

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

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

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JUNE 14, 2023  
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# CONTENTS

	Page
Hearing held on:	
June 14, 2023 .....	1
Appendix:	
June 14, 2023 .....	77

## WITNESSES

WEDNESDAY, JUNE 14, 2023

Chopra, Rohit, Director, Consumer Financial Protection Bureau (CFPB) .....	5
--	---

## APPENDIX

Prepared statements:	
Chopra, Rohit .....	78

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Barr, Hon. Andy:	
Written statement of the Association of Credit and Collection Professionals (ACA) .....	82
Letter to Rohit Chopra from Representatives Barr and Huizenga re: Freedom of Information Act (FOIA) requests, dated June 14, 2023 .....	87
Written statement of the Consumer Bankers Association .....	89
Written statement of the Credit Union National Association (CUNA) .....	93
Garcia, Hon. Sylvia:	
Letter to the CFPB from the Consumer Bankers Association, dated July 2, 2018 .....	101
Consumer Bankers Association White Paper, “The Case for Regulation Through Rulemaking & Guidance,” dated October 2021 .....	106
Velazquez, Hon. Nydia:	
Excerpt from House Small Business Committee hearing on March 28, 2023 .....	114
Waters, Hon. Maxine:	
Written statement of the Asset Building Policy Network (ABPN) .....	118
“Who Opposes the Fifth Circuit Decision in <i>CFSA vs. CFPB</i> ?” .....	121
Written statement of UnidosUS .....	124
Chopra, Rohit:	
Written responses to questions for the record from Representative Barr ..	132
Written responses to questions for the record from Representative Davidson .....	157
Written responses to questions for the record from Representative De La Cruz .....	158
Written responses to questions for the record from Representative Donalds .....	163
Written responses to questions for the record from Representative Flood ..	208
Written responses to questions for the record from Representative Garbarino .....	212
Written responses to questions for the record from Representative Hill ....	213
Written responses to questions for the record from Representative Houchin .....	215
Written responses to questions for the record from Representative Kim ....	219
Written responses to questions for the record from Representative Nunn ..	225
Written responses to questions for the record from Representative Pettersen .....	236

# IV

	Page
Chopra, Rohit—Continued	
Written responses to questions for the record from Representative Sherman .....	238
Written responses to questions for the record from Representative Steil ...	243
Written responses to questions for the record from Representative Timmons .....	246
Written responses to questions for the record from Representative Velazquez .....	250

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

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**Wednesday, June 14, 2023**

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

The committee met, pursuant to notice, at 10:04 a.m., in room 2128, Rayburn House Office Building, Hon. Andy Barr presiding.

Members present: Representatives Sessions, Posey, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Emmer, Loudermilk, Mooney, Davidson, Rose, Steil, Timmons, Norman, Meuser, Fitzgerald, Garbarino, Kim, Donalds, Flood, Lawler, Nunn, De La Cruz, Houchin, Ogles; Waters, Velazquez, Sherman, Meeks, Scott, Lynch, Green, Cleaver, Himes, Foster, Beatty, Vargas, Gottheimer, Casten, Pressley, Horsford, Tlaib, Torres, Garcia, Nickel, and Pettersen.

Mr. BARR. [presiding]. The Financial Services Committee will come to order.

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

Today's hearing is entitled, "The Semi-Annual Report of the Bureau of Consumer Financial Protection."

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

Thank you, Director Chopra, for being here today. As the Director, you wear a lot of hats. You are a member of the Federal Deposit Insurance Corporation (FDIC) and the Financial Stability Oversight Council (FSOC).

This committee has spent a lot of time understanding how regulators reacted to the failures of Silicon Valley Bank and Signature Bank. Given that both the FDIC and FSOC played critical roles in those failures, I am looking forward to hearing about your involvement in the decision-making process.

As we said when FDIC Chair Gruenberg and Federal Reserve Vice Chair Barr testified before this committee, there was and continues to be a lack of transparency surrounding the regulators' decision-making that first weekend in March. Was there an ideological lens that impacted your response? Did your views regarding bank consolidation lead to a delayed resolution and greater uncertainty in the financial sector? Let's spend more time on this when we get to questions.

Turning today to your job as Director of the Consumer Financial Protection Bureau (CFPB), your agency is responsible for regulating and enforcing consumer financial laws. Clear rules and expectations of how to comply with those rules benefit all participants in the consumer financial marketplace.

Unfortunately, under your leadership, the CFPB is doing the exact opposite. First, your agency identifies consumer harm in one instance for a specific product. From there, you extrapolate that that harm occurred everywhere and everyone should be under suspicion. In fact, every act is presumed abusive until the CFPB or a court decides maybe they aren't.

You use compliance bulletin circulars and advisory opinions to sow doubt and confusion in the marketplace. You vilify entire industries simply because they are politically unsavory, in your opinion. The practice of name-and-shame first, verify later, isn't consumer protection. It is McCarthyism. This harms consumers and the economy at large while propping up trial lawyers and consumer activist groups. Let me be clear: That is not the mission of the CFPB.

Finally, I will turn to what appears to be your most-recent appointment as an appendage of President Biden's re-election campaign. When the President started talking about junk fees, the current hyperpartisan CFPB engaged in a campaign about its effort to clamp down on—you guessed it—junk fees.

Look, it is an easy target. No one likes fees. And to be clear, some fees should be questioned to ensure that people are not getting ripped off. But to indiscriminately label fees as abusive is a blatant attempt to pander to Americans who have been hung out to dry in the Biden economy.

My Democratic colleagues will likely turn to their favorite talking point, corporate greed, to explain away the need for fees. But do you know who else relies on fees? The government. The IRS charges late fees on taxpayers. If you want to enter most national parks, you pay a fee. Even the CFPB charges fees on Freedom of Information Act (FOIA) requests. So why would the CFPB believe that the same costs that these fees cover or the actions they are designed to deter do not exist in the private sector?

I will finish with this. The current CFPB operates in an opaque, increasingly-partisan, and analytically-weak manner. We experienced this under Director Richard Cordray, and his legacy lives on with you, Director Chopra.

The CFPB is directly overstepping its bounds and serving as judge, jury, and executioner in the consumer financial marketplace. That is why committee Republicans advanced a package of bills to reform the structure and funding stream of the CFPB to ensure transparency and accountability to the American people.

And let me just say one thing about the rulemaking on credit cards. I want you to talk about this, Director, because we don't understand how it is protecting consumers to force a subprime credit card borrower who is always on time and never pays late—which is 74 percent, according to your own data; 74 percent of Americans who have credit cards never pay late—to pay a higher interest rate by lowering the late fees on borrowers who never pay late?

And with that, I yield back my time.

And I now recognize the ranking member of the committee, the gentlewoman from California, Ms. Waters, for 4 minutes for an opening statement.

Ms. WATERS. Thank you very much.

Good morning, and welcome, Director Chopra. I am so pleased that you are here this morning to share with us the success and all of the good that your group has been doing, as we predicted, instead of focusing on how we can strengthen consumer protections and avoid a catastrophic default of jobs.

Republicans are focused on undermining the CFPB, the only Federal agency with the singular mission of protecting consumers. As we speak, extreme MAGA Republicans are teaming up with predatory payday lenders to challenge the constitutionality of the CFPB's funding in the Supreme Court, based on a fringe legal theory.

Every single other court has affirmed the validity of the CFPB's funding, but just like MAGA Republicans who continue to deny election results, they are continuing to deny these facts, also.

So, let me state the facts simply. The Constitution is clear. Congress can fund the Executive Branch, including the CFPB, banking regulators, and other agencies however it likes and has done so for nearly 250 years. This attack on the CFPB is yet another destructive effort by Republicans to undermine all types of government programs, including and especially Social Security and Medicare.

Let's take a look at last month. I was proud to lead an amicus brief with 144 current and former Members of Congress supporting the CFPB against this reckless challenge. Republicans are also advancing legislation to undermine the operations of the CFPB. These efforts are a direct attack on consumers and the safeguards that protect them in our nation's ever-evolving financial system.

Despite these attacks, the CFPB's record under Director Chopra speaks for itself. The CFPB has successfully combated junk fees, relieved the burden of medical debt on consumers credit reports, fought back against housing discrimination and redlining, and held large financial institutions like Wells Fargo accountable for repeatedly breaking the law and harming people across America.

In fact, the CFPB has returned more than \$17 billion to 200 million harmed customers. That is why 80 percent of people, including 75 percent of Republicans, support the CFPB and want the agency to continue to do its job. Republicans should start listening to their constituents, who can tell them what a junk fee is and explain why they need to support this critical agency's work.

Additionally, the CFPB's new small business lending rule implementing Section 1071 of the Dodd-Frank Act will go a long way toward finally rooting out discrimination in small business lending. It will open up new funding opportunities to help small businesses start up, grow, and thrive. It will do this in part by tracking data of minority- and women-owned businesses, as well as LGBTQ+-owned businesses, which we are especially focused on during pride month.

Democrats will reject Republican efforts to use the Congressional Review Act to eliminate this long-overdue rule, while Republicans refuse to stand up for consumers, including LGBTQ+ small business owners. They continue to protect the interests of large corporations.

I yield back.

Mr. BARR. The gentlelady's time has expired.

The Chair now recognizes Mr. Loudermilk, who is also the Vice Chair of our Subcommittee on Financial Institutions and Monetary Policy, for 1 minute.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

And thank you, Director Chopra, for once again coming to speak with us this morning.

Unfortunately, since the last time you were here, it doesn't seem like much has changed. The CFPB is still an unaccountable agency with centralized leadership in a constitutionally-questionable funding structure. The Supreme Court is currently looking into the latter, and I am hopeful their decision will show us a path forward for the agency under regular appropriations.

Industry feedback has been near unanimous that the Bureau is acting with little to no regard for the downstream effects of their rulemaking on consumers or small businesses.

Through its wide-reaching disclosure rules, industry circulars, and opinions issued across various media, including enforcement, the CFPB has collected a wealth of consumer data. And in March of this year, we were informed of a significant breach at the Bureau that compromised data belonging to hundreds of thousands of consumers. This raises important questions over whether Congress and the American people can trust the Bureau to look out for their own best interests if they are not even willing to protect the information they collect.

The Consumer Financial Protection Bureau is deeply flawed, deeply troubled, and in desperate need of reform. The best time to hold the Bureau accountable is not today; it was 12 years ago.

Mr. BARR. The gentleman's time has expired.

Mr. LOUDERMILK. But the second-best time is today.

Mr. BARR. The gentleman's time has expired.

The Chair now recognizes the ranking member of the Subcommittee on Financial Institutions and Monetary Policy, Mr. Foster, for 1 minute.

Mr. FOSTER. Thank you, Mr. Chairman, and Director Chopra, thank you for being here today.

In an era where consumer financial transactions have become increasingly complex and oftentimes daunting, the CFPB serves as a beacon of protection, ensuring that individuals are treated fairly in the marketplace, a real example of government doing things to make people's lives better.

As our technology and ability to transact gets faster and more efficient, so do the scams and elaborate fraud schemes that wish to take advantage of our constituents.

The CFPB protects the most-sensitive parts of our population. You are focused on the protection of older adults, and on vulnerable groups from servicemembers to LGBTQ+ individuals, and your partnership with advocacy organizations and your actions against companies violating laws protecting servicemembers and others demonstrates your dedication to safeguarding those who may be more susceptible to financial exploitation. And it does all of this while coming under constant attack.

With the coming onslaught of deep-fake AI impersonation and the opaque ChatGPT robo advisors, your job will not get easier.

So thank you, and I yield back.

Mr. BARR. The gentleman's time has expired.

Today, we welcome the testimony of the Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau.

Director Chopra, we thank you for your time, and we will recognize you for 5 minutes to give an oral presentation of your testimony. And without objection, your written statement will be made a part of the record. You are now recognized for 5 minutes.

**STATEMENT OF ROHIT CHOPRA, DIRECTOR, CONSUMER  
FINANCIAL PROTECTION BUREAU (CFPB)**

Mr. CHOPRA. Chairman Barr, Ranking Member Waters, and members of the committee, thank you for holding this hearing today.

I am pleased to report that the CFPB continues to deliver tangible results for the public, ensuring that consumers are protected, ensuring that honest businesses are safeguarded, and preparing for the future as Big Tech and artificial intelligence reshape the industry.

I want to share a few observations about the state of household balance sheets in the United States as well as some highlights of our work.

American families continue to benefit from a resilient labor market. Consumer spending is quite robust, and borrowing has accelerated. Inflation in key categories such as vehicles and others has contributed to rising levels of household debt. Americans now own \$17 trillion in mortgages, auto loans, student loans, credit cards, and other consumer loans. Rates are higher than they were a few years ago, and some families are paying much more.

Overall, current indicators of distress on consumer credit remain fairly muted, although there are modest signs of increased delinquency. We will continue to monitor the impact of changes in interest rates and home prices closely as well as other changes that might impact large segments of the population.

We are on high alert for shocks to the system that might unsettle household financial stability. The failures of Silicon Valley Bank, Signature Bank, and First Republic Bank highlighted significant vulnerabilities in the banking system, and regulators took a series of extraordinary actions that limited the fallout to the broader economy. But it is clear that policymakers need to take steps to avoid the need for emergency measures in the future.

With respect to congressional directives, the CFPB has made major progress on proposing, finalizing, or implementing required rules on credit reporting for survivors of human trafficking, small business lending data, PACE lending, the LIBOR transition, and more.

We are reviewing old rules to find opportunities to simplify and future-proof them. We built on the work of my predecessor to publish more advisory opinions and guidance that helps small and nascent firms looking to develop new products and services.

We are focusing more heavily on supervision of nonbank financial firms, which have not always been subject to the same over-

sight as local banks and credit unions. We are activating unused authorities to minimize regulatory arbitrage by nonbank firms seeking to gain a competitive advantage.

We have shifted the focus of our enforcement program away from targeting small actors and putting more attention on large and repeat offenders. And since then, we have recovered \$4.6 billion in refunds and penalties. We are handling an average of 10,000 consumer complaints per week and obtaining successful resolutions for individuals outside of legal proceedings.

But equally important is our work to address how technology is transforming financial services. I think the U.S. has a choice. Are we going to harness technology to maintain and enhance relationship banking, drive more competition, and protect privacy? Or will we continue our lurch towards a system marked by surveillance that is fully-automated and controlled by just a handful of firms?

The CFPB is working to ensure broad benefits for consumers and businesses alike when it comes to technological progress. One of our most-important initiatives is to accelerate the shift in the United States to open banking, allowing consumers to more easily switch and gain access to new products while protecting their financial data.

We have been leading a number of efforts in artificial intelligence, and we are working to bring more technical talent inside the agency. We are taking steps to guard against algorithmic bias, and we are working to ensure that data brokers respect long-standing laws on the books.

The work of the CFPB in an age of Big Tech and artificial intelligence has never been more important.

Thank you, Chairman Barr, for the opportunity to appear before you. I look forward to your questions.

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

Mr. BARR. Thank you, Director Chopra.

And I will now yield myself 5 minutes to ask some questions.

As an FDIC Board Member, you were involved in the decision-making related to Silicon Valley Bank and its resolution. During the weekend of March 9th, did you express any views to FDIC Chairman Gruenberg, any member of the FDIC Board of Directors, any FDIC staff, or any officials in the Administration regarding the class of banks that should or should not be considered as a viable buyer of Silicon Valley Bank?

Mr. CHOPRA. No. In a bank failure particularly, the most-efficient way to contain any fallout is to ensure there is continuity. The Bank Merger Act specifically talks about financial stability. It was important if we had a viable buyer.

Mr. BARR. Did you express an opinion that a large Wall Street, too-big-to-fail bank should not be in the class of institutions that would be eligible to purchase the bank?

Mr. CHOPRA. I think we would have taken any potential buyer.

Mr. BARR. Okay.

Mr. CHOPRA. We did not receive a bid.

Mr. BARR. Okay. I appreciate your answer.

And I ask because when you were FTC Commissioner, you submitted a comment to DOJ on bank mergers, criticizing those that



occurred during the 2008 financial crisis. You opined that, “Policy-makers compounded the damage by orchestrating several more megamergers, forming even bigger banks.” We also know you used procedural games in December 2021 to try to force a bank merger process review.

Did you see the Silicon Valley Bank failure as an opportunity to take your personal views on megamergers, and implement them in a real-world crisis?

Mr. CHOPRA. No. But what you are referring to, I talk about where there is tremendous government assistance. It was a different situation. We were faced with one of the fastest bank failures in history.

Mr. BARR. Director, one more time, did you in any way try to influence the FDIC analysis of the bids?

Mr. CHOPRA. We did not receive any bids that weekend for Silicon Valley Bank. We sought to get as many bids as possible. The FDIC’s law requires minimizing costs to the Deposit Insurance Fund (DIF), and that is what we did.

Mr. BARR. We talked a little bit about this offline, that some healthy mergers can avoid losses to the DIF. I want you to take that back to Chairman Gruenberg, that we need a better merger process to avoid losses to the DIF. And we can talk about that further.

Director Chopra, in your new abusive acts and practices policy statement, do you include the following as fitting into what will now be considered abusive and a violation of consumer financial law? And I will ask that you answer yes or no.

A pop-up or drop-down box?

Mr. CHOPRA. I don’t believe that, on its own, is any violation.

Mr. BARR. Okay. Multiple click-throughs?

Mr. CHOPRA. I don’t believe that, on its own, is any violation. I think there was a series of examples used to look at material interference.

Mr. BARR. What about consumer confusion?

Mr. CHOPRA. That is part of the statutory——

Mr. BARR. What if it is unreasonable consumer confusion?

Mr. CHOPRA. Unreasonable on the part of the consumer——

Mr. BARR. On the part of the consumer.

Mr. CHOPRA. ——would not be the issue. That would not meet the statutory standard. The standard has two prongs with some sub-prongs. One is material interference with the consumer’s ability to navigate, and the second is taking unreasonable advantage——

Mr. BARR. What about customer support taking too long? Is that abusive?

Mr. CHOPRA. Is that in the proposed——

Mr. BARR. See, your confusion is the problem. Nobody knows what constitutes, “abusive.” We still don’t. If you don’t know, and you are the Director, and you issue the guidance——

Mr. CHOPRA. We have sought in the proposed policy statement to summarize all of the supervisory actions by State and Federal law as well as enforcement to say, this is the body of law we have. We have a common law system in the United States. We are seeking to provide as much clarity to be responsive to——

Mr. BARR. Because I have limited time, these are examples that you say that you are listing, and you can't tell me whether or not these examples constitute, "abusive." And complying with these new additions, these examples to the, "abusive" prong, means that companies will now have to change the way they present information or manage customer services. This means that these institutions have new obligations, and you are not following notice-and-comment rulemaking, and you are imposing new requirements on them by listing these—

Mr. CHOPRA. I completely disagree with that characterization, respectfully.

Mr. BARR. I know you do.

If it is not new requirements, here is the problem. It is kind of like Supreme Court Justice Potter Stewart in 1964 when he was asked to describe his test for obscenity. He said, "I know it when I see it."

This vague and ill-defined guidance on what, "abusive," means under Unfair, Deceptive, or Abusive Acts of Practices (UDAP) sounds a lot like Justice Stewart's test for obscenity. "Abusive" is whatever you say it is.

Mr. CHOPRA. It is not. Congress wrote the words. It is in statute. We have tried our very best to be able to articulate with fidelity to those words, to give examples and facts.

Mr. BARR. My time has expired. You tried, but respectfully, I think you failed. Nobody knows what it is. It is what you say it is, and that is the problem.

My time has expired. The ranking member of the committee, the gentlewoman from California, Ms. Waters, is recognized.

Ms. WATERS. Yes, your time has expired. And I certainly hope that you recognize that as I start with my questions.

First of all, I want to go back to what the gentleman was implying when he asked you about what you said. Whatever you said had nothing to do with what the final results were that were accomplished when we were able to save this country from bank runs, et cetera.

Would you like to take a moment to talk about how successful we were when, over 48 hours, you all worked very hard to ensure that when we woke up on Monday morning, the banks would be safe and secure, and that, again, they would not be bankrupt? Give America some examples of the fine work that was done.

Mr. CHOPRA. I think what happened that weekend was something we should never want to repeat and have to do again. We had to take emergency steps. The unanimous vote of the Fed Board and the FDIC Board, with the concurrence of the Treasury Secretary and the President, was to insure uninsured deposits. It was extraordinary, and it is something we do not want to have to repeat. It was one of the fastest bank runs in history pushed digitally; social media in the modern age was involved.

We are going to have to take steps to make sure that financial institutions can stay resilient even in these times of stress. I also think it woke people up to uninsured deposits, and there are more places where these uninsured deposits exist for consumers, and we need to make sure people know how to keep their money safe.

Ms. WATERS. I thank you very much for reminding this committee of the good work that our government did in order to ensure that our banks are safe and secure.

I want to go to a question that I think needs to be given some explanation. I applaud you and the CFPB staff for issuing long-overdue rules implementing Section 1071 of Dodd-Frank to provide transparency to the small business lending market. I worked with Congresswoman Velazquez and others to ensure that this measure was included in Dodd-Frank so that the same kind of transparency in market lending could be made in small business lending.

My colleagues on the opposite side of the aisle are quick to point to the burdens of data collection on lenders. Would you discuss how you took the concerns of small community banks and credit unions into account in the final rule?

Mr. CHOPRA. We made substantial changes from the proposal, including changing thresholds, which actually led, I believe, to 2,000 of the smallest banks which do not do much small business lending, to not have to report.

We also changed the implementation period so the large ones would go first with much more time for the smaller ones. We sought to simplify. The final rule allows small banks and others to work together with their industry associations to help with reporting. We did a lot to make changes, but we had to implement the statute as the court directed.

Ms. WATERS. Thank you. Now, would you also discuss the benefits that small businesses of all types will see from this rule, particularly for LGBTQ small businesses? And will transparency in this opaque market help make the market more competitive and reduce costs for all small businesses?

Mr. CHOPRA. Certainly, the Paycheck Protection Program (PPP) was a real sign that the government really lacked, and the market also lacked details about patterns of small business lending. We see that with more mortgage data, you actually invite smaller players to enter the market to fit unmet needs.

I hope this dataset is going to be able to be used also to identify opportunities, meet needs, and really work together with other rules that are currently on the books, with which people can achieve compliance.

Ms. WATERS. Thank you. One thing I am focused on is getting more information about the type of government programs supporting small businesses, including Small Business Administration (SBA) loans, and loans from Community Development Financial Institutions (CDFIs). I believe this kind of data would help Congress to better understand the full impact of these various programs that have been supporting small businesses in underserved rural and urban areas and to help us to strengthen them.

Do you agree?

Mr. CHOPRA. Yes.

Ms. WATERS. If so, would you work with me on how best to design such a requirement?

Mr. CHOPRA. We always want to work with you, Congresswoman. Many of those loans may be captured partially, but we will work with you.

Ms. WATERS. I thank you very much for your presentation here today, and I thank you for always working with us on behalf of the people of this country.

I yield back.

Mr. BARR. The gentlelady's time has expired.

The gentleman from Arkansas, Mr. Hill, is recognized.

Mr. HILL. Thank you, Mr. Chairman.

Director, we are glad to have you here before the committee today. We are doing a lot of work, and we have done that under the leadership of former Chairwoman Waters and current Chairman McHenry in the whole fintech space and the digital future for financial services. It is a major megatrend, of course, across the world. And the building blocks of that future digital financial services space include cyber protection standards, digital identity—a favorite topic of my friend from Illinois, Dr. Foster—and privacy.

And I want to start out our discussion talking about Section 1033, the rulemaking that talks about open banking. In the last 8 months, the Bureau has released the Small Business Regulatory Enforcement Fairness Act (SBREFA) outline. SBREFA is the acronym for 1033, which sheds some light into the agency's thinking about the advance of a rulemaking, I think, that you are considering for October.

Are you still on track for an October release of that rule?

Mr. CHOPRA. Yes, sir.

Mr. HILL. Data privacy and enshrining consumer data rights are a top priority of Chairman McHenry, which is why this committee passed our Data Privacy Act a few months ago. So, we have a keen interest in your views on open banking in this rulemaking.

I thought it was notable that in your initial proposal, you were only covering deposit accounts and card accounts from depository institutions, and weren't tackling or applying the rule to services provided by nonbanks, even though the Bureau acknowledges that nonbank data providers offer numerous consumer financial products, including mortgages, auto loans, et cetera.

Can you tell the committee how you reached the decision to set the scope only at Reg E and Reg Z for your initial proposal?

Mr. CHOPRA. Sure. And just to be clear, open banking is going to probably be one of the most important things we should all work on together. It is basically about the future of finance, and how do we shape it in ways that are good for consumers, businesses, and others.

Congressman Hill, we did not just include depository institutions. What we said was—we asked industry, asked experts, what is the most valuable types of data to get? And what they said was, it is transaction data. Cash flow data. So by getting all of that transaction account information—and we include nonbanks, I believe, in the SBREFA—we got input on that because that is what is going to give a mortgage lender, an auto lender, or others the ability to say, maybe I shouldn't rely on this credit score. Maybe I should look at their actual income and expenses.

I think that is why we started there. I am very open to figuring out ways to expand it, and I see this as a sequencing just like other jurisdictions in the Organization for Economic Co-operation and Development (OECD) have done.

Mr. HILL. Thanks. We will follow up on that. I want to make sure we get this right. This is something on which the committee wants to collaborate.

You also, in your advance notice on SBREFA, did not address liability for data breaches or data security noncompliance, a key issue that I am going to talk more about if we have time remaining. You have gotten a lot of comments on that. Do you expect the proposed rule this fall to include addressing liability for data breaches?

Mr. CHOPRA. Yes. The comments we got—I think institutions who are providing information want some understanding that if there is mischief on the other side, they won't be held liable. When we propose the rule, expect us to address some of that.

Mr. HILL. Okay. Good.

Mr. CHOPRA. So, that we can make it clear for the entities.

Mr. HILL. And speaking of data breaches, nobody has more data breaches than the U.S. Government. It is a huge frustration for all of us on this committee, and recently, even the CFPB had a former agency employee leak personally identifiable information (PII) and confidential supervisory information, which could have potentially impacted 250,000 American consumers and 50 financial institutions.

And whether it is this breach or the one from Office of Personnel Management (OPM) back in 2015, or the Postal Service, or the IRS, how in the world can the citizens trust their government to keep their private information private?

Mr. CHOPRA. Yes. It is an extremely serious situation. We were dealing with an insider threat. Our systems were not breached or hacked, but we identified indicia that an employee had sent some emails to their personal email account. We immediately investigated.

Mr. HILL. Is there monitoring now so you can stop that from happening in the future? Or do you now monitor that more successfully in the interim?

Mr. CHOPRA. Yes, sir. We have already been implementing ways to address this. But I will share with you that the issue of insider threats is a really serious—

Mr. HILL. Let me share with you that you and the bank regulators make that a living nightmare for every depository institution to make sure they do it right through internal and external penetration testing, and I think the citizens should demand the same of the Federal Government.

I yield back, Mr. Chairman.

Mr. BARR. The gentleman yields back.

The gentlewoman from New York, Ms. Velazquez, is now recognized.

Ms. VELAZQUEZ. Thank you, Mr. Chairman, and Ranking Member Waters.

Director Chopra, thank you for being here today.

I want to say that, along with many of my colleagues, especially Ranking Member Waters, I was proud to sign on to the amicus brief and support the good work of the CFPB.

I know that there has been some confusion about the Bureau's recent small business lending rule, also known as Section 1071, so

I would like to clarify a few things. Can you tell me why the Bureau is doing this rule now?

Mr. CHOPRA. Congress passed it in 2011, and the Bureau did not do it, and then a court order demanded the Bureau complete it by March 31st, and we did.

Ms. VELAZQUEZ. So it wasn't just the CFPB's idea or your idea, Director Chopra?

Mr. CHOPRA. It was the Legislative Branch's idea.

Ms. VELAZQUEZ. Isn't it true that there were major substantial changes between the regional proposal and the final rule based on input from industry stakeholders?

Mr. CHOPRA. Yes. And they have acknowledged that we made substantial changes, including one that would reduce the number of local banks that would have to report. We have tried our best to accommodate and figure out a way to achieve the statutory objectives, and we tried our best.

Ms. VELAZQUEZ. Okay. Does the CFPB's rule require banks to ask customers about their race and ethnicity and sexual orientation?

Mr. CHOPRA. The statute makes clear that a borrower does not need to provide that information. We did publish a sample form that institutions can use where borrowers can self-identify with checkboxes if they would like to, but it is not mandatory.

Ms. VELAZQUEZ. And does the rule allow for customers to decline to provide that information?

Mr. CHOPRA. Absolutely.

Ms. VELAZQUEZ. Aren't you allowing banks to partner with other banks and trade associations to fill out and report this data?

Mr. CHOPRA. Yes. Many of them can use consortia third parties. If they don't want to ask, they can direct their borrowers to, "Go fill this out over here." There is lots of flexibility because we heard those comments and wanted to make sure we were responding to them adequately.

Ms. VELAZQUEZ. That all sounds pretty reasonable to me.

Is it true that smaller banks have more time to comply with this rule?

Mr. CHOPRA. Yes. We gave substantial extra time compared to the proposal for those that were smaller in the marketplace. We are actively working with vendors and others to provide and partner with them to figure out how to make it as smooth as possible.

Ms. VELAZQUEZ. And what else do you do in this rule to ease the compliance burden on small banks? Weren't some banks exempted completely?

Mr. CHOPRA. Yes. We estimate that about 2,000 will not have to report under this. We visited with a lot of these associations and banks to figure this out. We were, again, under a court order to do it. We identified places where we could simplify. The way in which we are doing it is going to leverage technology. And, again, we understand this will require some effort, and we want to work, but we have to faithfully implement the law that was passed.

Ms. VELAZQUEZ. Director Chopra, this requirement was included in Section 1071 because small business lending data is a critical tool to help identify and combat this combination in small business lending. Not only that, but this data can ultimately help spur in-

vestment and programs to support the needs of America's small businesses.

Can you briefly describe what benefits we expect to see from this dataset and what benefits we would have seen if these had been in place several years ago, as Congress originally intended?

Mr. CHOPRA. I think due to the fact that this was delayed so long there has been a cost to that. Efficiencies and other government small business lending programs like the Paycheck Protection Program, as I mentioned with Ranking Member Waters. I think we would have been able to make sure we achieve fair lending all over the country and know exactly what is happening to so many small businesses, franchisees, and more.

Ms. VELAZQUEZ. As the ranking member on the House Small Business Committee, I am a strong supporter of the implementation of Section 1071. Thank you.

Mr. BARR. The gentlelady yields back.

The gentleman from Texas, Mr. Sessions, is now recognized.

Mr. SESSIONS. Mr. Chairman, thank you very much.

Director Chopra, welcome to the Financial Services Committee. The CFPB has been engaged in and is engaged in—as you mentioned—a lot of data breaches that occur in the private sector and in banks, financial institutions, and the government.

What have you learned from those that you have taught the government?

Mr. CHOPRA. Yes. One of the things that was very unique to the recent insider threat at the Bureau was that we have put in a lot of things over the years—penetration testing and other things—to make sure systems can't be hacked. We are now at the point where I think other—

Mr. SESSIONS. The systems can't be hacked?

Mr. CHOPRA. That is where the efforts have gone in for outsiders. But insider threats, I think, is one where there is more attention that all of the agencies, including the CFPB, need to guard against—a now former employee emailed themselves a set of emails, which was in complete violation of acceptable use policies.

Mr. SESSIONS. What did you do to that employee?

Mr. CHOPRA. I am prohibited from talking in specifics about personnel matters, but I can—

Mr. SESSIONS. Did you refer the matter for prosecution?

Mr. CHOPRA. We have referred the matter to investigators, including the Inspector General and others. We are cooperating with all of them. They have various authorities that go beyond our authority, civil, criminal, and others.

Mr. SESSIONS. So, you think that some of the breaches come from internal employees?

Mr. CHOPRA. In this recent incident that we informed Congress about, it was from a CFPB employee. And that is something that, especially with more devices, phones, and recordings, we need to figure out how—

Mr. SESSIONS. What have you taught the government in your investigation to help them? Because I recognize that your focus is entirely on beating the stuffing out of the free enterprise system.

Mr. CHOPRA. That is not true, sir.

Mr. SESSIONS. There is sufficient evidence to suggest that my statement would be true and yours would be also, sir.

What have you taught the government?

Mr. CHOPRA. I think in this incident, we have been working with all of the appropriate agencies, the Office of Management and Budget (OMB), and others. I think as we have talked to the other banking regulators, we recognized that we all need to figure out, how do we ask and allow institutions to give us data in even more-protected forms, and what can we do to police insider threats effectively?

I think there is so much that government employees across the government have access to in terms of sensitive information, and ensuring that it does not get disclosed is absolutely critical.

Mr. SESSIONS. Evidently, Homeland Security and, to a large part, the Secret Service have large jurisdictions for investigating and prosecuting these incidents. What are your regular conversations with them about what you have learned?

Mr. CHOPRA. Primarily, in these situations, OMB and other guidance says to work with the Inspector General, and of course, others, like the Justice Department, and as you know, the FBI is under the Justice Department. We try and provide all of the evidence to them. They have to conduct their own investigation.

But as a policy matter, I do think we want to contribute our learnings on insider threats, which may be an issue across-the-board that we all have to carefully combat, especially with new technologies to which individuals have access.

Mr. SESSIONS. You are the Director. I am not. You and I could have different ideas about what we believe the focus should be. But I would hope that you would put a major focus on data security, from the things that you have learned, and be a leader in that field. I am not arguing that you are not today. But I believe that a major focus of your 1,600 employees could be almost single-handedly across that until we defeat those who want to steal our intellectual property, our personal data, and other things.

Mr. Chairman, I want to thank you for this time.

Director Chopra, thank you.

Mr. BARR. I thank the gentleman.

The gentleman from California, Mr. Sherman, is now recognized.

Mr. SHERMAN. I want to strongly endorse one of the statements the acting Chair made in his opening statement. Mr. Chopra, you are indeed continuing the legacy of Director Cordray in your work. Congratulations.

The CFPB's importance is demonstrated every day. Nothing proves it more than the incredible efforts made here in Washington to silence and defeat you. You are the most-effective consumer protection organization I think the world has seen in the area of financial services. And it is critical that we win this case before the Supreme Court. I say, "we," because I joined the ranking member and so many others in the amicus brief to make sure you get the same kind of funding that the Fed has had for well over 100 years.

As you point out in your opening statement, you have secured \$4.6 billion in refunds and penalties against violators, and that is just the tip of the iceberg. Because every time you collect a fee, you get many, many other companies to change their policies or to not



engage in policies in which they might otherwise engage. And as you point out, you deal with 10,000 consumer complaints every week.

I want to thank you for focusing in your opening statement on two issues important to me. First, thank you for your work on the London Interbank Offered Rate (LIBOR) transition. Some \$16 trillion of instruments, including trillions of dollars of home mortgages, are going through that transition.

And second, you mentioned Property Assessed Clean Energy (PACE) lending. As to PACE lending, I want to commend you for your new regulation as required by law to require Truth in Lending Act (TILA) disclosures and ability-to-pay determinations. But the battle is not over. The industry will fight back, and I hope that you stand strong.

You, under Section 1071, are requiring disclosures on small business lending to women-owned businesses, minority-owned businesses, and LGBTQI-owned businesses. And I know you have pledged to help lenders, especially small lenders, implement that rule. I am told that some lenders have submitted questions over a month ago, and they submitted to those designated mailboxes and are not getting responses. So, I hope you can go back and get them those responses.

Credit repair scams are not just annoying television commercials. They charge you a lot of money. They just blanketly contest everything on your credit report. Your score then goes up for a little while until they realize that most of those entries were accurate, and then it goes back down. What are you doing to deal with the scheme where you get your credit report improved for a little while?

Mr. CHOPRA. Yes. We are looking hard at all the ways in which consumer credit report issues can spawn scams. We have brought a number of enforcement actions here. We do work with the Federal Trade Commission (FTC), and State Attorneys General to bring action. But we don't want to play Whac-A-Mole.

We want to figure out what is the way that consumers themselves can know how they can dispute inaccurate information. We want to make sure that fraudsters are not parking or placing debt on credit reports that is not even owed. So, there is a lot to work, and I know many on this committee—

Mr. SHERMAN. And I will furnish you one idea: When they start advertising about what percentage of their customers they improve the score for, they should not be claiming temporary improvements.

Mr. CHOPRA. Yes.

Mr. SHERMAN. Under Section 1031, you are dealing with privacy. Data aggregators and fintechs are not subject to a lot of the Federal supervision that banks are, so what steps are you taking to protect Americans from the misuse of their data by data aggregators and fintechs?

Mr. CHOPRA. We have started, as I mentioned in my testimony, to put more emphasis on nonbank supervision, especially the firms that sometimes touch millions and millions of consumers who have not been subject to similar supervision.

We want to make sure that the abuse you mentioned is not collected for one purpose but monetized for a completely different one.

It is going to be a challenge, but we are starting by making sure we are targeting our supervisory resources properly.

Mr. SHERMAN. And finally, I hope that you would look at these for-profit debt relief agencies that keep you from talking to your bank first because often you can revolve it with the—

Mr. BARR. The gentleman's time has expired.

The gentleman from Missouri, Mr. Luetkemeyer, is now recognized.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Mr. Chopra, welcome. Last time you were here, we discussed your schedule, about the fact that you don't meet with people from the industry. We showed your schedule to you. You made some comments about it.

We sent you a letter and asked you to fill in the blanks and tell us that you actually did meet with people in the industry. You responded to us with a letter, but in that letter, you didn't respond and explain the lack of data in that schedule.

So from that, I can assume two or three things here. Number one, the letter was to me, Mr. Huizenga, and Mr. Barr. You thumbed your nose at us and said, you are not worthy of a response, or else we were correct in that you are not meeting with industry people as they tell us, or both, which I think is probably the case. It's very disappointing.

Mr. CHOPRA. Let me just say that there are many industry associations. We have done—

Mr. LUETKEMEYER. Mr. Chopra, we have been down this road before. The problem is that you don't meet personally; your staff does.

Mr. CHOPRA. No, no, no. I meet personally.

Mr. LUETKEMEYER. No, you don't. Your schedule doesn't back that up.

I want to move on.

Ms. WATERS. Please allow the gentleman to answer.

Mr. LUETKEMEYER. Reclaiming my time, I want to move on to another subject here.

Director, you have clearly chosen to regulate by press release, guidance, and the threat of enforcement action instead of through rulemaking governed by the Administrative Procedure Act (APA).

As you know, the APA allows for public notice and comment on proposed rules, which gives regulated entities an opportunity to provide feedback and share their concerns or incorporate an agency's rules in order to produce workable policies.

Since public statements are not rulemakings or official actions, and the guidance you issue is not legally binding, are financial institutions and firms within their rights if they do not adhere to your proclamations?

Mr. CHOPRA. I could not hear you.

Mr. LUETKEMEYER. Okay. Since public statements are not rulemakings or official actions, and the guidance you issue is not legally binding, are financial institutions and firms within their rights if they do not adhere to your proclamations?

Mr. CHOPRA. Yes. Guidance advisory opinions don't create new obligations. One of the pieces of feedback this committee has given is concerns about using enforcement only. I have continued a practice from my predecessor, Director Kraninger, to issue more infor-

mal guidance and opinions because it helps give transparency about what approach the agency is taking.

Mr. LUETKEMEYER. Okay.

Mr. CHOPRA. But it is not intended to create any new—

Mr. LUETKEMEYER. That doesn't answer my question, though. My question is, are the firms within their rights to not adhere to your proclamations or to this guidance?

Mr. CHOPRA. No. They have to follow statute and regulation.

Mr. LUETKEMEYER. That is not my question. They are within their rights, then, to not adhere to your proclamations and your guidance, is that correct?

Mr. CHOPRA. I think I am trying to be responsive. I think the answer is, yes, they only have to look to statute and regulation as for what is binding.

Mr. LUETKEMEYER. Okay. That is right.

Mr. CHOPRA. These other forms—we got input from the Consumer Bankers Association a few years ago that they wanted to see more guidance and—

Mr. LUETKEMEYER. Okay. It is clarification, then. It is clarification that you are using guidance and official actions, right?

Mr. CHOPRA. I think what we are trying to do is—the market is so dynamic, and it changes so much. So, we often have entities saying, do I need to hire a lawyer to figure this out?

Mr. LUETKEMEYER. That is fine to discuss. I know what you are trying to do, Director. But it is not enforceable. That is my point.

Mr. CHOPRA. It is trying to restate existing law and regulations.

Mr. LUETKEMEYER. It is not enforceable. Is that correct?

Mr. CHOPRA. That is right. I am sorry if I—

Mr. LUETKEMEYER. Guidance is not enforceable, correct?

Mr. CHOPRA. It does not provide any legal—

Mr. LUETKEMEYER. Okay. Clarification through official documents, such as your compliance bulletins, is not enforceable, correct?

Mr. CHOPRA. That does not provide any obligation, so there is nothing to enforce.

Mr. CHOPRA. Okay. So, it is not enforceable. That is your statement. You agree with that?

Mr. CHOPRA. Yes.

Mr. LUETKEMEYER. Wonderful. We finally got here.

It is very disconcerting because you have compliance bulletins here—I think there are 12 compliance bulletins and opinions, which is great. It gives clarification to folks. But it is not enforceable.

This is very concerning to me because you turn around and you threaten different entities all the time. You have become the greatest extortionist in the history of this country by what you are doing with these actions when you issue press releases, and make up new terms like, “junk fees.”

“Junk fees” is not a legal term. It is not an enforceable term. I have checked with attorneys. I have looked at the people who design and work through financial and legal dictionaries. This is not an enforceable term. You made it up to give yourself more authority to be able to have more impact on things and extort more money from people.

Mr. CHOPRA. I completely and respectfully disagree with that.

Mr. LUETKEMEYER. Well, I am glad——

Mr. CHOPRA. Every action we have taken is based on laws that this body has enacted, but through legislation——

Mr. LUETKEMEYER. Director, junk fees is not a legal term. It is not an enforceable term, period. Just like guidance is not enforceable. And yet, you try and impose that on people. You extrapolate from the UDAP authority using the term, “junk fees,” to be able to have new authorities. You can’t create authorities out of thin air. Only Congress can give you that authority, and you are creating it yourself.

With that, I yield back.

Mr. BARR. The gentleman yields back.

The gentleman from New York, Mr. Meeks, is now recognized.

Mr. MEEKS. Thank you, Mr. Chairman, and Ranking Member Waters.

And thank you, Director Chopra, for being here.

In listening to some of this debate, I can’t help but say, thank God that we created the CFPB, which is singularly focused, because I hear the interest of other groups who have people to advocate on their behalf. Most of the industries and anyone else has someone to advocate on their behalf.

What I don’t understand is why it is so bad to have an agency, which you represent, to advocate on behalf of the American consumer. Throughout history, we have seen the consumer be ripped off, taken advantage of—so much, that is why we have to have labor unions—because we know and we have seen that folks on their own don’t see a move in the benefit of everyday people.

So, there has to be someone to advocate on their behalf, to look at it, to make sure that the playing field is level for consumers. Not to harm businesses, but to level the playing field so that the consumer has a voice and someone there to say, don’t rip us off.

This is a bad product. I lived it in the financial crisis of 2008. That is why you are here, because we said we can never allow that to happen again.

And one of the proudest moments of my career here was working with Ranking Member Waters and others to create the Consumer Financial Protection Bureau. So, I thank you for doing your job. And your job is to advocate on behalf of consumers. That is your job[, singularly focused on helping the American people.

And you help all of them. Not just Democrats. You are helping the American consumer who is a Democrat, who is a Republican, who is an independent, no matter where they are, rural or urban. Thank you for doing that.

Now, the recent bank failures of Silicon Valley, Signature, and First Republic Banks dominated the media and the media attention, and this committee particularly this spring. We had an opportunity to speak with the potential regulators responsible for the oversight of the institutions and continue to look at what could have been done to prevent the failures, but we have not yet had the opportunity to speak with you in the aftermath, the voice and the advocate for the consumer.

So from your perspective, how do the recent bank failures highlight the need for a strong CFPB, now more than ever?

Mr. CHOPRA. As you referenced, in your own community and almost everyone's, the financial crisis was absolutely devastating. And the victims of financial crises—the first ones are often those who can least afford the shock.

So, we had to take extraordinary steps to mitigate some of that damage. But also, people are now learning about deposits and safety and insurance. And there are places where people may be holding their money that aren't insured. And we are going to obviously want to make sure that any instability in financial markets does not impact the consumer, as you say.

The failure of credit sweeps as well in the forced merger with UBS was a big concern at the CFPB to figure out, how could it affect our mortgage markets, our auto loan markets, and others? So, financial stability and consumer protection absolutely go hand in hand.

Mr. MEEKS. Thank you. We also heard that the CFPB teamed up with the Federal Reserve, the FDIC, the FHFA, the National Credit Union Administration, and the OCC to propose a rule designed to make the automated home valuation process fair. And I believe that it is going in the right direction.

But I am curious, when we talk about AI, would this rule promote automated appraisals over human appraisals?

Mr. CHOPRA. No. I think that it is trying to make sure that AI and algorithms, when used to automatically compute homes, do not bake in any sort of discrimination. I think everyone deserves a fair and accurate appraisal, and that is what the proposal which implements Federal law seeks to provide.

Mr. MEEKS. Thank you.

Mr. BARR. The gentleman's time has expired.

The gentleman from Michigan, Mr. Huizenga, is now recognized.

Mr. HUIZENGA. Thank you, Mr. Chairman.

And, Director Chopra, welcome back.

I have a number of things to get to here, but I was curious, when my colleague, French Hill, was asking you about the breach, it seemed like you were downplaying it. You said, "insider threat," that that person, "sent some emails." Later, to another question, you indicated it was a, "set of emails."

Would you classify the incident that happened as a minor incident, a sort of medium-sized incident, or was it a major incident?

Mr. CHOPRA. It was an extremely serious and major incident. There is no question about that.

Mr. HUIZENGA. Okay. Great. I'm glad to hear you backing that up.

Mr. CHOPRA. And I apologize. I don't want to underplay it in any way. We have looked hard to make sure we are following all of the steps. We have begun notification of—

Mr. HUIZENGA. Yes.

Mr. CHOPRA. Sorry.

Mr. HUIZENGA. I understand that. And I was back conferring with our attorneys as to exactly how much we could talk about publicly because we don't want to get in the way of an investigation. I know you don't, and I don't, either. But I do have some concerns.

You were notified in March to let the committee know in May about what you now call a major incident, and we asked for a briefing on that. A briefing was granted at the staff level, however, when our attorneys asked your briefers—I don't know who they were. Maybe they were attorneys; maybe they weren't. But when they were asked basic questions like, "Did anyone at CFPB speak to the individual?", staff from your agency could not answer the question and advised committee staff to speak to the Inspector General.

Your staff explained the only reason why CFPB knew about the breach was from a different employee. You have talked about that. Committee staff asked about the identity of the other employee and about the circumstances surrounding the employee raising concerns. Your staff could not or would not give a single answer to any of these basic questions.

CFPB staff emphasized that there was no reason to suspect the information was disseminated—which I think we were all glad to hear—because it is my understanding, from what I have been briefed on, which I don't believe is public information as of yet, that this was a major incident with significant consequences, potentially. However, when they were pressed, they confirmed that the only evidence to sustain the claim was that, so far, there had been no suspicious activity.

For a little perspective—I won't go into all that, but we all have seen what has happened with Equifax and others that have had serious data breaches, and you have been a part of punishing others that have had serious data breaches.

And I am glad to hear you say it is serious, and I am glad to hear that you are cooperating with law enforcement, but we also expect you to fully cooperate with this committee, and Congress writ large, and with our Oversight and Investigations Subcommittee, which is called that for a reason.

These are basic questions that we are asking, and we expect full and complete answers, and your staff couldn't give basic answers, and sometimes, there wasn't any answer at all.

I am sorry to be suspicious here, but I know how D.C. works, and with your sort of dismissive attitude towards Congress that has come across in previous hearings and previous interactions, it makes me wonder if you intentionally sent someone who didn't know what was going on so that they wouldn't pass that information on to us? Were they somehow opaque in their answers for some reason?

I am not expecting you to answer that because I am not looking specifically for a response. But I am making sure, once again, you are put on notice that we will be following up, and we expect our questions to be answered.

One last thing I am going to pivot to is the Bureau's website provides fund transfer request letters that you have made to the Fed before every quarter of the financial year and the Fed's response.

To your knowledge, has the Fed ever denied your agency's funding request?

Mr. CHOPRA. Not to my knowledge.

Mr. HUIZENGA. Okay. Has the Fed ever provided feedback on a quarterly budget request, meaning, has the Fed ever told you that a request was too high or too low?

Mr. CHOPRA. I believe the Fed's feedback is usually about when we should request it because they manage it for liquidity purposes.

Mr. HUIZENGA. Okay. The last time that the shared Fed and CFPB Office of Inspector General (OIG) did an audit of the Bureau's budget and funding process in July of 2020, it was done at the request of Chairman McHenry, and that was almost 3 years ago. Are you aware of any other oversight conducted about the CFPB's budget?

Mr. CHOPRA. Yes. We do have an audit by—

Mr. HUIZENGA. Sorry, my time is up.

I do have a letter to be submitted for the record, Mr. Chairman, a letter that I sent along with your signature, and we wanted to make sure that that was—regarding the concerns—

Mr. BARR. Without objection, it is so ordered. The time has expired.

Mr. HUIZENGA. I yield back. Thank you.

Mr. BARR. The gentleman from Georgia, Mr. Scott, is now recognized.

Mr. SCOTT. Thank you.

Director Chopra, there are a lot of problems with this crypto asset fraud business. In November of last year, you all published a complaint bulletin that dealt with these complaints, fraud, theft acts, scams. All of them were significant problems.

And your analysis suggests that the bad actors are leveraging crypto assets to specifically perpetuate fraud on American consumers. And from October 2018 to September 2022, you all received 8,300 complaints.

Director Chopra, has the CFPB determined whether certain vulnerable groups are at particular risk for these scams?

Mr. CHOPRA. Yes. I believe we specifically mentioned older adults. It used to be more common, for example, for a scammer to ask someone, go buy me some gift cards, but we are now seeing it shift to more digital, often using crypto assets.

We have also identified a place where it has some interaction with identify theft, where it is not always crypto-specific, but servicemembers can be targeted for ID theft in ways that can really expose them to certain harm—

Mr. SCOTT. Let me ask you this, because we have to find some answers to this. The problems are overwhelming. You all have some great people over there at the CFPB. And we established this for a purpose, and we have to find some answers here.

Let me ask you, will financial literacy, financial education help? This is being put on people who are having difficulty.

Mr. CHOPRA. Yes. I think it is actually really important that we shift financial education and literacy so that it is really adapted to the digital world. There are lots of different ways in which digital technologies—and with generative AI, we could have voice cloning in ways where it can sound like a family member is calling you. We could have different ways in which digital images can look like reality, and we want to make sure we can arm people on how they can spot some of this.

Mr. SCOTT. That is very good. With what you said in mind, Director Chopra, and because we are concerned about this, can the committee get a clear commitment from you today that the CFPB will use a portion of the more than \$600 million in unallocated civil penalty funds to support financial literacy, financial education, for our consumers, in a program?

We have to arm our people with the weapons. They are the ones who are being targeted. We have to put some arms on them, soldier them with the full armor of protection. Use this money. That is what it is there for. Will you commit to doing that today?

Mr. CHOPRA. We will commit to using funds for financial education purposes. We may use other statutory funds to do that. The fund you referenced is also to be used for victims' relief for people who are victims of scams, and we want to make sure that they can receive payouts.

We do have other funds, and we can share with you what some of our spending will be on financial education, but we may want to use our general funds, not the victims'.

Mr. SCOTT. But the priority ought to be to stop them from becoming victims.

Mr. CHOPRA. I totally agree. But there are so many people whose lives are changed when they are able to get——

Mr. SCOTT. Can we get this commitment from you? I am not asking you how much to use, I am saying, will you use this money and——

Mr. CHOPRA. We will certainly use funds that we have access to for financial education, but I would like to discuss further with you the tradeoffs about using the fund.

Mr. BARR. The gentleman's time has expired.

The gentlewoman from Missouri, Mrs. Wagner, is now recognized.

Mrs. WAGNER. Thank you, Mr. Chairman, and welcome, Director Chopra. I would like to follow up on a line of questioning that my colleague, Mr. Luetkemeyer, began, discussing the CFPB's industry outreach and specifically your public calendar.

On February 7, 2023, my colleagues, Mr. Luetkemeyer, Mr. Barr, and Mr. Huizenga, sent you a letter, requesting specific information regarding your calendar and industry outreach.

In your response to their letter, dated February 21, 2023, you stated, "like my predecessors, I have continued the agency's commitment to transparency through our long-standing policy of publicly posting the calendars of senior leaders."

Director Chopra, it appears that your commitment to following this long-standing policy has been completely absent this year.

The CFPB's website states that each month's calendar will appear at least a few weeks after each month has concluded, but it has been almost 6 months—22 weeks—since your calendar has been publicly disclosed. There is nothing here.

Can you please tell me why your calendar has not been publicly disclosed for half the year?

Mr. CHOPRA. I am not actually aware that that is the case, but if it is the case, we will look to make sure that it happens in a faster way.



Mrs. WAGNER. It is, it is absolutely the case, and I am just reading to you directly from a letter to Congress in response, dated February 21st. So, there are the quotes. It is concerning.

Mr. CHOPRA. I will just share, though, that with respect to industry outreach, we have——

Mrs. WAGNER. I am not asking about that.

Mr. CHOPRA. Okay, sorry.

Mrs. WAGNER. I reclaim my time.

Mr. CHOPRA. I apologize.

Mrs. WAGNER. Would you say a 6-month hiatus of public disclosure is your way of showing commitment to transparency, sir?

Mr. CHOPRA. We would want to do that in a fashion that is responsive, and I will take a look directly——

Mrs. WAGNER. Yes, your own website states, “due to the time-intensive preparation process, each month’s calendar will appear on this page at least a few weeks after that month has concluded,” and that is just clearly not true.

Moving on, the comment period to the CFPB’s proposal to adjust the safe harbor dollar amount for credit card late fees was just 36 days. You received more than 55,000 comments, many of which were submitted weeks prior to the deadline, which was May 3rd, the majority of which came from real consumers and retail investors. But they weren’t posted in the comment file until a full month after the deadline closed.

What was the reason for the delay in posting these comments, sir? Was the Bureau overwhelmed by volume, or did you intentionally delay the posting of these comments?

Mr. CHOPRA. No, definitely not. When we receive large amounts of comments, one of the things that we do have to do, manually often, is to make sure it does not include account information. Sometimes, people might be trying to file a complaint. We do not want it to be a vector of identify theft.

And I will also just share, 36 days from the time we published the proposal, there were more than 36 days, and I would be happy to get you those details.

Mrs. WAGNER. I will tell you this then, you should have had more than ample time to begin with, to post some of those over 55,000 comments out there, in real-time, sir, because you don’t wait until after to delay it further. I consider that intentional, and frankly, Director Chopra, I am just seeing——

Mr. CHOPRA. No, absolutely not. We are trying to do our best——

Mrs. WAGNER. Reclaiming my time, sir, I am seeing an extremely troublesome theme here, and that is what I am trying to get to.

You claim to be for transparency—I am for transparency—but the blatant lack of timely public disclosure says otherwise. I don’t care whether it is your calendar or you publishing comments. So, I would like you to take a serious look at that.

Mr. CHOPRA. I will make sure—I do believe we are in line or better than most of our peer agencies, but I will get back to you, Congresswoman.

Mrs. WAGNER. Okay. I am concerned about what is your responsibility. The CFPB’s credit card late fee proposal ignores the important role that late fees play in deterring consumers from paying their bills. If late fees are capped at such a low amount and the

deterrent effect is nonexistent, more consumers will pay their bill late, leading to a higher share of delinquent accounts, which will be reported to credit bureaus and result in lower credit scores.

Director Chopra, I am not going to have enough time for you to answer, but I would like an answer in writing. Why is the Bureau proceeding with a rulemaking that has no consumer benefit and would actually result in tremendous harm to consumers?

Mr. BARR. The Director can answer for the record, and it is a good question.

Mrs. WAGNER. Thank you, and I yield back.

Mr. BARR. I now recognize the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Welcome, Director Chopra. It's good to see you again. And I do want to push back on the suggestion that you are not amenable to meeting with industry representatives and business concerns, as well as consumer groups. I think you have been exceedingly accommodating on each and every instance, at least to my knowledge.

I do want to put one quick issue before you. The Peterson Institute for International Economics defines junk fees as, "surprise charges that customers do not discover until they nearly complete a transaction, such as booking an airline flight, renting a car, checking out of a resort, or paying by credit card."

Is that basically your understanding of what a junk fee would be?

Mr. CHOPRA. I think it is a colloquial term, and I also hear a lot about what are the fees that are not subject to real competition and competitive pricing.

Mr. LYNCH. Right.

Mr. CHOPRA. Really, ones that may not be subject to the normal forces of shopping.

Mr. LYNCH. Right. And as more and more retail happens online, is the incidence of those junk fees growing or becoming—

Mr. CHOPRA. Each industry is different. I think we see, based on the empirical research, about where can firms be able to use, sometimes drip pricing where they can advertise one, but really the full costs are lifetime costs, and come later in the process when the consumer has less ability to negotiate.

Mr. LYNCH. Right. And I know President Biden identified that in his State of the Union Address, and he called upon Congress to eliminate those hidden junk fees from consumers' transactions.

I want to talk about something else. There has been a real shift among financial services firms to use chatbots, and I know you have done some work on this. I know you issued a memorandum, just an executive summary, on chatbots and consumer finance.

What are we seeing out there? I guess it is anecdotal, but my constituents are complaining about the fact that when they have a problem with the bank, they are getting hooked into these chatbots, and sometimes their problems are not resolved, which leads them to call me.

And I am just wondering, are we meeting our obligations to consumers when we allow banks to put a chatbot in an interface between them and the consumer that doesn't adequately resolve their problems?

Mr. CHOPRA. I think this is one use of generative artificial intelligence we are going to start seeing more and more. And one of the things we identified is, when a consumer has a very straightforward question—where is the closest branch, something that has a defined answer like in a FAQ—they may be able to get it.

There are places where consumers have to provide a lot of account information, personal information, and it is important that that information, if it is used to train AI, how is it being protected? When the consumer has to invoke a right to dispute under the Fair Credit Billing Act, can the chatbot actually handle it?

So, we are just reminding institutions that if they are moving everyone to this, they still have to adhere to these important legal protections and make sure that they are not violating privacy and more. And it can really undermine relationship banking if not tailored appropriately.

Mr. LYNCH. Right. I understand that the more basic questions could be dealt with by a chatbot, and I am sure that there are personnel savings there and efficiency issues that are certainly favorable. But as you mentioned, when matters become more complex, it doesn't seem at this point that the AI chatbots are capable of resolving those complex issues.

Is there any thought of providing an opt-out for when the issue becomes so complicated that the consumer would have an ability to go to a default which would provide a human being on the other side of that?

Mr. CHOPRA. Yes. I think that is a place where financial institutions need to be careful about denying access to a human in some form because it can lead to real frustration and a doom loop.

Mr. LYNCH. Okay.

Thank you, Mr. Chairman. I yield back.

Mr. BARR. The gentleman yields back.

The gentleman from Texas, Mr. Williams, is recognized.

Mr. WILLIAMS OF TEXAS. Thank you, Mr. Chairman. And thank you, Director Chopra, for being here.

I was just sitting here thinking that the consumer needs to be protected from the Federal Government, from all the things we are talking about.

And another thing, as we have been talking about these bank failures, I am from Texas, as you know, and I don't like well-run Texas banks—I want to go on record with this—bailing out badly-run California banks. I think that is really bad policy.

Director Chopra, the first time you came here before this committee, you said you would protect the interests of small businesses. I proudly serve as the Chair of the House Small Business Committee, and I can tell you that we don't feel too protected. And ever since you joined the CFPB, your agency continues to add burdensome requirements without any consideration of their impact on small businesses and small lenders.

When talking to community bankers back in my district in Texas and, quite frankly, all over and across the country, every single person tells me how miserable and terrified they are about the CFPB's Section 1071 small business data collection rulemaking. They are concerned that the complicated reporting requirements will tie up loan officers and increase compliance costs, plus compli-

ance officers, costs which will be passed down to the consumer, guys like me who borrow every day. We will pay for all this.

And they are concerned this will push the industry towards a standardized small business loan product and kill relationship banking, what free enterprise and capitalism are based on.

And everybody is concerned, too, that it is going to push the industry toward a standard-size small business loan and kill relationship banking, as I said, and they are concerned that this will force their employees to treat privacy as an afterthought and collect more data than necessary on small business loan applications, which is what we don't want to have happen. Right now, small businesses are struggling with rising costs due to inflation, increased interest costs, and ongoing labor shortages, and this out-of-touch rule will only build on these issues.

This is a hard time for small business. And the Section 1071 rule is an attack on Main Street America—that is the only way you can look at it—which is why I introduced the Congressional Review Act, with Congressmen Barr and Ogles, to halt the implementation of the CFPB's final 1071 rule.

Senator Kennedy is leading the Senate companion of this resolution and has the support of over 45 State and national associations, further proving the urgent need to block this regulatory overreach and make sure it does not take effect.

It is bad business, it is bad for Main Street, it is bad for consumers.

Now, Director Chopra, how have you been working with small businesses? How have you been helping them to ensure that your regulations are not causing any undue burdens on our country's small business owners? How have you been doing that? Because there is real concern that they don't hear from you.

Mr. CHOPRA. One of the things we have done is, we have focused a lot of our engagement on institutions that we don't supervise. I have met with, I believe, 28 State bankers associations, each of which have dozens of members. We have done the same thing with credit union leagues. I believe we have hit 20 States and the District of Columbia. I just want to say I take your points very, very seriously, and we tried to adjust the rule in ways that would reduce some of those costs.

Mr. WILLIAMS OF TEXAS. Reclaiming my time, you don't think it creates a burden for these financial institutions? Do you think it eases it?

Mr. CHOPRA. Oh, we certainly publish what we believe will be some of the costs. We tried our best to figure out what are the ways in which we can limit it, and we also created and made significant changes so that the smallest banks, 2,000 of them, will not have to do it. I hear you completely. We don't want standardized small business lending—

Mr. WILLIAMS OF TEXAS. And it does trickle down to the consumer like me, the borrower.

Let me ask you this. The CFPB's funding mechanism that we talked about leads to very little congressional oversight of the budget, and instead your budget is given to you by the Fed. There are many more court challenges out there regarding your funding mechanism, and the actions of the Bureau do not comply with reg-

ular order, therefore, creating more uncertainty in markets as everyone waits for the courts to decide.

In order to ensure your accountability and transparency to Congress, it is imperative that your operation be subject to congressional appropriations. So, Director, if the Supreme Court strikes down your funding mechanism, will you be accepting of being subject to congressional appropriations?

Mr. CHOPRA. We will comply with any Supreme Court decision and make sure that we are following the law and doing so accordingly.

We don't agree. The Solicitor General has filed a petition seeking reversal. There are conflicting opinions in the circuit courts, and we will look forward to the results in that matter.

Mr. WILLIAMS OF TEXAS. Lastly, the CFPB fined Equifax for a data breach. Did you fine yourselves?

Mr. CHOPRA. I was not part of that. I am happy to tell you in more detail——

Mr. WILLIAMS OF TEXAS. But have you fined yourselves for what you——

Mr. CHOPRA. This is an insider threat. It is a different situation, but it is a very serious one.

Mr. WILLIAMS OF TEXAS. My time is up. I yield back.

Mr. BARR. The gentleman's time has expired.

The gentleman from Illinois, Dr. Foster, is now recognized.

Mr. FOSTER. Thank you. And I would like to thank my colleague for his admiration of the Texas banking system. Although we, in Illinois, have not forgotten the tens of billions of dollars that we spent bailing out corrupt and mismanaged banks in Texas and California during the savings-and-loan crisis.

Director Chopra, some have argued that innovations in the financial services space, such as open banking, have the potential to facilitate consumer choice and increase access to credit for many underserved Americans in ways that our broken credit reporting system cannot. For example, open banking could provide access to a much wider range of consumer data than the credit bureaus currently access, which could give a more accurate picture of an individual's financial history, but it also provides the possibility for all kinds of bias to creep in.

The last time you appeared before our committee, you shared an update on the CFPB's small business review panel to advance proposals under Section 1033 of the Dodd-Frank Act. Could you give an update on that rulemaking?

Mr. CHOPRA. Yes. We will be proposing it. It is scheduled for October. We have released more on this, including the important role that industry standard-setting will play. We want to make sure that standards are giving the ability to switch, to consumers and all market participants. And I will tell you, it is not just more access to credit, lower interest rates for borrowers, and higher interest rates for savers. I think it is also going to have an impact on customer service quality. When a consumer has the power to vote with their feet, you will see how our system will give them better service as well.

Mr. FOSTER. Thank you, and thank you also for going on the alert early over the threat of generative AI being used for identity fraud. This is coming at us like a tsunami.

People who have looked at this identify two possible government interventions that could help consumers. One of them is to simply provision citizens who wish to have one, with the means of proving they are who they say they are online, with a secure digital identity, sometimes referred to as a Mobile ID or a digital driver's license. These are things that allow you to present you and your cell phone and your Real ID-compliant driver's license to present digital proof in an online or an offline environment that you, in fact, are who you say you are. And that is one avenue that we can, I think, make a difference on.

The other one are these so-called, "Blade Runner" laws. There is simply a requirement that any electronic communication coming from a machine must start by identifying itself as being machine-generated.

Do you have any comments on either of those two and their effectiveness?

Mr. CHOPRA. I completely agree that if we can solve this identity verification issue, as a core part of infrastructure in our country, we could actually reduce a lot of fraud as well. The benefits would also be big for market participants.

How we actually do it, obviously, is the question, but you see jurisdictions that have solved that identity verification layer get a lot of benefits of it.

In terms of stating who it is, it is very interesting. You are seeing a lot of generative AI, including chatbots and others, give themselves human names. This is, in some ways, to make it appear that they are an actual person. And with voice cloning, it really can simulate a human interaction.

I do agree that there may be places where, across the economy, some of this generative AI, there is a lot more we need to do, but people should at least know, are they talking to a human or not.

Mr. FOSTER. Certainly. And you are going to see things where the regional accent or the ethnic accent is matched to what the consumer will trust. And this is a huge problem.

First off, I want to thank you for the work that you did on the early versions of AI, trying to to deal with the fairness versus accuracy problem. You did some really high-quality work on that.

But the problem we are now facing with generative AI and chatbots that learn as they evolve is much more complicated. It is sort of analogous to, you raise your child perfectly, but then they get exposed to new things as they grow up that will make them do evil things that you never would have suspected.

So, how do you anticipate you are going to be looking at AI that evolves and learns?

Mr. CHOPRA. Yes. For machine learning and other ways in which AI evolves, one of the things we are trying to do at a base level is to be able to give information about how existing law applies. For example, AI needs to be able to determine, if you get an adverse credit decision, what the reasons are. If it is constantly changing and it can't do that, it is not able to comply with existing

law, there is not a generative AI exemption in our consumer protection laws.

Mr. FOSTER. Thank you.

Mr. BARR. The gentleman's time has expired.

The gentleman from Georgia, Mr. Loudermilk, is recognized.

Mr. LOUDERMILK. Thank you, Mr. Chairman. Director Chopra, thank you for being here.

Chairman Barr mentioned something in his opening statement that I would like to start out with, which is that according to your own data, 74 percent of Americans pay their credit cards on time. That is to say, they never pay the late fees.

According to your own proposed rule, however, cardholders who do not pay late fees will be paying higher fees and higher interest on interest-paying accounts, and will receive lower rewards because of the cross-subsidy.

Under Section 1022 of Dodd-Frank, you are required to consider the cost of all CFPB rulemakings. I can't see how this rule that rewards irresponsible cardholders at the expense of responsible ones is a net benefit.

With that said, how did this rule survive a rigorous cost-benefit analysis?

Mr. CHOPRA. I appreciate the question, Congressman. What you mentioned, those were not predictive. That was potential scenarios we looked at. And the core of what we are doing—

Mr. LOUDERMILK. What was not predictive?

Mr. CHOPRA. The idea that there are potential ways in which the market could shift. What I am trying to explain is the core of what that real review is doing, that is reviewing a congressional prohibition on unreasonable penalty fees. What we are trying to accomplish is making sure, yes, if institutions have costs, how can they make sure that it is a reasonable cost? And we are specifically looking at the Fed's rule they put into place, that we inherited, which did not have much data backing it, in order to make sure it fits the modern realities.

No, there are still going to be late fees. It will just—how they make sure that they are in line with the congressional prohibition. That is our—

Mr. LOUDERMILK. Reclaiming my time, you said that the fees are reasonable. That is very subjective. Now, these are fees that the user agreed to when they took the credit card because the fees, as you mentioned, do recoup costs, but they are also designed to be slightly punitive to stop bad behavior from happening again.

What you are proposing is basically taking that away and then giving the punitive charge to those who are obeying the contract or the agreement they made with the credit card company.

Mr. CHOPRA. No, that is not right, and I just want to make sure something is clear. "Reasonable," is not the CFPB's word. That is actually what is in the statute. The statute says that the penalties must be reasonable and proportional to the—

Mr. LOUDERMILK. But did they not agree to whatever fee structure it was when they agreed to take the credit card?

Mr. CHOPRA. That is true, but the reasonable and proportional is a separate prohibition. So, again, one of the things that is in

there is, institutions can certainly be able to show why there is reasonable—and we have proposed a framework—

Mr. LOUDERMILK. But why are you even going this direction?

Mr. CHOPRA. The reason is what we have found across consumer credit markets is that it is not a fair and competitive market when an institution has an incentive for someone to default or be late. We learned the hard way about this with subprime mortgages, where an originator actually could benefit even if the borrower defaulted.

Most credit card companies, especially small ones, don't have that business model, and our review is that they don't actually build a business model or profit more when someone is late.

In some cases, a borrower might just be a day late or a few dollars off and get a very large fee. That is what Congress was seeking to prohibit, and we want a market where a creditor really wants the person to pay back.

Mr. LOUDERMILK. Really what I see is, we are intruding in what should be the responsibility of the consumer, because they agreed to go into this agreement.

Earlier this year, FHFA finalized changes to the loan level price adjustment tables that resulted in borrowers with good credit scores paying higher rates for their home. This is obviously unpopular with consumers.

Aren't you concerned that you are sending the same message to consumers with this rule?

Mr. CHOPRA. No.

Mr. LOUDERMILK. Because 75 percent pay theirs on time.

Mr. CHOPRA. In fact, I think what this will do is actually help consumers compete on up-front pricing. Consumers are really smart in the credit card market. As soon as an issuer starts raising annual fees, they look to switch. It is easier for them to know the full price that way.

So, what we are hoping to do is adhere to the congressional prohibition on unreasonable fees, which is—the word, “reasonable,” is in the statute—while creating that ability for more competition up front.

Mr. LOUDERMILK. Thank you. My time is expiring, but I would think that consumer education would be more effective.

Mr. Chairman, I yield back.

Mr. BARR. The time of the gentleman has expired.

The gentlewoman from Ohio, Mrs. Beatty, is recognized.

Mrs. BEATTY. Thank you.

Director, thank you for being here, and I would like start by thanking you for your work, your integrity, and your leadership at the CFPB to protect consumers.

We have heard about the billions of dollars in consumer relief to the hundreds of thousands of Americans, and those Americans, would you say, are in all districts, Democrat and Republican districts?

Mr. CHOPRA. All across the country.

Mrs. BEATTY. Thank you. And that means that it ensures fairness, transparency, and competition in our financial system.

Let me say for the record, Mr. Chairman, there is no doubt in my mind that consumer protection problems are rampant in our fi-



nancial system, and I want to go on the record saying, Americans would be much worse off if the CFPB was no longer able to continue its work.

I have two questions I would like to get through, but first, since there has been a lot of attention to your schedule and your time, it seems like we alternate terms or Congresses when we decide to pick on the individual or the CFPB.

Mind you, since I have been here and many of my colleagues on this committee, I remember when former member of this committee, Congressman Mulvaney, said some of the most disparaging things about the CFPB and about the Director at that time, Mr. Cordray, whom he was replacing. Operative words. He went here, yet he took a job to be in the same position you are in.

If we want to talk about integrity, if we want to talk about putting politics over people or maybe even money, but to his calendar in the committee, he said he worked 3 days a week. Now, people are questioning you on a calendar. Do you work more than 3 days a week?

Mr. CHOPRA. Yes.

Mrs. BEATTY. And he said when he wasn't working, he loved watching baseball, and he put a TV in one of his offices so he could watch baseball and protect our people.

So if we want to talk about you being an, "extortionist," as somebody said, I want to use the word, "hypocrisy," and enter it into the record for everyone on the other side of the aisle who chose to support beating you up over a calendar when you work more than 3 days a week.

Now, let me get to my questions. We sent you a letter that I signed onto about the Section 1033 rule of including EBT and other government benefit accounts in that rule. First of all, let me say thank you for responding to the letter, and acknowledging that it was an issue and that you would continue to look into it. I don't know if you have anything you would like to add for the committee about these types of benefits being considered within the scope of the final rule?

Mr. CHOPRA. One of the things we are going to do is, a bunch of these rules for mortgage products and others were raised before. With EBT and other government benefits, part of what we are doing is, we want to talk to the Department of Agriculture and others that administer these, because we really want to understand any technical issues. But I completely share your view that for all transaction accounts, we want that data to be able to be used to help—

Mrs. BEATTY. Thank you. Let me move to my next question. Since our Chairman McHenry said we were going to put diversity in every committee—I am the ranking member on a subcommittee—we haven't had a diversity hearing yet. But I would like to commend you for 53 percent of the CFPB executives being women, and 40 percent identifying themselves as minorities.

Would you be willing to work with us or respond in writing where you are with contracting out to diverse groups, whether that is in legal services, contracting, et cetera? And that is a yes or a no for my time.

Mr. CHOPRA. Yes.

Mrs. BEATTY. Okay. Thank you.

And in fairness, since I am giving equal opportunities, the Director prior to you, Republican-appointed, did hold meetings with Democrats and Republicans, and did talk about diversity.

So, I wanted to thank her for the work that she did do, and I also think she worked more than 3 days a week. I don't know what her calendar was, but I want to commend you for the work that you are doing.

And also, one of my colleagues said that not much has changed. For the record, let me say, you could not receive 10,000 complaints weekly that you respond to. You could not do what you have done with AI. You could not do what you have done with algorithms. You could not do what you have done with bank failures. So, again, thank you, and my time is up.

Mr. BARR. The gentlelady yields back.

The gentleman from Tennessee, Mr. Rose, is recognized.

Mr. ROSE. I want to thank Chairman McHenry and Ranking Member Waters for holding this hearing, and Director Chopra, thank you for being with us today.

I want to begin by responding to Mrs. Beatty by saying I actually preferred the way that Director Mulvaney ran the agency.

Director Chopra, in *CFPB v. Brown*, the 11th Circuit Court of Appeals found the CFPB's assertion of work product objections to avoid identifying witnesses or facts supporting claims against the defendants to be egregious. The court held that the CFPB clearly violated Federal Rule of Civil Procedure 30(b)(6), and severe sanctions were warranted.

Director Chopra, do you believe that the Federal Rules of Civil Procedure apply to the CFPB and its attorneys?

Mr. CHOPRA. Absolutely, and—

Mr. ROSE. Thank you, yes, of course, they do. So, Director Chopra, would you commit to reminding your staff and counsel that they are not exempt from the Federal Rules of Civil Procedure and that they must abide by them like the rest of us?

Mr. CHOPRA. Yes.

Mr. ROSE. Thank you.

Mr. CHOPRA. And can I just address that really quickly?

Mr. ROSE. I will give you just a second.

Mr. CHOPRA. Litigation often can be very, very heated. That was brought many years ago. There was this decision, of course, in an overwhelming number of matters, and we have completely been respected by the courts for our—

Mr. ROSE. Thank you. I appreciate that commitment to make sure your staff understands that the basic Rules of Civil Procedure do apply to the agency.

Following passage of the Dodd-Frank Act, then-Special Advisor to the Secretary of the Treasury for the CFPB, Elizabeth Warren, testified that the Bureau would be accountable to Congress.

I have her testimony right here in front of me, and first, then-Special Adviser Warren said that the CFPB is subject to the requirements and limitations of the Administrative Procedure Act (APA).

But, Director Chopra, isn't it true that you have routinely acted unilaterally and arbitrarily without engaging rulemakings in com-

pliance with the APA like you did with the update to the UDAP section of the examination manual or by using the Paperwork Reduction Act to seek approval for a junk fee timing study, just to name a couple?

Second, then-Special Adviser Warren stated that the CFPB, “is the only banking regulator that is required to conduct small business impact panels to gather input from small businesses about the potential impact of proposed rules.”

Director Chopra, isn’t it true that you have routinely bypassed the Small Business Regulatory Enforcement Fairness Act (SBREFA) process like you did in your Notice of Proposed Rulemakings for non-bank registries for repeat offenders and terms and conditions of form contracts?

Mr. CHOPRA. No. We completely comply with all of it, and, in fact, we published the analysis. We have solicited comments on the analysis.

You also mentioned the Administrative Procedure Act. All of our work is reviewable under that law. To suggest—and I have heard this suggestion now a number of times—that we don’t comply with that is absolutely false. What we seek to actually do is provide more information, based on feedback from this committee, about how to make sure entities know what is expected of them—

Mr. ROSE. Specifically, though, I would actively discourage you from using the Paperwork Reduction Act when the APA would be, I think, a more fair and responsible way for proposing new rulemakings, and would criticize the Bureau for not doing that.

Mr. CHOPRA. The Paperwork Reduction—

Mr. ROSE. Third, then-Special Adviser Elizabeth Warren said that the, “checks on the CFPB’s rulemaking are more stringent than the checks on other banking regulators because FSOC can veto any rule issued by the CFPB.”

Director Chopra, has the FSOC ever overruled a CFPB rulemaking, and don’t you serve on the FSOC?

Mr. CHOPRA. I believe the FSOC did begin a review many years ago of one, but that rule was set aside for other reasons. We have not had a voluminous number of them, but FSOC absolutely has the power to do so.

Mr. ROSE. They may have the power, but the truth is, the threshold that has to be met is effectively impossible to meet.

Mr. CHOPRA. It is unique among banking agencies, though. There is no other agency that is subject to FSOC—

Mr. ROSE. But those other agencies have other checks and balances.

Finally and fourth, then-Special Adviser Warren said the CFPB’s funding structure is a significant source of accountability because it faces certain constraints by having to request funding from the Federal Reserve.

Has the Fed ever denied or scrutinized the CFPB’s Director’s budgetary requests? I will let you respond in writing for the record. My time has expired, and I yield back.

Mr. BARR. The gentleman’s time has expired, and the Director can answer for the record. And I would just remind Members to direct their comments to the Chair.

With that, the gentleman from California, Mr. Vargas, is now recognized.

Mr. VARGAS. Thank you very much, Mr. Chairman. I direct my comments to the Chair. You look great up there, sir, and of course, the ranking member always does. I would prefer her to be in the other seat, but it has been a pleasure to be here.

Director, I think you have done a great job, I really do, and I think we owe you a great debt of gratitude.

The hyperbole today has actually been rather remarkable. I have been here for quite some time, and sometimes people say rather ridiculous things, but today was particularly fun. They said that you were the greatest extortionist to the country of all time. Is that true, are you the greatest extortionist?

Mr. CHOPRA. Obviously, that is offensive.

Mr. VARGAS. Of course, it is offensive.

Mr. CHOPRA. But I want to just say that we and our staff try to discharge our public service obligations faithfully and to the best of our ability as we swear an oath to our Constitution and our country.

Mr. VARGAS. I wanted to give you an opportunity to react to that.

Now, are you beating the stuffing out of the free enterprise system?

Mr. CHOPRA. No. And in fact, we have made an emphasis about the importance of new entry, nascent entry, the ability for new players not to have to stumble through and hire so many high-priced lawyers.

Our country benefits when consumers have more choices and when honest businesses are protected from those who violate the law.

Mr. VARGAS. Of course. Now, here comes a tougher question.

You were accused of, "McCarthyism." Is it, "Kevin McCarthyism," or, "Joseph McCarthyism," and what is the difference?

Mr. CHOPRA. I will withhold responding, Mr. Chairman.

Mr. VARGAS. Okay, we will leave that for another time.

Mr. BARR. The gentleman will suspend. The Speaker is protected, so the gentleman will refrain from disparaging and using personalities.

Ms. WATERS. I hope that will include——

Mr. VARGAS. I certainly will, but the accusation was of, "McCarthyism." You heard it, I heard it, and it wasn't defined, so I wanted the definition.

But I will be happy to move on. I do not want to disparage the Speaker in any way. In fact, we have been friends for 23 years, and I respect him greatly. Thank you.

I do want to ask you about this. Most of the questions today on the other side have been about the industry. They seem to think that the industry is not pleased with you, that you don't meet with them enough, that they don't like you because of some of your policies. Is it your job to please the industry?

Mr. CHOPRA. My job is to execute the objectives of the law, to enforce the law and supervise for it fairly. We go overboard, and I think I have exceeded the types of engagement that some of my predecessors have engaged in. But, yes, there are certain times,

particularly when there are law violations, that there will be disagreements.

Mr. VARGAS. Of course, there will.

What is your duty to the consumers?

Mr. CHOPRA. Our duty is to ensure, as the statute said, a fair, transparent, and competitive market and to faithfully discharge—

Mr. VARGAS. And I think you are doing a great job.

How much money has your Bureau redirected back, gotten back to consumers, how much?

Mr. CHOPRA. Over \$17 billion.

Mr. VARGAS. And how many people has that affected?

Mr. CHOPRA. Hundreds of millions.

Mr. VARGAS. Of course. And it is interesting that I don't get complaints from consumers, just the opposite, they say that you guys are doing a great job. And I appreciate the job you are doing.

Now, I want to talk about remittances. Remittances, I think, are a problem, and the reason for that is hardworking Americans and other U.S. residents send money overseas. And when they do that, they don't know the full cost of those remittances—they are not easily understandable—and I think it is something important for your agency to work on.

Mr. CHOPRA. One of the things when you go get a disclosure, sometimes these remittances can be charged—or, sorry—as no fee, but in reality the exchange rate might be adjusted, so it doesn't look like there is a fee, but there is really a cost to it.

I also want to say, Congressman, that other nations, developed countries, have started thinking about, through their central banks, ways in which consumers and small businesses can transfer money more easily. There is some work between—I believe the Fed has an agreement with the Central Bank of Mexico. We should look at more partnerships like that, to have lower costs.

Mr. VARGAS. And lastly, we did talk about diversity. I did look at the numbers, however, and it looks like when it comes to—I think this is your Semiannual Report—when it comes to Latinos, the percentage is actually quite low. And I hope that you are taking a look at that.

Mr. CHOPRA. Yes.

Mr. VARGAS. And I will let you answer if I have enough time, but I do want to make this comment. It is interesting, every time I come here, I hear the accusations that are placed against you or others on the other side. There is never protestation from the Chairs. I never hear it.

And then, when you are defended, there seem to be protestations. I don't think that that is fair. I think you are doing a great job, and I hope that we are a little more careful with our language around here when we accuse people of McCarthyism, extortionism, and all of these other things for respected people like yourself.

I yield back.

Mr. BARR. The gentleman yields back. The time has expired.

The gentleman from Pennsylvania, Mr. Meuser, is now recognized.

Mr. MEUSER. Thank you, Mr. Chairman. And thank you, Mr. Chopra. I talk to a lot of banks—small banks under a billion dol-

lars, \$5 billion, regionals, and super-regionals throughout Pennsylvania, and big guys on Wall Street—and they are really not happy with your agency. So, let's just start there. Across-the-board, banks, from the largest banks down to the smallest, have many concerns.

So, the idea that the CFPB is doing a great job is foreign to me, because every single bank I talk to—I am not talking about 3 out of 5; it is more like 19 out of 20. I assume you have some sort of reviews taking place, taking information in on your final rules to be responsive to the clientele that you are supposed to be helping.

Mr. CHOPRA. Just to be clear, the clientele of the CFPB is not banks. The clientele is the public, and often, it is true that there will be differences with entities that we supervise——

Mr. MEUSER. Who serves the public? Do the banks serve the public?

Mr. CHOPRA. Of course, they are important public——

Mr. MEUSER. So, they are a link in the chain.

Mr. CHOPRA. Of course. And we want those who follow the law to be able to not get disadvantaged by those who don't. I hear your concerns, but at the end of the day, we have to make sure that our consumer protection objective——

Mr. MEUSER. You are going too far.

Now, let's talk about Section 1071 that keeps coming up, how somehow, that is wonderful. I had a Small Business Committee hearing the other day, and we had four Republican and Democrat witnesses, and they all thought it was terrible, the type of questions that needed to be answered.

Now, I know in the final rule, you have retracted some of the insane information that you wanted to derive, not making it required, but you are asking banks to ask for really personal information about people's race, and their sexual preferences. Where does that fit into looking out for the public good?

Mr. CHOPRA. That is a statutory directive. We were under a court order to implement Section 1071 of the Dodd-Frank Act. It requires collection of information on race and other categories.

Again, I appreciate that those are types of questions that sometimes are difficult. We tried to work with the industry to figure out what is the best way to limit some of that——

Mr. MEUSER. If you actually would do that, work with the industry to figure out the best way to provide guidance and oversight so they can handle and serve their customers best, but honestly, it doesn't sound as if you are doing that. I was in the business world, and the more you talk to your customers, the better of a company you become.

So that is on 1071, but there is also 13 data points. The statute requires the collection of 13 data points while the rule requires 81. So, there is a lot of concern from banks, small business banks, primarily community——

Mr. CHOPRA. Let me just make clear, there is not 81 data points. There is a difference between data fields. So, what we are trying to do is create——

Mr. MEUSER. I am going to reclaim my time. And if it is not 81, then is it 50?

Mr. CHOPRA. No. I believe it is about 19, 20-something——

Mr. MEUSER. Okay. Then, perhaps, I stand corrected. That is the information I have.

Let me ask you about screen scraping. It should be addressed in the 1033 rulemaking. Fraud is a serious problem, as we all know. Can you update the CFPB's approach to screen scraping, and can the 1033 rulemaking address this practice?

Mr. CHOPRA. Yes, I actually think we can. I think we can set the stage for making sure screen scraping is not going to be part of our financial infrastructure in the future. I think it is something we should all talk about, because I do think that screen scraping is not really a viable long-term way for data-sharing.

Mr. MEUSER. Great. I'm very happy to hear that.

And I am just going to go back to 1071 quickly, if you all could just do some sort of analysis on the compliance costs, primarily for small banks because that is where they amount and they are more a percentage of their operating costs, if you all could do that and maybe we could talk about that, I would appreciate it.

Mr. CHOPRA. I am happy to talk to you about it, including where we have created some changes in hurdles, but, yes, let's talk about it.

Mr. MEUSER. Great.

Thank you, Mr. Chairman. I yield back.

Mr. BARR. The gentleman yields back.

The gentlewoman from Texas, Ms. Garcia, is now recognized.

Ms. GARCIA. Thank you, Mr. Chairman, and thank you, Director Chopra, for being here with us today. It is always good to see you. I am always glad to get an update from you, given your relentless—relentless—commitment to protecting our nation's consumers.

Under your leadership, the CFPB has successfully worked on junk fees, medical debt, credit scoring, housing discrimination, and many other major issues. I have enjoyed reviewing your report. It is excellent and certainly is reflective of the fine work that you are doing.

I would like to make sure that all Americans understand just what it is you are charged to do. I reviewed a useful fact sheet about the services that you offer our constituents, like free credit reports, protection from scams for older adults which is really key in my district, help with surprise medical billings that impact so many Americans across our country, and resources on mortgages and borrowing.

I want to make sure that the word is getting out effectively, and I wanted to know how the Bureau makes sure that all Americans are aware of all the services, because there seems to be some confusion here as to exactly whom charged to advocate for.

Can you provide us some more information on just exactly what your mission is?

Mr. CHOPRA. Yes. We are there to make sure that the consumer financial protection laws are followed. We are there to make sure that consumers can file complaints and get them resolved.

We are there to take enforcement actions to help those who have been ripped off. We have gotten refunds for tens of millions of Americans, and our work has helped so many more.

Our job really is to give consumers the ability to have a market that really works for them.

Ms. GARCIA. So, you are there to help consumers when they get into a challenge with any retail outlet or a bank. This is not an anti-bank operation. You are there to help a consumer with a number of entities in all of their transactions.

And I want to tell you, I am thoroughly impressed that you handle 10,000—10,000—complaints a week, and I know that you reviewed 745,400 complaints, just to make sure that the companies that you make the referrals to are responding effectively and really responding to the complaint. So, thank you for that.

And I can tell you that I would hope that all of our agencies are that responsive to complaints and get to them as quickly as you do, so thank you for that.

I also, like Mr. Vargas, however, did note in your workforce report, that Latino representation does fall short. The CFPB workforce is only 7-percent Latino compared to 13 percent to the benchmarks of the United States Census National Survey of Labor Force. Further, Latino employees make up the lowest percentage of new hires, at 3.6 percent, compared to all the other groups. Can you tell me today, Director Chopra, what you will be doing to fix this problem?

Mr. CHOPRA. Yes. We have a number of things in motion to make sure that we are attracting a diverse workforce at all levels, and we are very proud that we have senior Latino employees at the highest levels as well.

I am happy to discuss that with you in more detail, but we want to make sure we are reaching everybody, that everyone has an opportunity to work for us. And I will say, making sure our workforce is reflective of the country will also help give us more connection to the people that we serve.

Ms. GARCIA. Great. Well, Latinos are the fastest-growing minority group in this country, and certainly have a big market share in terms of the growth as consumers, so thank you for that.

I would also like to make sure that you are committed to working on this problem, and I will follow up with you, of course, in the future.

Let's turn now to the small businesses, because that is another area where Latinos, especially Latinas, are the highest-growth area.

The issues with your lending rules, can you please clarify why it is critical for the CFPB to advance rulemakings on lending?

Mr. CHOPRA. Part of the reason we implemented the statute as required is to make sure that we have good data and the government and the public has good data about those trends.

You are right, there are so many immigrants, minorities, and others who start businesses, franchises and others, and that data, I think, would have been critically helpful in the Paycheck Protection Program.

Ms. GARCIA. Okay. Just a quick one, how are we doing on the language barrier issues?

Mr. CHOPRA. I will update you, but we are making progress.

Ms. GARCIA. Okay. Good. Thank you.

I yield back.

Mrs. HOUCHIN. [presiding]. The Chair now recognizes the gentleman from South Carolina, Mr. Timmons, for 5 minutes.



Mr. TIMMONS. Thank you, Madam Chairwoman.

I want to get back to the data breach that Congressman Huizenga discussed with you earlier. Can you describe how the CFPB found out about this breach?

Mr. CHOPRA. Another employee identified a specific indicator. It was reported to our team. We brought them together——

Mr. TIMMONS. The breacher cc'd their manager in an email, and the manager caught it? Is that correct?

Mr. CHOPRA. I don't want to go into anything related to the investigation, but it was another manager who identified——

Mr. TIMMONS. Okay. And how long between that manager pushing this breach up the chain did you notify the quarter million Americans and 45 companies involved in the breach about their exposure? How long did it take?

Mr. CHOPRA. We found some documents that did have consumer names. No information like Social Security——

Mr. TIMMONS. Was it 24 hours, was it 72 hours, or was it 2 months?

Mr. CHOPRA. We didn't have their contact information.

Mr. TIMMONS. So, you had their personally identifiable information, but you didn't have their contact information?

Mr. CHOPRA. Yes, we just had very few pieces of——

Mr. TIMMONS. But you didn't notify the companies, like you probably should have? Is that correct?

Mr. CHOPRA. We did. What we did is, we partnered with the companies whose——

Mr. TIMMONS. How long did it take you to partner with them?

Mr. CHOPRA. I can look at the timeline, but as soon——

Mr. TIMMONS. Was it 72 hours? The answer is no, it wasn't 72 hours.

Mr. CHOPRA. I think we tried our best to identify where we had any potential——

Mr. TIMMONS. It wasn't 72 hours, and, again, you are responsible for enforcing cybersecurity breaches, and if a company——

Mr. CHOPRA. We are not actually——

Mr. TIMMONS. Well, you have sued——

Mr. CHOPRA. But we do not enforce breach notification laws.

Mr. TIMMONS. Correct. But when you fine companies for violating best practices, those companies are considered to be in egregious breach if they do not notify the consumers who were breached within 72 hours.

Mr. CHOPRA. No, that is not accurate, but I am happy to follow up with you on that.

Mr. TIMMONS. Okay. So if a company is breached and they don't notify anybody within 72 hours, you are not going to consider that an aggravating factor in whether to fine them and how much?

Mr. CHOPRA. Generally speaking, the safeguards rule that governs financial institution breaches is enforced by other agencies. They are separately——

Mr. TIMMONS. Okay.

Mr. CHOPRA. This is a serious issue.

Ms. WATERS. Please allow the gentleman to answer the question.

Mr. TIMMONS. If you would answer the question.

Mrs. HOUCHIN. [presiding]. It is the gentleman's 5 minutes.

Mr. TIMMONS. Okay. I find it an egregious breach of best cybersecurity practices to have this information available to this individual in the way that it is.

Do you believe, in retrospect, that the information should have been siloed, and it should not be that easy to email a document?

Mr. CHOPRA. Yes. We are looking at making sure—we already have systems in place so that there is not the ability to transfer that. The issue can sometimes be when there are communications with the entity.

Mr. TIMMONS. How many people have been fired because of this data breach?

Mrs. HOUCHIN. Will the gentleman pause for just a moment while we fix the clock?

Mr. TIMMONS. Sure. I think I was at, like, 2:40.

Ms. WATERS. Do we know how much time was left?

Mrs. HOUCHIN. The gentleman can continue.

Mr. TIMMONS. Okay. Thank you.

Mr. CHOPRA. Do you want me to answer?

Mr. TIMMONS. It is really concerning that you have this color of law, this theoretical authority to force these businesses to give you this information, and then you are unable to protect it, and the individuals who have been breached have no recourse. They are not going to get a settlement. They are not going to get any money.

I already have a number of instances where people whose data was breached—these criminals have filed unemployment insurance claims, and they have already been damaged, and there is no recourse, because you are a governmental entity operating under the color of law. And I say, “operating under the color of law,” obviously, because there is a Supreme Court decision that we are expecting here pretty soon.

What would you tell the individual who has been damaged by the CFPB’s incompetence as it relates to the cybersecurity breach? What is their recourse? How will they be made whole? Are you going to write a check?

Mr. CHOPRA. This is a very serious issue. And one of the things we are doing for consumers who are customers of the entity, is we are working with the financial institution to figure out—

Mr. TIMMONS. Are you going to make them pay for the breach?

Mr. CHOPRA. No, of course not.

Mr. TIMMONS. Okay. Of course not? You make other companies pay for the breach.

Ms. WATERS. Please allow the gentleman to answer the question.

Mrs. HOUCHIN. It is the gentleman’s time.

Mr. TIMMONS. So, you are not going to write a check to make these people whole?

Mr. CHOPRA. We are working with the institutions, and fortunately, the information that was transferred on an unauthorized basis did not have indicia of risk of identity theft.

But I take your point that, of course, the data that is collected must be protected. This was a serious problem. The employee who was responsible—I can’t go into details there—is not currently an employee anymore.

Mr. TIMMONS. I will reclaim my time. Is that the best way to do it?

So, Director Chopra, you are required to appear before this committee twice a year, meaning we will likely see you again in about 6 months. And with the pending Supreme Court decision on the constitutionality of the CFPB, it may very well be your last appearance before our committee. Please try to do the least amount of damage as possible between now and then. The American people would really appreciate it.

Consumer Protection Financial Bureau: the quarter million consumers are not protected. You cause them damage, and they will never be made whole.

With that, Madam Chairwoman, I yield back.

Mrs. HOUCHIN. The gentleman's time has expired.

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

Mr. CASTEN. Director Chopra, it's nice to see you again. Thanks for coming in today.

This is, in some ways, not at all germane to today's hearing, but now we have a whole subcommittee focused on crypto issues and lots of bills that we are discussing about how and where to regulate the crypto industry. I am not going to ask you to opine on all that.

But it did catch my eye that you just issued a 2022 complaint bulletin looking at complaints related to digital assets. And if I have this quote right, it says that you found that, "fraud, theft, hacks, and scams are a significant problem in crypto asset markets that appears to be getting worse."

That was a year ago. And I would welcome your thoughts on, is that still true, and would you care to elaborate on what you found in that bulletin?

Mr. CHOPRA. We are going to take another look at that dataset again.

I guess I would say that fraudsters are trying to use methods of payment that are hard to track. Gift cards were a really common one before. There are other ways in which they have been used.

But more in the digital world, we are seeing that crypto assets—in some ways, they might tell an elderly person, go buy this and transfer it to me. It can be done without the person going to a superstore or department store to buy a gift card, which means it can be faster. It can be bigger amounts of money. And that is certainly something we want to figure out how we to stop so we can protect those individuals who have been defrauded in a world where identity verification is challenging.

Mr. CASTEN. When you say, "we," I assume you are referring to the CFPB?

Mr. CHOPRA. Yes. Frankly, law enforcement, the DOJ, others—as you know, fraud against older Americans in particular has been a pernicious problem.

Mr. CASTEN. But are the crypto asset platforms working with you? Are they constructive partners in this?

Mr. CHOPRA. That hasn't been a place where we have invested much effort. The way I understand it, and I can ask our staff, it that is being transferred outside of those platforms. So, that has not been a place where we have engaged.

Mr. CASTEN. Following up on the prior question, I would assume that they have a lot of the data and they could either be constructive or not. Is there anything we can do to help?

And you mentioned the elderly. Is the concern primarily with elder consumers who are being targeted, or are there other consumer groups that you are watching?

Mr. CHOPRA. Yes. It is disproportionately those who are older. That is not to say that people of all walks of life are not at risk, especially when voices can be cloned. There are lots of ways to impersonate now.

But certainly, romance scams, dating websites—that is a place where elderly and others are targeted. We have some evidence to suggest that those who are widows and widowers are more likely to be targeted.

Mr. CASTEN. I appreciate your support. I am reminded that, I think probably about 3 years ago, your predecessor sat here, and in spite of repeated questions, refused to acknowledge that the CFPB has an obligation primarily to look out for the interests of consumers. I am grateful that we are prioritizing those interests.

Out of curiosity, have you ever done the math on how much money do you think the Bureau has saved consumers since its conception?

Mr. CHOPRA. Just in refunds, it has been \$17 billion. But in terms of the reforms of the mortgage market and others—the ability now to get a competitive mortgage, it is totally different now, and it is hard to put a number on it.

The ways in which I think we have stopped certain actors from engaging in system-wide harm—we don't have a dollar figure, but the benefits are very, very big.

Mr. CASTEN. And in our office, we hear stories from constituent services about the veterans who are helped, the elderly, that you mentioned, and the folks who are not as proficient at working through these.

Are there particular classes of consumers whom you think most depend on the work you do?

Mr. CHOPRA. It's funny, the other weekend, I was in Virginia and was stopped at a restaurant. We had done an event at a local military base. And someone in the group who attended had mentioned that they had just gotten a \$5,000 check. We occasionally hear from people who really were ashamed and thought that it was all their fault, but they were actually sometimes a victim of a scheme and got over \$10,000 back. Some people have had their homes saved. So, it is not just the financial piece; it is also a huge amount of dignity for them.

Mr. CASTEN. I appreciate it. I am out of time. But I hope you don't take personally some of my colleagues' attacks on you. The idea of looking out for veterans and students and the elderly may be partisan, but I am glad you are——

Mrs. HOUCHIN. The gentleman's time has expired.

Mr. CASTEN. I yield back.

Mrs. HOUCHIN. The gentleman from South Carolina, Mr. Norman, is now recognized for 5 minutes.

Mr. NORMAN. Thanks for coming, Director Chopra.

On the civil investigative demands, a lot of the businesses that have been subject to it have said it was ill-defined, and it was onerous. Do you have an idea of, for actions that do not result in enforcement actions, the amount of money and time that the firms have had to bear to produce the information?

Mr. CHOPRA. Yes. I don't have that offhand. But you raise a good point, which is, what are the ways in an investigation to get the information to ascertain if there is a violation without it being costly or, frankly, taking a lot of time? This is especially concerning for—

Mr. NORMAN. Is CFPB required to provide the company with credible evidence that there has been a violation of the law prior to serving a criminal investigation?

Mr. CHOPRA. The statute is consistent, I believe, and actually may be enhanced compared to other civil investigative demands (CID) authorities around the government. We are required, I believe, to state a notification of purpose that really gives a sense of what we are looking for.

Mr. NORMAN. Is it law? Can you cite the law that has been violated before you do a CID?

Mr. CHOPRA. Yes. In the notification, we will sometimes be able to describe the particular type of violation that—

Mr. NORMAN. All the time or just sometimes?

Mr. CHOPRA. I would need to check.

Mr. NORMAN. Could you get back to me in writing on that?

Mr. CHOPRA. Sure.

Mr. NORMAN. Now, on the Fair Debt Collection Practices Act and the Fair Credit Reporting Act, they are basically silent on the treatment of medical debt and if that differs from any other debt. The CFPB has drastically altered the collection of unpaid medical debt.

What in the Fair Credit Reporting Act gives the CFPB authority to encourage furnishers to report inaccurate information about legally-owed and legitimate debt?

Mr. CHOPRA. Actually, no. It is just the opposite. Our push is accuracy. The Fair Credit Reporting Act requires reasonable procedures to ensure maximum possible accuracy. There actually is a provision that is related to health as well in there.

Mr. NORMAN. So, the CFPB has not made any efforts to rewrite portions of the Fair Credit Reporting Act as far as the reporting of unpaid medical debt?

Mr. CHOPRA. The statute is Congress' to change. When it comes to accuracy of furnishing on credit reports, that is an incredibly important responsibility for the enforcement agencies, the States, and others. We do not want the credit report being a way to coerce people into paying something they already paid or didn't owe in the first place.

Mr. NORMAN. So, you basically are hands-off with trying to rewrite that, as I stated?

Mr. CHOPRA. We cannot rewrite statute. We are trying to administer the Fair Credit Reporting Act, enforce it fairly, and there are real problems when it comes to—

Mr. NORMAN. Let me ask you this. On the \$8—I think they have been called junk fees—but the credit card late fees, in your rule-

making, you say that it is not a cap, but people need to show their work to get—to approve the fees that are charged. How do you define that? What process?

Mr. CHOPRA. Yes. It is not a preapproval. What we have done is put in the proposal—and the same thing exists currently in the Fed’s rule promulgated over a decade ago—that if you don’t want to use the immunity provisions, where you don’t have to show any work at all, you will have to spell out your calculations based on what it is. As one of your colleagues mentioned, the statute says the fees must be reasonable and proportional.

Mr. NORMAN. “Reasonable,” as defined by whom?

Mr. CHOPRA. It could be through case law. But one of the things we are trying to do is to provide clarity and predictability for businesses to spell out how they can make sure they can comply with it.

When Congress passes laws with words like, “reasonable,” it can be a benefit to businesses that they know how that is going to be interpreted.

Mr. NORMAN. How is that different—

Mr. CHOPRA. That is what we try and do all the time.

Mr. NORMAN. Yes, but, “reasonable,” is kind of like, “beauty is in the eyes of the beholder.” The criticism of the CFPB is the fact that it is vague. People are getting hit with CIDs that they don’t understand. It is just vague as interpreted by the CFPB.

Mr. CHOPRA. That is exactly why we have tried to provide more advisory opinions and guidance so that people know what is expected of them without creating new obligations.

Mr. NORMAN. In this country, small businesses are under tremendous stress now, and I would just—please don’t—

I yield back.

Mrs. HOUCHIN. The gentleman’s time has expired.

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

Ms. PRESSLEY. Thank you, Director Chopra, for joining us today. And thank you for the critical role that the CFPB plays in protecting consumers and holding bad actors accountable. I am grateful to you and your dedicated 1,500-plus employees.

Tomorrow is actually World Elder Abuse Awareness Day. And my mother, for many years, was a social worker to the elderly, trying to protect them from elder abuse. So, I did just want to take a moment in particular to thank you for all that the CFPB does specifically around fighting elder fraud, exploitation, and abuse. Thank you for all that you do for our most-vulnerable veterans, seniors, and students.

Speaking of another vulnerable group, Director Chopra, a recent New York Times review of hundreds of Federal lawsuits filed against tenant screening companies highlighted how a pattern of inaccuracies in these reports led to the denial of rental housing for people across the United States.

What problems has the CFPB found with tenant screening reports and the impact they can have on finding affordable, quality housing?

Mr. CHOPRA. I think when someone is falsely matched with the wrong report, it is almost like they have been given a different

identity. And that can be relied on to foreclose them from even accessing rental housing, and in some cases, we have heard of it leading to homelessness.

We have to make sure that, when there are these third-party dossiers collected about people, that they are actually accurate. We have found, Congresswoman, that people with common surnames are more likely to be victims of this, and we have to make sure the law is being followed.

Ms. PRESSLEY. Thank you. Clearly, a lack of regulation in the tenant screening industry is resulting in inaccurate reports and false information, particularly about people's criminal backgrounds. However, even when the reports do include accurate information, housing providers often use them to deny housing to people with a record: 70 million people in the U.S.—one in 3 adults—have a criminal record, which means the impact of this discrimination is severe and widespread.

Formerly incarcerated people are 10 times more likely to be homeless than the general public. And this is not a coincidence. It is a policy choice, one with dark consequences.

Director Chopra, is the issue of denying housing to people after they have completed their sentences a problem that you have heard about?

Mr. CHOPRA. It is. And I think that is something that the Department of Housing and Urban Development, and the Justice Department, have also been working on.

Ms. PRESSLEY. Thank you. When formerly incarcerated people do not have stable housing, it is hard for them to access healthcare, secure a job, or pursue greater education. Additionally, a lack of stable housing can lead to crimes of necessity to meet basic needs. So, the cycles of recidivism repeat.

That is why today, I, along with Representative Tlaib, am introducing the Housing for Formerly Incarcerated Reentry and Stable Tenancy Act, or the Housing FIRST Act. Our legislation would disrupt the prison-to-homelessness pipeline by regulating what information relating to a person's criminal background should appear on a tenant screening report.

Director Chopra, do you agree that by regulating the tenant screening industry on this matter, we can improve access to affordable quality housing and confront the prison-to-homelessness pipeline?

Mr. CHOPRA. I think what you have said about the disruptions about returning home and not being able to access a home are so serious. I look forward to working with you on that. And there is so much at stake to make sure that people who have served can really successfully reenter.

Ms. PRESSLEY. Thank you. Again, thank you for what you do day in and day out to protect consumers and to hold bad actors accountable for the harm they cause our most-vulnerable people. And thank you for your expressed partnership on this matter.

Housing is a human right, period. And when we deny stable housing to people with criminal records, we wrongfully punish them after they have already completed their sentences. Our bill would remove unjust barriers to housing and affirm that safe, stable housing is essential. Thank you.

And I yield back.

Mr. FITZGERALD. [presiding]. The gentlelady yields back.

We will now go to Congressman Davidson for 5 minutes.

Mr. DAVIDSON. Thank you, Director, for being here.

And I thank my colleague for her concerns about people who have served their sentences and done the time for their crime. It wasn't the question I was planning to lead with, but it is a good segue to something I had sent a letter to you on in April, and I appreciate your response.

Your response really dealt with the accuracy, and I think everyone wants them to be accurate. We don't want someone to be falsely denied residence. We also don't want someone to come in who maybe should have been screened out. So, we want accuracy.

But fundamentally, do you believe that tenant screenings are valuable to landlords?

Mr. CHOPRA. I think when they are fully accurate, it has a very different benefit. There are ways in which people can get information about a tenant. But I will tell you, the Fair Credit Reporting Act has accuracy standards, and I want the tenant screening industry to follow them carefully.

Mr. DAVIDSON. Yes. I agree they should be accurate. But sometimes, the quest for accuracy is really just using the law to prevent people from doing screenings in the first place.

We had a great Second Chance Program in the businesses that I owned prior to coming to Congress. I am passionate about the Second Chance Program. Once you have served your sentence, you need to be fully integrated into society; otherwise, they got the sentencing wrong.

So, it is a valuable thing. And it started with trust. Somebody was honest about their background. We checked it. It matched. Now, we have built trust. I think it can be important.

Turning to things that we probably are more aligned on, I was pleased, even in your opening remarks, that you talked about data brokers. And when you look at common concerns that we have had that have been bipartisan about privacy, American citizens have had their data stolen, hacked, sold, and otherwise exploited.

So, I was encouraged that on March 15th, the CFPB announced a Request for Public Input regarding how data brokers collect and sell personal consumer information. Last week, I saw that you even extended the comment period to July 15th.

Could you give us an overview of what you are seeing so far regarding the data broker industry and how they collect and use personal consumer data?

Mr. CHOPRA. In the 1960s, this committee, I believe—it had a different name—was concerned, and other committees were concerned about all of these firms creating dossiers about us. And the Fair Credit Reporting Act sometimes focuses a lot on the three big credit bureaus.

But there are more and more companies now that are assembling this information, especially collecting it digitally. They are selling it, and it is being used for all sorts of purposes, including employment insurance and so much more.

We are trying to make sure we know what the new business models are that they are using? We do know that there is a lot



more of them, and many of them may be doing things that are covered by the Fair Credit Reporting Act.

So, I hope this committee really thinks about privacy data brokers altogether because what we did, I think 50 years ago, was important, but it has to be modernized for the age of Big Tech.

Mr. DAVIDSON. Absolutely. I think there is definitely an urgent need for legislation. I think the Fourth Amendment protection of privacy is probably the most-abused current portion of the Bill of Rights, not that there aren't other portions that are under stress.

You recently noted in remarks at Money20/20 last year that the Bureau will be, "exploring safeguards to prevent excessive control or monopolization by a handful of firms. Over the last several years, a consortium of the largest financial institutions in the U.S. has sought to exert governance over data ecosystem and sometimes serving as mandated intermediaries between peer-to-peer consumer transactions, thus decreasing competition and consumer choice in the marketplace."

How do you assess this situation as you address the Bureau's goal of providing consumer choice, and frankly, the ability of people to protect the privacy of their own financial data?

Mr. CHOPRA. What you should expect about how we implement the statute—and I have shared this with some of you—is we want to propose that there are going to be some restrictions on secondary uses, so if you are moving your data to someone, they should only be using it for the purposes that are permitted. We have to figure out how to enforce this properly. We also want to think about how to make sure that an intermediary doesn't take the data, send the data, but then use it themselves.

It is not going to be totally easy, but I think we have a framework that will get support, and I expect we will propose it for comment in October. But the data protection element of this is huge.

Mr. DAVIDSON. Yes. Thank you. And the enforcement mechanism is really the challenge. We have our own bill, the It's Your Data Act, that recognizes the property right in your individual data. So, I look forward to continuing to work with you on privacy.

I yield back.

Mr. FITZGERALD. The time has expired.

I will now recognize the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you so much.

Director, thank you for being here. Your agency—I won't call it an organization—is the only financial regulator that is laser-focused on consumer protection, correct?

Mr. CHOPRA. That is right.

Ms. TLAIB. You were created, why? Because there were all these bad actors. They were out of control. We had to do something about it because people were calling us. It wasn't just mortgage fraud. It was so many other things. Is that correct?

Mr. CHOPRA. And there was a global financial crisis caused by that.

Ms. TLAIB. That is right. I read somewhere that the CFPB enjoys overwhelming bipartisan support outside of Congress. Something like 75 percent of Republicans actually support the work that the Consumer Financial Protection Bureau does.

I think it is because you did about \$17 billion in relief for over 200 million consumers through the Bureau's enforcement and supervisory activities. And that is why I don't think I am surprised by those statistics.

I actually wanted to look it up, because I know I have referred constituents to the Bureau, and the Bureau has been very incredibly helpful, especially because I think you all actually read the small print of things that get sent out to our consumers. Our residents just don't know what their rights are.

I want to talk about the credit card fees, because ever since you told me what you are doing on that, I have been bragging about it, because I think it is so important to show that the Federal Government has your back. That there is this agency that we are independently funding that specifically is working on this.

I think the proposed rule on Regulation Z would likely save cardholders billions of dollars each year. I read something around, what, roughly \$12 billion annually?

Mr. CHOPRA. That is right.

Ms. TLAIB. Director Chopra, when I read that for some credit card agencies, it is kind of part of their business plan that 40 percent of their profit or something crazy—I don't know, you might have to correct me—is from late fees. They literally have built a profit line specifically all about generating profit from late fees. Can you talk about that?

Mr. CHOPRA. I just think what Congress wanted when passing that law over a decade ago is just some common-sense safeguards, that the credit card industry can charge interest, can charge fees, make a profit, but when it is designed to build a business on penalties, lenders should want their customers to pay back and pay on time. We don't want a system where people are happy when someone doesn't pay on time or if they missed it by a day. All we are looking for is something balanced and reasonable.

Ms. TLAIB. I know I looked, and it really does impact some of our working poor communities regarding the late fees. They are paying twice as much as any other cardholder.

I also have been incredibly thankful that—and, again, the Bureau didn't have to do this—your report on medical debt literally triggered all three of the major the credit reporting agencies to do something.

Can you talk about the fact that you did this study that basically said, this is the impact of having medical debt on people's consumer reports, and it was pretty drastic. I think I saw something like \$88 billion in medical debt is on consumer credit records, which impacts housing, employment, you name it. The credit score and report is used for so many things, including auto insurance rates, as we talked about.

Can you talk about that study? And, I think, days after you released that study, what happened?

Mr. CHOPRA. Yes. Shortly after the three credit reporting conglomerates agreed to really drastically limit what is showing up, they also delayed when it would show up. Because often the consumer is just sort of debating and dealing between the insurance company, the provider, the facility.

I just think we want to make sure that that credit report is not a place that you could threaten someone to pay something that they don't owe. But we still have to make sure we look at accuracy standards across-the-board. I also hear there are other types of bills that show up, that may not actually be accurate.

Ms. TLAIB. Yes. That is the thing in the report I read. Something around—over the last decade or so—maybe from 2005 to now—that there has been a 31-percent increase in inaccuracy of medical debt because, basically, people are being misbilled and all this stuff and that this is happening.

Do you support prohibiting and banning medical debt on people's credit reports?

Mr. CHOPRA. I think we are going to be proposing some more safeguards on it.

It is interesting, medical debt is ill-defined because it is also medical credit cards. Also, medical debt can show up in other types of debt. So, we are trying to work on the specifics.

Ms. TLAIB. Yes. Director, I was shocked to find out that our VA sends medical debt of our veterans to credit reporting agencies—collection agencies.

Mr. CHOPRA. Yes, although they have made some dramatic changes.

Mr. FITZGERALD. The gentlelady's time has expired.

Ms. TLAIB. I know. But it is very, very disturbing.

Thank you. I yield back.

Mr. FITZGERALD. Next, we will go to the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

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

Thank you for being here, Director Chopra.

I want to dive right in. As you know, FSOC's SIFI designation is a serious authority that carries with it significant regulatory supervisory burdens. That is why Congress and the courts underscore the importance of the analytical rigor and due process as part of the designation decision.

In your statement accompanying the announcement that FSOC would change its approach to the SIFI designation, you wrote the following, "In 2019, FSOC effectively repealed the ability to designate systemically important nonbank financial institutions by adding an array of dubious process strictures."

In your view, do these strictures include cost-benefit analysis?

Mr. CHOPRA. The guidance is up for comment right now, the changes. Of course, there should be a fair process and a very analytically-driven process.

Mr. STEIL. I appreciate that. There absolutely should be.

You said it added an array of dubious process strictures. I am trying to get an understanding of what you view as these strictures, and do those strictures include the cost-benefit analysis?

Mr. CHOPRA. I wasn't referring to that. I believe what I was referring to—in the 2019 guidance, it set up a number of additional hoops.

Mr. STEIL. Understood. But specifically, is the cost-benefit analysis inside your dubious process analysis or outside?

Mr. CHOPRA. No, I wasn't referring to that when I was referring—I was referring to the stages at each level of review. And my

concerns, I believe, are shared in writing by the Secretary of the Treasury.

Mr. STEIL. Okay. I just want to make sure that you don't view the cost-benefit analysis—

Mr. CHOPRA. No, I was not referring to that.

Mr. STEIL. —as dubious, because I think that cost-benefit analysis is a really important component of our regulatory oversight.

Let me shift gears to a slightly different topic but one you speak a lot about, your term, “junk fees.” There has been a lot of discussion today about that and your efforts to extend CFPB's reach into everyday American lives, using what I believe is a very vague term. And it is still not clear to me what the term, “junk fee,” is based on.

In previous explanations, you argue that our government sometimes charges its own citizens junk fees. And I am concerned here that the CFPB's proposed restrictions on credit card late fees—whether or not that is your term of a junk fee.

Nobody likes paying late fees, and you don't want people to get into financial distress. But I am also trying to look at what the trade-offs are here in your cap on fees. I know one of your proposals has an \$8 cap on fees.

And I think the question is, do you acknowledge there are potential significant trade-offs associated with setting a cap on late fees?

Mr. CHOPRA. First, to be clear, the \$8 proposal is not a cap on late fees.

Mr. STEIL. Okay.

Mr. CHOPRA. That is the immunity provision, so that companies that charge \$8 or less do not have to worry—

Mr. STEIL. So, you are creating a safe harbor, \$8 or less, under that proposal?

Mr. CHOPRA. Exactly.

Mr. STEIL. So, it is not a cap. But you are saying, hey, if you are under \$8, you are safe. Safe harbor. If you are over \$8, we may or may not come after you.

Mr. CHOPRA. No, that is actually not how it is. If you are not on the \$8, we explain what you should be prepared to calculate so you can get certainty.

Mr. STEIL. Okay.

Mr. CHOPRA. Congress prohibited unreasonable and disproportionate penalty fees. We are trying to provide clarity. And it was clear the rule we inherited was way overdue for review. There was so much technological progress and changes in the credit card market that had to be reflected.

Mr. STEIL. Understood. Going back to my original question on this topic, do you believe there are potential trade-offs in setting a cap?

Mr. CHOPRA. Yes. What I think will happen is that we will start seeing things—rather than a business model built on penalties, they will compete just like other banks and small banks do who offer credit cards, which is really upfront on annual fee, on interest rates, and others. I think the competitive process will work better. Consumers are smart, more likely to switch, and will be healthier over all.

But we are looking—

Mr. STEIL. So, you don't think that by setting a cap—just as we play this out analytically, doing a pure economic analysis on this—that you are going to lead to more-expensive credit?

Mr. CHOPRA. It depends on the competitive factors. You will see consumers switched based on that. It really depends on the econometric model. But we are looking at all the comments, and we will look at it very carefully and analyze it before finalizing it.

Mr. STEIL. In my final 15 seconds—and I have asked you this before—do you believe the CFPB possesses regulatory oversight authority over insurance products or insurance companies?

Mr. CHOPRA. We do not regulate the business of insurance.

Mr. STEIL. Thank you very much.

Mr. Chairman, I yield back.

Mr. FITZGERALD. The gentleman's time has expired.

We will now go to the gentleman from North Carolina, Mr. Nickel.

Mr. NICKEL. Thanks so much, Director Chopra, for being here. I know with these 5 minutes for questions, it is tough to kind of get everything out in the time that you have. I am going to say a few remarks, but I want to just give you a beat to think about it. After I say a few things, if you want to jump in and supplement some of the comments you have made on some other things, I am happy to give you some time.

But I want to just start off by saying that I was proud to sign on to the amicus brief led by Ranking Member Waters supporting the CFPB at the Supreme Court. I know you have been under attack here today, so I want to just thank you for all the work you are doing to protect consumers.

Do you want to take any time to talk about—get a little more time on some of the—

Mr. CHOPRA. Yes. I know we have talked about the work we have been doing, but I also want to make sure we are thinking about the future, too.

We are seeing very big players, especially tech companies, come in. We are seeing the future of money look different. Digital payments. Artificial intelligence. It is so important that we think about tomorrow and make sure that we don't have problems in the future that we can address today.

Mr. NICKEL. Thanks so much. North Carolina has 13 congressional districts. I represent 49,000 veterans in my district. And I want to thank you, again, for the work that the CFPB is doing to protect servicemembers and veterans. I think it is our duty to support and care for the men and women who have served our country. We owe them a debt of gratitude, and we have to ensure that they have access to the resources and support they need to lead fulfilling and healthy lives after their service.

In June 2022, the CFPB issued a report highlighting complaints by servicemembers and veterans about problems with coercive credit reporting and false medical bill collections. I am very concerned that veterans and servicemembers that I represent, just like anyone, have a tough time navigating the credit reporting system. If a member of the military has been injured or hospitalized while in service, I don't think it is right for a medical bill to affect their creditworthiness.

What trends did the CFPB observe in its report, and what type of relief or remedies would you recommend to support veterans?

Mr. CHOPRA. Yes. Credit reporting—and let me just share that we do see differences between active-duty servicemembers and their families, and Guard and Reserve versus veterans. Each has unique issues.

I would say with active duty, the implications for problems on their credit report are very real. It can even harm their career. Many of them are subject to Permanent Change of Station (PCS) orders, and have to move frequently, which makes it really challenging to make sure that they don't suffer problems when they need to move or sell their home. With veterans' VA mortgages and other VA benefits, we always want to make sure they don't become a haven for abusing people.

We have done a lot of work on the Servicemembers Civil Relief Act, which has a 6-percent cap on pre-service obligations. We found Guard and Reserve families aren't always taking advantage of it and may not be—financial institutions, we want them to work more to honor those rights.

Mr. NICKEL. Thanks. I am also very concerned about the rise in abusive debt collection practices, including those that target low-income seniors, such as, "zombie mortgage" debts. Zombie mortgages are those that consumers thought were forgiven or satisfied long ago but still exist.

I was pleased to see that the CFPB held a field hearing on this issue in April. Can you tell us what you learned at the hearing and more about the CFPB's work in this area to protect homeowners targeted by these unfair collection practices?

Mr. CHOPRA. We heard from a lot of experts, including one homeowner who testified about how they got a mortgage—one of those 80/20 piggyback mortgages—before the financial crisis. She got it modified, and the second mortgage was satisfied. But then fast-forward, with no communication, I believe, for over a decade, and now she is getting threatened with foreclosure.

I think these second mortgages, which many people believe were satisfied, are now coming back. And we have tried and issued some guidance to make it very clear that when there is time-barred debt, there are certain responsibilities. We do not want to see this unlawful debt collection behavior especially targeting those whose wealth is mostly their home equity.

Mr. NICKEL. Thanks so much.

And I yield back.

Mrs. HOUCHIN. [presiding]. The gentleman yields back.

The gentleman from Wisconsin, Mr. Fitzgerald, is now recognized for 5 minutes.

Mr. FITZGERALD. Director, thanks for being here today. I wanted to just go to two different topics, the first being something that has already been talked about ad nauseam, but the credit card late fees. Specifically because I have corporations in my district, and Kohl's Department Store is probably the best example.

I am worried that the rule could have a negative impact because I don't know if the differentiation is there between bank cards and what you might see with retail, and I am wondering if you all have looked at it from that perspective?

Mr. CHOPRA. It is a great question.

With store credit cards, you are right, the market is a little bit different than the generally-available bank cards. They do work with the financial institution to issue it, to provide all the statements and the underwriting. A department store like Kohl's will probably work with them. There is different demographic—different loan characteristics of it. We certainly tried to look hard at those differences when shaping the rule.

At the end of the day, though, a reasonable late fee and making sure that there are incentives for consumers to pay, I think will be good.

I will also tell you, those retailers incur some real damage sometimes when their customers are not being treated fairly by their financial institution partner. So, I am hoping that the retailers themselves can also see some benefits from this.

Mr. FITZGERALD. Okay. Thank you for that.

And then, I am not sure if other members touched on this, but I think for some members of the committee—maybe they have the answers they want. But regarding the SVB failure, kind of that whole weekend that happened—we are 100 days out now. The FDIC, the Fed, the Treasury—I don't think we got the answers we need from them.

My question would be, what was your role? Maybe, it was ad hoc and kind of developing as that weekend played out?

Mr. CHOPRA. Certainly, as a board member—there are five members of the board that have to steward the Deposit Insurance Fund and take those emergency actions. We were often meeting late and taking votes in the middle of the night. It was a very fast-moving situation. These entities, I am all familiar with, because they are also large banks subject to the CFPB's oversight.

Mr. FITZGERALD. Right.

Mr. CHOPRA. We had real issues, and the decision to insure uninsured depositors on an emergency basis was a very, very serious one. We do think it created some stability in the system, but we need to make sure that we are ready for future runs like this and that the system is resilient and appropriately capitalized.

Mr. FITZGERALD. Specifically, what is your memory about what happened on March 12th at that FSOC meeting? What happened during that meeting?

Mr. CHOPRA. Was that on a Sunday, maybe? We were all working around the clock. We were regularly in touch—the FDIC, the Fed—with the Treasury because those emergency powers required the consent of the Secretary.

Anytime there is major movement like this, obviously, there is the worry about credit sweeps as well, and we did exchange information about the latest intel that we had. I don't know the specifics of it, but we certainly like to share information.

Mr. FITZGERALD. Do you feel like decisions were made in that there were already—there was already movement on trying to sell or save the banks at that point by the time the FSOC meeting happened in mid-March?

Mr. CHOPRA. I don't remember when the FSOC meeting was, but certainly, the failure of Silicon Valley Bank happened at around 11:00 a.m. on Friday. It didn't even make it to the end of the day.

Signature Bank barely made it through and ended up failing on Sunday.

It is not like a normal bank failure where there was clear awareness well in advance and the entities can prepare for the resolution in the same fashion and find buyers.

The First Republic resolution was quite different. The closure and sale happened over the same weekend, but the speed in which SVB occurred was lightning fast. And we did not get, I believe, a valid bid submitted that weekend. But over time, after the emergency actions, we were able to.

Mr. FITZGERALD. Okay. Let me ask you a huge question. It will be difficult to answer in half a minute. But what is your opinion now of where we are at, not just related just to banks, but all financial institutions? Is the market stable? And are regional banks in a good position as well?

Mr. CHOPRA. I think what we have seen is that deposit outflows have really stabilized. We are not seeing broad movement. We did see a big pool—a big hunk of deposits move to money—

Mrs. HOUCHIN. The gentleman's time has expired.

Mr. FITZGERALD. Thank you.

Mr. CHOPRA. I am happy to talk to you further.

Mr. FITZGERALD. Thank you.

Mrs. HOUCHIN. The gentleman from New Jersey, Mr. Gottheimer, is now recognized for 5 minutes.

Mr. GOTTHEIMER. Thank you, Madam Chairwoman.

And thank you, Director.

Director, I have previously shared my concern that the CFPB's consumer complaint database may be a breeding ground for consumer misinformation, where competing small businesses can file false complaints about competitors. In 2022 alone, the CFPB reported receiving nearly 1.3 million complaints.

I understand that companies have an opportunity to respond to complaints that are filed with the database, but is there a vetting process in place at the Bureau to weed out false complaints submitted to the website so that these small businesses aren't playing defense for those competitors who are trying to get them?

Mr. CHOPRA. Yes.

Mr. GOTTHEIMER. Can you talk a little bit more about that?

Mr. CHOPRA. Sure. You actually raised this in a previous hearing, and I went back to the staff to make sure I fully understood it.

When a company is enrolled in the complaint database, when a complaint is received, they are actually able to determine, is this even our customer or not? So, that is a key check to make sure that there is not any kind of false identification. In some cases, more information is needed.

After you raised it, I also looked to see if there were any other indicia of this happening, and we did not see any, but we are always looking to make sure that is processed—

Mr. GOTTHEIMER. So before it is posted, they can stop it from being posted?

Mr. CHOPRA. It is only posted under certain circumstances, and I believe one of the circumstances is that it is actually the customer.



Mr. GOTTHEIMER. Got it. So before it is even posted, you go back to the business and say, is this a customer of yours?

Mr. CHOPRA. Actually, the way it works is if a consumer files it, it almost immediately goes to the entity enrolled in our portal. They are able to respond. And it doesn't show up in the database until well after. So, there are a bunch of checks to limit this.

Mr. GOTTHEIMER. Got it. So if it is a competitor and not a customer, they can stop it from being posted?

Mr. CHOPRA. Yes. I don't think it could even show up because it is not a customer.

Mr. GOTTHEIMER. Okay. That is good to hear. And I will follow up—

Mr. CHOPRA. I will verify, but—

Mr. GOTTHEIMER. I would like to follow up with you on that. That would be great.

The CFPB's Office of Servicemembers Affairs helps military families overcome unique financial challenges and ensures they make the best financial decisions.

Late last year, the CFPB reported that members of the Reserve and the National Guard are paying an extra \$9 million in interest every year because they are not provided their rights under the Servicemembers Civil Relief Act (SCRA) to request interest rate reductions on loans during active duty.

Since that report was published in December of last year, can you tell me a little bit about what steps you have taken to inform servicemembers and financial institutions of the benefits provided under the SCRA?

Mr. CHOPRA. We did share that report with the financial institutions. And it is tricky—many people may not know that the Guard and Reserve, when activated, get the benefits afforded to active duty. There is a database that the Department of Defense makes available. We have shared information about how financial institutions can use that.

In some cases, many of them are automatically given those benefits, and I think that is a huge benefit, especially for an individual who has been activated, they want to minimize the amount of bureaucracy they have to go through.

Mr. GOTTHEIMER. Of course. Thank you.

The Supreme Court is expected to rule on the constitutionality, as you know, of the Bureau's funding mechanisms in the coming months. I believe the Bureau plays an important role in protecting consumers from illegal activities in the marketplace, and I think it is vital that we be prepared for all potential decisions of the court.

If the Supreme Court rules against the Bureau, what will the impact be for consumers? And do you think it is important that Congress start to act now to be prepared to promptly address a potentially unfavorable outcome?

Mr. CHOPRA. We have heard from many corners of the industry that if there is a decision that throws uncertainty into—many industry players rely on the certainty afforded by, especially our mortgage rules. We do not want to see disruption in our mortgage markets, especially in the environment in which we are in.

I am happy to talk to you further about it. But the Solicitor General has filed a brief with the Supreme Court and laid out the argument about why they would—

Mr. GOTTHEIMER. Do you think we need to start taking congressional action to prepare in case the mechanisms change?

Mr. CHOPRA. I will take that back. I am happy to take a question for the record. But really, we are focused on the litigation and how—

Mr. GOTTHEIMER. Okay. I would like that. Because I don't want to find that suddenly the court rules, and then we have to scramble. You know, we don't exactly always move very fast here.

I have heard stories about consumer financial services offered by unregulated scammers, some of whom operate online, and offshore, beyond the reach of State and Federal regulators.

Does the Bureau place a priority on detecting and deterring unregulated financial services operators, and can you give me some examples of the steps you are taking in the last few seconds here?

Mr. CHOPRA. Sure. One of the key things is, outside of the insured bank and credit union system, it is our job to protect against those entities that violate the law. We are devoting a lot of energy, using authorities Congress has given us to supervise some of them. When it comes to offshore, that is a very challenging problem, especially using digital technology.

Mrs. HOUCHIN. The gentleman's time has expired.

The gentleman from New York, Mr. Garbarino, is now recognized for 5 minutes.

Mr. GARBARINO. Thank you, Madam Chairwoman.

And thanks, Director, for being here.

I just want to get some clarification. I know you talked a little bit already about the small business data collection rule. I have heard from the private sector that the CFPB's small business lending data collection rule would impose 81 overly-burdensome and complex requirements, and 81 new data fields for each loan by some counts. I think you said 15 to 20 is possible before.

Mr. CHOPRA. Yes. I think there is a little bit of apples and oranges between data points. I believe there are about 20 data points. The fields is a little bit of a different issue. It is kind of how they input it.

Mr. GARBARINO. So, could 81 be correct, 81 data fields?

Mr. CHOPRA. Yes. It is in the way in which it is sent, but it is not the points that is in the statute.

Mr. GARBARINO. So, about 81 new data fields for each new loan, along with a timeframe of 18 months for some companies, and 36 months for others. I have heard from the industry that 18 months to set up a collection data, protect it, and get everything ready with its lenders is going to be too short of a time period. And I don't see why it is 18 months when other companies are getting 36 months. Are you concerned that the 18 months could set some of these lenders up for failure? And why not just do everybody for 36 months?

Mr. CHOPRA. I think we wanted to look at how smaller banks, local banks, others—they have different issues that they have to deal with when implementing some of this. So, we focus the 18 months on the largest lenders, which have very large books of this

and which are often big institutions themselves. That is part of the reason we had this phased-in implementation.

Mr. GARBARINO. I understand the reasoning for doing it for the smaller banks, or for the smaller lenders, but I am hearing from the bigger lenders that 18 months is still not enough time to get this done.

Is the CFPB considering delaying the 18-month timeframe?

Mr. CHOPRA. Not at this point. We are working to make sure that the system is well prepared for it.

I will say that many of these are quite large entities and have told us they have put in a lot of preparation. But I am happy to hear more from those about any challenges. We have set up a group that is working with them on implementation.

Mr. GARBARINO. Okay.

Mr. CHOPRA. And, again, the reason we phase it in—there will be learnings from the first phase that will help us make sure that, when the much larger group reports, it has less kinks.

Mr. GARBARINO. I understand. And I know you have also talked—bless you, by the way—about the data breach. What is the CFPB doing to protect against future data breaches?

Mr. CHOPRA. Insider threats are something that we are going to be putting a lot of effort in. We are also putting technological solutions in place. This was a very serious incident. We want to make sure not just that our systems are safeguarded from being penetrated by outsiders, but that even insiders have limited access and are not having to transfer things outside of the systems that are most secure.

We are working with the established guidance on making sure that we mitigate and take steps. There are a lot of changes that were already in progress. But certainly, it is a serious—

Mr. GARBARINO. How many employees do you have who are focused specifically on cybersecurity?

Mr. CHOPRA. It is pretty substantial. I don't have the exact number. But within our technology and innovation group, not only do we have a chief privacy officer, we have information security professionals. We also get outside support. Outside auditors work with our Inspector General as well.

Mr. GARBARINO. Okay. And one last question. This was a major cyber incident. When a major cyber incident occurs in a Federal agency, they are required to notify the Cybersecurity and Infrastructure Security Agency (CISA). Do you know if and when CFPB notified CISA about this breach?

Mr. CHOPRA. We certainly notified—and I believe we notified DHS and CISA. I would have to look at the timeline, but—

Mr. GARBARINO. But you did notify them?

Mr. CHOPRA. We notified everyone in the OMB guidance, and I believe they are listed explicitly.

Mr. GARBARINO. Okay. Director Chopra, unfortunately, the CFPB has disbanded the Office of Innovation and offers very few collaborative avenues for innovative companies to work with the CFPB to gain regulatory clarity on the myriad of announcements coming from the Bureau.

A huge issue in my district is home affordability. The average cost to originate a residential mortgage has doubled from \$5,000 to

over \$10,000 in the last 10 years. What exactly is the Bureau doing to try to lower the cost of homeownership?

Mr. CHOPRA. There is so much we are doing. We have actually put out and gotten information about how we can streamline—

Mrs. KIM. [presiding]. The gentleman's time has expired.

Now, I would like to recognize the gentlewoman from Colorado, Ms. Pettersen, for 5 minutes.

Ms. PETERSEN. Thank you, Madam Chairwoman.

And thank you, Director, for being with us today. This is a difficult committee, and you have done a great job. I want to thank you for the work that you do every day advocating on behalf of our constituents and making sure that some of the most-vulnerable people are not being taken advantage of and that they have a voice and a backstop.

I really enjoyed meeting with you in my office to talk about the specific services that you are able to provide. And I think many people don't even know that some of these tools exist. They don't know what is available.

So, I want to just give you some time to kind of highlight the programs and the opportunities that constituents have just to—what we should tell our constituents to make sure that they know the services that you provide.

Mr. CHOPRA. Yes. I think the focus of where we can provide so much individual help is our consumer complaint line. It was established in the law. We are doing, as it was said, 10,000 a week. And we hope that, even if you don't know the name of any individual agency, that you know there is a place you can go if you are having trouble with a consumer financial product or service, you can file a complaint, and it won't go into a black hole. It will actually—and in most cases, I believe—transfer to the institution.

And it is such a way that we have been able to get people help, but also for the financial institutions to know the challenges that are being experienced so that they can make tweaks to their processes and mitigate harm going down. I urge you all to get the word out about our complaint line.

Ms. PETERSEN. We plan on doing that with some of our constituent outreach. Thank you for highlighting that.

One of the concerns that we have heard come up is with limiting the junk fees. And I want to thank you for taking this on. While I recognize you don't have the authority to highlight these practices, you were able to set a limit.

And this is something that all of us have experienced, where we think that we are going to buy something, and then on the back end, we see all of these additional fees of which we are unaware. This especially hurts people who are lower income, and our elderly. So, thank you for taking this on.

One of the concerns that has been raised, though, is that when we are limiting fees like this, that there won't be the financial options for people with lower incomes where—the unbanked areas, I guess you could say.

What can you address in this area on what you are doing to make sure that is not the case?

Mr. CHOPRA. We have seen a lot of good movement and competition to offer lower, no-fee products with no surprises to really any-

body. Sometimes, we don't necessarily need to jump through a bunch of hoops.

It really is one of the benefits of competition here, and we see so many institutions offering these products now. I believe thousands—maybe it is hundreds of banks—these no-fee accounts. And it is a big benefit to those who live paycheck to paycheck.

Ms. PETERSEN. That is great. That is another thing that we can highlight for our constituents.

I know that there were a lot of questions asked of you with limited time to respond. I want to know if you have any other pieces that you would like to address on some of the concerns that have been raised and the questions that my colleagues have asked.

Mr. CHOPRA. I think there was a question I didn't get to fully answer about the Financial Stability Oversight Council. I think there were elements of the guidance from 2019 that were not related to the law at all. It indicated that there were certain procedural hurdles that I think were not appropriate. But, of course, we have to carefully consider what Congress wanted, and obviously, we do not want there being big nonbank institutions who cause a collective calamity for the rest of the market.

I also will say again, there has been a lot of talk about our motives. Our motives are to carry out and fulfill the objectives you have specified in the law, and I take great pride in the work of all of the public servants at the CFPB who have helped so many people.

Ms. PETERSEN. Thank you for recognizing that. I also want to thank your team for doing their work. I know that it is a difficult job. It couldn't be more obvious with the hearing today. So, thank you for what you are doing every day.

And with that, I will yield back.

Mrs. KIM. Thank you. The gentlelady yields back, and I now recognize myself for 5 minutes.

Director Chopra, I am disappointed that your written testimony did not mention financial literacy or education as one of your priorities. Consumer education is one of six primary functions of the Bureau. It is essential for consumer protection.

I serve as the Co-Chair of the Financial Literacy and Wealth Creation Caucus, so I would like to urge you to make use of the public-private partnerships to enhance financial literacy.

According to the Civil Penalty Fund annual report published in November 2022, the total unallocated balance was more than \$481 million, and recent reinforcement actions may have increased the fund's unallocated balance to exceed \$2 billion.

Why haven't you used the fund for its intended purpose, to enhance financial literacy, since you took office as Director of the CFPB?

Mr. CHOPRA. Let me just say that financial education and literacy is a real cornerstone of what we are doing. In the annual report that is part of our testimony, we—

Mrs. KIM. Well, I am glad we agree.

Mr. CHOPRA. The Civil Penalty Fund has two purposes: victim redress; and financial education, financial literacy programs. We actually expend resources on financial literacy through our general funds which cannot be used for victim redress.

Mrs. KIM. Sure.

Mr. CHOPRA. But we also want to make sure that those funds expended are smart, and that they are not wasteful, that they are effective.

Mrs. KIM. I am glad to hear that, and I also want to echo the urgency of my colleague across the aisle, Mr. Scott, to use the fund for its intended purposes.

And can I ask that you, rather than focusing on blog posts and press releases, I would remind you that you have other tools in your toolbox, like that fund, to prevent fraud and scams. So, please, let's use more of them.

Now, are you concerned about the amount of credit card debt held by Americans?

Mr. CHOPRA. I don't tend to think about the overall amount, but it certainly has accelerated. I worry more about delinquency costs, and having a competitive cost of credit.

Mrs. KIM. I would like to address that issue. In the credit card fee proposal, you cite the research that was co-authored by two former Bureau economists who use the Bureau's own card data. That study states that when the credit card late fee decreases, it incentivizes higher usage and greater likelihood of paying late. Is that right?

Mr. CHOPRA. I don't know the specific study you are referring to, but if you are saying that a late fee may have some impact—

Mrs. KIM. That is a study that is based on peer-reviewed academic publication. Are you aware of that?

Mr. CHOPRA. Okay. And I apologize, I don't have all the facts from that individual study cited, but of course we think a lot—

Mrs. KIM. Right. Despite that, the Bureau—disregarded that research and instead you conducted your own analysis, but that analysis wasn't peer-reviewed or published in a journal. That is our understanding.

Mr. CHOPRA. We certainly look at a lot of data sources studies on consumer credit. I know you are mentioning one. I am happy to take questions for the record on that specific one, but the overall goal—

Mrs. KIM. Your credit card fee proposal is not going to reduce prices for consumers. Instead, the reduction in fees will lead to an increase in borrowing costs and potentially higher debt for families and individuals.

The CFPB also acknowledged in the credit card fee proposal that customers who never pay late, which is about 74 percent of all Americans with credit cards, will not benefit from the reduced fees and could face higher maintenance fees, lower rewards, or higher interest-paying accounts. I just wanted to point that out to you, and then, I want to move on to the next matter.

I agree with you that open banking has the potential of unleashing innovation and more options for consumers. But the CFPB recently issued a Request for Information soliciting public feedback about the data broker market. The request uses a definition of, "data broker" that essentially covers every consumer-facing business in existence—firms that collect, aggregate, sell, resell, license, or otherwise share consumers' personal information with other parties.

Do you believe that small businesses in Southern California like hair salons, gyms, and flower shops should be subject to the Fair Credit Reporting Act since they collect personal information from consumers?

Mr. CHOPRA. No, I think the purpose is about companies that are assembling dossiers just like other background screening companies or as other tech companies and others. So, we are actually soliciting input. That was not a proposed rule. We are trying to make sure we get the right type of input.

Mrs. KIM. Sorry, my time has expired.

Before I ask the next person to ask questions, I would like to enter into the record the Washington Post Fact Checker that was dated June 12, 2023.

Without objection, it is so ordered.

And I now recognize the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. And thank you for being here, Mr. Director, and I personally appreciate your availability to all of us.

In my real life, I am a United Methodist Pastor, and I deal with people mainly when they are in trouble. Rarely does someone come by and say, I just wanted to come by and tell you that the world is great and everything is really, really nice in my life.

One of the things that people have as a major problem, more than anything else, are their finances. And there are those who have sought to take advantage of people. In fact, they are generally targeted by the so-called credit repair companies, organizations which are so fraudulent that they make Bernie Madoff seem like the Dalai Lama.

And they specialize in making people who are hurting, hurt more. They are inverted ATM machines. And we are being victimized—when I say, “we,” I mean that Americans are being victimized by other Americans who are running these fraudulent organizations, promising to fix bad credit, when in reality, they are going to fix you for coming in there.

So, I am thinking right now that something more needs to be done. I am not sure exactly what we can do to stop the financially-distressed consumers from being hurt worse, but many of those consumers, as I mentioned earlier, are targeted, and they are trying to get their financial lives on track.

What is the Bureau doing? Are you getting a large number of complaints about these credit repair companies which are, from my perspective, almost committing thievery?

Mr. CHOPRA. I don’t have the exact numbers, but certainly people who are trying to repair their credit, many of them have been targeted by those who are fraudsters or scammers.

There have been a number of enforcement actions. I definitely welcome any input on how we can more holistically deal with this, because sometimes going after one by one well after they have run off with the money won’t fix the problem.

I think accuracy in credit reports, and figuring out how people can rebuild is obviously important, but we want there to be honesty and compliance with the law.

Mr. CLEAVER. Yes, I don't think it is something that you or your agency can repair alone. But there needs to be something that we can do with the CFPB and local organizations, maybe Ministers, because they hear these ads on the radio. They are not on TV much anymore, they are advertising on the radio, and I am hoping that we can maybe work together on something.

I don't want the Bureau sued, but I am just wondering, can we do Public Service Announcements, talking about the mortgage thievery that is going on, and of course, these credit repair organizations, can the agency get involved in trying to get public—

Mr. CHOPRA. Yes. Actually, even the financial industry has helped with warning about some of these things. We try our best to help people understand and give them objective information, what should you do when you have a potential issue like this. It can be hard to get out the word sometimes because people can be micro-targeted very specifically. But there is certainly more we need to do to make sure people are protected from this.

Mr. CLEAVER. Thank you. I may have some ideas that I will share with you later. Thank you very much.

I yield back, Madam Chairwoman.

Mrs. HOUCHIN. [presiding]. The gentleman yields back. We will now take a 5-minute recess to allow the witness a brief break. The committee stands in recess.

[brief recess.]

Mrs. HOUCHIN. The committee will come to order. The Chair now recognizes the gentleman from Florida, Mr. Donalds, for 5 minutes.

Mr. DONALDS. Thank you, Madam Chairwoman.

Director Chopra, thanks for coming in. You have said previously that markets work best when rules are simple, easy to understand, and easy to enforce. Would you agree that markets work best when rules are actually relevant to today's marketplace?

Mr. CHOPRA. Yes.

Mr. DONALDS. I want to go into a couple of things about payment portions of the CFPB's small dollar—I know that this is at the center of litigation and that none of us know for sure where it will end up.

Section 1022 of Dodd-Frank requires the CFPB to conduct a 5-year assessment of each significant rule or order adopted by the Bureau under Federal consumer law. This assessment is supposed to address the effectiveness of the rule in meeting the purposes of the objectives of the Bureau under Dodd-Frank, as well as specific goals stated by the Bureau.

The public would also be allowed to comment on the recommendations for modifying, expanding, or eliminating a rule.

If this rule had gone into effect and had not been delayed by all the legal challenges, I believe the Bureau would have had to complete such assessments of this rule, this year.

When you look at the data, the alternative credit marketplace has shifted dramatically over the past 5 years. So if the court were ultimately to decide with the Bureau on the legality in question, wouldn't it be prudent to evaluate whether the rule is relevant in today's marketplace and is really going to meet the objectives that the Bureau intended?



Mr. CHOPRA. Yes. One of the things I have done is, I have really opened up and increased the analytical rigor of justice. So many times they create rules, and it is not future-proofed. I am always open to collecting more information to see if there are any adjustments that need to be made.

I don't know the specific provisions you are referring to that may have been subjected to technological change. There are certainly many rules that were transferred to the CFPB from the Fed and the FTC that were not future-proofed and were way too complex. And certainly, simplicity is a lodestar. We can't always get there, but we want to get there.

Mr. DONALDS. Would you acknowledge that it is prudent for the CFPB to periodically review all of its existing rulemakings and decide whether they are even necessary in today's environment?

Obviously we know that banking is moving by leaps and bounds, becoming far more technical for a myriad of reasons, regulation being one of them. Wouldn't it be prudent for CFPB to actually review these things periodically, make adjustments, or cancel previous rules altogether?

Mr. CHOPRA. That is some of what you are seeing me doing during my tenure. We are reviewing some older ones, and putting them out for public comment. Even the one on credit cards is really a rule review at its core, to make sure it is based in reality.

I think you are raising this point, though, on digital, that is really important, and we need to make sure that we are not just thinking about the human world, but how will it work in the metaverse, how will it work in other contexts, because otherwise it creates problems if people don't—

Mr. DONALDS. I am glad you raised it for two reasons, one with the revision—the re-look at the credit card rule. You have talked about—and I think comments from my colleague from California brought it up in earlier questioning—the changing of late fees from \$30 to \$8. You are on the record saying that, “By our estimate, 75 percent of late fees, \$9 billion, have no purpose beyond padding the credit card companies' profits.” Do you stand by that statement?

Mr. CHOPRA. Yes. That is based on our estimate, and that is based on a point in time where late fees might have been lower than they otherwise would have been.

Congress was clear: Those penalties are supposed to be reasonable and proportional, and we do not want loopholes from rules being used to evade the law.

Mr. DONALDS. Director Chopra, do you think that it is prudent that the CFPB has the abilities to unilaterally decide what are going to be late fees on consumer financial products, notwithstanding the ability of cost shifting as a result of capping fees?

Mr. CHOPRA. We don't have unilateral ability. Congress sets out the framework in law—

Mr. DONALDS. Director Chopra, I would argue that the CFPB is making broad use of their powers, which, by the way, to be clear, I do believe wholeheartedly that your agency is unconstitutional. I think it was unconstitutional when it was created in Dodd-Frank. I think you were given broad latitudes under, frankly, partisan government at the time, to not even really be accountable to the

people's branch of government, the legislative body, and so I do have issues with CFPB.

But let's be clear, you all have taken broad latitude on many issues over time——

Mr. CHOPRA. And it is always consistent with the laws that Congress passes.

Mr. DONALDS. And I would argue that those laws have always been——

Mrs. HOUCHIN. The gentleman's time has expired.

Mr. DONALDS. ——subject to Congress' ability to oversee you.

I yield back.

Mrs. HOUCHIN. The gentleman's time has expired.

The gentleman from New York, Mr. Lawler, is now recognized for 5 minutes.

Mr. LAWLER. Thank you, Madam Chairwoman, and Director Chopra, thanks for being here.

A huge issue in this hearing has been the egregious lack of accountability of the CFPB and the lack of clarity and poor process that has been followed in your rulemaking and enforcement processes.

What is your understanding of the Administrative Procedure Act (APA)?

Mr. CHOPRA. The Administrative Procedure Act has a lot of different provisions. It touches on everything from citizens' ability to petition their government, to rulemaking—I think it is about rulemaking.

Mr. LAWLER. Yes, let's not waste time. What is your understanding of the Administrative Procedure Act with respect to your job duties and how you do rulemakings?

Mr. CHOPRA. Absolutely. It requires that the decisions not be arbitrary and capricious. For rulemakings, legislative rulemakings, it requires a notice-and-comment period. It requires a response in consideration of those comments, a proposed rule, and a final rule, and all of those rules are subject to court review under that standard.

Mr. LAWLER. And how should that rulemaking process be followed? How should the notice-and-comment period operate?

Mr. CHOPRA. Based on the other relevant statutes that apply, there is a period for which you publish the notice in the Federal Register. There is a comment period of 30 or 60 days, or what have you. After that time, comments need to be considered.

In any final rule, we analyze the comments, and actually, substantial parts of the final rule discuss those and explain where there were changes made from the proposal to the final rule.

There are other parts of the APA as well, but, again, we are subject to quite a bit of review on that.

Mr. LAWLER. And where in the APA does it talk about being able to rule-make through blog posts and speeches?

Mr. CHOPRA. It doesn't, and the concept of rulemaking through blog posts, I don't know where that term came from, but when we issue a blog post, we get feedback from various industry associations. They want more information about what the CFPB is doing, to have more notice to understand specifics about programs——

Mr. LAWLER. Right. But you seemingly are using these blog posts to issue more information, thereby issuing more rules, correct?

Mr. CHOPRA. No, those aren't rules. Rules have to go through, as you are suggesting, the Administrative Procedure Act.

Mr. LAWLER. Right. So why are you using blog posts and/or giving speeches talking about what the industry should be doing if you are not following the exact rulemaking process?

Mr. CHOPRA. Blog posts are something that we put on our website as information for consumers and the public. Those are not rules. Statutes and regulations, codified in the Code of Federal Regulations, are what creates obligations.

Again, we received input from entities like the Consumer Bankers Association who asked us to continue what my predecessor, appointed by President Trump, had done on issuing advisory opinions, and informal guidance. And that is what we have continued to do.

I am getting two different, conflicting messages about, we are trying to transparent and open. Those blog posts for the consumers and the public are not rules and not creating new obligations.

Mr. LAWLER. Okay. So that we are all clear, your blog posts do not have the weight of law, and nobody should follow them? Is that what you are saying?

Mr. CHOPRA. No one has suggested, I think, that blog posts are rules. So, again, we have tried to provide guidance, other advisory opinions, very consistent with my predecessor, and also what almost every other agency does. There has been a request for more of it over the years, so that you don't need lawyers as much, and you have more plain-language support. This seems like something that is a good government——

Mr. LAWLER. Okay. So going forward, we all agree you will be using the Administrative Procedure Act for rulemaking? You won't be using blog posts or speeches to put any obligations on anybody within the industry going forward?

Mr. CHOPRA. There has been no blog post that created a new obligation on the industry.

Mr. LAWLER. Good. Okay. Great. We are in agreement.

Do you agree that you will commit to publicly releasing all of the facts and data that are used to support your decisions during the rulemaking and enforcement process? There have been numerous requests by this committee——

Mrs. HOUCHIN. The gentleman's time has expired.

Mr. LAWLER. Thank you.

Mrs. HOUCHIN. The gentleman from Nebraska, Mr. Flood, is now recognized for 5 minutes.

Mr. FLOOD. Thank you, Madam Chairwoman. Director Chopra, thanks for your testimony today.

I want to talk about student loan repayment. In March, Nelnet, the largest Federal student loan servicer, submitted SEC filings disclosing a significant modification to its Federal contract with the Office of Federal Student Aid, or FSA, showing that the Biden Administration has slashed its funding for student loan servicing operations as 40-plus million borrowers return to repayment on September 1st.

Nelnet disclosed these layoffs due to the rate cut. Across-the-board, Federal student loan servicers are entering return-to-payment significantly understaffed. That is a concern. The contract modification also shows FSA's acknowledgement that it is paying less for student loan servicing as borrowers return to repayment.

At this time, I would like to submit both of Nelnet's 8-K filings related to the contract modification for the hearing record. They are dated March 22, 2023, and March 27, 2023.

Mrs. HOUCHIN. Without objection, it is so ordered.

Mr. FLOOD. Director Chopra, can you commit to me here today that your agency will not enforce against Federal student loan servicers for providing service levels commensurate to their compensation as articulated in their current contracts?

Mr. CHOPRA. They are only responsible with respect to the CFPB for Federal consumer financial protection laws. They have to adhere to those laws based on—and if they enter into contracts with third parties, with governments—I do take your—

Mr. FLOOD. With all due respect, Mr. Chopra, they are entering into a contract with the Biden Administration's FSA office. I think I maybe interrupted at a point where you were going to acknowledge—

Mr. CHOPRA. Yes, I was just going to say that there is no question that the resources of the Office of Federal Student Aid to hire contractors—I understand that it is a very dire situation, and that if they can't adequately get the right support, the return to repayment will not be successful.

But I just want to be transparent and open with you. We can't consider—there are contract negotiations when it comes to compliance with the law. They are a private party which is free to enter into contracts as they deem appropriate, but I hear your point.

Mr. FLOOD. I am really sounding an alarm here as 40 million borrowers come back into repayment. This is a bad situation if the FSA does not provide the resources and this Congress does not provide the resources to make that happen.

And would you agree with me, it is going to be the most difficult for those re-entering repayment, who need an extra level of support and service to ensure that they don't have an adverse effect on their credit report, so that they understand how to make those payments? Do you share that concern?

Mr. CHOPRA. I agree with you, we need to make sure that—and in some ways, if there is not adequate support, the problems we could incur could be very, very big.

Mr. FLOOD. You and I agree.

The decisions by this Administration to politicize the student loan program through extended unnecessary pauses in pursuit of illegal loan forgiveness has harmed borrowers, and has resulted in a confluence of events that all but guarantees repayment to be exceedingly difficult. And no one but this Administration is to blame when and if return to repayment is a disaster.

I have more than 3,000 student loan servicer employees in my district. When the FSA decides to cut rates, they are jeopardizing jobs in my district, but as we have discussed here, they are cutting down on the service that are provided to people who are going to work, who got an education, and who have to pay back these loans.

And I don't want them to miss the opportunity to figure out how to get that money back to the creditor and make sure they don't suffer any ill effects on their credit reports, and that we get them back on the road to repayment in a good way.

Mr. CHOPRA. And an appropriate level of service is probably good for everybody. It increases the likelihood of longer repayment—or appropriate repayment, and as you mentioned, avoids the consequences of default that can be very significant for an individual and the system.

Mr. FLOOD. Absolutely. And it would be a disaster if the Federal Government refuses to pay adequate rates to servicers on the one hand, and then starts going after them for service quality on the other. And I think that is the point that I really want to make.

And with that, I yield back.

Mrs. HOUCHIN. The gentleman yields back.

The gentleman from Iowa, Mr. Nunn, is now recognized for 5 minutes.

Mr. NUNN. Thank you, Madam Chairwoman, and Madam Ranking Member. And thank you, Director Chopra, for being with us today.

We are almost to the end of the testimony. I know this has been a marathon, and I appreciate you being forthright with us and having this conversation.

I am going to ask you some questions that are coming from my small businesses, and a lot of my local bankers. These are folks from the Midwest and Iowa who are trying to do the best they can. They have been very successful in the past, but there have been some challenges coming from an agency which, in their words, they feel is opaque, potentially increasingly partisan, and analytically weak.

Several of these same colleagues today, on both sides, have brought up the funding structure, and its lack of oversight in terms of not having an executive board or an independent Inspector General, that they find concerning.

I am going to leave it to the Supreme Court and its highly-qualified judges to determine the future on that front, but I would like to talk about some of the tactical issues that are facing your organization right now.

I want to start by following up on what Representative Pete Sessions highlighted here on the issue of a cybersecurity incident that occurred under your watch. Your agency had a major breach of personal information just a few months ago.

I want to share, as a guy who has worked national counterintelligence, as a Director of Cybersecurity, that these issues have a huge impact on those people who are directly impacted.

I would like to begin by asking, when did the CFPB first find out about a data breach?

Mr. CHOPRA. The exact timeline, I don't want to get any of the dates wrong, but when we identified a potential email that was sent to a personal email account that included confidential information, we brought together our response team to investigate it.

Mr. NUNN. Approximately when was that?

Mr. CHOPRA. I want to say that that was—I don't want to get the dates wrong, but late February.

Mr. NUNN. So, in February. When were you able to inform Congress about that?

Mr. CHOPRA. I don't have the exact date, but we——

Mr. NUNN. Approximately?

Mr. CHOPRA. I don't want to even give an approximation. I want to say it was about a month or maybe a little less.

Mr. NUNN. So, the individual who was——

Mr. CHOPRA. But that was from the time of the suspicious email.

Mr. NUNN. Right.

Mr. CHOPRA. So obviously, we had to look to see if there was any other——

Mr. NUNN. Absolutely. Data forensics was required. I fully agree with you on that. As an independent organization, though, I want to make sure that Congress is getting alerted to these things happening.

Specifically, how many individuals were targeted?

Mr. CHOPRA. Targeted?

Mr. NUNN. Yes. In the data breach.

Mr. CHOPRA. Do you mean how many individuals' information was——

Mr. NUNN. No. First, I want to know how many people were targeted. Was this solely focused on one individual, or was there a mass approach——

Mr. CHOPRA. Oh, I see. The issue with the unauthorized transfer was with one employee, who is now a former employee.

Mr. NUNN. Copy. So, one point of entry of which we are aware.

How many individuals had their information hemorrhaged as a result of this breach?

Mr. CHOPRA. What we did was, we looked at the unauthorized transfer of emails, and we looked at the specific documents or information that went to their personal emails——

Mr. NUNN. Director, was it over 100,000?

Mr. CHOPRA. Yes. It was approximately 250,000.

Mr. NUNN. Okay, so a quarter of a million. How many consumers and institutions were impacted by this?

Mr. CHOPRA. I don't have the exact number of institutions.

Mr. NUNN. Do you know how many Social Security Numbers were compromised?

Mr. CHOPRA. It could be zero, but the 250,000——

Mr. NUNN. Or it could be all of them?

Mr. CHOPRA. Oh, no, no, no, the 250,000 did not include any Social Security Numbers, or things that might create identity theft.

Mr. NUNN. Dates of birth?

Mr. CHOPRA. I don't believe so, but I can check.

Mr. NUNN. So, no personally identifiable information (PII)?

Mr. CHOPRA. Their name was there, and that is PII, and that is why we take it so seriously.

Mr. NUNN. Right.

Mr. CHOPRA. And so——

Mr. NUNN. I was a victim of PII this past January when my personal information was hemorrhaged just with the release of my name.

When were these Americans informed that their information had been leaked?

Mr. CHOPRA. We started notifications, I believe, around last month, but, again, we don't have—

Mr. NUNN. Copy. So we are at a 5-month period here, and here is where I think this is so important. We are asking the American public to have faith in an institution that is now asking my local banks and my lenders to provide up to 21, or even more, up to 81, according to them, data points of information that you are keeping in a Federal server that has been breached. It took a month to notify Congress, and then we are going on 5 months now before the individual even knows that they are compromised.

I have a real concern here with not only the data management piece of it, but that your organization, by not having an independent Inspector General, is now compromised for any type of review on this.

If Congress doesn't have the ability to control your budget, if the Federal Reserve is the one in charge of monitoring you, and then there is no Inspector General, wouldn't you agree that an independent Inspector General has made these other organizations stronger as a result of having an independent source?

Mr. CHOPRA. Because the Fed has so much sensitive information, our IG has a strong capability on cybersecurity and—

Mrs. HOUCHIN. The gentleman's time has expired.

Director Chopra, you can answer the remainder of the question in writing for the record.

Mr. CHOPRA. Okay.

Mr. NUNN. Thank you, Madam Chairwoman.

Mrs. HOUCHIN. The gentleman from Nevada, Mr. Horsford, is now recognized for 5 minutes.

Mr. HORSFORD. I want to thank the chairman and the ranking member for holding this hearing, and thank you, Director Chopra, for coming to discuss consumer protection efforts that your Bureau has undertaken.

I am amazed every time that I am reminded that your agency is the only Federal agency focused solely on protecting consumers from unfair or deceptive practices in our financial marketplaces, the only one in all of the Federal Government.

The imbalance of information between sophisticated financial scammers and individual consumers has provided ample opportunity for predatory behavior in our financial sector.

My constituents certainly remember a short time ago before we had the CFPB, and they remember how financial institutions were able to saddle them with destructive and, in many cases, discriminatory loans that caused untold damage to them and to our economy.

Under your leadership, I have been pleased to see that the CFPB is standing up for consumers, combating the negative effects of medical debt, breaking down barriers to credit, and holding the credit reporting companies accountable.

I have also been interested in your actions to combat discrimination in entrepreneurial lending and to allow every American a fair shot at starting a small business.

Here in America, in my opinion, especially in Nevada, the enterprising spirit of small business formation is alive and well. We have been given the opportunity to succeed. Our constituents are

industrious and hardworking, with the determination necessary to create their own store or service. And yet, so many of my constituents, everyday Nevadans, who have the dream of being their own boss, have continued to be discriminated against simply because of the color of their skin or their gender.

Owning their own business is a crucial way for individuals to build wealth and thus a key part of the conversation on how to close the racial wealth gap. Unfortunately, for so many of our minority and women-owned entrepreneurs, discrimination in small business lending has cut that dream short.

That is why in March, I applauded your finalized rule to increase transparency in small business lending as an effective way to promote both equity and economic development.

Director, would you please highlight the benefits for our nation's women-owned and minority-owned businesses now that this final rule is finalized?

And additionally, as you look back over previously-administered programs such as the Paycheck Protection Program, would you consider the data collected under this rule helpful to ensure an equitable implementation of those programs in the future?

Mr. CHOPRA. Just like homeownership, small business ownership has been such a vehicle for families and communities to build wealth. We do not want to distort it by discrimination or other bad practices, which we have seen in our country routinely for many years.

You raised the Paycheck Protection Program, and so many minority- and women-owned businesses were not able to access those critical funds, and the data will help programs to be designed better so that we can make sure these programs are working as they are intended.

Mr. HORSFORD. And the CFPB also is tasked with enforcing financial protections such as provisions of the Military Lending Act, which provides indispensable protections for the thousands of active duty servicemembers who live and serve within my district.

Nevadans in uniform deserve to devote their entire energy to defending our country and should not have to worry that they are being taken advantage of by malicious actors. Whether it is preventing illegal high-interest loans, standing up to aggressive debt collectors, or ensuring adherence to legal protections, the CFPB is standing up for our servicemembers when and where it counts.

Within your report and in various blog posts, the CFPB mentions that servicemembers are more likely to report certain types of consumer harm. Could you detail what those were likely to be and whether they filed complaints on those matters, and how has the CFPB been able to take that up?

Mr. CHOPRA. Credit reporting is very big. Like for the rest of the population, it's one of the top areas of concern. And as I mentioned before, an inaccurate credit report or being hounded for debt that you don't actually owe, for a servicemember or a military family is particularly pernicious, and we are doing what we can.

We have brought multiple Military Lending Act enforcement action—

Mrs. HOUCHIN. The gentleman's time has expired.

Mr. HORSFORD. Thank you, Director.



Mrs. HOUCHIN. I will now recognize myself for 5 minutes.

Thank you, Director Chopra, for your testimony and your time today in this lengthy hearing.

As my colleagues have expressed, many of us have heard from our constituents about concerns regarding the Bureau, its regulatory overreach, and its lack of transparency. From regulation by enforcement, to undue burdens for small businesses, it is clear the CFPB, as it is currently operating, is not serving consumers or small business owners.

Director Chopra, the CFPB is unique among Federal agencies. Not only is the Bureau not subject to the appropriations process, it also does not have an executive board to weigh in on decision-making and does not have an Inspector General to root out waste, fraud, and abuse. Effectively, you oversee the Bureau without any meaningful or direct oversight. As a result, there is a remarkable lack of transparency with the CFPB, which is something I and many of my colleagues would like to see fixed.

Director Chopra, in May of 2022, you unilaterally issued an interpretive rule, without statutory authority, expanding the authority of States to pursue and enforce violations of Federal consumer protection laws under the Consumer Financial Protection Act (CFPA).

The CFPB further promoted this additional enforcement activity by assuring States they may bring an enforcement action to stop or remediate harm that is not addressed by a CFPB enforcement action against the same entity.

And the CFPB announced it would enter into more than 20 agreements with State Attorneys General. While Congress intended for the CFPB to enforce Federal consumer financial laws and protect consumers in the marketplace, it did not intend for the CFPB to intimidate companies by conspiring with State agencies to pursue duplicative and sometimes competing and confusing enforcement actions.

The Dodd-Frank Act limits attorneys general in bringing Federal enforcement actions, and while State attorneys general may enforce the CFPA in cases where the CFPB has not, the law does not allow for a State attorney general to become a party to an existing CFPB enforcement action. It is, therefore, inappropriate for the CFPB to recruit a State Attorney General, who is not otherwise investigating a company, to pursue enforcement as a means of intimidation.

Moreover, the effect of your May 19, 2022, interpretive rule is different from solely enforcing the law. It is more akin to deputizing State attorneys general to enforce the CFPA on behalf of the CFPB, something Congress did not authorize.

How many actions has the CFPB initiated with State AGs since the issuance of your interpretive rule?

Mr. CHOPRA. I don't have an exact number, but I don't think it deviates from prior practice across multiple Directors.

Mrs. HOUCHIN. Reclaiming my time, would you check to see and confirm in writing how many actions the CFPB has initiated?

Mr. CHOPRA. Yes.

Mrs. HOUCHIN. Okay. Of these actions—

Mr. CHOPRA. When you say, “initiated,” do you mean, initiated an enforcement action?

Mrs. HOUCHIN. Since the issuance of your interpretive rule with State AGs.

Mr. CHOPRA. Okay.

Mrs. HOUCHIN. Of these actions, can you explain to me why you involved the State AG as opposed to prosecuting the action solely under your own authority?

Mr. CHOPRA. We saw in the lead-up to the financial crisis how preemption deleting State law had very negative effects on protecting inside State borders.

It is very common. The DOJ, the FTC, and others regularly partner with State AGs and State agencies. Our statute requires us to coordinate. We have memorandums of understanding (MOUs) with States and others.

Mrs. HOUCHIN. Okay.

Mr. CHOPRA. I think we are trying to do exactly what the law is saying.

Mrs. HOUCHIN. Reclaiming my time, first of all, I just want to reiterate that Congress did not authorize the outside use of attorneys general in this instance.

Does the CFPB—

Mr. CHOPRA. Congress explicitly authorized—

Mrs. HOUCHIN. Excuse me. Does the CFPB engage in forum analysis when determining whether to institute an action in its own capacity or to engage a State AG?

Mr. CHOPRA. We look at enforcement actions based on the company’s place of business, and whether we have any co-plaintiffs. We do exactly, I think, what every other law enforcement agency does.

Mrs. HOUCHIN. The result of this interpretive rule, in some instances, has resulted in competing enforcement actions between the State’s actions and the CFPB’s actions.

The Administrative Procedure Act provides interested parties with notice and an opportunity to be heard and the right to seek judicial review of agency action. Why did you choose to issue an interpretive rule regarding actions by State AGs as opposed to engaging in a notice-and-comment rulemaking?

Mr. CHOPRA. It restated what the law already authorized, so this was not creating any new obligations on the public.

Mrs. HOUCHIN. Okay.

Mr. CHOPRA. But we were trying to be very clear that the CFPB does not have a monopoly on consumer protection—

Mrs. HOUCHIN. Director Chopra, I have one last question for you.

Mr. CHOPRA. Sure.

Mrs. HOUCHIN. By using the mechanism of an interpretive rule, haven’t you avoided the requirements and the procedural protections of the Administrative Procedure Act?

Mr. CHOPRA. No.

Mrs. HOUCHIN. I strongly disagree. I do want to say that members of this committee, including myself, will continue to provide oversight to the Bureau and ensure that we make the Bureau responsive to the American people.

My time has expired.

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

Mr. OGLES. Madam Chairwoman, thank you. Mr. Chopra, we are in the home stretch.

The data breach has been mentioned, and we have seen breaches across the industry, in both the private and the public sector. So obviously, I think we all have concerns there.

The CFPB's small business lending final rule states that covered financial institutions are required to collect and report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities.

As it pertains to the data on women and minorities, what is the purpose of collecting that data?

Mr. CHOPRA. That is in the statute. The statute requires the collection for minority-owned businesses, and women-owned businesses.

I believe the statute has a number of objectives, including things related to community development, fair lending, and more, but that was not something that the CFPB decided. We were under court order to implement that.

Mr. OGLES. Okay. Now, when it comes to that—and understanding that some of this was perhaps pushed on the agency, correct—do you think part of the intent is to prohibit or track discrimination but also fraud and abuse?

Mr. CHOPRA. I think the primary purpose is like the Home Mortgage Disclosure Act, which collects similar data for mortgages, and it is used, again, for community development, and data analysis, but also to detect and deter potential discrimination.

Mr. OGLES. Part of that is identification, and I will borrow from Senator Blackburn. As we are collecting this data, definitions are important. So, from the agency's perspective, what is a woman?

Mr. CHOPRA. The way in which the rule is specified is that a borrower—we even published a sample form—can self-identify as to—there will be options for race and ethnicity. It is really up to them. They don't have to provide that information.

Mr. OGLES. Sure.

Mr. CHOPRA. There is a specific statutory right to refusal.

Mr. OGLES. You explained the process, but if data collection is important, and it is a data point that is going to be used and verified, whether it is in statute or not in statute, what, from the agency's perspective, what is a woman, and how do you define it?

Mr. CHOPRA. We don't get into those questions.

Mr. OGLES. Then, why would you need that data?

Mr. CHOPRA. The agency was sued for not implementing—

Mr. OGLES. Have you come back to this committee, to Congress, and said, Hey, we need some relief here, because this data point, this data that we perhaps shouldn't house, nor is it relevant to our core mission, have you made that request?

Mr. CHOPRA. Fair lending is a part of our mission. The Equal Credit Opportunity Act—

Mr. OGLES. But the data point that you have yet to define doesn't seem to be germane to—

Mr. CHOPRA. The way it is defined is that a borrower gets to self-select. We receive comments in the—the proposal was proposed before I was in office.

Mr. OGLES. I understand that, but you are explaining the process of someone checking boxes. Again, you are collecting data. It would seem——

Mr. CHOPRA. We are actually reporting it.

Mr. OGLES. —that that data is not relevant to your core mission.

Mr. CHOPRA. I don't agree.

Mr. OGLES. I understand fair lending is part of your core mission, but if you can't even define the definition of a woman, it is a data point that you can't use in any analysis that you might otherwise make.

And so, you should be coming back and saying, we need relief from this, this, this in particular.

Mr. CHOPRA. To be honest, that data is important for fair lending, and we try to put together and implement the statutory directives as faithfully as we could. I do think having knowledge on women-owned businesses which did have challenges——

Mr. OGLES. Women-owned businesses is an important data point, just as you just said. So, what is a woman again, please?

Mr. CHOPRA. I don't really know what you are suggesting here, but the idea is that people are able——

Mr. OGLES. The idea is that——

Mr. CHOPRA. —to self-identify what——

Mr. OGLES. I will reclaim my time. In subcommittee, and when we were talking about the CFPB, it was one of those moments. And this is nothing personal against you, you were not the person who put this in place, so please don't take this personally.

Is the core mission of your agency, as has previously been done by other agencies, and if there was an agency that should be disbanded, I will paraphrase Hamlet, "To be or not to be, yours should die a painful death," because I do believe it is irrelevant. I do believe you have gone outside your core mission and you have abused the authority that otherwise Congress should take back from you.

And I would argue in agreement with Mr. Donalds that you, your agency—not you, sir, but your agency is unconstitutional.

With that, Madam Chairwoman, I yield back.

Mr. CHOPRA. There was a financial crisis——

Mrs. HOUCHIN. The gentleman's time has expired. The gentleman yields back.

The Chair now recognizes Ms. Garcia.

Ms. GARCIA. Madam Chairwoman, I have a unanimous consent request. I would like to submit two documents from the Consumer Bankers Association, which clearly requests the CFPB to not only issue rules but also issue guidance to help industry comply with the law.

This seems to contradict what many of my colleagues on the other side of the aisle are claiming, that the CFPB should not be issuing guidance. In fact, the document reads, the case for regulation through rulemaking——

Mrs. HOUCHIN. Without objection, it is so ordered.

Ms. GARCIA. Thank you.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

I ask you, Director Chopra, to please respond no later than July 14, 2023.

This hearing is adjourned.

[Whereupon, at 1:57 p.m., the hearing was adjourned.]



# **A P P E N D I X**

June 14, 2023

**PREPARED STATEMENT OF  
ROHIT CHOPRA  
DIRECTOR  
CONSUMER FINANCIAL PROTECTION BUREAU  
  
BEFORE THE  
COMMITTEE ON FINANCIAL SERVICES  
UNITED STATES HOUSE OF REPRESENTATIVES  
  
JUNE 14, 2023**

Statement Required by 12 U.S.C. §5492

The views expressed herein are those of the Director and do not necessarily reflect the views of the Board of Governors of the Federal Reserve System or the President.



Chairman McHenry, Ranking Member Waters, and Members of the Committee, thank you for holding this hearing on the Consumer Financial Protection Bureau's (CFPB) submission of its Semiannual Report to Congress.

I am pleased to report that the CFPB continues to deliver tangible results for the public today, ensuring that consumers are protected, while also preparing for the future as tech giants and artificial intelligence reshape the industry. I will share a few observations about the state of the American consumer, as well as some highlights of CFPB's work.

American families continue to benefit from a resilient labor market. Consumer spending continues to be robust, and borrowing has accelerated. Inflation in key categories, such as vehicles, has contributed to rising levels of household debt. Americans now owe \$17 trillion in household debt, including mortgages, student loans, auto loans, and credit cards. Interest rates are substantially higher than they were a few years ago, and some families are paying much more on their credit cards and other loans. Overall, current indicators of distress on consumer credit remain muted, though there are modest signs of increased delinquency. We will continue monitoring the impact of changes in interest rates and home prices closely, as well as other changes that might impact large segments of the population, such as upcoming resumption of federal student loan payments.

The CFPB continues to be on high alert for shocks to the system that might unsettle household financial stability. The failures of Silicon Valley Bank, Signature Bank, and First Republic Bank highlighted significant vulnerabilities in the banking system, and regulators took a series of extraordinary actions that limited the fallout to the broader economy. But it is clear policymakers will need to take steps to avoid the need for emergency measures in the future.

With respect to the CFPB's mandated objectives, we have made major progress to propose, finalize, or implement required rules on credit reporting for survivors of human trafficking, small business lending data collection, PACE lending, the LIBOR transition, and more. We're reviewing old rules to find opportunities to simplify and future-proof them. We've built on the work of my predecessor to publish more guidance and advisory opinions that especially help small and nascent firms looking to develop new products and services.

We are focusing more heavily on supervision of nonbank financial firms, which have not always been subjected to similar oversight as chartered banks and credit unions. We've activated unused authorities to limit regulatory arbitrage by nonbank firms.

We have shifted the focus of our enforcement program away from targeting small businesses and putting more attention on repeat offenders. Since then, we've recovered \$4.6 billion in refunds and penalties against violators.

We are handling an average of 10,000 consumer complaints each week and obtaining successful resolutions for individuals outside of formal legal proceedings.

Equally important is our work to address how technology is transforming financial services. The United States has a choice: will we harness technology to maintain relationship banking, drive competition, and protect privacy? Or will we continue our lurch toward a system marked by surveillance that is fully automated and controlled by a handful of firms?

The CFPB is working to ensure broad benefits for consumers and businesses alike when it comes to technological advances. One of our most important initiatives is to accelerate the shift in the United States to open banking, allowing consumers to more easily switch and gain access to new products, while protecting personal financial data.

The CFPB has been leading a number of efforts on artificial intelligence, and we're working to bring on more technical talent inside the agency. We're taking steps to guard against algorithmic bias across credit markets, and we're working to ensure that data brokers respect longstanding laws on the books. The work of the CFPB in today's digital economy is more relevant than ever.

Thank you for the opportunity to appear before you. I look forward to responding to your questions.



June 12, 2023

Chairman Patrick McHenry  
House Financial Services Committee  
Washington, D.C. 20510

Ranking Member Maxine Waters  
House Financial Services Committee  
Washington, D.C. 20510

Dear Chairman McHenry and Ranking Member Waters:

On behalf of ACA International, the Association of Credit and Collection Professionals (“ACA” or “Association”), I am writing regarding your hearing concerning the Semiannual Report of the Consumer Financial Protection Bureau. ACA represents approximately 1,700 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates, in an industry that employs more than 125,000 people worldwide. Most ACA member debt collection companies, however, are small businesses. The debt collection workforce is ethnically diverse and 70% of employees are women.

**Background about ACA International**

ACA members play a critical role in protecting consumers and providing liquidity to lenders. ACA members work with consumers to resolve their debts, which in turn saves every American household, on average, more than \$700, year after year. The accounts receivable management (“ARM”) industry is instrumental in keeping America’s credit-based economy functioning with access to credit at the lowest possible cost. For example, in 2018 the ARM industry returned over \$90 billion to creditors for goods and services they had provided to their customers. And in turn, the ARM industry’s collections benefit all consumers by lowering the costs of goods and services—especially when rising prices are impacting consumers’ quality of life throughout the country.

ACA members also follow comprehensive compliance policies, are diligent about employing strong compliance management systems, and have high ethical standards to ensure consumers are treated fairly and the wide range of federal and state laws that govern collections are followed. The Association contributes to this end goal by providing timely industry-sponsored education as well as compliance certifications. In short, ACA members are committed to assisting consumers as they work together to resolve their financial obligations, all in accord with the Collector’s Pledge that all consumers are treated with dignity and respect.

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) continues to target the work of the ARM industry in several ways. One of the Bureau’s apparent objectives is to completely remove any

reference to outstanding medical debts from all credit reports. This goal, if achieved, will result in negative consequences to consumers and harm medical providers throughout the country.

The CFPB recently announced that it is planning to engage in a rulemaking under the Fair Credit Reporting Act (FCRA) related to medical debt. The CFPB does not have jurisdictional authority over many issues related to medical debt and has limited authority under the FCRA to engage in rulemaking in this area. Yet, it appears adamant to get involved in medical debt issues, including an apparent objective to further the concept of universal health care through the back end of the medical system.

There are also serious concerns about the CFPB's interpretive rule issued last year as an advisory opinion on "junk fees" in the debt collection market. There is an existing judicial precedent that supports the use of these convenience fees, and they are very common in modern payment processing. Yet, the CFPB issued an advisory opinion without first engaging in a transparent and deliberative process with all stakeholders to understand the consumer choice associated with these fees. There was no effort to try to understand the benefits of why these fees are sometimes used in payment processing.

As the ARM industry grapples with this advisory opinion, it is disappointing that the Bureau did not provide a notice and comment period and opportunity for discussion before making these sweeping changes. As further outlined below, the CFPB is also engaging in serious overreach in proposals concerning nonbank registries. It has also deputized state attorneys general to go after financial service providers, often seeking to double team financial companies and exhaust resources through joint examination processes.

Accordingly, ACA urges Congress to consider the following concerns.

#### **Areas of CFPB Overreach**

##### *1. CFPB Actions Surrounding Medical Debt*

Director Chopra and other leaders in the CFPB have delivered public remarks that appear to encourage nationwide credit reporting agencies ("NCRAs") to not report unpaid medical debt. In March 2022, the three NCRAs announced significant changes to the medical debt credit reporting process. They announced that, effective July 1, 2022, paid medical debt will no longer be included on consumer credit reports. In addition, the time period before unpaid medical debt appears on a consumer's credit report will be increased from six months to one year. In the first half of 2023, Equifax, Experian, and TransUnion started to no longer include medical debt collections under at least \$500 on credit reports. Compounding this explosive action, in August 2022, VantageScore announced that it will exclude all medical billing that is sent to collections from its credit scoring model, making no differentiation between medically necessary *and* voluntary medical debt.

In the wake of these actions, the CFPB has taken credit for the NCRAs' behavior in public forums such as previous congressional testimony. ACA members have already seen evidence of their clients in the medical space suffering because of the message behind the message telling consumers that they do not have to pay their medical debt and will face no consequences if they do not. Last month alone, ACA members working for medical providers throughout the country reported plummeting numbers of consumers making payments, despite that many of them are insured and have the means to do so.

The CFPB also recently announced that it will begin the rulemaking process under the FCRA to issue rules related to medical debt. Please see the attached letter that explains why the CFPB does not have the legal authority to do this and other related concerns about the impact this will have on medical providers and the larger economy.<sup>1</sup>

## *II. The CFPB's Actions Surrounding Nonbank Registries Run Counter to the Law*

ACA has outlined in detail to the CFPB concerns about why its actions to require certain nonbank covered person entities to have registries is constitutionally flawed. One is related to final public orders “repeat offenders.”<sup>2</sup> The other registry impacts entities that use form contracts and arbitration agreements.<sup>3</sup> As outlined in ACA’s letters included in the footnote, there are several legal and policy reasons why these registries should not be made final. Much of the CFPB’s analysis in these proposals is frankly inaccurate and paints the picture of flawed ideological views that disfavor various industries, including the debt collection industry. Attempting to create new policies by relying on outdated, non-quantifiable, and in some cases just plain made-up information is harmful to consumers. Ignoring the will of Congress and its actions to strike down CFPB rules related to arbitration under the Congressional Review Act also raises separation of powers concerns. As a federal agency that is tasked with protecting consumers, the CFPB must do a better job to understand the laws and regulations in place for the debt collection industry and have a better understanding of its work for creditors throughout the country before making broad assumptions and accusations about the use of consumer contracts and “repeat offenders.”

## *III. CFPB and White House Focus on Junk Fees is Flawed*

In July 2022, the CFPB issued an Advisory Opinion on Debt Collectors’ Collection of Pay-to-Pay Fees (the “Convenience Fee Rule”), which interprets language in the Fair Debt Collection Practices Act (“FDCPA”) to only allow debt collectors to charge credit card convenience fees in those situations when state law explicitly authorizes the collection of such fees. CFPB Compliance Bulletin 2017-01, 82 FR 35936, 35936 (Aug. 2, 2017).<sup>4</sup> By promulgating the Convenience Fee Rule, the CFPB is attempting to subvert the nationwide debate over FDCPA text in favor of its preferred policy. Most troubling, it is demanding this change in law with a mere “interpretive rule,” which did not include a notice and comment rulemaking.

Section 808(1) of the FDCPA prohibits debt collectors from collecting “any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f (2022). Multiple courts have grappled with whether a credit card convenience fee elected by the borrower to cover the debt collector’s credit card merchant interchange fees (which are set by a Federal Reserve regulation) is permissible under this FDCPA provision.

<sup>1</sup> Letter to CFPB in Response to NCLC petition <https://policy.makers.acainternational.org/wp-content/uploads/2022/11/aca-response-to-nclc-petition-cfpb-november2022-final.pdf> and Amicus Brief in *CDIA v. Frey*, available at <https://policy.makers.acainternational.org/wp-content/uploads/2022/12/cdia-aca-amicus-brief.pdf>.

<sup>2</sup> Comments of ACA International available at <https://policy.makers.acainternational.org/wp-content/uploads/2023/03/aca-comments-cfpb-nonbank-registry-march2023.pdf>.

<sup>3</sup> Comments of ACA International available at <https://policy.makers.acainternational.org/wp-content/uploads/2023/03/aca-comments-cfpb-nonbank-contracts-march2023.pdf>.

<sup>4</sup> Debt Collection Practices (Regulation F); Pay-to-Pay Fees, CFPB, [https://files.consumerfinance.gov/f/documents/cfpb\\_convenience-fees\\_advisory-opinion\\_2022-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf)

The CFPB's reading since 2017 has vacillated. In a 2017 Compliance Bulletin, the Bureau said that a fee was only "permitted by law" if it was expressly *authorized* by state law—the fact that a fee is not *prohibited* is not enough to save it from Section 808(1) or Reg. F. CFPB, CFPB Compliance Bulletin 2017-01, 82 FR 35936, 35936 (Aug. 2, 2017). Conversely, when it promulgated Regulation F, it "generally mirror[ed] the statute" on the topic of charges permitted by law. 85 FR 76734, 76833 (2022). As relevant here, Regulation F provides that "[a] debt collector must not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 12 CFR § 1006.22(b) (2022).

In contrast, the Bureau's 2022 "advisory opinion" reverted to its 2017 position. The 2022 advisory opinion in effect rewrote the Regulation F provision to swap "permitted by law" with "expressly authorized by law."

When the CFPB moves the goal post on industry without following the notice and comment process, there will be unintended consequences. For example, some consumers for a variety of reasons choose to pay their bills with a credit card even though a fee is associated with those payments. However, those payment methods can save consumers time and potentially other costs (such as ordering new checks). The federal government should not eliminate consumers' choices without the material data and information to make those decisions. It also should not be making arbitrary decisions to classify certain financial services fees as "junk" based on ideological views.

#### *IV. Coordination with Attorneys General Should be Fair and Reasonable*

Last year, the CFPB issued an interpretative rule "to provide further clarity regarding the scope of state enforcement." According to the interpretive rule, Section 1042 of the Consumer Financial Protection Act ("CFPA") allows the CFPB to authorize state attorneys general to independently enforce federal consumer financial laws, regulations, and Bureau consent orders. The message the CFPB has clearly been sending, and actions it has taken, have resulted in numerous instances of duplicative actions from the Bureau and state attorneys general. Members of Congress recently pointed out that, "It is clear that state attorneys general may enforce the CFPA in cases where the CFPB has not. But the statute does not allow for a state attorney general to become a party to an existing CFPB enforcement action. It is therefore inappropriate for the CFPB to recruit a state attorney general that is not otherwise investigating a company to pursue enforcement as a means of intimidation.

When bad actors are engaging in abusive behavior, ACA supports targeted efforts to eliminate illegal activity. However, seeking to intimidate or burden legitimate businesses by engaging in duplicative enforcement with the states is not a good use of anyone's resources, and the costs are ultimately passed on to consumers. When businesses are spending time dealing with duplicative supervision or enforcement actions, they are not innovating and focusing on solving consumers' problems. Congress created the CFPB to protect consumers, not to rally states to work in concert with them to target certain disfavored industries or businesses.

Thank you for your attention to the concerns of the ARM industry. Please let me know if you have any questions.

A handwritten signature in black ink, appearing to read "Scott Purcell". The signature is fluid and cursive, with the first name "Scott" written in a smaller, more compact script than the last name "Purcell", which features larger, more prominent loops.

Scott Purcell  
Chief Executive Officer  
ACA International



PATRICK McHENRY, NC  
CHAIRMAN



MAXINE WATERS, CA  
RANKING MEMBER

United States House of Representatives  
One Hundred Eighteenth Congress  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

June 14, 2023

The Honorable Rohit Chopra  
Director  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, D.C. 20552

Dear Director Chopra:

We write to request information regarding the Consumer Financial Protection Bureau's (CFPB) responsiveness to public requests under the Freedom of Information Act (FOIA). It has come to the Committee's attention that the CFPB may not be complying with the timelines prescribed by statute and not providing responsive information to public requests.

As you know, the FOIA enables members of the public to request records from government agencies. The FOIA provides that when an agency receives a proper request, it "must determine within twenty [working] days . . . whether to comply with such request."<sup>1</sup> The CFPB's website further states that it is the goal of the CFPB "to respond within the time frame outlined in the Freedom of Information Act," however, the CFPB's ability to meet this goal may vary with the complexity of the request.<sup>2</sup> While FOIA allows an extension of the twenty-day time limit in "unusual circumstances,"<sup>3</sup> timely and responsive production of agency information is crucial an open and transparent government.

The FOIA permits agencies to toll this twenty-day time period under two circumstances: (1) to allow time for the agency to obtain information from the requester; and (2) as "necessary" to clarify fee-related issues with the requester.<sup>4</sup> Tolling of the twenty-day period limited to situations where the agency is awaiting information that it has "reasonably requested" from the FOIA requester.<sup>5</sup>

<sup>1</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>2</sup> FOIA FAQs, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/foia-requests/faqs/>.

<sup>3</sup> 15 U.S.C. § 552(a)(6)(B)(i); *See* *CREW v. FEC*, 711 F.3d 180, 189 (D.C. Cir. 2013) (noting that agencies can extend twenty-working-day timeline to thirty working days if unusual circumstances delay ability to search for, collect, examine, and consult regarding responsive documents).

<sup>4</sup> 5 U.S.C. § 552(a)(6)(A)(ii).

<sup>5</sup> *Id.* *See* OIP Guidance: New Limitations on Tolling the FOIA's Response Time (posted 11/18/2008) (advising that, if contacting requester for non-fee-related information more than one time will facilitate processing of request, agency is free to do so, but clock will continue to run); *see also* OIP Guidance: The Importance of Good Communication with FOIA Requesters (posted 3/1/2010) (noting that agencies should work "in a spirit of cooperation" with requesters and "[u]nnecessary bureaucratic hurdles have no place in 'new era of open Government'").

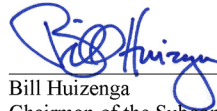
It is concerning to receive notice that the CFPB is not complying with the timelines outlined in FOIA and that it does not provide responsive information when the CFPB does provide a response. It is our understanding that in some cases the CFPB has taken nearly a year to respond after an original FOIA request was made. When the CFPB does respond, it has redacted virtually all material information that was requested. The CFPB has also deemed several trade associations who are acting on behalf of their members as commercial requestors, meaning they are required to pay significant fees to receive redacted documents. This practice of unnecessary redaction and unresponsive behavior is impeding the constitutional rights of the public to redress grievances with the unaccountable CFPB. Furthermore, the FOIA reports and logs on the CFPB website are severely outdated and do not include the number of requests made of the CFPB, creating an additional lack of transparency for the public.

To assist the Committee in understanding the CFPB's approach to responding to FOIA requests, please provide answers to the following:

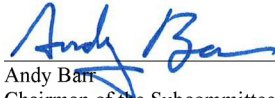
1. A full and accurate list of all FOIA requests made since January 2022 and their status.
2. A list of all requests that were not completed in the timeline outlined in FOIA.
3. Information about how the decision is made to redact requested information.

Please provide your response as soon as possible, but no later than June 30, 2023. Contact Michael Case of the Committee's Majority Staff at [michael.case@mail.house.gov](mailto:michael.case@mail.house.gov) with any questions regarding this request. Thank you for your attention to this important matter.

Sincerely,



Bill Huizenga  
Chairman of the Subcommittee on  
Oversight and Investigations  
House Committee on Financial Services



Andy Barr  
Chairman of the Subcommittee on  
Financial Institutions and Monetary Policy  
House Committee on Financial Services



June 8, 2023

The Honorable Patrick McHenry  
Chairman  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
House Committee on Financial Services  
4340 O'Neill House Office Building  
Washington, D.C. 20515

Dear Chairman McHenry and Ranking Member Waters:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled "The Semi-Annual Report of the Bureau of Consumer Financial Protection." We appreciate the committee's continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of 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.

The CFPB was created in 2011 by the Dodd-Frank Act and has seen no significant changes to its structure since it became operational. Since its inception, the Bureau has been a political lightning rod, instead of a steady and consistent voice for consumer protection regulation expected from a world class regulator. Recent actions taken by the Bureau have established new regulatory requirements for banks outside of the rulemaking process required by the Administrative Procedure Act, and, under the current leadership, the Bureau seeks minimal input from the industry it is responsible for overseeing. This is in stark contrast to the open dialogue that the banking industry experienced with multiple previous CFPB Directors, regardless of party affiliation. Furthermore, the current Director's nearly constant and public attacks on banks erode consumer confidence in the banking system and undermine efforts to bring more consumers into highly regulated and time-tested depository intuitions.

In this letter, we offer legislative and regulatory suggestions to lawmakers and the Bureau for the purpose of ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals. Topics discussed include: (1) credit card late fees, (2) Dodd-Frank Section 1071 implementation, (3) needed changes to the Bureau's UDAAP authority, and (4) structural reforms to the Bureau.

#### Credit Card Late Fees

On February 1, 2023, the CFPB announced a Notice of Proposed Rulemaking (NPRM) on credit card late fees that would drastically alter the credit card late fees landscape. Comments were due on May 3, 2023. This NPRM is part of the Biden Administration's overarching campaign against "junk fees," which seeks to reduce fees in several industries, including but not limited to hotel and lodging, transportation, and entertainment, and received national recognition in the President's State of the Union Address.

Under current Federal Reserve regulations, (1) the credit card late fee safe harbor is \$30 for the first late payment and \$41 for a subsequent late payment, (2) these safe harbor amounts are adjusted

Page 1 of 4

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annually for inflation, and (3) late fees cannot be more than 100% of the required minimum payment. The NPRM proposes to (1) reduce the safe harbor amount to \$8, (2) eliminate the annual inflation adjustment, and (3) cap late fees at 25% of the required minimum payment.

As proposed, this rule would have significant negative impacts on both credit card customers and issuers. The Bureau claims that this rule could help some credit card customers, but the proposal directly points to the Bureau's lack of data analysis needed to truly understand its consumer impact. **The Bureau acknowledged that cardholders who never pay late— which the CFPB's own data indicates is 74 percent of all Americans with credit cards—<sup>1</sup> will not benefit from the reduced fees and could experience "...higher maintenance fees, lower rewards, or higher interest on interest-paying accounts," and increased costs could completely negate any benefits.<sup>2</sup> Banks are required by their prudential regulators to manage and offset credit risk, and a reduction of the ability for financial institutions to recoup costs would result in a tightening of credit availability for some consumers.**

Additionally, **the proposal would reduce competition in the credit card marketplace by forcing some card issuers to exit the market entirely because they will be unable to cover the costs associated with funding card operations. Lowering the safe harbor would also provide a weaker or nonexistent deterrent effect,** likely resulting in a greater share of late-paying and delinquent accounts, which may ultimately cause more consumers who have delinquent accounts to be reported to credit bureaus, leading to lower credit scores.

Aside from the deeply flawed policies in the proposed rule, it is also procedurally deficient. The CFPB did not conduct a thorough analysis of the available economic literature on the effects of late fees, and the analysis that the CFPB did perform was not done in a transparent and consistent manner. The Bureau's flawed assumptions and deficient analysis have resulted in incorrect conclusions about the benefits and harms to consumers, as well as the costs issuers face in the marketplace. Finally, a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel is required when a rulemaking will have a significant economic impact on a substantial number of small entities. CBA and other trades stated in their joint trades response to the ANPR on credit card late fees that a SBREFA panel should be required because "[o]f the approximately 824 credit card-issuing banks, more than half (452) have assets less than \$750 million, and of the 3,172 credit card-issuing credit unions, nearly 85 percent (2,682) have assets less than \$750 million."<sup>3</sup> Despite this, the Bureau has failed to hold a SBREFA panel.

#### Dodd-Frank Section 1071 Implementation

On March 30, 2023, the CFPB released its long-awaited final rule implementing Section 1071 of the Dodd-Frank Act.<sup>4</sup> Section 1071 requires small business lenders to compile, maintain, and report information regarding loan applications made by woman- and minority-owned small businesses, with the goal of expanding access to credit in underserved communities. Implementation of these requirements is an enormous undertaking, so much so that some lenders may choose to terminate

<sup>1</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf)

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>

<sup>3</sup> <https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-comment-letter-late-fees-anpr>

<sup>4</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/>



their small business lending programs altogether because of the compliance costs.

The most fundamental change that needs to be made to the final rule is an extension of the implementation deadline. The final rule requires larger lenders, defined as originating at least 2,500 small business loans a year, to collect 1071 data starting October 1, 2024. **This short, 18 month implementation period is not sufficient and should be extended to 36 months.**

The rule defines a small business as one with annual revenue of less than \$5 million. While a standard definition is positive, this threshold is too high and requires data collection and reporting on businesses that often have an existing relationship with a financial institution and typically do not experience difficulty accessing credit.

CBA appreciates that the final rule provides that this data reporting is optional for small business loan borrowers, and that lenders can rely on the information provided by borrowers (i.e. race and gender) without the need to independently verify it. However, the CFPB has stated that if a lender has a low response rate from its borrowers, that will be considered a sign that the lender could be discouraging borrowers from responding, and could become a supervisory problem. This is a troublesome contradiction and could lead to unnecessary scrutiny of lenders that are complying in good faith.

#### Needed Changes to the Bureau's UDAAP Authority

For decades, Congress has never used the statutory concepts of "unfairness" and "discrimination" interchangeably. Rather, they are distinct, and each has a well-established meaning and scope of application. Congress did not authorize or intend for the CFPB to fill gaps between the clearly articulated boundaries of antidiscrimination statutes with its unfair, deceptive, and abusive acts or practices (UDAAP) authority.

In March 2022, the CFPB ignored required rulemaking procedures and sought to conflate the concepts of unfairness and discrimination by announcing that it will begin examining financial institutions for alleged discriminatory conduct that it deems "unfair" under its UDAAP authority. The CFPB also revised its exam manual to reflect its new view that "unfairness" can be applied to allegedly discriminatory practices. The CFPB's action has created significant uncertainty in the financial services marketplace to the detriment of consumers and banks alike, and it raises profound substantive and procedural legal concerns. The CFPB's actions have left industry with little choice but to pursue legal correction of the issue. In September 2022, CBA and other trades filed a lawsuit challenging the CFPB's position on several grounds, including the agency's lack of statutory authority and failure to follow appropriate rulemaking procedures.<sup>5</sup> This case is on hold pending the Supreme Court's decision in the CFPB funding mechanism case, *Selia Law v. CFPB*.

Given the Bureau's misuse of its UDAAP authority, reforms are needed. CBA calls on Congress to enact due process protections under UDAAP consistent with those adopted by the CFPB in 2020, which were subsequently reversed by the current CFPB Director.<sup>6</sup> These include: (1) not challenging conduct as abusive when the benefits to consumers outweigh the alleged harms, (2) not

<sup>5</sup> <https://www.consumerbankers.com/cba-media-center/media-releases/cba-leading-financial-groups-pursue-legal-action-against-cfpb>

<sup>6</sup> <https://consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>



conflating the concept of abusive with unfair or deceptive, (3) providing regulated entities with an opportunity to cure violations, (4) reiterating that discrimination is not part of UDAP, and (5) seeking monetary relief only when there has been a lack of good faith effort to comply with the law (not to impede the Bureau's ability to seek restitution for consumers who have experienced actual harm).

#### Structural CFPB Reforms

CBA appreciates the House Financial Services Committee's actions on meaningful reforms to the CFPB. In April, the committee passed H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, which includes four bills that CBA supports: (1) changing the Bureau's leadership structure from a single Director to a bipartisan commission, (2) placing the Bureau under the annual Congressional appropriations process, (3) requiring robust cost-benefit analysis with rulemakings, and (4) establishing an independent CFPB Inspector General. These reforms will bring greater accountability and transparency to the Bureau and will ensure proper checks and balances are applied to a regulator with such a broad scope and influence over the financial services marketplace.

#### Conclusion

The consumer financial services marketplace thrives when the regulatory agencies overseeing the institutions that provide products and services to consumers and small businesses issue rules and guidance that are developed through a transparent and consistent regulatory process. Further, consumers are only protected when financial products and services are subject to consistent consumer protections, not changes to regulation due to one particular ideological view. CBA stands ready to work with Congress and the CFPB to implement legislative and regulatory improvements to the Bureau to achieve these goals, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Johnson".

Lindsey D. Johnson  
President and CEO  
Consumer Bankers Association



Jim Nussle  
President & CEO

Phone: 202-508-6745  
jnussle@cuna.coop

99 M Street SE  
Suite 300  
Washington, DC 20003-3799

June 14, 2023

The Honorable Patrick McHenry  
Chairman  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters:

On behalf of the Credit Union National Association (CUNA), I am writing regarding the Committee's hearing entitled, *The Semi-Annual Report of the Bureau of Consumer Financial Protection*. CUNA represents America's credit unions and their more than 135 million members.

Credit unions are the original consumer financial protectors. Because of the not-for-profit, member-owned cooperative structure, credit unions are not subject to the same profit-first motives that have become characteristic of for-profit financial services providers. This distinction, combined with a track-record of providing consumer-friendly financial services, is a key reason that rules and regulations should be tailored so they are not overly burdensome on credit unions.

Unfortunately, the Consumer Financial Protection Bureau (CFPB or Bureau) has missed many opportunities to leverage credit unions' mission and history to the benefit of consumers and finalized regulations that ultimately hampered credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activity the CFPB's rules were designed to curtail. Under Director Rohit Chopra's leadership, the Bureau has yet again missed numerous opportunities to recalibrate its approach to regulation in a manner that fulfills its consumer protection mission without impeding consumers' access to credit or safe and affordable financial products and services.

Credit unions' commitment to member service is a key reason why credit union members are among the most financially healthy in America and agree that their credit union cares about them. According to CUNA's 2023 National Voter Poll, consumers who use credit unions are 60 percent more likely than their counterparts who do not use credit unions to respond "very positively" to the fact that they "can trust" their financial institution. Further, credit union members are 50 percent more likely than nonmembers to respond "very positively" to the fact that their institution "cares about" their financial well-being and are 60% more likely to say their institution "has positively impacted" their financial well-being. This sentiment reflects exactly the type of relationship banking that Director Rohit Chopra has stated he wanted to become commonplace in the consumer financial services markets.

[cuna.org](http://cuna.org)



We would like to take this opportunity to highlight for Congress several key principles we believe should guide any CFPB action. These principles were developed in consultation with our member credit unions.

**Use the Bureau's authority in a manner consistent with the original purpose of the CFPB and the spirit of the Dodd-Frank Act**

Congress created the CFPB specifically to address the irresponsible lending and banking practices of large too- big-to-fail banks and unregulated sectors of the consumer financial services marketplace. These entities are where the Bureau should dedicate most of its time and resources. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders subject to federal prudential regulation, then it will have more available to focus on the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections.

Credit unions remain one of the most heavily regulated entities in the country, even though they did not engage in the anti-consumer practices that caused the financial crisis. Despite our pro-consumer history, credit unions have repeatedly been lumped in with others through the promulgation of overly broad rulemakings, increasing compliance costs without a material benefit for consumers. In fact, the increasing cost and complexity of regulatory compliance remains a contributing factor in the significant consolidation taking place among community-based financial institutions. Ultimately, consumers lose when fewer choices are in the marketplace, resulting in a higher cost of financial services and reduced access to local community-based providers.

**Appropriately tailor regulations to reduce disruption for community-based financial institutions**

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act) to authorize the Bureau to tailor its rules to avoid adverse outcomes for consumers and regulated entities. Congress deliberately provided this express authority in Section 1022 of the Dodd-Frank Act:

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons**, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title (Emphasis added.)*

These words are unambiguous, and Congress clearly granted the Bureau broad authority to tailor regulations in a manner consistent with the best interest of consumers. We appreciate that the Bureau has used its Section 1022 authority in some rulemakings to create exemptions based on asset size, loan volume, the merits of a specific product, or other factors. However, we believe the Bureau should use its exemption authority more consistently and to greater effect.

Credit unions and Credit Union Service Organizations (CUSOs) should be considered for and receive appropriate exemptions from some of the Bureau's regulatory requirements. It is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to carefully consider the downstream impact of its rules and how those rules – without appropriate tailoring – could negatively affect the ability of consumers to access financial products and services from reputable, community-based financial institutions.



**Be consistent and transparent during the development and implementation of rulemakings and supervision and enforcement policies**

The current CFPB structure vests substantial authority in the Director. It is critical for the CFPB Director to avoid disrupting the efficient functioning of markets due to unnecessary secrecy, surprise regulation, “gotcha” enforcement, or the pursuit of political goals. Often, it is consumers themselves that are negatively affected by opaque, abrupt, or extreme changes in policy from one administration to the next.

We believe the CFPB should emphasize regular and open communication with financial services providers and be transparent during the policymaking process. An open communication posture would generate goodwill with industry and further both consumer protections and proper due process. To that end, CUNA is ready and willing to assist in communicating and amplifying any critical information from the Bureau to credit unions and their members. We are also at the Bureau’s disposal to solicit feedback from our members, as stakeholder input is critical to an efficient and effective regulatory environment.

Relatedly, we encourage the Bureau to regularly conduct reviews of its regulations in the interest of streamlining and eliminating outdated or superfluous requirements, increasing the efficiency of rules, or to provide exemptions where appropriate. However, it is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce complexity—always comes with a cost. For most Bureau rulemakings, the Dodd- Frank Act and the Regulatory Flexibility Act provide specified review processes intended to assist in identifying necessary or appropriate regulatory changes after the rule has been “in the field” for a reasonable time period. Therefore, the Bureau should reserve the adoption of substantial changes to rules or policies for cases where there are compelling data-based reasons for doing so or an imminent need that addresses a specified consumer impact.

**Consult with NCUA during the policymaking process and avoid implementing duplicative or contradictory policies**

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when policy decisions affecting them are made by a regulatory agency that has significant familiarity with the characteristics that differentiate them from other financial services providers. The National Credit Union Administration (NCUA or agency), due to its half-century of experience regulating credit unions, has a special understanding of the credit union model as well as the environmental and operational challenges credit unions face daily. For that reason, the CFPB should work more closely with the agency throughout the policymaking process and avoid implementing policies that conflict with or are duplicative of those issued by the agency, especially regarding examinations.

**Provide certainty to regulated entities by adopting clear “rules of the road” and prioritizing internal consistency**

The past decade has seen a massive increase in new consumer financial services regulations. This environment is particularly burdensome for credit unions which, unlike big banks, do not have scores of legal experts in house to assist with compliance questions. Given the heightened nature of the regulatory landscape, it is important that the Bureau provide certainty to regulated entities through the adoption of clear “rules of the road,” internal consistency from the Director’s office down to the field examiners, and robust guidance and implementation support.

In that spirit, we encourage the Bureau to provide helpful compliance resources, especially interactive webinars on final rules and Small Entity Compliance Guides, that help stakeholders understand regulatory expectations. We also encourage the Bureau to be proactive and continue providing compliance resources after final action as questions in need of clarification are identified. For example, the Bureau’s recent implementation of an Advisory Opinion program is a positive development and should be maintained.

Regarding clarity, we oppose the Bureau adopting a “regulation by enforcement” approach to policymaking. We believe if the Bureau wants to make actionable policy, then it should consider proposing clear regulations pursuant to the Administrative Procedure Act (APA) process instead of using its enforcement authority against financial institutions expecting the subsequent consent order to serve as a means for others to determine what practices are in violation of the law. We also caution against an unproductive and inflammatory “regulation by press release” approach to governance characterized by clearly politicized press releases intended to serve as a bully pulpit.

**Conduct thorough research prior to the adoption of a new rule or policy and base policy decisions on relevant data**

The Bureau prides itself on being a modern, data-driven regulator. Former Director Cordray often referred to the data beneath consumer complaints as the Bureau’s “compass,” playing a key role in identifying and prioritizing the Bureau’s actions, including in the realm of rulemakings. However, data for data’s sake is insufficient, and it is critical that the Bureau’s policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it has been common for a CFPB rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. We challenge the CFPB to set a new standard for evidence-based rulemaking decisions and processes.

It is critical that the Bureau base its decisions on data specific to the entities it intends to regulate through an action. For example, relying on bank data to justify a rulemaking that also covers credit unions without evaluating credit union-specific data is misguided. Almost equally critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally-identifiable information—the Bureau relies on as a foundation of its rulemakings.

### **Ensure continued access to credit from reputable providers**

Credit unions often provide the safest and most affordable loan options for consumers in need of credit. When developing rulemakings overseeing lending, the Bureau should carefully evaluate and consider the impact a policy decision may have on the availability of credit for consumers, especially when the action is likely to impact the cost of credit. For example, CUNA called for the Bureau's rule governing short-term, small dollar lending to be meaningfully tailored to address predatory payday lending while not inhibiting credit unions from offering responsible credit products to members in need. It is important that the CFPB strike an appropriate balance between its consumer protection mission and the availability of products and services. This balance is critical whether the product is a mortgage, credit card, or emergency loan. Many consumers rely on access to credit to manage their everyday finances and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

### **Encourage and support innovation in the consumer financial services marketplace**

Innovation, through technology and other creative solutions, has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. For this reason, CUNA supports the CFPB's recent efforts to revitalize its approach to innovation through the adoption of mechanisms like the revised Trial Disclosure Program, the No-Action Letter Policy, and the regulatory "sandbox" policy. These policies should be maintained and, where appropriate, expanded upon. However, the Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to another business model. Ultimately, credit unions must be given equal access to innovation policies and programs.

### Additional Issues of Concern for Credit Unions

#### Fees

The cooperative structure of credit unions ensures earnings – including fee income – are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. In fact, credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial service providers have with their customers.

The CFPB and the Administration have repeatedly classified a broad range of ordinary fees in the consumer financial services market as so-called “junk fees” obscuring the true cost of financial services.<sup>1</sup> In the press release for this proposal, Director Chopra went so far as to say “[o]ver a decade ago, Congress banned excessive credit card late fees, but companies have exploited a regulatory loophole that has allowed them to escape scrutiny for charging an otherwise illegal junk fee.”<sup>2</sup> We would argue that a legally established safe harbor is not a “regulatory loophole” and this government-wide effort to characterize all fees as “junk fees” appears to be little more than a convenient public relations tactic intended to divert the public’s attention away from the ever-increasing cost of everyday goods and services arising out of an environment of high inflation and other economic pressures. We strongly object to the government’s inflammatory messaging as it is intentionally misleading and clearly wrong-headed.

In multiple press releases, the CFPB has attempted to lump together fees levied in truly opaque markets outside of the Bureau’s jurisdiction with the clearly disclosed, heavily regulated financial institution fees that are incurred in direct response to specific actions (*i.e.*, a late payment). For example, in launching its junk fee initiative the Bureau highlighted that “hotels and concert venues advertise rates, only to add ‘resort fees’ and ‘service fees’ after the fact.”<sup>3</sup> While that may be a true assessment of fees in the entertainment and leisure industries, the Bureau would do itself a service by focusing on the state of the consumer financial services market, where fees are clearly governed by robust disclosure requirements that prevent “surprise” fees after the fact.

It’s especially perplexing that the Bureau would choose to characterize nearly all fees as “hidden” when most of the rules governing bank and credit union fees are either promulgated or administered by the CFPB itself. In particular, Regulation Z specifically requires disclosures, at application or solicitation, outlining the amount of and circumstances resulting in fees for a consumer’s credit card account. Similarly, Regulation E requires disclosures, before account opening, of all fees associated with other consumer accounts. These regulations are actively administered by the Bureau, including the precise scope and timing of the disclosures. These two examples, while not nearly comprehensive, reveal the extensive network of legal protections created precisely to prevent these fees from being “hidden” from consumers, as the Bureau alleges.

America’s credit unions stand as the epitome of consumer protection in practice. As part of our member-owned structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation. This fairness extends to the level of fees charged in exchange for services or as a penalty.

<sup>1</sup> See Consumer Financial Protection Bureau, Junk Fees Landing Page, *available at* <https://www.consumerfinance.gov/rules-policy/junk-fees/>. See also Consumer Financial Protection Bureau, Blog Post, The hidden cost of junk fees (Feb. 2, 2022), *available at* <https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/>. See also Consumer Financial Protection Bureau, Blog Post, As Outstanding Credit Card Debt Hits New High, the CFPB is Focusing on Ways to Increase Competition and Reduce Costs (Apr. 17, 2023), *available at* <https://www.experian.com/blogs/ask-experian/can-my-credit-score-affect-renting/>. See White House (@whitehouse), Instagram, “The Biden-Harris Administration is taking action to get lots of these fees under control!” (the picture shows “Credit Card Late Fee \$31.00 in a list of other “junk fees” Mar. 3, 2023.)

<sup>2</sup> Press Release, Consumer Financial Protection Bureau, CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees (Feb. 1, 2023), *available at* <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.

<sup>3</sup> Press Release, Consumer Financial Protection Bureau, Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees (Jan. 26, 2022), *available at* <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>.

*Regulating New and Emerging Service Providers*

Credit unions are increasingly concerned that unregulated providers are increasingly engaged in financial activities by offering products intended to be glossy, tech-savvy alternatives to traditional loan products. These non-financial institution providers often strive to offer these products without being subject to robust consumer protection laws and regulations in place for banks and credit unions. We believe there is value in the Bureau using its market monitoring authority to further explore these products and the companies that offer them as they begin serving a larger segment of consumers' financing purchases.

While credit unions welcome innovation in the market, we are concerned the exponential growth of alternative financial services products has outpaced prudent regulatory oversight and could ultimately result in consumer harm. In addition, the absence of effective oversight creates an uneven playing field to the material disadvantage of traditional lenders. Credit unions and other well-established financial service providers are heavily regulated for safety and soundness and consumer protection regulatory compliance. Congress and the CFPB should ensure consumer protections always run with a product or service, not with the entity providing the products or service.

*Credit Reporting*

Credit unions strongly believe that an accurate credit reporting system benefits borrowers and lenders alike. Lenders rely on an accurate and complete record of a borrower's credit situation to make underwriting decisions. Legislative or regulatory actions intended to remove or modify certain types of debt from the credit reporting system will do long-term damage to lending and the ability of borrowers to get the loans they need to buy a home, start a small business, or achieve a higher education.

Blanket restrictions on the reporting or consideration of certain debt will prevent lenders from seeing borrowers' complete debt circumstances and cloud lenders' ability to fairly assess borrowers' creditworthiness. An incomplete view of borrowers' credit history reduces lender confidence in credit reports and scores, impacting pricing decisions and credit availability. The borrowers most impacted by the consequences of inaccurate credit reports will be low- and moderate-income borrowers whose financial well-being could benefit the most from access to affordable credit from a credit union.

*All-In Interest Rate Cap*

CUNA strongly opposes proposals that would seek to establish a national "all-in" usury cap applicable to credit unions. Pursuant to the Federal Credit Union Act, federally chartered credit unions already comply with a usury cap administered by the National Credit Union Administration (NCUA or agency) Board. State chartered credit unions comply with the usury laws set by their respective jurisdictions.

Credit unions are often the safest and most affordable options for consumers in need of small dollar credit. In many cases, credit unions' small dollar loans are specifically designed to be a direct response to the harm caused by high-cost payday lenders and intended to put members back on the path to financial health. In fact, these products are often paired with other features intended to ensure the member is being set up to succeed, including – but not limited to – flexible repayment options, financial education resources, savings incentives, and credit counseling. We must caution Congress against establishing rigid restrictions on lending that reduce members' access to sensible loan options from local credit unions.

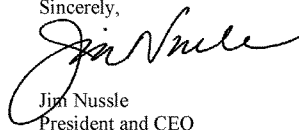
#### Debt Collection

Credit unions urge caution with legislation that would expand the scope of the Fair Debt Collection Practices Act (FDCPA) to cover business loans. Such an expansion could potentially disrupt the management of commercial lending portfolios, increase the cost of and reduce access to credit for small business borrowers. The FDCPA is a significant consumer protection law, but Congress must consider further whether expanding this law to the commercial lending environment, with its specialized products and sophisticated borrowers, is appropriate.

#### **Conclusion**

On behalf of America's credit unions and their more than 135 million members, thank you for holding this important hearing and considering our views.

Sincerely,



Jim Nussle  
President and CEO



July 2, 2018

**Submitted via regulations.gov**

Monica Jackson, Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1700 G Street NW

**Re: Request for Information Regarding Bureau Guidance and Implementation Support**

Dear Ms. Jackson,

The Consumer Bankers Association<sup>1</sup> ("CBA") appreciates the opportunity to comment on the Bureau of Consumer Financial Protection's ("Bureau") guidance and implementation support.<sup>2</sup> CBA's members frequently rely on the Bureau's guidance and implementation support to navigate a complex world of regulations while trying to best serve the financial needs of consumers.

The Bureau recognized the various challenges presented by issuing "Guidance," as stated in the Bureau's Request for Information Regarding Bureau Guidance and Implementation Support ("RFI").<sup>3</sup> CBA agrees that the guidance process has various tradeoffs, yet emphasizes that often, various forms of interpretive guidance can greatly help financial institutions better comprehend and work within the rules and regulations governed by the Bureau. Still, the world of financial services is constantly evolving, and all financial services stakeholders would benefit from having up-to-date guidance on Bureau rules that adequately reflect changes in financial institutions' business models and operations. As such, the Bureau should establish methods to review Bureau guidance on a regular basis to determine if updates or changes to the guidance are necessary.

Establishing procedures for the Bureau to re-examine previously issued guidance will help the Bureau establish guardrails for the financial services industry without the need for new and burdensome rulemaking, while affording financial institutions the opportunity to better

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<sup>1</sup> The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

<sup>2</sup> Request for Information Regarding Bureau Guidance and Implementation Support, 83 F.R. 13959 (Apr. 2, 2018).

<sup>3</sup> *Id.* at 13961, stating: "The Bureau faces tradeoffs that it must consider when issuing guidance. Where the Bureau does not use notice-and-comment procedures, it can act more quickly to issue or update guidance materials to address industry interpretive questions and respond to developments in the marketplace. However, the more expedited the process is in developing guidance, the more likely that an agency may find a need over time to revise or adjust its initial guidance statements and address related legal, factual, and policy issues, even though revisiting such materials can impose additional costs on both the agency and regulated entities."



tailor their individual programs to both adhere to Bureau rules and, serve consumers in the best way possible.

In addition to establishing a procedure to re-examine the various guidance materials the Bureau publishes on a regular basis, financial institutions, consumers, and other stakeholders would greatly benefit if the following recommendations are implemented.

#### **I. Improve the Bureau's Regulatory Inquiries Function**

CBA members greatly value the Bureau's willingness to answer regulatory inquiries via telephone. This process is frequently used by financial institutions with targeted questions concerning the Bureau's various rules and regulations. However, each call begins with a disclaimer stating that the information provided on the call cannot be relied upon by the institution. This disclaimer effectively limits the usefulness of any response given via the telephone, and as such, should be removed so individuals calling the Bureau can rely on the information given to them on the call.

The Bureau should commit itself to considering and issuing timely, accurate, and helpful responses to inquiries sent through electronic means. CBA recommends the Bureau acknowledge receipt of inquiries within two days of receipt, and establish and publish a service level agreement for responses.

Additionally, the Bureau should issue cumulative "Frequently Asked Questions" ("FAQs") on a monthly basis reflecting the inquiries made by financial institutions, and the responses to those inquiries. As is the case with those inquiries made via telephone, a disclaimer would greatly limit the use of the Bureau responses, and as such, no disclaimer should be attached to the FAQ responses. This will help financial institutions interpret the Bureau's various regulations. Additionally, the Bureau would benefit because releasing cumulative FAQs will help cut down on duplicative inquiries. A process should also be established to memorialize the cumulative FAQs into more formal guidance documents. Finally, the Bureau should closely monitor the inquiries submitted, and the Bureau's responses to determine what rules and regulations may need more interpretive guidance.

#### **II. Enhance Compliance Aids Usefulness**

While CBA members utilize the Bureau's various webinars and implementation aids, these tools are currently of limited value because they merely restate the rule and applicable commentary. The Bureau should include regulatory developments and other information in webinars and implementation aids to provide meaningful context and insight for rules and Bureau activities. Financial institutions could leverage these insights to enhance their respective compliance and regulatory management systems to further compliance with the Bureau's rules and regulations, and increase protections for consumers.





The Bureau should also frequently revise FAQs, examination manuals, and implementation aids to reflect Bureau regulatory actions, judicial decisions, and regulatory actions by other federal regulators to ensure these materials are of improved use to financial institutions and consumers. Additionally, implementation aids should provide specific examples of means to comply, and should be frequently updated to account for the use of new technology, especially as consumers meet many of their financial needs through mobile channels.

Finally, the Bureau should continue to improve on its efforts to reach out to financial institutions, trade associations, and interested stakeholders on a regular basis to foster an environment of better understanding around regulatory compliance requirements.

### **III. Formalize and Standardize Official Interpretations and Standalone Rules**

The Bureau should establish a process to formally memorialize Bureau interpretations conveyed in various advisory opinions and other standalone guidance documents in the Bureau's Official Interpretations. Further, when issuing standalone interpretive rules, the Bureau should establish notice and comment periods for interested stakeholders to provide input to the Bureau. When the Bureau requests feedback from interested stakeholders, the Bureau should be sure to review all information received, and incorporate the feedback into any guidance issued, or at least issue comprehensive explanations for why feedback was not incorporated. Finally, the Bureau should establish a procedure for the Bureau's commentary on rules and regulations to be updated on a regular basis.

### **IV. Better Utilize Fair Lending Guidance and the Division of Supervision Enforcement**

The Bureau's quarterly supervisory highlights related to fair lending are useful for financial institutions, but these supervisory highlights should not be used to provide regulatory interpretations. Instead, the Bureau should issue periodic regulatory guidance that financial institutions can rely on.

The Bureau's Office of Fair Lending and Equal Opportunity's frequent open dialogue with industry stakeholders has proven to be a useful tool, but it has historically been difficult for Bureau staff to provide direct feedback on specific issues to those who inquire. Often, financial institutions cannot discern details from the feedback received from the Office of Fair Lending and Equal Opportunity. As such, if the Office of Fair Lending and Equal Opportunity published regulatory guidance on specific issues on a periodic basis, financial institutions and consumers would greatly benefit from the increased clarity this guidance could bring.

### **V. Improve Other Forms of Written Guidance**

Frequently, when the Bureau releases new rules, regulations, or guidance, operational difficulties or certain unintended consequences result. As such, the Bureau should establish



procedures to quickly provide guidance and establish safe-harbors in the case of an operational difficulty arising as a result of a new rule to allow financial institutions to engage in practices that best benefit the consumer, pending a formal rulemaking process to remediate any issues.

While CBA appreciates the Bureau establishing Project Catalyst to encourage consumer-friendly innovation, the Bureau should provide more information on how financial institutions can apply to be a part of the Project, how the Bureau will review applications, and what reliance applicants can place on the no-action letter issued pursuant to the Project. As Project Catalyst stands now, the application and approval process is vague, with no standard application form, and just having language on the Bureau's website stating interested entities should submit information to a Bureau email address.<sup>4</sup> Addressing the issues above will encourage more institutions to submit proposals to Project Catalyst, and overall, improve the Project's utility.

Additionally, the Bureau's no-action letter procedures should be extended to financial institution's existing products and services. Importantly, no-action letters should be binding on the Bureau, as long as the financial institution acting on the letter has done so in good faith. Currently, no-action letters provide no clarity about the possibility of future enforcement actions and are firm specific, giving no guidance to third-parties and partners of no-action letter recipients. The Bureau should use the no-action letter process, or a similar advisory opinion process, to provide clarity regarding the application of a specific provision of law to a product or activity, similar to how the OCC issues Interpretive Letters.

Accordingly, no-action letters should be published publically, and the Bureau should redact the name of the institution requesting the letter, as warranted. No-action letters should not be firm specific, thereby allowing third-party partners and other similarly situated providers to gain legal comfort from the Bureau's determinations. Finally, the Bureau should address Unfair, Deceptive, and Abusive Acts or Practices ("UDAAP") issues via no-action letters, and provide greater transparency through explanations when no-action letters are approved or denied.

While advisory opinions can serve as a useful tool to help financial institutions gain clarification about the feasibility of specific acts and practices, often financial institutions cannot rely on these advisory opinions because they can create uncertainty around a practice. As such, the Bureau should monitor requests for advisory opinions to identify areas of uncertainty where additional formal guidance is needed. The Bureau should also more broadly publish advisory opinions so the entire industry can benefit from the information they contain. Advisory opinions should also be anonymized, and describe the institution that requested the opinion in broad terms that only serve to identify the characteristics material to the Bureau's

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<sup>4</sup> The Bureau of Consumer Financial Protection, *Project Catalyst*, <https://www.consumerfinance.gov/about-us/project-catalyst/> (last visited June 26, 2018).



advisory opinion. A process should be established by the Bureau to incorporate the decisions made in advisory opinions into formal policy. Finally, as many financial institutions also rely on the advisory opinions of other federal regulators, the Bureau should give deference to these opinions, and not interfere with these opinions without appropriate notice to the public.

**VI. Limit the use of Disclaimers**

Much of the Bureau's guidance mentioned above includes disclaimers on the utility of the language provided in the guidance. These disclaimers can render much guidance effectively useless, as financial institutions feel unable to rely on the decisions rendered in guidance with a disclaimer attached. As such, disclaimers should be used sparingly by the Bureau, if at all.

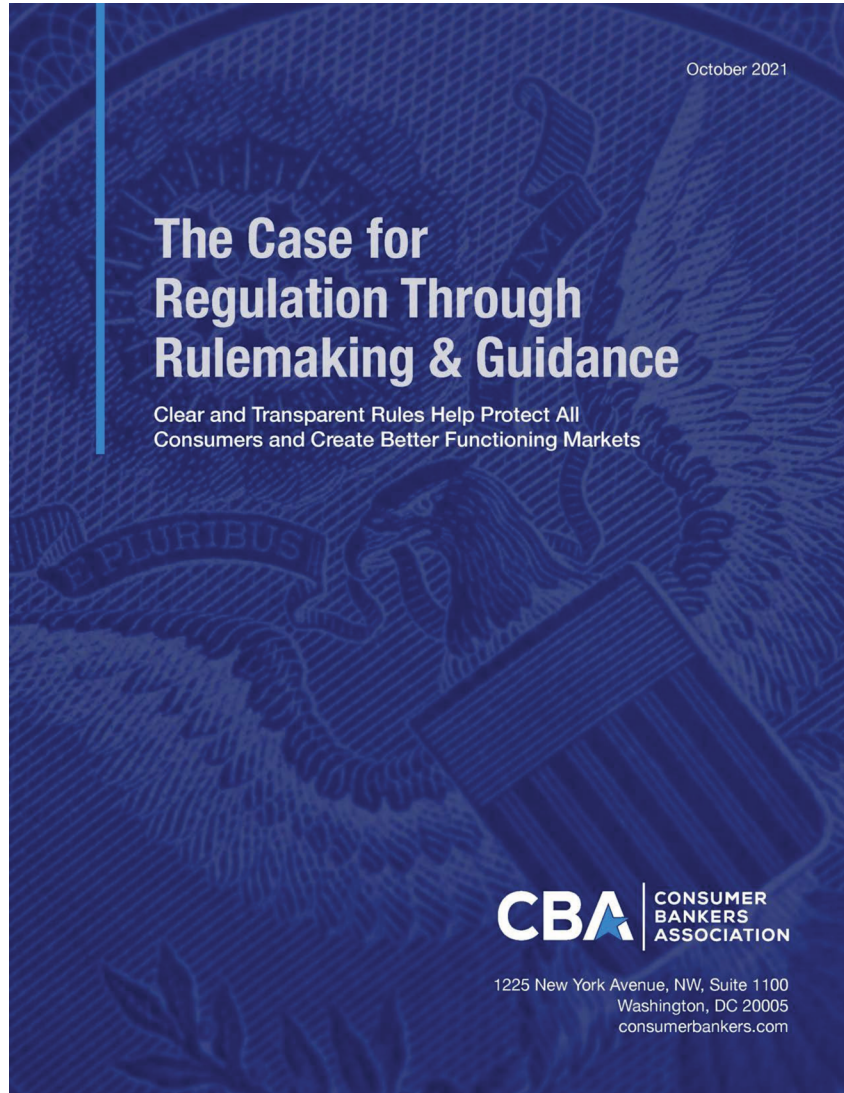
**VII. Conclusion**

CBA greatly values the Bureau's call for evidence and examination of the Bureau's guidance and implementation support. The Bureau should consider procedures to re-examine all forms of guidance it issues on a regular basis to ensure the Bureau's guidance reflects the ever-changing world of banking. If you require any more information on the principles contained herein, please do not hesitate to contact the undersigned directly.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Congdon".

Stephen Congdon  
Regulatory Counsel  
Consumer Bankers Association  
scongdon@consumerbankers.com





## The Case for Regulation Through Rulemaking & Guidance

*Clear and Transparent Rules Help Protect All Consumers and Create Better Functioning Markets*

### Introduction

Regulation is most effective when industry has clear notice of the rules of the road. Just as our national highway transportation system works most effectively when all drivers on the road know what safe driving habits are (e.g., observing the speed limit, signaling before changing lanes), our financial system works best when all participants have clear notice of what is acceptable. As a financial regulator, the Consumer Financial Protection Bureau (CFPB) is charged with ensuring all entities observe the laws. This includes punishing bad actors who fail to comply with applicable laws and regulations. The most effective way to protect consumers from harmful practices is by establishing clear and transparent expectations for the industry. Punishing an entity for conduct based on an agency's interpretation of the law not previously communicated to industry is not in the best interest of the consumer because it creates barriers to financial services, limits consumer choice, and creates market disparities between entities subject to standards set through enforcement action and those governed by supervisory pronouncements. Consumers benefit from an open, transparent process when markets are regulated through reliance on well-founded rules that are debated, examined, and their impact carefully considered before being applied to the marketplace.

CFPB Director Rohit Chopra acknowledges the value of a transparent approach to financial service regulation and supervision. At his confirmation hearing in early March before the Senate Banking Committee, Mr. Chopra stated, "I also will commit that the CFPB and every federal agency should be focused on fixing harms, making it clear to market participants what's expected of them. Ultimately that is what creates a vibrant market and that is something that the CFPB must do, adhering to all of the procedures Congress has laid out and I am absolutely committed to." Ensuring the Bureau lives up to his stated commitment to transparency as he takes the reins as the director of the Bureau will lead to a more effective marketplace that operates in the best interests of industry and consumers alike.

### **Enforcement is only effective when used as a penalty for failure to comply with established rules.**

The CFPB communicates new or revised regulatory expectations to industry participants through rulemaking, informal written guidance, and enforcement actions. The Bureau engages in formal rulemaking under the Administrative Procedures Act (APA), which requires the CFPB to issue a notice of proposed rulemaking, solicit and accept public comments on the rule, and then consider all the comments submitted in promulgating a final rule. The





CFPB also regularly issues informal written guidance to the industry. This guidance includes quarterly Supervisory Highlights, bulletins, advisory opinions, and reports. The CFPB also, of course, has the power to bring enforcement actions. Bringing such actions against those who break well-established consumer protection rules deters others who test the boundaries of the law. Indeed, no reasonable person would argue that a regulator should not use such power to protect consumers against rule breaking industry members. However, using enforcement actions in an attempt to define legal standards in the first instance or to walk back established and long-standing industry practices makes it difficult for industry participants to clearly understand the regulatory message the CFPB is trying to send. The Bureau's use of its enforcement tool in this context is akin to a police officer ticketing a driver for going 25 miles per hour on an unmarked road or deciding that doing 30 miles per hour in a zone marked 35 miles per hour now constitutes speeding. In both contexts, the post hoc establishment of standards fails to broadly and adequately communicate expectations.

Consent orders negotiated in the settlement of enforcement actions do not clearly communicate to industry the Bureau's regulatory expectations. Industry participants may question whether the provisions of a consent order are specific to the facts of the enforcement target's conduct or the announcement of a new industry-wide standard. The conduct provisions in a particular matter may be perceived as overcompensating for the target's idiosyncratic compliance efforts or controls, leaving it unclear as to which conduct provisions are truly applicable to other industry members. Additionally, conduct provisions are set to account for the target's operational capabilities, so industry members with different capabilities may not be able to adapt those provisions to their own operations. Finally, consent orders often are incomplete and imperfect indicators of the Bureau's positions and expectations of industry because they are heavily negotiated and often impacted by whether the enforcement target is a supervised entity. Consequently, consent orders frequently provide more industry confusion than clarity by forcing industry members to engage in guesswork about which parts have general applicability and which are target specific. Initiating uncertainty and forcing industry members to rely or surmise is not the optimal way for the Bureau to set compliance standards.

Attempts to change long-standing regulatory interpretations retroactively through litigation of enforcement actions run the risk that the CFPB will lose control of the message absorbed by industry, or that the Bureau will fail to establish a standard at all. For example, in *PHH Corporation, et al. v. Consumer Protection Financial Protection Bureau*, 881 F.3d 75 (D.C. Cir. 2018), the CFPB alleged that PHH's captive mortgage re-insurance arrangement violated the Real Estate Settlement Procedures Act (RESPA), a departure from the Department of Housing and Urban Development's (HUD) prior interpretation. Then-Director Richard Cordray's initial findings were appealed to the U.S. Court of Appeals for the D.C. Circuit. Years later, the court vacated the CFPB's order, finding the Bureau's interpretation of RESPA incorrect and that the statute of limitations applied in administrative enforcement actions. During the years the appeal was pending, market participants adopted varying and inconsistent approaches in response to the litigation due to uncertainty over the regulatory



state of play. Ultimately the CFPB failed to modify HUD's controlling interpretation on the RESPA issue and disrupted industry practice unnecessarily.

Attempts to retroactively establish new industry regulatory standards through enforcement actions similarly fail. The CFPB used enforcement to create a new standard for the automobile finance industry related to alleged disparate impact in dealer discretionary pricing. Between 2013 and 2016, the CFPB and Department of Justice brought a series of joint enforcement actions against indirect automobile lenders for violations of the Equal Credit Opportunity Act (ECOA). The enforcement actions created an uneven playing field amongst competitors as industry players adopted different rules and practices depending on whether they were receiving direction through enforcement or supervisory channels. Some financial institutions were required to implement a lower cap on dealer participation rates, while others were only required to monitor for and redress any future disparities at both the dealer and portfolio level. Similar to *PHH*, the CFPB ultimately failed to change industry practice. In May 2018, Congress used the Congressional Review Act to repeal the Bureau's 2013 guidance. The attempts to change industry practice through enforcement made the market worse for consumers by creating inconsistency in automobile credit across market participants depending on level and type of CFPB oversight.

In all of the instances discussed above, had the Bureau proceeded through rulemaking, all industry participants would have competed under one set of rules and their respective markets would have moved together, creating a level playing field and better achieving the Bureau's policy goals.

#### **Rulemaking is best for consumers and markets.**

Formal rulemaking and informal written guidance provide more benefit to consumers when compared to policy announcements issued through enforcement actions.

The CFPB's expectations and their general applicability across markets are more clearly communicated through rulemaking. When all industry participants have a clear understanding of applicable legal and regulatory expectations, they are all better able to comply, which in turn strengthens protections for all consumers, not just those doing business with the target of an enforcement action.

Rulemaking and informal written guidance can address general industry practices and variations in those practices and make clear how the Bureau will apply the law to those practices. This leaves much less room for doubt and error on the part of industry participants, meaning that practices change more quickly and more widely than through enforcement. It also puts industry "on notice" of the Bureau's expectations, thereby allowing industry to avoid conduct the Bureau deems harmful to consumers. Rulemaking is best suited to significant regulatory changes to industry-wide practices because the Bureau can



explain its priorities in addition to the text of the proposed and final rules. This gives industry a great deal of information to use in complying with the applicable requirements. Informal written guidance can also be used to provide transparency to the entire market regarding best practices, even though it does not carry the force of law. It is therefore helpful, even if it does not have the same utility as rulemaking.

Rulemaking and informal written guidance can communicate regulatory expectations industry-wide more quickly than enforcement actions, which can take more than two years to reach a public resolution (or longer if a settlement is not reached and the action is litigated). Through rulemaking, the Bureau can begin shaping industry behavior very early in the rulemaking process through an advanced notice of proposed rulemaking, a notice of proposed rulemaking a SBREFA outline, and other tools like requests for information (RFIs). Thus, rules and informal written guidance provide clearer direction to industry and can more quickly communicate the CFPB's consumer protection priorities to begin effecting change sooner.

Rulemaking and informal written guidance benefit consumers by setting regulatory equity across market participants. These approaches allow for industry participation, provide transparency on the rules, and avoid unfair retroactive application of new standards. The result is a level playing field for all market participants which fosters competition. As noted by the Biden Administration, competition in the rapidly evolving banking industry generally benefits consumers through lower costs and the development of innovative products and services.

Formal rulemaking also gives industry an opportunity to participate in the rulemaking process under the APA, which benefits the CFPB and industry. The APA's minimum requirements for rulemaking are notice and an opportunity for interested parties to comment on proposed rules. Public participation supplies the Bureau with information it needs to make its decisions (including the variety of industry practices that need to be accounted for), while consumer groups, industry participants, and other members of the public benefit from an opportunity to participate in shaping the final agency action. Notice and comment rulemaking should be the preferred course of action when new standards are being set, or industry-wide conduct is at issue, because it provides the greatest amount of information to the Bureau and the greatest opportunity for all involved stakeholders – including consumers – to provide input. By incorporating feedback from the industry and the public the Bureau can fashion rules that avoid potential unintended consequences which could undermine the Bureau's policy goals, ensure effective and fair regulation across the spectrum of industry participants, and reduce the perception of unfair retroactive application of new standards. It also allows industry to cooperate with the Bureau to implement the Bureau's priorities in a way that can be feasibly put into practice, with accompanying controls and monitoring tailored to real-world market conditions.

It is worth noting, even when issuing informal written guidance, the Bureau has provided public notice in the past through RFIs and solicited input from both industry and consumer





stakeholders, again allowing the Bureau to make more informed decisions and the public to participate in the process. This opportunity for public participation is helpful and important to the development of informal written guidance and should be employed by the Bureau regularly when announcing regulatory standards by this method.

#### **Examples of successful CFPB and other regulatory guidance and rulemaking, including UDAAP**

There are many examples of clear and effective rulemaking and written informal guidance issued by the CFPB and other federal regulators, even involving broad concepts like unfair, deceptive, and abusive practices. These examples make it clear that rulemaking and guidance can be very effective in achieving the Bureau's consumer protection goals.

With respect to formal rulemaking, the Bureau has engaged in the APA process many times and issued regulations that provide clear "rules of the road" that extend to the entire market. Examples include the Qualified Mortgage Rule, the Truth in Lending Act/RESPA Integrated Disclosure Rule (TRID), and the Remittance Rule. In enacting each of these rules, the CFPB issued a notice of proposed rulemaking and provided all stakeholders an opportunity to provide feedback to the CFPB. All these rules have had multiple rulemakings and amendments that identified and corrected problems or made adjustments in response to concerns raised by different stakeholders.<sup>1</sup>

The CFPB issues several types of informal written guidance. The CFPB regularly issues Supervisory Highlights in which the CFPB reports on trends and issues identified during the previous quarter's confidential supervisory examinations. Industry closely monitors the Supervisory Highlights for potential compliance issues. For example, in the Fall 2016 edition, the CFPB found it is an unfair or deceptive act or practice to charge auto loan borrowers a fee to recover their personal property from a repossessed vehicle unless the fee is disclosed in the underlying agreement.<sup>2</sup> Even when the consumer agreements and state law support the lawfulness of charging a storage fee, examiners concluded there were no circumstances in which it was lawful to refuse to return property until the consumer remitted payment rather than adding the fee to the borrower's balance. Therefore, the CFPB issued a clear expectation to the auto finance industry that personal property must be returned to a debtor/borrower who is unwilling or unable to pay the disclosed storage fee (and the fee could be added to the borrower's balance). Industry responded quickly to this statement and uniformly moved away from allowing repossession agents to charge such fees.

<sup>1</sup> See, e.g., Ability to Repay/Qualified Mortgage Rule, <https://www.consumerfinance.gov/rules-policy/final-rules/ability-to-repay-qualified-mortgage-rule/>; TRID Rule, <https://www.consumerfinance.gov/rules-policy/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z/>; Remittance Rules, <https://www.consumerfinance.gov/rules-policy/final-rules/electronic-fund-transfers-regulation-e/>.

<sup>2</sup> Consumer Financial Protection Bureau, Supervisory Highlights, Issue 13, Fall 2016, [https://files.consumerfinance.gov/f/documents/Supervisory\\_Highlights\\_Issue\\_13\\_Final\\_10.31.16.pdf](https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf).



The CFPB issues other written informal guidance less consistently that is also helpful. One recent and welcome example was the CFPB's Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency (LEP), which was published on January 13, 2021.<sup>3</sup> The statement provides principles and guidelines to assist financial institutions in decision-making concerning how best to serve LEP consumers and to facilitate compliance with ECOA and UDAP laws by providing "clear rules of the road." Importantly, while the statement lacks the force of law, the CFPB solicited and received input from both industry and consumer groups to develop guidance that encourages serving customers in non-English languages while avoiding UDAP and fair lending concerns. The Bureau's guidance helped to reverse some industry hesitancy to offer services in non-English languages brought about by years of enforcement activity by the FTC, CFPB, state attorneys general, and other regulators, which clearly demonstrated that UDAP risk existed, but failed to clearly and consistently describe the contours of that risk and the steps necessary to mitigate it.

The CFPB also conducts market research and issues reports identifying concerns in certain industries. This research is often informed by requests for information issued to industry participants. For example, every two years, the CFPB is required under Dodd-Frank to issue CARD Act Reports to Congress regarding the state of the credit card market. In each report, the CFPB identifies potential UDAP issues, indirectly communicating concerns to industry. For example, in 2013, the CFPB identified potential UDAP issues related to credit card rewards programs. Credit card issuers responded by improving disclosures, limiting points forfeiture, and voluntarily adopting a set of transparency principles for credit card rewards programs, all benefiting consumers. The Bureau did not bring any enforcement actions in this area, but nevertheless guided the industry in a manner that benefitted consumers.

Finally, the Federal Trade Commission's Online Advertising Guide is an excellent example of a practical, useful set of guidance for industry on UDAP issues.<sup>4</sup> The practical guidance is widely followed by industry participants in formulating online advertisements for financial products and services. The FTC periodically updates the guide and related advertising resources.

These examples make it clear that rulemaking and informal written guidance are powerful, effective tools for the Bureau to use in shaping industry conduct while strengthening protections for consumers. The idea that enforcement is a necessary – or even preferable – manner for the Bureau to announce industry standards is refuted by the success of the Bureau's more transparent and inclusive methods of providing guidance.

<sup>3</sup> Consumer Financial Protection Bureau, Statement Regarding the Provision of Financial Products and Services to Consumers with Limited English Proficiency, [https://files.consumerfinance.gov/f/documents/cfpb\\_lep-statement\\_2021-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_lep-statement_2021-01.pdf) (Jan. 13, 2021).

<sup>4</sup> Federal Trade Commission, Advertising and Marketing on the Internet: Rules of the Road, <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road>.



### **Conclusion**

There is no doubt enforcement is an important tool for the Bureau's consumer protection efforts. When legal requirements have been clearly communicated and industry actors fail to comply with those clear rules, enforcement is undoubtedly appropriate. But enforcement is an ineffective, imprecise, and slow method for the Bureau to announce new standards and expectations to industry. The use of rulemaking and informal written guidance promotes faster and more uniform compliance among a broader set of industry participants and serves the critical need for the Bureau to be explicit about the "rules of the road" for industry to follow. Industry has shown it is ready and willing to follow those clear rules when provided. If the Bureau prioritizes rulemaking over regulation by enforcement, the American consumers will be most effectively served.

THE END OF RELATIONSHIP BANKING? EXAM-  
INING THE CFPB'S 'SMALL BUSINESS LENDING  
DATA COLLECTION' RULE

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON ECONOMIC GROWTH,  
TAX, AND CAPITAL ACCESS  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTEENTH CONGRESS  
FIRST SESSION  
HEARING HELD  
MARCH 28, 2023



Small Business Committee Document Number 118-006  
Available via the GPO Website: [www.govinfo.gov](http://www.govinfo.gov)

U.S. GOVERNMENT PUBLISHING OFFICE  
WASHINGTON : 2023

small lender act. Failure to do so will threaten access to credit for many of our nation's main street small businesses who rely on community lenders like credit unions to meet their capital needs.

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

Chairman MEUSER. Thank you for your compelling testimony, Mr. Wilson.

I now recognize Ms. Urrutia for her 5 minute opening remarks.

#### STATEMENT OF LUZ URRUTIA

Ms. URRUTIA. Good morning, Chairman Meuser, Ranking Member Landsman, and Members of the Committee. Thank you for the opportunity to testify and discuss CFPB Section 1071.

My name is Luz Urrutia and I am the CEO of Accion Opportunity Fund, the leading CDFI nonprofit providing access to loans, business advising, and networks to underinvested entrepreneurs.

I spent my entire career in for-profit financial services which included nearly two decades at Wachovia, then as co-founder and CEO of a community bank and a CEO of a payday lending company where I helped to ensure that they provide responsible financial services to their customers. I joined AOF as its CEO because of my experience as a lifelong for-profit banker and my passion for providing responsible financial services to underinvested communities. I know for a fact that business and lenders can generate profit and do the right thing investing in all communities.

As CEO, I am very proud of the impactful work AOF has done to provide capital to entrepreneurs that are often left behind by our financial mainstream system. Today, we have deployed over \$700 million to more than 25,000 entrepreneurs, and 80 percent of our borrowers are people of color, women, and immigrants. In fact, women make up one out of every three clients we serve. It is because of the entrepreneurs we serve that I have advocated for rules like 1071 which will allow our entire financial services system to fully see and better serve all of our entrepreneurs.

And this transparency is not just about fairness. It is also about strengthening the economy. A recent study shows that minority- and women-owned small businesses employ nearly 20 million people and generate over \$2 trillion in economic activity.

I know this to be true, personally and as the CEO of AOF, because I think about clients such as Reign Free from Oakland, who started and scaled her catering business after repeatedly being told that she did not qualify for a loan. We were her first lender to say yes. I also think about Alicia Villanueva from Hayward, who took \$5,000, bought her first van, and now she has the most burgeoning tamale business nationwide.

I am proud that we provide loans to everyone—Black, White, Latino, Asian, and low-income, but I am especially proud of our investment in Black and Latina women who are starting up more businesses in this country than any other group. I am proud that AOF supports these entrepreneurs and the businesses that they found, the employees they hire and train, and the economic activity they generate.

However, for decades, entrepreneurs like these women have not been seen by our financial system. While I am on here to defend

or promote every letter of Section 1071, I recognize that this rule will accomplish three important things: It will help small business lenders. It will help entrepreneurs that desperately need access to capital, and help policymakers that want to invest in our economy without creating new direct entitlement programs.

First, this rule would help the market to better address both the lack of access to affordable capital, and the rise of irresponsible lending. For the first time, everyone in financial services would be able to see which business models are successful at reaching minority-owned, women-owned, and other small businesses. This transparency would attract investment capital and partnerships into models that really work. We can have a market-based model and pro-innovation approach to regulation, one that will actually help lenders expand customer acquisition, something that all community banks and lenders really want and need to do. But we need clarity on who the businesses are, who is serving them, and what capital are they getting, because we cannot manage what we do not measure.

Second, as lenders, the better we understand these businesses, it will help tailor products and services to meet their needs. The more knowledge we gain about our markets, our customers, and their needs, the better equipped we are to building long-term profitable relationships.

Finally, this rule helps spur additional investments in small businesses, which is the best way to reduce inequities without having to create new government programs. Instead, it will allow all of us to do what our organizations have successfully done for years—expand access to capital for underserved entrepreneurs by leveraging existing public and private sector partnerships.

For these reasons, I am very pleased to testify on how we can ensure that Section 1071 accomplishes its goals of spurring additional investment in all our entrepreneurs.

I will conclude by saying that access to capital for small businesses is a bipartisan priority. There are Mom and Pop stores in communities that are rural and urban; red and blue; Black and White, Hispanic, and Asian, and they are all powering our economy. But we cannot do that without Section 1071 to shine light on these small businesses' credit applications.

Because as I said before, we cannot manage what we do not measure, and sunlight is the best disinfectant. As we implement this rule well, we will finally will be able to increase access to capital for small businesses and create a more transparent, bipartisan, and successful financial system.

Thank you, and I look forward to your questions.

Chairman MEUSER. Thank you, Ms. Urrutia, I appreciate that.

We will now move to the Member questions under the 5-minute rule. And I recognize myself for 5 minutes.

Mr. White, I will start with you. And really, to all of our witnesses. The CFPB's mission statement is as follows. I am going to summarize.

We aim to make consumer financial markets work for consumers, responsible providers, and the economy as a whole. We protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law. We arm people with the in-



So I guess my question first Ms. Urrutia, sorry, I am struggling with that one, is do you believe that this will undermine, you know, small banks, their ability to provide these loans?

Ms. URRUTIA. I think it would be the opposite. I think that, this rule is going to lead actually to more small business lenders wanting to get into the market because everyone is going to become more aware, more knowledgeable, and more informed about the scope and scale of small businesses and the impact that they have on our economy. And frankly, how much they are growing and how profitable they are for institutions that want to serve them responsibly. You know, we saw this development with HMDA. It did not pull lenders away. In fact, as more data was reported, more competition emerged, better products were developed, and everybody won, the consumer and the lenders.

The CFPB issued a lender survey and developed cost estimates that were then reviewed by lenders, and many smaller financial institutions were asked this question during the rulemaking process and responded to say that it would not force them out of the market. The Bureau also estimated the cost per application would range anywhere between \$7 for the larger banks with more technological capabilities to \$28 for the smaller banks. And so, you know, for the first time I think everyone in financial services would really have access to see what the market is made up of and to be able to reach successfully more minority-owned, women-owned, and other small businesses. And I think once again, the transparency is going to attract quality responsible business models to want to serve a very burgeoning, growing, and profitable market which is the small business lending community.

Mr. LANDSMAN. You have been able to do a lot and this has helped you better understand the impact. What is your recommendation or suggestion, advice in terms of managing the data collection and pursuing the intent of the rule which is to increase lending to folks that have struggled to get lending, to get the capital?

Ms. URRUTIA. Yeah. So just, our own perspective, last year we did about 3,000 loans to small business entrepreneurs. That is an enormous amount of lending. And you know, like every other CDFI, we are required to collect and report data on a variety of data points—interest rates, fees, origination cost, race, gender, ethnicity. And CDFIs do that.

Mr. LANDSMAN. I have run out of time and I apologize. I spoke a lot. But as the hearing continues I think just getting that sense as to what advice, recommendations would be great.

Thank you, Mr. Chair.

Chairman MEUSER. Thank you. The Ranking Member's time has expired.

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

Mr. LEUTKEMEYER. Thank you, Mr. Chairman.

Mr. White, when Congress passed Dodd-Frank 12 years ago it included Section 1071, which requires companies to inquire whether customers are a small business, woman-owned business, or minority-owned business at the credit application stage. However, in the 1970s, Congress passed the Equal Credit Opportunity Act which



June 14, 2023

The Honorable Patrick McHenry  
Chairman  
U.S. House Financial Services Committee  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Maxine Waters  
Ranking Member  
U.S. House Financial Services Committee  
2129 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman McHenry and Ranking Member Waters,

In light of the upcoming House hearing, "Semi-Annual Report of the Bureau of Consumer Financial Protection," the Asset Building Policy Network (ABPN) write in support of the Consumer Financial Protection Bureau (CFPB). We strongly urge Congress to support the efforts of CFPB in securing a fair marketplace for all consumers and oppose legislation that would undermine the Bureau and its ability to accomplish its important mission.

When the CFPB was established following the financial crisis, millions of people had lost their homes. People of color were disproportionately impacted: Latino households lost 66% and Black households lost 53% of their wealth from 2005 to 2009, while White households lost 16% of their wealth.<sup>1</sup> Asian Americans were similarly impacted: foreclosure rates for Filipinos, Koreans and Cambodians were on par with Black and Latino households, and between 2008 and 2010, Native Hawaiian homeowners experienced a 687% increase in home foreclosures, which amounted to \$15 billion in home equity losses.<sup>2</sup> Congress established the CFPB to coordinate and create consumer protections so that everyone—including working class and people of color—can participate fully in our nation's economic life.

As this suggests, the CFPB is responsible for enforcing laws that address discrimination and unfair treatment related to financial products, including the Equal Credit Opportunity Act. Through its rulemaking, supervision, and enforcement authorities, the CFPB works to stop harmful financial practices that contribute to the racial wealth divide, including bringing more than 300 enforcement actions resulting in \$3.7 billion in penalties for fair lending law violations alone.

The CFPB also addresses discrimination in the banking, credit and housing marketplaces and protected consumers from being denied services or charged higher rates because of their race, sexuality, gender identity, or national origin. It issues measures to make the credit reporting, debt collection, mortgage servicing, credit card and banking industries more transparent, equitable and accountable to the public.

Discrimination and economic exploitation continue to pose a significant risk to the economic and social well-being of consumers, making the Bureau's core mission as relevant today as ever. People of color pay disproportionately high costs and fees when they use ordinary financial products such as deposit accounts and credit cards.<sup>3</sup> An increasing number of entrepreneurs of color, in particular Asian American and Native Hawaiian and Pacific Islanders, who seek loans for their small businesses online face predatory lending practices.<sup>4</sup>

People of color are also disproportionately excluded from the financial system. For example, Latino and Black people are more likely than whites to be denied a loan—even after controlling for credit score, incomes, and loan size.<sup>5</sup> Immigrants and those who speak English as a second language face additional





barriers, as many financial institutions fail to accept Individual Taxpayer Identification Numbers (ITINs), alternative forms of identification, or provide language access services.

The Bureau also implements Section 1071 of the Dodd-Frank Act, which sets standards for small business lending data and is important to communities we represent. Additionally, the CFPB is a key player in ensuring that those with family abroad can access and safely send funds abroad through remittances.

As organizations dedicated to financial inclusion and the prosperity of communities of color, we firmly believe that the CFPB must continue to play its critical role in assuring the fairness of our financial products marketplace, which in turn supports the well-being of low-income families and communities of color and the vitality and stability of our shared national economy. For these reasons, the CFPB must remain well-supported with a stable funding mechanism.

We also urge strong opposition to the Taking Account of Bureaucrats' Spending Act (TABS Act) and other legislation that would diminish the stability of the funding or regulatory authorities of the Bureau.<sup>6</sup> And we strongly encourage lawmakers to support the CFPB and the critical work it does to protect consumers and support the financial security of communities, include Black, Latino, and Asian American, and Native Hawaiian and Pacific Islander people of color and other economically vulnerable communities.

Sincerely,

**The Asset Building Policy Network**

NALCAB

National CAPACD- National Coalition for Asian Pacific American Community Development

National Urban League

Prosperity Now

The Leadership Conference on Civil and Human Rights

UnidosUS

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<sup>1</sup> "The Great Recession: Implications for Minority and Immigrant Communities," Russell Sage Foundation and the Stanford Center on Poverty and Inequality, <https://web.stanford.edu/group/recessiontrends-dev/cgi-bin/web/resources/research-project/great-recession-implications-minority-and-immigrant-communities>.

<sup>2</sup> "Crisis to Impact: Reflecting on a Decade of Housing Counseling Services in Asian American and Pacific Islander Communities," National CAPACD, UCLA Asian American Studies Center and Center for Neighborhood Knowledge, December 2020, [https://www.aasc.ucla.edu/resources/policyreports/NationalCAPACD\\_HousingCounselingReport.pdf](https://www.aasc.ucla.edu/resources/policyreports/NationalCAPACD_HousingCounselingReport.pdf); "Asian American and Pacific Islander Anti-Displacement Strategies," National CAPACD and Council for Native Hawaiian Advancement (CHNA), May 2016, [https://www.nationalcapacd.org/wp-content/uploads/2017/08/anti\\_displacement\\_strategies\\_report.pdf](https://www.nationalcapacd.org/wp-content/uploads/2017/08/anti_displacement_strategies_report.pdf).

<sup>3</sup> "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be," Financial Health Network, September 2021, <https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/>; "Latinos Banking and Credit Survey: Arizona, California, Texas," UnidosUS and Oportun, June 2022, [unidosus\\_opportun\\_latinosandcreditserviceessurvey\\_azcatx\\_crosstabs.pdf](https://www.unidosus.org/opportun_latinosandcreditserviceessurvey_azcatx_crosstabs.pdf); "Who Is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees," Federal Reserve of Boston, August 2022, <https://www.bostonfed.org/publications/research-department-working-paper/2022/who-is-paying-all-these-fees-an-empirical-analysis-of-bank-account-and-credit-card-fees/>; "Economic Well-Being of U.S. Households in 2022," Federal Reserve, May 2023, <https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf>.

<sup>4</sup> "Small Business, Big Dreams," National CAPACD, March 2019, <https://www.nationalcapacd.org/data-research/small-business-big-dreams/>.

<sup>5</sup> "Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data," Federal Deposit Insurance Corporation and Center for Financial Research, June 2022, [https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm\\_medium=email&utm\\_source=govdelivery](https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery).

<sup>6</sup> "Letter in Opposition to the TABS Act," Consumer Federation of America and Coalition Partners, March 2023, [https://consumerfed.org/wp-content/uploads/2023/03/Oppose-TABS-Act\\_March-2023.pdf](https://consumerfed.org/wp-content/uploads/2023/03/Oppose-TABS-Act_March-2023.pdf).

**Who Opposes the Fifth Circuit Decision in *CFSA* vs. *CFPB*?**

*Military and veterans service organizations, rural and agricultural groups, the AARP, industry members, credit unions, academic scholars, state attorneys general, congressional leaders, faith groups, housing groups, legal services organizations, consumer protection groups, and civil rights groups all agree that the Fifth Circuit decision holding that the funding mechanism of the Consumer Financial Protection Bureau (CFPB) is unconstitutional should not stand.*

Next term, the Supreme Court will be reviewing a Fifth Circuit [decision](#) holding that the funding structure of the CFPB is unconstitutional. Last month, a dozen amicus briefs were filed in the case. Some of these briefs explained why the Fifth Circuit's ruling is at odds with constitutional text and history. Some addressed the consequences of a decision affirming the Fifth Circuit: an extraordinary amount of uncertainty in the marketplace, especially for honest businesses that are trying to do right by consumers. Other briefs discussed the critically important work that the CFPB does for America's consumers, including servicemembers, veterans, farmers, rural Americans, and older Americans. And still others stressed the potential destabilization of federal agencies and programs that also rely on funding outside of the annual appropriations process, including Veterans Administration benefits, the National Farm Credit Administration, the Federal Reserve, and most federal financial regulators.

Significantly, every other court to have considered the issue has upheld the constitutionality of the CFPB's funding structure. And collectively these amicus briefs make clear both why the Fifth Circuit stands alone—and how devastating the consequences would be if the Supreme Court were to affirm the Fifth Circuit's decision.

[Military Officers Association of America, Blue Star Families, National Military Family Association, Iraq and Afghanistan Veterans of America, Vietnam Veterans of America, and a number of other military and veterans service organizations, along with former Assistant Directors of the CFPB Hollister K. Petraeus and Colonel Paul E. Kantwill](#), said that the CFPB “**plays a critical and unique role in promoting the financial wellbeing of America's 16.5 million veterans, over 2 million servicemembers, and their families.** . . . *Amici* do not typically weigh in on Supreme Court cases, but the practical impact of the Fifth Circuit's ruling is simply too consequential to ignore.”

Numerous [organizations representing farmers, ranchers, fisherfolk, farm and food chain workers, and rural communities](#) discussed the potential implications of the Fifth Circuit ruling to the Farm Credit Administration (FCA), stating that “if affirmed, **that decision could threaten not only the existence of administrative agencies like the [Farm Credit Administration], but also the sources of the food that feeds our nation.** For those reasons, this Court should reverse the decision of the Fifth Circuit and reaffirm that the Appropriations Clause does not bind Congress to funding agencies only through annual appropriations legislation.”

[AARP and AARP Foundation](#), representing nearly 38 million members aged 50 and older, wrote that the “CFPB benefits older adults by providing critical protections they need to successfully navigate the financial services markets and protect their financial security... **These consumer protections are a necessary bulwark to protect older Americans' financial stability. They must not be weakened in any way.**”

[Asian Real Estate Association of America, National Association of Hispanic Real Estate Professionals, National Association for Latino Community Asset Builders \(“NALCAB”\), Oweesta Corporation, and Self-Help Credit Union](#), affirmed the potentially catastrophic implications of upholding the Fifth Circuit's ruling: “a ruling that prevents the CFPB from continuing to function would have far-reaching effects. Anyone who uses a consumer financial product or service—anyone with a bank account, a credit card, a mortgage, auto loan, or personal loans—would be at risk. The risk extends beyond consumers, however. **Providers of financial products and services, especially small institutions like *Amici*, would struggle to function in a marketplace where the largest players had free reign and none of the players had a steady source of guidance.** Such a result can and should be avoided at all costs.”

Even industry voices that don't take a position on the constitutionality of the CFPB weighed in to recognize that a Court decision providing the **broad relief provided by the Fifth Circuit's ruling could "set off a wave of challenges and the housing market could descend into chaos, to the detriment of all mortgage borrowers."** [The Mortgage Bankers Association, the National Association of Home Builders, and the National Association of Realtors](#) (who filed in support of neither party) **highlighted "the potentially catastrophic consequences that a decision drawing those rules into doubt could have on the mortgage and real-estate markets.** Thus, this Court should take care not to call into question current CFPB regulations, including those governing the real-estate financing industry, which could lead to immediate and intense disruption to the housing market, harming both consumers and the broader economy."

[144 Current and Former Members of Congress](#) explained why Congress chose to fund the CFPB outside the annual appropriations process to ensure that it would have stable funding: **"Armed with its assessment of what went wrong in the financial crisis, Congress determined that to be effective, the CFPB needed independence from unpredictable annual funding cycles...."** Signers, including Senate Banking Committee Chairman Sherrod Brown, Leader Chuck Schumer, Whip Dick Durbin, Senator Elizabeth Warren, House Financial Services Committee Ranking Member Maxine Waters, Leader Hakeem Jeffries, Whip Katherine Clark, Assistant Leader James Clyburn, Speaker Emerita Nancy Pelosi, Rep. Steny Hoyer, as well as former Sen. Christopher Dodd and former Rep. Barney Frank, urged that **"accepting the Fifth Circuit's decision would place at risk a funding model that has been used since the early Republic, which now applies to the OCC and a host of other crucial federal programs."**

[24 State Attorneys General](#), representing Arizona, Colorado, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Pennsylvania, Wisconsin, and more, described the unique role the CFPB plays in state law enforcement, stating that **"the CFPB's important role in partnering with the States could be equally jeopardized by a broad remedy for any Appropriations Clause violation.** The CFPB often coordinates in bringing joint or parallel enforcement actions with the States to enforce the CFPB's consumer financial standards.... **Losing the CFPB's continued contributions would seriously impair the States' efforts to combat fraud and abuse in the consumer financial market."**

[Financial regulation scholars](#) discussed the potentially catastrophic impact to markets and other federal banking regulators, writing that "[i]f upheld, the court of appeals' hasty and mistaken conclusion would expose credit markets to acute and systemic distress. **The court's logic would further require defunding all federal banking regulators, not just the CFPB.** The Appropriations Clause does not compel this result, and **the financial system cannot withstand it."**

The [Constitutional Accountability Center, in a brief on behalf of distinguished scholars of history and constitutional law](#), affirmed that the Appropriations Clause does not give judges the authority to second-guess Congress's determination about how best to fund agencies, stating that "[w]hile praising Congress's appropriations power, Respondents come to bury it. **Like the Fifth Circuit, they would transform the Appropriations Clause from a legislative check on executive power into a judicial check on legislative power, replacing Congress's plenary discretion over spending with nebulous, judge-fashioned restraints.** Those limits are absent from the Clause's text, unsupported by its history, and incompatible with legislation dating to the Founding. The decision below should be reversed."

[90 state and local nonprofit organizations from 34 states and the District of Columbia shared their support of the CFPB, in a brief written by The UC Berkeley Center for Consumer Law and Economic Justice.](#) This brief discussed the broad array of independently funded *state* regulatory agencies across the country, from Indiana to Texas to Wyoming, that are governed by "state constitutional appropriations provisions that substantially mirror the Appropriations Clause of the U.S. Constitution." Reflecting the importance of stable funding for financial regulators, the brief explained that "[t]he funding architecture of the Consumer Financial Protection Bureau is neither exceptional nor exceptionable. It is echoed not only among other federal agencies but also, crucially, in dozens of state agencies around the country."

[A number of national consumer protection and student borrower organizations](#) explained how the CFPB's funding statute satisfies the requirements of the Appropriations Clause, stating that **"The CFPB receives exactly the appropriations that Congress has commanded, and Congress can alter the appropriations whenever it wants. The Appropriations Clause requires nothing more."**

More than a [dozen civil, human, women's, and disability rights organizations](#) highlighted the importance of the CFPB's work for communities of color, affirming that **"[t]he CFPB is integral to the federal government's efforts to counteract discriminatory practices and thereby ensure a fairer marketplace for all people."**

Finally, the National Treasury Employees Union discussed the negative implications of upholding the Fifth Circuit's decision to the CFPB's workforce, stating that "[i]f the Fifth Circuit's ruling stands, the Bureau's important work will grind to a halt. Its dedicated workforce will no longer be able to pursue enforcement actions against those who violate federal law, issue guidance to industry, or respond to consumer complaints. **The American people, in other words, would be the ultimate losers of this litigation.**"

**Ultimately, all of these amici agree on one thing: the Supreme Court cannot let the Fifth Circuit's decision stand.** That result is required by the text and history of the Constitution, and any other result would be disastrous for the American people, our nation's businesses, and our economy.

Questions, concerns? Reach out to [Brienne Gorod with Constitutional Accountability Center](#) or [Rachel Gittleman with Consumer Federation of America](#).



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## The Consumer Financial Protection Bureau's and Other Efforts to Protect Working Class and Latino Consumers From Junk Fees are Working

Presented at

"The Semi-Annual Report of the Bureau of Consumer Financial Protection"

Submitted to

**House Financial Services Committee**

Submitted by

**Santiago Sueiro**  
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June 14, 2023

UnidosUS is a nonprofit, nonpartisan organization that serves as the nation's largest Hispanic civil rights and advocacy organization. Since 1968, we have challenged the social, economic, and political barriers that affect Latinos through our unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico. We believe in an America where economic, political, and social progress is a reality for all Latinos, and we collaborate across communities to achieve it.

UnidosUS publishes reports, provides testimony, and advocates on policies that protect consumers, make financial services more inclusive, and improve the financial well-being of low-income people and the Latino community. For example, last year, we testified before the House's Subcommittees on Consumer Protection and Financial Institutions in a hearing focused on overdraft fees to advocate for reducing unnecessary fees that impact working class people and Latinos. Our research and analysis include publications such as *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (2014); *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color* (2019); and *Latinos Banking and Credit Survey: Arizona, California, Texas* (2022).

We are pleased to provide this testimony for the record on this important topic. The Consumer Financial Protection Bureau (CFPB) is responsible for enforcing laws to address discrimination and unfair treatment related to financial products, including the Equal Credit Opportunity Act. Through its rulemaking, supervision, and enforcement authorities, the CFPB works to stop harmful financial practices that contribute to economic and racial inequality, including bringing more than 300 enforcement actions resulting in \$3.7 billion in penalties for fair lending law violations alone.

The CFPB also addresses discrimination in the banking, credit and housing marketplaces and works to protect consumers from being denied services or charged higher rates because of their race, sexuality, gender identity, or national origin. It issues measures to make the credit reporting, debt collection, mortgage servicing, credit card and banking industries more transparent, equitable and accountable to the public.

Discrimination and economic exploitation continue to pose a significant risk to the economic and social well-being of consumers, making the Bureau's core mission as relevant today as ever. People of color are also disproportionately excluded from the financial system. For example, Latino and Black people are more likely than whites to be denied a loan—even after controlling for credit score, incomes, and loan size.<sup>1</sup> Immigrants and those who speak English as a second language face additional barriers, as many financial institutions fail to accept Individual Taxpayer Identification Numbers (ITINs), alternative forms of identification, or provide language access services.

Working class people and people of color also pay disproportionately high costs and fees when they use ordinary financial products such as deposit accounts and credit cards.<sup>2</sup> These fees, sometimes referred to as "junk fees," adversely impact consumers by causing some to lose

their bank accounts or default on a loan, and by creating a barrier to obtaining financial products.<sup>3</sup>

The top two largest such fees by volume are overdraft fees, which total some \$15 billion per year, and credit card late fees, which cost \$14 billion per year. Working class people and people of color are disproportionately impacted by overdraft fees. The Financial Health Network finds that low- to moderate-income households are nearly twice as likely to overdraft as higher income households.<sup>4</sup> The report finds that Black and Latino households are also about twice as likely to be charged overdraft fees than white households. When it comes to bank account product fees overall, Latinos pay, on average, \$14 per month for ATM, overdraft, and routine service charges on their checking accounts, while Black account holders pay \$12 a month. In contrast, whites pay an average of \$5 per month.<sup>5</sup>

Working class people and people of color are also disproportionately impacted by credit card late fees. A study by the Boston Federal Reserve finds that those making \$25,000 or less are 5% more likely to pay a late fee than those making more than \$100,000.<sup>6</sup> Additionally, a Consumer Financial Protection Bureau (CFPB) report finds that consumers living in the poorest neighborhoods in the U.S. paid twice as many late fees as those living in the wealthiest areas.<sup>7</sup> An UnidosUS study from 2022 underscored this finding, as 19% of Latinos paid a late fee on a loan or credit card in the last year.<sup>8</sup>

As we described in a comment to the Federal Trade Commission (FTC), higher fees and costs also impact Latino consumers in the car buying process.<sup>9</sup> For example, Blacks and Latinos are sold multiple “add-ons” that generally do not increase the value of the vehicle almost twice as often as are white consumers.<sup>10</sup> Furthermore, an FTC study found reports of auto dealers making enticing claims to Limited English Proficiency (LEP) consumers in Spanish who later concealed additional material terms, such as fees, presenting them only in English.<sup>11</sup>

These types of “junk fees” also contribute to barriers to accessing bank accounts and loans for low-income people and Latinos. According to the Federal Deposit Insurance Corporation (FDIC), high costs and fees make up three of the top five reasons that unbanked people cannot access a bank account.<sup>12</sup> Our 2022 survey similarly found that such costs and fees are two of the three leading reasons that Latinos cannot access a banking account.<sup>13</sup> The unbanked are disproportionately lower-income and Latino: more than 9% of those making less than \$30,000 are unbanked compared to 0.6% of those making more than \$75,000, and 9% of Latinos are unbanked compared to 2% of whites.<sup>14</sup>

These fees also have implications for access to credit for unbanked and marginalized populations. According to the Federal Deposit Insurance Corporation (FDIC), only 9% of the unbanked have a credit card or personal loan compared to 72% of the total population.<sup>15</sup> The study also finds that only 49% of Black households and 60% of Latino households have a credit card, compared to 78% of White households. Further, the Morning Consult finds that 41% of people who do not have a credit card cited high fees as a reason for not obtaining credit.<sup>16</sup>



**Latinos' Lack of Access to Credit and Banking Provides an Important Opportunity to Reimagine Relationships with Consumers to Promote Customer Loyalty and Reduce Costs.**

Rather than increasing fees, some financial institutions are instead offering tools that provide consumers with affordable and flexible credit terms in conjunction with lower fees. A 2022 study by Bankrate found that overdraft fees fell to their lowest level in 13 years with the average amount charged falling 11% to \$29.80.<sup>17</sup> This drop comes after years of efforts by consumer advocates, policymakers, agencies, including the CFPB and FTC, and industry actors to understand the adverse consequences of high overdraft fees and find ways to reduce these.<sup>18</sup> These changes are paying dividends for customers: the CFPB recently reported that overall overdraft revenue decreased by nearly 50% in 2022 compared to 2019.<sup>19</sup>

Since 2021, several financial institutions have lowered or eliminated their overdraft fees. Examples of these include:

- Fintechs such as Chime and Ally Bank, which eliminated overdraft fees in 2021.
- Large banks such as Bank of America reduced their overdraft fee to \$10,<sup>20</sup> Huntington National Bank and Manufacturers and Traders Trust Company lowered their fees to \$15 per overdraft, and Citibank eliminated their overdraft fees altogether.<sup>21</sup>

Some financial institutions are innovating even further by offering low-cost small dollar loans to meet consumer needs. Examples of these offerings are listed in the table below:<sup>22</sup>

Table: Examples of Small Dollar Loan Offerings						
Product name	Issuing bank	Loan size range	Speed of access to funds	Term to repay	Payment structure	Pricing
Balance Assist	Bank of America	\$100–\$500	Within minutes	3 months	Equal monthly payments	\$5
Standby Cash	Huntington Bank	\$100–\$500	Within minutes	3 months	Equal monthly payments	Free if autopay; 12% APR if not
Protection Line of Credit	Regions	\$50–\$500	Within minutes	No fixed term	Minimum 10% of balance (min. \$5)	12% APR
Cash Reserve	Truist	\$5–\$750	Within minutes	4 months	Equal monthly payments	18% APR
Simple Loan	U.S. Bank	\$100–\$1,000	Within minutes	3 months	Equal monthly payments	\$6 fee per \$100 borrowed
Flex Loan	Wells Fargo	\$250–\$500	Within minutes	4 months	Equal monthly payments	\$250 for \$12 flat fee or \$500 for \$20 flat fee

Many banks appear to recognize that some consumers who overdraft lack access to affordable credit and may thus be relying on overdraft to help make ends meet. Safe and affordable small dollar loans can help protect Latino consumers and offset the rise in junk fees.

Such offerings also produce long-term benefits for both financial institutions and consumers. Lowering fees and offering products that meet the financial needs of low-income people and marginalized consumers can build trust and loyalty among those consumers. If they see that their financial institution is willing to be flexible and meet them where they are, they will in turn be more likely to remain loyal to the financial institution and will be likely to use more financial products as they improve stability and grow economically.

Recent research by Pew Trusts shows that consumers look at financial institutions more favorably if they reduce or eliminate overdraft fees. They also find that consumers would look at financial institutions more positively if they offered affordable small-dollar loans to people with lower credit scores.<sup>23</sup> Lower-income people, immigrants with Individual Taxpayer Identification Numbers (ITIN), and LEP consumers need access to lower-cost and high-quality financial products to help build their financial well-being.

At the same time, we must monitor how financial institutions adopt these approaches to ensure that rates and fees are not raised in other product lines and for other consumers.

Further, smaller financial institutions and those with greater difficulty accessing capital, such as Community Development Financial Institutions (CDFI), low-income credit unions, and Minority Depository Institutions (MDI), likely need support to be able to adopt such a business practice. Many of these institutions already subscribe to this approach, but could be better funded to reach more consumers through programs like the CDFI Fund or other public or private investments.

It would be ideal, from a consumer perspective, to see equitable growth across a range of financial institutions in such products and offerings, including banks and credit unions that may already be likely to connect with and support lower-income and marginalized consumers.

**The CFPB can Play an Important Role in Cultivating these Practices and Should be Supported by Congress.**

The CFPB is already playing a significant role in pushing financial institutions to lower fees. The Bureau provides valuable data and public communications monitoring the use of overdraft fees and identifying where changes could be made.

In May, the Bureau also released a proposal to reduce credit card late fees to \$8. Many financial institutions have responded by finding creative alternatives that are safe and affordable, such as the ones we point out in this testimony.

However, recent efforts in the courts to alter the structure of the CFPB's funding mechanism could undermine these efforts. We strongly urge policymakers to support the efforts of the CFPB in securing a fair marketplace for all consumers and to oppose efforts that would undermine the Bureau and its ability to accomplish its important mission.

## Notes

<sup>1</sup> "Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data," Federal Deposit Insurance Corporation and Center for Financial Research, June 2022, [https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm\\_medium=email&utm\\_source=govdelivery](https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery)

<sup>2</sup> "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be," Financial Health Network, September 2021, <https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/>; "Latinos Banking and Credit Survey: Arizona, California, Texas," UnidosUS and Oportun, June 2022, [unidosus\\_oportun\\_latinosandcreditservicessurvey\\_azcatx\\_crosstabs.pdf](https://www.unidosus.org/wp-content/uploads/2022/09/unidosus_oportun_latinosandcreditservicessurvey_azcatx_crosstabs.pdf); "Who Is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees," Federal Reserve of Boston, August 2022, <https://www.bostonfed.org/publications/research-department-working-paper/2022/who-is-paying-all-these-fees-an-empirical-analysis-of-bank-account-and-credit-card-fees/>; "Economic Well-Being of U.S. Households in 2022," Federal Reserve, May 2023, <https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf>

<sup>3</sup> UnidosUS, Comments in response to the ANPRM to Address Deceptive or Unfair Fees [Federal Register No. 2022-24326] (Washington, DC: UnidosUS, 2021) <https://unidosus.org/wp-content/uploads/2023/02/UnidosUS-Response-to-DeceptiveFees.pdf>

<sup>4</sup> Stephen Arves and Meghan Greene, "Amid Resurgence of Interest in Overdraft, New Data Reveal How Inequitable It Can Be," Financial Health Network blog, September 3, 2021, <https://finhealthnetwork.org/amid-resurgence-of-interest-in-overdraft-new-data-reveal-how-inequitable-it-can-be/>.

<sup>5</sup> Michelle Fox, "Latinos, Blacks pay over twice as much in bank fees, survey finds," NBC News, January 13, 2021, <https://www.nbcnews.com/news/latino/latinos-blacks-pay-over-twice-much-bank-fees-survey-finds-n1254145>.

<sup>6</sup> Federal Reserve Bank of Boston, "Who is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees," Federal Reserve Bank of Boston, August 2022, <https://www.bostonfed.org/publications/research-department-working-paper/2022/who-is-paying-all-these-fees-an-empirical-analysis-of-bank-account-and-credit-card-fees.aspx>.

<sup>7</sup> Consumer Financial Protection Bureau, "Credit Card Late Fees," Consumer Financial Protection Bureau, March 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-late-fees\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf).

<sup>8</sup> UnidosUS, "Latinos Banking and Credit Survey: Arizona, California, Texas," UnidosUS, June 2022, [https://unidosus.org/wp-content/uploads/2022/09/unidosus\\_oportun\\_latinosandcreditservicessurvey\\_azcatx\\_crosstabs.pdf](https://unidosus.org/wp-content/uploads/2022/09/unidosus_oportun_latinosandcreditservicessurvey_azcatx_crosstabs.pdf).

<sup>9</sup> UnidosUS, Comments in response to the ANPRM to Address Deceptive or Unfair Fees.

<sup>10</sup> Center for Responsible Lending, "Non-Negotiable: Negotiation Doesn't Help African Americans or Latinos on Dealer-Financed Car Loans," Center for Responsible Lending, January 2014, <https://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/CRL-Auto-Non-Neg-Report.pdf>.

<sup>11</sup> Federal Trade Commission, "Serving Communities of Color: A Staff Report on the Federal Trade Commission's Efforts to Address Fraud and Consumer Issues Affecting Communities of Color," Federal Trade Commission, October 2021, [https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report\\_oct\\_2021-508-v2.pdf](https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf).

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<sup>12</sup> Federal Deposit Insurance Corporation, “FDIC National Survey of Unbanked and Underbanked Households,” 2021 FDIC Survey, October 2022, <https://www.fdic.gov/analysis/household-survey/2021report.pdf>.

<sup>13</sup> UnidosUS, “Latinos Banking and Credit Survey.”

<sup>14</sup> Federal Deposit Insurance Corporation, “FDIC National Survey Unbanked and Underbanked Households.”

<sup>15</sup> Ibid.

<sup>16</sup> Claire Williams, “Access to Cheap Money has a Racial Gap,” Morning Consult, June 3, 2019, <https://morningconsult.com/2019/06/03/access-to-cheap-money-has-a-racial-gap/>.

<sup>17</sup> Karen Bennett and Matthew Goldberg, Overdraft Fees Tumble to 13-Year Low While ATM Fees are Back on the Rise,” Bankrate, August 31, 2022, <https://www.bankrate.com/banking/checking/checking-account-survey/>.

<sup>18</sup> UnidosUS, “Written Testimony of Santiago Sueiro, Senior Policy Analyst, UnidosUS,” UnidosUS, March 30, 2023, <https://unidosus.org/wp-content/uploads/2022/03/UnidosUS-Santiago-Sueiro-Testimony-SCPMI-3.30.2236.pdf>.

<sup>19</sup> Consumer Financial Protection Bureau, “Overdraft/NSF Revenue Down Nearly 50% Versus Pre-Pandemic Levels,” Consumer Financial Protection Bureau, May 23, 2022, <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/#:~:text=Overdraft%2FNSF%20revenue%20down%20nearly%2050%25%20versus%20pre%20pandemic%20levels&text=Overdraft%2FNSF%20revenue%20for%20the,over%20%245.5%20billion%20going%20forward.>

<sup>20</sup> Bank of America, “Bank of America Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees,” Bank of America Newsroom, January 11, 2022, <https://newsroom.bankofamerica.com/content/newsroom/press-releases/2022/01/bank-of-america-announces-sweeping-changes-to-overdraft-services.html>.

<sup>21</sup> Consumer Financial Protection Bureau, “Overdraft/NSF Metrics for Top 20 Banks Based on Overdraft/NSF Revenue Reported During 2021,” Consumer Financial Protection Bureau, May 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-table\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-table_2023-05.pdf).

<sup>22</sup> Pew Trusts, “Affordable Credit Poised to Save Consumers Billions,” Pew Trusts, May 15, 2023, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/05/affordable-credit-poised-to-save-consumers-billions>.

<sup>23</sup> Alex Horowitz, Linlin Liang, and Gabe Kravitz, “Americans Support Affordable Small Loans in the Banking System,” Pew Trusts, June 6, 2023, <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/06/06/americans-support-affordable-small-loans-in-the-banking-system>.

**Rep. BARR - #1**

**A guidance document issued without observing the procedural requirements of public notice-and-comment can be rescinded as easily as it is issued, as the CFPB has repeatedly demonstrated throughout its relatively short history.**

**a) Do you agree that it is important for the CFPB's guidance to be durable so that market participants can plan multi-year investments in compliant products with certainty that changes to the rules governing their conduct (and/or that of their competitors) will not make such investments obsolete and therefore stifle innovation to the detriment of consumers?**

**Response:** The Consumer Financial Protection Bureau's (CFPB's) guidance documents explain what the law has already authorized, and do not create any new obligations. However, many small and nascent firms cannot afford to pay high-priced lawyers and value the ability to read CFPB issuances on topics relevant to longstanding and emerging business practices.

**b) If so, will you commit to relying on proper rulemaking for regulations that attempt to shape market behavior? For example, will the Bureau consider issuing legislative rules to codify its interpretation of:**

- 1. The Dodd-Frank Act, in its Policy Statement on Abusive Acts or Practices?**
- 2. The Real Estate Settlement Procedures Act, in its Advisory Opinion on Mortgage Comparison Shopping Platforms?**
- 3. The Equal Credit Opportunity Act, in its Advisory Opinion on Special Purpose Credit Programs?**

**Response (1b 1, 2, 3):** The Advisory Opinion program was created by my predecessor, Director Kraninger. The Advisory Opinion on Special Purpose Credit Programs was issued by Director Kraninger in 2020. It is an interpretive rule that provides clarity about existing regulations to

creditors that choose to establish Special Purpose Credit Programs. With respect to the Policy Statement on Abusive Acts or Practices, it summarizes prior actions addressing abusive acts or practices and explains how the CFPB analyzes the elements of abusiveness through relevant examples, with the goal of providing an analytical framework to fellow government enforcers and to the market for how to identify violative acts or practices. With respect to the Real Estate Settlement Procedures Act, the advisory opinion is a good example of how the CFPB has explained how longstanding prohibitions apply to modern business practices. At this time, the CFPB has not planned any rulemaking on these topics.

**REP BARR - #2**

During the hearing, many members of the Committee raised concerns about the complexity and cost of compliance with the CFPB's final rule on small business data collection implementing Section 1071 of Dodd-Frank, particularly for those smaller banks that are not required to comply with HMDA requirements. Your response was, "the final rule allows small banks and others to work together with their industry associations to help with reporting." You also stated, "There's lots of flexibility, because we heard those comments and wanted to make sure we were responding to them adequately." However, after careful review of the almost 900-page rule, it appears that your statement is false, or at least misleading. Section 1002.109 of the final rule, which comes the closest to what you were implying, only allows for subsidiaries to work together on their reporting requirements.

**a) Would you please provide the language that allows small banks to solicit assistance from industry associations with the reporting requirements of the final rule?**

**Response:** The final rule is designed to reduce complexity and cost in numerous ways. A large number of small lenders are not covered by the rule, and for lenders that are covered, the rule provided smaller entities with nearly three years to implement the rule. Data can be reused across credit applications for up to three years. The rule uses a simplified small business definition that allows covered lenders to know readily when the rule applies. HMDA-reportable data is not reported under the final rule. This is not an exhaustive list of such measures.

With respect to working with industry associations, under the rule, institutions are free to solicit assistance from service providers if they so choose. As the preamble to the final rule explains: "While there is no explicit provision addressing financial institution use of service providers in connection with submission of application registers... the CFPB is open to such submission, so long as it complies with all



applicable provisions of the final rule. . . .”<sup>1</sup> Many industry associations have developed standards and other programs to assist their members, and the rules allow them to do so here.

**b) If you cannot, were you unfamiliar with the provisions of the rule when you made that statement, or were you taking liberties with the existing language?**

**Response:** Please refer to response in 2(a) above.

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<sup>1</sup> <https://www.consumerfinance.gov/1071-rule/>

**REP. BARR - #3**

**I am deeply concerned about the security incident that took place recently at the CFPB. A then-CFPB employee sent a massive amount of sensitive and confidential information from their work e-mail address to their personal email address. For some reason, the CFPB's data loss prevention controls did not prevent this transmission. I am particularly concerned about this breach because the CFPB has access to sensitive supervisory information about banks, credit unions, and other financial institutions as well as Personally Identifiable Information about consumers who the CFPB should be protecting.**

**a) What steps have you taken to improve your data security procedures, and potentially bring them more in line with other financial regulators that have access to sensitive data?**

**Response:** The incident you raise was certainly extremely concerning. The CFPB has in place safeguards to ensure that personally identifiable information (PII) and confidential supervisory information (CSI) are effectively protected. The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems, and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security. All CFPB employees are required to complete privacy and cybersecurity training annually. Access to the system is shut off for employees who do not complete training.

In light of the recent data incident CFPB has been reviewing its information, privacy, and cybersecurity program to ensure that we can improve and strengthen safeguards as much as possible. Some of the projects underway to strengthen CFPB's posture include:

- Implementing additional technical measures, such as new Data Loss Prevention controls, which have the capability of scanning

outbound email for sensitive information, and adopting a federal shared service offered by the Department of Justice that will provide an IT network security capability that implements a zero trust architecture through which people and devices are verified every time they attempt to access sensitive data, regardless as to whether they have pre-existing network access;

- Strengthening internal policies and procedures, and cybersecurity and privacy training to reflect some of the lessons learned and ensure CFPB has the best technological controls available to detect any anomalous behavior or other issues; and
- Continuing to refine how we collect information from institutions during supervision, with a focus on narrowing the information we collect to the minimum necessary to fulfill our supervisory responsibilities.

**b) How, and why, do your security procedures differ from those at the Federal Reserve, from which you derive shielded funding?**

**Response:** Annual audits by the Office of Inspector General (OIG) – which provides oversight to both the CFPB and the Board of Governors of the Federal Reserve System – have consistently found that CFPB’s cybersecurity program meets an effective level of security. Those audits are made public.<sup>2</sup> The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems. The CFPB maintains information security standards as required by Federal Information Security Management Act (FISMA). In FY2022, the OIG rated both the CFPB’s and the Federal Reserve Board of Governor’s information security programs at a maturity level 4 (managed and measurable). The report of the OIG’s audit of the CFPB’s information security program covering FY 2022 is publicly available.<sup>3</sup>

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<sup>2</sup> <https://oig.federalreserve.gov/reports/allyears/cfpb.htm>

<sup>3</sup> <https://oig.federalreserve.gov/reports/CFPB-information-security-program-sep2022.pdf>

**c) Why should Congress continue to give the Bureau authority to collect voluminous information under HMDA and Section 1071 when the Bureau cannot safeguard the data in its possession?**

**Response:** The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems. The CFPB maintains information security standards as required by the FISMA and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security.

The CFPB adheres to all applicable federal data collection and storage standards, including encrypting data transfers and data stored in the system. With regard to HMDA, CFPB follows a strict data minimization standard. In the five years the CFPB has been collecting HMDA data there has never been a breach of non-public information.

With respect to the data collection required by the small business lending rule, the CFPB will only collect de-identified data about small business loans, i.e., data that does not directly identify individual small businesses/small business owners. The rule explicitly prohibits the collection of PII such as an individual's name and personal contact information. And, while the data intake system design and build are still underway, the CFPB will ensure that appropriate controls are built into the system to protect the data throughout its entire lifecycle. The system will also go through the security authorization process prior to deployment.

**d) What did the then-CFPB employee do with the data they sent to their personal email address?**

**Response:** Before referring the matter to the Office of Inspector General for further investigation, the CFPB only determined that the employee made use of their personal email account while conducting CFPB business.

**e) Did the then-CFPB employee forward the data they sent to their personal email address to any consumer activist group, private-sector lawyers, private-sector business, or foreign agent?**

**Response:** After we identified that the employee was misusing a personal email account while conducting CFPB business, CFPB referred the matter to the Office of Inspector General for further investigation.

**f) What do you, as Director of the CFPB, know of any forwarding, copying, or other uses of CFPB confidential data on businesses and consumers by the then-CFPB employee who sent to their personal email address? Please identify and document all that you know.**

**Response:** Before referring the matter to the Office of Inspector General for further investigation, the CFPB only determined that the employee made use of their personal email account while conducting CFPB business. As Director that is the extent of my knowledge about what the former employee may have done with the misappropriated data.

**g) Is the level of seriousness of the CFPB data leak, in terms of potential harms to consumers and businesses, comparable to earlier leaks at private-sector firms, such as Experian?**

**Response:** The CFPB takes privacy and cybersecurity very seriously and takes this incident very seriously. However, I want to be clear that the CFPB was not hacked; all associated systems worked as designed, and have all been fully vetted in accordance with federal standards. In addition, when the incident was reported, we found no anomalous or suspicious activity by the individual, nor any individual attempting to gain access to data that they should not have had access to. The individual mishandled the information. Lastly, while the CFPB does not take this incident lightly, it is important to note that, in general, the PII involved was relatively limited in scope. It did not contain sensitive personal information about consumers, like social security numbers or date of birth. That is not the type of information that CFPB typically requests during supervisory exams.

**REP. BARR - #4**

**Congress, in a bipartisan fashion, recently passed a law preventing further extensions of the student-loan payment pause. Student loan interest will resume starting on September 1, 2023, and payments will be due beginning in October.**

**a) Does the CFPB plan to engage in consumer education to smooth the transition of restarting payments and work with servicers of federal student loans?**

**Response:** The CFPB recognizes the return to repayment for student loan borrowers is a major financial event for millions of consumers and may put stress on their existing resources.

CFPB's approach to assisting these borrowers relies on three core actions: (1) providing support to the U.S. Department of Education's Federal Student Aid (FSA) office, (2) monitoring consumer feedback and complaints to understand student loan borrowers' experiences, and (3) monitoring market developments to identify specific risks.

In consultation with FSA, the CFPB has offered language translation services for return to repayment documents to allow them to reach student loan borrowers in languages other than English. CFPB has also offered plain language consulting to their office so that any materials developed by FSA are easy to understand and will not confuse borrowers with technical jargon. Finally, CFPB has offered to circulate any FSA developed materials with our networks and stakeholders, including state agencies, financial education providers, legal aid organizations, and consumer advocates.

**REP. BARR - #5**

**Small entities are impacted and will be harmed by several of the CFPB's recent proposed rules including its Notice of Proposed Rulemakings (NPRM) for nonbank registries for "repeat offenders" and "terms and conditions of form contracts." Nonetheless, the CFPB did not go through the Small Business Regulatory Enforcement Fairness Act (SBREFA) process, and the Small Business Administration (SBA) Office of Advocacy sent letters telling the CFPB this was a problem.**

- a) How are you addressing the concerns raised by the SBA Office of Advocacy about illegally skipping SBREFA requirements, and why have you acted against ensuring that there is small business regulatory enforcement fairness?**

**Response:** The CFPB is currently reviewing all comments received in response to the two Notices of Proposed Rulemaking<sup>4</sup> we issued to register nonbanks that are subject to certain orders or which use certain terms and conditions that present risks to consumers, including the comments received by the Small Business Administration's Office of Advocacy. The CFPB has followed the requirements under the Small Business Regulatory Enforcement Fairness Act during this rulemaking process, including by certifying that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The CFPB plans to address the concerns expressed by commenters like the SBA Office of Advocacy in the notice and comment process.

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<sup>4</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_registry-of-supervised-nonbanks\\_2023-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_registry-of-supervised-nonbanks_2023-01.pdf) and <https://www.consumerfinance.gov/rules-policy/rules-under-development/registry-of-nonbank-covered-persons-subject-to-agency-court-orders/>



**b) Do you believe that obligations to follow the SBREFA process is optional to you as Director of the CFPB?**

**Response:** The CFPB follows the requirements of the Small Business Regulatory Enforcement Fairness Act and has complied with those requirements.

**REP. BARR - #6**

**When the CFPB released the final rule implementing section 1071 of the Dodd-Frank Act, it pledged to help lenders, especially small lenders, implement the rule. This support is critical given the inadequate time the Bureau has provided before lenders must be ready to collect data. Some lenders have told us they submitted questions about the rule over a month ago to the mailbox the CFPB has designated for questions but have received no response. These delays cause great concern, given the aggressive mandatory compliance date and the sheer length of the rule.**

**a) Does the Bureau plan to increase staff focus to ensure it responds to questions within the 10-15 days it has promised?**

**Response:** CFPB's pledge to provide replies to lenders submitting questions, as outlined on the CFPB website, has been and will continue to be honored. CFPB has dedicated a wide spectrum of resources and staff to ensure that we are working closely with all stakeholders to develop and implement this provision of law as Congress mandated to increase transparency in small business lending, promote economic development and combat unlawful discrimination. The intent has been to understand the perspectives and needs of all stakeholders.

Since the issuance of the small business lending rule on March 30, 2023, the CFPB has engaged in a robust program of rule implementation support, providing written implementation materials and other compliance resources. At the time of the rule's release, the CFPB issued several compliance aids, including an executive summary, compliance date info sheet, data points chart, and filing instructions guide.<sup>5</sup> Since the rule's release, the CFPB has issued additional compliance aids. These compliance aids include a small entity compliance guide, which is a comprehensive explanation of the rule's requirements with examples and implementation tips, and an initial set of Frequently Asked

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<sup>5</sup> <https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/>

Questions (FAQs). All of these documents are available on the CFPB website.<sup>6</sup> The CFPB has hosted two webinars and has met with a wide variety of industry trade groups and technology providers who work with industry. The CFPB has also been working with trade associations and other stakeholders to answer their questions about the rule so that they can disseminate information and answers to implementation questions. The CFPB also offers informal staff guidance on individual questions about the rule submitted through the regulatory inquiry function<sup>7</sup> and has met with a wide variety of industry groups and technology providers to assist them.<sup>8</sup>

**b) Will the CFPB commit to issue FAQs by October 1, which is one year before the first mandatory compliance date?**

**Response:** The CFPB issued FAQs for the small business lending rule in June 2023.<sup>9</sup> The CFPB anticipates that it will issue additional FAQs and other compliance aids, as appropriate, in the future.

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<sup>6</sup> <https://www.consumerfinance.gov/1071-rule/>

<sup>7</sup> <https://reginquiries.consumerfinance.gov/>

<sup>8</sup> Please note that on July 31, 2023, the U.S. District Court for the Southern District of Texas ordered the CFPB not to implement or enforce the small business lending rule against plaintiffs in Texas Bankers Ass'n, et al v. CFPB, et al., No. 7:23-cv-00144, and their members. That order stays all deadlines for compliance with the small business lending rule for plaintiffs in that case and their members until the Supreme Court renders a decision in CFPB v. Community Financial Services Ass'n of Am., Ltd., No. 22-448 (U.S. cert. granted Feb. 27, 2023). As a result, those entities will have additional time to prepare for compliance with the small business lending rule. In addition, the U.S. District Court for the Eastern District of Kentucky recently enjoined the Bureau from enforcing the Rule "until the Supreme Court issues an opinion ruling that the funding structure of the CFPB is constitutional." Monticello Banking Co. v. CFPB, No. 6:23-cv-00148 (E.D.Ky. Sept. 14, 2023).

<sup>9</sup> <https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/small-business-lending-rule-faqs/>

**REP. BARR - #7**

If medical providers are unable to guarantee payment for medical services, particularly for charges under \$500, what types of challenges will they face in the provision of services?

**a) What are the long-term consequences for patients' ability to access medical assistance, particularly in rural areas?**

**Response:** Americans face unprecedented challenges in accessing medical care and access to affordable medical care is vital to the health and well-being of all Americans. This includes financial health and well-being. That is particularly acute in rural areas, where many medical providers and hospitals have ceased or reduced providing care in recent years<sup>10</sup> with the result that many rural patients have to travel farther to seek care. Additionally, families living in rural areas may face financial challenges in accessing medical care. Often, as noted by the Government Accountability Office (GAO), they may lack insurance, and, as CFPB research<sup>11</sup> has shown, people living in rural areas carry a disproportionate amount of medical bills in collection status. Lack of insurance and outstanding medical bills both appear to deter people from seeking and receiving needed medical care.

In March 2022, the national credit reporting companies announced they would no longer include on credit reports medical debt with balances under \$500, among other changes to the reporting of unpaid medical bills on credit reports. While these actions are a step in the right direction, the CFPB remains concerned about coercive reporting of unpaid medical bills. Research by the CFPB has shown that unpaid medical bills have little predictive value in determining a person's likelihood of repaying other credit obligations, and credit scoring models

<sup>10</sup> <https://www.gao.gov/products/gao-23-106651>

<sup>11</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-details-family-finances-and-debt-in-rural-appalachi>

have continued to reduce their reliance on medical debt. While including unpaid medical bills under \$500 on a credit report may coerce payment of a disputed debt, such coercion risks polluting the credit reporting system, on which creditors and others rely, with inaccurate data. To the extent medical providers are themselves extending credit to patients or assisting patients in obtaining specialty medical payment products, they - and ultimately patients - are injured by the inclusion of inaccurate data of little predictive value on credit reports. Any benefit that medical providers would derive from coercive credit reporting is likely further limited by the fact that the information regarding unpaid medical bills is typically provided, or furnished, to the credit reporting companies not by the medical provider themselves, but by a third-party debt collector. The interposition of a third-party debt collector further increases the likelihood of error or inaccuracy in the amounts, beyond the common problems of ensuring accurate and correct patient billing, after accounting for insurance, co-payments, and required financial assistance.

Two recent reports issued by the CFPB (Consumer Finances in Rural Appalachia<sup>12</sup> and Consumer Finances in Rural Areas of the Southern Region<sup>13</sup>) shed light on the data and context concerning medical debt and its implications for American consumers, including rural Americans. The CFPB will continue to monitor how these changes impact both consumers and practitioners.

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<sup>12</sup> <https://www.consumerfinance.gov/data-research/research-reports/consumer-finances-in-rural-appalachia/>

<sup>13</sup> <https://www.consumerfinance.gov/data-research/research-reports/banking-and-credit-access-in-the-southern-region-of-the-us/>

**REP. BARR - #8**

**The CFPB's Spring 2023 Agency Rule List states "The CFPB is considering whether to amend Regulation V" which implements the Fair Credit Reporting Act (FCRA). I have not seen you publicly discuss the need for amendments to Regulation V. I am concerned, in general, with how the CFPB has characterized credit reporting practices, and even more with how the agency has pointed to its UDAAP authority when issuing new guidance regarding credit reporting.**

**a) Would you share why and in what ways you believe Regulation V needs to be amended, and what your high-level objectives are with such a rulemaking?**

**Response:** In 2022, the CFPB received approximately 1,287,300 consumer complaints. Of those, 76 percent—or 978,900—were about credit or consumer reporting, making it the most-complained-about product and service category. Credit or consumer reporting has been the most complained about category since 2017.

Credit reports should contain accurate information that is predictive of a consumer's ability to repay a loan. The CFPB has recently launched an inquiry into data broker business practices to obtain information for our rulemaking effort, which would amend Regulation V under the Fair Credit Reporting Act (FCRA).<sup>14</sup> This inquiry will help us understand whether new business models used by data brokers are covered by the FCRA, as well as the potential harms and benefits that stem from the sale of consumer data. As indicated above, the CFPB also remains concerned that medical debt is less predictive of future repayment than other debts, that consumer reports regarding medical debt are often inaccurate, and that the furnishing of information regarding medical debt

<sup>14</sup> <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/request-for-information-regarding-data-brokers-and-other-business-practices-involving-the-collection-and-sale-of-consumer-information/>

may be used to coerce people into paying bills they may not owe. The CFPB is concerned about whether the reporting and use of this information-should be permitted under the FCRA, and considering options to address this concern.

**b) Would you provide an update on the status of the rulemaking?**

**Response:** The CFPB is currently conducting pre-rule activities which include hosting a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to collect advice and recommendations from small businesses that are likely to be subject to the rule.

**REP. BARR - #9**

**What steps did the CFPB take to ensure that your proposed adjustments to Regulation Z, regarding the safe harbor dollar amount for credit card late fees, will not result in higher Annual Percentage Rates (APR) for all credit card holders?**

**Response:** The CFPB analyzed the potential benefits and costs of the proposal, including the possibility that APRs would increase as a result of the proposed amendments. Based on the available evidence, the CFPB does not expect that reduced revenue as a result of the proposed lower safe harbor amount would be fully passed through to consumers in the form of higher APRs or other price increases. A full discussion of this analysis can be found in the proposed rule.<sup>15</sup>

**a) Is it fair that card holders who always pay on time bear the costs of this reduction in late fees through higher APRs, other fees, or even being shut out credit card access altogether?**

**Response:** Congress mandated that the late fees charged on credit accounts must be “reasonable and proportional” to the late payment as required under the Truth in Lending Act.

Section 1022(b)(2) of the Consumer Financial Protection Act of 2010 requires the CFPB to consider the potential benefits and costs of its rules to consumers and covered persons. The CFPB considered potential benefits and costs of the proposed credit card penalty fee rule and outlined the analysis in the Notice of Proposed Rulemaking. The CFPB anticipates that the proposal would benefit consumers when they incur late fees, and that the reduction in late fee amounts would reduce issuer revenue. Issuers may respond by adjusting interest rates or other card terms to offset the lost income. CFPB expects less than full offset, with the aggregate benefits to consumers to be greater than the aggregate costs.

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<sup>15</sup> <https://www.govinfo.gov/content/pkg/FR-2023-03-29/pdf/2023-02393.pdf>



**b) Are late fees charged by federal government agencies, such as the IRS, too high and harmful to taxpayers, who are consumers of federal government services, “junk fees” by the analytic standards laid out in your proposed adjustments to Regulation Z, and too high to be justified on the basis of behavioral deterrence?**

**Response:** Your question refers to the CFPB’s proposed rule on credit card late fees. The proposal implements a specific statutory provision in the CARD Act to better ensure that late fees charged on credit card accounts are “reasonable and proportional” to the late payment, as required under the statute. Accordingly, the CFPB is only considering credit card late fees in this rulemaking.

**REP. BARR #10**

In its proposed rule on credit card late fees, the CFPB certified the rule would not have an economic impact on a substantial number of small entities. However, the CFPB also stated it does “not have data with which to precisely estimate the effect of the Proposed Rule on late fee revenue.” The Small Business Administration’s Office of Advocacy and a bipartisan group of members of Congress have expressed concern with CFPB’s process in undertaking the rule.

**a) Does the CFPB intend to comply with its requirements to convene a SBREFA panel before finalizing the rule to ensure small entities have their voice heard and that the agency could make appropriate amendments to the rule?**

**Response:** The CFPB certified that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an initial regulatory flexibility analysis nor a small business review panel was required. The CFPB requested comment on the analysis that supported this certification and requested any relevant data. The CFPB is currently reviewing comments and submissions in response to the Notice of Proposed Rulemaking.

**b) If not, why does the agency believe it is not required to convene a SBREFA panel?**

**Response:** As discussed in the NPRM, the CFPB estimates that for the vast majority of small banks, even a large reduction in credit card late fee revenue would represent well below one percent of bank revenue and, therefore, would not have a significant economic impact. Similarly, for credit unions, the small share of revenue coming from credit cards, together with the fact that late fees make up only a fraction of credit card revenue, implies that even a significant drop in late fee revenue would not have a significant economic impact for the large majority of small credit unions. It is worth noting that the credit card market is dominated

by a small group of large players. The top 20 issuers control approximately 93 percent of the market.

**REP. BARR - #11**

**In reviewing the CFPB's Policy Statement on Abusive Acts or Practices, I am concerned that the guidance goes beyond addressing abusiveness prohibitions and may actually infringe upon judicial independence and separation of powers. As you know, attorneys serve an important role in the proper functioning of our consumer finance markets, acting as advocates and representatives for their own clients, but fundamentally, not educating, informing, or advising parties of adverse interest. In fact, they are legally and ethically prohibited from doing so. CFPB's policy statement appears to be in direct conflict with the American Bar Association's (ABA) model rules of professional conduct which make it clear that lawyers, "shall not give legal advice to an unrepresented person, other than the advice to secure counsel." Moreover, ABA's model rules also state that it is professional misconduct for an attorney to attempt to induce another attorney to violate a rule of professional conduct. Those provisions are mirrored in the laws of virtually every state.**

**a) Director Chopra, in light of these provisions, why does the CFPB believe that under the Policy Statement on Abusive Acts or Practices the Bureau can require attorneys to provide assistance or advice to consumers whom they do not represent as set forth in the abusiveness standard?**

**Response:** The Policy Statement on Abusiveness does not discuss attorneys, other than in a footnote that references in passing an amended complaint filed under my predecessor Acting Director Mick Mulvaney in December 2017.<sup>16</sup> Whether an attorney would be subject to CFPB enforcement would depend on the particular circumstances. Section 1027(e) of the Consumer Financial Protection Act of 2010, titled

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<sup>16</sup> 88 Fed. Reg. 21883, 21890 n.77 (Apr. 12, 2023) (citing in passing Amended Complaint, CFPB v. Access Funding, LLC, No. 1:16-cv-03759 (D. Md. Filed Dec. 13, 2017))

“Exclusion for the Practice of Law,” addresses the relationship of CFPB supervision and enforcement to the practice of law.

**REP. BARR - #12**

**As it stands today, fintech providers that rely on consumer-authorized data access are essentially dependent on the willingness of banks and other data holding institutions to cooperate and provide information that is crucial for their services. Given that increasing competition is a stated goal of the CFPB, how will the CFPB guarantee that all parties' influence and advantages are balanced within the §1033 sharing ecosystem, such as by not imposing arbitrary or unreasonable terms for authorized data access?**

**Response:** This is such an important question. Our country will not be able to realize the benefits of open banking if incumbents impose arbitrary or unreasonable terms for authorized data access.

The CFPB's Personal Financial Data Rights Rulemaking implementing section 1033 seeks to foster a more open and competitive market in which individuals and nascent firms would have more bargaining leverage. In today's market, consumers' access to their own data is based on inconsistent norms across market participants, and even when large institutions do share personal data, there is no guarantee on availability, latency, and critical data points, like price. We anticipate that the rulemaking will foster an environment where it will be less likely that incumbent institutions can improperly restrict access when consumers seek to control and share their data. We anticipate proposing this rule soon. I would be happy to discuss this further with you.

Rep. Warren Davidson  
QFR to Director Chopra  
July 14, 2023

Director Chopra, Throughout your tenure as the Chairman of the CFPB, you have advanced rules, regulations, and enforcement actions around competition and a fair and transparent financial services ecosystem for American consumers. Most recently, as you noted in your remarks at Money20/20 last year, the Bureau will be “exploring safeguards to prevent excessive control or monopolization by one, or even a handful of, firms.”

However, over the last several years, a consortium of the largest financial institutions in the U.S. has sought to exert governance over the consumer-permissioned data ecosystem, thus decreasing competition and consumer choice in the marketplace.

Do you believe what we are seeing in the current market is complementary or contradictory to the Bureau’s goal of providing consumer choice of, and accessibility to, their own financial data?

Response: If a small set of financial institutions seeks control over the infrastructure for consumer-permissioned data, this could disadvantage community banks, nascent startups, and innovators. We will soon be proposing the Personal Financial Data Rights Rulemaking under Section 1033 of the Consumer Financial Protection Act of 2010, and are keeping this concern in mind.

**Questions for the Record**  
**Rep. Monica De La Cruz (TX-15)**  
**House Financial Services Full Committee Heraing**  
**with Consumer Financial Protection Bureau (CFPB)**  
**Director Rohit Chopra**  
**(6/14/23)**

**REP. DE LA CRUZ - #1**

**Director Chopra, is the CFPB planning any actions regarding artificial intelligence (AI)?**

**Response:** The Consumer Financial Protection Bureau (CFPB) and four other federal agencies<sup>1</sup> have jointly pledged to monitor the development and use of automated systems, promote responsible innovation, and to vigorously enforce our collective authorities to protect individuals' rights, regardless of whether legal violations occur through traditional means or advanced technologies, including those that are marketed as artificial intelligence.

To that end, the CFPB has taken a series of actions to ensure that advanced technologies do not violate the rights of consumers:

- The CFPB released a circular underscoring that the adverse action notice requirements of the Equal Credit Opportunity Act (ECOA) and Regulation B apply equally to all credit decisions, regardless of the technology used to make them. In particular, ECOA and Regulation B do not permit creditors to use the excuse that their algorithms are too complex and therefore they cannot provide the specific and accurate reasons for adverse actions.

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<sup>1</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-federal-partners-confirm-automated-systems-advanced-technology-not-an-excuse-for-lawbreaking-behavior/>



- The CFPB issued an interpretive rule explaining that when digital marketing providers go beyond traditional advertising, they are typically covered by the Consumer Financial Protection Act as service providers and do not fall within an exception for companies that solely provide time or space for an advertisement. In other words, when digital marketing providers use sophisticated behavioral targeting techniques to market consumer financial products, they must adhere to federal consumer financial protection laws.
- The CFPB has also prioritized digital redlining, including bias in algorithms and technologies marketed as artificial intelligence. As part of this effort, the CFPB is working with federal partners to protect homebuyers and homeowners from algorithmic bias within home valuations and appraisals through rulemaking.

**REP. DE LA CRUZ - #2**

**Director Chopra, in an interagency statement you signed on April 25, 2023, it was stated, “We also pledge to vigorously use our collective authorities to protect individuals’ rights regardless of whether legal violations occur through traditional means or advanced technologies.” In what ways are you seeing individuals’ rights being violated by advanced technologies like AI?**

**Response:** The use of advanced technologies and automated systems marketed as artificial intelligence (AI) has the potential to perpetuate unlawful bias, automate unlawful discrimination, and produce other harmful outcomes. The CFPB has been focused on several harms from such advanced technologies, including from black box algorithms, behavioral targeting and advertising, abusive use of AI technology, and digital redlining. The response to the previous question notes several actions we have taken to protect consumers from these harms.

**REP. DE LA CRUZ - #3**

**Regarding the Silicon Valley Bank (SVB)-failure weekend, it has been over 100 days and this Committee is still trying to obtain information from the FDIC, the Fed, and Treasury about what happened, and we have been stonewalled on many fronts.**

**3a. Director Chopra, during the tumultuous bank failure weekend, did you have conversations about decisions concerning how to handle SVB, Signature Bank, or the systemic instability with anyone at the White House or anyone at the Federal Trade Commission (FTC)?**

**Response:** Yes. In my role as a Director on the Board of the Federal Deposit Insurance Corporation, I was in communication with relevant state and federal officials to discuss the developing stress in the banking system and strategies for mitigating the potential fallout on the broader economy.

**3b. Director Chopra, what was discussed in the March 12, 2023, Financial Stability Oversight Council (FSOC) meeting, and do you believe that such a meeting of the FSOC was even necessary since all substantive bailout and special Fed lending had already been made without any FSOC meeting?**

**Response:** At the March 12, 2023, FSOC meeting, the Federal Reserve Board, Federal Deposit Insurance Corporation, and the U.S. Department of Treasury provided updates to the Council on the failures of Silicon Valley Bank and Signature Bank, and the invocation of the Systemic Risk Exception to protect uninsured depositors at both banks. The Federal Reserve Board also briefed the Council on the Bank Term Funding Program, a new 13(3) liquidity facility. The FSOC was established after the 2008 financial crisis, in part, to improve coordination between financial regulators, including during times of stress. I do believe such a meeting was appropriate.

**REP. DE LA CRUZ - #4**

**The Department of Housing and Urban Development (HUD) already regulates criminal record screening through its 2016 Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, which is applicable to anyone subject to the Fair Housing Act. CFPB's request for information proposes to duplicate existing efforts of HUD and make property operations more complex, ultimately making housing more expensive for the individuals they are intending to help. Director Chopra, where do you believe CFPB gets its authority to regulate rental owners and managers?**

**Response:** The CFPB is working closely with the Federal Trade Commission (FTC) to identify practices that prevent consumers from obtaining and retaining housing, and comments to the agencies' joint request for information regarding tenant screening will help inform enforcement and policy actions under each agency's jurisdiction. The Fair Credit Reporting Act (FCRA), which the CFPB and FTC both enforce, imposes requirements on many aspects of the tenant screening process. The CFPB has exclusive rule-writing authority for most provisions of the FCRA.<sup>2</sup>

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<sup>2</sup> 15 U.S.C. § 1681s.

**REP. DONALDS T1 – Part 1 - #1**

**Director Chopra, when the Bureau released the final rule implementing section 1071 of the Dodd-Frank Act, it pledged to help lenders, especially small lenders, implement the rule. This support is critical given the inadequate time the Bureau has provided before lenders must be ready to collect data. Some lenders have told us they submitted questions about the rule over a month ago to the mailbox the CFPB has designated for questions, but have received no response. These delays cause great concern, given the aggressive mandatory compliance date and the sheer length of the rule.**

**a) Will the Bureau commit to issue FAQs by October 1, which is one year before the first mandatory compliance date?**

**Response:** The Consumer Financial Protection Bureau (CFPB) issued Frequently Asked Questions (FAQs) for the small business lending rule in June 2023.<sup>1</sup> CFPB's pledge to provide replies to lenders submitting questions, as outlined on the CFPB website, has been and will continue to be honored.

CFPB has dedicated a wide spectrum of resources and staff to ensure that we are working closely with all stakeholders to develop and implement this provision of law as Congress mandated to increase transparency in small business lending, promote economic development and combat unlawful discrimination. The intent has been to understand the perspectives and needs of all stakeholders.

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<sup>1</sup> <https://www.consumerfinance.gov/compliance/compliance-resources/small-business-lending-resources/small-business-lending-collection-and-reporting-requirements/small-business-lending-rule-faqs/>

Since the issuance of the small business lending rule on March 30, 2023, the CFPB has engaged in a robust program of rule implementation support, providing written implementation materials and other compliance resources. At the time of the rule's release, the CFPB issued several compliance aids, including an executive summary, compliance date info sheet, data points chart, and filing instructions guide.<sup>2</sup> Since the rule's release, the CFPB has issued additional compliance aids. These compliance aids include a small entity compliance guide, which is a comprehensive explanation of the rule's requirements with examples and implementation tips, and an initial set of FAQs. All of these documents are available on the CFPB website.<sup>3</sup> The CFPB has hosted two webinars and has met with a wide variety of industry trade groups and technology providers who work with industry. The CFPB has also been working with trade associations and other stakeholders to answer their questions about the rule so that they can disseminate information and answers to implementation questions. The CFPB also offers informal staff guidance on individual questions about the rule submitted through the regulatory inquiry function<sup>4</sup> and has met with a wide range of industry groups and technology providers to assist them. The CFPB anticipates issuance of additional FAQs and other compliance aids, as appropriate, in the future.

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<sup>2</sup> <https://www.consumerfinance.gov/data-research/small-business-lending/filing-instructions-guide/>

<sup>3</sup> <https://www.consumerfinance.gov/1071-rule/>

<sup>4</sup> <https://reginquiries.consumerfinance.gov/>

**REP. DONALDS - Part 1 - #2**

**Congress mandated that the CFPB follow the SBREFA process, which involves consultation with small businesses who could be impacted by agency regulations. That is the law. While you often speak of the obligations of others to follow the law, this one applies to your agency. I'm concerned that the CFPB didn't follow it on the late fee rulemaking.**

**You certified that the proposal didn't impact community banks and credit unions, despite their (and their associations) submitting official comments in the ANPR last year giving you clear notice of the impact. In fact, so blatant was your decision to bypass the law and push this proposal out before the State of the Union that the Small Business Administration's Office of Advocacy issued an official letter calling your certification "deficient" in several ways and asking for the rulemaking to be paused with respect to banks with assets below \$850 million.**

**a) How could you credibly have asserted, in light of all evidence to the contrary including the conclusion of another office of the Federal government, that the late fee proposal did not require the CFPB to consult with small businesses?**

**Response:** The CFPB certified that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities as outlined in the proposal.<sup>5</sup> As discussed in the Notice of Proposed Rulemaking (NPRM), the CFPB estimates that for the vast majority of small banks, even a large reduction in credit card late fee revenue would represent well below one percent of bank revenue and, therefore, would not have a significant economic impact. Similarly, for

<sup>5</sup> <https://www.federalregister.gov/documents/2023/03/29/2023-02393/credit-card-penalty-fees-regulation-z>

credit unions, the small share of revenue coming from credit cards, together with the fact that late fees make up only a fraction of credit card revenue, implies that even a significant drop in late fee revenue would not have a significant economic impact for the large majority of small credit unions. It is worth noting that the credit card market is dominated by a small group of large players. The top 20 issuers control approximately 93 percent of the market.

**b) You had the comment letters from small banks and credit unions before this certification. Did you just not believe them?**

**Response:** The CFPB issued the Credit Card Penalty Fees NPRM on February 1, 2023. This proposal contained the certification that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The CFPB accepted comments on the proposal from February through May 3, 2023. The CFPB is reviewing all comments submitted in response to the proposal.

**c) Did you skip the steps mandated by Congress in order to get the proposal out before the State of the Union?**

**Response:** No. The CFPB certified that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities for the reasons described in the proposal. The CFPB discussed the analysis pursuant to the Regulatory Flexibility Act in the Credit Card Penalty Fees NPRM.<sup>6</sup>

**d) In light of the U.S. Small Businesses Office of Advocacy letter you recently received that questioned your decision to skip the SBREFA small business consultation process, what is your plan to remedy the deficiencies they found with your certification of**

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<sup>6</sup> <https://www.consumerfinance.gov/rules-policy/rules-under-development/credit-card-penalty-fees-regulation-z/>



**the late fee proposal? Are you planning to conduct that small business consultation process?**

**Response:** The CFPB is reviewing all comments submitted in response to the proposal.

**a) Was the Small Businesses Office of Advocacy wrong? What will you be doing with those findings?**

**Response:** The CFPB is reviewing all comments submitted in response to the proposal.

**REP. DONALDS – Part 1 - #3**

**The crux of any legitimate government process is a fair hearing. Your statements indicate—as do President Biden’s State of the Union remarks made just days after your late fee proposal was issued—an unmistakable prejudgment about credit card late fees. Both of you spoke about an \$8 safe harbor and quote unquote “saving Americans” a specific amount of money. You branded late fees, which the government charges as well, as a "junk fee" and wrapped it into a broader campaign against airplane seat fees and gym and swimming pool fees at hotels.**

**a) Did you enter this rulemaking with the required "open mind" and did you communicate with any policy or political staff at the White House about the timing and content of the late fee rule?**

**Response:** Yes, the CFPB is committed to a fair and open rulemaking process. The proposal relating to credit card late fees is just that—a proposal. The CFPB will carefully consider all comments received in response to the proposal and, if warranted, may make changes based on those comments before finalizing the rule.

In fact, the proposal contemplates that credit card providers will continue to charge late fees. The CFPB is in regular communication with federal and state agencies about our policy efforts, including through the all-of-government Competition Council.

**b) Will you provide this committee with any correspondence with any White House official about the late fee rule?**

**Response:** It is CFPB policy to provide for an open development of rules and to encourage full public participation in rulemaking actions. To that end, and consistent with the requirements of the Administrative

Procedure Act, the information that the CFPB relied on in formulating the proposed rule is described in detail in the Federal Register notice.<sup>7</sup>

**c) Did you speak to any outside activist groups, who directly or through affiliates contribute to federal elections, about this rulemaking?**

**Response:** As Director, I conduct outreach to a wide range of stakeholders who are impacted by the CFPB's work, including a variety of industry groups, nonprofit organizations, and associations that represent financial institutions. As noted above, the information that the CFPB relied on in formulating the proposed rule is described in detail in the Federal Register notice.<sup>8</sup>

**d) Did you ask or have knowledge of any outside groups organizing "consumer" letters for the official comment docket.**

**Response:** I am unaware of any specific letter-organizing. However, it is common for industry groups and advocacy groups to do so. CFPB staff hosted stakeholder calls attended by a number of industry groups and consumer groups where we encouraged the submission of comments. We strongly encourage public participation in our rulemaking work. And we are supportive of both industry and consumer groups that raise public awareness of our rule proposals to help facilitate comments from the general public.

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<sup>7</sup> <https://www.consumerfinance.gov/rules-policy/rules-under-development/credit-card-penalty-fees-regulation-z/>

<sup>8</sup> <https://www.federalregister.gov/documents/2023/03/29/2023-02393/credit-card-penalty-fees-regulation-z>

**REP. DONALDS – Part 1 - #4**

**Based on all your public statements showing prejudgment on the late fee proposal, including calling the fees you were regulating "junk," how do you expect any member of the public to believe that submitting comments would make any difference? Isn't the CFPB's "process" not about the facts but just about your opinion and no one else's?**

**Response:** No. The CFPB is carefully reviewing all comments submitted in response to the proposal.

**REP. DONALDS – Part 1 - #5**

**What do credit card late fees have to do with hotel swimming pool and gym fees? If nothing, why are you (as a supposedly independent agency) not handling late fees outside the White House "junk fee" campaign?**

**Response:** In passing the Consumer Financial Protection Act of 2010, Congress expressly set forth as part of the CFPB's purpose to ensure that markets for consumer financial products and services are "fair, transparent, and competitive." Cabinet and independent agencies across the government are participating in efforts to promote competition in the American economy.

Competitive consumer finance markets depend on fair and transparent pricing, where consumers can easily compare prices among several different providers. But junk fees make it difficult, if not impossible, for consumers to make these kinds of comparisons. Like other agencies across the federal government, the CFPB has been looking for ways that competition is undermined, including when it comes to surprise and opaque fees.

As part of this whole-of-government effort, the CFPB has been working to rein in illegal junk fees in the financial sector. For example, the CFPB has taken legal action against several banks for charging illegal surprise overdraft fees - fees charged even though consumers had enough money in their account to cover the transaction at the time the bank authorized it.

**REP. DONALDS - Part 1 - #6**

**You talk about competition and consumer financial health a lot. But small financial institutions say they'll get out of the market if your late fee rule is enacted. They also say that credit will decrease and costs will increase. This all makes sense, since you admitted in your proposal that more consumers will pay late because of your changes.**

**a. How is small banks and credit unions leaving the card market and more consumers ending up with late payments on their credit report good for competition or personal financial health?**

**Response:** Under the Credit Card Accountability Responsibility and Disclosure Act of 2009, Congress added a new section to the Truth in Lending Act that mandates penalty fees be reasonable and proportional to the late payment. If small banks and credit unions provide fair and transparent pricing for their card programs and their customers value them beyond what they pay for them, that outcome will benefit competition.

**REP. DONALDS – Part 1 - #7**

**Community banks and credit unions have commented that CFPB's credit card late fee proposal will increase APRs and reduce credit lines.**

**a) Has CFPB calculated how much credit card APRs will increase or credit lines will decrease if your proposal is enacted? If so, will you please share those figures with the Committee?**

**Response:** As discussed in the proposed rule,<sup>9</sup> the extent to which issuers might respond to the proposed rule depends in part on the competitiveness of the credit card market and other factors. Competition is a powerful force. When competition focuses on up-front costs, there can be greater price competition.

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<sup>9</sup> <https://www.consumerfinance.gov/rules-policy/rules-under-development/credit-card-penalty-fees-regulation-z/>

**REP. DONALDS - Part 1 - #8**

Overdraft provides a needed form of liquidity to Americans who have emergency expenses or other short-term needs. Research demonstrates that consumers value overdraft. A 2022 [survey](#) revealed that 9 in 10 consumers find their bank's overdraft protection to be valuable. Despite the benefits provided by overdraft, the Bureau has criticized the product, leading some banks to no longer charge overdraft fees or to lower the overdraft fee. This is concerning. A certain number of customers who overdraw their account will not repay the negative balance. Banks charge overdraft fees in part to compensate for the risk of nonpayment. I worry that, if a bank decides not to charge an overdraft fee, the bank may also choose to limit access to the product to reduce this risk. Instead of paying a transaction into overdraft, the bank may decline the transaction.

- a) For banks that do not charge overdraft fees, have you studied how many transactions that overdrew the customer's account were not paid into overdraft by the bank, but instead were declined?

**Response:** The CFPB has been engaging with financial institutions that have reduced or eliminated overdraft fees in order to understand the effects of those policy changes and will continue to do so.



**b) If you have not studied this issue, will you commit to performing this study? I believe this information is critical to understanding whether your remarks about overdraft could be harming consumers.**

**Response:** As noted above, the CFPB has been engaging with financial institutions that have reduced or eliminated overdraft fees in order to understand the effects of those policy changes and will continue to do so.

**REP. DONALDS - Part 1 - #9**

Director Chopra, the CFPB issued a [report](#) last week that was critical of financial institutions' use of automated systems called "chatbots" to respond promptly and efficiently to customers' requests. I am concerned that the report relied on anecdotal consumer complaints to arrive at the conclusion that consumers are harmed by institutions' use of this technology. This conclusion is at odds with 2022 survey [data](#) that found that the overwhelmingly majority of Americans—9 in 10—are satisfied with their bank. As technology reshapes consumers' needs and expectations, tools like chatbots offer an additional medium to help financial institutions personalize and expedite the customer experience.

**a) Why did the CFPB rely only on anecdotal consumer complaints—rather than perform a rigorous, systematic analysis of all complaints received—when preparing its report on chatbots?**

**Response:** The question mischaracterizes the CFPB's analysis on chatbots. There is broad consensus that generative AI raises a host of opportunities and concerns. The report sought to highlight some of the challenges consumers can face when chatbots provide inaccurate information or when they foreclose access to customer support in complex situations. The analysis relied on a diversity of sources for information for the report, including consumer complaints, responses to our Relationship Banking request for information, peer-reviewed academic journals, independent reporting, and materials published by the financial institutions themselves. The CFPB also included selected consumer complaints as illustrations in the report.

**b) How many of the anecdotal complaints on which the CFPB relied were against banks? How many were against credit unions? How many were against nondepository institutions?**

**Response:** The CFPB's research explored how the introduction of advanced technologies, often marketed as "artificial intelligence," in financial markets, may impact the customer service experience. The purpose of this report was to explain how chatbot technologies are being used by some financial institutions and the associated challenges faced by their customers. Notably, the challenges that consumers face when engaging with faulty chatbots at financial institutions are not sector dependent, but rather share common threads. One major commonality is that problems become particularly acute as the inquiry becomes more complex, and questions regarding financial products and services are often quite complex.

**c) Going forward, will the CFPB commit to performing rigorous statistical analysis of its complaints before it publishes another report?**

**Response:** As noted in 9a above, the analysis relied on a diversity of sources for information for the report, including consumer complaints, responses to our Relationship Banking request for information, peer-reviewed academic journals, independent reporting, and materials published by the financial institutions themselves. The CFPB also included selected consumer complaints as illustrations in the report.

**REP. DONALDS – Part 1 - #10**

**Director Chopra, I am deeply concerned that the Bureau performs its policymaking through blog posts and speeches—not through rulemaking governed by the Administrative Procedure Act. The Bureau’s approach circumvents Congress, which established the notice-and-comment rulemaking process to ensure that public feedback is incorporated into agencies’ rules in order to produce the best and most workable policies.**

**a) Will you commit to using rulemaking—not blog posts and speeches—to make policy on issues like overdraft?**

**Response:** The CFPB adheres to all rulemaking requirements set forth in statute, including the Administrative Procedure Act. Communications such as press releases, blogs and speeches are meant to ensure that there is public awareness of CFPB policy and priorities. Public feedback is pivotal to effective rulemaking, and the CFPB uses a wide range of methods to solicit feedback to inform our work.

**REP. DONALDS – Part 1 - #11**

Director Chopra, the Bureau recently sought OMB approval to conduct a “[Timing Study](#),” which I understand is intended to study when disclosures should be provided to consumers. It seems clear that this research will inform the Bureau’s policymaking on credit card fees and overdraft fees. However, the Bureau is seeking OMB approval of this study through a “generic clearance,” which OMB rules specifically state should not be used for substantive or policy-related research.

**a) Will you commit to not using the results of the Timing Study for any rulemaking or other policymaking?**

**Response:** Yes.

**b) Going forward, will you commit to abide by OMB’s rules and not seek OMB approval under a generic clearance for substantive or policy-related studies like the Timing Study?**

**Response:** We will continue to comply with OMB policy and rules.

**REP. DONALDS – Part 1 - #12**

**Director Chopra, the CFPB is currently engaged in rulemaking to implement Section 1033 of the Dodd-Frank Act. In connection with this rulemaking, there have been discussions with cross-industry standards setting organizations such as the Financial Data Exchange, or FDX. The FDX standard now connects over 53 million consumer accounts (see [here](#)). I am concerned that the CFPB may propose a rule that is inconsistent with the FDX standard.**

**a) Does the CFPB plan to make the proposed Section 1033 rule consistent with that FDX standard so that the work developing that standard is not lost?**

**Response:** I am surprised at your concern and would be happy to discuss it with you. The CFPB has repeatedly made clear that open and fair standards are critical for the shift to open banking. In the fall of 2023, we will issue the proposal and will accept public comment before finalizing.

**b) How will the FDX standard be leveraged going forward after the final rule is issued?**

**Response:** In the fall of 2023, we will issue the proposal and will accept public comment before finalizing.

**REP. DONALDS - Part 1 - #13**

**Director Chopra,** one of the biggest issues in the Section 1033 rulemaking is determining which party is required to obtain authorization from the consumer in order to gain access to the consumer's data. Currently, most often, the entity that holds the information is the one who obtains the consumer's consent. However, in the CFPB's Outline of Proposals, the third party that seeks the consumer's information is charged with obtaining the consumer's consent. This is very risky and could lead to unauthorized access by bad actors. These third parties are not federally supervised and not subject to the same privacy and security requirements as banks are required to uphold. It also requires data providers to take the word of the third party.

**c) How will you ensure that these third parties uphold privacy and security standards akin to the standards banks are required to uphold?**

**Response:** As part of the rulemaking, the CFPB is considering how to ensure effective privacy and security standards for the parties who obtain data under the rule. The CFPB takes the prospect of fraudulent authorizations very seriously and is considering all options to eliminate that risk as part of this rulemaking.

**d) Have you reconsidered your position in the Outline?**

**Response:** The rulemaking is in its early stages, and no decisions about the rule are final at this time. The CFPB will be considering all feedback, including comments received in response to the upcoming proposed rule.

**DONALDS – Part 1 - #14**

**Privacy and security are at the forefront of Americans' minds. Banks are highly regulated and subject to supervision to ensure they follow regulatory requirements. By contrast, data aggregators and fintechs are not subject to federal supervision.**

**e. What steps is the CFPB taking to protect Americans from the misuse of their data by data aggregators and fintechs?**

**Response:** It is critically important that all aspects of the CFPB's work take proper account of the increasingly prominent role of large non-bank "tech" companies in consumer finance. Many of the non-bank companies identified in your question are already subject to the CFPB's supervisory authority, including under one or more of the CFPB's "larger participant" rules or as a service provider to other entities subject to our supervisory authority. For example, many of the entities that identify themselves as "data aggregators" meet the criteria to be supervised as larger participants in the market for consumer reporting. As a result, supervisory examinations over one or more such companies are scheduled or ongoing.

To further tighten its supervisory authority over big tech and other large non-bank providers of consumer financial services, the CFPB has under consideration defining larger participants in markets for consumer payments.<sup>10</sup> In addition, the CFPB has taken recent steps to make active use of a long-dormant authority that enables it to supervise non-banks that have engaged or are continuing to engage in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.<sup>11</sup> Nonetheless, additional rulemaking remains needed to ensure that consumers can exercise effective control over how their data is accessed and used, including by data aggregators

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<sup>10</sup> The CFPB's published agenda of its planned regulatory activities is available at <https://www.consumerfinance.gov/rules-policy/regulatory-agenda>

<sup>11</sup> CFPB Supervisory Highlights, Issue 30 (Summer 2023) at 31.



and other non-banks. The CFPB is moving to publish a regulatory proposal under Section 1033 of the Consumer Financial Protection Act of 2010. The proposal is intended to accelerate the shift to open banking in our country, while ensuring that third parties acting for the consumer with respect to data access – including the kinds of entities referenced in your question -- treat consumer data securely and respect consumer privacy interests.

**REP. DONALDS – Part 1 - #15**

**Director Chopra, I am deeply concerned about the security incident that took place recently at the CFPB. A then-CFPB employee sent a massive amount of sensitive and confidential information from their work e-mail address to their personal email address. For some reason, the CFPB's data loss prevention controls did not prevent this transmission. I am particularly concerned about this breach because the CFPB has access to sensitive supervisory information about banks, credit unions, and other financial institutions.**

**f) What steps have you taken to improve your security procedures?**

**Response:** The incident you raise was certainly extremely concerning. The CFPB has in place safeguards that establish a strong culture of privacy and security to ensure that personally identifiable information (PII) and confidential supervisory information (CSI) are effectively protected. The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems, and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security. All CFPB employees are required to complete privacy and cybersecurity training annually. Access to the system is shut off for employees who do not complete training.

In light of the recent data incident CFPB has been reviewing its information, privacy, and cybersecurity program to ensure that we can improve and strengthen safeguards as much as possible. Some of the projects underway to strengthen CFPB's posture include:

- Implementing additional technical measures, such as new Data Loss Prevention controls, which have the capability of scanning outbound email for sensitive information, and adopting a federal shared service offered by the Department of Justice that will provide an IT network security capability that implements a zero trust architecture through which people and devices are verified

every time they attempt to access sensitive data, regardless as to whether they have pre-existing network access;

- Strengthening internal policies and procedures, and cybersecurity and privacy training to reflect some of the lessons learned and ensure CFPB has the best technological controls available to detect any anomalous behavior or other issues; and
- Continuing to refine how we collect information from institutions during supervision, with a focus on narrowing the information we collect to the minimum necessary to fulfill our supervisory responsibilities.

**g) Why should Congress continue to give the Bureau authority to collect voluminous information under HMDA and Section 1071 when the Bureau cannot safeguard the data in its possession?**

**Response:** The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems. The CFPB maintains information security standards as required by the Federal Information Security Management Act (FISMA) and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security.

The CFPB adheres to all applicable federal data collection and storage standards, including encrypting data transfers and data stored in the system.

With regard to HMDA, CFPB follows a strict data minimization standard. In the five years the CFPB has been collecting HMDA data there has never been a breach of non-public information.

With respect to the data collection required by the small business lending rule, the CFPB will only collect de-identified data about small business loans, i.e., data that does not directly identify individual small businesses/small business owners. The rule explicitly prohibits the collection of personally identifiable information such as an individual's

name and personal contact information. And, while the data intake system design and build are still underway, the CFPB will ensure that appropriate controls are built into the system to protect the data throughout its entire lifecycle. The system will also go through the security authorization process prior to deployment.

**REP. DONALDS – Part 2 - #1**

**Director Chopra, you have spoken publicly about limiting the scope of the initial 1033 rule to only deposit accounts and credit cards. Other jurisdictions, like the US and Australia, are moving in exactly the opposite direction where consumers can share more data, not less. Why are you not considering other financial products such as mortgages, student loans, auto loans, personal and small business loans? In the past, your agency has raised concerns regarding the various fees associated with these financial products. Why would you not include these products in the scope of the rule so that consumers better understand these fees and have the ability to easily switch to products that are more favorable?**

**Response:** The CFPB has not yet proposed a rule under Section 1033 of the Consumer Financial Protection Act of 2010. The CFPB appreciates your input on what products and services the rule should cover. In response to the outline of proposals published last October, the CFPB has been intaking feedback from a range of stakeholders, including with respect to rule coverage issues.<sup>1</sup> CFPB anticipates receiving further comments from the public after the proposal is released. Accordingly, we will continue to have rule coverage issues under consideration for some time. The effective scope of any Section 1033 rule is not limited to the products and services that the rule may cover directly. For example, consumer checking account data can be used for underwriting in a number of credit product markets, including those you identify in your question. Transaction-based underwriting driven by data from consumer checking accounts can sharpen competition in these credit markets, thereby creating downward price pressure and potentially expanding product access, including to underserved consumers.

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<sup>1</sup> See CFPB [Outline of Proposals and Alternatives Under Consideration for the Personal Financial Data Rights Rulemaking](#) (Oct. 27, 2022).

**REP. DONALDS – Part 2 - #2**

**We know that technological innovation is a major part of what keeps the U.S. financial system at the apex of the global financial system, and a major part of how banks are able to adapt to changing economic conditions and maintain the availability of services for Americans. However, in February of 2022, the Government Accountability Office (GAO) released a report on U.S. banking regulators and access to financial services, stating that regulatory uncertainty – particularly surrounding small-dollar lending – has made it increasingly difficult for financial institutions to offer small-dollar loans and to innovate in this space. From 2010 through 2020, CFPB, the Federal Reserve, FDIC, and OCC issued or rescinded at least 19 actions related to small-dollar loans. In this ever changing regulatory regime can you understand why banks and their fintech partners want to see more clarity, transparency, and certainty from the CFPB with regards to how small dollar loans are regulated?**

**Response:** The CFPB is committed to clearly communicating expectations in simple and straight-forward terms.

**REP. DONALDS – Part 2 - #3**

**Director Chopra, the credit card late fees proposed rule attempts to help a small number of credit card customers at the expense of the vast majority of others. Cardholders who never pay late- which the CFPB's own data indicates is 74 percent of all Americans with credit cards- will not benefit from the reduced fees, and according to the proposed rule could experience "...higher maintenance fees, lower rewards, or higher interest on interest-paying accounts," and increased costs could completely negate any benefits. How has the CFPB accounted for actions that credit card issuers will likely be forced to take in their credit portfolios to properly manage credit risk and other prudential regulatory requirements?**

**Response:** The CFPB analyzed the potential benefits and costs of the proposal. Based on the available evidence, the CFPB does not expect that reduced revenue as a result of the proposed lower safe harbor amount would be fully passed through to consumers in the form of higher APRs or other price increases. A full discussion of this analysis can be found in the proposed rule.

**REP. DONALDS – Part 2 - #4**

**Director Chopra, Dodd-Frank Section 1022 requires the CFPB to consider the cost of its rules. How does a rule that attempts to help a small number of consumers, but would increase costs for cardholders across the board, survive a cost-benefit analysis?**

**Response:** Section 1022(b)(2) of the Consumer Financial Protection Act of 2010 requires the CFPB to consider the costs, benefits, and impacts of its rules to consumers and covered persons. The CFPB is reviewing all comments, including those related to Section 1022(b)(2), submitted in response to the proposal.



**REP. DONALDS - Part 2 - #5**

**The proposed rule ignores the important role that late fees play in deterring consumers from paying their bill late. If late fees are capped at such a low amount and the deterrent effect is nonexistent, more consumers will pay their bill late, leading to a higher share of delinquent accounts, which will be reported to credit bureaus and result in lower credit scores. Director Chopra, why is the Bureau proceeding with a rulemaking that has no consumer benefits and would actually result in tremendous harm to consumers?**

**Response:** Under the Credit Card Accountability Responsibility and Disclosure Act of 2009, Congress added a new section to the Truth in Lending Act that mandates penalty fees be reasonable and proportional to the late payment. As discussed in the NPRM,<sup>2</sup> “in considering the appropriate [safe harbor] amount, the CFPB is guided by factors including: (1) the cost incurred by the creditor from an omission or violation; (2) the deterrence of omissions or violations by the cardholder; (3) the conduct of the cardholder; and (4) such other factors deemed necessary or appropriate.” In developing this proposed rule, the CFPB has considered the proposed rule's potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010. The CFPB is reviewing all comments submitted in response to the proposal.

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<sup>2</sup> <https://www.consumerfinance.gov/rules-policy/rules-under-development/credit-card-penalty-fees-regulation-z/>

**REP. DONALDS – Part 2 - #6**

**Director Chopra, in the proposed rule, you cite research on the deterrent effect done by Grodzicki et al. That report was co-authored by two former Bureau economists and used the Bureau's own CARD Act data. The paper found that the deterrent effect of late fees is reduced when fees are lower, right? In other words, when late fees are lower, more consumers pay late. And this paper was published in the Journal of Financial Services Research, which is a peer-reviewed academic publication, correct? But the Bureau disregarded this research, and instead, you conducted your own analysis. But that analysis wasn't peer reviewed or published in a journal, was it?**

**Response:** As described in the proposal, the CFPB carefully considered the research paper by Grodzicki et. al., along with other sources, including other published research studies and its own analysis.

**REP. DONALDS – Part 2 - #7**

After the Bureau finalized revisions to the Home Mortgage Disclosure Act (HMDA) rule in 2015, regulated entities were given more than 24 months to implement the rule's requirements. Section 1071, which the CFPB recently issued a final rule to implement, has often been described as HMDA for small business lending- but the final rule only provides 18 months to comply. And while the HMDA rule required lenders to reprogram existing systems, 1071 requires entirely new systems to be created and programmed.

*Note: CFPB assumes that the above QFR was entered as an introduction for the following question, but formatted with a number in error. Please see information below responsive to the statement made in Question 7.*

**REP. DONALDS – Part 2 - #8**

**Given that 1071 implementation is such a massive new undertaking and will require lenders to build completely new systems, will you extend the compliance deadline?**

**Response:** The rule contains an extended compliance deadline for smaller institutions. Under the rule’s tiered compliance schedule, the highest volume lenders have roughly 18 months to comply; moderate volume lenders have roughly 2 years; and lower volume lenders have nearly 3 years. The many small lenders with under 100 small business originations annually have no deadline or regulatory obligations.<sup>3</sup>

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<sup>3</sup> Please note that on July 31, 2023, the U.S. District Court for the Southern District of Texas ordered the CFPB not to implement or enforce the small business lending rule against plaintiffs in Texas Bankers Ass’n, et al v. CFPB, et al., No 7:23-cv-00144, and their members. That order stays all deadlines for compliance with the small business lending rule for plaintiffs in that case and their members until the Supreme Court renders a decision in CFPB v. Community Financial Services Ass’n of Am., Ltd., No. 22-448 (U.S. cert. granted Feb. 27, 2023). As a result, those entities will have additional time to prepare for compliance with the small business lending rule. In addition, the U.S. District Court for the Eastern District of Kentucky recently enjoined the Bureau from enforcing the Rule “until the Supreme Court issues an opinion ruling that the funding structure of the CFPB is constitutional.” Monticello Banking Co. v. CFPB, No. 6:23-cv-00148 (E.D. Ky. Sept. 14, 2023).

**REP. DONALDS – Part 2 - #9**

**In your first appearance before our Committee as Director, you urged banks to get more involved in small dollar lending. Banks, and particularly community banks, often partner with technology providers to enable them to provide access to credit in the small dollar loan space. Unfortunately, a February 2022 GAO report said very clearly that regulatory uncertainty is stifling the ability of banks to provide access to credit. Let's be clear here – we are talking about access to credit for the most vulnerable consumers in our population, and what the GAO has said is that all of the uncertainty around how we are going to regulate access to credit is hurting the very consumers that the regulators are trying to protect. Community banks are at the forefront of innovation in providing access to credit for small dollar loans, and generally rely on fintech service providers to enable them to do so. Would you commit to assessing whether proposed regulations will impose the type of regulatory cost and uncertainty that will stifle this ability to provide credit access?**

**Response:** Section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010 requires the Consumer Financial Protection Bureau (CFPB) to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets, and the impact on consumers in rural areas. The CFPB fully complies with this requirement.

**REP. DONALDS – Part 2 - #10**

**Director Chopra, knowing that many small business owners simply will not want to report this data regardless of the lender's data collection process, will you ensure that lenders are not penalized solely because their borrowers have a low response rate?**

**Response:** Most information required by the Consumer Financial Protection Bureau's (CFPB) small business lending rule is either already collected by lenders now (such as the amount and type of credit sought, and the applicant's gross annual revenue) or is information solely in the lender's control (such as the application date, and action taken on the application). For information about applicants that lenders are not currently collecting (such as the demographic information about small businesses and their principal owners), the CFPB does not intend to penalize lenders if applicants do not wish to provide some or all of that information. Applicants have a right to refuse to provide the demographic information requested under the small business lending rule, and lenders must tell applicants about that right.

**REP. DONALDS – Part 2 - #11**

**Last year, by way of a press release and updates to its UDAAP Exam Manual, the CFPB announced that it will begin targeting discrimination as an unfair practice under its unfair, deceptive, and abusive acts and practices (UDAAP) authority, vastly expanding the reach of its anti-discrimination enforcement beyond the statutory limits of the Equal Credit Opportunity Act (ECOA). The CFPB, through its announcement and exam manual updates, adopted the position that discrimination meets the definition of “unfairness.” This seems to ignore law enacted by Congress that explicitly limits the reach of anti-discrimination concepts to specific areas.**

**Response:** The Consumer Financial Protection Act of 2010 provides that the Consumer Financial Protection Bureau (CFPB) cannot declare an act or practice unfair unless: (1) “the act or practice causes or is likely to cause substantial injury to consumers;” (2) the substantial injury “is not reasonably avoidable by consumer;” and (3) “substantial injury is not outweighed by countervailing benefits to consumers or to competition.”<sup>4</sup> Congress did not create a discrimination exception to unfairness, and the CFPB believes the March 2022 update to the UDAAP section of our exam manual fully complies with the law.<sup>5</sup>

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<sup>4</sup> 12 U.S.C. § 5531(c)(1)

<sup>5</sup> Note: On September 8, 2023, the United States District Court for the Eastern District of Texas vacated that exam manual update. The CFPB is reviewing the ruling and considering next steps.

**REP. DONALDS – Part 2 - #12**

**Why does the CFPB believe that it has authority to extend anti-discrimination theories such as disparate impact analysis to areas in which Congress has not explicitly given it the authority to do so?**

**Response:** As noted above, the United States District Court for the Eastern District of Texas recently vacated the CFPB's March 2022 update to the UDAAP section of our exam manual.



**REP. DONALDS – Part 2 - #13**

**Why did the Bureau not engage in a notice and comment rulemaking to make this change?**

**Response:** Exam manuals are guidance to staff and made available to the public. They are not legislative rules. The CFPB is unaware of any banking agency soliciting comment on exam manuals.

**REP. DONALDS - Part 2 - #14**

**Since this rulemaking was done outside of the notice and comment rulemaking process prescribed by the APA, there were no details provided on how banks should implement such a broad and sweeping change to their compliance management systems. How does creating a new rule and policy without any implementation or compliance guidance help consumers?**

**Response:** The manual update was not a legislative rule, but instead provided guidance to examiners on how to carry out their supervisory duties.<sup>6</sup>

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<sup>6</sup> As noted earlier, the United States District Court for the Eastern District of Texas recently vacated the updates to the UDAAP section of our exam manual.

**REP. DONALDS – Part 2 - #15**

**I have grave concern over the Consumer Financial Protection Bureau’s (CFPB or Bureau) Proposed Rule on Residential Property Assessed Clean Energy Financing (“Proposed Rule”) and its impact on our state. In Florida, PACE assessments are non-ad valorem real property tax assessments imposed by an arm of the Florida government, with the homeowner’s consent, to serve the State’s sovereign interests. The program provides low-to-moderate-income families with access to affordable financing to retrofit homes to harden and protect against natural disasters, including hurricanes, and make eligible energy efficiency upgrades. Have you considered how the Proposed Rule could interfere with the State’s efforts and damage a critical lifeline Floridians use to protect their homes against adverse weather events?**

**Response:** The CFPB addressed access-to-credit issues in the Notice of Proposed Rulemaking (NPRM) for PACE financing.<sup>7</sup> The NPRM noted that, while the proposal may reduce access to PACE credit, some consumers who would have a PACE application denied, or who are not offered an opportunity to apply for PACE financing, may be able to access other forms of credit, potentially at more favorable APRs. As the NPRM noted, the CFPB expects that many consumers that would be affected by the NPRM, if finalized, would retain access to other forms of mortgage and non-mortgage credit that could serve the purposes of PACE-authorizing statutes. Moreover, as the NPRM made clear in the discussion of potential effects of the proposed provisions relating to qualified mortgages, any credit access impacts must be justified against consumer protection risks. Additionally, the CFPB explicitly solicited comment on related issues in the NPRM. The comment period for the

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<sup>7</sup> <https://www.consumerfinance.gov/rules-policy/rules-under-development/residential-property-assessed-clean-energy-financing-regulation-z/>

CFPB's NPRM on PACE financing ended on July 26, 2023. The CFPB is reviewing all comments submitted in response to the proposal.

I appreciate that you submitted comments on the NPRM in your letter dated July 12, 2023. Your comments were submitted to the docket and are being considered.

**REP. DONALDS – Part 2 - #16**

**PACE has become a critical financing mechanism for Florida homeowners to harden their homes against hurricanes since its passage in the Florida legislature. Through the end of 2022, Florida homeowners financed approximately \$1.3 billion of state-eligible projects through PACE and are projected to finance more than \$700 million in 2023, providing precisely the low-cost private capital that the Florida Legislature intended to address these critical needs. Have you considered how this rule could infringe on the fundamental taxing authority of State and local governments?**

**Response:** In Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) section 307, Congress directed the CFPB to prescribe rules for PACE financing under the Truth in Lending Act. The CFPB's proposed rule on PACE financing would implement that directive under Regulation Z. The comment period for the CFPB's Notice of Proposed Rulemaking on PACE financing ended on July 26, 2023. The CFPB is reviewing all comments submitted in response to the proposal. As noted earlier, I appreciate that you wrote to me on this issue; your comments were submitted to the docket and are being considered.

**REP. DONALDS – Part 2 - #17**

**Have you considered an alternative that preserves affordable access to PACE financing?**

**Response:** The CFPB's Notice of Proposed Rulemaking for PACE financing would require lenders to assess a borrower's ability to repay a PACE loan, and addresses impacts on the availability of PACE financing and affordable access. The CFPB is reviewing all comments submitted in response to the proposal, including any comments addressing impacts on the availability of PACE financing or affordable access to financing for the types of projects currently funded by PACE financing.

**REP. DONALDS – Part 2 - #18**

**The fall 2022 unified agenda indicated that the CFPB is in the pre-rule stage of creating a new overdraft rule that would consider amending “special rules” related to Regulation Z. If common overdraft fees are reclassified as finance charges, then overdraft fees would need to be included in APR calculations, and providers would have to do a TILA disclosure every time a consumer attempts to have an overdraft- so unworkable that it would likely eliminate overdraft altogether. Is the Bureau trying to eliminate overdraft programs that consumers rely on to meet their day-to-day needs?**

**Response:** No. In fact, the CFPB strives to implement consumer protections that foster the economic well-being and security of American consumers. CFPB’s mission is to enforce consumer financial law and working to ensure that markets for consumer financial products are fair, transparent, and competitive.

**REP. DONALDS – Part 2 - #19**

**The CFPB recently released a data spotlight that indicates a major reduction of overdraft fees over the last several years. In fact, overdraft revenue in the fourth quarter of 2022 was 48% lower than overdraft revenue in the fourth quarter of 2019. Doesn't this confirm that more regulations on overdraft are not needed?**

**Response:** Overdraft and NSF fees reported by banks over \$1 billion in assets totaled around \$7.7 billion in 2022. Of that amount, a substantial portion constituted overdraft fees. Stakeholders from industry and the public have suggested that the CFPB consider creating clear rules for market participants. The CFPB has been engaging with financial institutions that have reduced or eliminated overdraft fees in order to understand the effects of those policy changes and will continue to do so. We have not made any final determinations with respect to any rulemaking.



**REP. DONALDS - Part 2 - #20**

(no text appears in question #20, part 2)

**Rep. Mike Flood****Question for the Record: CFPB Director Chopra  
Hearing (6/14/23)**

Rising interest rates and growing consumer debt levels mean lenders are tightening their belts when it comes to mortgages, car loans, and business loans. It's my understanding is that the CFPB is looking at eliminating medical debt collections from credit reports. I worry that further reducing the information lenders have on borrowers could result in higher rates for all, and increased costs to borrowers on fees to track down medical debt information.

**REP. FLOOD - #1**

**Is the CFPB on this track? If so, under what authority is the Bureau acting without an act of Congress?**

**Response:** The Consumer Financial Protection Bureau (CFPB) remains concerned that medical debt has little value in predicting future repayment, that it is often inaccurate, and that it may be used to coerce people into paying bills they may not owe. The CFPB is also concerned about whether the reporting and use of medical debt information should be permitted under the Fair Credit Reporting Act (FCRA), and we are considering options to address this concern. The nationwide consumer reporting companies' actions this past year to remove many medical debt tradelines are a step in the right direction, but we remain concerned about coercive reporting of unpaid medical bills. The CFPB has exclusive rule-writing authority for most provisions of the FCRA.<sup>1</sup> There is also a significant state-level attention being paid to medical debt given the impacts on American consumers.

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<sup>1</sup> 15 U.S.C. § 1681(c).

**REP. FLOOD - #2**

**Has the CFPB spoken with doctors and hospitals about the effects a ban on medical debt collection might have?**

**Response:** Yes. The CFPB has spoken with members of the Healthcare Financial Management Association (HFMA) and American Association of Healthcare Administrative Management (AAHAM). These interactions took place at various venues, including conferences and CFPB industry monitoring calls, to address medical debt collection and its effect on credit reporting. HFMA and AAHAM are comprised of hospital revenue cycle managers, physicians, and board members. Many of the member hospitals have reported to the CFPB that they no longer have their collection agencies furnish medical debt to credit reporting companies, and medical debt collectors have told the CFPB that many hospitals no longer require such furnishing.

Any CFPB rulemaking to amend Regulation V, which implements the FCRA, would be subject to public notice and comment. The CFPB welcomes feedback from medical professionals, hospitals, and all other stakeholders regarding the effects of any interventions it may propose with respect to medical debt.

**In August of 2022, the Consumer Financial Protection Bureau (CFPB) released a circular on consumer data security. This document stated that firms that do not have in place sufficient data security practices could be in violation of the Consumer Financial Protection Act.**

**Specifically, the Circular indicated that firms would need to undertake the following data security practices:**

- 1. Limit who can access customer information**
- 2. Require the use of encryption to secure such information, and**
- 3. Require the designation of a single qualified individual to oversee an institution's information security program and report at least annually to the institution's board of directors or equivalent governing body.**

**Earlier this year, the CFPB disclosed a data breach that impacted over 250,000 consumers. In response to this breach, I think it's reasonable to hold the Bureau to the same standard they hold private companies.**

**REP. FLOOD - #3**

**Director Chopra, does the CFPB limit who can access consumer data?**

**Response:** Yes. CFPB policy provides that access to consumer personally identifiable information (PII) is only granted to staff members when that information is necessary to the staff member's job function or assigned duties.

**REP. FLOOD - #4**

**Does the CFPB require the use of encryption to secure consumer information?**

**Response:** Yes. As part of CFPB's information security program, mechanisms are in place to prevent unauthorized access to CFPB information systems and data. These include encryption protections as needed. For example, when data is collected from institutions pursuant to various authorities, the CFPB has that data encrypted in transit and at rest using at least Federal Information Processing Standard (FIPS) 140-2 strength protections, in accordance with federal standards.

**REP. FLOOD - #5**

**Does the CFPB require the designation of a single individual to oversee the Bureau's information security program? Does this individual file annual reports that are made public?**

**Response:** Yes. The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and data maintained on those systems. The CFPB's information security program is overseen by a Chief Information Security Officer and annual audits by the Office of Inspector General (OIG) have consistently found that the program meets an effective level of security. Those audit reports are made public.<sup>2</sup> The report of the OIG's audit of the CFPB's information security program covering FY 2022 is also available.<sup>3</sup> The incident you raise was certainly extremely concerning. We continue to work with appropriate law enforcement authorities on this.

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<sup>2</sup> <https://oig.federalreserve.gov/reports/allyearscfpb.htm>.

<sup>3</sup> <https://oig.federalreserve.gov/reports/CFPB-information-security-program-sep2022.pdf>.

Questions for the Record  
Rep. Garbarino  
June 14, 2023

**Question for the Record for Director Chopra:**

**Question 1.** Dir. Chopra – for small business line of credit products which revolve like credit cards and allow customers to draw funds from their line, is each draw considered a covered application? For example, if a customer is approved for a Line of Credit of \$100,000, but subsequently draws \$5,000 three separate times, does each draw count as a covered application?

Response: No, draws on an existing line of credit do not constitute covered applications under the Consumer Financial Protection Bureau's small business lending rule. The application for the underlying line of credit would be a covered application under the rule, provided other conditions are met (including that the credit is for business or agricultural purposes and the applicant is a small business).

QFRs – Rep. Hill

**June 14, 2023 FSC Hearing – The Semi-Annual Report of the  
Consumer Financial Protection Bureau (CFPB)**

**Rep. French Hill**

**QFRs for Rohit Chopra, CFPB Director**

**Fair Credit Reporting Act Rulemaking**

**1. The CFPB is working on a Fair Credit Reporting Act Rulemaking (RIN: 3170-AA54) that would amend Regulation V. Please provide details about what specifically the CFPB is trying to address through this rulemaking and whether the CFPB will consider the potential downstream consequences for users of credit reports that rely on accurate, predictive information in those reports.**

Response: I agree with you that that credit reports should contain accurate information that is predictive of a consumer's ability to repay a loan. The Consumer Financial Protection Bureau (CFPB) has recently launched an inquiry<sup>1</sup> into data broker business practices to obtain information for our rulemaking effort, which will amend Regulation V under the Fair Credit Reporting Act (FCRA). This inquiry will help us understand whether new business models used by data brokers are covered by the FCRA, as well as the harms and benefits that stem from the sale of consumer data.

The CFPB also remains concerned that medical debt is less predictive of future repayment than other debts, that consumer reports regarding medical debt are often inaccurate, and that the furnishing of information regarding medical debt may be used to coerce people into paying bills they may not owe. We are concerned about whether the reporting and

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<sup>1</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/>

use of this information-should be permitted under the FCRA, and we are considering options to address this concern. In conjunction with the rulemaking, the CFPB will consider potential consequences of the rulemaking for consumers and for entities that participate in the credit reporting ecosystem, including users of credit reports.

### **Remittances**

**2. In January, the Wall Street Journal reported that the CFPB is considering new restrictions on the fees charged by money-transfer companies for wiring money overseas as a part of your broader effort to scrutinize so-called junk fees. The article talks about how the Bureau is looking into whether differences in the way exchange rates and fees are disclosed could make it tough for immigrants and other workers who send money overseas to evaluate their options. Please provide details on what specifically the CFPB is trying to address, whether you intend to go through guidance or formal rulemaking, and how this would affect the CFPB's current remittance rules?**

Response: The two key components of a remittance transfer's true cost are: (1) the fees remittance transfer providers charge consumers when they send remittance transfers, and (2) the exchange rate that is applied to the transfer, which determines how much money a consumer has to pay for a recipient to receive a certain amount of local currency. With limited exceptions, the CFPB's Remittance Rule requires remittance transfer providers to disclose to consumers the exact amounts of fees charged by the remittance transfer provider and the exchange rate that will apply to a transfer before a consumer pays for a remittance transfer. The CFPB is closely monitoring the market to see how remittance transfer providers are disclosing these costs.



**Rep. Erin Houchin (IN-09)**  
**HFSC Hearing titled “The Semi Annual Report of the Bureau of**  
**Consumer Financial Protection”**  
**Wednesday, July 14, 2023**

**Director Chopra, in May 2022, you issued an “interpretive rule” unilaterally and without statutory authority expanding the authority of states to pursue and enforce violations of federal consumer protection law under the CFPA.**

**The CFPB further promoted this additional enforcement activity by assuring states they may bring “an enforcement action to stop or remediate harm that is not addressed by a CFPB enforcement action against the same entity.”**

**And the CFPB announced it would enter into more than 20 arrangements with state attorney general offices.**

**While Congress intended for the CFPB to enforce federal consumer financial laws and protect consumers in the marketplace, it did not intend for the CFPB to intimidate companies by conspiring with state agencies to pursue duplicative enforcement actions.**

**The Dodd-Frank Act limits attorneys general in bringing federal enforcement actions, and while state attorneys general may enforce the CFPA in cases where the CFPB has not, the law does not allow for a state attorney general to become a party to an existing CFPB enforcement action.**

**It is, therefore, inappropriate for the CFPB to recruit a state attorney general that is not otherwise investigating a company, to pursue enforcement as a means of intimidation.**

**Moreover, the effect of your May 19, 2022, interpretive rule is different from solely enforcing the law. It is more akin to deputizing state attorneys general to enforce the CFPB on behalf of the CFPB – something Congress did not authorize.**

**Q: How many actions has the CFPB initiated with state AGs since the issuance of your Interpretive Rule?**

**Response:** Three: 1) Consumer Financial Protection Bureau and The People of the State of New York, by Letitia James, Attorney General of the State of New York, v. Credit Acceptance Corporation, which was filed in the United States District Court for the Southern District of New York on January 4, 2023; 2) State of Washington, et al v. Prehired, LLC, et al., which was filed in the United States Bankruptcy Court for the District of Delaware on July 13, 2023. This action is being brought with the attorneys general of Delaware, Illinois, Massachusetts, Minnesota, North Carolina, Oregon, South Carolina, Virginia, Washington, Wisconsin, and California's Department of Financial Protection and Innovation; and 3) In the Matter of Tempoe, LLC, Administrative Proceeding File No. 2023-CFPB-0010, filed on September 11, 2023. The attorneys general of Alaska, Arkansas, Arizona, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia resolved their enforcement actions against Tempoe in separate settlements filed in conjunction with the Consumer Financial Protection Bureau's consent order.

**Q: Of these actions, can you explain to me why you involved a state AG as opposed to prosecuting the action solely under your authority?**

**Response:** The CFPB did not involve the states in these actions. Rather, in all three cases, the states' involvement pre-dated CFPB's involvement.

**Q: Does the CFPB engage in forum analysis when determining whether to institute an action in its own capacity or to engage a state AG?**

**Response:** When the CFPB brings an enforcement action on its own or with a state partner it ensures that the action complies with all applicable rules and statutes governing proper venue.

**Q: The Administrative Procedure Act provides interested parties with notice and an opportunity to be heard, and the right to seek judicial review of agency action. Why did you choose to issue an interpretive rule regarding actions by state AGs, as opposed to engaging in notice-and-comment rulemaking? By using the mechanism of an “interpretive rule,” haven’t you avoided the requirements and the procedural protections of the Administrative Procedure Act?**

**Response:** The CFPB Spring 2023 regulatory agenda explained that CFPB was engaged in eleven notice-and-comment rulemakings.<sup>1</sup> However, as contemplated by the Administrative Procedure Act, not all forms of CFPB guidance are issued through the legislative rulemaking process. For example, like other agencies the CFPB issues interpretive rules, which simply “advise the public of the agency's construction of the statutes and rules which it administers” and “do not have the force and effect of law.”<sup>2</sup> Section 1042 of the Consumer Financial Protection Act (CFPA) generally authorizes States to enforce the CFPA’s provisions. The CFPB issued the interpretive rule to provide further clarity regarding the scope of state enforcement under section 1042 and related provisions of the CFPA. The interpretive rule does not have the force of law and did not create any new administrative burdens or requirements.

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<sup>1</sup> <https://www.consumerfinance.gov/rules-policy/regulatory-agenda/>.

<sup>2</sup> *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995).

**Rep. Kim – Questions for the Record**  
**Hearing Entitled: The Semi-Annual Report of the**  
**Bureau of Consumer Financial Protection**

**1. Director Chopra, your agency has published resources to help U.S. consumers and households measure and score their financial well-being. One of your publications defines financial well-being “as a state of being wherein a person can fully meet current and ongoing financial obligations, can feel secure in their financial future, and is able to make choices that allow them to enjoy life”. You’ve stated in the past that you’re looking to limit the scope of the initial 1033 rule to only deposit accounts and credit cards. Some of consumers’ most important financial choices are associated with student loans, mortgages and retirement savings. Why isn’t the 1033 rule including these types of accounts to help increase access and choice for consumers so that they may achieve financial well-being?**

Response: The CFPB has not yet proposed a rule under Section 1033 of the Consumer Financial Protection Act of 2010. The CFPB appreciates your input on what products and services the rule should cover. In response to the outline of proposals that it published last October, the CFPB has been intaking feedback from a range of stakeholders, including with respect to rule coverage issues.<sup>1</sup> CFPB anticipates receiving further comments from the public after our proposal is released. Accordingly, we will continue to have rule coverage issues under consideration for some time. The effective scope of any Section 1033 rule is not limited to the products and services that the rule may cover directly. For example, consumer checking account data can be used for underwriting in a number of credit product markets, including those you identify. Transaction-based underwriting driven by data from

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<sup>1</sup> See CFPB [Outline of Proposals and Alternatives Under Consideration for the Personal Financial Data Rights Rulemaking](#) (Oct. 27, 2022).

consumer checking accounts can sharpen competition in these credit markets, thereby creating downward price pressure and potentially expanding product access, including to underserved consumers.

**2. The Bureau posted in the regulatory agenda that it is working on a Fair Credit Reporting Act rulemaking. I understand that the Bureau has reached out to possible stakeholders to participate in the regulatory review process. Since the Bureau is moving forward with this rulemaking, lenders, insurers and other users of credit reports are concerned about any rule that would remove predictive information from credit reports or discourage the reporting of predictive information. In fact, yesterday, you said that you wanted to look “holistically at the credit reporting system.” My concern is that removing predictive information will make it harder for consumers to access affordable credit, if lenders believe that important information is being hidden from their review. Could you please tell the committee more about the rulemaking that CFPB has begun?**

Response: CFPB recently launched an inquiry<sup>2</sup> into data broker business practices to obtain information for this rulemaking effort, including information about whether new business models used by data brokers are covered by the Fair Credit Reporting Act (FCRA) and the harms and benefits that stem from the sale of consumer data. The CFPB is looking at whether rules under the FCRA reflect current market realities with respect to data brokers, and whether people have the ability to exercise control over their most sensitive data. The CFPB also remains concerned that medical debt is less predictive of future repayment than other debts, that consumer reports regarding medical debt are often inaccurate, and that the furnishing of information regarding medical debt may be used to coerce people into paying bills they may not owe. CFPB is concerned about whether the reporting and use of this information should be permitted under the FCRA, and we are considering options to address these concerns.

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<sup>2</sup> <https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/request-for-information-regarding-data-brokers-and-other-business-practices-involving-the-collection-and-sale-of-consumer-information/>

**3. We know that technological innovation is a major part of what keeps the U.S. financial system at the apex of the global financial system, and a major part of how banks can adapt to changing economic conditions and maintain the availability of services for Americans. However, in February of 2022, the Government Accountability Office (GAO) released a report on U.S. banking regulators and access to financial services, stating that regulatory uncertainty – particularly surrounding small-dollar lending – has made it increasingly difficult for financial institutions to offer small-dollar loans and to innovate in this space. From 2010 through 2020, CFPB, the Federal Reserve, FDIC, and OCC issued or rescinded at least 19 actions related to small-dollar loans<sup>3</sup>.**

- a. Can you provide examples or case studies of individuals who have been able to obtain small dollar loans after being turned down by banks?**

Response: The CFPB is aware that many banks offer short-term, small dollar loans and we continue to monitor these developments. In order to obtain such loans, offering banks typically require the consumer to have an account with the bank and employ other credit underwriting. Some consumers thus may not qualify for these bank loans.

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<sup>3</sup> GAO Report, "Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved."



**b. What are some of the benefits that the CFPB has found for consumers from their use of small dollar loans?**

Response: Small dollar loans encompass a variety of different types of products including payday and “payday installment” loans, as well as installment loan products offered by banks, credit unions and non-bank financial companies. The consumer impacts from using such products depend on the particular loan product and the consumer’s situation.

**c. Are there any specific programs or initiatives implemented by the CFPB to promote responsible and affordable small dollar lending options for individuals with subprime credit scores?**

Response: Congress established the CFPB to ensure “that markets for consumer financial products and services are fair, transparent, and competitive.” Last year, the CFPB opened a new office, the Office of Competition and Innovation, as part of a new approach to help spur innovation in financial services by promoting competition and identifying stumbling blocks for new market entrants. The Office of Competition and Innovation focuses on how to foster market conditions where consumers have choices, the best products can win, and large incumbents cannot stifle competition by exploiting their network effects or market power.

**d. What measures will the CFPB take to ensure credit access for individuals while protecting them from predatory practices?**

Response: The CFPB continually gathers information to assess various credit products and their impacts on consumers. When appropriate, the CFPB takes action, including supervisory and enforcement action, to protect consumers from unfair, deceptive, or abusive acts or practices or other unlawful acts or practices within the CFPB's jurisdiction.

**REP. NUNN - #1**

**Director Chopra, studies in Illinois and Colorado have demonstrated that a 36% APR rate cap results in significantly less credit availability, particularly for vulnerable populations. My concern is that a rate cap or aggressive regulation would limit the supply of loans but does not limit demand, and that folks who couldn't qualify for loans at that rate beforehand wouldn't magically be able to, all of a sudden, now qualify for loans below a 36% APR.**

**a) What are the key differences between installment loans and storefront payday loans in terms of their structure, terms, and fees? Is one type of loan more consumer friendly than another?**

**Response:** There are a variety of installment loans on the market, and payday lending continues to be an area of transition as states amend payday lending legislation and as firms innovate. Some former payday lenders now only offer installment loans or lines of credit. These higher-cost loans are repaid in multiple installments, with each installment typically due at the consumer's payday and with the lender generally having the ability to collect the payment from the consumer's bank account as money is deposited or directly from the consumer's paycheck. There are also traditional installment loans offered by banks and nonbank finance companies as well as fintech installment loans, sometimes originated by bank partners. Traditional installment lenders typically engage in underwriting that may include assessing the applicant's income and expenses, credit report, and deposit account cash flow. Depending on the particular product and application of state laws, installment loans may be offered at APRs of 36 percent or less or triple-digit APRs or higher. Unless explicitly authorized by law, the Consumer Financial Protection Act of 2010 does not provide the CFPB with authority to establish a usury limit.

**b) Can you provide examples or case studies that demonstrate how installment loans have provided greater value and affordability compared to storefront payday loans for individuals with subprime credit?**

**Response:** As noted above, there are a number of installment loan models aimed at individuals with subprime credit; consequently, it is not possible to provide an answer with general applicability.

**c) How does the CFPB evaluate the transparency and disclosure practices of installment loan lenders and fintech providers compared to storefront payday loan lenders?**

**Response:** Regardless of the type of loan offered, the CFPB evaluates the disclosure practices of all creditors for compliance with federal consumer financial laws in the same manner. The CFPB has brought actions against fintech and installment lenders, as well as payday lenders, for violations of consumer financial laws when their disclosures (or lack of disclosures) violate federal consumer financial law.

**d) Does the CFPB have any data or research on the rates of loan defaults or re-borrowing among borrowers who have used installment loans versus those who have used storefront payday loans?**

**Response:** As noted above, there are a number of installment loan models and creditors, including payday installment loans and loans from banks, credit unions, nonbank finance companies, and nonbank financial technology companies. The CFPB published research in 2016 on default and reborrowing rates on payday loans and payday installment loans.<sup>1</sup> In addition, in Market Snapshot: Consumer use of State payday loan extended payment plans (April 2022), the CFPB reported that the payday loan default and re-borrowing (rollovers) rates exceed the use of

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<sup>1</sup> <https://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/>

state payday loan extended payment plans.<sup>2</sup> The CFPB is also aware of external research and reports on payday loans and some installment loan products.<sup>3</sup>

**e) Does the CFPB have any reason to believe that banks and credit unions are making small-dollar loans to the subprime credit market in sufficient numbers to handle the demand of the entire market?**

**Response:** The CFPB's market monitoring includes small-dollar loans issued by banks and credit unions and the CFPB is aware that many of the larger banks now offer their customers a small-dollar loan product. The CFPB continues to monitor new small-dollar loan products issued by banks and credit unions, as well as by nonbank lenders.

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<sup>2</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_market-snapshot-payday-loan-extended-payment-plan\\_report\\_2022-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-payday-loan-extended-payment-plan_report_2022-04.pdf)

<sup>3</sup> Regulation and Recent Trends in High-Interest Credit Markets (Malone and Skiba, July 2020) and Payday Loans Cost 4 Times More in States With Few Consumer Protections (Horowitz, The Pew Charitable Trusts, June 2022). The CFPB is also aware of older external research on payday lending and consumer welfare including: In Harm's Way? Payday Loan Access and Military Personnel Performance (Carrell & Zinman, 2014), How do Payday Loans Affect Borrowers? Evidence from the U.K. Market (Gathergood et al. 2019), (Skiba & Tobacman, 2019), Much Ado About Nothing? New Evidence on the Effects of Payday Lending on Military Members (Carter & Skimmyhorn, 2017), Payday Loan Choices and Consequences (Bhutta et al. 2015), and Restricting consumer credit access: Household survey evidence on effects around the Oregon rate cap (Zinman, 2010). In addition, the CFPB's Payday Rule cites several research papers.

**REP. NUNN - #2**

**Director Chopra, the Bureau posted in the regulatory agenda that it is working on a Fair Credit Reporting Act rulemaking. I also understand that the Bureau is moving forward with this rulemaking process. Obviously, changes to the Fair Credit Reporting Act could affect lenders, insurers, and other users of credit reports who use that information to make decisions and manage risks. For instance, I would expect that any rule that hides accurate, predictive information from lenders will discourage access to affordable credit. Lenders have to operate in a safe and sound manner, so if they don't have visibility into known risks, then they need to reduce how much they lend and increase at what costs.**

**a) Don't you agree that such an outcome would not be desirable for consumers?**

**Response:** When credit reports contain inaccurate data, lenders and consumers both suffer. We currently see a lot of problems, including inaccurate and incomplete furnishing and coercive debt collection practices, in the consumer reporting market, and we believe there is clear need to update existing rules. The consumer credit reporting industry has consistently been a major source of consumer complaints. Complaints about credit or consumer reporting represented roughly 76 percent of consumer complaints submitted to the CFPB during 2022, making it the most-complained-about product and service category.<sup>4</sup> Credit or consumer reporting has been the most-complained-about category since 2017. The intent of any CFPB rulemaking would be to ensure accurate, predictive information is reported on credit reports. Input from industry participants and others is highly encouraged as part of the public rulemaking process.

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<sup>4</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_2022-consumer-response-annual-report\\_2023-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2022-consumer-response-annual-report_2023-03.pdf)

**b) Could you please tell the committee more about the rulemaking that CFPB has begun?**

**Response:** Data brokers collect and share a vast range of information about consumers, often building profiles of individuals by delving into the details of consumers' everyday interactions, including credit card purchases and web browsing activity. Data brokers also collect other types of sensitive and intimate personal information such as health information and geolocation data. People often have little choice about whether they will be tracked by these companies, yet the data these companies collect may nevertheless play a decisive role in significant life decisions, like buying a home or finding a job. Government agencies, technology and privacy experts, financial institutions, consumer advocates, and others have identified numerous consumer harms and abuses related to the operation of data brokers, including significant privacy and security risks, the lack of consumer knowledge and consent, and the spread of inaccurate information.

**REP NUNN - #3**

**Director Chopra, I am deeply concerned about the security incident that took place recently at the CFPB. A then-CFPB employee sent a massive amount of sensitive and confidential information from their work e-mail address to their personal email address. For some reason, the CFPB's data loss prevention controls did not prevent this transmission. I am particularly concerned about this breach because the CFPB has access to sensitive supervisory information about banks, credit unions, and other financial institutions.**

**a) What steps have you taken to improve your security procedures?**

**Response:** The incident you raise was certainly extremely concerning. The CFPB has in place safeguards to ensure that personally identifiable information (PII) and confidential supervisory information (CSI) are effectively protected. The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems, and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security.<sup>5</sup> All CFPB employees are required to complete privacy and cybersecurity training annually. Access to the system is shut off for employees who do not complete training.

In light of the recent data incident, CFPB has been reviewing its information, privacy, and cybersecurity program to ensure that we can improve and strengthen safeguards as much as possible. Some of the projects underway to strengthen CFPB's posture include:

- Implementing additional technical measures, such as new Data Loss Prevention controls, which have the capability of scanning outbound email for sensitive information, and adopting a federal shared service offered by the Department of Justice that will provide an IT network security capability that implements a zero trust architecture through which people and devices are verified

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<sup>5</sup> <https://oig.federalreserve.gov/reports/allyearscfpb.htm>



every time they attempt to access sensitive data, regardless as to whether they have pre-existing network access;

- Strengthening internal policies and procedures, and cybersecurity and privacy training to reflect some of the lessons learned and ensure CFPB has the best technological controls available to detect any anomalous behavior or other issues; and
- Continuing to refine how we collect information from institutions during supervision, with a focus on narrowing the information we collect to the minimum necessary to fulfill our supervisory responsibilities.

**b) Why should Congress continue to give the Bureau authority to collect voluminous information under HMDA and Section 1071 when the Bureau cannot safeguard the data in its possession?**

**Response:** The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems. The CFPB maintains information security standards as required by the Federal Information Security Management Act (FISMA) and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security.

The CFPB adheres to all applicable federal data collection and storage standards, including encrypting data transfers and data stored in the system.

With regard to the Home Mortgage Disclosure Act (HMDA) data, CFPB follows a strict data minimization standard. In the five years the CFPB has been collecting HMDA data there has never been a breach of non-public information.

With respect to the data collection under by the statutorily-required small business lending rule, the CFPB will only collect de-identified data about small business loans, i.e., data that does not directly identify individual small businesses/small business owners. The rule explicitly

prohibits the collection of PII, such as an individual's name and personal contact information. And while the data intake system design and build are still underway, the CFPB will ensure that appropriate controls are built into the system to protect the data throughout its entire lifecycle. The system will also go through the security authorization process prior to deployment.

**REP. NUNN - #4**

**Director Chopra, I am deeply concerned that the Bureau performs its policymaking through blog posts and speeches—not through rulemaking governed by the Administrative Procedure Act. The Bureau’s approach circumvents Congress, which established the notice-and-comment rulemaking process to ensure that public feedback is incorporated into agencies’ rules in order to produce the best and most workable policies.**

**a) Will you commit to using rulemaking—not blog posts and speeches—to make policy on issues like overdraft?**

**Response:** The CFPB adheres to all rulemaking requirements set forth in statute, including the Administrative Procedure Act. Like other agencies, the CFPB uses public communications to help the public understand the agency’s activities.

**REP. NUNN - #5**

Overdraft provides a needed form of liquidity to Americans who have emergency expenses or other short-term needs. Research demonstrates that consumers value overdrafts. A 2022 [survey](#) revealed that 9 in 10 consumers find their bank's overdraft protection to be valuable. Despite the benefits provided by overdrafts, the Bureau has criticized the product, leading some banks to no longer charge overdraft fees or to lower the overdraft fee. This is concerning. A certain number of customers who overdraw their accounts will not repay the negative balance. Banks charge overdraft fees in part to compensate for the risk of non-payment. I worry that, if a bank decides not to charge an overdraft fee, the bank may also choose to limit access to the product to reduce this risk. Instead of paying a transaction into overdraft, the bank may decline the transaction.

**a) For banks that do not charge overdraft fees, have you studied how many transactions that overdrew the customer's account were not paid into overdraft by the bank, but instead were declined?**

**Response:** The CFPB has been engaging with financial institutions that have reduced or eliminated overdraft fees in order to understand the effects of those policy changes and will continue to do so.

**b) If you have not studied this issue, will you commit to performing this study? I believe this information is critical to understanding whether your remarks about overdrafts could be harming consumers.**

**Response:** As noted above, the CFPB has been engaging with financial institutions that have reduced or eliminated overdraft fees in order to

understand the effects of those policy changes and will continue to do so.

**Question for the Record -The Semi-Annual Report of the Bureau of  
Consumer Financial Protection**

June 14, 2023

Congresswoman Brittany Pettersen (CO-07)

**1) There have been reports of complaints about the role of the large credit bureaus in gathering and selling consumer data, including around income verification and payroll data. A Washington Post report last year<sup>1</sup> highlighted both consumer protection concerns and potentially anticompetitive practices by one of the three major credit bureaus. Is the CFPB looking into this issue?**

**Response:** I share your concerns about consumer protection and competition in the data brokerage industry. The Consumer Financial Protection Bureau (CFPB) is seeking to address these issues using a variety of our statutory tools. For example, the CFPB launched an inquiry into the practices of data brokers, in advance of a planned rulemaking under the Fair Credit Reporting Act (FCRA), which governs the gathering and selling of consumer data in many circumstances.<sup>2</sup> The Request for Information (March 15, 2023) was meant to provide background on the full scope and breadth of data brokers and their business practices, their impact on the daily lives of consumers, and whether they are all playing by the same rules. This request provided the public an opportunity to share feedback about companies that play a significant role in people's lives and in the economy. This feedback will shed light on the current state of an industry that largely operates out of public view, and inform the CFPB's future work to ensure that these companies comply with federal law.

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<sup>1</sup> <https://www.washingtonpost.com/technology/2022/03/23/google-apple-equifax-worknumber/>

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-inquiry-into-the-business-practices-of-data-brokers/>

In addition, the CFPB's Supervision and Enforcement Offices are engaged in wide-ranging work to address risks to consumers and improve FCRA compliance across the consumer reporting industry.

**Congressman Brad Sherman**

Questions for the Record

House Committee on Financial Services Hearing: “The  
Semiannual Report of the Bureau of Consumer Financial  
Protection”

Wednesday, June 14, 2023

Question for Rohit Chopra, Director, Consumer Financial  
Protection Bureau:

**1. The COVID-19 pandemic made abundantly clear that Real Estate Settlement Procedures Act (Regulation X) reform was necessary, as the overwhelming need for borrower relief magnified existing elements of the regulation that contributed to consumer confusion, ambiguity in the rule’s application or delayed delivery of assistance. As we reflect on how the COVID-19 pandemic impacted the mortgage servicing industry and plan for the future of loss mitigation, it is necessary to address the loss mitigation rules in Regulation X that inadvertently served as a barrier to getting consumers the assistance that state and other federal government agencies were developing. The Bureau’s rationale in 2012 and 2013 for how these rules were structured no longer applies to the evolved mortgage servicing industry, and the rules do not provide the intended protections to consumers. Amendments to Regulation X are needed to ensure mortgage servicers can timely assist distressed borrowers in any market conditions and to promote an efficient loss mitigation experience for consumers. Director Chopra, the Bureau**



**has repeatedly suggested that it is going to look at its servicing and loss mitigation rules to make them more flexible in response to the lessons learned during the pandemic. Can you offer some updates on the planned timeline for that rulemaking and what areas you are looking at?**

**Response:** I agree that we should be considering ways to simplify and streamline the existing mortgage servicing rules. This is a priority for the Consumer Financial Protection Bureau (CFPB), and we have a team currently working on this. As I noted in a blog issued on June 15, 2023,<sup>1</sup> the CFPB has observed that there were places where the rules could be revised to reduce unnecessary complexity. In Fall 2022, the CFPB asked the public for input on ways to reduce risks for borrowers who experience disruptions in their ability to make mortgage payments, including input on the mortgage forbearance options available to borrowers.<sup>2</sup> In particular, we sought input on the features of pandemic-related forbearance programs and whether there are ways to automate and streamline long-term loss mitigation assistance. We received comments from housing organizations, homeowner advocates, mortgage servicers, and many others. Many commenters noted that borrowers seeking help on their mortgages can face a paperwork treadmill that hurts both homeowners and mortgage servicers. According to commenters, the temporary pandemic-related changes we made to the mortgage servicing rules helped alleviate this problem and get borrowers accommodations more quickly.

When homeowners who struggle to make payments get the help they need without unnecessary delay or hurdles, it is better for borrowers, services, and the economy as a whole. The CFPB will be using this input

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<sup>1</sup> <https://www.consumerfinance.gov/about-us/blog/the-cfpb-intends-to-identify-ways-to-simplify-and-streamline-the-existing-mortgage-servicing-rules>

<sup>2</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-launches-effort-to-spur-new-opportunities-for-homeowners-in-the-mortgage-market>

from commenters to propose ways to simplify and streamline mortgage servicing rules. We will propose streamlining only if it would promote greater agility on the part of mortgage servicers in responding to future economic shocks while also continuing to ensure they meet their obligations for assisting borrowers promptly and fairly.

**2. According to the CFPB's consumer complaint database, "the most common complaint issue continues to be about inaccurate information on a consumer's report." Consumers have no control over the data that goes into CRAs, no dispute resolution process, there is inconsistent criteria applied across credit bureaus, and yet a families entire financial future hinges on having a good credit score. Director Chopra, what is your agency doing to address some of these issues?**

**Response:** I strongly agree that inaccuracy in consumer credit reports is a serious problem. Because of the importance of credit report accuracy to businesses and consumers, the Fair Credit Reporting Act (FCRA) creates interrelated legal requirements to support the policy goal of accurate credit reporting and to ensure that consumers have a meaningful opportunity to dispute inaccuracies.

The CFPB is utilizing a range of tools and authorities to improve compliance with these requirements throughout the credit reporting industry and, in turn, increase the accuracy of credit reports. First, we are monitoring complaints submitted about TransUnion, Equifax, and Experian to identify deficiencies in their responses. This past January, we published a report highlighting some of our findings and noted that we have seen some evidence of changes.<sup>3</sup> For example, our analysis indicates that these companies' responsiveness to complaints increased over the past year, as did their reported rates of relief in response to complaints. Second, we are continuing to exercise our authorities to ensure consumer reporting companies comply with consumer financial protection laws. This includes exploring a new rulemaking, as well as our ongoing supervisory and enforcement work, which has remained a top priority. Third, last November, we released a circular to outline how federal and state consumer protection enforcers, including regulators and

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<sup>3</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra-611-e\\_report\\_2023-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2023-01.pdf)

attorneys general, can bring claims against companies that fail to investigate and resolve consumer report disputes.<sup>4</sup>

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<sup>4</sup> <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-07-reasonable-investigation-of-consumer-reporting-disputes/>

## Questions for the Record

For the hearing entitled “Semi-annual Report of the  
Bureau of Consumer Financial Protection”

June 14, 2023

*Rep. Bryan Steil*

**As you know, the recent regional bank crisis has curtailed the extension of credit in the economy. The Fed’s Loan Officer Survey demonstrates that bankers expect further contraction in the coming months. At the same time, 60 million consumers already have difficulty obtaining credit from mainstream banks and other lenders because of impaired credit, and it is getting worse as a number of states impose rate caps on lenders, further reducing credit access for vulnerable populations. I am deeply concerned about how these Americans meet a financial emergency in this economic environment.**

**What is the status of the small dollar rule, and how can we help consumers in those states that have enacted policies like rate caps to ensure that consumers in those states still have access to credit? For example, how can we encourage community banks to continue to meet this need?**

**Response:** In July 2020, the Consumer Financial Protection Bureau (CFPB) under Director Kraninger issued a rule revoking certain provisions of its regulations, including the mandatory underwriting provisions for making an ability-to-repay determination, that governed payday, vehicle title, and certain high-cost installment loans.<sup>1</sup>

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<sup>1</sup> See 85 FR 44382 (July 22, 2020)

**How does the CFPB encourage innovation and competition in the fintech sector to provide better loan alternatives for consumers with subprime credit?**

***Response:** Congress established the CFPB to ensure “that markets for consumer financial products and services are fair, transparent, and competitive.” Last year, the CFPB opened a new office, the Office of Competition and Innovation, as part of a new approach to help spur innovation in financial services by promoting competition and identifying stumbling blocks for new market entrants. The Office of Competition and Innovation focuses on how to foster market conditions where consumers have the ability and information to shop for financial services that meet their needs.*

*For example, we are looking at ways to facilitate a move toward open banking and finance. The CFPB is prioritizing the implementation of the law’s rulemaking on personal financial data rights pursuant to Section 1033 of our authorizing statute. Together with other CFPB authorities, it has the potential to facilitate competition by lowering customer acquisition costs for small providers and new entrants, while also limiting the ability for large incumbents to stifle competition.*

*Specific to the subprime and deep subprime credit issue, the CFPB recently announced that it is hosting a tech sprint in partnership with the Census Bureau’s Opportunity Project leveraging recently updated Terms of Credit Card Plans survey data.<sup>2</sup> The CFPB intends for the challenge to promote competition in the credit card market by having participants consider how to help consumers improve their ability to shop for credit cards and thereby improve access to credit. By helping to foster increased competition and transparency in credit card markets,*

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<sup>2</sup> <https://opportunity.census.gov/assets/files/2023-CFPB.pdf>

*we can help improve access to credit, especially for consumers with thin or no credit files.*

**Based on the CFPB's observations and data, what are the potential long-term impacts for consumers who choose installment loans or fintech providers over storefront payday loans?**

***Response:** Small dollar loans encompass a variety of different types of products, including payday and "payday installment." There are a variety of installment loan products offered by banks, credit unions, nonbank finance companies and financial technology companies. Consumer impacts from using these products depend on the particular loan product and consumer's situation.*

**What individuals or organizations has the CFPB met with where the topic was the extension of the MLA interest rate cap or similar proposal to all consumers? What materials or information was provided to the CFPB in connection with these meetings? Please provide said information or materials in your response.**

**Response:** CFPB staff meet with a significant number of individuals and organizations across the spectrum of our work. The subject of extending the Military Lending Act interest rate cap is at times raised by individuals. However, CFPB staff are unaware of any meeting scheduled where the topic was extending the cap. Furthermore, Section 1027(o) of the Consumer Financial Protection Act of 2010 provides that "[n]o provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law."

Rep. William R. Timmons, IV (SC-04)  
June 14, 2023  
The Semi-Annual Report of the Bureau of Consumer Financial  
Protection

**In your first appearance before our Committee as Director, you urged banks to get more involved in small dollar lending. Banks, and particularly community banks, often partner with technology providers to enable them to provide access to credit in the small dollar loan space. Unfortunately, a February 2022 GAO report<sup>1</sup> said very clearly that regulatory uncertainty is stifling the ability of banks to provide access to credit.**

**Let's be clear here – we are talking about access to credit for the most vulnerable consumers in our population, and what the GAO has said is that all of the uncertainty around how we are going to regulate access to credit is hurting the very consumers that the regulators are trying to protect.**

**1. Does the CFPB offer any resources or guidance to help consumers with subprime credit scores make informed decisions about small dollar loans and credit options?**

**Response:** The Consumer Financial Protection Bureau (CFPB) offers information to consumers about payday loan products and other ways to help make ends meet. For example, our Payday Loans portal<sup>2</sup> helps consumers understand how the loans work, find answers to common questions, and compare options. Examples of related publications

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<sup>1</sup> <https://www.gao.gov/products/gao-22-104468>

<sup>2</sup> <https://www.consumerfinance.gov/consumer-tools/payday-loans/>



accessible from the Payday Loans portal include Find Financial Products and Services<sup>3</sup> and Reducing Debt Worksheet.<sup>4</sup>

More self-service guidance for consumers on building credit can be found on our Credit Reports & Scores portal.<sup>5</sup> Examples of related publications that help people build a strong credit profile include How to Rebuild Your Credit<sup>6</sup> and Building Credit From Scratch.<sup>7</sup>

**2. Does the CFPB collaborate with other organizations or agencies to provide financial education and support for individuals with subprime credit scores who are seeking small dollar loans?**

**Response:** Yes. The CFPB works to integrate financial education into trusted and established community partners where people already go for other services. These include workplaces, social service organizations, military recruiters, Army ROTC, colleges and universities, government agencies, financial institutions, and financial educators. The CFPB coordinates actively with other federal agencies to identify areas for collaboration to amplify one another's mutual ability to reach the public with financial education. The CFPB is a member of the Financial Literacy and Education Commission, which was established to improve the financial literacy and education of Americans and to coordinate financial education efforts in the federal government.

In addition, Your Money, Your Goals is a CFPB program<sup>8</sup> designed to help front-line practitioners who work with people with low-incomes—for example, securing employment or housing, or resolving legal issues. Your Money, Your Goals includes guides for practitioners and

<sup>3</sup> [cfpb\\_your-money-your-goals\\_find-financial-products-services\\_tool.pdf](#) (consumerfinance.gov)

<sup>4</sup> [cfpb\\_ymyg-toolkit\\_reducing-debt-worksheet.pdf](#) (consumerfinance.gov)

<sup>5</sup> <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/>

<sup>6</sup> [cfpb\\_how-to-rebuild-your-credit.pdf](#) (consumerfinance.gov)

<sup>7</sup> [201612\\_cfpb\\_credit\\_invisible\\_checklist.PDF](#) (consumerfinance.gov)

<sup>8</sup> <https://www.consumerfinance.gov/consumer-tools/educator-tools/your-money-your-goals/>

consumers to use together, on managing bills, dealing with debt, and building credit.

**3. Can you provide any statistics or data on the use of small dollar loans by individuals with subprime credit scores who have successfully utilized small dollar lending options to improve their financial situations?**

**Response:** Many different financial products involve small dollar lending. For example, some consumers may use financial products such as deposit advance loans, credit cards, overdraft protection, or Buy Now, Pay Later loans to meet their short term credit needs. Our research publications available on our website cover a variety of issues related to the consumer credit market including these products.

**4. Has the CFPB studied the ease of obtaining or the availability to credit for consumers with credit scores under 600? Where do these consumers turn for help? What happens if these individuals are unable to access credit.**

**Response:** The CFPB regularly monitors many markets. For example, we have several statutory responsibilities to analyze the credit card market. Some market participants seek to offer this credit to individuals who are not “prime.” There is also a breadth of academic research available on how consumers deal with financial emergencies.

Questions for the Record  
Rep. Velazquez  
June 14, 2023

**1) Director Chopra, the Section 1033 Rule the Bureau is developing is intended to promote competition and choice in financial services and ensure that consumer's financial data is safe even as it moves from banks to non-banks. As the Bureau develops the rule: first, will the CFPB set appropriately high standards--including supervision by the Bureau--for the companies that want to connect to banks so that consumers can share their financial data with them? And second, that any company that meets those high regulatory standards will be allowed to connect directly with the bank, and cannot be rejected by the bank for anti-competitive or other reasons?**

Response: The Consumer Financial Protection Bureau (CFPB) is considering proposing that a covered data provider would be required to make information available to a third party, upon request, when the covered data provider has received evidence of a third party's authority to access information on behalf of a consumer, information sufficient to identify the scope of the information requested, and information sufficient to authenticate the third party's identity. The CFPB is seeking to ensure that third parties that do not meet these conditions are prevented from obtaining access to the information.

In addition, the CFPB is considering a proposal to require authorized third parties to implement data security standards to prevent authorized third parties from exposing consumers to harms arising from inadequate data security.

**2) Director Chopra, the Bureau earlier this year issued a proposed rule to reduce credit card late fees. I'd like to ask you about the current status of that rulemaking, but I am also wondering if the Bureau is taking into consideration impacts on newer financial products, such as those that don't operate under a monthly payment structure, for instance BNPL. Can you comment on those two items?**

Response: The CFPB issued a Notice of Proposed Rulemaking regarding Credit Card Penalty Fees on February 1, 2023. The proposal was published in the Federal Register on March 29. The CFPB accepted comments on the proposal from February through May 3, 2023. The CFPB is reviewing all comments submitted in response to the proposal.

The CFPB is also actively monitoring the market to understand consumer financial products and services like Buy Now, Pay Later (BNPL). In September 2022, the CFPB issued a report, "Buy Now, Pay Later: Market trends and consumer impacts," summarizing data that we acquired through market monitoring orders. The report identifies several competitive benefits of BNPL loans, as well as three categories of potential consumer risks: discrete consumer harms, data harvesting, and borrower overextension. In September, I announced that I have asked our staff to identify potential interpretive guidance or rules to issue with the goal of ensuring that BNPL firms adhere to many of the baseline protections that Congress has already established for credit cards. In March 2023, the CFPB issued a report, "Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey," which explored the consumer financial profiles of BNPL borrowers using the CFPB's Making Ends Meet survey.

