

**WRITTEN TESTIMONY OF
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**BEFORE THE
United States House of Representatives Committee on Financial Services
Subcommittee on Oversight and Investigations**

**IN A HEARING ENTITLED
From Watchdog to Attack Dog: Examining the CFPB's Chopra-era Assault
on Disfavored Industries**

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Chairman Meuser, Ranking Member Green, and Members of the Subcommittee, thank you for inviting me to testify today. My name is James Kim. I am a partner at the law firm, Cooley LLP. Today, I am presenting my own views, and not those of my firm or any client of the firm.

Background and Perspective

My testimony and the views I will express today are informed by my tenure at the Consumer Financial Protection Bureau ("CFPB" or "Bureau") and my subsequent practice focusing on financial services regulatory matters. My clients range from banks and other traditional institutions to medium-sized and early-stage companies seeking to launch innovative products and expand choices for consumers in the marketplace.

From 2012 through 2014, I had the privilege of serving at the CFPB, where I was the lead attorney in the Bureau's first enforcement action involving mobile devices and payments. In addition to my duties as an enforcement attorney, I worked with colleagues in the Office of Supervision and supported examinations behind the scenes. I was also a member of an inter-departmental working group focusing on emerging payment products and services. After leaving the Bureau, much of my practice involves helping companies navigate examinations and investigations by the CFPB and other government agencies.

Reflection on the CFPB's Recent History

The CFPB was created after the 2008 financial crisis to address perceived gaps in federal oversight of consumer financial products and services. Congress granted the Bureau broad authority over a large universe of companies offering a wide range of financial products and services that help consumers in their everyday lives. There is no question the CFPB has strengthened consumer protections since its inception. But some of the Bureau's actions in the past four years pushed its authority beyond the confines of the laws and rules that it enforces. During the last administration, the Bureau issued interpretive rules, guidance documents, and advisory opinions that purported to interpret or clarify federal consumer financial laws, but in reality expanded the Bureau's already far-reaching jurisdiction.

My testimony will focus on recent Bureau enforcement practices that exceeded the agency's statutory authority:

1. First, I will discuss the source of the CFPB's authority to investigate and take action against companies offering consumer financial products and services.
2. Second, I will describe how certain CFPB actions exceeded this authority.
3. Third, I will highlight how the Bureau's actions result in companies paying penalties that are not tethered to alleged consumer harm.

Source and Scope of the CFPB's Authority

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") after issues in the residential mortgage industry led to the collapse of the secondary mortgage market. In the wake of the aftermath, Congress created the CFPB to strengthen federal oversight of consumer financial products and services, which at that time were regulated by the Federal Trade Commission alongside a patchwork of federal and state agencies. The CFPB's mission is ensuring that the market for consumer financial products and services is fair and transparent.¹ The Bureau's mandate includes ensuring compliance with a host of statutes and regulations, such as the Equal Credit Opportunity Act ("ECOA"),² Real Estate Settlement Procedures Act,³ and the Electronic Fund Transfer Act.⁴

The CFPB's core functions include writing rules, supervising companies, and enforcing federal consumer financial laws.⁵ The CFPB has rulemaking, supervisory, and enforcement authority over "covered persons," which include "any person that engages in offering or providing a consumer financial product or service."⁶ Such products or services are defined as those that are offered or provided to consumers "primarily for personal, family, or household purposes" or that are "delivered, offered, or provided in connection with" a financial product or service.⁷ In addition, the Bureau has supervisory authority over mortgage lenders and servicers, payday lenders, private student lenders, and "larger participant[s] of . . . other consumer financial products or services."⁸ And the Bureau can seek to supervise *any* covered person it believes "is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services."⁹ Through rulemaking, the Bureau has expanded this authority to supervise, among others, credit reporting agencies, student loan servicers, and money transmitters. The Bureau also has non-exclusive supervisory and enforcement authority over insured depository institutions, such as banks, thrifts, and credit unions, with assets over \$10 billion.¹⁰

Under this expansive authority, the Bureau may examine covered persons to assess compliance with federal consumer financial law, obtain information about covered persons' activities and compliance systems, and "detect[] and assess[] risk to consumers and to markets for consumer financial products and services."¹¹ I have testified before that the Bureau's examination power is the CFPB's "most powerful and least transparent tool" due to the lack of an objective third party charged with overseeing the process and adjudicating disputes. The Bureau's enforcement powers bear the same hallmarks, but with potentially greater consequences because of its broad enforcement authority, power to bring *public* lawsuits and administrative actions, and impose significant civil money penalties.

¹ *The CFPB*, CFPB, <https://www.consumerfinance.gov/about-us/the-bureau/> (last accessed June 23, 2025).

² 15 U.S.C. § 1691 *et seq.*

³ 12 U.S.C. § 2601 *et. seq.*

⁴ 15 U.S.C. § 1693 *et seq.*

⁵ 12 U.S.C. § 5511(c)(4).

⁶ 12 U.S.C. § 5481(6).

⁷ 12 U.S.C. § 5481(5).

⁸ 12 U.S.C. § 5514(a)(1).

⁹ 12 U.S.C. § 5514(a)(1)(C).

¹⁰ 12 U.S.C. § 5515–16.

¹¹ 12 U.S.C. § 5514(b)(1)(C).

CFPB's Power to Conduct Investigations

Civil Investigative Demands for Documents, Reports, and Written Responses

Before starting proceedings in federal court or before an administrative law judge, the Bureau may commence investigation by issuing a civil investigative demand ("CID") to any person or entity if the agency has reason to believe that they possess documents or information relevant to a potential violation.¹² The Bureau can issue CIDs for documents, written reports—which often require the production of incredible amounts of data—and written responses to interrogatories, all of which must be furnished within a short time period after receiving the CID.¹³ In recent years, the Bureau expected companies to collect and provide tens of thousands of pages (all of which must be reviewed for responsiveness and privilege) and millions of data points, sometimes dating back more than half a decade, within 30 days. Companies can negotiate extensions and modifications to CID requests. Under the past administration, however, CIDs were typically overly broad. It was exceedingly difficult for companies to narrow CIDs or secure extensions. And this was especially difficult for small companies, who were often negotiating against nearly impossible expectations. This unfortunate pattern resulted in companies spending significant sums of money, not to mention thousands of personnel hours, responding to CIDs, which in some cases targeted practices that allegedly caused little, if any, consumer harm.

According to the CFPB's own rules, CIDs must include a notification of purpose that advises the recipient of "the nature of the conduct constituting the alleged violation that is under investigation."¹⁴ But the Bureau often crafted exceedingly broad statements of purpose that provided little transparency about the investigation. Past notifications provided that the CFPB was investigating whether a company has "engaged in unlawful discrimination" in violation of ECOA, "improperly originated mortgage loans" in violation of the Consumer Financial Protection Act, or "made false or misleading representations to consumers." These statements of purpose did not describe, with any particularity, conduct the Bureau was investigating and sometimes allowed the Bureau to engage in fishing expeditions when initial productions did not uncover any violations. In one of the few instances where a company challenged a CID, a federal court struck down the CID because the statement of purpose was too vague to comply with the statutory requirement that it describe the conduct being investigated.¹⁵

While CIDs must describe the materials requested with "such definiteness and certainty as to permit such material to be fairly identified,"¹⁶ the law contains virtually no limitation on the scope of what the CFPB can request. Unlike litigation governed by the Federal Rules of Civil Procedure, the Bureau has virtually unlimited power to demand the production of documents, data, and written responses pertaining to any aspect of a covered person's business, even those that are entirely unrelated to the company's offering of consumer financial products. At times, when a company's CID responses did not reveal any potential violations, the Bureau issued multiple CIDs, resulting in investigations lasting three years or longer.

Civil Investigative Demands for Oral Testimony

In addition to requesting documents, written responses, and data reports, the Bureau has the power to issue CIDs for oral testimony. The CFPB conducts these investigational hearings without any oversight from a court or administrative law judge, meaning witnesses are afforded little to no due process protections. Notably, the Bureau is not required to follow the Federal Rules of Civil Procedure during investigational hearings. Those rules are intended to protect witnesses, promote fairness, and provide ground rules for the parties. For example, the Federal Rules allow counsel for the witness to object to

¹² 12 U.S.C. § 5562.

¹³ 12 C.F.R. § 1080.6

¹⁴ 12 C.F.R. § 1080.5.

¹⁵ *CFPB v. Accrediting Council for Indep. Colleges & Sch.*, 183 F. Supp. 3d 79, 82–83 (D.D.C. 2016) (holding that the CFPB lacked the authority to issue a CID stating that the agency was investigating the third party's "unlawful acts and practices in connection with accrediting for-profit colleges" (emphasis omitted)).

¹⁶ 12 U.S.C. § 5562(c)(3)(A).

questions that are unclear, confusing, or improper.¹⁷ But these rights are not afforded to covered persons and other witnesses in CFPB investigational hearings. Although counsel may attend, the ability to object is severely limited,¹⁸ allowing the Bureau to pose compound, convoluted, or leading questions that would be impermissible in other civil proceedings.¹⁹ As discussed below, companies can object to the hearing through a petition to modify or set aside the CID, which the CFPB, rather than a neutral third party, decides.²⁰

Challenging Civil Investigative Demands

Information obtained through CIDs and investigational hearings is generally non-public. While covered persons often pay high prices to comply with CIDs, the investigation remains confidential and businesses can protect their reputations so long as the investigation is pending. If, however, a company wishes to challenge the CID, it must file a petition with the CFPB, who posts the petition on its website,²¹ making the matter public and harming the business's reputation and risking its financial future *before* the CFPB has gathered any evidence of a violation from the company. Few businesses, therefore, have the appetite to challenge CIDs even if the CFPB has exceeded its authority. In the absence of proper mechanisms to challenge or limit the scope of CIDs, companies have been subjected to defective, unreasonable, and overly broad CIDs that were ripe for challenge.

CFPB's Vast Enforcement Powers

Once the Bureau concludes its investigation, it affords the target an informal opportunity to present its positions and defenses to the Bureau before a public lawsuit is filed.²² The Bureau describes this process as the "Notice and Opportunity to Respond and Advise" ("NORA"). The NORA process should "strike[] a balance between fairness to those under investigation and protection of the public interest" by allowing the agency to respond quickly to "unlawful conduct."²³ Under the past administration, unfortunately, this process often failed to provide a fair and thorough consideration of the facts and legal issues.

All paths through which a covered person can obtain impartial review of the Bureau's investigative findings are public. The Bureau may bring an enforcement action in federal court or through an administrative proceeding. Administrative proceedings are adversarial proceedings before an administrative law judge, who issues a recommended decision to the CFPB Director. Ultimately, the Director issues a final decision adopting or modifying the administrative law judge's recommendations.²⁴

Historically, the Bureau has extracted consent orders from companies who fear the reputational damage from being sued by the CFPB and lack the resources to litigate against the CFPB.²⁵ Past consent orders levied outsized financial penalties, often without identifying meaningful consumer harm and or evidence-based link between the amount of redress and the alleged harm to consumers. In some instances, the CFPB has sought to name chief executive officers and hold them personally liable for activities outside of

¹⁷ Fed. R. Civ. P. 30(c).

¹⁸ 12 C.F.R. § 1080.9(b).

¹⁹ Fed. R. Evid. 611(c).

²⁰ 12 C.F.R. § 1080.6(e).

²¹ 12 U.S.C. § 5562(f).

²² See *CFPB Bulletin 2011-04 (Enforcement)*, CFPB (Nov. 7, 2011), available at <http://www.consumerfinance.gov/wp-content/uploads/2012/01/Bulletin10.pdf>.

²³ *Life Cycle of an Enforcement Action*, CFPB, <https://www.consumerfinance.gov/enforcement/life-cycle-of-enforcement-action/> (last modified Dec. 12, 2024).

²⁴ 12 C.F.R. § 1081.400–.408.

²⁵ A single CFPB Bulletin contains the Bureau's limited policies on the NORA process. See *CFPB Bulletin 2011-04 (Enforcement)*, CFPB (Nov. 7, 2011), available at <http://www.consumerfinance.gov/wp-content/uploads/2012/01/Bulletin10.pdf>.

the officer's duties. The result is that, too often, the CFPB has sought enormous sums of money for purported violations that caused little to no consumer harm.

Pending Legislation

The Civil Investigative Demand Reform Act of 2025, introduced by Representative Andy Barr to the House of Representatives on February 27, 2025, recognizes this history of investigatory overreach and aims to provide safeguards to the Bureau's investigative powers.²⁶ The bill would limit the scope of CIDs by grounding the notification of purpose in "specific reference to particular facts."²⁷ It permits company counsel to submit questions to the Bureau related to the scope and breadth of the CID.²⁸ The bill introduces additional grounds for setting aside CIDs, including for being "unduly burdensome, disproportionately expensive, and outside the scope of the inquiry" or "unreasonably cumulative or duplicative, or [for materials that] can be obtained from some other source that is more convenient, less burdensome, or less expensive."²⁹ Finally, the bill would make the CFPB's denial of a petition to set aside or modify a CID appealable.³⁰ The bill merits meaningful consideration because it introduces sensible ways to reform the CFPB's enforcement powers.

Thank you again for the opportunity to participate today. I look forward to addressing any questions you may have.

²⁶ H.R. 1653, 119th Cong. (2025).

²⁷ H.R. 1653, 119th Cong. § 2(b) (2025).

²⁸ H.R. 1653, 119th Cong. § 2(c) (2025).

²⁹ H.R. 1653, 119th Cong. § 2(e) (2025).

³⁰ H.R. 1653, 119th Cong. § 2(f) (2025).