

Testimony of  
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On Behalf of the  
American Bankers Association

Before the  
Subcommittee on Oversight and Investigations  
Committee on Financial Services  
United States House of Representatives

Examining the Consumer Financial Protection Bureau's Mass Data Collection Program

December 16, 2015

Thank you Chairman Duffy and Ranking Member Green for the opportunity to testify on this important topic, relating directly to the accountability of the Bureau of Consumer Financial Protection (Bureau) and the transparency of its work. My name is Wayne Abernathy, Executive Vice President for Financial Institutions Policy and Regulatory Affairs at the American Bankers Association.<sup>1</sup> The customers of all of ABA's member banks, from thousands of community banks in every congressional district in the nation, to the mid-size, regional, and money center banks, that together present a wide variety of business models by which they serve the wide variety of financial services needs of the deepest and most complex economy in the world—the customers of these banks are affected by the actions, policies, and decisions of the Consumer Bureau.

The Dodd-Frank Act gave the Bureau of Consumer Financial Protection enormous authority and power over retail financial products, those who provide them, and therefore over the people who use them. This power comes with little more than nominal oversight and accountability. It would be hard to find a Federal agency where the gap between regulatory power and public accountability is greater. The broad authorities of the Bureau are ultimately wielded by a single individual who has no face-to-face peer among the hundreds of employees of the Bureau.

In their defense, Bureau officials repeatedly assert that the Bureau is a “transparent” and “data-driven” agency, where policy decisions, rules, regulations, and actions are formulated in public view driven by the story told in the enormous amounts of information that the Bureau gathers from businesses and their customers. Public exposure and data are to be the checks on the natural tendency for such a government agency, any such agency, to stray into arbitrary action. I emphasize again, that the Bureau, as it is currently structured, is governed by one person with

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits, and extend more than \$8 trillion in loans.

no peers, no one in the agency who can address him without ultimately bending to that one person's policy judgment, knowing that at some point the discussion will end with, "Yes sir."

We welcome the Subcommittee's inquiry into the question of just how strong a check on arbitrary behavior are the Bureau's data practices and the public's access to the full information on which the Bureau relies for its decisions. How much is the Bureau, in fact, data-driven, and by which data, from which sources, and how would we know?

Here are some things that we do know:

**Bureau officials have devoted significant effort to promote public recognition that the Bureau places a high priority on the role of data in policymaking and the importance of transparency in the use of those data.** A few examples:

- Bureau Director Richard Cordray stated the following, on September 11, 2013, in remarks before the American Mortgage Conference: "At the Consumer Bureau, we are a data-driven agency. Before we finalize our rules, we conduct research and solicit input from all stakeholders—consumer advocates, industry members, and public officials. The best decisions will be those that are best informed."<sup>2</sup>
- A year earlier, on May 3, 2012, Richard Cordray said the following at the Simon New York City Conference: "we have dedicated ourselves to being an agency that is evidence-based and data-driven. Field hearings, inquiries, rulemakings, bulletins—we are taking an 'all of the above' approach to guarantee that we are both sharing and receiving up-to-date information that will inform our policymaking. . . . We strive to be as rigorous and analytical as the available market information allows us to be while remaining pragmatic in our judgments and decisions."<sup>3</sup>
- On December 13, 2012, Richard Cordray offered the following on a press call to discuss a white paper on credit reporting: "As a data-driven agency we believe in informational reports like this. We believe in doing deep dives into the markets we regulate, because we think the best and most effective way to oversee an industry or market is to understand it thoroughly."<sup>4</sup>
- The Bureau's Strategic Plan for FY2013-FY2017 includes the following: "We take in data, manage it, store it, share it appropriately, and protect it from unauthorized access. Our

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<sup>2</sup> Richard Cordray, Director, Bureau of Consumer Financial Protection, Remarks at the American Mortgage Conference (Sept. 11, 2013), *available at*: [director-cordray-remarks-at-the-american-mortgage-conference](#).

<sup>3</sup> Richard Cordray, Director, Bureau of Consumer Financial Protection, Prepared Remarks Before the 2012 Simon New York City Conference (May 3, 2012), *available at*: <http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-before-the-2012-simon-new-york-city-conference/>.

<sup>4</sup> Richard Cordray, Director, Bureau of Consumer Financial Protection, Prepared Remarks on a Credit Reporting White Paper Press Call (Dec. 13, 2012), *available at*: <http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-on-a-credit-reporting-white-paper-press-call/>.

aim is to use data purposefully, to analyze and distill data to enable informed decision-making in all internal and external functions.”<sup>5</sup>

- This, from the Bureau’s website, on a page titled, “Open Government”: “Transparency is at the core of our agenda, and it is a key part of how we operate. You deserve to know what we’re doing for the American public and how we are doing it.”<sup>6</sup>

It would be difficult for anyone here to object to the goals, objectives, or principles enunciated in those statements. We support them.

Bureau practices, however, have not lived up to these appropriate standards, and there is little to require that they do.

**The Dodd-Frank Act extends to the Bureau impressive authorities for requiring information and *gathering* data. Oversight under the Act of the exercise of those authorities is less impressive.** The following is a summary of key provisions.

- Section 1022(c): Monitoring Authority. The Bureau—“to support its rulemaking and other functions”—is authorized to exercise broad data gathering powers for the purpose of monitoring “for risks to consumers in the offering or provision of consumer financial products or services, including developments” in these markets. The statute provides illustrations of—but not limits on—what the Bureau should consider in using *its* resources under this provision (there is no consideration mentioned of the use of *financial firms’* resources), including (1) likely risks and costs to consumers; (2) understanding by consumers of risks; (3) applicable legal protections; (4) rates of growth in providing products and services; (5) the extent to which risks may disproportionately affect underserved consumers; or (6) “the types, number, and other pertinent characteristics” of the firms under Bureau jurisdiction that provide financial consumer products and services. The Bureau is required to publish at least annually a report of “significant findings” from this monitoring. To obtain this information, Section 1022 authorizes the Bureau to gather data “regarding the organization, business conduct, markets, and activities” of the firms under Bureau jurisdiction. The Bureau may gather from firms under its jurisdiction information by rule or by order, under oath or otherwise, in such form and reasonable time period “as the Bureau may prescribe”. The Bureau may also gather from other parties information “from a variety of sources,” including consumers and “available databases”. This section also authorizes the Bureau to require that non-banks that are not under its jurisdiction file with the Bureau, “under oath or otherwise,” annual or special reports, including answers to specific questions, to

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<sup>5</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION, STRATEGIC PLAN FY 2013 – FY 2017, *available at*: <http://www.consumerfinance.gov/strategic-plan/>.

<sup>6</sup> Open Government, BUREAU OF CONSUMER FINANCIAL PROTECTION (December 10, 2015), <http://www.consumerfinance.gov/open/>.

help the Bureau assess whether such firms are or are not under the Bureau's jurisdiction.

- Section 1024: Exams and Reports, Large Non-Banks. The Bureau is authorized to require reports from and conduct periodic examinations of larger non-bank participants in financial consumer markets for the purposes of (a) assessing compliance with Federal consumer financial laws; (b) obtaining information about activities subject to such laws, as well as the financial firms' compliance systems and procedures; and (c) "detecting and assessing associated risks to consumers and markets for consumer financial products and services." This third purpose is broad, the limits of which remain untested by the courts or bound by regulations or guidelines. The Dodd-Frank Act extends to the Bureau authority to require these firms to "generate, provide, or retain" records to facilitate these examination and reporting requirements. Bureau authority also extends to service providers to these firms.
- Section 1025: Exams and Reports, Larger Banks. The Bureau has exclusive authority to require reports from and conduct periodic examinations of banks and credit unions—and any of their affiliates—that have more than \$10 billion in assets. This authority, under the statute, is to be exercised for the purposes of (a) assessing compliance with Federal consumer financial laws; (b) obtaining information about activities subject to such laws, as well as the financial firms' compliance systems and procedures; and (c) "detecting and assessing associated risks to consumers and markets for consumer financial products and services." This third purpose is broad, the limits of which remain untested by the courts or bound by regulations or guidelines. Bureau authority also extends to service providers to these banks and credit unions.
- Section 1026: Exams and Reports, Smaller Banks. The Bureau is authorized to require reports from banks and credit unions with \$10 billion or *less* in assets (a) to support the role of the Bureau in implementing Federal consumer financial laws, (b) to support Bureau examinations of such banks and credit unions, and (c) "to assess and detect risks to consumers and consumer financial markets." Again, this third purpose is a broad catchall authority untested in court or defined by regulations or guidelines. Bureau authority also extends to service providers to these banks and credit unions.
- Section 1013(b)(3): Consumer Complaints. The Bureau is directed by the Act to create an internal unit to establish a toll-free telephone number, a website, and a database for the centralized collection and monitoring of and response to consumer complaints. No authority is mentioned for publication of such complaints. There are requirements for the Bureau to route complaints to appropriate government agencies, including State agencies, and to provide Congress with an annual report on consumer complaints and their resolution.

These authorities are expansive and intrusive. In the case of each extension of authority there are enumerated lines of inquiry followed by broad undefined grants, leaving little in the

affected firms to which the Bureau could not reach in its quest for information. Missing from the statute is effective oversight of the Bureau's exercise of this authority.

Among the noteworthy elements of these provisions are the ways in which power is given to the Bureau to reach for data from firms outside of its jurisdiction, including authority for the Bureau to demand that such firms provide whatever information the Bureau deems appropriate to *show cause* why they should not be under the Bureau's jurisdiction.

### **The Bureau gathers data through numerous consultative efforts.**

- In addition to these statutory authorities—as well as in connection with their exercise—the Bureau takes advantage of a variety of formal and informal activities to gather information, such as meetings and consultations with academics, think tanks, consumer advocacy groups, and financial firms subject to its jurisdiction.
- The Bureau has established and consults with advisory groups, such as the Academic Research Council, the Consumer Advisory Board, the Community Bank Advisory Council, and the Credit Union Advisory Council. These advisory groups meet periodically in person and through conference calls, with some of their deliberations open and some of them closed to the public.
- The Bureau has sought public comment through several formal Requests for Information (RFIs) on topics such as debit overdraft programs, arbitration, student loan servicing, mobile financial services, and consumer complaint “normalization.”

**Problematic Bureau data practices have undermined the effective use of data to serve as a check on arbitrary action by the Bureau, weakened the contribution of information to the quality of policymaking, and undercut the role of data to prevent regulatory abuses. Taken together, these practices place at risk the Bureau's mission to protect consumers.** The following are an illustrative, but not comprehensive, litany.

- Evading PRA Public Exposure Strictures, While Cherry-Picking Data. In 2012 the Bureau gathered data on debit overdraft practices from 9 banks. The number selected was not arbitrary, since the Paperwork Reduction Act (PRA) requires prior exposure to public comment and a submission for review to the Office of Management and Budget (OMB) whenever a Federal agency seeks to collect information from 10 or more parties. Inasmuch as the data collection was applied to *large* banks, it skewed the results, ignoring the variety of overdraft programs exercised throughout the industry by banks of all sizes. The Bureau kept confidential the identities of the 9 banks surveyed, even discouraging the banks from publicly acknowledging their participation. The Bureau published in June 2013 an analysis of the data in a white paper, “CFPB Study of Overdraft Programs: A white paper of initial data findings.” Neither the structure of the survey nor the data it gathered were made available for public review and comment other than what was selectively offered in the Bureau's white paper. The validity of the

Bureau’s “initial data findings” could not be reviewed—let alone tested—by the public.<sup>7</sup> In July 2014 the Bureau again drew on this still cloistered database in a “Data Point” published on the Bureau’s website.<sup>8</sup> The information as offered was misleading both to consumers who might read and act on it and to policymakers who might be tempted to do so, too. For example, the “Data Point” asserted that the *median* debit card overdraft in the survey was \$24, causing a *median* overdraft fee of \$34 dollars. The *mean* average of both overdrafts and fees in the sample data was and remains publicly unavailable. Why this matters can be shown by a George Mason University Law and Economics Research paper that, drawing upon data from a regional bank, reported that in the one year period under review the bank’s customers overdrew their accounts by \$437.6 million, for which they paid a total of \$58.8 million in overdraft fees, which is to say that overdraft *credit* received by customers was 7.4 times the amount of fees paid.<sup>9</sup> The authors of the GMU Law paper do not claim their study of one bank to be definitive, but they do demonstrate that the Bureau’s interpretation of its 9-bank study cannot be taken as definitive, either. Full public disclosure of the data on which the Bureau based its studies would promote public analysis and regulatory policymaking that would benefit rather than threaten to harm consumers.

- Skewed Data Samples. Similarly, in 2014 the Bureau, using its authority under Section 1022, again ordered fewer than 10 banks to provide information on their credit card debt collection and debt sale policies and practices. And, once again, limiting the sample to avoid PRA public review strictures produced data skewed to large banks.<sup>10</sup> Such a sample, limited to data on credit card debt collection practices, can suggest policy actions out of sync with the realities of debt collections by smaller banks where credit card accounts make up a much smaller portion of their business. Policymakers in Congress and in the executive branch agencies are increasingly recognizing the importance of tailored regulation appropriate to the variety of banking business models—and thereby more appropriate to the needs and interests of the variety of bank customers. Skewed regulatory data practices, however, employed in order to avoid statutory public exposure requirements, will ill-serve consumers. The Bureau will fail to be data-driven while such data manipulation practices prevail.
- Avoiding Public Exposure by Abusing PRA Generic Clearance Processes. The PRA was enacted, “to ensure the greatest possible public benefit from and to maximize the utility

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<sup>7</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION, CFPB STUDY OF OVERDRAFT PROGRAMS, A WHITE PAPER OF INITIAL DATA FINDINGS (June 2013), *available at* [http://files.consumerfinance.gov/f/201306\\_cfpb\\_whitepaper\\_overdraft-practices.pdf](http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf).

<sup>8</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION, DATA POINT: CHECKING ACCOUNT OVERDRAFT (July 2014), *available at* [http://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf).

<sup>9</sup> G. Michael Flores and Todd J. Zywicki, Commentary: CFPB Study of Overdraft Programs, George Mason University Law & Economics Research Paper No. 13-60 (Nov. 4, 2013) at 7, *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2349819](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2349819).

<sup>10</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION, THE CONSUMER CREDIT CARD MARKET REPORT 237 (December 2015), *available at* [http://files.consumerfinance.gov/f/201512\\_cfpb\\_report-the-consumer-credit-card-market.pdf](http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf).

of information created, collected, maintained, used, shared and disseminated by or for the Federal Government” and “to improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society.”<sup>11</sup> Evading application of the PRA, therefore, evades fulfillment of these important purposes in government policymaking. Besides sidestepping PRA requirements by seeking data from fewer than 10 parties, the Bureau also makes extensive use of the PRA’s Generic Clearance process to avoid public scrutiny. Under this simplified procedure (normally used for customer satisfaction surveys, focus group testing, and website usability surveys),<sup>12</sup> agencies can obtain expedited and advance sign off for information requests—with little or no public awareness of what they are doing and therefore little or no opportunity to comment on the effectiveness of the proposed survey research. In November 2011, the Bureau obtained Generic Clearance under PRA for the innocuous and bureaucratic sounding project, “Generic Clearance for Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials”. Once the Bureau obtained the rather routine OMB Generic Clearance for the project, the Bureau subsequently used it 13 times for qualitative testing, including projects relating to consumer decision-making on debit card and ATM overdraft options.<sup>13</sup> These 13 information requests were obscured from public review and comment, frustrating the PRA’s objectives “to strengthen decision making, accountability, and openness in Government and society,” objectives that are consistent with the Bureau’s public image as a “data-driven agency”.

- Misrepresenting Overdraft Data Gathering. In January 2013, OMB approved the Bureau’s request for “Generic Clearance for Qualitative Consumer Education, Engagement, and Experience Information Collections” under the PRA. The Bureau conducted 17 separate information collections under this approval, with little public awareness. One was a survey on checking account debit programs, beginning with an initial sample of 10,000 households, leading to in-depth, one-hour interviews with 100 overdraft users. Astonishingly, the Bureau *certified* that the information collected from this overdraft survey would “not be used for the purpose of substantially informing influential policy decisions,”<sup>14</sup> a statement that may overdraw the Bureau’s credibility

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<sup>11</sup> 44 U.S.C. § 3501.

<sup>12</sup> Office of Management and Budget Memorandum, Information Collection under the Paperwork Reduction Act (April 7, 2010) at 5, *available at* [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf). *See also* Office of Management and Budget Memorandum, Paperwork Reduction Act – Generic Clearances (May 28, 2010)(“Clearances of generic ICRs provide a significantly streamlined process by which agencies may obtain OMB’s approval for particular information clearances – usually voluntary, low burden, and *uncontroversial* collections....including methodological testing, customer satisfaction surveys, focus groups, contests, and website satisfaction surveys.”(emphasis added)).

<sup>13</sup> *See* Info. Collection List filed pursuant to Information Collection Request Package, OMB Control No. 3170-0022, *available at* [http://www.reginfo.gov/public/do/PRAICList?ref\\_nbr=201206-3170-002](http://www.reginfo.gov/public/do/PRAICList?ref_nbr=201206-3170-002).

<sup>14</sup> Qualitative Research of Consumer Understanding and Decision-making Related to Overdrafts, *Request for Approval Under the “Generic Clearance for Qualitative Consumer Educ., Engagement, & Experience Info.*

account. Consider that elsewhere in the Bureau's description of the overdraft survey it reports that the Bureau is planning "a series of one or two additional white papers" on overdraft, and that the survey "will inform our interpretations of the quantitative data in these white papers."<sup>15</sup> Bureau officials have long announced overdraft programs to be on their list of issues for regulatory policy review. Such hide-the-ball information practices frustrate rather than promote the "all of the above" approach promised by Richard Cordray in 2012 to "guarantee that we are both sharing and receiving up-to-date information that will inform our policymaking".

- Publication of Unverified Complaints. The Bureau continues to publish on its official website, at the top of which are the words, "An official website of the United States Government", consumer complaints that are unverified for accuracy or veracity. As noted above, Section 1013 of the Dodd-Frank Act directs the Bureau to gather consumer complaints and direct them to the appropriate agencies to promote their resolution. Neither the Dodd-Frank Act nor any other provision of Federal law, however, authorizes the Bureau to publish this unverified information. The Bureau asserts that, "By adding their voice, consumers help improve the financial marketplace."<sup>16</sup> But how can this be true if the information provided, with a U.S. Government imprimatur, is unreliable and misleading? What does the Bureau offer to protect a consumer from acting on erroneous information published on the Bureau's website?
- Ignoring its Own Data: the Arbitration Study. Section 1028 of the Dodd-Frank Act requires the Bureau to study arbitration provisions in the agreements that financial firms have with their customers. The Bureau is then to take regulatory action, if appropriate, based upon the findings of that study. In March 2015, the Bureau published its study.<sup>17</sup> In this case, the Bureau gave significant public access to the complement of data on which it based the study's findings. That access revealed that in important aspects the data were inconsistent with those findings. One such finding is that consumers are better protected under class action lawsuits than they are under arbitration. The data in the study tell a different story. For example, they show that arbitration resolves customer disputes up to 12 times faster than do lawsuits. According to the supporting information in the Bureau study, the average time for resolution by arbitration varied from 4 months to 7 months (depending on the form of arbitration used).<sup>18</sup> The same data showed that the average time for resolution by class action lawsuit varied from 1.89 years and 2.07 years (the latter being the average for multi-district litigation).<sup>19</sup> Further, consumers obtained an average of \$32.25 via class action

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*Collections*" p. 6(OMB Control No.: 3170-0036), available at [http://www.reginfo.gov/public/do/PRAViewIC?ref\\_nbr=201404-3170-001&icID](http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201404-3170-001&icID).

<sup>15</sup> *Id.* at 1.

<sup>16</sup> Consumer Response Database home page, available at <http://www.consumerfinance.gov/complaintdatabase/>.

<sup>17</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION, ARBITRATION STUDY (MARCH 2015) available at [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf).

<sup>18</sup> *Id.* §4, p. 72-73.

<sup>19</sup> *Id.* §6, pp. 9, 43.



settlements according to the Bureau data, while arbitration relief to consumers averaged \$5,389.<sup>20</sup> Were the Bureau to take regulatory action based upon findings that are contradicted by its own data, it would arguably leave itself vulnerable to legal challenges for acting in an arbitrary and capricious manner. Hopefully, the public exposure of the data behind the Bureau's study, and the public scrutiny that this exposure allows, will result in Bureau action fully consistent with the data and therefore with consumer interests. That is to say, that public disclosure of the data behind policymaking can militate against Bureau action taken contrary to the facts.

- Manufacturing Data that Do Not Exist: Indirect Auto Lending. The work of the full Committee and this Subcommittee has already developed a strong record exposing the problems with the Bureau's data practices relating to indirect auto lending. In mentioning that work I note that it further supports arguments that I have raised in this testimony. I would only add, by way of emphasis, that transparency and accountability also require access to the Bureau's research *methods* and *assumptions*. This is perhaps demonstrated nowhere more clearly than in the Bureau's efforts to manufacture fair lending data where they do not exist. In well publicized enforcement cases, the Bureau asserted illegal discrimination in auto lending where no data are actually collected on race or national origin of customers. In fact, lenders are forbidden by law from collecting such information, specifically in order to avoid it from being a factor in lending decisions. On March 21, 2013, the Bureau published Bulletin 2013-02, "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act," in which it warned that, "there is a significant risk that" indirect auto lending practices "will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases." The Bulletin disclosed neither data nor the analytical processes substantiating that warning.<sup>21</sup> Following significant controversy, the Bureau published in September 2014 its methodology for developing data to support its concerns.<sup>22</sup> Further disclosures in the media and by the full Committee have shown that when the Bureau methodology was tested against mortgage data (where race and national origin of borrowers *is* known because law requires lenders to record and report it), only about half of the people identified by the Bureau's methodology to be African-American were in fact African-American. Bureau memos leaked to the press suggest that this error rate has long been known to the Bureau. Greater public access to the information on which the Bureau relies in making public policy would improve the quality of policymaking and would be consistent with a truly data-driven agency.

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<sup>20</sup> The Arbitration Study states that cash payments to "at least 34 million consumers" during the period studied were "at least \$1.1 billion." This means that the average class member's recovery was a mere \$32.35.

<sup>21</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION BULLETIN 2013-02, "INDIRECT AUTO LENDING AND COMPLIANCE WITH THE EQUAL CREDIT OPPORTUNITY ACT" (March 21, 2013), available at [http://files.consumerfinance.gov/f/201303\\_cfpb\\_march - Auto-Finance-Bulletin.pdf](http://files.consumerfinance.gov/f/201303_cfpb_march - Auto-Finance-Bulletin.pdf).

<sup>22</sup> BUREAU OF CONSUMER FINANCIAL PROTECTION, USING PUBLICALLY AVAILABLE INFORMATION TO PROXY FOR UNIDENTIFIED RACE AND ETHNICITY: A METHODOLOGY AND ASSESSMENT (Summer 2014), available at [http://files.consumerfinance.gov/f/201409\\_cfpb\\_report\\_proxy-methodology.pdf](http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf).

## Recommendations

In light of these problems, ABA makes the following recommendations for consideration and action by the Congress.

1. Section 1022 of the Dodd-Frank Act should be amended to place appropriate oversight, accountability, and reasonableness requirements on how the Bureau uses that authority to obligate data submissions. Reform efforts should take up a mandate that the Bureau consider and document (1) the value and importance of information it requests, and (2) whether the data are duplicative of other collections or of otherwise available information. The Section would be improved by including a process whereby a recipient of an order may challenge or seek to limit the breadth of the order. The Bureau's annual report under this section should also include a summary of each use of the authority for the previous year and the cost to the private sector for complying with each request. In addition, Congress should consider a requirement that the Bureau provide the private sector offsetting compensation for the costs of producing and submitting information under Section 1022.
2. The public should be given full and ample access to the de-identified information and data relied upon by the Bureau in its rulemaking, policymaking, and policy-related reports. Access to such data should be a standard part of the public comment process prior to making final decisions, allowing for liberal public review and analysis relating to the complete story that the information may tell.
3. A study should be conducted, such as by the Government Accountability Office, of the use by the Bureau of the Generic Clearance process under the Paperwork Reduction Act (PRA), to identify whether Bureau practices are appropriate and in line with the purposes of that clearance process and the public transparency and accountability objectives of the PRA.
4. The governance of the Bureau should be changed from a sole directorship to governance by a bipartisan commission, similar to the structure of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and other independent agencies. In this way, data practices would be subject to governance and review (and a diversity of perspectives) by Bureau commissioners with comparable stature and authority within the agency, who can ensure that public disclosure of data is provided in full and ample context consistent with public review, oversight, and accountability.

## Conclusion

I wish to emphasize our fourth recommendation as the most important of the four. With a commission structure, composed of a bipartisan council of policymakers, there is less room for

abusing data, and less opportunity to do so as well. Under the light of the variety of viewpoints that comes with a council or a commission, you have different people posing different questions from differing backgrounds and insights, all more likely to poke and prod the data, and all of them likely to be intolerant of information legerdemain.

On behalf of ABA and its member banks of all descriptions and business models, serving hundreds of millions of people—our customers and your constituents—impacted by policy decisions made by the consumer Bureau, I want to thank the Subcommittee for this important inquiry. I would be happy to respond to any questions you may have.