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

HYBRID HEARING

BEFORE THE

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

Wednesday, December 14, 2022

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

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

Members present: Representatives Waters, Maloney, Velazquez, Sherman, Green, Cleaver, Perlmutter, Foster, Beatty, Vargas, Gottheimer, Casten, Pressley, Lynch, Adams, Tlaib, Dean, Garcia of Illinois, Garcia of Texas; McHenry, Lucas, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Loudermilk, Mooney, Davidson, Budd, Rose, Steil, Timmons, Sessions, and Norman.

Chairwoman WATERS. The Financial Services Committee will come to order.

Today, we welcome Director Chopra of the Consumer Financial Protection Bureau (CFPB) to our committee.

I would like to take a moment to highlight just how important the CFPB has been in the past year. Under Director Chopra's leadership, the CFPB has been combating redlining, housing discrimination, illegal evictions, and foreclosures, and has worked tirelessly to root out appraisal bias. I commend the CFPB for its announced plans to create an online registry of companies which have violated consumer financial protection laws, which will certainly support the CFPB's current efforts to hold repeat offenders accountable and ensure consumers get the relief they are owed.

The CFPB has also put pressure on the credit bureaus to make overdue policy changes to relieve the burden of medical debt on consumer credit reports, highlighted financial institutions' excessive overdraft fees, helped small businesses get the access to capital they need to thrive, and closely monitored the impact that fintech products and crypto assets have had on consumers. So, Committee Democrats applaud the CFPB for once again putting consumers first, all of our consumers first, with these critical wins, and we remain committed to fighting against any and all efforts to thwart this progress.

We are also closely monitoring the deeply-flawed ruling from the Fifth Circuit which focuses on the CFPB's funding that would disrupt the entire Federal Government, harm the economy, and leave consumers with fewer protections than the predatory pre-financial-crisis days. Democrats support the Justice Department, and CFPB has appealed to the Supreme Court to overturn this absurd ruling, and we stand ready to support the CFPB as much as we possibly can.

At one point yesterday, the ranking member mentioned that we oftentimes work together, and we have been able to work together on any number of issues and that we will continue to try and do that. There is a lot that I could say about my displeasure with the way my Republican colleagues have dealt with the Consumer Financial Protection Bureau. But I am going to eliminate the criticisms that I have in an effort today to recognize that this is our last hearing, and that I am looking forward to working with the ranking member. And also, I want to give the opposite side of the aisle the opportunity to at least identify what it is that they like and appreciate about the Consumer Financial Protection Bureau.

And so, in an effort to end on a good note, I will yield back the balance of my time, and recognize the gentleman from North Carolina, the ranking member of the committee, Mr. McHenry.

Mr. MCHENRY. Madam Chairwoman, a point of personal privilege, if I may. On that note, you should have picked as your last hearing a different witness, from a different bureau, with all due respect. But I did want to say as a point of personal privilege, I want to congratulate you on your 4 years as Chair. I know it was not your intention for next Congress to not be Chair, but I am excited to have the opportunity to actually take your chair, and I will say it has been an honor to work with you. The historic nature of your chairmanship, as I noted at the beginning of the first hearing, as the first Californian to chair this committee, the first woman to chair this committee, and the first African American to chair this committee, and, I'm sorry, Blaine and Ann, the first Missouri-born to chair this committee. There are a lot of firsts in that.

[laughter]

I know you worked intensely hard to get the chairmanship after a long career in California politics, and I want to congratulate you. And the great news is because of the great working relationship you had with Chairman Hensarling, if you have a portrait made during my chairmanship, I am going to put you two right next to each other, but we will have to position Barney Frank to be able to just stare at the Democrats, not the Republicans.

[laughter]

Mr. MCHENRY. But I do want to congratulate you on that, and we have from time to time worked together. Last Congress, we did big things together that took down the temperature on controversial subjects in this committee. And while I offered to help on this, it was your leadership which enabled that to happen. The same thing with the CARES Act, the good work we did with the CARES Act, and the same thing we have done in our approach to confronting Russia about Ukraine. And I want to commend you for that outreach, because without that outreach, we could not have gotten a bipartisan product. I know there are other partisan products you may list under your chairmanship, I won't, but I am grateful for the outreach and the times that we did work together, and I hope that we can do that in the next Congress as well.

Chairwoman WATERS. I would like to take a point of personal privilege at this point, and also thank you for the times that we have been able to work together, but I want to spend a little bit of time on some recent work that we have been doing on stablecoins. Our staffs have been working very, very hard. We have all taken cryptocurrency very seriously, and I want to commend all of the Members on both sides of the aisle for the way that we all conducted ourselves yesterday. I think every Member had something important and very, very thoughtful to say about what is taking place, what we are attempting to do, and our surprise at not having Sam Bankman-Fried here to testify. So, I am not only wishing you the best in your chairmanship, but I am looking forward to continuing to work not only on some of the issues that I have alluded to, but certainly on cryptocurrency. Thank you very much, and I yield back the balance of my time.

Mr. MCHENRY. Thank you, Madam Chairwoman, and along those lines, I agree. I hope that we can continue to do bipartisan work with this committee, because this is the center of where the legislation is going to happen on digital assets for the coming years, so thank you.

Chairwoman WATERS. Thank you very much. And I now recognize the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes to give an opening statement.

Mr. MCHENRY. Thank you, Madam Chairwoman. Director Chopra, you just made it, 2 weeks before the close of Congress, for your second statutorily-required appearance this year. Welcome back. You can look forward to a few more of these invitations next year, and we think we will have you back before the committee a number of times, and I look forward to you being very willing to change your schedule to adhere to that.

We have a lot to cover today, and I will start by saying it is obvious that the CFPB's lack of transparency is of grave concern. Over the last year, committee Republicans sent more than 10 letters with specific questions we wanted answered, to which you replied with single-page responses. It looked glib and not as thoughtful as a major regulatory agency should take rational oversight. My encouragement would be for you to actually take those letters more seriously with the new Majority next Congress, because without proper oversight, this system of government doesn't work well.

And it is not good for financial institutions, it is not good for market participants, and it is not good for the consumers whom we are trying to protect either. In fact, what we have seen from Director Chopra's leadership is to only put forward one real rule through the notice-and-comment process, and that action was directed by Congress under my bill, the Debt Bondage Repair Act. Meanwhile, you have issued six compliance bulletins, five advisory opinions, five interpretive rules, and, just this year, seven circulars.

While not legally binding, such clarifications and guidance without time to process the changes fosters an environment of uncertainty for the industry. That doesn't make it better for the consumers. Financial institutions and other market participants changed their behavior, increasing compliance costs, and ultimately limiting consumers' access to affordable products and services, and leading to more confusion, not more clarity. You are implementing progressive policies at the expense of both consumers seeking financial products and market participants trying to comply with the law, and you are doing so without fully and transparently considering the consequences of your actions.

You have also moved the Office of Innovation to the back burner. It has had almost no activity during your tenure. You did, however, rescind a no-action letter as well as the sandbox approval order. And you gave virtually no notice to those market participants, and threw their operations into jeopardy without signaling any willingness to work with them to address the CFPB's concerns. And again, there is no certainty and no transparency along the way.

This is all against the backdrop of the Fifth Circuit Court of Appeals ruling that the CFPB's funding mechanism is unconstitutional, and vacating the CFPB's payday lending rule as a result. Last month, the U.S. Solicitor General responded by filing a cert petition on behalf of the CFPB, asking the Supreme Court to review the Fifth Circuit decision. I think we are all interested in the Supreme Court action here, but the real problem here, and what we have been saying from the moment of your Agency's inception is this: Why wouldn't the next Director, with a politically-different persuasion, not abuse his or her powers with the precedent you have set? The political pendulum does not stop swinging.

Next month, there will be a new Majority in the House of Representatives. We look forward to more oversight, and I hope you will wish you had tried harder. Well, I know you will wish you had tried harder, and played by the rules, and we hope you will change your behavior going forward.

Chairwoman WATERS. Thank you, Ranking Member McHenry. I now recognize the gentleman from Missouri, Mr. Luetkemeyer, who is also the ranking member of our Subcommittee on Consumer Protection and Financial Institutions, for 1 minute to give an opening statement.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman. When Congress passed the Dodd-Frank Act, there was much concern that if a new Consumer Financial Protection Bureau was developed in an unconstitutional manner, that opened the door for massive abuses of power. Over the last year, those concerns have come to fruition. Under the direction of Mr. Chopra, the Bureau has shown a willingness to operate and regulate by any means other than those that are legally- and ethically-appropriate.

In contravention to the Administrative Procedure Act and rulemaking process, Mr. Chopra illegally redefines and creates words through press releases, then sues U.S. companies based on those erroneous definitions, refusing to meet with consumers and industry stakeholders, and instead spends his time undermining other regulators strictly to increase his own perceived power and stature. These actions smack of a person who is either uninterested in or too lazy to fulfill his statutory duties as a regulator. The courts have already begun to chip away at the Bureau's illegal framework and actions. It is long past time that Congress does our part. With that, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much. I want to welcome today's distinguished witness to the committee, the Honorable

Rohit Chopra, the Director of the Consumer Financial Protection Bureau.

You will have 5 minutes to present your oral testimony. You should be able to see a timer that will indicate how much time you have left. I would ask you to be mindful of the timer so that we can be respectful of everyone's time.

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. Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for holding this hearing today.

Our economy and our consumer finance markets are truly in transition out of a pandemic and further into a digital era. Given the economic uncertainties in today's markets, the CFPB is carefully monitoring consumer finance markets to protect honest businesses, consumers, and to prevent the type of widespread harms we saw in the financial crisis more than a decade ago. Over the last year we have recovered hundreds of millions of dollars in victim redress and penalties. We have sharpened our focus on repeat offenders, those companies that repeatedly break the law, and Congress has directed the CFPB to implement several rules and we have prioritized getting these done. While we continue to address the challenges consumers face today, the CFPB is also preparing for the future. When new companies can take on incumbents, and when consumers can easily switch providers in a decentralized market structure, we are all better off.

In October, the CFPB kicked off a rulemaking process under Section 1033 of the Consumer Financial Protection Act. The proposals under consideration would require that firms provide consumers access to their own financial data. Consumers would then be able to provide permissions to this data safely and securely to competing financial firms. The CFPB is also focused on stimulating refinancing, including automobiles, credit cards, and mortgages, and we have been working with industry and others to find ways to lower barriers to entry and to foster innovation that addresses important market gaps.

We are taking a hard look at how Big Tech and other technology conglomerates are entering payments and consumer finance. Over the past year, we have had productive discussions with members from both chambers and on both sides of the aisle on reforms that can be advanced on a bipartisan basis.

First, I would urge Congress to take action to protect the neutrality of our payment system. Facebook's Libra proposal in 2019 was a wake-up call to policymakers around the world. There is now growing concern about how a small group of payment platforms, including Venmo, PayPal, Apple, and Google, are gaining a greater foothold in the payment system. Large tech firms are now the conduit for trillions of dollars in transactions, and the CFPB is conducting an ongoing study into the role of these companies in financial services.

The rise in dominance of a small group of tech firms raises questions about how they can suppress, suspend, or even discriminate against certain users over others. The CFPB has even heard concern about payment apps kicking off users or even fining users for their speech, and we have heard concerns about firms abusing their positions to increase fees on small banks, merchants, and consumers. Our nation's payment system serves as core economic infrastructure that should be neutral and nondiscriminatory. Congress needs to ensure that tech platforms aren't the ones picking winners and losers.

Second, Congress should strengthen financial privacy protections. More than 20 years ago, legislators on this committee and others began raising concerns about the creation of behavioral profiles using our credit- and debit-card data. Today, with the rise of ecommerce and Big Tech platforms that monetize user behavior through targeted advertising, these concerns are even more acute. I am concerned that the notice-based privacy regime of the Gramm-Leach-Bliley Act from decades ago is no longer effective in today's market. Privacy policies for financial services are often all or nothing, and consumers must choose to accept the company's terms wholesale or decline to participate altogether. While Congress is looking at privacy protections across sectors of the economy, I hope you will consider updating the Gramm-Leach-Bliley Act to provide limitations on the collection, use, and sharing of extremely-sensitive personal financial data.

There are a number of other opportunities for bipartisan legislative efforts, and the CFPB is eager to work with this committee to craft solutions on these and many other issues. Thank you again for the opportunity, and I look forward to your questions.

[The prepared statement of Director Chopra can be found on page 64 of the appendix.]

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

Director Chopra, this committee has been investigating the collapse of FTX, whose founder, Sam Bankman-Fried, has been indicted by the Justice Department on eight criminal counts, and charged by the SEC with, among other things, concealing a years'-long fraud of diverting FTX customers' funds to Alameda Research, his privately-held crypto hedge fund. CFPB recently published an analysis of consumer complaints about crypto assets, which found that most consumers complained about rapid fraud, including theft and hacks of their accounts.

I have also been concerned about reports of fraud we have seen elsewhere in the fintech industry, with companies like Zelle, PayPal, and other mobile wallets, and a lack of consumer protections when such fraud occurs. Over a year ago, the CFPB launched an inquiry looking into Big Tech payment platforms like PayPal. Would you please share with us the status of that inquiry and any areas of risk and concern you may have identified?

Mr. CHOPRA. Thank you for the question. I think Big Tech and other payment platforms entering the payment system raises a host of questions about how banks, consumers, and others will fairly participate. We have recently reopened the docket to hear further concerns about consumers getting their accounts frozen or suspended because of their speech or their other activities. This is really a new concept that was unheard of and raises a lot of concerns about people and the payment system. The payment system is not supposed to be one that picks winners and losers. We are also noting that there is an extraordinary amount of data that is being collected about individuals and their transactions.

We have heard from many banks themselves about the inability to understand fraud when it comes to the use of some of these apps and Big Tech technologies, so we will be offering a report on some of these topics. There likely will be a series of analyses we release, and we look forward to working with this committee on how we deal with that. We have to deal with fraud, we have to deal with fairness, and it is not clear to me that consumers should get their accounts frozen or suspended unless there is some indicia of money laundering, fraud, or other unlawful activity.

Chairwoman WATERS. Thank you. There have been various proposals made to improve the regulation of payments. For example, in a recent Treasury report on digital assets, the Biden Administration raised concerns with non-bank payment providers, and called on Congress to establish a Federal framework for payments regulation to better protect users and the financial system. What issues would you recommend Congress prioritize in legislation to strengthen consumer protection with respect to payments, including digital payments?

Mr. CHOPRA. I think with respect to stablecoins, that is the number-one issue that I think would affect consumers and consumer financial protection. Right now, stablecoins are not really being used for consumer payments. When Libra was proposed in 2019, I think that was a sign that something like a stablecoin could very, very rapidly scale. And how will we make sure that there are not runs like we have seen in money market funds or even in the recent FTX situation? How do we make sure that fraud protections are in place, and ultimately, we want to have a modern payment system with real-time payments, that scales in ways that helps everyone? And ultimately, I think that is a place we would be happy to work with you specifically on some of the consumer protection and fraud-related issues.

Chairwoman WATERS. Thank you, and I look forward to working with you and your team to craft legislation to better protect consumers in our payment system.

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

Mr. MCHENRY. Thank you, Madam Chairwoman. Director Chopra, I raised this last April about regulation-by-press-release. In your first 6 months, you issued 49 press releases. I just want to understand the internal processes. You have blog posts. You also have the Administrative Procedure Act. How do you make the distinction for rulemaking on what gets a blog post, what gets a press release, and what goes through the Administrative Procedure Act? Walk me through the legal doctrine there, the regulation that you all have established. It is not clear to me.

Mr. CHOPRA. Yes, I will try. One of the things that we have tried to do is try and issue a lot more guidance. That is actually because of feedback and requests from industry and also from some of you. That clarity we issue through guidance documents, through circulars, through interpretations, and others. We essentially try and reveal, based on feedback from many of you, that enforcement is just one vehicle, but to promote compliance and clarity to also be able to provide more transparency on how we interpret rules. None of the guidance documents commit institutions to new obligations. They are supposed to restate.

Mr. MCHENRY. Are those legally enforceable, though? Is that guidance legally enforceable?

Mr. CHOPRA. Guidance does not create any obligations under the law. They are supposed to—

Mr. MCHENRY. So, you would tell folks who look at new guidance that was issued maybe this morning, that has no new force of law, no new obligation on them, that it is just guidance?

Mr. CHOPRA. The things that have obligations under the law are statutes and regulations. We publish blog posts.

Mr. MCHENRY. What is a blog post?

Mr. CHOPRA. A blog post or any posting on the website is supposed to communicate and be transparent. In fact, we have gotten requests to publish more information about what we are doing. As a regulator, when you put out a blog post—

Mr. MCHENRY. You are telling me that does not have any enforcement action? No enforcement action would be taken off of a new blog post?

Mr. CHOPRA. I don't know if I totally follow what you are saying. The only enforcement that you can enforce is a statute and a regulation, so in our complaints, when we file an enforcement action, it cites particular statutes and particular regulation.

Mr. MCHENRY. Okay. So, as an example—

Mr. CHOPRA. In certain statutes, like the Fair Credit Reporting Act, there are different ways in which they define guidance. We try our best to look at each of those statutes.

Mr. MCHENRY. We have other regulators that have been doing this stuff for 100 years, and your approach at the CFPB is novel. It is new. We don't see these kinds of actions from other agencies, so—

Mr. CHOPRA. I would just disagree. I think many agencies publish things on their website, blog posts, letters, other things, to provide information to the public about how—

Mr. MCHENRY. —that is significant. What agency would you reference that is doing what you are doing?

Mr. CHOPRA. We can provide you a list. The Treasury does this. We see this also from the Education Department, the Labor Department, and the Homeland Security Department. There are many ways in which they communicate to be able to provide—

Mr. MCHENRY. Sure. So, let me get into this. You have the non-bank supervision, so you have a rule for non-bank supervision. Is that going through the Administrative Procedure Act, or does it not have to?

Mr. CHOPRA. The non-bank, under Section, I believe, 1024, this is about how the procedures that the CFPB will use in order to define that. It was not required to do a rule. We provided and published a procedural rule so that entities would know how this works, what—

Mr. MCHENRY. Did you get feedback on that?

Mr. CHOPRA. Yes, we did.

Mr. MCHENRY. So, there was clarity for the industries that were going to be affected before you posted that?

Mr. CHOPRA. We published the procedural rule and asked for comment on it. We received comment, and we also published an update to reflect to respond to those comments and reflect—

Mr. MCHENRY. Okay. But I just want to close here. So in your view, guidance is not legally binding. Is that true?

Mr. CHOPRA. Statutes and regulations are what are enforced.

Mr. MCHENRY. No, but I am asking a—

Mr. CHOPRA. Bulletins. This is not something you can plead in a courtroom.

Mr. MCHENRY. But let me just ask, is guidance legally binding or not?

Mr. CHOPRA. No, generally speaking—

Mr. MCHENRY. Okay. Thank you.

Mr. CHOPRA. —guidance is supposed to provide interpretation, and what you plead in an enforcement action is statutes and regulation. Guidance can sometimes help in an enforcement to show notice, to show other factors.

Mr. MCHENRY. Well, that, "help," has had a negative effect on consumer protection. I yield back.

Chairwoman WATERS. Thank you. The gentleman yields back. The gentlewoman from New York, Ms. Velazquez, who is also the Chair of the House Committee on Small Business, is now recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Madam Chairwoman. Director Chopra, the Bureau's Section 1071 rulemaking is an issue that you and I have spoken about several times. According to publicly-available material, the Bureau is on track to issue a final rule by March 31, 2023, is that correct? And do you expect to issue a final rule by this time?

Mr. CHOPRA. That is right. The Bureau was sued a few years ago for not implementing that rule, and we are under court supervision to complete it by March 31st, and we will adhere to that court supervision and get it done by that date.

Ms. VELAZQUEZ. Thank you. And in 2012, the CFPB created the remittance rule, which was a monumental step in protecting the millions of Americans utilizing remittances from hidden fees. While the rule makes a positive impact by requiring providers to disclose certain fees, consumer and immigration groups have found that remittances still lack full transparency. Providers can still hide fees in the exchange rate and force consumers to unknowingly pay higher costs, resulting in Americans losing $8.7 billion in hidden fees per year. Has the CFPB considered strengthening the remittance rule to better protect consumers and working-class families from these hidden fees?

Mr. CHOPRA. Let me just say, Congresswoman, that when someone is sending a remittance, the cost to them is a mix of any immediate fee plus any exchange rate delta, and in many cases, the consumer cannot really know how much money is always going to end up on the other side. So, this is a place where we are starting to see some more digital apps and others try and compete more, and we think that is a good thing. But ultimately, the exchange rate opacity is a concern, and we are going to continue to look at that and to look at all of the players and what would be ways that the exchange rate transparency can be better.

Ms. VELAZQUEZ. Okay. Director Chopra, I would like to work with you on this issue going forward. Earlier this year, I wrote you a letter on the lack of information that the Bureau has published pertaining to Puerto Rico and the other Territories. In your response, you have stated that you will direct staff to find opportunities to incorporate data for Puerto Rico and the other Territories in reports and other data products. Can you explain how you are intending to carry this out, and what type of information should we be expecting?

Mr. CHOPRA. I appreciate that. Puerto Rico, I think if ranked by population, would be maybe the 30th- or 31st-largest State. So what we are doing is, particularly in our analysis of credit reporting data and other loan data, we are trying to use that to see in our reports if we can make sure that every Territory has some specific information, just like we have 50-State information. We also particularly want to look at overseas military personnel to figure out their unique experiences. Sometimes, it is a challenge, because we rely on Census Bureau data and other data published by other agencies. My understanding is some of them are also looking at enhancing data on Puerto Rico and the Territories, so we will continue to find ways to make sure that we are able to understand what is going on.

Ms. VELAZQUEZ. And are you working with other Federal agencies and Departments to acquire this data?

Mr. CHOPRA. Generally speaking, we work with the Census Bureau. We work with really publicly-available datasets. I can't speak off the top of my head about what discussions there have been on an interagency basis about more data publicly available on the Territories. I am happy to follow up with you on that. But I think the spirit of it is that these are American citizens, and the more we can make sure that we understand what is going on and how it might be different from the 50 States, that feels very important.

Ms. VELAZQUEZ. Thank you. I yield back.

Chairwoman WATERS. Thank you. The gentlewoman from Missouri, Mrs. Wagner, is now recognized for 5 minutes.

Mrs. WAGNER. Thank you, Madam Chairwoman, and I am going to, Director Chopra, follow up on what I think is a mantra that you are going to hear from our side. We are hearing from industry and investors and others that you have clearly chosen to regulate by press release, guidance, and enforcement action instead of through the traditional Administrative Procedure Act (APA), through that process. These actions show an intent to, frankly, subvert the notice-and-comment procedures of the APA, that provide accountability and improve rulemakings. Since your public statements are not rulemakings or official actions, and your guidance is not legally binding, as you stated previously in response to the ranking member's question, do you agree that financial institutions and firms are within their rights not to adhere to your proclamations?

Mr. CHOPRA. Congresswoman, I would characterize it as existing—

Mrs. WAGNER. That is a yes-or-no question.

Mr. CHOPRA. Those are existing obligations under the law. One of the things that you have actually shared in the past is a concern about so-called regulation by enforcement. I take that very seriously. So what we have done is make sure that any of those potential enforcement actions, any of those interpretations, we could bring an enforcement action. But what we have tried to do is issue much more transparency about how we believe existing situations in the marketplace would apply to the existing law. We also use this in talking with Members of Congress, where you all believe there should be changes in interpretations and statutory changes. We try our best to say what—

Mrs. WAGNER. Reclaiming my time, are these financial institutions and firms within their rights not to adhere to your proclamations outside of the APA? Yes or no?

Mr. CHOPRA. Every single institution has the right to challenge in an enforcement act —

Mrs. WAGNER. Oh, good heavens. Okay. Enough. I am reclaiming my time. To reiterate, for the record, will you commit to not bringing enforcement actions against financial institutions and other market participants that do not comply with any decree other than APA rules?

Mr. CHOPRA. We will enforce the law as written. The law and statutes are crafted by Congress.

Mrs. WAGNER. That is why the APA is there.

Mr. CHOPRA. No, statutes are developed by Congress. When there are additional obligations or requirements to conduct rulemaking, we absolutely do go through that process, just as we did through Ranking Member McHenry's Debt Bondage Repair Act, and as we are doing in Section 1033, as we are doing in Section 1071, and we are doing on the—

Mrs. WAGNER. Does the Bureau's communications department have a role in shaping policy through press releases or on-the-record comments?

Mr. CHOPRA. I do not know. The interpretations of policy are made by all sorts of individuals.

Mrs. WAGNER. Okay. Again, no answer to the question. Director Chopra, you recently indicated through a blog post titled, "Rethinking the Approach to Regulations," that you would pursue, "simple and straightforward terms, basic bright line guidance and rules, and clarity and simplicity in rulemaking." Those sound like great principles, sir. Would you give specific examples of how you have implemented this change so far, and how do you plan to continue providing these simple and straightforward terms?

Mr. CHOPRA. We are happy to provide you a list. I will give you some examples. One example is that we have received questions from industry participants about the use of certain algorithms and automated decision-making. We have made clear that those are usable when you can comply with the adverse action notice under Regulation B and under the Fair Credit—

Mrs. WAGNER. If you could, Director Chopra, just provide me with the list. I have other questions here. I am very concerned that the proposed Small Business Data Collection Rule, Section 1071, which would impose new reporting requirements on lenders, will have an unintended result of increasing origination costs and decreasing access to credit for businesses that need loans the most. How has the CFPB adhered to these principles when working to finalize a small business data rulemaking?

Mr. CHOPRA. I think bright lines are always the best. Sometimes Congress doesn't pass statutes with bright lines. In the case of Section 1071, Congress did specify a whole host of factors and delineations of what data should be collected, and we are under a court order.

Mrs. WAGNER. I hope you will commit to those principles when taking future policy actions. And I yield back.

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. Thank you, Madam Chairwoman, and thank you, Mr. Chopra, for appearing today. I compliment you on the work that you have done, and I do so because I was here in 2008 when we had the downturn in the economy. I remember a time when banks would not lend to each other. I remember a time when we had the dastardly yield spread premium as a norm. I remember 327s and 228s. It was a time of open season, it seems, on consumers. But the Consumer Financial Protection Bureau has made a difference, and this is why I support an independent Consumer Financial Protection Bureau that doesn't have to depend upon the vagaries of Congress for its funding, a Congress that has difficulty funding the Federal Government, a Congress that has difficulty raising a debt ceiling so that the United States of America, the greatest country in the world, will not be perceived as a deadbeat nation. The independence is what makes the difference. Give us the purse strings, and you will see a change in your ability to move forward with the actions necessary to protect consumers.

So, here is my one question. Assuming that Congress controls the purse strings and there is a sharp cut in funding to the CFPB, how will this impact consumers?

Mr. CHOPRA. Ultimately, a CFPB that is robust and reliable is the best thing for consumers to avoid some of the horrible things that you referred to in the mortgage crisis. It is also very critical for industry participants that we provide the framework that serves as safe harbors in mortgages and what they can rely on in debt collection. It would be chaos if there was not an orderly way in which these critical rules are administered. The mortgage crisis was such a lesson, I think, for so many people about what happens when you don't have an orderly system to protect consumers. Consumers are ultimately deeply intertwined into broader financial stability and economic stability. They go hand-in-hand. So, I really think a strong and independent CFPB, just like the Federal Reserve Board, just like the other bank regulators for 150 years—it seems really unwise to create chaos by dismantling that.

Mr. GREEN. And to this end, the notion that it could be dismantled, what would that do for people who are in the business of acquiring a loan? How could they be adversely impacted by our sharply cutting funds?

Mr. CHOPRA. We have heard, they have said it publicly, the mortgage industry, about the real problems of not having the CFPB and its rules to make clear about what is the two-way obligation between homeowner and mortgage lender. If we want housing and mortgages to be robust, if we want that to be a vehicle for people to get ahead in life, I don't see how throwing huge amounts of uncertainty in that will help anyone. So, I really hope that we can make sure that consumer protection is a way to make sure there is a fair market system with obligations on both sides.

Mr. GREEN. Thank you. And with my last few seconds, Madam Chairwoman, I do want to compliment you on your leadership in this Congress. We haven't done all of the things that we wanted to do, but we have done some remarkable things under your leadership. We have improved housing for many. We have helped many persons who find themselves living in the streets of life. We have not done enough. We want to do more, but I compliment you on what you have done. You have made a difference. And I thank Mr. McHenry for being kind today, and I look forward to working with him in the next Congress. We can do this; we only have to have the will, the ways before us. I yield back.

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

Mr. SESSIONS. Madam Chairwoman, thank you very much. Director Chopra, thank you for taking the time to be here, and thank you for taking the time to come and shake our hands before we began today. Chairwoman Waters asked us if we would take the opportunity to offer feedback about the things which we perhaps disagree with or that we would like to include, and one of them has been briefly discussed today. We don't need to get into it, but what we consider to be from the Federal court here, the District Court of Appeals here in D.C., that the CFPB is unconstitutionally constructed. And I heard you refer to the CFPB in the same terms as other boards, but that have 5 or 3 members on them, not a solely constructed, nor are they given the status of using the money that they would choose. Secondly, that we would get into what some history has been, although I don't know lately what an IG may say, but about a toxic workplace that the CFPB has been and may still be involved in.

Director, I found your words pretty interesting. You talked about the critical role of an orderly system, and avoiding disruption and chaos. About the things when you use the internet platforms to perhaps give advice, I just want you to know, I think that, as the gentlewoman from Missouri said, we need a direct answer because people, if they intend to comply with the law, don't need to be sitting on the internet taking your advice, or consent, or whatever you would give as opposed to structurally the law. We deal with lawyers who look at words, who understand what those meanings are, and next year, our young chairman will engage you again, and I think everyone on this committee.

Director, as I told you when you walked by, in your testimony in recent years, you have pointed out that Big Tech companies and other digital giants have leveraged their existing platforms to expand their reach into banking and finance. What is your working definition of, "Big Tech," and when you are deciding which of these tech companies we would have, you would have in mind that allows us to know more about what you are thinking> So, Director, I ask that question with 2 minutes and 25 seconds left for you to respond.

Mr. CHOPRA. Sure. Let me just say one thing, Congressman, that the CFPB has, in many ways, a similar structure to the Office of the Comptroller of the Currency, which is led by one person. The Federal Reserve Board of Governors has the same exact funding system. I acknowledge they do have multiple members. This question has been addressed in the Supreme Court.

With respect to your question on Big Tech, the Treasury Department, the Financial Stability Board, and others also use this term. It is generally meant to convey the very largest technology conglomerates that operate globally, but, particularly, have scale and network effects, whether it is in social media, in mobile operating systems, or other key platforms. When there is the introduction of these firms who have many, many other businesses into the payment system, as you know, banks really aren't allowed to have side businesses and ancillary businesses. They are really supposed, to when moving money, move it from point to point. They are typically not allowed to have their own industrial businesses, and they also typically don't harvest enormous amounts of information to preference their other businesses.

And so what you are seeing in Big Tech firms is really they have enormous power to elevate or suppress some users over others. I think that is very scary, and I think in the context of payments, payments are really about moving money from one place to the next. It is really not supposed to be about elevating someone or the other. And of course, there is room for detection of fraud, preventing money laundering, but I think we have a lot of tough questions to deal with. We have seen class action lawsuits by credit unions and small banks about some of these payment platforms operated by Big Tech companies, and there really is a host of issues about how really do they make decisions, how are they using our data, and how might it be disadvantaging banks, merchants, and even consumers?

Mr. SESSIONS. Director, thank you very much. I would assume we will follow up next year with you to gain more insight into your discussions about that, whether it is on the internet or whether it is in rulemaking. Thank you very much. Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you. 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, Madam Chairwoman, and I will try to do this quickly. I want to follow up on what Mr. Green said earlier. We were all here, Mr. McHenry, on down this way. We were in here. We met almost every single day, and I was reminded of President Bush's Secretary of the Treasury coming in that door, holding up a few sheets of paper, and asking for $850 billion, I think, or close to that, and Mr. Oxley and Barney Frank worked hand-in-hand. This committee held the fate of the U.S. economy in its hand, and so we worked together. And the CFPB was created not out of any partisanship, but we wanted an agency where the people got up every morning with one thing in mind, and that was protecting the consumers of the United States. That was it, and I am glad that we did it.

I want to move now to the contemporary issues that we are facing. The dollar was backed by gold, and then I guess it switched. It was cancelled, suspended 2 or 3 times as the value dropped. And then under in the 1970s, I think, underneath Richard Nixon, the dollar was backed by fiat currency. So, I am thinking now, what are all of these digital assets backed by? Can you help me with what backs that up? The dollar is backed with the full faith and credit of the United States, so what backs up—

Mr. CHOPRA. For the CFPB, I think, things are backed up in terms of payments, and while these digital assets are really not used as a payment instrument now, certainly we all have to be thinking about, could it be and when will it be? And if there is a dollar-denominated stablecoin, there are obviously going to be questions about what is it backed up by, does it have the right liquidity, could there be a run on it, would there be fire sales? So obviously, as this committee thinks about stablecoins, the issues are run risk and fire sales. When people can't access their money, what the CFPB has experienced with this in the prepaid card context and some other contexts, is it is hugely catastrophic to an individual family when they can't access their own funds in their deposit account.

And to the extent to which people are relying on that safety and security, apps like PayPal, Venmo, and others are very, very heavily used, and many consumers are not aware that those funds that they have there may not be insured by the FDIC. So, there are lots of changes in the market, and to make sure we are doing our part where we have jurisdiction to provide that clarity, but I think there is a lot of work for the regulators and Congress to do across-the-board.

Mr. CLEAVER. Thank you. I referred to cryptocurrency yesterday as a, "creepy dough." When I grew up, you had some dough, money, and as a result, before nightfall, we had all of these new creepy dough assets being promoted. And one of them, as of this morning, is worth $600,000 overnight on something that doesn't even exist, which is something I said at a committee hearing, and it is trending. People are getting other people's money. This is dangerous, and we have to do something, and I am willing to do whatever we need to do. Do you have any ideas about what we need to do?

Mr. CHOPRA. Again, we are focused on payments, and right now it is not in consumer payments. But we are really happy to work with you to figure out how to make sure that if it is ever used in consumer payments, what is the right way to make sure that we don't see a repeat of some of the problems throughout history.

Mr. CLEAVER. Thank you very much. Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you very much. The gentleman from Missouri, Mr. Luetkemeyer, is now recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman. Director Chopra, in October of this year, you issued guidance on overdraft fees. In that guidance, you stated there are two junk fee practices that are likely unfair and unlawful under existing law. I would like some clarity here. This guidance seems to say that something that was legal yesterday, is illegal tomorrow. There are a couple of different things with this. You are trying to use guidance to determine whether something is legal or not. You just said, in answer to Mr. McHenry a while ago, that you can't do that, number one. And number two, you are trying to do something with overdrafts. You have no authority on overdrafts whatsoever. And number two, you have used the word, "likely," in your comment there, which is no certainty, too, but yet you infer something and you try to undermine people's confidence in what they are doing. Tell me, what is going on there?

Mr. CHOPRA. Sure. With respect to those guidance documents, here is what I would say. There was no change in obligations whatsoever. The rules the day before were the rules the day after.

Mr. LUETKEMEYER. Okay. Let me interrupt right there because 30 days before you issued that, you took an enforcement action against a company. How does that work?

Mr. CHOPRA. That enforcement action was against Regions Bank, which was repeatedly on notice.

Mr. LUETKEMEYER. You used this guidance to go after them.

Mr. CHOPRA. Oh no, that is not true. The guidance—

Mr. LUETKEMEYER. What did you use? What was the need to go after them?

Mr. CHOPRA. The enforcement action in the complaint outlines the violations of law and regulation. It noted that the entity was actually already aware of the issues expressed by the regulators, and, in fact, these documents are very similar to what has been issued by State regulators, by the other banking—

Mr. LUETKEMEYER. Now, you are conflating things here. We are talking about guidance. You are talking about something else there. Number two, in your statement here, you are talking about junk fees. There is no such word in the financial services lexicon. You just made that word up, sir, or that phrase. You are not a legislator. We are legislators here. We make up these words and define them in law to make sure that they are fairly adjudicated, make sure that the law is actually determining what is going on, and use a word and define that word to make sure we have the law correct. You are making up a word and then using it to go out and enforce something that doesn't exist. This is scary stuff that we are looking at here today.

Mr. CHOPRA. Can I just say for the record that you mentioned that the CFPB does not have any authority with respect to overdraft fees? I just want to state for the record, all of the rules related to overdraft fees that the Board of Governors of the Federal Reserve System promulgated under the Truth in Lending Act and others are under congressional mandate, enforceable and—

Mr. LUETKEMEYER. I would argue against that point, but let's move on. I have a lot of questions about your inability and your unwillingness to meet with my constituents, industry officials. There is a huge lack of transparency with regards to your schedule.

Mr. CHOPRA. That is not true, sir. I have met more than both of my predecessors.

Mr. LUETKEMEYER. Let me just show you a copy of your schedule here, sir. Here is a copy of one of your days, and here is a copy of 2 or 3 other days. There is nothing on there. You talk about a meeting, but there is no description of what kind of meeting you have. It could be a staff meeting. I don't know. There is no meeting on here. Do you understand what the Freedom of Information Act (FOIA) is all about? There is an article here just this week with regards to the Security and Exchange Commission's Chairman Gensler, who is scrubbing his meetings to make sure that people don't know he met with Secretary of State Clinton and billionaire donor George Soros. Are you meeting with those sorts of people and hiding that information from the public?

Mr. CHOPRA. We publish our calendar publicly. We have for years and years—

Mr. LUETKEMEYER. Mr. Chopra, I have your calendar, and it is not on there, sir. Well, there is nothing there except it says, "meeting with no description."

Mr. CHOPRA. I am happy to look at any specific days. It is true that meetings about particular enforcement actions, about particular supervisory matters—

Mr. LUETKEMEYER. Mr. Chopra, we are going to request from you an entire year's worth of meeting descriptions, because they are not here. Tell me how many different industry folks that you met with, how many constituents you met with over the last year, because I can tell you not one single one coming to my office has ever said, that yes, they had a meeting with you.

Mr. CHOPRA. Well, with me.

Mr. LUETKEMEYER. Yes.

Mr. CHOPRA. I have personally met with, I believe, 21 State banker associations, and I believe it doesn't state—

Mr. LUETKEMEYER. From this right here, 40 percent of your time over this year is nothing. There is nothing on this calendar to show that you are doing—

Mr. CHOPRA. I have done more industry outreach with those affected by the CFPB than both of my predecessors. I understand that it is not just large institutions—

Mr. LUETKEMEYER. Mr. Chopra, it is your job to meet with the very people and industries that you oversee. Your weekly schedule doesn't show that is going on.

Mr. CHOPRA. If there are entities in your State that invite me to work with them, I am very happy to do that, sir.

Mr. LUETKEMEYER. Thank you. You shall receive a letter from us. I yield back.

Chairwoman WATERS. Thank you very much. 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. I would comment that I don't release a complete schedule of whom I meet with, and I doubt most members of this committee do either, so I am happy to meet with both George Soros and Hillary Clinton at any time.

The gentleman from Missouri pointed out that I guess, "creepy dough," has now has a value of over $600,000, supposedly. I want to relate the fact that the same thing happened in this committee room, what must have been 8 or 10 months ago, when I indicated that I thought crypto was kind of silly, and maybe the next coin would be a Hamster Coin. My staffer tapped me on the shoulder after the hearing in, I think it was March of this year, and he told me, boss, there already is a Hamster Coin. And I said, okay, what about a Cobra Coin? And he told me there was a Cobra Coin. So I came here and I said, well, what is Mongoose Coin going to do with Hamster Coin and with Cobra Coin, and by the afternoon, they had created a Mongoose Coin. And I shouldn't say this, but I think the Mongoose Coin at one time was more valuable than the Creepy Coin is today, but the Creepy Coin could go back up, so we will have to see.

A lot of discussion about crypto is about payment systems. We do need to improve the payment system, but it should be a system where you pay in dollars and you know your customer, but small businesses shouldn't be paying 3 or 4 percent when you use a credit card. I realized there is a bad debt risk on the credit card for the credit card issuing company, but they charge plenty of interest from the consumer to cover that. I think we talked privately about Dodd-Frank Section 1071, which requires financial institutions to compile and maintain and submit data to you, and I asked you when those regulations were coming out, and you said by the end of March. Did I get that right?

Mr. CHOPRA. That is right. We will issue the final rule on Section 1071 on small business lending data no later than March 31st. We are under court supervision to complete it by that date. It is a long-overdue rule. It is a tough one for sure, but we will comply based on the court's order.

Mr. SHERMAN. And one particular thing to look at there is that often the auto dealer is acting as an agent for a lender. The auto dealer isn't under your jurisdiction, but the lender is. The lender may be required to compile this information about the race, et cetera, of those applying for a loan, but the auto dealer may be prohibited from asking. So, I would hope that you would work this out and make sure you don't have a circumstance where the lender is required to report that which the auto dealer is required not to ask. Every time I buy a car, I do it face to face, and I guess they can tell what my race and gender is, so I don't know why there is any law prohibiting the auto dealers from asking, but I am told that there is.

Let's move forward to Property Assessed Clean Energy (PACE) loans. In May of 2018, Congress passed and the President signed a law that you would promulgate rules dealing with these PACE loans. There has only been a request for informtion (RFI) from your predecessor that was back in 2019. When will you get those PACE loans out and at least make sure that there is an ability to pay before people sign up?

Mr. CHOPRA. You are right that that rule has not been implemented yet. I am planning to propose it this spring, hopefully by April or May. The goal would be to get the proposal out and to be able to finalize it in a reasonable amount of time.

Mr. SHERMAN. I am going to try to sneak in one more question, and that is on appraisal management companies. We have seen these articles where appraisers come to different values on a home based on the perceived race of the owner. I don't think that would happen in L.A., where we have tract homes, but appraisal is more of an art here where the homes are less uniform, so there can be bias. There can be other areas with these appraisers. They are set up by these appraisal management companies. What oversight is there for the appraisal management company industry you plan to look at in this area?

Mr. CHOPRA. It is pretty complicated how the appraisals piece works. I don't have much time, but I do think we need to work with Congress to make sure there is good availability of appraisers in rural and urban areas alike and that we focus on accuracy. Undervaluation and overvaluation are both problems. We have seen how it can be problematic in the financial crisis, and making sure good, robust independent appraisals are available to the whole housing system.

Mr. SHERMAN. Thank you.

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

Mr. LUCAS. Thank you, Madam Chairwoman. Director Chopra, could you describe how you engage with the Federal Reserve, the FDIC, the OCC, and the NCUA to ensure that the CFPB's regulation is in line with their safety and soundness objectives?

Mr. CHOPRA. That's a great question. Safety and soundness and consumer protection absolutely go hand in hand. There are some formal ways in which we gather their input and make sure they and we, our staffs can really understand the nexus of some of those issues. Those formal consultations certainly occur in the context of rules and other similar policymaking, but also as it relates to official votes, the CFPB is required to make on different bodies, including the Financial Stability Oversight Council (FSOC). The FSOC itself is able to overturn CFPB rules pursuant to the statute, if any of those rules might pose a threat to safety and soundness. So, of course, this is a huge issue that we really work closely on with all of those agencies to make sure that consumer protection and safety and soundness really go hand in hand.

Mr. LUCAS. The reason this comes to mind, Director, is that last month, the Federal Reserve and the FDIC announced the results of their resolution plan view of the largest U.S. financial institutions. And I believe you released a statement which had a quote to the effect that it is highly unlikely that any of these institutions, as currently constituted, could be resolved in a rapid and orderly manner under the bankruptcy code. Would you mind elaborating on this, and should your statement be viewed as a criticism of the Fed and the FDIC for not identifying shortcomings in all of the resolution plans?

Mr. CHOPRA. Thanks for the opportunity. As you know, and actually Chairman Hensarling, whose painting is right there, was very, very critical, and I shared that criticism about bailouts. And one of the things that Congress did is it basically said, we don't want to do bailouts anymore. We want to make sure that when large financial institutions get into distress, they can resolve themselves through Chapter 11 bankruptcy. And they require the regulators, and I had to cast a vote about whether or not the plans that were submitted by the Global Systemically Important Banks (G-SIBs) could be resolved in bankruptcy. I agreed with the FDIC and the Fed that there was an institution that was deficient on this front, but I, more broadly, was questioning some of the assumptions on Chapter 11 of the bankruptcy. And, in fact, Members on this side of the aisle have also questioned whether Chapter 11 is really realistic for a very, very large firm to go through bankruptcy, and, in fact, the firm suggests that they will self-finance their bankruptcy. That is really not a thing that we see in the rest of the economy. So ultimately, an orderly resolution that avoids bailouts, and I think bailout risk is really the key here, Congressman Lucas.

We do not want to be in a position where we have to bail out a large firm. We want it to be resolved in an orderly fashion that does not disrupt the entire capital markets, disrupt access to credit. This is an unfair subsidy that small banks don't really get if you can't be resolved in an orderly fashion. So, I voted on it after reviewing the plans, and it is typical to issue voting statements with those.

Mr. LUCAS. Director, what kind of interaction have you had with the Fed and FDIC after your comments, and how have they responded to your quotes?

Mr. CHOPRA. I think it is an ongoing question in the next submission of resolution plans. If you look at the feedback letters that the agencies provided to the G-SIBs, I think we are moving in exactly the right direction. Is it theoretical, or is it realistic? We are going to be doing capabilities testing by the Fed and the FDIC and making sure that this is not a fairy tale, but it is really grounded in business realities and the Chapter 11 process.

Mr. LUCAS. One last question. In your recent budget request to the Federal Reserve System, it is much higher than any other 4th quarter request, which typically is the largest request in the year. Can you elaborate on this budget request? Does it indicate that the CFPB may undertake significant rulemaking, requiring more resources in the near future? You need more money because you are going to crank out more rules?

Mr. CHOPRA. No, I think there is some seasonality to our spending, and I am happy to look at the numbers and take a question for the record on this, but we do look at our needs and then we make that request in order to manage our treasury cash flows appropriate—

Mr. LUCAS. It is an amazing system you operate under. Thank you, Mr. Director. And thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you. The gentleman from Colorado, Mr. Perlmutter, who is also the Chair of our Subcommittee on Consumer Protection and Financial Institutions, is now recognized for 5 minutes.

Mr. PERLMUTTER. Thank you, Madam Chairwoman. Let's first correct the record on this Creepy Coin. Creepy Coin is today, or at least according to that chart that Mr. Cleaver had, is 8 cents. They did $613,000 worth of trades on that coin yesterday, so it is not worth $613,000, but it has been trading. So, that record is clear.

Now, the thing I really want to talk about is something you and I have spoken about, Mr. Chopra, and that is enforcement versus guidance, because I think my friends are really going down the wrong path here. And I might remind them that Mr. Huizenga and I worked with the CFPB on this subject because Mr. Huizenga had a constituent, a title company, that just got clobbered. They were enforcing and through the industry by bringing this big action against a small title company, and they were sued for $500,000, and ultimately settled for $50,000 after I don't know how much in attorneys' fees. So, why don't you just give people a heads up before you bring the enforcement hammer, and that is precisely what I think the CFPB is trying to do now.

Look, I am going back to practicing law. I am happy if they enforce everything because it is going to mean more business for me. That is the problem here. You want to get the heads up and you want to get the notice. So, I am going to let you have a little bit of say as to why you proposed and why you are providing guidances to give the different industries, different groups, different banks, different title companies, some notice as to what you are thinking about particular regulations and statutes.

Mr. CHOPRA. My predecessor, Director Kraninger, established an advisory opinion program for the CFPB to be able to provide clarity on where it would exercise its enforcement and rulemaking. And let me just say, Congressman Perlmutter, the CFPB is not strong-arming small businesses anymore like I see at the other agencies. The Federal Trade Commission is notorious in years prior for focusing on small businesses. We are focused on repeat offenders, the largest players, many of whom have ample resources to fight us, and they do, and I will also add that regulators should not be in the business of increasing the costs of lawyers. When we issue guidance, we hear from firms actually this is another reason that I don't need to hire more outside attorneys. I realize outside attorneys probably don't like that. They like anytime that they can create uncertainty.

We want to provide the clarity, and maybe firms don't agree with it. They can go to Congress and change the laws. We try and offer existing legal interpretation about obligations today, where we are seeking to create new obligations. We go through the rulemaking process, and we focus on large market actors, and that is why we are litigating more. We are often—

Mr. PERLMUTTER. Let me stop you. I was looking through the booklet that we all got. There must be 50 big cases that are either pending or have just been settled. Am I wrong about that?

Mr. CHOPRA. That is right. We have a lot of litigations. We are in court in many places all over the country. There are, of course, some smaller fraudulent actors. We have continued to litigate those, but our enforcement emphasis is on bigger players that repeat.

Mr. PERLMUTTER. But the bottom line on the enforcement and the guidance, and I agree with their points—guidance isn't the law, the law is the statute, the law is the regulation, but the guidance gives somebody a heads up, gives them notice that, look, we think there are problems in this area. This industry should be prepared or be aware or clean it up if they want to, or, no, say, we are not doing anything wrong and okay, fine.

Mr. CHOPRA. And we have actually found that in many cases, offering transparency in what we are finding in our examinations is allowing other firms to gut-check. Might their systems be mis-programmed? Might they be doing something different? This is what we are seeing, for example, in auto repossessions. We found that there was a number of places where there were unlawful repossessions. And we are hearing firms saying, after you issued your bulletin, we looked at our systems to figure out how we can reduce that and stay in compliance. So that transparency is something industry asked for, at least they used to ask for publicly, but privately, they continue to ask for it, so we are trying to do our best by responding to the concerns about enforcement, attention, and clarity.

Mr. PERLMUTTER. Okay. Thank you for your answer, and if you go back to enforcement, it will be okay with me, because I am going back to practicing law. See you.

Chairwoman WATERS. Thank you, Mr. Perlmutter.

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

Mr. BARR. Thank you, Madam Chairwoman. Director Chopra, your statement that the Bureau is focused on enforcement against only the largest firms is curious because the Bureau has recently told a very small consumer lender to sue in order to find out what they allegedly did wrong, so that doesn't really square with your statement, but let me focus on the Fifth Circuit decision really quickly. Director Chopra, are the funds of the CFPB congressionally-appropriated?

Mr. CHOPRA. The question of whether it meets the appropriations clause of the Constitution, which says that no money shall be drawn from the Treasury but in consequence of appropriations made by law, that is the subject of the Supreme Court petition by the solicitor general. That is an open issue—

Mr. BARR. Yes, and the solicitor general on your behalf says that the CFPB's funding statute indisputably establishes an appropriation under the long-accepted understanding of that term. Let me read you what the Fifth Circuit says about that argument. It contends that there is no constitutional infirmity because its funding scheme was enacted by Congress. In essence, the Bureau contends that because Congress spun the Agency's funding mechanism into motion when it passed the Act, voila, the appropriations clause is satisfied. The Bureau's argument not only not only misreads Supreme Court precedent, but also the plain text of the appropriations clause. What is that clause? "No money shall be drawn from the Treasury but in consequence of appropriations made by law," and the Fifth Circuit says a law alone does not suffice. An appropriation is actually required. So again, are the funds of the CFPB congressionally-appropriated or not?

Mr. CHOPRA. You should look at the solicitor general's opinion.

Mr. BARR. I have.

Mr. CHOPRA. That is the best and most authoritative view of the United States and the Executive Branch, and it is the same funding as the Federal Reserve Board.

Mr. BARR. And you are double-insulated because you get your funding from the Federal Reserve. But Mr. Chopra, reclaiming my time, in 2012 the Bureau's first Director, Richard Cordray, testified that the revenues were, "non-appropriated funds." He said what is obvious to everyone. The Bureau has released three public reports which state that the funding for the Bureau happens outside of the traditional appropriations process. Last year, you testified that the base level of funding is, "guaranteed by statute." That doesn't sound like an appropriations process. What is your position, sir?

Mr. CHOPRA. Is this a trick question?

Mr. BARR. No, it is not a trick question.

Mr. CHOPRA. The answer is very clearly outlined in the solicitor general's opinion. We believe the Fifth Circuit opinions ruling is not correct. The solicitor general has petitioned this issue. There are many, many—

Mr. BARR. Director Chopra, reclaiming my time, if the Supreme Court does what it will do and affirms the Fifth Circuit's decision, doing not the absurd thing, as the Chair says, but actually the constitutional thing, which is to vindicate the separation of powers, I want to know, are you going to support my Taking Account of Bureaucrats' Spending (TABS) Act, which would put the Bureau under congressional appropriations to save your Agency?

Mr. CHOPRA. We will comply with whatever the Supreme Court rules. We always work with everyone on any potential legislation.

Mr. BARR. Reclaiming my time, your exam manual, updating the interplay between UDAAP and anti-discrimination statutes, do you believe your exam manual fills gaps where there is presently no specific anti-discrimination law like the Fair Housing Act or the Equal Credit Opportunity Act?

Mr. CHOPRA. The prohibition on unfair acts or practices has three prongs. Some of the—

Mr. BARR. I don't have much time, Director. Does it fill gaps or not?

Mr. CHOPRA. The law is the law—

Mr. BARR. Let me ask the question a different way. You say in your press release in March that examiners will require companies to show their processes for assessing risk and discriminatory outcomes, including documentation of customer demographics, etc. Were companies required to do that before your exam manual update?

Mr. CHOPRA. The manual is guidance for examiners.

Mr. BARR. Were they required to do that before, Director?

Mr. CHOPRA. The examiners or the institution?

Mr. BARR. Before your update, did examiners look for disparate impact in conduct not covered by fair lending laws?

Mr. CHOPRA. Disparate impact is not a theory of liability under unfairness. Unfairness has substantial injury, reasonable avoidability.

Mr. BARR. Director, reclaiming my time, and I am running out of time, you are changing the law, and you are changing the law without Congress.

Mr. CHOPRA. I am not.

Mr. BARR. Yes, you are.

Mr. CHOPRA. That is existing law.

Mr. BARR. These are obligations not previously required, and you think you are Congress. You are not.

Mr. CHOPRA. I know. You are Congress—

Mr. BARR. You are not. This is not interpretive guidance. You are trying to change the law.

Mr. CHOPRA. Not true, sir.

Mr. BARR. I yield back.

Chairwoman WATERS. The Director's position is clear. This case of whether or not you have to go through the appropriations process is on appeal, is that correct?

Mr. CHOPRA. Yes, ma'am.

Chairwoman WATERS. Okay. The position is clear. With that, the gentlewoman from Ohio, Mrs. Beatty, who is also the Chair of our Subcommittee on Diversity and Inclusion, is now recognized for 5 minutes.

Mrs. BEATTY. Good morning. First of all, let me just say thank you to you, Director Chopra, for speaking with us today, and for everything that you do at the CFPB to protect consumers and to ensure fairness in our financial system. I cannot begin to tell you how honored I am to have someone who understands protecting our consumers and putting them first. We have had a lot of work that we have had to do in the past, especially under the last Administration.

I want to commend your agency for its efforts to boost contracts with minority- and women-owned businesses. According to the report, 27 percent of $96 million in contracts went to these firms in the reporting period. As you probably will be reminded, every Director who has an Office of Minority and Women Inclusion (OMWI), I have said to them the value of making sure that they follow all of the guidelines that our chairwoman fought so hard for to get in Section 342 of the Dodd-Frank Act. So, it is good to see a Director who works well with OMWI and is able to report back what you did.

Secondly, under your OMWI implementations, I was very pleased to see that you implemented the persons with disability action plan last year to address these barriers. We did the same with our Subcommittee on Diversity and Inclusion. We had a hearing that dealt with disabilities. But now let me go to the questions that I want to propose to you.

According to a recent report, from April 2021 to April 2022 of this year, you reported over 1.1 million complaints, and 73 percent of those complaints pertained to credit reporting. Do you have any idea if that is because people didn't know how to get their credit report? Do you have any idea of that? And let me just say before you answer, I am asking that question because many of my colleagues have pieces of legislation that deals with credit reporting and credit scores. For example, I have the Free Credit Scores for Consumers Act that aims to reform the credit reporting system. Can you talk to us about any information you could share on credit reporting?

Mr. CHOPRA. I appreciate the question. I think one of the things that is very important for this committee to know is that it is not just the three major credit reporting conglomerates. We now have more Big Tech firms, data brokers, and others that are developing scores and background dossiers on all of us. And I think this raises some real questions about what are we going to do to protect privacy, data sharing, and also all of the decisions that are being made about us in these dossiers, and I think we have to work together on this.

We will continue to use our Fair Credit Reporting Act authorities as we do in background screening. We see a whole ecosystem of this, but I am worried that we are shifting to a more social scoring environment that really you only see in places like China and other similar jurisdictions. I think we want to avoid that kind of backdoor back room data collection on all of us and really understand what the Big Tech firms and these data brokers are doing with our data. Accuracy in disputes is a core issue. When people have background reports, they are sometimes falsely matched to a criminal record, or falsely accused of something. This is something that is—

Mrs. BEATTY. I'm going to stop you only, because of the clock running, and ask you to respond, "yes" or, "no." I assume this means you will work with us and legislation to help you in this area?

Mr. CHOPRA. Of course. I think credit reporting is a key place and background reporting for us to all to work together on both sides.

Mrs. BEATTY. Let me just say thank you for that, and in my last 20 seconds, this is our last hearing of the year. I want to dedicate it to saying thank you to our chairwoman. I could not have been more honored to serve on the Financial Services Committee under her and for the appointment of the DNI subcommittee. I want America to know that we are all the better because of Congresswoman Maxine Waters fighting and standing up for the people. Thank you, and I yield back.

Chairwoman WATERS. Thank you so very much. The gentleman from Texas, Mr. Williams, is now recognized for 5 minutes.

Mr. WILLIAMS OF TEXAS. Thank you, Madam Chairwoman, and Director Chopra. I regularly speak with community bankers from Texas. That is where I am from. And in all the meetings I have, every single person tells me how terrified they are about your Agency's 1071 small business data collection rulemaking. They are concerned that complicated reporting requirements will tie up loan officers, maybe create more compliance officers, and increase the cost of credit. They are concerned that this will push the industry towards a standardized small-business loan product and kill relationship banking, which is community banks. And they are concerned this will force their employees to consider factors outside of creditworthiness as they evaluate small business loan applications.

You don't have to take my word for it. It is really interesting. Biden's Small Business Administration's Office of Advocacy raised similar questions on how harmful 1071 will be. They submitted a letter earlier this year on the rulemaking that stated, "We are concerned that the CFPB's approach may be unnecessarily burdensome to small entities, may impact the cost of credit for small businesses, and may lead to a decrease in lending to small, minority- and women-owned businesses." That is from the Biden SBA. Director Chopra, describe how you have been working to accommodate the concerns of small businesses within the rulemaking?

Mr. CHOPRA. Yes. No, I think you raise a point about how to make sure that we implement the congressional requirement in ways that we can simplify as much as possible in terms of systems. We know, and I am actually very worried that a lot of businesses may have to bank with the very largest rather than a local bank, and local banks, as we saw during the Paycheck Protection Program (PPP). were much more responsive and agile. So what we do is, I have met with dozens of State associations of credit unions and bankers. We have heard from them. We are obviously taking very seriously what we hear in all of the comments, but it is a tough one. We have to implement this in accordance with what the law and the court says.

I think over time, we want to make sure that we have an implementation period that gives the smaller firms more time and the ability to make sure that it is not duplicative with existing requirements under the Community Reinvestment Act (CRA). So, we are going to get it done by March, but I hear your concerns loud and clear. We are going to do the best we can, but of course the statute is what we have to look to.

Mr. WILLIAMS OF TEXAS. Your regulations trickle down. You can save Main Street America, cut these regulations. Now, the first time you came before this committee, you said you would protect the interests of small business. However, since you joined the CFPB, I cannot find one example where you have listened to the private sector and changed your course of action. I hope I am proven wrong on how this 1071 rulemaking plays out; you are saying you understand what it does to community banks and small businesses, and I hope I am proven wrong on that, but I am also very skeptical that you will change the way you do it. If you continue to disregard the concerns of Main Street America, half of the payroll, half of the workforce, it will lead to the demise of countless small businesses, leaving many communities without a vital source of economic growth and stability.

To that end, the CFPB recently issued a request for comment on data for auto lending. When the CFPB was created, auto dealers were specifically exempt from your Agency's purview. I can tell you the supply chain crisis, coupled with the increased interest rates, are hammering car dealers right now and it is hurting consumers, and the threat of increased regulation from your Agency is not needed at this time. So, Director, the CFPB does not have the authority over auto dealers, correct?

Mr. CHOPRA. That is correct. We cannot exercise any enforcement or supervisory jurisdiction.

Mr. WILLIAMS OF TEXAS. So, what information are you looking to collect from them?

Mr. CHOPRA. I don't think we have proposed any information collection on them. I think the outstanding auto debt is now, I believe, $1.5 trillion, and as you mentioned, the cost of vehicles has meant more people have had to borrow.

Mr. WILLIAMS OF TEXAS. Couple that with higher interest rates.

Mr. CHOPRA. Of course, and I think the challenges are that there is a very disparate set of data about what is happening in auto lending. And we had a meeting with industry groups where we talked about what would be most useful to investors, to analysts, and to banks, because many banks and credit unions want to get into auto lending. So figuring out what is the public data that they can look at in order to entice their entry, but just so you know, there is no proposal to collect from auto dealers.

Mr. WILLIAMS OF TEXAS. Madam Chairwoman, I yield back.

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

Mr. VARGAS. Thank you very much, Madam Chairwoman. First of all, as Mrs. Beatty stated, I want to thank you. It has been an honor to work with you. You really have been a champion, especially for affordable housing consumers. I do keep thinking of what we could have done if we had that $150 billion for housing in the United States, and how hard you fought for that, and, again, it has been an honor to serve with you. It really has been a pleasure.

I want to thank you, Director, for being here. I do want to quote you here. You said, "We need an orderly, strong, independent Consumer Protection Bureau." You said that today, and I think we have a very strong, independent consumer protector in you, so, again, I am very pleased that you are proving that today. They are throwing a bunch of crap at you oftentimes here, and you have defended yourself and your Agency quite well. I appreciate that, even obvious stuff, like, of course, it is at the Court. The Court will decide. It is the Supreme Court, and I think you defended yourself well on something that was obvious.

One of the things I did find kind of odd today is the issue of guidance versus enforcement. Before I came to Congress, I was a vice president of a Fortune 500 company in their corporate legal department. We had lots of lawyers. We had outside counsel. So whenever an issue came up, of course, we were lawyering all over the place. Small companies don't have that, and that is why I think it is a good idea to give them guidance. I don't understand the issue on the other side, why they are so upset about it. Could you illuminate us or me on that?

Mr. CHOPRA. You are so right about the small players, and when I talk to investors and especially new entrants, when they are raising capital, they don't have money to burn on all of these D.C. lawyers. So, they ideally like to have an in-house counsel and some outside law firms that are often general, and to be able to find the right types of applicable guidance and it is ideal when it is in plain language. And we do our best to be able to publish that, so that people can know what the expectations are. I think it actually reduces barriers to entry. In some cases, people might not like the law, but Congress sets laws and there are rules that implement them. So, I do think it is actually pro-competitive to create more clarity.

Mr. VARGAS. I agree with you, with the exception of one thing, don't beat up too much on those D.C. lawyers. They are all my classmates.

Mr. CHOPRA. Sorry.

Mr. VARGAS. And the last thing I would say is it was very interesting being at that company, because one of the things we attempted to do as a large company is not only follow the law, but also be a good citizen. We did try to promote women, and people of color. I think we did a pretty good job of that. The large companies aren't always the bad people. In fact, oftentimes, they are not at all because they want to be a good citizen and they want to grow even larger, and the way to do that is to follow the law and be a good corporate citizen. So anyway, I know everybody likes to beat up on these big corporations, but I was with one of them, and I thought it was a good corporation. I still do.

I do want to talk a little bit today about cryptocurrency. You said it is just payments, but people are getting ripped off, and as I said yesterday, I don't get the point. I really don't get the point of this whole system, just to be honest with you. I think it is going to be a little bit like the tulip mania. The Dutch is going to collapse at some point. There is going to be no value there. But that being said, people are losing money. What can you do to help here?

Mr. CHOPRA. Most of the activity right now in digital assets is really on speculative trading. Of course, that has come to a tumble. I think, of course, the markets regulators are really the ones that do trading and exchanges. That being said, we have done recently an enforcement action against Loan Doctor, which was essentially baiting people into a high yield savings account. They were making all sorts of misrepresentations.

And on our side, we are investing in very speculative things, including crypto. That is an example of where crypto intersects with consumer financial products when you are advertising like a savings account. That is not really a trading account in the same way that others are. So, we try and make sure that where the law implicates our authorities, we are looking at that. And I think the biggest concern I would have is making sure that the regulators are ready. If some of these digital currencies like a stablecoin really scale, like on a Big Tech platform or a card network, and really working with the other regulators and all of you to make sure there are not runs and that people can get their money when they need—

Mr. VARGAS. My time has almost ended here. Again, I want to thank you. I think you are doing an excellent job. I wish you the best on your case before the court. Thank you. I yield back.

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

Mr. HUIZENGA. Thank you, Madam Chairwoman. One comment: In constant dollars, cars and trucks costs have increased dramatically, and you have to ask why, right? It is a combination of a number of things: government mandates; customer expectations; and manufacturing costs. Coming from Michigan, I represent all of the Tier 1, Tier 2, and Tier 3 automotive suppliers, and no wonder people are borrowing more. So, mystery solved on that one. Quickly, though, kind of returning to crypto, I saw that the Bureau released the bulletin in November analyzing the rise in crypto asset complaints. Do you anticipate expanding your enforcement in this area?

Mr. CHOPRA. I think the existing place in crypto is that it is really, again, mostly used for speculative—

Mr. HUIZENGA. I understand what it does. Are you planning on increasing your enforcement?

Mr. CHOPRA. And by the way, just to be clear on this—

Mr. HUIZENGA. I will accept, "no."

Mr. CHOPRA. I think it is important. Crypto is not a product.

Mr. HUIZENGA. Okay. Hold on.

Mr. CHOPRA. So, if it is used for a savings—

Mr. HUIZENGA. I understand what it does. We just had a whole hearing about this. My next question on that is, have you received any criminal complaints or enforcement actions, or have you been involved in any of those regarding FTX or Sam Bankman-Fried or his parents or anybody else?

Mr. CHOPRA. We are not a criminal enforcement service—

Mr. HUIZENGA. No, I understand that. Have you received any of the complaints or you have been involved in any of those complaints or any enforcement? Has anybody pulled you in?

Mr. CHOPRA. No.

Mr. HUIZENGA. Okay. Stop right there. Good.

Mr. CHOPRA. No, but—

Mr. HUIZENGA. That is all I need to know.

Mr. CHOPRA. No, but just the word, "complaints," consumer—

Mr. HUIZENGA. Okay. Reclaiming my time, Director Chopra, in your testimony, you said the CFPB is working to ensure that Buy Now Pay Later lenders adhere to the same protocols and protections as other similar financial products, and it looks like you released a study in September on Buy Now Pay Later, correct?

Mr. CHOPRA. That is correct.

Mr. HUIZENGA. Okay. And you are planning on releasing what the report calls, "interpretive guidance." Is that correct?

Mr. CHOPRA. We are looking at various things and working with industry to—

Mr. HUIZENGA. You are planning on it or you are not?

Mr. CHOPRA. We are considering it. We don't have any final plans yet. The process—

Mr. HUIZENGA. Okay. Good. Stop right there. By the way, I will note, this is why we get frustrated because you just burn time. You would be great in the Senate.

Mr. CHOPRA. I am trying my best to answer—

Mr. HUIZENGA. Okay. Moving on. As an interpretive rule exempt from the notice-and-comment rulemaking requirement of the Administrative Procedure Act, is it your intent to avoid a lengthy rulemaking process?

Mr. CHOPRA. No, I think your new product that—

Mr. HUIZENGA. Okay. Great. So, here is what I am getting at. The Bureau seems to follow a pattern to not release a rule, but rather to issue opinion ladders, release blog posts, and take enforcement actions as an alternative to the rulemaking process. And this strikes me, frankly, as strange given your most recent budget request, which goes by quarter to increase your budget, which, what are you going to use it for? It would make some sense. You could make the argument you are going into rulemaking or enforcement. You need that rulemaking. So quickly, why do you need additional dollars?

Mr. CHOPRA. We can provide you with more information. There is some seasonality to our expenditures by quarter. We are happy to look at that data. I don't think—

Mr. HUIZENGA. I appreciate that, and I would like to yield the rest of my time to my friend from Kentucky.

Mr. BARR. Director Chopra, revisiting the March Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) exam manual revision, one analysis says that your action vastly expands the reach of its anti-discrimination enforcement beyond the limits of the Equal Credit Opportunity Act (ECOA). Do you agree?

Mr. CHOPRA. No.

Mr. BARR. Okay. And if you disagree with that analysis, why then did you say that you are breaking new ground?

Mr. CHOPRA. I think in the way we are telling and articulating what the FDIC, the OTS, and others have already said, with some more specificity about what will our examiners look at when there are complaints—

Mr. BARR. Okay. Reclaiming our time, where did Congress authorize you to expand UDAAP authority to anti-discrimination? Where and when did we do that?

Mr. CHOPRA. The law prohibits unfair practices. Some discriminatory practices may also threaten the legal definition. It is common that—

Mr. BARR. Director, reclaiming my time, you were at the FTC. You know history. When Congress gave unfairness authority to the Federal Trade Commission in 1938, it did not intend to give the FTC authority on discrimination. That is why in 1974, Congress passed the ECOA, which created the anti-discrimination laws. Congress and Dodd-Frank gave the CFPB the same unfairness authority that it gave the FTC in 1938.

Mr. CHOPRA. No, that is not correct.

Mr. BARR. That is correct.

Mr. CHOPRA. No, it is not.

Mr. BARR. That is correct.

Mr. CHOPRA. In 1994—

Mr. HUIZENGA. My time has expired, Madam Chairwoman.

Mr. BARR. I want to talk to you offline about this because—

Chairwoman WATERS. The gentleman's time has expired. Mr. Barr?

Mr. CHOPRA. —the unfairness standard was promulgated in 1994.

Chairwoman WATERS. The gentlemen has yielded back.

Mr. CHOPRA. I am happy to talk to you about this.

Chairwoman WATERS. The gentlewoman 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, Madam Chairwoman, and thank you, Mr. Chopra, for your public service. In 2009, this committee passed a bipartisan bill called the Credit Card Bill of Rights, which the CFPB said saved consumers roughly $16 billion, that is, "billion," with a, "b," a year. Under the former President, they stopped keeping records, I was told, on the savings that it was making for people. I think it is important that when we pass important consumer protection bills, we continue to track that.

What was interesting about your research is it showed that it did not in any way hinder banks. If anything, they got stronger, possibly because people trusted them more, the abusive practices had stopped, more people were using them, so it helped the financial industry get stronger, and helped the consumer keep $16 billion in its pocket. My question is, are you still keeping records on the effectiveness of the CARD Act, the Credit Card Bill of Rights?

Mr. CHOPRA. We are gearing up right now to conduct our statutory-required CARD Act report, and I have taken your feedback about what type of metrics we should be putting in it, and I am going to do my best to respond to what you are saying in the way that it was previously done. It is so important to have a competitive credit card market. We have been working with community banks and credit unions on how they can also enter the credit card market to provide more options. It is the core way in which small-dollar lending happens in our country.

Mrs. MALONEY. And you issued a report earlier, or your Agency did, on the Overdraft Protection Act, and I believe the report showed that roughly $15 billion was taken from consumers with unfair and deceptive practices. Is that correct?

Mr. CHOPRA. I think we released an analysis of the total amount of deposit charges based on the sample of accounts, and I believe you are right. It was $15 billion, but that is really just the total charges. We have started to see a number of banks across-the-board compete more. Many are lowering their overdraft fees. Some are even eliminating them, so we have continued to look at the institutions that are most dependent on these. In some cases, we found pretty significant noncompliance with existing rules. There is no question that we want to make sure that when there is any overdraft or other charges, that it meets the requirements of the law, and hopefully, we will see banks and others continue to compete on making their charges more competitive.

Mrs. MALONEY. It is true that a lot of banks have on their own started initiating, really eliminating overdraft fees, but it would be less confusing to consumers if we had one standard, would you agree, a standard across-the-board for protection from unfair and deceptive overdraft fees?

Mr. CHOPRA. We are continuing to supervise institutions, and work with other regulators on the question of deposit charges, so we will continue to work on that. I am really encouraged to see where the market has moved. I think where the competition we are seeing is going to decrease billions of dollars and still give people access to their funds, and that is very positive.

Mrs. MALONEY. We passed a bill out of the committee and the subcommittee on overdraft protection. Could you review that and let us know what your feelings are on that particular bill? It would be less confusing to consumers if we at least had a floor of protections for them.

Mr. CHOPRA. And I would be remiss if I didn't say overdraft and credit cards are really linked in many ways. We want people to be able to get the lowest-cost way of accessing credit. And in many cases, a credit card in a competitive market would be much cheaper, especially given post-CARD Act than the protections it affords.

Mrs. MALONEY. Thank you for your testimony, and I yield back.

Chairwoman WATERS. The gentleman from Arkansas, Mr. Hill, is now recognized for 5 minutes.

Mr. HILL. Thank you, Madam Chairwoman, for this hearing. Director, thanks for being with us today. I echo the concerns Mr. Williams expressed about 1071. Think about it this way: This is a chance for you to actually turn a page. I know what Dodd-Frank said, but under President Obama and President Trump—as Charlie Munger frequently says, "It was put in the too-hard pile." I really think 1071, while well-intended, is not implementable in a cost-effective way, and I don't believe the public policy, the theoretical benefits of that data will actually produce results. I think it will reduce participants for small-business lending, cause higher prices, and be just the opposite of what well intentions are, so you don't need to comment on it. I just want to echo that I agree with Roger Williams, and I think you could be the Director who just brings an end to it by saying, "After 12 years of debate, thought, lots of hearings, and consideration by my staff, it is unworkable. And I recommend black, something completely different and just take a pass on implementing it." In all of the laws we pass, sometimes we don't get them right. And we are not robots here and we don't expect you to be one. Well, you passed it, I want to do it. All of your predecessors have struggled and failed in that capacity, so let me change the subject.

Mr. CHOPRA. Sir, I do want to just say, though, for the record, we are under a court order to complete it now, as the Bureau was sued under my predecessor.

Mr. HILL. Yes, fair point.

Mr. CHOPRA. And I am happy to talk about that with you further.

Mr. HILL. We should. You are not a lawyer, and I am not a lawyer, but maybe we can think about a response there. I hear the point.

Let me shift gears to 1033, this open data rulemaking. You released that in October. It is an outline of proposals and alternatives in the consideration of rulemaking. Personal financial data rights are required to implement Section 1033 of Dodd-Frank. And I thought it was really notable that the Bureau's proposal would cover only depository accounts and credit cards from regulated depository institutions, but would not apply the rule to services provided by non-banks. And the CFPB itself acknowledges that many non-bank data providers offer numerous consumer financial products and services, like mortgages and auto loans, and yet they wouldn't be subject to this proposal. So, why is the scope of the 1033 rulemaking narrowed to just depository institutions and credit card accounts?

Mr. CHOPRA. I want to make sure I get the statutory provisions on this right, but just on the question of the proposal, the proposal is really all transaction and deposit accounts, and we are starting there. We going to keep going and go into more products. The reason why we are going first here is really based on what we are hearing from industry about where is the most valuable data to get in order to be able to underwrite or help people access new products. And they say it is the transaction data—I'm sorry, the ledger data.

Mr. HILL. No, let me ask you to pause there, and say that you are going to pursue non-banks in a second tranche. You don't really address liability for data breaches or other data security, non-compliance that happens once a consumer's data leaves the financial institution or other covered entity. Is it the Bureau's assumption that banks have the liability for data breaches or other security risk for data that they have no control over, while non-banks and other data users have no oversight?

Mr. CHOPRA. No, that is not at all where we are trying to go, and, in fact, this is a place where we might need some of your help. We really want to make sure that if there is more data and very sensitive financial data moving around about people, it is safe and secure from end to end. I think we are looking at how to build in the appropriate data safeguards. And by the way, I think a lot of those non-banks don't necessarily have the same supervision for data security, and we need to make sure they don't create an underworld of data resharing.

Mr. HILL. I agree with that. This committee has had many hearings on data protection, data privacy, and I hope we can have a bipartisan data privacy bill in the new Congress.

Mr. CHOPRA. And as I shared in my testimony, I think that is the place where we really need to do something.

Mr. HILL. Yes.

Mr. CHOPRA. Financial data is very sensitive.

Mr. HILL. I am going to send you some additional questions on that, if you could follow up for the record.

I was looking at your statute. It says, "The Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System the amount determined by the Director to be reasonable and necessary." It says, "the combined earnings." The Federal Reserve has no earnings. A plain reading of the text means that Congress should act to put the CFPB on appropriations, in my view. The Fed's earnings are negative. In fact, they will cost the Treasury $100 billion this fiscal year. Do you support the Bureau being on appropriations as opposed to being dependent on something unreliable like Fed earnings?

Mr. CHOPRA. I need to look closer at that language, but the views of the United States and the Executive Branch are really in that petition that the Supreme Court has received. We are happy to share that with you. It is a matter of public record, and it articulates the full legal views.

Chairwoman WATERS. Thank you. 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, Madam Chairwoman. It's a pleasure to see you again, Director Chopra. I am sitting here listening to some of the comments, and I am reminded of about 10 years ago when I was running an energy company and doing a debt raise on Wall Street. I had done this sort of rehearsal with the investment banker we retained, and she cut me off and she said the definition of an ugly American is someone who travels to Europe, meets someone who only speaks French, and yells at them in English, and she said when you are talking to a banker, don't yell at them, an engineer. And I share that story because I am grateful, and I encourage you to continue speaking to consumers, and not just yelling at them in regulatory law, notwithstanding that some of my colleagues in here prefer that.

Moving on from that. When we talked last April, I asked you about creditors and social media companies, specifically Facebook, and how their algorithms may violate fair lending laws. I was very pleased to see since that conversation in May, you released a statement of policy confirming that Federal anti-discrimination law would require companies to explain to applicants the specific reasons for denying an application for credit. I realize it has only been a few months, but since that guidance was issued, have you witnessed any changes in financial institutions who are using black box algorithms to make lending decisions?

Mr. CHOPRA. Yes. What we are seeing, and it is informal right now, is that entities that use advanced computational methods, algorithms and others, are actually working to make sure that they can explain clearly why someone got an adverse action because that is what congressional law requires. And I think we are still trying to see where there might be additional questions about the adverse action notice. We are doing our best, but ultimately, I think you have seen a number of developments, the AI Bill of Rights, and other things happening internationally, that really are putting a premium on explainability. Because often these algorithms can just completely shut out a group of users.

Mr. CASTEN. No doubt, and it has to be auditable somehow.

Mr. CHOPRA. That is right.

Mr. CASTEN. I am glad to hear that on the bank side. When we talked last April, I also asked this question. You said what if the bank is not using the algorithm, but the ad for their credit card is being promoted through a Facebook algorithm or something like that. And when I asked you if CFPB had the authority to look inside those black box algorithms, but they are not held by the banks, I think you said you weren't really sure.

Mr. CHOPRA. Yes. We have looked into this further, inasmuch that they are a service provider, material services, like offering products, would be subject to our authority. And we know that many banks and other financial firms are really taking a hard look at how they use some of these third parties to do targeting and algorithmic targeting.

Mr. CASTEN. I guess what I am still trying to understand is, if I am a credit card issuer, and I put an ad on a Facebook site, and that ad, unbeknownst to me, and not disclosed by the algorithm is preferentially targeting rich White people because they are most likely—and I am making up the example. Do you have the authority right now to query the algorithm, the Facebook in that example?

Mr. CHOPRA. Yes, if it is providing a material service to the financial firm.

Mr. CASTEN. And have you exercised that authority?

Mr. CHOPRA. I am not going to comment on where we are investigating or supervising on that, but certainly, our authority would cover the service part. You can outsource your liability on that, and, in some cases, the service provider is of greater interest to us, especially those serving a lot of firms.

Mr. CASTEN. Okay. Let me maybe reframe the question then, recognizing that you can't comment on the specifics. I have introduced a bill with Congresswoman Trahan and Congressman Schiff, specifically to give the FTC the authority to query, and we have done it that way because there was some concern with some of the social media companies that that algorithm is a trade secret that they don't want in the broader public. If we were to do that, without asking you to comment on the specific legislation, is there information that you would like to get about that black box that you are limited because of trade secrets that would be helpful to have some agency, FTC or otherwise, with the authority to ask those hard questions about how the algorithms work?

Mr. CHOPRA. Yes, it is a great question. I do think trade secrets—we seek to protect and all agencies seek to protect confidential information, but you do worry when that is cloaking necessary information to ascertain compliance. So, I don't have any immediate worries, but it is true that sometimes firms will not provide information, and sometimes we need to go to court. Agencies may need to go to court to get it.

Mr. CASTEN. Okay. Obviously, I share your goal to make sure that we do not discriminate in our lending practices, and if we can work together to close that barn door, I look forward to continued conversations. Thank you. I yield back.

Chairwoman WATERS. Thank you. The gentleman from South Carolina, Mr. Norman, is now recognized for 5 minutes.

Mr. NORMAN. Thank you, Madam Chairwoman. Director Chopra, do you agree that small medical providers in underserved areas deserve to be paid for medical care?

Mr. CHOPRA. Of course. I think small medical providers in especially rural areas, many of them, it is hard to stay afloat and they need to get paid.

Mr. NORMAN. Then why are medical debt and student loan debt different from all other types of debt, and is it the government's role to be rewriting contract law? To be honest with you, the biggest complaint I have with your Agency is a frustration with you rewriting rules, kind of being a one-man marching crew out, forgetting Congress, but would you agree you are rewriting the contract law?

Mr. CHOPRA. No, can you say more about contract law because where we have focused on medical debt is really credit reporting. What we see in our complaints are huge inaccuracies of medical debt. We see places where there is not documentation when third-party collectors are called out for acting on it, and often, there is a lot of paperwork between the insurance company and the provider. I really want to make sure that medical providers can get paid, but that debt collectors are not using the credit report and putting inaccurate information on it in ways when a person might have already paid it.

Mr. NORMAN. Let me ask you this. What has changed that would allow the CFPB to pick certain types of debt, such as medical debt, rental debt, and student loan debt to not be accurately reported, or I guess your interpretation of that?

Mr. CHOPRA. No, accuracy is the standard that is put forth in the Fair Credit Reporting Act. So, when you are putting any information on any background screening or credit report, there are obligations to make sure that it is correct. We don't want data brokers and credit reports to be a tool of extortion. We want to make sure that people are getting the right accurate information about their performance or nonperformance, and you really worry when there are lots of inaccuracies, and we see it all the time.

Mr. NORMAN. Per the Bureau's website and notice in the Federal Register in November of 2022, your office is collecting information about the auto lending market. The Bureau also held a non-public meeting for stakeholders on the issue, yet not all of the relevant stakeholders were invited. Can you explain what criteria your Bureau is using to decide who is a stakeholder and who is not?

Mr. CHOPRA. W have many meetings. I am sure there will be more. We meet with industry groups a lot. Most of the participants were industry groups. We talked about what auto lending data is currently being used in the marketplace. Unlike mortgages, there is less availability of public data. We are looking at how small banks and credit unions can have public data access, so they know—

Mr. NORMAN. Let me ask you. My time is running out. Are independent automobile dealers involved in meetings when it comes to car repos?

Mr. CHOPRA. Are they involved with car repos?

Mr. NORMAN. Do you involve independent dealers when you meet with other creditors?

Mr. CHOPRA. I have met with a number of dealer associations. While we don't have any legal authority to bring enforcement or supervision, I certainly talk to them. I have spoken at their conferences because there are issues in the broader auto market that they will want to be interested in. One of the things they tell us is that often when they are involved in the process of credit reporting or others, it is good for us to always be in touch with a broad array, not just banks and credit unions.

Mr. NORMAN. So you believe in transparent communication?

Mr. CHOPRA. We try our best to meet with these industry groups. We don't actually always meet in public. It is normal, actually, for them to come and speak with us, so we try our best.

Mr. NORMAN. According to my information, in the first 10 months that you have been in office, you met with the industry 28 times. Your predecessors, Mr. Cordray and Mr. Mulvaney, met with the financial services industry over 100 times collectively.

Mr. CHOPRA. We have met with more small banks and small credit unions.

Mr. NORMAN. Have you met with them?

Mr. CHOPRA. What we have done is we have had a series of town halls or group discussions organized with—

Mr. NORMAN. So, the 28 times is not accurate?

Mr. CHOPRA. Well, that is not 28 banks. I don't know what number you are referring to. All I can say is that our industry outreach to small financial institutions far exceeds our predecessors.

Mr. NORMAN. That is not a—

Mr. CHOPRA. Okay. Well, I am happy to share more data directly.

Chairwoman WATERS. Thank you. The gentlewoman from North Carolina, Ms. Adams, is now recognized for 5 minutes.

Ms. ADAMS. Thank you, Chairwoman Waters, for holding the hearing today, and thank you, Director Chopra, for being with us today. 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.

I am extremely concerned with the levels of student debt in this country, which amounts to $1.8 trillion, so I believe we need to cancel $50,000 in student debt for Federal student loan bonds. And I was proud to join my colleague here on Financial Services, Nikema Williams, along with Representatives Deborah Ross and Haley Stevens, in introducing our Clean Slate legislative series to make real steps and to take real steps toward helping students. But in particular, I agree with you that we need a concrete plan on student loan debt relief before payments restart in September. My question to you is, can you discuss why it is so critical for us 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. Thank you for the question. The CFPB's role is oversight of the financial firms which are engaging in practices implicated by the laws that we administer. The Education Department and the Biden Administration are going through a process which is subject to appeal on student debt cancellation. We are looking to make sure that when payments restart, whenever it happens, that people are ready, that everyone is ready. We don't want a messy return. So, we are really hoping and we are trying our best and working very productively with the industry and others to make sure that when the payments restart, if and when, that they know what their options are if they can't pay. We have done some analysis to suggest that there are borrowers with student loans struggling now. We released a report on that. We know that some of the economic uncertainty is out there, and what we don't want to see is a huge spike of defaults. We want to see servicers work with borrowers so they know their options if they can't make the full payment and can get into a repayment plan that gets them on the road to paying off that debt.

Ms. ADAMS. Thank you, sir. The OMWI and the CFPB released a report a year ago examining diversity and inclusion across your regulated entities, including both depository and non-depository institutions. Why is it important for these institutions to share this data publicly? And is there a link to sharing this data and having a diverse workforce that improves consumer protection or service?

Mr. CHOPRA. It's a great question. I believe it is Section 342 which establishes the OMWI programs. We take what is in that statute very seriously. I know Chairwoman Waters has been very active on this, as well as Congresswoman Beatty. We have published a set of reports and also want to make sure that we are fulfilling all of those obligations. I didn't catch specifically, Congresswoman, the specific question on consumer protection, but I just wanted to convey that we are actively fulfilling those mandates.

Ms. ADAMS. Thank you, sir. Are you aware of any specific impacts on the credit reports and scores of the consumers who utilize the company's debt relief services?

Mr. CHOPRA. Yes. I think over the course of many years, both of my predecessors have also done work on debt relief, and sometimes there is phantom debt relief. Sometimes, there is outright fraud.

Sometimes, things are put on the credit report that are outright false in order to induce people to pay. That has been the subject of a lot of law enforcement, and often, what is a real frustration is that even when you catch these guys, they often don't have the money or it's too late.

One of the things we have recently proposed is a registry of non-bank firms that have one of these law enforcement orders under them. Debt relief providers is a big space where this occurs. It will also help States see if another State put in an order against one of these bad actors, and they are coming into their State, it might help them respond more quickly. We are working through that process now.

Ms. ADAMS. Great. Thank you. I hope that they can expect to see their checks in the mail soon. Thank you very much, and, Madam Chairwoman, I yield back.

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

Mr. DAVIDSON. Thank you, Madam Chairwoman, and Director Chopra, thank you. Clearly, you have differences of opinion with Republicans, and you and I would have many differences of opinion. I think a lot of those have been aired by my colleagues, but I think it's important that where we can find common ground, we ought to appreciate it. So, I have been encouraged by some of your comments respecting privacy and the importance of protecting that for consumers, and, frankly, kind of the distinction that you have recognized in terms of how a lot of tech firms are monetizing that data. And really, in a way, it is kind of an arbitrage where they are taking value that for any one consumer isn't necessarily worth a lot. They are kind of giving it away for free access, but it is meant to add quite a few billionaires. It has created some real asymmetries, and I think our laws are long overdue in addressing that adequately with a comprehensive privacy law. So, that is where I have been particularly appreciative of the Section 1033 rulemaking that you have undertaken.

You said that the CFPB will publish a report in the first quarter of next year, and subsequently propose a rule later in 2023. You finished by saying that the rule will be finalized in 2024, and you also mentioned that during this process, you will convene panels comprised from smaller entities to seek feedback. How are you deciding who gets to participate in those panels, and could you talk a little bit about the process of getting to a final rule?

Mr. CHOPRA. Sure. The Small Business Administration is very involved. They are actually going to produce the report with us about what small entities are saying. We have tried to hit the broad set of stakeholders from, for example, fintech companies, to small banks and credit unions. We have worked through their industry associations, and many of them have put forward people. We are doing our best to make sure it is very inclusive. And then in terms of finalizing a rule, the goal would be to make sure we figure out how to protect data, while also giving more competition and innovation for new players. I would love to see a market where there is competition on more privacy protection too, because we don't want just a few entities engaging in surveillance and doing what they want.

Mr. DAVIDSON. Yes, I would like to see a big shift in the surveillance capitalism, and I appreciate the perspective that you bring to that. Obviously, I am rooting for a major law from my colleagues. In fact, I hope Republicans make H.R. 4, since the Fourth Amendment is there, a major privacy bill that recognizes a property right in our data that is individual, and in that sense, then the individual can consent. There would be a whole different architecture. I am not sure if we will get all the way there with the rulemaking, but I look forward to collaborating with you to get as close to that as we can, within the bounds of current law.

You mentioned fintech firms. And we have had some feedback that just looking at your calendar, you don't meet directly with a lot of fintech firms or a lot of specific players. I guess my question is, what are the primary sources of information as you go about your job and you go about overseeing this rulemaking? How do you get input on the state of fintech, the state of innovation, yes, the practices that are really abusive versus the practices that are actually innovative and protective of privacy?

Mr. CHOPRA. Yes. One of the things we make a point of is to go to a lot of fintechs, and they don't have Washington, D.C. staff, so we try and go to the industry associations that represent a lot of them, especially in payments. We attended and brought a delegation of CFPB employees to the main fintech conference. I spoke there. We met with a wide range of people. I will take the feedback, though, if you have input too. We want to continue to find ways to get new players in the business. It is one of the reasons we also talk to investors, to analysts, because they often are the ones deploying capital that helps firms get off the ground, but we always welcome input on how we can reach more of those new firms.

Mr. DAVIDSON. Yes, thank you, and obviously the state of tech makes all kinds of things possible. But from your perspective, thinking about the consumer, why do you think there is so much demand for all this fintech in the market?

Mr. CHOPRA. I think it is great. We are really tech-forward. We have set up a chief technology office. We have changed our innovation approach from instead of picking one fintech as a winner-take-all, we are trying to find out what can we issue so that all the fintechs or all the banks involved can benefit and they can compete against each other.

Mr. DAVIDSON. But aside from the firms, if you think about the individual consumer, what is it that all of this innovation is driving at? It seems like there is a void in the marketplace that they are trying to address, and I wonder how you could play into that?

Mr. CHOPRA. I think part of it is, as we have gotten out of the pandemic, people want more digital services. They are demanding it and we want to see it being fulfilled, and I think, Congressman Davidson, that is why we want a lot of decentralization, small players. We don't just want a handful of the Big Tech firms dominating it. That is not a good market structure.

Mr. DAVIDSON. Thank you, and my time has expired. I yield back.

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. Director Chopra, I am very impressed by the observation that out of the wide purview of issues under the CFPB's mandate, over 70 percent of all consumer complaints filed with the CFPB relate to credit reporting. On October 2nd of this year, the Wall Street Journal reported that Equifax provided incorrect credit scores for potentially millions of customers applying for credit, including home, credit cards, and auto loans. Two days later, a class action lawsuit was filed against Equifax led by attorneys representing Nydia Jenkins from Florida, who allege that an Equifax error landed Ms. Jenkins with a substantially pricier car loan. According to the suit, Ms. Jenkins was pre-approved for a car loan in January but denied in early April because her reported credit score from Equifax was off by 130 points. And because this loan was denied, Ms. Jenkins was allegedly forced to buy a car from a different dealership at a much higher interest rate and now pays about $2,300 more per year than she would otherwise have been had she been correctly qualified for the initial loan. First, in your view, were Equifax actions in violation of the Fair Credit Reporting Act (FCRA)?

Mr. CHOPRA. I can't comment on that matter. We don't comment in public on any of these specific company matters. I will say, of course, the three credit reporting conglomerates have a lot of impact on all Americans in their ability to get credit when you have an error.

Mr. FOSTER. I understand that you can't comment directly on that, but we often hear back from the credit reporting agencies that although some credit scores and reports may get reported inaccurately, they virtually never adversely affect a consumer before they are corrected. However, in the case of Ms. Jenkins, this certainly seems to have affected her adversely, so do you agree in general that with the credit agencies, almost all credit errors are benign?

Mr. CHOPRA. All credit reporting agencies?

Mr. FOSTER. Are benign that these—

Mr. CHOPRA. No, I don't.

Mr. FOSTER. Okay.

Mr. CHOPRA. I think they can be very severe. We have seen situations where background reports and credit reports have actually blocked people from getting an apartment or a job because they are falsely matched with someone else. We have seen how it leads to a much higher cost of credit where there's a material error, and the list goes on and on.

Mr. FOSTER. Yes, and according to a CFPB advisory opinion that was published in October of this year, the FCRA was enacted to protect consumers from the transmission of inaccurate information about them. The opinion further explains that while consumer reporting agencies like Equifax are preparing consumer reports, they are held to certain legal standards, including a requirement to, "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." Do you believe that Equifax and the reporting agencies in general have appropriate procedures and controls in place to ensure the maximum possible accuracy, and what is the standard to prevent instances like Ms. Jenkins?

Mr. CHOPRA. Again, I need to be careful. The law is very clear in the statute about reasonable procedures to assure maximum possible accuracy. I can commit to you that where we find that, we will, in our supervision and our examination and enforcement, take that very seriously. I have been part of a number of enforcement actions involving tenant screening where that provision has not been followed, and, look, it is a huge issue. Consumers are not the customer of these companies. They are the product, and so much about their life can be dictated by what is in those reports, and we need to use accuracy as our lodestar.

Mr. FOSTER. Yes. Do you believe that we have set the correct balance in regulatory actions to make sure that we minimize consumer suffering from bad credit scoring?

Mr. CHOPRA. Of course. I think this is a classic example of a market failure where the consumer reporting companies don't have a market mechanism for them to make sure they obtain the highest levels of accuracy. And that is why Congress made the decision in 1970 to have the Fair Credit Reporting Act, and I would welcome working with all of you on how we can continue to address the modern problems of credit reporting, especially with Big Tech brokers, data brokers, and others.

Mr. FOSTER. Thank you, and my time has virtually expired, so I will yield back.

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

Mr. LOUDERMILK. Thank you, Madam Chairwoman. Director Chopra, thank you for being here. I want to talk about peer-to-peer (P2P) payments for a moment. We know that the CFPB has begun exploring pathways to expand its authority to address the peer-to-peer payments platforms by changing its interpretation of the Electronic Fund Transfer Act (EFTA) and the CFPB Regulation E to hold banks liable for payments from consumer accounts to scammers over P2P platforms. Now, coming from the IT industry and working in similar fields, I have come to know that most criminals require consumers' confidence to perpetuate most common scams, and that education and awareness are the most effective tools for preventing these crimes from happening in the first place.

My first question regarding is, do you agree that consumer education is the most effective way to protect consumers from becoming victims of this type of fraud and scam?

Mr. CHOPRA. I think it is a very core and important way. I think it goes hand in hand with transparency, too, but there is no question that as we have shifted to more real-time payments, peer-to-peer apps like Venmo and PayPal are now moving so much money. And we want to make sure, and a lot of banks tell us that when fraud occurs on some of these P2P apps, and they are responsible for investigating it, they can't even control necessarily what information they are getting from those apps. So, we are working to make sure that we do want more real-time payments, but what is the right role for the P2P app when it comes to making sure that consumers know what is going on, and that we can protect them from errors and fraud.

Mr. LOUDERMILK. Right, and I understand the difference of making whole versus the protection aspect of it. Education has proven time and time again that the most effective way to help keep someone from being scammed to start with, and we know that some scammers have sophisticated knowledge of EFTA and Regulation E liability protections. If you are going to engage in this type of criminal activity, you are going to know basically how to get around this, so if the Bureau shifts its liability so that banks must refund a consumer for any P2P payment scam, isn't it true that a scammer could just assure a consumer that their bank is required to refund them no matter what, and then this creates an additional hazard?

Mr. CHOPRA. Yes. First of all, we have not made any changes, but it is true that we are studying the role of the P2P apps and other payment players, and actually, the banks are very supportive of this. I take your point very seriously that we don't want to create any situation that actually creates different fraud, or may even increase fraud, so I think there are some steps that are happening on their own. The banks and other financial firms operate the kind of routing rules, payment rules—they have made certain changes. We are looking at those changes, and I think we are cautiously optimistic about it. But you are right that we also want users, especially in a mobile device, when there is some indicia that something is off, many times you will get an alert and we hope that UX and UI designs can also be a way that we reduce the level of fraud too.

Mr. LOUDERMILK. I know you have made changes, but as I said in the beginning, in exploring this area, have you given serious consideration to consumer education as a key element of this?

Mr. CHOPRA. Yes, and in fact, we are trying to understand what are the customer segments that are most likely to be affected by it. One of the things we have identified is a rise in romance scams, which sounds kind of clever, but it is actually disproportionately harming veterans and older Americans. So, we are doing work with the Department of Defense, and we are doing work with others to figure out what are the best channels to reach people so that they know how to spot a scam, and for older Americans in particular who are suffering from any sort of cognitive impairment, we especially worry about how they might fare.

Mr. LOUDERMILK. I commend you on that. I think that is an important aspect of this. One final question in the remaining seconds I have is, have you considered using the almost $10.5 billion in unspent funds of the Civil Penalty Fund to compensate consumers?

Mr. CHOPRA. We are actually only using it for redress right now. So, the only eligible expenditures from that fund are for consumers who are involved in an enforcement action where we have obtained a penalty, so we can't kind of hand it out in general. It has to link to a specific case that we worked on if we are giving consumers redress.

Mr. LOUDERMILK. I would just say that is something to consider. Thank you.

Mr. CHOPRA. Consider the scam and fraud area?

Mr. LOUDERMILK. With P2P, yes. I yield back.

Chairwoman WATERS. Thank you. 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, Madam Chairwoman, and thank you, Director Chopra, for being here. Earlier this year, I announced my senior security strategy to ensure we are doing everything we can to end financial scams targeting our seniors. I was very proud to have two bipartisan, bicameral senior protection bills pass the House this Congress: the Empowering States to Protect Seniors from Bad Actors Act; and the Senior Security Act. These bills would support grants and Federal coordination to protect seniors from financial scams and help crack down on fraudsters targeting the retirement savings of older Americans.

Director, the CFPB stood up its Office of Financial Protection for Older Americans in 2011. To ensure the Bureau is serving senior citizens effectively, my bill, the Senior Security Act, would establish a senior investment task force at the SEC to report on topics related to senior investors. From your experience, how has the Office of Older Americans' specialization on seniors helped the Bureau protect senior citizens from financial abuse, and do you think other financial regulators would benefit from having an office or panel dedicated to those issues?

Mr. CHOPRA. Our Office of Financial Protection for Older Americans has been a huge success, and, Congressman Gottheimer, thank you for your support of the CFPB in this work. One of the things that we did this year, led by our Office for Older Americans, is we identified a particularly pernicious issue involving nursing home debt collection. This is where someone may be in a nursing home, but then their family members are actually chased after and coerced into paying money that they may not even owe.

We have also looked at the issue over the years of financial designations and certifications and how that might affect older Americans. We certainly look at it in terms of housing, because we have so many seniors often living on their own in housing, and what is happening to them when they are targeted in certain neighborhoods. Again, we strongly support focusing on older Americans, servicemembers, students, and other special populations. We think it has given us a lot of good insight into really where we should focus the Bureau's attention.

Mr. GOTTHEIMER. Thank you. Are there additional resources or training authorities that law enforcement and financial institutions need to increase the number of cases that are reported and resolved favorably? Is there anything you recommend?

Mr. CHOPRA. Yes. I do think we need to work more to get some of this fraud addressed criminally. One of the things we have seen is that some of these players bounce from State to State to State, and when they are under investigation, they go someplace else. It is one of the reasons we have proposed a registry of those violators. We also think that there is more enforcement cooperation we need when it comes to swindling seniors out of their retirement savings. That is not a place where we directly have enforcement authority, but we really worry about those who have saved up but then get baited into sudden and often very, very sophisticated scams, so looking upstream and how we see the purveyors who are trafficking that and have knowledge of that illegal activity is critical.

Mr. GOTTHEIMER. Thank you so much, Director. Last time you were before the committee, I don't know if you remember, but I shared my concern that the CFPB's public-facing consumer complaint database could be used by firms to publish unmerited complaints about their competitors, based on their competitors using it as a way to stick it to them and file false complaints. And often, the database—the concern is that it is not checked, and there is no way to know that these complaints that are filed are actually real and that can cause problems for competitors or for companies particularly small businesses. What steps have you taken since we last spoke, if you don't mind me asking, to ensure that the complaints publicly displayed in the database have merit and are not misleading to consumers and to protect our small businesses?

Mr. CHOPRA. Yes, I appreciate that. After we spoke last time, I did look into whether we think there is an issue there. And one of the things that is important is we are limiting the set of complaints that go in the public database, and it often includes a company response, and a company can also say, this is not my customer. So, I think we can brief you more on that, but we do think it is fairly limited and reduces the likelihood of non-customers filing complaints.

Mr. GOTTHEIMER. So, the company can file and say, that is not me or not my business, or not our customer. Is that then removed or is the complaint removed—

Mr. CHOPRA. I would need to look at the exact protocols, but I think that may not be published if it is misdirected to the wrong company. So, we can respond to you and check back.

Mr. GOTTHEIMER. I would love to follow up with you on that.

Mr. CHOPRA. We have not heard or seen any systemic evidence of this being an issue, but I appreciate you bringing it to our attention.

Mr. GOTTHEIMER. I have heard about it, so I would love to talk to you more. Thank you so much. I yield back.

Chairwoman WATERS. Thank you. The gentleman from West Virginia, Mr. Mooney, is now recognized for 5 minutes.

Mr. MOONEY. Thank you, Madam Chairwoman. Many agencies under the Biden Administration completely lack accountability and transparency. One of the worst offenders is the Consumer Financial Protection Bureau (CFPB) which has taken actions that raise the cost of credit, while reducing access to credit, with few ways for Congress to intervene. My constituents are largely rural blue-collar workers who are the most impacted by the CFPB's costly actions.

Director Chopra, you have chosen to ignore the traditional rulemaking process, instead regulating by press release and blog post. One example is the CFPB expanding the definition of, "unfair," in its unfair, deceptive, or abusive acts or practices section of the examination manual to include disparate impact or unintentional discrimination. This expanded definition is not found in statute. Banks and credit unions have said that this change is unworkable, opaque, and costly, and will only serve to reduce credit options for those who need it the most; in other words, hurting the very people that you are intending to help.

Director Chopra, you have testified before that you do not recall whether anyone in the Bureau advised you to seek the Administrative Procedure Act (APA) rulemaking with respect to this examination manual change. Is that still your recollection?

Mr. CHOPRA. No, it was in a manual. It was not a rulemaking. I just want to make sure I understand the question.

Mr. MOONEY. Okay. Do you know whether anyone in the Bureau that you work for advised you to seek an Administrative Procedure Act (APA) rulemaking? Did anyone advise you to seek a rulemaking—

Mr. CHOPRA. That has never been in an exam manual from any regulator that goes through notice and comment. The exam manuals are guidance for our examiners so that they can consistently conduct supervisory exams. They are existing law. They don't create any new obligations. And if anything, Congressman Mooney, we are trying our best to respond to the concerns that people don't know how we will exercise authority. We are trying to put more in public, and I get concerned when you say, oh well, we are issuing more things on our website or our press release. We are trying to put out more information so that people know, especially people who are small businesses or consumers, so that they understand and don't have to necessarily hire a lawyer to deal with it. I understand that there may be some places, and I am happy to talk to you further about it, but our goal is transparency.

Mr. MOONEY. Okay. I think I have a follow-up question to that. Thank you for that answer. I would say, unlike other financial regulators, the CFPB is under a sole Director rather than a bipartisan board. Given the significant criticism of this change and the organization to the examination manual from industry and consumers alike, do you believe that a bipartisan board of directors with diverse opinions would better serve consumers rather than a sole Director?

Mr. CHOPRA. I would say this. For about 150 years, the Office of the Comptroller of the Currency, which has far more employees, a far bigger budget, and a far bigger remit has been led by a single Director. I think that is part of the reason why Congress modeled the CFPB after them, and I think that, really, Congress decides how it wants to create the governance of its agencies. There are many single Directors. There are many multi-member boards. I think there are a lot of cons of multi-member boards, having served on one before, but I think that is really for Congress to decide.

Mr. MOONEY. Okay. Thank you for that answer. My last question is, would you vow today to not bring an enforcement action against any financial institution for a violation not expressly laid out in statute or in APA rule?

Mr. CHOPRA. Again, we cannot bring enforcement actions unless we plead a violation of law or regulation. That must have specific reference to what Congress has enacted, and the President has signed into law and regulations that are codified into the Code of Federal Regulations. That is how enforcement works. We have received input from people across-the-board. They want us to provide guidance. Director Kraninger created the advisory opinion program, which we have continued, which is about providing guidance and helping people understand their obligations under current law.

Mr. MOONEY. Okay. I only have a few seconds left. I just want to close by saying I have introduced legislation that would require the CFPB to undergo a comprehensive cost-benefit analysis in its rulemakings to ensure that the benefits of any rule outweigh the costs. Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you. 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 so much, Madam Chairwoman, and, Director Chopra, it is so good to see you. Thank you for being here today, especially in this moment, at a time when consumers are being embezzled by FTX, and are subjected to junk fees. I am deeply grateful for your leadership, particularly as it pertains to the issue of medical debt. The CFPB's report earlier this spring highlighted the devastating challenges that can occur when an individual incurs medical debt.

I want to lift up an example of one of my constituents, whom I will call Jamal for the purposes of this hearing, a young man working a full-time job like millions in our country, but still living paycheck to paycheck, experiences a catastrophic accident, and receives medical attention in a nearby hospital. And now, Jamal cannot afford to pay the bill, to pay out of pocket since he lacks insurance, and so he is forced to incur thousands of dollars in medical debt. Director Chopra, let's say this medical bill ends up on Jamal's credit report. Yes or no, is it fair to say that this could result in reduced access to credit for Jamal, in your opinion?

Mr. CHOPRA. Yes.

Ms. PRESSLEY. And could this lead to Jamal avoiding medical care in the future even if he needs treatment? Yes or no?

Mr. CHOPRA. Yes.

Ms. PRESSLEY. And could this medical debt make it more difficult for him to secure future employment?

Mr. CHOPRA. Yes, we have seen how employment background checks and background reporting has a huge impact on people.

Ms. PRESSLEY. And if this medical bill is inaccurate, would Jamal still be penalized with a lower credit score?

Mr. CHOPRA. If the score includes it and it is inaccurate, yes, generally speaking, it would, and it is a huge problem. It is one of the reasons the CFPB has focused a lot on medical debt, especially credit reporting, and the huge amount of inaccuracies and the impact on the lives of people like Jamal.

Ms. PRESSLEY. Yes, thank you, Director. Again, it is a systemic issue. Jamal is no anomaly. It is the reality of tens of millions of households and individuals across this country. Roughly 20 percent of the American public are people with medical debt who are disproportionately representing marginalized communities who are struggling with their health issues. But on top of that, they are further inflicted with lower credit scores, resulting in financial hardship, and that is an injustice.

Director Chopra, I am so pleased that following the CFPB's report, Equifax, TransUnion, and Experian announced they would make policy changes that would remove 70 percent of medical bills from credit reports. This is really welcome news, but I am still concerned about the 30 percent of medical bills that won't be removed and the impact that this will have on low-income consumers in my district. In order to build on the Bureau's work thus far, what further steps is the Bureau considering to protect these vulnerable consumers, many of whom may be facing catastrophic or chronic medical issues?

Mr. CHOPRA. We are certainly considering rulemaking under the Fair Credit Reporting Act to address the issue of medical debt. I am really worried that credit reports can be used as a tool of coercion into having people pay debt they already paid, or that they really never owed in the first place. I think I see this as a privacy issue to being able to slander someone, and basically say they haven't paid something that they may not have even owed. This is out of control, and I think it is a place where we continue to be seriously worried, especially for medically-necessary debt.

Ms. PRESSLEY. Thank you so much. Certainly, our credit score is our reputation, our financial reputation, and our credit reporting system is a broken one, and we have to legislate and act in such a way to address it. Our medically-vulnerable and disabled neighbors, many of whom are struggling with the devastating impacts of medical debt, and I only see that growing, working on the issue of a long COVID in that there is a growing community of those who are living with the symptoms of COVID, or COVID long-haulers, and I only see this continuing to be an issue. Again, I thank you, Director Chopra, for your leadership on the issue of medical debt at the CFPB, and I thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you. The gentleman from North Carolina, Mr. Budd, is now recognized for 5 minutes.

Mr. BUDD. Thank you, Madam Chairwoman, and thank you, Director, for being here today. It is good to see you. Today, I want to touch on an issue related to transparency and encouraging innovation and competition. Previously, CFPB Directors recognized the importance of fintech innovation for both providers and consumers. In fact, this was the original focus of Project Catalyst, I believe, under Director Cordray. In contrast, you have terminated the fintech sandbox program that issued no-action letters. Instead, you are now asking startups in the public to file rulemaking petitions to ask for clarity. How does your process provide consumers with more choices and create an environment for the best products to win, while at the same time allowing new firms to enter the market, to give us greater competition?

Mr. CHOPRA. Basically here, the biggest thing we are thinking about is how to invite new players in. The old CFPB approach, I think, was about picking winners and losers. It was about choosing one company that would get the benefits and not anyone else. You mentioned filing petitions for rulemaking. They can also make requests for advisory opinions and other information, and the key, sir, is that it is broadly applicable. So, we want to make sure it is not just one firm that is becoming the winner, but many of them.

We have also put a lot of attention on proposing Section 1033 rules, and we have received a huge response from fintechs on it, about how they will be able to compete against the big guys and be able to challenge incumbents. We have talked to investors, and to analysts, about what is the way in which there can be consumerfriendly innovation and how do we invite them in. We have also identified some places where existing players may be blocking new entrants in order to resist that competition, so I think we are working on all fronts and trying not to pick winners and losers.

Mr. BUDD. Thanks, Director. I want to go back to the fintech sandbox. I want to dig a little deeper into that before we get too far afield. In your view, can regulatory sandboxes, like the ones in my State of North Carolina and others across the U.S., reduce barriers to innovation, help us keep pace while providing the necessary guardrails?

Mr. CHOPRA. Yes. I think there are lots of ways in which the regulators can work with those who are creating new products. I think sometimes sandboxes have a real goal. What are the obstacles we are trying to topple over? How might a product structure need some additional information about how to comply with the rules of the road? We totally embrace that, and we actually look pretty carefully at how the sandboxes are working overseas, and how they are doing in the States. While we don't call ours a sandbox, we are really trying to reinvent how we are promoting innovation and more entry.

Mr. BUDD. Thank you. Committee Republicans sent you a letter earlier today, which I would like to ask for unanimous consent to submit for the record.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. BUDD. Thank you, Madam Chairwoman. The letter expresses our concern with the Bureau's recent actions over non-banking entities that both exceeds CFPB's statutory authority and harms the very consumers that the Bureau was established to protect. What I would like is, I would like to have your commitment that you will substantively respond to the letter by its deadline of December 30th. Do you want me to do that?

Mr. CHOPRA. You have not sent me the letter.

Mr. BUDD. Asking you just to review it and subsequently respond.

Mr. CHOPRA. Yes, we will try our best to make sure we accommodate whatever you are looking for.

Mr. BUDD. So, we can count on your response by December 30th?

Mr. CHOPRA. I will work to make sure that we are responsive to the letter as best we can. I don't know what is in it.

Mr. BUDD. We are just asking for a substantive response to the best of your ability.

Mr. CHOPRA. I will give a substantive response.

Mr. BUDD. Thank you. I yield back.

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

Mr. LYNCH. Thank you, Madam Chairwoman, and welcome, Director. It's good to see you again. The last time you were here, we actually had a discussion about the urgent need for policy changes to protect consumer data. And as Chair of the Task Force on Financial Technology, we have had a number of hearings exploring the need for a more robust consumer data rights framework, and we actually had considerable agreement from the Republican side as well, so it is one of those areas I am eager to work on.

I was pleased to see that the CFPB published an outline of proposals being considered in advance of the rulemaking that would implement Section 1033 of the Dodd-Frank Act in October. I was wondering if you might be able to expand a little bit on some of those proposals? I know that it was a general outline, but are there certain avenues that you prefer or favor?

Mr. CHOPRA. Yes. I think that we are looking to propose a rule that would require financial firms to provide, in a machine-readable, secure way, people's personal ledger data, on their transaction accounts, and that the goal would be that they could permission that to other entities that they might want products or services from. And I think the goal would be, we want people to be able to switch more seamlessly. I think when consumers can switch more easily, that gives them the ability to get better pricing, it gives them the ability to say, I want better customer service. And ultimately, that is how the competitive market will work best. Data protection has to be part of that.

And we are really thinking through how to make sure that this rulemaking, and more data sharing, doesn't create an underworld or a surveillance-type market, and I think that is a place where we are going to see the authorities we have. But of course, as I mentioned in my testimony, we really need to update these financial privacy laws too. I think they can be much more robust, and I think they can create issues with discrimination and other issues as well.

Mr. LYNCH. That was my next question. The Gramm-Leach-Bliley Act (GLBA)—I think in previous hearings, you might have indicated a need to update that. What could we be doing? Apart from the rulemaking that you are proceeding with, what can we do to sort of enhance or supplement some of the things that you are doing, which I think is on the right track? If you empower the consumer to control their own data, it gives them leverage in this whole process and portability, obviously, because they can vote with their feet. But GLBA, what is—

Mr. CHOPRA. There are two main pieces of the GLBA: the privacy framework; and the security framework. The privacy framework is where we have rulemaking authority. The Congress specifies that financial institutions provide a notice of what they are collecting, and then consumers can opt out. But I think consumers in this digital world, in some ways are feeling like, what is the point of all of these? Everyone is collecting data on me. How come there aren't any substantive limitations on what data can be collected? Sometimes it is very sensitive data, and who is it being shared with, and do we have confidence that who it is being shared with isn't being further re-shared and re-shared again and bought and sold and combined with other information. So, I think we are seeing a number of places where State privacy laws are happening. There is work at the Federal level. We think it should be all-of-the-above, so we can protect people.

Mr. LYNCH. Is there a way to right-size the demand? If a consumer is making a transaction, buying a pair of socks, I think I have referred to it in the past, something as simple as that, you should not have to get naked from a data privacy standpoint just because you want to buy a pair of socks. Is there a way to sort of modulate what a business can ask for? Obviously, if you are going for a mortgage or something like that, there is a deeper dive that they have to do to protect their own interest, but if it is just a hand-to-hand transaction, there is no need for someone to deliver every bit of information that they have about themselves personally to make some minor purchase.

Mr. CHOPRA. Yes, including their social map, their list of contacts, and I fear that in the metaverse, this is going to happen on steroids, so the key is thinking about substantive limitations and really, how do we get there?

Mr. LYNCH. I would appreciate working with your staff in terms of trying to find the contours of that, and where the outlines and the guardrails might be in that process, so thank you. Madam Chairwoman, I yield back. Thank you for your courtesy.

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

Mr. ROSE. Thank you, Chairwoman Waters, and I also thank Ranking Member McHenry for holding this important hearing today. And thank you, Director Chopra, for being with us.

The Bureau has been operating at warp speed. Even in just the last quarter, it has proposed an extensive rulemaking on non-bank financial firms. It has taken numerous enforcement actions across the consumer finance landscape and seems to be operating on all cylinders. It has issued guidance on consumer reporting companies and junk fees, published bulletins and reports on cryptocurrencies, and student banking products, and so much more, and it doesn't look like you are slowing down at all. We have a lot to catch up on, Director Chopra, so I will dive right in.

It has come to my attention that the Bureau has been demanding that non-bank financial companies turn over attorney-client privileged information during the course of its supervisory examinations. You should know that the attorney-client privilege is one of the oldest and most respected privileges in our legal system. It prevents a lawyer from being compelled to testify about his or her clients, and courts are very protective of the need for that to ensure that legal advice can be useful to clients. It has been reported that some organizations have raised concerns about your practices in this area, particularly where Congress has never legislated with regard to the Bureau or its prior regulators, like with respect to non-banks. Director Chopra, what is your statutory authority to demand such information from these entities?

Mr. CHOPRA. I am not actually aware that there is a new issue related to this. My understanding is that years ago, by my predecessors, there was some publication about privileged logs. For example, at a law enforcement investigation, when producing documents, they might include a log with it. I am happy to look into that more—

Mr. ROSE. Please do. If you will check and see, it is very much a concern to me as a recovering lawyer, and I would like to know what the current stance is. And if the Bureau believes that you have authority there, we would like to know exactly what the basis for that is.

I wanted to follow up on a statement that you made earlier to Mr. Lucas about the CFPB being subject to adequate oversight because the Financial Stability Oversight Council (FSOC) can overturn CFPB rulemakings. Director Chopra, how many CFPB rulemakings has the FSOC vacated?

Mr. CHOPRA. To my understanding, none, because I don't think any of the CFPB's rules have met the standard for threatening the safety and soundness of the financial system. Part of what we are required to do under the statute is consult with the other agencies before promulgating any sort of rule to understand any sort of impacts on safety and soundness. So, that is an important check, but it is one clearly where it has affected the way the CFPB has analyzed information about impacts on insurance.

Mr. ROSE. In any event, though, doesn't it take a two-thirds vote of the FSOC to overturn a CFPB rulemaking?

Mr. CHOPRA. Yes, I believe that is what the statute says.

Mr. ROSE. And you are a member of FSOC, is that right?

Mr. CHOPRA. That is right.

Mr. ROSE. Okay. Director Chopra, would you be surprised to hear that before today, the Democratic Majority has only held one hearing with government officials as witnesses in the last 146 days?

Mr. CHOPRA. I don't actually track that. I know since I have taken office, in 14 months, I have appeared 5 times. That is all I can say.

Mr. ROSE. And I wonder, do you expect that to change here in just a few short weeks when there is a new Republican Majority?

Mr. CHOPRA. I don't want to predict what hearings are going to be held, but we have always cooperated and worked productively with Congress.

Mr. ROSE. Would it be safe to say that you are excited to spend more time visiting with us here—

Mr. CHOPRA. If you ever want to meet with me, I am happy to do it, sir, and, of course, we will continue meeting with you.

Mr. ROSE. One of our former colleagues, and your predecessors, Mick Mulvaney—I frequently used his testimony before this committee to highlight ways in which the Bureau could be improved, typically calling attention to the CFPB's funding mechanism and the fact that the Director is not required by statute to testify before this committee, but is merely required to appear before the committee. Director Chopra, could you please provide some suggestions for improving the CFPB, to bring it more in line with other Federal agencies?

Mr. CHOPRA. Yes. The number-one issue really, and this has been supported by my predecessor, Director Kraninger, as well, is we do not have an equivalent whistleblower protection kind of system. And in terms of rewards and protections, I think that is a place where there has been bipartisan agreement, and that would be a good improvement.

Mr. ROSE. Thank you. I see my time has expired, and I yield back.

Chairwoman WATERS. Thank you. The gentlewoman from Michigan, Ms. Tlaib, is now recognized for 5 minutes.

Ms. TLAIB. Thank you so much, Chairwoman Waters. I want you to know that this has been an incredible experience being on this committee with you as the chairwoman. I am actually eager to see your portrait in this room. I understand that will be much later.

But, again, it has been an incredible experience to have your mentorship and your leadership as a new member on this committee, as well as choosing to do the hearing on one of my favorite agencies, which is really the people's advocate agency.

These are folks, residents who have to take on the big banks, the mortgage companies, the credit card companies, the credit reporting agencies. These are big, mega-billion-dollar corporations. These people can't afford a lawyer, and the CFPB is their advocate. They might not be in the courtroom, but they are there to ask the right questions and demand accountability for unjust actions by a lot of these corporate entities.

Dr. Chopra, something that you have always shared personally about why the protection of folks experiencing medical debt is so important to you, and I just want to acknowledge and appreciate so much that you have made it a priority to address the medical debt crisis in our country, have brought it up a number of times. But what I also appreciate is that your team decided to issue a report highlighting the complicated and burdensome nature of the medical billing system in our country.

On August 2nd of this year, the Wall Street Journal had reported that Equifax provided incorrect credit scores for potentially millions of customers applying for credit, including home loans, credit cards, and auto loans. And then, even hearing that complication with some of the credit reporting agencies, they decided, I think, after the report that they would take out some of the medical debt from people, and I appreciate that. I think it impacted like 70 percent of folks, which is a huge, tremendous thing. But I also read, and you can correct me, is it 40 percent of Americans filed bankruptcy because of medical debt?

Mr. CHOPRA. One of the major contributors to bankruptcy filing is an illness and resulting financial trauma from that.

Mr. TLAIB. And addressing that, we need more to be done regarding this crisis. I know so many folks have concentrated on certain other debt, but medical debt, for me, is through no fault of our families and residents experiencing it, but when you hear things like Equifax doing that, I think 2 days later, there was a class action lawsuit that was filed against them led by attorneys representing Nydia from Florida and an alleged Equifax error which landed Ms. Jenkins with a substantially pricier car loan and so forth.

According to the lawsuit, and I know you read all of these things, but Ms. Jenkins was pre-approved for a car loan in January and was denied in April. And then, because in her report, Equifax made a big mistake—I think it was off by 130 points—and because of that, she was denied and then allegedly forced to buy a car from a different dealership, and do you know she now pays about, I think, $2,000 or more per year than she would have if she qualified. In your view, were Equifax's actions in violation of the Fair Credit Reporting Act?

Mr. CHOPRA. I have to be careful on this one—

Ms. TLAIB. I know.

Mr. CHOPRA. —because they are subject to our entity, but let me just be clear on it.

Ms. TLAIB. But I think the American public needs to know. This is huge.

Mr. CHOPRA. The Equifax data breach was really an egregious violation of law. We are concentrating on actors that cause widespread harm. We are not focused on little players, and the extent to which the market mechanism doesn't work, again, consumers don't choose Equifax, Experian, or TransUnion—

Ms. TLAIB. I know.

Mr. CHOPRA. It is chosen for them, and I think that really is a core part of the issue.

Ms. TLAIB. Do you think Equifax had the appropriate procedures and controls in place to ensure accuracy? They are controlling whether or not somebody becomes a homeowner, can get a car to go to work, and so much more. Even families that tell me they have to get loans to send their kids to college, and all of it has been impacted if they are not accurate, It is a monopoly, right? These are three major agencies that control whether or not my residents not only survive, but thrive.

Mr. CHOPRA. There are a handful of data firms, and I would say it is not just the three credit reporting companies, but also increasingly other tech data firms have enormous power over all of us. And that is why we need laws to be enforced to make sure that consumer rights are protected.

Ms. TLAIB. I think in the next session, I do want to work on some sort of way to figure out, especially with the credit reporting agencies, and I, of course, will continue to work with our chairwoman on this, but it is being used for so many things, such as auto insurance rates. Whether or not somebody has a high credit score has nothing to do with whether or not they are a safe driver, but it actually is now disparate impact, and is impacting the majority of Black drivers across our nation. With that, I yield back. Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you. The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Madam Chairwoman. Director Chopra, welcome. Thank you for being here. In April, I asked you a number of questions about the CFPB Fellows Program. I still have a lot of concerns about the appropriateness of it. The chairwoman was very concerned with the last Administration having 10 political appointees. While you only have 8, you have 21 fellows, most of them making over $214,000, and all of them making more than you. I do want to say thank you, though, because we asked questions, we sent a letter, and 2 weeks later you responded, on May 27th, that you were working on it, and then on October 14th, you sent really a large amount of information regarding all of the ethics requirements that the fellows were subjected to, so I really do appreciate it. I have some follow-up questions, but before I get there, you all took the website down. Do you know why you took the website down for the Fellows Program?

Mr. CHOPRA. The CFPB website?

Mr. TIMMONS. Yes.

Mr. CHOPRA. Okay. The section on the Fellows Program?

Mr. TIMMONS. Yes, sir. It is gone.

Mr. CHOPRA. I think it was a job posting.

Mr. TIMMONS. Okay.

Mr. CHOPRA. Maybe that is why, but if there was a different section, I will take a look.

Mr. TIMMONS. Okay. That is very interesting.

Mr. CHOPRA. But just to be clear, I think it was a job posting that is on a job.

Mr. TIMMONS. No, it described everything, and we can follow up with that too. The House of Representatives and the Senate have financial disclosure requirements for Members of Congress and their spouses. And any staffer making over $135,000 also has this financial disclosure requirement. The reason that we have those, theoretically, is that we have inside information that could impact publicly-traded companies' values, and we could theoretically profit off of that. People allege that happens with certain individuals. I don't own any publicly-traded company, so I don't have this concern for myself, but there is talk of banning Members from even owning publicly-traded companies at all, and that would not only apply to Members, but to their spouses, and to staff making more than $135,000 and their spouses. And I have been here for 4 years, I don't have any inside information that I could have traded on if I wanted to, so that is not really true for your 21 fellows. You all issue guidance. They have advance notice of that guidance. That guidance generally impacts publicly-traded companies' values. Is that fair?

Mr. CHOPRA. No, I think they must adhere to the same exact requirements. For example, on our prohibited holdings list, they are not allowed to hold any of those—

Mr. TIMMONS. That does not apply to their spouses. It doesn't. What you sent me says it does not, so—

Mr. CHOPRA. Okay. I will look into that, but I don't see it. As I understand it, there is no difference between those who are hired—there is no differences in employee types who are not subject to the same—

Mr. TIMMONS. The information that you sent us says that your 21 fellows and their spouses have no financial disclosure requirements. So, we have no idea whether they are using inside knowledge of guidance you are about to issue that is going to impact publicly-traded companies, to trade on and to make a whole bunch of money. We have no idea. There is no way of knowing. I think that we probably should fix that. There is lots of talk of people benefiting off of information. I am not saying anybody is. I am optimistic they are not, but generally speaking, we want to give the public maximum confidence, especially when there are a lot of detractors from your organization that happens. But it is fair to say that we should have a high degree of confidence that your fellows or their spouses are not trading on advanced notice of guidance to make a whole bunch of money. That is fair. Do you agree with that?

Mr. CHOPRA. I do agree, and, in fact, the Federal Reserve System has had a number of major issues related to trading of securities. The Fed's Inspector General (IG), which is also our IG, has provided us, and we have gone above and beyond to make sure that our folks are not engaged in any similar activity. I want to look into this issue about spousal coverage. My understanding is that all employees really are under the same rubric. There are some higher standards for those who make over a certain amount, but I don't think there are any differences among that. And I would, by the way, support more—

Mr. TIMMONS. We will get some legislation written to make sure that anybody who has access to information that they could benefit from has financial disclosures.

Mr. CHOPRA. And by the way, I would tell you, we would absolutely report any of our employees to appropriate civil and criminal authorities——

Mr. TIMMONS. But you would never know.

Mr. CHOPRA. —if they use non-public information.

Mr. TIMMONS. You would never know, because their spouses don't have to tell you their financial decisions. They don't have to tell you their trades. They don't have to tell you anything because that is not the law. The law, and again, in Congress, if you make over $135,000 as staff, or Members or spouses, you have to disclose everything—

Mr. CHOPRA. My understanding is it applies to all of our employees. There is no—

Mr. TIMMONS. It does not apply to your fellow's spouses. That is what you—

Mr. CHOPRA. Does it apply to the career employee's spouses? I think that is what we will work on. We will work on—

Mr. TIMMONS. I am just looking at the fellows. We will work on it. I really appreciate it. Thank you, sir.

Mr. CHOPRA. Thank you, sir.

Chairwoman WATERS. Thank you. The gentlewoman from Pennsylvania, Ms. Dean, is now recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chairwoman, and I associate myself with the words of our colleague, Ms. Tlaib. It has been a privilege for me to serve on this committee with you, with your leadership, not just this Congress, but the 116th as well, so thank you for all your leadership. And thank you, Director Chopra, for testifying today, and thank you for the work of the CFPB.

I thought I would start with the state of household finances. We know that high deposit amounts due to pandemic relief programs have begun to decrease, especially for lower-income Americans. The New York Fed reported that the 15 percent year-over-year increase in credit card balances for the third quarter of this year was the largest in 20 years. They also noticed an increased delinquency rate across all debt types. Director Chopra, how concerned are you about the state of finances for average Americans given current economic conditions?

Mr. CHOPRA. I appreciate the question. One of the things that is so key here is we started seeing a return to normalcy for most American households. They were spending again. They were borrowing again. There are certain places where they faced increased costs because of inflation or, say, vehicle prices. So, auto loans and credit cards have gone up. Delinquencies have returned, and in some specific segments, we see that delinquencies are actually above the pre-pandemic levels. It is a place that we are really looking at the data, working with the Fed and the Treasury to understand what is happening. You are right that at the lowest income levels, we are starting to see a bit more pressure on those households.

Overall, though, I think the volume of deposits in the system has not gone down as much as we would have anticipated for those households because of the strong labor market, so I really feel it is not the CFPB's job to make any projections. My job as Director is to be paranoid and ready so that we can be decisive if things quickly deteriorate. There is a lot of uncertainty in the global economy, and we spend a lot of energy being prepared for that.

Ms. DEAN. In what segments are you seeing increased delinquencies?

Mr. CHOPRA. There is a place where we have seen at the lowest credit tier. In auto, we see that as elevated relative to pre-pandemic. Obviously, the pandemic had very different types of contours. We have also started to look at where student loan borrowers who are not currently in repayment, how are they currently faring on their credit cards and auto. So, we do see that those with student loan debt are actually having some issues.

Obviously, we have to look at all of these pieces together to see how household finance is changing, and, of course, we want to make sure that when it comes to housing and mortgages, that is the place with the most exposure to the economy. And we see that refinancing mortgage origination has gone down quite a bit, and that is having lots of effects on homeowners. Increased interest rates are leading to billions of dollars in more costs for those borrowing on credit cards and other debts, so we are seeing some major changes in tracking it closely.

Ms. DEAN. That connects to my next thought or my next concern, and maybe my own paranoia. In hearings in this committee earlier this year, one issue that came up is homebuyers' renewed interest in adjustable-rate mortgages (ARMs), given the rising interest rates, something that I think gives all of us some pause, when you consider the role that ARMs played in the 2008 global financial crisis. While the ARM share was only about 3 percent in January, it increased to 10 percent in the spring as the Fed started raising rates. You noted this trend in your testimony. Director Chopra, how concerned do we need to be about the resurge of ARMs? Is there more we need to do to ensure borrowers are protected?

Mr. CHOPRA. As of right now, I would not be too concerned. The reason why is that we have taken a look at this. Most adjustable-rate mortgages being originated are still following the ability-to-repay standard and the Qualified Mortgage Rule. I do think there are risks there, but I don't think we should equate it to what we saw in the lead-up to the financial crisis. That being said, I really worry that people are not shocked by the payments that they have to make. Fortunately, the reforms that Congress made to the mortgage market have made things safer, including for adjustable-rate mortgages. We have published information for consumers so that they know what they are getting into with an ARM. We have also been collecting comments on how to make sure people can refinance in the future.

Ms. DEAN. I see my time has expired. Thank you very much, Director.

I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you very much. The gentleman from Wisconsin, Mr. Steil, is now recognized for 5 minutes.

Mr. STEIL. Thank you very much, Madam Chairwoman. And thank you for being here, Director Chopra. I appreciate it. As I listened to you, you are a man who chooses your words carefully, and who thinks through what you are saying. As we know, in the markets, words have a big impact, and, in particular, CFPB, we are often, we are enforcing rules against wrongdoing within your jurisdiction. I think it is really important to keep in mind how impactful the words are that we use in this space. And I am sometimes concerned about ascribing motives and using inflammatory phrases that aren't standard terms of art, that can have big impacts on firms, on people, the workers, or customers. And so, I look back at the CFPB ombudsman conducting an independent review of Bureau press releases, and they found that some may include misleading language. Can you describe your policies and practices that you put in place since the ombudsman review to ensure your press releases are accurate, and then, can you confirm if you are following those policies?

Mr. CHOPRA. Yes. The ombudsman's review, I think was several years ago, if I am not mistaken. We make a lot of effort to make sure that we publish the complaint and any other information in an enforcement action, but absolutely, we will use plain language to explain what has happened. And in many cases, the conduct is egregious, and we need to sometimes say that so that people understand what exactly happened. It is not—

Mr. STEIL. But is it important to use terms of art in the industry, or are you trying to use flowery and descriptive language?

Mr. CHOPRA. I like to speak in plain language, because—

Mr. STEIL. Okay. That is good. You like to speak in plain language, in particular—

Mr. CHOPRA. In legal documents, we try and be very—

Mr. STEIL. Let's jump off the documents. Let's go to maybe some of your speeches. Are those reviewed by attorneys before you make them?

Mr. CHOPRA. In some cases.

Mr. STEIL. In some cases, yes, but some cases, no?

Mr. CHOPRA. I don't know. I can't speak to that.

Mr. STEIL. You don't know if your speeches are reviewed by legal people?

Mr. CHOPRA. I don't know if every single set of remarks I have done has been reviewed by an attorney. I just don't. I assume—

Mr. STEIL. That would likely mean that it had, that there is not a policy that you have where you prepare remarks—

Mr. CHOPRA. We are talking about the law. If I am just giving some sort of welcome or inviting people in that doesn't really involve policy, that may not be one that we review by—

Mr. STEIL. Yes, sir. Okay. In a previous speech, you referred to medical debt as a, "doom loop." Is that a helpful term? Could you have been more descriptive—

Mr. CHOPRA. Yes. I think actually—

Mr. STEIL. —or do you think, "doom loop," is the appropriate term?

Mr. CHOPRA. I think medical professionals actually use that term—

Mr. STEIL. Because it—

Mr. CHOPRA. —where patients feel like they are in an endless infinite loop with the insurance company and others, and that is how it feels, yes.

Mr. STEIL. Okay. You refer to the credit bureaus as a cartel. Is that—

Mr. CHOPRA. No, I did not. What I said there was that the way in which they made a decision was not what you would see in other sectors. They came together and made a uniform business decision. That actually concerned a number of people because it is not the sign of a competitive market. If banks got together and did that, that would raise some serious questions, so I do worry that those three players—

Mr. STEIL. So, you think it was an accurate description to call those three players a cartel?

Mr. CHOPRA. I didn't call them that. I said they were acting in that manner.

Mr. STEIL. They were acting like a cartel but not a cartel?

Mr. CHOPRA. I will read the statement again.

Mr. STEIL. Maybe we are splicing words. Maybe an attorney's advice might have been helpful here.

Mr. CHOPRA. Let me just say this. I take your feedback about thinking about language, and I guess I would say that it is important to balance both precision and understandability. People need to understand what their government is doing. When we just speak in jargon and just speak in citations or code, they don't understand, and, in fact, it is businesses that also want it. It is consumers who want it. It is our job to be able to convey what we are doing and, in some cases, to be able to say when conduct is unlawful and egregious, and that is what we do sometimes.

Mr. STEIL. As I say, as we look back at that previous ombudsman review, I think it might be good practice that people review some of the comments because of flippant remarks or descriptive language that is not actually held in statute. The reason people speak in jargon is, in particular in the financial space, I think it is important for people to understand where you are coming down in any rule or regulation because the power invested in you by previous Congresses, not this Congress, is incredibly significant.

This Congress doesn't hold authority over the appropriations process, which I think it should. It doesn't matter whether or not you think it should because you don't need to respond to the appropriations process. You don't even need to comment on it. Previous Congresses have bound this Congress and the operations of the CFPB. So, I would flag to you that the word choice you are using with the power that you have is quite significant, not only in the markets, but to consumers, to individuals who are dependent upon you doing your job well. I thank you for being here. Madam Chairwoman, I yield back.

Mr. CHOPRA. And I take the feedback seriously.

Chairwoman WATERS. Thank you so very much. The committee will recess to allow Members to vote on the House Floor. We will resume immediately following this vote series.

The committee stands in recess. Thank you very much.

[recess]

Chairwoman WATERS. The committee will come to order.

The gentlewoman from Texas, Ms. Garcia, who is also the Vice Chair of our Subcommittee on Diversity and Inclusion, is now recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman, and I want to thank you for your steadfast leadership of this committee as we come to the closing days of the 117th Congress. Director Chopra, thank you again for being here today, and thank you for leading the Bureau with such drive, enthusiasm, conviction, and, most importantly, openness. You have been a breath of fresh air, knowing that you are always open to listening to us, taking our questions and being as transparent as you can in all of your answers, so thank you for that.

Last time we spoke, I asked you about the Bureau's authority on the issues regarding language access, which is an issue that, as you know, I have been following in Congress, and you and I have talked about before. You agreed that language access for consumers is important, and that, in particular, for people in the district that I represent, which is 77-percent Latino, you assured me that you would consider the authority of the Bureau and what it was that you could do. I wondered if you could give me an update?

I noted on page 58 of your semi-annual report that you talk about fair lending, outreach, and education, but nothing specifically about language access. And you mentioned that you have, through your publications that you issue, whether they are policy statements, requests for information, press releases, blog posts, podcasts, videos, brochures, website updates, on and on, that you are doing a lot more in terms of making sure that different stakeholders get this. Can you tell me how you have been able to implement any language access in any of these outreach materials that you are doing and in other areas?

Mr. CHOPRA. Yes. There are a few things I would say. One is, what is the key way in which people are communicating with consumers from financial providers? Whether it is remittances or mortgages, there is all sorts of work to translate disclosures and other key information. We have started the process of publishing officially-translated disclosures that providers can use, and sometimes, they are marketing in a language other than English. It only makes sense that they can also provide the right information in that language as well. With respect to our own materials and our own website, we have started a process of usability testing, with Korean speakers, Tagalog speakers, and many others, so that we can provide all the digital tools as well in languages other than English.

As you know, there are so many ways in which people feel intimidated or scared when it comes to financial challenges, and often language barriers amplify those anxieties, so we really see this as a long process with a long way to go. A big development was the change to the Uniform Residential Loan Application, which now is going to collect language preference and also include other information to help those who are not primarily English-speaking to navigate the mortgage process, including their mortgage servicer as well.

Ms. GARCIA OF TEXAS. You anticipated my next question, because one important step towards building wealth is homeownership, so I would like to ask you about the Bureau's recent actions to hold two mortgage lenders accountable for redlining and housing discrimination. Latinos are on track to be the largest group of homebuyers in the nation, but they, along with other minority groups, face redlining and other systemic barriers to homeownership. I was especially pleased that the Bureau is standing up for consumers. I think you have issued some civil penalties to some of these folks, directing millions of dollars to supporting homeownership in the communities and neighborhoods where those lenders deliberately discriminate against Black and Latino families. My question is, how will you make sure that those millions that you settled on the civil penalties will get to people? How will you make sure that it is distributed and that people that you intended will actually get benefit of that settlement?

Mr. CHOPRA. Obviously, our orders are not suggestions, and we did a few recent orders with the Justice Department, which outline how, whether it is restitution loan subsidies and others, need to be administered. They often submit a compliance plan, and we look at that carefully. I do want to acknowledge, though, that I think the orders in redlining, in some ways needs to be a little bit rethought, and we are going through a process to make sure that the victims of the redlining are actually getting benefits. I worry that some of the ways in which the Justice Department, and the CFPB, and others have remedied these in the past may not be reaching those who are truly the victims of redlining. And that is part of what we are talking about and thinking through with lots of different stakeholders.

Ms. GARCIA OF TEXAS. Thank you, because that is my concern, that the people who are harmed get the benefit of the penalties. Thank you.

Chairwoman WATERS. Thank you very much. The gentleman from Illinois, Mr. Garcia, is now recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Chairwoman Waters, and Ranking Member McHenry, for holding this important hearing, and, of course, I want to thank Director Chopra for testifying in front of this committee again and for your strong leadership at the CFPB.

Last week, a Member-elect, Maxwell Frost, tweeted that he had been denied an apartment because of bad credit, and his application fee was not refunded. Member-Elect Frost said, "This ain't meant for people who don't already have money." His experience is not unique. Tenant background checks make it harder for thousands of families to find housing. Finding housing is especially tough for people who have been evicted in the past and for people who have had criminal convictions. Just last month, the CFPB put out two reports about tenant background checks. The report found that in addition to contributing to higher costs and barriers to quality housing, tenant background checks are riddled with errors as well. Director Chopra, can you expand on some of your main findings from these two reports?

Mr. CHOPRA. Thank you so much. Tenant screening reports are covered by the Fair Credit Reporting Act, and they must have reasonable procedures to assure maximum possible accuracy, and one of the problems we are seeing is that people are being falsely matched with someone who is not them, and it is disqualifying them from obtaining rental housing in the location or neighborhood of their choice. I think we have to be really careful when it comes to tenant screening and employment screening. If they are not accurate, we will be in a system where some people are systematically unable to get a job or an apartment. As we are working on data privacy, credit reporting, I hope we can think about tenant screening and employment background screening to ensure that they are fair and accurate.

Mr. GARCIA OF ILLINOIS. Absolutely, and is the CFPB working on any rulemaking to address the harm caused by these background checks?

Mr. CHOPRA. Both the CFPB and the FTC have been undertaking a number of pieces of work. Over the last several years, there have been two significant enforcement actions: one against AppFolio; and one against RealPage. I expect there will be more of this going forward where there is law-breaking, but also, we are considering whether to launch additional rulemaking on the Fair Credit Reporting Act. I think a lot of focus is on the three credit reporting conglomerates, and it is true that they impact everyone, but as more data brokers and background screeners and Big Tech companies are forming these dossiers about us, we need to make sure that people's rights under the law are being respected.

Mr. GARCIA OF ILLINOIS. And briefly, is there anything Congress can do to help?

Mr. CHOPRA. As I outlined in my testimony, I think there are a lot of important issues related to data protection and privacy. Obviously, the Equifax data breach had a huge impact on people's confidence in certain circumstances to say, where is my data even being held? How is it being secured? I think we need to work on whether there are ways to meaningfully limit the types of information that financial firms are collecting about our most sensitive information, and make sure that there is not an underworld of our financial data where essentially our sensitive information is bought and sold. I think we have to be more careful, and I think on both sides of the aisle, there is a real interest in this.

Mr. GARCIA OF ILLINOIS. Thank you. Redlining and other discriminatory lending practices contributed to making Chicago, my hometown, one of the most-segregated cities in the country. The Community Reinvestment Act (CRA) was enacted more than 40 years ago to fight redlining. Despite the progress we have made because of the CRA, discriminatory practices still continue, and we have to keep fighting to get that legacy of segregation and discrimination out of lending practices. That is why I was happy to see the CFPB's recent actions to hold two mortgage lenders accountable for redlining and housing discrimination. Both the Trident Mortgage Company and Trustmark National Bank are required to pay millions in civil penalties. Hopefully, this will be a lesson to others who want to engage in these practices. Thank you, Director

Chopra. My time is just about up. I look forward to continuing to work with you to protect consumers.

Mr. CHOPRA. Thank you, and I know the Attorney General's redlining initiative—we are actively participating, and we are continuing to make progress not only in traditional redlining, but also the digital redlining of the future.

Mr. GARCIA OF ILLINOIS. Thank you, sir. Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much. At this time, I would like to thank our distinguished witness 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. Thank you so very much.

[Whereupon, at 3:09 p.m., the hearing was adjourned.]

A P P E N D I X

December 14, 2022

PREPARED STATEMENT OF
ROHIT CHOPRA
DIRECTOR
CONSUMER FINANCIAL PROTECTION BUREAU

BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

DECEMBER 14, 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 present the Consumer Financial Protection Bureau's (CFPB) submission of the Semiannual Report to Congress.

Our economy and our consumer finance markets are truly in transition, out of a pandemic and further into the digital era. I will offer some observations about the state of the economy today, as well as what the CFPB is doing to prepare for the future, especially as we confront the challenges of Big Tech in banking. I will also highlight a number of opportunities for bipartisan reforms.

The Current State of the Economy and Household Finance

The CFPB's market monitoring and supervision of financial institutions provides one lens into the state of the economy. Consumer demand has rebounded as our country transitions out of pandemic conditions. While the labor market remains strong, household debt has increased rapidly. The rise in household payment burdens from auto loans and credit cards has been particularly pronounced, given rising interest rates, the cost of vehicles, and the impact of inflation on other goods and services in the economy.

As consumers continue to navigate the economic impacts and ripple effects of the pandemic, their financial patterns have adapted and responded to changing conditions – as have the companies that serve them. For example, the CFPB has observed a notable increase in use of Buy Now, Pay Later products over the past few years. As interest rates on credit cards increase – and correspondingly, outstanding balances – a low- or no-interest Buy Now, Pay Later product that spreads the cost of goods over four payments can be particularly appealing. The CFPB's recent study on Buy Now, Pay Later noted a significant increase in use of these products to fund essential goods and services. The CFPB is working to ensure that Buy Now, Pay Later lenders adhere to the same protocols and protections as other similar financial products to avoid regulatory arbitrage and to ensure a consistent level of consumer protection.

Homeowners and home buyers are likewise adjusting to today's economic environment, which is characterized by higher interest rates and softening home prices. With interest rates above 6% for fixed-rate mortgages and average monthly mortgage payments on the rise, weekly mortgage applications for purchases are down 40% from the same time last year. Adjustable-rate mortgages have increased from less than 5% to nearly 10% of mortgages in just the last three years, suggesting that buyers seeking lower interest rates may be increasingly looking for alternatives to fixed rate mortgages.

Unsurprisingly, refinancing volumes have declined substantially. Given the importance of the mortgage market to both consumers and the economy, we will continue to assess trends closely, identify risks that require attention by regulators, and keep the public informed of their options.

Medical debt continues to be a significant pain point for many Americans. Our analysis of consumer credit reports revealed that approximately 43 million credit reports contained a medical debt collection item. Given the complexities of medical billing in the United States, there are serious questions about the accuracy of medical debt credit reporting. The three major credit reporting companies are voluntarily making changes that will lead to reductions in the number of credit reports with medical debt items. We continue to examine how medical debt burdens are impacting household balance sheets.

Given the outlook for the global economy, we are also working across government to be prepared if the macroeconomic environment deteriorates. We will be closely monitoring any impacts on U.S. consumer finance markets and the effects on household debt and household financial stability.

Promoting Competition and a Decentralized Market

In an open and competitive market, consumers can choose products and services that meet their needs and shift away from providers that treat them poorly. When new companies can challenge incumbents and when consumers can easily switch in a decentralized market structure, we are all better off. That's one of the reasons why Congress charged the CFPB with ensuring that consumer finance markets are competitive.

In recent years, Big Tech companies and other digital giants have leveraged their existing platforms to expand their reach into banking and finance. While new entry is typically welcome news, Big Tech's entry raises broader concerns about competition and user choice. The CFPB has been closely studying these firms' expansion into consumer finance markets, particularly with respect to payment platforms, like Apple Pay, Google Pay, PayPal, and Venmo. We also continue to examine the effects of large technology conglomerates entering payments and financial services in other jurisdictions, like in China, where Alipay and WeChat Pay have extraordinary reach.

Big Tech firms can tie their payment platforms to their social media offerings or their mobile operating systems. Users may be restricted in how they make contactless payments (like "tapping") outside of the proprietary app affiliated with that operating system. Since there are strong network effects from payment systems, other payment apps have a strong incentive to leverage their scale to harvest data for purposes other than moving money from one party to another.

We have issued orders to a number of these firms to determine what data they are extracting from transactions and whether they can use that data to preference their other business lines. We are also particularly interested in how these payment platforms implement existing consumer protections, as well as how they make decisions on account approvals, freezes, and terminations.

In addition to identifying emerging risks to competition, the CFPB is working to proactively create conditions for small firms and start-ups to challenge incumbents. One way to prevent excessive centralization is to accelerate the shift to open banking and open finance. That is why it is a key priority for the CFPB to expand personal financial data rights through a rulemaking under section 1033 of the Consumer Financial Protection Act. This long dormant authority, once implemented, can give consumers more control over their personal financial data.

In October, the CFPB launched the rulemaking process. The proposals under consideration would require that financial firms provide consumers access to their own financial data on deposit accounts, credit cards, and other transaction accounts. Consumers would then be able to provide permissions to this data safely and securely to other financial firms. We are also exploring how to limit firms from sharing or misusing this sensitive data.

I am encouraged by the positive reactions this rulemaking process has elicited from across the consumer finance ecosystem, and I look forward to continuing the rulemaking process over the coming months.

We are also focused on promoting competition and new entry in refinance markets, including in mortgage, auto, and credit cards, and we have made it a priority to identify ways to lower barriers to entry and to foster innovation that addresses important market gaps.

Bipartisan Action Needed by Congress

Over the past year, the CFPB has had productive discussions with members from both chambers and on both sides of the aisle. There are a wide range of issues where I expect commonsense reforms can be advanced on a bipartisan basis.

Protect the neutrality of the payments system

The transfer of money in commerce is at the core of a market-based economy. Digital technology is driving greater ease for individuals and small businesses to transfer funds in a fast and frictionless way.

Facebook's Libra proposal in 2019 was a wake-up call to regulators around the world. While the proposal was largely scrapped, it was an important reminder of the power and potential that tech giants hold, and of the duties of financial regulators to carefully monitor how large tech conglomerates and other platforms enter the payments system and financial services.

Analysts estimate that payment apps from large tech firms are the conduit for trillions of dollars in transactions. There is growing concern that a small set of players, including some of the largest tech companies, are gaining a greater foothold in the payments system.

The rise in dominance of a small group of payment platforms raises questions about how firms can suppress, suspend, or discriminate against certain participants over others. The CFPB has heard considerable concern about payment apps kicking off users, or even claiming the ability to reach into their accounts and fine users without a clear reference to any legal infraction. For example, the operator of a major payment network recently suggested that it could impose fines on users for their online speech. Policymakers need to determine whether it is appropriate for platforms to shut off a user's account access without suspicion of fraud, money laundering, or other illicit activity.

Public commenters also raised concerns that dominant payment players will abuse their positions by substantially increasing fees on small banks, merchants, and consumers.

Congress must ensure that payments systems are neutral and nondiscriminatory, by eliminating the incentive for firms to use their control over payments to favor their other interests. This could require, for example, separations between payment utilities and ancillary businesses. In the coming months, the CFPB will be sharing more results from its study with this Committee and others in Congress.

Strengthen Financial Privacy Protections

More than twenty years ago, legislators began raising concerns about the creation of behavioral profiles using our credit and debit card transaction data.[1] With the rise of e-commerce and tech platforms that monetize user behavior through targeted advertising, these concerns are even more acute. Making digital payments and transferring funds online has become almost obligatory in our modern economy, and as a result, subjecting oneself to digital surveillance has become obligatory too.

The CFPB has found that large tech firms are able to ingest extremely detailed data about a user, including sensitive information. Firms we have studied have laid the groundwork, through loose privacy policies and expansive data retention practices, to use this data in ways that challenge traditional notions of privacy and autonomy.

The Gramm-Leach-Bliley Act requires that consumers are provided with a notice and a right to opt out of certain data collection and sharing practices. I am concerned that this privacy notice is ineffective. Privacy policies for financial services are often all-or-nothing: consumers must choose to accept the company's terms wholesale or decline to use the company's product. Given the importance of many financial services to consumers' daily lives, this can create a false choice between submitting to data harvesting or foregoing access to critical banking services.

The financial services landscape has changed significantly in the past two decades, and our approach to privacy must evolve as well. While Congress is broadly looking at privacy protections across sectors of the economy, I hope that financial privacy can be a top consideration for this Committee. Specifically, I hope you can explore meaningful limitations on the collection, use, and sharing of personal financial data. The CFPB will be looking closely at ways to better protect privacy in areas under our jurisdiction, including, for example, the collection and distribution of personal data in credit reporting and the use of data authorized by a consumer under the CFPB's personal financial data rights rulemaking.

There are a number of other opportunities for bipartisan legislative efforts, such as reforming the Appraisal Foundation, expanding awards for whistleblowers, and protecting relationship banking. The CFPB is eager to work with this Committee to craft potential solutions on these and many other issues.

Thank you again for the opportunity to appear before you. I look forward to responding to your questions.

[1] See, for example, Freedom from Behavioral Profiling Act of 2000, S. 536, 107th Cong. (2001). https://www.congress.gov/bill/107th-congress/senate-bill/536?s=1&r=6

Semi-Annual Report of the Consumer Financial Protection Bureau

Table of contents

1. Rules and Orders

During the reporting period, the Consumer Financial Protection Bureau (CFPB or Bureau) issued the following significant rules and orders and other rule-related actions.[1] A complete listing of the CFPB's proposed and final rules can be found on the CFPB's website.[2]

1.1 List of significant rules and orders adopted by the CFPB

Final rules:

- *Facilitating the Libor Transition.* In December 2021, the CFPB amended Regulation Z, which implements the Truth in Lending Act (TILA), generally to address the anticipated sunset of London Interbank Offered Rate (LIBOR), which is expected to be discontinued for most U.S. Dollar (USD) tenors in June 2023.[3] The Bureau amended the open-end and closed-end provisions to provide examples of replacement indices for LIBOR indices that meet certain Regulation Z standards. The Bureau also amended Regulation Z to permit creditors for home equity lines of credit (HELOCs) and card issuers for credit card accounts to transition existing accounts that use a LIBOR index to a replacement index on or after April 1, 2022, if certain conditions are met. The rule also addresses change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to accounts transitioning away from using a LIBOR index. Lastly, the Bureau amended Regulation Z to address how the rate reevaluation provisions applicable to credit card accounts apply to the transition from using a LIBOR index to a replacement index.

- *Fair Credit Reporting; Name-Only Matching Procedures.* In November, 2021, the CFPB issued an Advisory Opinion to highlight that a consumer reporting agency that uses inadequate matching procedures to match information to consumers, including name-only

[1] Separate from the Bureau's obligation to include in this report "a list of the significant rules and orders adopted by the Bureau . . . during the preceding year," 12 U.S.C. 5496(c)(3), the Bureau is required to "conduct an assessment of each significant rule or order adopted by the Bureau" under Federal consumer financial law and issue a report of such assessment "not later than 5 years after the effective date of the subject rule or order," 12 U.S.C. 5512(d). The Bureau will issue separate notices as appropriate identifying rules and orders that qualify as significant for assessment purposes.

[2] A full listing of the CFPB's proposals and rules can be found here: https://www.consumerfinance.gov/rules-policy/.

[3] "Facilitating the LIBOR Transition (Regulation Z)." Consumer Financial Protection Bureau. Dec. 28, 2021. https://www.consumerfinance.gov/rules-policy/final-rules/facilitating-libor-transition-regulation-z/.

matching (i.e., matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer's first and last names are identical or similar to the names associated with the information), in preparing consumer reports is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the Fair Credit Reporting Act (FCRA).[4]

- *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X.* In June 2021, the CFPB issued a final rule to amend Regulation X to assist mortgage borrowers affected by the COVID-19 emergency.[5] The final rule established temporary procedural safeguards to help ensure that borrowers have a meaningful opportunity to be reviewed for loss mitigation before the servicer can make the first notice or filing required for foreclosure on certain mortgages. In addition, the final rule temporarily permitted mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application. The Bureau also finalized certain temporary amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on mortgage servicers.

- *Debt Collection Practices in Connection with the Global COVID-19 Pandemic (Regulation F).* The CFPB issued an interim final rule to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and contains the procedures for state application for exemption from the provisions of the FDCPA.[6] The interim final rule addressed certain debt collector conduct associated with an eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) in response to the global COVID-19 pandemic. The interim final rule required that debt collectors provide written notice to certain consumers of their protections under the CDC eviction moratorium and prohibit misrepresentations about consumers' ineligibility for protection under such moratorium.

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[4] "Fair Credit Reporting; Name-Only Matching Procedures." Consumer Financial Protection Bureau. Nov. 10, 2021. https://www.consumerfinance.gov/rules-policy/final-rules/fair-credit-reporting-name-only-matching-procedures/.

[5] Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X." Consumer Financial Protection Bureau. June 30, 2021. https://www.consumerfinance.gov/rules-policy/final-rules/protections-for-borrowers-affected-by-covid-19-under-respa/.

[6] "Debt Collection Practices in Connection with the Global COVID-19 Pandemic (Regulation F). Consumer Financial Protection Bureau. April 22, 2021. https://www.consumerfinance.gov/rules-policy/final-rules/debt-collection-practices-global-covid-19-pandemic-regulation-f/.

Proposed rules and pre-rule activities:

- *Small Business Lending Rule under the Equal Credit Opportunity Act (Regulation B).* In October 2021, the CFPB published a proposed rule amending Regulation B that would, if finalized, implement changes to the Equal Credit Opportunity Act (ECOA) made by section 1071 of the Dodd-Frank Act.[7] Consistent with section 1071, the Bureau proposed to require covered financial institutions to collect and report to the Bureau data on applications for credit for small businesses, including those that are owned by women or minorities. The Bureau's proposal also addressed its approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the proposed rule's effective and compliance dates

- *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X.* In April 2021, the CFPB published proposed rule that would amend Regulation X to assist borrowers affected by the COVID-19 emergency.[8] The CFPB took this action to help ensure that borrowers affected by the COVID-19 pandemic have an opportunity to be evaluated for loss mitigation before the initiation of foreclosure. As proposed, the amendments would establish a temporary COVID-19 emergency pre-foreclosure review period until December 31, 2021, for principal residences. In addition, the proposed amendments would temporarily permit mortgage servicers to offer certain loan modifications made available to borrowers experiencing a COVID-19-related hardship based on the evaluation of an incomplete application. The CFPB also proposed certain amendments to the early intervention and reasonable diligence obligations that Regulation X imposes on mortgage servicers.

- *Outline on Small Business Advisory Panel for Automated Valuation Model Rulemaking.* In February 2022, the CFPB outlined potential rulemaking options to ensure that

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7 "Proposed Rule: Small Business Lending Data Collection under the Equal Credit Opportunity Act (Regulation B)." Consumer Financial Protection Bureau. September 1, 2021. https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-shine-new-light-on-small-businesses-access-to-credit/.

8 "Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X." Consumer Financial Protection Bureau. April 09, 2021. https://www.consumerfinance.gov/rules-policy/rules-under-development/protections-for-borrowers-affected-by-the-covid-19-emergency-under-the-real-estate-settlement-procedures-act-regulation-x/.

computer models used to help determine home valuations are accurate and fair.[9] The outline of proposals and alternatives under consideration was released in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy.

When underwriting a mortgage, lenders typically require an appraisal, which is an estimate of the value of the home. While traditional appraisals are conducted in-person, many lenders also employ algorithmic computer models. These models use massive amounts of data drawn from many sources to value homes. The technical term for these models is automated valuation models. Both in-person and algorithmic appraisals appear to be susceptible to bias and inaccuracy, absent appropriate safeguards.

Given the crucial role of home valuation, the Dodd-Frank Wall Street Reform and Consumer Protection Act tasked the CFPB and other regulators with implementing rules on automated valuation models.[10] Work on the proposed rule is ongoing.

1.2 List of significant initiatives conducted by the CFPB

1.2.1 Reports

- *Report on The Consumer Credit Card Market.* In September 2021, the CFPB released its fifth biennial report to Congress on the consumer credit card market, finding that the market's growth over the prior few years reversed course in 2020.[11] In reviewing the market for potential consumer harm, the report presented the latest research on consumer card use, cost, and availability. From a 2019 peak of $926 billion, credit card debt fell to $811 billion by the second quarter of 2020, the largest six-month decline on record, before reaching $825 billion by the end of 2020. The release of the report reflects the

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[9] "Outline of Proposal and Alternatives Under Consideration: Small Business Advisory Review Panel for Automated Valuation Model (AVM) Rulemaking." Consumer Financial Protection Bureau. February 23, 2022. https://www.consumerfinance.gov/about-us/newsroom/cfpb-outlines-options-to-prevent-algorithmic-bias-in-home-valuations/.

[10] Dodd-Frank Act section 1473(q), 124 Stat. 2198 (codified at 12 U.S.C. 3354).

[11] "The Consumer Credit Card Market." Consumer Financial Protection Bureau. September 29, 2021. https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.

CFPB's ongoing work to ensure the adequacy of consumer protection and a transparent and competitive marketplace for all consumers, particularly the most vulnerable. The report notes several specific areas of concern—including issuer failure to report payment amounts to credit bureaus and issuer practices with respect to credit line decreases—that will be the subject of further work as the CFPB works to promote an equitable recovery. The CFPB also intends to increase its use of demographic data in its future research.

- *Report on Disputes on Consumer Credit Reports*. In November 2021, the CFPB released research finding that consumers in majority Black and Hispanic neighborhoods, as well as younger consumers and those with low credit scores, are far more likely to have disputes appear on their credit reports.[12] The new research is a part of a series of reports focusing on trends in the consumer financial marketplace, and uses data from auto loans, student loans, and credit card accounts opened between 2012 and 2019. The report shows that majority Black and Hispanic neighborhoods continue to face significant challenges with credit records. In nearly every credit category reviewed (auto loans, student loans, credit cards, and retail cards), consumers residing in majority Black areas were more than twice as likely to have disputes appear on their credit reports compared to consumers residing in majority white areas. For auto loans, consumers in majority Black areas were more than three times as likely to have disputes appear on their credit reports (0.8 percent of accounts with disputes in majority white census tracts compared to 2.8 percent of accounts in majority Black census tracts). When credit reporting has errors, this can limit fair and equitable access to individuals and families nationwide. The CFPB is committed to further researching the root causes of credit information disputes, as well as investigating the reasons for the demographic disparities found in the report.

- *Report on Medical Debt Burden in the United States*. In March 2022, the CFPB released a report highlighting the complicated and burdensome nature of the medical billing system in the United States.[13] The report reveals that the U.S. healthcare system is supported by a billing, payments, collections, and credit reporting infrastructure where mistakes are common, and where patients often have difficulty getting these errors corrected or resolved. The report details how medical bills are often incurred through unexpected and emergency events, are subject to opaque pricing, and involve complicated insurance or charity care coverage and pricing rules. In emergency situations, patients might not even sign a billing agreement until after receiving treatment.

[12] "Disputes on Consumer Credit Reports." Consumer Financial Protection Bureau. November 2, 2021. https://files.consumerfinance.gov/f/documents/cfpb_disputes-on-consumer-credit-reports_report_2021-11.pdf.

[13] "Medical Debt Burden in the United States." Consumer Financial Protection Bureau. March 1, 2022. https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf.

In other instances, patients, including those with chronic illnesses or who are injured or ill, may desperately feel that the need for medical care forces them into accepting any costs for treatment. The report outlines how these repercussions are especially acute for people from Black and Hispanic communities, as well as people with low incomes, veterans, older adults, and young adults of all races and ethnicities.

- *Report on Justice Involved Individuals.* In January 2022, the CFPB released a comprehensive review of the financial issues facing people and families who come in contact with the criminal justice system.[14] The report describes an ecosystem with burdensome fees and lack of choice where families are increasingly being forced to shoulder costs. It walks through the financial challenges families encounter at every stage of the criminal justice process, and the ways in which providers– often for-profit private companies– are leveraging a lack of consumer choice and their own market dominance to impose hefty fees at families' expense.

- *Action Plan to Advance Property Appraisal and Valuation Equity*. In March 2022, the Interagency Task Force on Property Appraisal and Valuation Equity (PAVE) issued a report outlining the historical role of racism in the valuation of property, examining the various forms of bias that can appear in residential property valuation practices, and describing how government and industry stakeholders will advance equity through concrete actions and recommendations.[15]

- *Report on Mortgage Servicing COVID-19 Pandemic Response Metrics*. In August 2021, the CFPB released a report on 16 large mortgage servicers' COVID-19 pandemic response.[16] The report's data metrics include call handling and loan delinquency rates and highlights the industry's widely varied response to the pandemic. The CFPB expects servicers to compare the report's findings to their own internal metrics to identify opportunities for, and demonstrate concrete efforts toward, improvement. The CFPB will continue its oversight work through examinations and enforcement, and it will hold servicers accountable for complying with existing regulatory requirements.

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[14] Justice-Involved Individuals and the Consumer Financial Marketplace." Consumer Financial Protection Bureau. January 31, 2022. https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf.

[15] "Action Plan to Advance Property Appraisal and Valuation Equity." Interagency Task Force on Property Appraisal and Valuation Equity (PAVE). March 2022. https://pave.hud.gov/actionplan.

[16] "Mortgage Servicing COVID-19 Pandemic Response Metrics: Observations from Data Reported by Sixteen Servicers." Consumer Financial Protection Bureau. August 10, 2021. https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2021-08.pdf.

1.2.2 Compliance bulletins

- *Compliance Bulletin on Supervision and Enforcement Priorities Regarding Housing Insecurity*. In April 2021, the CFPB warned mortgage servicers to take all necessary steps to prevent a wave of avoidable foreclosures.[17] The CFPB issued this bulletin in light of heightened risks to consumers needing loss mitigation assistance as the COVID-19 foreclosure moratoriums and forbearances end. The CFPB will closely monitor how servicers engage with borrowers, respond to borrower requests, and process applications for loss mitigation. The CFPB will consider a servicer's overall effectiveness in helping consumers when using its discretion to address compliance issues that arise.

- *Compliance Bulletin on Servicer Responsibilities in Public Service Loan Forgiveness Communications*. In February 2022, the CFPB released a bulletin detailing student loan servicers' obligation to halt unlawful conduct regarding borrowers' eligibility and benefits under the Public Service Loan Forgiveness (PSLF) Waiver.[18] The bulletin recommends actions servicers should consider taking to ensure they do not misrepresent borrower eligibility or make deceptive statements to borrowers about the PSLF program and the Waiver.

- *Compliance Bulletin Regarding Illegal Auto Repossessions*. In February 2022, the CFPB issued a compliance bulletin addressing illegal repossessions and sloppy servicing of auto loans.[19] The bulletin describes instances, in examinations and enforcement actions, where servicers may have violated the Dodd-Frank Act's prohibition on engaging in unfair or deceptive acts or practices.

1.2.3 Orders to file information

In October and December 2021, the CFPB issued orders pursuant to Section 1022(c)(4) of the Consumer Financial Protection Act. The CFPB has the statutory authority to order covered

[17] "Bulletin 2021-02: Supervision and Enforcement Priorities Regarding Housing Insecurity." Consumer Financial Protection Bureau. April 1, 2021. https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf.

[18] "Bulletin 2022-03: Servicer Responsibilities in Public Service Loan Forgiveness Communications." Consumer Financial Protection Bureau. February 18, 2022. https://files.consumerfinance.gov/f/documents/cfpb_bulletin_2022-03_servicer-responsibilities-in-public-service-loan-forgiveness.pdf.

[19] "Bulletin 2022-04: Mitigating Harm from Repossession of Automobiles." Consumer Financial Protection Bureau. February 28, 2022. https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2022-04_mitigating-harm-from-repossession-of-automobiles.pdf.

persons and service providers to turn over information to help the CFPB monitor for risks to consumers and to publish aggregated findings that are in the public interest.

- *Inquiry into Big Tech Payment Platforms*. In October 2021, the CFPB issued orders to collect information on the business practices of large technology companies operating payments systems in the United States.[20] The information will help the CFPB better understand how these firms use personal payments data and manage data access to users so the CFPB can ensure adequate consumer protection. The orders were sent to Amazon, Apple, Facebook, Google, PayPal, and Square. The CFPB is also studying the payment system practices of Chinese tech giants, including Alipay and WeChat Pay. The orders compel information on:
  - **Data harvesting and monetization.** Payment companies may be actively storing and sharing payment data across product lines and with data brokers and other third parties. In some cases, payments companies may be using this data for behavioral targeting. These practices may not align with consumers' expectations. The orders seek information on how companies collect and use data.
  - **Access restrictions and user choice.** When payment systems gain scale and network effects, merchants and other partners feel obligated to participate, and the risk increases that payment systems operators will limit consumer choice and stifle innovation by anticompetitively excluding certain businesses. The orders seek to understand any such restrictive access policies and how they affect the choices available to families and businesses.

    Other consumer protections. Consumers expect certain assurances when dealing with companies that move their money. They expect to be protected from fraud and payments made in error, for their data and privacy to be protected and not shared without their consent, to have responsive customer service, and to be treated equally under relevant law. The orders seek to understand the robustness with which payment platforms prioritize consumer protection under laws such as the Electronic Fund Transfer Act and the Gramm-Leach-Bliley Act.

- *Inquiry into Buy Now Pay Later*. In December 2021, the CFPB issued orders to five companies offering "buy now, pay later" (BNPL) credit.[21] The CFPB issued these orders to Affirm, Afterpay, Klarna, PayPal, and Zip to collect information on the risks and benefits of these fast-growing loans. The CFPB is concerned about accumulating debt,

[20] "Order to File Information on Payments Products." Consumer Financial Protection Bureau. October 21, 2021. https://files.consumerfinance.gov/f/documents/cfpb_section-1022_generic-order_2021-10.pdf.

[21] "Order to File Information on Buy Now, Pay Later Products." Consumer Financial Protection Bureau. December 16, 2021. https://files.consumerfinance.gov/f/documents/cfpb_bnpl_sample-order_2021-12.pdf.

regulatory arbitrage, and data harvesting in a consumer credit market already quickly changing with technology. BNPL credit is a type of deferred payment option that generally allows the consumer to split a purchase into smaller installments, typically four or less, often with a down payment of 25 percent due at checkout.

1.3 Plan of the CFPB for rules, orders, or other initiatives conducted by the CFPB

1.3.1 Rules and orders

Upcoming Period:

The CFPB published its Spring 2022 Rulemaking Agenda[22] as part of the Spring 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget. Among other things, the Unified Agenda lists the regulatory matters that the CFPB reasonably anticipates having under consideration during the period from June 1, 2022, to May 31, 2022.

Pre-rulemaking initiatives, as reflected in the CFPB's Spring 2022 Unified Agenda:

- Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that, subject to rules prescribed by the CFPB, a covered entity (for example, a bank) must make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from the covered entity. Section 1033 also states that the CFPB must prescribe by rule standards to promote the development and use of standardized formats for information made available to consumers. In November 2020, the CFPB published an Advance Notice of Proposed Rulemaking (ANPRM) concerning implementation of section 1033, accepting comments until February 2021. The CFPB will release materials in advance of convening a SBREFA panel, which is planned for December 2022.

Proposed rules for the upcoming period, as reflected in the Spring 2022 Unified Agenda:

[22] "Regulatory Agenda." Consumer Financial Protection Bureau. Spring 2022. https://www.consumerfinance.gov/rules-policy/regulatory-agenda/.

- As mentioned above, the CFPB is participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning automated valuation models appraisals. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs). These standards are designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. In February 2022, the CFPB released an outline of proposals and alternatives under consideration for the SBREFA panel, made up of representatives of small businesses that might be affected by the rulemaking. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.

- Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amended the Truth in Lending Act (TILA) to require the CFPB to prescribe regulations relating to "Property Assessed Clean Energy" (PACE) financing. As defined in EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the CFPB will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing and specifically authorizes the collection of data and information necessary to support a PACE rulemaking. In March 2019, the CFPB issued an Advance Notice of Proposed Rulemaking (ANPRM) on PACE financing to facilitate the CFPB's rulemaking process. The CFPB is working to develop a proposed rule to implement EGRRCPA section 307.

Final rules for the upcoming period:

- As mentioned above, Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the CFPB, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. On October 8, 2021, a Notice of Proposed Rulemaking (NPRM) was published in the *Federal Register*. The CFPB's next action for the section 1071 rulemaking is the issuance of a final rule, which is expected in March 2023.

- The National Defense Authorization Act (NDAA), enacted on December 27, 2021, amended the Fair Credit Reporting Act (FCRA) to prohibit consumer reporting agencies from furnishing a consumer report containing any adverse item of information about a consumer that resulted from a severe form of trafficking in persons or sex trafficking if the consumer has provided trafficking documentation to the consumer reporting agency. The NDAA includes a requirement for the CFPB to conduct rulemaking to implement the provisions it added to the FCRA.

1.3.2 Other initiatives

Upcoming Period:

- *Office of Servicemember Affairs 2021 Annual Report.* In June 2022, the CFPB released a review of the top financial concerns facing servicemembers, veterans, and military families, based on the complaints they submitted to the CFPB.[23] Servicemembers told the CFPB about billing inaccuracies and that debt collectors used aggressive tactics to recover allegedly unpaid medical bills. Servicemembers also reported failures by credit reporting companies in helping to resolve inaccuracies and other credit reporting issues. Servicemembers, veterans, and military families have now submitted more than 250,000 consumer complaints since the CFPB began collecting complaints in 2011. In 2021, they submitted more than 42,000 complaints to the CFPB. The most common types of complaints– more than 60 percent– were about credit reporting and debt collection.

- *HMDA Data Release, Summary, and Beginners Guide.* In March 2022, the CFPB released the 2021 Home Mortgage Disclosure Act (HMDA) Modified Loan Application Registers, modified to protect privacy, for individual HMDA filers and a guide to assist stakeholders on how to use HMDA data.[24]

[23] "Office of Servicemember Affairs 2021 Annual Report." Consumer Financial Protection Bureau. June 13, 2022. https://files.consumerfinance.gov/f/documents/cfpb_osa-annual-report-2021.pdf.

[24] "Modified Loan/Application Register (LAR)." Federal Financial Institutions Examination Council. March 24, 2022. https://ffiec.cfpb.gov/data-publication/modified-lar.

- *Fair Lending Annual Report to Congress*. In May 2022, the CFPB released an annual report to Congress on the CFPB's 2021 fair lending activities.[25]

- *Report on Mortgage Servicing COVID-19 Pandemic Response Metrics*. In May 2022, the CFPB released a report examining mortgage servicers' responses to the COVID-19 pandemic.[26] The data, collected across 16 large servicers from May through December 2021, reveal that homeowners continue to face significant risks and challenges connected to working with their mortgage servicers. The CFPB's continued monitoring and supervision of the mortgage market shows borrowers are still struggling with the after-effects of the pandemic, and the CFPB is encouraging mortgage servicers to enhance outreach to borrowers exiting forbearance and closely monitor data on borrower demographics and outcomes.

[25] "Fair Lending Report of the Consumer Financial Protection Bureau." Consumer Financial Protection Bureau. May 6, 2022. https://files.consumerfinance.gov/f/documents/cfpb_2021-fair-lending_report_2022-05.pdf.

[26] "Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021." Consumer Financial Protection Bureau. May 16, 2022. https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

2. Complaints

The CFPB has a statutory obligation to collect and monitor consumer complaints.[27] Consumers' complaints and companies' responses provide the CFPB with important information about the types of challenges consumers are experiencing with financial products and services and how companies are responding to consumers' concerns. The CFPB uses this information to monitor risk in financial markets, assess risk at companies, and prioritize agency action.

2.1 An analysis of complaints about consumer financial products or services that the CFPB has received and collected in its central database on complaints

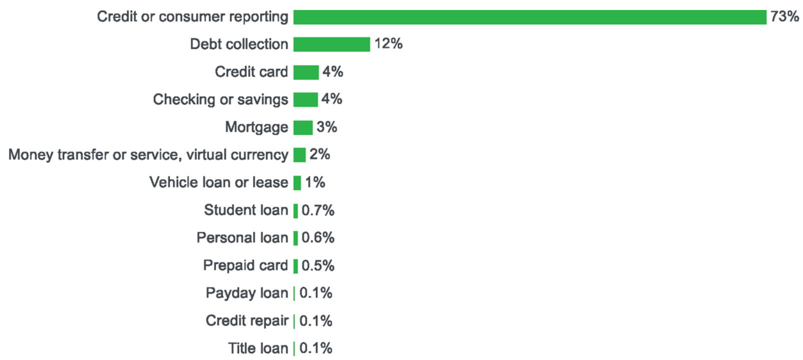
During the period April 1, 2021, through March 31, 2022, the CFPB received approximately 1,104,400 consumer complaints.[28] Consumers submitted approximately 95 percent of these complaints through the CFPB's website and three percent via telephone calls. Referrals from other state and federal agencies accounted for two percent of complaints.

When consumers submit complaints, the CFPB's complaint form prompts them to select the consumer financial product or service with which they have a problem as well as the type of problem they are having with that product or service. The CFPB uses these consumer selections to group the financial products and services about which consumers complain to the CFPB for public reports. As shown in Figure 1, credit or consumer reporting was the most complained about consumer financial product or service during the period, followed by debt collection.

FIGURE 1: COMPLAINT VOLUME BY FINANCIAL PRODUCT OR SERVICE

[27] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111 -203, Sections 1013(b)(3)(A) and 1021(b)(3)(A).

[28] Complaint data in this report are current as of August 1, 2022. Percentages in this section of the report may not sum to 100 percent due to rounding. This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. For more information on our complaint process refer to the Bureau's website at https://www.consumerfinance.gov/complaint/process.



The CFPB sent approximately 745,700 complaints received to companies for review and response.[29] Companies responded to approximately 99 percent of complaints that the CFPB sent to them for response during the period. Company responses typically include descriptions of steps taken or that will be taken in response to the consumer's complaint, communications received from the consumer, any follow-up actions or planned follow-up actions, and a categorization of the company's response. Companies' responses also describe a range of monetary and non-monetary relief. Examples of non-monetary relief include correcting inaccurate data provided or reported in consumers' credit reports, stopping unwanted calls from debt collectors, correcting account information, issuing corrected documents, restoring account access, and addressing formerly unmet customer service issues.

The CFPB's Office of Consumer Response analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses so that the CFPB, other regulators, consumers, and the marketplace have relevant information about consumers' challenges with financial products and services. The Office of Consumer Response uses a variety of approaches to identify trends and possible consumer harm. Examples include:

[29] The CFPB referred 6 percent of the complaints it received to other regulatory agencies and found 26 percent to be not actionable. Complaints that are not actionable include incomplete submissions, withdrawn complaints, and complaints in which the CFPB discontinued processing because it had reason to believe that a submitter did not disclose its involvement in the complaint process. At the end of this period, less than 0.01 percent of complaints were pending with the consumer and 0.01 percent were pending with the Bureau.

- Reviewing cohorts of complaints and company responses to assess the accuracy, timeliness, and completeness of an individual company's responses to complaints sent to them for response;
- Conducting text analytics to identify emerging trends and statistical anomalies; and
- Visualizing data to highlight geographic and temporal patterns.

The CFPB publishes periodic reports about its complaint analyses. For example, on January 5, 2022, the CFPB published an *Annual report of credit and consumer reporting complaints*,[30] which is required by Section 611(e) of the Fair Credit Reporting Act. On March 31, 2022, the CFPB also published the *Consumer Response Annual Report*,[31] which is required by Section 1013(b)(3)(C) of the Dodd-Frank Act. The CFPB also published complaint analyses in other mandatory and discretionary reports.[32]

In addition to public reports, the CFPB makes complaint data available to the public in the Consumer Complaint Database (Database).[33] The Database contains certain de-identified, individual complaint level data, as well as dynamic visualization tools, including geospatial and trend views based on recent complaint data, to help users of the database understand current and recent marketplace conditions. Finally, the CFPB also shares consumer complaint information with prudential regulators, the Federal Trade Commission (FTC), other federal agencies, and state agencies.

30 "Annual Report of Credit and Consumer Reporting Complaints." Consumer Financial Protection Bureau. January 5, 2022. https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

31 "Consumer Response Annual Report." Consumer Financial Protection Bureau. March 31, 2022. https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf.

32 "Complaint Bulletin: County-level demographic overview of consumer complaints." Consumer Financial Protection Bureau. April 2021. https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_county-level-demographic-overview-consumer-complaints_2021-04.pdf; "Complaint Bulletin: Mortgage forbearance issues described in consumer complaints." Consumer Financial Protection Bureau. May 2021. https://files.consumerfinance.gov/f/documents/cfpb_mortgage-forbearance-issues_complaint-bulletin_2021-05.pdf; "Complaint Bulletin: COVID-19 issues described in consumer complaints." Consumer Financial Protection Bureau. July 2022. https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf; "Consumer complaints throughout the credit life cycle, by demographic characteristics." Consumer Financial Protection Bureau. September 2021. https://files.consumerfinance.gov/f/documents/cfpb_consumer-complaints-throughout-credit-life-cycle_report_2021-09.pdf.

33 "Consumer Complaint Database." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/data-research/consumer-complaints/.

3. Supervisory and Enforcement Actions

The CFPB's supervisory activities with respect to specific institutions are non-public. The CFPB has, however, issued numerous supervisory guidance documents and bulletins during the preceding year.

The public enforcement actions during the applicable time period to which the CFPB was a party are set forth in the following section. This section also identifies those actions involving Office of Administrative Adjudication Orders with respect to covered persons that are not credit unions or depository institutions.

3.1 List of public supervisory and enforcement actions

The CFPB was a party in the following public enforcement actions from April 1, 2021, through March 31, 2022, detailed as follows and listed in descending chronological order by filing date.

- *In the Matter of Edfinancial Services, LLC (File No. 2022-CFPB-0001) (not a credit union or depository institution).* On March 30, 2022, the CFPB issued an order against Edfinancial Services, LLC. (Edfinancial). Edfinancial, headquartered in Knoxville, Tennessee, is a student loan servicer that services both Federal Family Education Loan Program (FFELP) loans, which are loans from private companies, and Direct Loans, which are loans directly from the Department of Education. The Public Service Loan Forgiveness (PSLF) Program is a government program that forgives student-loan debt for certain borrowers who work in public service and make 120 qualifying loan payments. Ordinarily, FFELP loans must be consolidated into Direct Loans before any payments qualify towards the PSLF program; but in October 2021 the Department of Education provided a limited waiver allowing payments to FFELP loans to retroactively qualify so long as the borrower consolidated into Direct Loans by a certain date. The CFPB found that Edfinancial made various deceptive statements to FFELP borrowers, including in many instances telling borrowers that they were not eligible for the PSLF program even though borrowers could become eligible by consolidating their loans; that borrowers could not consolidate their loans; that borrowers' past payments qualified when they did not qualify; and that qualifying jobs did not qualify for PSLF. The CFPB also found that, in numerous instances, when FFELP borrowers asked about forgiveness options available to them, Edfinancial's representatives did not mention PSLF as an available option. The order requires Edfinancial to contact all its FFELP borrowers to inform them of the limited waiver so that eligible borrowers can take advantage of the waiver before it expires. The limited waiver is currently set to expire by October 31, 2022. The order also requires Edfinancial to pay a $1 million civil money penalty.

- *Consumer Financial Protection Bureau v. Craig Manseth, Jacob Adamo, Darren Turco, United Debt Holding LLC, JTM Capital Management, LLC, UHG, LLC, UHG I LLC (also known as United Holding Group), and UHG II LLC (collectively holding themselves out as United Holding Group, United Holding Group, LLC, and United Holdings Group, LLC) (W.D.N.Y.* 1:22-cv-29). On January 10, 2022, the CFPB filed a lawsuit against several individual debt collectors and buyers, and their companies. As set forth in the February 23, 2022, amended complaint, the CFPB alleges that the defendants, located in Colorado and New York, purchased defaulted consumer debt worth tens of millions of dollars and then collected on those debts using third-party agents who engaged in illegal debt-collection tactics. Specifically, the CFPB alleges that since at least 2014, defendants have used collection agents to collect debts knowing that these agents were using false threats and misrepresentations to coerce immediate payment from consumers, in violation of the Consumer Financial Protection Act of 2010 ("CFPA") and the Fair Debt Collection Practices Act ("FDCPA"). The CFPB's complaint seeks redress for consumers, injunctive relief, and a civil money penalty. The case remains pending.
- *Consumer Financial Protection Bureau v. FirstCash, Inc., and Cash America West, Inc. (N.D. Tex. 4:21-cv-01251).* On November 12, 2021, the CFPB filed a lawsuit against FirstCash, Inc. and Cash America West, Inc. FirstCash owns and operates over 1,000 retail pawnshops in the United States, offering pawn loans through its wholly owned corporate subsidiaries, including Cash America West. Cash America West operates pawn stores in Arizona, Nevada, Utah, and Washington. The CFPB alleges that FirstCash and Cash America West made pawn loans to active-duty servicemembers and their dependents that violated the Military Lending Act (MLA). The MLA puts in place protections in connection with extensions of consumer credit for active-duty servicemembers and their dependents, who are defined as "covered borrowers." These protections include a maximum allowable annual percentage rate of 36 percent, a prohibition against required arbitration, and certain mandatory loan disclosures. The CFPB alleges that between June 2017 and May 2021, FirstCash and Cash America West made over 3,600 pawn loans in Arizona, Nevada, Utah, and Washington to more than 1,000 covered borrowers that violated prohibitions of the MLA by imposing a rate greater than the MLA's 36 percent cap; using loan agreements requiring arbitration in the case of a dispute; and without making required loan disclosures. The CFPB further alleges that

since October 3, 2016, FirstCash has, together with Cash America West and other wholly owned subsidiaries, made additional pawn loans in violation of the MLA from stores in these and other states. In 2013, the CFPB ordered Cash America International, Inc. to halt its misconduct against military families, prohibiting Cash America and its successors from violating the MLA. FirstCash is a successor to Cash America and therefore subject to the 2013 order. In this action, the CFPB alleges that FirstCash's violations of the MLA violated the prohibitions of the CFPB's 2013 order and consequently the CFPA. The CFPB's complaint seeks redress for consumers, injunctive relief, and civil money penalties. The case remains pending.

- *United States and Consumer Financial Protection Bureau v. Trustmark National Bank (W.D. Tenn. 2:21-cv-02664).* On October 22, 2021, the CFPB, together with the United States Department of Justice (DOJ), filed a complaint and proposed consent order in settlement of claims against Trustmark National Bank (Trustmark), which is headquartered in Jackson, Mississippi. The joint complaint alleged that Trustmark engaged in unlawful discrimination against applicants and prospective applicants, including by redlining majority Black and Hispanic communities in the Memphis, Tennessee-Mississippi-Arkansas Metropolitan Statistical Area (MSA) and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of the Equal Credit Opportunity Act (ECOA), Regulation B, and CFPA. In the joint complaint, DOJ also alleged that Trustmark's conduct violated the Fair Housing Act (FHA). The order, as entered by the court on October 27, 2021, requires Trustmark to invest $3.85 million in a loan subsidy program that will offer qualified applicants for credit secured by properties in majority Black and Hispanic neighborhoods in Memphis loans on a more affordable basis than otherwise available from Trustmark; open a new loan production office in a majority Black and Hispanic neighborhood in the Memphis MSA; fund targeted advertising to generate applications for credit from qualified consumers in majority Black and Hispanic neighborhoods in Memphis; and take other remedial steps to improve its fair lending compliance and serve the credit needs of majority Black and Hispanic neighborhoods in the Memphis MSA. The order also requires Trustmark to pay a civil money penalty of $5 million, $4 million of which would be remitted as a penalty paid to the Office of the Comptroller of the Currency (OCC) for FHA violations arising from the same conduct alleged in the complaint.
- *In the Matter of JPay, LLC (2021-CFPB-0006) (not a credit union or depository institution).* On October 19, 2021, the CFPB issued an administrative order against JPay, LLC (JPay). JPay is headquartered in Miramar, Florida. JPay contracts with Departments of Corrections around the country to provide financial products and services to justice-involved individuals. JPay provided prepaid cards to formerly incarcerated individuals

upon their release from prison or jail (JPay debit release card). The debit release cards contained the balance of funds owed to former inmates upon their release, including their commissary money, as well as any 'gate money,' which are entitlements provided pursuant to state or local law, policy, or regulation to ease transition to society after release from prison or jail. The CFPB found that JPay violated the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E by requiring consumers to establish an account with the particular financial institution that issued the JPay debit release card as a condition of receiving a government benefit, namely their gate money. JPay's violations of EFTA and Regulation E also constituted violations of the CFPA. The CFPB also found that JPay engaged in unfair and abusive acts and practices by causing fees to be imposed through its JPay debit release card on consumers who were required to get a JPay debit release card to access the money owed to them at the time of their release from prison or jail. In addition, the CFPB found that JPay violated the CFPA's prohibition against unfair acts and practices by causing some consumers to be charged fees on their JPay debit release card that were not authorized by their cardholder agreements, and the CFPA's prohibition against deceptive acts and practices by misrepresenting fees of some JPay debit release cards. The order requires JPay to pay $4 million for consumer redress, prohibits JPay from engaging in the illegal conduct found by the CFPB, and requires JPay to pay a $2 million civil money penalty.

- *Consumer Financial Protection Bureau v. American Advisors Group (C.D. Cal 8:21-cv-01674).* On October 8, 2021, the CFPB filed a lawsuit and proposed stipulated final judgment and order against American Advisors Group (AAG), which the court entered on October 25, 2021. AAG, based in Irvine, California, is the nation's largest provider of reverse mortgages. In 2016, the CFPB issued an administrative order against AAG to address the CFPB's finding that AAG used deceptive advertisements, including falsely claiming that consumers could not lose their homes. In this action, the CFPB alleged that in marketing its reverse mortgage product, AAG inflated consumers' estimated home values to entice them to enter into negotiations to open a reverse mortgage with the company and falsely reassured consumers that AAG made "every attempt to ensure the home value information provided is reliable," when in fact it did not. The CFPB alleged that this conduct was deceptive under the CFPA and violated the CFPB's 2016 order. The stipulated final judgment and order requires AAG to pay $173,400 in consumer redress, stop its unlawful conduct, and pay a $1,100,000 civil money penalty.

- *Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud, and Daniel Rosen (C.D. Cal. 2:21-cv-07492).* On September 20, 2021, the CFPB filed a lawsuit against Credit Repair Cloud, a Los Angeles, California company that since at least 2013 has provided an "all-in-one solution" for people to start their own credit-repair businesses, and its owner and CEO, Daniel Rosen. The CFPB alleges that Credit

Repair Cloud and Daniel Rosen have violated the Telemarketing Sales Rule (TSR) by providing substantial assistance to credit-repair businesses that violate the TSR's advance-fee prohibition. The CFPB also alleges that by violating the TSR, Credit Repair Cloud and Daniel Rosen have violated the CFPA. On January 7, 2022, the CFPB filed an amended complaint. The amended complaint seeks redress to consumers, disgorgement, appropriate injunctive relief, and the imposition of civil money penalties against Credit Repair Cloud and Daniel Rosen. The defendants filed a motion to dismiss the amended complaint on January 28, 2022. The court denied the motion on April 5, 2022.

- *Consumer Financial Protection Bureau v. LendUp Loans, LLC (N.D. Cal. 3:21-cv-06945).* On September 8, 2021, the CFPB filed a lawsuit against LendUp Loans, LLC. LendUp is an online lender offering single-payment and installment loans to consumers. The CFPB alleged that LendUp's brand identity is tied to its marketing claims that through on-time payments and repeat borrowing, borrowers will accrue points and ascend the "LendUp Ladder," gaining access to loans with more favorable interest rates or larger loan amounts as consumers reach higher Ladder levels. In 2016, the CFPB issued an administrative order against LendUp to address the CFPB's finding that LendUp misled consumers about the benefits of its loans. That order prohibits LendUp from misrepresenting the benefits of borrowing from the company. In this action, the CFPB alleged that, though LendUp claimed that consumers who ascended the LendUp Ladder would gain access to lower interest rates and larger loans, many borrowers did not actually get those benefits. The CFPB alleged that LendUp's marketing claims were deceptive under the CFPA and violated the prohibitions of the CFPB's 2016 order. The CFPB also alleged that LendUp failed to timely issue required adverse-action notices and failed to provide accurate denial reasons on its adverse-action notices to thousands of loan applicants, in violation of ECOA and Regulation B, and that these violations also constitute violations of the CFPA. On December 21, 2021, the CFPB filed a proposed stipulated final judgment and order to settle the lawsuit, which the court entered on December 30, 2021. The order imposes an injunction, prohibiting LendUp from offering or providing extensions of credit, or assisting others that are offering or providing extensions of credit; from collecting on, selling, or assigning outstanding subject loans, or assisting others in doing so; from selling consumer information; and from making misrepresentations in the sale of credit or collection of consumer debt, or assisting others in doing so. The order also imposes a $100,000 civil money penalty and requires the payment of $40,500,000 in consumer redress, to be suspended upon payment of the civil money penalty based on LendUp's demonstrated inability to pay.

- *In the Matter of Better Future Forward, Inc.; Better Future Forward Manager, LLC; Better Future Forward Opportunity ISA Fund (CP1), LLC; and Better Future Forward Opportunity ISA Fund (CH1), LLC (2021-CFPB-0005) (not a credit union or depository* *institution).* On September 7, 2021, the CFPB issued an administrative order against Better Future Forward, Inc.; Better Future Forward Manager, LLC; Better Future Forward Opportunity ISA Fund (CP1), LLC; and Better Future Forward Opportunity ISA Fund (CH1), LLC (collectively, "BFF"), which are companies that provide students with income-share agreements (ISAs) to finance postsecondary education. The CFPB found that BFF falsely represented that its ISAs are not loans and do not create debt. This conduct was deceptive in violation of the CFPA. The CFPB also found that BFF failed to give certain required disclosures and imposed prepayment penalties on private education loans in violation of the Truth in Lending Act (TILA), Regulation Z, and the CFPA. The CFPB's order requires BFF to cease misrepresentations, provide consumers with required disclosures, and reform contracts to eliminate prepayment penalties.

- *In the Matter of GreenSky, LLC (2021-CFPB-0004) (not a credit union or depository institution).* On July 12, 2021, the CFPB issued an administrative order against GreenSky, LLC (GreenSky), a financial technology company that services and facilitates the origination of consumer loans. The CFPB found that GreenSky engaged in origination activity on thousands of loans to consumers who did not request or authorize them and that the company structured its loan origination and servicing program in a manner that enabled the origination of unauthorized loans. This conduct was unfair in violation of the CFPA. The CFPB's order requires GreenSky to refund the accounts or cancel the loans of customers harmed by the conduct up to $9 million, implement enhanced loan authorization and verification procedures to prevent unauthorized loans from being issued in the future, and pay a civil penalty of $2.5 million.

- *Consumer Financial Protection Bureau; and State of Georgia ex rel. Christopher M. Carr, Attorney General of the State of Georgia v. Burlington Financial Group, LLC; Richard W. Burnham; Sang Yi; and Katherine Ray Burnham, (N.D. Ga. 1:21-cv-02595).* On June 28 and 29, 2021, the CFPB filed a lawsuit and proposed stipulated final judgment and order, respectively, against Burlington Financial Group, LLC, and its principals, Richard Burnham, Katherine Burnham, and Sang Yi. The court entered the stipulated final judgment and order on June 29, 2021. Burlington Financial is a Maryland-based company offering debt-relief and credit-repair services. The CFPB alleged that Burlington Financial and its principals used telemarketing to solicit consumers with false promises that Burlington's services would eliminate their credit-card debts and improve their credit scores. The CFPB alleged that Burlington and its principals charged advance fees for debt-relief and credit-repair services in violation of the TSR and engaged in deceptive acts or practices to market and sell Burlington's services in violation of the TSR and CFPA. The CFPB also alleged that the principals substantially assisted in the company's violations of the TSR and CFPA. The CFPB filed its complaint jointly with the Attorney General for the State of Georgia. The order bans Burlington and its principals from telemarking with respect to any consumer-financial product or service and from offering, marketing, selling, or providing any financial-advisory, debt-relief, or credit-repair service. The order also requires Burlington and its principals to pay civil money penalties totaling $150,001, $15,000 of which will be remitted upon Burlington's payment of a penalty in that amount to Georgia, and it imposes a judgment for redress of $30,457,853, to be suspended upon payment of the civil money penalties.

- *In the Matter of 3rd Generation, Inc., d/b/a California Auto Finance (2021-CFPB-0003) (not a credit union or depository institution).* On May 21, 2021, the CFPB issued an administrative order against 3rd Generation, Inc., a California corporation doing business as California Auto Finance (California Auto). California Auto services subprime auto loans that were originated by car dealers and later assigned to California Auto. The CFPB found that, between 2016 and 2021, California Auto charged about 5,800 customer accounts a total of $565,813 in interest on late payments of loss damage waiver fees without disclosing the charge to consumers. The CFPB concluded this is an unfair practice under the CFPA. The order requires California Auto to provide a total of $565,813 in consumer relief, which reflects the unlawful loss-damage-waiver fees that California Auto charged its customers. The order also requires California Auto to pay a civil money penalty of $50,000 and prohibits the company from charging interest on loss-damage-waiver fees without disclosing such terms in its contracts with consumers.
- *In the Matter of Nationwide Equities Corporation (2021-CFPB-0002) (not a credit union or depository institution).* On April 27, 2021, the CFPB issued an administrative order against Nationwide Equities Corporation (NWEC), a reverse mortgage broker and lender. The CFPB found that NWEC sent direct mail solicitations and other marketing communications to hundreds of thousands of older borrowers that violated the Mortgage Acts and Practices Advertising Rule (MAP Rule) and Regulation Z, which implement TILA. These violations also constituted violations of the CFPA. The CFPB's order prohibits such misrepresentations and requires NWEC to affirmatively review each of its mortgage advertisement templates for compliance with consumer financial protection laws before disseminating ads to consumers. The CFPB's order also requires NWEC to pay a $140,000 civil money penalty.
- *Consumer Financial Protection Bureau and the People of the State of New York, by Letitia James, Attorney General for the State of New York v. Douglas MacKinnon, Amy MacKinnon, Mary-Kate MacKinnon, and Matthew MacKinnon (W.D.N.Y. 1:21-cv-00573).* On April 22, 2021, the CFPB filed a lawsuit against Douglas MacKinnon, who operated a debt-collection enterprise, and Amy MacKinnon, Mary-Kate MacKinnon, and Matthew MacKinnon, relatives of Douglas MacKinnon. The CFPB filed its complaint jointly with the Attorney General of New York. The complaint alleges that defendants

fraudulently conveyed a house with the intent to hinder collection efforts by creditors, including the CFPB and the State of New York, in violation of the Federal Debt Collection Procedures Act of 1990 and New York state law. The complaint specifically alleges that Douglas MacKinnon transferred ownership of his home, valued at approximately $1.6 million, to his wife and daughter for $1 shortly after he learned that the CFPB and the State of New York were investigating him for illegal debt-collection activities. That investigation resulted in a $60 million judgment against Douglas MacKinnon and the companies he operated and permanently banned him from the industry. The CFPB and New York seek a declaratory judgment that a fraudulent conveyance occurred and to recover the value of the property in partial satisfaction of the $60,000,000 judgment. On June 21, 2021, all defendants moved to dismiss the complaint, which the court denied on October 27, 2021. The case remains pending.

- *Consumer Financial Protection Bureau v. SettleIt, Inc. (C.D. Cal. 8:21-cv-00674).* On April 13, 2021, the CFPB filed a proposed stipulated final judgment and order to resolve allegations that SettleIt, Inc., a California-based debt-settlement company, violated the TSR and engaged in abusive acts and practices under the CFPA. In its complaint, the CFPB alleged that SettleIt failed to disclose to consumers its relationship to certain creditors and then regularly prioritized those creditors in settlements; claimed that its programs could be completed without borrowing more money, while steering consumers into high-cost loans to pay off third-party creditors; failed to clearly and conspicuously disclose the costs of its services; and required consumers to pre-authorize settlements so that SettleIt could settle consumers' debts without their express consent. The order, which the court entered on July 2, 2021, requires SettleIt to return at least $646,769.43 in performance fees to consumers and to pay a $750,000 civil money penalty.
- *In the Matter of Yorba Capital Management, LLC and Daniel Portilla, Jr. (2021-CFPB-0001) (not a credit union or depository institution).* On April 6, 2021, the CFPB issued an administrative order against Yorba Capital Management, LLC (Yorba), a third-party debt collection company, headquartered in Anaheim California, and its former sole owner and managing member, Daniel Portilla, Jr. (Portilla). The CFPB found that from January 2017 until at least April 2020, Yorba and Portilla engaged in deceptive acts or practices in violation of the CFPA and that Yorba violated the FDCPA by mailing notices to consumers in an attempt to collect debt that falsely represented that consumers would be sued and that there would be further legal action if the consumers did not pay the debt amount on the notices. The order permanently bans both Yorba and Portilla from participating, or assisting others, in activities related to the collection of a consumer debt and orders them to pay $860,000 in redress. The ordered redress amount is suspended in full based on Yorba's and Portilla's demonstrated inability to pay upon their payment of a $2,200 civil money penalty to the CFPB.

- *Consumer Financial Protection Bureau v. Judith Noh d/b/a Student Loan Pro, Judith Noh as an individual, Syed Faisal Gilani, and FNZA Marketing, LLC, (C.D. Cal. No. 8:21-cv-00488)*. On March 16, 2021, the CFPB filed a lawsuit against Student Loan Pro, a California sole proprietorship that telemarketed and provided debt-relief services focused on federal student-loan debt; Judith Noh, its owner; and Syed Gilani, its manager and owner-in-fact. The CFPB also named as a relief defendant FNZA Marketing, LLC (FNZA), a California company nominally owned by Noh and controlled by Gilani. The CFPB alleges that Student Loan Pro conducted a student-loan debt-relief business from 2015 through 2019 that charged about 3,300 consumers with federal student-loan debt approximately $3.5 million in illegal upfront fees in violation of the TSR to file paperwork on their behalf to apply for programs that were available to them for free from the United States Department of Education. The CFPB alleges that Noh and Gilani are individually liable for and substantially assisted Student Loan Pro's violations of the TSR. The CFPB also alleges that FNZA was the recipient of some portion of the unlawful advance fees obtained by Student Loan Pro without legitimate claim to the funds. The CFPB seeks redress to consumers, appropriate injunctive relief, and the imposition of civil money penalties against Student Loan Pro, Noh, and Gilani, and seeks to have FNZA disgorge the funds it received from Student Loan Pro. Defendants filed a motion to dismiss the complaint on July 2, 2021, which the court denied on January 18, 2022. The case remains pending.
- *Consumer Financial Protection Bureau v. BrightSpeed Solutions, Inc. and Kevin Howard (N.D. Ill 1:21-cv-01199).* On March 3, 2021, the CFPB filed a lawsuit against BrightSpeed Solutions, Inc. (BrightSpeed) and its founder and former chief executive officer, Kevin Howard. BrightSpeed was a privately-owned, third-party payment processor based in Chicago, Illinois. Howard founded BrightSpeed in 2015 and ran the company until he wound it down in March 2019. The CFPB alleged that between 2016 and 2018, Howard and BrightSpeed knowingly processed payments for companies that purported to offer technical-support services and products over the internet, but actually tricked consumers into purchasing expensive and unnecessary antivirus software or services. The CFPB alleged that Howard's and BrightSpeed's actions were unfair practices in violation of the CFPA and as well as deceptive telemarketing practices in violation of the TSR. On January 18, 2022, the CFPB filed a proposed stipulated judgment and order to resolve its claims, which the court entered on January 19, 2022. The stipulated judgment and order permanently bans defendants from the payment processing, consumer lending, deposit-taking, and financial advisory industries and from engaging in debt collection activities and telemarketing with respect to consumer financial products or services. The stipulated judgment and order also requires the

defendants to pay $54 million in redress, which amount will be suspended upon Howard's payment of a $500,000 civil money penalty.

- *Consumer Financial Protection Bureau; Commonwealth of Massachusetts; The People of the State of New York, by Letitia James, Attorney General of the State of New York; and Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General v. Nexus Services, Inc.; Libre by Nexus, Inc.; Michael Donovan; Richard Moore; and Evan Ajin (W.D. Va. 5:21-cv-00016).* On February 22, 2021, the CFPB filed a lawsuit against Nexus Services, Inc. (Nexus Services), Libre by Nexus, Inc. (Libre), and their principals, Michael Donovan, Richard Moore, and Evan Ajin. Libre is a wholly owned subsidiary of Nexus Services, and both are non-banks with their principal places of business in Virginia. The CFPB alleges that Libre and its owners operated a scheme through which Libre offers to pay immigration bonds to secure the release of consumers held in federal detention centers in exchange for large upfront fees and hefty monthly payments, and that Libre creates the impression that it has paid cash for consumers' bond, creating a debt that must be repaid to Libre through an upfront fee and subsequent monthly payments. The CFPB further alleges that Libre's efforts to collect monthly payments include making false threats and threatening to re-detain or deport consumers for non-payment and that Libre and its owners conceal or misrepresent the true costs of its services. Specifically, the CFPB alleges that Libre and its owners engaged in deceptive and abusive acts or practices in violation of the CFPA, and that Nexus Services and Libre's owners provided substantial assistance to Libre's violations. The CFPB filed its complaint jointly with the Attorneys General of Virginia, Massachusetts, and New York. The CFPB seeks an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. On March 1, 2021, the defendants filed a motion to dismiss the complaint, which the court denied on March 22, 2022. The case remains pending.
- *Bureau of Consumer Financial Protection v. 1st Alliance Lending, LLC; John Christopher DiIorio; Kevin Robert St. Lawrence; and Socrates Aramburu (D. Conn. 3:21-cv-00055).* On January 15, 2021, the CFPB filed a lawsuit against 1st Alliance Lending, LLC, John Christopher DiIorio, Kevin Robert St. Lawrence, and Socrates Aramburu. 1st Alliance, based in Hartford, Connecticut, originated residential mortgages from 2004 to September 2019 and stopped operating in November 2019. DiIorio was its chief executive officer and he, St. Lawrence, and Aramburu were 1st Alliance's three managing executives. The CFPB's complaint alleges that 1st Alliance, with DiIorio's, St. Lawrence's, and Aramburu's knowledge and direction, engaged in various unlawful mortgage lending practices in violation of TILA, the Fair Credit Reporting Act (FCRA), ECOA, the MAP Rule, and the CFPA. The CFPB filed an amended complaint on April 1, 2021. The CFPB's amended complaint seeks injunctions against the defendants, as well

as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. 1st Alliance and the individual defendants filed motions to dismiss on May 11, 2021, which on March 31, 2022, the court denied as to all but one claim against the individual defendants, which it dismissed without prejudice. The case remains pending.

- *Bureau of Consumer Financial Protection v. BounceBack, Inc. and Gale Krieg, (W.D. Mo. 5:20-cv-06179).* On December 9, 2020, the CFPB filed a lawsuit against BounceBack, Inc. BounceBack, based in Kansas City, Missouri, operates bad-check pretrial-diversion programs on behalf of more than 90 district attorneys' offices throughout the United States. The CFPB alleged that since at least 2015, in the course of administering these bad-check pretrial-diversion programs, BounceBack used district-attorney letterheads to threaten more than 19,000 consumers with prosecution if they did not pay the amount of the check, enroll and pay for a financial-education course, and pay various other fees. BounceBack did not reveal to consumers that BounceBack—and not district attorneys—sent the letters, or that district attorneys almost never prosecuted these cases, even against consumers who ignored BounceBack's threats. In fact, in most cases, BounceBack did not refer cases for prosecution at all. BounceBack's letters also failed to include disclosures required under the FDCPA. The CFPB alleged that BounceBack's conduct violated the FDCPA, was deceptive under both the FDCPA and the CFPA, and that its violations of the FDCPA constituted violations of the CFPA. On August 27, 2021, the CFPB filed an amended complaint, which also named BounceBack's president and majority owner, Gale Krieg, and alleged that Krieg exercised control over BounceBack and materially participated in the conduct of BounceBack's affairs. The complaint alleged that Krieg engaged in deceptive acts and practices in violation of the CFPA because, among other things, he oversaw BounceBack's deceptive activities. On September 21, 2021, the CFPB filed a proposed stipulated final judgment and order to resolve the lawsuit, which the court entered on November 1, 2021. The stipulated judgment and order requires BounceBack and Krieg to pay about $1.4 million to redress consumers, which amount would be suspended based upon defendants' demonstrated inability to pay more upon BounceBack's and Krieg's compliance with the certain provisions of the judgment and order including paying a $30,000 civil money penalty. The order also permanently bans BounceBack and Krieg from, inter alia, engaging in debt collection related to any consumer financial product or service.

- *Bureau of Consumer Financial Protection v. DMB Financial, LLC (D. Mass. 1:20-cv-12147).* On December 1, 2020, the CFPB filed a lawsuit against DMB Financial, LLC (DMB). DMB, which has its principal place of business in Beverly, Massachusetts, offers to renegotiate, settle, or otherwise alter the terms of unsecured debts owed by consumers to creditors or debt collectors. As alleged in the CFPB's complaint, since its establishment in 2003, DMB claims to have successfully negotiated and settled over $1 billion of consumer debt for over 30,000 consumers who have enrolled in its debt-settlement or debt-relief programs. The CFPB alleged that in connection with its debt-settlement and debt-relief services, DMB engaged in abusive and deceptive acts or practices in violation of the TSR and deceptive acts and practices in violation of the CFPA. The CFPB also alleged that DMB's alleged TSR violations also constitute violations of the CFPA. On May 19, 2021, the court entered a stipulated final judgment and order that resolved the CFPB's claims. The order requires DMB to pay $7,700,000 in redress to consumers, which amount is suspended based on DMB's demonstrated inability to pay and upon its payment of $5,400,000 within an agreed-upon timeframe and a $1 civil money penalty to the CFPB. The order also requires DMB to refrain from charging unlawful settlement fees, engaging in specified deceptive practices, or obtaining consumers' credit reports without a permissible purpose.

- *Bureau of Consumer Financial Protection v. FDATR, Inc., Dean Tucci, and Kenneth Wayne Halverson (N.D Ill. 1:20-cv-06879).* On November 20, 2020, the CFPB filed a lawsuit against FDATR, Inc., and its owners, Dean Tucci and Kenneth Wayne Halverson. FDATR was a corporation headquartered in Wood Dale, Illinois, that promised to provide student-loan debt-relief and credit-repair services to consumers nationwide. FDATR involuntarily dissolved in September 2020. Tucci and Halverson both owned and managed FDATR. The CFPB alleges that FDATR, Tucci, and Halverson violated the TSR by engaging in deceptive and abusive telemarketing acts or practices as well as the CFPA by engaging in deceptive acts or practices. The CFPB seeks injunctions against FDATR, Tucci, and Halverson, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. On February 25, 2021, the CFPB filed a notice of voluntary dismissal of Halverson, now deceased, and the court dismissed him from this action the next day. On February 7, 2022, the CFPB obtained a default judgment and order against FDATR imposing $2,117,133.28 in consumer redress, a $41,123,897 civil money penalty, and injunctive relief permanently banning it from offering or providing financial advisory, debt-relief, or credit-repair services and from telemarketing consumer financial products or services. The case remains pending against Tucci.

- *Bureau of Consumer Financial Protection v. Driver Loan, LLC, and Angelo Jose Sarjeant (S.D. Fla. 1:20-cv-24550).* On November 5, 2020, the CFPB filed a lawsuit against Driver Loan, LLC and its Chief Executive Officer, Angelo Jose Sarjeant, for violations of the CFPA. Driver Loan is a limited-liability company based in Doral, Florida that offers short-term, high-interest loans to consumers funded by deposits made by other consumers. The CFPB alleged that Driver Loan and Sarjeant engaged in deceptive acts or practices that violated the CFPA by misrepresenting the risks associated with the deposit product offered to consumers and by misrepresenting the annual percentage rates associated with extensions of credit it offered to other consumers. On June 1, 2021, the court entered a stipulated final judgment and order that requires defendants to return consumers' deposits—roughly $1 million—plus all interest due to consumers under the terms of the advertised product, and to pay a $100,000 penalty. The defendants are also permanently banned from engaging in deposit-taking activity and from making deceptive statements to consumers. On December 22, 2021, the CFPB filed an application for an order to show cause, which the court granted the same day, ordering Driver Loan and Sarjeant to set forth why they are not in violation of the stipulated final judgment and not in contempt of court. On February 8, 2022, the court entered a discovery and briefing schedule, and the matter remains pending.

- *Bureau of Consumer Financial Protection v. Performance SLC, LLC, Performance Settlement, LLC and Daniel Crenshaw (C.D. Cal. 8:20-cv-02132):* On November 5, 2020, the CFPB filed a lawsuit against Performance SLC, LLC (PSLC), a California debt-relief business focused on federal student loan debt; Performance Settlement, LLC (PSettlement), a California debt-settlement company; and Daniel Crenshaw, the owner and CEO of the two companies. The CFPB alleged that: PSLC and Crenshaw conducted a student-loan debt-relief business that charged thousands of consumers with federal student-loan debt approximately $9.2 million in illegal upfront fees in violation of the TSR, to file paperwork on their behalf to apply for programs that were available to them for free from the United States Department of Education; PSLC failed to provide disclosures mandated by the TSR to consumers it required to place funds in trust accounts; Crenshaw and PSettlement used deceptive sales tactics to sign consumers up for PSettlement's debt-relief services, in violation of the CFPA; and Crenshaw substantially assisted PSLC in requesting or receiving fees illegally and PSettlement in engaging in deceptive acts and practices. On July 6, 2021, the CFPB filed an amended complaint adding a claim against PSettlement alleging it violated the TSR and CFPA when it asked consumers who enrolled in its program to sign a form that preauthorized PSettlement to agree to settlements on the consumer's behalf. As of the end of the reporting period, the case remained pending.[34]

- *Bureau of Consumer Financial Protection and the People of the State of New York, by Letitia James, Attorney General for the State of New York v. JPL Recovery Solutions, LLC; Check Security Associates, LLC (dba Warner Location Services, Pinnacle Location Services, and Orchard Payment Processing Systems); ROC Asset Solutions LLC (dba API*

[34] Additional activity has occurred with this matter since the end of this reporting period. More information can be found here https://www.consumerfinance.gov/enforcement/actions/performance-slc-llc-performance-settlement-llc-daniel-crenshaw/.

Recovery Solutions and Northern Information Services); Regency One Capital LLC; Keystone Recovery Group, LLC; Bluestreet Asset Partners, Inc.; Christopher L. Di Re; Scott A. Croce; Brian J. Koziel; Marc D. Gracie; and Susan A. Croce (W.D.N.Y. 1:20-cv-01217). On September 8, 2020, the CFPB, in partnership with the New York Attorney General, filed suit against a network of five different companies based outside of Buffalo, New York, two of their owners, and two of their managers, for their participation in a debt-collection operation using illegal methods to collect debts. As set forth in the amended complaint filed on December 20, 2021, the company defendants are: JPL Recovery Solutions, LLC; Regency One Capital LLC; ROC Asset Solutions LLC, which does business as API Recovery Solutions; Check Security Associates LLC, which does business as Warner Location Services and Orchard Payment Processing Systems; Keystone Recovery Group; and Blue Street Asset Partners, Inc. The individual defendants are Christopher Di Re, Scott Croce, and Susan Croce, who have held ownership interests in some or all of the defendant companies, and Brian Koziel and Marc Gracie, who are members of Keystone Recovery Group, and have acted as managers of some or all of the defendant companies. Susan Croce is also a relief defendant. The complaint alleged that from at least 2015 through the present, the defendants have participated in a debt-collection operation that has used deceptive, harassing, and improper methods to induce consumers to make payments to them in violation of the FDCPA and the CFPA. The complaint seeks consumer redress, disgorgement of ill-gotten gains, civil money penalties, and appropriate injunctive relief against the defendants. As of the end of the reporting period, the case remained pending.[35]

- *Bureau of Consumer Financial Protection v. Townstone Financial, Inc. and Barry Sturner (N.D. Ill. 1:20-cv-04176).* On July 15, 2020, the CFPB filed a lawsuit against Townstone Financial, Inc., a nonbank retail-mortgage creditor and broker based in Chicago. The CFPB alleges that Townstone violated ECOA; its implementing regulation, Regulation B; and the CFPA. The CFPB alleges that, for years, Townstone drew almost no applications for properties in majority African American neighborhoods located in the Chicago-Naperville-Elgin Metropolitan Statistical Area (Chicago MSA) and few applications from African Americans throughout the Chicago MSA. The CFPB alleges that Townstone engaged in discriminatory acts or practices, including making statements during its weekly radio shows and podcasts through which it marketed its services, that would discourage prospective African-American applicants from applying for mortgage loans; would discourage prospective applicants living in African-American neighborhoods in the Chicago MSA from applying for mortgage loans; and would

[35] Additional activity has occurred with this matter since the end of this reporting period. More information can be found here https://www.consumerfinance.gov/enforcement/actions/jpl-recovery-solutions-llc-et-al/.

discourage prospective applicants living in other areas from applying for mortgage loans for properties located in African-American neighborhoods in the Chicago MSA. On November 25, 2020, the CFPB filed an amended complaint, which added as a defendant Barry Sturner, Townstone's cofounder, sole owner, and sole director, as the fraudulent transferee of more than $2.4 million from Townstone. The CFPB's amended complaint seeks an injunction against Townstone, as well as damages, redress to consumers, the imposition of a civil money penalty, and other relief. The defendants filed a motion to dismiss the amended complaint on February 8, 2021. The motion to dismiss the amended complaint and the case remain pending.

- *Bureau of Consumer Financial Protection v. My Loan Doctor LLC d/b/a Loan Doctor and Edgar Radjabli (S.D.N.Y. 1:20-cv-05159).* On July 6, 2020, the CFPB filed a lawsuit against My Loan Doctor LLC, a Delaware financial company operating in West Palm Beach, Florida and New York City and doing business as Loan Doctor (Loan Doctor), and its founder, Edgar Radjabli. The CFPB alleges that Loan Doctor and Radjabli made several false, misleading, and inaccurate marketing representations in advertising Loan Doctor's "Healthcare Finance (HCF) Savings CD Account," in violation of the CFPA's prohibition against deceptive acts or practices. As alleged in the complaint, starting in August 2019, Loan Doctor took more than $15 million from at least 400 consumers who opened and deposited money into Loan Doctor's deceptively advertised product. The CFPB seeks redress for consumers, an injunction, and the imposition of civil money penalties. The defendants filed a motion to dismiss the complaint on December 16, 2020, which the court denied without prejudice. On September 10, 2021, the defendants filed an amended motion to dismiss, which the court denied on September 30, 2022. The case remains pending.
- *Bureau of Consumer Financial Protection and the Commonwealth of Massachusetts ex rel. Maura Healey, Attorney General v. Commonwealth Equity Group, LLC (d/b/a Key Credit Repair); Nikitas Tsoukales (a/k/a Nikitas Tsoukalis) (D. Mass. 1:20-cv-10991).* On May 22, 2020, the CFPB and Commonwealth of Massachusetts Attorney General Maura Healey jointly filed a lawsuit against Commonwealth Equity Group, LLC, which does business as Key Credit Repair, and Nikitas Tsoukales (also known as Nikitas Tsoukalis), Key Credit Repair's president and owner. An amended complaint was filed on September 16, 2020. As the amended complaint alleges, from 2016 through 2019 alone, Key Credit Repair enrolled nearly 40,000 consumers nationwide, and since 2011, it collected at least $23 million in fees from consumers. The CFPB alleges that in their telemarketing of credit-repair services, the defendants violated the CFPA's prohibition against deceptive acts or practices and the TSR's prohibitions against deceptive and abusive telemarketing acts or practices. Massachusetts also alleges violations of Massachusetts laws. The amended complaint seeks redress to consumers, an injunction, and the imposition of civil

money penalties. The defendants filed a motion to dismiss the amended complaint on September 30, 2020, which the court denied on August 10, 2021. On September 9, 2021, the defendants moved for reconsideration of the order denying the motion to dismiss, which the court denied on October 13, 2021. The case remains pending.

- *Bureau of Consumer Financial Protection v. Fifth Third Bank, National Association (N.D. Ill. 1:20-cv-01683), transferred to (S.D. Ohio 1:21-cv-00262).* On March 9, 2020, the CFPB filed a lawsuit against Fifth Third Bank, National Association (Fifth Third). On February 12, 2021, the court granted Fifth Third's motion to transfer the case to the Southern District of Ohio. The CFPB filed an amended complaint on June 16, 2021. The CFPB alleges that, by misleading consumers about the bank's sales practices, opening products and services and engaging in consumer-account transactions without consumer consent, and failing to adequately address the misconduct, Fifth Third engaged in unfair and abusive acts or practices in violation of the CFPA and also violated FCRA, TILA, the Truth in Savings Act (TISA), and TILA's and TISA's implementing regulations. The CFPB seeks an injunction to stop Fifth Third's unlawful conduct, redress for affected consumers, the imposition of a civil money penalty, and other legal and equitable relief. On July 12, 2021, Fifth Third filed a motion for judgment on the pleadings, and on August 13, 2021, the CFPB filed a motion for partial judgment on the pleadings. The motions and the case remain pending.

- *Bureau of Consumer Financial Protection v. Citizens Bank, N.A. (D.R.I. No. 1:20-cv-00044).* On January 30, 2020, the CFPB filed a lawsuit in federal court in the District of Rhode Island against Citizens Bank, N.A. (Citizens), alleging violations of TILA and its implementing Regulation Z, including TILA provisions passed under the Fair Credit Billing Act (FCBA) and CARD Act, as well as violations of the CFPA based on TILA violations. The CFPB alleges that Citizens systematically violated TILA and Regulation Z by failing to properly manage and respond to consumers' credit card disputes and fraud claims. The CFPB also alleges that Citizens violated TILA and Regulation Z by not providing credit counseling referrals to consumers as required by law. The CFPB seeks, among other remedies, an injunction against Citizens and the imposition of civil money penalties. The Court denied Citizens' motion to dismiss. The case remains pending.

- *Bureau of Consumer Financial Protection v. Monster Loans, Lend Tech Loans, and Associated Student Loan Debt-Relief Companies (C.D. Cal. 8:20-cv-00043).* On January 9, 2020, the CFPB filed a lawsuit in federal court in the Central District of California against Chou Team Realty, LLC f/k/a Chou Team Realty, Inc., d/b/a MonsterLoans, d/b/a Monster Loans; Lend Tech Loans, Inc.; Docu Prep Center, Inc., d/b/a DocuPrep Center, d/b/a Certified Document Center; Document Preparation Services, LP, d/b/a DocuPrep Center, d/b/a Certified Document Center; Certified Doc Prep, Inc.; Certified Doc Prep

Services, LP; Assure Direct Services, Inc.; Assure Direct Services, LP; Direct Document Solutions, Inc.; Direct Document Solutions, LP; Secure Preparation Services, Inc.; Secure Preparation Services, LP; Docs Done Right, Inc.; Docs Done Right, LP; Bilal Abdelfattah a/k/a Belal Abdelfattah a/k/a Bill Abdel; Robert Hoose; Eduardo "Ed" Martinez; Jawad Nesheiwat; Frank Anthony Sebreros; David Sklar; Thomas "Tom" Chou; Sean Cowell; Kenneth Lawson; Cre8labs, Inc.; XO Media, LLC; and TDK Enterprises, LLC. The CFPB alleges that many of the Defendants violated the Fair Credit Reporting Act (FCRA) by wrongfully obtaining consumer report information and that, in connection with the marketing and sale of student loan debt relief products and services, certain defendants charged unlawful advance fees and engaged in deceptive acts and practices. The CFPB also alleges that certain entities and individuals are liable as Relief Defendants because they received profits resulting from the illegal conduct. The CFPB seeks an injunction against defendants, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties.

On May 14, 2020, the court entered a stipulated final judgment against Chou Team Realty, LLC, Thomas Chou, TDK Enterprises, LLC, Cre8labs, Inc., and Sean Cowell, which resolves the CFPB's claims against those defendants and relief defendants. The judgment imposes an $18 million redress judgment against Monster Loans, bans Monster Loans, Chou, and Cowell from the debt-relief industry, and imposes a total $450,001 civil money penalty against them. On July 7, 2020, the court entered a stipulated final judgment against Robert Hoose, which resolves the CFPB's claims against him. The judgment imposes a $7 million redress judgment against Hoose, bans him from the debt-relief industry, and imposes a $1 civil money penalty against him. On July 10, 2020 and August 26, 2020, the CFPB filed a first and second amended complaint, respectively, adding factual allegations regarding certain defendants. On October 19, 2020, the court entered a stipulated final judgment against relief defendants Kenneth Lawson and XO Media, LLC, which resolves the CFPB's claim against them. The judgment imposes a $200,000 redress judgment against Lawson and XO Media, LLC. On May 4, 2021, the court entered stipulated final judgments against Lend Tech Loans, Inc. and David Sklar, which resolve the CFPB's claims against them. The judgment as to Lend Tech Loans requires it to dissolve and cease to exist as a corporate entity, bans it from offering or providing any consumer financial product or service, and imposes a $1 civil money penalty against it, based on its limited ability to pay. The judgment as to Sklar imposes a $7 million redress judgment against him, full payment of which is suspended based upon his limited ability to pay upon his payment of $3,000 to the CFPB; it also bans him from the debt-relief industry and from telemarketing consumer financial products or services and imposes a $1 civil money penalty against him. On May 7, 2021, the court entered a default judgment against the following student loan debt relief companies: Docu Prep

Center, Inc., d/b/a DocuPrep Center, d/b/a Certified Document Center; Document Preparation Services, LP, d/b/a DocuPrep Center, d/b/a Certified Document Center; Certified Doc Prep, Inc.; Certified Doc Prep Services, LP; Assure Direct Services, Inc.; Assure Direct Services, LP; Direct Document Solutions, Inc.; Direct Document Solutions, LP; Secure Preparation Services, Inc.; and Secure Preparation Services, LP. The default judgment imposes redress judgments against the companies that collectively total $19,699,869 and civil penalties against the companies that collectively total $11,382,136. The default judgment also bans the companies from the debt relief industry. On May 7, 2021, the court also entered a default judgment against Bilal Abdelfattah a/k/a Belal Abdelfattah a/k/a Bill Abdel ("Abdel"), which imposes a civil penalty of $3,262,244 against Abdel and bans him from the debt-relief industry.

On May 11, 2021, the court entered a stipulated final judgment against Docs Done Right, Inc., Docs Done Right, LP (collectively, "Docs Done Right"), and Eduardo Martinez, which resolves the CFPB's claims against them. The judgment imposes an $18 million redress judgment against Martinez and Docs Done Right, full payment of which is suspended based on their limited ability to pay upon their payment of the ordered penalty, bans them from the debt-relief industry, and imposes a $125,000 civil money penalty against them. On May 11, 2021, the court also entered a stipulated final judgment against Frank Anthony Sebreros, which resolves the CFPB's claims against him. The judgment imposes a $3,404,455 redress judgment against Sebreros, full payment of which is suspended based on their limited ability to pay upon their payment of $35,000; it also bans him from the debt relief industry and from telemarketing consumer financial products or services, and imposes a $1 civil money penalty against him. On August 10, 2021, the district court granted in full the CFPB's Motion for Summary Judgment against Jawad Nesheiwat, the sole remaining defendant at that time. The court found Nesheiwat was liable for violating FCRA, the TSR advance fee ban, the TSR and CFPA prohibitions on deceptive practices and substantially assisting violations, and §1036(a)(1)(A). The court found the CFPB was entitled to injunctive relief, restitution, and civil money penalties. On September 23, 2021, the court entered a judgment and order against Nesheiwat imposing a judgment of nearly $20 million in consumer redress, a $20 million civil money penalty, and injunctive relief including permanent bans from the debt-relief and mortgage industries, from using consumer reports for business purposes, and from telemarketing consumer financial products and services. On September 25, 2021, Nesheiwat appealed the judgment against him. That appeal remains pending.

- *Bureau of Consumer Financial Protection; State of Minnesota, by its Attorney General, Keith Ellison; State of North Carolina, ex rel. Joshua H. Stein, Attorney General; and The People of the State of California, Michael N .Feuer, Los Angeles City Attorney v. Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center; True Count*

Staffing Inc., d/b/a SL Account Management; Prime Consulting LLC, d/b/a Financial Preparation Services; Albert Kim, a/k/a Albert King; Kaine Wen, a/k/a Wenting Kaine Dai, Wen Ting Dai, and Kaine Wen Dai; and Tuong Nguyen, a/k/a Tom Nelson (C.D. Cal. 8:19-cv-01998-JVS-JDE)/ On October 21, 2019, the CFPB filed a complaint and sought a temporary restraining order and preliminary injunction in federal court in the Central District of California against Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center (Premier); True Count Staffing Inc., d/b/a SL Account Management (True Count); Prime Consulting LLC, d/b/a Financial Preparation Services (Prime); Albert Kim; Kaine Wen; and Tuong Nguyen. The CFPB alleges the debt relief companies operate as a common enterprise and have engaged in deceptive practices and charged unlawful advance fees in connection with the marketing and sale of student loan debt relief services to consumers. The CFPB also alleges the individuals substantially assisted the student loan debt relief companies. The complaint also names several relief defendants and seeks disgorgement of those relief defendants' ill-gotten gains. The court granted the request for the temporary restraining order on October 21, 2019. The court entered a stipulated preliminary injunction on November 15, 2019.

The CFPB filed an amended complaint on February 24, 2020. The CFPB's amended complaint seeks an injunction against defendants, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. The amended complaint also names several additional defendants and relief defendants. On August 26, 2020, the court entered a corrected, amended stipulated final judgment as to defendants Prime and Horizon Consultants LLC (Horizon). The order imposes a judgment of $95,057,757 against Prime to provide redress to consumers. Horizon is jointly and severally liable for $12,942,045 of this amount. Full payment of these amounts is suspended based on Prime's and Horizon's demonstrated inability to pay following, among other things, their turnover of assets and their payment of a $1 civil money penalty to the CFPB. The order also bans Prime and Horizon from telemarketing or offering or providing debt relief services. On August 28, 2020, the court entered a stipulated final judgment and order as to defendant Tuong Nguyen and relief defendant TN Accounting Inc. The order imposes a judgment of $95,057,757 against Nguyen to provide redress to consumers. Relief defendant TN Accounting is jointly and severally liable for $444,563 of this amount. Full payment of these amounts is suspended based on their demonstrated inability to pay following, among other things, Nguyen and TN Accounting's turnover of assets and Nelson's payment of a $1 civil money penalty to the CFPB. The order also bans Nguyen from telemarketing or offering or providing debt relief services. On September 8, 2020, the court entered a stipulated final judgment as to relief defendants Hold the Door, Corp. and Mice and Men LLC. The order imposes a judgment of $1,638,687 against relief defendant Hold the Door and $5,041,069 against relief defendant Mice and Men to provide redress to consumers. Full payment of these amounts will be suspended based on their demonstrated inability to pay following their turnover of assets. On December 15, 2020, the court entered a default judgment against First Priority LLC and True Count Staffing Inc. The order imposes a judgment of $55,360,817.14 and $165,848.05 against True Count and First Priority, respectively, to provide redress to consumers. The order also requires True Count to pay a $30 million penalty, of which $29,850,000 is payable to the CFPB. It also requires First Priority to pay $3.75 million in penalties, of which $2,470,000 is payable to the CFPB. The order also bans the defaulted defendants from telemarketing or offering or providing debt relief services.

The CFPB filed a second amended complaint on April 20, 2021, adding additional claims and an additional relief defendant. On June 15, 2021, the court entered a stipulated final judgment and order as to relief defendant Judy Dai. The order imposes a judgment of $3,088,381.80 against Dai for the purpose of providing redress to consumers. On July 1, 2021, the court entered a stipulated final judgment and order as to relief defendant's 1st Generation Holdings, LLC (1st Generation) and Infinite Management Corp (Infinite Management). The order imposes a judgment of $3,984,779.28 and $2,049,189.07 against 1st Generation and Infinite Management, respectively, for the purpose of providing redress to consumers. Full payment of the amount imposed on Infinite will be suspended based on its demonstrated inability to pay following its turnover of assets. On July 15, 2021, the court entered a stipulated final judgment and order as to defendant Consumer Advocacy Center, Inc. (CAC). The order imposes a judgment of $35,105,017.93 against CAC for the purpose of providing consumer redress. The amount of redress to be collected will be based on the amount recovered by the bankruptcy trustee and the resolution of multiple claims against the CAC bankruptcy estate. The Court also imposed a $1 civil money penalty in favor of the CFPB and against the CAC bankruptcy estate. The court also permanently restrained CAC from participating in any debt-relief service or telemarketing any consumer financial product. The CFPB filed a third amended complaint on August 5, 2021, to remove remaining claims relating to a relief defendant against whom a stipulated final judgment was previously entered. On March 22, 2022, the court entered a stipulated final judgment and order as to defendant TAS 2019 LLC. The order imposes a judgment of $2,866,314.24 in consumer redress, a $1 civil money penalty, and injunctive relief permanently banning TAS 2019 LLC from participating in any debt relief service or telemarketing any consumer financial product. As of the end of the reporting period, the case remained pending against remaining defendants Albert Kim, Kaine Wen, and relief defendant Sarah Kim. Additionally, claims against relief defendant Anan Enterprise, Inc. are currently stayed pending the outcome of a bankruptcy adversary action filed in the Southern District of Florida.[36]

- *Bureau of Consumer Financial Protection v. FCO Holding, Inc., Fair Collections & Outsourcing, Inc., Fair Collections & Outsourcing of New England, Inc., FCO Worldwide, Inc., and Michael E. Sobota (D. Md. No. 8:19-cv-02817-GJH).* On September 25, 2019, the CFPB filed a complaint against Maryland-based debt collector FCO Holding, Inc. and its subsidiaries, Fair Collections & Outsourcing, Inc., Fair Collections & Outsourcing of New England, Inc., and FCO Worldwide, Inc. (collectively, FCO). Also named as a defendant in the CFPB's lawsuit is Michael E. Sobota, the chief executive officer, president, director, and owner of FCO Holding, Inc. The CFPB alleged that FCO, which furnishes information to consumer reporting agencies, violated the Fair Credit Reporting Act and Regulation V by failing to maintain reasonable policies and procedures regarding the accuracy and integrity of the information it furnishes, including the handling of consumer disputes, failing to conduct reasonable investigations of certain consumer disputes, and failing to cease furnishing information that was alleged to have been the result of identity theft before it made any determination whether the information was accurate. In addition, the CFPB alleged that FCO and Sobota violated the FDCPA when FCO represented that consumers owed certain debts when, in fact, FCO did not have a reasonable basis to assert that the consumers owed those debts. On October 27, 2021, the court entered a stipulated final judgment and order, which requires defendants to pay a $850,000 civil money penalty and put in place policies and procedures to prevent future violations.

- *Bureau of Consumer Financial Protection v. Forster & Garbus, LLP (E.D.N.Y. No. 2:19-cv-02928).* On May 17, 2019, the CFPB filed a complaint in the federal district court in the Eastern District of New York against Forster & Garbus, LLP, a New York debt-collection law firm. The CFPB alleges that Forster & Garbus violated the FDCPA by representing to consumers that attorneys were behind its lawsuits when, in fact, attorneys were not meaningfully involved in preparing or filing them. The CFPB also alleges that Forster & Garbus violated the CFPA's prohibition against deceptive acts and practices by making such representations to consumers through its lawsuits. The CFPB seeks an injunction against Forster & Garbus, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. The court administratively closed the matter, pending a decision in *Seila Law LLC v. Consumer Financial Protection Bureau*, No. 19-7 (cert. granted Oct. 18, 2019). After *Seila Law LLC*

[36] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at https://www.consumerfinance.gov/enforcement/actions/premier-student-loan-center-et-al/.

was decided, the court denied the CFPB's request to reopen the matter and stayed the case pending a decision in *Mnuchin v. Collins*. In October 2021, the court reopened the case after the Supreme Court denied certiorari in *Consumer Financial Protection Bureau v. RD Legal Funding, LLC, RD Legal Finance, LLC, and RD Legal Funding Partners, LP, and Roni Dersovitz (S.D.N.Y. No. 1:17-cv-0890)*. The case remains pending.

- *Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc.; PGX Holdings, Inc.; Progrexion Teleservices, Inc.; eFolks, LLC; CreditRepair.com, Inc.; John C. Heath, Attorney at Law, P.C., d/b/a/ Lexington Law (D. Utah No. 2:19-cv-00298)*. On May 2, 2019, the CFPB filed a complaint against PGX Holdings, Inc. and its subsidiaries (collectively, Progrexion) and against John C. Heath, Attorney at Law PLLC, which does business as Lexington Law, in federal district court. The CFPB alleges the defendants violated the TSR by requesting and receiving payment of prohibited upfront fees for their credit repair services. The CFPB also alleges that Progrexion and its subsidiaries violated the TSR and the CFPA by making deceptive representations in its marketing, or by substantially assisting others in doing so. The CFPB seeks an injunction, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. Defendants filed a motion to dismiss on July 19, 2019, which the court denied on February 18, 2020. Defendant Heath, P.C., filed a motion for partial summary judgment on August 20, 2021, which the court denied on January 20, 2022. Defendant Progrexion filed a motion for summary judgment on January 21, 2022, which as of the end of the reporting period remained pending. The CFPB filed a motion for partial summary judgment on December 10, 2021. That motion and the case remain pending.

- *Bureau of Consumer Financial Protection v. Future Income Payments, LLC, et al. (D.S.C. No. 6:19-cv-02950)*. On September 13, 2018, the CFPB filed a complaint against Future Income Payments, LLC, Scott Kohn, and several related entities. The CFPB alleged that defendants represented to consumers that their pension-advance products were not loans, were not subject to interest rates, and were comparable in cost to, or cheaper than, credit-card debt when, in actuality, the pension-advance products were loans, and were subject to interest rates that were substantially higher than credit-card interest rates. The CFPB also alleged that the defendants failed to disclose a measure of the cost of credit, expressed as a yearly rate, for its loans. Among other relief, the CFPB sought compensation for harmed consumers, civil money penalties, and injunctive relief. The defendants waived service of the CFPB's complaint but failed to answer or otherwise respond to it. The CFPB obtained a clerk's entry of default in December 2018, and in August 2019, the CFPB moved for entry of default judgment against all defendants, appointment of a receiver, and to transfer the action to the District of South Carolina. On October 17, 2019, the court transferred the matter to the District of South Carolina. On

February 22, 2021, the court entered a default judgment against all defendants and appointed a receiver. The default judgment imposes a permanent injunction, including a permanent ban on advertising, marketing, promoting, offering for sale, or selling any pension-advance products, and requires defendants to pay over $436 million in consumer restitution and a $65,481,736 penalty. The receiver's work is ongoing.

- *Consumer Financial Protection Bureau v. The National Collegiate Master Student Loan Trust, et al. (D. Del. No. 17-cv-1323).* On September 18, 2017, the CFPB filed a complaint and proposed consent judgment against several National Collegiate Student Loan Trusts (collectively, "NCSLT"). The CFPB alleges that NCSLT brought debt collection lawsuits for private student loan debt that the companies could not prove was owed or was too old to sue over; that they filed false and misleading affidavits or provided false and misleading testimony; and that they falsely claimed that affidavits were sworn before a notary. Soon after the CFPB's filing, several entities moved to intervene to object to the proposed consent judgment. The judge granted the intervention motions, and on May 31, 2020, the Court denied the CFPB's motion to approve the proposed consent judgment filed with the original complaint. Several of the intervenors then filed motions to dismiss, one of which was granted in part, dismissing the complaint without prejudice. On April 30, 2021, the CFPB filed an amended complaint, adding clarifying allegations related to several issues raised in the motions to dismiss the original complaint. On May 21, 2021, defendants and certain intervenors filed a motion to dismiss the amended complaint, which the court denied on December 13, 2021. On February 11, 2022, the court certified two holdings in its opinion denying the motion to dismiss for interlocutory appeal to the Third Circuit and stayed the matter. The case remains pending.

- *Consumer Financial Protection Bureau v. Ocwen Financial Corporation, Ocwen Mortgage Servicing, Inc., Ocwen Loan Servicing, LLC, and PHH Mortgage Corporation (S.D. Fla. No. 17-cv-80495).* On April 20, 2017, the CFPB filed a complaint against mortgage loan servicer Ocwen Financial Corporation and its subsidiaries. The CFPB alleges that they used inaccurate and incomplete information to service loans, misrepresented to borrowers that their loans had certain amounts due, illegally foreclosed on homeowners that were performing on agreements on loss mitigation options, failed to adequately investigate and respond to borrower complaints, and engaged in other conduct in violation of the CFPA, TILA, FDCPA, RESPA, and Homeowners Protection Act (HPA). On September 5, 2019, the district court rejected the majority of Ocwen's arguments in its motion to dismiss but required the CFPB to re-plead its allegations, which the CFPB did on October 4, 2019. The case was partially consolidated with a related case against Ocwen brought by the Office of the Attorney General and Office of Financial Regulation for the State of Florida, and the Florida plaintiffs settled their claims against Ocwen. On March 4, 2021, the district court granted in part defendants' Motion for Summary Judgment as to Counts 1-9 of the CFPB's First Amended Complaint based on *res judicata*. On April 19, 2021, the CFPB filed a Second Amended Complaint that dropped Count 10 of its First Amended Complaint and limited the claims set forth in Counts 1 through 9 to allegations of violations for the time period of January 2014 through February 26, 2017. On April 21, 2021, in light of the CFPB's recently filed Second Amended Complaint, the district court entered a Final Judgment in favor of the defendants. The CFPB filed a notice of appeal the same day. As of the end of the reporting period the appeal and the case remain pending.[37]

- *Consumer Financial Protection Bureau v. RD Legal Funding, LLC, RD Legal Finance, LLC, and RD Legal Funding Partners, LP, and Roni Dersovitz (S.D.N.Y. No. 1:17-cv-0890).* On February 7, 2017, the CFPB and the New York Attorney General filed a complaint against RD Legal Funding, LLC, two related entities, and the companies' founder and owner, Roni Dersovitz. The CFPB alleges that they made misrepresentations to potential borrowers and engaged in abusive practices in connection with cash advances on settlement payouts from victim-compensation funds and lawsuit settlements. The lawsuit seeks monetary relief, disgorgement, and civil money penalties. On May 15, 2017, the defendants filed a motion to dismiss the CFPB's complaint, which the CFPB opposed. On June 21, 2018, the court issued an opinion concluding that the defendants are subject to the CFPA's prohibitions and that the complaint properly pleaded claims against all of them. The court held, however that the removal provision that applied to the CFPB's Director violated the constitutional separation of powers and could not be severed from the remainder of Title X of the Dodd-Frank Act. Based on that conclusion, the court ultimately dismissed the entire case. The United States Court of Appeals for the Second Circuit vacated the district court's judgment and remanded the case for further proceedings. On March 12, 2021, the defendants filed a motion to dismiss, which the court denied on March 16, 2022.

- *Consumer Financial Protection Bureau v. Navient Corporation, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc. (M.D. Pa. No. 17-cv-0101).* On January 18, 2017, the CFPB filed a complaint against Navient Corporation and its subsidiaries, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc. The CFPB alleges that Navient Solutions and Navient Corporation steered borrowers toward repayment plans that resulted in borrowers paying more than other options; misreported to credit reporting agencies that severely and permanently disabled borrowers who had loans discharged

[37] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at https://www.consumerfinance.gov/enforcement/actions/ocwen-financial-corporation-ocwen-mortgage-servicing-inc-and-ocwen-loan-servicing-llc/.

under a federal program had defaulted on the loans when they had not; deceived private student loan borrowers about requirements to release their co-signer from the loan; and repeatedly incorrectly applied or misallocated borrower payments to their accounts. The CFPB also alleges that Pioneer and Navient Corporation misled borrowers about the effect of rehabilitation on their credit reports and the collection fees that would be forgiven in the federal loan rehabilitation program. The CFPB seeks consumer redress and injunctive relief. On March 24, 2017, Navient moved to dismiss the complaint. On August 4, 2017, the court denied Navient's motion. On May 19, 2020, the CFPB and all three defendants moved for summary judgment and these motions are pending. On July 10, 2020, Navient filed a motion for judgment on the pleadings, which the court denied on January 13, 2021. The case remains pending.

- *Consumer Financial Protection Bureau v. Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, Lee Jundanian, Raffi Boghosian, Michael Borkowski, and Charles Smith (D. Md. No. 1:16-cv-3759).* On November 21, 2016, the CFPB filed a complaint against Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, three of the companies' principals—Lee Jundanian, Raffi Boghosian, and Michael Borkowski—and a Maryland attorney, Charles Smith. The CFPB alleged that Access Funding was aware that the individuals from whom they purchased structured settlement payments were frequently in need of the funds the company could supply. The CFPB also alleged that the companies and their principals steered consumers to receive "independent advice" from Smith, who was paid directly by Access Funding and provided only cursory communications to consumers. The CFPB alleged that Smith's conduct was unfair, abusive, and deceptive in violation of the CFPA and that Access Funding and its leadership unlawfully aided Smith's illegal conduct. The CFPB further alleged that Access Funding engaged in abusive conduct by advancing money to some consumers and represented to those consumers that the advances obligated them to go forward with transactions even if they realized that the transactions were not in their best interests. On September 13, 2017, the court granted defendants' motions to dismiss counts I–IV, arising out of Smith's conduct, on the grounds that he had attorney-client relationships with the consumers in question. The court denied the defendants' motions to dismiss the CFPB's claim relating to the advances Access Funding offered consumers. The court granted the CFPB's motion to file an amended complaint alleging that Smith did not have attorney-client relationships with the consumers in question. Defendants again filed motions to dismiss, which the court denied. The defendants filed a motion for partial summary judgment, which the court denied on January 18, 2019. On December 26, 2019, the court stayed the case pending the Supreme Court's decision in *Seila Law LLC v. CFPB*, No. 19-7 (cert. granted Oct. 18, 2019). On October 23, 2020, based on the parties' stipulation, the court dismissed the claims against Reliance Funding, LLC. The parties moved for summary judgment, which the Court denied on July 12, 2021.

On November 18, 2021, the court entered a stipulated judgment and order against Charles Smith, which requires him to pay $40,000 in disgorgement and a $10,000 civil money penalty. The order also permanently bans him from the structured-settlement industry. On December 17, 2021, the court entered a stipulated judgment and order against Access Funding, LLC, Access Holding, LLC, Lee Jundanian, and Raffi Boghosian, requiring the settling defendants to pay $40,000 in disgorgement and a $10,000 civil money penalty. The order also prohibits the settling defendants from referring consumers to a specific individual or for-profit entity for advice concerning any structured-settlement transaction or taking unreasonable advantage of consumers' lack of understanding of the material risks, costs, or conditions of any cash advance. The order also prohibits the settling defendants from misrepresenting the relationship between themselves and providers of independent professional advice, and any other fact material to consumers (such as the material risks, total costs, or conditions of any advance) in connection with the transfer of payment streams from structured-settlement holders. As of the end of the reporting period, the case remained pending against Michael Borkowski.[38]

- *Consumer Financial Protection Bureau v. All American Check Cashing, Inc., Mid-State Finance, Inc., and Michael E. Gray (S.D. Miss. No. 16-cv-0356).* On May 11, 2016, the CFPB filed a complaint against two companies, All American Check Cashing, Inc. and Mid-State Finance, Inc., which offer check-cashing services and payday loans, and their president and sole owner, Michael Gray. The CFPB alleges that All American tried to keep consumers from learning how much they would be charged to cash a check and used deceptive tactics to stop consumers from backing out of transactions. The CFPB also alleges that All American made deceptive statements about the benefits of its high-cost payday loans and failed to provide refunds after consumers made overpayments on their loans. The CFPB's lawsuit seeks injunctive relief, restitution, and the imposition of a civil money penalty. On July 15, 2016, the court denied defendants' motion for a more definite statement. The defendants moved for judgment on the pleadings on May 24, 2017, and the CFPB moved for summary judgment on August 4, 2017. The court has not yet ruled on the CFPB's summary judgment motion. On March 21, 2018, the court denied the defendants' motion for judgment on the pleadings, and on March 26, 2018, the defendants moved to certify that denial for interlocutory appeal. The next day, the court granted the

[38] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at https://www.consumerfinance.gov/enforcement/actions/access-funding-llc-access-holding-llc-reliance-funding-llc-lee-jundanian-raffi-boghosian-michael-borkowski-charles-smith/.

defendants' motion in part, holding that interlocutory appeal was justified with respect to defendants' constitutional challenge to the CFPB's statutory structure. On April 24, 2018, the court of appeals granted the defendants' petition for permission to appeal the district court's interlocutory order. The district court action has been stayed pending the appeal. On March 3, 2020, the Fifth Circuit affirmed the district court's denial of All American's motion for judgment on the pleadings. On March 20, 2020 the court of appeals, *sua sponte*, vacated the panel's decision and decided to rehear the matter *en banc*. On September 8, 2020, the court placed the case in abeyance pending a decision by the Supreme Court in *Collins v. Mnuchin,* which is now captioned, *Collins v. Yellen*, No. 19-422. The Supreme Court issued its opinion in *Collins* on June 23, 2021, finding that the structure of the FHFA was unconstitutional. On June 21, 2021, the Fifth Circuit directed the parties to file supplemental briefing addressing the impact of the *Collins* decision on the present matter. Supplemental briefing was completed on September 8, 2021, and a supplemental *en banc* argument was held on January 19, 2022. As of the end of the reporting period, the case remained pending in the Fifth Circuit.[39]

- *In the Matter of Integrity Advance, LLC and James R. Carnes (File No. 2015-CFPB-0029) (not a credit union or depository institution)*. On November 18, 2015, the CFPB filed a notice of charges against an online lender, Integrity Advance, LLC, and its CEO, James R. Carnes. The notice alleges that Integrity Advance and Carnes deceived consumers about the cost of short-term loans and that the company's contracts did not disclose the costs consumers would pay under the default terms of the contracts. The notice also alleges that the company unfairly used remotely created checks to debit consumers' bank accounts even after the consumers revoked authorization for automatic withdrawals. On September 27, 2016, the Administrative Law Judge issued a Recommended Decision finding liability and recommending injunctive and monetary relief. The Recommended Decision was appealed to the Director, but further activity on that appeal was held in abeyance pending a decision in *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir.), and, subsequently, pending a decision in *Lucia v. SEC*, No. 17-0130 (S. Ct.). Subsequent to the Supreme Court's ruling in *Lucia* that suggested that the Administrative Law Judge that presided over the proceedings in this case may have been improperly appointed, the Director remanded the case for a new hearing and recommended decision by the CFPB's Administrative Law Judge. On March 26, 2020, Respondents moved to amend their answer, to reopen the record, and to dismiss the notice of charges. The Administrative Law Judge denied these motions on April 24, 2020. In response to cross

[39] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at https://www.consumerfinance.gov/enforcement/actions/all-american-check-cashing-inc-mid-state-finance-inc-db-thrifty-check-advance-and-michael-gray/.

motions for summary disposition, on August 4, 2020, the Administrative Law Judge issued a Recommended Decision finding in the CFPB's favor on all counts. Respondents noticed an appeal to the Director and filed their opening appeal brief on September 3, 2020. On January 11, 2021, the Director issued a Decision and Final Order, affirming in part and reversing in part the Recommended Decision. She affirmed the ALJ's conclusion that Integrity Advance violated TILA and EFTA and that both respondents violated the CFPA. With respect to the appropriate remedy, she concluded that Integrity Advance and James Carnes were jointly and severally liable for more than $38 million in restitution and imposed a $7.5 million civil money penalty against Integrity Advance and $5 million penalty against Carnes. The Director did not order restitution for conduct that pre-dated July 21, 2011, which is the CFPB's designated transfer date. On February 10, 2021, Integrity Advance filed a petition for review in the Tenth Circuit. On May 19, 2021, the CFPB filed a petition to enforce the CFPB Director's order in United States District Court for the Northern District of Kansas. The district court granted the CFPB's petition on July 30, 2021 and entered judgment for $38,453,341.62 in restitution against Integrity Advance and Carnes, and a civil money penalty of $7.5 million against Integrity and $5 million against Carnes. The CFPB is currently pursuing asset discovery against Carnes in order to satisfy the judgment. As of the end of the reporting period, the petition for review of the Director's order remained pending on appeal.[40]

- *Consumer Financial Protection Bureau v. Global Financial Support, Inc., d/b/a Student Financial Resource Center, d/b/a College Financial Advisory; and Armond Aria a/k/a Armond Amir Aria, individually, and as owner and CEO of Global Financial Support, Inc. (S.D. Cal. No. 15-cv-2440).* On October 29, 2015, the CFPB filed a complaint against Global Financial Support, Inc., which operated under the names Student Financial Resource Center and College Financial Advisory, and Armond Aria. As alleged in the February 16, 2021 amended complaint, the defendants issued deceptive marketing letters that created the false impression that the company would provide financial aid or apply for financial aid on students' behalf and conduct extensive searches to target or match them with individualized financial aid opportunities. The CFPB also alleges that Global Financial Support, Inc. misrepresented defendants' affiliation with government and university financial aid offices, and that the defendants pressured consumers to enroll through deceptive statements suggesting that failure to fill out the company's form and pay its fee before a specified deadline would jeopardize students' ability to obtain financial aid. The CFPB also alleges that the company failed to provide required privacy notices in violation of Regulation P. A stay was entered by the court on May 17, 2016,

[40] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at. https://www.consumerfinance.gov/enforcement/actions/integrity-advance/.

pending an ongoing criminal proceeding involving one of the defendants. The court lifted the stay on May 27, 2019. On August 24, 2020, the CFPB moved for default judgment against the corporate defendants and for partial summary judgment against the individual defendant. On January 25, 2021, the court granted the CFPB's motion for default judgment in full and the CFPB's motion for summary judgment in part. The court also ordered the defendants to provide $4.7 million in restitution to harmed consumers, pay a $10 million civil money penalty, and imposed a permanent injunction. On March 26, 2021, the court denied the individual defendant's Motion for Reconsideration of its Summary Judgment Order and on March 29, 2021, the court denied the individual defendant's Motion for Stay of the Order. Individual defendant Armond Aria filed an appeal with the Ninth Circuit on May 19, 2021. The case remains pending.

- *Consumer Financial Protection Bureau v. Nationwide Biweekly Administration, Inc., et al. (N.D. Cal. No. 3:15-cv-2106).* On May 11, 2015, the CFPB filed a complaint against Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, and Daniel S. Lipsky. The CFPB alleged the defendants engaged in abusive and deceptive acts and practices in violation of the CFPA and the TSR regarding a mortgage payment product known as the "Interest Minimizer Program," or IM Program. The CFPB alleged that the defendants misrepresented their affiliation with consumers' mortgage lenders; the amount of interest savings consumers would realize, and when consumers would achieve savings on the IM Program; consumers' ability to attain the purported savings on their own or through a low- or no-cost option offered by the consumers' servicer; and fees for the program. The CFPB sought a permanent injunction, consumer redress, and civil money penalties. A trial was held beginning on April 24, 2017, and on September 8, 2017, the court issued an opinion and order finding that the defendants had engaged in deceptive and abusive conduct in violation of the CFPA and TSR. The court imposed a $7.93 million civil money penalty but denied the CFPB's request for restitution and disgorgement. On November 9, 2017, the court reduced the previous order to a judgment that included a permanent injunction forbidding defendants from engaging in specified acts or practices. The court denied defendants' post-trial motions on March 12, 2018, and both parties have filed a notice of appeal. On January 23, 2020, the United States Court of Appeals for the Ninth Circuit held the parties' appeals in abeyance pending the Supreme Court's decision in *Seila Law LLC v. Consumer Financial Protection Bureau*, No. 19-7 (cert. granted Oct. 18, 2019). In September 2020, the Ninth Circuit scheduled oral argument for November 18, 2020, and ordered supplemental briefing regarding the sufficiency of a ratification the CFPB filed after the Supreme Court's decision in *Seila Law LLC*. The Ninth Circuit held oral argument on November 18, 2020, and, the following day, vacated submission of the case pending the court's resolution of *Seila Law LLC*, which the Supreme Court had remanded to the Ninth Circuit. On December 29, 2020, the Ninth Circuit issued its opinion in *Seila Law LLC*, and on January 12, 2021, the court continued its vacatur of submission of the case pending the Ninth Circuit's decision in *CFPB v. CashCall, Inc.* (No. 18-55407). The case remains on appeal to the U.S. Court of Appeals for the Ninth Circuit.

- *Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions, LLC, et al. (N.D. Ga. No. 15-cv-0859).* On March 26, 2015, the CFPB filed a lawsuit against a group of seven debt collection agencies and six individual debt collectors, four payment processors and individual sales organizations, and a telephone marketing service provider alleging unlawful conduct related to a phantom debt collection operation. Phantom debt is debt that consumers do not actually owe or debt that is not payable to those attempting to collect it. The CFPB alleges that the individuals, acting through a network of corporate entities, used threats and harassment to collect phantom debt from consumers. The CFPB alleges the defendants violated the FDCPA and the CFPA's prohibition on unfair and deceptive acts and practices and substantial assistance to unfair or deceptive conduct. On April 7, 2015, the CFPB obtained a preliminary injunction against the debt collectors that froze their assets and enjoined their unlawful conduct. On August 25, 2017, as a discovery sanction against the CFPB, the court dismissed the CFPB's claims against the payment processors and the telephone marketing service provider: Frontline Processing Corp., Global Payments, Inc., Pathfinder Payment Solutions, Inc., Francis David Corp. d/b/a/ Electronic Merchant Systems, and Global Connect, LLC. Five of the seven corporate debt collectors defaulted and the CFPB voluntarily dismissed one individual defendant, Varinderjit Bagga. On March 21, 2019, the court granted the CFPB's motion for summary judgment on all its claims against four individual debt collectors, Marcus Brown, Mohan Bagga, Sarita Brown, and Tasha Pratcher, and against the non-defaulted corporate debt collector WNY Account Solutions, LLC. The court further granted the CFPB's motion as to one of its claims against the other individual debt collector defendant, Sumant Khan, but denied summary judgment on the remaining claims. The court also denied the CFPB's motion for summary judgment against the other non-defaulted corporate debt collector S Payment Processing Solutions, LLC. Lastly, the court denied the latter two defendants' motions for summary judgment against the CFPB.

  On August 21, 2019, the court entered a stipulated final judgment and order against Sumant Khan and S Payment Processing Solutions, LLC. Among other things, the stipulated judgment and order requires the settling defendants to transfer all the funds in their various bank accounts to the CFPB in partial satisfaction of a judgment of equitable monetary relief and damages in the amount of $633,710, which is partially suspended based on inability to pay. The stipulated judgment and order permanently bans the settling defendants from engaging in debt collection activities and prohibits them from making certain misrepresentations. On November 15, 2019, the court entered a stipulated final judgment and order against Mohan Bagga. Among other things, the stipulated judgment and order imposes a suspended judgment against Bagga of equitable monetary relief and damages in the amount of $5,261,484, orders him to pay a $1 civil money penalty, permanently bans him from engaging in debt collection activities, and prohibits him from making certain misrepresentations. The suspension of the judgment and the $1 civil money penalty are based on his inability to pay. On February 19, 2020, the court appointed a receiver to, among other things, identify and conserve frozen assets of certain defendants for future potential consumer redress. On December 15, 2020, the court entered a stipulated final judgment and order against Tasha Pratcher. Among other things, the stipulated judgment and order imposes a $300,000 judgment against Pratcher for monetary relief and damages, which amount is suspended upon her payment of $2,500 and turnover of assets, orders her to pay a $1 civil money penalty, permanently bans her from engaging in debt collection activities, and prohibits her from making certain misrepresentations.

On October 20, 2021, the court entered a permanent injunction and final judgment against Marcus Brown, Sarita Brown, and WNY Account Solutions, LLC and a default judgment against the five corporate debt collectors—Check & Credit Recovery, LLC, Credit Power, LLC, Universal Debt & Payment Solutions, LLC, Universal Debt Solutions, LLC, and WNY Solutions Group, LLC—which had previously defaulted. These orders impose judgments for monetary relief against Marcus Brown, Sarita Brown, WNY Account Solutions, LLC, and the defaulted defendants, joint and severally, in the amount of $5,183,947.71 and require them to pay civil money penalties totaling $2,016,000. The orders also permanently ban them from engaging in debt collection activities, prohibit them from making certain misrepresentations, and prohibit them from using consumer information they obtained during the course of the debt collection scheme. On December 17, 2021, the CFPB filed a notice of appeal of the court's August 25, 2017 order dismissing its claims against the payment processors and the telephone marketing services provider, and the parties have completed briefing on the appeal. The case remains pending.

- *Consumer Financial Protection Bureau v. The Mortgage Law Group, LLP, d/b/a The Law Firm of Macey, Aleman & Searns; Consumer First Legal Group, LLC; Thomas G. Macey; Jeffrey J. Aleman; Jason E. Searns; and Harold E. Stafford (W.D. Wis. No. 3:14-cv-0513).* On July 22, 2014, the CFPB filed a complaint against The Mortgage Law Group, LLP (TMLG), the Consumer First Legal Group, LLC (CFLG), and attorneys Thomas Macey, Jeffrey Aleman, Jason Searns, and Harold Stafford. The CFPB brought suit alleging that the defendants violated Regulation O, formerly known as the Mortgage Assistance Relief Services Rule, by taking payments from consumers for mortgage modifications before the consumers signed a mortgage modification agreement from their lender, by failing to make required disclosures, by directing consumers not to contact lenders, and by making deceptive statements to consumers when providing mortgage assistance relief services. A trial was held in April 2017. On June 21, 2017, the district court entered a stipulated judgment against the bankruptcy estate of TMLG, which sought Chapter 7 bankruptcy. The court enjoined TMLG from operating and ordered TMLG to pay $18,331,737 in redress and $20,815,000 in civil money penalties. On May 29, 2018, the CFPB filed an unopposed motion to increase the redress amount ordered by the court to $18,716,725.78, based on newly discovered information about additional advance fees paid by consumers. The amended stipulated judgment against TMLG increasing redress to $18,716,725.78 was issued by the court on November 11, 2018. On November 15, 2018, the court issued an opinion and order ruling that defendants CFLG, Macey, Aleman, Searns, and Stafford violated Regulation O by taking upfront fees and by failing to make required disclosures, and that some of the defendants also violated Regulation O by directing consumers not to contact their lenders and by making deceptive statements. The court directed that the parties submit briefs addressing what damages, injunctive relief, and civil money penalties, if any, should be awarded. On November 4, 2019, the court issued an opinion and order against defendants CFLG, Macey, Aleman, Searns, and Stafford, imposing a total of $21,709,022 in restitution ($18.7 million of which TMLG is also jointly and severally liable for) and $37,294,250 in civil money penalties. CFLG, Macey, Aleman, and Searns were permanently enjoined from marketing, selling, providing, or assisting others in selling or providing any mortgage-assistance-relief or debt-relief products or services. Stafford was enjoined from marketing, selling, providing, or assisting others in selling or providing mortgage-assistance-relief services for five years. CFLG, Macey, Aleman, Searns, and Stafford filed an appeal with the Seventh Circuit on December 4, 2019. On July 23, 2021, the Seventh Circuit affirmed the district court's rulings that defendants violated Regulation O, vacated the remedial order, and remanded to the district court for further proceedings on remedies. On December 16, 2021, the district court ordered the parties to file briefs on appropriate remedies based on the Seventh Circuit's opinion, which issue remained pending as of the end of the reporting period.[41] The case remains pending.

- *Consumer Financial Protection Bureau v. CashCall, Inc.; WS Funding, LLC; Delbert Services Corporation; and J. Paul Reddam (C.D. Cal. No. 15-cv-7522).* On December 16, 2013, the CFPB filed a complaint against online lender CashCall Inc.; its owner J. Paul Reddam; WS Funding, LLC, a subsidiary; and Delbert Services Corporation, an affiliate.

[41] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at https://www.consumerfinance.gov/enforcement/actions/mortgage-law-group-and-consumer-first-legal-group-dba-law-firm-of-macey-aleman-and-searns-consumer-first-legal-group-llc-thomas-g-macey-jeffrey-j-aleman-jason-searns-harold-e-stafford/.

The CFPB's amended complaint, filed on March 21, 2014, alleged that the defendants violated the CFPA's prohibition against unfair, deceptive, and abusive acts and practices by collecting and attempting to collect consumer-installment loans that were void or uncollectible because they violated either state caps on interest rates or state licensing requirements for lenders. The complaint alleged that CashCall serviced loans it made in the name of an entity, Western Sky, which was located on the Cheyenne River Sioux Tribe's land. The case was transferred to the Central District of California, where defendants were based, on September 23, 2015. On August 31, 2016, the court granted the CFPB's motion for partial summary judgment, concluding that the choice-of-law provision in the loan agreements was not enforceable and that the law of the borrowers' states applied, resulting in the loans being void or uncollectable. Because the loans were void, the court found that the defendants engaged in deceptive acts or practices by demanding and collecting payment on debts that consumers did not owe. A two-day trial was held in October 2017 on the issue of appropriate relief. On January 19, 2018, the court issued findings of fact and conclusions of law imposing a $10.28 million civil money penalty but denying the CFPB's request for restitution and an injunction. The CFPB and the defendants appealed. Oral argument was heard on September 9, 2019. After the Supreme Court decided *Seila Law LLC v. Consumer Financial Protection Bureau*, No. 19-7 (cert. granted Oct. 18, 2019), and the Ninth Circuit decided that case on remand, the court in this case invited supplemental briefing, which concluded in April 2021. The Ninth Circuit heard oral argument on the supplemental briefing on September 23, 2021, and took the appeal under submission, which was pending as of the end of the reporting period.[42]

[42] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at https://www.consumerfinance.gov/enforcement/actions/cashcall-inc-ws-funding-and-delbert-services/.

3.2 Actions taken regarding rules, orders, and supervisory and enforcement actions with respect to covered persons which are not credit unions or depository institutions

The CFPB's *Supervisory Highlights* publications provide general information about the CFPB's supervisory activities at banks and nonbanks without identifying specific companies. The CFPB published two issues of *Supervisory Highlights* between October 1, 2021, and March 31, 2022.[43]

All public enforcement actions are listed in Section 5.1 of this Report. Those actions taken with respect to covered persons which are not credit unions or depository institutions are noted within the summary of the action.

[43] Supervisory Highlights, Issue 25, Fall 2021, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf; Supervisory Highlights, Issue 26, Spring 2022, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf.

4. State Consumer Financial Law

For purposes of the Section 1016(c)(7) reporting requirement, the CFPB has determined that any actions asserting claims pursuant to Section 1042 of the Dodd-Frank Act are "significant."

4.1 Assessment of significant actions by state attorneys general and state regulators relating to federal consumer financial law

The CFPB is aware of the following developments in pending State attorney general and regulatory actions asserting Dodd-Frank Act claims during the October 1, 2021 through March 31, 2022 reporting period.

- *Consumer Financial Protection Bureau; Commonwealth of Massachusetts; The People of the of State of New York, by Letitia James, Attorney General of the State of New York; and Commonwealth of Virginia, ex rel. Mark R. Herring, Attorney General v. Nexus Services, Inc.; Libre by Nexus, Inc.; Michael Donovan; Richard Moore; and Evan Ajin (W.D. Va. 5:21-cv-00016).* On February 22, 2021, the CFPB and the Attorneys General of Virginia, Massachusetts, and New York filed a lawsuit in the United States District Court for the Western District of Virginia against Nexus Services, Inc. (Nexus Services), Libre by Nexus, Inc. (Libre), and their principals, Michael Donovan, Richard Moore, and Evan Ajin. The CFPB and states allege that Libre and its owners operated a scheme through which Libre offers to pay the immigration bonds to secure the release of consumers held in federal detention centers in exchange for large upfront fees and hefty monthly payments, while concealing or misrepresenting the true costs of its services. Specifically, the CFPB and states allege that Libre and its owners engaged in deceptive and abusive acts or practices in violation of the Consumer Financial Protection Act (CFPA), and that Nexus Services and Libre's owners provided substantial assistance to Libre's violations. The CFPB and states seek an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. On March 1, 2021, the defendants filed a motion to dismiss the complaint, which was denied on March 22, 2022. The case remains pending.

- *Bureau of Consumer Financial Protection and the People of the State of New York, by Letitia James, Attorney General for the State of New York v. JPL Recovery Solutions, LLC; Check Security Associates, LLC (dba Warner Location Services, Pinnacle Location Services, and Orchard Payment Processing Systems); ROC Asset Solutions LLC (dba API Recovery Solutions and Northern Information Services); Regency One Capital LLC; Keystone Recovery Group, LLC; Bluestreet Asset Partners, Inc.; Christopher L. Di Re; Scott A. Croce; Brian J. Koziel; Marc D. Gracie; and Susan A. Croce (W.D.N.Y. 1:20-cv-01217).* On September 8, 2020, the CFPB, in partnership with the New York Attorney General, filed suit against a network of five different companies based outside of Buffalo, New York, two of their owners, and two of their managers, for their participation in a debt-collection operation using illegal methods to collect debts. As set forth in the amended complaint filed on December 20, 2021, the company defendants are: JPL Recovery Solutions, LLC; Regency One Capital LLC; ROC Asset Solutions LLC, which does business as API Recovery Solutions; Check Security Associates LLC, which does business as Warner Location Services and Orchard Payment Processing Systems; Keystone Recovery Group; and Blue Street Asset Partners, Inc. The individual defendants are Christopher Di Re, Scott Croce, and Susan Croce, who have held ownership interests in some or all of the defendant companies, and Brian Koziel and Marc Gracie, who are members of Keystone Recovery Group, and have acted as managers of some or all of the defendant companies. Susan Croce is also a relief defendant. The complaint alleged that from at least 2015 through the present, the defendants have participated in a debt-collection operation that has used deceptive, harassing, and improper methods to induce consumers to make payments to them in violation of the Fair Debt Collection Practices Act (FDCPA) and the CFPA. The complaint seeks consumer redress, disgorgement of ill-gotten gains, civil money penalties, and appropriate injunctive relief against the defendants. As of the end of the reporting period, the case remained pending.[44]
- *Bureau of Consumer Financial Protection and the Commonwealth of Massachusetts ex rel. Maura Healey, Attorney General v. Commonwealth Equity Group, LLC (d/b/a Key Credit Repair); Nikitas Tsoukales (a/k/a Nikitas Tsoukalis) (D. Mass. 1:20-cv-10991).* On May 22, 2020, the CFPB and Commonwealth of Massachusetts Attorney General Maura Healey jointly filed a lawsuit against Commonwealth Equity Group, LLC, which does business as Key Credit Repair, and Nikitas Tsoukales (also known as Nikitas Tsoukalis), Key Credit Repair's president and owner. An amended complaint was filed on September 16, 2020. As the amended complaint alleges, from 2016 through 2019 alone, Key Credit Repair enrolled nearly 40,000 consumers nationwide, and since 2011, it collected at least

44 Additional activity has occurred with this matter since the end of this reporting period. More information can be found here https://www.consumerfinance.gov/enforcement/actions/jpl-recovery-solutions-llc-et-al/.

$23 million in fees from consumers. The CFPB and Commonwealth allege that in their telemarketing of credit-repair services, the defendants violated the CFPA's prohibition against deceptive acts or practices and the TSR prohibitions against deceptive and abusive telemarketing acts or practices. Massachusetts also alleges violations of Massachusetts laws. The amended complaint seeks redress to consumers, an injunction, and the imposition of civil money penalties. The defendants filed a motion to dismiss the amended complaint on September 30, 2020, which the court denied on August 10, 2021. On September 9, 2021, the defendants moved for reconsideration of the order denying the motion to dismiss. On September 23, 2021, the defendants answered the amended complaint. On September 9, 2021, the defendants moved for reconsideration of the order denying the motion to dismiss, which the court denied on October 13, 2021. The case remains pending.

5. Fair Lending

Congress charged the CFPB's Office of Fair Lending and Equal Opportunity (Fair Lending) with "providing oversight and enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities" that are enforced by the CFPB.[45] This Semi-Annual Report update provides highlights from the CFPB's fair lending-related activities from October 1, 2021 through March 31, 2022.

5.1 An analysis of efforts to fulfill the fair lending mission of the CFPB

Fair lending supervision and enforcement

Fair lending supervision

The CFPB assesses compliance with federal fair lending consumer financial laws at banks and nonbanks over which the CFPB has supervisory authority. To fulfill its fair lending mission during this reporting period, the CFPB initiated 21 supervisory activities onsite at financial services institutions under the CFPB's jurisdiction to determine compliance with federal laws, including the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and the prohibition against unfair, deceptive, or abusive acts and practices (UDAAPs).

For supervisory communications issued by the Office of Supervision during the reporting period, the most frequently identified issues related to the CFPB's review of mortgage origination underwriting policies and guidelines, especially with respect to underwriting policies that exclude lending relating to properties in certain locations or geographies.

During this reporting period, the CFPB examiners issued fewer matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period. MRAs and MOUs direct entities to take corrective actions and are monitored by the CFPB through follow-up supervisory events. Examiners encouraged lenders to enhance oversight and identification of fair lending risk and to implement policies, procedures, and controls designed to effectively manage HMDA activities, including regarding integrity of data collection.

45 Dodd-Frank Act, § 1013(c)(2)(A).

Fair lending enforcement

Congress authorized the CFPB to enforce ECOA, HMDA, and the prohibitions against UDAAPs under Title X of the Dodd Frank Act. The CFPB engages in research, conducts investigations, and, where appropriate, takes public enforcement actions for violations of fair lending laws under the CFPB's jurisdiction. Like other federal agencies responsible for enforcing ECOA, the CFPB is required to refer matters to DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[46] During this reporting period, the CFPB referred three matters regarding a pattern or practice of lending discrimination to the DOJ pursuant to Section 706(g) of ECOA.

The CFPB announced two fair lending-related enforcement actions during the reporting period against Trustmark National Bank (Trustmark) and JPay, LLC (JPay). These actions were brought under ECOA as well as other federal consumer financial laws that protect consumers and ensure fair access to credit, including the Consumer Financial Protection Act of 2010 (CFPA) and the Electronic Fund Transfer Act (EFTA).For more information, please refer to Section 5.1 of this report.

Fair lending guidance

For more information, refer to Section 1.2 of this report.

Fair lending rulemaking

In Fall of 2021, the CFPB issued a Notice of Proposed Rulemaking (NPRM) on Section 1071 of the Dodd-Frank Act ("section 1071") to collect small business lending data and participated in interagency rulemaking to improve quality control standards for automated valuation models (AVM), including outlining options for review to ensure that computer models used to help determine home valuations are accurate and fair. For more information pertaining to these rulemakings, please see section 3 of this report.

Interagency fair lending coordination

During the reporting period, the CFPB coordinated its fair lending regulatory, supervisory, and enforcement activities with other federal agencies and state regulators and enforcement agencies to promote consistent, efficient, and effective enforcement of federal fair lending laws.

[46] See 15 U.S.C. § 1691e(g).

The CFPB, along with the FTC, U.S. Department of Housing and Urban Development (HUD), FDIC, Federal Reserve Board (FRB), National Credit Union Administration (NCUA), OCC, DOJ, and Federal Housing Finance Agency (FHFA), constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies. The FDIC is currently the Chair of this Task Force.

The CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

The CFPB also participates with other agencies on issues of bias in home appraisals through the Property Appraisal and Valuation Equity (PAVE) Task Force. On March 23, 2022, the PAVE Task Force issued a report, *Action Plan to Advance Property Appraisal and Valuation Equity: Closing the Racial Wealth Gap by Addressing Mis-valuations for Families and Communities of Color*.[47] The report outlines the historical role of racism in the valuation of property, examines the various forms of bias that can appear in residential property valuation practices, and describes how government and industry stakeholders will advance equity through concrete actions and recommendations. Aside from its involvement in PAVE, the CFPB is actively working with its interagency partners on issues of bias in home appraisals.

In February 2022, the CFPB, along with HUD, FRB, DOJ, OCC, FDIC, NCUA, and FHFA submitted a letter to the Appraisal Standards Board regarding proposed changes to the 2023 Edition of the Uniform Standards of Professional Appraisal Practice.[48]

The Federal Financial Institutions Examination Council's (FFIEC) Appraisal Subcommittee (ASC), comprised of designees from the CFPB and certain other federal agencies, provides

[47] "Action Plan to Advance Property Appraisal and Valuation Equity." Interagency Task Force on Property Appraisal and Valuation Equity (PAVE). March 2022. https://pave.hud.gov/actionplan.

[48] Letter to Michelle Czekalski Bradley." Patrice Alexander Ficklin, Consumer Financial Protection Bureau; Amy Frisk, U.S. Department of Housing and Urban Development; Arthur Lindo, Deputy Director, Division of Supervision and Regulation; Sameena Shina Majeed, U.S. Department of Justice; Donna Murphy, Office of the Comptroller of the Currency; Mark Pearce, Federal Deposit Insurance Corporation; Timothy Segerson, National Credit Union Administration; James Wylie, Federal Housing Finance Agency. February 4, 2022. https://files.consumerfinance.gov/f/documents/cfpb_appraisal-discrimination_federal-interagency_comment_letter_2022-02.pdf.

federal oversight of state appraiser and appraisal management company regulatory programs, and a monitoring framework for the Appraisal Foundation.[49]

Through the FFIEC the CFPB works with other member agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has chaired the Home Mortgage Disclosure Act (HMDA)/Community Reinvestment Act (CRA) Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

Fair lending outreach and education

The CFPB regularly engages in outreach with stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government agencies to educate or communicate about fair lending issues.

The CFPB achieves its educational objectives through publication of proposed rules, advisory opinions, and interpretive rules; issuance of compliance bulletins and CFPB circulars; policy statements; requests for information; press releases, blog posts, podcasts, videos, brochures, and website updates; and reports regarding fair lending issues. Additionally, CFPB staff deliver speeches, panel remarks, webinars, and presentations addressing fair lending issues; and participate in smaller meetings and discussions with external stakeholders, including federal and state regulators and agencies.

During the reporting period, the CFPB also issued a range of content available to the public and to market participants related to fair lending.[50]

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49 Additional activity has occurred with this matter since the end of this reporting period. Deputy Director Zixta Martinez became chair of the ASC on April 1, 2022.

50 The fair lending and access to credit related blogs, press releases, speeches, and reports are available at consumerfinance.gov/about-us/newsroom/ and https://www.consumerfinance.gov/about-us/blog/.

6. Workforce and Contracting Diversity

The Office of Minority and Women Inclusion (OMWI) is charged with overseeing all matters at CFPB relating to diversity in management, employment, and business activities. OWMI works to develop and foster a diverse and inclusive workforce and workplace culture at CFPB. OMWI's work is informed by best practices in diversity, equity, and inclusion in which employees have equal access to opportunities and are valued for their expertise and authentic perspectives.

6.1 An analysis of CFPB efforts to increase workforce and contracting diversity consistent with procedures established by OMWI

During the reporting period, CFPB continued its work to advance diversity and inclusion under the mandates of Section 342 of the Dodd-Frank Act.

The CFPB launched a new Diversity, Equity, Inclusion, and Accessibility Strategic Plan (DEIA Strategic Plan), FY 2022–2026[51] in March 2022 that guides CFPB's efforts in promoting diversity, equity, inclusion, and accessibility in its workforce. The DEIA Strategic Plan aligns with the CFPB's new overall Strategic Plan FY 2022–2026,[52] which was released in January 2022.

Objective 4.1 of the CFPB's Strategic Plan commits the CFPB to "cultivate an engaged and informed workforce to maximize talent and development in alignment with the CFPB's mission." The plan requires the CFPB to achieve this objective with specific strategies, which are:

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[51] "Diversity, Equity, Inclusion, and Accessibility (DEIA) Strategic Plan." Consumer Financial Protection Bureau. June 2, 2022. https://files.consumerfinance.gov/f/documents/cfpb_deia-strategic-plan_report_2022-06.pdf.

[52] "Consumer Financial Protection Bureau Strategic Plan." Consumer Financial Protection Bureau. January 2022. https://www.consumerfinance.gov/about-us/budget-strategy/strategic-plan/.

- Reinforce human capital policies and programs to help the agency effectively and efficiently manage a talented, engaged, diverse, and inclusive workforce.
- Analyze and mature our learning and development opportunities to develop the new skills, leadership traits, and professional growth required for a modern workforce.
- Foster a positive, innovative work environment that promotes diversity, equity, integrity, inclusion, and trust for all employees.
- Review and redesign the skills and values we want in the CFPB's employees and enhance our services to enable them to do their best work.
- Maintain comprehensive equal employment opportunity (EEO) compliance and diversity and inclusion programs, including those focused on minority and women inclusion.

In addition, the CFPB's DEIA Strategic Plan also aligns with Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce*, released by the White House in June 2021.

6.2 Office of Minority and Women Inclusion

6.2.1 Significant initiatives

Current period:

In October 2021, the CFPB began implementing the Persons with Disabilities Action Plan to begin addressing and eliminating barriers to equal employment opportunity identified for persons with a disability or a targeted disability. The accomplishments and outcomes of the identified actions will be published in the FY 2022 EEO Status Report (MD-715 Report).

On November 22, 2021, the CFPB was one of three agencies highlighted in the White House Domestic Policy Council's Diversity, Equity, Inclusion, and Accessibility (DEIA) initiative webinar titled "Promising Practices from Agencies." The CFPB presented on the outstanding work it has done to promote LGBTQ+ equity and inclusion within the CFPB and best practices other agencies can adopt.

In January 2022, the CFPB submitted the CFPB Equity Action Plan to Office of Management and Budget (OMB) in voluntary response to Executive Order 13985 (racial and economic equity). The Plan identifies specific actions CFPB will take to break down barriers to equity and performance and accountability measures to ensure our goals are met. The Plan is also published on the CFPB's website, consumerfinance.gov.

In March 2022, the CFPB submitted its No FEAR Act Annual Report. In April 2022, the CFPB also submitted its annual EEO Status Report (MD-715 Report) and Office of Minority and Women Inclusion (OMWI) Annual Report to Congress.

The OMWI Director, as the CFPB's Chief Diversity Officer, led the CFPB's voluntary response to Executive Order (EO) 14035 (diversity, equity, inclusion, and accessibility - DEIA). The OMWI Director led a cross-agency team to facilitate the development of a new 5-year DEIA Strategic Plan to guide CFPB's efforts in promoting diversity, equity, inclusion, and accessibility in its workforce, supplier diversity, and work to promote diversity and inclusion in Financial Services. The CFPB submitted the Plan to OMB in March 2022 and published the Plan on the CFPB's public website, consumerfinance.gov.

Upcoming period

In April 2022, the CFPB launched a professional development pilot program in its Supervision Enforcement and Fair Lending (SEFL) division designed to assist employees in administrative positions with skills development and career planning to support advancement beyond their current administrative positions. The goal is to leverage the learnings from the pilot to establish a cross-agency program.

In September 2022, the CFPB will complete mandatory diversity, equity, and inclusion (DEI) training for all CFPB divisions. The training focuses on cultivating inclusive teams and is designed to provide substantive opportunities for discussion, practice, and collaboration within the CFPB workforce. As of June 2022, five of the CFPB's six divisions had completed the training.

6.2.2 An analysis of Bureau efforts to increase workforce and contracting diversity consistent with procedures established by OMWI

As of March 2022, an analysis of the CFPB's current workforce reveals the following key points:

- Women represent 50 percent of the CFPB's workforce in 2022.[53]
- Minorities (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, and employees of two or more races) represent 43 percent of the CFPB workforce in 2022 with an approximate 1 percent increase from FY 2021.
- As of March 31, 2022, 15.1 percent of CFPB employees on permanent appointments identified as individuals with a disability. Of the permanent workforce, 2.8 percent of employees identified as individuals with a targeted disability. As a result, the CFPB continues to exceed the 12 percent workforce goals for employees with disabilities and two percent workforce goals for employees with targeted disabilities in both salary categories as required in the U.S. Equal Employment Opportunity Commission's (EEOC) Section 501 regulation 4.

The CFPB engages in the following activities to increase workforce diversity:

- Staffing:
    - The CFPB had 78 new hires which included 41 (53 percent) women and 28 (36 percent) minorities.[54]
    - The CFPB continues to enhance diversity by recruiting, hiring, and retaining highly qualified individuals from diverse backgrounds to fill positions at the CFPB:
        - The CFPB uses social media platforms like LinkedIn, Twitter, and Facebook to broadly promote vacancies. In addition, the CFPB has been using eQuest, a diversity specific recruitment tool to promote direct outreach to diversity organizations.
        - The CFPB takes steps to mitigate bias in the hiring process, for example by removing applicant names from resumes and other application documents before submitting certain best-qualified lists to selection officials.

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53 "Office of Minority and Women Inclusion Annual Report to Congress." Consumer Financial Protection Bureau. March 31, 2022. https://files.consumerfinance.gov/f/documents/cfpb_2021-omwi-annual-report_2022-03.pdf.

54 New Hires data are collective over the period from October 1, 2021 to March 31, 2022.

    - The CFPB regularly analyzes whether any job qualifications may inadvertently disadvantage individuals who are members of underserved communities.
    - The CFPB's OMWI and OHC collaborate with hiring managers on strategic diversity and inclusion recruitment options.
  - The CFPB also utilized other professional development programs, and recruitment efforts directed to reach veterans and applicants with disabilities to assist in the CFPB's workforce needs. In addition, the CFPB recently hired a Selective Placement Program Coordinator who has a focus on expanding outreach to applicants with disabilities and veterans.
  - The CFPB's Disability and Accessibility Program Section (DAPS) provides employees and applicants with disabilities access to reasonable accommodations and other accessibility services required to meet the essential functions of their jobs and obtain fair and equitable access to apply and interview for CFPB positions. These efforts support the CFPB's overall efforts to recruit, hire, promote and retain individuals with disabilities as required by the Equal Employment Opportunity Commission's (EEOC) Section 501 regulation.
- Workforce engagement:
  - To promote an inclusive work environment, the CFPB continues to conduct strong engagement with employees and utilizes an integrated approach of education, training, and engagement programs that ensures diversity, equity, inclusion, and non-discrimination concepts are part of the learning curriculum and work environment. Employee resource groups, cultural education programs, employee dialogue sessions, a mentor program, and mandatory DEI training are key components of this effort. Notable examples include: 2022 Unity Day Celebration; Webinars on Personal Pronoun Etiquette; Dialogues on Gender Identity, Colorism, and the Cost of Racism; and Administrative Professionals Day.
  - In January 2022, the CFPB included the integration of racial equity and DEIA principles into the Bureau Strategic Plan and the CFPB's divisional biannual performance review (BPR) process to facilitate greater management commitment and accountability on equity and inclusion. DEIA was also included as a focus for all divisions during the Spring BPR sessions.

- In March 2022, the CFPB adopted a new DEIA Strategic Plan that includes actions on workplace inclusion and employee engagement to facilitate an inclusive, equitable work environment.

6.2.3 Increasing contracting diversity

In addition to the mandates in Section 342(b)(2)(B) of the Dodd-Frank Act, Goal 4 of the CFPB's DEIA Strategic Plan describes the efforts the CFPB takes to increase contracting opportunities for diverse businesses including Minority- and Women-owned Businesses (MWOBs). The CFPB's OMWI and Procurement offices collectively work to increase procurement opportunities for participation by MWOBs.

6.2.3.a Outreach to contractors

The CFPB promotes opportunities for the participation of small and large MWOBs by:

- Actively engaging CFPB business units with MWOB contractors throughout the acquisition cycle.
- During the reporting period, OMWI and the Office of Procurement held technical assistance events virtually due to COVID-19 restrictions. In fiscal year 2022, OMWI provided technical assistance to approximately 125 MWOBs and added over 150 vendors to its MWOB database. Attendance remained consistent at around 100 registrants and 55 attendees per session. These events included expert advice directly from CFPB procurement and program office professionals. The events aimed to align the CFPB's upcoming needs to vendor capabilities in data analytics, management consulting, and legal support services. In coordination with the Office of Procurement, OMWI attended two in-person events in addition to co-hosting two virtual business inclusion events for vendors and internal stakeholders.

In addition:

- OMWI supports program office stakeholders with updated market research and targeted outreach to engage current and potential MWOBs, and by providing suggestions for Divisions on how to incorporate supplier diversity goals into their diversity and inclusion strategic plans.
- OMWI tracks the percentage of contract dollars spent with MWOBs to advance economic equity. During the first and second quarters of FY 2022, the CFPB's MWOB spend percentage was 31 percent.

- OMWI regularly participates in virtual and in-person national supplier diversity industry days, such as the *31st Annual Government Procurement Conference and Women's Business Enterprise National Council conferences*, that help to foster business partnerships among the federal government, its U.S. prime contractors, and MWOBs.

- As a result of these efforts, 27 percent of the $96 million in contracts that the CFPB awarded or obligated during the reporting period went to MWOBs. The following table represents the total amount of dollars spent and disbursed to MWOBs as a result of contract billing.

TABLE 1: DOLLARS SPENT TOWARD MINORITY-OWNED AND WOMEN-OWNED BUSINESSES

Dollars Spent	% of Total	MWOB Category
$14,304,967	18.2%	Women Owned
$2,118,882	2.7%	Black/African American
$1,066,360	1.4%	American Indian/Alaskan Native
$12,810,098	16.3%	Asian/Pacific Islander American
$2,039,658	2.6%	Hispanic American

6.2.4 Diversity within the Bureau contractors' workforces

The CFPB requires its contractors and sub-contractors to report their diversity and inclusion data through the Good Faith Effort (GFE) contract requirement. During the reporting period, the CFPB collected GFE compliance data from contractors, providing an opportunity for contractors to demonstrate their efforts to address the six evaluation criteria: 1) Diversity Strategy; 2) Diversity Policies; 3) Recruitment; 4) Succession Planning; 5) Outreach; and 6) Supplier – Subcontractor Diversity. OMWI continues to maximize technical assistance to CFPB contractors throughout this process. During the reporting period the data collection form associated with the Good Faith Effort was broadened to allow for greater customization for Small Businesses. The modified form is awaiting OMB approval.

6.2.5 Assessing diversity of regulated entities

Per Section 342 (b) (2) (c) of the Dodd-Frank Act and Goal 5 of the CFPB's DEIA Strategic Plan, the CFPB continues to collect voluntarily submitted diversity and inclusion assessments from regulated entities. During the reporting period, the CFPB engaged in analysis of public diversity and inclusion data of regulated entities to gain a better understanding of diversity and inclusion within the financial services sector and compiled a report to share its findings. The *Diversity and Inclusion within Financial Services* report was published in January 2022. In addition, the CFPB continued its research of publicly available information related to corporate commitments designed to combat racial inequity. The CFPB followed press updates from institutions on their progress towards meeting these commitments and any new developments.

As part of ongoing the CFPB's self-assessment data collection efforts, the OMWI sent data calls to approximately 1,300 institutions and invited them to submit a diversity self-assessment. The OMWI also met directly with several financial institutions to learn more about their internal programming. These meetings have informed the OMWI about innovative initiatives that institutions have engaged in to address racial inequity within their organizations as well as in the communities they serve. The OMWI continues to welcome institutions to meet to discuss their diversity and inclusion initiatives including opportunities and challenges. The CFPB will continue to follow industry developments related to these initiatives and commitments. The CFPB will also continue its outreach to increase awareness and to encourage voluntary submission of the Diversity and Inclusion self-assessment.

7. Budget

7.1 Justification of the budget request for the previous year

The CFPB's Annual Performance Plan and Report and Budget Overview includes estimates of the resources needed for the CFPB to carry out its mission.[55] The document also describes the CFPB's performance goals and accomplishments, supporting the CFPB's long-term strategic plan.

7.1.1 Fiscal year (FY) 2022 spending through the end of the second quarter of the FY

As of March 31, 2022, the end of the second quarter of FY 2022, the CFPB had spent approximately $365.7 million[56] in FY 2022 funds to carry out the authorities of the CFPB under federal consumer financial law, including approximately $193.0 million for employee compensation and benefits.[57] There were 1,604 CFPB employees on board at the end of the second quarter.[58]

TABLE 2: FY 2022 SPENDING BY EXPENSE CATEGORY

Expense Category	Fiscal Year 2022
Personnel Compensation	$135,685,000

[55] "Budget and Performance." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/.

[56] This amount includes commitments and obligations. A commitment is a reservation of funds related to an authorized procurement action; an obligation is a transaction or agreement that creates a legal liability and obligates the government to pay for goods and services ordered or received.

[57] The CFPB's operations are funded principally by transfers made by the Board of Governors of the Federal Reserve System (Board) from the combined earnings of the Federal Reserve System, up to the limits set forth in the Dodd-Frank Act. The CFPB Director requests transfers from the Board in amounts that they have determined are reasonably necessary to carry out the CFPB's mission within the limits set forth in the Dodd-Frank Act. Transfers from the Board were capped at $717.5 million in FY 2021 and are capped at $734.0 million in FY 2022 and $750.9 million in FY 2023. Funds transferred from the Board are deposited into the Consumer Financial Protection Bureau Fund (Bureau Fund) at the Federal Reserve Bank of New York.

[58] This figure reflects the employees on board during pay-period 06 of calendar year 2022.

Benefit Compensation	$57,239,000
Benefit Compensation – Former Employees	$31,000
Travel	$48,000
Transportation of Things	$80,000
Rents, Communications, Utilities & Misc.	$9,081,000
Printing and Reproduction	$2,489,000
Other Contractual Services	$140,994,000
Supplies & Materials	$4,799,000
Equipment	$15,208,000
Total (as of March 31, 2022)	$365,654,000

7.1.2 FY 2022 fund transfers received from the Federal Reserve System

The CFPB is funded principally by transfers from the Federal Reserve System, up to the limits set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). As of March 31, 2022, the CFPB had received the FY 2022 transfers listed in Table 2 below.[59]

TABLE 3: FUND TRANSFERS

Date	Funds Transferred
October 01, 2021	$235.0M
January 04, 2022	$276.0M
Total	**$511.0M**

[59] Current year spending in excess of funds received is funded from the prior year's unobligated balance.

Additional information about the CFPB's finances, including information about the CFPB's Civil Penalty Fund and Bureau-Administered Redress programs, is available online in the annual financial reports.[60]

Copies of the CFPB's quarterly funds transfer requests are available online.[61]

[60] "Financial Reports." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/about-us/budget-strategy/financial-reports/.

[61] "Funds Transfer Requests." Consumer Financial Protection Bureau. https://www.consumerfinance.gov/about-us/budget-strategy/funds-transfer-requests/.

8. Appendix A

8.1 2021 Annual Report to Congress on the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) mandates a nationwide licensing system and registry for residential mortgage loan originators. It requires that State licensing and registration and federal registration of residential mortgage loan originators (MLOs) be accomplished through the same online system, known as the Nationwide Mortgage Licensing System and Registry (NMLS&R). The NMLS&R is operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS), as a contractor for the Bureau. The statutory purposes of the SAFE Act generally include increasing uniformity, reducing regulatory burden, enhancing consumer protection, and reducing fraud.

In July 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred to the Bureau rulemaking authority, and other authorities, of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Secretary of the Department of Housing and Urban Development for the SAFE Act. With this transfer, the Bureau assumed the (1) responsibility for developing and maintaining the federal registration system; (2) supervisory and enforcement authority for SAFE Act compliance for applicable entities under the Bureau's jurisdiction; (3) back-up and related authority relating to SAFE Act standards for MLO licensing systems at the state level; and (4) certain rulemaking authority. It also transferred to the Bureau the requirement to submit an annual report to Congress on the effectiveness of the SAFE Act's provisions. This section of the Bureau's Spring Semi-Annual Report constitutes the annual SAFE Act report for 2021.

While administering the SAFE Act during 2021, the Bureau worked closely with SRR/CSBS to facilitate sharing MLO information between state and federal regulators through the NMLS&R. Officials from the Bureau and SRR/CSBS met regularly to discuss issues related to the operation of the NMLS&R, resolve issues, and discuss requirements and policies related to the administration and functions of the NMLS&R. The Bureau reviewed, and approved as applicable, NMLS&R record adjustment requests to correct inaccurate information on federal registrant accounts. It also responded to Freedom of Information Act (FOIA) requests that pertained to federally registered MLOs. As of December 31, 2021, there were approximately 390,708 active federally registered MLOs in the NMLS&R.

In February 2021, Bureau staff virtually attended the 2021 annual NMLS User Conference and Training that provided information and training on the NMLS&R's state licensing and federal registry system related processes. The event was open to regulatory and industry system users, education providers, consultants, and others interested in attending, so it also provided an opportunity for Bureau staff to meet the other participants, build relationships, and share contact information.

The Bureau continues to answer SAFE Act-related questions through its regulations guidance function and provides different forms of guidance and compliance resources on its website. In 2021, the Bureau received approximately 22 inquiries concerning the SAFE Act through its "Regulations Inquiries" feature accessible on the Bureau's website. Most of the inquiries sought information about MLO licensing and registration requirements. The Bureau also maintains a SAFE Act Inquiries e-mail box to manage operational questions about the SAFE Act. The Bureau received approximately 115 emails in 2021, many of which pertained to the registration of MLOs and the use of the NMLS&R. The Bureau also continues to work with SRR/CSBS officials with inquiries associated to the use of the system.

While the Bureau has not conducted a formal assessment of the SAFE Act, our interactions with SRR/CSBS and the public indicate that the system is meeting expectations and provides a comprehensive licensing and supervisory database. During 2021, all of the required states, territories, and D.C. regulators (state regulators) continued to use the NMLS&R for licensing their MLOs, as is mandated by the SAFE Act, as implemented in Regulation H. The NMLS&R continues to collect and maintain the information required by the SAFE Act, as implemented in Regulations G and H. Additionally, an online consumer portal is available at no charge to consumers to provide employment and publicly adjudicated disciplinary and enforcement history for MLOs consistent with the statutory objectives of the SAFE Act.

The Bureau is litigating an enforcement action that alleges that Connecticut mortgage company, 1st Alliance Lending, LLC, violated Regulation Z by using unlicensed employees to engage in mortgage-origination activities that required them to be licensed under the SAFE Act, its implementing regulations, and State SAFE Act implementing law. On March 31, 2022, the United States District Court for the District of Connecticut denied 1st Alliance's motion to dismiss this claim finding that the requirement, for loan originator organizations to ensure that their loan originators are licensed as required by state and federal law, is clearly authorized by TILA.

All bank and non-bank mortgage origination exams conducted by the Bureau in 2021 included a review for compliance with the SAFE Act. Examiners tested for accurate licensing and registration as well as related policies and procedures.

During 2021, SRR/CSBS continued to engage the Bureau on issues regarding the NMLS&R and the modernization of the NMLS&R. The modernization entails rebuilding the NMLS&R on a more modern platform to improve its operations, enhance the user experience, and strengthen supervision. The Bureau continues to provide its feedback and position on current and proposed functions relating to the federal registration process for MLOs in the NMLS&R to SRR/CSBS.

3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

December 13, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing: "Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau"

Dear Chairwoman Waters and Ranking Member McHenry:

I write today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing, "Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 134 million consumers with personal and small business financial service products. NAFCU appreciates the Committee's ongoing oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and efforts to promote financial inclusion and consumer protection. We welcome this opportunity to share our thoughts on some current issues pertinent to the CFPB.

Use of Small Entity Exemption Authority

NAFCU believes that the CFPB should utilize its statutory exemption authority to recognize the unique nature of and constraints faced by the credit union industry. Since enactment of the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act, the credit union industry has faced massive consolidation, with many institutions forced to close their doors or merge with other credit unions. The rate of consolidation has only increased since creation of the CFPB. A majority of credit unions that have closed or merged were smaller in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. Therefore, it is incumbent upon the CFPB to provide some degree of regulatory relief for small entities that cannot afford to comply with complex rules and would otherwise be forced to stop offering services to members.

Although the CFPB has provided past exemptions based on an entity's asset size, such as the qualified mortgage (QM) and Home Mortgage Disclosure Act (HMDA) rules' small entity exemptions, the CFPB could do more to recognize that not all financial institutions operate the same way by tailoring its regulations to provide exemptive relief based on those differences. NAFCU encourages you to question why the CFPB has not utilized this dormant authority and to encourage the CFPB to begin relying on its exemption authority under Section 1022 of the Dodd-

Frank Act in its rulemaking efforts to consider the unique structure and characteristics of the credit union industry.

NAFCU Urges Interagency Coordination to Implement Section 1033 of the Dodd-Frank Act

The CFPB is currently in the rulemaking process to implement Section 1033 of the Dodd-Frank Act governing consumer access to financial records. Section 1033(e) requires the CFPB to consult with the federal banking agencies and the Federal Trade Commission when prescribing any future rule to "take into account conditions under which covered persons do business both in the United States and in other countries."[1] NAFCU has urged both the CFPB and the National Credit Union Administration (NCUA) to assess how implementation of Section 1033 will impact the availability of credit union services, competitive impact on small credit unions, and the security of member account data.

The CFPB has already published an outline of proposals under consideration that does not reference input provided by other federal banking agencies.[2] Shortly before this outline was released, the Director of the CFPB delivered a speech in which he predicted that "[O]nce data holding companies must share authorized consumer data with authorized third parties [...] this will lead to more shopping by consumers because they have the leverage to walk away and because they will have access to more tailored products and services."[3] Such an assertion disregards the healthy competition that exists within the financial sector landscape and downplays the serious privacy risks that would follow from any rule that grants third parties—potentially operating outside of the United States—the ability to extract financial data from American consumers at the push of a button. Accordingly, we urge you to ensure that the CFPB conducts the appropriate consultation with the NCUA so that the implementation of Section 1033 not only addresses privacy and security risks but also preserves the role of smaller community financial institutions. Credit unions are at risk of being displaced by large technology companies that stand to benefit from permissive data sharing rules. Commodification of consumer data coupled with expansive regulation that requires credit unions to maintain third party access portals will only drive further consolidation within the financial sector—an outcome that is at odds with the CFPB's desire to promote competition.

NAFCU supports efforts to empower consumers with modern financial tools; however, the CFPB should not seek to compel unvetted, third-party information sharing. Credit unions already provide account information directly to members through statements and other online tools.

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[1] 12 U.S.C. § 5533(e)(2).
[2] *See* CFPB, Outline of Proposals and Alternatives Under Consideration for the Personal Financial Data Rights Rulemaking (October 27, 2022), *available at* https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf.
[3] Director Chopra's Prepared Remarks at Money 20/20 (October 25, 2022), *available at* https://www.consumerfinance.gov/about-us/newsroom/director-chopra-prepared-remarks-at-money-20-20/ (comparing future CFPB rules to facilitate "open banking" to those that shaped the current telecommunication markets).

New rules that might compel the use of third-party APIs for data extraction would tilt the playing field to benefit companies that are not in the business of relationship banking but are eager to obtain all the data associated with a credit union's long-term relationship with a member. Detailed transactional information held by credit unions represents data earned through trust and substantial investments in customer service. Any proposal that risks eroding the value of such trust and investment should be carefully considered by all federal banking agencies—not just the CFPB.

The CFPB must ensure that access to consumer financial records is predicated upon a fair distribution of costs and data security and privacy responsibilities that does not overburden credit unions that already face competitive pressure and reduced bargaining power when interacting with larger technology companies. NAFCU urges your oversight so that the NCUA, the CFPB, and other federal banking regulators can appropriately coordinate on the implementation of Section 1033.

CFPB's Focus on Fees

Credit unions put their members first, not their bottom lines, and follow the law by clearly disclosing their fees for products and services to consumers. NAFCU and our member credit unions support fair, transparent, and competitive markets for consumer financial services and are happy to work with the CFPB to improve consumers' understanding of financial products and services, but we caution that increasing the amount of required disclosures or mandating that contingent fees be included in a lump-sum price would only further confuse and frustrate consumers who may have varying demands for convenience. NAFCU has urged the CFPB to continue to study the markets and products listed in its previous January 26, 2022, Request for Information (RFI) on fees before taking any supervisory or regulatory action because the Bureau's current data and analyses do not suggest an unfair or underregulated environment.

Unfortunately, on October 26, 2022, the CFPB issued guidance regarding "illegal junk fees." The CFPB addresses two types of fees that it may consider as "junk." The first fee is a surprise overdraft fee, including "overdraft fees charged when consumers [have] enough money in their account to cover a debit charge at the time the [financial institution] authorizes it." The next fee is a surprise depositor fee. This type of fee occurs when a person cashes a check and the check bounces. NAFCU cautions that efforts to eliminate or limit overdraft protection programs would likely result in significant negative impacts on borrowers and credit unions. The CFPB should not rely on scare tactics and legally non-binding guidance to delineate the bounds of its regulatory and supervisory authority. NAFCU recommends that you closely scrutinize the Bureau's alleged authority to make changes to its regulatory framework to limit the fees described in the RFI and issued guidance.

On a fundamental level, NAFCU also objects to the CFPB's characterization in the RFI and issued guidance of financial services fees as "junk fees," "excessive or exploitative fees," or "inflated or surprise fees," as these fees bear no resemblance to the type of hotel and resort fees referenced in the RFI and issued guidance and, in contrast, are all subject to comprehensive federal or state laws and regulations; are not unfair, deceptive, or abusive; and consumers are well-informed of the fees. Required disclosures have made significant positive impacts on consumers' understanding of financial product pricing, provided for better comparison shopping, and improved consumers' repayment behavior. To claim that fees that must be disclosed are in fact surprise or junk fees is a mischaracterization and one that undercuts the Bureau's own efforts to develop effective disclosures.

Still, NAFCU's credit union members often report that their members are frustrated and confused by the volume of required disclosures, despite their best efforts to educate consumers about the importance of these disclosures and the information they contain regarding the terms and fees of products and services. To this end, instead of pushing the bounds of its statutory authority to regulate fees in connection with consumer financial products and services, the CFPB should be engaged in broad consumer education initiatives regarding financial disclosures. For example, providing toolkits to develop optional, just-in-time disclosures for use with mobile banking applications might serve as a practical and effective resource. NAFCU encourages you to closely monitor any CFPB regulatory and supervisory activity related to fees.

Unfair, Deceptive, or Abusive Acts and Practices (UDAAP)

Credit unions are devoting more resources to UDAAP compliance due to unclear standards and the unpredictability of enforcement, so the CFPB should issue a rulemaking to clarify its UDAAP authority. Since the enactment of the Dodd-Frank Act, NAFCU has asked for clear, transparent guidance from the CFPB on its expectations for credit unions under the law and its regulations. In January 2020, the CFPB issued a policy statement providing a framework for how the Bureau applies the "abusive" standard in UDAAP supervision and enforcement matters; however, the CFPB quickly rescinded this guidance last year. NAFCU's members appreciated this guidance because the attention and resources dedicated to UDAAP compliance have continued to increase over the last few years. Between 2018 to 2022, NAFCU members estimated a 9 percent increase in the number of full-time equivalent staff members devoted to UDAAP compliance over the next three years, according to NAFCU's 2022 Federal Reserve Meeting Survey.

NAFCU encourages the CFPB to continue to provide more clarity on the specific factual bases for violations. Details on and examples of the specific factual bases for violations will assist credit unions in mitigating the risks of a violation. This clarity and certainty are especially critical to providing relief at a time when credit unions are making every effort to assist their members facing difficult economic situations. The CFPB should consider a UDAAP rulemaking to enhance transparency and accountability and provide the financial services industry with some predictability regarding this amorphous standard. Additionally, NAFCU asks that the CFPB work closely with the NCUA to resolve questions regarding whether certain credit union powers conferred by the Federal Credit Union (FCU) Act may be subject to the CFPB's UDAAP authority.

Under Director Chopra, certain guidance has been issued that has the potential to massively expand the scope of prohibited acts and practices. On March 16, 2022, the CFPB published a revised examination procedure guide for UDAAP that indicated the Bureau is targeting discrimination as an "unfair" practice in connection with all financial products and services and not just credit products. This is a serious shift in the CFPB's stance on UDAAP that is likely to expand the reach of the Bureau's antidiscrimination enforcement beyond the scope of the Equal Credit Opportunity Act (ECOA). Under ECOA, creditors are prohibited from discriminating against a consumer on the basis of race, color, religion, national origin, sex, marital status, or age. Discrimination does not need to be intentional in order to constitute a violation under ECOA. The Bureau has yet to explicitly discuss what types of discrimination are covered under its new stance and should engage in formal rulemaking efforts to solicit public input on its legal intentions. Credit unions support strong anti-discrimination laws and fair lending policy. However, it is counterproductive for the Bureau to articulate new legal standards through press releases or open-ended expansion of UDAAP. Credit unions are committed to complying with all federal anti-discrimination laws, but agency interpretations that are neither formalized in written guidance nor aligned with prevailing interpretations of statutory authority will present difficulties.

Separately, the Bureau has also sought to leverage its UDAAP-related enforcement authority to promulgate data security expectations for supervised institutions that have traditionally followed the guidance of their primary functional regulator. For example, under the Gramm-Leach-Bliley Act (GLBA), the NCUA is responsible for administering and implementing technical safeguard requirements for federally-insured credit unions. NCUA rules require credit unions to develop robust information security programs that comprehensively address risks to both credit union IT systems and member data. The CFPB's decision to adopt its own set of data security principles tied to UDAAP risks creating confusion and potentially conflicting supervisory expectations. The CFPB should not seek to introduce its own interpretations around data security best practices to exert additional supervisory influence or expand the scope of its regulatory reach beyond the limits of consumer financial law.

Section 1071 Small Business Data Collection Proposed Rule

While NAFCU and our members appreciate the CFPB's dedication to ensuring small businesses are adequately protected under ECOA and Section 1071 of the Dodd-Frank Act, we have a number of concerns about the Proposed Rule for Section 1071. The Proposed Rule's complexity and significant one-time and ongoing compliance costs will weigh disproportionately on credit unions and hurt their ability to help small businesses. The likely net effect of the Proposed Rule's expansive coverage and intensive data collection and reporting requirements is that credit unions will quickly become uncompetitive and may be forced out of small business lending altogether. This not only harms credit unions, but it also reduces the credit available to small businesses at a time when they are trying to rebound from the COVID pandemic.

NAFCU has urged the CFPB to adopt commonsense definitions, right-sized thresholds, and a reasonable, phased mandatory compliance schedule to ensure that credit unions' support of their small business members is not jeopardized by unnecessary Section 1071 compliance burdens. NAFCU also recommended that the CFPB delay any further Section 1071 rulemaking until it is clear the COVID-19 pandemic has ended.

Some of the major concerns we have with the Proposed Rule include:

- *Definition of Covered Financial Institution.* The proposed 25-loan threshold is far too low and would unjustifiably impact many smaller lenders. If the CFPB is not going to use its authority under Section 1022 to exempt credit unions from this rule, a practical and workable higher threshold of at least 500 loans must be established.
- *Definition of Small Business.* The Proposed Rule would define a small business as any business with prior-year gross annual revenue of $5 million or less. At this level, financial institutions would have to collect Section 1071 data related to businesses that are not truly small. The CFPB should adopt a lower revenue threshold of $1 million for the definition of a small business.
- *Covered Credit Transactions.* While we support the CFPB defining covered credit transactions in the Proposed Rule, we believe the CFPB should also exempt loans under the de minimis definition of member business loan (MBL) found in the FCU Act. Subjecting credit unions' non-MBL loans to Section 1071 coverage could potentially affect the availability of these smaller size loans due to the increased costs associated with Section 1071 regulatory compliance. We recommended the CFPB establish an exemption for loans under the de minimis amount for MBLs established in the FCU Act from the definition of covered credit transactions.
- *Compliance Deadline.* The Proposed Rule's uniform 18-month mandatory compliance deadline is aggressive even for the largest financial institutions and is extremely difficult for credit unions. Furthermore, we hear from our member credit unions that their previous experience with IT vendors in adapting their products to comply with major rulemakings has shown that timeframe to be unworkable. NAFCU believes that any compliance deadline should be no earlier than 36 months after the final rule is issued.

<u>Examinations</u>

The CFPB should better coordinate with NCUA examiners to limit exam burden and streamline processes and procedures. NAFCU has repeatedly requested the CFPB further enhance its coordination with the NCUA to alleviate examination burdens on credit unions that are over $10 billion in assets and subject to examination by the both the NCUA and CFPB. These credit unions are experiencing overlapping or consecutive examinations, which poses an immense operational burden and diverts valuable resources away from credit union members. The memorandum of understanding (MOU) between the CFPB and NCUA is an initial step, and we encourage the CFPB to make every effort to better coordinate with the NCUA to ensure examiners from both institutions are not examining a credit union simultaneously or consecutively. There should be a reasonable amount of time in between CFPB and NCUA examinations so that credit unions can quickly get back to the important business of serving their members.

The CFPB should also avoid duplication of examination functions. The recent addition of an IT examination component in the CFPB's latest Supervision Manual suggests that such duplication may occur. The NCUA is the functional regulator charged with implementing and administering the technical safeguards provisions of the GLBA for credit unions. The CFPB should not seek to expand its supervisory jurisdiction by performing overlapping, IT-based examinations that are more capably executed by financial institutions' prudential regulators. However, the Bureau should continue to administer IT-based exams for nonbank fintech companies that are not regularly examined by a functional regulator such as the NCUA or Federal Deposit Insurance Corporation.

Electronic Signatures in Global and National Commerce Act (E-SIGN)

NAFCU urges the CFPB to adopt more flexible rules for the acceptance and delivery of electronic signatures and disclosures. Considering the impacts of the COVID-19 pandemic, modernizing E-SIGN would assist credit union members and alleviate compliance burdens for institutions. The current requirement for consumers to "reasonably demonstrate" access to electronic information before consenting to the receipt of electronic disclosures is cumbersome and antiquated. This delays the administrative processing of loan modifications, deferrals, fee waivers, or other service changes that, when disclosed electronically, must comply with E-SIGN.

While credit unions appreciated pandemic-related E-SIGN relief, the CFPB's statement authorizing more flexible E-SIGN procedures in June 2020 has since expired.[4] The now-rescinded supervisory statement allowed for a credit card issuer, under Regulation Z, to obtain a consumer's oral consent to electronic delivery of written disclosures through an oral affirmation of his or her ability to access and review the electronic written disclosures.[5] Credit unions were able to use this additional authority to more efficiently address the credit needs of their members. Furthermore, the Bureau has provided no indication that the use of these more flexible E-SIGN procedures increased the risk of consumer harm.

E-SIGN itself also lacks clarity regarding when a credit union must update a statement of the hardware and software requirements to access and retain electronic disclosures. Lastly, E-SIGN does not clearly state whether a member's initial E-SIGN consent is sufficient for all subsequent transactions between the credit union and the member. NAFCU urges the CFPB to allow for the

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[4] https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-series-of-policy-statements-to-ensure-industry-complies-with-consumer-protection-laws/.

[5] https://files.consumerfinance.gov/f/documents/cfpb_final-rescission_electronic-cc-discl-e-sign-consent-cons_2021-03.pdf.

delivery of electronic disclosures without having to obtain prior consent, so long as the consumer is initiating the transaction using an online service. In addition, the CFPB should clarify that a financial institution that obtains presumptive consent once may rely on it in the future for all subsequent related transactions.

Use of Larger Participant Authority to Oversee Fintechs
The CFPB should use its authority under the Dodd-Frank Act to oversee a grossly underregulated industry of fintech companies that offers consumers a wide array of products and services digitally, across state lines, that ranges from mortgage servicing to mobile payments and peer-to-peer lending. The recent actions taken by the CFPB to look at larger fintech companies operating in the payments space were a good first step. Additionally, NAFCU appreciates the CFPB's announcement that it will begin exercising its Section 1024 authority under the Dodd-Frank Act to designate nonbank entities for supervision and the proposed procedural rule seeking to make public certain parts or all of the orders designating these nonbank entities for supervision. However, a more robust level of supervision from the CFPB may be necessary to ensure compliance with consumer financial protection laws.

State-level supervision does not suffice as many fintech companies continue to grow exponentially by offering access to convenient online financial tools. The longer these companies go unchecked, the greater the risk of consumers facing a significant loss or violation of their rights. The Dodd-Frank Act grants the CFPB the authority to regulate a covered person who "is a larger participant of a market for other consumer financial products or services, as defined by [a] rule" issued in consultation with the Federal Trade Commission. This same section of the Dodd-Frank Act also grants the CFPB the authority to supervise larger participants' compliance with federal consumer financial law through periodic reports and examinations, obtain information about the activities and compliance systems used by larger participants, and detect and assess risks to consumers and to the markets for consumer financial products and services. Certain fintech companies conduct a substantial volume of transactions involving consumer financial products and services while not being subject to direct supervision by a federal financial regulator.

The CFPB should exercise its authority over larger participants in the consumer financial markets, much in the same way it did in the 2012 final rules for larger participants of the markets for consumer reporting and consumer debt collection. Should the Bureau conclude its "larger participant" authority in the Dodd-Frank Act does not authorize it to issue rulemakings and conduct examinations for fintech companies, then NAFCU would urge support for a legislative amendment to the Dodd-Frank Act to explicitly provide such authority.

Regulation E
We also believe that Congress or the CFPB should ensure that error resolution responsibilities under the Electronic Fund Transfer Act (Regulation E) are fairly balanced for credit unions and

third-party payment system operators. When a dispute primarily implicates a third party's payment service, the third party should be primarily responsible for resolving the dispute. Credit unions shoulder unique investigative burdens when a transaction involves a mobile payment application, and users can fund these transactions with a combination of debit card funds and preexisting wallet funds that may have been acquired entirely in-network. As mobile payment applications become more prevalent, there should be more clarity or guidance regarding the responsibilities of mobile payment platform providers to resolve disputes, especially with respect to instances of fraud. Error resolution investigations put a strain on credit union resources and in certain situations the credit union may not be the best party to investigate a dispute. We believe Congress and the CFPB should examine what protections are needed to combat app-based fraud.

CFPB Commission
NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director structure. Regardless of how qualified one person may be, including the current leadership of the Bureau, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one presidential administration to another. The U.S. Supreme Court highlighted this fact when it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found the single director, removal only for "just cause" structure of the CFPB to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission, such as H.R. 4773, the Consumer Financial Protection Commission Act, which was introduced in July 2021.

We appreciate your leadership and ongoing focus on issues important to credit unions, and we look forward to continuing to work with the Committee and the CFPB on these topics. Should you have any questions or require any additional information, please do not hesitate to contact me or Jake Plevelich, NAFCU's Associate Director of Legislative Affairs, at jplevelich@nafcu.org.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Committee

Questions for the Record

Rep. Alma S. Adams, Ph.D.

"Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau"

1. Director Chopra: As you know, the CFPB in October released its small business panel outline of proposals and alternatives under consideration for a Section 1033 rulemaking. The goal of this rule is to give consumers full access to their account information for FS accounts and provide the ability to share that information. Within the outline, the Bureau asked for public comment on whether "providers of government benefit accounts used to distribute needs-based benefits programs" should be included within the scope of its forthcoming rule. **Don't you believe that in order to avoid creating a financial system in which low-income consumers have fewer rights and protections as it relates to their financial data than higher-income Americans, these types of benefits should be considered in scope of the final rule?**

CFPB Response:
Each and every day, Americans across the country use government benefit cards to manage their monthly budgets. In the proposals under consideration, the Consumer Financial Protection Bureau (CFPB) asked for feedback regarding the coverage of data providers and any alternative approaches we should consider. The CFPB specifically asked whether we should also consider covering payment account providers that are not Regulation E financial institutions, as presently defined, such as providers of government benefit accounts used to distribute needs-based benefits programs. We will be carefully considering the feedback received on this issue.

2. Director Chopra: The Dodd-Frank Act provides that a "covered person" includes any entity that engages in "providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments system or network used by processing payments." **In the EBT marketplace, providers of these accounts operate similarly to traditional financial service providers in that they offer a financial product or service, in this case a payment mechanism and associated account to low-income Americans. If the CFPB has been granted authority under its definition of what a financial services provider is under Dodd-Frank, shouldn't you consider EBT processors in scope?** The exclusion of these accounts creates a two-tier system in which higher income people will have more access to more products and services as opposed to lower income people.

CFPB Response:
You raise an important issue about coverage. We share your commitment to ensuring that the benefits of any rule will accrue to all Americans, not just those who already have significant financial resources. We will carefully consider these issues as we craft a proposed rule.

Rep. Sean Casten Questions For The Record:

Consumers First: Semi-Annual Report of the Consumer Financial Protection Bureau
Wednesday, December 14, 2022

1. Director Chopra, I appreciate your efforts to implement Section 1071 to increase transparency in the lending marketplace. I have recently heard from businesses in and around my district about a type of lending known as insurance premium finance where the only information required for a lender to approve a small business borrower is the business name and address. In my understanding, this is because the lending company uses the financed insurance policy's premium, funded to and held at the insurance company, as the collateral for the loan.

   Premium insurance finance was included in the section 1071 Notice of Proposed Rulemaking, and I have heard concerns that as the lending company has not previously needed to collect any financial or demographic data about a borrower, the inclusion of that industry in the data collection proposed by the CFPB (the Bureau) will impose a new, substantial burden on those lenders. Does the Bureau believe this to be true? And if so, has the Bureau considered exempting premium finance from the 1071 rulemaking?

   CFPB Response:
   I appreciate you posing this question as it addresses the importance of supporting small business in the United States. The rulemaking is ongoing and the Consumer Financial Protection Bureau (CFPB) is still in the process of evaluating the comments and weighing the evidence. We will be closely considering the unique facets of the insurance premium financing market before finalizing the rule.

2. Director Chopra, I have also heard concerns from the indirect vehicle financing industry in Illinois and understand that there might be difficulties in implementing the section 1071 rulemaking in their industry. Does the CFPB plan to address how vehicle finance entities can cooperate with auto dealer entities to successfully comply with its final rule regarding section 1071 of the Dodd-Frank Act?

   CFPB Response:
   Yes, we are carefully considering the comments received in response to the Notice of Proposed Rulemaking regarding vehicle financing to small businesses.

3. While auto dealers are not regulated by the CFPB, they often originate and complete auto sales transactions directly with customers. Is the CFPB currently working with the Federal Reserve to streamline how auto dealers and vehicle finance entities can capture

small business lending data in its final rule regarding section 1071 of the Dodd-Frank Act?

CFPB Response:

The CFPB generally may not exercise any rulemaking, supervisory, enforcement, or any other authority, including any authority to order assessments, over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. The rulemaking is ongoing and the CFPB is still in the process of evaluating the comments and weighing the evidence. We have been working with the Federal Reserve and we will closely consider the unique facets of the auto financing market before finalizing the rule

Questions for the Record

"Consumers First: Semi-Annual Report of the CFPB
Rep. French Hill (AR-02)

December 14, 2022

Section 1033 rulemaking (Consumer Access to Financial Records)

In October, the CFPB released its Small Business Review Regulatory Enforcement Fairness Act (SBREFA) outline of proposals and alternatives under consideration for its rulemaking on personal financial data rights as required under Section 1033 of the Dodd-Frank Act. It was notable that the CFPB's proposal would cover only deposit accounts and card accounts from depository institutions, but would not apply the rule to services provided by non-banks. The CFPB itself acknowledges that many non-bank data providers offer numerous consumer financial products and services, like mortgages and auto loans. Yet they would not be subject to the CFPB's proposal under consideration.

1. Why did the CFPB not include other non-bank lenders that provide closed-end credit products, such as mortgages?

CFPB Response:
The CFPB believes it is critical to have a level playing field between banks and nonbanks. The outline of proposals would apply equally to banks and nonbanks that offer transaction accounts. Based on our significant industry engagement, we found that this transaction data is most likely to be helpful to both bank and nonbanks offering new products and services. Notably, when a consumer pays a mortgage, auto loan, or student loan via check or an electronic funds transfer, this data will be captured in their transaction account. That is why we have chosen to focus on these accounts for the first phase of the rule. We would be happy to discuss this in more detail with you as we develop a proposed rule.

2. How does narrowing the scope of data covered under this rule help consumers?

CFPB Response:
While this authority has existed for over a decade, the CFPB did not make any material progress to implement it prior to 2021. This is a top rulemaking priority, and we are seeking to implement it in a way that generates the most benefits with the least costs. At the same time, from the perspective of feasibility of industry implementation, the coverage put forth in our outline of proposals would leverage, to the greatest extent presently possible, existing industry infrastructure for consumer-authorized financial data sharing.

Over time, and based on learning from the implementation, we will continue to expand the scope. However, we do not want to create further delays. We are open to feedback on the scope and would be happy to discuss this in more detail with you as we develop a proposed rule.

The SBREFA outline does not address liability for data breaches or other data security non-compliance that happens once a consumer's data leaves the financial institution or other covered entity.

3. How does the agency plan on clarifying the liability for misused or unauthorized access to a consumer's data? Is there an allocation of risk between all parties or is the assumption where the data breach took place is liable?

CFPB Response:
I appreciate your interest in this very important issue. Transitioning to an open banking system can only be successful if consumers are confident that personal data is safe and secure. The CFPB believes that nearly all—if not all—covered data providers are subject to the existing safeguards framework under the Gramm-Leach-Bliley Act, implemented by the Federal Trade Commission (FTC) in its Safeguards Rule and by the prudential regulators in the Safeguards Guidelines. In addition, existing Electronic Fund Transfer Act (EFTA) and Regulation E provisions protect consumers against unauthorized electronic fund transfers and other errors. Any entity that is considered a financial institution under Regulation E has error resolution obligations in the event that a consumer notifies the financial institution of an error, with limited exceptions.

The CFPB is considering various proposals, including proposals to establish third party data portal security features, and moving the ecosystem to methods of data sharing that do not require consumer credentials. The CFPB is also considering proposals that would establish specific data security obligations for third parties. We are also seeking feedback on issues related to data security and the circumstances under which a data provider should be required to make information available.

In your testimony you said that if a consumer exercises their Dodd-Frank 1033 right to share their financial information from a bank account to a third party—which could be a fintech, a merchant, or even another bank—it was not your intention for banks to be held liable if a data breach occurs at the entity that the consumer shares their data with.

4. How will you work with the Office of the Comptroller of the Currency, Federal Reserve, Federal Deposit Insurance Corporation, and the National Credit Union Association to ensure that, in their guidance to the financial institutions, their prudential supervision aligns with this expectation and set clear limits on bank liability when consumers exercise their 1033 rights?

CFPB Response:
The CFPB has invited discussion on proposals under consideration that would implement section 1033 of the Consumer Financial Protection Act with staff from the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Trade Commission, and the National Credit Union Administration. The CFPB plans to continue conferring with these and other agencies throughout the rulemaking process. As noted earlier, the transition to open banking in the United States can only succeed if consumers are confident that their personal data is safe and secure. The CFPB is working on a wide range of inter-agency efforts to ensure that

the Safeguards framework and data protection requirements provide this confidence to Americans.

When consumers choose to share their financial data with a third party, a data aggregator is often involved to facilitate the transmission of this data. Consumers assume their data remains protected by federal information security and privacy standards required of banks under the Gramm-Leach-Bliley Act. Although data aggregators are subject to GLBA, their compliance with its privacy and security obligations is not subject to bank-like supervision, which is critical to identifying risk before harm is done to consumers. A cornerstone of Dodd-Frank's Title X was the authority given to the CFPB to establish a supervisory program for non-banks to ensure that federal consumer financial law is enforced consistently.

5. Is the Bureau preparing to write a larger participant rule to identify data aggregators that will be subject to regular CFPB supervision to ensure that consumer data remains protected when it is shared?

CFPB Response:
Under section 1024 of the Consumer Financial Protection Act, the CFPB has authority to supervise nondepository covered persons, including larger participants in a market for consumer financial products or services. In conjunction with its broader data sharing and privacy work, we are considering all of our supervisory authorities provided by the Dodd Frank Act. The CFPB has received a petition for rulemaking regarding a possible larger participant rule for data aggregators and is currently considering that petition.

6. What role, if any, do you foresee with the FTC having authority over various fintechs providing financial products or services?

CFPB Response:
The CFPB recognizes that effective cooperation is critical to protecting consumers, preventing duplication of efforts, providing consistency and ensuring a vibrant marketplace for consumer financial products or services. The CFPB also recognizes that Congress has granted particular legal authorities to the FTC and we will work proactively with the FTC to ensure maximum benefit for consumers and new market entrants. For example, the FTC retains rulemaking and enforcement authority pursuant to the Disposal Rule under the Fair Credit Reporting Act and the Safeguards Rule under the Gramm-Leach-Bliley Act.

7. Are there plans to coordinate with the FTC in the personal financial data rights space?

CFPB Response:
Yes. I share your commitment to a whole-of-government approach to bring the best results to American consumers. The CFPB intends to coordinate with the FTC and other relevant federal agencies.

The Dodd-Frank Act provides that a "covered person" includes any entity that engages in "providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments system or network used by processing payments." In the Electronic Benefit Transfer (EBT) marketplace, many providers of these accounts operate similarly to traditional financial service providers in that they offer a financial product or service, in this case a payment mechanism and associated account to low-income Americans. The SBREFA outline proposes exempting EBT accounts from coverage under the 1033 regulation.

8. How is the Bureau thinking about EBT processors when considering whether the 1033 regulation should cover account providers that are not Regulation E financial institutions?

CFPB Response:
You raise an important issue about coverage. We share your commitment to ensuring that the benefits of any rule will accrue to all Americans, not just those who already have significant financial resources. We will carefully consider these issues as we craft a proposed rule.

9. Should government-sponsored financial services accounts be subject to the same competition and innovation that the market provides to consumers of other types of accounts or should government-sponsored financial services accounts be insulated from market competition?

CFPB Response:
The CFPB is always interested in finding ways to facilitate competition and new technological advancement that could serve low-income consumers, including SNAP recipients.

10. Would exempting EBT accounts lead to more innovation and improved customer service than covering them? If not, why does the CFPB oppose innovation that benefits consumers and improves the marketplace?

CFPB Response:
Innovation that truly benefits consumers and is carried out in a transparent manner is a key objective that helps guides the CFPB's work. In the proposals under consideration, the CFPB asked whether it should also consider covering providers of government benefit accounts used to distribute needs-based benefits programs. The CFPB is currently considering feedback received on this issue.

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QFRs for Director Chopra

1. In response to a question about what has changed in the law to cause the CFPB to encourage inaccurate reporting of medical debt, you stated that there are inaccuracies in medical debt credit reporting.

a. Please provide all data and research the CFPB has showing a statistically accurate percentage of any medical debt being reported that is inaccurate, in which you based your answer on?

CFPB Response:
A variety of sources report that inaccuracy in consumer credit reports is a serious problem. Not only have people complained to the Consumer Financial Protection Bureau (CFPB) about inaccurate information in consumer credit reports more than any other issue over the last six years, but third-party research underscores the ongoing issue of inaccurate information. [1] ***A 2012 FTC study found that one in five consumers who participated in the study had an error on at least one of their credit reports from the three nationwide consumer reporting companies (NCRC).*** [2] ***A 2021 study found that more than one third of consumers surveyed were able to identify an error in their credit reports.*** [3]

As it relates to medical bills reported to the NCRCs, the CFPB has published research showing that medical collections are less predictive of future consumer credit performance than non-medical 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. [4]

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[1] See Consumer Fin. Prot. Bureau, Consumer Response Annual Report, at 20 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf; Consumer Fin. Prot. Bureau, Consumer Response Annual Report, at 22 (Mar. 2021), https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf; Consumer Fin. Prot. Bureau, Consumer Response Annual Report, at 19 (Mar. 2020), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf; Consumer Fin. Prot. Bureau, Consumer Response Annual Report, at 19 (Mar. 2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf; Consumer Fin. Prot. Bureau, Consumer Response Annual Report, at 13 (Mar. 2018), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf; Consumer Fin. Prot. Bureau, Consumer Response Annual Report, at 18 (Mar. 2017), https://files.consumerfinance.gov/f/documents/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF.

[2] See Fed. Trade Comm'n, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, at 64 (Dec. 2012), https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.

[3] Syed Ejaz, Consumer Reports, A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It (June 10, 2021), https://advocacy.consumerreports.org/research/a-broken-system-how-the-credit-reporting-system-fails-consumers-and-what-to-do-about-it/.

[4] Brevoort and 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-debt-credit-scores.pdf.

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The two leading credit score providers also recognize that low-balance collections, particularly medical collections, are not strong predictors of future credit performance. Specifically, FICO Score versions 8 and later exclude collections under \$100, and VantageScore versions 3.0 and later exclude collections under \$250.[5] ***VantageScore also announced that neither of its most recently introduced scoring models (VantageScore 3.0 and 4.0) will use medical debt collection data in the calculation of consumers' credit scores, regardless of the amount owed or the age of the collection.***[6]

These findings are connected to the inaccuracy issues that pervade the broader consumer reporting system and, in particular, problems with medical billing. Fifteen percent of the debt collection complaints to the CFPB focus on medical debt collections that were already paid, belonged to someone else, or had an incorrect balance.[7] ***Relative to other information in consumer credit reports, collections tradelines generally have higher dispute rates which further highlights the problem of inaccuracies affecting debt collection tradelines, including medical debt tradelines.***[8]

b. Please also provide your statistically accurate data showing what percentage of medical debt being reported is legitimate legally owed debt.

<u>CFPB Response</u>:
As described in the previous response, approximately 15 percent of debt collection complaints to the CFPB in 2021 were about attempts to collect a medical debt that were already paid, belonged to someone else, or had an incorrect balance. The most common issue in debt collection is about attempts to collect a debt that the individual says is not owed. In medical debt collection complaints, this issue makes up nearly half of complaints and, importantly, complaint volume about this topic has been increasing.[9] ***Relative to other information in consumer credit reports, collections tradelines generally have higher dispute rates which further highlights the problem of potential inaccuracies affecting debt collection tradelines, including medical debt tradelines.***[10]

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[5] *See* Experian, "What Types of Debt Can Go to Collections?" (July 2021), *available at* https://www.experian.com/blogs/ask-experian/what-type-of-debt-can-go-to-collections/, and VantageScore, "13 Ways Credit Scores Have Changed in the Past 20 Years" (Aug 2016), *available at* https://vantagescore.com/press_releases/13-ways-credit-scores-have-changed-in-the-past-20-years/

[6] *See* VantageScore, "VantageScore Removes Medical Debt Collection Records From Latest Scoring Models" (Aug 2022) *available at* https://www.vantagescore.com/major-credit-score-news-vantagescore-removes-medical-debt-collection-records-from-latest-scoring-models/.

[7] See Consumer Fin. Prot. Bureau, Complaint Bulletin: Medical billing and collection issues described in consumer complaints, (Apr. 2022), https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf.

[8] See Consumer Fin. Prot. Bureau, "Consumer Credit Trends: Disputes on Consumer Credit Reports" (2021), pg. 5 at note 8, https://files.consumerfinance.gov/f/documents/cfpb_disputes-on-consumer-credit-reports_report_2021-11.pdf; Consumer Fin. Prot. Bureau, "Key Dimensions and Processes in the U.S. Credit Reporting System" (2012), pgs. 29-31, https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

[9] See Consumer Fin. Prot. Bureau, Complaint Bulletin: Medical billing and collection issues described in consumer complaints, (Apr. 2022), https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf.

[10] See Consumer Fin. Prot. Bureau, "Consumer Credit Trends: Disputes on Consumer Credit Reports" (2021), pg. 5 at note 8, https://files.consumerfinance.gov/f/documents/cfpb_disputes-on-consumer-credit-reports_report_2021-11.pdf; Consumer Fin. Prot. Bureau, "Key Dimensions and Processes in the U.S. Credit Reporting System" (2012), pgs. 29-31, https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf.

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c. Please provide information about what in the Fair Credit Reporting Act gives the CFPB authority to encourage furnishers to report inaccurate information about legally owed and legitimate medical debt?

CFPB Response:
The CFPB does not encourage furnishers to report inaccurate information about medical debt. In the Consumer Financial Protection Act of 2010 (CFPA), Congress granted the CFPB general rulemaking authority over the Fair Credit Reporting Act (FCRA) (except for certain provisions that are administered by other Federal agencies). The CFPB also has the authority to enforce the FCRA, along with other Federal regulators.

Because of the importance of consumer report accuracy to businesses and consumers, the structure of the FCRA creates interrelated legal standards and requirements to support the policy goal of accurate credit reporting. Among these is the requirement that, when preparing a consumer report, consumer reporting agencies "shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."[11]

d. And any research or data the CFPB has compiled from medical providers showing the impact on recent changes the CRAs have made to the medical debt credit reporting process.

CFPB Response:
The changes announced by the three largest nationwide consumer reporting companies (NCRCs) – Experian, Equifax, and TransUnion – will affect people who have allegedly unpaid medical debt on their credit reports. Starting in 2023, medical collections tradelines less than $500 will no longer be reported on consumer credit reports. CFPB research estimates that these changes will likely result in the majority of medical collections tradelines being removed from consumer credit reports. However, nearly half of those with medical collections on their credit reports will likely still have them after the changes go into effect, and the remaining medical collection tradelines will likely represent a majority of all reported medical collections in dollar terms.[12]

The UN has set a sustainable development goal relating to remittances, in particular requiring that member states strive to drive the average cost of a $200 remittance to 3% by 2030 and to eliminate corridors in which the cost exceeds 5% by that time. This standard has been picked up by the G20 and the FSB in standard-setting forums encouraging multinational and public-private coordination to ensure that migrants globally have access to priced remittances.

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[11] 15 U.S.C. 1681e(b).
[12] See Consumer Fin. Prot. Bureau, Paid and Low-Balance Medical Collections on Consumer Credit Reports, (July 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-publishes-analysis-of-potential-impacts-of-medical-debt-credit-reporting-changes/.

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a. Why does the CFPB focus on price transparency vs the consumer protection and global development standard used in multinational and national forums and why is the CFPB focused on transparency vs the take rate standard being used globally?

CFPB Response:
The CFPB is committed to carrying out statutory directives from Congress. In the Consumer Financial Protection Act of 2010, Congress amended the Electronic Fund Transfer Act to establish, among other things, that consumers must receive certain pricing information about remittance transfers. The CFPB implemented these statutory protections in the Remittance Rule. Among other things, the Remittance Rule generally requires that remittance transfer providers disclose, as applicable, the fees and taxes a remittance transfer provider imposes on a remittance transfer, the exchange rate applied to the transfer, the amount of certain fees charged by third parties, such as a remittance transfer provider's agents or intermediaries involved in the transfer process. In addition, the Remittance Rule requires providers to disclose the total amount of money expected to be received by the designated recipient, excluding foreign taxes and certain fees charged by the designated recipient's institution.

b. Given the constantly varying price of global currencies and the numerous highly competitive options in the global remittance market, is total fee transparency practicable or useful to consumers over and above the disclosures already required by the remittance rule?

CFPB Response:
Please see response in section 2(a) above.

c. Does the characterization of any markup or fee as junk properly acknowledge the heavy costs associated with proper AML/BSA compliance and other compliance processes that are vital to keeping this country safe from human rights catastrophes including global arms and drug cartels, human trafficking, and terrorism?

Response:
The CFPB continues to work to address compliance with the Remittance Rule. Where there is non-compliance, we have taken action to protect consumers against these violations and will continue to do so in the future.

Question for the Record from Representative Rose for Director Chopra from the December 14 Hearing

During your testimony in December before the House Financial Services Committee I asked you a question about the Consumer Financial Protection Bureau's (CFPB) practice of requesting privileged attorney-client communications and attorney work product from non-bank entities during supervisory examinations.

Your response was, "I'm not actually familiar that there's a new issue related to this. My understanding is that years ago by my predecessors there was some publication about privileged logs for example in a law enforcement investigation-when producing documents, they might include a log with it. I'm happy to look into that more."

However, entities that the CFPB currently regulates wrote[1] to you in April with concerns of the CFPB's ongoing practice in this regard, and requesting answers. To my knowledge, the Bureau has failed to respond to this letter that was sent **eight** months ago and your answers during testimony were thus unsatisfactory.

Please respond to the following questions in writing.

- Why has the Bureau failed to respond to regulated entities requesting clarity on supervisory examinations?

- Should the industries you regulate expect an **eight** month or longer turn-around time on correspondences?

- Under what statute did the CFPB conclude that Congress abrogated common law privileges with respect to CFPB supervision and examination activities with regard to non-banks and articulate the legal authority upon which it relies to request, demand, or obtain privileged attorney-client communications and attorney work product from non-bank covered persons during supervisory examinations?

- Will the CFPB commit to making its conclusion public?
    - If yes, when should covered entities expect such public declaration to be available?
    - If no, why not?

CFPB Response:

I appreciate the opportunity to clarify the record. The Consumer Financial Protection Bureau (CFPB) engages in ongoing dialogue with supervised institutions and receives feedback from industry participants regarding our work. We have significantly expanded our efforts to be responsive to regulated entities' need for more information to help them operate successfully.

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[1] Mortgage Bankers Association Letter on CFPB Supervisory Request for Privileged Information From Nonbanks (April 19, 2022).

Consistent with other regulators, the CFPB exercises its visitorial authority to obtain information from entities during the supervisory process. The CFPB's authority to require reports and conduct examinations applies to both banks and nonbanks. Once the CFPB has issued a supervisory request for information that has been determined to serve one or more statutory purposes, supervised institutions are required to provide all documents and other information responsive to the request.[2] The supervisory process depends on full and unfettered access to information. As the CFPB has consistently communicated, review of a supervised institution's privileged materials may in some cases be the most efficient means for a supervisor to understand and assess an issue, and the CFPB will request such material as appropriate.[3]

At the same time, the CFPB recognizes the importance of the attorney-client privilege and work-product protection to the entities we supervise. As a matter of public policy, the entities we supervise should be encouraged to consult counsel in order to facilitate compliance and avoid possible violations of the law. The CFPB will give due consideration to supervised institutions' requests to limit the form and scope of any supervisory request for privileged information.

The CFPB's long-standing policy under each of its Directors and Acting Directors has been to request privileged information only when the CFPB determines that such information is material to its supervisory objectives and it cannot practicably obtain the same information from non-privileged sources.[4] Congress has also contemplated that the CFPB may request privileged information in the course of supervision and provided certain statutory protections for such submissions.[5] We are committed to working closely with supervised entities to ensure an effective and cooperative supervisory process. Consistent with other regulators that also request privileged information from the institutions they supervise, we work with entities to ensure we can fulfill our supervisory mission without compelling production of privileged material.

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[2] *See* Consumer Financial Protection Act of 2010 §§ 1024-26, 1036, 1061.
[3] *See* CFPB Bulletin 2012-01 (Jan. 4, 2012), available at http://files.consumerfinance.gov/f/2012/01/GC_bulletin_12-01.pdf.
[4] *See* Bulletin 2012-01.
[5] *See* 12 U.S.C. 1821(t) (preserving privileges when the CFPB shares information with other federal agencies); 1828(x) (clarifying that submission by any person of any information to the CFPB for any purpose in the course of any CFPB supervisory or regulatory process does not waive any privilege that the person may claim with respect to such information as to any person or entity other than the CFPB); 5514(b)(3) (preserving privilege when the CFPB shares information with certain state regulatory agencies).

Rep. Bryan Steil
Questions for the Record
Full Committee Hearing entitled "Semi-Annual Report of the Consumer Financial Protection Bureau"

1. The U.S. Treasury's report to the White House Competition Council included the following recommendation:

> To encourage consumer-beneficial innovation, regulators should support innovations in consumer credit underwriting designed to increase credit visibility, reduce bias, and prudently expand credit to underserved consumers.

As you know, many smaller financial institutions do not have the resources to develop these innovations on their own. How do you plan to implement this recommendation in light of the fact that much of the artificial intelligence and alternative data technology development is occurring at non-bank financial technology (fintech) companies that partner with financial institutions? Would you agree that regulators should support and encourage responsible partnerships between financial institutions and fintech companies?

CFPB Response:
Yes, and I appreciate you raising this important question. Competition, innovation and transparency are key to success for American consumers. It is important for regulators to support innovation to provide more options and more choices to consumers and that this is done in a transparent manner.

The Consumer Financial Protection Bureau (CFPB) recognizes that entities under its jurisdiction may sometimes need to outsource certain functions to service providers, in this case "fintechs," to expand the services available to their customers.

Since taking office, I have dramatically increased engagement with small financial institutions through state-based roundtables with community banks and credit unions. I have also worked with our Community Bank Advisory Committee and Credit Union Advisory Committee to understand how smaller institutions can leverage technology alongside their relationship banking model.

One of the themes that has emerged is the role of the core service providers. Many smaller financial institutions report frustrations with the core service providers when it comes to deploying new products and services, including with third-party financial technology firms.

We are also engaging with smaller financial institutions on how they can leverage Banking-as-a-Service to offer products that might otherwise be limited to offerings from very large institutions, like credit cards.

At the same time, the CFPB does not intend to endorse specific partnerships between such entities and any category of service providers or the use of specific technologies. Nor does the CFPB believe regulators should be involved in picking potential winners and losers, which can distort the financial services market.

2. When Congress passed Dodd-Frank 12 years ago, it included Section 1071, which will require commercial finance companies to inquire of their customers whether they are a small business, woman-owned business, or minority owned business at the credit application stage.

   Section 1071 specifically includes a provision that is entitled, "Right to Refuse." This section ensures that when the commercial finance company inquires about the status of the customer, the customer can decline to respond.

   As proposed by the CFPB, your regulations would deny the customer that right by including the detailed financial aspects of the loan application in the public database even if the customer specifically declined to participate.

   There may be any number of reasons why a customer might not want their loan application details made public. Personal privacy and the need to keep sensitive information from competitors are just two commonsense reasons why an applicant may want their application details to remain private.

   I am concerned that you have taken a provision that was supposed to be voluntary and made it mandatory, and in the process, you will have created a detailed government database that includes the details of basically every small business finance transaction in the United States regardless of whether the customer opted out. How does this not exceed your statutory authority?

   CFPB Response:
   Thank you for this question and the opportunity to provide clarification. You are correct that the required small business lending rulemaking under section 1071 includes a "Right to Refuse" provision that provides that an applicant for credit may refuse to provide certain information, though the CFPB respectfully disagrees that the Notice of Proposed Rulemaking (NPRM) would have denied that right to applicants. For example, proposed Appendix E, a sample data collection form, states that "[a]pplicants are not required to provide this information but are encouraged to do so," and each question on the form gives applicants the option to respond: "I do not wish to provide this information." The CFPB is also mindful of the privacy concerns related to small business owners' information. The rulemaking is ongoing and the CFPB is still in the process of evaluating the comments and considering the evidence.

Questions from Representative Velazquez

1) Director Chopra, in a recent statement, you said "Ending 'too big to fail' continues to be a goal, but it is not yet a reality." I have long been concerned about the risks that TBTF financial firms pose to our financial system and economy. Why do you believe that the eight U.S. global systemically important banks could not be resolved in a rapid and orderly manner under Chapter 11 of the bankruptcy code?

CFPB Response:

During the 2008 financial crisis megabanks and other massive financial firms that were considered too large, complex, or interconnected to allow to fail, and were propped up with government bailouts. Community banks, on the other hand, were allowed to fail. As you know, Congress sought to address this issue in the Dodd-Frank Wall Street Reform and Consumer Protection Act by requiring the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation to ensure large financial firms have credible plans to be resolved in a rapid and orderly fashion under Chapter 11 of the U.S. Bankruptcy Code.

After reviewing the partial plans submitted by the eight most systemically important U.S. banks, I concluded that none of them could be resolved in a rapid and orderly manner under Chapter 11 of the U.S. Bankruptcy Code. First, I don't think there are adequate safeguards in place to ensure that boards file for bankruptcy promptly, before depleting the capital and liquidity resources that could be available to execute a successful Chapter 11 proceeding. They would have an incentive to gamble for resurrection and take on additional risk to stay out of bankruptcy.

Second, I do not believe private financing would be available for a bankrupt megabank to continue operating given the size, complexity, and magnitude of their short-term funding needs. The largest ever debtor-in-possession financing for a bankrupt firm was a small fraction of what a megabank would require. In their living wills, the megabanks assume they will be able to finance their own bankruptcy, without private financing, and keep critical business functions open and operating. I do not believe it is wise to put our faith in that unprecedented and questionable strategy.

Finally, these firms are so large, complex, and interconnected that they may cause an unacceptable level of economic harm if they spiral toward failure—but before they actually go bankrupt. A megabank under duress would pull back from lending, engage in disruptive fire-sales, and possibly constrict the provision of other products and services, including payments activities. These actions would inflict significant harm on businesses and households before the megabank was at the point of failure. The harm could be so large that policymakers step in before the bankruptcy filing to prop up the firm and limit the damage.

I look forward to reviewing the next round of full resolution plans, which will be submitted in 2023. It is critical that we evaluate those plans using the appropriate legal standard and with sufficient rigor.

2) Director Chopra, I am also concerned about the potential financial stability risks posed by BigTech cloud service providers. Financial institutions are increasingly relying on this small set of large technology companies. Representative Katie Porter and I wrote a letter to Secretary Mnuchin in 2019 on this issue and the risk has only increased since then. Do you think the FSOC should evaluate whether the concentrated reliance on BigTech cloud service providers threatens financial stability? Are there any tools you think the FSOC should explore using to mitigate these risks?

CFPB Response:
Financial institutions are looking to move more data and core services to the cloud in coming years. They are increasingly relying on a small set of Big Tech companies for these services, including Amazon Web Services, Microsoft Azure, and Google Cloud. These firms are becoming critical financial infrastructure. Over the past several years, we've seen how operational disruptions at these providers can paralyze communications and web platforms. The operational resilience of these large technology companies could soon have financial stability implications as well. A material disruption could one day freeze parts of the payments infrastructure or grind other critical services to a halt.

I believe it is appropriate for the Financial Stability Oversight Council (FSOC) to evaluate its authorities and determine whether they could be used to mitigate the risks posed by these firms. Under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the FSOC has the authority to designate financial market utilities as, or as likely to become, systemically important. Such a designation would subject the financial market utility to heightened risk management standards and oversight. Since this authority can be used when a financial market utility is likely to become systemically important, before it poses systemic risk, the FSOC can get ahead of such risks. If, based on the facts and circumstances, a Big Tech cloud service provider met the statutory definition of a financial market utility, then this tool could be used to address the operational and other risks posed.

The FSOC should continue monitoring the migration of activities and services to the cloud, coordinate the member agencies that are using their authorities to mitigate risks to firms and markets in their respective jurisdictions, and engage in the legal and substantive financial stability analysis necessary to determine whether tools like a Title VIII designation should be deployed.