

Conclusion

Strong and effective consumer protection, and fair and responsible banking, are profoundly important to our member banks. CBA routinely engages with the CFPB and other regulators to promote reasonable and effective regulation that ensures consumers have the ability to choose safe and affordable products and services. It is our concern that many of the CFPB's impending rules will further limit consumer choice and inhibit the ability of financial institutions to innovate and better serve their customers.

CBA stands ready to work with Congress and the CFPB to craft a regulatory framework that safeguards the American consumer and small business, ensures access to credit, and promotes competition in the financial marketplace. On behalf of our members, we appreciate the opportunity to submit this statement for the record.

Sincerely,



Richard Hunt
President and CEO
Consumer Bankers Association

APPENDIX A

American Bankers Association
Building Success. Together.

CBA Consumer Bankers Association
The Voice of the Retail Banking Industry

Financial Services Roundtable

Via Federal Express

July13, 2015

The Honorable Richard Cordray

Bureau of Consumer Financial Protection
1275 First Street, NE

Washington, DC 20002

Re: Comments on the Bureau's Consumer Arbitration Study

Dear Director Cordray:

The American Bankers Association,[8] the Consumer Bankers Association,[9] and The Financial Services Roundtable[10] (collectively, the Associations) appreciate the opportunity to provide comments regarding the Bureau of Consumer Financial Protection's (Bureau) March 10, 2015, Study

[8] The American Bankers Association is the voice of the nation's $15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits, and extend more than $8 trillion in loans.

[9] Founded in 1919, the Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking – banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

[10] As *advocates for a strong financial future*™, the Financial Services Roundtable (FSR) represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

on Consumer Arbitration (Study).[11] In accordance with Section 1028 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau, having completed its Study of the use of arbitration provisions in consumer financial services contracts, is now considering whether a regulation prohibiting or limiting such provisions would be "in the public interest and for the protection of consumers." Under Section 1028, any such regulation must be "consistent with the [S]tudy."

Many of the Associations' members, constituent organizations, and affiliates (collectively, Members) utilize arbitration agreements in their consumer contracts, and many of those contracts were included in the Study's data set. The Associations' Members are major stakeholders in the Bureau's examination of consumer arbitration and will be affected negatively by any regulation of consumer arbitration adopted by the Bureau. Although the Bureau has not formally requested comment on the Study, we believe that, considering its potential impact on consumers and the business of banking as well as the misleading conclusions that have been drawn and reported about the Study, it is critical that the Bureau consider another perspective. Accordingly, we submit this analysis of the Study, which analysis we believe supports a conclusion that pre-dispute arbitration clauses benefit customers and that those benefits should not be restricted or prohibited.

I. SUMMARY

The Study clearly illustrates that arbitration has significant, demonstrable benefits over litigation in general and class action litigation in particular. It is faster, less expensive, and more effective than class action litigation. Customers who prevail in an individual arbitration recover monetary benefits that, on average, are approximately 166 times greater than the sums received by the average class member in a class action settlement.

Simply put, there are insufficient data in the Study to support a conclusion that mandatory pre-dispute customer arbitration provisions in financial services contracts, or the inclusion of class action waivers therein, should be prohibited; in fact, there are abundant data in the Study that contradict such a conclusion. Because such regulation would not be "consistent with the Study," in the public interest, or necessary for the protection of consumers, it would exceed the Bureau's authority under Section 1028 of the Dodd-Frank Act.

Moreover, if the Bureau were to over-regulate arbitration agreements or prohibit the use of class action waivers in such agreements, as some parties advocate, many companies are likely to discontinue offering arbitration to consumers. That outcome would harm consumers, as they would be deprived of a valuable and time-tested procedure for economically, expeditiously, conveniently, and efficiently resolving individual consumer disputes. Instead, consumers would be relegated to a procedure (class action litigation) in which they are likely to receive either no benefits at all or

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11 This is the Associations' third submission to the Bureau in connection with its study of consumer arbitration. On June 22, 2012, the Associations submitted comments in response to the Bureau's Request for Information Regarding Scope, Methods, and Data Sources for Conducting Study of Pre-Dispute Arbitration Agreements. And, on August 6, 2013, the Associations submitted comments in response to the Bureau's request for comments on its proposed telephone survey of consumers.

minuscule benefits that are awarded years after the initiation of the lawsuit. New regulatory limitations on arbitration agreements are likely also to result in increased costs to consumers for financial products and services. Rather than regulating consumer arbitration in financial services contracts, the Associations believe the Bureau should concentrate its efforts on educating consumers about arbitration, including how to make best use of arbitration terms that a contract may contain and the differences between arbitration and litigation, particularly class action litigation, so that consumers gain a better understanding of the many benefits that arbitration offers.

In addition, we identify numerous additional issues the Bureau should research and analyze before any meaningful final conclusions regarding the efficacy of customer arbitration provisions can be reached. These include customer satisfaction with arbitration and whether the creation of the Bureau and its own regulatory, enforcement, and supervisory activities are supplanting what consumer activists contend are the main justification for class actions—*i.e.*, providing redress to large numbers of consumers and regulating corporate behavior.

Finally, we urge the Bureau to solicit public comment on the Study so that all interested stakeholders will have an opportunity to express their views on the important issues at hand before the Bureau decides whether to initiate a rulemaking proceeding. It would be premature for the Bureau to promulgate any regulation at this time considering the relatively brief time period that customer arbitration provisions have been used by companies.

A. Pro-Arbitration Findings

The data reported in the Study clearly demonstrate that arbitration is more beneficial to consumers than class action or individual litigation in a number of important ways. As discussed in detail in Section II.A. of this letter—

1. Arbitration is faster, less expensive, and more effective than litigation, including class action litigation, and customers are far more likely to obtain a decision on the merits and more meaningful relief.

2. The Bureau's statistics are consistent with the conclusion of the U.S. Chamber of Commerce in its December 2013 statistical analysis of class actions that the vast majority of class actions "produce[] no benefits to most members of the putative class" but "can (and do) enrich [their] attorneys." With respect to the 562 class actions examined by the Bureau in the Study—

    - At least **60%** of the class actions studied produced **no benefits** at all for the putative class members, because they were settled individually or withdrawn by the plaintiff.

    - Only **15%** of the class actions received final class settlement approval.

    - **No** class action was actually tried on the merits.

    - Consumers who received cash payments in class action settlements obtained an average of only **$32.35**.

- In class settlements that required putative class members to submit a claim form, the weighted average claims rate was only **4%**, meaning that **96% of the putative class members failed to obtain any benefits** because they did not submit claims.

- Notwithstanding the foregoing statistics, attorneys' fees awarded to class counsel in settlements totaled **$424,495,451**.

By contrast, **customers who prevailed in arbitration recovered an average of $5,389, compared to the $32.35 obtained by the average class member in class action settlements.** Thus, the average customer who prevailed in arbitration received **166 times more** in financial payments than the average class member in class action settlements.

3. The Study dispels the misconception that arbitration is a barrier to class actions. **Arbitration was not even a factor—and therefore presented no barrier—in 92% of the 562 class actions studied by the Bureau,** because so few defendants moved to compel arbitration and only about half of those few motions were granted. Moreover, there is abundant competition in the financial services marketplace to accommodate customers who prefer to resolve disputes via litigation as opposed to arbitration. The data show that 85% of credit card issuers and 92.3% of banks do not include arbitration provisions in their customer contracts. At least 25% of customers whose credit card and deposit account contracts contain arbitration provisions have a contractual right to reject the arbitration provision within 30 to 60 days of entering the contract without affecting any other provision in their contracts.

4. The Study also dispels the misconception that companies have an unfair advantage over customers in arbitration. The Study found that almost all of the arbitration proceedings involved companies with repeat experience in the forum. However, that was counter-balanced by the fact that counsel for the consumers were also usually repeat players in arbitration.[12] Moreover, in 81% of the arbitrations in which customers were awarded affirmative relief, the company was a "repeat player," but the customer prevailed anyway.[13]

5. Many of the other statistics recited in the Study also reflect favorably on arbitration when placed in the proper context. For example—

   - The Study's finding that customers initiated only 1,847 arbitration proceedings from 2010 through 2012[14] does not reflect customer dissatisfaction with arbitration nor suggest that it is an ineffective remedy. In context, this statistic is reasonable given the multitude of other factors that materially affect the number of arbitrations filed by customers. Those factors include, *inter alia*, that (a) the vast majority of customers resolve their disputes

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12 Study, § 1, p. 12; § 5, p. 10 & n. 16.

13 *Id.* § 5, p. 67.

14 *Id.* § 5, p. 9.

with businesses informally without the need for arbitration or litigation,[15] (b) customer arbitration is still in its infancy compared to civil litigation, (c) plaintiffs' lawyers and consumer advocacy groups (many funded by plaintiffs' lawyers) have sent consistently negative messages about arbitration to customers for many years to dissuade them from using it; (d) government enforcement and supervisory actions have eliminated much of the need for customers to bring private arbitration actions; and (e) individuals are turning increasingly to on-line arbitration and mediation resources to resolve small dollar customer complaints, which the Bureau chose not to include in the Study.[16]

- The Study's finding that 75% of consumers surveyed telephonically did not know whether their contracts contain an arbitration provision underscores the need for the Bureau to concentrate its efforts on educating customers about the differences between arbitration and litigation (including class actions) and the many benefits that arbitration can offer customers for resolving their disputes with companies.

B. <u>Analysis of the Study Underscores the Need for Additional Research to Inform Future Policy Decisions Regarding Arbitration</u>

Before the Bureau decides whether or not to issue a regulation, it should research a number of important issues that either were omitted from or were not fully or properly analyzed in the Study. We believe that these issues, discussed in Section II. B below, are essential to a fair and balanced understanding of whether any regulation of consumer arbitration "is in the public interest and for the protection of consumers." They include–

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15 The Bureau itself has provided a portal through which financial services companies informally resolved more than 558,000 alleged customer complaints in the past three years. Each alleged complaint resolved obviated the need for the customer to commence an arbitration proceeding.

16 For example, in comments submitted to the Bureau when it initially proposed the Study, Modria, one of the leading companies offering online arbitration and dispute resolution services, stated that it handles more than 60 million disputes a year. *See* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0017-0019. Even if only a fraction of the disputes handled by Modria involve consumer financial services companies, it is obvious that the universe of customer disputes being addressed outside the courtroom is much larger and diverse than just the AAA database examined in the Study. Modria is only one of many online dispute resolution services. In their own initial comments on the Study, the Associations asked the Bureau to study the extent to which customers resolve their disputes with businesses through online dispute resolution in order to place more traditional customer arbitration services (such as the AAA) in the proper context. *See* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0017-0030. However, the Bureau did not do so. Before enacting any regulation affecting customer arbitration, the Bureau should study whether and how such a regulation would impact this ever-burgeoning national and international market for resolving customer disputes online.

1. Customer satisfaction with the arbitration process;

2. The cash awards, if any, that *individual* class members receive in class action settlements;

3. The economic consequences to customers and companies of regulation that would prohibit the use of arbitration provisions or class action waivers;

4. The impact of any regulation regarding customer arbitration on the provision of national and international online dispute resolution services (*see* note 9 supra);

5. Whether recent United States Supreme Court decisions, which make it more difficult to obtain class certification, weigh in favor of supporting arbitration as a method for customers to resolve their disputes with companies;

6. The impact of the Bureau's enforcement and supervisory actions from January 1, 2013, to date;

7. Whether the class actions analyzed in the Study or the complaints in the Bureau's Consumer Complaint Database can be qualitatively evaluated to determine how many involved systemic issues that would have been amenable to class action treatment and certification; and

8. Customer experience with analogous areas in which the use of arbitration has a lengthier and more developed history, such as employment arbitration.

II. DISCUSSION

Section 1028 of the Dodd-Frank Act requires the Bureau to "conduct a study of, and to provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services." Section 1028 further provides that the Bureau, "by regulation, may prohibit or impose conditions and limitations for the use of [such] an agreement" if it "finds that such a prohibition or imposition of conditions and limitations is in the public interest and for the protection of consumers." The findings in such a regulation must be "consistent with the study."

Notably, the Study—consistent with prior empirical studies of consumer arbitration conducted by the Bureau's own consultant[17]—includes a significant quantity of data demonstrating that

[17] *See, e.g.*, Christopher R. Drahozal, et al., "An Empirical Study of AAA Consumer Arbitration," 25 Ohio St. J. on Disp. Resol. 843 (2010). This article discusses the results of the March 2009 study of AAA consumer arbitrations undertaken by the Searle Civil Justice Institute, Northwestern University School of Law. The study was based on a review of 301 AAA consumer arbitrations (240 brought by consumers, 61 brought by businesses) that were closed by award between April and December 2007. It reached the following conclusions: (a) the upfront cost of arbitration for

arbitration is more beneficial to consumers than class action or even individual litigation and dispels key misconceptions about arbitration. These data weigh heavily against any regulation that would prohibit the use of arbitration provisions in consumer financial services contracts altogether, or materially condition or limit their use (for example, by banning the use of class action waivers). We discuss these data in Section A below.

A. The Study Clearly Demonstrates that Arbitration Benefits Customers

1. Arbitration Is Faster for Customers than Litigation

The Study demonstrates that customer arbitration is up to twelve times faster than customer litigation. The data show that (i) the median desk arbitration[18] was resolved in 4 months; (ii) the median telephone arbitration was resolved in 5 months; (iii) the median in-person hearing was resolved in 7 months; and (iv) when the arbitration settled, the median arbitration proceeding lasted 2-5 months.[19] By contrast, the average class action settlement received final court approval in 1.89 years, and federal court multi-district litigation (MDL) class actions filed in 2010 closed in a median of 2.07 years.[20]

2. Arbitration Is Less Expensive for Customers than Litigation

The Study shows that customers pay far less to arbitrate than to sue in court. Prior to September 14, 2014, the customer's portion of the administrative and arbitrator fees charged by the American Arbitration Association (AAA) under its rules was capped at $125. The company paid all of the remaining fees. Under the AAA's revised rules, the customer's share of those fees is capped at $200, with the company paying the remainder.[21] That is only one-half of the $400 it costs to file a new complaint in federal court.[22]

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consumer claimants was quite low; (b) AAA consumer arbitration is expeditious (an average of 6.9 months); (c) consumers won some relief in 53.3% of the cases filed and recovered an average of $19,255 (52.1% of the amount claimed); (d) no statistically significant repeat-player effect was identified; and (e) arbitrators awarded attorneys' fees to prevailing consumers in 63.1% of cases in which the consumer sought such an award and the average attorneys' fee award was $14,574.

18 **Desk arbitration** involves dispute resolution based on paper submission rather than a hearing.

19 Study, § 1, p. 13.

20 *Id.* § 6, pp. 9, 43.

21 *Id.* § 1, p. 13; § 4, pp. 10-11. Moreover, customers are permitted to apply for a hardship waiver if they cannot pay these modest amounts, and many arbitration provisions offer to pay them for the customer if requested or unconditionally. *Id.* § 2, pp. 58-59; § 5, pp. 12, 76-77.

22 *Id.* § 4, p. 10.

3. *Customers Recover More in Arbitration than in Litigation*

According to the Study, in arbitrations where customers obtained relief on affirmative claims and the Bureau could determine the amount of the award, the customer's average recovery was $5,389 (an average of 57 cents for every dollar claimed).[23] By contrast, based on 73 of 74 individual federal court claims in which a judgment was entered for the customer, the average amount awarded to the customer was $5,245.[24] At the other end of the spectrum are class members in consumer class action settlements. The Study states that cash payments to "at least 34 million consumers" during the period studied were "at least $1.1 billion." This means that the average class member's recovery was a mere $32.35.[25]

The Study further concluded that in 60% of the 562 putative class actions studied, the putative class members got nothing at all, because 25% of the class actions were settled individually, while 35% were withdrawn by plaintiffs.[26] These statistics create a strong inference that many class actions are marginal at best and are filed not to benefit putative class members, but with the intention of driving an individual settlement. (Of course, even marginal or frivolous class actions require the defendant company to incur substantial defense costs up to the point of settlement, withdrawal, or dismissal. Therefore, all customers pay for the cost of defending and managing such suits in the form of higher prices or impact on services as such expenses have to be funded.)

Moreover, according to the Study, only 15% of the class actions studied obtained final class settlement approval.[27] In the class settlements that required the putative class members to submit a claim form, the weighted average claims rate was only 4%, because 96% of the potentially eligible putative class members failed to submit claims and therefore did not receive a settlement award.[28] In addition, even those minuscule claims rates fell by 90% if documentary proof was required to be submitted along with the claim.[29]

The Study also shows that customers are more likely to obtain decisions on the merits in arbitration than they are in class action litigation. None of the 562 class actions studied by the Bureau went to trial.[30] By contrast, the Study found that of 341 cases resolved by an arbitrator, in-person

[23] *Id.* § 5, pp. 13, 41. Customers were also awarded attorneys' fees in 14.4% of the disputes resolved by arbitrators; the largest award of customer attorneys' fees was $37,275. *Id.* § 5, p. 79.

[24] *Id.* § 6, p. 49 n. 85.

[25] $1.1 billion divided by 34 million equals $32.35 per class member.

[26] Study, § 1, pp. 13-14; § 6, p. 37.

[27] *Id.* § 1, p. 14.

[28] *Id.* § 1, p. 17, § 8, p. 30.

[29] *Id.* § 8, p. 31.

[30] *Id.* § 6, pp. 7, 38.

hearings were held in 34% of the cases, and an arbitrator issued an award on the merits in about one-third of the cases.[31]

Finally, the statistic that dwarfs all others is the amount paid to class action attorneys. The Study found that attorneys' fees awarded to class counsel in settlements during the period studied amounted to a staggering $424,495,451—*almost half a billion dollars*—in that relatively short period.[32] The Bureau's findings confirm the conclusions reached by the U.S. Chamber of Commerce, Institute for Legal Reform in a December 2013 empirical study of class actions titled, "Do Class Actions Benefit Class Members?"[33] The Chamber analyzed 148 putative consumer and employee class action lawsuits filed in or removed to federal court in 2009. Consistent with the Bureau's Study, the Chamber's report found, *inter alia*, that—

- Not one of the class actions studied ended in a final judgment on the merits for the plaintiffs. And none of the class actions went to trial, either before a judge or a jury.

- The vast majority of cases produced no benefits to most members of the putative class—even though in a number of those cases the lawyers who sought to represent the class enriched themselves in the process.

- Over one-third (35%) of the class actions that were resolved were dismissed voluntarily by the plaintiff. Many of those cases settled on an individual basis, resulting in an award only to the individual named plaintiff and the lawyers who brought the suit, with the class members receiving nothing.

- Just under one-third (31%) of the class actions that were resolved were dismissed by a court on the merits, and the class members received nothing.

- For those cases that settled, there was often little or no benefit for class members. Moreover, few class members ever received those benefits, particularly in consumer class actions.

The close correlation between the Study and the Chamber's data reveals an empirical consensus that class actions benefit consumers' lawyers but not the consumers themselves. Both reports confirm that in class actions: (1) the vast majority of customers receive no benefit whatsoever from being a class member; (2) any economic benefit to individual class members in a class settlement is insignificant; and (3) the merits of the dispute are rarely reviewed or resolved. By contrast, the Study shows that customers can receive significant economic benefits in arbitration; they receive those benefits in months rather than years at little or no expense; and their disputes are resolved on the merits.

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31 *Id.* § 5, pp. 11-12.

32 *Id.* § 8, p. 33.

33 A link to the report is available at http://www.instituteforlegalreform.com/resource/study-class-actions-benefit-lawyers-not-consumers/.

4. *The Study Dispels Key Misconceptions about Consumer Arbitration*

Plaintiffs' class action attorneys and consumer advocates contend that arbitration is unfair to consumers because (a) arbitration is a barrier to class actions, because it imposes individual arbitration or dissuades class actions from being brought; (b) very few consumers actually use arbitration to resolve disputes; (c) the arbitration provisions are contained in form contracts which give customers no choice but to arbitrate; and (d) companies have an unfair advantage in arbitration, because they are "repeat players" before the arbitration organizations they have named in their contracts. Study data, however, dispel each of these misconceptions.

a. Arbitration Is Not a Barrier to Class Actions

Substantial data in the Study contradict the argument that arbitration clauses are a barrier to class actions. The Study found that arbitration was a factor—and therefore potentially a barrier—in only 8% of the 562 class actions studied.[34] That is because the defendant companies moved to compel arbitration in only 94 of the 562 class actions (16.7%), and those motions were granted in only 46 (one-half) of the class actions.[35] Thus, arbitration had no causal effect whatsoever on 92% of the class actions studied by the Bureau and, therefore, could not have been a barrier to consumers obtaining class relief in the overwhelming number of examples.[36] These data are particularly remarkable since in the middle of the time period studied (2010-2012), the U.S. Supreme Court upheld the validity of class action waivers in consumer arbitration agreements in *AT&T Mobility LLC* v. *Concepcion*.[37] The Study found that while *Concepcion* generated a "slight upward trend" in the use of arbitration provisions, "the increase has not been as dramatic as predicted by some commentators."[38]

Inasmuch as the Study demonstrates that arbitration agreements with class action waivers have only a very minor (8%) impact on consumer class actions, regulating availability or use of such agreements would not be in the public interest, nor is such regulation needed to protect the public. Conversely, if the Bureau were to over-regulate arbitration agreements or prohibit the use of class action waivers in such agreements, as some advocate, many companies would likely discontinue offering arbitration to customers. That would harm consumers, as they would lose the arbitration forum to resolve a dispute. They would be deprived of a valuable and time-tested procedure for economically, expeditiously, conveniently, and efficiently resolving individual customer disputes. Instead, they would be relegated to a procedure (class actions) in which they are likely to receive either no benefits at all or minuscule benefits that are delayed for years.

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34 Study, § 6, p. 38 ("[a]ll claims against a company party were stayed or dismissed for arbitration in 8% of the [class] cases").

35 *Id.* pp. 8-9, 57-58.

36 *Id.* § 1, p. 14.

37 *See AT&T Mobility LLC* v. *Concepcion,* 131 S. Ct. 1740 (2011).

38 Study, § 2, p. 12.

In fact, the Study clearly shows that the vast majority of class action lawsuits fail, not because the underlying disputes are sent to arbitration for individual disposition, but because they inherently lack merit and/or are not certifiable. The Study found that 35% of the class actions filed between 2010 and 2012 were withdrawn by plaintiffs and 25% were settled individually.[39] As noted in the Study, "[t]he most common outcome was a potential non-class settlement (typically, a withdrawal of claims by the plaintiff) .... Classwide judgment for consumers ... [was] the least frequent of the identified outcomes ... occurring in less than 1% of cases."[40] The Study further found that "[c]lass certification rarely occurred outside the context of class settlement" and "[n]o class cases went to trial."[41]

These statistics strongly suggest that the vast majority of the so-called "class actions" studied were one-off disputes that did not involve systemic issues and/or were otherwise not meritorious or certifiable.[42] They buttress the conclusion that there is little, if any, causal relationship between the success of consumer class actions and the presence of arbitration clauses in the customers' contracts, since most class actions fail due to their own inadequacies entirely unrelated to arbitration. Even as to the 92% of the class actions studied that were not ordered to be arbitrated, the Study demonstrates that class actions are an exceptionally poor vehicle for producing relief to customers. Moreover, these numbers effectively challenge the notion that class actions are an effective enforcement tool.

The data also debunk the oft-asserted argument from plaintiffs' lawyers that the mere presence of an arbitration clause discourages or inhibits customers from pursuing remedies.[43] Assuming *arguendo* that there are class actions that are not brought because the potential plaintiffs' contracts contained an arbitration clause with a class action waiver, there is no evidence to demonstrate that such class actions, if initiated, would have had a higher success rate than those that were filed and studied by the Bureau. Presumably, 60% of those class actions would never have resulted in any relief to putative class members, less than 1% of them would result in a judgment for the plaintiffs, and any relief to putative class members afforded by class action settlements would be insignificant compared to the benefits obtainable in arbitration.

In sum, it is not arbitration that is a barrier to customers obtaining meaningful relief in class actions. Rather, the evidence demonstrates that *it is class action litigation that may be precluding consumers from obtaining meaningful relief in arbitration.*

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39 *Id.* § 1, pp. 13-14; § 6, p. 37.

40 *Id.* § 6, p. 37.

41 *Id.* § 1, p. 14.

42 Of course, even marginal or frivolous class actions must be defended, often at substantial cost to the defendant company.

43 *See, e.g.*, "Public Justice Comments to Bureau of Consumer Financial Protection In Response to Request for Information for Study of Pre-Dispute Arbitration Agreements," Docket No. CFPB-2012-0017, p. 17 (June 23, 2012) (urging the Bureau to study "the claims suppression effects of arbitration clauses").

b. The Number of Consumer Arbitrations Initiated to Date Is Not a Meaningful Statistic

The Study noted a "relatively low" number (1,847) of arbitration proceedings filed by customers against financial services companies.[44] However, no inference should be drawn that customers prefer litigation to arbitration or that arbitration is an ineffective remedy compared to class actions. In reality, the vast majority of customer disputes are resolved by more direct methods without the need for arbitration or litigation, even small claims litigation.

Indeed, the Bureau has established a portal through which financial services companies resolve consumer disputes directly and without intervention, and the Bureau uses every opportunity to encourage consumers to file complaints through the portal. According to its website, from July 2011 through March 1, 2015, more than 558,800 consumer complaints and issues have been resolved in this manner.[45]

The Bureau's Consumer Response Annual Report also provides monetary relief information for companies that report such relief. This includes median relief of $363 for 670 debt collection complaints, $475 for 1,000 mortgage complaints, $24 for 200 credit reporting complaints, $105 for 3,060 bank account and service complaints, $121 for 3,140 credit card complaints, $200 for 270 private student loan complaints, and $319 for 70 payday loan complaints.[46] In addition to the Bureau, a vast number of other federal agencies as well as state agencies such as state attorneys' general offices provide their own complaint portals, as do private entities such as the Better Business Bureau.

The fact that the number of consumer arbitrations is relatively small can also be explained by the following facts: (a) for almost two decades consumer advocates have sent consistently negative messages about arbitration to dissuade consumers from arbitrating;[47] (b) consumer arbitration is still "the new kid on the block" compared to litigation;[48](c) government enforcement actions, including vigorous regulatory and supervisory activities by the Bureau,[49] reduce the field for consumers to bring

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44 Study, § 5, p. 9.

45 *See* http://files.consumerfinance.gov/f/201503_cfpb_complaints-by-the- numbers.pdf.

46 CFPB, Consumer Response Annual Report (January 1-December 31, 2014), p. 43, available at http://files.consumerfinance.gov/f/201503_cfpb_consumer-response-annual-report-2014.pdf.

47 For example, the consumer advocacy organization Public Justice states on its website that "[o]ur Mandatory Arbitration Abuse Prevention Project is the acknowledged national leader in the battle against corporate efforts to use arbitration …." *See* http://www.publicjustice.net/what-we-do/access-justice/mandatory-arbitration.

48 *See* Prepared Remarks of Bureau Director Cordray at the March 10, 2015 Arbitration Field Hearing, p. 1 (although the Federal Arbitration Act was passed in 1925, "[a]rbitration clauses were rarely seen in consumer financial contracts until the last twenty years or so").

49 *See* discussion at pages 18-20 of this letter.

private actions;[50] (d) individuals are turning increasingly to on-line arbitration and mediation resources to resolve small-dollar customer complaints (*see* note 9 *supra*); and (e) the Bureau has done little to educate consumers about the many benefits that arbitration can offer. With respect to this latter point, the Study found that over 75% of consumers surveyed said they do not know whether their credit card agreement contained an arbitration clause. The Bureau can play an important role in rectifying that situation by having its Consumer Education and Engagement division educate customers about the relative costs and benefits of arbitration and litigation—particularly class action litigation.

c. Customers Have Choices Regarding Arbitration

The Study found that 85% of credit card issuers (covering 47% of the market) and 92.3% of banks (with 56% of insured deposits) do not include arbitration provisions in their customer contracts.[51] Clearly, customers who prefer not to have an arbitration provision in their account agreement can choose companies that do not offer arbitration programs. These include four of the ten largest credit card issuers (Bank of America, Capital One, Chase, and HSBC), which before 2009 included arbitration provisions in their account agreements but no longer do so.[52] Moreover, at least 25% of those contracts that contain arbitration provisions also provide the customer with a contractual right to reject the arbitration provision, typically within 30 to 60 days of entering the contract, without affecting any other provision in the contract.[53]

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50 The Study identified 1,150 consumer financial enforcement actions filed between 2008 and 2012 by state, municipal, and federal entities. Of those, only 15% had one or more matching class action litigations. Study, § 9, p. 14.

51 *Id.* § 1, pp. 9-10; § 2, pp. 7, 9, 14.

52 *Id.* § 2, pp. 10-11.

53 *Id.* § 2, p. 31. Scores of federal and state courts have enforced arbitration provisions on the basis that it permitted the consumer to opt out. See, e.g., *Circuit City Stores, Inc. v. Ahmed*, 283 F.3d 1198 (9th Cir. 2002); *Circuit City Stores, Inc. v. Najd*, 294 F.3d 1104, 1108 (9th Cir. 2002); *Marley v. Macy's South*, No. CV 405-227, 2007 WL 1745619, at *3 (S.D. Ga. June 18, 2007); *Providian National Bank v. Screws*, 894 So. 2d 625 (Ala. 2003); *Tsadilas v. Providian National Bank*, 13 A.D.3d 190, 786 N.Y.S.2d 478 (N.Y. App. Div. 1st Dep't 2004), *appeal denied*, 5 N.Y.3d 702, 832 N.E.2d 1189, 799 N.Y.S.2d 773 (June 4, 2005); *Webb v. ALC of West Cleveland, Inc.*, No. 90843, 2008 WL 4358554 (Ohio Ct. App., 8th App. Dist. Sept. 25, 2008); *Pivoris v. TCF Financial Corp.*, No. 07-C 2673, 2007 U.S. Dist. LEXIS 90562 (N.D. Ill. Dec. 7, 2007); *SDS Autos, Inc. v. Chrzanowski*, Case No. 1D06-4293, 2007 WL 4145222 (Fla Ct. App., 1st Dist. Nov. 26, 2007); *Honig v. Comcast of Ga., LLC*, Civil Action No. 1:07-cv-1839-TCB, 537 F. Supp. 2d 1277 (N.D. Ga. Jan. 31, 2007); *Davidson v. Cingular Wireless, LLC*, No. 2:06-cv- 00133, 2007 WL 896349, at *6 (E.D. Ark. Mar. 23, 2007); *Martin v. Delaware Title Loans, Inc.*, No. 08-3322, 2008 WL 444302 (E.D. Pa. Oct. 1, 2008); *Columbia Credit Services, Inc. v. Billingslea*, No. B190776, 2007 WL 1982721 (Cal. Ct. App. July 10, 2007); *Eaves-Leanos v. Assurant, Inc.*, No. 07-18, 2008 WL 1805431 (W.D. Ky. Apr. 21, 2008); *Enderlin v. XM Satellite Radio Holdings, Inc.*, No. 06-0032, 2008 WL 830262 (E.D. Ark. March 25, 2008); *Crandall v. AT&T Mobility, LLC*, No. 07-750, 2008 WL 2796752 (S.D. Ill. July 18, 2008); *Guadagno v. E*Trade Bank*, No. CV 08-03628 SJO (JCX), 2008 WL 5479062 (C.D. Calif. Dec. 29,

d. Companies Do Not Have an Unfair Advantage in Arbitration as "Repeat Players"

The Study found that almost all of the arbitration proceedings involved companies with repeat experience in the forum. However, that was counter-balanced by the fact that counsel for the consumers were also usually repeat players in arbitration.[54] Moreover, in 81% of the arbitrations in which customers were awarded affirmative relief, the company was a "repeat player," but the customer prevailed anyway.[55]

B. Important Issues that Warrant Additional Study

The Associations strongly urge the Bureau to conduct additional research on several important issues before making policy decisions regarding whether restricting or prohibiting consumer arbitration clauses would be in the public interest.

First, the Bureau should study consumer satisfaction with the arbitration process. The Bureau's telephone survey of 1007 consumers merely purported to explore consumers' "default assumptions" concerning arbitration and intentionally excluded consumers who had actually participated in an arbitration proceeding.[56] Both logic and common sense dictate that the Bureau should seek to measure consumer satisfaction with arbitration as it is an essential factor to be considered in an analysis of whether consumer arbitration is in the public interest.

As the Study acknowledges, there is precedent for studying this issue.[57] For example, in 2005 Harris Interactive conducted an online poll of 609 individuals who had participated in an arbitration proceeding in which a decision was reached.[58] That poll concluded, *inter alia*, that (1) arbitration was widely seen as faster (74%), simpler (63%), and cheaper (51%) than going to court; (2) two thirds (66%) of the participants said they would be likely to use arbitration again, with nearly half (48%) saying they were extremely likely to do so, and even among those who lost, one-third said they were at least somewhat likely to use arbitration again; (3) most participants were very satisfied with the arbitrators' performance, the confidentiality process, and its length; and (4) although winners found the process and outcome very fair and losers found the outcome much less fair, 40% of those who

2008); *Magee v. Advance America Servicing of Ark, Inc.*, No 6:08-CV-6105, 2009 WL 890991 (W.D. Ark. April 1, 2009); *Clerk v. ACE Cash Express, Inc.*, No. 09-05117, 2010 U.S. Dist. LEXIS 7978 (E.D. Pa. Jan. 29, 2010).

54 Study, § 1, p. 12; § 5, p. 10 & n. 16.

55 *Id.* § 5, p. 67.

56 *Id.* § 3, p. 4 ("[w]e opted not to explore consumer satisfaction with arbitration (or litigation proceedings").

57 *Id.* § 3. p. 5 n. 5.

58 *See* Harris Interactive, *Survey of Arbitration Participants* (April 2005), available at http://www.adrforum.com/rcontrol/documents/ResearchStudiesAndStatistics/2005HarrisPoll.pdf.

lost were moderately to highly satisfied with the fairness of the process, and 21% were moderately to highly satisfied with the outcome.

The Associations submit that, notwithstanding the Bureau's assertion that it is difficult to find consumers who have personal experience with both arbitration and litigation,[59] the opinions of consumers who have experienced the arbitration process are more valuable than the opinions of the consumers questioned in the Bureau's telephone survey who had never participated in an arbitration. The Associations believe that the Bureau's survey greatly diminished the value and relevance of the data as well as the Study as a whole.

Second, the Bureau should continue to study the benefits, if any, that individual class members receive in class action settlements. The Study reports data on the benefits of class actions in aggregate terms, failing to disclose the small sums that individual class members receive. Based upon the Bureau's finding that aggregate cash payments to "at least 34 million consumers" during the period studied were "at least $1.1 billion,"[60] the Associations estimate that the average cash payment received by individuals in a settlement class was a mere $32.35. That figure pales by comparison with the $5,389 that the average customer received in arbitration.[61] In addition, the Bureau should conduct a survey of consumers who have gone through class action litigation. Such a survey would shed much light on the issue of consumer satisfaction with class actions.

While the Associations have sought to make apples-to-apples comparisons between arbitration and class action litigation based upon the Study's aggregate data, the Study itself attempts to shy away from doing so. Instead, the Study urges readers to exercise "caution in drawing conclusions as to how well consumers or companies fare in arbitration as compared to litigation."[62] It reiterates that "[c]omparing outcomes across litigation and arbitration is especially treacherous" and "quite challenging."[63] If that is so, then what was the basis for the Bureau's press release for the March 10 field hearing, which emphasized the benefits of class actions over arbitration?[64] More importantly, what basis could there be for any regulation that would prohibit or materially limit consumer arbitration provisions in financial services contracts if the Bureau is unable to demonstrate clearly and convincingly that individual consumers fare worse in arbitration than they do in class action litigation?

The fact that the Bureau has acknowledged that in 60% of the putative class actions studied, class members recovered absolutely nothing makes it incumbent on the Bureau to analyze the amount

59 Study, § 3 p. 5.

60 *Id.* § 1, pp. 16-17, § 8, pp. 27-28.

61 *Id.* § 5, pp. 13, 41.

62 *Id.* p. 7.

63 *Id.* § 6, p. 4.

64 See http://www.consumerfinance.gov/newsroom/cfpb-study-finds-that-arbitration-agreements-limit-relief-for-consumers/.

that individual class members received in the 15% of the class actions that received final settlement approval. Any regulation by the Bureau that is based upon the alleged superiority of class actions as a means of resolving customer disputes must be supported by specific data showing that customers fare better in class actions than in arbitration. Such data are presented nowhere in the Study. In fact, the data in the Study show that arbitration is superior to class actions in terms of financial recovery for consumers ($5,389 versus $32.35).

Third, the Bureau should conduct additional analysis of whether the use of consumer arbitration provisions by companies lowers the costs of the goods and services these companies provide to customers and, conversely, whether the elimination of arbitration provisions or of class action waivers within them would increase the costs of goods and services to customers. The results of the Study on this issue were inconclusive as the Bureau found "little empirical evidence" and a "lack of a statistically significant effect."[65] The Bureau acknowledged that "we have not specifically isolated and studied the effect of removing arbitration clauses on the pricing of small issuers," and further acknowledged that "our analysis cannot be interpreted as establishing that companies did not save money from their use of pre-dispute arbitration clauses."[66]

The Associations believe that this merits further study. Congress has recognized the extraordinary costs and burdens that companies are forced to incur in defending class actions, even the costs of defending against frivolous and marginally meritorious lawsuits. In enacting the Class Action Fairness Act of 2005, Congress found, *inter alia*, that—

> [C]orporate defendants are forced to settle frivolous claims to avoid expensive litigation, thus driving up consumer prices.
>
> * * *
>
> Because class actions are such a powerful tool, they can give a class attorney unbounded leverage, particularly in jurisdictions that are considered plaintiff-friendly. Such leverage can essentially force corporate defendants to pay ransom to class attorneys by settling—rather than litigating—frivolous lawsuits.
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> * * *
>
> Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit has explained, "Certification of a class action, even one lacking merit, forces defendants to stake their companies on the outcome of a single jury trial, or be forced by fear of the risk of bankruptcy to settle even if they have no legal liability .... [Defendants] may not wish to roll these dice. That is putting it mildly. They will be under intense pressure to settle." Hence, when plaintiffs seek hundreds of millions of

65 Study, § 10, pp. 5, 16.

66 *Id.* p. 16.

dollars in damages, basic economics can force a corporation to settle the suit, even if it is meritless and has only a five percent chance of success.[67]

If there is a correlation between a company's use of arbitration and the costs of the goods and services it supplies to customers, any regulation that eliminated the arbitration provision or its class action waiver could cause companies to incur substantially increased dispute resolution costs that could drive up the cost of the goods and services they provide to customers, the purported beneficiaries of such regulation. Basic economic theory dictates that if companies' litigation costs increase, there will be corresponding pressure to increase revenue or reduce value. Many courts and commentators have so concluded.[68]

Fourth, the Bureau should study the impact of recent U.S. Supreme Court decisions, such as *Comcast Corp. v. Behrend* and *Wal-Mart Stores, Inc. v. Dukes*, which make it more difficult for plaintiffs to obtain class certification.[69] The Associations believe that these decisions decrease the likelihood that putative class members will benefit from the class proceedings, which in turn supports arbitration as a preferred method in the first instance for consumers to resolve their disputes with companies.[70]

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67 Senate Report No. 14, The Class Action Fairness Act of 2005, 109th Congress, 1st Sess., 2005 WL 627977, at *14, 20-21 (Feb. 28, 2005).

68 *See, e.g., Metro East v. Quest*, 294 F.3d 294, 297 (7th Cir.), *cert. denied*, 537 U.S. 1090 (2002) (The "benefits of arbitration are reflected in a lower cost of doing business that is passed along to customers. That is because by limiting discovery and dealing with individual rather than class claims it "curtails the cost of the proceedings and allows swift resolution of small disputes."); *Provencher v. Dell*, 409 F. Supp. 2d 1196, 1203 n. 9 (C.D. Cal. 2006) ("it is likely that consumers actually benefit in the form of less expensive computers reflecting Dell's savings from inclusion of the arbitration clause in its contracts"); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) ("it stands to reason that passengers containing a forum clause ... benefit in the form of reduced fares ..."); Stephen J. Ware, *Paying the Price of Process: Judicial Regulation of Consumer Arbitration Agreements*, 2001 J. Disp. Resol. 89, 91-93 (2001); Richard A. Posner, Economic Analysis of Law 7 (6th ed. 2003).

69 *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011). *See also* C. Fisk & E. Chemerinsky, "The Failing Faith in Class Actions: *Wal-Mart v. Dukes* and *AT&T Mobility v. Concepcion*," 7 Duke J. of Const. Law & Pub. Policy 73 (2011) ("[i]n *Wal-Mart v. Dukes* ... the Supreme Court revamped the law concerning ... Rule 23 of the Federal Rules of Civil Procedure, allowing businesses to insulate themselves from class action suits ...."); R. Bone, "Class Actions and Access to Justice," 82 Geo. Wash. L. Rev. 651, 654 (2014) (as a result of *Wal-Mart* and *Comcast*, "class certification has become more difficult to obtain").

70 Moreover, in *Spokeo, Inc. v. Robins*, No. 13-1339 (*cert. granted* April 27, 2015), the Supreme Court agreed to review whether a plaintiff who cannot show any actual harm from a violation of the Fair Credit Reporting Act (FCRA) nevertheless has standing under Article III of the U.S. Constitution to sue for statutory damages in federal court. The consequences of the Supreme Court's eventual decision will likely extend significantly beyond FCRA litigation and affect numerous other statutes and the viability of class actions where alleged technical violations did not cause any actual harm. In addition to the FCRA, such statutes include the Truth in Lending Act, the Telephone Consumer Protection Act, the Electronic Fund Transfer Act, the Fair Debt Collection Practices Act, the Homeowners Protection Act, the Fair Housing

Fifth, the Bureau should consider whether the government enforcement section of the Study, which excludes the bulk of the Bureau's own enforcement and supervisory actions, should be updated to include the Bureau's enforcement and supervisory actions from January 1, 2013, to date and to take account of anticipated future enforcement activities. The Study examined federal and state enforcement actions from January 1, 2008, through December 31, 2012.[71] However, the Bureau did not report its first enforcement action until July 2012, and it has reported 47 enforcement actions in 2013, 2014 and to date in 2015.[72]

Although the Bureau has been in operation less than four years, it would appear that its regulatory and supervisory activities are supplying what consumer advocates argue are the goals of class actions—providing redress for large numbers of consumers and the regulation of corporate behavior. Since the record of the Bureau's regulatory and enforcement activities is just beginning to emerge, the Study should be updated to consider the Bureau's enforcement activities from January 2013 to date. We believe they are reshaping the government enforcement landscape and significantly decreasing the alleged "enforcement" need for class actions. In July 2014, the Bureau stated on its website: "To date, our enforcement actions have resulted in $4.6 billion in relief for roughly 15 million consumers harmed by illegal practices."[73] The Bureau also reported in its *Supervisory Highlights* of Winter 2015 that "recent supervisory resolutions [by the Bureau] have resulted in remediation of approximately $19.4 million to more than 92,000 consumers."[74] Its more recent *Supervisory Highlights* of Summer 2015 report an additional $11.6 million to more than 80,000 consumers for a total of $31 million to 172,000 consumers for the combined periods. Analyzing just the enforcement action statistics, the Bureau's enforcement efforts have resulted in an average

Act, the Credit Repair Organizations Act, the Employee Retirement Income Security Act, the Lanham Act, the Americans with Disabilities Act, and the Video Privacy Protection Act. The Supreme Court's ruling could also discourage the filing of class actions under those statutes. In countless class actions in federal court, the plaintiffs' class action bar has obtained recoveries despite the absence of actual injury to the named plaintiffs and class members. In addition, the Supreme Court recently agreed to review whether an unaccepted offer of complete relief to the named plaintiff made prior to certification of a class moots not only the plaintiff's individual claims, but also the class action and deprives the court of federal subject matter jurisdiction. *See Campbell-Ewald Company v. Gomez*, No. 14-857 (*cert. granted* May 18, 2015). A decision in that case could also make class actions harder to sustain.

71 Study, § 9, p. 9.

72 *See* http://www.consumerfinance.gov/administrativeadjudication/.

73 *See* http://www.consumerfinance.gov/blog/category/bureau-milestones/.

74 *See Supervisory Highlights* (Winter 2015) at http://www.consumerfinance.gov. The study notes that remediation numbers represent remedial actions that gave been completed "since the publication of the last issue of the Supervisory Highlights and during the period under review," but does not indicate the date of the prior *Supervisory Highlights*.

payment of $305 to each consumer, approximately 10 times the $32.35 received by the typical putative class member in the class action settlements studied by the Bureau.

In addition, the Bureau has remedies and resources not available to plaintiffs' class action lawyers, such as the Civil Penalty Fund.[75] Moreover, unlike class action lawsuits, when the Bureau acts, there is less potential conflict between consumers and the attorneys representing them in the ultimate resolution of the case. In private class action litigation, counsel for the class seeks a sizeable percentage of any recoveries obtained ($424,495,451, almost half a *billion* dollars, in attorneys' fees in the limited class action data studied by the Bureau).[76] Notably, the $4.6 billion in consumer relief provided by the Bureau's enforcement activities through July 2014 was not reduced by a half-billion dollars to pay attorneys' fees.

Updating the Study to include these statistics, and anticipated future enforcement and regulatory activities by the Bureau, is critically important since the Bureau's robust enforcement activities reduce the need for class actions as a mechanism to protect consumers or discipline proscribed behavior. In the Study, the Bureau analyzed the extent of overlap between government enforcement and private class actions involving consumer financial issues. The Study concluded that "we were unable to find an overlapping private class action complaint in 88% of the enforcement actions."[77] Thus, when the Bureau acts, it potentially eliminates or reduces the need for private class actions. Reducing the supposed need for class actions should also reduce any concerns that arbitration agreements may be harming customers because they impair class actions. Any new regulation of consumer arbitration before the impact of the Bureau's enforcement activities on class actions is determined, and future enforcement activities by the Bureau are taken into account, would therefore be myopic.

Sixth, the Bureau should attempt to evaluate qualitatively the class actions it studied to determine whether the disputes involved were of a nature that would be likely to lead to certification. The Study seems to assume that if a class action is filed, it must be serious and legitimate for purposes of comparing class actions to arbitration. As discussed above, however, the Bureau's own statistics reveal that 60% of the class actions studied were settled individually or were withdrawn by the plaintiffs.

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75 *See* http://www.consumerfinance.gov/budget/civil-penalty-fund/.

76 Study § 8, p. 33.

77 *Id.* § 9, p. 4.

These statistics are inconsistent with the Bureau's assumption about the legitimacy of class actions, and they challenge the conclusion that class actions are useful as an enforcement tool. Even the finding that 15% of the class actions received final settlement approval does not establish that the class actions were certifiable, since many companies settle to avoid the enormous cost, burden, and distraction of protracted class action proceedings and the discovery process. At the very minimum, the Bureau should review the pleadings in the class actions it studied and report on the percent, if any, that involved disputes that were adequately systemic in nature and therefore reasonably likely to result in class certification.

Seventh, the Bureau should study whether and how a regulation affecting consumer arbitration would impact the ever-burgeoning national and international market of online dispute resolution services. (*See* note 9 *supra*).

Finally, because financial consumer arbitration is in its relative infancy, the Bureau should study analogous areas, such as employment arbitration, in which the use of arbitration has a lengthier history. Several earlier studies have concluded that employees fare well in arbitration and have high levels of satisfaction with the arbitral process. For example—

- One study dealing with AAA employment arbitration found that employees won 73% of the arbitrations they initiated and 64% of all employment arbitrations (including those initiated by employers).[78]

- A study that compared the results in employment arbitration with the results in federal court during the same period of time found that 63% of employees won in arbitration compared to 15% of employees who won in federal court. Awards to employees in arbitration were on average 18% of the amount demanded versus 10.4% of the amount demanded in court. The study also demonstrated that while arbitration awards to employees were on average lower than judgments to employees in court, the outcome for employees was still better in arbitration because of their higher win-rates of arbitration and the shorter duration of arbitration compared to court proceedings.[79]

- In yet another study, it was reported that employees won 51% of arbitrations, while the EEOC won 24% of cases in federal court.[80]

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[78] Lisa B. Bingham, "Is There a Bias in Arbitration of Nonunion Employment Disputes? An Analysis of Active Cases and Outcomes," 6 Int'l J. Conflict Management 369, 378 (1995).

[79] L. Maltby, "Private Justice: Employment Arbitration and Civil Rights," 30 Colum. Hum. Rights L. Rev. 29, 46-48 (1998).

[80] G. Baxter, "Arbitration in Litigation for Employment Civil Rights?," 2 Vol. of Individual Employee Rights 19 (1993-94).

- Another study reported that employees won 68% of the time before the AAA as contrasted with only 28% of the time in litigation.[81]

- A study examining employment arbitration in California concluded that consumers prevailed 71% of the time.[82]

- A report comparing arbitration and litigation of employment claims found that higher-compensated employees (*i.e.*, those with annual incomes of $60,000 or more) obtained slightly higher awards in arbitration before the AAA than in court.[83]

- A study compared the results of employment discrimination cases filed and resolved between 1997 and 2001 in the Southern District of New York versus arbitrations conducted by the NASD and NYSE. Employees prevailed 33.6% of the time in court versus 46% of the time in arbitration. The median damages award was $95,554 in court versus $100,000 in arbitration. The median duration was 25 months in court versus 16½ months in arbitration. The study also found that of over 3,000 cases filed in court, only 125 (2.8%) went to trial.[84]

- A study of 171 employment arbitration cases filed with the AAA in 1992 concluded that there was no basis for believing that the arbitrators would favor employers who were repeat players.[85]

III. CONCLUSION

The Associations believe that the Bureau's Study, inadequate as it is in many respects, nevertheless clearly supports a conclusion favoring pre-dispute arbitration agreements. We urge the Bureau to recognize and give full credit to the many pro-arbitration findings in the Study and to the other issues raised in this letter when it begins its policy deliberations. Moreover, we urge the Bureau to solicit public comment on the Study so that all interested stakeholders will have an opportunity to express their views on the important issues presented and amplify the record of information available

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81 W. Howard, "Arbitrating Claims of Employment Discrimination," Disp. Res. J. Oct-Dec 1995, at 40-43.

82 "Consumer and Employment Arbitration in California: A Review of Website Data Posted Pursuant to Section 1281.96 of the Code of Civil Procedure," California Dispute Resolution Institute (August 2004), available at www.mediate.com/cdri/ cdri_print_ Aug_6.pdf.

83 T. Eisenberg & E. Hill, "Arbitration and Litigation of Employment Claims: An Empirical Comparison," Disp. Resol. J. Nov. 2003 – Jan. 2004, at 44.

84 M. Delikat and M. Kleiner, "An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?," Disp. Resol. J. Nov. 2003 – Jan. 2004, at 56.

85 L. Bingham, "Is there a Bias in Arbitration of Nonunion Employment Disputes? An Analysis of Actual Cases and Outcomes," 6 Int'l J. of Conflict Mgmt. 369 (1995).

before the Bureau decides whether to initiate a rulemaking. Without doing so, we do not believe that the Bureau, based upon the evidence presented to the public, can meet the test established by Congress for imposing new rules to limit, restrict, or otherwise prohibit consumer arbitration, an effective avenue for redress relied upon each year by many consumers.

Respectfully submitted,

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April 5, 2016

The Honorable Richard Shelby
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Brown,

On behalf of the Credit Union National Association (CUNA), I am writing to thank you for holding the hearing "Assessing the Effects of Consumer Finance Regulations." CUNA represents America's credit unions and their more than 100 million members. We ask that this letter be included in the record of the hearing.

America's credit unions appreciate your continued focus on the impact of regulations on financial institutions. Since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, credit unions have faced an unprecedented increase in regulatory burdens. Credit unions have been subjected to more than 200 regulatory changes since around the time of the financial crisis, despite the clear evidence that credit unions were not the cause of it. At two Committee hearings last February, at one of which CUNA testified, Members raised several questions regarding the cost of all of these new regulations on credit unions, and expressed concern that reliable data was not available. At the time, CUNA had just commissioned such a study from Cornerstone Advisors, and we now welcome the opportunity to present the results.

We asked Cornerstone Advisors to perform a rigorous independent analysis of the current financial impact of regulation on credit unions, and how much it has changed since 2010. The results of the study are in and are quite staggering. In 2014 the cost of regulatory burden on credit unions was $7.2 billion. The study also revealed that in the time period from 2010 to 2014, regulatory impact on credit unions increased by $2.8 billion. This represents a 40% increase since 2010, not even counting the effect of asset growth.

One of the most disconcerting issues the study confirmed is that small credit unions bear the brunt of regulations. For smaller credit unions—the three quarters of credit unions with assets below $100 million—regulatory costs rose from 0.78% of assets in 2010 to 1.12% of assets in 2014, an increase of 43%. Regulatory costs now account for 30% of total operating expenses at smaller credit unions, and almost 10% of total operating expenses at these credit unions in 2014 were new regulatory expenses, added since 2010. For credit unions with assets between $10 million and $1 billion, the increase in regulatory expenses was 40%, and was 28% at credit unions with over $1 billion in assets. These increases come on top of the already heavy regulation credit unions faced prior to 2010.

The Honorable Richard Shelby
The Honorable Sherrod Brown
April 5, 2016
Page Two

Credit unions are widely recognized as providing safe and affordable financial services products. However, as this comprehensive research describes, the wave of poorly-tailored regulations has made access to safe and affordable financial services provided by credit unions more expensive and less available to members. We believe addressing this issue should be a top priority for the Committee.

On behalf of America's credit unions and their more than 100 million members, thank you very much for holding this hearing and considering our views. We have attached the study's executive summary to this letter and we would welcome the opportunity to discuss this research in detail with the Committee or its staff. We look forward to continuing to work with the Committee on enacting into law, meaningful regulatory relief for credit unions and their members.

Sincerely,

Jim Nussle

Jim Nussle
President & CEO

Attachment

CUNA
Credit Union National Association

Credit Unions' Strongest Advocate™

Regulatory Burden Financial Impact Study

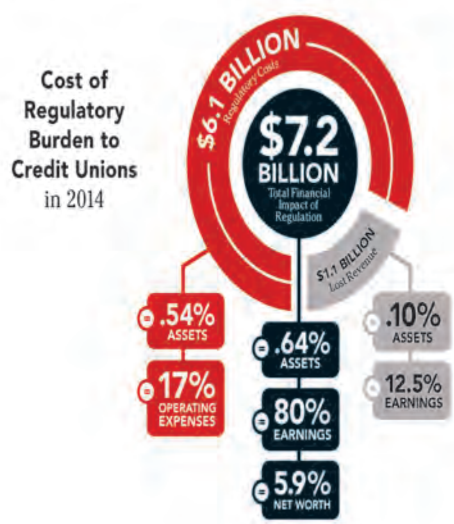
EXECUTIVE SUMMARY

Credit unions recognize that they operate in a regulated industry and must bear reasonable costs of regulation. However, the total financial impact of regulation on credit unions and their members is high and has increased dramatically since the recent financial crisis.

With the support of state credit union Leagues, CUNA commissioned Cornerstone Advisors to perform a rigorous analysis of the current financial impact of regulation on credit unions, and how much it has changed since 2010.

Cornerstone Advisors conducted a two-phased study to gain an in-depth examination and quantify the impact of regulation at small, medium and large credit unions. The study gathered data in terms of increased costs, including staffing, third party expenses and capitalized expenses, and reduced revenue opportunities.

These financial impacts are considerable in terms of the scale of credit union operations.



This summary was prepared by CUNA. Readers are encouraged to refer to the full study.

cuna.org/regburden

CUNA
Credit Union National Association

Credit Unions' Strongest Advocate™

INCREASE IN REGULATORY IMPACT SINCE 2010

The regulatory cost of 54 basis points of assets in 2014 represents a 15 basis point increase from the 39 basis point cost the study found in 2010. This means that regulatory costs for credit unions in 2014 were $1.7 billion higher than they would have been without the changes that occurred from 2010 to 2014. Adding the 10 basis point reduction in revenues ($1.1 billion) yields an increase in total financial impact of 25 basis points ($2.8 billion), from 39 basis points to 64 basis points.

Regulatory Cost Increase
$1.7 Billion

Increase in Total Financial Impact
Since 2010

LOST REVENUE

The study considered how revenue has been influenced by regulation, especially by changes in regulation. Participants identified a number of business lines that had been affected by regulatory changes, primarily related to lending and interchange income.

Although, lending revenue has no doubt been affected by regulation, the amount is difficult to accurately quantify. Therefore, the only revenue reduction included in the study is that due to reduced interchange income as a result of the Durbin Amendment to the Dodd Frank Act. This means the study's $1.1 billion estimate for revenue reduction underestimates the actual amount.

Small Credit Unions Bear the Brunt of Regulatory Burden

Compares regulatory costs relative to assets

REGULATORY IMPACTS AND CREDIT UNION SIZE

The study found dramatic evidence of differential impacts by credit union size. Cost impacts were much stronger at smaller versus larger credit unions. There are basic fixed costs associated with complying with regulations, and at larger credit unions these costs can be spread over a larger asset base. In contrast, adverse revenue impacts were stronger at larger than smaller credit unions. This is because members of larger credit unions are more likely to generate interchange income by using a debit card from their credit union.

This summary was prepared by CUNA. Readers are encouraged to refer to the full study.

cuna.org/regburden

CUNA
Credit Union National Association

Credit Unions' Strongest Advocate™

TYPES OF REGULATORY COST

The study collected data on three types of costs related to regulation: staff costs, third party expenses and depreciation of capitalized costs. For each cost category, care was taken to include only that portion of the costs that are driven by regulatory requirements. For example, for compliance staff, time spent on compliance with internal policies not required by regulation was not included as a regulatory expense.

The largest component of regulatory expense was for staff, at 74% of the total. This is not surprising as compensation typically accounts for about half of total credit union operation expenses.

Of the staff costs driven by regulation, the largest component came in member-facing staff. This suggests that credit unions have to employ more such staff than otherwise, and/or that member facing staff have to divert much of their attention from serving members to complying with regulations.

This summary was prepared by CUNA. Readers are encouraged to refer to the full study.

cuna.org/regburden

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Credit Union National Association

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STRATEGIC IMPACTS

The study solicited credit union CEOs' views on how the funds devoted to regulation would have been reallocated within the credit union had they not been drained by regulation. Better member pricing, better service delivery, and institutional strengthening topped the CEO's lists.

In addition to extensive data collection, the study solicited participating CEOs' viewpoints of where they had seen the greatest increase in regulatory impact in the areas of greater costs, reduced productivity, and reduced revenues. The greatest cost and productivity impacts occurred in compliance, mortgage and consumer lending and internal audit. The greatest revenue impacts were in mortgage lending, debit interchange and payments.

KEY THEMES

As a result of engaging with credit union executives over several months while conducting the study, Cornerstone Advisors analysts catalogued four key features of how credit unions view the impact of regulation:

CONCLUSION

The study found that the costs that credit unions bear as a result of regulation, even when conservatively measured, are very high, and have increased substantially since the financial crisis and Great Recession. The burden is particularly egregious for smaller institutions.

This summary was prepared by CUNA. Readers are encouraged to refer to the full study.

cuna.org/regburden

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April 6, 2016

The Honorable Richard Shelby
Chairman
Committee on Banking, Housing, and Urban Affairs
U.S. Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
U.S. Senate
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Brown:

On behalf of the Credit Union National Association (CUNA), thank you for holding tomorrow's hearing entitled, "The Semi-Annual Report of the Bureau of Consumer Financial Protection." CUNA represents America's credit unions and their more than 100 million members. We respectfully ask that this letter be included as part of the record of the hearing.

Credit unions understand the importance of consumer protection; after all, they are owned by their members and they along with CUNA were among the founding members of the Consumer Federation of America, one of the leading consumer advocacy organizations in the United States. As Director Cordray has acknowledged, consumer protection was job number one for credit unions long before the financial crisis or the creation of the Consumer Financial Protection Bureau (CFPB).[1] More important than the Director's acknowledgements, consumers know they are safe when they use credit unions as their financial partner. According to Consumer Reports, credit unions rate among the highest-rated services they have ever evaluated.[2] And, in the aftermath of the financial crisis, credit unions have experienced record membership growth.

Credit unions' commitment to consumer financial protection is indisputable and we support efforts to reign in abusers of consumers. Nevertheless, we have very significant concerns with how the CFPB has implemented many of its initial rulemakings and with the impact that the unending wave of regulatory changes is having on credit unions, particularly smaller credit unions. We have been troubled by the extent to which these concerns have been dismissed or unaddressed by the Director and Bureau staff, even as they routinely acknowledge that credit

[1] Prepared Remarks of CFPB Director Richard Cordray at the Credit Union National Association, *available at* http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-thecredit-union-national-association/ (Feb. 23, 2016).

[2] Blyskal, Jeff, "Choose the Best Bank for You," ConsumerReports, *available at* http://www.consumerreports.org/banks-credit-unions/choose-the-best-bank-for-you/ (Dec. 4, 2015).

unions did not engage in the practices that brought on the financial crisis and have no history of consumer abuses.

Since the financial crisis, credit unions have been subjected to more than 200 regulatory changes – several thousand pages of new or modified requirements – that they must follow to ensure that the consumers they have been safely serving for decades remain able to continue to receive service. The question that credit unions have for Congress and the CFPB is: Why have the rules changed for credit unions when they did nothing wrong in the first place?

This is not a naïve or rhetorical question. It makes very little sense for the CFPB to require credit unions, entities with no history of consumer abuse, to change the way they serve their members. It makes even less sense to do so when Congress has given the CFPB very clear and very broad authority to tailor their regulations toward the abusers of consumers.

We do not question the mission that Congress gave the Bureau to "ensure that the federal consumer financial laws are enforced consistently so that consumers may access markets for financial products, and so that these markets are fair, transparent, and competitive."[3] But Congress anticipated the problems that would result if the same rules that should apply to the largest banks and other abusers of consumers were applied to credit unions and other entities that have no history of abusing consumers, and Congress sought to prevent those problems. That is why Congress gave the CFPB exemption authority under Section 1022 of the Dodd Frank Act as a tool to help tailor its rules towards the abusers of consumers.

Section 1022 of the Dodd-Frank Act explicitly provides that the Bureau:

> "**may conditionally or unconditionally exempt any class of covered persons** . . . from any provision of [Title X], or from any rule issued under [Title X], as the Bureau determines necessary or appropriate to carry out the purposes and objectives of the Title."

We are disappointed that the CFPB has not used this authority as broadly as we feel is necessary and appropriate, and we urge the Committee to press the Director to use this authority with greater alacrity to ensure the Bureau's rules do not have an adverse impact on the ability of credit unions to serve their members.

The CFPB's Failure to Use its Exemption Authority Harms Credit Union Members

The financial and operational burdens associated with the Bureau's poorly tailored regulations have a direct impact on credit unions of all sizes. When a rule is changed, the credit union must decide whether they must comply with the rule and if so, how to comply. Then, they must decide whether the cost of compliance makes it worth continuing to offer particular products and

[3] 12 U.S.C. § 5511.

services and if so, at what price. Once they have decided to move forward, there are often countless changes the credit union must make, ranging from updating computer systems and forms to training staff and explaining the changes to members. Without question, all of these modifications have a financial and human resource impact on member-owned credit unions, keeping them from otherwise serving their members.

However, the rules themselves have also had an impact on credit union members. When changes in regulation cause credit union services to become more expensive or less available, families across the country may no longer be able to rely on their local credit union for a mortgage for their first home, an international remittance to send funds to family overseas, or a free checking account to help them save. As we discuss below, small credit unions face a regulatory burden crisis that has accelerated the rate of attrition in the credit union system.

Below are some of the recent rulemakings which have, or could, cause problems for credit union members if not properly tailored to consider their impact on credit union products and services.

Mortgage Rules

The CFPB's recent Home Mortgage Disclosure Act (HMDA) rulemaking nearly tripled the Dodd-Frank Act required data points and will create significant compliance costs for credit unions, while doing very little more to enhance the ability of the CFPB to monitor for discriminatory practices. There will also be detrimental impacts on consumers, such as a decreased availability of home equity lines of credit, due to the increased regulatory burden of the new requirements. CUNA is continuing to urge the CFPB to provide broader exemptions for credit unions from these reporting requirements.

For example, under the final rule, a depository institution is required to collect and report data if it originated 25 or more closed-end mortgage loans in the prior year. Setting the exemption threshold at only 25 (or only 2 mortgage loans per month) does not accurately reflect the current mortgage market or operations of smaller mortgage lenders. In fact, CUNA's analysis shows that a threshold exemption of 500 loans per year would be more appropriate for HMDA's reporting requirements. This broader exemption would provide the CFPB with the data needed under the HMDA requirements and decrease the additional regulatory burden on smaller credit unions.

The recently implemented Truth in Lending Act and Real Estate Settlement Procedures Act (TILA/RESPA) rules (also commonly known as TRID or KYBO) represent the most massive overhaul of mortgage lending regulations in the history of this nation. In the short term, these changes have slowed the mortgage lending process, frustrating borrowers and lenders. In the long term, we have concerns that technical and inadvertent violations of the new rules could present significant litigation issues for lenders in the coming years. The secondary market is already either rejecting or not purchasing loans based on concerns that technical items might pass through because of an uncertain TRID violation. Many of these items could dissipate with written guidance by the CFPB and restore certainty to the secondary market.

Director Cordray has implied that CUNA and others exaggerated litigation fears stemming from technical violations of new mortgage rules. The assumption that these fears are overblown is unquestionably premature since some of the new mortgage rules have just recently been implemented or are in the process of implementation. One would not expect this type of litigation to take place for several years; nevertheless, it is in fact already taking place. Just recently a homeowner in Long Island tried to put off a foreclosure by arguing that Emigrant Bank failed to follow the loss mitigation procedures mandated by 12 CFR §1024.41(g) (Emigrant Savings Bank-Long Island v. Berkowitz, 27142/2012). In Michigan, there is other litigation involving whether the loss mitigation rules should be retroactively applied (Campbell v. Nationstar Mortgage, 611 F. App'x 288, 296 (6th Cir.) cert. denied, 136 S. Ct. 272, 193 L. Ed. 2d 137 (2015). There is no question that frivolous litigation could harm credit unions, threaten participation in the mortgage market, and result in more limited consumer choice.

To address this and other concerns we have regarding the implementation of TRID, we have urged the Bureau to issue additional written guidance to help lenders better serve borrowers consistent with the regulation. However, the Bureau has been unwilling to provide additional guidance so far. We hope the Committee will encourage the Bureau to issue written guidance.

International Remittances

The CFPB's international remittance transfer (IRT) final rule was far too broad. The unintended consequences of this rule for credit unions, which did not engage in the activity that brought on the new rule, has resulted in a significant reduction in service offerings. According to a survey of CUNA members, the CFPB's international remittance transfer rule caused almost half of credit unions offering remittance services to their members either to stop offering remittances or to reduce the number of remittances.[4] The survey results paint a clear picture of the aftermath of this rule. Fewer credit unions are offering remittances; those that continue to offer remittances conduct fewer transactions; and, the transactions that credit unions complete are priced higher than they were prior to the rule. Again, this regulation represents a loss for consumers who now have fewer and more expensive options in the IRT market, and a missed opportunity for the Bureau to have used its exemption authority in a meaningful way to ensure that credit unions could continue to offer these services.

Overdraft Protection and Small Dollar Loans

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[4] Schenk, Mike, "CUNA 2014 International Remittances Survey." *available at* http://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Track_Regulatory_Issues/Pending_Regulatory_Changes/2014/Remittance%20Study%20Summary.pdf (March 2015).

With most of the Dodd-Frank Act mandated rulemakings behind it, the Bureau has now turned its attention to issues such as overdraft services and small-dollar loans. Credit unions have been developing innovative solutions to serve members in need of these types of services for many years. This includes working to tailor products to the needs of their members, some of who are facing financial distress. The National Credit Union Administration (NCUA) recently reported that payday alternative lending was up 7.2 percent in the last year, which is a step in the right direction for members seeking consumer friendly alternatives in this market.[5] Nevertheless, pending regulations for payday and small-dollar loans threaten credit unions' ability to continue in this market if additional regulatory burdens for credit unions are added, since in many instances they are already only breaking even or losing profits after underwriting these loans.

In the case of overdraft services, credit union members continue to express satisfaction and choose this service as one of their options. This level of contentment is reflected in the CFPB's own complaint data which showed that in 2015, only 1.5 percent of over 500,000 consumer complaints pertained to overdraft.[6] The diverse product and service offerings credit unions provide in these markets, and innovative new ways to serve members, did not stem from additional regulation in these areas. Rather, credit unions developed these products by engaging with members, finding out what they like and need, and working to offer the necessary services. As the Bureau proceeds with these rulemakings, steps should be taken to ensure that credit unions can continue to provide critical lifeline services to consumers as they have for several decades.

CFPB's Recent Action for Small Creditors is a Step in the Right Direction

While the cases in which the Bureau has failed to appropriately use its exemption authority to tailor regulations toward the abusers of consumers outnumber the cases in which it has used its authority, it is important to note when the Bureau has gotten it right, as they did when implementing the recently enacted Helping Expand Lending Practices in Rural Communities Act.

Last month, the CFPB issued an interim final rule broadening the exemption for small creditors under the Truth in Lending Act's Regulation Z, which will allow more credit unions operating in rural or underserved areas to originate balloon mortgages, even though balloon mortgages are not otherwise allowed to be designated Qualified Mortgages. This change also allows more credit unions to originate high-cost mortgages with balloon payments under the CFPB's Home Ownership and Equity Protection Act regulations. Additionally, small credit unions will no longer be required to establish escrow accounts for higher-priced mortgages if they satisfy the other exemption criteria.

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[5] National Credit Union Administration, "Credit Union Deposits Surpass $1 Trillion." *available at* https://www.ncua.gov/newsroom/Pages/news-2016-march-call-report-data.aspx (March 3, 2016).

[6] Moebs $ervices, Inc., "Consumer Overdraft Complaints Rank Low." *available at* http://www.moebs.com/ (Jan. 20, 2016).

The CFPB's updated small creditor threshold applies to credit unions that have less than $2 billion in assets and who originate under 2,000 covered transactions. Before this change, the credit union would have to demonstrate that over 50% of its total first-lien covered transactions lie on properties located in a rural or underserved area to qualify for the exemption. However, under the new rule, the credit union only needs one transaction to avail themselves of the exemption.

This change, sought by CUNA, undoubtedly will increase the number of credit unions that are able to offer certain types of mortgages in rural and underserved areas. This is a step in the right direction of increasing access to credit for consumers and allowing small credit unions to continue to operate in this market in rural and underserved areas.

While this particular change was prompted by legislation passed by Congress, we urge the CFPB to continue to make such changes on its own accord when there is evidence that a Bureau rulemaking is stifling credit union participation in certain markets. Similar thoughtful analysis about the impact of rulemakings on consumers must be part of the CFPB's mission of protecting consumers in each rulemaking it puts forth.

Poorly Tailored Rulemakings from the CFPB Accelerate Small Credit Union Consolidation and Impact Credit Unions' Ability to Fully Serve Their Members

Despite the way in which the Bureau has implemented changes to Regulation Z, we remain concerned the CFPB does not fully understand and appreciate the problems CUNA and credit unions have brought to its attention about regulatory burdens stemming from rulemakings. Director Cordray has on several occasions referred to the current regulatory environment as "good news" for credit unions because the credit union system is growing. However, our members view the current regulatory environment as anything but "good news."

The growth of the credit union system is being driven by larger credit unions that have a greater capacity to absorb the Bureau's regulatory changes because of their size. So, while the Director says that the credit union system is doing well under the new regulatory regime, a deeper, more comprehensive analysis shows that the system-wide numbers mask a troubling trend for smaller credit unions. While the number of credit unions has been declining since 1970, the attrition rate has accelerated since 2010, after the financial crisis and the creation of the CFPB. Indeed, the last two years, 2014 and 2015, are among the top five in terms of attrition rates since 1970, at 4.2% and 4.1%. Attrition rates at smaller credit unions have been especially high. In both 2014 and 2015, the attrition rate at credit unions with less than $25 million in assets (half of all credit unions are of this size) has exceeded 6%. There is an indisputable connection between the dramatically higher regulatory costs incurred by small credit unions, the increases in those costs since 2010, and their higher attrition rates.

In an effort to further understand the impact of regulatory burden on credit unions and quantify the compliance costs that credit unions and their members pay, CUNA recently commissioned a comprehensive study of credit union regulatory burden, which we delivered to the Committee earlier this week.

The study conducted by Cornerstone Advisors[7] shows that the financial impact of regulation on credit unions has increased by 40 percent since 2010, not even counting the effect of asset growth. For smaller credit unions—the three quarters of credit unions with assets below $100 million—regulatory costs rose from 0.78% of assets in 2010 to 1.12% of assets in 2014, an increase of 43%. Regulatory costs now account for 30% of total operating expenses at smaller credit unions, and almost 10% of total operating expenses at these credit unions in 2014 were new regulatory expenses, added since 2010. For credit unions with assets between $100 million and $1 billion, the increase in regulatory expenses was 40%, and 28% at credit unions with over $1 billion in assets.

Overall, the study found that regulatory burden diverted $7.2 billion from services in 2014 alone: $6.1 billion in regulatory costs and an additional $1.1 billion in lost revenue. The $6.1 billion in costs represents 17% of operating expenses of the entire credit union system, or roughly $1 out of every $6 spent. It is clear these results are staggering. It is also important to recognize that credit unions are just beginning to implement many other new rules, and are waiting for the proposal or final releases of several other sweeping regulations which have not even been incorporated yet into these calculations. Therefore, these costs are expected to increase in the coming years.

Compliance burdens resulting from these rule changes have impeded credit union employees from serving members and have strained credit union resources. As a result, credit union products subject to new or modified regulations are often more expensive and less available to members than they were prior to the financial crisis. This is not a positive outcome for credit union members and other consumers, yet it is an outcome that is well within the Bureau's authority to avoid.

CUNA certainly understands the importance of regulations to implement law and credit unions have been heavily regulated at both the state and federal level for decades. Accordingly, we are simply asking for the ability to continue to serve our members in the consumer friendly way we always have. We believe that regulations that make it more difficult for credit unions to provide safe and affordable financial services to their members are inconsistent with the principals of consumer protection. Congress gave the CFPB clear and broad authority to tailor regulations to reign in abusers of consumers and the CFPB should be using this authority to do just that. Doing so would not only be consistent with a plain reading of the statute but also the intent of Congress.

[7] Hui, V., Myers, R., Seymour, K, "Regulatory Financial Impact Study." Cornerstone Advisors, Inc., available at http://www.cuna.org/regburden/ (Feb. 2016).

most recently manifested in a letter to the Bureau from 329 members of the House of Representatives.[8] We urge the Committee to press the Bureau to make greater use of its statutory exemption authority.

Conclusion

CUNA appreciates the support credit unions have received from numerous Members of Congress in our efforts to remove unnecessary regulatory barriers, which ultimately cause consumers to pay the biggest price when they have fewer and worse choices, and less access to credit and services. We encourage the Committee to continue to examine whether CFPB rulemakings are having a detrimental impact on small financial institutions such as credit unions. Further, we urge Congress to press the CFPB to ensure that past and future rulemakings are not making it more difficult for credit unions, who have a long history of offering safe and affordable financial products and services, to serve their members.

On behalf of America's credit unions and their more than 100 million members, thank you again for holding this hearing and considering our views.

Sincerely,

Jim Nussle
President & CEO

[8] Letter from Congress to CFPB about Dodd-Frank Act Exemption authority, available at http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Removing-Barriers-Blog/Removing-Barriers-Blog/329-Members-of-Congress-Rebuke-CFPB-s-Interpretation-of-Exemption-Authority/ (March 4, 2016).

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"The Consumer Financial Protection Bureau's Semi-Annual Report to Congress"
Committee on Banking, Housing, and Urban Affairs

U.S. Senate
April 7, 2016

Steve Jordan
Chief Executive Officer
National Independent Automobile Dealers Association

Statement for the Record
Submitted April 14, 2016

Mr. Chairman and Members of the Senate Committee on Banking, Housing, and Urban Affairs, my name is Steve Jordan, Chief Executive Officer 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 April 7th hearing on the Semi-Annual Report of the Consumer Financial Protection Bureau ("CFPB").

For 70 years, the NIADA has represented the interests of the nearly 38,000 independent automobile dealers who own dealerships across America, not affiliated with a manufacturer. NIADA and its nearly 16,000 members subscribe to a Code of Ethics that emphasizes honor, integrity and fair dealing. NIADA members espouse the highest professional and ethical standards and are committed to ensuring a fair marketplace for both consumers and dealers.

NIADA members embody the spirit of American entrepreneurism, and as a result NIADA is dedicated to ensuring the success of small businesses. More than 40 percent of NIADA's dealer members 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.

As an Association, NIADA commends you and the Committee for holding this important hearing to consider actions undertaken by the CFPB, actions that should not be taken lightly. That is why NIADA encourages the Committee to be forthright and vigilant in ensuring that the CFPB is transparent and accountable in all that it does.

The passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 and the creation of the 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. Many of the actions undertaken by the CFPB illustrate the concerns with an agency that has such power and resources and does not engage in a transparent and open process before acting.

One such action that is illustrative of the CFPB's overreach is its March 2013 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.

Substantively, the CFPB's guidance is problematic in that it interferes with a dealer's ability to pair consumers with a myriad of lenders with which the dealer has relationships. By having the ability to shop a consumer's credit application to several lenders, including many to which consumers cannot access directly, dealer assisted financing often results in a lower credit costs for the consumer. The CFPB's approach to dealer assisted financing potentially eliminates a dealer's ability to discount credit, will raise the cost of credit to the consumer, and may reduce availability of credit for certain consumers.

Furthermore, NIADA continues to have significant concerns with the CFPB's approach in large part because of the flawed proxy methodology the Bureau utilizes in its attempt to identify a consumer's ethnicity. In fact, the CFPB recognizes its methodology is flawed in nearly 20% of its ethnicity estimations. Based on the enforcement actions the Bureau has undertaken in implementing this guidance, it is doubtful the Bureau would accept that level of error from the entities it regulates. In fact, members of Congress from both chambers and both political parties have expressed concern about the methodology and asked the Bureau for additional information. Yet, despite those thirteen Congressional letters signed by more than 90 Senators and Members, significant questions remain unanswered.

As troubling as the substance of the guidance document is, NIADA has significant concerns with the process the CFPB followed in its dissemination. It was issued without prior notice, public input, transparency, consultation with other agencies, and by the CFPB's own admission, without any study of its impact on consumers. The secrecy with which the CFPB operated in releasing this guidance, rather than following a public rulemaking process, was either intentional or not. Neither is acceptable for any federal agency, much less for one with the wide-swath of oversight the CFPB has.

The CFPB expects, as it 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.

In order to ensure that the CFPB operates with a fully transparent process as it relates to dealer assisted financing, NIADA urges the members of the Committee to vote for S. 2663, "Reforming CFPB Indirect Auto Financing Guidance Act." S. 2663 is a bill that would revoke the current fundamentally flawed indirect auto lending guidance document. The bill permits the CFPB to reissue guidance on the issue if the Bureau provides notice and a period for public comment; makes public any studies, data, and analyses upon which the guidance is based; consults with the Federal Reserve Board, the Federal Trade Commission and the Department of Justice; and, studies the cost and impact of the guidance on consumers as well as women, minority, veteran-owned businesses, and small businesses.

By design, S. 2663 does not impinge on the CFPB's structure, jurisdiction, or authorities nor does it tie the CFPB's hands. It is also important to note that the bill does not attack the disparate impact theory of discrimination underlying the guidance document. Rather, it provides a simple, common sense approach to transparency before changing the auto finance market through an un-scrutinized guidance document.

H.R. 1737, the companion bill to S. 2663 introduced by Reps. Guinta (R-NH) and Perlmutter (D-CO), passed the House on November 18, by an overwhelming bipartisan vote of 332-96 in large part because the bill merely required an open, transparent process. That legislation, which is identical to S.2663, was fully supported by NIADA, and its industry partners such as the National Automobile Dealers Association, the National Auto Auction Association, the American Financial Services Association, the Alliance of Automobile Manufacturers, the Motorcycle Industry Council, the U.S. Consumer Coalition, and others.

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 will provide the Bureau with needed information about the industry so they can make informed, open decisions consistent with and limited to its statutory mandate.

We hope that the Bureau will engage in substantive discussions with interested parties from the automotive finance industry on meaningful solutions that address the CFPB's fair lending concerns while recognizing legislative business practices. The CFPB's recognition of these legitimate business practices, openly recognized as legitimate by another federal agency, would address many, if not all of the concerns stakeholders have with the current guidance document. Moreover, it could obviate the need for a legislative fix.

Unfortunately, because the CFPB has failed to follow prior precedent in accepting those legitimate business practices and issued the guidance in the shroud of secrecy, S. 2663 is the only viable solution. To that end, NIADA again encourages members of the Committee to vote for the bill 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.

At your service,

Steve Jordan
NIADA | CEO

How to Avoid Fair Lending Enforcement Actions

By Leonard N. Chanin
May 28, 2013

How do financial firms avoid fair-lending problems? There is a simple answer: Don't make loans. I can't figure out why financial institutions don't latch onto that brilliant solution. So, if you are one of those peculiar institutions in the business of making loans and want to keep doing so, I have other advice: prepare for the not-so-brave new world of fair-lending supervision/enforcement.

The core discrimination concepts have been around for nearly 40 years. Of course, there have been many changes to fair-lending laws on topics such as adverse action notices and credit scoring models. There is also debate about whether disparate impact claims are permissible under the Fair Housing Act.

So, if the law really hasn't changed, what has? Well, it seems clear the Consumer Financial Protection Bureau has made fair lending a top priority. It has a dedicated fair-lending office with many attorneys whose sole purpose is to look for fair-lending issues. Recently, the CFPB stirred up a hornet's nest by issuing guidance on discretionary pricing of car loans for lenders that purchase them from auto dealers.

It seems hard to argue with the notion that an agency should ensure that institutions comply with fair-lending laws. But, nothing is simple when it comes to fair lending. First, agencies look at the results of lending decisions, and if different outcomes correlate with race, ethnicity, etc. (e.g., different approval and denial rates or interest rates), then they suspect discrimination. The burden is (literally, even if not legally) on institutions to explain the differences.

Second, what about disparate impact? Every policy could potentially have a disparate impact on some protected group. Given the economic differences of various ethnic and racial groups, many underwriting standards are likely to have a negative effect on some group. So, what is a financial institution to do? You can't spend all your time conducting statistical analyses on each of your policies to pinpoint any possible adverse impact on a group. Even if you could, you would have to determine whether there is sufficient justification to override any disparate impact. And trying to determine if there is a disparate impact on the basis of race or ethnicity can be difficult if you don't actually know the race or ethnicity of the borrower, such as for car loans.

So, where does one find hope in this new world?

There are things an institution can do. First, institutions should scrutinize an agency's view of the law. That is, regulators sometimes take liberties in interpreting what the law actually requires and institutions may need to discuss and even challenge an agency's reading of the law. In addition, once an allegation arises, an institution should seek to ensure that the agency is actually establishing discrimination, rather than simply asserting discrimination.

Second: be proactive. Institutions need to take preventive steps. This involves creating clear policies, monitoring adherence to those policies, reviewing loan files and managing the use of discretion. And, if you find a problem, fix it.

Third, there are many technical compliance issues under the Equal Credit Opportunity Act and Regulation B. For example, when can you request information about an applicant's spouse? How do you evaluate "protected" income? Are the reasons provided in adverse action notices specific and accurate? Compliance with rules on these and many other issues is critical. Failure to do so is often seen as a red flag by a regulatory agency, and typically leads to other questions.

Fourth, document matters. It's hard to lend without using any discretion. What do you do if a long-term, good customer asks you to waive a late fee? If a consumer asks and you make an adjustment, document the reason. Failure to document can cause problems with agencies.

Finally, to prepare for any allegations that practices may have a disparate impact, institutions should analyze policies to determine whether they actually do accomplish important business purposes, such as managing loan risks.

There are no secret formulas or magic bullets when it comes to fair lending. There are seldom simple solutions. There is often only difficult, tedious work.

In September 2012, the Federal Reserve Bank of Philadelphia published a paper, "Do We Still Need the Equal Credit Opportunity Act?" You can be sure that no one at the CFPB is asking that question. But when the CFPB asks other questions, financial institutions want to ensure they have robust fair-lending policies and programs to respond to those inquiries.

Before rejoining Morrison Foerster, Leonard N. Chanin served as assistant director of the Office of Regulation of the Consumer Financial Protection Bureau.

Available at: http://www.americanbanker.com/bankthink/how-to-avoid-fair-lending-enforcement-actions-1059379-1.html?zkPrintable=true

Consumer Federation of America

The Honorable Richard Shelby
Chairman
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington D.C. 20510

Re: April 5, 2016 hearing on the Effects of Consumer Finance Regulations and April 7, 2016 hearing on The Consumer Financial Protection Bureau's Semi-Annual Report to Congress

Dear Chairman Shelby, Ranking Member Brown and Members of the Committee:

Consumer Federation of America (CFA)[1] would like to submit the following statement for the record for the hearing entitled "Effects of Consumer Finance Regulations" held on April 5, 2016 and the hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress" held on April 7, 2016. This statement addresses the critical work underway at the Consumer Financial Protection Bureau to protect consumers from the harmful practices of payday and auto title lenders. CFA strongly supports this work and urges you to support this and other efforts to protect consumer from abusive lending and oppose any efforts to delay the Bureau's much-needed rule.

The Consumer Federation of America also supports the important consumer financial protection efforts undertaken by the Bureau in other areas addressed in the statements prepared by members of Americans for Financial Reform. Although we do not have a position on every consumer regulatory issue discussed by other AFR members, we associate ourselves with other remarks defending the CFPB's work and structure.

1. A Strong CFPB Rule is Necessary to Protect Consumers from the Financial Harm Caused by Payday, Auto Title and Payday Installment Loans

According to the Center for Responsible Lending, the failure to limit abusive repeat loans issued by payday lenders results in $3.5 billion in additional fees paid by payday loan borrowers[2] and $3.6 billion in

[1] CFA is an association of over 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy and education.

[2] Parrish, Leslie, and Uriah King. *Phantom Demand: Short-Term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of Total Volume*. Washington, DC. July 9, 2009. http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf.

additional fees paid by title loan borrowers each year.[3] Currently 35 states authorize triple digit interest rate payday loans made without any consideration of a borrower's ability to repay.[4] As a result, 71 percent of Americans live in states that would see a considerable improvement in consumer protections for payday and auto title loans if a strong CFPB rule is enacted.

As a data-driven regulator committed to improving the financial market place and protecting consumers, the CFPB has exhaustively documented the frequency of repeat borrowing and other harmful practices that its current proposal seeks to address. In March 2014, the CFPB released research documenting that repeat borrowing is standard practice—over 80 percent of loans are renewed because a borrower is unable to repay in full and on time and half of all loans are part of a series of ten or more loans.[5] In a 2013 white paper on payday lending, the CFPB also found that 75 percent of loan fees were charged to borrowers that used 11 or more payday loans in a 12-month period.[6]

2. Recent Enforcement Actions Demonstrate Harm Caused by Payday and Auto Title Loans

The CFPB has also taken strong action against payday lenders who have violated current consumer protections and these actions have helped expose harmful practices.

In 2014, the CFPB took enforcement action against ACE Cash Express, one of the largest payday lenders in the country for using illegal debt collection tactics to push borrowers into taking out additional loans they could not afford.[7] By using false threats, intimidation and harassing phone calls, the CFPB found that ACE Cash Express pressured overdue borrowers to temporarily repay their short-term loans then quickly re-borrow—resulting in mounting fees and a long-term cycle of debt. ACE Cash Express's training manual confirmed that this tactic was common practice in the company, going so far as to include a graphic explaining how short-term borrowing results in an inability to repay followed by a new loan and commensurate fees (see Figure 1). ACE Cash Express was ordered to pay $5 million in consumer refunds to borrowers that were harmed by this abusive practice.

In November 2015, the CFPB took enforcement action against Integrity Advance, LLC an online lender. The Bureau alleged that Integrity Advance had hidden the true cost of the loan by only disclosing the cost of borrowing based on a single payment and then automatically renewing the loan and charging additional finance charges. The Bureau also alleged that the online lender unfairly used a little-known payment

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[3] *Driven to Disaster: Car-Title Lending and Its Impact on Consumers.* Washington, DC: Center for Responsible Lending and Consumer Federation of America. February 28, 2013. http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/CRL-Car-Title-Report-FINAL.pdf.

[4] *State Payday Loan Regulation and Usage Rates*. The Pew Charitable Trusts, July 11, 2012. http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/~/media/Data%20Visualizations/Interactives/2014/State%20Payday%20Loan%20Regulation%20and%20Usage%20Rates/Report/State_Payday_Loan_Regulation_and_Usage_Rates.pdf.

[5] *CFPB Data Point: Payday Lending*. Washington, D.C.: Consumer Financial Protection Bureau. March 2014. http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

[6] *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings*. Washington, DC: Consumer Financial Protection Bureau, April 13, 2013. http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

[7] "CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt." Washington, DC: Consumer Financial Protection Bureau, July 10, 2014. http://files.consumerfinance.gov/f/201407_cfpb_consent-order_ace-cash-express.pdf.

mechanism called a remotely-created check to debit consumers' checking accounts even after they have revoked the lender's authorization to make automatic checking account withdrawals.

These enforcement actions, and others undertaken by the Bureau, demonstrate the harm caused by high-cost, short-term loans originated with no consideration of a borrower's ability to repay the loan without re-borrowing or financial hardship. Both actions described above show that repeat borrowing and unfettered access to a borrowers checking account is the business model of payday lenders. While ongoing enforcement of existing consumer protection laws are critical to prevent widespread abuse, we believe that additional protections, such as those that the Bureau has proposed, are necessary to protect consumers going forward.

3. The ability to repay standard proposed by the CFPB will protect consumers who take out payday and auto title loans

At a March 2015 field hearing in Richmond, Virginia, the CFPB issued a working draft of possible consumer protections under consideration for a proposed rule – a critical first step to ensuring that consumers are protected from abusive practices such as poor underwriting and back-to-back lending.[8] The proposal contains a straight-forward, common-sense ability to repay standard that requires lenders to review borrowers' income and expenses before issuing a loan to ensure that they can repay the loan in full and on time without additional borrowing. The adoption of such a standard that applies to short-term and long-term payday and auto title loans, without loopholes for unsafe repeat borrowing, is critical to protecting consumers and stopping the debt trap caused by unsafe credit products. An ability to repay standard is already in place for other types of lending, such as mortgage and credit card lending, and those products remain widely available.

4. Protecting consumers from short- and longer-term payday loans will prevent current and future abusive practices

The CFPB proposal rightly applies the ability to repay standard to short- and long-term payday and auto title lending, as well as to similar, harmful products structured as open-end lines of credit. The scope of the proposal is fundamental to protecting consumers and to ensuring that lenders do not develop new products to evade a final rule.

Payday and title lenders are already shifting to longer-term loans and the Bureau's application of a strong ability to repay standard to longer-term payday loans is critical to preventing evasions. A 2014 report by payday lending analysts Stephens, Inc., documents the shift from balloon payment payday loans to payday installment loans among storefront lenders and illustrates the need to apply consumer protections to both short- and long-term payday and auto title loans and open-end credit. The Stephens report found that, as of 2014, installment loan growth represented well over half of the total growth for payday industry participants who experienced growth in 2013."[9] One of the largest lenders, Cash America has

[8] "Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, and Similar Loans: Outline of Proposals Under Consideration and Alternatives Considered." Washington, DC: Consumer Financial Protection Bureau, March 26, 2015. http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.

[9] Hecht, John. "Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework." presented at the CFSA Solutions, Little Rock, AR, February 27, 2014. http://cfsaa.com/Portals/0/cfsa2014_conference/Presentations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf.

also shifted from balloon payment payday loans to longer-term payday loans and open-end lines of credit. Including both storefront and online lending, Stephens, Inc. noted that Cash America's installment and open-end products now comprise about 56 percent of the company's domestic loan balance as of December 2013.[10]

This shift to long-term lending means that the longer-term payday loan ability to repay standard is a critical part of the CFPB proposal and must be strong enough to ensure that lenders do not simply shift to this form of lending to avoid new restrictions on short-term payday loans.

5. Recommendations to improve the current CFPB payday proposal

CFA encourages the Bureau to consider four key improvements to ensure that the rule adequately protects consumers. The final rule should apply an ability to repay requirement to all covered credit without any exemption or safe harbor for loans that do not consider and document a borrowers' income and expenses to ensure affordability. To protect borrowers from the well-documented cycle of debt caused by high-cost, short-term payday loans, the CFPB should prohibit lenders from making short-term payday loans that would put borrowers in debt for more than 90 days in a 12-month period. To protect consumers from common abuses associated with the longer-term payday loans discussed previously, the CFPB should strengthen underwriting requirements and limit abusive refinancing designed to mast defaults and extend the term of the loan. The rule should also explicitly recognize the importance of the usury caps adopted by state legislatures as an important consumer protection to preventing abusive lending.

6. Borrowers can and do turn to lower-cost, more sustainable financial options if abusive, back-to-back lending is restricted

A strong rule would not unduly reduce access to safe and sustainable credit options. Instead it would ensure that all lenders, including storefront and online lenders, are only issuing loans that a borrower can repay in full and on time without re-borrowing or financial hardship.

In 2012, the Pew Charitable Trusts issued a report examining how borrowers would manage their financial options if high-cost payday lending was unavailable. The report found that 81 percent of borrowers that used payday loans would cut back on expenses. Borrowers also indicated that they would borrow from family or friends or sell or pawn possessions instead of taking out a high-cost payday loan. Likewise, 44 percent indicated that they would take a loan from a bank or credit union, 37 percent would use a credit card and 17 percent would borrow from an employer.[11]

A strong rule based on an ability to repay standard that applies to the entire payday and auto title market would serve the dual purpose of preventing widespread, well-documented abuses and giving borrowers the option of turning to lower-cost and more sustainable credit options as they already do in states that do not allow payday and auto title lending. While the proposal as currently structured may ultimately limit the number of back-to-back loans, this should be viewed as a dramatic improvement in a marketplace where over 80 percent of all loans are followed by another loan just days or weeks later.

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[10] Ibid. Note that Cash America has since spun off its online lending operation, Enova Financial.

[11] *Payday Lending in America: Who Borrows, Where They Borrow, and Why*. Washington, DC: The Pew Charitable Trusts, July 2012. http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/PewPaydayLendingReportpdf.pdf.

Conclusion

Effective regulation of the lenders that offer high-cost payday, auto title and other loans is critical to protecting consumers from abusive practices and the financial insecurity that results from the sustained use of high-cost debt. The proposal under consideration by the CFPB is the result of a comprehensive analysis of the high-cost credit marketplace and is supported by robust CFPB research and information collected as part of its ongoing supervision and enforcement activities. It represents a targeted response that will prevent bad practices so that good practices can flourish. We urge you to fully consider the profound harm suffered by consumers trapped in a long-term cycle of debt caused by payday and auto title loans and support the Bureau's work to ensure that consumers are treated fairly.

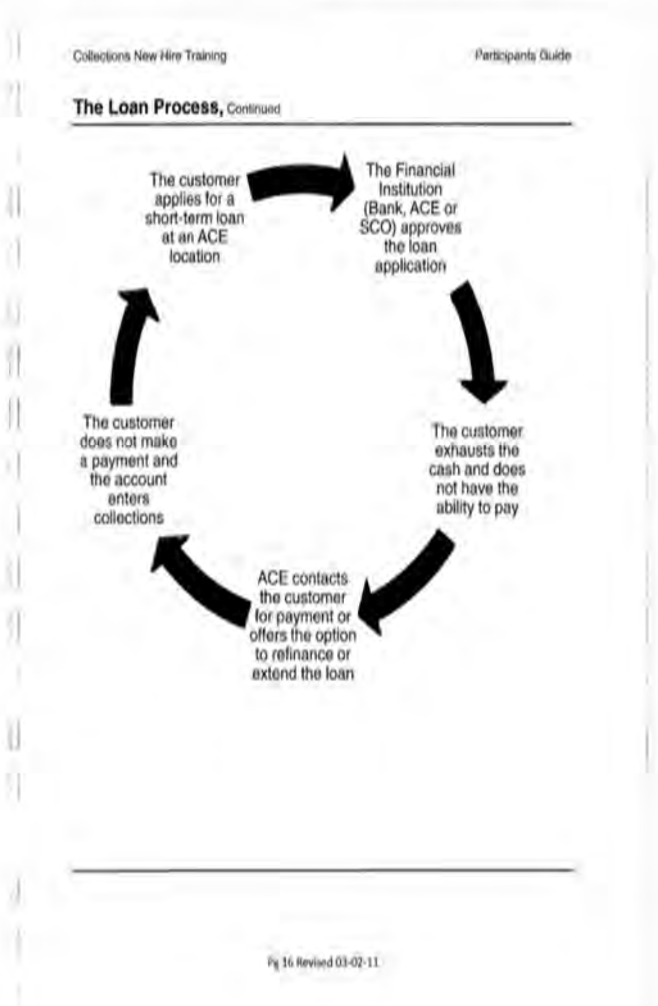
If you have any additional questions or concerns, please contact Tom Feltner, director of financial services at Consumer Federation of America at 202-618-0310 or tfeltner@consumerfed.org.

Respectfully submitted,

Tom Feltner
Director of Financial Services
Consumer Federation of America

Committee on Banking, Housing and Urban Affairs
April 5, 2016
Page 6

Figure 1. Graphic from ACE's 2011 Training Manual illustrating the cycle of debt business model



Source: Consumer Financial Protection Bureau press release available at: http://1.usa.gov/1N6WFp7

INDEPENDENT COMMUNITY BANKERS *of* AMERICA®

April 7, 2016

CFPB Rules Have a Critical Impact on Access to Consumer Credit

On behalf of the nearly 6,000 community banks represented by ICBA, we thank Chairman Shelby and Ranking Member Brown for convening this hearing to receive the Consumer Financial Protection Bureau's (CFPB's) Semiannual Report to Congress. We are pleased to take this opportunity to set forth our views on legislative and regulatory issues related to the CFPB.

Before specifying ICBA's views on these topics, we would like to thank Chairman Shelby, Ranking Member Brown, this committee, and Director Cordray for the recent statutory change expanding access to "rural lender" benefits under the CFPB's mortgage rules and for the CFPB's interim-final rule implementing that statutory change. Chairman Shelby's "Financial Regulatory Improvement Act" (S. 1484) creates a new petition process under which a lender, borrower, or other interested party may challenge the CFPB's designation of "rural areas" using a broad range of factors. Importantly, S. 1484 also provides that a "small creditor" (a creditor with less than $2 billion in assets that originates fewer than 2,000 annually, excluding portfolio loans) does not have to operate "predominantly" in "rural areas" in order to qualify as a rural lender. Rural lender benefits include qualified mortgage status for balloon loans held in portfolio and an exemption from escrow requirements on higher priced mortgages. These provisions of S. 1484 were included in the FAST Act, which was signed into law December 4, 2015.

The CFPB's interim final rule implementing this statutory change, issued on March 22, broadly interprets the statutory change so that a small creditor that originates one or more loans per year in a rural area qualifies as a rural lender. Thousands of community banks and their customers will benefit from the statutory change and the implementing rule.

However, to better serve consumers and small business borrowers and support an economic recovery that reaches every region and demographic of the country additional regulatory relief is critically needed.

Legislation Related to CFPB Rules and Authority

ICBA urges the members of this committee to support the following legislative changes.

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Qualified Mortgage Status for Loans Held in Portfolio

ICBA thanks Chairman Shelby for including this critical provision in S. 1484, and Senators Moran and Tester for including it in the Clear Relief Act (S. 812). When a lender holds a loan in portfolio it holds 100 percent of the credit risk and has every incentive to ensure it understands the borrower's financial condition and to work with the borrower to structure the loan properly and make sure it is affordable. Exposing a lender to litigation risk under the CFPB's Ability-to-Repay/Qualified Mortgage (QM) rule does not make their loans safer, nor does it make underwriting more conservative. It merely deters lending that does not fit the narrow parameters of the QM safe harbor. ICBA strongly supports legislation that would provide that any mortgage held in portfolio is QM, including balloon loans and regardless of loan pricing.

Expand Exemption Thresholds Under the Home Mortgage Disclosure Act (HMDA)

The CFPB recently finalized a rule under HMDA which will require covered banks and credit unions to collect and report 48 unique data points on each mortgage loan they make, more than double the number of data points covered lenders are currently required to collect. The proliferation of data points will amplify the number of data entry errors and penalties, especially among institutions that upload data manually, including many community banks and small credit unions.

The new rule's exemption thresholds – 25 closed-end mortgages and 100 open-end lines of credit – will exempt less than 1 percent of the nearly 10 million annual mortgage applications and loans reported through HMDA. There is an opportunity to provide relief for many more small lenders without materially impacting the mortgage data available to the CFPB or impairing the purpose of the HMDA statute. According to CFPB data, exempting lenders with a loan volume of less than 100 closed-end mortgages would reduce the number of loan applications and loans reported through HMDA by only 2 percent.

Increase Small Servicer Exemption Threshold From 5,000 loans to 20,000 Loans

Community banks are deeply concerned about the impact of servicing standards that are overly prescriptive with regard to the method and frequency of delinquent borrower contacts. These rigid standards reduce community banks' flexibility to use methods that have proven successful in holding down delinquency rates. A higher exemption threshold would preserve the role of community banks in mortgage servicing, where consolidation has clearly harmed borrowers. Community banks above the 5,000 loan threshold have a proven record of strong, personalized servicing and no record of abusive practices. To put the 20,000 threshold in perspective, consider that the five largest servicers hold an average servicing portfolio of 6.8 million loans and employ as many as 10,000 people each in servicing alone.

Exempt Financial Institutions with Assets of Less than $50 Billion from CFPB Examination and Reporting

This provision is contained in the Consumer Financial Protection Bureau Examination and Reporting Threshold Act (S. 482), introduced by Senators Pat Toomey (R-PA) and Joe Donnelly D-IN). It was amended to S. 1484 during the markup of that legislation in 2015.

A $50 billion examination and reporting threshold would enhance consumer protection by allowing the CFPB to concentrate on larger institutions, focusing on the greatest threat to consumers and making more effective use of the agency's resources. Non-exempt financial institutions would continue to be examined for compliance with CFPB rules by their prudential regulators. Supervision is more balanced and effective when a single regulator examines for both safety and soundness and consumer protection.

Repeal Small Business Loan Data Collection Requirement for Small Financial Institutions

Section 1071 of the Dodd-Frank Act, which has yet to be implemented by the CFPB, creates a new data collection and reporting requirement in connection with every small business loan application. Under the new requirement, a financial institution must inquire of every credit applicant whether it is woman-owned, minority-owned, or a small business. The financial institution must maintain a record of the response to this inquiry, and the record must be kept separate from the application and, where feasible, from the underwriting process. In other words, the requirement creates a separate bureaucracy within the financial institution that cannot be integrated with lending operations. This is especially inefficient, and may not be feasible in organizations that are too small to accommodate fire wall structures. Further, data collected by financial institutions and subsequently made public by the CFPB could compromise the privacy of applicants in small communities where an applicant's identity may be easily deduced, despite the suppression of personally identifying information.

Repeal of Section 1071 was included in the Too-Big-To-Fail Act (113th Congress), introduced by Senator David Vitter and Ranking Member Sherrod Brown. It is also included in a House bill in the current Congress, the Right to Lend Act (H.R. 1766), introduced by Rep. Robert Pittenger. ICBA strongly encourages this committee to consider legislation to repeal Section 1071.

General Comments the CFPB's Use of Its Rulemaking Authority

ICBA strongly supports the CFPB's use of its statutory authority to exempt or provide tiered regulatory requirements for community banks and community bank products and services. Any regulations should directly target identified problems with financial products and services while allowing community banks to continue to provide responsible products and services free from undue regulatory burden.

In addition, ICBA is concerned that the CFPB's reliance on enforcement actions, rather than authoritative written guidance, creates compliance uncertainty for community banks that threatens to reduce access to credit and other financial products and services. The CFPB should work with community banks and other responsible industry participants to develop authoritative written guidance regarding problematic practices and regulatory expectations.

ICBA Views on Current Rulemakings

Small Dollar Loans

ICBA urges the CFPB to pursue its proposed rulemaking regarding payday, vehicle title, and similar loans in a way that would not impose significant new regulatory burdens and prevent community banks from offering many of their customers much needed access to credit through personal loans. Community banks do not engage in abusive lending practices, such as steering consumers to unaffordable loan products. Community banks also have close relationships with their customers and, consequently, are familiar with their financial condition, history and ability to repay loans.

ICBA urges the CFPB to consider the differences between the lending practices and unique circumstances of community banks and other participants—who may not be as vested in their customers' financial success—in the personal loan marketplace. A "one size fits all" approach would force many community banks from the market, thereby reducing consumer choice and depriving many consumers of safe and sustainable access to credit. The CFPB's final rule must be crafted to ensure that community banks have the needed flexibility to continue making character and relationship-based personal loans.

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TILA/RESPA Integrated Disclosures

ICBA continues to be concerned about new mortgage disclosure and timing requirements under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). Community banks and other lenders have experienced major difficulties implementing both the January 2014 mortgage rules and the TILA RESPA Integrated Disclosure (TRID) rule due to many vendors' inability to roll out software upgrades in a timely manner. CFPB must monitor vendors closely as banks implement HMDA to ensure that the marketplace is not disrupted. In addition, ICBA urges the CFPB to provide authoritative guidance and adjustments to the rule where warranted.

Forthcoming Overdraft Services Rulemaking

As the CFPB prepares to initiate an overdraft services rulemaking sometime in 2016, we urge the agency not to impose new requirements that would inhibit community banks from continuing to provide a service that is highly valued by consumers.

Overly prescriptive regulation of overdraft protection services will hurt consumers. In particular, price controls or caps on the number of overdraft fees a bank may assess on a consumer would cause banks to reject more transactions that would create a negative balance in an account. The consequences of a rejected transaction – merchant returned check fees, possible credit report and check verification system blemishes, collections hassle, embarrassment, and the potential reliance on payday lenders – are far worse for a consumer than incurring an overdraft fee.

Thank you again for convening this important hearing and for the opportunity to present the community bank perspective on the critical issues noted above.

ConsumersUnion

POLICY & ACTION FROM CONSUMER REPORTS

April 7, 2016

The Honorable Richard Shelby
304 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
713 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Shelby and Ranking Member Brown:

Consumers Union, the policy and advocacy arm of Consumer Reports is a staunch and ardent supporter of the Consumer Financial Protection Bureau (CFPB). We respectfully oppose any efforts to undermine, weaken or otherwise cripple its ability to carry out its mission. The CFPB must be allowed to continue its work unhampered by attempts to change its structure, its mission or its ability to enact needed regulatory reforms.

The CFPB is the only federal agency whose sole mission is to protect consumers from harmful financial products, unfair practices and unscrupulous actors. Since 2011, it has done much to police the financial market place. To highlight a few of its accomplishments:

- Approximately 25.5 million consumers will receive $11.2 billion in relief because of the CFPB's enforcement actions;
- Over 1.9 million consumers will received $295 million in relief because of the CFPB supervisory action;
- The CFPB has received and helped resolve over 830,000 consumer complaints since February 2016;
- Victims of robo-signing scams in debt collection lawsuits will be refunded $14 million;
- A buy-here-pay-here auto dealer was ordered to pay $700,000 in restitution to consumers harmed by abusive auto financing schemes; and
- The CFPB has finalized numerous mortgage rules that protect consumers from predatory lending practices and require better disclosures.

While the CFPB has done much to protect consumers in the financial market place, much more needs to be done. The CFPB's regulatory agenda for the next two years includes many needed reforms that will protect all consumers especially those most vulnerable -- low income and minority consumers and their communities. It is essential that the CFPB be allowed to continue its work. In particular,

- The CFPB needs clarify existing regulations to ensure that prepaid card users have full protection under the Electronic Fund Transfer Act, including limited liability for unauthorized transactions and the right of re-credit for funds that go missing.

- Education debt is crippling our economy reaching an all-time high of over $1.3 trillion dollars. The CFPB should work with other agencies to develop rules to address problems students are experiencing with loan servicers who provide borrower's with inaccurate or incomplete loan information and do little to help borrowers with flexible repayment plans, loan deferment, and loan forgiveness options.

- The CFPB needs to move forward, without delay, on rules to stop banks and other financial services companies from imposing forced arbitration in their consumer contracts that shield them from accountability to consumers under the law.

- Credit scores and credit reports affect who can get credit and at what price, and may impact a consumer's ability to get employment. While lenders are required to follow reasonable procedures to assure the accuracy of credit reports, many reports nonetheless contain far too many errors. We urge the CFPB developed rules that would make credit reports more accurate, require credit reporting agencies and furnishers to conduct meaningful investigations when consumers file disputes, and make credit scores purchased by consumers more reliable.

- There are several reforms of the overdraft product that would protect consumers from unwarranted fees and unfair overdraft practices. The CFPB needs to adopt rules that would require opt-in for all forms of overdraft not just debit and ATM. Banks should be prohibited from engaging in deceptive marketing practices that dupe consumers into enrolling in these programs and should not be allowed to re-order how transactions are processed to boost overdraft fees.

- Payday, car-title, and high-cost installment loans, with annual rates of 300% or more create a cycle of never ending debt for consumers. We urge the CFPB to develop strong small dollar loan rules that would require transparency and sound underwriting practices that would make lenders determine the borrower's ability to repay the loan after consideration of income and expenses.

The CFPB's work has just begun. More is needed to make the financial marketplace safe and fairer for all consumers. Consumers Union respectfully opposes efforts to undermine or weaken CFPB's authority or regulatory reach.

If you have any questions, please contact Pamela Banks, Senior Policy Counsel, at (202)-263-4549 or pbanks@consumer.org.

Sincerely,

Pamela Banks

Pamela Banks
Senior Policy Counsel
Consumers Union

CREDO action colorofchange.org

AFR Americans for Financial Reform   Other98

PUBLICCITIZEN   NCLR NATIONAL COUNCIL OF LA RAZA   NATIONAL PEOPLE'S ACTION

Senator Richard Shelby, Chairman
Senator Sherrod Brown, Ranking Member
Committee on Banking, Housing and Urban Development

April 7, 2016

Dear Senators Shelby and Brown,

We are writing to express our strong support for the work of the Consumer Financial Protection Bureau (CFPB). Our organizations speak for countless millions of Americans who are glad such an agency exists, grateful for what it has done to bring basic standards of fair play to the financial marketplace, and committed to its continued ability to carry out its crucially important mission.

Many lawmakers, including members of your committee, have attacked the Consumer Bureau and called for the enactment of bills and amendments that would gravely weaken it. In doing so, they ignore the will of the vast majority of voters, across party lines. To underscore that fact, we are delivering a flash drive containing petitions in which hundreds of thousands of Americans urge Congress to stand up for the CFPB and oppose efforts to weaken its authority and effectiveness by, for example, turning it from a director-led agency into a commission. These petitions were initiated by CREDO Action, ColorOfChange, Americans for Financial Reform, Other 98, Public Citizen, National Council of LaRaza, and National People's Action.

(The petition files on the flash drive contain 462,000 signatures. We can't give a precise figure on the total number of signers, because we have not attempted to account for people who signed more than one petition.)

In addition to the petitions contained on the flash drive, more than 200,000 people have signed petitions urging Congress not to try to undermine the CFPB through riders to spending bills or other "must-pass" legislation; and tens of thousands of people have signed petitions appealing to lawmakers to back the Consumer Bureau in its specific efforts to rein in the abuses of triple-digit interest, debt-trap consumer lenders; combat auto-lending practices that systematically lead to the overcharging of black and Hispanic borrowers; and end the used of forced arbitration clauses to strip consumers of their ability to take companies to court.

Thank you for your consideration.

Sincerely,

Americans for Financial Reform
ColorOfChange
CREDO Action
National Council of LaRaza
National People's Action
Other 98
Public Citizen

AFR Americans for Financial Reform

April 5, 2016

Dear Senator,

Americans for Financial Reform (AFR)[1] appreciates the opportunity to provide this statement for the record of the Senate Committee on Banking, Housing on Urban Affairs regarding the Effects of Consumer Finance Regulations. It is less than five years since the Consumer Financial Protection Bureau (CFPB) was established. Since then, the CFPB has fulfilled Congress's vision of a federal agency with "the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced."[2] Through its rulemaking, supervision, enforcement, and consumer education and complaint system, the CFPB has made enormous strides in ensuring that the financial marketplace is fair to consumers. Its rules and supervision have already begun to reform the industry's conduct, making banks and other financial services companies more attentive to consumers' rights.

In this statement, AFR focuses in particular the CFPB's enforcement successes, the need to retain its statutory structure, and some of the CFPB's priorities in the coming years. AFR members are submitting statements for the record on issues we did not address in this short statement, and we ask the Committee to give those statements full consideration.

Enforcement

Director Cordray has been straightforward in stating that "the Consumer Bureau fully intends to be the 'cop on the beat' that was envisioned when the financial reform law was enacted."[3] Through its enforcement actions, the CFPB has lived up to those words, resolving more than 80 cases and securing $11.2 billion in relief for consumers - more than four times what the Bureau has spent on all functions over the course of its existence. These settlements have also yielded more than $375 million in fines.

A few examples illustrate the breadth of the CFPB's successes:

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[1] AFR is a coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of AFR member groups is attached to this letter.

[2] Joint Explanatory Statement of the [Dodd-Frank] Committee of Conference, at 874 (June 29, 2010), http://www.llsdc.org/assets/DoddFrankdocs/dodd-frank-act-jt-expl-statement.pdf

[3] Richard Cordray, *Prepared Remarks of CFPB Director Richard Cordray at the National Association of Attorneys General* (Feb. 23, 2015), http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-national-association-of-attorneys-general-2/.

- Securing $1.8 billion in refunds for the credit card customers of Citibank,[4] Bank of America,[5] and JP Morgan Chase[6] for worthless add-on products like fraud monitoring services and deceptively-marketed insurance.
- Entering into a $2.1 billion settlement with Ocwen for systematically overcharging homeowners by misapplying their payments and adding unauthorized fees, and by misleading homeowners and courts in the foreclosure process.[7]
- Securing a $530 million default judgment against Corinthian,[8] a for-profit school that swindled students into paying for worthless degrees and then engaged in illegal debt collection in its private student loan program, as well as $480 million in debt relief for affected students.[9]
- Putting an end to the unfair practices of dozens of other companies in other cases. To take one example, in December 2015, the CFPB stopped CarHop from continuing to convey inaccurate information to credit reporting agencies; CarHop also agreed to pay a $6,465,000 civil penalty in recognition of the 84,000 customers already been harmed by its false reports.[10]

In the face of these law enforcement successes and their tangible results for consumers, the CFPB's critics assert that the Bureau is engaging in "rulemaking by enforcement." This is simply a pejorative label for routine agency practice. For more than a century, Congress has recognized the necessity of having agencies make judgments on a case-by-case basis, particularly in stopping unfairness in the marketplace. As the legislators who passed the Federal Trade Commission Act in 1914 wrote, "[i]t is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again."[11]

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[4] http://www.consumerfinance.gov/newsroom/cfpb-orders-citibank-to-pay-700-million-in-consumer-relief-for-illegal-credit-card-practices/

[5] http://www.consumerfinance.gov/newsroom/cfpb-orders-bank-of-america-to-pay-727-million-in-consumer-relief-for-illegal-credit-card-practices/

[6] http://www.consumerfinance.gov/newsroom/cfpb-orders-chase-and-jpmorgan-chase-to-pay-309-million-refund-for-illegal-credit-card-practices/

[7] http://www.consumerfinance.gov/newsroom/cfpb-state-authorities-order-ocwen-to-provide-2-billion-in-relief-to-homeowners-for-servicing-wrongs/

[8] http://www.consumerfinance.gov/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/

[9] http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/

[10] http://www.consumerfinance.gov/newsroom/cfpb-orders-carhop-to-pay-6-4-million-penalty-for-jeopardizing-consumers-credit/

[11] House Report No. 1142, 63d Congress, 2d Sess., at 19 (Sept. 4, 1914) *cited with approval FTC v. R. F. Keppel & Bro., Inc.*, 291 U.S. 304, 312 n.2 (1934).

Similarly, the Supreme Court has long recognized that case-by-case adjudication is entirely appropriate and necessary for an administrative agency:

> Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity.
>
> In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.[12]

At bottom, objection to case-by-case development of the law is an objection to the entire common law system that forms the foundation of Anglo-American law. The feigned outrage at this ordinary and longstanding practice is simply a pretext to complain about the CFPB's success in fulfilling its mission to enforce consumer finance laws.

Structure

The CFPB's success has confirmed the wisdom of creating an agency accountable to a single Director with the independent funding to shield financial regulation from undue politicization.

Vesting a single director with responsibility for the Bureau's functioning facilitates effective decision-making and ensures a clear point of responsibility for the CFPB's performance. A single-director structure for a financial regulator is nothing new: the Office of the Comptroller of the Currency, the regulator of national banks, has been headed by a single official since it was

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[12] *SEC v. Chenery Corp.*, 332 US 194, 201-202 (1947); *accord NLRB v. Bell Aerospace Co.*, 416 US 267 (1974); *Conference Group, LLC v. FCC*, 720 F. 3d 957 (D.C. Cir. 2013) (Rogers, J.) ("The Commission's decision involved a statutory interpretation that could be rendered in the form of an adjudication, not only in a rulemaking. . . . Although the Commission stated its decision would apply to 'similarly situated' providers, that is true of all precedents.").

established in 1863.[13] Since Congress established the Federal Housing Finance Agency in 2008, that agency has also been headed by a single director who can be removed only for cause.[14]

The CFPB nevertheless faces many structural checks on its authority. Its rulemakings are subject to notice-and-comment procedures that provide opportunity for input by the affected industries, the public, and elected officials, and its rules may be challenged in court under the Administrative Procedures Act. Similarly, enforcement actions may be appealed to the courts. Unlike other bank regulators, the CFPB's decisions are also subject to veto by the members of the Financial Stability Oversight Council,[15] and CFPB rulemakings that impact small businesses are initially reviewed by a panel of affected small businesses.[16] The CFPB is also subject to extensive oversight through semi-annual testimony before each house of Congress's committee of jurisdiction, annual Government Accountability Office audits, and frequent reports by the Inspector General.

Independent funding is also a common characteristic of the federal bank regulatory agencies. Like the other federal bank regulators – the OCC, the FDIC, and the Federal Reserve – the CFPB does not receive appropriations. None of these agencies have ever been appropriated agencies. While other bank regulators have mechanisms to increase their own independent funding, only the CFPB's budget is capped by Congress. The CFPB has proven itself prudent in the use of this funding. In FY2015, the CFPB spent $524.4 million, 17% less than its Congressionally-authorized cap of $631.7 million and 49% less than the $1.04 billion spent by the OCC.

Future Policy Priorities

The CFPB must continue to move forward on many pressing priorities. Despite the enormously successful initiatives of the past four-and-a-half years, consumers continue to face unfair, deceptive, and abusive practices when accessing financial services. To that end, AFR continues to urge the CFPB to move forward on each of the nine priorities it has identified for the next two years[17] as well as in a number of other areas. We discuss several, but not all, of these priorities below.

Payday lending. AFR hopes and expects that the CFPB will soon propose a strong rule requiring all high-cost lenders, including payday, car title and installment lenders to confirm a borrower's ability to repay in light of their income and expenses without defaulting on other bills and without taking out a new loan. This work is vital to stopping the worst abuses in predatory small dollar lending and the debt trap that has ensnared millions of Americans.

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[13] 12 U.S.C. § 1(b)(1).

[14] 12 U.S.C. § 5491(b).

[15] 12 U.S.C. § 5513(a).

[16] 5 U.S.C. § 601 *et seq.*

[17] CFPB Fact Sheet, Policy priorities over the next two years (Feb. 25, 2016), http://files.consumerfinance.gov/f/201602_cfpb_policy-priorities-over-the-next-two-years.pdf.

Arbitration. AFR urges the CFPB to propose a strong rule banning or restricting forced arbitration. Lenders and financial servicers use mandatory arbitration clauses to block consumers from joining together to seek compensation; these clauses typically force wronged consumers to individually bring their claims against large companies in a private arbitration system that is shaped by companies to favor their own interests. The empirical findings in the CFPB's comprehensive report on the use of arbitration clauses unequivocally demonstrate that forced arbitration leaves consumers effectively powerless to hold companies accountable.

Debt collection. AFR is encouraged that the CFPB has announced its intention to initiate a rulemaking process on debt collection. The CFPB receives more complaints about debt collection than any other issue, and it is vital that continued abuses be addressed by the Bureau.

Student lending. AFR welcomes the CFPB's attention to the student loan servicing market, including its ongoing collection of debt collection and private student loans. The CFPB recently solicited feedback from students on their student loan-related problems in the form of a Request for Information (RFI) on servicing,[18] which received more than 30,000 comments. The information collected through this RFI was analyzed in a September report that found student loans are more distressed than other types of consumer debt, with more than 1-in-4 student loan borrowers now delinquent or in default on a student loan.[19] We urge the CFPB to use the lessons it learned from its September servicing report to inform future action to address ongoing failures in student loan servicing.

Mortgage servicing. AFR looks forward to a final CFPB rule revising its mortgage servicing standards to address ongoing problems faced by homeowners. These problems include unnecessary delays in the processing of mortgage modification requests, family members being left unable to seek mortgage modifications after inheriting a home, and homeowners negatively impacted by the transfer of a mortgage from one servicer to another. Even after these rules are instituted, the CFPB will need to address mortgage servicing issues involving the needs of borrowers with limited English proficiency and to take additional steps to maximize the number of borrowers able to access sustainable loan modifications as the housing market and policy environment change.

Collection of data on lending to small businesses. AFR is very pleased to see the CFPB identify meeting its responsibility to collect data on lending to small businesses and women- and minority-owned businesses as a top priority.[20] Small businesses are critical to job creation, and the founding of a successful small business is one of the ways for people to build wealth and get ahead. Unfortunately, small businesses – especially women- and minority-owned businesses –

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[18] CFPB, *Tell us about your student debt stress* (May 14, 2015), http://www.consumerfinance.gov/blog/tell-us-about-your-student-debt-stress/.

[19] CFPB, *Student Loan Servicing* (Sept. 29, 2015), http://www.consumerfinance.gov/reports/student-loan-servicing/.

[20] *See* 15 U.S.C. § 1691c–2.

have trouble attracting needed capital.[21] The CFPB's data collection will provided a valuable tool to address this problem, and we hope that the CFPB will move quickly to establish this statutorily-required system.

Data availability. AFR has been impressed by the success of the CFPB's complaint database. In particular, AFR appreciates that consumer complaints are now available for public review with personally identifiable information redacted. We hope that the CFPB will also take steps to ensure the public disclosure of the maximum amount of information from both the Home Mortgage Disclosure Act database and the forthcoming small business lending database. We believe that it is possible to combine expansive disclosure with protecting borrowers' legitimate privacy interests.

* * *

Thank you for the opportunity to express AFR's views on the success of the CFPB. If you have additional questions on these issues, please contact Brian Simmonds Marshall, AFR's Policy Counsel, at brian@ourfinancialsecurity.org or 202-684-2974.

Sincerely,

Americans for Financial Reform

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America's Future

[21] Karen Gordon Mills & Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, HARVARD BUSINESS SCHOOL WORKING PAPER 15-004, at 58 (July 22, 2014), http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf.

- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International
- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America

- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction

- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY

- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending

- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Phoenix AZ
- UNET

ALLIANCE FOR A JUST SOCIETY

April 4, 2016

The Honorable Senator Richard Shelby, Chairman
The Honorable Senator Sherrod Brown, Ranking Member
U.S. Senate Committee on Banking, Housing, & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Brown,

On behalf of the Alliance for a Just Society, I am writing to submit this statement for the record of the Committee's April 5 hearing titled "Assessing the Effects of Consumer Finance Regulations."

The Alliance is a network of state-based community organizations that work with people in low-income communities across the country to advance economic opportunity and racial equity. Many of our affiliates' members are affected by the escalating crisis of family debt (including medical debt, mortgage debt, student loan debt, municipal fines/fees, and more). Because of this, we are highly concerned with the prevalence of unfair, deceptive, and abusive practices in the debt collection industry, and we believe the Consumer Financial Protection Bureau should act promptly to establish new rules to protect consumers from collection-related abuses.

The Alliance recently conducted a study of debt collection-related complaints published in the CFPB complaint database. In the two-year sample we examined, covering July 2013 to August 2015, there were nearly 75,000 published debt collection complaints. This study highlighted consumers' experiences of hardship and harassment at the hands of debt collectors, and underscored the need to develop new rules not only for third-party collectors and debt buyers, but also for creditors collecting debts. Please see the attached summary fact sheet and full report for more details on our research findings and recommendations for reforms to protect consumers from debt collection abuses.

While we know some industry interests are intent on undermining the ability of the CFPB to protect consumers, we hope the committee's proceedings will explore the continuing threats of unfair and deceptive financial industry practices facing consumers, both in debt collection and in other areas, and the important role of the CFPB in curbing abusive practices that harm families, communities, and our economy.

Sincerely,

LeeAnn Hall

LeeAnn Hall
Alliance Executive Director

ALLIANCE FOR A JUST SOCIETY

CONTINUING ABUSES BY DEBT COLLECTORS

We recently conducted an analysis of debt collection-related complaints published in the CFPB complaint database. In the two-year sample we examined, covering July 2013 to August 2015, there were nearly 75,000 published debt collection complaints.

The breakdown of collection-related complaints by primary issue was as follows:

- 42 percent were about continued attempts to collect debts consumers said they didn't owe;
- 19 percent were about collectors' communication tactics;
- 17 percent were about disclosures and verification of debts;
- 8 percent were about false statements or representations;
- 8 percent were about improper contact or sharing of information; and
- 7 percent were about a collector taking or threatening an illegal action.

The stories captured in the consumer complaint narratives are compelling. The following excerpts speak to the hardships consumers have suffered:

- A consumer wrote about PRA Group: "A company called Portfolio Recovery has done all of these things: contacted family in other states, contacted employer, threatened me, calls multiple times a day from different numbers, won't tell me what this is for, etc. ... FOR SEVERAL YEARS!!!! Please stop them."
- A consumer from Florida wrote about Encore Capital Group: "I have been receiving numerous calls from [Encore subsidiary] Midland Credit. They are looking for someone else, not me, for over a month. Sometimes it is automated and they just ring the phone; I called them back XXXX times and asked them to take off my number – calls keep coming. Today I spoke to a person that said he would remove it from the automated calls and now the manual calls have begun."
- A consumer from Florida wrote about Navient: "I am writing on behalf of my XXXX year old XXXX. She is paying on her grandson's XXXX XXXX XXXX loan, however they call her day and night requesting that she pay it off in full or they demand a very large payment. They threaten her with foreclosure and lawsuits. She pays monthly and they still call, they even call her on holidays. She asks them to stop calling and has put it in writing and the harassing calls continue. They've told her they'll call whenever they want and will continue until she pays off the loan. These calls are making her XXXX and I need to know what we can do to stop this harassment?"
- A consumer from Colorado wrote about Dynamic Recovery Solutions: "Dynamic Recovery Solutions is contacting myself and my husband daily, with very threatening attitudes. I have received a letter in the mail also. This is not my debt, I do not owe this money and they will not leave us alone."

For more information, see full report at: http://allianceforajustsociety.org/2016/01/debt-collectors-report/

ALLIANCE
FOR A JUST SOCIETY

SIGNIFICANT ABUSES BY CREDITORS COLLECTING DEBTS

In our analysis of collection-related complaints in the CFPB database, we looked at the 15 companies that received the most complaints related to debt collection activities. While debt buyers took the top two slots, it's important to note that six out of the 15 companies receiving the most collection-related complaints were original creditors (the list included many of the biggest banks). *The high incidence of creditors on this list underscores the need to develop new rules for creditors collecting debts.*

Examining the breakdown of complaints by type for creditors, looking at Citigroup as an example, we found in a sample of more than 1,500 complaints:

- 34% were about continued attempts to collect debts consumers said they didn't owe;
- another 31% were about communication tactics;
- 13% were about disclosure and verification issues; 9% about improper contact or sharing of information; 7% about false statements; and 6% about taking or threatening illegal actions.

The consumer complaint narratives underscore that consumers' experiences with creditors can be just as harrowing as with third-party collectors. For example:

- A consumer from South Dakota wrote about Capital One: "This company calls me repeatedly throughout the day, every day of the week. From morning until night. They have never left a message. They use multiple numbers to call me from. It interrupts me at work. It interrupts me at home while I care for my young son... They call XXXX times a day for months now."
- A consumer from Texas wrote about Citigroup: "Letter sent to me pertaining to my DEAD husband's account. My husband died on XXXX XXXX, 1991 (almost XXXX years ago). I believe the account was paid off, but I might be wrong. But I do believe there is a statute of limitations with debt collections. I would consider XXXX years within that limit..."
- A consumer from Washington wrote about Wells Fargo: "My wife and I have been getting harassing phone calls on our cell phones and at work about a debt we know nothing about. (They called her XXXX in the last five days at work and told her manager she would be served papers at work when she returned.) They are claiming we owe a debt to Wells Fargo from 2005 (well past the six-year statute of limitations in Washington state). They say we are going to be sued and that her wages will be garnished."
- A consumer from Washington wrote about Bank of America: "An automatic call placed many times from XXXX states that there is fraudulent activity associated with my name and Social Security number. To avoid XXXX charges being filed against me, they then give me a case number of XXXX and a contact number XXXX. When calling the XXXX number, the operator tells me that I will be sued if I don't come to an agreement even though it is a time-barred debt. They continue to call even after I tell them the debt is not valid."

For more information, see full report at: http://allianceforajustsociety.org/2016/01/debt-collectors-report/

UNFAIR DECEPTIVE & ABUSIVE

Debt Collectors Profit from Aggressive Tactics

PROFILES OF COMPANIES WITH THE MOST DEBT COLLECTION COMPLAINTS IN THE CFPB CONSUMER COMPLAINT DATABASE

ALLIANCE FOR A JUST SOCIETY

JANUARY 2016

ALLIANCE FOR A JUST SOCIETY TAKING ACTION, MAKING CHANGE

The Alliance for a Just Society's mission is to execute local, state and national campaigns and build strong affiliate organizations and partnerships that address economic, racial, and social inequities.

▶ www.allianceforajustsociety.org

COVER ART

The text used to create the word cloud were taken directly from complaints filed with the Consumer Financial Protection Bureau.

CONTRIBUTORS

Sam Blair, Ben Henry, Jill Reese and Kristofer Bitney, Alliance for a Just Society.

ACKNOWLEDGEMENTS

The Alliance for a Just Society wishes to acknowledge the contributions made to this report by: Lisa Donner, Americans for Financial Reform; Katy Griffith Boswell, USAction/USAction Education Fund; April Kuehnhoff, National Consumer Law Center; Liz Ryan Murray, National People's Action; Margot Saunders, National Consumer Law Center; and Lisa Stifler, Center for Responsible Lending.

UNFAIR DECEPTIVE & ABUSIVE

Debt Collectors Profit from Aggressive Tactics

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Introduction

In November 2013, the Consumer Financial Protection Bureau (CFPB) released an advance notice of proposed rulemaking signaling that it would consider whether new rules are warranted to protect consumers from unfair, deceptive and abusive debt collection practices.[1] The Bureau received over 23,000 comments in response.[2]

As part of this process, the Bureau is also conducting a survey of thousands of consumers to gather input on their experiences with debt collectors as part of its pre-rulemaking process. Pre-rule activities, including the expected convening of a Small Business Advocacy Review panel meeting under the Small Business Regulatory Enforcement Fairness Act (SBREFA), are anticipated to continue at least through February 2016.[3]

Meanwhile, the CFPB also has been accepting consumer complaints about debt collection practices since July 2013 and began making details of many of these complaints publicly available through its consumer complaint database starting in November 2013.[4,5] As of August 11, 2015, the database contained records for 74,376 debt collection-related complaints. (This number does not reflect the total number of complaints submitted, as the CFPB excludes many complaints in adherence to its privacy policy.)

This report examines the share of Americans affected by debt collection issues, trends in the debt collection industry, and patterns in the collections-related complaints in the CFPB complaint database. The report contains detailed profiles of the 15 companies with the most debt collection-related complaints filed against them in the CFPB complaint database (these companies include a mix of debt buyers, third-party collection agencies, and original creditors). The report concludes with a series of recommendations for the debt collection rulemaking.

Background

PREVALENCE OF DEBTS IN COLLECTIONS ACROSS U.S. AND IN STATES

Practices in the debt collection industry have implications for a surprisingly large share of the U.S. population. According to the Urban Institute's 2014 study *Delinquent Debt in America*, roughly 77 million Americans, or 35 percent of adults with a credit file, have a report of debt in collections. The average amount in collections is $5,178 — more than four months' wages for a full-time worker earning the federal minimum wage.[6]

The share of people with debts reported in collections is even higher in some states, the Urban Institute study found. In Alabama, Arkansas, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Texas, and West Virginia, the share of adults with debt in collections tops 40 percent.[7]

Of the 100 largest Metropolitan Statistical Areas (MSAs) in the U.S., more than a quarter have shares

CATEGORIES OF DEBT COLLECTORS

There are generally three types of entities that collect payments on debts.

- Original creditors: These companies make loans and extend credit direct to consumers (for example, a bank or credit card company). Original creditors typically have internal debt collection departments that work to collect payments on the debt they issue.
- Third-party debt collectors: Sometimes original creditors contract with third-party debt collectors to collect payments from consumers. Third-party debt collectors typically charge fees as a percentage of the debts they collect.
- Debt buyers: Original creditors sometimes sell portfolios of uncollected debts to debt buyers. Debt buyers purchase debts firsthand from original creditors or secondhand from other debt buyers. These companies then use their own internal collections and legal teams to seek payments from consumers.

Note: These categories are not mutually exclusive — original creditors sometimes buy debts and collect on them, and debt buyers sometimes hire third-party debt collectors — but the categories are useful for understanding companies' primary operations.

of their adult populations with debt in collections exceeding 40 percent. McAllen, Texas, has the highest share at 52 percent.[8]

While debt collection practices impact a broad swath of Americans, evidence suggests increases in aggressive collection practices — in particular, the rise in debt collection lawsuits and resulting court judgments against consumers — disproportionately impact communities of color. A recent exposé by *Pro Publica* found: "Our analysis of five years of court judgments from three metropolitan areas — St. Louis, Chicago and Newark — showed that even accounting for income, the rate of judgments was twice as high in mostly black neighborhoods as it was in mostly white ones."[9]

ABOUT THE U.S. DEBT COLLECTION INDUSTRY

INDUSTRY GROWTH AND SCALE

Debt collection is a $13 billion industry in the U.S.[10] More than 50 percent of industry revenues comes from third-party collections agencies, while close to one-third come from debt buyers.[11]

The debt buying industry, in particular, has grown rapidly since its inception during the Savings & Loan crisis of the late 1980s and early 1990s. Today, two of the three largest debt collectors are primarily debt buyers, and these companies have experienced explosive growth:

- Encore Capital Group increased its revenues from $381 million in 2010 to nearly $1.1 billion in 2014. Over that period, Encore doubled its profits from $49 million to $104 million.[12]
- PRA Group increased its revenues from $373 million in 2010 to $881 million in 2014. Over that time, PRA more than doubled its profits from $73 million to $177 million (with a profit margin of 20 percent in 2014).[13]

LEGAL AND ENFORCEMENT FRAMEWORKS

Third-party debt collectors and debt buyers are governed under federal law by the Fair Debt Collection Practices Act (FDCPA). This law was enacted in 1977 to "eliminate abusive debt collection practices by debt collectors, to [ensure] that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[14]

MARKET SHARE, DEBT COLLECTIONS INDUSTRY, 2014

Rank	Company	Percentage of Total Market Revenue
1	Expert Global Solutions, Inc.	8.8%
2	Encore Capital Group, Inc.	7.5%
3	PRA Group, Inc.	6.9%

Source: IBISWorld Debt Collection Agencies in the U.S. Industry Report, April 2015

The FDCPA prohibits debt collectors from engaging in "unfair, deceptive, and abusive acts and practices" in collecting debts. Its definition of "debt collectors" encompasses third-party debt collectors and debt buyers, but it does not include original creditors.[15] The Consumer Financial Protection Bureau (CFPB), created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Federal Trade Commission (FTC) are responsible for enforcement of the FDCPA.

In addition, Section 1031 of the Dodd-Frank Act gives the CFPB direct rulemaking and enforcement authority to protect consumers from unfair, deceptive, or abusive acts or practices (or "UDAAP" authority) in connection with consumer financial products and services. Debt collection activities fall within the CFPB's UDAAP authority, and the CFPB has already taken a number of enforcement actions against companies it determined were engaging in unfair, deceptive or abusive debt collection activities.

According to the CFPB's March 2015 annual report on debt collection issues, in 2014, "the CFPB and the FTC provided almost $700 million in relief to consumers who were subject to illegal collections practices; the CFPB collected $13 million in fines, and took seven enforcement actions involving egregious debt collection violations; the FTC's enforcement actions resulted in 47 businesses and individuals being banned from the debt collection business."[16]

Both the CFPB and the FTC log consumer complaints about debt collectors who may have violated the FDCPA or other laws. The CFPB began accepting complaints in the second half of 2013. In 2014, the CFPB reported receiving 88,300 complaints related to debt collection, more than any other industry under the CFPB's purview, including a variety of financial industries.[17] Additionally, the FTC, which also receives complaints from consumers, noted that it receives more complaints about debt collection than any other industry.[19]

In November 2015, the FTC announced an unprecedented partnership with state and local law enforcement across the country as part of a "crackdown" resulting in 30 new actions taken against "rogue collectors." Offenses include attempts to collect on debts that are not actually owed and improper threats of arrest and wage garnishment.[19]

Around the time the CFPB began accepting debt collections complaints, it also announced its intention to create new rules for debt collectors. The CFPB cited several reasons for the proposal, including the need for increased information accuracy, more informed consumers and fair communication tactics.[20] The CFPB collected tens of thousands of public comments, hosted roundtable discussions, and conducted consumer and business surveys to gather input from a wide range of stakeholders. Currently the rulemaking remains in a "pre-rule" status, meaning the CFPB is still collecting information.[21]

PREVIOUSLY DOCUMENTED ISSUES

Identified patterns of problematic practices in the debt collection industry include:

- *Consumer harassment:* Debt collectors have been criticized for aggressive and harassing collection tactics. In 2013, the FTC secured a $3.2 million penalty against Expert Global Solutions, the largest debt collector in the world, for "employing harassing collection calls, disclosing consumers' debts to third parties, and continuing collection efforts without verifying debts even after consumers said they did not owe those debts."[21] A 2013 study by the FTC found that, in a sample of accounts purchased by debt buyers, only 51 percent of disputed debts were verified by the debt buyers.[22]
- *Pursuit of time-barred debt:* Debt portfolios purchased by debt buyers often include accounts for debts that are too old to show up on credit reports or to be pursued through the legal system. (The statutory limitations defining the age at which debt can no longer be pursued vary by state.) But debt buyers seeking to collect payments on time-barred debts may still threaten to sue or employ other aggressive and deceptive tactics to induce consumers to make a payment, which can "restart the clock" on the statute of limitations.[23]
- *Incomplete documentation:* When a debt buyer purchases a portfolio of accounts, information is often incomplete and documentation lacking. The FTC's 2013 study examining over 5 million accounts purchased by the largest debt buyers found that only 11 percent of reviewed accounts included the principal amount owed and only 46 percent specified the name of the original creditor. An examination of documentation at the time of purchase for 3.9 million accounts found only 12 percent of accounts included any account documents (such as account statements, terms and conditions documents, or application documents).[24]
- *Mass litigation:* One estimate claims the third largest debt collector, PRA Group Inc., was pursuing up to 1.5 million individual accounts in court at once in 2013. At that time, legal actions represented an estimated 47 percent of PRA Group's collection activities outside of bankruptcy.[25] In 2011, debt buyers filed more than 200,000 cases in New York state alone. In 2014, there were 130,000 lawsuits in Cook County, Illinois.[26] A study of 4,400 lawsuits filed in Maryland by debt collectors in 2009 and 2010 found that more than 99 percent of

The 15 companies with the most debt collection-related complaints lodged against them in the CFPB's consumer complaint database, together with individuals associated with those companies, have collectively spent hundreds of millions of dollars on federal lobbying and political contributions since 2001, according to an analysis of data from the Center for Responsive Politics.

judgments against defendants were obtained without trial and less than 2 percent of defendants had lawyers.[27]

- *Robo-signing:* Some large debt collectors have been penalized for using "robo-signing" tactics, wherein individuals sign huge numbers of court case affidavits — too many for the signers to know the details of each case — in order to increase the number of lawsuits the companies can file without hiring more people.[28]

INDUSTRY INFLUENCE

The CFPB's role in establishing rules and initiating enforcement actions to protect consumers from unfair, deceptive and abusive debt collection practices is particularly important because of the significant investments companies engaging in collection activities have made to gain influence in Congress.

The 15 companies with the most debt collection-related complaints lodged against them in the CFPB's consumer complaint database, together with individuals associated with those companies, have collectively spent hundreds of millions of dollars on federal lobbying and political contributions since 2001, according to an analysis of data from the Center for Responsive Politics.

Of the 15 companies, eight companies and/or individuals associated with those companies — which include Encore Capital Group, PRA Group, Citigroup, Capital One, JPMorgan Chase, Bank of America, Navient and Wells Fargo — have made material contributions to federal candidates and political parties since 2001, totaling a combined $94.9 million.[29]

Meanwhile, six of the 15 companies — including Encore Capital Group, Citigroup, Capital One, JPMorgan Chase, Bank of America and Wells Fargo — have reported material spending levels on federal lobbying, totaling $284.9 million since 2001.[30]

These figures constitute total political contributions and lobbying spending by these entities and associated individuals. While these sums of money were not spent entirely to further specific interests around debt collection, the figures speak to the overall influence these entities hold in Congress. As such, the aggregate figures underscore the important role of independent, agency-level rulemaking to ensure meaningful protection for consumers.

COMPLAINTS ABOUT DEBT COLLECTION PRACTICES FROM THE CFPB CONSUMER COMPLAINT DATABASE

Consumer complaints filed with the Consumer Financial Protection Bureau suggest that unfair, deceptive and abusive tactics are prevalent in the debt collection industry. This report analyzes a sample of 74,376 consumer complaints received by the Consumer Financial Protection Bureau between July 10, 2013, when the CFPB first began accepting complaints about debt collections, and August 7, 2015. The sample excludes complaints in which the complainant did not specify debt collections as the primary "product." The sample contains only those complaints made publicly available by the CFPB. (Tens of thousands of debt collections complaints are not publicly available due to requests for privacy, limited data quality and other reasons.)[31]

CONSUMER COMPLAINTS BY ISSUE AND SUB-ISSUE

The breakdown of complaints by issue and sub-issue within the database provides an illustrative picture of consumers' self-reported experiences of different types of unfair, deceptive and abusive practices. (See table, Page 5.)

Consumers' most common complaint is that they are repeatedly being requested to pay a debt they do not believe they owe: 30,905 complaints (42 percent) specify this issue. Of the complaints with "continued attempts to collect debt not owed" as their specified issue, 63 percent indicate "debt is not mine" as the sub-issue of their complaint, 27 percent state the debt was paid, 6 percent state the debt resulted from identity theft, and 4 percent state the debt was discharged in bankruptcy.

The second most common complaint relates to the communication tactics used by debt collectors: 13,966 complaints (19 percent) cite this issue. Of those, 62 percent specify "frequent or repeated calls," 19 percent state the collector threatened legal action, 8 percent relate to companies calling after being sent written notices to cease communication, 7 percent relate to companies using obscene, profane or abusive language, and 4 percent relate to collectors calling outside the hours of 8 a.m. to 9 p.m.

Third, 12,992 complaints (17 percent) relate to debt disclosures and verification of debts. Of those, 69 percent of those consumers report that debt collectors did not provide documentation believed by the consumer to be necessary for verification of the debt. Another

DEBT COLLECTION-RELATED COMPLAINTS BY COMPLAINT TYPE

Types of products identified by consumers who submitted complaints on debt collections to the CFPB between July 7, 2013 and Aug. 7, 2015.

Issue Identified	Number of Complaints	% of Total Complaints
Continued attempts collect debt not owed	30,905	42%
Communication tactics	13,966	19%
Disclosure verification of debt	12,992	17%
False statements or representation	6,077	8%
Improper contact or sharing of info	5,600	8%
Taking/threatening an illegal action	4,836	7%
Total	74,376	100%

Sub-Issue Identified	Number of Complaints	% of Total Complaints
Debt is not mine	19,375	26%
Not given enough info to verify debt	8,920	12%
Frequent or repeated calls	8,625	12%
Debt was paid	8,310	11%
Attempted to collect wrong amount	4,626	6%
Right to dispute notice not received	3,255	4%
Threatened to take legal action	2,653	4%
Talked to a third party about my debt	2,620	4%
Debt resulted from identity theft	1,950	3%
Contacted me after I asked not to	1,525	2%
Threatened to sue on too old debt	1,449	2%
Threatened arrest/jail if do not pay	1,433	2%
Contacted employer after asked not to	1,318	2%
Debt was discharged in bankruptcy	1,270	2%
Called after sent written cease of communications	1,140	2%
Used obscene/profane/abusive language	999	1%
Not disclosed as an attempt to collect	817	1%
Impersonated an attorney or official	721	1%
Sued w/o proper notification of suit	712	1%
Seized/Attempted to seize property	556	1%
Called outside of 8 a.m.-9 p.m.	549	1%
Indicated committed crime not paying	546	1%
Attempted to/collected exempt funds	488	1%
Sued where didn't live/sign for debt	198	0.3%
Indicated shouldn't respond to lawsuit	184	0.2%
Contacted me instead of my attorney	137	0.2%
Total	74,376	

Source: CFPB Consumer Complaint Database

25 percent report they did not receive a "right to dispute" notice, which is required by the FDCPA. The remaining 6 percent state the company did not disclose that the communication was an attempt to collect a debt (also required by the FDCPA).

False statements or representations are cited in 6,077 complaints (8 percent). Of these, 76 percent report attempts to collect the wrong amount of debt. Another 12 percent report collectors impersonated an attorney, law enforcement or government official. In 9 percent of these complaints, consumers report the collector indicated the consumer had committed a crime. And in 3 percent, consumers report they were told they should not respond to a lawsuit.

Consumers cite improper contact or sharing of information as the primary reason for 5,600 complaints (8 percent). Of those, 47 percent report the collector talked to a third-party about the debt. Another 27 percent indicate the collector contacted the consumer after being asked not to do so, 24 percent report the collector contacted an employer after being asked not to do so, and 2 percent report the collector contacted the consumer instead of her/his attorney.

Finally, 4,836 complaints (7 percent) relate to debt collectors taking or threatening an illegal action. Of those, 30 percent report threats to sue on time-barred debt, 30 percent report they were told they would be arrested or sent to jail if they did not pay, 15 percent report being sued without proper notification, 11 percent cite seizures or attempts to seize property, 10 percent cite collection or attempts to collect from exempt funds, and 4 percent cite attempts to sue where the consumer didn't live or sign for the debt.

The table at left summarizes the public complaint data by type of complaint.

Type of Debt	Number of Complaints	Percentage of Named Complaints
Credit card	15,524	42%
Medical	9,081	25%
Payday loan	4,542	12%
Student loan	2,978	8%
Mortgage	2,551	7%
Auto	1,941	5%
Other (phone, health club, etc.)	21,471	
Unidentified	16,288	

Source: CFPB Consumer Complaint Database

CONSUMER COMPLAINTS BY DEBT TYPE

The complaint database also includes information about the type of debt to which each complaint relates. Among the complaints identified with a single specific debt source, credit card debt is by far the most common type of debt connected to collection-related complaints. Medical debt is the second most common debt type. (See table, Page 5.)

EXCERPTS FROM COMPLAINT NARRATIVES

While the tallies of complaints by issue area and debt type are instructive, the numbers tell only part of the story. A significant share of complaints in the public database also include complaint narratives, and these narratives speak to the level of frustration consumers experience as a result of their contact with debt collection agencies.

A sampling of quotes, with identifying information redacted with "XXXX," from these narratives include:

- *"A company called Portfolio Recovery has done all of these things: contacted family in other states, contacted employer, threatened me, calls multiple times a day from different numbers, won't tell me what this is for, etc. ... FOR SEVERAL YEARS!!!! Please stop them."*
- *"They call every day XXXX times a day and I tell every single XXXX of them says they will take me off the list and they do not!!!! This is unacceptable! They are looking for XXXX and he doesn't live at this number because this number is a XXXX, which I've also said before. This disrupts the flow of my office and it must stop. XXXX of them accused me of lying and said they were going to take this XXXX guy to court if he doesn't come to the phone ... What?!"*
- *"This company calls me repeatedly throughout the day, every day of the week. From morning until night. They have never left a message. They use multiple numbers to call me from. It interrupts me at work. It interrupts me at home while I care for my young son. I have answered XXXX in the past but nobody communicated on the other line. They call XXXX times a day for months now."*
- *"Received a robocall from XXXX, saying he was going to deliver a summons in the next 24 hours and to be available with XXXX forms of ID, etc., and to call XXXX. I called. Spoke to XXXX, from XXXX XXXX XXXX, told him I dispute the debt, that it is time-barred, and that the kind of robocall they are doing is illegal. He said, 'Hey, let's resolve this now; I will make it go away for $1,900.' I told him, 'I don't have any money and they are not allowed to call that phone number any more (it's not mine).' He hung up on me. I called back asking for the company address and summons and court case number. He said it would be delivered. I told him I didn't want to wait, that I wanted the information so I could turn it over to a lawyer ASAP. He said it would be delivered by summons and hung up. The summons never came and they hang up on me when I call to ask for their info and the info on the court case they claimed they have filed ..."*
- *"I made a payment agreement around XXXX, 2014, with Allied Interstate about a non-federal private student loan that I am in default. Last month, due to hardship, I requested a month off payments. After that period they started attempting to call me. I requested not to be called since they always interrupt me while working. They debited my bank account already, thus resuming payments, yet they continue to call non-stop demanding to give me an update. Now they are harassing my domestic partner by phone XXXX XXXX, asking her personal questions about our relationship. They have no reason to call, since payments are being currently made. I do not wish to talk to them."*
- *"Letter sent to me pertaining to my DEAD husband's account. My husband died on XXXX XXXX, 1991 (almost XXXX years ago). I believe the account was paid off, but I might be wrong. But I do believe there is a statute of limitations with debt collections. I would consider XXXX years within that limit. Also, it was sent to my current address that has never been associated with my dead husband at all. I am not listed on this account at all."*

- *"I am writing on behalf of my XXXX year old XXXX. She is paying on her grandson's XXXX XXXX XXXX loan, however they call her day and night requesting that she pay it off in full or they demand a very large payment. They threaten her with foreclosure and lawsuits. She pays monthly and they still call, they even call her on holidays. She asks them to stop calling and has put it in writing and the harassing calls continue. They've told her they'll call whenever they want and will continue until she pays off the loan. These calls are making her XXXX and I need to know what we can do to stop this harassment?"*
- *"An automatic call placed many times from XXXX states that there is fraudulent activity associated with my name and Social Security number. To avoid XXXX charges being filed against me, they then give me a case number of XXXX and a contact number XXXX. When calling the XXXX number, the operator tells me that I will be sued if I don't come to an agreement even though it is a time-barred debt. They continue to call even after I tell them the debt is not valid."*
- *"My wife and I have been getting harassing phone calls on our cell phones and at work about a debt we know nothing about. (They called her XXXX in the last five days at work and told her manager she would be served papers at work when she returned.) They are claiming we owe a debt to Wells Fargo from 2005 (well past the six-year statute of limitations in Washington state). They say we are going to be sued and that her wages will be garnished."*

These excerpts from complaint narratives indicate a high level of stress. According to the psychological research literature, being in significant debt is itself a major stressor (in one study, "getting into debt beyond means of repayment" ranks as the fifth most stressful life event, next behind "immediate family member attempts suicide" and ahead of "period of homelessness," "immediate family member seriously ill," "unemployment," and "divorce"; see table, below).[32] Unfair, deceptive and abusive collection practices can only be expected to compound the stress involved.

LIFE EVENTS INVENTORY

Weightings of life event items by Cochrane and Robertson (2001), ranked in order of severity of weights.

Rank	Life event	All	16–25	26–35	36–45	46–55	Male	Female
1	Death of spouse	93.77	98	94	93	94	95	93
2	Jail sentence	90.17	93	88	91	91	92	89
3	Death of immediate family member	88.44	96	87	86	91	88	89
4	Immediate family member attempts suicide	87.45	85	86	88	89	86	89
5	**Getting into debt beyond means of repayment**	**83.86**	**82**	**79**	**86**	**87**	**82**	**86**
6	Period of homelessness (hostel or sleeping rough)	82.48	90	73	86	87	81	84
7	Immediate family member seriously ill	81.38	87	80	78	86	83	80
8	Unemployment (head of household)	81.02	77	79	76	90	82	80
9	Divorce	80.78	82	79	78	86	81	81
10	Break-up of family	80.60	86	75	79	88	81	81
11	Immediate family member sent to prison	79.52	78	77	77	86	76	83
12	Sudden and serious impairment of vision or hearing	79.38	82	73	80	85	80	79
13	Death of close friend	79.28	92	77	77	81	78	80
14	Infidelity of spouse/partner	79.23	50	78	80	79	77	81
15	Marital separation	78.25	82	75	76	84	80	77

Source: Spurgeon, A., C.A. Jackson, and J.R. Beach. "The Life Events Inventory: Re-Scaling Based on an Occupational Sample." Institute of Occupational Health, University of Birmingham. 31 Jan. 2001. Available at: http://occmed.oxfordjournals.org/content/51/4/287.full.pdf

COMPLAINTS BY COMPANY

The 15 companies most commonly mentioned in the CFPB complaint database account for a combined total of 21,464 consumer complaints. Encore Capital Group leads the complaint tally with 4,684 filed complaints. PRA Group places second with 2,216 complaints, and Enhanced Recovery Company places third with 2,016 complaints. The next five companies in the list each have more than 1,000 filed complaints, and the remainder in the top 15 each have at least 700. All 15 have at least 1 percent of total complaints.

The table on Page 9 lists the companies with the most debt collection-related complaints logged in the CFPB complaint database.

COMPLAINT CATEGORIZATION

Complaints are categorized by issues and sub-issues, as follows:

EXAMPLES OF ISSUES IDENTIFIED BY CONSUMERS IN COMPLAINTS

Communication Tactics

- Called after sent written cease of communication
- Called outside of 8 a.m.-9 p.m.
- Frequent or repeated calls
- Threatened to take legal action
- Used obscene/profane/abusive language

Continued Attempts to Collect Debt Not Owed

- Debt is not mine
- Debt resulted from identity theft
- Debt was discharged in bankruptcy
- Debt was paid

Disclosure Verification of Debt

- Not disclosed as an attempt to collect
- Not given enough info to verify debt
- Right to dispute notice not received

False Statements or Representation

- Attempted to collect wrong amount
- Impersonated an attorney or official
- Indicated committed crime not paying
- Indicated shouldn't respond to lawsuit

Improper Contact or Sharing of Info

- Contacted employer after asked not to
- Contacted me after I asked not to
- Contacted me instead of my attorney
- Talked to a third party about my debt

Taking/Threatening an Illegal Action

- Attempted to/collected exempt funds
- Seized/Attempted to seize property
- Sued without proper notification of suit
- Sued where didn't live/sign for debt
- Threatened arrest/jail if do not pay
- Threatened to sue on too old debt

NOTE ON DEBT COLLECTION COMPLAINTS

The CFPB collects thousands of consumer complaints and sends them to companies for a response. The CFPB publishes records of many of these complaints in its database for public review. Complaint filings also help inform CFPB rulemaking.[13]

For the purposes of this report, the CFPB complaint database was accessed on August 11, 2015 and records for all publicly available complaints relating to debt collection were downloaded. The dataset includes all publicly available debt collection complaints accrued between July 10, 2013, and August 7, 2015, which number 74,376. (The database goes as far back as December 1, 2011, but did not accept debt collections complaints until July 2013.)

In the following profiles, samples of complaint narratives submitted to the CFPB for the most frequently complained-about companies are republished from the complaint database. The CFPB has stripped these complaints of identifying information to protect individual identities, with redacted information presented as "XXXX." Complaints are edited only for basic grammar. When possible, we publish the CFPB's accounts of how those complaints were resolved. This report's authors, the Alliance for a Just Society and its affiliates provide no personal or legal opinion as to the accuracy of the complaints received by the CFPB and republished in this report.

Profiles of Companies with Most Consumer Complaints about Debt Collection Practices in the CFPB Complaint Database

COMPANIES WITH MOST DEBT COLLECTION COMPLAINTS IN CFPB DATABASE

CFPB debt collection complaints, accessed Aug. 11, 2015; sample includes all publicly available debt collection complaints accrued between July 10, 2013, and Aug. 7, 2015 (n = 74,376); companies listed are those with one percent or more of total complaints.

Rank	Company	Number of Complaints	Core Business
1	Encore Capital Group, Inc.	4,684	Debt Buyer
2	PRA Group, Inc.	2,216	Debt Buyer
3	Enhanced Recovery Company, LLC	2,016	Contractor
4	Citibank (subsidiary of Citigroup, Inc.)	1,553	Original Creditor
5	Expert Global Solutions, Inc.	1,463	Contractor
6	Resurgent Capital Services L.P.	1,161	Debt Buyer
7	Capital One Financial Corp.	1,145	Original Creditor
8	GE Capital Retail (now Synchrony Financial)	1,140	Original Creditor
9	Convergent Resources, Inc.	985	Contractor
10	JPMorgan Chase & Co.	952	Original Creditor
11	Allied Interstate LLC	919	Contractor
12	Bank of America Corp.	908	Original Creditor
13	Navient Corp.	842	Contractor
14	Dynamic Recovery Solutions, LLC	764	Contractor
15	Wells Fargo & Co.	716	Original Creditor

Source: CFPB Consumer Complaint Database

CONSUMER COMPLAINTS PROFILE

#1 ENCORE CAPITAL GROUP, INC.

Encore Capital Group is the nation's second-largest debt collector,[34] controlling about 7.5 percent of the debt collections market in the U.S.[35] Encore has experienced rapid growth over the past five years: between 2010 and 2014, Encore nearly tripled its annual revenues and more than doubled its profits.[36]

The CFPB has received more than twice as many debt collection-related complaints about Encore Capital Group as it has about any other company, with Encore alone responsible for more than 6 percent of all debt collections complaints in the complaint database.

PROFILE[37]

- Business type: Specialty finance company providing debt collections services for consumers and property owners across a broad range of financial assets. Portfolio purchasing and recovery.
- Headquarters: San Diego, California
- Employees: 5,400
- Subsidiaries: 108 worldwide, including in tax havens like the Cayman Islands (two companies) and Delaware (27 companies)[38]
- Stock: ECPG, NASDAQ

Total number of debt collection complaints filed with the CFPB

4,684

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	$49M	$61M	$69M	$75M	$104M
REVENUE	$381M	$467M	$556M	$773M	$1.073B
PROFIT MARGIN	13%	13%	12%	10%	10%

Source: Morningstar.com

EXECUTIVE COMPENSATION

Kenneth A. Vecchione, President and Chief Executive Officer

2010	2011	2012	2013	2014
-	–	–	$7,156,327	$5,190,334

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	1,958	42%
Disclosure verification of debt	1,009	22%
Communication tactics	770	16%
False statements or representation	433	9%
Taking/threatening an illegal action	292	6%
Improper contact or sharing of info	222	5%
Total	4,684	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"I have been receiving numerous calls from [Encore subsidiary] Midland Credit. They are looking for someone else, not me, for over a month. Sometimes it is automated and they just ring the phone; I called them back XXXX times and asked them to take off my number — calls keep coming. Today I spoke to a person that said he would remove it from the automated calls and now the manual calls have begun."

State: Florida
Date: Submitted to CFPB on March 21, 2015
Issue: Communication tactics; frequent or repeated calls
Company response to consumer: Closed with explanation

COMPANY ANALYSIS

In 2011, the state of Minnesota sued Encore Capital Group subsidiaries Midland Funding and Midland Credit Management "for allegedly using fraudulent 'robo-signed' affidavits in collection cases."[39] Minnesota Attorney General Lori Swanson stated: "Midland has perverted the justice system by filing robo-signed affidavits in court and hounding citizens for debt they don't owe."[40] In 2012, Midland settled with the state, agreeing to adjust its business practices and provide consumers with proof of debt.[41]

Similarly, the state of West Virginia sued the same two units of Encore Capital Group in March 2012, claiming "the firms used false affidavits in lawsuits and took part in fraudulent debt-collection practices."[42]

In 2012, Encore Capital Group acquired Propel Financial Services LLC, a leading purchaser of tax debt. At the time, Encore CEO Brandon Black said the acquisition would "put Encore in position to build a significant tax lien acquisition business."[43]

Encore Capital Group is known to collect on time-barred "zombie" debt — debt that is too old to show up on credit reports or to be collected through legal judgment. According to the company's 2013 SEC filings, that year Encore collected payments on debt accounts it had purchased in the 1990s.[44]

In 2013, Encore acquired Asset Acceptance Capital Corporation, which paid a $2.5 million civil penalty in 2012 to settle Federal Trade Commission charges alleging it "made a range of misrepresentations when trying to collect old debts."[45]

Also in 2013, an appeals court overturned a $5.2 million settlement in a class action lawsuit against Encore (wherein the plaintiffs alleged Encore subsidiaries used "robo-signing" tactics to file large numbers of collections lawsuits against consumers), ruling the settlement was unfair to unnamed class members.[46] The deal would have paid just $17.38 in restitution to each unnamed class member.[47]

More recently, in January 2015 Encore Capital Group settled a lawsuit initiated by New York state for "bringing improper debt collection actions against thousands of New York consumers." Encore had allegedly sued those thousands of New York consumers in order to gain default judgments for time-barred debt. As part of the settlement, Encore paid a $675,000 penalty to the state and was made to vacate 4,500 improperly obtained judgments totaling close to $18 million.[48]

In September 2015, the CFPB announced a new enforcement action after finding Encore and another debt collector "bought debts that were potentially inaccurate, lacking in documentation, or unenforceable." The CFPB further found that Encore, "without verifying the debt, ... collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents."[49] Furthermore, according to the CFPB, Encore told consumers the burden of proof was on them to disprove the debt. The CFPB levied a $10 million penalty on Encore and ordered the company to pay up to $42 million in consumer refunds and stop collection on over $125 million worth of debts. The action further required Encore to overhaul its debt collection and litigation practices.[50]

CONSUMER COMPLAINTS PROFILE

#2

PRA GROUP, INC.

PRA Group, Inc. (PRA), formerly known as Portfolio Recovery Associates, is the nation's third largest debt collector, with 6.9 percent market share. PRA Group's size can be attributed in part to its rapid growth in recent years, outpacing the growth of other entities in the expanding debt buying industry. Between 2010 and 2014, PRA Group's annual revenues increased by 236 percent and its annual profits grew by 242 percent.

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	$73M	$101M	$127M	$175M	$177M
REVENUE	$373M	$459M	$593M	$735M	$881M
PROFIT MARGIN	20%	22%	21%	24%	20%

Source: Morningstar.com

EXECUTIVE COMPENSATION

Steven D. Fredrickson, Chairman of the Board, President and Chief Executive Officer

2010	2011	2012	2013	2014
$2,508,546	$3,010,050	$3,534,981	$3,960,210	$5,606,441

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	920	42%
Communication tactics	525	24%
Disclosure verification of debt	369	17%
Improper contact or sharing of info	170	8%
False statements or representation	134	6%
Taking/threatening an illegal action	98	4%
Total	2,216	

Source: CFPB Consumer Complaint Database: between July 7, 2013 and Aug. 7, 2015

PROFILE[51]

- Business type: The purchase, collection and management of portfolios of defaulted consumer receivables. Purchases delinquent debt accounts and collects on those debts.
- Headquarters: Norfolk, Virginia
- Employees: 3,900
- Subsidiaries: 63, from Delaware to Norway[52]
- Stock: PRAA, NASDAQ

Total number of debt collection complaints filed with the CFPB

2,216

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"My XXXX died owing a credit card debt. The debt collectors say I now owe the debt. My name is not on the application for credit nor have I benefited from the credit card. The debt collectors reported it to the credit reporting corps. And it appears on my credit report as a debt I failed to pay and fraud. I am applying to refinance my home and I am being denied because of the report. I have no other blemishes on my credit report. I can't sleep with the fear of losing my home."

State: California
Date: Submitted to CFPB on May 19, 2015
Issue: Continued attempts collect debt not owed; debt is not mine
Company response to consumer: Closed with explanation

COMPANY ANALYSIS

PRA Group has obtained revenue through default judgments in lawsuits filed against consumers in the pursuit of time-barred "zombie" debt. SEC filings from 2013 reveal payments received on debt the company purchased as long ago as 1996.[53] In 2014, PRA was made to pay $300,000 in civil penalties to the state of New York as part of a settlement for its violations concerning the pursuit of time-barred debt through default court judgments. In addition, the company was made to vacate thousands of judgments that the New York Attorney General's Office called "improper."[54]

According to an estimate by the Virginian-Pilot, PRA group is pursuing legal action on 1.5 million of its accounts, and nearly half of PRA Group's collections came from legal action in late 2013.[55]

PRA Group has also been subject to legal action. A Missouri jury awarded one woman, who alleged long-term harassment, $250,000 for violations of the Fair Debt Collection Practices Act and almost $83 million in punitive damages.[56]

In September 2015, the CFPB announced a new enforcement action after finding that PRA Group, along with Encore Capital, "bought debts that were potentially inaccurate, lacking in documentation, or unenforceable." The CFPB further found that PRA Group, "without verifying the debt, ... collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents."

Likewise, PRA Group was found to have "falsely claimed an attorney had reviewed the file and a lawsuit was imminent," when, in fact, attorneys allegedly had not reviewed files and the company had not decided whether to file suit. The CFPB enforcement action required PRA Group to pay an $8 million penalty, pay up to $19 million in consumer refunds, and stop collection on over $3 million worth of debts. The action further required PRA Group to overhaul its debt collection and litigation practices.[57]

#3 ENHANCED RECOVERY COMPANY, LLC

This privately held company manages tens of millions of debtor accounts every year. According to the company, it made more than 150 million calls and sent more than 2 million letters in the first quarter of 2012 — a ratio of 75 calls for every letter sent to a customer.[58]

Enhanced Recovery Company (ERC) is the subject of 2.7 percent of all debt collections complaints logged in the CFPB complaint database, placing it third on the list of companies with the most debt collection-related complaints. More than 60 percent of complaints about ERC were for continued attempts to collect debt that consumers stated they did not owe.

PROFILE

- Business type: One of the largest third-party debt collectors in the industry. Also known as Enhanced Resource Centers.
- Headquarters: Jacksonville, Florida
- Employees: 1,000-5,000[59]
- Subsidiaries: Not publicly available
- Stock: Privately held

Total number of debt collection complaints filed with the CFPB

2,016

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

Not publicly available.

EXECUTIVE COMPENSATION

Kirk Moquin, Co-Founder & Chief Executive Officer. Compensation not publicly available.

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	1,227	61%
Disclosure verification of debt	489	24%
False statements or representation	115	6%
Communication tactics	114	6%
Improper contact or sharing of info	59	3%
Taking/threatening an illegal action	12	1%
Total	2,016	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"I received many calls from a debt collector, to the point where I had to change my phone number. This is a debt that is from 6+ years ago, which I don't have proof that I paid but in fact did pay. They have gone ahead and reported it in my credit reports. I tried calling XXXX last time in an effort to solve this issue and was threatened that if I did not pay they would contact my XXXX and contact my employer (which they repeatedly called and that's how we found out it was a false collection agency)."

State: Maryland
Date: Submitted to CFPB on March 20, 2015
Issue: False statements or representation: indicated committed crime not paying
Company response to consumer: Closed with non-monetary relief

CONSUMER COMPLAINTS PROFILE

#4

CITIGROUP, INC.

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	$10.6B	$11.1B	$7.5B	$13.7B	$7.3B
REVENUE	$86.6B	$78.4B	$70.2B	$76.4B	$76.9B
PROFIT MARGIN	12%	14%	11%	18%	10%

Source: Morningstar.com

EXECUTIVE COMPENSATION

James A. Forese, Co-President, Citi; Chief Executive Officer, Institutional Clients Group; Michael L. Corbat, Chief Executive Officer; Manuel Medina-Mora, Co-President, CEO, Global Consumer Banking and Chairman, Mexico

	2010	2011	2012	2013	2014
Forese	-	-	-	$17,536,298	$15,892,220
Corbat	$8,022,760	$10,658,652	$12,377,508	$17,558,119	$14,457,199
Medina-Mora	$10,116,895	$11,446,900	$15,131,874	$14,012,550	$10,161,014

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	527	34%
Communication tactics	489	31%
Disclosure verification of debt	195	13%
Improper contact or sharing of info	146	9%
False statements or representation	110	7%
Taking/threatening an illegal action	86	6%
Total	1,553	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

PROFILE[60]

- Business type: Diversified financial services holding company, including consumer banking and credit, corporate and investment banking, securities brokerage, trade and securities services and wealth management.
- Headquarters: New York, New York
- Employees: 241,000
- Subsidiaries: 279 worldwide, including Citibank,[61] in tax havens such as the Cayman Islands (six companies) and Delaware (95 companies)[62]
- Stock: C, NYSE

Total number of debt collection complaints filed with the CFPB

1,553

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"Letter sent to me pertaining to my DEAD husband's account. My husband died on XXXX XXXX, 1991 (almost XXXX years ago). I believe the account was paid off, but I might be wrong. But I do believe there is a statute of limitations with debt collections. I would consider XXXX years within that limit. Also, it was sent to my current address that has never been associated with my dead husband at all. I am not listed on this account at all."

State: Texas
Date: Submitted to CFPB on June 8, 2015
Issue: Communication tactics: threatened to take legal action
Company response to consumer: Closed with explanation

CONSUMER COMPLAINTS PROFILE

#5 EXPERT GLOBAL SOLUTIONS, INC.

The largest third-party debt collector in the world, Expert Global Solutions (EGS) holds an 8.8 percent market share in the U.S. debt collection industry. This private company was formed in 2012, when NCO Group merged with APAC Customer Services. EGS provides services to more than 200 of the Fortune 500 companies.[63]

FINANCIALS

	2010	2011	2012	2013	2014
REVENUE	$1.2B	$1.1B	$1.2B	$1.2B	$1.2B

Source: "IBISWorld Debt Collection Agencies in the U.S. Industry Report," IBISWorld, April 2015, p. 25.

Other information not publicly available.

EXECUTIVE COMPENSATION

Bob Segert, President and Chief Executive Officer.[67] Compensation not publicly available.

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	724	49%
Communication tactics	251	17%
Disclosure verification of debt	239	16%
False statements or representation	126	9%
Improper contact or sharing of info	82	6%
Taking/threatening an illegal action	41	3%
Total	1,463	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

PROFILE[64]

- Business type: Third-party debt collector.
- Headquarters: Plano, Texas
- Employees: More than 40,000
- Parents: EGS is a subsidiary of One Equity Partners (OEP), the private investment arm of JP Morgan Chase & Co.[65,66]
- Stock: Privately held

Total number of debt collection complaints filed with the CFPB

1,463

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"They call every day XXXX times a day and I tell every single XXXX of them says they will take me off the list and they do not!!!! This is unacceptable! They are looking for XXXX and he doesn't live at this number because this number is a XXXX, which I've also said before. This disrupts the flow of my office and it must stop. XXXX of them accused me of lying and said they were going to take this XXXX guy to court if he doesn't come to the phone ... What?!"

State: Virginia
Date: Submitted to CFPB on June 10, 2015
Issue: Continued attempts collect debt not owed; debt is not mine
Company response to consumer: Closed with explanation

COMPANY ANALYSIS

In 2013, the Federal Trade Commission secured a $3.2 million civil penalty for unlawful collection practices conducted by EGS. These practices included "harassing collection calls, disclosing consumers' debts to third parties, and continuing collection efforts without verifying debts even after consumers said they did not owe those debts."[68]

This was the largest penalty the FTC had ever levied against a third-party debt collector.[69,70] Other major regulatory enforcements against EGS include a $1.5 million settlement with the FTC in 2004 for alleged violations of the Fair Credit Reporting Act involving the reporting of account delinquency dates that were later than the actual delinquency dates;[71] a $300,000 Assurance of Voluntary Compliance agreement with the Commonwealth of Pennsylvania in 2006 for alleged unlawful business practices;[72] and a similar $575,000 Assurance of Voluntary Compliance agreement with multiple states in 2012.[73]

CONSUMER COMPLAINTS PROFILE

#6 RESURGENT CAPITAL SERVICES L.P.

FINANCIALS

Not publicly available.

EXECUTIVE COMPENSATION

Sherman Financial Group founder and Chief Executive Officer is Benjamin W. Navarro.[76] Compensation not publicly available.

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	511	44%
Disclosure verification of debt	376	32%
False statements or representation	110	9%
Taking/threatening an illegal action	78	7%
Communication tactics	51	4%
Improper contact or sharing of info	35	3%
Total	1,161	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

PROFILE[74]

- Business type: Manager and servicer of domestic and international consumer debt portfolios for credit grantors and debt buyers.
- Headquarters: Greenville, South Carolina
- Employees: Not publicly available
- Parent: Resurgent Capital Services (Resurgent) is an affiliate of Sherman Financial Group.[75]
- Stock: Privately held

Total number of debt collection complaints filed with the CFPB

1,161

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"I continue to get phone calls from a company XXXX XXXX, XXXX. They claim I have a debt from a XXXX credit card from 1998, which is in my maiden name. The debt totals $1,400. I called XXXX and this debt does not exist."

State: Pennsylvania
Date: Submitted to CFPB on April 22, 2015
Issue: Continued attempts collect debt not owed; debt is not mine
Company response to consumer: Closed with non-monetary relief

COMPANY ANALYSIS

In 2012, Resurgent and subsidiary LVNV Funding reached an agreement with the Maryland State Collection Agency Licensing Board for various alleged violations of state and federal laws, including the Fair Debt Collection Practices Act. Seeking to generate default judgments, Resurgent filed more than 27,000 cases in Maryland over the course of six years.[77] Alleged violations included filing false or misleading complaints, misrepresenting the amounts of claims and engaging in collections activities without being properly licensed. The settlement included $12.5 million in costs to Resurgent.[78]

Similarly, in 2014, Resurgent agreed to a settlement with the state of New York — part of a combined agreement costing Resurgent and another major debt buyer a combined $16 million — for allegedly seeking default court judgments on time-barred debt.[79]

CONSUMER COMPLAINTS PROFILE

#7 CAPITAL ONE FINANCIAL CORP.

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	$2.7B	$3.1B	$3.5B	$4.2B	$4.4B
REVENUE	$16.2B	$16.3B	$21.4B	$22.4B	$22.3B
PROFIT MARGIN	17%	19%	16%	19%	20%

Source: Morningstar.com

EXECUTIVE COMPENSATION

Richard D. Fairbank, Board Chair, Chief Executive Officer & President

2010	2011	2012	2013	2014
$14,859,688	$18,668,058	$22,605,374	$18,294,525	$19,606,474

Source: Morningstar.com

PROFILE[80]

- Business type: American bank holding company specializing in credit cards, home loans, auto loans, banking and savings products.
- Headquarters: McLean, Virginia
- Employees: 46,000
- Subsidiaries: Capital One Bank, National Association, and Capital One N.A.[81]
- Stock: COF, NYSE

Total number of debt collection complaints filed with the CFPB

1,145

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	404	35%
Communication tactics	260	23%
Disclosure verification of debt	208	18%
Taking/threatening an illegal action	111	10%
False statements or representation	84	7%
Improper contact or sharing of info	78	7%
Total	1,145	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"This company calls me repeatedly throughout the day, every day of the week. From morning until night, They have never left a message. They use multiple numbers to call me from. It interrupts me at work. It interrupts me at home while I care for my young son. I have answered XXXX in the past but nobody communicated on the other line. They call XXXX times a day for months now."

State: South Dakota
Date: Submitted to CFPB on June 10, 2015
Issue: Communication tactics; frequent or repeated calls
Company response to consumer: Closed with explanation

CONSUMER COMPLAINTS PROFILE

#8 SYNCHRONY FINANCIAL

PROFILE[82]

- Business type: Consumer financial services, providing a range of credit products. Formerly GE Capital Retail Finance.
- Headquarters: Stamford, Connecticut
- Employees: 1,000
- Subsidiaries: 20 worldwide, including 13 in the tax haven state of Delaware[83]
- Stock: SYF, NYSE

Total number of debt collection complaints filed with the CFPB

1,140

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

	2011	2012	2013	2014
NET INCOME (PROFIT)	$1.9B	$2.1B	$2.0B	$2.1B
REVENUE	$8.7B	$10.0B	$11.1B	$11.8B
PROFIT MARGIN	22%	21%	18%	18%

Source: Morningstar.com

EXECUTIVE COMPENSATION

Margaret M. Keane, President and Chief Executive Officer

2010	2011	2012	2013	2014
-	-	-	-	$14,783,661

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	407	36%
Communication tactics	343	30%
Disclosure verification of debt	156	14%
False statements or representation	91	8%
Improper contact or sharing of info	81	7%
Taking/threatening an illegal action	62	5%
Total	1,140	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"I [am] getting almost daily calls from this agency, threatened and tried to garnish my unemployment benefit, I am still unemployed."

State: California
Date: Submitted to CFPB on April 30, 2015
Issue: Taking/threatening an illegal action; attempted to/collected exempt funds
Company response to consumer: Closed with explanation

COMPANY ANALYSIS

In 1998, GE Capital (Synchrony Financial's predecessor) agreed to settle a $100 million class action lawsuit over its debt collections practices. The settlement involved the Federal Trade Commission and attorneys general in all 50 states.[84]

CONSUMER COMPLAINTS PROFILE

#9 CONVERGENT RESOURCES, INC.

FINANCIALS

Not publicly available.

EXECUTIVE COMPENSATION

Not publicly available.

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	645	65%
Disclosure verification of debt	153	16%
Communication tactics	82	8%
False statements or representation	55	6%
Improper contact or sharing of info	33	3%
Taking/threatening an illegal action	17	2%
Total	985	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"Sending emails, threat[en]ing to sue and add additional charges resulting in jail time, calling non-stop after XXXX."

State: Rhode Island
Date: Submitted to CFPB on June 3, 2015
Issue: Continued attempts collect debt not owed; debt is not mine
Company response to consumer: Closed with explanation

PROFILE[85]

- Business type: Third-party debt collector.
- Headquarters: Atlanta, Georgia
- Employees: 2,300
- Subsidiaries: Not publicly available
- Stock: Privately held

Total number of debt collection complaints filed with the CFPB

985

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

CONSUMER COMPLAINTS PROFILE

#10 JPMORGAN CHASE & CO. (JPM)

PROFILE[86]

- Business type: Financial holding company specializing in investment banking, financial services for consumers and small businesses, commercial banking, financial transaction processing and asset management.
- Headquarters: New York, New York
- Employees: 241,359
- Subsidiaries: 49 worldwide[87]
- Stock: JPM, NYSE

Total number of debt collection complaints filed with the CFPB

952

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	$17.4B	$19.0B	$21.3B	$17.9B	$21.8B
REVENUE	$102.7B	$97.2B	$97.0B	$96.6B	$94.2B
PROFIT MARGIN	17%	20%	22%	19%	23%

Source: Morningstar.com

EXECUTIVE COMPENSATION

James S. Dimon, Chairman of the Board and Chief Executive Officer

2010	2011	2012	2013	2014
$20,816,289	$23,105,415	$18,717,013	$11,791,833	$27,701,709

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	368	39%
Communication tactics	172	18%
Disclosure verification of debt	143	15%
Taking/threatening an illegal action	111	12%
False statements or representation	106	11%
Improper contact or sharing of info	52	5%
Total	952	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"Received a robocall from XXXX, saying he was going to deliver a summons in the next 24 hours and to be available with XXXX forms of ID, etc., and to call XXXX. I called. Spoke to XXXX, from XXXX XXXX XXXX, told him I dispute the debt, that it is time-barred, and that the kind of robocall they are doing is illegal. He said, 'Hey, let's resolve this now; I will make it go away for $1,900.' I told him, 'I don't have any money and they are not allowed to call that phone number any more (it's not mine).' He hung up on me. I called back asking for the company address and summons and court case number. He said it would be delivered. I told him I didn't want to wait, that I wanted the information so I could turn it over to a lawyer ASAP. He said it would be delivered by summons and hung up. The summons never came and they hang up on me when I call to ask for their info and the info on the court case they claimed they have filed and which I cannot find ..."

State: California
Date: Submitted to CFPB on June 8, 2015
Issue: Taking/threatening an illegal action: threatened to sue on too old debt
Company response to consumer: Closed with explanation

COMPANY ANALYSIS

In March 2013, the state of California sued JPMorgan Chase, alleging the company's in-house attorneys illegally robo-signed thousands of court documents in debt collection lawsuits. The suit also alleged JPMorgan engaged in other deceptive and abusive practices, such as claiming it had served customers with required notices of debt collection suits without actually doing so, failing to redact personal information from court filings, and asserting that people it was suing were not on active military duty without checking the validity of that assertion.

In November 2015, the California Attorney General's Office announced a proposed deal to settle this lawsuit. Under the terms of the proposal, JPMorgan will be required to pay $50 million in restitution to customers across the country, and another $50 million in penalties to the state.[39]

Meanwhile, in July 2015 JPMorgan Chase agreed to pay at least $216 million as part of a settlement with the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency and 47 states. This settlement also requires JPMorgan Chase to reform its credit card debt collection operations to prevent the recurrence of problems, including inaccurate information in customer files and the sale of inaccurate information to collection agencies.[40]

#11 ALLIED INTERSTATE LLC

FINANCIALS

Not publicly available.

EXECUTIVE COMPENSATION

Douglas J. Lewis, Chief Executive Officer and Jeff Swedberg, President. Compensation not publicly available.[91]

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	445	48%
Communication tactics	237	26%
Disclosure verification of debt	99	11%
False statements or representation	62	7%
Improper contact or sharing of info	52	6%
Taking/threatening an illegal action	24	3%
Total	919	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

PROFILE[90]

- Business type: Third-party debt collector.
- Headquarters: Minneapolis, Minnesota
- Employees: Not publicly available
- Parent: Allied Interstate is a subsidiary of iQor, Inc., a New York-based private company that operates internationally.
- Stock: Privately held

Total number of debt collection complaints filed with the CFPB

919

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"I made a payment agreement around XXXX, 2014, with Allied Interstate about a non-federal private student loan that I am in default. Last month, due to hardship, I requested a month off payments. After that period they started attempting to call me. I requested not to be called since they always interrupt me while working. They debited my bank account already, thus resuming payments, yet they continue to call non-stop demanding to give me an update. Now they are harassing my domestic partner by phone XXXX XXXX, asking her personal questions about our relationship. They have no reason to call, since payments are being currently made. I do not wish to talk to them."

State: Florida
Date: Submitted to CFPB on July 24, 2015
Issue: Improper contact or sharing of info; talked to a third party about my debt
Company response to consumer: Closed with non-monetary relief

COMPANY ANALYSIS

The Federal Trade Commission penalized Allied Interstate in 2010 for allegedly attempting to collect debts from the wrong consumers and in wrong amounts, harassing consumers with repeated calls and abusive language, and revealing private information to third parties it had called when searching for debtors. These alleged practices, conducted over a multi-year period, would be in violation of the FDCPA. At the time, the $1.75 million penalty paid by Allied Interstate to resolve this complaint was the second largest civil penalty the FTC had ever obtained from a third-party debt collector.[89]

A Canadian Broadcasting Corporation investigation in 2012 found that iQor Canada had been fined in two Canadian provinces for its debt collection practices.[90]

#12 BANK OF AMERICA CORP.

PROFILE[94]

- Business type: A bank holding company and a financial holding company. Banking, investing, asset management and other financial and risk management products and services
- Headquarters: Charlotte, North Carolina
- Employees: 224,000
- Subsidiaries: 103 worldwide[95]
- Stock: BAC, NYSE

Total number of debt collection complaints filed with the CFPB

908

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	-$2.2B	$1.4B	$4.2B	$11.4B	$4.8B
REVENUE	$110.2B	$93.5B	$83.3B	$88.9B	$84.2B
PROFIT MARGIN	-2%	2%	5%	13%	6%

Source: Morningstar.com

EXECUTIVE COMPENSATION

Brian T. Moynihan. Chairman of the Board and Chief Executive Officer

2010	2011	2012	2013	2014
$1,940,069	$8,087,181	$8,321,300	$13,139,357	$15,342,399

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	341	38%
Disclosure verification of debt	213	23%
Communication tactics	150	17%
False statements or representation	69	8%
Taking/threatening an illegal action	68	7%
Improper contact or sharing of info	67	7%
Total	908	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"An automatic call placed many times from XXXX states that there is fraudulent activity associated with my name and Social Security number. To avoid XXXX charges being filed against me, they then give me a case number of XXXX and a contact number XXXX. When calling the XXXX number, the operator tells me that I will be sued if I don't come to an agreement even though it is a time-barred debt. They continue to call even after I tell them the debt is not valid."

State: Washington
Date: Submitted to CFPB on April 2, 2015
Issue: Taking/threatening an illegal action: threatened to sue on too old debt
Company response to consumer: Company chooses not to provide a public response; closed with explanation

COMPANY ANALYSIS

Bank of America has settled numerous large class-action lawsuits, including suits headed by state attorneys general and federal regulators.

In relation to debt collections, in 2013 Bank of America agreed to a $32 million settlement resulting from a class-action lawsuit that alleged the bank made harassing collections calls to customers' cell phones at all hours of the day, using an automatic dialing system (aka "robocalls").[36]

Bank of America, like some other original creditors, has allegedly sold millions of dollars in credit card debt to collectors without guaranteeing the accuracy or reliability of debt information. Bank of America has allegedly sold some debt without guaranteeing the account balances were correct or that the debt had not already been paid back in full.[37]

CONSUMER COMPLAINTS PROFILE

#13 NAVIENT CORP.

Navient is a publicly traded corporation and one of the nation's largest loan management companies, with more than 12 million customers. Navient is a spinoff of Sallie Mae that became an independent company in May 2014 and is the nation's largest student loan servicing company. Navient employs about 6,000 people and services about $300 billion in student loans.[98, 99]

PROFILE[100]

- Business type: Loan management, servicing and asset recovery, servicing student loans.
- Headquarters: Wilmington, Delaware
- Employees: 6,200
- Subsidiaries: HICA Holding, Inc.; Navient Solutions, Inc.; Navient Credit Finance Corporation; Navient Credit Funding, LLC, Blue Ridge Funding, LLC; Navient Investment Corporation; Southwest Student Services Corporation[101]
- Stock: NAVI, NASDAQ

Total number of debt collection complaints filed with the CFPB

842

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	-	-	$940M	$1.4B	$1.1B
REVENUE	-	-	$3.5B	$4.1B	$3.6B
PROFIT MARGIN	-	-	27%	35%	32%

Source: Morningstar.com

EXECUTIVE COMPENSATION

John F. Remondi, President and Chief Executive Officer

2010	2011	2012	2013	2014
-	$4,394,918	$4,466,200	$5,462,776	$6,613,724

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Communication tactics	297	35%
Continued attempts to collect debt not owed	252	30%
Improper contact or sharing of info	137	16%
Disclosure verification of debt	76	9%
False statements or representation	51	6%
Taking/threatening an illegal action	29	3%
Total	842	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"I am writing on behalf of my XXXX year old XXXX. She is paying on her grandson's XXXX XXXX XXXX loan, however they call her day and night requesting that she pay it off in full or they demand a very large payment. They threaten her with foreclosure and lawsuits. She pays monthly and they still call, they even call her on holidays. She asks them to stop calling and has put it in writing and the harassing calls continue. They've told her they'll call whenever they want and will continue until she pays off the loan. These calls are making her XXXX and I need to know what we can do to stop this harassment?"

State: Florida
Date: Submitted to CFPB on March 20, 2015
Issue: Taking/threatening an illegal action: threatened arrest/jail if do not pay
Company response to consumer: Closed with explanation

COMPANY ANALYSIS

Navient has earned tens of millions of dollars through federal contracts since its formation in 2014. However, the U.S. Department of Education announced in March 2015 that it would end contracts with Navient when it found the company had misled struggling borrowers with inaccurate information.[102] The company has been under investigation by federal regulators for more than two years, in part for its debt collections practices. A group of state attorneys general and the New York Department of Financial Services have also launched investigations.[103]

#14 DYNAMIC RECOVERY SOLUTIONS, LLC

PROFILE

- Business type: Third-party debt collections
- Headquarters: Greenville, South Carolina
- Employees: Between 51 and 200[164]
- Subsidiaries: Not publicly available
- Stock: Privately held

Total number of debt collection complaints filed with the CFPB

764

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

Not publicly available.

EXECUTIVE COMPENSATION

Not publicly available.

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	462	60%
Disclosure verification of debt	101	13%
Communication tactics	87	11%
False statements or representation	43	6%
Taking/threatening an illegal action	39	5%
Improper contact or sharing of info	32	4%
Total	764	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"Dynamic Recovery Solutions is contacting myself and my husband daily, with very threatening attitudes. I have received a letter in the mail also. This is not my debt, I do not owe this money and they will not leave us alone."

State: Colorado
Date: Submitted to CFPB on April 23, 2015
Issue: Continued attempts collect debt not owed: debt is not mine
Company response to consumer: Closed with non-monetary relief

CONSUMER COMPLAINTS PROFILE

#15 WELLS FARGO & CO.

PROFILE[105]

- Business type: Provides retail, commercial and corporate banking services. Provides other financial services through subsidiaries engaged in various businesses, principally: wholesale banking, mortgage banking, consumer finance, equipment leasing, agricultural finance, commercial finance, securities brokerage and investment banking, insurance agency and brokerage services, computer and data processing services, trust services, investment advisory services, mortgage-backed securities servicing and venture capital investment.
- Headquarters: San Francisco
- Employees: 264,500
- Subsidiaries: 1,427 worldwide, including in tax havens such as the Cayman Islands (34 companies) and Delaware (1,086 companies)[106]
- Stock: WFC, NYSE

Total number of debt collection complaints filed with the CFPB

716

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

FINANCIALS

FINANCIALS	2010	2011	2012	2013	2014
NET INCOME (PROFIT)	$12.4B	$15.9B	$18.9B	$21.9B	$23.1B
REVENUE	$85.2B	$80.9B	$86.1B	$83.8B	$84.3B
PROFIT MARGIN	15%	20%	22%	26%	27%

Source: Morningstar.com

EXECUTIVE COMPENSATION

John G. Stumpf, Board Chairman, President & Chief Executive Officer

2010	2011	2012	2013	2014
$18,973,722	$19,847,921	$22,878,085	$19,320,409	$21,426,391

Source: Morningstar.com

DEBT COLLECTIONS

Issues Raised By Consumers to CFPB	Frequency	Percent
Continued attempts to collect debt not owed	202	28%
Communication tactics	185	26%
Disclosure verification of debt	130	18%
Taking/threatening an illegal action	82	11%
False statements or representation	62	9%
Improper contact or sharing of info	55	8%
Total	716	

Source: CFPB Consumer Complaint Database, between July 7, 2013 and Aug. 7, 2015

EXAMPLE OF CONSUMER COMPLAINT

"My wife and I have been getting harassing phone calls on our cell phones and at work about a debt we know nothing about. (They called her XXXX in the last five days at work and told her manager she would be served papers at work when she returned.) They are claiming we owe a debt to Wells Fargo from 2005 (well past the six-year statute of limitations in Washington state). They say we are going to be sued and that her wages will be garnished. They won't give us any more info without disclosing sensitive information with them."

State: Washington
Date: Submitted to CFPB on July 6, 2015
Issue: Taking/threatening an illegal action; threatened to sue on too old debt
Company response to consumer: Company chooses not to provide a public response; closed with explanation

Recommendations

RECOMMENDATIONS FOR CFPB RULEMAKING

In light of consumers' experiences as evidenced in the complaint database records, the CFPB should adopt rules that strengthen protections for consumers against unfair, deceptive, and abusive debt collection practices. Recommendations for CFPB rulemaking include:

Apply new debt collection rules to original creditors — which include payday lenders, credit card companies, and banks — along with third-party collectors and debt buyers.

Currently, the provisions of the Fair Debt Collection Practices Act, for which the CFPB has primary enforcement responsibility, apply only to third-party debt collectors and debt buyers (not to original creditors). Yet, six of the top 15 entities with the most debt collection-related complaints in the CFPB consumer complaint database operate primarily as original creditors. Applying fair debt collection rules to original creditors is necessary to correct this double standard and protect consumers from unfair, deceptive and abusive collection practices, regardless of the primary line of business of the entity seeking to collect payment on a debt.

Strengthen remedies and increase penalties to enable consumers to stop abusive debt collection practices.

The CFPB should clarify that consumers have the right to injunctive relief to stop unfair debt collection practices, and that multiple statutory damages may be awarded for multiple statutory violations of fair debt collection rules. The CFPB should also clarify that the law allows courts to award separate statutory penalties of $1,000 for each violation of the FDCPA. In addition, the CFPB should clarify that all amounts collected by a collector in connection with these violations should be treated as actual damages and returned to consumers.

Require debt collectors to have complete documentation (including information about the consumer, the debt itself, previous communications, and proof of the collector's legal right to collect the debt) prior to initiating collection actions, and require debt sellers to furnish full documentation to future collectors of the debt.

The top consumer complaint in the CFPB database — with 42 percent of all complaints — is that collectors are asking for payments on a debt that is not owed. Currently, collectors have little incentive to conduct due diligence and verify that the debts they are attempting to collect are legitimate, and consumers pay the price. The CFPB should require debt collectors to have the following information before initiating collection actions:

- Information about the consumer (including identifying information, primary language, receipt of exempt funds, disability status, conditions of financial hardship, military status, and whether or not the consumer is represented by an attorney);
- Information about the debt itself (including original creditor; type of debt; account number; date of origination; terms and conditions; principal due; an itemization of fees, charges and interest; documentation of consumer responsibility; any settlement agreements or payment plans previously established; and information about the applicable statute of limitations);
- A record of previous communications (including all previous communications and attempts to collect payments on the debt, cease contact demands, previous disputes about the debt, and details about inconvenient times/places to contact the consumer); and
- Proof of the collector's legal right to collect the debt.

The CFPB should make clear that the collector will be held responsible for having this information (failure of a prior collector or debt seller to furnish this information will not release the collector from responsibility and the possibility of enforcement action by the CFPB). The CFPB should also require debt sellers to convey this information to debt buyers and make clear that sellers will be held liable for failure to do so.

Set specific limits on phone calls from debt collectors to prevent harassment of consumers and ensure that consumer requests to cease communication are honored.

Nearly one in five complaints to the CFPB cite communication tactics employed by collectors. Nearly two-thirds of those complaints involve "frequent or repeated calls." The CFPB should limit the number of times a debt collector can call a consumer to no more than three times per week and no more than one conversation per week. Calls or text messages to cell phones should be prohibited without consumer opt-in. The CFPB should prohibit calls to consumers in their place of work if consumers request not to be contacted at work. In addition, the CFPB should require debt collectors to notify consumers of their right to request a cease of communications during each contact, and it should require collectors to accept cease communication requests in forms including verbal request, written letter, online form submission, and email. The CFPB should strongly enforce the requirement that collectors abide by cease communication requests once made.

Strengthen enforcement of the prohibition against debt collectors contacting third parties (such as employers and family members).

Complaint records implicate debt collectors engage in improper contact with third parties (sometimes used as a tactic to embarrass and put pressure on consumers), despite the fact that such third-party contact is illegal. The CFPB should strengthen enforcement of this prohibition.

Prohibit the sale, purchase, and collection of time-barred debt.

When collectors seek to collect time-barred debts, which cannot be pursued through the legal system, the danger of deceptive collection tactics is great. To address this, the CFPB should prohibit the sale, purchase, and collection of time-barred debt.

Stop deceptive and abusive credit reporting practices by debt collectors.

The CFPB should require debt collectors to report any disputes over allegedly owed debts to credit reporting agencies. It should also require collectors to notify consumers that paying a debt that is already reported on a credit report will not eliminate information about previous non-payment from that credit report.

Stop unfair and abusive practices in the collection of medical debt.

The CFPB should clarify that reporting a debt to a credit reporting agency before attempting to collect the debt from the consumer constitutes an unfair practice in violation of the FDCPA. It should establish a 120-day waiting period after first billing before health care entities or third-party collectors can report an unpaid debt to a credit reporting agency. It should also establish that errors in billing and disputes with health insurers constitute disputes for the purposes of the FDCPA. In cases where consumers qualify based on income for financial assistance, the CFPB should prohibit collectors from attempting to collect "gross" or "chargemaster" prices.

Protect student loan holders from abusive collection practices.

The CFPB should require debt collection communications relating to private student loans to include clear information that consequences associated with federal loans (such as garnishment of federal benefits) do not apply. The Bureau should require debt collection communications relating to federal student loans to include clear information about circumstances where debt discharge is an option, such as closed schools, permanent disability, false certification, and unpaid refund discharges.

In enforcement actions, levy penalties on a scale to serve as meaningful deterrents to prevent companies from engaging in unfair, deceptive and abusive debt collection practices.

For companies with annual profits in the hundreds of millions or even billions of dollars, penalties of a few million dollars for violating the rules fail to serve as a meaningful deterrent. Instead, companies can simply budget for and absorb these small penalties as a "cost of doing business." The CFPB should levy penalties against violators that are sufficient to act as a meaningful deterrent against future violations.

RECOMMENDATIONS FOR LEGISLATIVE ACTION

In addition to new rules from the CFPB, action from Congress is needed to ensure full protection for consumers against unfair debt collection practices. Congress should:

Close loopholes in existing law that leave consumers vulnerable to unfair, deceptive or abusive debt collection activities associated with consumer debts not directly related to a financial product or service.

Under current laws, collection activities of original creditors on consumer debts not related to a financial product or service — such as municipal debts and medical debts — fall into a grey area where regulatory authority is unclear. This leaves consumers vulnerable to abuse. Congress should enact legislation that clarifies that all collection activities relating to consumer debts (including municipal and medical debts), whether initiated by an original creditor or a third-party collector, fall within the rulemaking and enforcement authority of the CFPB.

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Statement for the Record
Hearing of the Senate Committee on Banking, Housing, and Urban Affairs on "Assessing the Effects of Consumer Finance Regulations"

Chairman Richard Shelby
Ranking Member Sherrod Brown
U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

April 4, 2016

Dear Chairman Shelby and Ranking Member Brown:

As the Consumer Financial Protection Bureau reaches the five-year mark, it has achieved a remarkable track record for American families. It has handled over 830,000 public complaints[1], its enforcement actions have provided more than $11 billion in relief to more than 25 million wronged consumers,[2] and, it has uncovered consumer financial challenges in segments of the market—such as credit reporting—that had previously not been addressed.[3] In short, consumer finance regulations post-crisis are working.

All too often, debates over consumer financial regulation are perceived as a tug of war between greater protection and greater access. This is a false choice. Enabling faulty products to thrive by failing to regulate or enforce consumer protection laws does not ultimately expand access—it only expands consumer harm, leaving other actors to pick up the tab whether they are family and friends, community nonprofits and houses of worship, social service agencies, or the public at large. For example, in a healthy economy, a homeowner may not be concerned about the state of his or her neighbor's mortgage. But if that neighbor is ultimately unable to pay and the home falls into foreclosure—as we witnessed on a massive scale—that community, and ultimately the taxpayers, end up paying the price.

As millions of Americans painfully learned during the financial crisis, conflicting incentives are at the heart of financial products that fail consumers and the broader economy. As the Center for American Progress noted in a 2015 report, "Lending for Success," historically, an economically rational lender would be unlikely to make a loan that would not be paid back.[4] The interests of the lender and borrower would naturally be aligned. Yet, in a number of credit markets—most dramatically, the pre-crisis mortgage market—this rational outcome became less and less prevalent. Instead of assessing the borrower's ability to repay, lenders increasingly focused on loans that were either immediately unaffordable or that were likely to fail in the future.

Consumer finance regulations exist to foster a lending market in which these incentives are realigned. Ultimately, they should incorporate safeguards to ensure not just that loans are originated with the customer in mind, but that the customer is not harmed throughout the life of a loan. For example, prior

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[1] Consumer Financial Protection Bureau, "Monthly Complaint Report, Volume 9: March 2016," available at http://files.consumerfinance.gov/f/201603_cfpb_monthly-complaint-report-vol-9.pdf.
[2] Consumer Financial Protection Bureau, "Financial report of the Consumer Financial Protection Bureau: Fiscal year 2015," available at http://files.consumerfinance.gov/f/201511_cfpb_report_fiscal-year-2015.pdf.
[3] For example, the three main credit bureaus have been among the most complained-about firms to the CFPB. Credit reporting oversight was limited prior to the CFPB's inception.
[4] Joe Valenti, Sarah Edelman, and Julia Gordon, "Lending for Success" (Washington: Center for American Progress, 2015), available at https://www.americanprogress.org/issues/economy/report/2015/07/13/117020/lending-for-success/.

to the 2009 CARD Act, credit card users faced sudden interest rate changes through no fault of their own.[5] Ending these and other practices has saved consumers $16 billion in fees.[6]

Present and future rulemaking is intended to address segments of the market where loopholes or uneven regulations present confusion and potential harm to consumers. One key example is the harm posed by unaffordable small-dollar lending. When four out of five loans cannot be paid back on time as intended, the lending model is clearly inappropriate and unsustainable.[7] Many states' efforts, while well-intentioned, have been inadequate to deal with loans at triple-digit interest rates that trap vulnerable consumers in a cycle of debt. Faith groups have joined low-income advocates, civil rights groups, and others in recognizing the harm caused by these loans[AP1].[8]

Attempts to take away the CFPB's independent funding or turn it into a commission are short-sighted and would harm both the agency's effectiveness and broader public trust.[9] The single-director structure of the CFPB makes it a more effective agency than commissions that may be mired in partisan gridlock. And the financial independence of the CFPB—a key component of financial regulation—ensures that it acts in favor of the consumer's interest. In an environment where only about one in four Americans expresses "a great deal" or "quite a lot" of confidence in banks,[10] the Consumer Financial Protection Bureau plays a critical role in improving both trust in government and trust in the financial system.

Thank you for providing me with the opportunity to discuss this matter. Please do not hesitate to contact me if you have any questions or would like any additional information.

Sincerely,

Joe Valenti
Director of Consumer Finance
Center for American Progress

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[5] Joe Valenti, "Protecting Consumers Five Years After Credit Card Reform" (Washington: Center for American Progress, 2014), available at https://www.americanprogress.org/issues/economy/report/2014/05/22/90198/protecting-consumers-five-years-after-credit-card-reform/.

[6] Consumer Financial Protection Bureau, "The Consumer Credit Card Market," December 2015, available at http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

[7] Joe Valenti, "Ensuring Responsible Credit for Financially Vulnerable Consumers" (Washington: Center for American Progress, 2014), available at https://www.americanprogress.org/issues/economy/report/2014/07/10/93459/encouraging-responsible-credit-for-financially-vulnerable-consumers/.

[8] Joe Valenti and Claire Markham, "Responsible Credit Is an Economic and Moral Issue" (Washington: Center for American Progress, 2015), available at https://www.americanprogress.org/issues/economy/report/2015/06/09/114562/responsible-credit-is-an-economic-and-moral-issue/.

[9] Joe Valenti and David Sanchez, "The Consumer Financial Protection Bureau is working. So why is Congress trying to cripple it?" *Morning Consult*, July 20, 2015, available at https://morningconsult.com/opinions/the-consumer-financial-protection-bureau-is-working-so-why-is-congress-trying-to-cripple-it/.

[10] Rebecca Rifkin, "In U.S., Confidence in Banks Remains Low," Gallup, June 26, 2014, available at http://www.gallup.com/poll/171995/confidence-banks-remains-low.aspx.

Statement for the Record

Hearing of the Senate Committee on Banking, Housing, and Urban Affairs: Assessing the Effects of Consumer Finance Regulations

Submitted by: Center for Responsible Lending (CRL)

April 05, 2016

Thank you for the opportunity to submit a statement for the record for this hearing. We write to express our support for post-crisis lending rules that have made the financial system safer by eliminating abusive financial products, reining in reckless behavior, and encouraging more effective oversight. We support statements prepared by other members of various consumer and civil rights organizations who are generally in support of the Consumer Financial Protection Bureau (CFPB) as a key achievement of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). However, CRL focuses our statement on the positive impacts of Dodd-Frank and CFPB's regulations on mortgage lending.

Abusive loan terms, rather than "risky" borrowers, bear the greatest responsibility for the foreclosure crisis and the Great Recession of 2008. During the subprime boom, misaligned incentives and deregulation allowed mortgage brokers, lenders, and investors to profit greatly from reckless and predatory lending, and toxic financial products. As a result, approximately 8.2 million families have lost their homes to foreclosure since 2004[1]. As of January 2016, about 1.2 million families are seriously behind with their mortgage payments, and just under half a million are in some stage of foreclosure.[2] Recently released Home Mortgage Disclosure Act (HMDA) data also shows that the American dream of homeownership and wealth building remains out of reach for too many creditworthy lower-wealth households.

The CFPB's Qualified Mortgage (QM) rule addresses the frontline abuses that caused the crisis. The QM rule, along with the Ability-to-Repay standard, defines bright line standards to move the market away from high-risk, unsustainable loans and ensure borrowers have an ability to repay the loans they receive. In fact, recent studies conducted prior to the enactment of the QM rule have shown that, comparing borrowers of similar risk characteristics, loans with sensible QM-like terms had significantly lower foreclosure rates than subprime loans with toxic and unpredictable features.[3] As stated above, irresponsible mortgage lending that ignored borrowers' ability to repay their loans resulted in a foreclosure tsunami that disproportionately impacted communities of color—eviscerating a generation of wealth building. QM and Ability-to-Repay

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[1] CORELOGIC, CORELOGIC, CORELOGIC REPORTS 38,000 COMPLETED FORECLOSURES IN JANUARY 2016 YEAR, PRESS RELEASE (2016) *available at* http://www.corelogic.com/about-us/news/corelogic-reports-38,000-completed-foreclosures-in-january-2016.aspx.

[2] *Id.* See also CORELOGIC, NATIONAL FORECLOSURE REPORT: JANUARY 2016 4-5 (2016) *available at* http://www.corelogic.com/research/foreclosure-report/national-foreclosure-report-january-2016.pdf.

[3] CENTER FOR COMMUNITY CAPITAL, BALANCING RISK AND ACCESS, UNDERWRITING STANDARDS AND QUALIFIED RESIDENTIAL MORTGAGES 15 (2012) *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/Underwriting-Standards-for-Qualified-Residential-Mortgages.pdf.

promote underwriting and product features that will help reorient the housing market back toward safe, sustainable lending for all borrowers.

The mortgage rules also offer stability to the mortgage market. The QM rule, with its consumer-friendly product requirements, is designed to facilitate the flow of mortgage credit, as lenders will have the confidence in knowing the suitability of loans for borrowers at the time of origination. This in turn reduces the overall likelihood of borrower default. This certainty will benefit consumers, lenders, and investors alike, leading to a more sustained housing recovery.

Contrary to some predictions, the reforms of Dodd-Frank, including QM and Ability-to-Repay, have not hurt mortgage lending or access to credit. Instead, these reforms support sustainable homeownership and wealth building opportunities for lower-wealth households. While it has been just over two years since the QM rule was implemented, early and current reports confirm that QM has not negatively impacted mortgage lending or access to credit. In fact, the 2014 HMDA data does not show that federal mortgage underwriting rules (Ability-to-Repay and QM) have had a "cooling effect" on mortgage lending.[4] The data is very much consistent with market trends immediately preceding the implementation of the rule. The Federal Reserve's seasonally adjusted origination numbers show a slow increase in monthly originations from 2011 through 2014 with no discernable decrease when the rules were fully implemented in January 2014. After considering the data the Federal Reserve concluded "The HMDA data provide little indication that the new ATR and QM rules significantly curtailed mortgage credit availability."[5] Reports by Federal Reserve's Senior Loan Officer Survey also show that the majority of respondent loan officers did not note a change in their business post-QM rule.[6] Analysis of previous Federal Reserve Studies and current mortgage lending data from the Urban Institute, a nonpartisan policy research organization, also notes that lending has not decreased due to the QM rule.[7] The Urban Institute attributes continued access to credit problems to overcorrections in the post-crises market that results in constrained lending. This environment is most harmful to lower-wealth households with lower FICO scores and lower down payment needs.[8]

The QM rule also allows for flexibility by loan size and lender type. The CFPB carefully considered and continues to consider and act upon the impacts of the rule on various types of loans and lending institutions. The result allows for differences to accommodate small and rural

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[4] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, THE 2014 HOME MORTGAGE DISCLOSURE ACT DATA (2015), *available at* http://www.federalreserve.gov/pubs/bulletin/2015/pdf/2014_HMDA.pdf.
[5] *Id.*, at 3.
[6] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, JANUARY 2016 SENIOR LOAN OFFICER OPINION SURVEY ON BANK LENDING PRACTICES 35-41. (2016), *available at* https://www.federalreserve.gov/boarddocs/snloansurvey/201602/fullreport.pdf.
[7] BING BAI ET. AL., HAS THE QM RULE MADE IT HARDER TO GET A MORTGAGE? 7, URBAN INSTITUTE (2016) *available at* http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000640-Has-the-QM-Rule-Made-It-Harder-to-Get-a-Mortgage.pdf. SEE ALSO JIM PARROT ET. AL., DATA SHOW SURPRISINGLY LITTLE IMPACT OF NEW MORTGAGE RULES, URBAN INSTITUTE, (2014) *citing* BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, JULY 2014 SENIOR LOAN OFFICER OPINION SURVEY ON BANK LENDING PRACTICES (2014), *available at* http://blog.metrotrends.org/2014/08/data-show-surprisingly-impact-mortgage-rules.
[8] Jim Parrot and Mark Zandi, Opening up the Credit Box 5 (2013), *available at* http://www.urban.org/UploadedPDF/412910-Opening-the-Credit-Box.pdf.

lenders and smaller loans.[9] While the QM rule is just over two years old, the data suggest that the market is slowly improving and access to credit for creditworthy borrowers has slightly improved, as well. There is little, if anything, to suggest a rollback of consumer protections will help borrowers.

In addition to its implementation of the Dodd-Frank mortgage protections through thoughtful deliberation and rulemaking, the CFPB has played an important role in improving consumer protections in other areas as well. Its research has improved understanding of issues like overdraft fees on bank accounts, issues in student lending, and the high-cost of abuses in the small dollar loan market. Enforcement actions have returned billions to consumers who have been harmed by unfair and deceptive financial services practices across the board. The CFPB is considering rulemaking in several areas, including strong and safe regulation of payday loans, arbitration clauses, debt collection, prepaid accounts, and overdraft fees. The CFPB also continues to include consumer groups, civil rights organizations, and industry into a collaborative discussion process in addition to its own data collection and research. These are finance areas where increased oversight and protections are much needed, and we support their efforts to do more on behalf of consumers and on behalf of creating a more stable financial market.

We should remember lessons from the immediate past – Congress should not roll back the protections that will prevent the onslaught of defaults and foreclosures that caused the crisis. We can increase access to credit by providing well-underwritten loan products to creditworthy borrowers from lower- and moderate-income households. Borrowers from lower-wealth households have succeeded and can succeed with appropriate underwriting and safe mortgage loans. Instead of focusing on false causes of the crisis, Congress needs to give its full attention to the economic recovery—which will remain out of reach for too many Americans as long as creditworthy borrowers struggle to keep or purchase a home. We must move forward, not backward, on the reforms that protect borrowers and promote sustainable homeownership. The reforms of Dodd-Frank and the CFPB help consumers, lenders, and the economy by the promotion of responsible loan products.

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[9] ABILITY-TO-REPAY AND QUALIFIED MORTGAGE RULE, SMALL ENTITY COMPLIANCE GUIDE, CONSUMER FINANCIAL PROTECTION BUREAU (2014), *available at* http://files.consumerfinance.gov/f/201411_cfpb_atr-qm_small-entity-compliance-guide.pdf.

the MAIN STREET alliance

Small business owners. Small business values.

April 5, 2016

The Honorable Richard Shelby
304 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
713 Hart Senate Office Building
Washington, D.C., 20510

Dear Chairman Shelby and Ranking Member Brown:

On behalf of the Main Street Alliance, a national network of state-based small business coalitions, I am writing to express enthusiastic support for the Consumer Financial Protection Bureau (CFPB) and to oppose any attempt to weaken the Bureau's ability to protect consumers and enact critical financial reforms.

As you are well aware, the 2008 crash caused the worst economy since the Great Depression, decimating the labor market. While all businesses suffered from the crisis, the economic wreckage caused by the financial industry disproportionately hurt small businesses. At the peak of the recession, the job loss rate for businesses with fewer than 50 employees doubled that of businesses with 500 or more employees.[1] And between 2007 and 2012, an astonishing 60 percent of the total net job losses were in the small business sector. To this date, the job creation rate of small businesses lags well behind the pre-recession levels, and small businesses widely struggle to obtain sufficient financing.[2]

Lawmakers passed the Dodd-Frank bill and created the CFPB to ensure that such a crisis never again happens. Less than five years in, the CFPB has already proven itself an able and effective agency. Highlights of its accomplishment include:

- Returning more than $11 billion to individuals cheated by financial companies;
- Crafting new rules outlawing unaffordable, predatory mortgages that instigated the financial collapse;
- Securing $1.8 billion in refunds from credit card customers of the largest banks for worthless add-on products like fraud monitoring services and deceptively-marketed insurance products;
- Securing $530 million from a for-profit school that swindled students and then engaged in illegal debt collection in its private student loan program; and

[1] Mills, Karen Gordon and Brayden McCarthy. "The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game." Harvard Business School, July, 2014.
[2] Mills, Karen. Ibid.

- Creating a complaint system to help consumers, small businesses, and the Bureau spot worrisome practices.

Beyond these accomplishments, the CFPB has an ambitious agenda ahead. It is working on rules to safeguard economically vulnerable people and communities against the abuses of triple-digit-interest debt-trap lenders; to rein in the use of take-it-or-leave-it forced arbitration clauses to bar wronged consumers from taking companies to court; and to stop illegal debt collection activities. And, of particular interest to small business owners, the CFPB will soon be collecting publicly available small business loan data—information that has been difficult to come by, but is essential to increase access to capital for small businesses, particularly female-owned and minority-owned.

CFPB opponents often invoke small businesses in their opposition, claiming that its regulatory and enforcement actions are burdensome or job-killing. However, the Main Street Alliance firmly believes that these protections are the necessary safeguards to enable businesses and entrepreneurs to take the financial risks to start or expand their business. For instance, 63 percent of small business owners used their personal assets, such as their homes or personal savings, as collateral to secure financing, and over half used personal savings to finance their business.[3] As such, protecting these "consumer investments" is critical to small business success. Likewise, removing forced arbitration clauses that disempower consumers is beneficial to small businesses, who are subject to the same clauses whenever they seek to set up internet or phone service, open a credit card account, or rent a car.

Furthermore, when consumers' financial lives are held hostage to predatory payday loans or student loans that lock them in a cycle of debt, businesses suffer. Under the weight of this debt, customer dollars are siphoned away from the local economy, consumer demand for goods and services slackens, and Main Street businesses lose revenue. Strong, local businesses depend upon robust enforcement by the CFPB.

The CFPB has made enormous strides in creating a fairer marketplace in which small businesses, consumers, and local economies can thrive. The Main Street Alliance urges the CFPB to continue this work ahead and promptly move forward on each of the nine priorities it has identified for the next two years.[4] We are particularly eager to see the issuance of a robust small business lending data collection regulation that includes accessible and comprehensive data broken down by, among other fields, race, economic status, census tract, loan type, and action taken on the application.

Thank you again for the opportunity to express Main Street Alliance's views. If you have any questions, please contact Michelle Sternthal, Deputy Director of Policy and Government Affairs, at 202-263-4529 or michelle@mainstreetalliance.org.

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[3] "2015 Small Business Credit Survey: Report on Employer Firms." Federal Reserve Bank of Atlanta https://www.frbatlanta.org/-/media/Documents/research/small-business/survey/2015/report-on-employer-firms/2015-report-on-employer-firms.pdf?la=en

[4] CFPB Fact Sheet, Policy priorities over the next two years (Feb. 25, 2016), http://files.consumerfinance.gov/f/201602_cfpb_policy-priorities-over-the-next-two-years.pdf

Sincerely,

Amanda Ballantyne
National Director
Main Street Alliance

Written Statement of

Christine Hines
Legislative Director, National Association of Consumer Advocates

Before the
U.S. Senate Committee on Banking, Housing, and Urban Affairs

"Assessing the Effects of Consumer Finance Regulations"

April 5, 2016

Chairman Shelby, Ranking Member Brown, and Members of the Committee:

The National Association of Consumer Advocates (NACA) is a nonprofit association whose members are private and public sector attorneys, legal services attorneys, law professors, and law students committed to representing consumers' interests. NACA is actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. Supporting reasonable safeguards against unfair and deceptive business practices, and ensuring that corporations comply with state and federal consumer protection laws are continuing priorities.

For the hearing titled, "Assessing the Effects of Consumer Finance Regulations," we write to commend the ongoing efforts of the Consumer Financial Protection Bureau to curb predatory practices in the financial sector, as a general matter, and specifically, the Bureau's announced intention to promulgate rulemaking to address corporations' use of pre-dispute binding mandatory (or "forced") arbitration against American consumers.

Over the last six years, the Bureau has engaged in multiple pursuits to monitor the financial marketplace and enforce laws under its jurisdiction. These activities include its rigorous collection and analysis of data; its supervision and examination of financial services providers and their systemic practices and conduct; and its enforcement actions against financial institutions that violate critical consumer financial protection laws. The CFPB's work has resulted in billions of dollars returned to consumers and consequential changes to predatory industry practices. Through these and other actions the Bureau has identified and addressed some of the worst unfair, abusive and deceptive practices in debt collection, credit reporting, student loans, payday loans, back accounts, and other products and services.

For example, for debt collection alone, which recently surpassed mortgages as the most complained-about product on the Bureau's complaint database,[1] CFPB's law enforcement actions in 2015 involving debt collection practices have resulted in over \$360 million in consumer relief.[2] The enforcement actions and examinations also have spurred some changes in industry conduct that will help to alleviate consumer harm from abusive debt collection.

We also support the Bureau's rulemaking agenda and its work to set appropriate standards and practices in lending and other financial products. We expect to review upcoming proposed rulemaking for payday loans, debt collection practices, and prepaid cards. We are especially looking forward to the Bureau's exercise of its explicit authority to regulate the use of forced arbitration terms in corporate-written financial contracts that require consumers to resolve disputes in private, individual arbitration proceedings instead of in open court. We have long condemned these provisions as a serious

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[1] CFPB, Monthly Complaint Report, Vol. 9, March 2016, http://1.usa.gov/1S41VeB.
[2] Fair Debt Collection Practices Act CFPB Annual Report 2016, at 27, http://1.usa.gov/25GtXXQ.
[2] Fair Debt Collection Practices Act CFPB Annual Report 2016, at 27, http://1.usa.gov/25GtXXQ.

imposition on consumers' rights and freedom, and a damaging tool that corporate entities use to avoid responsibility for harmful conduct.

A Comprehensive Data-Driven Study on the Use of Forced Arbitration

The Dodd-Frank Wall Street Reform and Consumer Protection Act[3] required the CFPB to study the use of predispute arbitration clauses in consumer financial products or services, and to provide a report to Congress. It also authorized the CFPB to write a rule consistent with the study to prohibit or limit the use of forced arbitration clauses in consumer financial products or services if it is in the public interest and for the protection of consumers.

In 2012, the CFPB launched a study on arbitration and spent the next three years compiling and analyzing data and collecting stakeholder feedback. The study presented data on the prevalence of the practice, including the use of terms that prohibit consumers' participation in class actions, litigation outcomes, and arbitration outcomes. The effort resulted in the most comprehensive and evidence-based examination ever of forced arbitration in consumer contracts.

(A) *The Study Process.* The Bureau's multi-year study process included the following:

The CFPB officially launched its study with a public request for information. It received comments from public interest organizations, industry trade associations, law firms and individuals. Afterward, the CFPB scheduled meetings with stakeholders.[4] In June 2013, the CFPB launched a telephone survey to study consumer awareness and perception of arbitration clauses with a Federal Register notice and invited public comment.[5]

The CFPB released preliminary results from the study in December 2013.[6] The Bureau held a public field hearing to discuss the findings, inviting participation from industry and consumer interests. It also announced that it would hold stakeholder meetings.[7]

The CFPB issued a second Federal Register notice on its proposed telephone survey on consumer awareness, inviting public comment.[8] The Office of Management and Budget approved the CFPB's request to proceed with the consumer awareness survey.

The CFPB released the final arbitration report in March 2015. It held a second field

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[3] 12 U.S. Code § 5518 (a).

[4] *Scope, Methods, and Data Sources for Conducting Study of Pre-Dispute Arbitration Agreements*, CFPB-2012-0017-0001, April 27, 2012, http://1.usa.gov/1N59nVB.

[5] *Agency Information Collection Activities; Proposals, Submissions, and Approvals*, CFPB-2013-0016-0001, June 7, 2013, http://1.usa.gov/23bhxVx.

[6] *CFPB Arbitration Study Preliminary Results*, Dec. 2013, http://1.usa.gov/18WUWEy.

[7] CFPB, *Live From Dallas!*, Dec. 12, 2013, http://1.usa.gov/1XcG0X1.

[8] *Agency Information Collection Activities; Proposals, Submissions, and Approvals*, CFPB-2014-0011-0002, May 29, 2014, http://1.usa.gov/1W6dIEy.

hearing and announced that it would hold roundtables with stakeholders.[9] In October 2015, the CFPB released an initial proposal for its arbitration rulemaking prepared for a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel review.[10] The Bureau held a third public field hearing on arbitration, inviting public feedback from business and consumer interests.[11]

(B) Key Study Findings. Forced arbitration clauses are unfair and everywhere:

The Bureau found that tens of millions of consumers that use financial services and products are subject to forced arbitration clauses and class action bans, including in their credit cards, bank accounts, prepaid cards, credit reporting services, and student loans. For example, almost all [98.5%] of licensed payday loan storefronts that the CFPB studied in California and Texas used contract terms with forced arbitration clauses, while only 1.5% did not use forced arbitration clauses.

• Almost all forced arbitration clauses in financial services and products also prohibit consumer participation in class actions: 93.9% of credit card arbitration clauses; 88.5% of checking account arbitration clauses; 97.9% of prepaid card arbitration clauses; 88.7% of storefront payday loan arbitration clauses; 100% of private student loan arbitration clauses; and 85.7% of mobile wireless arbitration clauses.

• The Bureau's data revealed that very few consumers can vindicate their rights in arbitration on an individual basis, especially for small-dollar losses. In its study, the Bureau identified only on average about 8 cases per year involving a debt dispute of $1,000 or less, and only about 25 cases per year involving an affirmative consumer claim of $1,000 or less.

• Its examination of class action in financial services makes clear that consumers receive remedies in class actions for harm in financial services: Across consumer finance markets, at least 160 million class members were eligible for relief over a five-year period. The settlements totaled $2.7 billion in cash, in-kind relief, and attorney's fees and expenses – [roughly 18 percent went to expenses and attorneys' fees].

• Based on data from its consumer telephone survey, the Bureau concluded that consumers are not aware of and do not understand the impact of arbitration clauses. Consumers are unaware of whether their credit card contracts include arbitration clauses. Consumers' beliefs about dispute resolution rights bears little to no relation to the actual contract terms. Despite provisions that restrict their rights, most believe that they can sue in court for wrongdoing and participate in class actions. Fewer than 7 percent recognized that they could not sue their credit card company in court.

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[9] CFPB, *Arbitration Study: Report to Congress 2015*, http://1.usa.gov/1EPGBnT and Live From Newark!, http://1.usa.gov/18xSGDQ.
[10] CFPB, *Small Business Advisory Review Panel For Potential Rulemaking On Arbitration Agreements; Outline Of Proposals Under Consideration And Alternatives Considered*, Oct. 7, 2015, http://1.usa.gov/1MpolPy
[11] CFPB, *Live From Denver!*, http://1.usa.gov/226ymhW.

• The CFPB also found no evidence that arbitration clauses led to lower prices for consumers, as corporate representatives often claim. The CFPB compared companies that use arbitration clauses and prohibit class actions with companies that had eliminated forced arbitration from their consumer contracts. It found no statistically significant evidence that the companies that removed the arbitration clauses increased their prices or reduced access to credit.

Restoring Consumer Choice in the Marketplace

Based on its study findings, the Bureau announced that it would undertake a rulemaking to regulate the use of forced arbitration in financial services. Specifically, the Bureau has initially proposed to bar the use of class action bans in financial services contracts and to require reporting of individual arbitration claims and awards, which it would consider releasing to the public.

Although we have long called for the outright elimination of forced arbitration clauses in consumer contracts, we strongly support this step that the Bureau is proposing to take to restrict the use of class action bans, the worst aspect of arbitration clauses. We have been aware and have studied the consequences of forced arbitration on consumers and the markets, but now that the CFPB has collected and examined an unprecedented amount of data, the conclusion is irrefutable: forced arbitration and class action bans unfairly deny consumers' right to seek recourse for financial injuries caused by corporate misconduct.

The data makes clear that class actions bans are an unreasonable burden on consumer rights. Small-dollar claims prevalent in financial services, such as illegal charges and fees and abusive interest rates, are not heard in arbitration or court because most people cannot practically seek remedies for those losses individually. These claims simply are better pursued on a class basis. The Bureau's decision to eliminate class action bans would restore a critical right for consumers in the marketplace. It is in the public interest for consumers to have the freedom to band together to seek remedies and accountability for wrongdoing.

We also agree with the Bureau's findings in its initial proposal that state and federal governments with their limited resources, cannot sufficiently monitor and enforce laws for the entire financial services marketplace on their own. The marketplace benefits from consumers' ability to privately enforce rights and remedies granted to them in consumer protection laws. In 2014, state attorneys general submitted a letter to the Bureau confirming a similar view that private enforcement of laws supplements the work of state officials.[12]

Finally, the Bureau's decision to limit the use of arbitration clause is consistent with recent decisions by Congress and other federal agencies to seek to provide adequate avenues of redress for harmed consumers. For example: (a) the Dodd-Frank Act barred forced arbitration in residential mortgages and lines of credit, and prohibited forced

[12] *Letter from State Attorneys General to Director Richard Cordray*, Nov. 19, 2014, http://1.usa.gov/1xGI6WS

arbitration of whistleblower claims under the Sarbanes-Oxley Act of 2002; (b) Congress has protected auto dealers from forced arbitration in their transactions with auto manufacturers; (c) employees of government defense contractors with Title VII and sexual assault tort claims are shielded from forced arbitration (the federal government is finalizing an executive order to similarly protect employees of all federal contractors); (d) Military members and their dependents cannot be forced into arbitration for a wide range of high- cost loans (payday, etc.).[13] Currently, the Centers for Medicare and Medicaid Services is considering protections from forced arbitration for nursing home residents,[14] and the Department of Education[15] similarly is reviewing protections for students of colleges and universities.

These actions demonstrate that there is acute concern about the practice and its impact on individuals who participate in the respective sectors and markets. The CFPB's anticipated action for consumer financial services, supported by its evidence-based report, is consistent with the activities of other areas of government that similarly seek to protect the public interest by restoring ordinary Americans' access to remedies.

[13] Pub. L. 107-273, 15 U.S. Code § 1226); 48 CFR 252.222-7006; 10 U.S.C. 987(e)(3) and (f)(4) and 79 Fed. Reg. 58602.

[14] *Medicare and Medicaid Programs: Reform of Requirements for Long-Term Care Facilities*, CMS-2015-0083-0001, July 16, 2015, http://1.usa.gov/1V4XpD4.

[15] *U.S. Department of Education Takes Further Steps to Protect Students from Predatory Higher Education Institutions*, March 11, 2016, http://1.usa.gov/1WfKxYc.

Support the CFPB's Authority to Restore Consumer Rights in the Financial Marketplace

After the well-documented abuses that led up to the 2008 financial crisis, Congress authorized the Consumer Financial Protection Bureau to restore consumers' legal rights by regulating the use of forced arbitration clauses in financial services contracts. These are terms inserted in contracts that bar consumers from going to court to seek remedies for harm, and instead force consumers to resolve disputes in private arbitration on an individual basis.

After a three-year examination of the issue, the CFPB released a comprehensive, data-driven study on the use of forced arbitration and class action bans in consumer financial contracts. The study confirmed that forced arbitration is a rigged system that favors corporations over ordinary American consumers. The CFPB can act now to restore consumers' ability to join together to seek remedies for harm. However, despite the strong evidence supporting action, corporate interests are lobbying against this much-needed protection. Here are a few myths that corporate lobbyists are circulating, and the facts to refute those myths:

Myth: Forced arbitration benefits consumers and gives them a fair place to resolve disputes.

FACT: Forced arbitration simply eliminates consumer claims. It provides almost no relief to consumers harmed by illegal or abusive practices in the financial services sector. Many forced arbitration clauses prohibit consumers with similar small claims (such as wrongful charges and fees, and illegal interest rates) from banding together in class actions even when class actions are the only economically feasible way for the consumers to resolve those claims. The CFPB has found that few consumers go to individual arbitration, while millions more recover in class actions.[1] According to the CFPB data, there were only on average about 8 individual cases per year involving $1,000 or less, and only about 25 cases per year involving a claim of $1,000 or less. Permitting forced arbitration clauses with class action bans under most circumstances has now become "a foolproof way of killing off valid claims," as Justice Kagan warned in her dissent in *Am. Exp. v. Italian Colors Restaurant* (2013).

Myth: Class actions do not compensate consumers.

FACT: In financial services, consumers are often cheated by small-dollar rip-offs, such as predatory and illegal charges and fees, and usurious interest rates, where a consumer cannot practically seek remedies on his or her own. A company that charges small-dollar illegal fees of hundreds or thousands of its customers reaps huge illicit profits. Consumers need the ability to join together in class actions to hold entities accountable for misconduct. The CFPB study reported extensively on the value of class action settlements (Section 8) and the prevalence of class action bans in arbitration clauses (Section 2). Across consumer finance markets, at least 160 million class members were eligible for relief over a five-year period. The settlements totaled $2.7 billion in cash, in-kind relief, and fees and expenses.

Myth: Forced arbitration, that is, corporate terms requiring consumers to resolve disputes in individual arbitration instead of court, is a favored public policy.

FACT: Congressional actions and public sentiment show significant opposition to forced arbitration. Congress has protected numerous sectors from forced arbitration, recognizing the harm of the practice to consumers and small businesses. The Federal Arbitration Act is a 1925 law that was originally passed by Congress to facilitate *business-to-business* arbitration, where two sophisticated entities

[1] CFPB Arbitration Study, Section 5.

negotiated contract terms. It was not meant to force individuals into arbitration with businesses in one-sided, non-negotiable contracts. While the Supreme Court has expanded the reach of the FAA to allow the use of forced arbitration clauses and class action bans against consumers, Congress has acted many times to restrict the FAA and protect individuals in numerous sectors:

(1) The Dodd-Frank Act barred forced arbitration in residential mortgages and lines of credit, and prohibited forced arbitration of whistleblower claims under the Sarbanes-Oxley Act of 2002;
(2) Congress has protected auto dealers from forced arbitration in their transactions with auto manufacturers (Pub. L. 107-273, 15 U.S. Code § 1226);
(3) Livestock and poultry growers are shielded from forced arbitration with big agribusiness (7 U.S. Code § 197c);
(4) Employees of government defense contractors with Title VII and sexual assault tort claims are shielded from forced arbitration (the federal government is finalizing an executive order to similarly protect employees of all federal contractors)(48 CFR 252.222-7006);
(5) Military members and their dependents cannot be forced into arbitration for a wide range of high-cost loans (payday, etc.)(10 U.S.C. 987(e)(3) and (f)(4) and 79 Fed. Reg. 58602).

These are great steps forward for American consumers and workers. Congress should pass legislation that will restore the rights of consumers and workers in *all* areas of the marketplace.

Myth: Public enforcement by state and federal governments is sufficient.

FACT: Public agencies cannot, as a practical matter, police the activities of the financial services industry by themselves. The limited number of enforcement actions that these agencies bring each year is not enough by itself to protect consumers adequately. Private actions complement the work of state and federal officials.[2] As private enforcement actions have become more unlikely because of forced arbitration, abusive industry actors have greater incentives to flagrantly violate consumer protection laws. State attorneys general,[3] the CFPB,[4] and other agencies[5] have acknowledged the limitations of public enforcement, and the need for consumers to be able to enforce laws in court. Congress also has reinforced private rights and remedies in numerous consumer protection laws, which often cannot be used due to forced arbitration.[6]

Myth: The CFPB study does not provide sufficient information on forced arbitration.

FACT: The rampant use of forced arbitration and the demonstrated harm to consumers were unmistakable before the CFPB conducted its study. However, the Bureau's data-driven and evidence-based examination of the practice is the most comprehensive analysis of the issue ever. The CFPB spent three years, 2012 to 2015, examining the use of forced arbitration in financial services. The study presented data on the prevalence of forced arbitration, litigation outcomes and arbitration outcomes. When it launched the study, the Bureau sought information from the public, to help identify the appropriate scope, methods, and sources of data for the Study. Industry groups, including the American Bankers Association, U.S. Chamber of Commerce and bank lawyers submitted their views to the CFPB on multiple occasions during the three-year process. The CFPB has conducted numerous public

[2] Letter from State Attorneys General to CFPB Director Richard Cordray, Nov. 19, 2014, http://1.usa.gov/1xOl6WS.
[3] Id.
[4] CFPB, Small Business Advisory Review Panel For Potential Rulemaking On Arbitration Agreements: Outline Of Proposals Under Consideration And Alternatives Considered, at 4. (Oct. 2015), http://1.usa.gov/1MpolPr.
[5] FTC Joins Amicus Brief Opposing Federal Court Finding On Consumers' Rights Under the Fair Debt Collection Practices Act. (2012), http://1.usa.gov/1MytiBf.
[6] E.g. Fair Credit Reporting Act, Truth in Lending Act, and Fair Debt Collection Practices Act.

hearings on the arbitration study, permitting further public comment and discourse. Despite the evidence presented in the CFPB's study, bank lobbyists seek to delay CFPB action by suggesting that the CFPB should repeat its study.

Myth: Companies' customer service departments (informal) adequately solve complaints.

FACT: The CFPB refutes this claim: "Companies' informal systems are voluntary and are primarily designed to benefit those consumers who pursue them. *Many more consumers* may be harmed by the same wrongful practice without realizing it or without filing their own disputes … Also…companies can choose not to resolve disputes raised by customers who complain or can resolve disputes with those customers while maintaining practices that violate the law or harm consumers who never complain."[7]

Banks' recent abusive overdraft fee practices are a telling example. In a class action against one bank, the court noted that individual consumers complained to the bank about the order in which the bank would clear account expenditures. The bank built "a trap…(and) then exploited that trap with a vengeance, racking up hundreds of millions off the backs of the working poor, students, and others without the luxury of ample account balances…" The bank helped relatively few consumers who complained to customer service about its conduct, but it continued the practice on many others. In a class action, the court ordered the bank to return $203 million to consumers. Clearly, the class action worked better, than individual customer service, for consumers and the market.

Myth: Disclosures and other changes to arbitration clauses will help consumers.

FACT: Hollow proposals, such as disclosures, opt outs and other meaningless changes fail to address the basic problems of forced arbitration: consumers' lack of choice and lack of access to remedies. Section 3 of the study showed that bolded and underlined language describing forced arbitration does not adequately inform consumers about the meaning and consequences of this industry practice. Disclosures and other cosmetic changes to arbitration clauses will fail to restore consumer choice in the market. The data makes clear that only voluntary arbitration, chosen by both parties after the dispute arises, sufficiently restores consumer access to remedies. What consumers need is the freedom to say NO to forced arbitration after the dispute arises.

Myth: Forced arbitration lowers consumer transaction costs.

FACT: Section 10 of the study presents data on the cost and availability of credit when forced arbitration is restricted. The CFPB found no evidence that arbitration clauses led to lower prices for consumers. The CFPB compared companies that use arbitration clauses and prohibit class actions with companies that had eliminated forced arbitration from their consumer contracts. The CFPB found no statistically significant evidence that the companies that removed the arbitration clauses increased their prices or reduced access to credit.

Based on the ample proof it has presented, it is time for the CFPB to exercise its authority to write a rule to protect consumers from forced arbitration and class action bans.

Contact Christine Hines at Christine@consumeradvocates.org with any questions.

[7] SBREFA Outline, at 14, http://1.usa.gov/1MpofPr

CFPB Must End Abusive Forced Arbitration and Class Action Bans in Consumer Financial Services

A top priority of the Consumer Financial Protection Bureau (CFPB) is to protect American consumers from unfair, deceptive and abusive financial products. Few practices are as abusive, unfair and deceptive as the widespread use of forced arbitration clauses written into millions of contracts for financial goods and services. These terms strip consumers of their right to go to court and to participate in class actions when companies cheat or rip them off. Instead, they are forced into a private system set up by an industry that favors big banks, payday lenders, debt settlement and auto financing companies and other financial institutions at the expense of consumers.

The CFPB is authorized to write a rule on the use of forced arbitration under the Dodd-Frank Wall Street Reform and Consumer Protection Act. In July 2015, it announced its intention to begin rulemaking, and has completed a small business review of its proposal. The CFPB can look to its own compelling data as it decides on the details of a rule that protects consumers from forced arbitration.

CFPB study is roadmap for rule to restore consumer access to the court system.

In March 2015, the CFPB released a comprehensive, 728-page, three-year study on the widespread use of forced arbitration that demonstrated a fundamental lack of access to justice for millions of consumers and the potential for harm to the financial markets. The CFPB found that:

Forced arbitration clauses are unfair and everywhere in the consumer financial services market: Tens of millions of consumers that use financial services and products are subject to forced arbitration clauses and class action bans, including credit cards, checking accounts, prepaid cards and student loans.

Forced arbitration prohibits consumer participation in class actions: Almost all of the arbitration clauses CFPB studied forbid consumers from participating in class actions.

Few consumers can go to arbitration, especially for small-dollar claims. The CFPB data showed very few small-dollar claims - such as for illegal charges and fees - are brought in individual arbitration. There were only on average about 8 cases per year involving a debt dispute of $1,000 or less and only about 25 cases per year involving an affirmative consumer claim of $1,000 or less.

Eliminating arbitration clauses & restoring access to courts do not raise prices for consumers. Industry players argue that restricting access to court lowers consumer prices. The CFPB found no evidence to support their claim. In a comparison of companies that use arbitration clauses and prohibit class actions with companies that had eliminated forced arbitration from their consumer contracts, the CFPB found no statistically significant evidence that the companies that removed the arbitration clauses increased their prices or reduced access to credit.

Systemic, widespread misconduct is better addressed in class actions. The data showed that common complaints, such as wrongful overdraft fee charges on bank statements, that would typically motivate customers to contact their banks, were not adequately resolved. Instead, consumer remedies for the widespread predatory charges affecting millions were recovered in class action settlements. Meanwhile, banks that enforced arbitration clauses and class action bans in their contracts evaded accountability for the illicit charges because the terms denied their customers adequate access to remedies.

Consumers are not aware of and do not understand the impact of arbitration clauses: Data showed that consumers are unaware of whether their credit card contracts include arbitration clauses. Despite provisions that restrict their rights, most consumers believe that they can sue in court for wrongdoing and participate in class actions. Fewer than 7 percent recognized that they could not sue their credit card company in court.

The CFPB should use its full authority to restore consumers' choice to go to court.

No consumer financial contract should block consumers' ability to go to court as an individual or as part of a class action.

The study showed that even bolded and underlined language describing forced arbitration terms does not adequately inform consumers about the meaning and consequences of forced arbitration. Similarly, disclosures and other cosmetic changes to arbitration clauses will fail to restore consumer choice in the market. The data makes clear that only voluntary arbitration, chosen by both parties after the dispute arises, sufficiently restores consumer access to remedies.

The rampant use of forced arbitration and the demonstrated harm to consumers were unmistakable before the CFPB conducted its study. However, the CFPB's data-driven and evidence-based examination of the practice shed considerable light on the issue. The CFPB spent three years, 2012 to 2015, examining the use of forced arbitration in financial services. The study presented comprehensive data on the prevalence of forced arbitration, litigation outcomes and arbitration outcomes. Despite the evidence, bank lobbyists suggest that the CFPB should take even more time to gather additional evidence.

It would be a huge step backwards for the public interest and a tremendous gift to the worst actors on Wall Street and others in the financial sector if rulemaking was delayed any further. Based on the ample proof it has presented, it is time for the CFPB to exercise its authority to write a rule to protect consumers from forced arbitration and class action bans.

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April 5, 2016

Chairman Richard Shelby
Ranking Member Sherrod Brown
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

Re: April 5, 2016 hearing on the Effects of Consumer Finance Regulations and April 7, 2016 hearing on The Consumer Financial Protection Bureau's Semi-Annual Report to Congress

Dear Chairman Shelby, Ranking Member Brown, and Members of the Committee:

The National Consumer Law Center, on behalf of its low income clients, would like to submit the following statement for the record for the U.S. Senate Committee on Banking, Housing and Urban Affairs' April 7, 2016 hearing on the Consumer Financial Protection Bureau's Semi-Annual Report to Congress.

This statement focuses on several areas where the CFPB is doing critical work to protect consumers: debt collection, credit cards, credit reporting, access to bank accounts and prepaid cards. In each of these areas, we provide only a very brief summary of the problems and the CFPB's efforts. We invite you to visit our website, including the comments on our Rulemaking page, for more in-depth information about the problems facing consumers and the CFPB's role in making the financial marketplace safer for consumers. We also support the work of the CFPB and the need for more consumer protection in other areas addressed in statements prepared by members of Americans for Financial Reform. Although we may not have a position on every consumer regulatory issue discussed by other AFR groups, we strongly associate ourselves with other remarks defending the CFPB's work and structure.

Credit Cards

The Credit Card Accountability, Responsibility and Disclosures (CARD) Act of 2009 addressed some of the worst abuses in the credit card market. The credit card industry claimed that the CARD Act and implementing regulations would drive up prices and unduly restrict access to credit. But the CFPB has produced two in-depth reports using rich data sources and rigorous analysis that refute the naysayers. The all-in cost of using credit cards has declined across credit score ranges; the Credit CARD Act increased price transparency and saved consumers $16 billion in back-end fees; an credit is increasingly available, except where Congress explicitly intended it to be more restricted (i.e., consumers under 21 years old and others who did not have the ability to repay the credit).[1] Consumer satisfaction with credit cards is also much higher, and most in the credit card industry would also likely agree that the regulations improved a dysfunctional market.

The disparity between the industry's Chicken Little claims in 2009 and the reality shows the importance of discounting gloom and doom predictions about consumer protection regulations and the CFPB's value as a data-driven regulator. The CFPB's insightful, groundbreaking credit card research adds facts to the discussion about the impact of regulation, and has also highlighted areas of continuing concern, especially deferred interest offers, laying the groundwork for potential future reforms.

The Credit CARD Act did not, and could not, address every single abuse developed by credit card lenders to extract profits from consumers. Part of the very reason for the CFPB's existence is to have a strong and nimble agency to address abuses in a timely fashion so as to minimize consumer harm. The CFPB has successfully fulfilled this purpose by taking aggressive action against abuses in the credit card sector, recovering billions for injured consumers.

After the Credit CARD Act, two of the worst abuses left in the credit card market were (1) deceptive sales of often useless add-on products, such as debt suspension products and credit monitoring; and (2) deferred interest promotions, which promise "no interest" but are a trap that can result in the imposition of hundreds or thousands of dollars in retroactive interest. The CFPB has brought actions regarding add-on products against almost all of the major credit card lenders (American Express, Bank of America, Capital One, Citibank, Discover, JPMorgan Chase, Synchrony, and US Bank), resulting in over \$2.2 billion being returned to injured consumers. Furthermore, these actions have resulted in a dramatic reduction in the marketing for these products, which are overpriced and of limited use at best.

The CFPB has also taken aggressive action against Synchrony, one of the major purveyors of deferred interest promotions, over the use of these promotions with its healthcare credit card product CareCredit. This action resulted in major reforms in the marketing of CareCredit cards to vulnerable, economically stressed patients while returning \$34 million to them.

Credit Reporting

Prior to the CFPB, there was no regulator with authority to supervise the credit reporting industry. The Big Three nationwide credit reporting agencies - Experian, Equifax and TransUnion – operated with oligopolistic impunity, allowing errors to infect the credit reports of millions of consumers, making a mockery of the federally-mandated dispute process, and deceptively promoting expensive credit monitoring subscription products. The FTC was outgunned and under-resourced, without the legal tools necessary to bring about significant reform. The Big Three credit bureaus consistently resisted any reforms, and could do so because they were immune to normal market forces such as competition. Unresponsive to the complaints of consumers, without a strong regulator to rein them it, the Big Three wreaked havoc on the lives of those consumers with errors in their credit reports– 20% of consumers with credit reports or 40 million Americans.

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[1] *See* CFPB, The Consumer Credit Card Market (Dec. 2015), http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

The CFPB has wrought a sea change in the realm of credit reporting. The Bureau's supervisory and enforcement activities have already made significant improvements to this historically intransigent sector, including:

- Getting the credit bureaus to finally agree, after years of complaints and litigation, to take the simple step of providing the consumer's actual dispute and supporting documentation to the creditor or debt collector ("the furnisher") that provided the information. The credit bureaus have also finally provided the ability for consumers to upload supporting documents when they file disputes online.

- Taking enforcement actions against creditors and debt collectors in their role as furnishers of information for failing to properly investigate disputes, providing inaccurate information, and making deceptive statements about credit reporting when engaged in debt collection. In addition, the CFPB has taken enforcement action against at least one background check credit reporting agency.

- Examining the practices of lenders and debt collectors under its supervision in their role as furnishers of information.

Finally, the CFPB has conducted groundbreaking research on consumer credit reporting. For example, the Bureau issued a landmark report on the enormous role of medical debt in damaging the credit reports of tens of millions of consumers, finding that 1 in 5 consumers with a credit report has a medical debt collection item and over half of collection items on credit reports are for medical debt. The CFPB's report on *Key Dimensions and Processes in the U.S. Credit Reporting System* is considered a standard reference document.

However, there is still much more to be done. The Big Three credit bureaus still continue to abuse consumers, which is dramatically reflected in the fact that they are consistently among the top four or five companies for which the CFPB receives the most complaints, and in some months have been ***the*** top three most complained-about companies. Consumers need a strong CFPB to ensure that the credit reporting industry treats them fairly and with respect.

Debt Collection

In 2015, the CFPB resolved critical, targeted enforcement actions to curb abusive debt collection practices, such as:

- Encore Capital and Portfolio Recovery Associates – the two largest debt buyers in the country – were engaged in practices such as attempting to collect unsubstantiated or inaccurate debt, robo-signing documents, and suing consumers past the statute of limitations;

- JPMorgan Chase – one of the largest banking institutions in the United States – was selling credit card accounts that already been paid or discharged in bankruptcy and robo-signing documents used in litigation against its former customers; and

- Frederick J. Hanna & Associates – a Georgia-based law firm and debt collection lawsuit mill – was filing lawsuits without meaningful review or involvement by attorneys and introducing faulty or unsubstantiated evidence.

In each of these cases, the defendants were clearly violating existing law and harming consumers. The CFPB's negotiated consent orders remedied these violations and prevented future harm by preventing collection of debts that were in the wrong amount, against the wrong person, or not legally collectible. The CFPB's enforcement actions also have had a helpful deterrent impact against wrongdoing by the industry as a whole and serve as a roadmap to industry compliance going forward.

In addition to these important enforcement actions, the CFPB continues to work toward comprehensive debt collection regulations for debt collectors, debt buyers, and creditors collecting debts in their own name. The need for debt collection regulations is underscored by the 82,500 debt collection complaints received by the CFPB – the highest of any industry – and the 897,655 debt collection complaints received by the FTC in 2015. Problems are widespread, including continued collection of debts not owed, in the wrong amount or against the wrong person; telephone harassment; deceptive and abusive collection of ancient, zombie debt; harmful practices involving medical debt and student loans, and inaccurate information impacting consumer credit reports. The CFPB's debt collection rulemaking will allow the agency to update and strengthen the provisions of the nearly 40-year old Fair Debt Collection Practices Act to address old problems that remain and new issues posed by communication technology and debt collection practices that did not exist in 1977, such as the sale of charged-off debt to debt buyers. Regulations will provide clarity to both consumers and the collection industry.

Access to Bank Accounts

Access to a safe and affordable bank account is a cornerstone of financial empowerment. However, almost 17 million Americans do not have bank accounts. One of the obstacles that prevents many consumers from opening an account is a negative history at a bank account screening consumer reporting agency (CRA), such as ChexSystems or Early Warning Services. Account screening CRAs operate databases that receive and report information, mostly negative, about a consumer's banking history and are used by banks to determine whether to allow a consumer to open an account.

Originally intended to warn financial institutions about potential fraud, the vast majority of negative information at account screening CRAs actually involves accounts closed due to overdrafts. Yet many consumers end up overdrawing their accounts due to unfair banking practices that permit or exacerbate overdrafts, such as allowing overdrafts on debit cards where they are almost completely avoidable and unnecessary or re-ordering transactions to create the maximum number of overdrafts in order to charge more fees. In addition to costing consumers billions in overdraft fees, these practices result in shutting out millions of consumers from the mainstream banking system.

The CFPB has taken a number of steps to address the problems with account screening CRAs and access to bank accounts in general. The CFPB took the first step in October 2014 by holding a Forum on Access to Checking Accounts. The CFPB followed up by examining, in its supervisory role, practices at both the account screening CRAs and the financial institutions that furnish and use their information. Discovering insufficient procedures and policies to ensure accuracy at both, the CFPB has directed both to institute reforms.

In February of this year, the CFPB took a number of additional steps to improve access to bank accounts. First, Director Cordray sent a letter to the 25 largest banks encouraging them to offer and promote "safe" accounts that help consumers avoid overdrafting. The CFPB also issued a bulletin reminding financial institutions of their obligations under the Fair Credit Reporting Act to have reasonable policies and procedures regarding the accuracy and integrity of information that they furnish to account screening CRAs.

Ultimately, ensuring fair access to bank accounts involves reform of bank overdraft abuses. The CFPB is considering a rulemaking process on this critical issue. The Bureau has conducted several in-depth research studies and issued a notice and request for information regarding the topic. There is much work that remains to reform bank overdraft practices, and we urge Congress to let the CFPB do its job.

Prepaid and Payroll Cards

The prepaid card market (including payroll and government prepaid cards) has been growing exponentially in the last several years. Prepaid cards fill an important gap left by banks' failure to adequately and safely serve low and moderate income consumers. But antiquated regulations have left most prepaid cards out of key consumer protection statutes that protect the safety of bank debit cards and bank accounts. In addition, while the vast majority of the prepaid cards on the market are true to their name and their promise – a safe account for vulnerable consumers that does not risk overdraft fees or the risks of credit – a few cards are designed to exploit consumer struggles, encouraging overdraft fees and enabling payday loans that undermine the safety and prepaid nature of the account.

The CFPB has proposed rules that would close the gaps in consumer protections for prepaid cards, improve those protections, and preserve the vital role prepaid cards play for families who struggle paycheck to paycheck. The proposal would extend Regulation E to prepaid cards, ensuring that prepaid cardholders have protection against unauthorized charges and a mechanism to address errors and disputes. The CFPB has proposed vastly improved fee disclosures that would give consumers clear information about the cost of the card, making comparison shopping easier. The proposed rule would also limit – but unfortunately not completely prohibit – overdraft fees and credit features on prepaid cards, helping to preserve prepaid cards as a safe refuge for consumers who have been denied access to or have trouble managing checking accounts.

The proposed rule is long and detailed, reflecting the careful thought, nuance, and care to avoid evasions and unintended consequences that the CFPB has brought to designing a rule that will encompass a variety of different types of cards and a variety of different consumer protection issues. The detailed specifics also make it easier for companies to comply, knowing exactly what is required. Ironically, a long and detailed regulation addressing a variety of situations actually results in a more straightforward product for consumers and simpler compliance for the industry – a hallmark of the CFPB's rulemaking approach.

Conclusion

The Consumer Financial Protection Bureau has been doing exactly what Congress created it to do: addressing a long backlog of consumer protection issues that have been sorely neglected. The Bureau has been listening carefully to consumers, industry and other interested parties and gathering critical research in order to make financial markets work better for all concerned. Congress should applaud the CFPB for the tremendous progress it has already made in a short period of time and provide strong support to the agency to continue its vital work in protecting the American public.

If you have any questions, please contact Lauren Saunders, Associate Director, National Consumer Law Center, lsaunders@nclc.org, (202) 595-7845.

Respectfully submitted,

National Consumer Law Center
(on behalf of its low income clients)
Start here

NCRC

Statement for the Record From John Taylor, President and CEO, National Community Reinvestment Coalition

Senate Committee on Banking, Housing, and Urban Affairs Hearing

"Assessing the Effects of Consumer Finance Regulations"

April 5, 2016

Chairman Shelby, Ranking Member Brown, and Distinguished Members of the Committee:

The National Community Reinvestment Coalition (NCRC) appreciates the opportunity to provide this written statement for the record of the April 5, 2016 hearing on "Assessing the Effects of Consumer Finance Regulations." NCRC applauds the Consumer Financial Protection Bureau's (CFPB) final rule expanding the data collected around the Home Mortgage Disclosure Act (HMDA).

The expansion of HMDA data is an important step for all consumers. Had we had this expanded data before, it would have provided an early warning system that would have helped to prevent the housing crisis by alerting regulatory agencies to a rapid increase in abusive lending. The expanded data includes information that could help to identify potential discriminatory lending practices, such as property value, term of the loan, total points and fees, information on teaser or introductory rates, and the applicant's age and credit score. Teaser rates, usurious loan fees, and points are commonly used tools to prey on vulnerable consumers with lower credit scores. The expanded data sets also include information on underwriting and pricing, such as debt-to-income ratios and interest rates. This information will be used to determine disparities across communities in the way home loans are written and priced.

The data will serve to increase the fairness of mortgage markets for all Americans. Existing HMDA data has been central to recent investigations and enforcement actions by the CFPB and the U.S. Department of Justice (DOJ), exposing on-going redlining. The CFPB and DOJ ordered Hudson City Savings Bank to pay $27 million for discriminatory redlining practices. Evans Bancorp agreed to a $825,000 settlement in response to a mortgage redlining lawsuit brought by the New York State Attorney General. The expanded HMDA data will increase the effectiveness of enforcement by boosting the ability of agencies to identify price discrimination in addition to redlining cases.

We are particularly pleased that the CFPB has followed the recommendation of NCRC and other advocacy groups to disaggregate the data on race and ethnicity. The CFPB has also shown careful consideration of potential privacy issues in this process, which should assuage any concerns surrounding the collection of the data.

The next step for the CFPB is to ensure that all of the data elements collected that pose no privacy concerns are released to the public. Detailed public disclosure gives increased transparency to the market and allows members of the public to detect lending discrimination and abuse. We urge the CFPB to commence this process as soon as possible. We anticipate that the dissemination of the new data elements will present minimal privacy risk to consumers; therefore, the CFPB should opt for comprehensive disclosure of the new data elements. There are several arguments that support a full public dissemination of the data:

- The personally identifying information (Social Security numbers and account numbers) that is most sought after by identity thieves will not be reported to the CFPB under the HMDA rule expansion.[1]
- Loans will be identified using a Universal Loan Identifier that must not include any information that could be used to directly identify an applicant. Prohibited information includes but is not limited to the applicant's name, date of birth, Social Security number, driver's license number, or employment/tax identification number.[2]
- The CFPB interprets HMDA to call for the use of a balancing test to determine whether and how HMDA data should be modified prior to public release in order to protect privacy while also fulfilling the public disclosure requirements of the statute.[3]
- The CFPB has taken steps to remove information that directly identifies consumers in its current data collections. The CFPB can apply similar procedures as it relates to sensitive HMDA data (age, credit score, LTV ratio) if it chooses to make any part of such data public.[4]
- If made publicly available, credit scores and ages could be reported in ranges or percentiles which are valuable for analysis but do not identify specific consumers.[5]
- Under the current rule, sensitive, potentially personally identifying data are not made available. The application/loan number, the date an application was received, and the date action was taken on an application are not made available to the public.[6] Similar procedures will be applied to the new data.

1 HMDA Disclosure Requirements http://www.occ.gov/static/community-affairs/community-developments-newsletter/summer05/cd/hmdadisclosure.htm

2 Ibid.

3 CFPB Proposed Rule on Home Mortgage Disclosure http://files.consumerfinance.gov/f/201402_cfpb_proposed-rule_home-mortgage-disclosure_regulation-c.pdf

4 Ibid.

5 Ibid.

6 Ibid.

NFHA
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Statement for the Record

Hearing of the Senate Committee on Banking, Housing, and Urban Affairs: Assessing the Effects of Consumer Finance Regulations

Submitted by: National Fair Housing Alliance

April 5, 2016

The National Fair Housing Alliance (NFHA) appreciates the opportunity to submit this statement for the record for the hearing of the Senate Committee on Banking, Housing and Urban Affairs on the effects of regulations as it relates to consumer finance. In the lead up to the foreclosure and financial crises, NFHA, along with many of our allies in the civil rights community, strongly urged the Congress and federal regulatory agencies to increase oversight of the financial industry by passing stronger legislation to stamp out abusive practices, step up regulation of the industry using then existing authority, and increase enforcement actions against bad actors. Thus, we are very supportive of current lending rules, implemented as a result of the Wall Street Reform and Consumer Protection Act (Dodd-Frank) to eliminate discriminatory and abusive lending practices, create safer products, improve consumers' understanding of financial products and services and implement sound rules to help the industry operate in a profitable and safe manner. We believe the CFPB has done an extraordinary job in accomplishing all of these goals but will focus our comments on the Bureau's fair lending work. NFHA also supports the remarks that have been submitted by our colleagues who are members of Americans for Financial Reform.

The foreclosure and financial crises and their impact on the global economy have been at the forefront of the country's domestic and foreign policy issues for years and for good reason. Moody's Chief Economist, Mark Zandi, estimates that over 7 million consumers will have lost their homes to foreclosure by the end of the crisis[1]. Reports vary on the cost to the American people of the foreclosure and financial crises but estimates range from $13 trillion to $20 trillion[2]. What has been greatly overlooked is how rooted the crises are in the historical discriminatory housing and lending practices in our nation. Bias in our housing and lending markets created a segregated society which has made it easy for unscrupulous

[1] Garrison, Trey, "Moody's Analytics: Single-family rental growth will accelerate", HousingWire, July 1, 2015; available at: http://www.housingwire.com/articles/34369-moodys-analytics-single-family-rental-growth-will-accelerate

[2] One study conducted by Better Markets puts the estimate at $12.8 trillion. Another study by the GAO states that the crises, as of 2013, cost the American economy $22 trillion.

actors to exploit under-served communities and indeed was the catalyst for the explosive growth in the subprime lending market. From segregated banks and lending institutions who closed their doors to newly emancipated Black citizens, to federally created redlining maps to the perpetuation of a bifurcated lending system, borrowers of color have never been fully served by the financial mainstream. Indeed, subprime and fringe market lenders have always been the primary source of credit for consumers of color. This is why PayDay and fringe lenders are and always have been disproportionately located in communities of color.

Moreover, we have more proof than ever that subprime lenders, in large part due to a lack of regulation and misaligned incentives, preyed upon highly qualified consumers to provide them with high-cost lending products – not because the borrowers were risky but, rather because lenders sought ways to enhance their earnings. African-American and Latino borrowers were targeted by lenders for subprime lending products. Numerous fair lending cases have been brought by the Department of Justice, Department of Housing and Urban Development, the CFPB or a combination of these agencies addressing discriminatory lending practices. These cases reveal that borrowers of color who were in all pertinent points equal to their White counterparts were charged more for loans and/or were unduly placed in subprime loans. Some cases also demonstrated redlining practices by mainstream financial institutions[3]. In fact, the Wall Street Journal commissioned an analysis of several subprime loan vintages and found that most people who got subprime loans qualified for prime-rate, fully amortizing, fixed rate conventional loans. In one portfolio, 61% of the borrowers qualified for prime credit.[4]

Communities of color are still bearing a disproportionate burden of the financial crisis and are the slowest to recover making it all the more imperative for the CFPB to use all of the

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[3] For some examples see CFPB and United States of America v. Hudson City Savings Bank, F.S.B. https://www.justice.gov/crt/file/791046/download; CFPB and United States of America v. National City Bank https://www.justice.gov/sites/default/files/crt/legacy/2014/04/08/nationalcitybanksettle.pdf ; United States of America v. Countrywide Financial Corporation, et al https://www.justice.gov/sites/default/files/crt/legacy/2012/01/27/countrywidesettle.pdf ; United States of America v. First Lowndes Bank, Inc. https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/lowndessettlefinal.pdf ; United States and CFPB v. Provident Funding Associates https://www.justice.gov/sites/default/files/crt/legacy/2015/05/29/providentcomp.pdf ; United States of America v. Wells Fargo Bank, NA https://www.justice.gov/iso/opa/resources/9512012712113719995136.pdf ; United States of America v. Suntrust Mortgage, Inc. https://www.justice.gov/iso/opa/resources/313201253116253830420.pdf

[4] Brooks, Rick and Simon, Ruth, "Subprime Debacle Traps Even Very Creditworthy," *Wall Street Journal*, December 3, 2007 available at: http://www.wsj.com/articles/SB119662974358911035

tools within its bailiwick to provide relief for consumers still struggling to work, live in safe and stable housing and provide for their families.

The CFPB has taken great steps to create a more fair and balanced marketplace and improve the ability of consumers to operate in a safe environment and the Bureau's efforts in this regard have been critically important. The CFPB has been addressing issues that too long have been ignored and, thanks to the Dodd-Frank legislation, the Bureau has the authority it needs to regulate financial transactions in sectors of the market that have been too long left un-monitored.

Fair Lending Regulation and Enforcement

The CFPB issued its Supervision and Examination Manual which provides guidance to banks and financial institutions on how the Bureau provides oversight on fair lending and consumer protection laws. The manual provides not only the legislative backdrop for the Bureau's regulatory and examination activities but includes descriptions of the type of discriminatory conduct that is prohibited by fair lending statutes. The guidance walks lenders through the process of ensuring that institutions have the appropriate policies, product offerings, fair lending compliance programs, board and management oversight, training, consumer complaint and response systems, vendor management oversight, marketing and advertising protocols, application and underwriting processing systems, pricing protocols, servicing procedures, and ability to monitor and correct problems. The manual outlines the CFPB's examination process, which is thorough and helps ensure that all consumers have fair access to quality credit.

The CFPB has also issued a bulletin entitled Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act, which provides extremely critical guidance to lenders to reduce the level of discrimination experienced by borrowers of color who procure auto loans. Discrimination in this sector has been long documented and was the subject of much public furor when PrimeTime aired its groundbreaking investigation called **True Colors**[5], which featured two testers from a Chicago fair housing group. The African-American tester encountered discrimination on multiple occasions when trying to purchase a car, secure

[5] See video clip showing differences in treatment at:
https://www.bing.com/videos/search?q=abc+nightline+discrimination+segment+testing&view=detail&mid=E611CB52E8E8E6AC9349E611CB52E8E8E6AC9349&FORM=VIRE

housing and purchase everyday goods and services. When trying to purchase a car, the White and Black testers received completely different information over and over about financing requirements and the cost of the cars for which they were shopping. When PrimeTime reporter Diane Sawyer asked why there was a difference in pricing, the auto salesman only responded "They're all different." When pressed to explain the difference, the auto sales person walked away from her. National studies have borne out the differences that Blacks and Latinos pay for car loans as compared to their White counterparts, even when Latinos and Blacks make the same attempt as Whites to negotiate on car dealer loans[6]. Discrimination in this sector has been revealed by the number of fair lending enforcement cases brought by both the DOJ and the CFPB as well as civil rights organizations[7].

Prior to the establishment of the CFPB there was an obvious void in federal oversight of financial institutions operating to bring a panoply of financial products and services to consumers. This is evidenced by the sheer number of fair lending issues the Bureau is now able to address using its authority under Dodd-Frank. The millions of consumers who have received relief from discriminatory practices are a testament to the Bureau's necessity. NFHA fully supports the fair lending regulatory and enforcement work the CFPB has undertaken and urges the Committee to do everything within its power to ensure that the agency is fully equipped to continue its work to make our financial markets fair for America's consumers.

We are happy to answer any questions Committee members might have about our comments. Please feel free to contact Lisa Rice, Executive Vice President at lrice@nationalfairhousing.org or 202-898-1661.

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[6] Davis, Delvin, "Non-Negotiable: Negotiation Doesn't Help African-Americans and Latinos on Dealer-Financed Car Loans", Center for Responsible Lending, January, 2014.

[7] For some examples see United States of America v. Fifth Third Bank https://www.justice.gov/crt/file/783561/download ; United States of America v. Evergreen Bank Group https://www.justice.gov/sites/default/files/crt/legacy/2015/05/07/evergreencomp.pdf ; United States of America v. Toyota Motor Credit Corporation https://www.justice.gov/opa/file/818481/download

U.S. PIRG Statement for the Record
Hearing on Assessing the Effects of Consumer Finance Regulations, 5 April 2016
U.S. Senate Committee on Banking, Housing and Urban Affairs
by Edmund Mierzwinski, Consumer Program Director

U.S. PIRG
Federation of State PIRGs

Chairman Shelby, Senator Brown and Members of the Committee:

On behalf of state PIRG consumer members around the nation, thank you for the opportunity to present this brief statement for the record for Tuesday's hearing "On Assessing the Effects of Consumer Finance Regulations" and in advance of "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress" hearing on Thursday.

SUMMARY:

Defend the CFPB, It Works: U.S. PIRG stands in strong support of the Consumer Financial Protection Bureau (CFPB), including support for its single-director structure, its independent funding insulating it from special interest chicanery and its broad authority and tools to make all financial markets work. Without any doubt, establishment of the CFPB is the most important consumer financial protection action by the Congress since the establishment of deposit insurance in the 1930s. And, independent funding is neither a controversial nor new idea: it's been the law since 1864 for all bank regulators.

The Public Complaint Database Works For All of Us: While we associate our remarks today with those of other Americans for Financial Reform coalition (AFR) members whose statements will focus on defending the CFPB and on mortgage lending, credit card markets, credit reporting, CFPB enforcement actions, current rulemakings on predatory payday and auto title lending and arbitration reform and other aspects of the CFPB's work, we will emphasize the importance of the CFPB's public Consumer Complaint Database as a mechanism to both aid its enforcement and selecting its rulemaking priorities but also to help it avoid the calcification of, or worse, regulatory capture of, its predecessor consumer regulators.

The "Durbin Amendment" Works to Improve a Broken Payment Card Marketplace While Benefiting Small Banks and Credit Unions: All consumers pay more at the store and more at the pump due to "market power" exerted by the Visa/Mastercard card network duopoly, which allows banks to impose excessive "swipe fees" on merchants. The "Durbin amendment" limiting the duopoly's power to allow big banks to collect these excess rents has worked. Contrary to testimony that may be provided to the committee, there is strong evidence that the Durbin amendment has helped small banks and credit unions, which continue to offer both free checking and debit rewards programs. Further, perhaps less-discussed but also important provisions of the amendment have encouraged merchants to give consumers "price signals," resulting in more competition from fraud-resistant "PIN" networks against the riskier and fraud-prone but lucrative-to-banks "signature" network transactions preferred by Visa and Mastercard.

1. THE CFPB WORKS AND SHOULD NOT BE WEAKENED

In less than five years of existence (its fifth birthday will be July 21) the success of the CFPB has demonstrated the wisdom of Congress both in establishing it and in insulating it from special interest chicanery. Its independent funding is neither a controversial nor new idea; it's been the law since 1864 for all bank regulators. Further, despite allegations by special interests, the CFPB is neither rogue nor immunized from Congressional oversight. The director's appearance before Congress Thursday will be approximately the 59th by him or another senior CFPB official.

The CFPB has already provided over $11 billion in refunds, restitution and other relief to consumers harmed by unfair financial practices of banks, credit card companies, mortgage companies, for-profit student lenders, debt collectors, payday lenders and other wrongdoers. Its work has protected all of us but placed an emphasis on protecting servicemembers and veterans, older Americans, young Americans (students) and consumers at greater risk of discrimination. We would urge the committee and the full Senate to reject the self-serving demands of powerful special interests to weaken the bureau's independent funding or gut its single-director structure (there is no evidence that commissions are better than single-directors, nor is the claim that all financial regulators are run by commissions even close to true). Further, a variety of other special-interest proposals would subject the CFPB to a death by a thousand cuts, for example, by eliminating its authority over auto financing or to issue predatory lending rules or to tie it in regulatory knots or even to weaken its highly-successful public consumer complaint database.

2. THE CFPB'S PUBLIC CONSUMER COMPLAINT DATABASE WORKS FOR ALL OF US

In just four and one-half years, the CFPB now has the largest public consumer complaint database of any federal agency, with over 834,000 complaints collected as of 1 March 2016. Over 540,000 of the 834,000 complaints to the CFPB have been posted in the Public Consumer Complaint Database (others are still being processed or have been referred to other agencies).

It is important to point out, however, that transparent public consumer complaint databases are now the rule, not the exception. Other examples include the Consumer Product Safety Commission (saferproducts.gov) and National Highway Traffic Safety Administration (safercar.gov). U.S. PIRG maintains an appendix of these and several other searchable government consumer complaint databases in each of its six (so far) reports on CFPB Consumer Complaint Database. We drill down into the CFPB database on issues from credit reporting to mortgages.[1]

We commend the CFPB for its efforts, first to stand up the database while ensuring both that consumers had legitimate account relationships and that businesses had ample opportunity to comment on, respond to and dispute consumer claims, <u>but not to censor complaints</u>, as they routinely demand to do. Further, the CFPB should be commended for making the work of government more transparent and open while also protecting customer privacy.

[1] See our page "Reports: The CFPB Gets Results for Consumers," linking to reports on bank accounts, credit cards, credit reports, debt collection, mortgages and student lending here at http://www.uspirgedfund.org/page/usp/reports-cfpb-gets-results-consumers Open any report and scroll to the Appendix B, "Searchable Public Databases of Government Consumer Agencies."

By publishing consumer complaints, the CFPB has improved its own ability to police the marketplace and prioritize use of its own scare resources while simultaneously enabling independent and academic researchers, other consumers and other firms to better analyze consumer complaints and concerns.

- Researchers, from PIRG to academics to industry consultants, are identifying trends and developing more insights about good and bad marketplace practices;
- Consumers are making better marketplace choices after searching the database. They more wisely choosing institutions based on a more robust understanding of a firm's behavior toward its other customers, accountholders or – in the case of "dead-end markets" such as debt collection and credit reporting – the consumers it maintains files on. Those potential customers will also be able to see if a problem that they are having is the same the problem other consumers are having;
- Other firms are better able to identify patterns and practices that they might change, or affirmatively choose to avoid, and then be able to market their firm as more consumer-friendly, making it easier for good actors to gain market share and stimulating competition positively, by better aligning the interests of firms with those of their customers and potential customers. Firms without "tricks and traps" should do better in a more transparent marketplace. (In fact, news stories have pointed out that industry consultants are recommending improvements to customer service as a best practice;[2] so are consultant reports, such as one from Deloitte[3]);
- Researchers, armed with more robust data, will be better able to build models to provide early warnings of the kinds of unsafe consumer practices that could otherwise lead to a systemic collapse such as occurred in 2008.

Narratives Are a Very Important Improvement to the Database: Last year, as of June, following a public comment period, the CFPB made consumer narrative or "story" fields public, but only with the consumer's informed opt-in consent. Approximately half of all new complaints come with narrative fields. The narratives make the database more accessible and understandable and provide a more robust picture of marketplace practices than mere coded "issue" (problem) fields were able to do. Stories should also encourage more consumers to use the database. This positive feedback loop or "network effect" will increase its value to everyone as the financial services marketplace becomes more transparent.

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[2] See e.g., this 11 September 2013 American Banker story, "Customers Are Now Banks' Greatest Regulatory Threat" by Rachel Witkowski: "You want to reduce the number of complaints to the CFPB and a way you can do that is to cut them off at the pass," said Alan Kaplinsky, who heads the consumer financial services group at Ballard Spahr. Banks should "have a very good system in place from the get go to resolve a complaint quickly." http://www.americanbanker.com/issues/178_176/customers-are-now-banks-greatest-regulatory-threat-1061975-1.html

[3] See page 9, "CFPB's consumer complaint database analysis reveals valuable insights," Deloitte, September 2013, available at http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/FSI/US_FSI_CFPBConsumerComplaintDatabaseFINAL2_091913.pdf

Of course, the bureau already had access to the narrative information and was already using these data points in its supervision, enforcement, rulemaking and public education. But the bureau itself now will benefit from more eyes aimed at potential marketplace problems. In addition, the public, including outside academics, "civic hackers" and other researchers are expected to develop new crowd-sourcing and other analytic tools using the new data points.

Monthly Snapshots Are Also an Important Improvement to the Database: Last year, the CFPB also took another of our recommendations when it began publishing its own detailed monthly complaint summaries.[4] Since July, the monthly snapshots produced by CFPB Consumer Response have added an important new window into the financial marketplace. Each snapshot examines a particular financial sector in depth, profiles complaints in a different geographical area and ranks complaints by company and product category, with trend analysis.

The Database Works To Prevent Regulatory Capture: The CFPB is a transparent, data-driven agency which publishes vast amounts of information for public examination and review. It devotes substantial resources to rulemaking, examination, enforcement and public education. Yet, the database may be among its most important tools against the complacency that has led to calcification and regulatory capture among other government agencies. The database provides an important way for the CFPB to hear from consumers, not just from the typical insider lobbyists and lawyers for regulated firms. As CFPB Director Richard Cordray told AFR members on the occasion of the CFPB's fourth birthday last July:

> Each complaint that people take time to submit to the Consumer Bureau can provide invaluable information and insight. Consumer complaint data is part of our DNA and these complaints play an important role in our supervision of companies, our enforcement actions, our rulemakings, and our engagement with servicemembers, students, the economically vulnerable, and older Americans. Each complaint is a chance for us to evaluate a perceived problem and see if it can be addressed successfully. But more importantly, complaints make all the difference by informing our work and helping us identify and prioritize problems. We know that if we hear about the same problem from fifty consumers, it likely looms larger than if we hear about it only from one or two. All of these complaints have real people behind them. Each tells us a story about how consumers view their experiences with financial institutions, as they struggle to manage the ways and means of their economic lives. Often consumers ask simply to be treated with fairness, dignity, and respect. And we all know in our hearts that this is exactly what each of us deserves.[5]

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[4] The most recent CFPB complaint snapshot, released at the end of March and drilling down into debt collection complaints and complaints from the Florida region, is here http://www.consumerfinance.gov/newsroom/cfpb-monthly-complaint-snapshot-examines-debt-collection-complaints/

[5] See "Prepared Remarks of CFPB Director Richard Cordray At the Americans for Financial Reform Event on the CFPB's Fourth Anniversary (16 July 2015):"http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-americans-for-financial-reform-event-on-cfpb-anniversary/

3. THE DURBIN AMENDMENT LOWERING DEBIT CARD SWIPE FEES WORKS, DESPITE CLAIMS TO THE CONTRARY

We also want to take this opportunity to offer U.S. PIRG's continued strong support for another benefit of the Dodd-Frank Act, its "Durbin Amendment," which reduced allowable "swipe fees" imposed on merchants accepting debit cards from banks over $10 billion. A lesser known impact is that the amendment also prevents banks from imposing unfair limits on the ability of merchants to give "price signals" to their customers by explaining that certain payment methods – such as rewards cards, especially credit and debit card rewards cards – cost the merchant more and force it to raise everyone's, including cash customers, prices.

Everyone pays more at the store and more at the pump due to anti-competitive swipe (interchange) fees, which have declined in nearly every country, but continue to rise in U.S. markets due to market power of the primary card networks. Although the Visa and Mastercard networks are now publicly traded, they remain controlled by the big banks. High swipe fees also impose a regressive tax on lower-income cash customers, who are forced to subsidize the rewards cards of more affluent credit card customers.

We have seen numerous unfounded claims that the Durbin amendment's price caps on debit cards offered by the largest banks are somehow responsible for a decline in fee revenue which allegedly harms small banks and credit unions and has supposedly ended free checking and debit card rewards everywhere.

These claims are not backed up by any sort of evidence. In fact, there is much statistical and survey evidence to the contrary. The most recent issue of the Philadelphia Federal Reserve Bank's Banking Trends[6] explains that the Durbin amendment reduced interchange fee revenue at big banks, as intended, it did not harm and even helped small bank fee revenue:

> "There is substantial evidence that the ceiling did lower interchange fees collected by banks with assets above $10 billion, from around 44 cents to about 22 cents per transaction. But there was no such decline for small banks. Furthermore, after the ceiling was imposed, the volume of transactions conducted with cards issued by exempt banks grew faster than it did for large banks. Finally, Zhu Wang shows that interchange revenue fell substantially at large banks after the fee ceiling was imposed but continued rising for small banks." [citations omitted]

Nor has the Durbin amendment been shown to harm free checking programs at large or small banks. The ABA itself finds that "61% of consumers" pay no fees at all for "checking account maintenance

[6] See James DiSalvo and Ryan Johnston, "How Dodd-Frank Affects Small Bank Costs: Do Stricter Regulations Enacted Since The Financial Crisis Pose A Significant Burden?", in "Banking Trends," First Quarter 2016, page 14, Federal Reserve Bank of Philadelphia, available at https://www.philadelphiafed.org/-/media/research-and-data/publications/banking-trends/2016/bt-how_dodd_frank_affects_small_bank_costs.pdf

or ATM access.[7]" There are no independent data showing any link to any decline in the availability of so-called free checking to the Durbin amendment at large banks; if so, 61% of consumers could not be paying zero fees.

Bankrate.com's most recent survey finds that more large and small (76%) credit unions are now offering free checking, up from 72% last year.[8] Finally, nor has the Durbin amendment restricted the ability of large or small banks or credit unions to offer their own debit card rewards programs to members. In January, Credit Union Times reported:

> "Debit rewards programs at big institutions may be few and far between, but industry experts said they're rapidly becoming the new secret weapon for credit unions interested in snagging market share. The trigger was the Durbin Amendment, which is part of the Dodd-Frank Act."[9]

CONCLUSION:

Thank you for the opportunity to present these brief comments to the committee. Strong consumer regulations, and a strong CFPB, are critical to making financial markets work. They better align the interests of buyers and sellers so sellers don't depend on "gotcha" practices and buyers (consumers) gain more trust and confidence in the regulated financial system. Strong consumer rules also reduce the amount of risk placed in the system by unsafe, unsustainable products, further reducing the threat of future financial crises.

The idea of the CFPB needs no defense, only more defenders.

Respectfully submitted,

Edmund Mierzwinski
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202-461-3821 (direct); email is edm <AT> pirg.org

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[7] See "Survey: Most Americans Pay Nothing for Bank Services," 15 August 2016, available at http://www.aba.com/Press/Pages/081815SurveyonBankCosts.aspx

[8] See Claes Bell, "Credit unions: Where free checking still reigns," undated article based on 2016 Bankrate.com 2016 Checking Account Survey, both available at http://www.bankrate.com/finance/checking/want-free-checking-check-out-credit-unions-1.aspx

[9] Tina Orem, "Credit Unions Pile Into Debit Card Rewards," Credit Union Times, 21 January 2016, available at http://www.cutimes.com/2016/01/20/credit-unions-pile-into-debit-rewards Also, re large bank rewards programs, see CU Today's "Despite Durbin, Debit Card Reward Programs Remain Vibrant," 29 March 2016, available at http://www.cutoday.info/Fresh-Today/Despite-Durbin-Debit-Card-Reward-Programs-Remain-Vibrant

Statement for the Record

Hearing of the Senate Committee on Banking, Housing, and Urban Affairs: Assessing the Effects of Consumer Finance Regulations

Submitted by: Public Citizen

April 5, 2016

As the Senate Banking Committee meets with the Consumer Financial Protection Bureau (CFPB), Public Citizen applauds the CFPB for what it's done—returning more than $11 billion from predatory Wall Street firms to victims. We urge the agency to continue to fulfill its mandate by moving forward a strong rule banning or restricting forced arbitration—a pernicious practice which blocks consumers from joining together to seek justice and forces ripped-off consumers to take on large corporations alone in a secretive system set up to favor corporations, giving them an effective license to steal. We also urge the CFPB to propose strong rules protecting consumers from abusive small-dollar lending that exploits the most vulnerable among us. Public Citizen stands strongly behind the CFPB as a key achievement of Dodd-Frank and a tried and true defender of American consumers. We also agree and support other statements made by members of our coalition, Americans for Financial Reform.

Statement of the Electronic Transactions Association

United States Senate

Committee on Banking, Housing, and Urban Affairs Hearing

"Assessing the Effects of Consumer Finance Regulations"

Tuesday, April 5, 2016

In anticipation of the Senate Committee on Banking, Housing and Urban Affairs hearing on April 5, 2016, the Electronic Transactions Association (ETA) submits the following statement for the hearing record. ETA is the leading trade association for the payments industry; it represents more than 500 companies that provide payment processing services including card networks, financial institutions, processors, manufacturers, independent sales organizations, and technology companies. ETA's comments are intended to assist in the Committee's examination of the value of pre-dispute Arbitration clauses for consumers and the effects of regulation, like the Consumer Financial Protection Bureau's ("CFPB") announced plan to issue a rulemaking restricting the use of such clauses.

Historically, arbitration agreements have been supported by the federal government and the U.S. Supreme Court. Specifically, the Federal Arbitration Act of 1925 established a strong federal policy in favor of arbitration and the U.S. Supreme Court has upheld the broad application and enforceability of arbitration agreements in a long series of cases, including several in the last three years.

Arbitration has many advantages for consumers in resolving complaints: 1) it is quick, taking months instead of years; and 2) it is relatively inexpensive avoiding the need to incur costly legal fees. In the end, arbitration is simple and more cost-efficient for all parties involved.

While Dodd-Frank required the CFPB to conduct a study on arbitration as a pre-requisite to any rulemaking regulating the use of arbitration agreements in consumer financial agreements, ETA has concerns about the manner in which the CFPB's *Arbitration Study* was conducted, including the lack of public access to the data underlying the study and the subsequent March 2015 Arbitration Report to Congress. One significant finding that the CFPB did make, however, is that dispute resolution mechanisms in credit card agreements play a limited role, if any at all, in consumers' decisions to obtain a particular credit card. In viewing the lack of importance that consumers attach to dispute resolution provisions in financial services agreements, it appears that the CFPB may be unfairly attempting to restrict the use of arbitration provisions.

ETA believes that providing consumers with a swift and cost effective dispute resolution system is paramount. Any rulemaking by federal agencies that limits options for consumers should be given a second look.

Submitted April 4, 2016

CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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April 6, 2016

The Honorable Tom Cotton
United States Senate
Washington, DC 20510

Dear Senator Cotton:

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions. The Chamber created the Center for Capital Markets Competitiveness to promote a modern and effective regulatory structure for capital markets to function well in a 21st century economy.

I write to follow up with you and your colleagues on the Committee on Banking, Housing, and Urban Affairs regarding your questions from yesterday's hearing concerning the impact of the forthcoming Consumer Financial Protection Bureau (CFPB) rule that, as a practical matter, will eliminate arbitration from the consumer financial services industry. In particular, you asked about its likely impact on the ability of credit bureaus to provide helpful credit monitoring and credit education services to consumers. Thank you for your question; my thoughts on this subject are set forth below.

As you mentioned in your question to me, the Credit Repair Organizations Act of 1996 (CROA) was enacted to prohibit fraudulent representations by companies offering credit repair services about their ability to remove true but negative information from an individual's credit history.[1] In addition to government enforcement, CROA is enforced through a strict liability private right of action, including a statutorily authorized class action.[2] This means that even the most insignificant, immaterial error by a credit repair organization is actionable. Needless

[1] *See generally* Credit Repair Organizations Act of 1996, Pub. L. No. 104-208 § 2451 (Sept. 30, 1996) (codified at 15 U.S.C. §§ 1679-1679j)..
[2] *Id.* § 1679g, 1679h.

to say, under this particular strict liability statute, the potential liability of any "credit repair organization" is immense.[3]

The question of who is a "credit repair organization" is more than a proverbial "million dollar question"—the class action plaintiffs' bar has recently turned it into a literal one. In February 2014, the Ninth Circuit Court of Appeals issued its opinion in *Stout v. FreeScore, LLC*, concerning whether the district court properly dismissed a putative class action case alleging that FreeScore, a company that provided consumers with credit scores, credit reports, and credit monitoring services, was strictly liable under CROA for various violations of the statute. To be sure, FreeScore did not at any time actually perform credit repair services—a point the Court did not dispute.[4] Instead, the Court's opinion focused on FreeScore's advertising, which state that having access to credit reports and scores and using credit monitoring services could help consumers improve their overall credit. Incredibly, the Court took the view that stating the most basic principle of financial literacy—that knowing more about your credit can help you improve your credit—was exactly the type of nefarious "representation" that CROA was enacted to root out.[5] That holding is at odds with congressional testimony by the Federal Trade Commission, the agency tasked with enforcing CROA, in which the Commission said it "sees little basis on which to subject the sale of legitimate credit monitoring and similar educational products and services to CROA's specific prohibitions and requirements, which were intended to address deceptive and abusive credit repair business practices."[6]

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[3] Under CROA, the defined term "credit repair organization" (A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of (i) improving any consumer's credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i)[.] It does not include a 501(c)(3) nonprofit organization, a creditor that is helping a person restructure debt, or a depository institution or credit union. 15 U.S.C. § 1679a(3).

[4] *See generally* Stout v. Freescore, LLC, 743 F.3d 680 (9th Cir. 2014).

[5] *Id.*

[6] *Oversight of Telemarketing Practices and the Credit Repair Organizations Act (CROA): Hearing Before the Senate Committee on Commerce, Science, and Transportation*, 110th Cong. 8 (2007) (written statement of Lydia B. Parnes, Dir., Bureau of Consumer Prot., Fed. Trade Comm'n).

The Honorable Tom Cotton
April 6, 2016
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Class action lawsuits under CROA are existential threats to companies actually subject to its jurisdiction; more perniciously, in light of cases like *Stout*, they threaten the existence of companies not intended to be subject to CROA that provide credit monitoring and education services to millions of Americans worried about identity theft, hacking, and other cybersecurity threats. The Chamber is very concerned that *Stout* and cases like it, which we believe seriously misread CROA's statutory text, defy congressional intent, and subject more companies to class action litigation, will harm consumers by reducing or eliminating their access to helpful products that help them take more control over their financial well-being. We therefore take this opportunity to encourage Congress to clarify that the provision of credit monitoring and credit education services is not covered by CROA.

Moreover, as you foreshadowed in your question to me at yesterday's hearing, the CFPB's forthcoming arbitration rule will further jeopardize the availability of consumer credit monitoring and education services—a strange result for a government agency charged with improving financial literacy.[7] Like many financial services providers, many credit monitoring service providers use pre-dispute arbitration agreements to provide their customers a faster, cheaper, more efficient way of recovering a greater amount of money for claims they have against the company. That shouldn't be surprising—after all, the CFPB's own *2015 Arbitration Study and Report to Congress* confirms these benefits of consumer arbitration; it also concludes that 87% of class action lawsuits result in absolutely no recovery for consumers. Despite this data, the CFPB's arbitration rule is likely to prohibit consumer financial contracts from requiring that claims be filed in arbitration rather than class action litigation, which will likely have the practical effect of eliminating arbitration altogether. The impact of CFPB's rule on the continued availability of consumer arbitration is a critically important question that should be answered before any such rule is proposed; regrettably, the CFPB did not even bother to study it. The Chamber has and will continue to encourage the CFPB to preserve consumer arbitration in financial services contracts.

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[7] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 § 1013(d) (July 21, 2010) (creating the CFPB's Office of Financial Education to "educate and empower consumers to make better informed financial decisions").

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I hope that I have answered your questions. If not, please do not hesitate to contact me.

Regards,

David Hirschmann

cc: Members of the Committee on Banking, Housing, and Urban Affairs
The Honorable Richard Cordray, Director, CFPB

MBa

MORTGAGE BANKERS ASSOCIATION

April 6, 2016

The Honorable Richard Shelby
Chairman
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, & Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Brown:

We are writing in advance of testimony that Consumer Financial Protection Bureau (CFPB) Director Richard Cordray is scheduled to deliver before the Senate Banking Committee on Thursday, April 7. Since its inception, MBA and its members have worked closely with the Bureau to ensure its rules governing the mortgage finance industry effectively protect consumers, but do not unduly restrict credit availability to qualified borrowers. In fact, the industry has a history of productive collaboration with the CFPB that has resulted in better outcomes for both consumers and the housing finance market. For example, the Ability to Repay/Qualified Mortgage implementation is an excellent model for the implementation of new and complex regulations.

However, recently the CFPB has taken a number of actions that we believe will have an adverse impact on consumers. Specifically, we wish to highlight two key concerns that we have raised with the Bureau over the past year:

1) The use of consent decrees and administrative decisions to make changes in existing rules or guidance, rather than using rulemaking or published written guidance that is prospectively applied, and

2) The issuing of major new rules and then failing to provide additional written guidance to aid consistent implementation by the industry.

Regulation by Enforcement

Five years after the enactment of Dodd-Frank, enforcement actions present very significant challenges to the residential mortgage industry. Unfortunately, the CFPB has recently appeared to take a "regulation by enforcement" approach, offering industry participants little guidance and simply instituting claims against them — often using new interpretations of old rules.

Enforcement without guidance exposes industry participants to "regulation by enforcement action" and opens up activities not previously believed prohibited to potential challenge by state regulators, plaintiffs' attorneys, as well as the government.

In particular, two concerning themes have emerged since the CFPB became the primary regulator of the mortgage market: 1) the CFPB is reluctant to issue written authoritative guidance even to clarify its own rules, and 2) the CFPB utilizes an enforcement-driven approach to redirect behavior in the marketplace.

With respect to the first theme, it is critically important that consumers and lenders have a clear understanding of the CFPB's rules and interpretations of those rules. Unfortunately, despite lenders' good faith efforts to comply with the CFPB's rules—including using compliance management systems, seeking advice from outside counsel, and seeking clarity directly from the CFPB—ambiguities remain and answers, even among CFPB employees, are inconsistent. Oral guidance, whether provided privately in response to individual inquiries or on CFPB's webinars does not address the need for authoritative written guidance issued broadly to industry.

With respect to the second theme of changing prior interpretations of existing rules through enforcement actions, CFPB's current practice provides no constructive notice (much less an opportunity to comment) when the CFPB's view of market behavior has changed. Industry is left to parse through every enforcement action to determine if it contains new views or enforcement theories. This is particularly burdensome for small lenders that do not have an army of lawyers on staff to conduct these reviews. Should the CFPB wish to redirect market behavior, lenders need clear rules or official supervisory guidance that puts market participants on notice of new interpretations, and affords firms an opportunity to adapt without having to guess about the standards set forth in a CFPB order. Moreover, lenders would rather have a complete understanding of the CFPB's expectations in a rule or guidance than wait for a series of costly enforcement actions, especially if there is a possibility that they will be the subject of such enforcement.

This lack of guidance from the CFPB is now straining firms with exemplary compliance records, driving up costs, and forcing some to consider closing their doors. It also results in an inconsistent application of the rules of the road in the marketplace, as some companies must revise business arrangements while others await further guidance.

There are two specific examples where the Bureau's approach is resulting in inconsistent application of the rules, slowing adoption, and raising costs of compliance – all of which results in higher consumer costs and unevenly applied consumer protections.

Marketing Services Agreements (MSAs)

Last July, MBA formally requested that the CFPB issue clear rules regarding the use of MSAs under the Real Estate Settlement Procedures Act (RESPA). MSAs are agreements between settlement service providers. Under such agreements, one party markets the services available from the other to its customers for fair compensation. Based upon decades of Department of Housing and Urban Development (HUD) guidance concerning key sections of RESPA, many lenders have entered into marketing arrangements with other settlement service providers that closely follow the guidance provided by HUD to ensure compliance with these standards.

However, since the Dodd-Frank Act transferred responsibility for RESPA from HUD to CFPB, the CFPB has published key consent orders and decisions under RESPA that diverge from prior

HUD rules and interpretations. The CFPB has argued that HUD's interpretations were erroneous, and that the prior written guidance was not authoritative. These cases have in turn raised questions on whether a host of other arrangements — including brokering of loans and arrangements with third parties to allow consumers to shop for settlement services — are still permissible under the CFPB's evolving views of RESPA.

As a result, it is entirely unclear whether the RESPA cases, for example, are specific to their facts or whether they embody a new approach altogether. In some cases, lenders have unwound previously compliant arrangements out of fear of enforcement, and have lost business as a result. Other lenders believe that their arrangements are compliant based on the prior guidance and the opinions of counsel. The environment is forcing lenders to choose between market risk (losing business as a result of shuttering an effective business arrangement) and compliance risk, simply for lack of clear guidance.

Although CFPB responded to industry requests for guidance via a bulletin, it stopped short of opining on whether MSAs are permissible, provided only a laundry list of risks and concerns, and offered no guidance on what measures could be taken to mitigate those concerns. Moreover, the guidance contained a disclaimer that it was a "nonbinding general statement of policy articulating considerations relevant to the Bureau's exercise of its supervisory and enforcement authority."

Because RESPA is a criminal statute, the uncertainty caused by the change in position needs a clear, authoritative and prospective resolution. Accordingly, we continue to request that the CFPB propose new rules to clarify the applicability of RESPA to MSAs through notice and comment rulemaking.

Know Before You Owe/TILA RESPA Integrated Disclosure

In addition to its divergence from prior interpretation of law, CFPB has also refused to provide timely written guidance on new rules, such as its "Know Before You Owe" rule (i.e., TRID).

The TRID rule became effective on October 3, 2015. At its core, TRID represents the largest restructuring of the residential mortgage application-to-closing process in nearly 40 years. Implementing this new rule required major changes to industry systems and business processes as well as thousands of hours of training. In light of this complexity, the CFPB announced prior to the October 3 effective date that it would take into account "good faith efforts" by industry to comply with the rule. Unfortunately, the CFPB did not provide a timeline for this good faith window, nor did it define the scope of good faith compliance.

While industry appreciates the establishment of a diagnostic "good faith" period for implementation of the rule, it is clear that many questions – some of which could not have been anticipated – still need be addressed. Since the TRID rule's implementation, a significant number of issues have emerged — mostly due to lingering misperceptions, differing interpretations, and technical ambiguities in the regulation. These are not matters with important policy or consumer protection implications; they are technical issues arising out of an incredibly complex rule. However, because the rule contains significant penalties for failure to comply, lenders and investors need clear written guidance. Such guidance will speed uniform adoption of the rule, ensure a consistent consumer experience and eliminate impediments to the sale of loans in the secondary market.

Conclusion

MBA believes that the CFPB, when implementing new rules or changing the interpretation of existing rules, should adopt clear "rules of the road" through the issuance of official, written interpretative rules, supervisory guidance and/or compliance bulletins. This clarity will facilitate efficient compliance, reduce implementation costs and ensure consistent consumer treatment across the market.

Sincerely,

Bill Killmer
Senior Vice President, Legislative and Political Affairs

Written Statement of the National Automobile Dealers Association
Submitted For the Hearing On
"The Semi-Annual Report of the Bureau of Consumer Financial Protection (CFPB)"
Before the Committee on Banking, Housing, and Urban Affairs
United States Senate
April 7, 2016

The National Automobile Dealers Association (NADA), a national trade association representing more than 16,000 franchised new car and truck dealers that collectively employ more than 1 million individuals,[1] is pleased to submit comments for the record as the Committee on Banking, Housing, and Urban Affairs engages in continuing oversight of the Consumer Financial Protection Bureau (CFPB). Particularly worthy of the Committee's attention is the CFPB's initiative, implemented through enforcement actions against auto lenders, to regulate dealer-assisted financing. This initiative is both (1) ***harmful to consumers*** – it threatens to eliminate customers' ability to receive a discounted annual percentage rate (APR) on their auto financing at a dealership; and (2) ***unnecessary*** – an alternative solution exists that fully addresses the fair credit concerns raised by the CFPB without eliminating a dealer's flexibility to discount the cost of credit for consumers. The CFPB's initiative also constitutes a back door attempt to regulate auto dealers, which Congress expressly prohibits in section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[2]

Auto dealers have relationships with a wide variety of banks, credit unions and finance companies, so the dealers can offer consumers competitive financing right at the dealership. Dealer-assisted financing allows consumers to benefit from dealers' access to many lenders (including lenders the consumer could not access directly), all vying to provide vehicle financing to consumers. In this indirect financing model, the dealer absorbs the retail costs of the lender. The consumer often benefits, not only because the dealer is typically more efficient in overseeing those localized costs but also because the dealer has the flexibility to discount its retail margin by lowering the consumer's APR to beat a competing offer or to fit the customer's budget. Dealer-assisted financing routinely provides vehicle buyers with better finance rates than they could get on their own from a bank or credit union.

In March 2013, the CFPB issued informal indirect auto finance guidance which threatens to eliminate a dealer's flexibility to discount the APR offered to consumers to finance vehicle purchases.[3] In the three years since the issuance of this guidance, despite persistent Congressional

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[1] NADA members are primarily engaged in the retail sale and lease of new and used motor vehicles, and also engage in automotive service, repairs, and parts sales. Last year America's franchised new car and truck dealers sold or leased approximately 17.5 million new cars and light duty trucks. NADA members operate in every congressional district in the country, and the majority of our members are small businesses as defined by the Small Business Administration.
[2] Congress retained the Federal Trade Commission, Federal Reserve Board and the Department of Justice's authority over dealers at the federal level.
[3] CFPB Bulletin 2013–02, issued March 21, 2013: http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf

oversight, the Bureau has provided little transparency regarding the formulation of this guidance and the potential adverse effects on consumers.

With the CFPB's actions likely to raise the cost, and in turn reduce the availability, of credit for car buyers,[4] NADA appreciates the Committee's review of the CFPB's actions on auto financing to ensure the Bureau is acting in the best interests of consumers and basing its policies on sound analysis.

The auto finance guidance is a classic case of the government not working properly. The CFPB released its guidance without prior notice, an opportunity for public comment, or even interagency coordination. What makes this specific guidance problematic is that the CFPB chose to avoid the rulemaking process and use "guidance" as a way to make a major change in policy which is effectively eliminating a dealer's ability to offer customers discounts on credit.

1. **<u>The Bureau is not acting in the best interests of auto consumers</u>**. The CFPB proceeded without considering the impact of its directives on auto consumers.[5] And the CFPB continues to press its fair credit initiative in a way that eliminates or significantly constrains consumer discounts. Of course, consumers are better served when they are able to leverage the competitiveness of the marketplace to negotiate lower interest rates on auto financing.

2. **<u>The Bureau is not basing its policy on sound analysis</u>**. The CFPB is attempting to eliminate or constrain dealers' ability to discount credit utilizing (1) a proxy analysis for determining the ethnicity of borrowers that the CFPB knows to be flawed[6] and (2) a fair credit enforcement theory that fails both (i) to compare only "similarly situated" customers[7] and (ii) to account for legitimate, competitive business factors that explain any pricing differentials that may exist.

The Department of Justice (DOJ) has noted repeatedly that the Equal Credit Opportunity Act does not ban pricing discretion or pricing differentials between groups, if the differences are based on a legitimate business rationale. This principle is consistent with the Supreme Court's recent decision

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[4] AnnaMaria Andriotis and Gauthan Nagesh, "*Crackdown on Racial Bias Could Boost Drivers' Costs for Auto Loans*," Wall Street Journal (Aug. 15, 2015).

[5] Section 1022 of the Dodd-Frank Act requires the CFPB to consider, when issuing a rule, the potential benefits and costs (including the potential reduction of consumer access to financial products and services) that could be caused by such a rule. In response to a letter sent by 22 Senators on this topic, <u>the CFPB acknowledged that it never studied how eliminating a dealer's ability to discount credit would affect the cost of credit paid by consumers</u>. (Letter from the Hon. Richard Cordray, Director, CFPB to Senators Portman (R-OH) and Shaheen (D-NH) (Nov. 4, 2013.)

[6] The CFPB's own analysis of its methodology revealed errors as high as 20 percent in estimating individuals' ethnicity. An independent research study found that the CFPB's proxy methodology can overestimate certain populations by 41 percent. Charles River Associates, *Fair Lending: Implications for the Indirect Auto Finance Market* (Nov. 2014).

[7] For a correct fair lending analysis, the CFPB must ensure the consumers compared are similarly situated by holding key variables constant, including the following: (1) the amount financed; (2) trade-in value; (3) competition in the local market; (4) market conditions; (5) demand and desirability for the vehicle; (6) consumer's payment capacity; and (7) whether the car is new or used. Also, manufacturers provide dealers sales incentives that motivate a dealer to arrange financing a car at a discount or loss if it achieves certain sales goals. If this factor is present, it must be taken into consideration as a dealer often has a vested interest in selling the car at a financing discount both to make the sale and to create customer loyalty that results in return business for parts, service, and future car purchases.

in *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*,[8] a decision which CFPB Director Richard Cordray approvingly cited last month before the House Financial Services Committee to justify its policy to eliminate dealer discounts.

As an alternative to the CFPB's guidance, NADA has endorsed a fair credit compliance program based entirely on a DOJ model, and we continue to urge the Bureau to embrace this common sense approach to addressing the fair credit concerns it has raised. In 2014, NADA developed its *Fair Credit Compliance Policy & Program*, based on prior work by the DOJ, which addresses fair credit risk in the showroom while also preserving a dealer's ability to discount credit. NADA, the National Association of Minority Automobile Dealers, and the American International Automobile Dealer Association jointly released this program, and numerous fair credit experts across the country have endorsed this approach. To date, the CFPB has declined to provide a reasonable rationale for failing to adopt this effective, DOJ-inspired alternative.

The DOJ-based program recognizes certain business reasons as legitimate to explain differentials in the amount of dealer discounts in the financing of automobiles, yet the CFPB refuses to acknowledge these neutral factors or to provide a rationale for rejecting them. The neutral, business-related factors that are often necessary to gain a customer's business include the following:

- the customer has a **monthly payment**/budget constraint;
- the dealer **"<u>meets or beats</u>"** a competing offer from a bank, credit union, or another dealer;
- the dealer offers a **promotional financing campaign** extended to all buyers, or all buyers of a particular vehicle, on the same terms;
- the customer qualifies for an **employee incentive program;**
- there are **inventory reduction considerations** that prompt the dealer to offer a financing discount in order to move certain vehicles off of its lot (since the dealer accrues interest on those vehicles until they are sold).

The DOJ model addresses fair credit concerns by promoting a standardized approach while preserving the flexibility needed to allow consumers to benefit from today's competitive auto financing marketplace. Most significantly, the DOJ prudently recognized that eliminating credit discounting in the showroom would deprive consumers of the ability to obtain a lower, discounted rate from the dealer when there is a legitimate business reason for the lower rate, i.e., a reason unrelated to the customer's background. (In contrast, the CFPB's guidance could largely *eliminate* a customer's ability to negotiate a lower interest rate in the showroom.)

The Senate should pass S. 2663, the "Reforming CFPB Indirect Auto Financing Guidance Act", introduced by Sen. Moran (R-KS). The bill would rescind the CFPB's flawed auto finance guidance, and make the Bureau more transparent and accountable when issuing future auto finance guidance. The bill provides for a public comment period, coordination with regulatory agencies that possess authority over dealers, and a study of the impact of the guidance on small businesses and,

[8] *Inclusive Communities, decided on June 25, 2015, held*, among other things, that "[g]overnmental or private policies are not contrary to the disparate-impact requirement unless they are artificial, arbitrary, and unnecessary barriers" and noted that businesses should be able to make "practical business choices and profit-related decisions." *Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. ___ (2015).

most importantly, consumers.[9] In particular, before issuing new auto finance guidance, S. 2663 would require the CFPB to:

- provide notice and a period for public comment;
- make public any studies, data, and analyses upon which the guidance is based;
- consult with the Federal Reserve Board, Federal Trade Commission and Department of Justice; and
- study the cost and impact of the guidance on consumers as well as women-owned, veteran-owned, minority–owned, and small businesses, including in rural areas.

S. 2663 is a moderate bill that does not dictate a result or tie the CFPB's hands. The bill merely allows for transparency and public notice so the public has an opportunity to analyze and to comment on the CFPB's attempt to change the auto financing market via "guidance."[10] It protects fair credit laws and their enforcement in order to safeguard equal opportunity in auto financing. For all of these reasons, the companion bill, H.R. 1737, introduced by Reps. Guinta (R-NH) and Perlmutter (D-CO), overwhelmingly passed the House on November 18 by a vote of 332-96 with strong support from Members across the political spectrum, including 88 Democrats.

The current system of optional, dealer assisted financing is fair and competitive, and boosts access to affordable credit for consumers. The Senate should provide careful oversight to ensure that the CFPB's actions do not unnecessarily and disproportionally hurt consumers, especially those with less-than-perfect credit, since those customers will be less able to afford any increase in rates and face even more limited options to buy a car or truck to meet their work and family needs. Any disruption in the highly-efficient, dealer assisted model can only be justified if supported by reliable and sound analysis. Yet, the CFPB continues to attempt to set the *manner* and dictate the *amount* of dealer compensation for arranging financing, despite a clear prohibition in Dodd-Frank against regulating dealers.[11] These significant flaws in the CFPB's policy could have been avoided if the Bureau had employed a transparent process and sought information on effective ways to build on the consumer benefits of the current auto finance model.

Senators should (1) vote for S. 2663 to provide much needed transparency, and (2) urge the CFPB to embrace the DOJ-based program that simultaneously addresses potential fair credit concerns and preserves consumers' access to affordable auto credit.

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[9] The CFPB took none of these essential steps before issuing its far-reaching guidance.

[10] Significantly, the process for issuing guidance in S. 2663/H.R. 1737 is consistent and in accordance with OMB's practices on agency guidance documents. The Bulletin on "Agency Good Guidance Practices" sets forth general policies and procedures to ensure that guidance documents of Executive Branch departments and agencies are developed with appropriate review and public participation, accessible and transparent to the public, and of high quality.

[11] Chris Kukla, of the Center for Responsive Lending and a "persistent critic of auto dealers and lenders," has a "theory that federal regulators... are still angry that when the CFPB was set up...franchised new-car dealerships won a 'carve out,' exempting them from the CFPB's jurisdiction." Mr. Kukla stated that he believes CFPB's actions are "...driven in part by the auto dealer exclusion." See Jim Henry, *"Did dealers hurt themselves with the carve out?"* Automotive News, Aug. 20, 2014.

<u>Attachments</u>

Bill Text, S. 2663

Myths & Facts, S. 2663

NADA/NAMAD/AIADA *Fair Credit Compliance Policy & Program*

4 Pinocchios: "Fact Checker: Warren's false claim that 'auto dealer markups cost consumers $26 billion a year'", Washington Post (May 5, 2015).

S. 2663: Reforming CFPB Indirect Auto Financing Guidance Act
Myths vs Facts – March 14, 2016

Myth	Facts
S. 2663 would "condone discrimination in auto lending, and would stop the Consumer Financial Protection Bureau (CFPB) from taking action against discriminatory practices in auto lending."	• Any suggestion that support of S. 2663 condones discrimination is unfair, baseless, and wrong. • S. 2663 is a process bill; it does not impact or amend the Equal Credit Opportunity Act (ECOA). • The bill would in no way prohibit, disrupt or affect the enforcement of any fair credit laws by the CFPB, or any other agency. • The Congressional Budget Office noted in its cost estimate "the bill would not affect the underlying statute or regulations to implement it, the Bureau can continue to enforce the ECOA without the bulletin[i]," something even the primary opponent of S. 2663 admits.[ii] • To bolster ECOA compliance, the trade associations representing franchised auto dealers developed a fair credit compliance program based on a Department of Justice model that addresses fair credit risk but still allows dealers to discount rates for consumers.
Auto dealers get a "substantial bonus" from lenders for increasing the interest rate above that for which the borrower otherwise qualifies.	• A finance source gives dealers a "maximum contract rate". Unlike a bank or a credit union, dealers currently have the flexibility to discount a rate for consumers and often do so to beat a consumer's competing offer from a bank. The compensation a dealer receives is the retail margin for the cost of arranging the loan, not a "bonus" or "overcharge." • The Washington Post recently debunked the Center for Responsible Lending's claim that dealer compensation "cost consumers $26 billion a year." The Post found that CRL's conclusions were based on misapplied, unexplained, and false data and gave the claim 4 Pinocchios – their maximum rating a "Whopper" of a false statement.[iii] • The CFPB wants to eliminate a dealer's ability to discount credit but fails to acknowledge "legitimate business reasons," such as budget constraints, which explain why a dealer may discount an interest rate.
The process established under S. 2663 is "convoluted" and would "tie the CFPB's hands."	• The process established under S. 2663 is simple, open and transparent, and consistent with OMB's practices on agency guidance documents.[iv] • The bill does not direct any particular result; it merely allows for public participation and transparency. • The bill's requirements just add appropriate safeguards to the CFPB guidance and are much less rigorous than an APA rulemaking. For example, the CFPB decides the length of a public comment period.

Myth	Facts
The enforcement actions against auto lenders are proof of wrongdoing.	• CFPB enforcement actions are forcing lenders to settle based on information and analysis the CFPB knows to be flawed. One undisputed study found that the CFPB's proxy methodology had errors of 41%. The CFPB admits errors of nearly 20%.[v] • The CFPB is a powerful regulator with tremendous leverage over lenders. For example, three days after one lender's consent order with the CFPB, the Federal government approved its application to become a financial holding company, enabling the bank to continue offering insurance products it would have otherwise been forced to discontinue.[vi] [vii] • The CFPB is taking these actions without considering the impact on buyers. However well intentioned, the CFPB's policy will have the effect of reducing or eliminating discounts buyers can get on their car loans.
The CFPB auto finance guidance is being unfairly singled out. No other guidance is being similarly treated.	• Democratic authors of S. 2663/H.R. 1737 carefully drafted the bill to narrowly focus only on the CFPB auto finance guidance. Previously Democratic members of the House Financial Services Committee objected to a bill last Congress (H.R. 4811) that would have affected all CFPB guidance as being overbroad. • In this instance, the CFPB is trying to make new policy and reinterpret existing law using guidance. • Recent release of internal CFPB documents confirms that the Bureau is using the auto finance guidance as a means to change the auto lending market and avoid the rulemaking process.[viii]

[i] Congressional Budget Office. (2015, October 14). Cost Estimate: H.R. 1737 Reforming CFPB Indirect Auto Financing Guidance Act.

[ii] Even the primary opponent of H.R. 1737 concedes that "Rescinding the guidance does not change laws barring discrimination." Letter to Congress regarding H.R. 5403 (the identical bill to H.R. 1737 last Congress.) Center for Responsible Lending, October 2014.

[iii] Kessler, Glenn. (2015, May 5). Warren's false claim that 'auto dealer markups cost consumers $26 billion a year'. *The Washington Post.*

[iv] Office of Management and Budget, Executive Office of the President. (2007). Final Bulletin for Agency Good Guidance Practices. *Federal Register, 72(16)*, 3432-2440.

[v] Washington's Latest Bank Heist. (2015, April 6). *The Wall Street Journal.*

[vi] According to the Wall Street Journal, "Standard & Poor's Ratings Services... warned it would potentially lower the company's ratings if it failed to secure financial holding company status." An Ally official stated that "[n]o investor publically was going to invest in us unless we got financial holding company status. And we could not do that without coming to terms with the CFPB." Johnson, Andrew R. (2013, December 23). Ally Receives Fed Approval for Financial Holding Company Status. *The Wall Street Journal.*

[vii] Washington's Latest Bank Heist. (2015, April 6). *The Wall Street Journal.*

[viii] Witkowski, Rachel (2015, September 29). Lawmakers Give CFPB's Cordray Earful Over Auto Lending Crackdown. *American Banker.*

The Washington Post

Fact Checker

Warren's false claim that 'auto dealer markups cost consumers $26 billion a year'

By Glenn Kessler Follow @GlennKesslerWP

"One study estimates that these auto dealer markups cost consumers $26 billion a year. Auto dealers got a specific exemption from CFPB [Consumer Financial Protection Bureau] oversight, and it is no coincidence that auto loans are now the most troubled consumer financial product. Congress should give the CFPB the authority it needs to supervise car loans – and keep that $26 billion a year in the pockets of consumers where it belongs."

– Sen. Elizabeth Warren (D-Mass.), speech at the Levy Institute, April 15, 2015

Sen. Warren has long objected to Congress's decision to exempt automobile dealers from the Consumer Financial Protection Bureau, which she helped set up as an adviser to the Obama administration. In a recent speech, she indicated that she will push Congress to eliminate this exemption and allow the CFPB to supervise loans made by car dealers.

We take no position on whether this is necessary — or whether auto dealers should be barred from arranging loans — but we did become curious about a statistic that Warren has frequently cited — that "auto dealer markups cost consumers $26 billion a year." She referenced a 2011 report released by the Center for Responsible Lending (CRL), which describes itself as a nonpartisan, nonprofit organization that fights "predatory lending practices."

How accurate is this $26 billion figure and is Warren describing it correctly?

The Facts

Buying a car often involves two negotiations – the price of the car and then interest rate for the financing. (There can also be a negotiation over the value of a trade-in.) Consumers can come into a dealer with a pre-approved annual percentage rate (APR) from a lending institution, such a credit union, or they can get financing from the car dealer. The dealer typically will send an application to various lenders to get quotes. In that case, the dealer acts as a broker.

Whether someone would get a better rate from the auto dealer is open to question, since dealers expect to get paid for their work in arranging the loan. That compensation is known as the "dealer reserve." But you can haggle over the rate from the auto dealer. "Try to negotiate the lowest APR with the dealer, just as you would negotiate the best price for the vehicle," the Federal Trade Commission advises.

The dealer has the option of adjusting the APR (to below a bank's APR) by reducing its compensation in order to facilitate the sale. Dealers also may tout low or even zero percent financing offers for certain model cars. At the same time, that dealer discretion may result in higher rates for people with poor credit (or who do not negotiate well). Consumer advocates and academic studies also say there is evidence of racial disparities in rates that are offered.

The CRL report is based on 2009 data, in the depths of the financial crisis, and has not been updated. Although the report says that the "total rate markup volume" was $25.8 billion, it does not fully explain how that figure was calculated. A chart in the report says the key information about the dealer reserve was derived from annual survey published by the National Automotive Finance Association, which is a membership organization of lenders who specialize in "subprime" loans to people with poor credit.

That's right. This is data on the subprime market, a fact which CRL does not disclose in its report. CRL took the data and applied it to the entire auto loan market, even though subprime loans were only one-fifth of the auto-loan market in 2009. Moreover, just 25 of the 175 companies that were in the subprime auto loan market at the time participated in the

Fact Checker

Warren's false claim that 'auto dealer markups cost consumers $26 billion a year' *(continued)*

survey. Four respondents were deemed "large" lenders with more than 80,000 loans outstanding, while 10 respondents had fewer than 10,000 accounts. (In fact, only one company that answered the survey is one of the top 20 lenders.)

"The [NAF] report has never purported to represent the entire auto financing industry," said Jack Tracey, the group's executive director. "The 2010 survey reported data from only 25 companies, all in the non-prime financing space, and it would be incorrect to extrapolate such a small sample size to the entire auto financing market."

Christopher Kukla, CRL senior vice president, acknowledged that the data used in the report is incomplete. "One thing I will say is that the amount of publicly available data is minimal," he said. "We would be the first to admit that it is not a perfect data set."

But there's a bigger problem. The numbers in the CRL report do not match up with the numbers in the NAF survey. The CRL report says the average markup per used car loan was $780, but the NAF survey says it was $280. For new cars, CRL says $494 but the NAF survey lists $477. CRL says the average reserve was $714 but NAF survey says $330.

We won't bore you with the math. But calculations based on the data for auto-financed sales in the CRL report and the stated NAF survey estimates for dealer reserves yields a figure of $11.6 billion, or less than half the figure in the report. That may seem like a big number, but remember, it's based on data that is a subset of a subset of the overall auto loan market, so it's practically meaningless.

Even more curious, the CRL report asserts, without explanation, that the markup volume increased 24 percent from 2007 to 2009. (Kukla says the 2007 figure was based on a different data set, from the Consumer Bankers Association.) But the NAF survey shows that from 2007 to 2009 the average dealer reserves declined 24.9 percent for new vehicles and 23.3 percent for used vehicles.

We should note that these numbers come from 15 of the respondents, since that's how few consistently responded to the survey over three years. Kukla claims CRL relied on an average of data derived from all 25 respondents, from the survey's appendix, "which we believe gives a fuller picture of the industry."

It's puzzling how the numbers could change so much with the addition of a few more respondents, especially because all of the large lenders were included in the sample of 15. It is possible a couple of small (under 10,000 accounts) lenders, with hard-to-believe reserves above $2,000, skewed the numbers.

Moreover, none of the NAF report survey questions regarding dealer reserve have responses from all 25 participating companies, as only 15 arranged loans through a auto dealer. Even then, 10 said the dealer reserve was based on a flat fee, not a percentage of the finance charge — which is practice advocated by critics such as Warren.

As an example of how fuzzy estimates of "dealer mark-ups" are, the Consumer Federation of America in 2004 issued a report in which the dealer reserve totaled "hundreds of millions and as much as one billion dollars annually." Yet somehow, in the CRL report, the number climbed more than 25 times in the space of seven years.

Yet even if the $26 billion number were credible — which it is not — Warren incorrectly characterizes it. She claimed that the study showed "auto dealer markups cost consumers $26 billion a year." But Kukla acknowledged that this figure includes compensation for dealers who arranged the loans for car buyers.

"We are careful to say that, yes, this included compensation that is likely to be fairly gotten," he said. "It is fair for dealers to get compensation for the work they do." (Nevertheless, the group's Web site includes a calculator, derived from the report, that purports to show the "windfall profits" earned by auto dealers.)

In 1977, the Federal Reserve Bank rejected a proposal that would have required auto dealers, as part of the Truth in Lending Act, to disclose how much of the finance charge they receive for arranging a loan. "In most instances, the portion of the finance charge which represents the dealer's participation is not an amount which the consumer could save by obtaining a direct loan from a lending institution," the board concluded.

A Warren spokeswoman declined to provide an on-the-record response.

The Pinocchio Test

As regular readers know, we hold politicians accountable for the accuracy of sources they cite. There are enough warning flags in the CRL report — such as its lack of transparency on how the $26 billion number was calculated — that would have given a close reader pause. The National Automobile Dealers Association in 2012 submitted to the FTC a lengthy rebuttal of the report that also raised serious questions about the research.

But besides citing a faulty number, Warren misleadingly says it represents "auto dealer mark-ups." The group that produced the report said that figure includes reasonable compensation owed to car dealers. She earns Four Pinocchios. ■

Four Pinocchios

Glenn Kessler has reported on domestic and foreign policy for more than three decades. He would like your help in keeping an eye on public figures.

NAMAD
NATIONAL ASSOCIATION OF MINORITY AUTOMOBILE DEALERS

NADA

American International Automobile Dealers

Fair Credit Compliance
POLICY & PROGRAM

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Overview of Fair Credit Policy & Fair Credit Compliance Program Templates

The Equal Credit Opportunity Act ("ECOA") and its implementing regulation, Regulation B, prohibit discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age and other factors.[1] Regulation B states that this prohibition applies not just to intentional discrimination[2] but also to credit practices that appear neutral but nevertheless *result* in a negative "disparate impact" on customers who are members of one of these protected classes (assuming the customers in the different classes being compared are similarly situated).[3] Because a finding of disparate impact typically is established by a statistical evaluation of past credit transactions, dealers and other creditors cannot ensure they are complying with ECOA solely by training their employees to avoid considering these prohibited factors when making credit decisions. Dealers must also ensure that their policy for determining the amount they earn for arranging financing will not give rise to post-transaction claims that the policy resulted in a negative statistical disparity in the amount of dealer participation paid by customers in a protected class (i.e., a class defined by color, national origin or one of the other prohibited bases listed above).[4]

On March 21, 2013, the Consumer Financial Protection Bureau ("CFPB") issued a fair lending guidance bulletin to indirect auto finance sources (which the CFPB refers to as indirect auto lenders) stating "that certain lenders that offer auto loans through dealerships are responsible for unlawful, discriminatory pricing" and that lender policies "that allow auto dealers to mark up lender established buy rates and that compensate dealers [for originating credit contracts] in the form of dealer [participation]" create a "significant risk" of fair lending violations.[5] The bulletin instructs indirect auto finance sources on steps they should take to address this risk, which include either (i) eliminating dealer pricing discretion (such as by paying dealers a flat fee per transaction), or (ii) constraining dealer pricing discretion (by adopting a series of controls and monitoring the credit contracts the finance source purchases from dealers to see if there exists a statistical disparity in dealer participation as described above). Because the bulletin sets forth limitations on how indirect auto finance sources may compensate dealers for arranging financing for customers, it affects dealers even though the Dodd-Frank Act prohibits the CFPB from exercising any authority over dealers engaged in indirect financing transactions.[6]

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[1] Other factors include the fact that a credit applicant relies on social security, welfare or other public assistance or has exercised a right under a federal consumer credit law.

[2] The term usually associated with intentional discrimination is "disparate treatment." Disparate treatment involves treating credit applicants differently on a prohibited basis even if there is not a deliberate intent to discriminate. An example of disparate treatment would be if a creditor were to require that a minority applicant provide greater documentation to secure financing than a similarly situated non-minority applicant.

[3] While ECOA clearly prohibits disparate treatment, substantial controversy exists over whether ECOA also prohibits disparate impact. Consistent with NADA's cautious approach to disseminating compliance guidance to its members, this guidance and the policy and program templates assume (but do not concede) that a disparate impact theory of liability exists under ECOA.

[4] The term "dealer participation" (also known by such terms as "dealer reserve" or "dealer spread") refers to the dealer's participation in (i.e., its portion of) the contract interest rate that the customer pays to finance the purchase of a vehicle from the dealer. It is the difference between this retail rate (also known as the Annual Percentage Rate or "APR") and the wholesale "buy rate" at which a finance source buys the finance contract (also known as a retail installment sale contract or "RISC") from the dealer. Finance sources typically compensate dealers for arranging financing with the customer by permitting dealers to retain the dealer participation subject to parameters established by the finance source.

[5] The guidance bulletin (CFPB Bulletin 2013-02) and its accompanying press release are available at www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-hold-auto-lenders-accountable-for-illegal-discriminatory-markup/.

[6] The CFPB was created in Title 10 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. Law. §§ 111-203 (July, 21, 2010)("Dodd-Frank Act"). Section 1029 of the Dodd-Frank Act excludes motor vehicle dealers engaged in indirect financing transactions (in which a dealer enters into a RISC with a customer and then assigns the contract to a third party finance source) from the authority of the CFPB, while continuing to subject dealers to the authority of the federal agencies that could exercise authority over dealers prior to the enactment of the Dodd-Frank Act. The CFPB, therefore, may not take actions directly against dealers engaged in indirect financing. However, CFPB actions affecting indirect finance sources (over which the CFPB may exercise authority) can also affect dealers to the extent they

Since the CFPB issued its fair lending guidance bulletin, several indirect auto finance sources have informed dealers that they will monitor (i.e., conduct a statistical analysis of) the contracts they purchase from dealers. In many cases, these indirect finance sources have sent letters to dealers indicating that the finance source's statistical analysis identified unexplained differences in the amount of dealer participation paid by customers who are members of protected classes and customers who are not members of those classes. These letters typically offer the dealer the opportunity to respond to the finance source's preliminary findings. Usually as part of this process, dealers may provide to the finance source legitimate (non-prohibited) reasons that explain the purported pricing disparities.

In addition, on December 20, 2013, the CFPB and the Department of Justice announced an enforcement action against an indirect auto finance source (Ally) for alleged disparate impact discrimination. The action resulted in a consent order between the United States and Ally to resolve the government's allegation that "Ally engaged in a pattern or practice of discrimination on the basis of race and national origin in violation of ECOA based on the interest rate 'dealer markup' – the difference between Ally's buy rate and the contract rate – paid by African-American, Hispanic, and Asian/Pacific Islander borrowers who received automobile loans funded by Ally." Ally did not admit to the allegations and no court determined their validity. In addition, Ally stated in a press release that "it does not believe that there is measurable discrimination by auto dealers."[7] Nevertheless, to resolve the matter, Ally agreed to undertake several actions, including the payment of a civil penalty and compensation to the alleged victims, monitoring the amount of dealer participation earned by dealers in retail installment sale contracts ("RISC") purchased by Ally, and taking "appropriate corrective action" if such monitoring reveals that dealers charged a higher amount of dealer participation to similarly situated protected groups of customers.[8]

cause indirect finance sources to amend the contracts that govern their relationship with dealers.

[7] Ally's press release is available at http://media.ally.com/2013-12-20-Ally-Financial-Statement-on-Auto-Financing-Consent-Orders.

[8] The full terms of the consent order are available at http://images.magnetmail.net/images/clients/NADA/attach/Ally_Consent_Order.pdf.

Fair Credit Compliance Program

These and other related developments have prompted dealers and their attorneys to seek from NADA compliance guidance to minimize the fair credit risk identified in the CFPB guidance bulletin. This guidance and the *Fair Credit Policy* and *Fair Credit Compliance Program* templates are intended to respond to these requests. NADA may issue supplemental guidance as necessary to address additional compliance issues or subsequent developments related to this topic.

Although NADA is not aware of any evidence demonstrating that the ability of automobile dealers to negotiate contract rates with their customers results in disparate impact discrimination in today's marketplace, we recognize that our members strive to adopt policies and procedures that will reduce their litigation exposure while demonstrating their ongoing commitment to regulatory compliance and the fair treatment of their customers. Therefore, in order to promote these goals, we set forth below and in the Fair Credit Compliance Program template that follows an alternative means for dealers to arrive at the amount of compensation they earn for arranging financing. **Keep in mind that the finance compensation model that dealers adopt is an individual dealer decision that must be consistent with federal and state law as well as any contractual restrictions imposed on the dealer by its finance sources. It is essential that dealers consult their legal counsel when making decisions related to this topic.**

The most obvious way to reduce the possibility of a finding of disparate impact discrimination is for individual dealers to establish a means of compensation in which the determination of the amount of finance income they earn does not vary on a customer-by-customer basis. Examples of such an approach include charging each customer (i) a fixed number of basis points over the wholesale buy rate (i.e., the rate at which the finance source will purchase the credit contract from the dealer), (ii) a fixed percentage of the amount financed or (iii) a fixed dollar amount. Of course, a major drawback to customers of such a rigid pricing policy is that it deprives dealers of the ability to "meet or beat" the most competitive credit offer that the customer has received from another creditor, which in turn limits the customer's ability to reduce the amount that the customer pays for credit. It also may be unrealistic to assume that most dealers would be able to adopt such an inflexible compensation approach when they typically have contractual arrangements with multiple finance sources and each of those sources establishes its own compensation schedule and financing parameters.

One potential way to eliminate a customer-by-customer determination of the amount the dealer earns for arranging financing while preserving sufficient flexibility to accommodate scenarios that may benefit customers, such as the "meet or beat" dynamic, is to establish a pre-set amount of compensation but allow for downward adjustments to that amount in the event that one or more pre-determined conditions occur. Examples of such conditions could include (i) the customer's inability to satisfy a monthly payment constraint at the pre-determined amount, (ii) the customer's access to a more favorable offer of credit from another creditor, (iii) a promotional offer that the dealer extends to all customers on the same terms, (iv) the fact that a particular transaction is eligible for a subvened interest rate from a manufacturer, finance source, or other non-affiliated third party, (v) the fact that a transaction is eligible for an employee incentive program, and (vi) documented inventory reduction considerations that are related to specific vehicles.[9]

If a dealer chooses to adopt this or a similar approach to dealer finance compensation, it should adopt written procedures that (a) identify each pre-determined condition that permits a downward deviation from its pre-set amount of dealer participation, (b) require its finance personnel to execute a standardized form that identifies the pre-set dealer participation amount, the final dealer participation amount, and, where the two differ, which pre-determined condition or set of conditions is present in the transaction that authorizes the deviation, (c) conduct formal training of all relevant personnel on its finance compensation policy, and (d) retain the compensation forms and otherwise monitor and document its compliance efforts.[10] The training and monitoring functions are particularly important as fidelity to the program from the employees who must carry it out is essential to its success.

An attractive feature of this approach is that if the dealer develops appropriate, well-defined allowable adjustments and ensures that its personnel properly and consistently apply, document and retain them, then the dealer is in a much better position to explain any unexplained pricing disparities that might otherwise lead a court, governmental enforcement agency or indirect auto finance source that is monitoring the dealer's credit contracts to conclude that such disparities are attributable to a customer's background[11] and therefore in violation of ECOA.

Dealers are not required to adopt this approach to standardizing the amount of dealer participation they charge in credit transactions and should consult with their individual legal counsel about whether they should do so. For dealers who wish to adopt this or a similar approach, we have developed the Fair Credit Policy and Fair Credit Compliance Program templates that begin at page 9. General and specific instructions for completing these forms are provided below.

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[9] Dealers who follow this approach may wish to identify and include additional or different pre-determined reasons for deviating from their pre-set dealer participation amount. This should be acceptable provided the additional or different reasons are limited to neutral, pro-competitive factors that are completely unrelated to the customer's status as a member of a protected class and are executed in good faith. However, it must be noted that the ECOA compliance approach set out in the text and the attached Program is modeled after the ECOA compliance framework that the Department of Justice ("DOJ") incorporated into consent orders with two automobile dealers in 2007 to resolve claims of unintentional disparate impact discrimination. One of the consent orders is available at www.justice.gov/crt/about/hce/documents/pacifico_order.pdf (see, in particular, paragraph 7 entitled "Guidelines for Setting Dealer Reserves" and Appendix B). While this framework was developed solely for that purpose (and therefore does not create a safe harbor for complying with ECOA), it nevertheless provides a useful template for dealers to consider in developing their own approach to ECOA compliance. With this in mind, dealers should be aware that the specific allowable deviations noted in the text and the attached Program are those that were included in the DOJ consent orders. Dealers and their attorneys who adopt this compliance approach should proceed cautiously in adopting specific allowable deviations that differ from or are in addition to those contained in the DOJ consent orders.

[10] These features were also part of the DOJ ECOA compliance framework that was included in the 2007 consent orders referenced above.

[11] As used in this document, the term "customer's background" refers to the customer's status as a member of a protected class.

Instructions for Completing Fair Credit Policy & Fair Credit Compliance Program Templates

General Instructions and Disclaimers

Use of Templates. It is essential that, prior to adopting this *Fair Credit Policy* and *Fair Credit Compliance Program*, dealers read the templates carefully, make adjustments that are appropriate to their individual circumstances, and ensure that the final policy and program they adopt are reviewed by qualified counsel. While italicized language that appears in brackets identifies areas of the document where an individualized dealer entry is appropriate, dealers should modify both italicized and non-italicized portions of the document that they and their counsel determine is necessary.

Program Scope. The *Fair Credit Compliance Program* is broader than a pure dealer participation pricing policy that is designed to help mitigate a finding of disparate impact discrimination under ECOA and Regulation B. This is because, as explained above, ECOA and Regulation B prohibit intentional discrimination and (in the view of federal regulators) disparate impact discrimination, and it is therefore essential that fair credit training programs address both prohibitions. However, the *Program* does not attempt to address every issue that potentially relates to fair credit compliance at a franchised automobile dealership (e.g., how the dealership handles oral requests for financing, desking procedures, conditional sales agreements and the sale of products to protect the customer's investment in the financed vehicle). These issues are very dealer specific and need to be addressed in a manner that is appropriate to the dealership's circumstances. For these reasons, the *Program* template should be viewed as part of a broader dealership effort to develop a comprehensive approach to fair credit compliance.

Program Approval. Neither ECOA nor Regulation B require creditors to adopt a written fair credit program or, if they adopt such a program, to have it approved by any particular body or individual officer within their business.[12] However, for the reasons stated above, it is prudent for creditors to do so.

The *Program* template assumes that a board of directors will adopt the dealership's *Fair Credit Compliance Program*, appoint a Program Coordinator to administer the *Program*, receive compliance reports from the Program Coordinator, and amend the *Program* as necessary to address fair credit risks that are present at the dealership. If the dealership's governing structure dictates that another dealership body or officer should exercise these functions, the template should be modified accordingly. Regardless of which dealership body or officer acts in this manner, it is important that its leadership affirmatively establish and express support for its fair credit commitment.

Program Limitations. The *Program's* approach to determining the compensation dealers receive for arranging financing for customers is not, and the *Program* template has not been, mandated by ECOA or Regulation B and neither have been formally adopted by any federal agency as a means of satisfying the requirements of federal law. Nor is there any guarantee that adopting the attached *Program* or any component of it will adequately protect a dealership from a governmental enforcement action or private lawsuit.[13]

Notwithstanding these limitations, NADA believes the *Program* template represents a solid attempt to promote compliance with ECOA and Regulation B while preserving enough flexibility to allow customers to continue leveraging the overwhelming benefits that are produced by today's intensely competitive vehicle financing market.

[12] This is in contrast to other regulatory requirements such as the FTC Red Flags Rule, which requires financial institutions and creditors to adopt a written identity theft prevention program and to have it approved by their board of directors or an appropriate committee of the board of directors. See 16 C.F.R. § 681.1(e)(1).

[13] As with other areas of the law, it is essential that dealers and their attorneys stay abreast of legislative, regulatory and judicial developments as well as finance source issuances that could affect their compliance obligations.

Specific Instructions

Fair Credit Policy

This document, which is set forth at Appendix A of the *Program*, serves as a strong, unambiguous statement affirming the dealership's commitment to ensuring equal credit opportunity and complying with all applicable fair credit laws. Whether adopting this or a different statement, dealers should ensure that their fair credit commitment is stated clearly and unequivocally. In addition, dealers should strongly consider prominently posting their fair credit policy in locations where it can easily be viewed by both consumers and employees.

Fair Credit Compliance Program

Section I – Scope. Paragraph (a) identifies the dealership employees, agents, and/or independent contractors ("dealership employees") who are covered by the *Policy* and *Program* and the consequences for failing to comply with the *Program*.

Paragraph (b) states that the *Program* (i) carries out the *Policy*, (ii) applies to all activity related to the extension of credit at the dealership, and (iii) establishes how dealership compensation will be determined in indirect vehicle financing transactions (which it defines).

Paragraph (c) states that the *Program* does not confer any rights, benefits or remedies to any person, except that it may be used by the dealership to discipline dealership employees who do not comply with the terms of the *Program*. This is intended to forestall a third party from bringing a legal action against the dealership for a violation of the *Program*.[14]

Section II – ECOA and Regulation B Compliance. Paragraph (a) states the dealership's strict prohibition against unlawful credit discrimination and defines what constitutes credit discrimination under ECOA and Regulation B. If the law of the dealer's state or municipality (or other states or municipalities where the dealer conducts business) identifies "prohibited bases" beyond those contained in ECOA (for example, some jurisdictions identify sexual orientation as a prohibited basis), the additional prohibited bases should be listed in this paragraph (by entering them either in subparagraph 1 or in a new subparagraph 4) and the name of the state or local law containing the prohibition should be added to the section heading (after "Regulation B"). Paragraph (a) also states that this prohibition applies to disparate treatment as well as disparate impact discrimination.

Paragraph (b) states that the dealership complies with all applicable requirements contained in ECOA and Regulation B (not just the prohibition against unlawful discrimination) and cites, in particular, the dealership's adherence to the law's adverse action and other notification requirements (such as the need to issue a notice of incompleteness to credit applicants if the credit application is missing information required to make a credit decision) and the law's records retention requirements.[15] It then includes a placeholder for dealers to either (i) incorporate into this portion of the *Program* its written procedures for adhering to these requirements, or (ii) cross-reference the separate procedures the dealer has adopted for this purpose.

Section III – Appointment of Program Coordinator. This section creates the position of Fair Credit Compliance Program Coordinator to administer the *Program* and specifies that the Program Coordinator will report directly to the board of directors. The employee who will perform this function is identified at the end of the *Program* (just above the resolution and signatures of the board of directors adopting the *Program*) and his or her specific duties are delineated in section V of the *Program*.

It is important to note that, as with the adoption of a written fair credit program, nothing in ECOA or Regulation B mandates the appointment of a Program Coordinator.[16] However, the dealership's ability to implement and carry out an effective fair credit compliance program will clearly be strengthened if it designates a senior manager to oversee (and, in many cases, execute) the multiple, recurring functions

[14] However, this language would not prevent a third party from bringing a legal action against a dealership for a violation of applicable federal, state or local law to the extent permitted by such law.

[15] Additional information on these topics is contained in NADA University's publications entitled *A Dealer Guide to Adverse Action Notices* (2011) and *A Dealer Guide to the Federal Records Retention Requirements* (1998), which are available at www.nadauniversity.com.

[16] This is in contrast to other federal rules, such as the requirement in the FTC Safeguards Rule that financial institutions appoint an employee or employees to coordinate the comprehensive written information security program that the rule requires financial institutions to develop, implement and maintain. See 16 C.F.R. § 314.4(a).

established by the *Program*.[17] It is essential that the Program Coordinator (i) have the full support of the board of directors, (ii) have the substantive expertise, time and seniority to carry out the duties established in sections IV and V of the *Program* (including the ability to initiate the corrective action identified in the Dealer Participation Certification Form Review process set forth in section IV.d and Appendix D of the *Program*), and (iii) is not routinely involved in establishing the Final Dealer Participation Rate offered to the customers in individual transactions. This last requirement is important because the *Program* (a) requires in section IV.d that a review of the transaction be conducted by a person who did not participate in it to ensure it was carried in a manner that is consistent with the terms of the *Program*; and (b) designates the Program Coordinator to carry out this function. While the *Program* permits the Program Coordinator to designate another employee to perform the review function, the Program Coordinator generally should not participate in transactions as this could compromise the integrity of the designee's review.

Section IV – Guidelines for Establishing Dealer Participation. This section establishes the manner in which the dealership will determine the dealer participation amount to include in credit offers to customers.

Paragraph (a) states that the Program Coordinator will establish the pre-set standard dealer participation rate for the dealership and identify that rate (the "Standard Dealer Participation Rate") on the form at Appendix B. Unless an allowable downward deviation identified in Paragraph (b) applies, the Standard Dealer Participation Rate will be added to the buy rate of the indirect finance source to which the dealer will assign the RISC to arrive at an APR that the dealership will offer to the customer.

Paragraph (b) identifies seven good-faith, competitive reasons that are unrelated to the customer's background which, if present, allow the dealership to include in credit offers a dealer participation rate that is lower than the Standard Dealer Participation Rate. These are the same reasons listed in the 2007 DOJ Consent Orders mentioned in footnote 9 above. As stated in that footnote, dealers should be able to identify additional or different reasons for downward deviations in paragraph (b) provided they are limited to neutral, pro-competitive factors that are completely unrelated to the customer's background and are executed in good faith. However, as also explained, dealers should proceed cautiously in adopting downward deviations that differ from those listed in the DOJ consent orders.

For each allowable deviation that is contained in this paragraph, dealers should clearly state the prerequisites, including the necessary supporting documentation, that must be present in order to apply that deviation. In addition, dealers should, to the maximum extent possible, standardize the application of each deviation. For example, the third deviation allows the dealership to reduce the Standard Dealer Participation Rate when the customer states that he or she has access to a more competitive offer from another dealer or finance source. Dealers should determine whether, as a matter of policy, it will (i) reduce the Standard Dealer Participation Rate by the amount necessary to meet the competing offer, or (ii) reduce the Standard Dealer Participation Rate so as to beat a competing offer by a certain number of basis points. The bracketed italicized language that appears in the description of this allowable deviation should be modified to reflect this determination.

Similarly, the seventh deviation allows the dealership to reduce the Standard Dealer Participation Rate based on Inventory Reduction Considerations. It is essential that this subparagraph explain the process by which such considerations will be applied. In addition, because inventory reduction criteria may change more frequently than the frequency with which the dealership would be able to amend this portion of the *Program*, it may be prudent to permit the Program Coordinator to establish the current inventory reduction criteria on a separate document that can be provided to dealership employees who arrange the credit sale with the customer. The *Program* adopts this approach and creates Appendix C for this purpose.

[17] Because dealerships require the services of a Program Coordinator to oversee their compliance efforts in a variety of areas (whether as a matter of prudence or as necessary to comply with federal mandates such as the FTC Safeguards Rule requirement mentioned in the previous footnote), dealers should consider whether their management structure would allow them to achieve greater operational efficiency by consolidating the various program coordinator functions under a single senior dealership manager.

Paragraph (c) states that dealership employees who arrange the credit sale with the customer must complete, sign, and date a Dealer Participation Certification Form that documents the Standard Dealer Participation Rate, the final Dealer Participation Rate, and, where the two rates differ, the allowable deviation that applies to the transaction. Appendix D has been created to record this determination. Note that dealership employees who arrange credit sales with customers should be required to complete a Dealer Participation Certification Form for every credit sale transaction regardless of whether the Standard Dealer Participation Rate or a different dealer participation rate based on an allowable deviation was applied.

Paragraph (d) states that the Program Coordinator, or his or her designee, must (i) review each dealership credit sale within two business days of the credit sale to ensure that the Dealer Participation Certification Form was executed properly and in a manner that is consistent with the terms of the *Program*, and (ii) complete, sign and date the Reviewer Certification that appears on that form. Should the reviewer determine that the form was improperly executed or that the *Program* terms were not otherwise followed, he or she will initiate the corrective action set forth in this paragraph and record that action in the Reviewer Certification. This may require coordinating with the finance source that took assignment of the RISC. In order to preserve the integrity of the review, the *Program* does not permit the reviewer to have participated in the credit transaction under review.

Dealers should ensure this paragraph and the corresponding language in Appendix D are tailored to reflect the dealership's operational circumstances. For example, dealers should determine whether the reviewer requires two business days or a slightly longer period to complete the review and the date on which that period will begin (e.g., date of the credit sale, date of delivery, etc.) Similarly, dealers should identify the employees within the dealership with whom the Program Coordinator must coordinate to ensure corrective action is carried out with regard to both the affected customer and the responsible employee.

Section V – Training, Oversight, and Reporting. This portion of the *Program* is intended to ensure that the dealer's fair credit commitment is fully carried out.

Paragraphs (a) through (h) delineate and explain the Program Coordinator's duties. Dealers should carefully review this list to determine whether any of these duties, such as setting and prospectively changing the Standard Dealer Participation Rate, should be retained by the board of directors. If dealers decide that the board should retain any of these duties, this must be reflected in the other portions of the *Program* (including the appendices) that reference the retained duty.

With regard to paragraph (d), the Program Coordinator must clearly identify and communicate to dealership employees who arrange credit sales with customers both the Standard Dealer Participation Rate (as required in section IV.a of the *Program*) and the documentation required to substantiate each of the allowable deviations contained in section IV.b. This will facilitate the consistent application of the allowable deviations by dealership employees and will assist the Program Coordinator or his or her designee in completing the Reviewer Certification set forth in section IV.d and Appendix D of the *Program*.

With regard to paragraph (f), the Program Coordinator must randomly monitor dealership credit offers and conduct periodic audits of dealership credit sales to ensure the *Program* is being effectively implemented. As part of this auditing function, the Program Coordinator should monitor the frequency with which different dealership employees who arrange credit sales apply the dealership's allowable deviations to the Standard Dealer Participation Rate. If such monitoring reveals that particular dealership employees have applied one or more allowable deviations significantly more or less frequently than the other dealership employees who arrange credit sales, then the Program Coordinator should closely scrutinize the employee's application of such deviations to determine whether the employee is correctly applying the deviations and whether additional corrective action may be necessary.

The documents that should be retained (or cross-referenced) in the deal jacket or other location specified by the Program Coordinator include, at a minimum, those that set forth the buy rate and –

- for the first deviation, the rate cap imposed by the finance source (including a transaction specific rate cap that is lower than the finance source's standard rate cap based on its assessment of the customer's repayment ability);

- for the second deviation, the monthly budget constraint stated by the customer (the Dealer Participation Certification Form records this information and therefore serves as appropriate documentation for this deviation);
- for the third deviation, the name of the dealer or lender that provided the more competitive offer and the APR contained in that offer (the Dealer Participation Certification Form records this information and therefore serves as appropriate documentation for this deviation);
- for the fourth deviation, the dealership advertisement or other communication identifying the terms of the dealership's promotional financing campaign;
- for the fifth deviation, the manufacturer's, finance source's, or other third party's advertisement or other communication identifying the terms of the subvention program;
- for the sixth deviation, the terms of the dealership's employee incentive program; and
- for the seventh deviation, a description of how the vehicle to which the indirect financing transaction applies satisfies the inventory reduction criteria set forth on the form at Appendix C (the Dealer Participation Certification Form records this information and therefore serves as appropriate documentation for this deviation).

Section VI – Program Amendments. This section establishes that the Program may only be amended by the board of directors, except that the Program Coordinator may, after consulting with the dealership's legal counsel, add an allowable deviation from the Standard Dealer Participation Rate provided it consists of a good-faith, competitive reason and the board of directors approves the amendment at its first meeting following such amendment. If this occurs, the Program Coordinator needs to ensure that dealership employees are trained on the appropriate application and documentation of the added deviation and it needs to be appropriately reflected on the Dealer Participation Certification Form. Program Coordinators should be reminded of the need to exercise caution in adding to the list of allowable deviations.

Appendix A – Fair Credit Policy

See the description above under Fair Credit Policy.

Appendix B – Standard Dealer Participation Rate

See the description above under section IV.a.

Appendix C – Inventory Reduction Criteria

See the description above under section IV.b.

Appendix D – Dealer Participation Form

See the description above under sections IV.c and IV.d.

Attached Templates

Fair Credit Compliance Program

Appendix A	Dealership Fair Credit Policy
Appendix B	Dealership Pre-Set Dealer Participation Rate ("Standard Dealer Participation Rate")
Appendix C	Dealership Inventory Reduction Criteria
Appendix D	Dealer Participation Certification Form

Nothing in this guidance or the *Fair Credit Policy* or *Fair Credit Compliance Program* templates is intended as legal advice. It is essential that dealers consult with an attorney who is familiar with applicable federal, state, and local law and their operations to determine appropriate fair credit compliance procedures for their business to adopt.

This information is also not intended to urge or suggest that dealers adopt any specific practices or policies for their dealerships, nor is it intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the price of any good or service.

[*Name of Dealership*]

Fair Credit Compliance Program

[It is essential that dealers and their attorneys read the NADA Overview and Instructions that accompany this Program template before deciding whether and how to adopt it.]

I. Scope

a. Persons Covered

This Program (which includes all appendices to this Program) applies to all employees, agents, and/or independent contractors of [*Name of Dealership*] who are involved in any aspect of the Dealership operations described in section I.b of this Program ("Dealership employees"). Failure to comply with any requirement in this Program may result in disciplinary action, including termination of employment and/or the agency or independent contractor relationship.

b. Operations Covered

This Program carries out the [*Name of Dealership*] Fair Credit Policy at Appendix A of this Program, sets forth the fair credit requirements applicable to all Dealership activity related to the extension of credit, and prescribes in section IV the manner in which [*Name of Dealership*] determines the amount of its compensation when it engages in an indirect vehicle financing transaction. For purposes of this Program, an "indirect vehicle financing transaction" refers to a transaction in which –

1. [*Name of Dealership*] enters into a retail installment sale contract ("RISC") with a customer for the purchase of a vehicle from [*Name of Dealership*];
2. [*Name of Dealership*] subsequently assigns the RISC to a third-party finance source ("the Assignee"); and
3. [*Name of Dealership*] retains its right to receive a portion of the finance charge payable under the RISC, specifically the difference between the retail annual percentage rate ("APR") and the wholesale interest rate at which the Assignee will buy the RISC from the dealer ("buy rate") within the parameters established by the Assignee. This amount is referred to in this Program as "dealer participation."

c. No Third-Party Beneficiaries

Nothing in this Program, express or implied, is intended to or shall confer upon any person any right, benefit, or remedy of any nature whatsoever under or by reason of this Program or by reason of any federal, state or local law. Notwithstanding this provision, this is a program of [*Name of Dealership*], and any violation of the Program by a Dealership employee can be the basis for disciplinary action, including termination of employment and/or the agency or independent contractor relationship.

II. Complying with the Equal Credit Opportunity Act and Regulation B

a. Prohibition Against Unlawful Credit Discrimination

As part of its fair credit commitment, [*Name of Dealership*] strictly prohibits discriminating against any credit applicant with respect to any aspect of the credit transaction –

1. on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to contract);
2. because all or part of the applicant's income derives from a public assistance program; or
3. because the applicant has in good faith exercised any right under the federal Consumer Credit Protection Act.

[These are the "prohibited bases" set forth in the federal Equal Credit Opportunity Act. Add any additional prohibited bases that are identified by the law of your state and/or municipality and add the title of that law to the heading of this section.]

This prohibition against credit discrimination extends to both disparate treatment (i.e., treating a credit applicant differently than other credit applicants on one of the prohibited bases mentioned above) and disparate impact (i.e., applying a facially neutral policy in a manner that has an adverse impact on credit applicants who are members of a class protected against discrimination relative to similarly-situated credit applicants who are not members of that protected class).

b. Other Requirements

[*Name of Dealership*] also fully adheres to and will comply with other applicable requirements set forth in the Equal Credit Opportunity Act and Regulation B including, but not limited to, the adverse action and other notification requirements prescribed in 12 CFR § 202.9 and the records retention requirements prescribed in 12 CFR § 202.12.

[Set forth or cross-reference the Dealership's specific procedures for complying with these requirements.]

III. Appointment of Fair Credit Compliance Program Coordinator

Upon its adoption of this Program, the [*Name of Dealership*] Board of Directors will appoint (and, thereafter, replace as necessary or appropriate) a Fair Credit Compliance Program Coordinator who will administer the Program. The Program Coordinator will report directly to the Board of Directors.

IV. Guidelines for Establishing Dealer Participation

The dealer participation rate that [*Name of Dealership*] will include in a credit offer to a customer in an indirect vehicle financing transaction will be determined in accordance with the guidelines set forth in this section.

a. Pre-Set Standard Dealer Participation Rate

The Program Coordinator will establish a pre-set rate of dealer participation that will be included in all credit offers that the Dealership extends to customers (the "Standard Dealer Participation Rate") except as provided in section IV.b of this Program. The Program Coordinator will set forth the Standard Dealer Participation Rate in writing on the form at Appendix B of this Program and provide it to all Dealership employees. The Program Coordinator may change the Standard Dealer Participation Rate prospectively on a periodic basis through a written declaration to all Dealership employees.

b. Pre-Determined Allowable Deviations

Dealership employees may include a lower dealer participation rate in a credit offer to a customer only for the good faith, competitive reasons listed below. (Immediately below each reason is how that reason appears on the Dealer Participation Certification Form at Appendix D of this Program, which is described in paragraph (c) of this section.) When this occurs, Dealership employees must include sufficient documentation in the deal jacket or other location specified by the Program Coordinator to support the Dealership employee's application of that reason and to verify that the final dealer participation rate was determined in a manner that comports with the terms of this Program.

1. Lower Cap Imposed by Assignee

❑ Dealer participation limited by finance source

If the Assignee has imposed a cap on the dealer participation that may be earned in the transaction that is lower than the Standard Dealer Participation Rate, the credit offer may include a dealer participation rate that is reduced to the rate cap level.

2. Monthly Payment Constraint

❑ Customer stated monthly payment constraint of $_____ per month

If the customer states a monthly payment constraint in a fixed dollar amount that would preclude the customer from accepting a credit offer made under this Program, the Standard Dealer Participation Rate may be reduced to the level that will allow the customer to satisfy the monthly payment constraint.

3. More Competitive Offer

❑ Customer stated competing offer by ________________ (name) of _____%

If the customer (i) states that he or she has access to a credit offer from another dealer or a lender that is lower than the credit offer from the Dealership made under this Program and (ii) identifies the terms and source of the competing credit offer, the Dealership's credit offer may include a dealer participation rate that is reduced so as to [*select one of the following — [meet the competing credit offer][beat the competing credit offer by a pre-determined number of basis points established by the Program Coordinator for all such scenarios*]].

4. Dealership Promotional Financing Campaign

❑ Customer qualified for Dealership Promotional Financing Campaign

If the Dealership extends a promotional credit offer to all customers on the same terms or to all purchasers of certain vehicles on the same terms, the credit offer may include a dealer participation rate that is reduced to the level necessary to extend the promotional credit offer.

5. Manufacturer Subvention Program

❑ Customer qualified for subvened interest rate of ____% from ______________ (name)

If the customer qualifies for a manufacturer, finance source, or other third-party interest rate subvention program, the credit offer may be made pursuant to the terms of that program without regard to the Standard Dealer Participation Rate.

6. Dealership Employee Incentive Program [*Include only if applicable.*]

- ❑ Customer qualified for Dealership Employee Incentive Program

  If the customer qualifies for [*Name of Dealership*]'s Employee Incentive Program, the credit offer may include a dealer participation rate that is reduced pursuant to the terms of that program.

7. Dealership Inventory Reduction Considerations

- ❑ Customer purchased a vehicle that satisfies the Dealership's pre-determined inventory reduction criteria (describe how vehicle satisfies the criteria)

  If the Dealership extends a credit offer pertaining to a vehicle that satisfies inventory reduction criteria that have been pre-determined by the Program Coordinator, the credit offer may include a dealer participation rate that is reduced in order to secure the sale of the vehicle. In establishing the inventory reduction criteria, the Program Coordinator will (i) consult with the manager(s) responsible for vehicle sales and the Dealership's floor plan line of credit, and (ii) identify in writing on the form at Appendix C of this Program and provide to Dealership employees the written inventory reduction criteria that a vehicle must satisfy in order to qualify for the reduction in the Standard Dealer Participation Rate. The written inventory reduction criteria should include relevant thresholds that the vehicle must satisfy such as the number of such vehicles in stock, the number of days the vehicle has been in inventory and/or the declining value of the vehicle. The Program Coordinator may revise the inventory reduction criteria on a prospective basis as warranted by the circumstances provided these requirements are satisfied.

c. Dealer Participation Certification Form

A Dealership employee who arranges a credit sale with a customer must fully complete, sign and date the Dealer Participation Certification Form set forth at Appendix D of this Program for each such credit sale and place the form in the deal jacket. The Dealer Participation Certification Form will be retained for the same period of time that the Dealership retains other documents related to credit transactions as set forth in section II.b of this Program.

d. Dealer Participation Certification Form Review

The Program Coordinator, or his or her Designee, will review each Dealership credit sale within two (2) business days of the sale to ensure that the Dealership employee who arranged the transaction executed a Dealer Participation Certification Form and completed and retained it in a manner that is consistent with the terms of the Program. The person conducting this review may not have participated in the credit transaction under review. If the reviewer determines that the Form was executed in a manner that is inconsistent with the terms of the Program, the reviewer will note the defect on the Form and initiate appropriate corrective action. Such action will include (i) ensuring that the customer receives a reduced interest rate or a refund if the transaction should have resulted in a lower interest rate for the customer, (ii) ensuring that appropriate corrective action is taken with regard to the Dealership employee who improperly executed the Form, and (iii) if the reviewer is not the Program Coordinator, promptly notifying the Program Coordinator of the defect. The Program Coordinator will coordinate with the [*enter position title of appropriate employee(s)*] to ensure such corrective action was carried out. Upon completion of the review, the reviewer will complete, sign, and date the Form's Reviewer Certification.

V. Training, Oversight and Reporting

The Program Coordinator will complete the tasks listed below.

a. Ensure all current Dealership employees receive training on the [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program within 60 days of the Board of Director's adoption of the Program.

b. Ensure all new Dealership employees receive training on the [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program prior to engaging in any credit operation described in Section I.b of the Program.

c. Ensure all current Dealership employees receive recurring training on the [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program on a periodic basis, at least once per year, and more frequently if the Program is amended in a substantive manner or if the Program Coordinator determines that additional training is necessary.

d. Establish the Standard Dealer Participation Rate as set forth in section IV.a of this Program and provide to Dealership employees this and any other information that is necessary to carry out the terms of the Program, including the documentation that must be present to support a Dealership employee's application of an allowable deviation to the Standard Dealer Participation Rate.

e. Complete or ensure the completion of the Dealer Participation Certification Form Review as described in section IV.d of this Program.

f. Randomly monitor Dealership credit offers and conduct periodic audits of Dealership credit sales to ensure the [*Name of Dealership*] Fair Credit Compliance Program is being effectively implemented.

g. Submit a report to the Board of Directors, at least once per year, that sets forth (i) the Dealership's level of compliance with the Fair Credit Compliance Program, and (ii) any recommended changes to the Program that may assist in carrying out its purpose.

h. Retain records documenting the completion of the training, oversight and reporting tasks outlined in this section.

VI. Program Amendments

a. Except as provided for in section VI.b of this Program, amendments to the Program may only be made by the [*Name of Dealership*] Board of Directors.

b. After consulting with the Dealership's legal counsel, the Program Coordinator may amend section IV.b of this Program in a manner that adds a good-faith, competitive reason for an allowable deviation from the Standard Dealer Participation Rate that is consistent with [*Name of Dealership*]'s Fair Credit Policy and is capable of being uniformly applied by Dealership employees. Any such amendment must be ratified by the Board of Directors at its first meeting following such amendment.

Appointment and Policy & Program Approval

The following employee has been appointed as the [*Name of Dealership*] Fair Credit Compliance Program Coordinator pursuant to section III of this Program:

____

[*Insert appropriate language indicating the Dealership's approval of this Policy and Program, such as:*]

By signing below, the undersigned, constituting all of the members of the [*Name of Dealership*] Board of Directors, acknowledge the Board's approval of the foregoing [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program and its appointment of the [*Name of Dealership*] Fair Credit Compliance Program Coordinator this ____ day of ____________, 201_.

______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________
______________________	______________________

[*Name of Dealership*]
Fair Credit Policy

[*Name of Dealership*] is fully committed to complying with the letter and spirit of federal, state, and local laws and regulations that are designed to protect its customers. This includes ensuring that all qualifying credit applicants have equal access to credit and are treated in a manner that is fair, professional and consistent with the terms of the [*Name of Dealership*] Fair Credit Compliance Program. Engaging in any form of unlawful credit discrimination is destructive, morally repugnant and will not be tolerated by [*Name of Dealership*].

Appendix B

[*Name of Dealership*]
Standard Dealer Participation Rate

The [*Name of Dealership*] Pre-Set Dealer Participation Rate ("Standard Dealer Participation Rate") is _____%.

This rate applies to all indirect vehicle financing transactions beginning on ________ (enter date) and is in effect until further written notice from the [*Name of Dealership*] Fair Credit Compliance Program Coordinator.

[*Name of Dealership*] Fair Credit Compliance Program Coordinator:

____

Signature

____

Printed Name

Appendix C

[*Name of Dealership*]
Inventory Reduction Criteria

In order for a Dealership employee to reduce the [*Name of Dealership*] Pre-Set Dealer Participation Rate ("Standard Dealer Participation Rate") based on Inventory Reduction Considerations as set forth in section IV.b.7 of the [*Name of Dealership*] Fair Credit Compliance Program, the vehicle must meet or exceed the following threshold(s):

____

____

____

____

These inventory reduction criteria apply to all vehicle indirect financing transactions beginning on _________ (enter date) and is in effect until further written notice from the [*Name of Dealership*] Fair Credit Compliance Program Coordinator.

[*Name of Dealership*] Fair Credit Compliance Program Coordinator:

____

Signature

____

Printed Name

Appendix D

Dealer Participation Certification Form

Buyer(s) Name(s) ______________________ Date ______________________

Assignee ______________________ VIN ______________________

Standard Dealer Participation Rate ___% Final Dealer Participation Rate ___%

If the Final Dealer Participation Rate does not equal the Standard Dealer Participation Rate, check the allowable deviation box below and fill in the corresponding blanks.

- ❑ Dealer participation limited by finance source
- ❑ Customer stated monthly payment constraint of $_____ per month
- ❑ Customer stated competing offer by _____________ (name) of ____%
- ❑ Customer qualified for Dealership Promotional Financing Campaign
- ❑ Customer qualified for subvened interest rate of ___% from _____________ (name)
- ❑ Customer qualified for Dealership Employee Incentive Program
- ❑ Customer purchased a vehicle that satisfies the Dealership's predetermined inventory reduction criteria (describe how vehicle satisfies the criteria)

____

____

I certify that the information above is true and correct to the best of my knowledge and that any deviation from the Standard Dealer Participation Rate was made in good faith and in a manner that is consistent with the requirements of the [*Name of Dealership*] Fair Credit Compliance Program.

____
Signature

____
Date

____
Printed Name

____
Title

Reviewer Certification

I have reviewed the above information and supporting documentation and:

- ❑ certify that the Final Dealer Participation Rate complies with the [*Name of Dealership*] Fair Credit Compliance Program, or
- ❑ certify that I have initiated the corrective action noted below:
  - Reduced the customer's interest rate to ___% or provided a refund to the customer in the amount of $____
  - Taken the following employee corrective action (describe):

    ____

    ____
  - Other (describe):

    ____

    ____

____
Signature

____
Date

____
Printed Name

____
Title

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April 4, 2016

The Honorable Richard Shelby
Chairman
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tomorrow's Hearing, "Assessing the Effects of Consumer Finance Regulations"

Dear Chairman Shelby and Ranking Member Brown:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today in conjunction with tomorrow's hearing, "Assessing the Effects of Consumer Finance Regulations." We appreciate the committee's continued focus on balancing consumer protection while addressing the effects of burdensome regulations on our nation's credit unions.

Credit unions have always been some of the most highly regulated of all financial institutions, facing restrictions on who they can serve and their ability to raise capital. Credit unions take the issue of consumer protection very seriously, and there are many consumer protections already built into the *Federal Credit Union Act*. Among these protections is the only federal usury ceiling on financial institutions and the prohibition on prepayment penalties that other institutions have often used to bait and trap consumers into high cost products.

Despite the fact that credit unions are already heavily regulated, were not the cause of the financial crisis, and actually helped blunt the crisis by continuing to lend to credit worthy consumers during difficult times, they are still firmly within the regulatory reach of Dodd-Frank, including all rules promulgated by the Consumer Financial Protection Bureau (CFPB). Lawmakers and regulators readily agree that credit unions did not participate in the reckless activities that led to the financial crisis, so they should not be caught in the crosshairs of regulations aimed at those entities that did. Unfortunately, that has not been the case thus far. Accordingly, finding ways to cut-down on burdensome and unnecessary regulatory compliance costs is a chief priority of NAFCU members.

The impact of the growing regulatory burden on credit unions is evident in the declining number of credit unions, dropping by 23%, or more than 1,800 institutions, since 2007. A main reason for the decline is the growing cost and complexity of complying with the ever-increasing onslaught of regulations. Since the second quarter of 2010, we have lost 1,200 federally-insured credit unions, 96% of which were smaller institutions below $100 million in assets. Many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over. There is an urgent need for Congress to enact meaningful regulatory relief.

As member-owned not-for-profit cooperatives, credit unions consistently strive to provide their members with financial products and services designed to help each member achieve their individual financial needs and goals. Credit unions are dedicated to ensuring their members' financial health by providing responsible products and services. Therefore, NAFCU believes it is critical for regulators to try to avoid any rulemaking that unjustifiably restricts the ability of credit unions to provide their members with the types of services they desire. This can be done through greater use of exemptions for credit unions and better tailoring of rules to recognize the unique nature of credit unions. For example, we believe that the CFPB can go much further than it has when it comes to using its exemption authority under Section 1022 of Dodd-Frank. We would encourage the Committee to further explore this topic.

Credit unions are unique and their track record as good actors within the financial services industry proves they should not be grouped together with the unscrupulous entities that the CFPB seeks to restrict. Overregulation has already had a substantially negative impact on credit unions and their members. Any additional unwarranted regulatory constraint is likely to further encumber products and services and ultimately hurt the consumers they mean to protect.

Thank you for your consideration and we look forward to continuing to work with the Banking Committee as you move forward in addressing many of these issues. Should you have any questions or require any additional information please contact me or Chad Adams, NAFCU's Associate Director of Legislative Affairs, at 703-842-2265 or cadams@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Senate Committee on Banking, Housing, and Urban Affairs

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April 6, 2016

The Honorable Richard Shelby
Chairman
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
U.S. Senate Committee on Banking,
Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tomorrow's hearing to receive the CFPB semi-annual report

Dear Chairman Shelby and Ranking Member Brown:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I write today in conjunction with tomorrow's hearing to receive the Consumer Financial Protection Bureau's (CFPB) semi-annual report to Congress. NAFCU urges the committee to press the CFPB to provide greater relief to credit unions.

During the consideration of financial reform, NAFCU was concerned about the possibility of overregulation of good actors such as credit unions, and this is why NAFCU was the only credit union trade association to oppose the CFPB having authority over credit unions. Unfortunately, many of our concerns about the increased regulatory burdens that credit unions would face under the CFPB have proven true. While there are credible arguments to be made for the existence of the CFPB, its primary focus should be on regulating the unregulated bad actors, not adding new regulatory burdens to good actors, like credit unions, that already fall under a prudential regulator. As expected, the breadth and pace of the CFPB's rulemaking is troublesome, and the unprecedented new compliance burden placed on credit unions has been immense.

The impact of this growing compliance burden is evident as the number of credit unions continues to decline. Since the second quarter of 2010, we have lost 1,280 federally-insured credit unions – over 17% of the industry. The overwhelming majority of these were smaller institutions below $100 million in assets. While it is true that there has been a historical consolidation trend in the industry, this trend has accelerated since the passage of the *Dodd-Frank Act*. The percentage of credit unions disappearing annually rose from 3.4%, on average, in the ten years prior to Dodd-Frank to an average annual disappearance rate of 3.9% in the years after Dodd-Frank. The fact is that many smaller institutions simply cannot keep up with the new regulatory tide and have had to merge out of business or be taken over.

One way that the CFPB can provide immediate help is by improving the guidance it gives with its rulemakings. In attempting to understand ambiguous sections of CFPB rules, NAFCU and many of its members have reached out to the CFPB to obtain legal opinion letters (written guidance) as to the agency's interpretation of its regulations. Many other financial agencies, including the National Credit Union Administration (NCUA), issue legal opinion letters to help institutions understand otherwise ambiguously written rules. The CFPB has declined to do so. What they have done is set up a "help line" where financial institutions can call for oral, informal, guidance from the agency. While this can be helpful, there are reports of conflicting guidance being given depending on who answers the phone. This is not only unhelpful, but can also be confusing when NCUA examines credit unions for compliance with CFPB regulations. NAFCU would appreciate the CFPB establishing procedures for institutions to get much needed official written legal advisory opinions to provide clearer guidance. Setting up such a process within the CFPB would be beneficial to credit unions and other financial institutions.

A prime example of where additional guidance would be helpful is in TRID implementation. Credit unions worked diligently for nearly two years to implement the TILA/RESPA integrated disclosures rule, at a significant cost of both staffing and resources. Following the implementation of TRID last fall, credit unions continue to struggle to offer consumers the loans of their choice in the face of complex and confusing regulations. NAFCU appreciates that the CFPB is working to resolve any unintended consequences of its final regulation and to provide regulatory guidance which is both clear and useful. NAFCU continues to believe that the CFPB must actively and transparently coordinate with NCUA to establish clear expectations and guidance in anticipation of examination, especially as NCUA has indicated that TRID compliance will be a supervisory focus for the 2016 examination cycle. NAFCU applauds CFPB Director Cordray for indicating that the Bureau is continuing to extend its "good faith effort" hold harmless period for resolving TRID issues.

Another way that the CFPB can provide relief to credit unions is by using its broad legal authority granted by Sec. 1022 of the *Dodd-Frank Act* to exempt credit unions from various rulemakings. Given the unique member-owner nature of credit unions and the fact that credit unions did not participate in many of the questionable practices that led to the financial crisis, subjecting credit unions to rules aimed at large bad actors only hampers their ability to serve their members. A recent Government Accountability Office (GAO) report found that financial services have been limited or discontinued by many community-based financial institutions due to new regulations. While some CFPB rules may be well-intentioned, many credit unions do not have the economies of scale that large for-profit institutions have, and, as the GAO report indicated, may end a product line or service rather than face the hurdles of complying with new regulation. While the CFPB has taken some positive steps, such as their small creditor exemption, NAFCU has long urged that more needs to be done to exempt credit unions from burdensome rulemakings that they are not the primary target of.

Director Cordray recently suggested that Congress did not give the CFPB the authority to exempt credit unions from its rulemakings. However, the previously mentioned Sec. 1022 of the *Dodd-Frank Act* specifically grants the Bureau authority to exempt "any class of covered persons" from any provision or rule issued under Title X. Last month, a bipartisan majority of 329 members of the House of Representatives wrote to Director Cordray to urge him to do more in this area. We hope Director Cordray will agree and respond accordingly to provide more regulatory relief by better tailoring its regulations and using greater exemption authority when appropriate. We ask the Committee to urge him to do more in this regard.

Some other CFPB issues NAFCU is monitoring include:

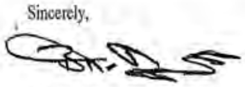
- Overdraft: Credit unions have an established history of member satisfaction with their overdraft programs, yet these programs could be curtailed by a potential rulemaking from the CFPB. For the past two years, the CFPB has listed overdraft on its rulemaking agenda. However, the timeframe for its release continues to be pushed back because the CFPB lacks the statutory authority to set a hard cap on overdraft fees, and there is a lack of consumer support for curtailing overdraft programs. NAFCU believes that the CFPB should carefully consider the long-term implications of any changes to overdraft protection regulations, especially since consumers may end up actually paying more fees, such as NSF fees for checks. Further, credit unions need the flexibility to tailor their programs as necessary, as there is no one-size-fits-all approach.

- HMDA: Late last year the CFPB finalized several substantive changes to HMDA (Regulation C), including: (1) requiring credit unions to report additional data points, (2) making HELOC reporting mandatory, and (3) changing the coverage test so credit unions that originated 25 covered loans or less, excluding open-end lines of credit, in the previous calendar year would be exempt from HMDA reporting requirements. NAFCU strongly supports HMDA's goal of ensuring fair lending and anti-discriminatory practices, but is concerned that many aspects of the proposal may not further this goal and may only serve to impose significant additional compliance and reporting burdens. Given the tremendous burden that these changes will place on credit unions, NAFCU believes that the Bureau has failed to provide compelling reasons for how the collection of the additional data ensures fair access to credit in the housing market.

- FCC TCPA: NAFCU is concerned about the impact that the Federal Communication Commission's (FCC) recent Declaratory Ruling and Order on the Telephone Consumer Protection Act (TCPA) will have on credit unions' ability to contact their members about important notifications and timely updates regarding financial developments that will impact their existing accounts. Recently, FCC Chairman Tom Wheeler indicated that they are collaborating with the CFPB as it contemplates changes, including drafting a proposed rule granting exemptions for collection of federal debt.

NAFCU looks forward to working with the committee to continue to make improvements to the CFPB and provide regulatory relief to credit unions. We hope that you will use tomorrow's hearing to encourage the CFPB to take greater steps to provide relief to credit unions under its current authority. We thank you for the opportunity to share our thoughts with you today. If you have any questions, or if my colleagues or I can be of assistance in any way, please do not hesitate to contact me 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 Senate Banking Committee

Bank CEO reveals how Obama administration shook him down

By Paul Sperry

February 21, 2016 | 6:00am

The former CEO of Ally Financial Inc. says the Obama administration abused its power by holding the bank's business hostage in order to coerce a record settlement of "trumped-up" racism charges and push profit-killing new regulations on the entire auto-lending industry.

The huge $100 million deal has spooked several other major lenders into resolving similar race-bias charges and offering below-market rates to minorities for car loans.

Michael A. Carpenter, who helmed Detroit-based Ally from 2009 to 2015, complained in an exclusive interview that Obama's powerful consumer watchdog agency threatened to derail the bank's efforts to obtain key regulatory approvals if it didn't agree to settle the allegations out of court.

"To be strong-armed by a regulator was inappropriate to say the least," he said. "They absolutely knew they had tremendous leverage over us."

Since the 2013 deal, the Consumer Financial Protection Bureau has accused the industry's biggest lenders of ripping off black and other minority customers by charging them higher interest rates than whites.

But Carpenter says there's no merit to the accusations. He suggests they're merely a means to a political end: forcing car dealers to abandon discretionary pricing and equalizing credit outcomes, regardless of borrower creditworthiness. He warns moving to flat-rate financing, as the administration wants, would limit the industry's ability to make a profit and cover risk and would be like "signing our own death warrant."

Congressional critics in both parties agree. In fact, some argue the CFPB, created in 2010 to educate and protect American consumers, is acting more like the NAACP but with subpoena power.

Carpenter says the CFPB's civil rights activists refused to consider exculpatory evidence acquitting Ally of the charges, and warned him that he would lose holding-company status for the bank if he fought the charges. Without such status, Ally would have had to divest key businesses and wouldn't have been able to raise equity in the markets to repay billions in taxpayer dollars pumped into Ally under the TARP program.

"We would have fought the CFPB's trumped-up accusations in every court in the land if paying back the American taxpayer had not been the compelling priority," said Carpenter, who remains a consultant to the Ally board.

He says the administration was trying to beat a potentially market-reshaping deal out of the company. By making an example of one of the largest auto lenders, the government still hopes to reform the way the industry finances car loans.

"They were using us as a way to regulate the industry," he said. And it may be working. Several of the nation's biggest lenders, including most recently Toyota Motor Credit, Fifth Third Bank and American Honda Finance, have agreed to cap interest rates, and a handful of smaller banks have agreed to adopt flat fees.

A confidential CFPB memo detailing how the agency would go after Ally strongly confirms the strategy. The October 2013 document says being able to roll the financial giant would "send an important message" to the entire auto-finance industry to "eliminate discretionary pricing" — or face similar discrimination charges.

Carpenter says he's dealt with federal bank regulators his entire career, which includes high-level stints with Citigroup and Kidder Peabody, but "I've never seen anything like" the bullying he's seen in this administration.

"There is no intellectual honesty in their approach," he said.

Under President Obama, the feds so far have managed to extract more than $220 million from several major car financing firms, along with some $1.2 billion from the nation's biggest mortgage lenders, over unproven, unsupported racism charges.

Of the dozens of cases prosecuted, none has been based on actual discrimination complaints. All the cases hinge on statistics generated by the flawed disparate-impact methodology.

Carpenter says the CFPB tried to hide its metrics for the analytical screens it used to determine discrimination. After Ally obtained them and ran the numbers itself, it found that non-discriminatory factors — such as credit differences, vehicle type purchased, trade-ins and down payments — explained virtually all the disparities in the loan data. It also found that many white borrowers were charged dealer rates that were higher than the white average, further undercutting the administration's case.

Ally quickly learned the agency was unfairly comparing borrowers who were not similarly situated, Carpenter said, and "we were being accused of something we didn't do." Yet prosecutors refused to consider the more scientific data that refuted the racism charges.

"They just rejected it," Carpenter said. "The people involved [in negotiations] had a very clear agenda, you know, a social agenda.

"The fundamental premise on which they based their case was not true and they knew that, [but] they didn't care," he added. "You could show them all the data on the planet. They did not care. They had an agenda."

Worse, the CFPB could never identify the alleged 235,000 Ally minority "victims" harmed by loan mark-ups. The auto industry does not report borrower race, so the CFPB resorted to guessing race by last name and zip code, a so-called "proxy" method that's wildly inaccurate and often misidentifies whites as black.

As a result, Carpenter says he wouldn't be surprised if as much as 20% of the checks the government is now mailing out are actually going to Caucasians.

In a pre-emptive strike against future prosecution, Ally has been randomly cutting refund checks to car borrowers on its own, outside the settlement, advising pleasantly surprised recipients a mistake may have been made in calculating their interest rate.

"We didn't want that same problem again," Carpenter said, "so we said to ourselves, what are we going to do to make sure we pass the (CFPB's fair lending) test?"

In effect, the industry is now having to pay protection money to the government as a cost of doing business.

"If that's the way you get their metrics right," he said, "that's the way you have to play the game."

Paul Sperry is a former Hoover Institution media fellow and author of "The Great American Bank Robbery." Sperry@SperryFiles.com

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