

**CONSUMERS FIRST: SEMI-ANNUAL
REPORT OF THE CONSUMER
FINANCIAL PROTECTION BUREAU**

HYBRID HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
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**CONSUMERS FIRST: SEMI-ANNUAL
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FINANCIAL PROTECTION BUREAU**

Wednesday, April 27, 2022

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

The committee met, pursuant to notice, at 10:03 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Sherman, Green, Cleaver, Foster, Vargas, Gottheimer, Lawson, Axne, Casten, Pressley, Torres, Lynch, Adams, Tlaib, Garcia of Illinois, Williams of Georgia, Auchincloss; McHenry, Lucas, Posey, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Emmer, Zeldin, Loudermilk, Mooney, Davidson, Budd, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Gooden, Timmons, and Sessions.

Chairwoman WATERS. 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, "Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau."

I now recognize myself for 5 minutes to give an opening statement.

Good morning. Today, we welcome Mr. Rohit Chopra, Director of the Consumer Financial Protection Bureau (CFPB), before our committee. Under your leadership, I am pleased that the CFPB is finally back on track. I commend your recent efforts to crack down on large financial firms that repeatedly break the law and harm individual consumers and working families. The practice of slapping a fine on a recidivist corporation while they continue to rake in large profits should not be tolerated anymore. There must be serious consequences and structural reforms to prevent these kinds of repeat offenses.

Under my leadership, this committee has done extensive work to investigate and address compliance failures by Wells Fargo that hurt millions of consumers, work that resulted in new board leadership and management being installed, as well as former Fed Chair, Janet Yellen, imposing an unprecedented asset cap on the bank in February 2018, which remains in place to this day. I am heartened that you are building on our efforts by seeking to hold more corporations accountable, with lawsuits filed against

TransUnion and MoneyGram for repeatedly breaking the law, and I hope these efforts will put other large firms on alert, and encourage your banking regulator counterparts to similarly use the full suite of enforcement tools.

Furthermore, I applaud the CFPB's work to put an end to discrimination and ensure fairness in small business and consumer lending. Specifically, I look forward to learning about the CFPB's progress in finalizing the Section 1071 rulemaking which requires lenders to collect demographic data on credit applications from small businesses. This data will be critical to our efforts to rule out discrimination against minority-owned, women-owned, and LGBTQ-plus-owned firms.

In addition, it is important that the CFPB combat predatory payday lenders and closely monitor student loan servicers as well as mortgage servicers that strip America's consumers of their hard-earned dollars. On this last point, we should do all we can to prevent unnecessary foreclosures, especially for Black and Latinx homeowners, who are more likely to still be managing the end of a forbearance plan.

I hope you will comment today on your efforts to coordinate with the Administration to ensure that struggling homeowners can access the \$10 billion that myself and members of this committee secured in the American Rescue Plan. They have to stay current during the pandemic. Moreover, I commend your work to examine the junk fees that financial institutions charge consumers. And let us not forget the role of the CFPB in promoting responsible innovation. With the rise of financial technology, I am so happy, Director Chopra, that the Agency is taking action to prevent low-income consumers and consumers of color from being discriminated against by the redlining practices or algorithmic bias that may be present at some tech firms.

Lastly, I applaud your work on the FDIC Board, ensuring that the Agency also fulfills its statutory mission, even when a Chair unlawfully attempts to thwart the will of the Board's majority to solicit public comment on strengthening bank merger reviews. So Director, I look forward to your testimony and to hearing about the CFPB's priorities under your leadership.

I now recognize the gentlewoman from Missouri, Mrs. Wagner, for 5 minutes.

Mrs. WAGNER. Thank you, Madam Chairwoman. Director Chopra, under your leadership, the CFPB is out of control. Democrats in Congress can't pass their progressive agenda, so they have turned to regulators to get the job done. This approach ignores statutory limitations, and it actually endangers consumers' financial well-being.

Director Chopra, in the short time since you were sworn in, here are just a few examples of this ideologically-driven regulatory regime.

Number one, you led a power grab at an entirely different independent agency, the FDIC, which we look forward to investigating. You gave the CFPB the upper hand in administrative adjudication proceedings. You reignited the flawed disparate impact theory. You have scrutinized sectors of the financial services industry that left us long disfavored, and you have attempted to frame widely-used

credit and deposits products as harmful or unfair to consumers. What's more, the Bureau's regulation by enforcement, which Republicans have long criticized, has only worsened under your watch.

In fact, in your previous testimony before this committee, the ranking member asked if you would be willing to clearly define either through rulemaking or by supporting legislation, the "abusive" standard under your Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority. You declined. You said you believed in establishing clear bright lines and rules for industry participants, but you have done quite the opposite, instead implementing changes in exam manuals and procedural rules without public input. Your actions are inconsistent with your statements, sir.

Now, you are regulating by press release, issuing research reports with old data, and using press releases to drive your narrative, regardless of whether the data back up the claims. Your conclusions were clearly predetermined, so asking for comment was a waste of time and resources. These approaches are beneath the mission granted to you.

Whether or not Republicans agree with that mission, it makes one wonder whether resources are really being devoted to pursuing illegal activity and bad actors, or is it all going toward the progressive crusade, but how would we know the answer to that question? The CFPB was structured by Democrats to be opaque. It is not subject to the annual appropriations process. Other than these semi-annual hearings on its reports, Congress has no role in how the CFPB operates. The Democrats wanted it this way. Unfortunately, at a time when consumers are seeking credit opportunities or services from new products, the CFPB is limiting choice with its actions. This will hurt all consumers.

Last month, during the overdraft fees hearing, we heard from Professor Zywicki who reminded us that, "Exasperation is not a substitute for sound economic analysis." In other words, not liking something is not a reason to forego basic economic analysis in favor of politically expedient decisions. This kind of behavior creates unintended consequences. It stifles innovation, limits consumer choices, and chokes off access to credit. And probably most egregiously, it drives up the costs of financial services for all Americans, something that I have spoken about for 10 years on this committee, particularly those whom Democrats claim they are trying to protect.

The CFPB's actions under your leadership, Director Chopra, have not been based on sound regulatory or supervisory objectives, but a dictation of your own personal political views. That is bad news for Americans already struggling to make ends meet, thanks to a Democrat-controlled Washington.

I thank you, Madam Chairwoman, and I yield back.

Chairwoman WATERS. Thank you. I want to welcome today's distinguished witness to the committee, the Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau.

You will have 5 minutes to summarize your testimony. You should be able to see a timer that will indicate how much time you have left, and I would ask you to be mindful of the timer and quickly wrap up your testimony if you hear the chime.

And without objection, your written statement will be made a part of the record.

Director Chopra, you are now recognized for 5 minutes to present your oral testimony.

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

Mr. CHOPRA. Thank you Madam Chairwoman, and thank you, Mr. Ranking Member, and all of the members of the committee for inviting me to appear before you today.

American households and businesses continue to recover from the economic devastation caused by the pandemic. And at the same time, ongoing supply chain disruptions, geopolitical strife, and inflation pose real challenges. The CFPB is working hard to fulfill the mandate Congress has specifically entrusted the Agency with to ensure that markets are fair, transparent, and competitive. The Agency is supervising financial entities for compliance, handling heavy volumes of complaints, issuing guidance to implement Federal law, and bringing enforcement actions where appropriate.

In my written testimony, I detail some of the highlights of the direction of our work to protect consumers and the law-abiding businesses we serve. Perhaps most importantly, the CFPB is deeply engaged with stakeholders and market participants about the future of the consumer finance ecosystem. And we will be very focused on what that future holds and how we can collectively shape it in ways that are in line with American values.

Currently, the United States is lurching toward a market structure where finance and tech commingle, fueled by uncontrolled flows of consumer data and surveillance. This is the market structure that has emerged in China, where dominant internet conglomerates play an outsized role in financial services. These tech giants have access to an extraordinary set of data about consumers and about businesses, including financial businesses with which they compete.

Over the last several years, Chinese tech and finance giants have developed so-called social scoring that goes beyond credit performance and relies on analyzing user habits totally unrelated to credit and banking. We really have a choice before us. Are we going to turn into a world of algorithmic banking, or will we be able to preserve relationship banking? All of these developments raise a host of questions about privacy, about fraud, and about so much more. The CFPB is currently studying these issues as part of our inquiry into Big Tech's entry into consumer payments in the United States. We expect to issue reports on our research to contribute to the discussions that we are all having about the future of consumer finance and relationship banking in our country.

In addition, based on feedback from across the board, we are shifting our enforcement scrutiny away from small businesses and small firms, and instead focusing on repeat offenders and large market actors engaged in widespread harm. We are particularly focused on entities that violate formal law enforcement and court orders. Our recent lawsuits against TransUnion, one of the nation's largest credit reporting companies; FirstCash, one of the nation's largest pawn lenders; and MoneyGram, one of the nation's largest

international remittance providers, illustrate this shift. In many of these cases, we allege that they violated specific orders that were law enforcement-related, to which they willingly agreed.

And based on feedback from industry, the CFPB is also dramatically increasing its issuance of guidance. These efforts help entities comply with laws passed by Congress by drawing attention to an already-clear legal requirement or providing further clarity where needed. They also promote consistency among the many government actors responsible for enforcement, including other Federal regulators and Tribal and State Attorneys General across the country. The CFPB is especially interested in areas where guidance can support compliance by small institutions and new entrants looking to challenge existing dominant incumbents.

The Agency is also rethinking its approach to regulations by prioritizing rulemaking that implements congressional directives. For example, we are heavily focused on making progress on implementing Section 1033, which is about consumer control of data. In addition, I have repeatedly expressed concerns about excessively-complicated rules, and I have asked staff to put a high premium on simplicity and bright lines.

In closing, we must always remind ourselves that our consumer finance ecosystem serves as a critical infrastructure for the growth and prosperity of our country, and I am optimistic that we can live up to the directives that Congress established at the Agency's creation.

Thank you again for the opportunity, and I look forward to answering your questions.

[The prepared statement of Director Chopra can be found on page 72 of the appendix.]

Chairwoman WATERS. Thank you very much. I now recognize myself for 5 minutes for questions.

Director Chopra, I applaud you for your recent work to stop large financial firms from breaking the law time and time again without adequate accountability. These companies seem to believe that they are above the law because when they harm consumers, they only get a slap on the wrist from regulators. In a recent speech, you rightly pointed out that there is not a single senior executive who was truly held financially accountable for their role in the 2008 crisis. I am pleased to see that the CFPB is finally doing something about these repeat law breakers.

Earlier this month, the CFPB charged TransUnion and senior executive, John Danaher, with violating a 2017 law enforcement order. The CFPB and the New York Attorney General also filed a lawsuit against MoneyGram. These actions to hold recidivist institutions accountable build on the committee's important work in the last few years to shine a spotlight on the reckless and egregious pattern of repeated consumer abuses at Wells Fargo, resulting in CEOs and board members stepping down, as well as the Fed imposing an unprecedented asset cap on the megabank until Wells Fargo cleans up its act, and they have more work to do.

It was disappointing to see in recent reports that Wells Fargo allegedly denied more than half of Black homeowners a chance to refinance their mortgage, while 72 percent of White homeowners had their applications approved, the biggest disparity when compared

to other lenders, according to Bloomberg. I hope regulators will investigate and not be shy on imposing escalating structural penalties if they continue to break the law.

Director Chopra, what is your plan to ensure that large recidivist institutions face real consequences and change their behavior to the benefit of consumers? How do the penalties that are imposed when laws are broken change the perceptions of other financial institutions regarding the rule of law? What authorities do you intend to consider deploying that regulators in the past had been reluctant to use?

Mr. CHOPRA. Thank you, Madam Chairwoman. I think it is actually pretty simple. When small players get caught breaking the law repeatedly, enforcers are pretty consistent. They often shut them down. They name individuals, and they often refer people for criminal prosecution. Yet, when large players do it over and over again, sometimes with the same exact facts, we see a totally different outcome. There is nothing in law that has a leniency factor for larger firms. So if we believe that there should be equal justice, we should apply the law equally, and that means yes, we may have to go beyond fines, which are sometimes just part of the profit that they made. We may need to look at stricter sanctions, especially when they are repeat offenders, just as we do for smaller firms. And this can include limitations and other remedies that are explicitly authorized in order to stop the endless repeat offenses again, and again, and again, and again.

Chairwoman WATERS. Thank you, sir, very much. I have a number of questions that I would like to ask, but we really don't have time. But while you are here and we are focused on consumers and the lack of protection under the past Administration, I want to tell you that now is the time when we must shine a bright light on the activities of businesses that are taking advantage of inflation. We have inflation and we know that, and our Administration is working very hard to deal with it, but others are taking advantage of these times, and they are raising prices. And we are going to do everything from taking more time on the House Floor, to more press conferences, in engaging on this issue. You are at the right place at the right time. I applaud your work, and I yield back.

The gentlewoman from Missouri, Mrs. Wagner is now recognized for 5 minutes.

Mrs. WAGNER. Thank you, Madam Chairwoman. I would say that I believe the inflation crisis that we have ongoing in this country, which is devastating to working families all across the United States of America, is a result of Democrat policies and overspending, like trillions of dollars by this Administration.

Director Chopra, how are you ensuring that the costs of regulations and other CFPB actions do not outweigh any potential benefit, especially since those costs will, in fact, be passed on to consumers?

Mr. CHOPRA. I appreciate the question. In the Act, there are certain requirements about making sure that there is adequate analysis. I am very focused on making sure that we are not being excessively complicated in ways that just advantage the larger players at the disadvantage of the smaller players. So, we try our best to be able to understand what are the system changes that need to

be made, what kind of vendor work? And one of the things that continually comes up when we talk with institutions is the role of software providers and how they might pass back costs, and the lack of competition with community—

Mrs. WAGNER. Respectively reclaiming my time, just very clearly, do you, sir, conduct cost-benefit analyses with each CFPB action?

Mr. CHOPRA. We follow what the statute says—

Mrs. WAGNER. Do you conduct cost-benefit analyses on each CFPB action?

Mr. CHOPRA. That is my understanding. I don't know if this is exactly what is required. I think in the statute, that we looked at cost and benefits.

Mrs. WAGNER. Director Chopra, do you intend to engage on issues related to interchange fees as part of your plan to address so-called junk fees?

Mr. CHOPRA. Interchange fees is actually something that is regulated by the Federal Reserve Board of Governors. At the same time, it is certainly something we hear from the business community as a concern, but that is not the purview of the CFPB.

Mrs. WAGNER. In your opinion, do you consider fees that retail companies pay in exchange for the maintenance and operation of card networks to be junk fees?

Mr. CHOPRA. A junk fee is something when there is often not competition, and so the fee may be something that you don't even want or you never even asked for.

Mrs. WAGNER. Develop that a little bit. How do you define a junk fee?

Mr. CHOPRA. I think many people define it in different ways. The way I define it is that it is a fee that is often not subject to the full competitive process, and specifically for a service you may have never asked for or was forced, where its cost is way in excess of what a competitive market is.

Mrs. WAGNER. Apparently, it is very subjective then, is what you are saying here. I am not familiar with this terminology, and what you are describing is something very subjective.

Mr. CHOPRA. Many Americans experience this in their day-to-day life. There is a fee creep that is occurring throughout the economy where people are surprised, where people don't know why they are being charged for something that they never knew they agreed with to. It is a common experience, and we are trying to find ways that disclosures can be better.

Mrs. WAGNER. I thought you said this wasn't in your purview, so I am confused. Are you involved in this so-called junk fee subjective analysis or not?

Mr. CHOPRA. No, we are asking people about their experiences. In our complaints, we receive a broad range of input about fees. We also hear about it from institutions. And one of the things we are seeing in the market today is that institutions are starting to compete more aggressively on fees—

Mrs. WAGNER. Reclaiming my time, I have a couple of questions, Director Chopra. Under former Director Richard Cordray, the CFPB studied overdraft protection but did not identify a need or a rulemaking effort. In the past year, the CFPB has hinted at restricting a financial institution's ability to offer overdraft products.

Where do you expect consumers using this product to turn if the CFPB restricts this ability?

Mr. CHOPRA. We are seeing institutions reduce their overdraft fees. So in some cases, they are providing that same service for a much lower cost, or they are even providing it for free. This is one of the beauties of a competitive market, is that when there is real competition, even on the back end, people can benefit—

Mrs. WAGNER. Thank you. I yield back the balance of my time.

Chairwoman WATERS. Thank you. The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is now recognized for 5 minutes.

Mr. GREEN. Who also, Madam Chairwoman, would like to associate himself with your comments about the inflation as well as the invidious discrimination.

Mr. Director, it is an honor to have you before us today. I am concerned about invidious discrimination in lending. We have indications consistently of how these tests that are performed, such as the mystery shopper test that was performed by the National Community Reinvestment Coalition in several cities, consistently show that White persons are treated differently. They get better treatment than non-White persons.

I have a piece of legislation to deal with this. I am convinced that in some of these cases, banks literally can build in the penalties as the cost of doing business when they are caught engaging in invidious discrimination. I think there has to be a stronger penalty. I think that just as when you try to defraud a bank, you pay a price and it can be a criminal penalty. When you defraud a consumer who is trying to get a loan for a business, or for a mortgage, I think there ought to be a criminal penalty when it can be proven.

I am just very much concerned about the way it continues and the way we don't seem to be getting the relief that I thought we would be getting at this point in time. Can you comment on this, please, Mr. Director?

Mr. CHOPRA. There is no question that it is important that we enforce the laws you have told us to enforce. One of them, of course, is the Home Mortgage Disclosure Act (HMDA), and another is the Equal Credit Opportunity Act (ECOA). We did finalize an action recently against Trustmark National Bank. It was a very significant action involving some of the conduct that I think you are referring to. I think one of the things we are also thinking—

Mr. GREEN. Mr. Director, would you allow just a moment of interruption? I apologize, but my assumption is that the penalty was some sort of fine associated with a monetary punishment. Is that a correct statement that it was monetary in nature?

Mr. CHOPRA. That is right. There are also sometimes other provisions about loan subsidy funds. I don't have it off the top of my head, but yes, there is usually a monetary penalty.

Mr. GREEN. Have you had anybody punished with some sort of penalty that is associated with the penal laws, some sort of time associated with incarceration? And I am very serious about this. If you defraud a bank, you are going to jail, but we find that consumers, especially minority consumers, are being defrauded, and it is being done with impunity because the banks can simply build the penalty into the cost of doing business. So, would there be a

greater deterrence if we had a penalty that carried with it some association with incarceration?

Mr. CHOPRA. It is not something I have thought about, but I will share that, of course, lying to investors and securities fraud sometimes is punishable criminally. And as you mentioned, in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), there is wire fraud, and mail fraud. Those are criminal statutes. We don't enforce criminal law. But I think as a big picture point, I do agree that, particularly for repeat offenders, the monetary penalty on its own just doesn't seem to deter future problems. Maybe it does for smaller actors, but I am just not convinced that it does for larger ones. So it is something we are thinking hard about, but, of course, criminal law—we, of course, refer when we find potential violations, but it is not in our mandate.

Mr. GREEN. Thank you for your commentary and for your leadership as well. These are tough times, and these are some tough issues that we are having to negotiate, but it is going to take people who are willing to deal with the issues. We cannot continue to assume that the passage of time in and of itself will cure the problem. We have to take bold action because, as you have indicated and others have, too, these big institutions just make it the cost of doing business. A few million here, a few million there, open up accounts in the names of persons without getting the person's consent. No big deal. Just go on with business as usual. Change out your leadership and continue to do what you do best, which seems to be to defraud the public.

I thank you, Madam Chairwoman, and I yield back the balance of my time.

Chairwoman WATERS. Thank you. The gentleman from Oklahoma, Mr. Lucas, is now recognized for 5 minutes.

Mr. LUCAS. Thank you, Madam Chairwoman. Director Chopra, I would like to discuss with you for a moment the Bureau's tribal consultation policy. I represent all or parts of 16 different Tribes, and the State of Oklahoma alone is home to 39 tribal nations. Could you discuss how the CFPB typically seeks input from the tribes during the rulemaking process under your tenure, and is the Bureau committed to maintaining a meaningful dialogue with the tribal governments?

Mr. CHOPRA. Yes. I really appreciate this. I myself have had a number of meetings directly with both those who represent tribal communities and those who represent tribal financial services providers, so I have been personally engaged with it.

With respect to our policy, I do think that we are continuing to make sure that we can go beyond the letter of that policy and make sure that we are thinking beyond that. One of the areas that is quite an area of focus for me is what we have launched in terms of rural work. We know that rural financial services providers face very, very different constraints, but especially those who serve tribes. So, I am happy to take more input from you and others as well to make sure that we are fully making sure that all of their views and, frankly, the unique nature of their business models is also incorporated, because I do want to see us do what we can to reduce some of the banking deserts that we see across rural America, but especially in tribal lands.

Mr. LUCAS. We thank you for respecting that unique relationship. Financial innovation continues to drive the economy and empower businesses to meet the evolving needs of consumers. Director, could you discuss how financial technology allows institutions to support financial inclusion, particularly among the underbanked?

Mr. CHOPRA. I am a huge believer that technology and finance provides a huge opportunity to accomplish exactly what you are saying. There are a few ways in which we are able to do it. Technology also helps people lower their customer acquisition costs, lower some of their back office costs, and, frankly, allows them to find and innovate on services. Here, though, I want to be open: I have a worry that I don't want technology and financial services to be dominated by Big Tech companies, like we see in China. I want to see that small institutions are able to partner with them responsibly in order to maintain their relationship banking model, but also accomplish the goals you are saying as well as those in the non-bank sector as well.

Mr. LUCAS. So, you are saying it is a priority for the Bureau to create an environment for financial innovation to thrive?

Mr. CHOPRA. That is right. I think we want to make sure that competition and innovation are part of what we want to see as progress. We need to make sure that the market is competitive and that is what yields a lot of benefits. And there are some concerns in areas of the ecosystem that it could be quickly dominated by a handful of tech giants.

Mr. LUCAS. The U.S. economy, Director, is facing significant headwinds. We all see that. And we are coming off the heels of a pandemic that we are still studying the effects of, while experiencing supply chain backlogs and inflation of a 40-year high, with the Russian invasion of Ukraine exacerbating economic uncertainty. As I am sure you can appreciate, supporting healthy and liquid markets to protect the U.S. economy and small businesses in the face of substantial challenges should be a priority. Could you elaborate on how the Bureau is working to ensure that its actions do not intensify the already-severe economic uncertainty for small businesses and, ultimately, the consumer?

Mr. CHOPRA. Yes. You raised a good question that small businesses, capital markets, are looking at capital markets signals, but also frankly, inflation. We actually pore over these inflation numbers, and one of the places we see that is most likely to impact consumer finance is auto lending. Because the price of automobiles, both new and used, is going up, sometimes substantially above Kelly Blue Book value, that is having an impact on what our auto lenders are seeing. And when we meet with them, they tell us that the average loan balance is going up. They tell us that there are issues with people being able to afford cars. So, we are trying to work with everyone to make sure that people can adjust to the realities of you need a car, not sometimes just to get to work, but to do your work as well.

Mr. LUCAS. Mr. Director, just as long as we maintain liquidity in the market so that resources can be available. Thank you. I yield back, Madam Chairwoman.

Mr. CHOPRA. Thank you, sir.

Chairwoman WATERS. Thank you. The gentleman from Illinois, Mr. Foster, who is also the Chair of our Task Force on Artificial Intelligence, is now recognized for 5 minutes.

Mr. FOSTER. Thank you, Madam Chairwoman. And actually, as part of our work on the Artificial Intelligence Task Force, we have been wrestling with what is sometimes referred to as the accuracy-fairness tradeoff in things like automated valuation models, which are right at the heart of making sure that people get a fair deal when they are buying or selling their homes. And in February, the CFPB proposed an outline for an interagency, or proposed or contemplated interagency rulemaking on automated evaluation models.

There are four factors which are straightforward and easy to understand, and then a fifth factor, which is sort of a catchall for everything that we will have to deal with on the issues of the accuracy-fairness, a tradeoff. What is your thinking on the time scale and where that may end up landing, the range, if possible?

Mr. CHOPRA. Yes. Thanks for the question. Many of you know that there are two vehicles in which the appraisal industry works. There are human appraisals, but also algorithmic appraisals, and this is sometimes referred to as an automated valuation model. So what the CFPB is doing is we are collecting input now from small businesses about potential changes to that rulemaking. The Dodd-Frank Act—or it may be another law—asked the regulators to make sure that there is essentially fidelity in these valuation models, these algorithms.

I can't say anything about a specific timeline because actually it is the other regulators that are key parts of this. It is an interagency piece. But the way I think about this is we want an appraisal market that actually gets to accuracy. And in many cases, particularly rural areas or urban neighborhoods where you see heterogeneous housing types in a specific geographic area, sometimes there are severe issues with accuracy. So figuring out ways that we can make sure that it is accurate, that it is nondiscriminatory, that it is actually like what a good approximation of what that home is valued, I think that is the North Star. Getting at accuracy is so important. Overvaluation on an appraisal is dangerous, and undervaluation can really hurt a family's financial future.

Mr. FOSTER. Yes. Now, one of the toughest things in the accuracy tradeoff is that an accurate estimate of a house's worth will contain the fingerprints of redlining generations ago. So, how do you view that problem where the dataset that you train your valuation models on has a discriminatory past history and the discrimination is embedded in the dataset that you have available?

Mr. CHOPRA. It is not an easy question. I think many of us, when we saw Secretary Carson's complaint against Facebook that was related to housing, and how the algorithm worked, I think that actually was just one sign of where the algorithm lacked a sense of transparency about how it was actually making the decision. Why am I being denied? And I think this tension between algorithmic banking and relationship banking is one we are going to have to confront. I don't have a great answer for you. It is something, obviously, we are starting to collect feedback on, but it is an important question with which the agencies have to deal.

Mr. FOSTER. Yes. And the other factor that you are going to have to end up waiting for is explainability because the most accurate models are neural network models where you could say, okay, here are all the weights in our neural network, and that gets the most accurate result. But when someone says, "I am sorry, your house is not worth what you think it is because our neural network says so," that is not an acceptable explanation. So, how are you going to prioritize explainability inside all of these?

Mr. CHOPRA. Yes. I want to say that about a decade ago, a lot of international bodies weren't focused on banking. They were focused on a cross-sectoral basis. Explainability was a key feature of something that was successful, because otherwise, there will be a lot of downstream effects if no one can answer how the algorithm works. We see that in social media. We see that even in health now. So I do think when it makes decisions, being able to understand how that decision was made and what inputs drove it, just feels like a common-sense goal that we have to have.

Mr. FOSTER. Yes, the rubber hits the road when you have to choose between a model that is explainable and one that is more accurate than one that is easy to explain. And when you figure that out, let me know, because we have been wrestling with that on the AI Task Force since our very start.

My time is up here, and I yield back.

Mr. CHOPRA. Thank you so much.

Chairwoman WATERS. Thank you. The gentleman from Florida, Mr. Posey, is now recognized for 5 minutes.

Mr. POSEY. Thank you, Chairwoman Waters. Mr. Chopra, can you please tell us how you are continuing Director Kraninger's commitment to apply cost-benefit analysis to the Bureau regulations as required by Section 1022 of the Dodd-Frank Act?

Mr. CHOPRA. Yes, sir. As you say, there is a framework that is required in the Dodd-Frank Act. One of the things that I am putting a big premium on is figuring out, how do you accomplish what the consumer protection goal is? And we are dealing with this now with some congressional directives. How do you actually minimize the cost while getting to the benefits? And one of the things I have been trying to impress upon is simplicity and bright lines. What we hear from smaller institutions especially is that the more we can get to a place of bright lines, the easier and less costly it is.

The other place we are looking at, Congressman, is the role of software providers, especially core services providers. There are only a handful of them, but most financial service firms, especially small banks, use the same set and often struggle with the costs of how changes are passed back to them. So, we are thinking about this rather surgically. We are trying to get more data and talk to a broader set of businesses, including those who are technology providers, so that we can really understand what happens on the ground. What are the patches that need to be done? What are the changes that need to be done? What can be done in-house versus through vendors? What can be automated? How do you make it streamlined? All of these are things that I want to make sure we are doing a better and better job of because it is important to be able to get things, frankly, to be effective.

Mr. POSEY. Okay. Thank you. Can you give us an example of how cost-benefit analysis of a regulation changed or improved that regulation issued by the Bureau?

Mr. CHOPRA. Sorry. There was a little bit of background noise. Just say the first part one more time. I apologize.

Mr. POSEY. Sure. Can you give us an example of how the cost-benefit analysis of a regulation changed or improved a regulation issued by the Bureau?

Mr. CHOPRA. I will want to follow up with you on that, because the specifics may be quite before I came. But I think there is something that we are looking at currently, which is what are the ways and the drivers in which we can reduce costs in some ways by making changes to a regulation that really won't change the benefits? So again, what are the drivers of those costs and how do you dissect that in order to figure out how to lower that? But I will admit that sometimes it is very challenging to get the right set of data or the right type of way in which to fully understand the benefits. Sometimes, Congress has actually made a determination. That is the case with a lot of congressionally-directed rules, so it is not a perfect science.

Mr. POSEY. Yes. That brings up the status of compliance with Section 1022(d) of Dodd-Frank, and where Members of Congress and the public may access your congressionally-mandated assessments of Bureau rules and public comments that have been conducted so far. Can you give us an example of that?

Mr. CHOPRA. We are reviewing older rules, especially ones that have not been looked at in a while. Some of them were transferred from other agencies, including the Federal Reserve Board of Governors. I don't know if we have any specific timelines. We are still in the early stages, but we are certainly looking at older rules to see if they need to be updated or amended based on some of what you are saying.

Mr. POSEY. Great. Can you summarize the nature of public comments collected as part of your assessments?

Mr. CHOPRA. Sorry, sir. One more time?

Mr. POSEY. Could you summarize the nature of public comments collected as part of your assessments?

Mr. CHOPRA. Yes. In the rulemaking process, when we propose a rule, I think we actually always do. If it goes to a final rule, we will always describe this is compliance with the law about how the analysis of the comments might have driven changes as well as data that was collected through the process in order to explain the full regulation.

Mr. POSEY. Thank you. I see my time is up, and I yield back.

Mr. AUCHINCLOSS. [presiding]. The gentleman yields back.

The gentleman from California, Mr. Vargas, is now recognized for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman. I appreciate the opportunity, and I thank you for the hearing. Good morning, Director Chopra.

Mr. CHOPRA. Good morning, sir.

Mr. VARGAS. Thank you for your testimony and for your service. We really do appreciate you. As you know, April marks the Fair Housing month time to reflect on the 54 years since the passage

of the Fair Housing Act in 1968, and 45 years since the passage of the anti-redlining law, the Community Reinvestment Act. However, many people of color still face significant barriers to affordable and sustainable housing today. According to the latest Home Mortgage Disclosure Act, Black and Hispanic applicants are denied conventional mortgages at higher rates than their White counterparts. This is important, because these families were still denied mortgages when they had the same debt-to-income ratios and made the same amount of money. I think we need to focus on decreasing barriers, especially for first-time home buyers. So, can you please speak to what the CFPB's role is in ensuring that Americans have equal access in our housing market?

Mr. CHOPRA. Sure. While we don't enforce the Fair Housing Act, that is something the other bank regulators, and the Justice Department, and HUD look at. We, of course, administer the Home Mortgage Disclosure Act, so that is some of the data that you are referring to. We need to make sure that we are living up to that and also enforcing the anti-redlining laws that directly relate to the Equal Credit Opportunity Act. We did finalize an action in recent months against Trustmark for conduct that is related to this where there was evidence of liability under the Equal Credit Opportunity Act. So if the extent to which we have these types of tips, whistleblowers, or where the data leads us to look further, that is certainly something that is totally contiguous with the law that Congress has directed us to administer.

Mr. VARGAS. How can the financial institutions utilize the Home Mortgage Disclosure Act to ensure that Americans have the needed resources to navigate the local housing markets?

Mr. CHOPRA. Actually, you are seeing a lot of interest from financial institutions today to really address housing issues. We are living in a time where it is not just in coastal metropolitan areas that housing is expensive, you are seeing it across-the-board; urban, suburban, and rural housing is eating up a bigger and bigger amount of people's income.

We are actually in line with the other analysts that project there will be a significant decline next year in refinancing activity because of changes in interest rates. I do worry when some people miss out on a refinancing cycle. So, I do think you are seeing a lot of the mortgage industry, not just banks, but non-banks as well, looking at ways to be able to serve people, especially to deal not just with high housing costs, but really even to get their first home altogether.

Mr. VARGAS. And lastly, maybe with the time I have left, you did mention auto lending. My understanding is that a third of the inflation that we have in the system right now is because of automobiles. Could you comment on that?

Mr. CHOPRA. Sure. When we hear from the auto industry and auto lending industry, what we are seeing is that it is common with other goods that you are seeing driving inflation; it is often related to supply chain issues. Specifically, many cars today depend on semiconductors that are manufactured pretty much only in Asia—I know that is not a topic for today—I think many people are worried that their semiconductor production has essentially left the United States. That is making it tougher for global automakers, in-

cluding U.S. automakers, to get those chips, and that is leading to a reduction in new cars coming on the market. And because of that, that is also creating a ripple effect on the used car market as well, so we see significant elevation in car prices. And we are looking at what is the impact on auto lending, what is the impact on repossessions?

We want to make sure that the consumers have a lot of choice, can get a competitively-priced loan. Because an auto loan for many people is just not an option. You need to be able to have a car in much of the country, again, not just to get to work, but to do your work; light trucks, especially, are quite costly. And for many people in construction trades and others, it is a critical input to their business.

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

The gentleman from Missouri, Mr. Luetkemeyer, is now recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. Director Chopra, an American Banker article dated December 10, 2021, entitled, "Dust-Up at FDIC Portends a Bigger Fight Over Bank Regulation," describes an 8-page internal CFPB memo containing detailed legal analysis of the legal authority of the FDIC. The problem is that legal analysis is exempt from disclosure under the Freedom of Information Act (FOIA), meaning that the CFPB's own confidentiality rules prohibit its release. In fact, the only way it can lawfully be released on CFPB's own rules is with your personal written authorization. So my question is, did you as Director personally authorize the release of this memo to the reporters?

Mr. CHOPRA. Did I personally release it? I just—

Mr. LUETKEMEYER. Did you personally authorize the release of this memo?

Mr. CHOPRA. Yes. I am happy to provide it to you as well.

Mr. LUETKEMEYER. We are requesting—

Mr. CHOPRA. We do think that this is an important rule of law issue. What we saw at the FDIC was, frankly, pretty astounding. I have never witnessed—

Mr. LUETKEMEYER. Let me reclaim my time, Mr. Chopra. Reclaiming my time, we are going to request a copy of that authorization that you sent. If you are willing to release internal legal analysis for political and press purposes, it is not, as you have described in responses to this committee, protected by the liberty process and attorney-client privileges, furthermore, because we have asked you about this before. We haven't gotten that information, but suddenly you are able to release it to the press, but not to us. I'm very concerned about that. We are going to be sending you a letter requesting production of all internal legal analysis relating to your recent decision to assert that UDAAP can be used to address allegedly discriminatory conduct outside of ECOA. Will provide this material, hopefully without delay?

Mr. CHOPRA. To be very clear, the legal analysis related to the FDIC was shared with the FDIC.

Mr. LUETKEMEYER. That is not what I am asking, Mr. Chopra.

Mr. CHOPRA. No. I just want to make that clear because it was not just selectively shared. It was shared with other agencies as well.

Mr. LUETKEMEYER. You didn't share—

Mr. CHOPRA. We were not able to get—

Mr. LUETKEMEYER. Mr. Chopra, reclaiming my time.

Mr. CHOPRA. Yes, sir.

Mr. LUETKEMEYER. You didn't share it with the committee. That is the point I am trying to—

Mr. CHOPRA. I will look into this. We will work—

Mr. LUETKEMEYER. So, we want to know if you are going to give us the information that led up to the decision and all of the legal analysis that went with it? Are you going to offer those papers to us?

Mr. CHOPRA. We will work with your staff to make sure we are responsive to getting the analysis about the FDIC and we can discuss other topics as well.

Mr. LUETKEMEYER. Okay.

Mr. CHOPRA. The FDIC legal situation was a severe crisis.

Mr. LUETKEMEYER. A crisis that was created by you, Mr. Chopra.

Mr. CHOPRA. I disagree with that. We have never—

Mr. LUETKEMEYER. Reclaiming my time, I have another question for you. Yesterday, in front of the Senate Banking Committee, you stated that the CFPB General Counsel and the Office of the Comptroller of the Currency (OCC) General Counsel were the individuals who worked on this memo that I just referenced a minute ago. Did the OCC General Counsel agree with the conclusions laid out in the memo?

Mr. CHOPRA. You would have to ask the OCC that. It is not my place to say what the OCC thinks. What I shared was that it was a major discussion across all the—

Mr. LUETKEMEYER. Director Chopra, yesterday in the Senate Banking Committee, you indicated that the OCC and the CFPB General Counsels worked on that memo together. You are not aware of that?

Mr. CHOPRA. I don't believe I said that. What I said was that the legal issues were discussed across the agencies because never before—

Mr. LUETKEMEYER. That is not what I have here.

Mr. CHOPRA. —has there been the level of stonewalling about what the legal authority was. Typically, you can look at the bylaws, look at this—

Mr. LUETKEMEYER. Reclaiming my time, Mr. Chopra, considering that the CFPB General Counsel led the effort to create this memo that was improperly leaked to the press and it resulted in the CFPB staff working on an issue related to FDIC bylaws, which is well beyond the statutory authority of the CFPB, will you make your General Counsel available to the committee staff for a transcribed interview regarding this internal memo?

Mr. CHOPRA. I don't know what you are referring to in terms of the General Counsel, but we are happy to work with you and your staff to make sure you know all the details.

Mr. LUETKEMEYER. Okay. So, you are willing to allow your General Counsel, whether this—

Mr. CHOPRA. No, I am not going to make those commitments. I do not know what you are referring to on this, but we will work with—

Mr. LUETKEMEYER. Referring to the memo that you discussed at the Senate yesterday and we just discussed a minute ago.

Mr. CHOPRA. We will provide, and we have already provided substantial information to so many people about what the FDIC's legal authority is, where the dispute was, and—

Mr. LUETKEMEYER. Reclaiming my time, Mr. Chopra.

Mr. CHOPRA. —continue to work with you to be responsible.

Mr. LUETKEMEYER. Thank you for helping us with that, hopefully. Okay. Recently, my colleagues and I sent you two letters, one regarding your statements on repossessions, and the other one on so-called junk fees, and I would argue that a bunch of your regulations are becoming junk regulations, the request for information. Both of those letters ask common-sense questions about statements and actions of the Bureau. In both responses you sent to all of us, you failed to answer any of those questions. So because you refused to answer that, I have sent, with Ranking Member McHenry and Representative Emmer, two other letters, just this morning demanding that you preserve all internal documents related those actions, that you obey those requests to retain those documents.

Mr. CHOPRA. We will be compliant with all applicable laws, and we will make sure that we work with you to make sure you understand.

Mr. LUETKEMEYER. Okay. I am asking—

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

Mr. LUETKEMEYER. —you to comply with our request to retain those documents.

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

Mr. CHOPRA. I believe we have already responded to that.

Mr. LUETKEMEYER. No, you did not. You did not respond.

Mr. CHOPRA. I will check into it, and we will respond if we have not responded.

Mr. LUETKEMEYER. Okay. Thank you.

Mr. AUCHINCLOSS. The gentleman from Florida, Mr. Lawson, is now recognized for 5 minutes.

Mr. LAWSON. Okay. Thank you, Mr. Chairman, and welcome to—

Mr. CHOPRA. Mr. Chairman, I am having a little bit of a tough time hearing from the video. Maybe you could ask the Members just to speak up a little? I am just having a tough time.

Mr. AUCHINCLOSS. The gentleman from Florida, can you do an audio check please?

Mr. LAWSON. Testing one, two, three. Testing one, two, three.

Mr. CHOPRA. Great. Sorry.

Mr. AUCHINCLOSS. Thank you, Mr. Lawson. You can go ahead.

Mr. LAWSON. Okay, and thanks for being committed. As you know, the Consumer Financial Protection Bureau issued a report on the challenges faced by Americans in rural communities. I appreciate your comments to focus on rural communities, but while agriculture historically been the main economic driver for rural communities, the number of farmers has decreased over several decades. Today, less than 10 percent of the people in rural communities are completely working in agriculture. And the farmers who remain earn less than 16 percent of every dollar spent by consumers on agriculture products, according to U.S. Department of Agriculture (USDA) analysis. Can you explain how the CFPB plans

to support our farmers and how to increase access to credit for those in the agriculture sector?

Mr. CHOPRA. Yes. Thank you. We need to start recognizing that banking in rural counties and communities is really different than it is in other parts of the country. We see a lot of banking deserts, places where people live very, very far from an institution, and often the decline of branches in those areas has quite an effect on small business credit. It has an effect on other types of credit as well. We want to make sure that especially family farmers are able to navigate the ups and downs, are able to avoid bankruptcy. We also see issues in housing when it comes to appraisals, when it comes to how people get mortgages. So, we are going to detail some of the challenges that rural communities face, and we are looking forward to working with the USDA and others to see if there are ways that we can make sure those communities are being served. We do not want rural areas being a place where that cannot continue to exist. Our country just depends way too much on it.

Mr. LAWSON. Okay. Thank you very much. That is a great comment. While our focus is on establishing fair and competitive markets, how are you working to level the playing field for small, community-based financial institutions to compete with FinTech and Big Tech companies getting into the financial service space?

Mr. CHOPRA. Yes. This is a huge challenge. Small institutions and community development financial institutions (CDFIs) are thinking about what are they going to do to stay competitive with the biggest players that are out there. The bigger players are always going to have more access to data and very, very detailed data. So part of what we have been thinking about is what are ways that small players can use technology to be able to promote that in a competitive way, that provides a meaningful challenge. I don't have an easy answer for you, Congressman, but it is something I am worried about. What we see in other jurisdictions, especially China, is that there could be a sense where it is only very, very large tech and finance companies that completely dominate from front to back, and that is not going to lead to a resilient competitive system.

Mr. LAWSON. Okay. And another economic driver for rural communities is small businesses. People living in rural communities are more likely to be employed by small businesses than people living in other parts of the country. I introduced the Small Business Fair Debt Collection Protection Act to encourage entrepreneurship and allow small business owners to have similar protection to consumers when having to deal with debt collectors. These protections are especially important to small businesses located in rural communities since they can be more vulnerable to predatory practices.

Do you believe that expanding the protection that currently exists for consumers to small business owners—that these businesses would be more likely to succeed?

Mr. CHOPRA. I don't know the specifics of your bill, but I do think that there have been a lot of troubling practices targeted at small business owners. I have met with a range of small business owners, including franchisees, about specific issues they are facing. So, we are happy to work with you on that. And I do think protecting

small businesses is also about protecting our economy and our country.

Mr. LAWSON. Okay. Thank you, and I yield back.

Mr. AUCHINCLOSS. The gentleman from Michigan, Mr. Huizenga, is now recognized for 5 minutes.

Mr. HUIZENGA. Thank you, Mr. Chairman. Director Chopra, in your testimony you noted that, "During my tenure, the CFPB will dramatically increase its issuance of guidance documents, such as advisory opinions, compliance bulletins, policy statements, and other publications." I think what you failed to mention was the CFPB's use of a press release as a way of influencing behavior. It was something that I spoke about with former Director Cordray at length, and back then, I used the phrase, "trial by press release."

And just as I did back then, I read these press releases now that you are issuing that my staff sees and that the public sees, and more often than not, quite honestly, I am kind of shocked by reading them. And what Director Cordray never seemed to fully grasp is that—

Mr. Chairman, can we suspend? We have to ask our colleague to turn his microphone off. And I would just say, as a courtesy to our witnesses, maybe people ought to show up. That would be helpful, okay? Then, he could actually clearly hear us, but we have other Members interrupting my time because they can't turn their stupid microphones off. So, I would request that you give me some time back so that we can properly go through this. Give me some time back.

Mr. AUCHINCLOSS. The gentleman will proceed, and all Members will mute.

Mr. HUIZENGA. And I would expect a very light gavel at the end of my 5 minutes.

What Director Cordray never seemed to grasp was the Bureau's ability to influence decisions companies make, not by rules, not by policies, but simply by public statements. Just last week, I saw you sent out a release on the Bureau's lawsuit against MoneyGram, which, by the way, is one of the few companies that has been doing a public pushback on this, where seemingly very little information was given and no specific allegations were made, other than they broke, "various consumer protection laws." And this week, the Bureau's announcement that they would now examine more closely, "non-bank companies posing risks to customers," but failed to mention what actually prompted this action.

So, Director, let me ask you this. Since public statements are not rulemakings and not binding actions, what are you expecting from these pronouncements? And can financial institutions just simply ignore the public pressure campaigns and go about their business?

Mr. CHOPRA. Let me be very clear. With respect to MoneyGram, there was not a lack of information about the allegations. We actually included a public version of the complaint that details it. And by the way, we regularly have firms quite clearly launch their own statements—

Mr. HUIZENGA. Please don't fall into the—

Mr. CHOPRA. We try and make sure that the actual document—

Mr. HUIZENGA. Please don't fall into the same trap or the same mistake that Director Cordray—

Mr. CHOPRA. But to be clear, it is not just the press release. There's a guidance document—

Mr. HUIZENGA. Here is that—leave MoneyGram—

Mr. CHOPRA. No, I know. I am speaking on the other one, too.

Mr. HUIZENGA. You issue statements that you know affect and influence behavior without going through rulemaking, without having any kind of true review. And I want to know, what are we and what are those companies that you are targeting expected to do with that? Can they just ignore it? Is it just commentary?

Mr. CHOPRA. We usually, I think, almost always include the policy document. And instead of just releasing that, we explain it in concordance with the plain language act and we do try and offer more details.

Mr. HUIZENGA. I am going to reclaim my time, because I am not sure how light the gavel is going to be at the end of my time. Back in December—

Mr. AUCHINCLOSS. The gentleman will have an extra minute.

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

Director Chopra, back in December of last year, you criticized the largest banks for becoming more powerful through mergers and acquisitions. You also noted that rural communities have become, "banking deserts." It is a phrase that has been brought up a number of times. I actually happen to represent what used to be the poorest county in the State of Michigan, and is now the second-poorest county in the State of Michigan, very rural and quite poor, and there is one bank in that county. And the pressures that they and others who are in those situations are feeling are because of added regulations, much of that brought on as the result of Dodd-Frank and other harmful regulations. And they have often forced these small rural community banks to either close or consolidate.

So quickly, can you cite the statutory authority given to the CFPB to review bank mergers and acquisitions, if any? Or will you just continue to use name-and-shame, trial-by-press-release for the bank data?

Mr. CHOPRA. No, I believe that statement is specifically related to the bank regulators, specifically the FDIC, its Board requirement to adjudicate under the Bank Merger Act. So, it is directly related to that.

Mr. HUIZENGA. Okay.

Mr. CHOPRA. I will share that you are right. There are a lot of small banks that almost feel that they need to consolidate in order to stay ahead. There are a number—

Mr. HUIZENGA. Not almost feel. They have to, because they don't have the bevy of lawyers that are in there. Okay. I need to get back in this remaining little bit. You talk about enforcement, something that you and I have spoken about in the past. And what I see you proposed on 1071, on the Bureau revisiting payday lending or disparate impact, I have some concerns. And it is hard for me to know how these rules or policies can be anticompetitive to see how they impact small businesses. Yes, I think you have that view, but I see it every day. And what I want to hear from you today is, can you commit to me today that you will not pursue policies that are harmful to small businesses? And that goes back to some of these things that we were discussing earlier.

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

Mr. CHOPRA. I would love to take that question for the record, but I want to make sure that small players and challengers can go up against the big—

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

The gentleman from Missouri, Mr. Cleaver, who is also the Chair of our Subcommittee on Housing, Community Development, and Insurance, is now recognized for 5 minutes.

Mr. CLEAVER. Thank you very much, Mr. Chairman. Director Chopra, thank you for being here today, and thank you for the work of the CFPB. My background would cause me to know what I am about to share, but I am not an anti-lender person. Since the beginning of time, human civilization has been involved in the lending business, and I have come to the conclusion that without lending, there would be no national commercial or industrial growth in our world. So, I am not anti-lender.

We actually have evidence from archeology and from theology that pawn brokers were around a thousand years ago, and they were lending by collecting collaterals from the borrowers to reduce risk. So having acknowledged that I am concerned about, but not opposed to, lending, I am still concerned, and I have been since I came to Congress, about the role the government can play. So, I want to know what the CFPB now is doing to reduce, if not eliminate the predatory practice of ripping off people under the pretense of just simply lending.

Mr. CHOPRA. Congressman, if I understand the question right, we obviously are trying to make sure that everyone is following the law and no one is being ripped off. We have been doing some research and releasing data about some of those markets that you have referred to. We have filed a lawsuit recently in the pawn lending area for violations of the Military Lending Act and violations of a past law enforcement order. We are looking across-the-board, including through our supervision, where when we see complaints or fast-growing firms, we may be able to supervise those non-banks that which is separate from, they already are subject to enforcement authority.

So, we are trying to address all of our tools to be able to make sure that people are not ripped off and not cheated. We really want everyone to play by the rules and to level the playing field for everyone.

Mr. CLEAVER. I appreciate that. I know that the CFPB did work in that arena, but I am just wondering whether or not there is something as it relates to reform that you believe Congress should be doing? I think the CFPB is doing its job. But what is it that Congress can do, or is there anything that Congress can do to address this whole issue of what we see with payday lending, that is almost, in some cases, thievery? What can we do? What would you recommend that we do as the Congress of the—

Mr. CHOPRA. That is a big question. Obviously, we are happy to discuss this with your staff, and as much that there are bills or other proposals you want us to analyze, we are happy to be helpful. But at the end of the day, we want to make sure that the market is competitive, fair, and transparent, and that people have options

and that small players can serve, not just large players. So, we are happy to work with you in more detail about that.

I will share that we have seen a number of State laws that have been passed over recent years that do relate to consumer protection and consumer financial protection. In some cases, there is some data about the impacts of it that is available by their State banking supervisor or by third-party researchers. Often in our market monitoring, we keep that data on hand, and to the extent that we can share it or if it is publicly available, we are happy to do that with you.

Mr. CLEAVER. I would really appreciate that. Mr. Chairman, thank you very much, and if we could get any of that information, it would be very helpful. I yield back, Mr. Chairman. Thank you.

Mr. AUCHINCLOSS. The gentleman yields back.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Director, welcome back. The Bureau recently announced it was invoking dormant authority to examine non-bank consumer finance companies. Your press release uses the term, "FinTechs." But the problem with running your Agency by press release as opposed to rulemaking is that nobody understands what you are referring to when you talk about dormant authority, and nobody understands what you are talking about when you say, "FinTechs." So, I am going to ask you to be very specific here. What category of non-bank firms do you assert you have authority to supervise?

Mr. CHOPRA. I am trying to be as responsive as possible. There are two different authorities established. One is enforcement authority. That is where we have to issue civil investigative demand, and you go to court to sue them. That is the full jurisdiction. Separate and apart from that, Congress has established three categories that are subject to bank-like supervisory examinations. This is the third category that hasn't been used. We have gotten feedback particularly—

Mr. BARR. What non-banks?

Mr. CHOPRA. Okay. I am going to explain. There are non-banks that are automatically covered regardless of size in the statute, all in the mortgage industry, essentially, all in the payday industry, and all in the private student loan industry.

Mr. BARR. Okay. Let me reclaim my time and draw down a little bit more specifically. You are the Director of the Consumer Financial Protection Bureau.

Mr. CHOPRA. Yes.

Mr. BARR. So you understand this means you lack authority to examine businesses to provide credit or funding to non-consumers, merchants, businesses, correct?

Mr. CHOPRA. Yes. If you are not covered under a covered person under the Consumer Financial Protection Act for enforcement, you certainly can't be supervised.

Mr. BARR. Okay. Thank you. One of the few areas where the Bureau has access—

Mr. CHOPRA. Or a service provider, I should say. It is a covered person service provider, what is in the statute.

Mr. BARR. Okay. But you don't have jurisdiction over non-consumers, one of the few areas where the Bureau actually has promulgated a rule in Section 1071. The rule would impose a new, massively complex, and burdensome data collection requirement that would put commercial loan officers in the unfair, uncomfortable, and highly inappropriate position of guessing a borrower's race or ethnic background based on visual observation or surname when the borrower refuses to disclose it. More than a few small rural community banks in my district have reviewed your proposed rulemaking, and they have told me that they will be forced to completely exit the small business lending market, leaving their small business borrowers with fewer options and higher costs of credit.

You talk a lot about competition and helping rural banking deserts. And I appreciate and applaud you and the Bureau for putting up this focus on rural banking. But what I am telling you is that based on the feedback of my constituents, if your supervision and enforcement reduces or eliminates financial services and products, you are reducing and eliminating competition and you are exacerbating a banking desert in rural areas. I would like you to respond to that.

Mr. CHOPRA. Great. And let me also clarify there, you are right. There are some authorities that relate to small business lending beyond normal consumer lending. Look, as it relates to small business loan data collection, that is an act of Congress. I am under a court order right now to be able to make progress on it. I did not make the proposal you have referred to that was proposed before. We are currently going through all of the comments.

Mr. BARR. Thank you.

Mr. CHOPRA. We are trying to make sure that we are looking at ways, so that we can reduce and—

Mr. BARR. And reclaiming my time, the Bureau lacks authority over non-consumer businesses other than 1071. But what I am saying about 1071 is that I am getting feedback from small, rural community banks that you say you never focus on. I know you are well-intentioned on this, but they are telling me they are going to exit the small business lending market because of the complexity and the burdensome nature of this rulemaking. I urge you to review 1071. Don't force these community banks to exit small business lending in rural areas if you care about these banking deserts.

Finally, in your request for information, you solicited public comment on what you refer as junk fees. Can you cite any legal or statutory authority that defines, "junk fees?"

Mr. CHOPRA. No, junk fees are something that everyone experiences in so many parts of their financial life. We try and make sure we are understanding what is happening in terms of businesses, in terms of consumer—

Mr. BARR. I understand that. In my remaining 20 seconds, your stated goal in the request for information is to exercise your, "enforcement supervision, regulatory, and authorities." This implies some illegal activity is happening in the space. Outline with specificity the illegal activity you alleged to be taking place with regard to consumer financial product fees.

Mr. CHOPRA. We are happy to provide you with enforcement actions that have occurred under both of my predecessors that relate to fees—

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

Mr. BARR. But there is no due process. Nobody knows what you are talking about.

Mr. AUCHINCLOSS. You can put it into the record.

Mr. CHOPRA. I will respond for the record on that.

[The information requested can be found on page 112 of the appendix.]

Mr. AUCHINCLOSS. The gentleman's time has expired. The gentleman from New York, Mrs. Maloney, who is also the Chair of the House Committee on Oversight and Reform, is now recognized for 5 minutes.

Mrs. MALONEY. Thank you, Mr. Chairman, and I apologize that I am literally chairing an Oversight Committee hearing at the same time. But I wanted to come in, welcome Director Chopra back, and ask him about the Credit CARD Act. This is a bill that I authored and passed in 2009, called the Credit Card Bill of Rights, to crack down on unfair and deceptive practices in the credit card industry, and I am proud to say the Bureau has been vigorously enforcing it. Thank you. Since its passage, according to the CFPB, it has saved consumers over \$16 billion, with a "B," a year, each year, and kept that money in their pockets instead of going to unfair and deceptive banking fees, and has been a much-needed stimulus, I would say, during the financial crisis.

But I worry that if we take our eyes off the ball and don't continue to protect consumers, banks will start rolling back these protections. And we must continue to keep our eye on it and enforce it, and I hope you will, and to also prevent other bad practices that card companies use to take advantage of, low-income customers, such as exorbitant late fees, really large late fees. So, Director Chopra, is there anything more than this that the CFPB can be doing to protect and enforce the Credit Card Bill of Rights? And is there anything more that the CFPB plans to do that would help customers, consumers, particularly low-income consumers?

Mr. CHOPRA. Thank you for raising that. With credit cards, Americans owe over a trillion dollars, I believe right now, maybe a little less. And that is one of the core ways in which people have small-dollar lending in which they are able to charge and get a product and have liquidity. We want to make sure that the CARD Act that Congress has passed, that credit cards are a competitive market where people can often find lower rates. But I am asking the staff to look at whether we should reopen the CARD Act rules that were promulgated by the Federal Reserve Board over 10 years ago, as I mentioned to one of your colleagues, to be able to look at some of these older rules we inherited to determine whether there needs to be any changes.

Certainly, late fees is an area that I expect to be one of the questions that we solicit input on, and it will be important that that market is competitive. The credit card market is critical to the U.S., and we need to make sure we are living up to the ideals that Congress has set out in the CARD Act.

Mrs. MALONEY. Oh, wow. That is absolutely great news. Thank you for that. And I am proud to see that the CFPB is fighting for consumers and vigorously enforcing the CARD Act and looking at other ways to help consumers with predatory finance and fees.

I would like to turn to the Overdraft Protection Act. That is another important bill that I have been fighting for, for a long time. Bank overdrafts can cause a \$3 cup of coffee to cost over \$40, and these fees take billions out of the pockets of hardworking consumers and Americans every year. My bill, the Overdraft Protection Act, would crack down on predatory overdraft fees and limit the number of instances in which banks can charge consumers for simply not having enough money. Since we spoke last October, the Bureau, under your leadership, has released data on the serious impact that overdraft has had on consumer financial health. Your research found that from 2015 to 2019, the biggest banks have been increasing their overdraft fees every year. They charged their consumers \$12 billion in 2019 alone. I personally believe that is outrageous.

Director Chopra, do you think Congress should pass my Overdraft Protection Act, and what does the Bureau plan to do on overdraft fees on its own?

Mr. CHOPRA. I want to learn more, and we will work with you on the specifics of your bill. Generally speaking, we want to make sure that there are service and competitive markets, and that is exactly what we are starting to see when it comes to overdraft. You are seeing more and more institutions market that they are offering lower costs on overdraft, with some of them eliminating it altogether, and some of them offering some of the same services, a little bit modified, but for free. So, we want everyone to be able to benefit from that. We also do hear a number of complaints about overdraft. There have been a couple of enforcement actions related to overdraft, so it is certainly an area we know is very, very important to make sure is—

Mrs. MALONEY. Can we see a proposed rule? My time has almost expired, but—

Mr. CHOPRA. We will circle back. But as of right now, we are currently looking across-the-board at all sorts of fees to determine where we are going to go.

Mrs. MALONEY. Thank you for continuing the legacy of the CFPB. Thank you. I yield back.

Mr. AUCHINCLOSS. The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS OF TEXAS. Thank you, Mr. Chairman. Before I start with my questions, I want to talk about a troubling trend I am seeing in our country: the erosion of personal accountability.

In Texas, we often say, “a deal is a deal.” But now it seems to be if one side doesn’t want to uphold their end of the bargain, they go to the government to intervene on their behalf. We see this as Democrats are demanding that people should not have to pay their student loans, effectively turning them into grants, and leaving taxpayers on the hook with billions in losses. We have people on this committee and within your agency who say there should be no penalty when someone mismanages their finances and overdrafts from their bank account. Rather than holding the individual ac-

countable, they believe financial institutions should be forced to fund these unsecured, short-term loans at no cost.

The CFPB has put out a press release targeting auto finance firms—you have mentioned that—warning them about repossessing cars simply because the price of used cars has skyrocketed, and that is ridiculous. This will undoubtedly make a person more hesitant to repossess a car, even though it is their money on the line when a person misses his payments. And we shouldn't forget that we allowed renters not to pay rent for 2 years during the pandemic, and many landlords are still yet to be made whole for providing house financing. They still have to pay their bank. So on top of all this, we have people wanting to diminish the amount of negative information reported to the credit bureaus that are used by financial institutions to accurately assess the credit risk of borrowers. And as a small business owner, which I am, I can tell you that certainty is key.

And we must stop projecting to people that the government will intervene when they find their end of the bargain or their end of the agreement to suddenly be inconvenient for them to uphold. So to recap, you don't have to pay your student loans. There are no consequences if you spend money you don't have. You don't have to pay your car loan, and you can't be evicted when you don't pay your rent. These policies are killing, not will, but are killing Main Street America, I can tell you that.

With that in mind, and with that said, I want to pivot to another issue that you can tell bothers a lot of us, and that greatly affects small business lending. Now, if we ask everyone on this committee room to guess your ethnicity based on your appearance and last name, it is very unlikely that everyone will land on the same answer. Yet, in your 1071 small business data recollection rulemaking, you are asking loan officers to do this exact thing when a customer comes in to get a small business loan. Not only does this put the loan officers in an extremely awkward position that no amount of training can rectify, but it would provide inconsistent data that will be the basis of enforcement actions coming out of the CFPB and legislation coming through Congress.

Race should not play a part in credit decisions. I worked in the 1960s, and I can tell you that during the 1960s and 1970s, we were required to check boxes based on race. It was pure racism. It was racist then and it is racist now. We should not go back to those days. So, Director Chopra, while we disagree on many aspects of the 1071 rulemaking, I wanted to see if I can get a commitment to improve the rule in two areas, which should be, frankly, non-partisan. First, will you commit to increasing the implementation time for affected entities so they can properly build their necessary systems to comply with the final rule?

Mr. CHOPRA. Yes. To be clear, that was a rule proposed before I arrived, and we have not yet finalized it. But on the issue of implementation, it is obviously something I am asking a lot of questions about the comments we have received, looking at what is the role of software providers in implementing it, how it would work on the ground. I can't give a commitment on a specific rulemaking right now, but I am happy to talk more with you about it. But the key is we are looking hard at the huge body of comments that we

got and we will work to get and address those comments and finalize it in an orderly fashion and in accordance with the court order back around here.

Mr. WILLIAMS OF TEXAS. Okay. I have a second question for you. Will you abandon the proposal that has loan officers guessing the ethnicity of borrowers if they don't provide the information voluntarily? And I think you have answered that the—

Mr. CHOPRA. We have received a lot of comments. I hear very loud and clear the concerns about this.

Mr. WILLIAMS OF TEXAS. Okay. Let me—

Mr. CHOPRA. It is similar to a provision in the Home Mortgage Disclosure Act that has been around, I think—

Mr. WILLIAMS OF TEXAS. Let me quickly go to one more question before my time is up.

Mr. CHOPRA. Sure.

Mr. WILLIAMS OF TEXAS. Have you studied how restricting or ending overdraft charges would affect some smaller financial institutions? We worry about the customer writing a bad check, but what about the bank that has to deal with that?

Mr. CHOPRA. Yes, there is a separate issue between overdraft fees, which sometimes is described as a penalty, and sometimes, it is described as a service. Obviously, when it is a service where a bank is taking on risk, that is something at which we look closely.

Mr. WILLIAMS OF TEXAS. But you had admitted it affects the bank, the lending institution, negatively, right, if somebody writes a bad check?

Mr. CHOPRA. If they clear the charge.

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

Mr. WILLIAMS OF TEXAS. Okay. I yield back.

Mr. CHOPRA. Sorry.

Mr. AUCHINCLOSS. The gentleman from Illinois, Mr. Garcia, is recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Mr. Chairman. Thank you for holding this important hearing. And of course, thanks to Director Chopra for joining us today.

Predatory loans, including payday, auto title, and high-cost installment loans, are a debt trap. These high-cost loans exacerbate financial difficulties and target low-income communities and communities of color. Not only are payday lenders more concentrated in Black and Latino communities, but consumers of color are far more likely to have a payday loan than White consumers, even when controlling for income. For example, in Chicago, a person is 13 times more likely to have a payday loan if they live in a predominantly Black neighborhood, such as Austin, as opposed to a predominantly White neighborhood such as Lincoln Park. A national rate cap is necessary, and especially urgent given the challenging times that we are facing. We must take action to protect our communities from high-interest loans and the dangers of predatory lending, which is why I have introduced the Veterans and Consumers Fair Credit Act, to extend the military's 36% interest rate cap to all Americans.

Director Chopra, we applaud the CFPB resuming Military Lending Act examinations, as the examinations are critical in ensuring that active-duty military members and their families are protected

from predatory lending. What do you think the impact of the Military Lending Act has been?

Mr. CHOPRA. There have been some observations that it has done more to protect military families from credit report damage, and from certain debt collection practices. And ultimately, there is a view that financial readiness for service members is also about force readiness. There has been some work done by the Department of Defense which shows that loss of security clearance or severe financial distress does increase separations, and that has costs for taxpayers, and it also really limits, for those who want to build a career in the military, their ability to stay on and use their skills. So, I do support the Military Lending Act. I have worked at the JAG school before and have seen some of it on the ground. We are enforcing it and we are happy to be working with the DOD and others on it.

Mr. GARCIA OF ILLINOIS. Thank you. Director Chopra, there are virtually no meaningful restrictions on short-term payday lending in the majority of the States. Although the payment protections portion of the 2017 payday rule will help consumers when it goes into effect, large gaps remain, and the fundamental business model of these predatory lenders remains unchanged. To address this problem, I have introduced the Veterans and Consumers Fair Credit Act. Can you explain how the lack of meaningful restrictions on short-term payday lending has impacted low-income communities?

Mr. CHOPRA. Certainly we are responsible for supervising payday lenders. We are certainly looking at that market actively. We recently released a research study about the impact of certain State laws, specifically laws that provide extended repayment plans, and offered some observations about their efficacy. There is no question that there are challenges when it comes to people taking out high-cost loans. The rulemaking that you refer to, there are elements of it that are still subject to litigation, and that process is ongoing.

At the end of the day, we want to make sure that there is a fair and competitive market, that people have options, and that people can go to a place where they get a good competitive rate. Many people do have trouble in this market because they often get in a cycle where they can't ever get out, and that is obviously something that leads to real harm to their credit reports and to debt collection. So, we are very attuned to the problems. We share your concerns and we are happy to be responsive as you develop legislation and to provide technical advice on it.

Mr. GARCIA OF ILLINOIS. Thank you. And in my remaining 20 seconds or so, several States, including my home State of Illinois, passed a 36-percent rate cap last year. Do you think that these trends in the States will have an impact on the broader financial marketplace?

Mr. CHOPRA. Certainly, State laws are a huge part of the consumer protection framework. The system is based on federalism, and we certainly see differences in our complaints and market monitoring based on States and their protections.

Mr. GARCIA OF ILLINOIS. Thank you. Mr. Chairman, I yield back.

Mr. AUCHINCLOSS. The gentleman from Minnesota, Mr. Emmer, is recognized for 5 minutes.

Mr. EMMER. Thank you, Mr. Chairman, and thank you, Director Chopra, for taking the time to testify to this committee today. Sir, the last time you were here was October 27, 2021, last year, which actually was about 2 weeks before you were sworn in to your current position.

Mr. CHOPRA. Yes, after.

Mr. EMMER. And as I understand it, at that time you were preparing to force a request for information (RFI) regarding bank mergers under the FDIC's agenda. You presented a draft to FDIC Chair Jelena McWilliams just a few days after you appeared here before this committee. You did not, however, share those plans with us during your testimony on that day in October, and I am hoping you are going to provide some clarity for all of us now.

Sir, do you remember presenting that document to Chair McWilliams back in October?

Mr. CHOPRA. The document—

Mr. EMMER. The answer is, "yes" or "no?" Do you remember presenting the document to her?

Mr. CHOPRA. I am just giving you the full context.

Mr. EMMER. No, I don't want that. My question is, sir, respectfully—

Mr. CHOPRA. But it is a hard question. Let me give you the context.

Mr. EMMER. It is simply yes or no.

Mr. CHOPRA. The document was circulated—

Mr. EMMER. Sir, do you remember giving her the document?

Mr. CHOPRA. I remember discussing the document with every board—

Mr. EMMER. So, you don't remember giving Chair McWilliams the document that we are talking about?

Mr. CHOPRA. You mean physically?

Mr. EMMER. Well, you did give it to her? Yes, you did provide it to her.

Mr. CHOPRA. Okay. It was provided to all of the board members and the FDIC staff.

Mr. EMMER. Sir?

Mr. CHOPRA. And it was not drafted by me.

Mr. EMMER. Allow me to do my job. I know you are here and very kindly sharing your time with us, but there are some things that I would like to get to the bottom of before we are done. And I would appreciate it if you would just do me the courtesy and answer the questions that I asked. Since you don't necessarily remember, I will take from your answer, physically providing Chair McWilliams at that time with the language—

Mr. CHOPRA. Electronic—

Mr. EMMER. —that you proposed for the RFI, I assume you don't remember that you did provide it on October 31st, and, by the way, that was 4 days after you testified before this committee. That draft RFI, I am interested, Director, how did that come about? Did you write it yourself? Did you have some help from the staff at the CFPB, or maybe even from staff at the Federal Trade Commission or people from outside the government?

Mr. CHOPRA. No, it was provided by the FDIC, so staff under the direction of board members at the FDIC provided it. We all had discussions about it repeatedly.

Mr. EMMER. Sir, you realize that you are here to provide accurate testimony. I have an email that recounts how this actually happened, and I guess I would have expected that it would be staff experts at the FDIC, but they were not involved in the process of preparing materials for the FDIC's docket. You did not give them that opportunity, and the documents and information that we have obtained so far show that Chair McWilliams was willing to work with you and have the experts at the FDIC prepare an RFI for the FDIC's docket.

Again, we even have an email from November 17th to you from the FDIC Deputy General Counsel that says, "The Chairman has repeatedly expressed her willingness to work with the staff and has discussions with FDIC staff on this issue." That is why, sir, I was surprised that you testified to the Senate yesterday that you were somehow prevented from communicating with the FDIC staff, because information that we have appears to show that the Chair made the staff available to you and you declined that offer.

Mr. CHOPRA. That is not true.

Mr. EMMER. Sir, reclaiming my time, here is what I mean. In November, after you presented your RFI to Chair McWilliams, the Acting Comptroller of the Currency, Michael Hsu, called her when she was at the airport about to board a flight to Europe. And on that call, they discussed a plan to have the FDIC staff prepare a version of your RFI for a vote. Chair McWilliams offered to instruct the staff to expedite your bank merger RFI by December 6th. Isn't that correct?

Mr. CHOPRA. No.

Mr. EMMER. Well, it is correct.

Mr. CHOPRA. It is not correct.

Mr. EMMER. And Mr. Hsu by the way, sir—

Mr. CHOPRA. It is not correct at all.

Mr. EMMER. And did Mr. Hsu, sir, share that offer with you?

Mr. CHOPRA. Sorry?

Mr. EMMER. Did Mr. Hsu share that offer to do your language and have something ready for a vote by—

Mr. CHOPRA. When you say, "your language," this is language by the board—

Mr. EMMER. Look I am going to run out of time. So, I am just going to—

Mr. CHOPRA. —associated in order to figure out how to get to compromise ultimately.

Mr. EMMER. —at this point, you literally ignored 88 years of collegial operations together and tried to force the FDIC to do some agenda that you have rather than working through the process.

Mr. CHOPRA. Well, no, I am going to defend the rule of law.

Mr. EMMER. It looks like we have a lot here to learn about your effort to lead a hostile takeover of the FDIC, and I look forward to receiving all of the documents that we requested early in March.

Mr. CHOPRA. We must defend the rule of law and make sure that these agencies are following the law.

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

Mr. EMMER. Thank you, Mr. Chairman.

Mr. AUCHINCLOSS. The gentlewoman from North Carolina, Ms. Adams, is now recognized for 5 minutes.

Ms. ADAMS. Thank you very much, and I want to thank the Chair for holding the hearing today. Director Chopra, thank you for being with us. Like I said when you testified before us in October, it is nice to have you behind the wheel of the CFPB. The work that you are doing is critical, from protecting our consumers to making sure that our financial regulators mirror the diversity of our nation. So, thank you for your efforts there.

Director, I am extremely concerned with the levels of student debt in this country, which amounts to about \$1.8 trillion, and that is why I believe we need to cancel \$50,000 in student loan debt for Federal student loan borrowers. And I was proud to join my colleague here on the Financial Services Committee, Representative Nikema Williams along with Representatives Deborah Ross and Haley Stevens, in introducing our Clean Slate legislative series to make real steps toward helping our students. But, in particular, I agree with you that we need a concrete plan on student loan debt relief before payments restart in September.

Can you discuss why it is so critical to have a plan in place for student loan debt forgiveness, one way or another, for our students, the services of that debt, and our economy?

Mr. CHOPRA. Yes. When student borrowers have to make repayments, if they are wondering about whether there is going to be some change in policy, about what their total balance will be, it may be difficult. I think it is important that if there are going to be any decisions, that it is known before some of those borrowers have to begin their repayments again, which many of them otherwise might make a crapshoot. So, I think there are a lot of people wondering what is going to happen. And I think as soon as there are answers and clarity, one way or another as you say, it will make the process going forward for repayment clear.

Ms. ADAMS. Okay. Great. When we spoke last time, we discussed the Public Service Loan Forgiveness (PSLF) Program, and I believe that service is the rent we pay for our time on Earth. Our young folks who are becoming teachers aren't doing it for the money. Of course, I taught for 40 years, and I would say you are not going to get rich doing that. They did it to serve the community, and that is why it is so important that we make sure that the PSLF Program is functioning as smoothly as possible. Director, can you discuss what the CFPB is doing now, to protect student loan borrowers who are pursuing the PSLF?

Mr. CHOPRA. Yes. In our examinations, we have shared with institutions about where there might be problems if they may be deceiving borrowers about their benefits. Here is the most important thing. If you are a mortgage borrower, or if you are a student loan borrower, or whatever you are borrowing, and if you have contractual or legal entitlements about your rights embedded in the contract or in law, it is important that the servicer does not deceive you about what they are. We want to make sure that borrowers, when in a mortgage, are able to get a loan modification, which is often a win-win for both borrower and creditor to stay off a foreclosure track.

The same thing is true with student loan default. When people have reached the eligibility or even just inquiring about their eligibility, they need to make sure that they are getting accurate information. We depend on loan servicers for that type of information, for clear answers about our accounts. And it is no good when you have firms that decide that it is cheaper for them to provide wrong information. Most of these firms are doing the right thing, but the ones who don't, disadvantage the entire industry.

Ms. ADAMS. Right. With respect to the PSLF, can you describe any efforts that you have with the Department of Education to issue guidance to those borrowers and servicers to minimize efforts on the front end that would require enforcement action?

Mr. CHOPRA. Yes. Some of that has already been done. We are happy to share that with you. But I think the most important part is a lot of borrowers made, in some ways, career decisions based on that program. They decided to stay in teaching. They decided to stay in the military because there was a sense that the law allowed them to get part of it canceled at the end. And the fact that so many have been stymied is a huge problem and we need to make sure we mitigate further damage from it.

Ms. ADAMS. Thank you so much. And teaching has been a noble profession for me and for so many others. Thank you very much. I yield back.

Mr. AUCHINCLOSS. The gentleman from Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman. Director Chopra, thank you for being here. I have a few questions, some interesting comments and questions. Some have gone, in my opinion, unanswered, but just to get some background questions, are overdraft fees illegal?

Mr. CHOPRA. Overdraft fees, when they comply with all of the regulations—

Mr. LOUDERMILK. Are they legal?

Mr. CHOPRA. Yes.

Mr. LOUDERMILK. Okay. You mentioned overdraft services with which you have problems?

Mr. CHOPRA. No, I think what I heard from your colleague was that sometimes overdraft was described as a penalty and sometimes it was described as a service.

Mr. LOUDERMILK. Are either illegal?

Mr. CHOPRA. No.

Mr. LOUDERMILK. No. Okay. What about mortgage or origination fees? Are they illegal?

Mr. CHOPRA. No, as long as they—

Mr. LOUDERMILK. Okay.

Mr. CHOPRA. —comply with what is required under the law—

Mr. LOUDERMILK. Right. What about checking account management fees?

Mr. CHOPRA. Checking account management?

Mr. LOUDERMILK. Yes, the fee that you may pay on the checking account.

Mr. CHOPRA. Like a monthly fee?

Mr. LOUDERMILK. Yes.

Mr. CHOPRA. Yes, if there are requirements under the Truth in Savings Act and others to do that.

Mr. LOUDERMILK. Okay. As I understand it, you have kind of grouped these together as junk fees?

Mr. CHOPRA. No.

Mr. LOUDERMILK. These are things that you consider as junk fees?

Mr. CHOPRA. No, I think anywhere you are getting a bona fide service is—we want banks to make money for services that they are providing. We see this all over the economy. We are sometimes getting charged for things we never even asked for or never even wanted.

Mr. LOUDERMILK. Okay. But does that mean that these are currently illegal?

Mr. CHOPRA. Actually, if there is any deception around it—

Mr. LOUDERMILK. No, beside deception, just the fact that there may be fees associated with something?

Mr. CHOPRA. Right. There are some State law issues, but the ones you have mentioned, there is not a per se ban on that.

Mr. LOUDERMILK. Okay. So who is responsible for determining if something is legal or illegal? What entity is constitutionally given the power to make law?

Mr. CHOPRA. Well, Congress and the President.

Mr. LOUDERMILK. No, Congress is.

Mr. CHOPRA. Sorry. The President signed the—

Mr. LOUDERMILK. It is concerning that you don't know the basics of our Constitution. The President is not.

Mr. CHOPRA. No, I know that the President signs law bills into—

Mr. LOUDERMILK. Right. So, it is Congress. My question is in your job, and from what I am hearing through the testimony, is it your job, which it is, but I am just trying to get your opinion, is it your job to enforce a law, or what you personally believe is wrong?

Mr. CHOPRA. It is enforcing the law and enforcing the law as written, and, in some cases, Congress has specifically required agencies to promulgate disclosures to enforce certain provisions. And often, we need to look at what is working and what is not in order to make those legal requirements that Congress has often required—

Mr. LOUDERMILK. How do overdraft fees—

Mr. CHOPRA. —to help them to ensure that they are effective.

Mr. LOUDERMILK. How do overdraft fees fit into that?

Mr. CHOPRA. Overdraft fees are subject to provisions of the Truth in Lending Act.

Mr. LOUDERMILK. This is the issue we are having here. Now, let me ask you this question.

Mr. CHOPRA. Yes.

Mr. LOUDERMILK. It appears that you are a person who really likes to regulate. I understand there are folks out there who really like regulations. Do you believe that businesses, banks, even small banks, or whatever, incur costs for the regulations that you impose on them?

Mr. CHOPRA. No. The key is that regulations should work to promote markets that are fair, transparent, and competitive is exactly—

Mr. LOUDERMILK. My question is, do these businesses incur additional costs to implement these regulations?

Mr. CHOPRA. Usually, if there are—

Mr. LOUDERMILK. Yes?

Mr. CHOPRA. If there is a bright-line ban on something, maybe not, but—

Mr. LOUDERMILK. I am reclaiming my time here. With regulation, businesses incur costs. So you take something, a fee that is to recoup a cost, like with an overdraft, right? And if you are not allowing or you are going to punish a business that collects an overdraft fee, then who is going to incur that cost? It is not going to be the bank. It is going to be the consumers who do not overdraft.

Mr. CHOPRA. I think—

Mr. LOUDERMILK. So, how is that consumer protection?

Mr. CHOPRA. No, you highlight a good point about cost recoupment. One of the important things is financial institutions, other businesses may incur costs, but then there is also a price, and the price ideally is set by the competitive market. And I think that is actually what we are starting to see in overdraft. You are starting to see banks look at what are their costs and how can they still make the numbers work and compete. And some of them are actually offering that service now for free because they are using it as a vehicle to offer a broader suite of services that is in their business interests. That is how the market works.

Mr. LOUDERMILK. Obviously, my time has expired, so I will submit the rest of the questions for the record, Mr. Chairman. Thank you.

Mr. AUCHINCLOSS. The gentlewoman from Iowa, who is also the Vice Chair of our Subcommittee on Housing, Community Development, and Insurance, is now recognized for 5 minutes.

Mr. CHOPRA. Sorry. Do you mind if I offer a clarification to the previous question just for the record?

Mr. AUCHINCLOSS. No.

Mr. CHOPRA. Okay. Sorry.

Mr. AUCHINCLOSS. You can do that when my time comes up.

Mr. CHOPRA. Okay. Great.

Mr. AUCHINCLOSS. If the Chair will allow for me to do that.

The gentlewoman from Iowa, Mrs. Axne, is now recognized for 5 minutes.

Mrs. AXNE. Thank you, Mr. Chairman, and thank you, Director Chopra, for being here. I appreciate that.

Last month, the CFPB put out a report noting that medical debt is less productive for credit reports, and you pointed out as well some of the harm that it could do. After that report, we saw three of the main credit bureaus take steps to reduce the importance of medical debt on people's credit reports, which is good news. So, can you explain the changes that were made, and if you believe that they are really important to making a more positive change in people's lives? And what is the CFPB's role in this area?

Mr. CHOPRA. Sure. I don't know them encyclopedically, but as I understand it, the three credit reporting companies, the nationwide credit reporting companies are making certain changes about when they will report allegedly owed medical debt on credit reports. I believe they are extending the amount of time for it to appear. They are also only going to include, they say, certain debts above a certain threshold. And there are some other changes they are making as well.

You are right that there has been evidence to suggest that medical debt is not necessarily a very good predictor of credit performance on other loan obligations. We are actually looking hard about, given the challenges of accuracy, given the challenges that we see throughout the system, and also with respect to health privacy, because one of the things we have found is consumers are even reporting that collections issues are raising the cost of what their actual medical procedure might have been.

We should determine whether it is appropriate to include this information at all. We are currently looking into that, and we will happily report back on that question with you.

Mrs. AXNE. Thank you so much for that, especially given some of the horror stories that I have heard lately about debts being sent immediately to collections after medical treatment. I appreciate you looking into this.

Secondly, I want to turn to a topic that is been discussed here, and that is student loans. We know how important this is and we spoke about this in October, but I have a specific question that I am curious about. My office just had someone reach out because they are unable to get their loan forgiven after being defrauded by a for-profit college years ago. And I know that falls under the jurisdiction of the Education Department, but I wanted to know what you thought we could do to better protect borrowers from this ever happening to begin with, because if we can avoid it, that would be much better. The Student Borrower Protection Center released a report showing for-profit schools now offering Buy Now, Pay Later loans, my goodness, in place of normal student loans.

Have you heard of these similar practices, and what can the CFPB do to keep these things from happening, address the issues with those folks and those for-profits who got defrauded? What are some of the root causes that we can get after so we can avoid these things?

Mr. CHOPRA. Yes, we watched the education space as part of our ordinary required market monitoring, and you do see some new types of products that are entering outside of the banking system and outside of the Federal student loan system. It is obviously a place that we don't have too much information on. We just are kind of noticing those developments. We obviously want to make sure that there is clarity, transparency, and options about where people are going to borrow across every single market.

So, I don't have too much for you on that, but I certainly would worry if there were ways in which students were being taken advantage of. People, when they borrow, are doing it for the purpose of bettering themselves and their families and to climb the economic ladder, reach the American Dream. And a lot of people have been made worse off by their experience with student loans, and

it has a really deleterious effect. Many people say, "I don't even want other people in my family to go to college because it actually ruined my life."

The more we can make sure that there is adherence to the existing law and to figure out how we can make sure that education is getting people ahead and not pushing them behind, that is really critical for, I think, what we want to achieve across-the-board as Americans.

Mrs. AXNE. Thank you, Director. I appreciate that. And anything that can be done to keep students from getting into this type of situation to begin with is what I am hoping we can address through the CFPB. Keeping money in folks' pockets and, to your point, giving them a future through an education is what we are looking for. I appreciate your words here today and the work that you are doing.

And I yield back the rest of my time.

Mr. CHOPRA. Thank you, Congresswoman.

Mr. AUCHINCLOSS. The gentleman from West Virginia, Mr. Moon-ey, is now recognized for 5 minutes.

Mr. MOONEY. Thank you, Mr. Chairman. Director Chopra, thanks for being here again. I have a question relating to Section 1071, the Small Business Lending Data Collection rule. It may have been proposed before your time, I understand, but it is now up to you to shepherd that rulemaking to a conclusion. In the proposed rule, the CFPB's cost analysis indicated that small businesses would not be impacted much by its implementation. However, the Small Business Administration's Office of Advocacy, which is tasked with advancing the interests of small businesses and regulatory matters, disagreed. The Office of Advocacy says that the 1071 rule will raise burdens on small businesses and increase their cost of credit. Director Chopra, how can you square the assertions in the 1071 cost-benefit analysis with the Office of Advocacy's concerns?

Mr. CHOPRA. I don't have the exact text from the Office of Advocacy comment letter, but what I will say is that we are required, before finalizing the rule, to conduct a process to solicit input from small entities, and that has been done. To date, I think the small entities that were consulted were mostly small creditors. Separate and apart, we have received comments from small businesses, from banking associations, and others.

You raise the point about, how do we make sure that we can minimize the challenges, and your colleagues have raised issues about the implementation timeline, and what they will be required to do. There is an open rulemaking. We are under a court order to make progress on it. It is required that we implement this by law. So, we are going to be looking carefully at all of this information and try to land at a result that faithfully implements what Congress has passed, but also make sure that we are thinking of all of the on-the-ground issues that you have raised.

Mr. MOONEY. Okay. Thank you. When you say for most agencies, rules and their cost-benefit analysis are reviewed by the Office of the Management and Budget (OMB), which uses peer-reviewed, well-respected frameworks for their regulatory review, such as OMB Circular 84. As you know, the CFPB is not subject to OMB

review because of its status as an independent agency. So, compared to the requirements of agencies under the OMB review, the Bureau's analysis is not as thorough. For example, OMB Circular 84 includes provisions relating to the distributional effects of a proposed rule, explicit guidelines on measuring indirect costs, probability models, and other important metrics not currently included in CFPB rules.

Director, you have previously stated that cost-benefit analysis should be rigorous, robust, and grounded in data. If Congress were to expand the statutory requirements of the CFPB's cost-benefit analysis to bring it in line with the recommendations of OMB Circular 84, wouldn't doing so meet your goal of a rigorous, robust, and grounded cost-benefit analysis?

Mr. CHOPRA. Currently, the analysis of our regulations does look at a broad range of factors, and, by the way, those circulars are certainly something that all agencies look at in making those determinations. So, I hear you loud and clear that you want to make sure we are looking carefully at what the impacts are, looking carefully at how to do it, making sure that we are finding data and looking at different categories of that. I hear you loud and clear on that.

We will look through this carefully as we adhere to the court's requirements and adhere to Congress when it comes to getting that rule implemented because it has not been done in 11 years.

Mr. MOONEY. Okay. Thank you. Let me say in closing, the Consumer Financial Protection Bureau's recent Section 1071 rulemaking on small business lending data collection exposed a deeper problem that has plagued the CFPB since its inception, which is a weak statutory requirement to analyze costs and benefits. The Bureau may be independent of OMB's rulemaking oversight, but it should absolutely be subjected to a thorough cost-benefit analysis framework. My bill, the Transparency in CFPB Cost-Benefit Analysis Act, would fix some of the problems I have highlighted today. It would require the Bureau to consult with the Small Business Administration's Office of Advocacy to minimize the cost of regulations on small businesses, but also provide a striking cost-benefit analysis holding the CFPB to many of the same standards as other agencies.

Thank you. I yield back.

Mr. CHOPRA. Thank you, sir.

Mr. AUCHINCLOSS. The gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. SHERMAN. Thank you. Director Chopra, when you last came before the committee, I asked you whether the CFPB was close to completing its statutorily-required obligation to impose ability-to-repay requirements on the Property Assessed Clean Energy (PACE) loans. Of course, we adopted that law in May of 2018. In May of 2019, you had gotten to the point where you had proposed regulations and the comment period had ended. When you came before us then, you had only been on the job for 2 weeks, and now it has been another 6 months. When are we going to get the notice

of proposed rulemaking, closed comment period ready to go to final regulations on the PACE loans?

Mr. CHOPRA. As I noted in my written testimony, we are prioritizing the rulemakings that have been required by Congress. This one is a challenging one. I do anticipate that we will get to a final rule. I will have us brief your staff when we have a little bit more understanding on timing, but you should not have any worries that we are going to get it done. I am not going to do what we see in other agencies, where they just never implement something required by law.

Mr. SHERMAN. My doctor says I have a limited life expectancy, so let us—

Mr. CHOPRA. I hear you. We will get that done, and it is an important rule.

Mr. SHERMAN. I look forward to getting it done. You are so close. You closed the comment period a couple of years ago.

Mr. CHOPRA. Just so you know, the comment period, that was on a different phase of it, but we will get you the information, yes.

Mr. SHERMAN. Okay. Good. When we look at consumer loans, we probably ought to have the same level of consumer protection, whether it is your traditional regulated bank or credit union making a loan, or these new Buy Now, Pay Later lenders.

In a recent marketing inquiry, the CFPB has raised a number of concerns about that industry, including the risk that these firms are skirting some regulations with which other consumer lenders have to comply. I am particularly concerned that many of these products seem to lack an ability-to-repay requirement, but they also have clear policies on how they treat return purchases and disputes. And they seem to have an unknown credit reporting process. Do you share these concerns? And does the Bureau intend to regulate this market to protect consumers?

Mr. CHOPRA. I don't have any conclusions on this, and I would really characterize where we are in this as questions. We have issued a series of questions through those orders that you referenced to be able to get to answers from the key players on the use of data. As far as credit reporting practices and some of the other issues you mentioned, we are expecting to issue one or more reports related to this. It is part of a trend we are seeing of finance and commerce apps converging. And then—

Mr. SHERMAN. That brings me to the last question I am going to try to squeeze in, on another mixing of commerce and lending. In October, the CFPB ordered six technology platforms offering payment services to turn over information about their products, plans, and practices when it comes to payments. You had previously expressed concerns about these companies. They can gain tremendous scale and market power. And you have highlighted the risk of Big Tech exploiting these platforms by engaging in, in fact, financial surveillance by combining consumer payment data with consumer browsing data. I would be interested to hear if the CFPB's concerns have increased as a result of its inquiry and how this might influence your approach to its Section 1033 rulemaking?

Mr. CHOPRA. Yes. The 1033 rulemaking is a key priority for me. It has a lot of ability to not move to an open banking or open finance system but to take some important steps. I think we want

to really all think together about how do we get to a world that is more open banking, that people can switch more seamlessly, that people can compare more products across a broader range of participants? I see a lot of upside there. I will say I do worry about Big Tech firms really kind of modeling what we are seeing in China with Alipay and WeChat Pay. I think the fact that you have these dominant providers who have so much data about people's movements, about people's geolocation, about their habits, their church attendance, everything, it raises a lot of questions about, will there be a fair and transparent system?

Mr. SHERMAN. Thank you.

Mr. AUCHINCLOSS. The gentleman from North Carolina, Mr. Budd, is now recognized for 5 minutes.

Mr. BUDD. I thank the Chair for having this hearing, and Director Chopra, thank you for being here.

Earlier this week, the CFPB invoked a dormant authority to begin examining non-bank companies posing risks to consumers. The CFPB's release stated that, "This will allow the CFPB to be agile and supervise entities that may be fast growing or are in markets outside the existing non-bank supervision program." So, here is the question: Do you believe the CFPB has the authority to regulate activity specifically within crypto or decentralized finance (DeFi), using this dormant authority? And if so, how does the Bureau plan on doing that without actually killing innovation, pushing it offshore, and potentially harming consumers?

Mr. CHOPRA. Great question. Blockchain-based technologies in finance, most of it right now is for the purposes of speculative trading. Our focus has been on payments and really the Big Tech rails, but as it relates to the supervision program, I do want to be clear about something: There is no expansion of jurisdiction through this. So if you are engaged in activities that Congress has specified in the law, you are already subject to this CFPB's enforcement jurisdiction with the exception of small banks.

Enforcement involves subpoenas, CIDs, and litigation. Supervision is often a less adversarial way to do compliance examination. I just want to be clear that inasmuch as a firm that is engaged in an activity that is covered, is noted as a covered person in the Act, they are already subject to our enforcement jurisdiction, again except if they are a small bank, and the supervision process is actually just a way outside of litigation. And outside of that kind of law enforcement—

Mr. BUDD. Thank you.

Mr. CHOPRA. Sorry.

Mr. BUDD. No, I see where you are headed with this, so fair enough, but let me ask you this: How does the Bureau regulate an entity that has no centralized structure, and it is simply made up of code and peer-to-peer transactions, because that is what DeFi is. How does it regulate or, in your term, supervise, I believe, something that has peer-to-peer transactions? There is really no structure.

Mr. CHOPRA. Is the question, who is the entity?

Mr. BUDD. No. How do you regulate and supervise that, since it is peer-to-peer?

Mr. CHOPRA. Honestly, I don't have good answers other than if it is a covered activity. We have an activities-based approach, not really an entities-based approach. Certainly, there are a number of activities that are covered under the Electronic Fund Transfer Act. Those activities would be covered under the CFPB, but there is not necessarily a delineation of what type of technology is being used.

Mr. BUDD. Thank you.

Mr. CHOPRA. And I am sorry if I am not being responsive. I am trying my best, but—

Mr. BUDD. No, no, I understand, but just to be clear, I don't think that the CFPB has what appears to be an ever-expanding authority, and I don't believe Congress has delegated that to you or the Bureau. But also, in a different topic here—

Mr. CHOPRA. Yes.

Mr. BUDD. It is never, "free-of-bias algorithms," and it may result in credit determinations that are unfair to consumers. You have also said that machine learning could lead to digital redlining and robo-discrimination. Interestingly enough, in your last appearance before this committee you stated that, "Preserving relationship banking is critical to our nation's resilience and recovery, particularly in these times of stress." Fair enough. "The Fair Housing Act prohibits discrimination based on race, color, religion, sex, national origin, family status, or disabilities." But how can an algorithm discriminate based on any of these characteristics if it doesn't have that information about the borrower?

Mr. CHOPRA. I am happy to try my best at this. One of the ways in which we look at algorithms across the government, and a great example of this is Secretary Carson's complaint against Facebook about how the algorithm essentially excluded certain types of borrowers on Facebook for marketing, and I am happy to talk about this with you further. We also know about redlining. So, there may be places where you carve out certain geographies that can impact your liability under the fair lending laws or in certain cases, the fair housing law. So, I think it is important that we think about both human decisions and algorithmic decisions together across-the-board and understand that is part of the reason we brought on more technologists. We are trying to understand more of the data science because, especially when it comes to these Big Tech algorithms, it has huge implications.

Mr. BUDD. Thank you for your time. I yield back.

Mr. AUCHINCLOSS. The gentleman from Illinois, Mr. Casten, who is also the Vice Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. CASTEN. Thank you, Mr. Chairman, and it's nice to see you again, Director Chopra.

By happy coincidence, I would like to really pick up the thread that Mr. Budd raised, because when you were here last October, I had asked you specifically about this issue of digital redlining and what is going to happen if these algorithms are moving things around. And I am sure you saw the article this week that Facebook said that once you import all that data into their platform—your age, your race, your address, your income levels, your purchasing history—they can't even keep track of where all that data goes.

They just know it is all out there somewhere and being used by their own algorithms.

When I asked at the time whether you thought that those violated fair lending laws or potentially could, you said you were very worried about black box algorithms, and that we need to make sure firms cannot dodge fair lending laws and anti-discrimination laws under the guise of their secret algorithms. Quick follow-up: Since October, have you initiated any investigations or enforcement proceedings based on that? What is the status—

Mr. CHOPRA. Yes. I am not allowed to comment, especially on that specific entity, but here are a few things that have already started. One is that we have had a number of conversations across the industry, especially with smaller players. And what smaller players tell us is that they use Facebook, they use Google, and they use other services in order to reach customers, but they often don't really know how it is all working. I referenced the HUD complaint from a few years ago. Many of these firms are operating as service providers to many, many institutions. There are a lot of discussions across the regulators about many of these service providers, whether they be cloud providers or behavioral surveillance advertising platforms. So, it depends on the facts. In some circumstances, we need to look at what their role is. I think it is a place where a lot of financial institutions who want to comply with the law are worried. So, we are eager to hear from them too on that, how we can make sure that there is the right type of compliance and guidance on it.

Mr. CASTEN. If I could, and I understand you can't comment on ongoing investigations, but when we talked last time, this was specifically raised because of a lender in my district who said that they don't know whether they are in compliance with fair lending rules, and they couldn't get information from the Facebooks of the world. Setting aside what you are doing that you can't disclose on the record—

Mr. CHOPRA. Yes.

Mr. CASTEN. —do you have the authority? Can you see inside to see how those algorithms work? Can you get the data to actually understand what they are hoovering up, and how they are using that, because the only evidence that we have seen from here are internal whistleblowers. Do you feel like you actually have the authority to see inside those algorithms and get the data that would be needed to answer the questions?

Mr. CHOPRA. I am not really sure, to be honest, because I think what you see with a lot of algorithmic decision-making—and I have said this before—is that the algorithmic banking is different than relationship banking. With relationship banking, you have a lot more insight into how things work. With algorithmic banking, you may not necessarily even know why a decision was made, or why an individual was denied, or why an individual was not marketed to. That is a real challenge when figuring out this space altogether. I will share with you that there are some requirements under current law that require essentially an explanation as to what were the factors that were relied on that led to an adverse decision. I think it is not clear to me whether all of those algorithms are really able to spit out those reasons to comply with that.

Mr. CASTEN. Since that conversation in October, I have gone deep down this rabbit hole now, and I have introduced a bill with Congresswoman Trahan and Congressman Schiff, the Digital Services Oversight and Safety Act, because we, in talking with people, the concern was raised that you can't actually get in there unless a whistleblower comes forward. So, the idea of this bill is to establish a bureau within the FTC that would have the authority to conduct these investigations, issue content-neutral rules, and basically, subject to reasonable claims, go and investigate, and find out how the algorithms work. You have worn some hats at the FTC and at the CFPB, and I realize you are not going to comment on ongoing legislation, but I would be curious for your thoughts on whether that tool would be useful, would the FTC be the right place to house it, and any comments you might have about whether it would make it easier for you to assess this problem?

Mr. CHOPRA. Yes. The FTC, of course, is the blanket overseer of prohibitions on certain unfair commercial practices, deceptive commercial practices, but, of course, carved out of the FTC is banking, is airlines, is so many industries. So, it is something every department is confronting.

Mr. CASTEN. Thank you. I yield back.

Mr. AUCHINCLOSS. The gentleman from Tennessee, Mr. Kustoff, is now recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman, and thank you, Director, for appearing today. If I can go back to the questioning from Congressman Loudermilk several moments ago, you all were discussing overdraft protection. Just to clear things up, you were not suggesting that overdraft protection is subject to the Truth in Lending Act, were you?

Mr. CHOPRA. The Truth in Lending Act, essentially—I don't want to characterize it as a carveout, but it basically says what type of credit. It does not trigger a disclosure.

Mr. KUSTOFF. It is not subject to the Truth in Lending Act, is it, overdraft protection?

Mr. CHOPRA. It is not subject to the Truth in Lending Act disclosures, and the requirements, but it is mentioned in the Truth in Lending Act's Fed's rules.

Mr. KUSTOFF. Thank you, sir. And overdraft protection itself is not credit, is it? It is not credit that is subject to the Truth in Lending Act, correct?

Mr. CHOPRA. That is right. Yes, sir.

Mr. KUSTOFF. Okay. Thank you. I know you have had a number of questions about Section 1071, and I don't want to plow over old ground. If I can, from my perspective, like 434 other Members of Congress, I represent community banks that are in the district, good community banks, just like the other 434 Members. The issues relating to Section 1071 requirements, because you have been asked about it before, have you thought about a threshold for these institutions, so that they would not have to comply with Section 1071 reporting? A billion dollars for an institution, is that a reasonable threshold?

Mr. CHOPRA. And again, it was before I came, but there was a threshold put forth in the proposal. As I understand it, it was on a number-of-loans basis. I imagine there are many ways that Con-

gress has designed thresholds. Actually, in our Act, there is a threshold on bank supervision that is cut off as an asset basis if we should be considered a loan-volume basis, number of loans. I believe we received a lot of comments on that. I will also say, inasmuch as there are Members who are introducing legislation about exemptions, there is actually not a statutory exemption in Section 1071, so we—

Mr. KUSTOFF. It is subject to your interpretation though, isn't it, as Director?

Mr. CHOPRA. Sorry?

Mr. KUSTOFF. It is subject to your interpretation, isn't it, as Director of the CFPB?

Mr. CHOPRA. I am not sure that is the case. I think that actually, the section spells out that it is a kind of congressional determination. We did propose it—

Mr. KUSTOFF. Let me, if I can, reclaim my time and move on.

Mr. CHOPRA. Sorry.

Mr. KUSTOFF. Thank you. Mr. Budd asked you about a press release that you all issued on Monday, 2 days ago. This is the press release that you used to invoke previously unused legal authority to exercise greater supervision over non-bank financial companies. In the press release, under the transparency section on the second page, the CFPB announced that in a change with past precedent, it would no longer respect the confidentiality of exam proceedings, giving the Director authority to publicize the basis for opening an examination. I am going to take that concern, and I am going to ask you, wouldn't you agree that during a routine examination of a supervised financial company, that the CFPB, under its existing authority, and almost every regulator treats with confidentiality the proceedings between the regulator and the supervised entities to foster cooperation and collaboration? That is correct, isn't it?

Mr. CHOPRA. Yes, yes. And to be clear, I want to make sure that where we have sought comment is not to release kind of the examination or the examination findings. I think the purpose of what we were trying to accomplish and solicit input on is Congress set a standard of posing risk, and we want to be able to provide guidance on what that is going to mean after we make a determination. So, it is not necessarily making exam findings public. It doesn't have to do with that. I just want to make sure I clarified that.

Mr. KUSTOFF. Let me, if I can, ask you directly in my remaining time, wouldn't you agree that if that were suspended, the confidentiality of exams, that gives rise to the opening of exam and underlying information, in fact giving rise to that exam? Isn't that a correct statement?

Mr. CHOPRA. We have to absolutely protect the confidential supervisory process. There are extremely rare circumstances. Often, when it goes to litigation, it comes up, but I totally agree with you.

Mr. KUSTOFF. Thank you.

Mr. AUCHINCLOSS. The gentlewoman from Massachusetts, Ms. Pressley, who is also the Vice Chair of our Subcommittee on Consumer Protection and Financial Institutions, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Mr. Chairman, and Director Chopra, thank you for being here today. Your command of Constitution and

of the laws, and your command about that which is most important, the consumer, is clear. And after years of Republican sabotage, I want to commend you on your work to bring the CFPB back on the side of consumers. I also want to acknowledge your efforts to prevent unlawful medical debt collection and reporting.

One of the issues that I will lead on here is that of COVID long haulers, and given the millions of people living with long COVID, we certainly should not be placing any additional stressors or anxieties on patients and families. I was also really pleased to see the Bureau take action to investigate overdraft and other junk fees. As myself and others have consistently advocated, these fees reflect an abusive and predatory practice that punishes people simply for being poor. Seven major banks made over \$1.2 billion in overdraft and non-sufficient fund penalties last year, including those that have a history of consumer abuse. As numerous studies have repeatedly shown, these fees disproportionately prey again on our poorest consumers.

Director Chopra, in order to build on the Bureau's work thus far, what further steps is the Bureau considering to provide overdue relief to the millions of consumers facing financial hardship due to these junk fees?

Mr. CHOPRA. You raised medical debt, you raised fees, and you raised other issues. We are taking a hard look at whether it is appropriate for especially privacy reasons as well, that medical debt information should be included on credit reports. There is significant information to suggest that it does not really help with accuracy on credit determinations. We also want to make sure that there is a competitive market when it comes to all sorts of not just deposit accounts, not just credit cards, but all financial products. And people should be paying for services rendered and that they want, and also be able to compete upfront on what those costs are. Ultimately, we think it is a benefit to all financial institutions and to all consumers to have more competition and more accuracy on credit reports.

Ms. PRESSLEY. Thank you. And I think the banks have certainly proven that they can't be expected to voluntarily reform themselves, and so legislative intervention really is sorely needed. Another area of concern that we have seen emerging is the rise of Buy Now, Pay Later. I know Representative Axne raised it earlier regarding the predatory practices of many of our for-profit colleges and universities, but we have seen this when it comes to payment credit plans. The number of consumers who have been using a Buy Now, Pay Later product, especially through e-commerce, has really grown, in fact by 300 percent since 2018. Recent reports show significant risk to consumers who may not know how this can potentially hurt their credit score or lead to hidden fees and exorbitant interest payments.

Director Chopra, what steps is the Bureau taking to ensure that these companies are operating with transparency and accurately disclosing fees and charges to consumers of these products?

Mr. CHOPRA. Yes. There are certain types of products that have not been subject to the normal disclosures that other financial products are, so we have actually issued a set of orders to the Buy Now, Pay Later companies, the larger ones. I would characterize it

as we are in question mode. I think that Buy Now, Pay Later has actually provided a great service for many people, but there are also some pitfalls. How is the credit reporting going to work? How is the handling of data going to work? There are a number of questions that we need to make sure that we understand so that we can make sure that the market is working fairly and transparently.

Ms. PRESSLEY. Absolutely. And just given the evolving nature of this space and the potential risk to consumers, it really does require the Bureau's ongoing and diligent work. I thank you for your attention in that regard, and I yield back.

Mr. CHOPRA. Thank you so much.

Mr. AUCHINCLOSS. The gentlewoman yields back.

The gentleman from North Carolina, Mr. McHenry, who is also the ranking member of the committee, is recognized for 5 minutes.

Mr. MCHENRY. Thank you, Mr. Chairman. Director Chopra, thank you for being here. I wrote you back in December. I had requested the Bureau preserve documents related to the FDIC matter that you have discussed earlier today. That request also covered any communications on your personal email accounts, and the Bureau delivered an initial set of documents on Monday night to staff here on the Hill, to our committee. It is fair to say those documents raise new questions, but we will get into that. One of the things that is really coming into focus is the fact that during the relevant period, you had email accounts at the FTC, at the CFPB, and at the FDIC. Is that correct?

Mr. CHOPRA. No. Actually, we were supposed to be provided an FDIC email account, but I think we were never provided it until recently.

Mr. MCHENRY. Oh, okay. So, which account did you use?

Mr. CHOPRA. The account I used is my CFPB account.

Mr. MCHENRY. Okay. Any personal email account used for business?

Mr. CHOPRA. No, no.

Mr. MCHENRY. None?

Mr. CHOPRA. No.

Mr. MCHENRY. Okay. Any messaging apps?

Mr. CHOPRA. No, I comply with all of the requirements under FOIA, the Records Act, everything, and they should all be there.

Mr. MCHENRY. Okay. But there is no messaging app or texts related to this in the documents we got, so if you use text—

Mr. CHOPRA. If I receive anything to a personal device, what we do is we move it to a government server so that it is preserved. I have been in multiple agencies. This is what we do.

Mr. MCHENRY. And the same for texts?

Mr. CHOPRA. Yes. It is hard sometimes to forward it, but you create a record for it.

Mr. MCHENRY. It is complicated, yes, but you have the best technology of any government agency at this point. So, we just want to make sure since there were none provided, of texts or personal emails, that that was, in fact, the case?

Mr. CHOPRA. Yes.

Mr. MCHENRY. Okay. We have a number of things that we want to raise with you, but we have a limited amount of time. You have had 49 press releases since you became the Director. It is an im-

pressive rate, even for a State Attorney General, and they cover everything from your priorities and major initiatives, and you telegraph your actions through speeches as well. Why didn't the CFPB issue a press release announcing the interim final rule issued on February 22nd, which changed the rules practice for adjudicating proceedings? It seems like a substantial thing.

Mr. CHOPRA. You are right. There should have been a blog or a press release on that.

Mr. MCHENRY. Why didn't you?

Mr. CHOPRA. I actually thought that was going to be the case, but you are right, I would change that.

Mr. MCHENRY. Okay. Typically, the interim final rules are issued when there is good cause to issue the rule immediately without putting the rule out for comment. Why did you go to that procedure here?

Mr. CHOPRA. This is a procedural rule. It actually doesn't even require a comment. And one of the things that was important about this is: first, making sure that the procedures are constitutional; and second, that they are fair. And what we did immediately is, respondents being defendants in this case, take depositions, have access to information. It also makes the process for them to go quickly to judicial review. We have not issued any complaints under this process, so it is a little bit theoretical right now, but we have received comments from it. We will not issue any complaints until we look at those comments. And we still expect that Federal court will be the primary way, overwhelmingly, in which we will do enforcement actions, contested actions.

Mr. MCHENRY. You describe this as basically giving defendants more rights, but, in reality, you have internal adjudication now. You are basically taking this in-house in a way that the courts have ruled unconstitutional for the Securities and Exchange Commission. So, this is a power grab, as viewed by many that are under your remit and regulation. Why not put it out for notice and comment? And I understand, you have the power as Director to do enormous things. I get that. I understand. But to do that according to notice and comment rules that have been longstanding and that bind other agencies, I think, is the proper thing to do.

Mr. CHOPRA. Okay. That is a fair point. I do want to be clear, though, that actually the issues that were identified with the SEC, the staff actually looked across-the-board at all agencies, so this is not a new administrative forum. It is the same one. But you are right; you have to make sure it is constitutional.

Mr. MCHENRY. But it is new powers, and that is my point.

Mr. CHOPRA. Sorry?

Mr. MCHENRY. It is more power, and it is new power.

Mr. CHOPRA. If I could, I actually don't know if that is true. I actually think—

Mr. MCHENRY. We don't know it is true because you didn't allow notice and comment. That is my point.

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

Mr. CHOPRA. I will tell you—

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

Mr. CHOPRA. —if it was favorable, we would not be bringing all of these actions in Federal court.

Mr. AUCHINCLOSS. The committee will stand in recess for 5 minutes.

[brief recess]

Mr. AUCHINCLOSS. The gentleman from New York, Mr. Torres, is now recognized for 5 minutes.

Mr. TORRES. Thank you, Mr. Chairman. Director, it is good to see you. There are Federal regulators such as the SEC and the CFPB that have a practice of allowing corporate bad actors to enter into settlements and pay a fine without ever admitting wrongdoing. And the truth is often a casualty of neither admit nor deny settlements, which essentially protect corporate bad actors from the reputational consequences of their own bad behavior. I raised the issue with you back in October for the first time, and I am wondering, in the 6 months since then, have you taken any action to remove or reduce or otherwise reform the practice of neither admit nor deny settlements?

Mr. CHOPRA. There are two issues. One, there are no settlements that we are doing that have denials. Certainly, there have been some with no admit, no deny. I think what we are weighing is what is the tradeoff between getting help to consumers, getting the order done, versus all of the issues that are related to a litigation, in order to seek that. One of the things that I recently spoke about is the issue of institutions that repeatedly break the law. And that is an area where I do think admissions is potentially going to be more part of the process or specific findings of wrongdoing, because I think when you have repeat bad actors, it is clear that sometimes there needs to be, for the sake of justice, a formal court determination or a formal legal determination that the entity agrees to.

Mr. TORRES. So, you are moving in the direction of treating repeat offenders differently?

Mr. CHOPRA. That is right, yes.

Mr. TORRES. Okay. It has been 11 years since the passage of Dodd-Frank, which provides the statutory basis for Section 1033. It has been a year-and-a-half since the advance notice of proposed rulemaking in Section 1030, and it has been nearly a year since President Biden's Executive Order directing the CFPB to implement Section 1033. And yet, in spite of it all, a Section 1033 rule has not yet been implemented. And so I am wondering, is there a deadline for implementation? How much longer must we wait?

Mr. CHOPRA. I know. I am as frustrated as you. When I arrived, I was surprised to see how little progress had been made. It is one of the most important rules that the CFPB can do. It is something that Congress wants us to do. I wish I could give you a discrete timeline, but I am prioritizing the rulemakings that have been required by Congress. This rule in particular has the ability to open up consumer opportunities, financial institution opportunities. At the same time, there are some tough issues in it related to data privacy, especially. An institution is going to be able to go and grab consumer's data and then sell it or share it or resell it, so it is not—

Mr. TORRES. Do you have any timeline at all or—

Mr. CHOPRA. The hope is to get the next step done within a year. I don't know when the final implementation will be, but it is certainly a top rulemaking—

Mr. TORRES. Well, I will ask you bluntly, if you fail to get Section 1033 finalized by the end of President Biden's first term, would you consider that a failure?

Mr. CHOPRA. I would not be happy, and, yes, I would almost agree that would not be a good sign at all.

Mr. TORRES. On March 6th, and I hope I can squeeze in this question, The New York Times published an article with the following headline, "Fraud Is Flourishing on Zelle. The Banks Say It's Not Their Problem." Did you read this article?

Mr. CHOPRA. I am familiar with the issue. I don't know about this specific article, but probably.

Mr. TORRES. The New York Times tells the story of several victims, including a man by the name of Justin, who lost \$500 to a sophisticated scammer pretending to be a banking official. The scammer sent a text that seemingly came from the fraud department of Wells Fargo, and the scammer actually called the victim from a phone that a caller ID flagged as coming from Wells Fargo. And as a result, he was successfully scammed because he reasonably thought he was transferring his money to a bona fide bank employee. My understanding is that if a transaction has an unauthorized user, a fraudulent user, a bank, as I understand it, is required to reimburse a customer for losses. Is that a correct understanding of the law?

Mr. CHOPRA. That is right. I want to be careful not to comment on this specific situation, but, generally speaking, Regulation E provides the fraud protections.

Mr. TORRES. Now, what about the case cited in The New York Times article? What if a transaction has a fraudulent receiver rather than a fraudulent user? Is a bank then required to reimburse a customer for losses? Should a bank be required to do so?

Mr. CHOPRA. We will answer that question for the record. I am being especially careful because there is a specific entity you are referring to. But I am on board generally that we need to make sure that these payment systems, especially peer-to-peer, that fraud is piling up and it is a major problem, including for service members and seniors, and it is high on our radar.

Mr. TORRES. I see my time has expired.

Mr. AUCHINCLOSS. The gentleman from Indiana, Mr. Hollingsworth, is now recognized for 5 minutes.

Mr. HOLLINGSWORTH. Director Chopra, and Mr. Torres, I really appreciate that back and forth because Mr. Gottheimer and I have worked really hard on several pieces of legislation trying to combat fraud, especially against our seniors. It is becoming more and more rampant, and the stories that are told, especially to my district case workers, are horrific about individuals who have lost their life savings due to these very, very sophisticated fraud schemes to which Mr. Torres alluded.

I wanted to ask about something more specific that you said yesterday, which surprised me, and that I hope is not a disquieting statement of belief, but perhaps a flippant quip. You said in response to some questions at the Senate Banking hearing, "I am not sure there is really a balance between consumer protection and others." The others, I think in this, refers to expansion of consumer access to products, financial innovation in products. But I won-

dered if you might very specifically, but also very succinctly, talk a little bit about how you view consumer protection also being aided by financial innovation and the expansion of financial products to those who don't currently have access to them.

Mr. CHOPRA. Yes, sure, and I have been testifying for many hours, so I hope I remember it right. But what I think I was trying to articulate is that I don't necessarily know that it is always a tradeoff between innovation and competition, and consumer protection. I think there are many ways that actually everyone benefits, especially when there are some newer technologies being used, you can use them in different ways that are good for the institution and good for the consumer.

Mr. HOLLINGSWORTH. So, you would say that you recognize that financial innovation is an important part of long-term consumer protection, being able to lower costs of delivery of products to consumers, being able to lower the cost to consumers, being able to give them more access to those products? Those are important aspects of consumer protection in the long run.

Mr. CHOPRA. Yes. I think consumer protection has a lot of features, and one that Congress has spelled out is being fair, transparent, and competitive. Across-the-board, it is certainly true that technologies can help to do that. And I think you want more. Yes.

Mr. HOLLINGSWORTH. As you have these internal discussions about policymaking and the press releases that come out, you are really thinking about how this might have a deleterious impact on innovation or a deleterious impact on the expansion of access to financial products, not just on some of the near and present and seemingly perhaps more urgent, if not perhaps less important aspects of consumer protection?

Mr. CHOPRA. I am happy to discuss this further with you. I think we try our best to make sure that entities, especially smaller ones and nascent ones—it can often be hard to directly engage them. They don't necessarily have people in Washington, but we try and make sure when lawyers might be scaring them, to be able to give them some facts about the scope of what is happening, and also to figure out what are the barriers that they are facing in order to challenge the status quo, in order to raise capital, in order to use new technologies and no agency is perfect. But I have really pushed us to really make sure we don't just have lawyers. We have technical talent, we have a diversity of skills, especially that understand this intersection between technology, the capital markets, and consumer finance.

Mr. HOLLINGSWORTH. There is a great amount of recognition that over the last 70 to 100 years, this country has continued to see costs to financial consumers go down. Some of that is due to innovation. And as you continue to think about what comes out of your office, are you going to be focused on ensuring that we don't have too much of a deleterious impact on that innovation over the long run?

Mr. CHOPRA. Yes.

Mr. HOLLINGSWORTH. We want consumers to have access to a wider variety of products and for them to be able to choose the products they want, and for those products to be delivered at a lower cost and perhaps even at a faster pace than ever before.

Mr. CHOPRA. Yes, my sense is that we are right at a moment when the future could take very different paths. And I think one path is that it could be dominated by a very small set of firms or Big Tech firms, big Wall Street firms, or we could do what has seemed to work best in a lot of sectors, which is a very, very diverse ecosystem of big, medium, small, and especially new firms that are entering. So, that is something that we think about a lot.

Mr. HOLLINGSWORTH. Well, when I talk with a lot of those small firms, they live in fear of the CFPB, not live in hope that the CFPB will be their savior. And I want to make sure that you are thinking about those smaller firms, those nascent technologies, those things in their infancy today that could become very important to consumers in the future and not foreclose upon any of those technologies going forward.

And with that, I will yield back my time.

Mr. AUCHINCLOSS. The gentleman from Massachusetts, Mr. Lynch, who is also the Chair of our Task Force on Financial Technology, is recognized for 5 minutes.

Mr. LYNCH. Hi, Mr. Chopra. Thank you very much for all your great work. I do want to follow up on Mr. Torres' line of questioning. As you know, we are concerned about consumer financial data, not only the permissioning of that data and how it might be shared, but also letting consumers know what is happening with their data when they participate on these platforms. I know we have a rulemaking that is pending on Section 1033. I won't press you on a deadline. I know you are doing your best in that regard. But I would like to get some direction, some sense of where we are going with that sort of as a benchmark. I don't want to wait until the next time you are before this committee to ask you about this very important piece of rulemaking, because there are a number of Members on both sides of the aisle here who are putting forward legislation, and what you do with that rulemaking will have a lot to do with whether we are in harmony with the guidance issued by the CFPB.

Mr. CHOPRA. Here are a few principles I can share. A couple of goals are we want to make it easier ultimately to switch, to be able to shop, to find a product and switch. We also want to make it easier for small firms, including community banks and startups, to be able to reach new customers with new products. I think at the same time, we don't necessarily want to create a market where there is an underworld of data exchange, where people can grab your data and then sell it. That is actually what you see in other jurisdictions. There are some worries about that. We also don't want to create a haven for scams, and especially what Congressmen Hollingsworth and Torres mentioned about some of the scams we are seeing, especially on payment transfers, that is something we want to avoid.

I do think it is important that we figure out how to get the data sharing and data privacy aspects right. And I think inasmuch that we can create a framework where people can participate without feeling like they are handing over everything and then everyone will know about it, those are the goals that I have set.

Mr. LYNCH. Okay. Now, let me move to the issue that Mr. Torres raised around Zelle. According to The New York Times article, and

the reporters did a great job on this, Stacy Cowley and Lananh Nguyen, in the March 6, 2022, article, which is entitled, "Fraud Is Flourishing on Zelle. The Banks Say It's Not Their Problem." According to the article, there were 19 million Americans who were defrauded through wallets and financial platforms. And we have a hearing tomorrow in this committee on digital wallets and the security surrounding them.

What could the CFPB do? I know you did issue a guidance that I think got the attention of a lot of the banks, because they own the company that is actually handling that security, so there is responsibility in principle on the part of the banks, but also the fact that they own the company that is responsible for security. What can the CFPB do to protect our consumers?

Mr. CHOPRA. Certainly, as faster payments become more widespread, whether it is through private technologies or through systems like FedNow, it is true that in jurisdictions across the world, fraud and errors become a much bigger issue. Complaints go up and often people are out a lot.

There is currently the Electronic Fund Transfer Act. Congress passed this to get those balances right about fraud protection, about getting errors resolved, about consumer rights, where to place the liabilities to make sure that people are protected from theft and hacks. So, there is currently that law that exists. And inasmuch that you think there needs to be further rulemaking or clarifications, we have set up a process for people to be able to petition for rulemaking on topics like this. So, I take this very seriously. Especially, we want an instant payment system. We don't want people to fear it if they feel like they won't have the same rights—

Mr. LYNCH. Thank you. And I just want to end by saying we would like to be informed on this committee about that rulemaking process on 1033. There have been long periods of silence, not your fault, but we need to be kept up-to-date during that process. So, it would be great if we had some interim updates as you move forward with that rulemaking. Thank you.

Mr. CHOPRA. Understood.

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

Mr. AUCHINCLOSS. The gentleman from Tennessee, Mr. Rose, is now recognized for 5 minutes.

Mr. ROSE. Thank you. Thanks to Chairwoman Waters and Ranking Member McHenry for holding this hearing, and thank you, Director Chopra, for being here today. A lot has happened since the last time you testified, and as my time is limited, I want to go ahead and dive right in.

We have talked a lot today about your request for information on, "junk fees," which you have now defined for us as fees that do not correlate with the underlying cost of products or services offered by financial institutions. Director Chopra, is that a fair assessment of your understanding of what junk fees are?

Mr. CHOPRA. No, I think again, a junk fee is an experience by so many consumers. Each of them may have a different experience. The way I often hear about it is, it is a fee for a service that you didn't even ask for, you didn't necessarily want, or a fee, for example, that doesn't feel like it is subjected to the competitive process,

and that it is way in excess of really what a normal market would provide. I will give an example. A big area we hear is so-called pay-to-pay fees, where you have to actually pay a fee in order to pay, and that fee is sometimes way out of line with what people would typically expect. We have also seen payoff statement fees, where you have to pay a significant fee to know exactly how much you are supposed to pay, to pay off an amortizing loan.

Mr. ROSE. Okay. It still seems to me that in a competitive marketplace, competition will ultimately weed those things out, and if we try to substitute regulation for competition, it seems problematic. And I am wondering, would you consider requesting public comment on junk regulations or, as I might define those, regulations in which the costs do not outweigh the underlying benefits?

Mr. CHOPRA. Yes. We actually have solicited comments as part of an assessment of rules. We have actually changed our procedures to allow anyone to submit a petition for rulemaking, and that will be posted so that the public can put comments in. It is much more open and accessible. So, I will share with you that you are right, competition is one of the best ways to help them deliver good outcomes. Here is the challenge: There are many cases where consumers don't get to actually choose the provider they are working with. This is common, especially in loan servicing, but it is also true in credit reporting, collections, and other markets as well.

Mr. ROSE. Director Chopra, on December 22, 2021, FTC Commissioners Noah Phillips and Christine Wilson, both of whom you served with at that Agency, penned an op-ed in *The Wall Street Journal* following your attempted coup at the FDIC, the title of which was, "Remember 'Norms'? This Biden Appointee Doesn't." The Commissioners wrote that they were dismayed by your conduct, but not surprised. They stated that your routine public interrogation of terrified FTC staff, your disregard for bipartisan norms and traditions, and your willingness to distort both law and fact eroded the tradition of bipartisan engagement in a way that even Democrats lamented. Commissioners Phillips and Wilson wrote that your actions undermine the credibility and integrity of the Agency, its missions, and its initiatives.

Director Chopra, could you explain what actions you took at the FTC that led to such a stark rebuke from your former colleagues?

Mr. CHOPRA. There were significant disagreements we had on a number of major policy issues and law enforcement actions, whether it was the Facebook settlement, the YouTube settlement, and others. I am disappointed that some of my colleagues have not embraced the rule of law and following Agency procedures. I have disagreed with my FTC Commissioner colleagues about laws that Congress passed and asked the Agency to do, and some believed, across multiple Administrations, that we should just ignore them. So, yes, I have had disagreements with Democrats, I have had disagreements with Republicans, but I have also had a lot of agreement with Republicans and Democrats, too. There are different things that we agree on. We don't always fall on one side. And I will tell you, we have the utmost respect for all of the civil servants who work at our agencies.

Mr. ROSE. Thank you. I see that my time is about to expire, Mr. Chairman, so I will yield back.

Mr. CASTEN. [presiding]. The gentlewoman from Michigan, Ms. Tlaib, is now recognized for 5 minutes.

Ms. TLAIB. Thank you so much, Mr. Chairman. Director Chopra, thank you so much for CFPB's workaroud. I know the study came out in regards to medical debt, and that we know now over 20 percent of our neighbors across the nation are facing the harms and impact of having medical debt on their credit report. Last month, as you know, Equifax, Experian, and TransUnion announced that they would be making some changes, slight changes to the reporting of medical debt, but it does remove nearly 70 percent of medical debt from credit reports. And again, I think they capped it of which dollar amount and things like that.

Some of my folks who were diagnosed with cancer or have major surgeries, and again, these are medically necessary procedures—it is a small victory for many of my neighbors and advocates who have been pressuring the predatory debt collection and credit reporting industries to protect patients instead of their bottom lines. And so, I applaud that kind of action, but this change can easily be reversed and undone, right? And so, Director Chopra, what steps can or is the CFPB doing to ensure that these changes can be permanent and maybe to be able to continue expanding on them?

Mr. CHOPRA. Yes. To be candid with you, we are looking at whether it is appropriate and lawful to include this information at all. We also think that the level of inaccuracy on credit reports, and by the way, our country, I do think, is shifting toward this sort of social scoring world, and the fact that you get sick is not supposed to predetermine the rest of your financial future. So, I think we have to take a hard look at what our authorities are, in terms of whether this should be restricted altogether.

We are talking to people in the healthcare industry, and we are talking to the financial industry about it. But I am worried that when you get sick and you are dealing with a billing dispute or stuck in a doom loop with the insurance company and the provider, that you might lose out on an employment opportunity because of a credit check or a tenant screening check, or even a loan.

Ms. TLAIB. I can't agree more. Between the confusing reimbursements, to OPAC billing, and the increasingly high cost of healthcare, a single, unexpected trip to the hospital can set one of my neighbors back for years, again, due to medical debt. Often, patients are caught in the middle in disputes between hospitals, insurers, and collectors. What steps, and it sounds like you might have touched on this, is the CFPB taking to ensure that furnishers do not contaminate the credit reporting system with inaccurate reports? And it sounds like you all are moving in that direction. Should these credit agencies cut off access to repeat offenders as well?

Mr. CHOPRA. Yes. I think there is this major question about what happens when there is inaccurate data by a furnisher that is constantly being furnished.

Ms. TLAIB. That is right.

Mr. CHOPRA. At what point do they need to just be cut off? There is a law, the Fair Credit Reporting Act, that governs some of this. There are supposed to be reasonable procedures to ensure max-

imum possible accuracy. But I worry that the credit reporting system is sometimes used as a vehicle to coerce people into paying debt that they don't owe or that they already paid.

Ms. TLAIB. I don't know if many of my colleagues know this, but I am also concerned because healthcare providers are often now providing our patients, our residents with applications for medical credit cards or other financial products to pay for their healthcare. So between, when the patient puts the medical debt on their credit card or finances the debt in some other way, and I have heard horror stories about this, they may lose out on legal protections from medical debt and may also lose the opportunity to negotiate with the provider about the amount and terms. Director, has the CFPB incorporated or thought about other financial products such as credit card debt, analysis on medical debt? If so, what are some of the findings that you would like to share?

Mr. CHOPRA. Yes. We are early in thinking about some of this, but we do know that there is growth in the use of certain medical, I would say, credit instruments. We see that in some places. It is used in particular areas—cosmetic surgery, dentistry. I don't know exactly, but we are happy to follow up with you. But, yes, I do worry that illness is creating cycles of debt that people get pushed down and can't get back up from.

Ms. TLAIB. I cannot agree more. Finally, many low-income patients are frequently not screened for eligibility or notified of the availability of financial assistance. As a result, medical debt should be forgiven or covered by hospital financial programs, so they are not aware of it. Oh, I am sorry. Okay. We can ask later.

Mr. CHOPRA. We will take the question for the record.

Ms. TLAIB. Yes. Thank you so much.

Mr. CASTEN. The gentleman from Ohio, Mr. Gonzalez, is now recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Mr. Chairman, and thank you, Director. It's good to see you. I want to start with the distinction between algorithm lending and banking, and relationship banking. I think you have stated a number of times, or at least implied, that relationship banking is better per se. Am I putting words in your mouth or would you agree?

Mr. CHOPRA. No, it is more that you need to use both, and I wouldn't want to see the relationship banking option get totally eliminated. There are strengths of relationship banking and I worry that it is fading away.

Mr. GONZALEZ OF OHIO. Okay. I think that is fair. And for what it is worth, it felt like at various points that the distinction was being made to attack algorithmic banking in favor of relationship banking. I think there should be options. I think the goal should be to provide as many options as possible. And if algorithmic banking isn't providing services, isn't providing loans to folks who either can't get them around better terms, then why wouldn't we want algorithmic banking, I think is sort of the perspective that I have.

One thing I hear a lot of is the bias issue and that is obviously something we should all be thinking about and should have on our minds. I am curious. In a world where 22 percent, according to the Fed in 2019, 22 percent of Americans are unbanked or underbanked, is there any evidence that suggests that algorithmic bank-

ing would make those numbers worse or is it just a supposition at this point?

Mr. CHOPRA. Again, let us distinguish—I think maybe we should use the term, “human-only” or “algorithm-only.” The truth is it is probably good when it is both, when there is some human dimension to it because when you do get that, you can get the benefits of both. And obviously, data analysis technology has the ability to do a lot, including to expand.

Mr. GONZALEZ OF OHIO. Right.

Mr. CHOPRA. But we also all want to make sure that we don’t have situations like we have seen where those algorithms don’t really have any explainability about the decisions that are made, because that can cause problems.

Mr. GONZALEZ OF OHIO. And I think relationship banking only has proven throughout our entire history to have enormous problems. It does a lot of good. I am not saying it doesn’t. But with respect to redlining and over-discrimination that we have seen over many, many years, when it is just humans, I think, we have always seen and known that is why the laws exist, to prevent these sorts of things, that can go sideways, right? So, I am happy to hear that you see it as both, not either/or, but both/and. And I look forward to seeing work that suggests that is true.

I want to talk about 1071 for a second. I know it has been touched on. Complying with 1071 will be harder for small lenders as they have less staff to record compliance, and submit the data the CFPB is asking for. Do you believe 1071 will increase the cost of small business credit or put an undue burden on some of the smaller lenders in my State of Ohio?

Mr. CHOPRA. Sorry. There is background noise. I think the question—

Mr. GONZALEZ OF OHIO. Do you believe that it will increase the cost of credit to small businesses?

Mr. CHOPRA. It is hard to speculate because the cost of credit is obviously going to be driven by capital markets conditions, interest rates, and other things. But, yes, I am sensitive to the idea that for smaller creditors, when they have costs, they have to meet return-on-equity thresholds. They have to make—

Mr. GONZALEZ OF OHIO. And they have to push them somewhere, right?

Mr. CHOPRA. And so, I think that the challenge is, obviously we want to make sure we are meeting the congressional objective, just like the Home Mortgage Disclosure Act. There is this requirement. We need to get it done. And, again, if there are concerns about if you are looking to draft exemptions, we are happy to provide technical feedback to you, but we are under a court order to make progress on this, and so we are trying to do it in a way that adheres to the law and the order.

Mr. GONZALEZ OF OHIO. That’s fair, and I hope progress means more options for small businesses and more of my smaller lenders being able to participate in the market, because I think it would be an absolute tragedy if, as a result of 1071, we all of a sudden are now freezing small businesses out of the market or increasing the cost of capital. And I agree there are other factors, but holding

all of those constant, if you increase cost, the cost has to be priced in somewhere.

Mr. CHOPRA. Yes, and I think part of what I have been asking is what are the ways in which we can move toward more simplicity. Of course, sometimes congressional requirements are challenging, but also looking at how to use technology to make the reporting easier. It doesn't have to be in paper form, all of that, so I take your point seriously.

Mr. GONZALEZ OF OHIO. Thank you. My last comment is about junk fees outside of normal market forces. People feel like they don't make sense. You are paying for things you don't want. Can you please turn that on the Tax Code and some of the things that we are spending money on at the Federal Government level, because I think a lot of us think that is junk, and I would love to see those go away—

Mr. CHOPRA. And to be clear, that is on you, but I hear you loud and clear.

Mr. GONZALEZ OF OHIO. Yes, I hear you. Thank you.

I yield back.

Mr. CASTEN. The Chair will note that there is no waste on this committee and the illustrious Members who serve here.

The gentlewoman from Georgia, Ms. Williams, who is also the Vice Chair of our Subcommittee on Oversight and Investigations, is now recognized for 5 minutes.

Ms. WILLIAMS OF GEORGIA. Thank you, Mr. Chairman. A lot of folks watching today don't have banks knocking down their doors to give them loans, and I know exactly what that is like, because I have been unbanked. I have lived paycheck to paycheck as a public school educator, trying to figure out how I was going to have the money in time to pay my rent and my bills, and to this day, I remain strapped by student loan debt. My hard work and determination to achieve the promise of America hasn't always been reflected in my credit score. I am lucky to have been able to buy a home and get ahead. And now, as a Member of Congress, I am determined to open the door to financial inclusion wider so that everyone seeking the promise of America can walk through it. One way that we can do this is by ensuring that mortgage lenders consider alternative data not found in traditional credit reports so that everyone has the opportunity to put their best foot forward when it comes to getting a home.

Director Chopra, I understand the Consumer Financial Protection Bureau is planning to collect alternative credit data like this. Can you tell us a little bit more about this effort and what you hope to learn about the value that the inclusion of such information may provide to marginalized consumers working hard to get ahead?

Mr. CHOPRA. I don't think we have any specific collection of data going on. But it is obviously an issue that we think very closely about, how can we get data and lenders use data that are reasonable approximations for whether they can repay a loan. Often, looking at those characteristics will allow people to change their underwriting models. In some cases, it is about different income streams that they might be having. In some cases, it might be about their rental history or other histories where they have made good on

their obligations, and it will help them get access and affect underwriting. So, we think hard about this. At the same time, unchecked use of data without transparency may have other consequences, and I know a lot of lenders are thinking carefully about that as well.

Ms. WILLIAMS OF GEORGIA. I have legislation included in this hearing that will task mortgage lenders with considering additional credit information at the request of the mortgage applicant. And to me, this is a win-win. A truly reflective mortgage application is valuable for both consumers and lenders. So, how could giving consumers the chance to point lenders toward additional information, such as positive rental payments, help lenders to understand the true creditworthiness of an applicant?

Mr. CHOPRA. Yes. Many lenders actually do invite that information because some people's credit histories may be fairly unique, or they may have various nuances in their life. We are happy to discuss that further with you, if you would like us to provide any technical feedback on it. I will tell you that the industry is definitely innovating and evolving about how it considers its underwriting process. Obviously, market conditions are changing for many people. Homeownership is feeling out of reach because of high prices. And so, obviously, how that intersects with the mortgage markets is extremely important.

Ms. WILLIAMS OF GEORGIA. Thank you. Another big part of ensuring mortgage applications reflect the applicant is making sure that their hard work, not just their hardship, is reflected. And right now, when a borrower goes through the hard work of rehabilitating a defaulted Federal student loan, the default technically goes away, but a lot of the associated adverse information stays, so that is really not a true second chance. Along with Congresswomen Alma Adams, Deborah Ross, and Haley Stevens, I have introduced the Clean Slate Legislative series. The three bills included will remove default-related information once the student borrower rehabilitates, consolidates, or repays their defaulted Federal student loan. The affected borrowers have done their incredible work to repair a defaulted student loan. How would giving them a true second chance facilitate fairer outcomes in their future loan applications, including mortgages?

Mr. CHOPRA. Yes, you are right. There is this rehabilitation program, I believe, that Congress established in Federal student loans. I don't know the status of it in other products, but I think there are a few pieces of this. It is not just what is in your credit report. There is also what is reflected in your credit score. And when information is deleted, we don't necessarily know if it impacts the credit score, depending on which reports that scores are using. I think this issue is really challenging. And again, we are happy to provide feedback to you, as you think about what you would like to propose.

Ms. WILLIAMS OF GEORGIA. Thank you, and Mr. Chairman, I yield back the balance of my time.

Mr. CASTEN. The gentleman from Ohio, Mr. Davidson, is now recognized for 5 minutes.

Mr. DAVIDSON. Thank you, Mr. Chairman. I also thank our colleagues. And, Director, thank you for coming to testify before us

today, one of the limited connections to Congress that the CFPB still has. And hopefully, we will change that. The burden is on our body to do that, not you, but certainly you could cooperate a little more. And I appreciate your exchange with Mr. Luetkemeyer and your offer to actually respond to some things that have been loose ends, and many of us have been co-signers on some of these letters. So, thanks for the correspondence and the commitment to continue the dialogue.

One of the areas that I have focused on significantly, because Congress hasn't provided legal clarity, is digital assets. I saw that as a big void. And go back to the ICO market. You would think that in the midst of that, Congress would weigh in and provide some legal clarity, and Congress still hasn't. We have had legislation since 2018 to make it clear that if you are, in fact, a security, then you have to submit to U.S. securities regulations. And really, if something is a security, we would want the SEC to be vigorous in their enforcement. There are many things that I think, broadly, people will look at and say that is a pump-and-dump scam and investors are being harmed. That is really the SEC's jurisdiction. They have been very selective about it.

And I guess I am just curious how you perceive consumer protection, and the role that you see for the CFPB in digital assets?

Mr. CHOPRA. It is interesting. I think people talk about digital assets solely as blockchain-based technologies, and maybe that is the right definition for it. I think our focus has been a lot on digital payments. Unfortunately, the U.S. is quite behind China and others when it comes to fast, instant, real-time payments, and so, there are laws that Congress has asked that we administer. And we have actually seen an uptick in complaints and issues related to fraud and scams in this area, so it is obviously something we worry about. We are studying how the Big Tech companies are entering the payments area with respect to, I think your question about digital assets, if I am understanding it right.

The Treasury Department and others, I believe, submitted a report about a payments working group, but we were not a part of that. It does lay out, I think, some frameworks. And I know there are open discussions about bank-intermediated versus other places for it. Certainly, technology is changing payments. It is something I pay close attention to, but hopefully, that is responsive.

Mr. DAVIDSON. Yes, somewhat. It doesn't sound like you have a very well-defined area that you plan to focus on. And look, there is a need for it, and I guess the concern is really that Congress needs to provide the clarity here because people continue to have the debates. And I think the other thing is, you have seen selective enforcement, and of course, we have seen that it has certainly been characteristic of the CFPB in the past, but hopefully never again. And I think the concern is when you take a dormant authority and just come in and say, yes, we are going to use that, and then you combine it with something that recently happened: administrative law judges.

We have had legislation in the past that really seeks to curb this practice, because a lot of people feel that it is abusive and coercive because, in the SEC's case, I think they win, like, 96 percent of the cases that they bring, so everyone just settles, because the judge

actually works for the SEC. So, there is not really a feeling that there is real due process there. And the CFPB recently fought to try to get administrative law judges. So, what is your view on that and on selective enforcement?

Mr. CHOPRA. Yes. I actually wouldn't characterize it that way at all. I think that the changes that we have made, first of all, it actually gives more due process, in my view, to be able to get orders reviewed, to be able to expedite through the process, and it gives the defendants more ability to take depositions. I still think, overwhelmingly, we are going to be filing cases in Federal court. I don't agree that the administrative forum is more friendly than Federal court to either party.

Mr. DAVIDSON. The thing is, the Federal agency has the authority to automatically just go to an Article III court, and so should the citizen or the corporation, they should have the same standing and say, you know what, we are opting out of this process, and we are going to go to an Article III court, not this administrative procedures path. So, we will have legislation that will deal with that, and we look forward to your interaction on digital assets in particular. Thanks for coming today.

My time has expired, and I yield back.

Mr. CASTEN. The gentleman from Massachusetts, Mr. Auchincloss, who is also the Vice Chair of the committee, is now recognized for 5 minutes.

Mr. AUCHINCLOSS. Director Chopra, thank you for being with us. I know it has been a heavy 2 days of testimony for you. I want to talk more about the issues raised by my colleague from Massachusetts, Mr. Lynch, and my colleague from New York, Mr. Torres.

Following consumer complaints directly to the CFPB, the Agency issued an Electronic Fund Transfer Act fact sheet to explain the Bureau's approach. It is on your website. Are you looking at other ways to provide protections to consumers and victims of fraud and scams?

Mr. CHOPRA. Yes. I would make sure it is clear that it is fraud, scams, but also hacks. A lot of people are losing out based on various breaches or hacks, and it is something that we are getting a lot of complaints on. As you know, the Electronic Fund Transfer Act and Regulation E provide the architecture for what is the responsibility of the financial institution when it comes to these issues. We obviously are monitoring this, and I think the guidance you may be referring to may have predated me. But certainly, if we want people to have confidence in our payment system, especially peer-to-peer and real-time payments, we need to make sure that people have similar levels of protection regardless of if they swipe a debit card or if they are using these services.

Mr. AUCHINCLOSS. And what steps should financial institutions and companies be taking if their consumers are repeatedly flagged as fraudsters in peer-to-peer payments? If they have evidence that there is repeated fraud, do they have specific steps outlined for them by the CFPB?

Mr. CHOPRA. That is not really a CFPB requirement, if I am remembering it right, and I am sorry if I am forgetting something. There are certain requirements under it, and it is sometimes referred to as Know Your Customer (KYC).

Mr. AUCHINCLOSS. Right.

Mr. CHOPRA. There are also some anti-money laundering provisions that are related to that. I know that many entities that do see patterns of fraud, will take certain steps. Obviously, it is important that they look for these trends, and we also look for these trends as well.

Mr. AUCHINCLOSS. Shifting gears to DeFi, you had mentioned earlier in this hearing that you take an activities-based rather than an entity-based approach to regulation, which I think, broadly, seems like the right approach. There is going to be a challenge here with DeFi in that there may not be any kind of incorporated body in which to actually target the regulations at or to address grievances with. And you don't have to comment now about your exact approach. I understand this is a nascent field. But I would encourage the CFPB and your peers to be thinking about how you do activities-based regulation when those entities, the corresponding entities don't exist.

Mr. CHOPRA. You are certainly right about that. I would say this. It is not a philosophy of activities-based versus entities-based. It is actually what Congress has set out. Our supervisory authority is for banks and other insured institutions over \$10 billion in assets, and there is a whole framework for how we supervise non-banks. There is a whole grouping of activities that are delineated of what is subject to our enforcement authority. But I hear you loud and clear that in the DeFi context, there may not necessarily be an entity.

Mr. AUCHINCLOSS. And I think I say this collectively as sort of the U.S. Government, Congress, and the Administration alike. We should not be penalizing these DeFi brokers who are not doing anything nefarious because there is a lack of clarity about the entity versus the activity. I think we need to be working with them rather than against them, and I'm not saying that the CFPB is not, but just as a statement of principle in this approach.

You had mentioned earlier in this hearing that you had a clarifying remark to an earlier comment. I want to give you time to—

Mr. CHOPRA. Oh, sure. Yes. Congressman Luetkemeyer had claimed that we did not provide a specific legal memo. My staff has confirmed that that was already produced. I thought that was true, but I can confirm that it was produced.

Mr. AUCHINCLOSS. Okay. And I also want to give you some time to discuss your distribution process of the FDIC documents about a memo with legal analysis.

Mr. CHOPRA. The FDIC staff drafted the RFI. We asked many times what is the legal justification for one board member being able to essentially ignore a supermajority of the board who went through all of the processes and precedent following statute and bylaws, and essentially got an answer of, well, because we say so. It is so important that Agencies follow the statute and bylaws of their governance structure, and it is quite clear that the actions of the board were valid.

Mr. CASTEN. The gentleman from Texas, Mr. Gooden, is now recognized for 5 minutes.

Mr. GOODEN. Thank you, Mr. Chairman. And thank you, Director, for being here.

Earlier this year, President Biden called on the DOJ to resume a controversial Obama-era policy that permits prosecutors to offer settlement agreements that result in defendants paying an outside group rather than a victim or the government. Following the financial crisis, the Obama DOJ used this practice to enter into quid pro quo settlement agreements that allowed banks to turn fines into donations, and, in some cases, to activist groups with a checkered record of benefiting consumers. I recently introduced H.R. 5773, the Stop Settlement Slush Funds Act, to prohibit the Administration and future Administrations from extorting companies to fund their partisan agendas and to put a stop to this corrupt practice. I think it is bad no matter who is in charge, and I would like your thoughts on that. And I realize I am probably catching you off guard, so while you compose your thoughts, I will tell you specifically what I am interested in.

I would like to know if you will commit today to ensure that any funds distributed out of this fund will go directly to victims and not unaccountable third-party organizations. What safeguards do you intend to implement to ensure the Civil Penalty Fund is equitably distributed among all States that want to increase compensation to victims and not just States controlled by various parties at the time? Do you know what I am saying here? Will you commit also to ensuring the Bureau continues to utilize the Federal procurement process for these programs, and to continue to post information about the process and the contract requirements as Civil Penalty Fund money becomes available for consumer education and financial literacy programs?

Mr. CHOPRA. You are catching me off guard, but I am glad you raised it. I have actually put a moratorium on expenditures from the Civil Penalty Fund that are not going to victims. I think the most important part, when you reach these resolutions, is to make those victims whole. Many of them were victimized by a very severe fraud. So, it is true Congress has specified that there are two purposes. We are reviewing those processes. I think if I understand that procurement law, I believe that has been the process that has been used, but I am happy to follow up.

In terms of your big-picture policy question, I have no interest in settlements that are not focused on redress, and forfeitures that are related to what the statute is saying. I don't know all of the circumstances of the DOJ and what you are referring to, but on a principles basis, I think you are onto something, that when there are fines and penalties, that should generally go to the taxpayers or to redress for victims.

Mr. GOODEN. Thank you. What a pleasant answer. I appreciate that. We would love to follow up with you and visit more about it.

Mr. CHOPRA. Please.

Mr. GOODEN. Thank you. One more thing: Big Tech. I wanted to thank you for your work on that. Big Tech companies have an incentive, obviously, to collect as much personal data on their users as possible. Their business models are built around using consumer data for profits, and this advantage of superior information is key to their success, as you know. There are countless examples of Big Tech exploiting data and behavioral biases to manipulate consumers' preferences. And I support your recent efforts to increase

accountability, and I appreciate you working with my office on our efforts, our bipartisan efforts to rein in Big Tech.

Mr. CHOPRA. I actually really hope that as a committee, we can work with you on this. I see this as potentially one of the biggest challenges we face. I think before you came in, I talked about now I really believe we are lurching toward a financial system that is not good for America, and more like what we see in China. And if we want to choose that, you all should choose that and do it with deep thought because I think we are much better off with a system that is not based on surveillance by a few firms, especially Big Tech firms. I think we need a decentralized system where small institutions who don't necessarily have an arsenal of data about each of us should be able to compete too. And I think this raises real questions about privacy, national security and really a fair and competitive market. And it is not just the Big Tech firms. There are big issues when it comes to scooping up and surveilling us and what that data is being used for, and the accountability for the decisions around it.

Mr. GOODEN. Thank you. I look forward to visiting with you more about that and working with you on this issue that I think has broad bipartisan support across our great nation.

I yield back.

Mr. CASTEN. The gentleman from New Jersey, Mr. Gottheimer, who is also the Vice Chair of our Subcommittee on National Security, International Development and Monetary Policy, is now recognized for 5 minutes.

Mr. GOTTHEIMER. Thank you, Mr. Chairman, and thank you, Director. An ongoing concern of mine has been how government bureaucracy comes up with new rules that contradict other rules and layer on new ones without actually getting rid of old, out-of-date rules. Year after year, these outdated rules pile up even when they are out of date, which is very tough for businesses and startups who must comply with all of these outdated rules. I introduced legislation that would create an independent bipartisan commission that would cut outdated and unnecessarily burdensome red tape and help streamline government to move faster and support our small businesses and economic growth while continuing to protect families and consumers.

Director Chopra, do you think it is a good idea to have an independent bipartisan commission that modernizes our guardrails to help protect consumers from outdated, overly-burdensome regulation?

Mr. CHOPRA. I am happy to look at the legislation with you, but in spirit, I am in total agreement. We want to make sure that small players and startups are able to challenge the dominant incumbents. The way our economy has prospered in so many sectors, whether it is the life sciences, communications, or financial services, is when small entities can break in, can challenge the system, and to be able to make sure that we can have competition. The rules should not be designed in order to only benefit the big players who have all of the legal resources to be able to use those rules and comply with those rules. So, competition and innovation is—sorry.

Mr. GOTTHEIMER. No, no, I was going to say thank you, Director. Additionally, I am concerned that some of the rules that build up

just pile on to hurt all of these businesses, and we end up just not looking—a new Administration comes in and we end up not looking at the old rules that are on the books. We pile on new ones, and then all of these businesses have to comply with things that are outdated and unnecessary, and, as a result, it actually creates a huge burden on them.

If I could just turn to discussing the Consumer Complaint Database, a platform that the CFPB created to allow the public to file complaints against small businesses. One area I am particularly concerned about is how this database is managed. If you don't mind, can you please tell me how you use this database to inform rulemaking and enforcement actions around small businesses, and how you ensure the validity of these complaints to protect small businesses from unwarranted attacks? What is the accountability measures that you have in place on the database?

Mr. CHOPRA. Yes. Thanks for the question. As I shared in my written testimony, we have actually moved our enforcement scrutiny away from small firms. I think that the most need of attention is on large firms engaged in market-wide harm, and repeat offenders. I have seen too many times Federal agencies focus on the small players and strong-arm them into settlements, and I think it is inappropriate. Of course, if they are engaged in serious violations of law, we will work with others to figure out where to refer it, and if we need to do it ourselves, we will. But on the complaint database, as I understand it, individual firms have the opportunity to respond not only to the consumer, and there are certain fields, and I am happy to brief you more specifically on it, but—

Mr. GOTTHEIMER. I would like to understand, because the way it has been explained to me is that literally anybody can post anything. And listen, it is obviously something that is merited. There should be some accountability. It should be looked into and not just something that any random person or a competitor, which is what I worry about, someone's competitor just decides to throw up a complaint on a site and then suddenly it hurts the business. And, frankly, I don't care what size the business is, if it is not merited, we shouldn't allow people to just post things that hurt a business because they decide to do it for anti-competitive reasons, because they want to hurt another competitive business. So, I just want to make sure there is accountability behind these complaints. You can't just throw them up. And people see a name written a bunch of times and decide that that business of any size is not good because there were some complaints.

Mr. CHOPRA. As I understand it, it is not like a bulletin board where you can just post whatever. There is a process of how it moves through from the law enforcement side into what data is shared publicly. There is a dimension of it where companies have to enroll, and there is a whole process around that. And again, we are happy to share more with your staff. But I take it seriously, what you are saying about making sure that small firms have the ability to compete and are not just kind of pushed out by larger players and others who want to do them harm.

Mr. GOTTHEIMER. I appreciate that. Thank you so much. I yield back.

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

Mr. STEIL. Thank you, Mr. Chairman. And Director, thank you for being here. It has been a long day. We have a small attendance left, but I think it is a big topic. And I think the questioning you are getting from many Members is warranted because the CFPB, unlike other independent agencies such as the SEC or the FTC, isn't dependent on the congressional appropriations process, so this is our one chance to ask you questions rather than an appropriations process. I think the way that the CFPB was set up was foolish, but that is not for our discussion today.

I want to dive into the announced changes that you made under the supervisory guidance related to discrimination on March 16th. The Bureau announcement noted that customers can be harmed by discrimination regardless of whether or not it is intentional. And it sounds a lot like disparate impact theory, the idea that different outcomes prove discrimination. And I reflect back on the Bureau's analysis, in particular of individual's races based on the ZIP Codes that they lived in, whether or not ads have people of different races in an ad, whether or not The Wall Street Journal even opined that maybe whether or not people are clicking on different ads, under different basis would be fall under disparate impact. I think it is a very interesting area to explore.

And to my knowledge, the Bureau's Unfair, Deceptive, or Abusive Acts and Practices (UDAAP) authority has not been successfully stretched to include disparate impact claims previously. Yesterday in the Senate, when Senator Toomey asked you about the apparent inclusion of disparate impact in the new supervisory guidance, you said, "That is not what is in the manual." And so, I would like you to, if you would, clarify, does the CFPB intend to use UDAAP authority to pursue disparate impact claims? Yes or no?

Mr. CHOPRA. Yes. Just to be clear, disparate impact is not part of UDAAP. Disparate impact is what the courts have determined is part of certain, very specific laws, including the Equal Credit Opportunity Act, that we do enforce, and it is in the regulations we inherited from the Fed. "Unfair," "deceptive," and "abusive" are spelled out, and unfairness has three prongs. These prongs—

Mr. STEIL. Understood. But are you using a disparate impact analysis and measure?

Mr. CHOPRA. No. What you do is you evaluate the practice based on the prong, for example, take fake accounts. There is not a specific prohibition that says you can't make fake accounts necessarily. But there are three elements of unfairness that Congress has enacted and you evaluate each of them. So, substantial injury, was it reasonably avoidable? What is the—

Mr. STEIL. Cognizant of the time, and understanding the analysis, your view under UDAAP is that you don't have the authority to use a disparate impact analysis? You said it is not in the statute, so—

Mr. CHOPRA. I am struggling. I want to be responsive but disparate impact theory is not part of UDAAP. And to be clear, this is not—

Mr. STEIL. Then, you have answered my question. It is not under UDAAP, and is it fair to say you don't have authority then to stretch disparate impact into UDAAP?

Mr. CHOPRA. Yes. That is a different legal doctrine. Unfairness is a different one. To be clear, this is not also very new. There are multiple banking agencies that have described how discriminatory practice, in their exam manuals, may also violate the prohibition on UDAAP. So, there was a sense—

Mr. STEIL. I am going to reclaim my time. I appreciate [inaudible]. I think that is helpful to give us a little bit of clarity as to where you are looking. I just want to touch quickly on, if I can, junk fees. That is your term, not a not a definition in law. You have noted that it includes hidden back-end fees. I don't want hidden back-end fees. Can you provide clarity as to what are hidden back-end fees? These are highly-regulated entities. Are these disclosed hidden back-end fees? Are they non-disclosed hidden back-end fees? Can you describe what you mean by, "hidden back-end fees?"

Mr. CHOPRA. In some cases, and we have seen this and we are getting and analyzing comments on it, there are fees that are not necessarily disclosed beforehand. And I think there are certainly issues with this when the concerns—

Mr. STEIL. So, it is fees. You are specifically looking at fees that are not disclosed with highly-regulated firms?

Mr. CHOPRA. We are looking at all fees.

Mr. STEIL. But that is what you mean by, "hidden back-end fees?"

Mr. CHOPRA. Yes.

Mr. STEIL. That they are hidden. They are not disclosed.

Mr. CHOPRA. Yes.

Mr. STEIL. Okay. I am going to reclaim my time, because I want to ask you one final question that I am concerned about, in particular as it relates to student loans. Have you or anyone in your senior staff been in discussion and consultations about the termination of loans with the Department of Education?

Mr. CHOPRA. Yes. We share a certain—

Mr. STEIL. So, yes. Have you been in discussions with any other third-party outside groups as it relates to the termination of student loans?

Mr. CHOPRA. To the determination?

Mr. STEIL. Termination.

Mr. CHOPRA. What do you mean by, "terminate?"

Mr. STEIL. The Biden Administration is proposing to terminate student loans.

Mr. CHOPRA. Oh, I see, the cancellation. I think we have been advocated before on it. I have not had conversations with the White House about that, but we do administer certain laws that overlap with the Department of Education.

Mr. STEIL. Thank you. I yield back.

Mr. CASTEN. The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman. As you are aware, political appointees throughout the Executive Branch must sign ethics pledges and certain financial disclosures. Here in Congress,

staff making a certain salary must file financial disclosures and comply with various ethics requirements. Do you agree that those requirements and disclosures are important to maintain the public's trust in the government?

Mr. CHOPRA. I think I know all the ones you referred to. I fill them out, too, yes.

Mr. TIMMONS. Ethics requirements are great.

Mr. CHOPRA. Yes.

Mr. TIMMONS. In January 2021, President Biden signed an Executive Order on ethics commitments, that every political appointee and every Executive Branch agency must sign and commit to. The ethics pledge also has a revolving door ban that does not allow appointees to participate 2 years in matters involving specific parties that are directly or substantially related to their former employer. So, he went above and beyond the legal requirements. Do you think that is good?

Mr. CHOPRA. Yes. I think that was the Trump pledge, too, which I signed—

Mr. TIMMONS. I love it. Okay. We are on the same page. Are you familiar with the White House Fellows Program?

Mr. CHOPRA. I think so, yes.

Mr. TIMMONS. Generally speaking, it is the most prestigious fellowship in the Federal Government. There are 17 every year. It is a 1-year term. Each of them work directly under one Cabinet Secretary, the Vice President, or the President. Importantly, they are subject to all of the ethics requirements. They make \$134,000 a year, and just for reference, Cabinet Secretaries make \$210,000. The President makes \$400,000. That is the White House Fellows Program. Up until a couple of hours ago, I thought it was the best fellows program out there, but the CFPB actually also has a fellows program. It allows the CFPB to bring on advisors to develop policy. That is from the website. I have information which shows that you have 23 fellows, and almost all of them make more than \$214,000. Over half of them make \$240,000. That is even more than you make as the CFPB Director, at \$180,000. So, not only do fellows make more than you, but they also make more than any Cabinet Secretary, and you have 23 of them. But the Cabinet Secretaries, the President, and the Vice President get one who makes almost half as much. So, these incredibly well-compensated fellows, because they are not technically political appointees, don't have any of the ethics requirements, none of the disclosure requirements, none of the outside earned income requirements. Do I have that right?

Mr. CHOPRA. No. The fellowship program that the White House has is not the same—

Mr. TIMMONS. So, separate the White House. This is just the CFPB fellows program. Do your CFPB Fellows have to go through the same ethics requirements, outside income requirements that political appointees do, because the answer is no.

Mr. CHOPRA. I don't think so, but, again, it is a hiring authority—

Mr. TIMMONS. You have 23 people making over \$200,000 who are not political appointees, and they are also not fellows. Fellows generally are in graduate school or just starting their career. Most of

your fellows have decades of experience. I just have a problem with this, because it seems like you are circumventing the political appointee requirement, and the Chair of this Committee, Chairwoman Waters, last Congress passed a bill, and she brought in then-CFPB Director Kraninger and lambasted her for having 10, you have 8 political appointees and 23 fellows who make more than you do. Is that a problem?

Mr. CHOPRA. Okay. So, just to be clear, these are term hires as I understand—

Mr. TIMMONS. So, a 2-year term up to 4 years. That is still 4 years. The Administration term is 4 years. What is the difference?

Mr. CHOPRA. No, I understand that, but they are not determined by the President or the White—

Mr. TIMMONS. I am aware. Do you determine who the fellows are?

Mr. CHOPRA. No. They go through a competitive process. It was a posting.

Mr. TIMMONS. Do you know the 23 people now?

Mr. CHOPRA. I think I have met almost all of them. I spoke—

Mr. TIMMONS. Did you know any of them prior to becoming the CFPB Director?

Mr. CHOPRA. I knew a few of them. I encouraged a lot of people to apply, but I was not—

Mr. TIMMONS. How many of the 23 did you know prior to applying?

Mr. CHOPRA. I don't know.

Mr. TIMMONS. Okay. But you did know a number of these people who became—

Mr. CHOPRA. Not a number. I think I know a handful.

Mr. TIMMONS. Okay. There are 23. You would say half?

Mr. CHOPRA. Oh no, less than half.

Mr. TIMMONS. Okay. We have a list if you want to see it, but you would say at least 5 or 10?

Mr. CHOPRA. I don't know the exact numbers. Some people come through different hiring—

Mr. TIMMONS. Do you think this is a problem? Do you think it is a problem that the Chair of this Committee went nuts over Director Kraninger having 10 political appointees and you have 23—

Mr. CHOPRA. These are not political appointees. There are—

Mr. TIMMONS. They are paid more than political appointees.

Mr. CHOPRA. Let me just be clear. There are a number of authorities, and, in fact, the CFPB and other agencies have hired on a non-competitive—

Mr. TIMMONS. Do they have outside—

Mr. CHOPRA. —basis that make big salaries that are permanent.

Mr. TIMMONS. Do they have outside earned income bands? Do they have financial disclosures?

Mr. CHOPRA. I believe so. I think all employees, and there may even be requirements if they make above a certain amount, too—

Mr. TIMMONS. Okay. I don't think they do, because they are fellows. I think this is a workaround and—

Mr. CHOPRA. No, I think they are like every other employee.

Mr. TIMMONS. I don't believe that is the case. I believe that they—

Mr. CHOPRA. Okay. I will look into this, and I am happy to discuss it with you—

Mr. TIMMONS. It seems that you have 23 people who are political appointees and have no financial disclosure requirements, have no outside income requirements, and have no bans on their spouses lobbying them, so these are big problems. By the way, they are all—

Mr. CHOPRA. If their spouses are allowed to lobby or—

Mr. TIMMONS. By the way, they are all from aggressively left-wing organizations. Their employment history—

Mr. CHOPRA. That is not true. We have people from Wall Street. We have people from industry.

Mr. TIMMONS. Sixteen of the 23 come from far-left associations. We can get you their work histories. I yield back.

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

The gentleman from Texas, Mr. Sessions, is now recognized for 5 minutes.

Mr. SESSIONS. Thank you. Thank you very much, Mr. Chairman. Director, I want to thank you for taking the time to be here. I know that taking all day to answer our questions takes its toll on you. And I really don't want to put you in any diminished position right now, especially since I cannot be downstairs, and I apologize.

Director, I want to follow up on some of the advice and information that you provide to the industry. The industry, as you know, views that your viewpoints are important to them because they want to know the direction that you not only think, but that the agency may be headed in. And, in particular, there are two points, your comments made about the CFPB's efforts to reinvent the remittance market that were made in the context of announcing a lawsuit that included no specific allegation of consumer harm. And so, there are questions with people who are really trying to give advice, get ahead, prepare themselves as an opportunity for understanding your context of overregulation versus or, I guess, the term, "reinvent."

Mr. CHOPRA. Sir, just to make sure we are clear, when we filed that action—you said there were no allegations, but we actually posted the public version of the complaint that went through each count. That is the lawsuit that was filed in Federal court, so we are happy to follow up with you on that. I think, as I recall, there is no question that payment systems are really being reinvented right now. There are a lot of new technologies that are coming online that are helping people transfer money in ways that we haven't seen before, including in a cross-border context, so you do see apps, and you do see other products that are allowing people to do things in ways that are quite different.

There is no question that there is a lot of change. I hope I am answering your question, but I do think that there is a lot of innovation happening. And I do think we are better off in a world where there are faster payments, more real-time settlement, but also that consumers can be protected in the process.

Mr. SESSIONS. If I were to go a little bit deeper, you are suggesting, Mr. Director, the term, "reinvent," does that mean something new or different in the way you look at things, and would

consideration of advice be given ahead of time before action is taken?

Mr. CHOPRA. Yes. And I think, by the way, when I said, “re-invent,” it is the market that is reinventing it. How people are moving money, even just 10 years ago, is totally different than how people are moving money today. There is even some data to suggest that there is more peer-to-peer than some financial institutions are experiencing than even what they are clearing in checks. So, I think that was meant to say what the market is doing, if I am recalling it correctly.

Mr. SESSIONS. Okay. In fact, Mr. Director, that is very helpful. You are talking about the marketplace, not the way you view the marketplace and oversight activities, and that is very helpful. And I will go back and re-look at what I believe and send you a letter because I believe now that you put it in context.

The second question that I would have is from a source, the Financial Health Network, on March 24th. And I will be glad, sir, to save you these discussions in writing because it is hard when someone comes at you with something from a month ago, but essentially, it is the Buy Now, Pay Later loans. And in the discussion about them, that data shows that the overwhelming majority of users understand the terms and are successfully using the product. And perhaps, if I can gain your insight about how you look at, once again, going back to the word, “reinvent,” you take it that it is the marketplace as opposed to your oversight. Now with your oversight of Buy Now, Pay Later, would you mind discussing your context of that?

Mr. CHOPRA. I am out of time, but I am happy to answer for the record and to discuss it with you further, but I also gave a response on this to some of your colleagues.

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

Mr. CASTEN. I would like to thank Director Chopra for his testimony today.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is adjourned.

[Whereupon, at 1:54 p.m., the hearing was adjourned.]

A P P E N D I X

April 27, 2022

**PREPARED STATEMENT OF
ROHIT CHOPRA
DIRECTOR
CONSUMER FINANCIAL PROTECTION BUREAU**

**BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

APRIL 27, 2022

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.

Chairwoman Waters, Ranking Member McHenry, and distinguished Members of the Committee, I am pleased to appear before you today in conjunction with the Consumer Financial Protection Bureau's (CFPB) submission of the Semiannual Report to Congress.

In my first six months as Director, the Consumer Financial Protection Bureau has refocused its efforts to align with the objectives that Congress set out for the agency. I have outlined some of the highlights of this work below.

Focusing Enforcement on Repeat Offenders and Other Major Market Actors

When small businesses violate the law, federal enforcers are often quick to levy crippling sanctions. But when larger players repeatedly violate the law, agencies are far more lenient. This is highly inappropriate.

I am committed to ensuring that the CFPB does not follow this path. The CFPB is shifting enforcement resources away from investigating small firms and instead focusing on repeat offenders and large players engaged in large-scale harm.

For example, in recent months, we have filed lawsuits against two very large firms, FirstCash and TransUnion, that violated law enforcement orders and other consumer financial protection laws. In both cases, the entities willingly consented to an order and were on clear notice of their obligations. The CFPB alleges that both firms violated their orders and continued to violate the law.

The CFPB and the New York Attorney General also recently filed a lawsuit against MoneyGram, one of the biggest providers of remittances worldwide, for violating rules required by Congress in the money transfer market, despite being granted many chances to come into compliance.

During my tenure, the CFPB will not only focus on large actors engaged in widespread harm, but also enforce the law as written. I expect that this may lead to more litigation, but also lend greater legitimacy to agency actions.

Enhancing Transparency Through Guidance

Laws work best when they are easy to understand, easy to follow, and easy to enforce. During my tenure, the CFPB will dramatically increase its issuance of guidance documents, such as advisory opinions, compliance bulletins, policy statements, and other publications. We have already begun to do so on a wide variety of topics.

These efforts help entities comply with laws passed by Congress by either providing further clarity where needed or drawing attention to an already clear legal requirement. They also promote consistency among the many government actors responsible for enforcement of federal consumer financial law, including other federal regulators and state and tribal Attorneys General across the country. The CFPB is especially interested in areas where guidance can support compliance efforts by small institutions and new entrants.

Rethinking Our Approach to Regulations

When Congress and the President enact laws that direct or authorize the promulgation of regulations, agencies should not ignore them.¹ I am committed to ensuring that the CFPB takes meaningful steps to carry out legislative directives.

At the time I became Director, the CFPB had not made any significant progress on the development of several rules that Congress authorized in the Consumer Financial Protection Act, including under Section 1033, a provision that could increase competition and choice in consumer financial markets. In addition, the agency is working to implement Section 1071 of the Act, regarding small business data. This is not a discretionary rule, and the CFPB is subject to a court order to ensure it is implemented in a timely fashion.

In December 2021, Congress amended the Fair Credit Reporting Act to assist survivors of human trafficking and required the CFPB to implement regulations within 180 days. The CFPB has already published a proposal for public comment and is working to complete the rulemaking to comply with the deadline set by Congress.

More broadly, I am concerned that the approach to regulations pursued by federal banking agencies is excessively complicated. I have asked CFPB staff to put a higher premium on simplicity and “bright lines” whenever possible. We are also reviewing rules that the agency inherited from the Federal Reserve Board of Governors to identify opportunities for improvement.

The CFPB has also launched a new process to allow the public to more freely exercise the Constitutional right to petition the government. Our new process will allow us to hear directly from the public about potential regulations that should be developed or amended.

Listening and Learning from the Business Community

While large depository and nondepository institutions have direct access to the CFPB through our supervision program, many other businesses also have a stake in the CFPB’s policies. During my confirmation process, I received feedback that the CFPB was extremely responsive to large financial institutions, but not sufficiently committed to listening and learning from local financial institutions and the broader business community. I take this criticism seriously and I have directed a number of changes to the agency’s status quo approach.

A key priority for me has been to engage with institutions without direct access to the CFPB, including small banks and credit unions. I have been fortunate to meet with many state-based associations to speak directly with community banks and credit unions, and I hope to meet with all of these associations during my term in office.

¹ For example, when I served as a Commissioner on the Federal Trade Commission, my office conducted an analysis that identified several pieces of legislation signed into law by President Bill Clinton, President George W. Bush, and President Barack Obama that the Commission largely ignored.

The CFPB is also engaging with a broad range of other businesses and associations, including health care providers, automobile dealers, farmers, hotel owners, retailers, and more. While these industries generally engage in business practices that fall outside the scope of the CFPB's authority, they are deeply affected by the laws the agency administers. These efforts will help the CFPB be more attuned to the needs of businesses across the economy.

Promoting Competition

In our market system, one of the best ways that consumers can protect themselves is to switch from providers that treat them poorly. This is why Congress established as a primary objective that the CFPB seek to ensure that markets for consumer financial products and services are fair, transparent, and competitive.

Competition leads to innovation, attractive rates, quality service, and benefits that may be difficult to quantify. But when consumers do not get to select their provider or when switching is complex or difficult, it can lead to stagnation, junk fees, and poor treatment. Indeed, in many markets for consumer financial products and services, like loan servicing and credit reporting, consumers have no choice of provider.

In addition to implementation of rules under Section 1033, we will be launching other initiatives to identify ways to lower barriers to entry and increase the pool of firms competing for customers based on quality, price, and service. We are especially interested in ways that small financial institutions can leverage technology and systems, like the planned FedNow program, to capture market share while still preserving their relationship banking model.

Preparing for the Era of Big Tech and Big Data in Banking

America's consumer finance infrastructure is the plumbing for an enormous amount of economic activity. New technologies and systems can bring us faster payments and new opportunities to connect customers and financial providers. During my tenure, the CFPB will be very focused on what the future holds and how we can collectively shape it in ways that align with American values.

Currently, the United States is lurching toward a consolidated market structure where finance and commerce co-mingle fueled by uncontrolled flows of consumer data. This is the market structure that has emerged in China, where Alipay (operated by Ant Group, formerly known as Alibaba) and WeChatPay (operated by Tencent) predominate. Alipay is part of the same conglomerate that dominates e-commerce, and WeChatPay is connected to the dominant messaging app.

These super-apps have access to an extraordinary set of data about consumers and businesses, including financial businesses that they may compete with. Over the last several years, Chinese

tech and finance giants have developed so-called “social scoring” that goes beyond credit performance and relies on analyzing user habits unrelated to credit and banking.²

The outsized influence of such dominant tech conglomerates over the financial services ecosystem comes with risks and raises a host of questions about privacy, fraud, discrimination, and more. The CFPB is currently studying these issues first as part of our inquiry into Big Tech’s entry into consumer payments in the United States. The agency has issued a set of orders to Google, Facebook, Amazon, Apple, PayPal and Block (formerly Square) to further understand key issues on their plans for consumer payments. We expect to issue reports on our research to contribute to the critical policy discussions about the future of consumer finance and relationship banking in our country.

Thank you again for the opportunity to appear before you, and I look forward to answering your questions.

² See, for example, John Gapper, *Alibaba’s social credit rating is a risky game*, Financial Times (February 21, 2018), <https://www.ft.com/content/99165d7a-1646-11e8-9376-4a6390addb44>.



April 27, 2022

The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services
Washington, D.C. 20515

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the American Financial Services Association (AFSA)¹, we appreciate the House Financial Service Committee (HFSC) for hosting a hearing entitled, “*Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau.*”

Today’s hearing with Consumer Financial Protection Bureau Director (CFPB) Rohit Chopra comes at a time when Americans should be able to rely on a fair and transparent financial marketplace to make informed choices. Given the economic fluctuations since the onset of the COVID-19 pandemic and the rising costs of goods and services due to inflation, it is imperative that regulators find an appropriate balance to help Americans expand their financial choices while not adding overly complicated guidelines for American businesses that are driving the economy beyond pre-pandemic levels.

AFSA appreciates the opportunity to provide comments on the following consumer finance-related issues outlined in this letter. We look forward to working with the House Financial Services Committee and the CFPB to protect consumers and maintain access to safe, responsible credit.

Access to Safe and Affordable Consumer Credit:

AFSA strongly opposes H.R. 5974 – *the Veterans and Consumers Fair Credit Act*. This legislation, as written, will have drastic economic effects on millions of consumers by restricting their ability to access affordable credit from highly regulated financial institutions, including traditional installment lenders.

The structure of a loan is best judged by its quality, affordability, and soundness, not its “all-in” APR calculation. This is because the “all-in” annual percentage rate (APR) on small amounts can be a misleading indicator of the true cost of a loan for a consumer. For example, if you borrow \$100 today and charge \$1 in interest; if you pay back the loan in one year, the APR is 1 percent; pay it back in a month, the rate is 12 percent; pay back the loan tomorrow, the APR is 365 percent. Same dollar in interest, vastly different APRs.

In 2020, the Federal Reserve found with an “all-in” 36% rate cap, consumers would not be able to receive a loan for less than approximately \$3,000.² Unfortunately, rate caps force consumers to

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance.

² Federal Reserve, [The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates](#) (2020).

borrow more money than they need or want, resulting in higher finance charges, longer repayment periods, and higher overall costs, despite having a lower APR.

Earlier this year, the Congressional Black Caucus Institute's (CBCI) 21st Century Council published its 2022 Annual Report and highlighted the importance of maintaining a financial marketplace that allows Americans to access small-dollar credit. The report cited "proposals to protect consumers from predatory practices through a 36% rate cap would cause more harm than help by limiting consumer access to credit."³

While we commend the bill sponsors for highlighting the need to protect consumers from unlicensed predatory lenders and minimize consumers in a cycle of debt, implementing a nationwide APR restriction alone will limit consumer choice and their ability to address unique economic situations.

Addressing the Indirect Vehicle Finance Guidance Gap Under Dodd-Frank Section 1071:

As the CFPB finalizes its Small Business Lending Data Collection proposed rule under Dodd-Frank section 1071, we encourage the CFPB to ensure small financial institutions are not overburdened with sharp increases in operational and compliance costs that would hamper access to credit for many small businesses. More specifically, we recommend the Bureau apply an exception to the 1071 rule for the indirect vehicle financing market.

Under section 1071, covered financial institutions would be required to compile, maintain, and report information concerning credit applications made by women-owned, minority-owned, and small businesses. As proposed, specific data points such as race, ethnicity, sex, business size, application number, application date, the amount applied for, the amount approved, loan type, loan purpose, annual gross revenue, census tract, and possibly others would be required by an array of financial institutions to collect and report to the CFPB.

Vehicle finance companies generally do not interact with small business applicants directly; instead, the finance companies purchase contracts from auto dealers, so the vehicle finance companies cannot collect Section 1071 information themselves when a small business (e.g., catering businesses, florists, moving companies) applies for credit at the dealership. Vehicle finance companies must rely on auto dealers to collect 1071 information. However, auto dealers are prohibited from collecting information of this nature until the Federal Reserve promulgates a rule allowing them to do so. Therefore, vehicle finance companies will be unable to compile, maintain, and submit Section 1071 as required under the proposed rule.

To correct this issue, the CFPB should exclude indirect vehicle financing from the Section 1071 rulemaking until the Federal Reserve issues its 1071 rulemaking for auto dealers. When the Federal Reserve issues its rule, which should conform to the Bureau's, the CFPB should then provide vehicle finance companies the same implementation period as granted in the final rule.

³ Congressional Black Caucus Institute, [21st Century Council Annual Report](#) (p.65) (2022)

The Rulemaking Process at the CFPB:

The CFPB has recently issued several blog posts and press releases focused on the financial services industry. Some have been accompanied by short guidance documents or, in one case, changes to the exam manual. As financial institutions that provide consumer credit to millions of Americans, we understand how important the CFPB's rules and procedures are for consumers and businesses alike. However, new compliance guidelines without specificity can be complex and time-consuming for the average financial institution. For example, while the CFPB updated its examination manual, these changes were not highlighted or specifically noted. Additionally, new terms were added to the manual, but not defined. The CFPB's recent guidance bulletin on auto repossessions lacked detail, especially how it relates to state laws.⁴ We encourage Congress to work with the CFPB to ensure that policy changes are done through rulemaking with notice and comment.

AFSA appreciates the opportunity to provide written comments to the House Financial Services Committee for its hearing about the Consumer Financial Protection Bureau's Semi-Annual Report to Congress. Please contact me by phone, at 202-776-7300, or email, at cwinslow@afsamail.org, with any questions.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association

⁴ CFPB, [Bulletin 2022-04: Mitigating Harm from Repossession of Automobiles](#) (February 28, 2022)



May 3, 2022

Dear members of the House Financial Services Committee,

Americans for Financial Reform (AFR) appreciates the opportunity to provide this statement for the record of the U.S. House Committee on Financial Services regarding the Semi-Annual Report of the Consumer Financial Protection Bureau (CFPB). It has been 10 years since the CFPB was established. Since then, the CFPB has fulfilled Congress's vision of a federal agency with "the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced."¹ Through its rulemaking, supervision, enforcement, consumer education and complaint system, the CFPB has made enormous strides in ensuring that the financial marketplace is fair to consumers. Its rules and supervision have reformed the industry's conduct, making banks and other financial services companies more attentive to consumers' rights.

In this statement, AFR focuses in particular on the CFPB's recent enforcement successes, the need to retain its authority, and some of the CFPB's existing and future priorities.

Authority and Structure

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank; P.L. 111-203) established the CFPB to implement and enforce federal consumer financial law while maintaining consumer access to financial products and services. Dodd-Frank consolidated in the CFPB certain regulatory authorities related to consumer finance that were previously held by other agencies and created new powers not previously held by federal regulators. Dodd-Frank authorizes the CFPB to exercise these powers with the goal of promoting fair, transparent, and competitive markets for consumer financial products and services.²

Dodd-Frank charges the CFPB to implement and enforce consumer protection laws, lead financial education initiatives, collect consumer complaints, and conduct consumer finance research. The CFPB has broad regulatory authority over providers of an array of consumer financial products and services, including deposit taking, mortgages, credit cards and other extensions of credit, loan servicing, collection of consumer reporting data, and consumer debt collection. Although the scope of the CFPB's regulatory power is considerable, it is also subject to certain statutory exceptions and limitations. The CFPB's

¹ Joint Explanatory Statement of the [Dodd-Frank] Committee of Conference, at 874 (June 29, 2010), <http://www.llsdc.org/assets/DoddFrankdocs/dodd-frank-act-jt-expl-statement.pdf>

² Congressional Research Service, *Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB)*, <https://sgp.fas.org/crs/misc/IF10031.pdf>

regulatory authorities fall into three broad categories: supervision (including the power to examine and impose reporting requirements on financial institutions), enforcement of various consumer protection laws, and rulemaking.³ It is clear that all action outlined in this comment letter are well within this statutory authority, and indeed, the CFPB's obligations.

The CFPB's authority and range of tools are important to its ability to succeed in its vital consumer protection mission, and its recent activity lies well within the scope of that authority. Arguments to the contrary have repeatedly reflected - and been driven by - industry interests in tying the Bureau's hands so they can continue abusive practices that transfer wealth from people and communities to their own profits.

Enforcement and Supervision

Through its enforcement and supervisory efforts, the CFPB has delivered approximately \$14.4 billion in relief for consumers and \$1.7 billion in civil penalties. It has delivered economic redress to more than 183 million consumers consumer accounts, the Office of Consumer Response has received and processed over 3 million consumer complaints, and over 7 million consumers have accessed the COVID-19 educational content the Bureau has created.⁴

A few examples illustrate the breadth of the CFPB's consumer protection impact since Director Chopra's swearing in:

- Sanctioning Edfinancial for lying to borrowers about student loan cancellation, resulting in a \$1 million civil penalty and a requirement for the servicer to reach out to all its FFELP borrowers to provide them with an opportunity to take advantage of the Department of Education's limited PSLF waiver before it ends on October 31, 2022.⁵
- Filing suit against Moneygram for violating "the Remittance Transfer Rule and Regulation E, which implements the Electronic Fund Transfer Act (EFTA) by failing to disclose accurate fund availability dates, failing to investigate noticed errors promptly, failing to timely report the results of its error investigations to consumers, failing to provide a written explanation of its findings to consumers, failing to notify senders of their right to request documents related to their investigation, failing to provide fee refunds when required to remedy errors, failing to develop and maintain sufficient error resolution policies and procedures, and failing to sufficiently address retention of documents showing its compliance with the Remittance Transfer Rule and EFTA."⁶
- Issuing an order against the TransUnion Companies to address the Bureau's findings that they deceptively marketed credit scores and credit-related products, including credit monitoring, to consumers.⁷

³ Congressional Research Service, *Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB)*, <https://sgp.fas.org/ers/misc/IF10031.pdf>

⁴ Dave Uejio, *Celebrating 10 Years of Consumer Protection* (July 21, 2021), <https://www.consumerfinance.gov/about-us/blog/celebrating-10-years-consumer-protection/>

⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sanctions-edfinancial-for-lying-about-student-loan-cancellation/>

⁶ <https://www.consumerfinance.gov/enforcement/actions/moneygram-international-inc-and-moneygram-payment-systems-inc/>

⁷ <https://www.consumerfinance.gov/enforcement/actions/transunion-dtc-compliance/>

Policy Priorities

The CFPB must continue to move forward on many pressing priorities. Despite the agencies enormously successful initiatives, consumers continue to face unfair, deceptive, and abusive practices when accessing financial services. To that end, AFR continues to urge the CFPB to move forward on each of the priorities it has as well as in a number of other areas. We discuss several, but not all, of these priorities below.

Arbitration. Lenders and financial servicers use mandatory arbitration clauses to block consumers from joining together to seek compensation; these clauses typically force wronged consumers to individually bring their claims against large companies in a private arbitration system that is shaped by companies to favor their own interests. The empirical findings in the CFPB’s comprehensive report on the use of arbitration clauses unequivocally demonstrate that forced arbitration leaves consumers effectively powerless to hold companies accountable. AFR urges the CFPB to propose a strong rule banning or restricting forced arbitration.

Auto Lending. Auto loans are the third largest consumer credit market in the United States at over \$1.4 trillion in outstanding debt, double the amount from 10 years ago and expected to grow further.⁸ We encourage the CFPB, through its UDAAP and other authorities, to ensure consumers are receiving fair interest rates not distorted by dangerous incentives, to prevent discrimination which charges BIPOC borrowers higher rates, to ensure affordable credit for the rising cost of automobiles, to monitor practices in auto loan servicing that aide in the wrongful repossession of consumer vehicles, and encourage auto servicers to promote finance terms in other languages.

Complaint database / information sharing. AFR has been impressed by the success and upgrade of the CFPB’s complaint database. AFR appreciates that consumer complaints are now available in trend view to “build upon the existing capability to filter and search, and emphasize aggregation and analysis of information, while continuing to make all the underlying data available for closer examination.”⁹ The complaints tool was also updated to be more user friendly. This change was instrumental in encouraging a robust response to the Bureau’s junk fee RFI, that has seen 80,000 responses and counting. We hope that the CFPB will also take steps to ensure the public disclosure of the maximum amount of information from both the Home Mortgage Disclosure Act database and the forthcoming small business lending database. We believe that it is possible to combine expansive disclosure with protecting borrowers’ legitimate privacy interests.

Collection of data on lending to small businesses (1071). AFR is very pleased to see the CFPB identify meeting its responsibility to collect data on lending to small businesses and women- and minority-owned businesses as a top priority.¹⁰ In September 1, 2021 the CFPB issued a proposed rule amending Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act. Consistent with section 1071, the Bureau is proposing to require covered financial institutions to collect and report to the Bureau

⁸ CFPB, *Rising car prices means more auto loan debt* (February 24, 2022). <https://www.consumerfinance.gov/about-us/blog/rising-car-prices-means-more-auto-loan-debt/>

⁹ CFPB, *CFPB Announces New Capability for the Consumer Complaint Database, Expands Ability to View Complaint Data Over Time* (Jul 17, 2020). <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-new-consumer-complaint-database-capability/>

¹⁰ See 15 U.S. § 1691c-2.

data on applications for credit for small businesses, including those that are owned by women or minorities.¹¹ Small businesses are critical to job creation, and the founding of a successful small business is one of the ways for people to build wealth and get ahead. Unfortunately, small businesses – especially women- and minority-owned businesses – have trouble attracting needed capital.¹² The CFPB’s data collection will provide a valuable tool to address this problem, and we hope that the CFPB will move quickly to establish this statutorily-required system.

Debt collection. AFR is encouraged that the CFPB implemented its debt collection rule in November of 2021. The CFPB receives more complaints about debt collection than any other issue, and it is vital that continued abuses be addressed by the Bureau.

Junk Fees. The Bureau has been diligent in its work to explore, expose and seek tools to reduce exploitative junk fees that distort the true price of products.¹³ In January, the CFPB launched an effort to save consumers billions of dollars a year by reducing the financial industry’s junk fees. Some of the most notable junk fees the Bureau has drawn attention to are bank overdraft fees, which big banks made \$15.47 billion off of consumers living on the margins at the height of the pandemic, Non-Sufficient Funds fees, late fees, fees to pay your bills and prepaid card fees. The CFPB’s Request for Information (RFI) on junk fees yielded 80,000 consumer complaints and stories, 30,000 of which AFR facilitated consumers in reporting. We urge continuing attention including rulemaking on junk fees including overdrafts.

Medical Debt. AFR is encouraged by the CFPB’s dive into medical debt, including the way it has been reported to and by the big three credit reporting agencies, and how it affects every aspect of a consumer’s life. Director Chopra recently stated that “many Americans feel forced to pay medical bills that they have already paid or never owed to begin with. The credit reporting system should not be used as a weapon to coerce patients into paying medical bills they do not owe.”¹⁴ This spotlight has resulted in some medical debt being stripped from credit reports altogether. Though this is a step in the right direction, especially as people continue to struggle with the impacts of the pandemic, we urge the CFPB to continue its work in removing all medical debt from credit reports as we know that this type of debt is not an indicator of consumer creditworthiness.

Payday lending. High-cost payday loans trap consumers in cycles of debt. Whether short-term or long-term, offered by banks or nonbanks, unaffordable predatory loans leave people, especially communities of color, unable to meet expenses, vulnerable to aggressive debt collection practices, unbanked, and in cycles of re-borrowing. Community members, faith leaders, veterans and other advocates from around the country have been working for many years to end these abuses. We think it is crucial for the CFPB to use all of the tools at its disposal, including rulemaking, to stop debt trap lending.

Repeat Offenders. Director Chopra stated that the Bureau would be shifting its enforcement scrutiny away from small firms and focusing on repeat offenders and large market actors engaged in widespread harm.

¹¹ CFPB, *Small business lending data collection rulemaking*, <https://www.consumerfinance.gov/1071-rule/>

¹² Karen Gordon Mills & Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, HARVARD BUSINESS SCHOOL WORKING PAPER 15-004, at 58 (July 22, 2014), http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf.

¹³ As The Consumer Financial Protection Bureau Works to Reduce "Exploitative Junk Fees" In The Financial Industry, Consumers Also Face Added Costs In Resort Fees, Event Ticket Fees, ATM Fees, And Criminal Justice Fees (April 20, 2022), [file:///C:/Users/ecrawford-hicks/Downloads/\(2022-04-20\)%20Junk%20Fees%20Breakdown%20\(FINAL\)%20\(1\).pdf](file:///C:/Users/ecrawford-hicks/Downloads/(2022-04-20)%20Junk%20Fees%20Breakdown%20(FINAL)%20(1).pdf)

¹⁴ CFPB, *CFPB Report Spotlights Medical Billing Challenges*. (April 20, 2022). <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-spotlights-medical-billing-challenges/>

The CFPB under the Director's charge has already engaged in lawsuits that exemplify this shift. The recent lawsuits against TransUnion, one of the nation's largest credit reporting agencies, First Cash, one of the nation's largest pawn lenders, and Money gram, one of the nation's largest international remittance providers illustrate the CFPB's dedication to consumer protection.

Student lending. AFR welcomes the CFPB's attention to the student loan servicing market, including its ongoing data collection on debt collection practices for both federal and private student loans. The Department of Education recently announced that it would be working closely with the CFPB to better examine whether student loan servicers are driving borrowers into expensive forbearances instead of the Income Driven Repayment plans that may serve them better in the long-term. The active litigation with Navient is an example of the CFPB's supervisory and enforcement power—a domino effect that has returned approximately 1.7 billion to borrowers and essentially wiping out student loan debt for some.¹⁵ The CFPB has also stepped up its scrutiny of student loan servicers that deceive borrowers about public service loan forgiveness.¹⁶ The Bureau, through its supervision of student loan servicers, has found that servicers made deceptive statements to borrowers about their ability to become eligible for PSLF.¹⁷ We and restore borrower faith in student loan servicers.

Veterans and Consumer Fair Credit Act (VCFCA)

AFR has been an avid supporter of the VCFCA. This Act addresses the problems caused by unaffordable, predatory payday, auto-title, and similar forms of loans by:

- **Reestablishing a simple, common sense limit on predatory lending** by extending the Department of Defense's 36% interest rate cap to all Americans. This would reestablish usury laws effective in virtually every state throughout most of the twentieth century.
- **Preventing hidden fees and loopholes.** The 36% rate cap is based on the Pentagon's successful rules that include not just periodic interest but fees and add-ons. Loopholes in the Truth in Lending Act's annual percentage rate have undermined cost transparency and emboldened evasions.
- **Maintaining low industry compliance costs from compromise rules already in effect.** Compliance costs for industry will be low because creditors *already* know how to comply for active-duty military and their families.
- **Upholding stronger state protections.** 36% is a relatively high rate and is appropriate only as an upper limit. States like Arkansas, Colorado, North Carolina, New Jersey, New York, and West Virginia already have strong interest rate caps lower than 36%, which will not be impacted

¹⁵ CFPB, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment* (January 18, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>

¹⁶ CFPB, *CFPB Steps Up Scrutiny of Student Loan Servicers That Deceive Borrowers About Public Service Loan Forgiveness* (Feb 18, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-steps-up-scrutiny-of-student-loan-servicers-who-deceive-borrowers-about-public-service-loan-forgiveness/>

¹⁷ CFPB, *CFPB Steps Up Scrutiny of Student Loan Servicers That Deceive Borrowers About Public Service Loan Forgiveness* (Feb 18, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-steps-up-scrutiny-of-student-loan-servicers-who-deceive-borrowers-about-public-service-loan-forgiveness/>

because the bill does not preempt any provision of State law that provides greater protections to consumers. For larger loans, in particular, rates lower than 36% are appropriate.¹⁸

* * *

Thank you for the opportunity to express AFR's views on the success of the CFPB. If you have additional questions on these issues, please contact Elyse Hicks, AFR's Consumer Policy Counsel, at elyse@ourfinancialsecurity.org or 202-684-2974.

Sincerely,

Americans for Financial Reform

¹⁸ <https://ourfinancialsecurity.org/2021/05/letters-to-congress-letter-in-support-of-the-veterans-and-consumers-fair-credit-act/>

**PRINCIPLES FOR RESPONSIBLE CONSUMER AND SMALL BUSINESS LOANS
TO PREVENT PREDATORY LENDING ABUSES**

The undersigned 175 consumer, civil rights, community, housing, labor, faith, military and veterans, human rights, older American, legal services, small business, and other organizations and academics representing more than 40 states and the District of Columbia agree that all loans should be safe and affordable. High-cost, unaffordable forms of credit or disguised credit are marketed as lifelines to consumers and small businesses, but predatory products do not provide access to affordable credit. Instead, they lead to financial ruin by trapping borrowers in high-cost loans and devastating cycles of debt that leave them worse off.

Some communities have been particularly affected or targeted by predatory forms of credit:

- **Communities of color, namely Black, Latinx, Native American, Asian American and Pacific Islander communities**, have been denied opportunities to build wealth or access to sustainable credit and have been disproportionately shut out of opportunities to build assets through centuries of systemic discrimination. These communities have been targeted with high-cost, destructive products in the name of “access to credit.”
- **Workers** making low wages have been offered high-cost or unaffordable loans, sometimes disguised as early payment of wages.
- **Small businesses** have been subjected to predatory lending through high-rate loans disguised as merchant cash advances, high-cost loans secured by the business owner’s home, and other dangerous high-cost products that exploit the lack of legal protections for small businesses.

Predatory lenders use many different tactics that harm borrowers, including exorbitant interest rates and fees, add-on products, unaffordable balloon payments, collateral-based lending with minimal underwriting, and other abusive terms. High-cost credit products can take various forms, including short-term and long-term loans; lines of credit; and disguised forms of credit; fintech products and apps; access to or assignments of wages, business revenue or other income or assets; and other forms of disguised credit.

High-cost lenders have also used several strategies to evade interest rate caps and credit laws. Predatory lenders have laundered their loans through banks, which are largely exempt from state rate caps. Lenders have falsely claimed that they are tribal entities and are exempt from state laws. Lenders have also claimed they are not covered by credit laws or have taken advantage of loopholes in interest rate limits.

Predatory lenders often use forced arbitration clauses and class action bans to prevent accountability when they violate the law and engage in unfair, deceptive or abusive practices. These tactics take away borrowers’ constitutional right to access the courts.

In order to protect borrowers, especially low-income consumers, borrowers of color, and small businesses, we support the following principles to stop predatory lending:

1. **Adopt effective interest rate caps of 36% or less for all consumer and small business lenders at the federal and state level, with lower rates for larger loans.** Interest rate limits are the simplest and most effective protection against predatory lending, aligning the interests of the lender and borrower to promote responsible lending.
 - CONGRESS should pass an interest rate cap no higher than 36% that covers all lenders, including banks, and continue to allow states to set lower rate limits.
 - CONGRESS, STATES, VOTERS, and REGULATORS should pass and enforce loophole-free interest rate limits no higher than 36%, inclusive of fees and ancillary products, for small dollar loans, and lower limits for larger loans.

2. **Prevent evasions of interest rate limits adopted by states and voters.** American states have had interest rate limits since the American Revolution, and American voters, on a bipartisan basis, strongly support interest rate limits of 36% or less. But the lack of federal interest rate limits and creative evasions of predatory lenders have exposed far too many people to debt trap loans.
 - CONGRESS should support and not preempt the right of voters and states to protect people from predatory lending and should pass a national interest rate limit that covers all lenders, which would greatly reduce lenders' ability to evade state caps.
 - STATE ATTORNEYS GENERAL and STATE CREDIT REGULATORS should challenge predatory lenders that attempt to evade state interest rate limits.
 - FEDERAL AND STATE BANK REGULATORS should stop banks from helping predatory lenders launder their loans to evade state interest rate limits.

3. **Apply credit laws to disguised forms of credit.** All forms of credit should be covered by basic credit laws, including rate limits, disclosures, ability-to-repay requirements, and other protections.
 - The FEDERAL GOVERNMENT and STATES should enforce credit laws against all forms of disguised credit and should not carve exemptions in credit laws for any form of credit.

4. **Require assessment of the borrower's ability to repay:** The ability-to-repay standard is a foundation of responsible lending. Every lender should take steps to reasonably ensure that the borrower can repay the loan as it comes due, based on the borrower's income and expenses or obligations, while continuing to meet existing obligations, in affordable payments.
 - The CFPB should enact and enforce strong ability-to-repay rules to protect consumers from debt trap loans including payday loans, title loans, installment loans, lines of credit, and disguised credit.
 - FEDERAL AND STATE BANK AND CREDIT REGULATORS AND ENFORCEMENT AGENCIES should enact and enforce ability-to-repay rules, should view lending without regard to ability to repay as an unfair, deceptive or abusive practice, and should stop their regulated entities from engaging in harmful collateral-based lending.

5. **Ensure access to the courts when laws are violated.** Borrowers should always be allowed their day in court when the law has been violated. No attempt by a predatory lender to bypass the legal system should be allowed.
 - CONGRESS should restore and protect access to the courts for borrowers harmed by predatory lending, including consumers, workers, and small businesses.
 - STATES should ensure that borrowers have remedies against lenders through laws against unfair, deceptive and abusive practices.

6. **Ensure that lenders treat borrowers fairly and with respect, and that they work with struggling borrowers.** Lenders and their debt collectors must not engage in harassment or intimidation, in or out of court. Lenders should offer reasonable options to help borrowers get back on track and should only use lawsuits as a last resort.
 - CONGRESS, STATES, and REGULATORS should adopt and enforce rules to protect borrowers from the unfair, deceptive or abusive debt collection practices of lenders, including using debt collection in lieu of responsible underwriting for ability to repay.

Predatory, unsafe credit shouldn't be thought of as credit at all. Predatory lenders specifically target communities of color, low-income workers, and small businesses, stripping these communities of hard-earned wealth – usually with the purported justification that they are providing “access to credit.” Consumers need and deserve access to affordable, safe credit, but credit with high interest rates that traps consumers in devastating cycles of debt only leaves them worse off. We support the common-sense policy recommendations outlined above.

Sincerely,

20/20 Vision DC
 Accountable.US
 American Family Voices
 American Sustainable Business Network
 Americans for Financial Reform
 Appleseed Foundation
 Association for Financial Counseling and Planning Education (AFCPE)
 CAARMA Consumer Advocates Against Reverse Mortgage Abuse
 Capital Good Fund
 Center for Economic Justice
 Center for LGBTQ Economic Advancement & Research (CLEAR)
 Center for Responsible Lending
 Coalition on Human Needs
 Color Of Change
 Consumer Action
 Consumer Federation of America
 Consumer Reports
 Consumers for Auto Reliability and Safety
 Credit Builders Alliance

The Leadership Conference on Civil and Human Rights
 Local Initiatives Support Corporation (LISC)
 Main Street Alliance
 Minority Veterans of America
 National Association for Latino Community Asset Builders
 National Association of Consumer Advocates
 National Community Reinvestment Coalition (NCRC)
 National Consumer Law Center (on behalf of its low income clients)
 National Consumers League
 National Fair Housing Alliance
 National Foundation for Credit Counseling
 National Housing Resource Center
 National Rural Social Work Caucus
 Public Citizen
 Public Good Law Center
 Revolving Door Project
 Strategic Organizing Center
 U.S. PIRG
 United Church of Christ, Justice and Local Church Ministries
 Woodstock Institute

Alabama

Alabama Appleseed Center for Law & Justice
 Alabama Arise
 Community Foundation of Greater Birmingham
 The Worship Center Christian Church

Alaska

Alaska PIRG

Arizona

Arizona Council of Human Service Providers
 Arizona PIRG
 Center for Economic Integrity
 Hope of Glory Center, Inc.
 Primavera Foundation
 Southwest Fair Housing Council
 Tucson Collaborative for Neighborhood Transformation
 Tucson Diocesan Council, The Society of St. Vincent de Paul
 William E. Morris Institute for Justice

Arkansas

Arkansans Against Abusive Payday Lending

California

Building Skills Partnership
California Reinvestment Coalition (CRC)
CALPIRG
CAMEO- California Association for Micro Enterprise Opportunity
Community Health Councils
Consumer Federation of California
Public Counsel
Public Law Center
United Parents and Students

Colorado

Bell Policy Center
CoPIRG
LaMedichi

Connecticut

Connecticut Legal Services, Inc.
ConnPIRG

Delaware

Delaware Community Reinvestment Action Council, Inc.

District of Columbia

RESULTS DC/MD
Tzedek DC

Gary Peller, Georgetown University Law Center
Arthur E. Wilmarth, Jr., Professor Emeritus of Law, George Washington University Law School

Florida

Feeding Northeast Florida
Florida Consumer Action Network
Florida PIRG
Florida Silver Haired Legislature Inc
Legal Aid Society of Palm Beach County

Georgia

Georgia Advancing Communities Together, Inc.
Georgia PIRG
Georgia Watch
The New Georgia Project Action Fund

Illinois

Chicago Consumer Coalition
Financial Inclusion for All Illinois
Housing Action Illinois
Illinois Conference of Churches
Illinois PIRG
Legal Action Chicago

Colonel Paul E. Kantwill, USA (Ret.), Founding Executive Director, The Rule of Law Institute,
Loyola University Chicago School of Law

Indiana

Citizens Action Coalition of IN
HomesteadCS
Indiana Catholic Conference
Indiana Community Action Poverty Institute
Indiana PIRG
MCCOY (Marion County Commission on Youth, Inc.)
Prosperity Indiana

Iowa

Iowa PIRG

Christopher K. Odinet, University of Iowa College of Law

Kansas

Andrea J. Boyack, Washburn University School of Law

Louisiana

Louisiana Budget Project

Maine

Maine Center for Economic Policy
Maine Equal Justice

Maryland

Maryland Consumer Rights Coalition
Maryland PIRG
Public Justice Center

Massachusetts

MASSPIRG
The Consumer Assistance Council, Inc.

Kathleen Engel, Suffolk University Law School

Michigan

Community Economic Development Association of Michigan (CEDAM)
PIRG in Michigan (PIRGIM)

Minnesota

Exodus Lending

Mississippi

Hope Policy Institute

Missouri

MoPIRG

Montana

MontPIRG

Nebraska

CUES Fund
Lending Link

Nevada

Legal Aid Center of Southern Nevada

New Hampshire

NHPIRG

New Jersey

New Jersey Appleseed Public Interest Law Center
New Jersey Citizen Action
NJPIRG

New Mexico

Independent Order of Odd Fellows, Santa Fe Lodge #2
New Mexico Center on Law & Poverty
New Mexico Fair Lending Coalition
Prosperity Works
NMPIRG

New York

Empire Justice Center
Housing and Family Services of Greater New York
Rural Law Center of New York, Inc.

Susan Block-Lieb, Fordham Law School
Peter Fraser, Cornell University
Dora Galacatos, Fordham Law School Feerick Center for Social Justice

North Carolina

NC Coalition for Responsible Lending
NCPIRG
North Carolina Council of Churches
North Carolina Justice Center
Reinvestment Partners
The Collaborative

Ohio

Ohio PIRG
Ohio Poverty Law Center

Creola Johnson, Moritz College of Law, The Ohio State University
Cathy Lesser Mansfield, Case Western Reserve University School of Law

Oklahoma

VOICE (Voices Organized in Civic Engagement) OKC

Oregon

Oregon PIRG (OSPIRG)
Our Children Oregon

Pennsylvania

Neighborhood Allies
PennPIRG
Pennsylvania Utility Law Project (on behalf of its low income clients)
Pennsylvania War Veterans Council
The One Less Foundation (Pennsylvania and Colorado)

James J. Pierson, Business Chair, MBA Program Director & Assistant Professor, Chatham
University

Rhode Island

Economic Progress Institute
RIPIRG

South Carolina

Columbia Consumer Education Council
CommunityWorks
South Carolina Appleseed Legal Justice Center
South Carolina Association for Community Economic Development (SCACED)

Texas

RAISE Texas
Texas Appleseed
United Way of Central Texas
United Way of Metropolitan Dallas
TexPIRG

Vermont

Vermont Public Interest Research Group

Virginia

Restoring Hope Roanoke
Virginia Citizens Consumer Council
Virginia Organizing

Irene E. Leech, Virginia Tech

Washington

WASHPIRG

West Virginia

Mountain State Justice

National Association of Social Workers - West Virginia Chapter

Rise Up WV

West Virginia Council of Churches

Wisconsin

CR-Social Development Commission

WISPIRG

Wyoming

Wyoming Trial Lawyers Association



Statement Submitted by

Alison Feighan on behalf of
The Responsible Business Lending Coalition

to the
U.S. House Committee on Financial Services
for the April 27, 2022, hearing entitled
“Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau”

Chairwoman Waters and Ranking Member McHenry, the [Responsible Business Lending Coalition \(RBLC\)](#)¹ appreciates the opportunity to submit this statement to encourage the Consumer Financial Protection Bureau’s (CFPB) to implement Section 1071 of the Dodd-Frank Act in a timely manner and to encourage the committee to support efforts to protect small business owners from deceptive and predatory financing practices by passing the Small Business Lending Disclosure Act.

As the foremost cross-sector voice advocating for small business financial protection, the RBLC’s leadership includes nonprofit and for-profit fintech lenders, community development financial institutions (CDFIs), investors, and small business advocates. Members of the RBLC share a commitment to innovation in small business lending as well as serious concerns about the rise of irresponsible small business lending.

In 2015, the RBLC created the Small Business Borrowers' Bill of Rights, the first cross-sector consensus on the rights that small business owners deserve and the standards of practice that financing providers should abide by to uphold those rights. Over one hundred small business lenders, brokers, lead generators, and advocacy organizations have endorsed these standards.

The RBLC views section 1071 as pro-innovation regulation that could encourage the development of more inclusive and higher-quality small business financing offerings simply by creating transparency into how the market is working today. The transparency created by section 1071 also has the potential to spur innovation by encouraging adoption of the products and practices that the data reveals are effective in serving underserved market segments. This long-needed data collection will also increase equity in the commercial financing marketplace by enabling regulators

¹Members of the RBLC include Accion Opportunity Fund, Community Investment Management, Funding Circle, LendingClub, Opportunity Finance Network, Small Business Majority, and the Aspen Institute.

to identify violations of the Equal Credit Opportunity Act (ECOA) or revealing unmet credit needs that financing providers could help address.

We concur with a statement made by Director Chopra in his opening remarks that “laws work best when they are easy to understand, easy to follow, and easy to enforce” which is why the RBLC advocates for federal legislation that would require commercial finance providers to disclose clear and comprehensive pricing information, using the same metrics, so small business owners and entrepreneurs can make apples-to-apples comparisons when seeking financings.

To that end, we urge the committee to pass the Small Business Lending Disclosure Act (H.R. 6054) as introduced by Congresswoman Nydia Velazquez as well as the Small Business Fair Debt Collection Protection Act sponsored by Congressman Al Lawson. Both bills seek to extend critical and straightforward protections to small business owners seeking financing.

The Small Business Fair Debt Collection Protection Act would extend the Fair Debt Collection Practices Act (FDCPA) to our country’s hard-working entrepreneurs and small businesses. Unlike consumer borrowers who are covered by FDCPA, small business borrowers are not protected from the threat of harassment or the predatory practice of some debt collectors. Extending FDCPA protections to entrepreneurs as proposed by the Small Business Fair Debt Collection Protection Act is especially important to women and minority small business owners who are especially vulnerable to predatory debt collection practices.

The Small Business Lending Disclosure Act would bring much needed transparency to small business credit markets. Small businesses owners are not protected by the Truth in Lending Act which requires the transparent disclosure of annual percentage rates (APR) in consumer lending. Transparent price disclosure is the basis for free and efficient markets and the lack of price transparency in small business financing is undermining market price competition, stymying innovation, and misleading small business into paying high rates. For many small businesses, choosing an unaffordable credit product unknowingly could be the difference between survival and failure.

Without standardization of disclosure requirements across lenders, small businesses are more likely to choose higher-cost products. [Research](#) indicates that small businesses can pay APRs of 94%, and as high as 350%, without these high rates being properly and clearly disclosed. What’s more, a [Federal Reserve study](#) demonstrated that Black- and Hispanic-owned businesses are more likely to use “high-cost” and “non-transparent” financing, referring specifically to merchant cash advances as well as factoring products.

APR is the only established metric that enables informed comparisons of the cost of capital over time and between products of different dollar amounts and term lengths. APR is the time-tested

rate that people know and expect because it is the legally required standard for mortgages, auto loans, credit cards, student loans and personal loans, including short-term loans.

The RBLC has endorsed the Small Business Lending Disclosure Act, as have a growing list of organizations across the country including the Accompany Capital, African American Alliance of CDFI CEOs, the California Association for Micro-Enterprise Opportunity (CAMEO), the Colorado Black Chamber of Commerce, Latino Economic Development Center (LEDC), Lendistry, Main Street Alliance, the National Alliance of Community, Economic Development Associations (NACEDA), the National Association for Latino Community Asset Builders (NALCAB), National Urban League, New York State, CDFI Coalition, UpState NY Black Chamber of Commerce, United States Hispanic Chamber of Commerce, and the Woodstock Institute.

The RBLC looks forward to working with the committee and with the CFPB to promote policies that support and protect small business owners. We have included two documents with additional information on the importance of transparency in small business financing and particularly the importance and practicality of APR as a metric. We are honored to serve as a resource to you and your staff if you have questions or would like additional information.





SUPPORT: Small Business Lending Disclosure Act (H.R. 6054)

Small businesses are not protected by the Truth in Lending Act, which requires transparent disclosure of annual percentage rates (APR) in consumer lending. In the absence of transparency standards, some financing companies are charging small businesses effective APRs averaging 94%, and as high as 350%, without disclosing those APRs to small business borrowers.¹ Federal Reserve research finds that small businesses are often misled by disclosures quoting "rates" that are not APRs and would prefer an APR disclosure for all of their financing options.²

Transparent price disclosure is the basis for **free and efficient markets**. Today, the lack of price transparency in small business financing is undermining market price competition, stymying innovation, and misleading small business into paying high rates. **For small businesses already on the brink of closure amid the pandemic, choosing an unaffordable credit product unknowingly could be the difference between survival and failure.**

To ensure that all small businesses receive the transparency they need to make informed decisions, **Congresswoman Nydia Velázquez (D-NY-7)** introduced the *Small Business Lending Disclosure Act (H.R. 6054)*. This legislation requires financing providers to disclose clear and comprehensive pricing information to small business borrowers. H.R. 6054 cosponsors as of 2/28/22 include Chairwoman Waters, Rep. Perlmutter, Rep. Meeks, Rep. Cleaver, Rep. Beatty, Rep. Maloney, and Rep. Lynch.

Small Business Lending Disclosure Act: Gives small businesses the transparency they deserve by requiring all commercial financing providers to disclose key terms to prospective borrowers, for amounts up to \$2.5 million

- *Annual percentage rate (APR)*, or estimated APR for merchant cash advances and other alternative products
- *Total cost* of the financing in dollars, including any/all unavoidable fees
- *Financing amount*, and the disbursement amount after fees are deducted
- *Term* or estimated term of repayment
- *Payment amount and frequency* (daily, weekly, monthly, etc.), and the average monthly payment amount to enable comparison
- *Renewal costs* for financing that is 'renewed' or refinanced with new fees assessed
- *Clear description of prepayment cost*, addressing hidden prepayment charges

Which loan is cheaper?

Federal Reserve researchers asked small businesses this question, which businesses commonly face today.³

<u>Loan 1</u> 9% Simple Interest Rate	or	<u>Loan 2</u> 21.9% APR	?	<p>Answer: Loan 2. The Fed found that "most participants incorrectly guessed the 9% simple interest short-term loan to be less expensive."⁴ In fact, it had an APR of approximately 46%.⁴</p>
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1 Opportunity Fund, "Unaffordable and Unsustainable: The New Business Lending on Main Street", 2016: <https://www.opportunityfund.org/wp-content/uploads/2019/09/Unaffordable-and-Unsustainable-The-New-Business-Lending-on-Main-Street-Opportunity-Fund-Research-Report-May-2016.pdf>

2 Federal Reserve Board, "Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites", 2019: <https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf>

3 Ibid.

4 Ibid.



APR is the Cornerstone of Transparent Small Business Financing Disclosures

By providing small businesses with APR disclosure when they seek financing, the Act would bring transparency and price competition to the market, saving businesses an estimated \$4.7 billion annually.¹

1. Federal Reserve studies confirm the need for APR disclosure.

Federal Reserve research finds that small business owners consider APR among the “most helpful details” in an ideal disclosure.² Small businesses want to see APR because it is the only familiar, trusted, and universal price metric enabling apples-to-apples comparison.

2. APR enables comparison of borrowing cost over a common unit of time.

A price of \$10,000 to rent an apartment for a month is not the same as \$10,000 to rent for a year. The same is true in financing, which is the rent of money over a period of time. APR uses a common unit of time, the year, to enable price comparison.

When selecting an auto mechanic, drivers can compare different mechanics’ hourly rates—even if considering less than an hour of work. Drivers may choose to pay a higher hourly rate for a mechanic that is more convenient or skilled. Knowing the hourly rate first enables them to make an informed choice.

3. APR helps entrepreneurs compare offers with different term lengths, even those shorter than one year.

While some shorter-term cash advance are typically 6-18 months in term for a single use, financing companies encourage small businesses to ‘renew’ many times, extending longer than one year.

One provider states: “Approximately 90% of our Merchant Cash Advance clients participate in the program more than once. In fact, the average customer renews about ten times!”³

Another explains: “Once your Merchant Cash Advance or Business Loan payback is 50% complete, you’ll be eligible to renew with us for additional funding. Over 70% of our merchants take advantage of this option, many of them renewing for a third or fourth time... Our goal is to make a lasting connection...”⁴

4. APR can easily be calculated for alternative, sales-based products. State laws in New York and California require APR disclosure for all commercial financing, and some providers proactively disclosed APR to customers prior to the passage of these laws.

APR is calculated and disclosed today by many small business financing providers, including some providers of merchant cash advances. APR is already disclosed by the signatories of the Small Business Borrowers’ Bill of Rights, users of the SMART Box, and others. Soon, all nonbank small business financing providers operating in New York and California will begin including APR in all small business credit contracts as these laws take effect. New York and California’s commercial financing laws establish APR as the de facto standard for small business price comparison nationwide.⁴

5. Opposition to state disclosure bills centered around opposition to APR disclosure.

Opponents to the New York and California bills consisted of some alternative financing companies that charged high APRs and did not want to disclose them to small businesses. Supporters of the bills included responsible fintech/private-sector financing companies, CDFIs, small business organizations, and civil rights groups.

¹ Responsible Business Lending Coalition, “Responsible Business Lending Coalition Comments Small Business Lending Disclosure Act of 2021,” 2021: <https://www.borrowersbillofrights.org/wp-content/uploads/2021/02/Responsible-Business-Lending-Coalition-Comments-Small-Business-Lending-Disclosure-Act-of-2021.pdf>

² Federal Reserve Board of Governors, “Uncertain Terms: What Small Business Borrowers Find When Browsing Online Lender Websites,” 2019: <https://www.federalreserve.gov/about/press/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf>

³ Financing company website

⁴ Financing company website

➔ **UNDISCLOSED APRS AS HIGH AS 350%**

Small business demand for capital increased during the pandemic, while loan offerings declined. Now, alternative financing companies promising fast cash seek to fill this void, with prices that are not clearly disclosed to borrowers.

Some **unregulated financing companies charge hidden APRs of up to 350%** but tell businesses their "rates" are in the single digits.

➔ **BIPOC BUSINESSES DISPROPORTIONATELY IMPACTED BY DECEPTIVE LENDING**

The [2021 Small Business Credit Survey](#) found that:

- Business owners of color are worse off financially due to the pandemic, and
- Credit availability is Black entrepreneurs' top concern.

Moreover, **Black and Hispanic business owners are twice as likely** to apply to high-cost and less transparent financing companies.

Continue reading at next page >

**SMALL BUSINESSES NEED
RESPONSIBLE CAPITAL
TO REBUILD FROM THE
COVID-19 CRISIS. A LACK
OF TRANSPARENCY PUTS
THEIR FUTURES AT RISK.**



**NOW MORE THAN EVER, SMALL BUSINESSES
NEED LENDING TRANSPARENCY TO AVOID
UNSUSTAINABLE DEBT AS THEY REBUILD FROM
COVID-19.**

The federal government has regulated **consumer** financing disclosures for over 50 years. In that time, business financing has grown exponentially, without any disclosure requirements. **It is time for a Small Business Truth in Lending Act.**

Passed in 1968, the Truth in Lending Act requires lenders to disclose key pricing and term information to consumers, enabling them to compare options and make informed credit decisions.

A Small Business Truth in Lending Act would give business owners the same level of transparency from commercial financing providers.

FINANCING TRANSPARENCY COULD SAVE SMALL BUSINESSES ***BILLIONS OF DOLLARS*** PER YEAR IN EXCESS FINANCING CHARGES.

➔ ONE MILLION SMALL BUSINESSES

Using data from the [Federal Reserve's Small Business Credit Survey](#) and [U.S. Census Bureau](#), we estimate that each year, nearly one million price-sensitive small businesses will select lower-cost financing if presented with clear, comparable cost disclosures. Disclosures must include APR so that businesses can compare offers with different term lengths.

➔ SAVING OVER \$4.7 BILLION PER YEAR

Small businesses will save an estimated \$4.7 billion annually with the ability to switch to lower-cost loan products. These savings could fund [median-wage-rate](#) jobs for over 115,000 unemployed workers.



2

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Contact: info@borrowersbillofrights.org

ADDITIONAL BENEFITS

Businesses will not only save on finance charges, but also avoid secondary costs of unaffordable debt.

Time is money: Entrepreneurs often seek to refinance out of unaffordable debt, spending an average of [26 hours](#) searching and applying for credit. By understanding the cost of financing upfront, entrepreneurs can avoid the need to refinance.

Missed payments can increase the cost of credit for years to come: Unaffordable products lead to missed payments and charge offs. Transparency can help businesses avoid credit score damage that [increases the cost of future borrowing](#).

Preserving future business revenue: Unaffordable debt can force businesses to close prematurely. Business owners risk losing billions of dollars in future revenue without access to clear disclosures.



Testimony for the Record

“Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau”

Submitted to
House Financial Services Committee

Submitted by
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April 27, 2022

UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic* civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers at the national and local levels.

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, we supported \$500 million in funding for the Community Development Financial Institutions Fund (CDFI Fund) in the latest federal budget, as well as policies that protect consumers who receive services from the financial sector, improve pathways to becoming fully banked, and include low English proficient people and mixed-status families in the financial mainstream. Our research and reports include *Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities* (2014); *Profiles of Latinos and Banking—Technology: A Closer Look at Latinos and Financial Access* (2015); *The Future of Banking: Overcoming Barriers to Financial Inclusion for Communities of Color* (2019); *Latinos in Finance: Investing in Bilingual Banking and Finance Professionals* (2021); *Latinos, COVID-19, and Social Belonging: Voices from the Community* (2021); and *Closing the Latina Wealth Gap: Building an Inclusive Economic Recovery after COVID* (2021).

Latinos are in a precarious moment. The federal government's response to the pandemic was critical to reducing poverty and supporting low-income people and Latinos. However, as supports such as the Child Tax Credit (CTC) expire, many find themselves struggling to make ends meet. Eight million households are behind on their rent, with Latino renters more than twice as likely as Whites to be behind on rent.¹ In addition, over the last seven days, roughly 135 million people had difficulty covering expenses—and such stressors are not proportionately distributed; this worry afflicts 62% of Latinos, compared to 50% of Whites.²

Despite facing serious financial challenges, Latinos are an ongoing source of growing economic potential and dynamism, and our work is fueling the country's economy. When Latinos are fully included by structures and systems, the benefits are both extraordinary and widely felt. For example, Latinos have a higher-than-average labor force participation, start businesses at more than double the overall rate for entrepreneurship, and saw their revenues grow an average of 25% over the past two years (in comparison with 19% revenue growth for White-owned businesses).³ Finally, Latinos wield significant purchasing power and represent a growing customer base. In 2020, Latino spending power grew to \$1.9 trillion — an 87% increase from 2010,⁴ and the Latino population grew to 62.1 million in 2020 — a 23% increase from 2010 and the fastest growing population in the country.⁵

Safe and affordable financial products and services provide important tools for Latinos to overcome financial challenges and build wealth. Yet many low-income people and Latinos experience high costs for banking, are shut out of the financial system, or face disparate treatment in the financial products marketplace. For example, Latinos report that they pay \$14 per month, on average, for automated teller

* The term "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout our materials to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race. Our materials may also refer to this population as "Latinx" to represent the diversity of gender identities and expressions that are present in the community.

machine (ATM), overdraft, and routine service charges on checking accounts, while Black account holders report paying \$12 a month. In contrast, Whites pay an average of \$5 per month.⁶ Moreover, as of 2019, 12% of Latinos are unbanked, compared to 2.5% of Whites.⁷ Finally, Latinos are denied loans at almost twice the rate as Whites, and they are more likely to have a higher cost home loan if approved.⁸

The CFPB's Efforts Can Help to Make the Financial Products Marketplace Fairer and More Accessible for Latinos.

UnidosUS advocated for and helped keep Consumer Financial Protection Bureau (CFPB) in the Dodd-Frank Wall Street Reform and Consumer Protection Act. We have also been a core constituency for the Bureau's efforts since its inception. The 2008 financial crisis, and the consumer exploitation that contributed to it, resulted in disproportionately high losses in wealth and equity for Latinos and Black families.

The Bureau's core purpose is to ensure that "markets for consumer financial products and services are fair, transparent, and competitive."⁹ Its statutory powers allow it to develop rules and enforcement mechanisms to protect consumers from "unfair, deceptive, or abusive acts and practices and from discrimination."¹⁰

The CFPB's role as a consumer-centered agency can allow it, when properly used, to mitigate the negative impacts of specific aspects of the financial marketplace for lower- and middle-income Latinos. For this reason, the work of the Bureau is of keen interest to the civil rights community, including the Latino community. This testimony touches on several key themes that are relevant for Latino financial well-being.

In a few specific areas, the Bureau is helping to make the financial products marketplace fairer and more accessible for Latinos. As we elaborate below, we find the following current lines of inquiry to be useful:

- The Bureau is collecting comments on a Request for Information (RFI) regarding fees imposed by consumer financial products and services providers with a special focus on excessive and unnecessary fees.
- The Bureau's oversight of invaluable mortgage loan data, known as Home Mortgage Disclosure Act (HMDA) data, allows government agencies and consumer advocates to identify disparate lending patterns and possible unfair treatment.
- The CFPB is investigating enforcement avenues and data regarding Buy Now, Pay Later (BNPL) products.
- The CFPB has translated forms that facilitate access to critical lines of aid and loss mitigation options for Spanish-speaking Latinos.

Despite these efforts, low-income people and Latinos continue to face high costs and steep barriers to entry into the financial system. The CFPB should continue to move forward with efforts to make the financial system accessible for Latinos, ensure that new and emerging financial products are safe, and reduce unnecessary and excessive costs.

Finally, we urge recognition of the point that personnel is policy. While the CFPB has potential to assist the community, it is equally true that the Bureau could do more to ensure that low-income people and Latinos are included in the decision-making process by hiring more diverse staff and creating platforms for community-based organizations to provide input.

Language Barriers Keep Too Many Latinos Out of the Financial Mainstream.

Language barriers limit the ability of nearly 26 million limited-English-proficient (LEP) consumers in the United States to obtain responsible financial products and ultimately, to build wealth at the same rate as their peers.¹¹ A report by the Urban Institute found that neighborhoods with a high concentration of LEP speakers had homeownership rates five percentage points lower than those with a median concentration of LEP residents.¹²

Considering the country's current economic headwinds, LEP consumers must also weather additional obstacles that hamper their access to much-needed aid. UnidosUS recognizes that the Bureau has quickly acted within its authority to help LEP consumers and prevent eviction and foreclosures. Its work translating early intervention notices into Spanish and its multilingual housing help information on imperative federal aid programs such as Emergency Rental Assistance (ERA) and Homeowner Assistance Fund (HAF) facilitate access to these services for LEP consumers.

However, LEP consumers and homeowners remain especially vulnerable to evictions and foreclosures. Federal loss mitigation policies are helping many homeowners keep their homes and wealth during the pandemic. But delayed rollouts and inequitable implementation are leaving some homeowners experiencing financial stress and placing them at risk of losing their homes.

This is particularly true of low-income homeowners, homeowners of color, and LEP homeowners. An analysis in 2017 by Freddie Mac and Fannie Mae found that providing translated documents eliminates significant barriers that prevent or delay LEP borrowers' ability to buy a home.¹³ Servicers also identified language barriers as a primary obstacle to communicating with LEP borrowers.¹⁴ Yet the industry too often fails to provide translated documents, and there are limited data on the use of translated documents and borrowers' language preferences.

We urge the CFPB to continue its effort in this area and recommend the following steps:

1. Explore barriers to industry use of translated documents, track and publish servicing data disaggregated by race, ethnicity, and language preference, and monitor phone metrics regarding language access.
2. Encourage servicers to link to available translated foreclosure prevention materials from the Bureau and the Federal Housing Finance Agency's (FHFA) Mortgage Translations Online Clearinghouse.
3. Provide translated templates of high priority mortgage servicing documents, including, but not limited to:
 - a. Notice to a borrower who submitted an application for loss mitigation related to how to make that application complete.¹⁵
 - b. Notice of a complete application.¹⁶
 - c. Notice to a borrower who has been given a forbearance.¹⁷
 - d. Any other rules referenced in the Bureau's Loss Mitigation Rule.¹⁸

The Equity and Consumer Impacts of Emergent Financial Products and Services Should Be Monitored.

As we explore exactly what an inclusive economy looks like for Latino communities, we are actively monitoring the data about the impact and growing prevalence of Buy Now, Pay Later (BNPL) products. The BNPL sector is experiencing explosive levels of growth, including a 300% increase in the number of

consumers who have used a BNPL product since 2018.¹⁹ Such products are often marketed as an affordable, no-fee financing alternative to consumers who may be shut out of the credit market.

Although BNPL products are described as a lower-cost alternative to other forms of credit, new data show that they often have hidden costs. For instance, a February 2021 survey found that use of these products increased consumers' overall spending and preceded a drop in credit scores after a missed payment for 72% of the survey respondents.²⁰ Recent data also shows a troubling correlation between BNPL users and those who previously had overdrawn banking accounts.²¹ And new research shows that Black and Hispanic Americans are more likely to use BNPL products than are their non-Hispanic White peers.²² Moreover, the "Big Three" credit reporting bureaus (TransUnion, Equifax, and Experian) recently announced plans to include BNPL loans on credit reports.²³

BNPL products are playing a larger role in consumers' lives, prompting an urgency to understand as much as we can about their impacts on consumers. UnidosUS supports the Bureau's recent inquiry into BNPL companies and its support for greater market transparency.

Latinos Routinely Pay Excessive and Unnecessary Fees, Fines, and Excessive Costs.

As described below, Latinos face high costs in deposit accounts, credit cards, and small dollar loans. On deposit accounts, Latinos pay high levels of maintenance fees, minimum balance fees, and overdraft fees. In 2021, average monthly fees for checking accounts that are not free hit a record high of \$16.35.²⁴ While the average maintenance fees on all checking accounts was \$7.63, Latino and Black customers paid the highest amount in monthly fees (\$12.45 and \$18.29, respectively).²⁵ According to a 2018 report, small and community Main Street banks generally require an average daily or monthly minimum balance of at least \$626 to avoid fees in a majority White neighborhood, compared to \$749 in majority Latino neighborhoods, and \$871 in majority Black neighborhoods.²⁶

According to the CFPB, banks charged an estimated \$15.47 billion in overdraft and non-sufficient funds (NSF) fees in 2019.²⁷ Importantly, a whopping 80% of fees were charged to 9% of consumers.²⁸ An analysis by the Financial Health Network found that "low- to moderate-income households were nearly twice as likely to overdraft than higher-income households. Black and Latinx households with accounts were also far more likely to report an overdraft on their account than White households (1.9 times as likely, and 1.4 times as likely, respectively)."²⁹

Credit card fees and fines are also significant for low-income people and Latinos. According to data from the Federal Reserve Board, financial institutions—including credit card companies—charged nearly \$14 billion in late fees in 2019 and about \$12 billion in 2020.³⁰ A recent CFPB analysis of these data found that, "consumers with superprime scores hold 59% of card accounts but pay only 21% of late fee volumes; by contrast, consumers with deep subprime scores hold about 6% of card accounts but generate 24% of late fee volumes."³¹

More data are needed to better understand whether such late fees are disproportionately charged to specific racial and ethnic groups. The CFPB intends to collect racial data to better inform its future work, stating, "existing data available to the Bureau do not allow the Bureau to fully examine the disparity in use, cost, and availability of credit cards by racial groups. The Bureau intends to explore options to incorporate racial data in its data sources to inform its future work."³²

We support the CFPB's recent request for information on excessive fees that are generally not subject to competitive market pressures and have identified a range of fees that disproportionately impact Latinos, as well as major areas for further investigation by the Bureau.

Conclusion: The CFPB's Focus on Excessive Fees, New and Emerging Financial Products, and Language Access is Helpful to Latino Consumers, yet More Can Be Done.

The evidence is clear: Latinos experience inequitable access to and high costs within the financial system. Low-income people and Latinos are prevented from accessing tools to build their financial well-being and pay excessive fees to wealthy institutions. Reducing excessive fees, monitoring new financial products, and improving language access in the financial system are crucial components to address inequality and building wealth for Latinos. We support the CFPB's efforts to ensure that financial products are fair, transparent, and competitive, and we ask that Congress provide the CFPB with the support it needs to fulfill its core purpose and obligations.

At the same time, the Bureau can do more to protect vulnerable communities. For example, the Bureau still lacks disaggregated data to assess the impact of excessive fees in credit card usage and other financial products on Latinos. Furthermore, the CFPB previously failed to enforce fair lending laws³³ and occasionally waters down its enforcement power through no-action letters with problematic implications for Latino consumers.³⁴ In addition, above we flagged specific steps that would assist LEP consumers in this moment as the housing crisis continues.

The CFPB could also improve its hiring diversity, particularly at the top levels which would ensure that Latino perspectives are represented in their decisions. After all, it is important that all institutions reflect the diversity of the consumer base that they are trying to help.

Notes

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APPENDIX

April 27, 2022

House Committee on Financial Services
Consumers First:
Semi-Annual Report of the Consumer Financial Protection Bureau
April 27, 2022

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/COMMITTEE INSERT

CFPB.

The following Consumer Financial Protection (CFPB) enforcement actions included allegations of unlawful conduct relating to fees. This is a broadly defined list that spans CFPB enforcement actions relating to deceptive fees, unfair fees, fee charged without a consumer's consent, fees charged for services never rendered to or received by consumers, or fees that otherwise violate federal consumer financial laws.

- Chance Edward Gordon d/b/a Gordon & Associates (July 2012) - Filed lawsuit alleging companies and their principals charged consumers illegal advance fees for loan modification services.¹
- Capital One Bank (July 2012) - Consent Order found bank used deceptive marketing tactics to pressure or mislead consumers into paying for "add-on products" such as payment protection and credit monitoring when they activated their credit cards.²
- Discover Bank (Sept. 2012) - Consent Order found bank used deceptive telemarketing practices to sell certain credit card add-on products to consumers.³
- American Express Bank (October 2012) - Consent Order found company charged consumers illegal credit card fees.⁴
- Payday Loan Debt Solution, Inc. (Dec. 2012) - Filed stipulated final judgment; complaint alleged company and its principal charged consumers illegal advance fees for debt relief services.⁵

¹ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-halts-alleged-nationwide-mortgage-loan-modification-scams/>

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⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-american-express-to-pay-85-million-refund-to-consumers-harmed-by-illegal-credit-card-practices/>

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- National Legal Help Center, Inc. (Dec. 2012) - Filed lawsuit alleging company and its principals charged consumers illegal advance fees for loan modification services.⁶
- Premier Consulting Group LLC (May 2013) - Settled complaint alleging company and law firm charged consumers illegal advance fees for debt relief services.⁷
- American Debt Settlement Solutions (May 2013) - Obtained stipulated final judgment; complaint alleged company and its principal charged consumers illegal advance fees for debt relief services.⁸
- Dealers' Financial Services, LLC (June 2013) - Consent Order found bank and one of its non-bank partner companies deceptively marketed the cost and coverage of certain add-on products sold in connection with Military Installment Loans and Educational Services (MILES) auto financing installment loans.⁹
- Morgan Drexen (Aug. 2013) - Court entered final judgment in that company and its principal charged consumers illegal advance fees for debt relief services.¹⁰
- JPMorgan Chase Bank, N.A.; and Chase Bank USA, N.A. (Sept. 2013) - Consent Order found bank engaged in unfair billing practices for certain credit card "add-on products" by charging consumers for credit-monitoring services that they did not receive.¹¹
- Meracord LLC (Oct. 2013) - Consent Order found company and its principal charged consumers illegal advance fees for debt relief services.¹²
- American Express Bank (Dec. 2013) - Consent Order found the bank billed consumers fees for services they did not receive and also unfairly charged consumers for monthly fees and interest.¹³

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¹¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-chase-and-jpmorgan-chase-to-pay-309-million-refund-for-illegal-credit-card-practices/>

¹² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-meracord-for-processing-illegal-debt-settlement-fees/>

¹³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-american-express-to-pay-59-5-million-for-illegal-credit-card-practices/>

- Ocwen Financial Corp. and Ocwen Loan Servicing, LLC (Dec. 2013) - Consent Order found that companies charged unauthorized fees for default-related services.¹⁴
- Bank of America and FIA Card Services (April 2014) - Consent Order found companies engaged in deceptive marketing of two credit card payment protection products and billed consumers for identity protection products without or before having the authorization necessary to perform the credit monitoring and credit report retrieval services.¹⁵
- JRHBW Realty, Inc., d/b/a Realty South (May 2014) - Consent Order found company used contract that either explicitly directed or suggested that title and closing work be performed by a specific company, resulting in unearned fees.¹⁶
- Synchrony Bank, f/k/a GE Capital Retail Bank (June 2014) - Consent Order found bank misrepresented the cost of credit card add-on products, failed to inform some cardholders that they were ineligible for the products' benefits, failed to explain that the bank was enrolling consumers in an optional fee-based product, and misrepresented the products' availability.¹⁷
- Hoffman Law Group (July 2014) - Filed lawsuit alleging that a law firm and its affiliated company and principals promised homeowners they would be plaintiffs in mass-joinder lawsuits against their lenders and servicers to obtain mortgage modifications or foreclosure relief in exchange for fees where defendants rarely, if ever, obtained meaningful mortgage assistance relief for the consumers.¹⁸
- Mortgage Law Group and Consumer First Legal Group (July 2014) - Filed lawsuit alleging companies and their principals charged consumers illegal advance fees for loan modification services.¹⁹
- Stephen Lyster Siringoringo also d/b/a/ Siringoringo Law Firm (July 2014) - Filed lawsuit alleging company and its principals charged consumers illegal advance fees for loan modification services.²⁰

¹⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-state-authorities-order-ocwen-to-provide-2-billion-in-relief-to-homeowners-for-servicing-wrongs/>

¹⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-727-million-in-consumer-relief-for-illegal-credit-card-practices/>

¹⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-realtysouth-for-mortgage-disclosure-violations/>

¹⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-ge-capital-to-pay-225-million-in-consumer-relief-for-deceptive-and-discriminatory-credit-card-practices/>

¹⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-and-states-announce-sweep-against-foreclosure-relief-scammers/>

¹⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-and-states-announce-sweep-against-foreclosure-relief-scammers/>

²⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-and-states-announce-sweep-against-foreclosure-relief-scammers/>

- Global Client Solutions (Aug. 2014) - Obtained stipulated final judgment; complaint alleged that companies and their principals charged consumers illegal advance fees for debt relief services.²¹
- USA Discounters, Ltd. (Aug. 2014) - Consent Order found company charged servicemembers a fee to assist them in availing themselves of protections to which they were already entitled; the company then never performed most of the services offered.²²
- Amerisave Mortgage Corp. (Aug. 2014) - Consent Order found companies and their principal locked consumers in with costly-up-front mortgage fees and illegally overcharged them for affiliated “third party” services.²³
- SSM/Hydra Group (Sept. 2014) - Filed lawsuit alleging group of companies deposited unauthorized loans in consumer bank accounts and then debited biweekly finance charges indefinitely.²⁴
- U.S. Bank (Sept. 2014) - Consent Order found bank billed consumers for identity protection products prior to having the authorization necessary to perform the relevant services.²⁵
- M&T Bank (Oct. 2014) – Consent order found bank deceptively marketed checking accounts as free where consumers enrolled in those accounts ended up paying monthly fees.²⁶
- Union Workers Credit Services, Inc. (Dec. 2014) - Filed lawsuit alleging company deceived consumers into paying fees to sign up for a purportedly general-use credit card that in fact could only be used to buy products from the company.²⁷
- College Education Services (Dec. 2014) - Consent Order found company and its principals charged consumers illegal advance fees for debt relief services.²⁸

²¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-global-client-solutions-for-processing-illegal-debt-settlement-fees/>

²² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-shuts-down-usa-discounters-servicemember-fee-scam/>

²³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-amerisave-to-pay-19-3-million-for-bait-and-switch-mortgage-scheme/>

²⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-online-payday-lender-for-cash-grab-scam/>

²⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-u-s-bank-to-pay-48-million-refund-to-consumers-illegally-billed-for-services-not-received/>

²⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-mt-bank-for-deceptively-advertising-free-checking/>

²⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-texas-company-for-sham-credit-card/>

²⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-end-student-debt-relief-scams/>

- IrvineWebWorks, Inc. d/b/a Student Loan Processing (Dec. 2014) - Filed lawsuit alleging company and its principal charged consumers illegal advance fees for debt relief services.²⁹
- Continental Finance Company (Feb. 2015) - Consent Order found company misled consumers about credit card costs and charged illegal credit card fees.³⁰
- Fort Knox National Company and Military Assistance Company, LLC (Apr. 2015) - Consent Order found company charged fees without adequate disclosures.³¹
- Regions Bank (April 2015)³² - Consent Order found bank charged overdraft fees on certain transactions without first obtaining consumers' opt-in.³³
- Green Tree Servicing, LLC (Apr. 2015)* - Stipulated Order; complaint alleged company deceptively charged consumers convenience fees when paying their mortgage.³⁴
- Nationwide Biweekly Administration, Inc. (May 2015)* - Filed lawsuit alleging companies and their principal misrepresented fees for their "interest minimizer program."³⁵
- Cellco Partnership d/b/a Verizon Wireless, Sprint (May 2015) - Consent Orders found that wireless companies operated billing systems that allowed third parties to "cram" unauthorized charges on customers' mobile-phone accounts.³⁶
- Affinion Group Holdings, Inc. Affinion Group Inc., Affinion Group, LLC, et al. & Intersections Inc. (July 2015) - Filed lawsuit alleging companies enrolled consumers in add-on products that claimed to provide consumers with benefits but failed to provide the full promised services and Intersections authorized billing of consumers when it knew they were not receiving all, or in some cases any, of the benefits of the service.³⁷

²⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-shut-down-illegal-student-debt-relief-scheme/>

³⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-subprime-credit-card-company-to-refund-2-7-million-for-charging-illegal-credit-card-fees/>

³¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-military-allotment-processor-for-charging-servicemembers-hidden-fees/>

³² * Denotes matters where the alleged conduct were deception claims, but relate to products with questionable, if any, benefit to consumers.

³³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-regions-bank-7-5-million-for-unlawful-overdraft-practices/>

³⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-federal-trade-commission-take-action-against-green-tree-servicing-for-mistreating-borrowers-trying-to-save-their-homes/>

³⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-against-nationwide-biweekly-for-luring-consumers-with-false-promises-of-mortgage-savings/>

³⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-obtain-120-million-in-redress-from-sprint-and-verizon-for-illegal-mobile-cramming/>

³⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-companies-for-unfair-billing-of-credit-card-add-on-products-and-services/>

- Student Financial Aid Services, Inc. (July 2015)* - Consent Order found that company imposed undisclosed and unauthorized recurring charges for subscription financial services and provided misleading information about the total cost of the products.³⁸
- Citibank, N.A., Department Stores National Bank; and Citicorp Credit Services, Inc. (USA) (July 2015) - Consent Order found that when collecting payments, Department Stores National Bank and its service provider misrepresented fees charged for several debt protection add-on products, as well as credit monitoring, credit report retrieval services, and wallet protection services or failed to disclose no-cost payment alternatives.³⁹
- Orion Processing, LLC d/b/a World Law Processing, World Credit Repair (Aug. 2015) - Filed lawsuit alleging companies and their principals charged consumers illegal advance fees for debt relief services.⁴⁰
- Fifth Third Bank (Sept. 2015) - Consent Order found bank deceptively marketed add-on products during calls, misrepresented costs and fees for coverage, and misrepresented or omitted information about eligibility for coverage.⁴¹
- Global Financial Support, Inc. d/b/a Student Financial Resource Center (Oct. 2015) - Filed lawsuit alleging company charged fees in exchange for detailed identification of individualized financial aid opportunities but provided nothing or a generic booklet that had no individualized advice.⁴²
- Y King S Corp., d/b/a Herbies Auto Sales (Jan. 2016) - Consent Order found company hid auto finance charges and misled consumers.⁴³
- Student Aid Institute (Mar. 2016) - Consent Order found company illegally tricked borrowers into paying fees for federal loan benefits and charged consumers illegal advance fees for debt relief services.⁴⁴
- David Eghbali (May 2016) - Consent Order found former Wells Fargo employee directed escrow company to reduce its fees for certain customers and make up for its losses by adding

³⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-financial-aid-services-inc-for-illegal-recurring-billing-scheme/>

³⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citibank-to-pay-700-million-in-consumer-relief-for-illegal-credit-card-practices/>

⁴⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-world-law-group-for-charging-illegal-fees-and-making-false-promises-in-debt-relief-scheme/>

⁴¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/>

⁴² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-nationwide-student-financial-aid-scam/>

⁴³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-herbies-auto-sales-for-unlawful-lending-practices/>

⁴⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-halts-student-loan-debt-relief-scam/>

fees to loans for other customers, which allowed him to offer “no-cost” loans to price-conscious clients who might otherwise have gone to a competitor bank to find a cheaper loan.⁴⁵

- All American Check Cashing, Inc. (May 2016) - Filed lawsuit; complaint alleging companies and principal hid price of check-cashing fees.⁴⁶
- Santander Bank, N.A. (July 2016)* - Consent Order found bank misrepresented terms and costs associated with overdraft services and charged certain bank customers overdraft fees without their consent.⁴⁷
- First National Bank of Omaha (Aug. 2016) - Consent Order found bank administered debt cancellation add-on products in a way that prevented the vast majority of consumers from receiving several of the product benefits and unfairly billed consumers for credit monitoring add-on products without providing full product benefits.⁴⁸
- Wells Fargo Bank, N.A. (Aug. 2016) - Consent Order found bank processed payments in a way that maximized fees for many consumers and charged late fees even where consumers had made timely loan payments.⁴⁹
- TMX Finance LLC (Sept. 2016) - Consent Order found company lured consumers into loan renewals by misleading them about the deals’ terms and costs, including failing to provide information about the amount of fees.⁵⁰
- Flurish, Inc., d/b/a LendUp (Sept. 2016) - Consent Order found company failed to disclose fees associated with its products.⁵¹
- Prime Marketing Holdings (Sept. 2016) - Filed lawsuit alleging company charged consumers illegal advance fees for credit repair services.⁵²

⁴⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-former-wells-fargo-employee-illegal-mortgage-fee-shifting/>

⁴⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-check-cashing-and-payday-lending-company-tricking-and-trapping-consumers/>

⁴⁷ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-orders-santander-bank-pay-10-million-fine-illegal-overdraft-practices/>

⁴⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-first-national-bank-omaha-pay-3225-million-illegal-credit-card-practices/>

⁴⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/>

⁵⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-fines-titlemax-parent-company-9-million-luring-consumers-more-costly-loans/>

⁵¹ <https://www.consumerfinance.gov/about-us/newsroom/lendup-enforcement-action/>

⁵² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-credit-repair-company-misleading-consumers-and-charging-illegal-fees/>

- Access Funding (Nov. 2016) - Filed lawsuit alleging companies and their principals charged consumers illegal advance settlement fees.⁵³
- Equifax Inc. (Jan. 2017) - Consent Order found company deceived consumers into enrolling for credit-related products that it claimed were free but, in reality, after a brief trial, consumers were charged a recurring monthly fee of \$16 or more.⁵⁴
- Transunion (Jan. 2017) - Consent Order alleged company deceived consumers into enrolling for credit-related products that it claimed only cost "\$1" but, in reality, after a brief trial, consumers were charged a recurring monthly fee of \$16 or more.⁵⁵
- Howard Law, The Williamson Law Firm, LLC (Jan. 2017) - Filed lawsuit against ring of law firms and attorneys alleging they collaborated to charge consumers illegal advance fees for credit repair services.⁵⁶
- RD Legal Funding (Feb. 2017) - Filed lawsuit alleging companies and its principal charged consumers illegal advance settlement fees.⁵⁷
- TCF National Bank (Mar. 2017)* - Filed lawsuit alleging bank misled consumers about overdraft services; specifically, it designed its application process to obscure overdraft fees on one-time debt purchases and ATM withdrawals and made overdraft services seem mandatory for new customers to open an account.⁵⁸
- Prime Credit, L.L.C., et al. (June 2017) - Filed lawsuit alleging companies charged consumers illegal advance fees for credit repair services.⁵⁹
- Federal Debt Assistance Association (October 2017) - Filed lawsuit alleging companies and their principals charged consumers illegal advance fees for debt relief and credit repair services.⁶⁰

⁵³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-access-funding-scamming-lead-paint-poisoning-victims-out-settlement-money/>

⁵⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/>

⁵⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-transunion-and-equifax-pay-deceiving-consumers-marketing-credit-scores-and-credit-products/>

⁵⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-debt-relief-attorneys-collecting-illegal-fees-struggling-consumers/>

⁵⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-sue-rd-legal-scamming-911-heroes-out-millions-dollars-compensation-funds/>

⁵⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-tcf-national-bank-tricking-consumers-costly-overdraft-service/>

⁵⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-actions-against-credit-repair-companies-charging-illegal-fees-and-misleading-consumers/>

⁶⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-debt-relief-companies-illegally-posing-federal-government/>

- Wells Fargo Bank, N.A. (Apr. 2018) - Consent Order found bank engaged in unfair practices with respect to charging certain borrowers for mortgage interest rate-lock extensions.⁶¹
- Santander Consumer USA, Inc. (Nov. 2018) - Consent Order found bank did not properly describe the benefits and limitations of its S-GUARD GAP product, an optional add-on product offered in connection with auto loans.⁶²
- PGX Holdings, Inc. (May 2019) - Filed lawsuit alleging companies charged consumers illegal advance fees for credit repair services.⁶³
- Freedom Debt Relief (July 2019) - Filed stipulated final judgment; complaint alleged company and its principal misled consumers about company's fees charged consumers illegal advance fees for debt relief services.⁶⁴
- Certified Forensic Loan Auditors, LLC (Sept. 2019) - Obtained stipulated final judgment; complaint alleged company and its principals charged consumers illegal advance fees for loan modification services.⁶⁵
- Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center (Oct. 2019) - Filed lawsuit alleging companies and their principals charged consumers illegal advance fees for debt relief services.⁶⁶
- Commonwealth Equity Group, LLC d/b/a Key Credit Repair (May 2020) - Filed lawsuit alleging companies charged consumers illegal advance fees for credit repair services.⁶⁷
- Main Street Personal Finance (June 2020) - Consent Order found company failed to accurately disclose certain finance charges associated with certain vehicle title loans.⁶⁸
- Timemark, Inc. (July 2020) - Consent Order found company and its principals charged consumers illegal advance fees for debt relief services.⁶⁹

⁶¹ <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-settlement-wells-fargo-auto-loan-administration-and-mortgage-practices/>

⁶² <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-santander-consumer-usa-inc/>

⁶³ <https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-lexington-law-pgx-holdings-and-related-entities/>

⁶⁴ <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-lawsuit-against-freedom-debt-relief/>

⁶⁵ <https://www.consumerfinance.gov/enforcement/actions/certified-forensic-loan-auditors-llc-andrew-lehman-michael-carrigan/>

⁶⁶ <https://www.consumerfinance.gov/enforcement/actions/premier-student-loan-center-et-al/>

⁶⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-commonwealth-massachusetts-file-suit-against-credit-repair-telemarketers/>

⁶⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-short-term-lenders-engaging-unfair-deceptive-acts-practices/>

⁶⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-action-student-loan-debt-relief-business-illegal-advance-fees/>

- GST Factoring, Inc.; Amanda Johanson and Associates (July 2020) - Consent Order found companies and their principals charged consumers illegal advance fees for debt relief services.⁷⁰
- Sigue Corporation (Aug. 2020) - Consent Order found company and its subsidiaries failed to refund transaction fees when they did not make funds available by the disclosed date of availability.⁷¹
- TD Bank, N.A. (Aug. 2020)* - Consent Order found bank failed to obtain consumers' affirmative consent to enroll in overdraft-protection service and subsequently charged consumers fees pursuant to that service.⁷²
- Encore Capital Group, Inc. (Sept. 2020) - Filed lawsuit alleging companies failed to disclose certain fees may apply to particular transactions and making withdrawals on consumer accounts without notifying consumers of a fee change.⁷³
- Lobel Financial Corporation (Sept. 2020) - Consent Order found company charged loss-damage-waiver-related fees that were not disclosed in the contract and placed loss damage waiver product on borrower accounts, charged a monthly premium, but did not provide the relevant coverage.⁷⁴
- Nissan Motor Acceptance Corporation (Oct. 2020) - Consent Order found company deprived consumers paying by phone of the ability to select payment options with significantly lower fees.⁷⁵
- Performance SLC, LLC (Nov. 2020) - Consent Order found companies unlawfully charged consumers fees to apply to programs available to them for free and charged consumers advance fees for debt relief services.⁷⁶

⁷⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-student-loan-debt-relief-operation-settles-with-some-participants/>

⁷¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-remittance-transfer-providers-remittance-transfer-rule-violations/>

⁷² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-settlement-td-bank-illegal-overdraft-practices/>

⁷³ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-debt-collectors-and-debt-buyers-encore-capital-group-et-al/>

⁷⁴ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-auto-lender-unfair-loss-damage-waiver-practices/>

⁷⁵ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-nissan-motor-acceptance-corporation-illegal-collections-and-repossession-practices/>

⁷⁶ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-debt-relief-business-and-its-owner-taking-illegal-advance-fees/>

- SMART Payment Plan, LLC (Nov. 2020) - Consent Order found company engaged in deceptive conduct with respect to a loan payment program that charged fees to deduct payments from consumer bank accounts and forwarded the payments to the consumers' lenders.⁷⁷
- U.S. Equity Advantage, Inc. (Nov. 2020) - Consent Order found company and its principal engaged in deceptive conduct with respect to a loan payment program that charged fees to deduct payments from consumer bank accounts and forwarded the payments to the consumers' lenders.⁷⁸
- FDATR, Inc. (Nov. 2020) - Filed lawsuit alleging company and its principals charged consumers illegal advance fees for debt relief and credit repair services.⁷⁹
- BounceBack, Inc. (Dec. 2020) - Filed lawsuit alleging that company and its principal used district-attorney letterheads to threaten consumers with prosecution if they did not pay a variety of fees associated with the company's bad-check pre-trial diversion programs.⁸⁰
- Alder Holdings, LLC (Dec. 2020) - Consent Order found company charged fees without adequate notice.⁸¹
- DMB Financial, LLC (Dec. 2020) - Filed lawsuit alleging company charged consumers illegal advance fees for debt relief services.⁸²
- Libre by Nexus (Feb. 2021) - Filed lawsuit alleging that company and its owners offered to pay immigration bonds in exchange for large upfront fees and hefty monthly payments while concealing or misrepresenting the true costs of its services.⁸³
- FNZA Marketing LLC dba Student Loan Pro (Mar. 2021) - Filed lawsuit alleging company and its principals charged consumers illegal advance fees for debt relief services.⁸⁴

⁷⁷ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-smart-payment-plan-llc-deceptive-sales-practices/>

⁷⁸ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-us-equity-advantage-inc-and-owner-robert-m-steenbergh-deceptive-sales-practices/>

⁷⁹ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-sues-debt-settlement-company-fdatr-inc-and-owners-dean-tucci-and-kenneth-wayne-halverson/>

⁸⁰ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-sues-debt-collector-bounceback-inc/>

⁸¹ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-arkansas-attorney-general-settle-home-alarm-company-using-consumers-credit-scores-without-proper-notice/>

⁸² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-debt-settlement-company-for-charging-consumers-unlawful-fees/>

⁸³ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-virginia-massachusetts-and-new-york-attorneys-general-sue-libre-for-predatory-immigrant-services-scam/>

⁸⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-operators-of-an-unlawful-student-loan-debt-relief-scheme/>

- 3rd Generation, Inc. d/b/a California Auto Finance (May 2021) - Consent Order found company charged interest on late payments of loss damage waiver fees without disclosing the charge to consumers.⁸⁵
- Burlington Financial Group, LLC (June 2021) - Obtained stipulated final judgment; complaint alleged company and its principals charged consumers illegal advance fees for debt relief and credit repair services.⁸⁶
- JPay, LLC (Oct. 2021) - Consent Order found company caused fees to be imposed on formerly incarcerated individuals who were required to get its debit release card to access money owed to them upon release, caused fees to be charged that were not authorized by their cardholder agreements, and misrepresented certain fees.⁸⁷
- MoneyGram International, Inc. and MoneyGram Payment Systems, Inc. (April 2022) - Filed lawsuit alleging, among other violations, that the companies violated the Remittance Transfer Rule by failing to refund fees as required by the Rule to remedy failure to make remittance transfers available to recipients by the date disclosed to the sender.⁸⁸
- Bank of America (May 2022) - Consent Order found that the bank charged consumers fees for responding to a garnishment notice, including legal order processing and attorneys' fees, and may have assessed other fees such as overdraft, insufficient funds, or account maintenance fees that were assessed because Respondent illegally declined to process out-of-state garnishment notices.⁸⁹
- RAM Payment, LLC, also dba Reliant; Account Management Systems, LLC, fka Reliant Account Management; Gregory Winters; and Stephen Chaya (May 2022) - Consent order found that the company charged fees to consumers in support of applications for federal student loan debt-relief options, but collected those fees before providing debt-relief services, in violation of the Telemarketing Sales Rule.⁹⁰

⁸⁵ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-auto-lender-for-unfair-loss-damage-waiver-practices/>

⁸⁶ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-company-and-its-owners-and-executives-for-deceptive-debt-relief-and-credit-repair-services/>

⁸⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>

⁸⁸ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-ny-attorney-general-sue-repeat-offender-moneygram-for-leaving-families-high-and-dry/>

⁸⁹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-10-million-penalty-for-illegal-garnishments/>

⁹⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-scams-ringleaders-to-pay-more-than-8-million-to-consumers-and-student-loan-borrowers/>

- Frank Ronald Gebase, Jr. (June 2022) - Filed lawsuit alleging that Defendant engaged in unauthorized fee collection connected with his operation of a student debt relief business.⁹¹

⁹¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-seeks-ban-against-operator-of-student-loan-debt-relief-scam-reboot/>

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Ranking Member Patrick McHenry:

1. Please identify all CFPB, OCC, or FDIC staff who participated in drafting or editing the Bureau's legal memorandum analyzing the FDIC Board's authority (Bates No. MCH_CFPB_220307_0007).
2. Please provide any document or communications that authorizes the release of the Bureau's legal memorandum analyzing the FDIC Board's authority (Bates No. MCH_CFPB_220307_0007).
3. Please identify any individual (including but not limited to staff from the CFPB, OCC, and FDIC) who drafted, edited, or reviewed the RFI circulated for a notational vote by Bureau staff on November 26, 2021.
4. Please describe the nature of any conversations with Acting Comptroller Michael Hsu referring or relating to the RFI circulated for a notational vote by Bureau staff on November 26, 2021, including but not limited to any conversation wherein Hsu described conversations with then-FDIC Chairman Jelena McWilliams.
5. You testified, "the FDIC staff drafted the RFI." Please clarify which staff and provide a copy of any RFI drafted by FDIC staff.

Response (Questions 1-5)

I was deeply disturbed by the actions by Federal Deposit Insurance Corporation (FDIC) political leadership that precipitated former Chairman McWilliams' resignation last December. These actions were an egregious violation of the rule of law. The former Chairman engaged in an unprecedented attempt to nullify the vote of a supermajority of the Board of Directors, without any legal justification and in contravention of the governing structure created by Congress.

At the National Credit Union Administration (NCUA), the Chairman presides over a board that consists of a majority of members affiliated with a political party different than his own. However, the NCUA Board Chairman has worked constructively with this board, while recognizing the Board majority's authority. It is unfortunate that the leadership team that resigned at the FDIC did not follow a similar path.

The memo to which you are referring provides a legal analysis of the FDIC Board's authority—in particular whether the Chairperson can unilaterally prevent a majority of the Board from making decisions for the Corporation. The legal memo makes clear, based on analysis of the Federal Deposit Insurance Act and the FDIC Board's Bylaws, that the FDIC Chairperson does not have such authority. To the extent there is any confusion regarding this issue as a result of

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cross-talk during the two hearings, I want to make clear that that legal memo was the work product of Consumer Financial Protection Bureau (CFPB) staff.

The CFPB sent this legal memorandum to former FDIC General Counsel Nicholas Podsiadly on December 7, 2021. It was also shared with a number of others, including former Chairman McWilliams, Director Gruenberg, and Acting Comptroller Hsu, along with certain members of their respective staffs.

There were also discussions among all the FDIC Board members regarding the then-Chairman's lack of legal authority to overrule the Board's majority. Notably, at no time during these discussions did then-Chairman McWilliams or then-General Counsel Podsiadly provide any substantive legal analysis to support their position that the FDIC Chairperson has the authority to unilaterally overrule the Board majority. Nor is the CFPB aware of any legal memorandum that supports the then-FDIC Chairman's actions or position.

After considering the legal analysis prepared by CFPB staff, as well as the FDIC General Counsel's failure to provide any argument in support of his contrary interpretation, I voted to advance the Request for Information (RFI), as did Acting Comptroller Hsu and Director Gruenberg. The RFI was approved by the Board on December 7, 2021.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Alma Adams:

1. Mr. Chopra, I want to applaud the CFPB's recent action to address the repeat offenses of large financial companies like TransUnion. Are there further reforms that Congress should consider, such as those included in the Repeat Offenders and Megabank Accountability Act? And, specifically, what are your views regarding the impact to consumers of the credit bureaus' ownership of VantageScore?

Response

I share your concern about large entities that repeatedly violate the law and treat any associated fines or penalties as an acceptable cost of doing business. When smaller businesses violate the law, federal enforcers are often quick to levy crippling sanctions. But when larger players repeatedly violate the law, some agencies are far more lenient. This is highly inappropriate.

I am committed to ensuring that the Consumer Financial Protection Bureau (CFPB) does not follow this path. The CFPB is shifting enforcement resources away from investigating small firms and instead focusing on repeat offenders and large players engaged in large-scale harm.

For example, we have filed lawsuits against two very large firms, FirstCash and TransUnion, that violated law enforcement orders and other consumer financial protection laws. In both cases, the entities willingly consented to an order and were on clear notice of their obligations. The CFPB alleges that both firms violated their orders and continued to violate the law.

During my tenure, the CFPB will not only focus on large actors engaged in widespread harm, but also enforce the law as written. I expect that this may lead to more litigation, but also lend greater legitimacy to agency actions.

Finally, the CFPB will continue to hold accountable market participants in the consumer reporting industry. This includes the nationwide consumer reporting companies (Equifax, TransUnion, and Experian), the risk models they own and license, like the VantageScore model, and also the other third party and in-house statistical models that lenders use to make decisions about people every day. One of the statutory purposes of the CFPB is to ensure that "markets for consumer financial products and services are fair, transparent, and competitive." Collectively, Equifax, TransUnion, and Experian hold an outsized influence in determining whether and how much people pay for credit. It is a grave responsibility. To protect consumers and help grow our economy, we need the consumer reporting industry to perform at the highest level. All of us should have confidence that the credit risk models that are used to inform credit decisions about us are fair and derived from information that is accurate and appropriate. It is equally important to ensure the consumer reporting industry remains competitive. With the nationwide consumer reporting companies wholly owning VantageScore, LLC, some have questioned whether allowing VantageScore entrance into the conforming mortgage market will reduce competition

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and exacerbate market concentration, because the same three companies would control both the data and the model used in Government Sponsored Entity (GSE) underwriting. This is something we monitor closely, as there could be direct impact to consumers.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Warren Davidson:

1. Director Chopra, we are now twelve years removed from the enactment of Dodd-Frank and Section 1033 directing the Bureau to develop a regulatory framework for requiring that consumer financial services providers make available consumers' information. Close to a year ago, the President's Executive Order on Competition called for the Bureau to commence rulemaking under Section 1033 so that individuals can more easily switch financial institutions and use new, innovative financial products which is especially important today for American households struggling to get by financially during these times of high inflation. Will you commit to empaneling the SBREFA panel for the Section 1033 rulemaking this year and commit to concluding the 1033 rulemaking process by this time next year? If not, what is the Bureau's timeline for a 1033 rulemaking?

Response

The Required Rulemaking on Personal Financial Data Rights under Section 1033 is subject to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which generally requires the Consumer Financial Protection Bureau (CFPB) to convene a panel consisting of staff from the CFPB, the Office of Advocacy within the Small Business Administration, and the Office of Information and Regulatory Affairs within the Office of Management and Budget prior to publishing a Notice of Proposed Rulemaking (NPRM) that would have a significant economic impact on a substantial number of small entities. In advance of convening the panel, the CFPB publishes an outline of proposals under consideration and alternatives and solicits feedback from small entity representatives. The CFPB plans to publish the SBREFA outline this year. After convening the panel and considering input from the small entity representatives, the CFPB will publish an NPRM, solicit and consider comments on the NPRM, and issue a final rule.

2. In your testimony last October before this committee, you noted that you viewed a Section 1033 rulemaking as necessary to quote "unlock [] competition." The President's Executive Order also noted a Section 1033 rulemaking's potential for quote "facilitat[ing] the portability of consumer financial transaction data so consumers can more easily switch financial institutions and [the development of] new, innovative financial products." Besides reducing the barriers that consumers currently face when looking to switch banks and use new, innovative financial products, what other outcomes will you look to achieve with a Section 1033 rulemaking? What risks will you look to have a Section 1033 rulemaking address?

Response

The Required Rulemaking on Personal Financial Data Rights would give consumers the ability to transfer their banking data to competitors in order to facilitate switching providers, reducing friction, and making customers a little less "sticky."

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The rule would also give consumers the ability to share their data with companies that could use that data to provide them with new products or services. In particular, I am focused on the ways that the rule could allow consumers to give lenders permission to access their deposit and transaction data in order to make loans using automated cash flow or residual income underwriting. Consumers would benefit from a lending market that does not judge a person's character or "creditworthiness" using traditional credit scores, or worse, newer algorithmic underwriting models based on data from transactions unrelated to their finances. Pure cash-flow, residual income underwriting, which looks to whether a consumer will have enough money to make payments, has historically been too difficult to automate. That is something this rule could help solve. Lastly, the rule will seek to ensure that companies are acting properly when they access a consumer's banking data on the consumer's behalf.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Madeleine Dean:

1. Director Chopra, as you are aware, current law does not require a private student loan lender to discharge the student debt of a borrower or their cosigner in the case of total and permanent disability of the borrower—these loans can only be discharged in the case of death. However, federal student loans can be discharged in the event of total and permanent disability of the borrower or in the event of death. Moreover, federal student loans do not have cosigners, so there are no provisions related to cosigners being discharged.

I have legislation, H.R.2498 -- the Private Loan Disability Discharge Act of 2021, which would amend the Truth in Lending Act (TILA) to:

- Require discharge of private student loans in the case of permanent and total disability of the borrower;
- Require the discharge of cosigners in the case of a borrower's permanent and total disability; and
- Require private lenders to discharge a borrower's obligation when they are notified that the federal government has discharged the federal student loans of the borrower.

This bill would ensure parity between private loans and federal loans. While many private lenders voluntarily offer discharge in the case of permanent and total disability, this should be a requirement, not a choice.

Is this an issue that the CFPB often hears about from consumers? Do you support this legislation and do you think it is necessary to ensure student borrowers – and their cosigners – are protected in the devastating circumstance of permanent and total disability?

Response

The Consumer Financial Protection Bureau (CFPB) regularly receives complaints from student loan borrowers, including those who have a permanent and total disability and are unable to afford their student loan payments. As you note, under federal law student borrowers who are totally and permanently disabled may qualify for a discharge of their federal student loans. This relief recognizes that many of these borrowers are unable to work, live on fixed or limited incomes, and simply cannot afford to meet their basic living expenses and repay their student loans. The relief available for totally and permanently disabled student loan borrowers with respect to federal student loans is important to ensuring that these borrowers, many of whom live on fixed or limited incomes, are not impoverished by bills they cannot afford to pay.

There are no federal legal requirements to cancel private student loans when borrowers face permanent and total disability. Some private student loan lenders may offer relief for borrowers in certain circumstances, but such relief is discretionary, and few lenders extend it to co-signers. The lack of uniform protections for these borrowers with respect to private student loans

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contributes to increased debt burden that could affect hundreds of thousands of disabled borrowers and their families.

I share your view that there should be parity in the protections for federal student loan borrowers and private student loan borrowers and co-signers.

2. Director Chopra, I am also the sponsor of legislation, H.R. 1491 – the Fair Debt Collection Practices for Servicemembers Act, which would address a variety of abusive debt collection practices affecting members of the military and strengthen related prohibitions about false or misleading representations to servicemembers by debt collectors by:
- Prohibiting a debt collector from conveying any threats to a servicemember or third parties, including a dependent or commanding officer,
 - to have the servicemember’s rank reduced or
 - to have the servicemember’s security clearance revoked.
 - Prohibiting the representation to any servicemember or their dependents that the servicemember can be prosecuted under the Uniform Code of Military Justice for failing to cooperate with a debt collector.

The CFPB has previously reported that debt collection related complaints are a disproportionate share of complaints filed by servicemembers compared to civilians – does this continue to be the case? What steps is the CFPB taking to protect servicemembers from abusive debt collectors? Do you support this legislation?

Response

Yes, servicemembers continue to submit complaints regarding debt collection at a higher rate than non-servicemembers. In the CFPB’s 2021 Consumer Response Annual Report,¹ 21 percent of complaints received from consumers who identified as servicemembers were about debt collection compared to 12 percent of complaints received from consumers who did not indicate they were servicemembers.

The CFPB uses all of its tools, including examinations of supervised entities and enforcement actions, to protect servicemembers from unlawful debt collection practices like debt collectors that falsely threaten to sue servicemembers or contacted their commanding officers to coerce

¹ See <https://www.consumerfinance.gov/data-research/research-reports/2021-consumer-response-annual-report>.

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servicemembers into paying an alleged debt.² The CFPB also published information for servicemembers about companies that may abuse the military allotment system.³

The CFPB also works with other state and federal partners, including the Department of Defense and Department of Justice, to protect servicemembers from unlawful debt collection practices. For example, the CFPB provides training and technical assistance to JAG officers on servicemembers rights under the Fair Debt Collection Practices Act and other Federal consumer financial laws.

While I share your concern about protecting servicemembers from unlawful debt collection practices, I respectfully defer to Congress on what, if any, legislative action should be taken.

² See www.consumerfinance.gov/about-us/newsroom/cfpb-orders-navy-federal-credit-union-pay-285-million-improper-debt-collection-actions. See also www.consumerfinance.gov/about-us/newsroom/cfpb-orders-servicemember-auto-loan-company-to-pay-3-28-million-for-illegal-debt-collection-tactics. See also www.consumerfinance.gov/about-us/newsroom/cfpb-and-states-take-action-against-freedom-stores-for-illegal-debt-collection-practices-against-servicemembers.

³ See <https://www.consumerfinance.gov/about-us/blog/protecting-servicemembers-from-abuses-of-the-military-allotment-system>.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Anthony Gonzalez:

1. Director Chopra – Perhaps one of the only issues that all of the leaders of the CFPB, Republican and Democrat, have agreed on over the years is the need for a rulemaking under Section 1033 of the Dodd-Frank Act that provides consumers with control of their financial data. Given all of the work the Bureau has done over the years – and all of the input it has already received from market stakeholders – what more information does the CFPB need to finally move this rule forward?

Response

I agree that the Consumer Financial Protection Bureau (CFPB) must move forward with a rule. The Required Rulemaking on Personal Financial Data Rights under Section 1033 is subject to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which generally requires the CFPB to convene a panel consisting of staff from the CFPB, the Office of Advocacy within the Small Business Administration, and the Office of Information and Regulatory Affairs within the Office of Management and Budget prior to publishing a Notice of Proposed Rulemaking (NPRM), as the rule would have a significant economic impact on a substantial number of small entities. In advance of convening the panel, the CFPB is required to publish an outline of proposals under consideration and alternatives and solicit feedback from small entity representatives. We plan to publish the SBREFA outline this year, which will give small entity representatives the opportunity to provide feedback on how a proposed rule could impact them. After convening the panel and considering input from the small entity representatives, the CFPB will publish an NPRM, solicit and consider comments on the NPRM, and issue a final rule.

2. I am interested in how you view the balance between the role of industry and the role for regulation related to open banking and open finance in the US? For example, industry bodies like the Financial Data Exchange are working on a common, secure and interoperable technical standards for financial data sharing in the US and Canada. In addition it is clear from other jurisdictions that over regulating in this area can lead to a compliance-only mindset versus a market that is able to continue innovating and meeting consumer demand.

Response

Regulation, when done right, should be technology agnostic such that it does not stymie technological advancement. I have found that, in the spaces of data and privacy, this kind of compliance-only mindset is the result of a regulatory regime that causes companies to focus more on their boilerplate privacy statements than on actual privacy. Regulation should seek to level the playing field in areas where dominant firms can use various tools at their disposal to foreclose competition, as such conduct can also limit consumer-focused innovation.

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3. What are the powers and limits of your authority in regards to acting on financial data access issues? For instance, will certain data such as interest rates, fees, account and routing numbers be excluded from the rule? Or can a consumer securely share anything in their online and mobile banking applications with other financial providers of their choosing (i.e. fintech apps, mortgage applications, personal budgeting websites, etc)? What is the agency's priority in crafting a rule around consumer financial data? Do you favor consumer access, control, security, transparency? All of the above?

Response

Consumer access, control, security, and transparency are all virtues worth advancing in this rulemaking, and they are often not mutually exclusive. We will be considering exactly what data should be covered through the rulemaking process. Those questions will be governed both by legal authorities, and practical considerations including with regard to what entities are able to implement in a timely fashion.

4. Many fintech lenders are using nontraditional data and in some cases, artificial intelligence techniques, in evaluating applicants' credit risk. As you know, many of these fintechs argue that these methods enable them to be more inclusive in their lending, with no loss of loan quality, compared to traditional banks and other lenders. At the same time, you and others have noted the risk that these new methods could introduce or exacerbate lending bias, including unintended disparate impact discrimination. How will your examiners determine whether or when these techniques are illegal? Given that this is a fairly new use of technology in lending, what steps should these lenders take to be sure they are in compliance?

Response

The CFPB's oversight of the use of artificial intelligence (AI), machine learning, and alternative data is guided by the principle that companies must follow the law, regardless of the technology they use.

The full panoply of consumer protection laws apply to consumer financial products, regardless of whether the products are marketed and originated using AI and machine-learning or through brick-and-mortar methods. Industry has an affirmative responsibility to ensure that on-line advertising, marketing, and origination practices comply with consumer protection laws, including fair lending laws and the prohibition against unfair, deceptive, or abusive acts or practices. The CFPB will continue to enforce Federal consumer financial laws through examination and investigation, regardless of the platform or technology that entities use, and to apply an "all of government" approach by working with Federal, state, local and tribal agencies to enforce the law and protect consumers.

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Furthermore, the CFPB will not assume that black box underwriting algorithms are free of bias or create a more equal playing field. This is particularly true given the speed with which banks and lenders are turning lending and advertising decisions over to algorithms. When consumers and regulators do not know how decisions are made by the algorithms, consumers are unable to participate in a fair and competitive market free from bias. A recent CFPB circular clarifies that adverse action notice requirements should be enforced regardless of the technology used and that creditors cannot justify noncompliance with Equal Credit Opportunity Act (ECOA) based on the mere fact that the technology they use to evaluate credit applications is too complicated, too opaque in its decision-making, or too new.⁴ If we want to move toward a society where each of us has equal opportunities, we need to investigate whether discriminatory black box models are undermining that goal.

5. There has been some press recently around the credit bureaus buying (payroll and income) data without consumer permission or knowledge, then turning around and selling that data through exclusive arrangements without the consent of the consumer. Director, have you looked into these exclusive arrangements and whether or not the credit bureaus are providing sufficient notice to consumers regarding this data?

Response

We cannot comment on any potential supervisory or enforcement activity at this time.

6. What is the CFPB doing to foster innovation in the credit bureau market?

Response

The CFPB will be providing further guidance regarding the Fair Credit Reporting Act over the course of the next couple years. In addition, the CFPB will be issuing the Required Rulemaking on Personal Financial Data Rights under Section 1033 of the Consumer Financial Protection Act (CFPA). That rule will allow consumers to provide permission to access their account data, a business model that could compete with traditional credit reporting and credit scores.

⁴ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-acts-to-protect-the-public-from-black-box-credit-models-using-complex-algorithms>.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Lance Gooden:

1. On February 2, 2022, the Federal Register published Consumer Financial Protection Bureau's (CFPB) "Request for Information: Fees Imposed by Providers of Consumer Financial Products or Services" (Docket No. CFPB-2022-0003), with a comment deadline of March 31, 2022. On March 29, 2022, the CFPB announced that the deadline would be extended to April 11, 2022. On April 26th, 2022, in response to question from Senator Van Hollen during a hearing before the Senate Banking Committee, you stated "we've solicited comments on the issue of junk fees and have gotten 80,000 comments." On May 2, 2022, Americans for Financial Reform (AFR), the Center for Responsible Lending (CRL), Consumer Federation of America (CFA), the National Community Reinvestment Coalition (NCRC), and National Consumer Law Center (NCLC) released their comments in response to the RFI, nearly a month after the deadline. Finally on May 3, 2022, AFR submitted a statement for the record regarding the Semi-Annual Report of the CFPB that stated, "The CFPB's Request for Information (RFI) on junk fees yielded 80,000 consumer complaints and stories, 30,000 of which AFR facilitated consumers in reporting." However, Regulations.gov is only showing 2,580 submitted comments. **As of today, exactly how many comments has the CFPB received in response to its RFI? If more than 2,580 comments have been received, why hasn't the CFPB released the vast majority of the comments and made them part of the public record? Does the CFPB plan to make all comments public, including comments received after April, 11, 2022?**

Response

A total of over 87,500 comments, including comments from consumers, financial institutions, consumer groups, industry groups, and coalitions, were received in response to the Request for Information regarding Fees Imposed by Providers of Consumer Financial Products or Services. Many comments were received by email, rather than through regulations.gov, and the process of uploading email comments to the docket took a number of weeks. The final bulk upload of email comments was posted on May 24, 2022. The docket now displays all comments received by the comment deadline of April 11, 2022. The total count of comments shown on regulations.gov is over 50,000. Within that set are two submissions from two different organizations that contain over 37,500 consumer mass comments.

2. Non-profit organizations are acting as collection agencies for taxpayer-funded Refugee Travel Loans. The U.S. Department of State, via the United Nations' International Office of Migration (IOM), provides loans to refugees that are subsequently collected by non-profit organizations acting as resettlement agencies. These non-profits are permitted to keep 25% of the loans they recoup, giving these organizations a financial interest in the number of refugees brought into the United States. This creates an obvious conflict of interest. Despite multiple attempts from my office to collect additional information from the State Department, United Nations, and non-profits we have been stonewalled at every turn. **Will**

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the CFPB commit to protecting consumers and taxpayers by investigating the debt collection practices of refugee resettlement agencies?

Response

We should always be concerned about potential conflicts of interest. We would welcome further information from your office about this issue to determine whether it might implicate the Fair Debt Collection Practices Act or other relevant consumer protection laws.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative French Hill:

1. In the CFPB's Small Business Advisory Review Panel report, the Bureau committed to ensuring that "financial institutions have sufficient time to implement the Bureau's eventual 1071 rule" and mentioned that it is considering an implementation period of 2 years." However, the Bureau decided to propose an 18-month period instead despite acknowledging in its Proposed Rule that that "a large number of industry stakeholders accepted a two-year implementation period as inadequate or ... the minimum amount of time needed."
 - a. Does the CFPB no longer believe that financial institutions should have sufficient time to implement the 1071 rule?

Response

The rulemaking is still ongoing, and we are in the process of evaluating the comments and weighing any supporting evidence to inform the final rule implementing Section 1071, in accordance with applicable legal requirements, including the Administrative Procedure Act and our statutorily required assessment of the impacts under Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

- b. Why did the Bureau's opinion about the length of the implementation period change from when the SBREFA report was released to when the rule was proposed?

Response

The rulemaking is still ongoing, and we are in the process of evaluating the comments. The Consumer Financial Protection Bureau (CFPB) asked commenters to submit feedback on a proposed 18-month implementation period in the Notice of Proposed Rulemaking (NPRM) on "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)".⁵ The proposed period is not from issuance of the final rule to actual submission of data by financial institutions to the CFPB, but rather from publication in the Federal Register to the start of data collection by financial institutions. Under the proposal, institutions would have additional time before submitting data to the CFPB—potentially another year or even longer, depending when in the year the proposed 18-month implementation period would end.⁶ The NPRM also solicited comment on whether the proposed rule should have a longer implementation period for smaller financial institutions.⁷ We will use any evidence the comments provide to inform the final rule implementing Section 1071.

⁵ See NPRM, 85 FR 56356, 56508.

⁶ See 85 FR at 56507.

⁷ See 85 FR at 56508.

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- c. Will you commit to granting a longer implementation period for the final 1071 rule than the 18 months as proposed? If so, for how long?

Response

Currently, the rulemaking is still ongoing, and we are in the process of evaluating the comments. We are committed to using any evidence the comments may provide to inform the final rule implementing Section 1071, in accordance with applicable legal requirements, including the Administrative Procedure Act and our statutorily required assessment of the impacts under Section 1022 of the Dodd-Frank Act. While I was not at the CFPB at the time this proposal was released, under my leadership we will pay careful attention to implementation issues. I have met with hundreds of small financial institutions to hear their concerns and I fully understand the preparation needed for implementation.

2. In February the CFPB released its Small Business Advisory Review Panel for its rulemaking on qualify control standards for Automated Valuation Models for home appraisals.
- a. How can these standards promote accuracy while not deterring the use and acceptance of new technology?

Response

Accuracy is the key. The regulators are working to implement Section 1125 to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) so that these technologies can promote accuracy and speed when it comes to automated valuation models.

- b. What do you consider to be an accurate valuation of a home? Is it what the home is actually worth, or what the CFPB thinks it should be worth?

Response

The market is best positioned to determine the valuation of a home. As we saw in the last crisis, we did not always get accurate market-based appraisals. Overvaluing a home can lead the consumer to take on an increased amount of debt that raises risk to the consumer's financial well-being. Undervaluing a home can result in a consumer being denied access to credit for which the consumer is otherwise qualified or offered credit at less favorable terms.

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- c. Dodd Frank mandated for this Automated Valuation Model regulation to be a joint rulemaking between the CFPB, Fed, OCC, FDIC, NCUA, and FHFA. Will you commit to working with the other agencies through a formal APA rulemaking process on this regulation?

Response

Yes.

3. On March 16, the CFPB announced it will begin targeting discrimination as an “unfair” practice under its UDAAP authority. Not only is this a vast expansion of the Bureau’s anti-discrimination enforcement beyond the limits of the Equal Credit Opportunity Act, but it also ignores the deliberate choice by Congress to explicitly limit the reach of anti-discrimination legal concepts to specific areas when it passed legislation like ECOA and the Fair Housing Act.
- a. Do you believe that the CFPB has the authority to extended anti-discrimination theories such as disparate impact analysis to areas in which Congress has not directly given it the authority to do so?
- b. What expectations does the CFPB have for lenders in order to be in compliance with these UDAAP changes?

Response (a-b):

The CFPB has authority to enforce Federal consumer financial laws. The updated exam manual does not alter existing law or create new obligations for covered persons or service providers, and the CFPB’s expectations for lenders have not changed. The manual simply directs examiners to examine potential discrimination that may satisfy the preexisting standard for a violation of the prohibition on unfair practices.

4. The CFPB’s own statement on supervisory guidance acknowledges that announcements or updates like the one you made to the exam manual do not create new obligations and the Bureau won’t enforce against those that fail to follow these, as they are not rules.
- a. Can you commit to follow that policy, which is of course also consistent with the requirements of the Administrative Procedures Act?

Response

The CFPB’s examination manual does not constitute supervisory guidance. It is intended for use by the CFPB’s examiners when conducting supervisory activities and the manual is not

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addressed to supervised entities. As to the CFPB's policy on supervisory guidance, it is set out in the final rule on the Role of Supervisory Guidance at 12 CFR Part 1074. This rule describes the distinctions between regulations and supervisory guidance and explains the role of and the CFPB's approach to supervisory guidance.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative David Kustoff:

I would like to follow up to my question to you on April 27th. The CFPB issued a press release on April 25th entitled “CFPB Invokes Dormant Authority to Examine Nonbank Companies Posing Risks to Consumers.” As we discussed, the CFPB at the end of the long release noted under the potentially misleading title of transparency that it was issuing a procedural rule to provide new authority for the Director to disclose “orders and final decisions.”

1. Your new procedural rule changes the 2013 procedural rule issues to allow for the Director to make certain orders public. I find the seven pages of your proposal to be an inadequate justification. Please provide the committee with specific and detailed justification for abandoning the 2013 construct and issuing this new proposed procedural rule. I would request any documentation which would be necessary justification for the Bureau altering its longstanding precedent.

Response

For decades before the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), only banks and credit unions were subject to federal supervision. After the 2008 financial crisis in which nonbank companies played a pivotal role, Congress created the Consumer Financial Protection Bureau (CFPB) and tasked the agency with supervising certain nonbanks, in addition to large depository institutions with more than \$10 billion in assets, and their service providers.

In the Dodd-Frank Act, Congress authorized the CFPB to supervise three different categories of nonbank entities.⁸ First, the CFPB is authorized to examine all nonbank entities in the mortgage, private student loan, and payday loan industries, regardless of size.⁹ Second, the CFPB is authorized to examine “larger participants,” as defined by rulemaking, in other nonbank markets for consumer financial products and services.¹⁰ And third, the CFPB can examine nonbanks whose activities the CFPB has reasonable cause to determine pose risks to consumers.¹¹ This third, risk-based supervision authority is not specific to any particular consumer financial product or service. The CFPB implemented the provision through a procedural rule in 2013, but only recently announced it will use this authority so that it can be agile and supervise nonbank entities that may be fast-growing or are in markets outside the existing nonbank supervision program.

The 2022 procedural rule seeks to increase transparency with respect to the agency’s process for determining whether a nonbank entity poses risks to consumers. Under the 2013 procedural rule,

⁸ 12 U.S.C. 5514(a)(1).

⁹ 12 U.S.C. 5514(a)(1)(A).

¹⁰ 12 U.S.C. 5514(a)(1)(B).

¹¹ 12 U.S.C. 5514(a)(1)(C).

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any nonbank entity the CFPB determines should be subject to supervision based on risk is given notice and an opportunity to respond. The 2022 update to the CFPB procedures does not change this process. The only update is to authorize public disclosure of certain information about how the CFPB makes a determination that a nonbank entity is engaging or has engaged in conduct that poses risks to consumers and is subject to supervisory examination.¹² This update is intended to provide greater transparency to the public about how the CFPB makes these risk determinations.

¹² Prior to the public release of any information, the nonbank has an opportunity to provide input to the CFPB on the potential release of this information.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Pete Sessions:

Dear Director Chopra:

I very much appreciated your appearance this past week at the U.S. House Committee on Financial Services, and since we both ran out of time at that hearing, this is the letter I indicated I would be sending to you with follow-up questions. Thank you for committing to find answers to these questions for me last week- I believe our continued dialogue can help bring much-needed clarity of purpose and procedure to the consumers of financial services we both serve.

My first two follow-up questions concern remittances, an issue area we discussed at last week's hearing:

1. Can you please define "delayed transaction", and please describe the scope of that issue in the 17th Congressional District of Texas in terms of total number of transactions so far this year versus the number of transactions that fit that definition?

Response

I understand your question to be inquiring as to the Consumer Financial Protection Bureau's (CFPB's) recent lawsuit against MoneyGram International, Inc. and MoneyGram Payment Systems, Inc. As alleged in the CFPB's complaint:¹³

MoneyGram engaged in unfair acts and practices by failing to timely make remittance transfers available to recipients or to timely make refunds available to senders. MoneyGram unnecessarily delayed transactions. An unnecessary delay in a remittance transfer or refund causes or is likely to cause substantial harm to consumers. Senders and recipients lose access to funds or are delayed in the use of those funds. Consumers face additional hardship when the timing of a transfer is critical, or when, because of their financial circumstances, they do not have uncommitted funds to replace money subject to a delay in transmission or refund.

The CFPB cannot otherwise elaborate on pending litigation.

The Remittance Transfer Rule (Rule) requires that funds be available to the recipient of the remittance transfer by the date disclosed as the date of availability in the receipt a remittance transfer provider must provide to the sender. If the funds are not available by the disclosed date of availability, then the Rule generally treats the delay as an error, and the Rule generally provides senders with certain error resolution rights. However, there are very limited

¹³ See https://files.consumerfinance.gov/f/documents/cfpb_moneygram_complaint_2022-04.pdf.

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circumstances under the Rule such that a remittance transfer provider's failure to make funds available by the disclosed date of availability is not an error (e.g., when extraordinary circumstances outside of the remittance transfer provider's control and reasonable anticipation are the reasons for the transaction to be delayed).

CFPB does not have data regarding the exact number of "delayed transactions" by Congressional district.

2. In the context of your belief that we are all seeing a private marketplace transformation in remittances, can you please tell me what the CFPB is receiving in terms of formal complaints from 17th Congressional District of Texas consumers concerning remittances, and what role you believe the CFPB should play in this marketplace transformation?

Response

In the past three years, the CFPB has received more than 5,000 complaints about international money transfers. Of those, approximately 300 complaints were submitted by consumers who reported an address in Texas and five came from the 17th congressional district. The most common issues reported by Texas consumers were transaction problems, issues with fraud or scams, and money not being available when promised.

As for the CFPB's role in market transformation, we will be looking at ways to clear obstacles and pave the path to help people have more options and more easily make choices that are best for their needs.

My third question concerns "Buy Now Pay Later" products, an issue you also pointed out at last week's hearing is of great concern to many of my colleagues on the committee as well:

3. I understand you may be considering a rulemaking effort on "Buy Now Pay Later" (BNPL), and I am respectfully asking for a reference to and description of that process, why you believe it's important to consumers of BNPL products in the 17th Congressional District of Texas, and for your advice on the most effective and proper way for me, a Member of the House Financial Services Committee to engage the Consumer Financial Protection Bureau in any BNPL rulemaking on behalf of my constituents moving forward?

Response

Buy Now, Pay Later (BNPL) is a rapidly growing product in the United States, and I expect that it will continue to grow. The CFPB is currently studying the marketplace. In December, the CFPB sent market monitoring orders to five BNPL companies—Affirm, Afterpay, Klarna, Paypal, and Zip. The CFPB orders seek to better understand the range of BNPL products and the firms' underlying business practices.

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The CFPB's efforts to gather information from the BNPL companies pursuant to the orders is ongoing, but we anticipate publishing aggregated findings on insights learned from this inquiry that will guide future CFPB action. I will be sure that the CFPB shares these findings with you and would be happy to have CFPB staff brief your staff.

The CFPB has resources for your constituents if they have questions about BNPL programs on our website at consumerfinance.gov. If your constituents have any issue with a BNPL program or any other consumer financial product or service, they also can submit a complaint with the CFPB on our website or by calling (855) 411-CFPB.

And finally, my fourth question centers around my concern that actions at your Consumer Financial Protection Bureau may add to the regulatory burdens banks or other lenders face in the near future, thereby limiting consumer access in the 17th Congressional District to small dollar business loans and installment loans:

4. Does the Consumer Protection Financial Bureau have any plans to add to or change in any way the regulatory status of small-dollar lending in the near future?

Response

The CFPB is monitoring the small-dollar lending market and has taken targeted supervisory and enforcement actions to ensure that market participants are following the law.

Thanks again for your time at the House Committee on Financial Services last week, Director Chopra, and for committing to taking the time answering my follow-up questions. [...].

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative William Timmons:

“SUE AND SETTLE”

Director Chopra:

In 2019, the CFPB empaneled the Task Force on Federal Consumer Financial Law (Taskforce) to examine ways to harmonize and modernize federal consumer financial laws. The Taskforce was directed to examine the legal and regulatory environment facing consumers and financial services providers and report to then-Director Kathy Kraninger its recommendations for ways to improve and strengthen consumer financial laws and regulations. The Taskforce was empowered to produce new research and legal analysis of consumer financial laws in the US, focusing specifically on harmonizing, modernizing, and updating the enumerated consumer credit laws—and their implementing regulations—and identifying gaps in knowledge that should be addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.

The Taskforce charter was firmly based in law, its objectives and scope of activities were specifically enumerated, its duration and membership were addressed, and other details regarding its activities were spelled out. The Taskforce was populated with recognized experts in consumer financial products and services from the fields of law and academia, including former regulators from the Federal Trade Commission, the Federal Reserve, and the U.S. Department of Justice. The Taskforce was also supported by an extensive staff that provided additional expertise.

Following its establishment, the Taskforce conducted proceedings and, in January of 2021, issued an extensive two-volume report addressing a wide range of relevant topics. The report included in-depth analysis of the federal consumer financial laws, consumer credit issues, small-dollar lending, competition, disclosures, innovation, access, inclusion, privacy, data security, consumer empowerment, and more.

Notwithstanding its legal status, the careful selection and qualifications of its members, the extensive research and analysis undertaken, and the comprehensive report it issued, in June of 2020, the Taskforce was challenged in court by several consumer groups on the basis that it did not comply with the Federal Advisory Committee Act (FACA). The suit was filed in the U.S. District Court for the District of Massachusetts, clearly a venue chosen through forum shopping. The CFPB opposed the suit and moved to dismiss the complaint.

In December of 2021 – more than two years after the Taskforce was empaneled, 11 months after the release of the Taskforce report, and following the 2020 election and subsequent appointment of a new CFPB director – the CFPB surrendered to the consumer groups and entered into a settlement agreement stipulating to the allegations of the complaint. The settlement agreement

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agreed that the Taskforce was improperly impaneled, agreed to release all Taskforce records, and agreed to amend the Taskforce report to include a disclaimer indicating that the report was produced in violation of the FACA. The settlement of the consumer group action was a complete reversal of the position of the CFPB with respect to the validity of the Taskforce. The conduct of the CFPB in settling the consumer group challenge to the Taskforce can be replicated with respect to other Bureau action including the issuance of regulations, guidance, and enforcement actions.

1. When determining whether to oppose litigation filed against the CFPB or one of its actions, what procedures does CFPB follow?
2. How does CFPB determine whether to change its position with respect to litigation filed against it or one of its actions?
3. What processes exist for oversight of the litigation determinations made by CFPB, particularly when there is a change in the administration of the Bureau?
4. What process was undertaken and what considerations led to the determination by the CFPB to change its position and to settle the lawsuit challenging the Taskforce report?
5. What considerations did the CFPB rely upon in deciding to reverse its position with respect to the allegations of the consumer group lawsuit, including with respect to the validity of the Taskforce and its proceedings?
6. What standards exist and what standards can be implemented at the CFPB to ensure that the Bureau is consistent in its handling of litigation and to eliminate the possibility of “sue and settle”?

Response (Questions 1-6)

In determining how to respond to litigation, the Consumer Financial Protection Bureau (CFPB) carefully considers the law and the facts in each case. In considering a negotiated settlement, the CFPB weighs the likelihood of success on the merits against the litigation risk and the costs and makes a judgment as to whether settlement is in the public interest.

In the Taskforce litigation, the CFPB filed a motion to dismiss the suit on jurisdictional grounds, and the district court denied that motion. After reviewing the plaintiffs’ claims, the applicable law, and the facts, the CFPB concluded that the Taskforce on Federal Consumer Financial Law was subject to but had not complied with the requirements of the Federal Advisory Committee Act. Given this violation of law, the CFPB concluded that settling the case was in the best interests of the public and of the agency. After the parties reached an agreement, they submitted a proposed stipulated judgment to the court, which the court reviewed and entered. In settling the case, the CFPB reaffirmed its commitment to ensuring compliance with advisory committee

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sunshine laws. Under the settlement, for example, the Taskforce report remains available on the CFPB's website, and the public now also has access to Taskforce records that are required to be made public under the Federal Advisory Committee Act.

Meetings

Director Chopra:

7. You met with only three industry groups in your first 120 days in office. By comparison, Director Cordray met with 40 industry groups during his initial 120-day period. In your testimony you said it was incorrect that you only met with three industry groups and that you "personally meet with so many industry players." As the Director, you are confirmed by the United States Senate and accountable to the President of the United States, while your staff are not. The actions and rulemakings of the Bureau have a tremendous impact on consumers and the economy. There is some disagreement over whether or not you take meetings with the stakeholders of industries that the CFPB regulates. Please provide the names and dates of every meeting you have personally taken during your tenure as Director.

Response

During the confirmation process, I understand that there were concerns that the CFPB's previous industry outreach efforts were primarily focused on the very largest financial institutions, rather than the broad cross-section of businesses affected by the CFPB's actions.

Since the very largest institutions already have frequent interactions with CFPB staff, I have primarily focused my outreach on local banks and credit unions. Our primary mode of engaging these institutions has been through state-based meetings. These meetings are not venues for "speeches." Instead, it is an opportunity for financial institutions to ask questions and provide their views.

We primarily organize these meetings through state banker association and credit union leagues. To date, we have held these meetings with institutions from Florida, California, Nevada, Tennessee, Minnesota, Delaware, Pennsylvania, Wyoming, Iowa, Indiana, Maryland, Washington, DC, and Louisiana, with more on the horizon. In most of these interactions, the American Bankers Association has also participated.

In terms of large financial institutions, we have held similar roundtable discussions, as well as individual meetings to discuss targeted issues. For example, the American Financial Services Association helped to organize a roundtable with leaders in the captive auto finance industry. The Consumer Bankers Association organized a discussion between me and many of its leaders in consumer banking who serve on the association's board. In addition, I have also had the opportunity to meet with companies affected by the CFPB's actions that would not be considered financial companies, including hotel owners and retailers, as well as trade associations.

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I have also appeared at industry conferences, including the Independent Community Bankers of America, the Mortgage Bankers Association, the Asian American Hotel Owners Association, and the National Automobile Dealers Association and American Financial Services Association joint event.

We have sought to assemble a list of the institutions and industry groups participating in these meetings that I personally participated in, and are providing this list (below). This does not include other informal or unscheduled calls and discussions.

DATE	MEETING ENGAGEMENT
12/06/2021	Nelnet
01/10/2022	Mortgage Bankers Association (MBA)
02/17/2022	Native CDFI Network's Board and the Policy Committee (NCN/members)
02/22/2022	Florida Financial Institutions Registered Participants: 200
02/23/2022	National Automobile Dealers Assoc. (NADA) Merchants Payments Coalition (MPC)
02/24/2022	Participants: National Grocers Association; National Retail Federation; National Association of Convenience Stores; Food Marketing Institute
02/25/2022	Housing Policy Council (HPC) – Members include leaders in housing finance, representing mortgage lenders and servicers, data, technology, analytics firms, mortgage, title and property insurance professionals. Participants: 30
03/11/2022	JPMorgan Chase
03/14/2022	American Pharmacists Association (APhA)
03/24/2022	California/Nevada Financial Institutions Registered Participants: 234
04/01/2022	Blockchain Association
04/07/2022	Delaware Financial Institutions Registered Participants: 58
04/14/2022	American Financial Services Association (AFSA) Roundtable Participants: AFSA: Bill Himpler, President and CEO; Celia Winslow, Senior Vice President; American Honda Financial: Petar Vucurevic, Vice President; Ford Motor Credit: Jim Drotman, Executive Vice President; Hyundai Capital America: Vincent Rice, Chief Operations Officer; and Nissan Motor Acceptance Corporation: Kevin Cullum, President and CEO
04/15/2022	Asian American Hotel Owners Association (AAHOA)
05/02/2022	Independent Community Bankers of America (ICBA) Fireside chat with CEO and 400 registered member banks

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05/03/2022	FDIC Community Bank Advisory Committee. Current members include: Mike Bock, CEO, Dairy State Bank, Rice Lake, Wisconsin; Teri Messerschmitt, President and CEO, South Ottumwa Savings Bank, Ottumwa, Iowa; Troy Campbell, President and CEO, Altoona First Savings Bank, Altoona, Pennsylvania; Dominik Mjartan, President and CEO, OPTUS Bank, Columbia, South Carolina; Anthony Capobianco, President and CEO, American Community Bank, Glen Cove, New York; Gilbert Narvaez Jr., President and CEO, Falcon International Bank, Laredo, Texas; Harold Horvat, President, CEO and Chairman, Centreville Bank, West Warwick, Rhode Island; Margaret Oldner, CEO, Stone Bank, Mountain View, Arkansas; Robert James II, Executive Vice President, Carver State Bank, Savannah, Georgia; Arlen Osterbuhr, Chairman and CEO, Minden Exchange Bank and Trust Company, Minden, Nebraska; Betsy Johnson, President and CEO, Solutions Bank, Forreston, Illinois; Shane Pilarski, President and CEO, Alliance Bank, Francesville, Indiana; Cindy Kitner, President and CEO, Jefferson Security Bank, Shepherdstown, West Virginia; Kim Reigelsberger, President, Preferred Bank, Rothville, Missouri; Bruce Lowry, President and CEO, Ireland Bank, Malad City, Idaho; Andrew West, President and CEO, Eagle Bank, Polson, Montana; Trey Maust, Executive Chairman, Lewis & Clark Bank, Oregon City, Oregon; John Wharton V, President and CEO, Yampa Valley Bank, Steamboat Springs, Colorado; and Neil McCurry Jr., Sarasota and Manatee County Market President, Seacoast National Bank, Stuart, Florida
05/04/2022	Minnesota Financial Institutions Registered Participants: 34
05/11/2022	Tennessee Financial Institutions Registered Participants: 80
05/11/2022	Federal Advisory Council (Comprised of 12 representatives of the banking industry that consult with and advise the Federal Reserve Board of Governors). Current members include: <i>First District</i> - State Street Corporation, Boston, MA; <i>Second District</i> - Vacant; <i>Third District</i> - Uninvest Bank and Trust Co., Souderton, PA; <i>Fourth District</i> - PNC Financial Services, Pittsburgh, PA; <i>Fifth District</i> - Bank of America, Charlotte, NC; <i>Sixth District</i> - BankUnited Inc., Miami Lakes, FL; <i>Seventh District</i> - BMO Financial Group, Chicago, IL; <i>Eighth District</i> - First Horizon National Corp., Memphis, TN; <i>Ninth District</i> - US Bancorp/US Bank, Minneapolis, MN; <i>Tenth District</i> - Citizens Bank of Edmond, Edmond, OK; <i>Eleventh District</i> - Prosperity Bancshares / Prosperity Bank, Houston, TX; <i>Twelfth District</i> - Bank of the West, San Francisco, CA.
05/16/2022	PNC
05/16/2022	US Bank
05/16/2022	Citigroup
05/16/2022	MBA Secondary & Capital Markets Conference & Expo – annual conference for real estate finance professionals in the secondary and capital markets space that includes leaders from secondary and capital markets, chief financial officers mortgage presidents, trade desk, sales, correspondent/warehouse professionals and government agency and regulatory professionals.

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	Registered Participants: 1,000+
05/20/2022	Pennsylvania Financial Institutions Registered Participants: 33
05/23/2022	FDIC Minority Depository Institution Subcommittee. Current members include: Deron Burr, President and CEO, People's Bank of Seneca, Seneca, Missouri; Kyle Chavis, CEO and Chief Credit Officer, Lumbee Guaranty Bank, Pembroke, North Carolina; Warren Huang, General Counsel, Amerasia Bank, Flushing, New York; Russell Lau, Chairman and CEO, Finance Factors, Ltd., Honolulu, Hawaii; Benjamin J.B. Lin, President and CEO, Pacific Alliance Bank, Rosemead, California; Alden J. McDonald, President and CEO, Liberty Bank and Trust Co., New Orleans, Louisiana; Gilbert Narvaez, Jr., President and CEO, Falcon International Bank, Laredo, Texas; Angel Reyes, President, Centinel Bank of Taos, Taos, New Mexico; and James H. Sills, III, President and CEO, M&F Bank, Durham, North Carolina
06/07/2022	Consumer Bankers Association (CBA) (Board of Directors) Participants: Atlantic Union Bank; Bank of America; Berkshire Bank; BMO Harris; Capital One Bank; Citizens Financial; Comerica Bank; Eastern Bank; Goldman Sachs; KeyBank; PNC Bank; Regions Financial Corporation; Santander Bank; Synchrony; and Truist
06/07/2022	Citizens Bank
06/08/2022	American Bankers Association (ABA)
06/10/2022	Wyoming Financial Institutions Registered Participants: 4
06/14/2022	Montana Financial Institutions Meeting with the association CEO and Belt Valley Bank's CEO
06/16/2022	Iowa Financial Institutions Registered Participants: 34
6/22/2022	Credit Union National Association (CUNA) (Board of Directors) Participants: 1st Gateway Credit Union; Belco Community Credit Union; Border Federal Credit Union; City and County Credit Union; CommunityAmerica Credit Union; Cornerstone Credit Union League; Dakota Credit Union Association; Enbright Credit Union; Financial Partners Credit Union; First Commerce Credit Union; Georgia United Credit Union; GTE Financial Credit Union; Illinois Credit Union League; INOVA Federal Credit Union; Kentucky Credit Union League; Manchester Municipal Federal Credit Union; Mississippi Credit Union Association; Mountain West Credit Union Association; NextMark Federal Credit Union; Peninsula Credit Union; Royal Credit Union; SchoolsFirst Federal Credit Union; Tennessee Credit Union League; University Federal Credit Union; and WeStreet Federal Credit Union
6/29/2022	NADA/AFSA Executive Forum Fireside chat with senior leadership at an annual meeting of franchised automobile dealers and indirect vehicle finance sources
6/30/2022	American Fintech Council (AFC)
7/12/2022	Indiana Financial Institutions Registered Participants: 55

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7/12/2022	National Association of Federally-Insured Credit Unions (NAFCU) (Board of Directors) Participants: Arlington Community Federal Credit Union; Bank-Fund Staff Federal Credit Union; Chartway Federal Credit Union; Commonwealth Credit Union; Connex Credit Union; Coming Federal Credit Union; Educational Employees Credit Union; Elements Financial Federal Credit Union; Kinecta Federal Credit Union; Sandia Laboratory Federal Credit Union; Southwest Financial Federal Credit Union; State Department Federal Credit Union; State Farm Federal Credit Union; and Whitefish Credit Union
7/12/2022	QED Investors
7/15/2022	Maryland and Washington, DC Financial Institutions Registered Participants: 19
7/20/2022	Louisiana Financial Institutions Registered Participants: 58

Medical Debt

You testified that “the Department of Veterans Affairs has dramatically changed its policies concerning reporting medical debt for veterans. There’s work being done at the USDA, and yes, we are in discussions with the FHFA about how they should think about medical debt in the mortgage origination process. And we need to fix this because this is a central consumer pain point. It is the number one collections item now on people’s credit reports, and we have so many people feel coerced into paying something they don’t owe when they’re applying for a mortgage or job or an apartment.” The White House said that to achieve this, the Office of Management and Budget (OMB) will be issuing new guidance to agencies to, whenever possible and consistent with law, eliminate medical debt as a factor for underwriting in credit programs, or reduce its impact.

8. Under what authority can OMB do that? And, what research and data, and experts in medical healthcare and collections issues, will OMB be relying on?

Response

Questions regarding Office of Management and Budget’s (OMB’s) authorities should be directed to OMB.

9. You stated in response to a question that there has been evidence to suggest that medical debt is not necessarily a very good predictor of credit performance on other loan obligations. Can you produce this evidence? You also stated in regards to information about medical debt that, “We [the CFPB] should determine about whether it’s appropriate to include this information at all,” on credit reports.
 - a. Does the Dodd-Frank Wall Street Reform and Consumer Protection Act provide authority to the CFPB to eliminate credit reporting for certain portions of the economy,

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including sectors that are not consumer financial products or services? Will the CFPB promulgate a rulemaking to make this change, and if so, under what authority?

Response

The CFPB's research has found that medical collections are less predictive of future consumer credit performance than nonmedical collections. Additionally, paid medical collections are less predictive of future performance than unpaid medical collections. Individuals with more medical than non-medical collections and individuals with more paid than unpaid medical collections had delinquency rates that were comparable to those of individuals with credit scores of 10 points higher and 20 points higher, respectively. In other words, these individuals were less likely to be delinquent than other individuals with the same credit score.¹⁴

The CFPB is assessing its tools and authorities as it considers whether it is appropriate and lawful to include medical debt in credit reports.

Coordination with Department of Education

10. What is behind-the-scenes coordination between the CFPB, Education Department, and advocacy groups?

This seems to be occurring because reports and press releases reference and quote each other, indicating private behind-the-scenes coordination before those public announcements. This appears designed to align messaging to deflect blame from the Bureau and the Department over issues they have directly overseen.

Response

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires the CFPB to maintain a memorandum of understanding with the Department of Education to "ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans."¹⁵ The CFPB's Memorandum of Understanding with the Department of Education was executed on January 31, 2020, and memorializes the agencies' coordination and information sharing regarding student loan complaints.¹⁶

¹⁴ See Brevoort, Kenneth and Michelle Kambara. "Data point: Medical debt and credit scores." Consumer Financial Protection Bureau. May 2014. https://files.consumerfinance.gov/f/201405_cfpb_report_data-point_medical-debtcredit-scores.pdf.

¹⁵ See 12 U.S.C. § 5535(e)(2).

¹⁶ See also <https://www.consumerfinance.gov/about-us/newsroom/cfpb-us-department-education-sign-memorandum-understanding-better-serve-student-loan-borrowers>.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Rashida Tlaib:

Director Chopra, as you know, remittances are an important type of cross-border payment method typically made between migrant families. In 2012, the CFPB implemented its Remittance Rule, requiring companies that offer remittances to provide consistent disclosure regarding the price of a transfer, the amount to be delivered to the recipient, and the date of availability, all before the consumer made a payment. Unfortunately, this rule does not go far enough to protect families sending money home. Stakeholders including the National Consumer Law Center and Americans for Financial Reform have found that consumers lose approximately \$8.7 billion in hidden fees due to exchange rate markups annually. These hidden fees impact hundreds of thousands living in immigrant communities across the country, including many of my residents.

1. Should the CFPB modify its Remittance Rule to require providers to disclose the exchange rate fee to better protect consumers from these hidden fees?

Response

Remittances are extremely important to world economic stability, particularly in the Western Hemisphere. Millions of people depend on them, and they are an important aspect of many national economies. Remittances are also an important element in our own economy as remittances help bring stability in other countries that directly impact our own security and economic well-being. As Director of the Consumer Financial Protection Bureau, I have been actively promoting the need for competition and transparency in all aspects of consumer finance. I am interested in understanding how we can make remittances faster, cheaper, and more secure. I have asked my staff to look closely at these issues. It is complicated, in part because the market is actually comprised of a tremendous number of sub-markets, each having its own distinct needs, characteristics and challenges. We have received a significant level of input from a wide spectrum of stakeholders. However, it is too early to make any determination if adjustments to the Remittance Rule are needed. We want to ensure we provide maximum value and security to the consumers that depend on these products.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Ritchie Torres:

1. There are federal regulators that have a practice of allowing corporate bad actors to enter settlements and pay a fine without ever admitting wrongdoing and the truth is often a casualty of neither a minted nor deny settlements which essentially protects corporate bad actors from the reputational consequences of their own bad behavior. I raised the issue with you back in October for the first time and I'm wondering in the 6 months since then, have you taken any action to remove or reduce or otherwise reform the practice of a mint nor deny settlements?

Response

We are broadly looking at provisions in our orders to see where they can be strengthened, particularly for repeat offenders, including the issue of findings and admissions. At this point, we have not made a specific policy change, but are examining the appropriateness on a case-by-case basis.

2. On March 6, the NYT published an article with the title "Fraud is Flourishing in Zelle. The Banks say it's not their problem." My understanding is that if a transaction has a fraudulent user, a bank is required to reimburse the customer of the losses. Is that a correct understanding of the law? What if the transaction has a fraudulent receiver rather than a fraudulent user? Is a bank then required to reimburse for losses and should they be required to do so?

Response

The Electronic Fund Transfer Act (EFTA) and Regulation E apply to an electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account.¹⁷ The term "electronic fund transfer" or "EFT" means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account.¹⁸ An unauthorized EFT is an EFT from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit.¹⁹ Unauthorized EFTs include transfers initiated by a person who obtained a consumer's access device through fraud or robbery and consumer transfers at an ATM that were induced by force.

¹⁷ 12 CFR 1005.3(a).

¹⁸ 12 CFR 1005.3(b)(1).

¹⁹ 12 CFR 1005.2(m).

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3. As you know, the CFPB has been seriously considering a rulemaking under Section 1033 of the Dodd-Frank Act for the last six years, and under your tenure at the Bureau, that vision is on track to becoming a reality. As you, yourself have noted over the last several months several times, a financial data customer right under Section 1033 has the potential to significantly increase competition, financial access and inclusion, and to give consumers more control of their financial data. The Bureau's ANPR on Section 1033 closed nearly 15 months ago, so can you please provide an update on the CFPB's process to issue a final rule on this score?

Response

The Required Rulemaking on Personal Financial Data Rights under section 1033 is subject to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which generally requires the Consumer Financial Protection Bureau (CFPB) to convene a panel consisting of staff from the CFPB, the Office of Advocacy within the Small Business Administration, and the Office of Information and Regulatory Affairs within the Office of Management and Budget prior to publishing a Notice of Proposed Rulemaking (NPRM) that would have a significant economic impact on a substantial number of small entities. In advance of convening the panel, the CFPB publishes an outline of proposals under consideration and alternatives and solicits feedback from small entity representatives. The CFPB plans to publish the SBREFA outline this year. After convening the panel and considering input from the small entity representatives, the CFPB will publish an NPRM, solicit and consider comments on the NPRM, and issue a final rule.

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Questions for The Honorable Rohit Chopra, Director of the Consumer Financial Protection Bureau, from Representative Nydia Velazquez:

1. Director Chopra, I have introduced HR 7351, the Promoting Fair Lending to Small Businesses Act, which amends the Equal Credit Opportunity Act to give the CFPB authority to examine nonbank small business lenders for compliance with Section 1071 of the Dodd-Frank Act, the small business lending data collection, once the rule is finalized and has been implemented. Would you agree that it is important for CFPB examiners to be able to examine nonbank small business lenders to review the integrity of the data they submit and their compliance with ECOA's fair lending requirements?

Response

The Consumer Financial Protection Bureau's (CFPB's) supervisory examination authority plays an integral role in our ability to carry out our statutory mandate by ensuring that regulated entities comply with federal consumer financial laws, including the Equal Credit Opportunity Act (ECOA). The data collection intended with the CFPB's required small business lending data collection rule implementing Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) will allow the CFPB, advocates, industry, and other stakeholders to better monitor small business markets and community development needs to foster an inclusive and competitive small business lending market. Small businesses are the engine of economic growth and wealth creation. They are critical to innovation, competition, job creation, and community development. Small businesses are an important force for shrinking racial and gender wealth divides, and access to capital for all small business owners is critical for small businesses to thrive. The CFPB's small business lending supervisory work to date has enabled the CFPB to assess whether there are disparities in application, underwriting, and pricing processes, redlining, and whether there are weaknesses in fair lending-related compliance management systems. This supervisory work, and the CFPB's authority to conduct it, is indeed important to ensuring compliance with ECOA, as the CFPB is tasked to do by the Dodd-Frank Act.