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

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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

Wednesday, March 16, 2016

U.S. House of Representatives,
Committee on Financial Services,
Washington, D.C.

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

Members present: Representatives Hensarling, Royce, Lucas, Garrett, Neugebauer, Pearce, Posey, Fitzpatrick, Westmoreland, Luetkemeyer, Huizenga, Duffy, Hurt, Stivers, Mulvaney, Hultgren, Ross, Pittenger, Wagner, Barr, Rothfus, Messer, Schweikert, Guinta, Tipton, Williams, Poliquin, Love, Hill, Emmer; Waters, Maloney, Velazquez, Sherman, Meeks, Hinojosa, Clay, Scott, Green, Cleaver, Ellison, Perlmutter, Himes, Sewell, Foster, Murphy, Delaney, Sinema, Beatty, Heck, and Vargas.

Chairman Hensarling. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

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

I now recognize myself for 3 minutes to give an opening statement. Not that we need a reminder, but if there is one thing that the Presidential campaigns of both parties have shown us, it is that the American people are, indeed, angry. And they have a right to be angry.

After 7 years of Obamanomics they are still suffering through a failed economic recovery, the slowest and worst in our lifetimes. This is indisputable.

Americans are even angrier, though, at having their lives increasingly ruled by out-of-touch Washington elites. Every day they see their liberties slipping away as Washington inexorably grows larger, more intrusive, more distant, and more arrogant.

As Thomas Jefferson once warned, government agencies are sending, "swarms of officers to harass our people and eat out their substance."

Today, the poster child of Jefferson's lament is the Consumer Financial Protection Bureau (CFPB). Its Director, our witness, is neither elected nor accountable to the American people. Yet, when it comes to consumer financial products, he is vested with the awesome power of the entire United States Congress.

This is amazing; this is frightening; and this is tragic.

Soon, Mr. Cordray will presume to decide for all Americans whether he will allow them to take out small-dollar loans to keep their utilities from being cut off or to keep their car on the road so they can make it to work.

Soon, Mr. Cordray will decide whether he will permit Americans to resolve contract disputes through arbitration or simply hand over the keys to the CFPB's luxury office building to the wealthy, powerful, and politically well-connected trial lawyers' lobby.

Already, Mr. Cordray has decided who in America will be able to receive a mortgage under his qualified mortgage rule, which, when fully implemented, will disqualify almost one-fourth of all Americans who qualified for a home mortgage just a few years ago.

Already, Mr. Cordray has decided that countless Americans should pay more for auto loans based upon junk science and a dubious legal theory of statistical, unintentional discrimination; all the while, his agency reels from countless accusations of actual discrimination.

Now, apologists for the Bureau, along with Mr. Cordray, frequently cite the tens of millions of dollars of fines they have imposed as proof that they are, indeed, protecting consumers. But the Bureau operates as legislature, cop on the beat, prosecutor, judge, and jury, all rolled into one.

Fines imposed in such an abusive structure tell us nothing about justice; they tell us nothing about consumer welfare. Nothing.

In short, Congress has made Mr. Cordray a dictator. And when it comes to the well-being and liberty of American consumers, he is not a particularly benevolent one.

Congress must address this critical problem because Congress helped create the problem. It has outsourced much of its legislative authority to the Executive Branch in general, and the CFPB in particular, and in doing so, has compromised our foundational principles of co-equal branches of government, checks and balances, due process, and justice for all.

Congress must reclaim its Article I authority and reclaim it now. There is no better place to start than the CFPB, an agency that has abused its power that it never should have had in the first place.

It is time to uphold our oath to the Constitution. It is time to strip the CFPB of its rulemaking authority and return it to the elected Representatives of we, the people.

I now recognize the ranking member for 5 minutes.

Ms. WATERS. Thank you, Mr. Chairman.

And thank you, Director Cordray, for joining us again to discuss the Consumer Financial Protection Bureau's semi-annual report to Congress.

The Bureau's accomplishments under your leadership have helped more Americans participate in a financial system that is fair and strong. The work that you do is so important because it means that consumers can access the financial products and services they need to live prosperous lives without the risk of deceptive or abusive practices. It also means that consumers can have recourse when they have been wronged and recoup any finances they may have lost.

Those accomplishments are reflected in the $11.2 billion you have returned to 25.5 million Americans. They are reflected in the 830,000 consumer complaints you have handled on issues from debt collection to credit reporting. They are reflected in the increased share of mortgages made to minority borrowers in recent years and the expansion of access to credit cards, despite Republican claims to the contrary.

Director Cordray, you are helping consumers succeed, to the benefit of the entire financial system. I would like to highlight a few of these particularly important efforts.

I am encouraged by the Bureau's work so far on payday lending, including soliciting input from small businesses on the forthcoming regulations. We need rules that will protect low-income and minority communities from unreasonable loan terms and unaffordable rates.

Despite modest efforts by some States to curb predatory practices, most payday loans are simply used to help pay off another payday loan. We must stop this debt trap, and we must fight any efforts to weaken, roll back, or stop the CFPB's upcoming rule.

The Bureau has also led the charge against the discrimination that still exists in the auto lending industry. We should be doing all we can to prevent minority borrowers from being charged higher interest rates and from overpaying on their auto loans.

Unfortunately, too many Members of Congress have been misled by Republican arguments against the data and methodology used by the CFPB in this important work. While Republicans are attempting to protect lenders, the Bureau has fined banks and captive lenders, such as Toyota, Honda, and Fifth Third Bank, for discriminatory practices.

Additionally, in the months since his last report, the Bureau has successfully won a case against an unscrupulous for-profit college that deceived students into taking out expensive private loans and engaged in illegal debt collection practices. As you know, I have worked on this issue my entire career.

Just recently the Department of Education announced a proposal to ban mandatory arbitration in student lending. I hope the Bureau will follow in their footsteps by offering this protection not only to students but also to Americans that have found these unfair clauses in their credit cards, prepaid cards, bank accounts, and mobile phone contracts.

Despite a successful track record of helping consumers, whether looking to buy a car, own a home, or attend college, Republicans have turned the CFPB into a political punching bag, attempting to undermine its work at every turn. This tactic is at odds with the public's support for the CFPB and the Bureau's efforts to remain accountable and transparent.

I would like to remind my colleagues that the CFPB has now testified 59 times before Congress since it was created, issued more than 40 reports on its activities in the last year alone, and provided tens of thousands of documents in response to a never-ending list of Republican fishing expeditions.

Director Cordray, I am thankful for the work that you are doing. I look forward to hearing your testimony on how the Bureau continues to help consumers and improve our economy.

Thank you so much, and I yield back the balance of my time.

Chairman HENSARLING. The gentlelady yields back.

The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, chairman of our Financial Institutions Subcommittee, for 2 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Today I want to use this opening statement to address an issue that Director Cordray actually raised himself in speaking before the Consumer Bankers Association conference a couple of weeks ago. In speaking before the group of bankers, the Director highlighted the virtues of bringing market-changing enforcement actions instead of going through a transparent and formalized rulemaking process. Some call this practice, "regulation by enforcement."

Further, he critiqued his critics, saying their concerns were misguided. After hearing these comments, I feel it necessary to respond.

Businesses of all sizes deserve certainty. From the largest financial institution to the three-office title lender, regulatory risk drives up cost and stunts economic growth.

Federal agencies that are authorized to enforce Federal law act appropriately when they take actions to hold unlawful actors accountable. However, when a Federal agency routinely brings enforcement actions instead of undertaking rulemaking, with the sole purpose of changing the entire market behavior, it begins to look like a deliberate evasion of public notice and comment.

And public notice and comment is a crucial check on the regulatory overreach and abuse of regulatory power. Not only does it allow the public to provide unique business insight into the marketplace, but it diversifies and balances the decision-making.

At the CFPB, this point is all the more important, given the agency's current structure: a single, unelected individual who can unilaterally authorize an agency action.

This celebrated Bureau practice is most obvious and concerning in the indirect auto industry market. In the midst of significant public and congressional pushback on the Bureau's policy positions, it chose to strong-arm lenders into changing certain practices through media-driven enforcement headlines. It chose to do this instead of allowing a transparent process driven by public comment. Some even say that it purposely evaded the public dialogue.

Unfortunately, this example highlights the very problem with regulation by enforcement. It allows regulators to use their regulatory authority outside a transparent and structured process. It provides an opportunity for regulatory overreach and abuse. Further, it inserts significant regulatory risk into the business of our Main Street job creators.

In closing, the Director told the Consumer Bankers Association, "When you push back, we welcome your input." The Director should expect continued and aggressive congressional pushback to continue his regulation by enforcement.

Chairman HENSARLING. The time of the gentleman has expired.

Today, we welcome the testimony of the Honorable Richard Cordray, Director of the Consumer Financial Protection Bueau. Director Cordray has previously testified before our committee, so I believe he needs no further introduction.

Director Cordray, without objection, your written statement will be made a part of the record, and you are now recognized to give an oral presentation of your testimony.

Thank you.

STATEMENT OF THE HONORABLE RICHARD CORDRAY, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CORDRAY. Thank you, Mr. Chairman, Ranking Member Waters, and members of the committee, for the opportunity to testify today about the Consumer Financial Protection Bureau's semi-annual report to Congress. I appreciate our continued dialogue as we work together to strengthen our financial system and ensure that it serves consumers, responsible businesses, and the long-term foundations of the American economy.

As we continue to build this new agency, we have made considerable progress on the core responsibilities to exert supervisory oversight over the Nation's largest banks and nonbank financial companies, and to enforce the consumer financial laws enacted by the Congress. Our analytical approach to risk-based supervision is leading to more systematic, consumer-friendly changes at these financial institutions, and we are making progress on leveling the playing field for all market participants.

During this reporting period, our supervisory actions resulted in financial institutions providing more than $95 million in relief to over 177,000 consumers. Our enforcement actions are based on careful and thorough investigations, and most have identified deceptive practices by the parties involved.

During this reporting period, the orders entered on our enforcement actions led to approximately $5.8 billion in total relief for consumers victimized by violations of the law. These consumers are located in every one of your districts nationwide.

We are also working to provide tools and information to develop practical skills and help people understand the choices they will be making to manage the ways and means of their lives. Our Ask CFPB resource provides guidance and responds to inquiries across the entire spectrum of consumer finance. Our major moment-in-time decisional tools now include paying for college, owning a home, and planning for retirement.

We have developed a new partnership with the Financial Services Roundtable to work together on financial education in the schools, in the workplace, and on behalf of older Americans, which is proving to be productive.

Listening and responding to consumers is central to our mission. We continue to refine the capabilities of our Office of Consumer Response to receive, process, and facilitate responses to consumer complaints, including those referred to us by your offices.

We also continue to expand our public consumer complaint database, which updates nightly and is now populated by over half a million complaints from consumers about the broad range of consumer financial products and services. We marked a milestone for consumer empowerment when we began to add public consumer complaint narratives, which allow people to share in their own words their experiences in the consumer financial marketplace.

Reasonable regulations are essential to protect consumers from harmful practices and ensure that consumer financial markets operate in a fair, transparent, and competitive manner. We have focused our efforts on promoting functional markets, such as the all-important mortgage market in particular, where consumers can shop effectively for financial products and services and are not subject to unfair, deceptive, or abusive acts or practices.

During this reporting period, we issued several proposed rules, final rules, or requests for information. To support industry compliance with our rules, we have published plain-language compliance guides and other resources to aid in their implementation. We are also seeking to streamline, modernize, and harmonize financial regulations that we have inherited from other agencies.

Over this reporting period the Bureau has continued to expand its efforts to support and protect consumers in the financial marketplace. Recent data indicate that sound consumer protections in our major markets are strengthening markets for consumers and providers alike.

The mortgage market has been expanding briskly for 2 years now, since our major rules took effect. The credit card market is greatly improved, with strong consumer protections, better industry performance, and increasing consumer satisfaction. The auto lending market is supporting record sales of cars and truck to meet consumer demand.

The growing sense of consumers that these markets can actually work for them, without fear of tricks and traps and other predatory conduct, is stoking their confidence and restoring their trust. These developments reflect well on the work being done by the Consumer Bureau. Taken as a whole, they are making substantial contributions to the continued gradual recovery in the American economy.

Mr. Chairman, Ranking Member Waters, and members of the committee, thank you again for the opportunity to testify today and to discuss all the work we are doing on behalf of consumers. We will continue to listen closely to all of our stakeholders, and we will attend carefully to your oversight in order to ensure that all Americans can be assured of fair treatment in the consumer financial marketplace.

I look forward to your questions.

[The prepared statement of Director Cordray can be found on page 75 of the appendix.]

Chairman HENSARLING. The Chair now recognizes himself for 5 minutes for questions.

Director Cordray, as you are well aware, in late 2013 the Bureau entered into a consent order with Ally Financial over alleged violations of the Equal Opportunity Credit Act based upon a legal theory of disparate impact. At the time, Ally had an important yet unrelated application pending before the Federal Reserve to become a financial holding company.

On February 21st of this year, Michael Carpenter, former CEO of Ally, said that the charges that your Bureau brought against Ally were "trumped up." He went on to say that Ally had been "strong-armed" by the CFPB, and that the CFPB "absolutely knew they had tremendous leverage over us."

Mr. Cordray, isn't it true that you and senior staff in the Office of Fair Lending knew Ally was seeking to achieve financial holding company status prior to the settlement?

Mr. CORDRAY. I read the interview with Mr. Carpenter, who, of course, is no longer employed by Ally—

Chairman HENSARLING. Mr. Cordray, it is just a simple yes-or-no question. Were you or were you not aware of the pending application prior to the consent order?

Mr. CORDRAY. We had pursued this investigation against Ally for well over a year before Ally themselves made—

Chairman HENSARLING. Mr. Cordray, it is a simple yes-or-no question. Were you aware or were you not aware?

Mr. CORDRAY. As I said, we had pursued this investigation for more than a year before Ally brought that to our attention.

Chairman HENSARLING. Okay, so you were aware. That is the answer to the question.

Isn't it true that senior staff in the Office of Fair Lending were in discussions with both the Federal Reserve and the FDIC on how CFPB's determination of an ECOA violation could adversely impact their application? Is that true?

Mr. CORDRAY. We had no decision-making authority over those other matters. We were simply attempting to conclude our investigation and get to an appropriate—

Chairman HENSARLING. But the question is, were they in discussion? Was senior staff of the Fair Lending Division of the CFPB in discussion with both the Federal Reserve and the FDIC regarding this application?

Mr. CORDRAY. I believe there were some consultations about them wanting to know if we were completing this investigation.

Chairman HENSARLING. Okay, so consultation—you say "consultation," we say "discussion."

Can we pull up slide number six, please?

I believe on October 7, 2013, a decision memorandum was prepared for you. I am not sure you saw this, but it has the operative phrase, "staff is in a dialogue with both the Federal Reserve Board and the FDIC." It begs the question, what does this have to do with a potential violation of EOCA?

Did you receive this memo, Mr. Cordray? Do you know?

Mr. CORDRAY. I do not know.

Chairman HENSARLING. Okay. Go to the next slide, please.

What is also interesting is that the last sentence of the previous slide was deleted. And instead, we have somebody with the initials of "P.A.F.," perhaps Patrice Ficklin, saying, "Let's refrain from this discussion and instead quote from the securities filing." It seems to me that either senior staff attempted to cover up these discussions, or they tried to withhold this information from you.

Did senior staff try to withhold this information from you prior to the determination?

Mr. CORDRAY. No, I don't believe so. And I think you have the entire matter exactly backwards, Mr. Chairman. I would be glad to explain.

Chairman HENSARLING. Okay. Well, regardless of whether or not you saw this October 7th memorandum, you certainly saw the one on October 17th—I believe these are your initials—"Decision Memorandum for the Director."

And it says, "This could have a material adverse effect on Ally's business, results of operations, and financial position," and seemingly you initialed this. Are you at least familiar with this report?

Mr. CORDRAY. Again, I think you have this matter exactly backwards. I would be glad to explain.

Chairman HENSARLING. That is not the question, Mr. Cordray. The question is, did you initial this memorandum? And if so, it would seem to indicate that you knew ahead of time that you had an advantage over Ally and you used it.

Mr. CORDRAY. Again, I think you have this exactly backwards. I would be glad to explain.

Chairman HENSARLING. Okay. Mr. Cordray, you will have ample opportunity within this hearing, but I wanted to know—

Mr. CORDRAY. Should we do it now?

Chairman HENSARLING. —whether or not you saw this memo.

I have another question. In determining the racial characteristics of borrowers in the auto lending context, you don't actually have the racial characteristics that you know for a fact; instead, the Bureau uses Bayesian Improved Surname Geocoding. Is that correct?

Mr. CORDRAY. We use the same approach that is used in employment discrimination—

Chairman HENSARLING. Do you use Bayesian Improved Surname Geocoding (BISG) or not?

Mr. CORDRAY. We do the same approach that is used in employment discrimination cases across—

Chairman HENSARLING. Okay. So it is Bayesian Improved Surname Geocoding.

We have the names and salaries of the Bureau's employees in our possession, and our committee has used a public search tool to match home addresses and match names using your own Bayesian Improved Surname Geocoding. What we have discovered is that you pay Black employees almost $16,000 less than their White counterparts, which would suggest that either, one, you are presiding over a racist organization, and if you are not, Mr. Cordray, shouldn't the same disparate impact analysis you apply to others be applied to you?

And if you don't believe our analysis, I would assume you actually know the racial characteristics of your employees. I invite you to do your own analysis. But should disparate impact analysis be applied to the CFPB?

Mr. CORDRAY. I have no idea what analysis you are referring to or how carefully it was done. Disparate impact analysis applies throughout this field of law. It was upheld by the U.S. Supreme Court last June in an important decision.

And if you are going to do that analysis, you would need to correct for pay bands and different jobs. I have no idea whether you did that or not, so I would not—

Chairman HENSARLING. Mr. Cordray, I would invite you to do your own analysis. And I must admit, the evidence is fairly overwhelming. I am not sure there was any justice taking place here, and I fear what we are seeing are shakedowns for headlines, and this has to stop.

The Chair is way beyond his time.

I now recognize the ranking member.

Ms. WATERS. Thank you very much, Mr. Chairman.

Mr. Cordray, I do not want you to be intimidated or to be made to feel bad by these accusations that are being made by the chairman. I would like to think that the chairman and the opposite side of the aisle are truly interested in discrimination. There is nothing in their work or their history that shows they are.

And so you continue to do your work, and make sure that the work that you do on disparate impact analysis is work that will benefit all of the people who are being harmed by it.

Let's get on with the real issues. Let's talk about payday lending.

Despite the fact there is substantial support for payday operations on the opposite side of the aisle, we know that these operations have targeted minority communities and poor communities, and people are getting hooked on these payday loans. And I want to talk about, for a minute, what is happening here in Florida.

But before I do that, I have asked my staff to get me more information about where payday lenders are locating, how many are locating, and in what areas they are locating. We do know this: As it has been said by the Federal Reserve in St. Louis, there are more payday loan operations than there are McDonald's stores.

So a number of States like Florida and Ohio have attempted to reform payday lending, but even after so-called reforms, loopholes and other gaps remain, still leaving vulnerable borrowers susceptible to exorbitant interest rates and cycles of debt. For example, even after Florida's reforms, Floridians still take out on average about 9 loans a year, according to the Center for Responsible Lending, with an annual interest rate of about 312 percent.

According to a ProPublica investigation into Florida auto lenders, who expanded dramatically after Florida's so-called reforms, one Florida consumer appeared to have renewed her loan 17 times in 1½ years. Another woman borrowed $3,100 and made $2,600 in payments, and after her loan over 7 times she still owed $3,900.

I can give more examples of this, but what I am giving examples of is how poor people get hooked on payday loans. The fact that these borrowers have to take out multiple loans shows that the loans are not affordable. They have trapped borrowers into a cycle of debt.

Tell me why you are issuing guidance on payday loans? What have you discovered about them and how they work?

Mr. CORDRAY. What we have discovered—and this is through careful and comprehensive research into the payday lending industry—is that the description you just provided is substantially correct and accurate. About half of payday loans in the United States today are made to borrowers who are trapped in a cycle of 10 or more loans. That is about half of the loans being made nationwide.

That is what we found in our research that looked into millions of such transactions. It is difficult to see how that assists a consumer in improving their financial well-being.

Now, there are plenty of payday borrowers who get in and get out with one, or two, or three loans, and that is perfectly great. We are not attempting to cut off any such lending. The debt trap—being stuck in the debt cycle, living your life off of these massive rates of interest and difficult collection practices and the like that we have seen—is what creates a tremendous amount of consumer harm.

Ms. WATERS. According to the work that you have done, the research have you done, is this a profitable industry? Are they making money? Are they making large sums of money? What is keeping them going?

Mr. CORDRAY. It is actually a difficult product economically. There are high costs involved in defaults; there are high costs involved in customer acquisition. So there are not super normal profits being made in that area.

What keeps them going, what is at the heart of the business model for the average payday lender, is rolling the customer into loan after loan after loan so that eventually you have recovered more in fees than they borrowed in the first place. Your example was an apt one, of someone who takes out a loan, pays back more in the end than they borrowed to begin with, and still owes in the end more than they borrowed to being with. That is a very—

Ms. WATERS. So this is why—

Mr. CORDRAY. —normal part of this business.

Ms. WATERS. —they are referred to as debt traps.

Mr. CORDRAY. Yes.

Ms. WATERS. People get trapped. They can't get out. They keep rolling them over. Is that what this is all about?

Mr. CORDRAY. Yes. Industry has objected to that notion, but it is the best description I have seen of what actually happens in the marketplace.

Ms. WATERS. Thank you.

I yield back.

Chairman HENSARLING. The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, chairman of our Financial Institutions Subcommittee, for 5 minutes.

Mr. NEUGEBAUER. Director Cordray, this committee spent a considerable amount of time studying the short-term, small-dollar marketplace, and most recently your Deputy Director testified at my subcommittee on this issue. I will say this, that many of my colleagues did not walk away with much confidence in the direction that you are headed in the rulemaking, particularly on the issue of State and tribal sovereignty.

At issue are roughly 38 States who allow these products to be offered in some form, and the Federal preemption that will occur if your rule goes forward as outlined by the Bureau. I have a few questions, and I will use some slides during that questioning, and I hope that you will be brief and forthright in your answers.

Slide number one, please?

So after reviewing the currently regulatory framework, did you find any State that does not have the authority to enact and regulate short-term, small-dollar loans?

Mr. CORDRAY. What I would say is, States have authority in this area and the Federal Government has authority in this area, as well.

Mr. NEUGEBAUER. So you didn't find anybody that didn't have the authority? So the States have the authority to regulate that, is that your answer?

Mr. CORDRAY. Again, as is true in many areas of the law—securities law, antitrust law, telecommunications law—States have authority and the Federal Government also has authority.

Mr. NEUGEBAUER. Slide two, please?

Can you list the States, then, that have laws in place that have contributed to the problem that you have identified? And which States have failed to protect their citizens?

Mr. CORDRAY. What I can say is, as you indicated, there are approximately 37 or so States nationwide that allow some form of payday lending with different degrees of regulation. Our study that analyzed millions of such transactions nationwide showed that repeatedly in this business across the country many consumers fall into the debt trap, more than half of the loans are made to people who take out 10 or more loans in a row.

Mr. NEUGEBAUER. Which States, then, are allowing the debt trap?

Mr. CORDRAY. That would be all of the areas—all of the States that were examined in the study.

Mr. NEUGEBAUER. Do you have a list of those States?

Mr. CORDRAY. It would be all the areas where payday lending is authorized in this country.

Mr. NEUGEBAUER. So you looked at every State?

Mr. CORDRAY. We have looked at millions of transactions nationwide that occurred in all of the States.

Mr. NEUGEBAUER. In your rule, you mention that there is a floor. So does the floor mean that anything below that standard is void?

Mr. CORDRAY. First of all, again, we don't have a rule at this point. We have an initial framework and we are working toward a proposal. It is all in process, and this kind of input is relevant to our process.

Mr. NEUGEBAUER. I think, Mr. Cordray—

Mr. CORDRAY. But as with our mortgage servicing rules, which are final, we did not preempt State law there. We did provide a Federal policy judgment about mortgage servicing practices and indicated, in line with the statute that Congress enacted that gives us authority in the area, that our rules would be a floor for consumer protection, not a ceiling.

Mr. NEUGEBAUER. So is your position that you do not think that you are preempting State law?

Mr. CORDRAY. We are not preempting State law. Typically the Federal Government, when it is active in an area, could seek to occupy the field. That would be broad preemption. We are not doing that.

They could also seek to preempt State law in specific respects. We are not doing that.

Whatever we do in this area will coexist with State law. There will continue to be State regulation of payday lending; there will now be Federal regulation as well.

That is true of many areas of law—telecommunications law, energy law, environmental law. States and the Federal Government work together.

Mr. NEUGEBAUER. I understand that is your position, but the attorney general, Mr. Zoeller, disagrees with you.

Mr. CORDRAY. I'm sorry? Say that again?

Mr. NEUGEBAUER. Mr. Zoeller disagrees with you.

Mr. CORDRAY. I know the Indiana attorney general. We served together. I was a bordering State attorney general of his in Ohio. We have both been interested and concerned about issues of Federal preemption going back to our time in State Government. For myself, I spent 20 years in State Government.

Mr. NEUGEBAUER. So if one State has a 5-day cooling off period and the rule comes out that you require a 60-day cooling off period, haven't you then preempted the State that says 5 days is an appropriate cooling off period? Isn't that preempting that State?

Mr. CORDRAY. Again, a common aspect of federalism in our system is that there may be Federal regulation and there may be State regulation of individuals, and they coexist.

Mr. NEUGEBAUER. So what is your definition of "preemption" then?

Mr. CORDRAY. "Preemption" is when the Federal Government overrides State law and invalidates State law.

Mr. NEUGEBAUER. So if my State has a 5-day cooling off period and you say that 60 days is the new norm, haven't you preempted my State?

Mr. CORDRAY. You could say the same thing about securities law. States have securities laws that protect people who are investing, and the Federal Government has securities laws as well. And they coexist. They don't necessarily jibe in every particular, but they coexist and they are regulated at both levels.

Mr. NEUGEBAUER. Here is the question. These 37 States have gone out there, they have had the hearings, they have had debates on the floors, they have passed these laws. What do you know that they don't know?

Mr. CORDRAY. You could say the same about any of these areas of the law. The Telecommunications Act Congress passed in 1996—States had regulated that area for years, and the Federal Government had authority—Congress gave it the authority, and they acted and then those regimes coexisted.

Mr. NEUGEBAUER. Have you brought those attorneys general of these States and the various groups from those States in to have a discussion about this?

Mr. CORDRAY. I talk to them all the time. Those are my former colleagues.

Mr. NEUGEBAUER. No, I mean, have you had a forum where they had an opportunity to comment?

Mr. CORDRAY. I have spoken to them at the National Association of Attorneys General meetings; I speak to them individually; I have had a chance to speak to Attorney General Zoeller since he testified in your committee. We talk all the time. We coordinate on many things including enforcement actions against payday lenders—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Mrs. Maloney, ranking member of our Capital Markets Subcommittee.

Mrs. MALONEY. Welcome, Mr. Cordray.

My question concerns the Credit Card Bill of Rights (CARD Act), which was the second bill that President Obama signed into law. And Rahm Emanuel, his former chief of staff, told me that it is one of the most popular things that he ever did because it touches so many consumers.

And in that CARD Act we required you, the Bureau, to conduct a review every 2 years of whether the Act was having the effects that we intended. So first of all, I want to know, what is the response to the CARD Act?

When you get complaints, are you getting complaints about credit cards to the extent you were before the CARD Act went into effect? And what about the clear and transparent disclosures? Has that worked? And no more hidden fees or excessive interest rate hikes that are hidden?

The bill wanted to crack down on unfair and abusive tactics by card companies on consumers, and your report found that the CARD Act has dramatically improved the credit card market, making it more fair, and more transparent, even as the cost and availability have improved.

I, for one, think it is useful to have this type of regular review of a major bill. And my question is, are there lessons that you have learned from your two CARD Act reports that have been useful to the Bureau in writing other rules, and have you used those lessons going forward?

Also, two celebrated reviews, one by the Pew Foundation, said that the CARD Act saved consumers $10 billion a year. The NYU review, with others, said it was anywhere from $16 billion to $20 billion a year. Have you conducted any reviews similar to what they have done to see whether it is as good a stimulus package—it is actually a stimulus package that President Obama signed into law because it keeps the money in the consumer's hands.

So your comments, please, on the CARD Act and those various—

Mr. CORDRAY. As you say, we have had a chance to review the credit card market and we do that now on a biannual basis and provide a report to Congress.

I would start by congratulating the Congress. The Congress did an excellent piece of work in passing the CARD Act, and it has made an enormous difference for consumers.

Different assessments of amounts that consumers have been saved, in terms of previously exploitative fees, range up to $16 billion, but it is important to recognize this is going forward year by year, and every year consumers are saving, which is quite important.

The second piece is this shows—and, by the way, my experience here goes back to when I was in State Government before the CARD Act was passed, and we would hear tremendous complaints and concerns about the credit card product at that time. Although I was not in the Federal Government when the CARD Act was passed, we are doing a regular review of this and watching the J.D. Power consumer surveys, which show increasing customer satisfaction in this marketplace year in and year out.

It is a tremendous success story, and it shows what can be done with serious, substantive, even-handed regulation; better performance by the industry, which there is, and I give them credit for that, especially on their customer service in the credit card industry; and better consumer performance—people are being more careful with cards coming out of the financial crisis.

That is important, and it shows that if we work together in a balanced and reasonable way, we can improve these markets so that consumers can get more value from them, and that is what we all should want.

Mrs. MALONEY. Okay. Also in your report you highlighted the so-called deferred interest promotions—

Mr. CORDRAY. Yes.

Mrs. MALONEY. —and I quote: "impose significant costs on many consumers." And I think that is really important.

And my question is what, if anything, should be done to address the risks the Bureau has identified in deferred interest promotions? And also your comments on the overdraft—we have also a bill that I offered on overdraft that builds on the Credit Card Bill of Rights—your comments on where we stand on that rulemaking?

Mr. CORDRAY. Yes. We did indicate we have significant concerns about deferred interest products.

The reason is the core principle of the CARD Act was back-end pricing, which is never transparent to the consumer up front by definition. It is confusing and harmful to consumers because they think they are making a deal and they are having certain terms, and it turns out it is going to be different; it is going to be changed after the fact in a way that was not disclosed to them. That is very harmful.

Deferred interest operates much in that same fashion, so that is something we spotlighted in our most recent report. It is an issue that we are looking at very carefully and we are going to be taking actions as appropriate.

I think that credit card issuers should be mindful of thinking about their deferred interest products and the harm that is happening to a number of consumers who end up with back-end pricing that is very different from what was represented to them up front. That is an ongoing concern.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Michigan, Mr. Huizenga, chairman of our Monetary Policy and Trade Subcommittee.

Mr. HUIZENGA. Thank you, Mr. Chairman. I appreciate it.

And, Director Cordray, I have to tell you that I am a little surprised, and a little stunned. You just have laid out a case where you are intentionally trying to create conflict between State law and Federal law.

Now, a number of my colleagues over on the other side have been working on a slightly different issue that I am sure you are familiar with: medical marijuana law not lining up with Federal law and how that has affected banking.

Usually, there is an understanding that we are going to try and solve that problem, not create the conflict. And I just couldn't let that pass as my colleague from Texas was asking you about the lending—

Mr. CORDRAY. Do you want me to respond to that or not?

Mr. HUIZENGA. Very briefly, sure.

Mr. CORDRAY. Okay.

Mr. HUIZENGA. Why would you want to create intentional conflict?

Mr. CORDRAY. Look, I spent years in State Government: in the State legislature, as State attorney general, as the State treasurer. It was very common across many fields of law for us to be administering and enforcing State law in conjunction with common administration of Federal law. It happens all the time. It happens with environmental law, and it happens with securities law.

Mr. HUIZENGA. I did that as well, but you don't have—in what we typically have, for example in environmental law, is you have preemptive State law that goes in. First, it has to clear that hurdle. I served in the State legislature as well.

But that is not the direction I want to continue in. I want to pursue a little bit about the arbitration agreements, and I know that was brought up earlier.

In March of 2015 the Bureau released a report on the use of arbitration agreements and disputes between consumers and financial product providers. However, the report was criticized by a number of academics and industry people for completely ignoring major pieces of data.

On June 17, 2015, over 80 Members of Congress, including me, signed a letter asking that the Bureau reopen the arbitration study, citing issues with the methods on which the study was conducted, including the processes that developed that study that were not "fair, transparent, or comprehensive."

And I would like to submit the letter for the record, without objection, Mr. Chairman.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. HUIZENGA. The letter also noted the lengthy historical precedent in favor of arbitral dispute resolution, which assists in streamlining the American judicial system.

One of the complaints that I hear all the time is that we are bogged down in court. Arbitration was a tool introduced to streamline that, not to eliminate anybody's rights, not to eliminate a fair hearing, but purely to break the logjam.

Because I am very curious, do you really believe that this report accurately reflects how consumers use these tools?

Mr. CORDRAY. If I may, our report has been widely recognized as the single most comprehensive and informative report on this issue ever done. We had access to new data from the American Arbitration Association and others, and it is an outstanding report.

I have seen and we have attended closely to criticism of that report. It has been mostly incidental.

We sat down with the authors of the one critical study. One of them agreed to sit down with us and talk it through; the other did not. But we have looked at all of that—

Mr. HUIZENGA. Where does the study estimate the transaction costs associated with consumers pursuing a claim in Federal court versus arbitration?

Mr. CORDRAY. What we looked at was how the judicial process compared to the arbitration process in terms of outcomes and the like. What we found, by the way, was, as a matter of history, what you say is somewhat correct in terms of arbitration starting off as a business-to-business dispute resolution mechanism, and it is reasonable in that context.

Mr. HUIZENGA. It is also individuals.

Mr. CORDRAY. In more recent times it has been used to cut off access to—

Mr. HUIZENGA. Okay. So does the study compare the ability of consumers to pursue a claim without a lawyer in Federal court versus arbitration?

Mr. CORDRAY. The study comprehensively addresses many aspects of the judicial process, many aspects of the arbitration process, and compares outcomes between the two.

Mr. HUIZENGA. So for those watching on C-SPAN and the rest, the answer to both of those questions is "no."

Mr. CORDRAY. No, my answer is to describe what our study did, and it is the most comprehensive study ever done. Nobody disputes that.

Mr. HUIZENGA. I understand it is comprehensive, but there are a number of people involved in that space who believe that there were major flaws in the data and how it was used. And it seems to me that—

Mr. CORDRAY. We have looked at what they have had to say, and it is not particularly credible, frankly.

Mr. HUIZENGA. So you would have no problem, then, heeding the request that over 80 Members of Congress in the House and the Senate had of saying, "Okay, we would like to open this up and express some of our concerns in this?"

Mr. CORDRAY. I am simply going to continue to enforce the law. Congress asked us to do a broad, comprehensive study; we spent 3 years on it. We are now moving ahead with Congress' direction to engage in policy intervention based on that report.

Mr. HUIZENGA. Okay. What I need to know is how you can make a meaningful comparison between class actions and arbitration in this report? I don't see that, and many others in the space do not see that.

And that ultimately is the concern that I have is somebody receiving a check for 25 cents being part of a class action suit, which often happens as these major class action suits go on. The trial lawyers and the attorneys are all paid up. They are the ones who make the money; it is not the consumers.

And I would argue that arbitration actually benefits the consumer as much as it benefits anybody else in that process because it is streamlined. And so it sounds like to me that you are just trying to protect—

Mr. CORDRAY. That is not what our report showed, and it is a comprehensive study of this issue. There is virtually no relief to consumers in the arbitration process, and billions of dollars of relief to consumers in the judicial process. That is the comparison.

Mr. HUIZENGA. As long as their attorneys are paid.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Cordray, we have seen some indication from the CFPB that the lines between what is consumer lending and what is commercial lending are blurred. Can you explain your views on how the agency distinguishes between consumer lending and commercial lending?

Are there circumstances in which a loan to a small business could be a consumer loan? And if so, can you elaborate on the nature of those circumstances?

Mr. CORDRAY. Yes. There are areas where the line between commercial lending and consumer lending is blurry.

For example, a lot of start-up small businesses are being financed by individuals putting debt on their credit cards, so that is why the CARD Act becomes so important because it actually protects not just individuals but also many fledgling small businesses. It is also the case that home equity loans are often used to get capital to start businesses or improve businesses or grow businesses.

If I had my way—I don't have my way on many things—we would do what I did when I was Ohio attorney general and seek to protect not only individual consumers, as our statute authorizes us to do, but also small businesses who often operate in the marketplace with no greater clout than an individual household does.

If the Congress sees fit to give us that authority, we will aggressively pursue that. And it would help small business across the country.

As it is, again, as you say, the protections that we put in place for consumers often will end up helping certain individual small businesses that start out as individuals or a very small number of individuals and seek to grow.

Ms. VELAZQUEZ. Mr. Cordray, one area where I am concerned is regarding online lending. This is an increasingly popular choice for small businesses to quickly access capital, yet the regulatory environment has yet to catch up.

What role do you see the CFPB playing in the small business online lending marketplace?

Mr. CORDRAY. We are very interested in financial innovation and so-called FinTech. We have had the major marketplace lenders in to talk with us because we do have jurisdiction over them. The Treasury has convened a set of actors and is working on a White Paper on this subject.

It is something I think we are all interested in because it is a new source of capital for small businesses but needs to be subject to certain oversight and protections, as well.

That is something we will continue to work on. I am hearing from you a great deal of interest in this area. Others have a great deal of interest, as well.

Ms. VELAZQUEZ. Thank you for answering my letter.

Mr. CORDRAY. Yes.

Ms. VELAZQUEZ. Thank you.

Director Cordray, to date, five attorneys general have issued consumer alerts about deceptive advertising practices by rooftop solar companies, and a handful of settlements were reached in Arizona last year alone. Is the CFPB presently working with various State regulatory bodies, interviewing complainants, and investigating the depth of the problem we are hearing about?

Mr. CORDRAY. I can't speak to specific enforcement activity being engaged in by the Bureau, but across the country when there are consumers complaining about harm done to them or perceived mistreatment in the marketplace, that is the kind of thing that gets identified to us through our consumer complaint line and those are things we prioritize for investigation and potential action. I think I can say that much.

Ms. VELAZQUEZ. Thank you.

In May 2015 the CFPB issued a bulletin providing guidance to help lenders avoid discriminating against applicants participating in the Section 8 housing choice voucher homeownership program. Can you explain this bulletin and how it will help increase access to credit for eligible consumers?

Mr. CORDRAY. Yes. I am not sure if this is a direct answer to your question, but under the Equal Credit Opportunity Act it is illegal for lenders to discriminate against potential borrowers based on the fact that they are receiving public assistance income. That is good income and is supposed to be part of the calculation.

We have had several actions now where we found that lenders were not taking appropriate account of that kind of income, and they have made corrective actions accordingly.

In general, this is our approach. The Equal Credit Opportunity Act is one of the statutes that both we and the Justice Department administer, and we will do that faithfully and vigorously to make sure people are being protected and that prohibited classes are not being discriminated against under that statute.

Ms. VELAZQUEZ. Thank you.

Chairman HENSARLING. Does the gentlelady yield back?

Ms. VELAZQUEZ. I yield back.

Chairman HENSARLING. The gentlelady yields back.

The Chair now recognizes the gentleman from New Jersey, Mr. Garrett, chairman of our Capital Markets Subcommittee.

Mr. GARRETT. Thank you, Mr. Chairman. I am just coming in. I am over in Budget right now.

But I just want to follow up on the issue of arbitration. So Congress passed a bill, it was signed into law, and the President signed it, which validated the use of arbitration. My understanding now is a study was done—

Mr. CORDRAY. I'm sorry, what law is that?

Mr. GARRETT. The Federal Arbitration Act.

Mr. CORDRAY. Okay, in 1929 or so, yes.

Mr. GARRETT. Yes. Are you familiar with that law?

Mr. CORDRAY. Beg your pardon?

Mr. GARRETT. Are you familiar with it?

Mr. CORDRAY. I am.

Mr. GARRETT. Is that still the law of the land?

Mr. CORDRAY. It is still the law of the land, yes.

Mr. GARRETT. But you disparage it by saying, "1929."

Mr. CORDRAY. No, no. I am just saying in 2010 Congress passed the Dodd-Frank Act and made a number of changes in terms of how arbitration began, including outlawing arbitration clauses in residential mortgage contracts. Most residential mortgage—

Mr. GARRETT. The Federal Arbitration Act, which allows for arbitration, is still the law of the land.

Mr. CORDRAY. Although it has been modified by Congress in several respects since then, yes.

Mr. GARRETT. And it is now your agency's decision to, what, upend that law through a comprehensive action?

Mr. CORDRAY. No. Congress has now intervened and superseded the Federal Arbitration Act in specific respects. On the Military Lending Act—

Mr. GARRETT. Has Congress ended the ability of arbitration?

Mr. CORDRAY. In the Military—

Mr. GARRETT. That is a yes-or-no question.

Mr. CORDRAY. In several respects, yes, they have.

Mr. GARRETT. I didn't say in several respects. I said—

Mr. CORDRAY. Yes, in several respects they have.

Mr. GARRETT. —have they ended the use of arbitration?

Mr. CORDRAY. Under the Military Lending Act they barred arbitration clauses in lending contracts to service members.

Mr. GARRETT. So we can't seem to get—

Mr. CORDRAY. Under Dodd-Frank they barred it in residential mortgage contracts, for the most part.

Mr. GARRETT. Have we—

Mr. CORDRAY. They also—

Mr. GARRETT. Have we totally eliminated arbitration?

Mr. CORDRAY. No, but they then—

Mr. GARRETT. Okay. Thank you.

Mr. CORDRAY. —but they gave us, then, authority—Congress conferred it to us. I am not making it up.

Mr. GARRETT. And so is it your intention now to eliminate arbitration?

Mr. CORDRAY. Congress specifically said—and we merely carry out the will of Congress—that we should issue a report—do a study, issue a report, and then act in terms of addressing arbitration in light of that study and report.

Mr. GARRETT. So when you say that it is your intention to perform the will of Congress, when 80 Members of Congress write to you and ask specific questions, do you believe that you should answer those questions? Yes or no?

Mr. CORDRAY. I pay close attention to what Members of Congress tell me. It is my job to enforce the law that Congress has enacted.

Mr. GARRETT. When 80 Members of Congress ask you questions, do you believe that you have the responsibility to respond and answer those questions?

Mr. CORDRAY. I respond to individual Members of Congress, but I enforce the laws that Congress enacts.

Mr. GARRETT. So the answer is no, since you did you not say that—

Mr. CORDRAY. No. That is not correct.

Mr. GARRETT. —it was your responsibility.

Mr. CORDRAY. The answer is yes.

Mr. GARRETT. You do? We sent a letter back on June 17th of last year. We are still waiting for a complete answer.

With regard to that so-called comprehensive study, the Bureau ignored requests to disclose the topics that would be covered by the study. Have you disclosed all topics that have been covered by the study? Yes or no?

Mr. CORDRAY. I am not sure what all back-and-forth in correspondence there has been. I know we responded to that letter. If you think that response was insufficient, we would be happy to work with you further and get you more information.

Mr. GARRETT. You have also failed to provide the general public with any meaningful opportunities to provide input for the topic because the materials were kept behind closed doors. The final arbitration study included entire sections that were not included in the preliminary report that was provided to the public.

Was there a reason why you decided that certain information would be held confidential and not disclosed to the public?

Mr. CORDRAY. Some of the information, depending on how we obtain it from the American Arbitration Association and others, businesses have deemed confidential, may involve trade secret information and the like. Those would be the obstacles.

Mr. GARRETT. And are those—

Mr. CORDRAY. There wouldn't be any desire on my part.

Mr. GARRETT. Are those the only sections that are precluded from being public, the trade secrets, or is it a broad swath of areas?

Mr. CORDRAY. I would be glad to have my staff who are expert in this area deal with your staff and speak specifically to specific pieces of the report.

Mr. GARRETT. Obviously, since we are talking about a letter from June and here we are in March, we are still looking for complete answers.

Mr. CORDRAY. We have responded to the letter, and if that response was deemed insufficient we would be glad to work with you further to get you more information.

Mr. GARRETT. It goes back, I guess, to your initial answer to the question of whether you feel that it is your responsibility to answer to 80 Members of Congress.

Now, when you first came to this committee, I asked you, I guess the seminal question: "If the House of Representatives said you shouldn't do something, are you accountable to them?"

And the response was, "No."

And I asked, "If the Senate said that you should be doing something, should you respond to them and respond?" Your answer was, "No."

I said, "If the President asked whether or not you should be doing something," the answer was, "No."

Mr. CORDRAY. I don't remember any of this discussion.

Mr. GARRETT. Final answer was—

Mr. CORDRAY. I certainly don't remember it in that way.

Mr. GARRETT. Yes. That was my series of questions. The final question was, "Are you accountable to anyone?"

And the answer to this letter and that question back then was—

Mr. CORDRAY. No, that is not what I am saying and that is not a legitimate characterization of this.

Mr. GARRETT. Actually, that is—

Mr. CORDRAY. I respond to Members of Congress—

Mr. GARRETT. —on the record.

Mr. CORDRAY. —but I have a responsibility to enforce laws enacted by Congress, not by individual Members.

Mr. GARRETT. And the law of 1929 was enacted by Congress, and it would appear that you—

Mr. CORDRAY. And so has the law of 2010, yes.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from New York, Mr. Meeks.

Mr. MEEKS. Thank you, Mr. Chairman.

Good morning, Director Cordray, it's great to see you this morning.

And let me first join many of my colleagues—I know on the Democratic side, I think it should be on both sides—because we all should be thanking you for all the work that you have been doing to help the American consumer, for the work that you have been doing to help our veterans, to help our students, to help our mortgagees, and especially for the work that you do for low-income and minority communities who are always the most victimized—it is those who are on the bottom—and the work that you are doing to try to make sure that there is a level playing field.

And I would think that, given the scenario, both sides of the aisle should be appreciative of the agency and the work it does. I see there is room that we can work collectively together.

For example, what is important is that since the financial crisis, a number of financial services have closed. There have been over 5,000 branches of closures of—especially in—most of them in low-income and communities of color, leaving behind banking deserts, which is a neighborhood with basically no mainstream financial services.

But the people in those neighborhoods cannot live without access to financial services. And therefore, to meet those great needs, there are alternative products such as short-term lenders, and I hear my colleagues talking about that, and prepaid card providers, et cetera, of which—I just think about my parents. I lived in public housing, went to a bank—at that time some banks were not bankable, but they needed to have options so they used other options.

Back then, some of the options were dark. We don't want folks to go to the dark, so it would seem to me where your agency is a godsend to me is not to wipe out all of these businesses, but to try to make sure that we regulate them so that there is a good practice, so that people are not being ripped off, so that there are strong and functioning alternative financial services so they are not being denied access to financial products also, as they would have been.

Sometimes, I know my dad needed an extra few dollars to make it to the next month till the next paycheck came. And we need that kind of—but we don't want it where people are caught in that forever.

And I think that would be good for both sides. Nobody should want that. We don't want anybody taken advantage of.

And so if we have an agency, like yours, that can then put in some rules and some regulations so that we can make sure that the consumers are not getting ripped off but also—and I think that would be good for those who are providing good services. They would want that also.

Because we want to get rid of the bad folks. We don't want to get rid of everybody; we want to get rid of the bad folks. That would seem to me to be the goal.

And so I think that is the right approach that we should take, and I think that is the approach that you are trying to take in this, not just eliminating an entire—but eliminating the bad guys, and let's make sure that we uplift the good so that poor folks in low-income areas would have some opportunities to continue to bank. Is that correct?

Mr. CORDRAY. I found myself sitting here thinking that you are saying a lot of things that I try to say when I am sitting here in this seat testifying, and I think you may have just said it better. So I would just agree with you.

Mr. MEEKS. So now, let me just give, in the little time I have left, what I was concerned I saw about the Bureau's latest enforcement and findings, because I am shocked here we are in 2016 and there is still redlining going on, and that redlining especially in the mortgage lending and the steering of consumers in high-cost loans. It amazes me that we are still finding institutions thriving from this egregious practice.

And so can you please discuss with us in the little time I have left what is going on in those cases and what the Bureau has done to address it?

Mr. CORDRAY. We have seen a lot of things over the last few years, and frankly, again, 90 percent or more of our enforcement actions involve deceptive conduct by financial institutions, which is discouraging in some ways. But even we were somewhat surprised to see what we thought was very blatant redlining occurring.

This is the enforcement action that we and the Justice Department jointly took involving Hudson City Savings Bank, and the patterns when they were mapped were very clear. It is a significant resolution and a shot across the bow to the entire marketplace that this is not acceptable behavior; it is not an acceptable approach, and people need to review what they are doing and correct it if, in fact, they have gone down that road in any respect.

Mr. MEEKS. I only have 7 seconds, so I yield back.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Missouri, Mr. Luetkemeyer, chairman of our Housing and Insurance Subcommittee.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Mr. Cordray, you and I have had a number of discussions with regard to TRID, and I certainly appreciate your willingness to discuss it with us. As we have seen, you have delayed the implementation of the rule until October, and since then we have seen a lot of concern by the industry. They are struggling with this rule; some of the software programs that they have utilized have not been as good in implementing this as they would have liked to have seen and they are still struggling.

So my question is, what do you see from your position as the enforcer of this, as well as are you—have you had any enforcement actions taken against anyone at this point?

Mr. CORDRAY. I think we see and hear much the same things that you are describing. I think the I.T. problems here have been much larger than maybe people would have expected, and particularly because a mortgage lender can't control the I.T. systems of

REALTORS®, or title agents, or settlement agents, and others, and they have to all work together.

I know there was a bill in Congress proposing to have a hold-harmless period through February 1st of this year. What I had said and I have worked with the other regulators to jointly say was we were going to be corrective and diagnostic, not punitive, as we oversaw this implementation period, and it was open-ended.

It remains open-ended. We are now midway through March today and it remains open-ended.

We have taken no enforcement actions. I don't expect us to take enforcement actions unless somebody is blatantly just failing to try to implement the new rule.

To the extent that they are making some mistakes but trying to get it right, we are attempting to provide more clarification to them, which is something industry is asking us for, and also recognizing nobody is really trying to exploit consumers here; this is just a matter of getting these forms right and getting them correct.

By the way, the whole purpose behind this rule was something Congress wanted, and it is a positive purpose, which is taking what used to be two bureaucratic forms at the application stage and streamlining them into one, and the same at the closing stage. That is what we have done here.

Mr. LUETKEMEYER. Are you going to issue an additional guidance on this, or you feel that everybody is doing okay with what is going on?

Mr. CORDRAY. No, no. We have been monitoring this very closely. The last thing I want is for any of our rules to cause a jam-up in the market beyond anything that anybody would intend.

I think we are getting more guidance inquiries every day, but the trade associations are working together to provide some joint questions that they think are most important. We will attempt to be responsive to that.

Feel free to keep after us to make sure we do that.

Mr. LUETKEMEYER. Oh, we will. Trust me.

Mr. CORDRAY. Okay.

Mr. LUETKEMEYER. Also, along a different line, the Federal Trade Commission Act grants the FTC and banking regulators with the power to pursue enforcement actions based on unfair and deceptive acts or practices (UDAP).

Dodd-Frank marked an unprecedented expansion of UDAP authorities for the CFPB, including for the first time the term "abusive." An expanded series of powers for the CFPB referred to as UDAP has become a primary enforcement tool.

I realize that last week you spoke to the Consumer Bankers Association and rejected the notion that you are regulating by enforcement. I beg to differ, sir.

And when it comes to the CFPB's UDAP authority, you have issued little to no guidance preventing any financial institution from any sort of predictability. You use your UDAP authority on a case-by-case basis. Isn't that the definition of regulation by enforcement?

Mr. CORDRAY. We are doing the very same thing there that the Federal Trade Commission does and that the State attorneys general do. It is difficult to know how to do more than case-by-case when you are talking about cases of fraud or deceptive conduct.

We attempt to give guidance to the entire market by very specific orders that are issued in these cases so that everyone knows that if they are doing this, they should stop. If that is called regulation by enforcement, I think it is just strong deterrence and it is important as a law and order mechanism for signaling to other actors.

Mr. LUETKEMEYER. Along that line, the last time you were here, I asked the question just before we finished up with regards to a debt collection company that you wound up settling a situation for $12 million based on a proposed rule. Not a rule that is in force, but a proposed rule.

Mr. CORDRAY. I'm sorry, what matter are we talking about?

Mr. LUETKEMEYER. Encore.

Mr. CORDRAY. Okay, debt collection. Got it.

Mr. LUETKEMEYER. Debt collection. And this was based not on a rule that was in force, but it was on a proposed rule that you thought you may down the road have in force and said that they had a form that was noncompliant. So is that not regulation by enforcement?

Mr. CORDRAY. Yes, I don't think that is what we did in the Encore matter.

In the Encore matter we did a careful, thorough investigation of the facts. We found that there were violations of either the Federal Debt Collection Practices Act or the unfair and deceptive prong that we are given by Congress, and we enforced against that.

The notion that because we may issue a rule on debt collection several years down the road, or maybe next year, whenever it will be, that in the meantime we can't stop people from engaging in an unfair and deceptive conduct, I just don't think is the right approach for us.

Mr. LUETKEMEYER. I see my time has expired. I yield back the balance of my time.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Hinojosa.

Mr. HINOJOSA. Thank you. Thank you very much, Chairman Hensarling and Ranking Member Waters, for holding this important hearing on the CFPB's semi-annual report.

Director Cordray, I want to thank you for your appearance here today and for your exemplary leadership at the Consumer Financial Protection Bureau. Before I proceed with my questions, I wish to voice my strong support for the CFPB and its mission of protecting American consumers.

Chairman Hensarling, I ask unanimous consent to enter my opening statement into today's record.

Chairman HENSARLING. Without objection, it is so ordered.

Mr. HINOJOSA. With that, I will be able to move right into my questions.

Director Cordray, many argue that if the Bureau issues a payday lending rule in line with the released outline, it will eliminate a crucial source of lending for many low-income people who have no other options. Why does the Bureau see the need to regulate payday lenders, and why do you believe consumers will be better off with CFPB oversight?

Mr. CORDRAY. Again, we were given authority by Congress to address this marketplace, among others. In fact, it was specifically called out in the Consumer Protection Act of 2010, the Dodd-Frank Act.

We have done extensive research. We have assessed and analyzed millions of transactions. And again, what we found was a significant portion of the customer base, half of the total loans being made—payday loans nationwide—go to customers who are in a sequence of 10 or more loans.

That is a debt trap. I don't know what else to call it. It creates tremendous harm for consumers. It is the exact point that was being made earlier in the ranking member's example of someone taking out "X" dollars in loans, ending up repaying more in fees than they ever borrowed in the first place, and still owing more at the end of all that than they borrowed in the first place.

Mr. HINOJOSA. Thank you for your response. I strongly support your efforts to rein in those harmful payday loan practices.

In my community we have seen some programs that cost one-tenth of what payday lenders charge, but there just aren't enough of these programs.

Tell me about the 5 percent option included in the proposed rule, and will it be included in the final rule?

Mr. CORDRAY. I can't speak to what may be in the final rule. We are just coming up on a proposal stage here.

We are going to continue to take input from many different stakeholders. Of course, they have very dramatically conflicting input, and that is something we try to sort through.

What I can say is that in approaching this rule we are attempting to both address significant and actual harms to consumers, and we are also trying to make sure that there are ample avenues that remain for small-dollar lending to be available to consumers. Community banks and credit unions have a product now that we want to make sure that we are protecting and giving latitude for, and other products that may arise around the country. We don't want to squash innovation in this area.

We do want to, to the extent we can, squash predatory products that are causing enormous consumer harm.

Mr. HINOJOSA. According to the FDIC, nearly 50 million Americans are either unbanked or underbanked. Consumers sometimes need access to $100 or less to smooth the transition between paychecks when their balance is low so that they can still purchase medicines and groceries and other necessities.

How have the Q.M. rules affected mortgage lending by community financial institutions?

Mr. CORDRAY. This question is important because I often see facts alleged that are not accurate in this area.

This share of the market of mortgage lending by community banks and credit unions has grown since Dodd-Frank was enacted. It is larger now. It is larger now than it was in the mid-1990s. This has come at the expense of large banks in particular.

This is exactly the point that I think Congressman Meeks just made, which is that if you have even-handed, sensible regulation of a market, the more responsible actors should be able to thrive because they are freed from unfair competition by the bottom-feeding, law-violating actors, many of which came into the mortgage market in the middle part of the last decade and engaged in highly irresponsible lending and ended up blowing up the mortgage market.

Community banks and credit unions, contrary to much of what is said, their market share has increased, and that is a good thing.

Mr. HINOJOSA. My time has—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Wisconsin, Mr. Duffy, chairman of our Oversight and Investigations Subcommittee.

Mr. DUFFY. Thank you, Mr. Chairman.

Welcome, Mr. Cordray. As you know, I have expressed some of my frustration with regard to the lack of compliance with the document requests that this committee has made to the CFPB.

That is with the backdrop of Barack Obama telling us that this would be the most transparent and open Administration ever. That is with Elizabeth Warren indicating that sunshine would flow into the CFPB. That is in regard to the backdrop that you have given with regard to openness and transparency.

It gives us great concern that a number of our subpoenas go back several years and there has been a lack of compliance. As you know, there has been a recent subpoena 3 months ago that compiled all of our document requests, and we get limited compliance from you.

I want to direct your attention—

Mr. CORDRAY. Do you want me to respond to that?

Mr. DUFFY. Oh, in a second.

Mr. CORDRAY. Okay.

Mr. DUFFY. You will have plenty of time.

I want to direct your attention—you are aware that a report came out from this committee in regard to indirect auto lending. And you would note that there were some documents that we included, quotes in that report from the Consumer Financial Protection Bureau.

Did you provide those documents before this report to this committee?

Mr. CORDRAY. I can't speak to individual documents because I don't know which ones you are referring to, but what I can say is over the—

Mr. DUFFY. The ones in the report. I am referring to the—

Mr. CORDRAY. —course of the last several years, in response to numerous requests—

Mr. DUFFY. Director Cordray, I would just like you to answer my question. I am talking about the report that we did on indirect auto lending, the one that came out on November 24th. I am sure you read that because you made some calls to the Hill.

Did you provide those documents to us?

Mr. CORDRAY. I can't, out of context here, place individual documents over the last several years. I know that—

Mr. DUFFY. I am talking about the documents—

Mr. CORDRAY. —we have been very responsive to your requests. You have received tens of thousands of pages of documents. If there are particular ones that you are looking for—

Mr. DUFFY. Director Cordray, I love that—you could send me tens of thousands, you could send me tens of millions of documents, but if you don't send me the ones that I ask for—just like Hillary Clinton can send thousands of e-mails, but if you don't send the 10 that are relevant—

Mr. CORDRAY. Sure.

Mr. DUFFY. If you want to talk about recordings in Watergate, you could send hours of recordings, days of recordings, but if you miss a few minutes, it is those that are relevant.

Mr. CORDRAY. We continue to work with you on those responses. We will be glad to continue to work with you on those responses.

Mr. DUFFY. I know that you know what I am talking about in regard to this report, and you know that you didn't send us these documents. And even after this report came out, we have again asked you for the documentation in this report and you have refused to comply again with our request.

And that, sir, is incredibly frustrating when, again, you have made commitments to being open and transparent.

Mr. CORDRAY. We continue to be glad to work with you on those, Congressman Duffy.

Mr. DUFFY. Mr. Director, we have been trying to work together for years, and I don't—

Mr. CORDRAY. I still am trying to work with you and will continue to try to work—

Mr. DUFFY. Working is easy. Give us the documents. Send them to us. Send us what we asked for.

Mr. CORDRAY. We will be glad to sit down and talk further. I know our people are talking further.

Mr. DUFFY. I want to just kind of highlight some of the—before we go there, I—in the Ally settlement—let's talk specifically about that—you use your proxy data. In regard to your analysis on proxy data, what percentage of accuracy do you have in regard to Ally?

Mr. CORDRAY. So it depends on—look, it depends on what you are talking about. There are different degrees of accuracy for different things.

We work to provide a high degree of accuracy in terms of potential charges of disparate impact discrimination under the law and—

Mr. DUFFY. Disparate impact.

Mr. CORDRAY. —reaffirmed by the Supreme Court last—

Mr. DUFFY. So on disparate impact, what percentage of accuracy do you have?

Mr. CORDRAY. Again, it depends—

Mr. DUFFY. You can't tell me?

Mr. CORDRAY. —on what we are talking about. Are we talking about the auto market, the mortgage market? Are we talking about—

Mr. DUFFY. I'm sorry, we are talking about the auto market.

Mr. CORDRAY. Okay. A high degree of accuracy.

Mr. DUFFY. What is a percent?

Mr. CORDRAY. I can't give you specific percentages, but if you want my staff to work with your staff on specifics there we can do that.

Mr. DUFFY. So it is fair to say that you are not 100 percent accurate, is that right?

Yes?

Mr. CORDRAY. I don't know if anybody is ever 100 percent accurate, but we get as—

Mr. DUFFY. So is it fair to say that—

Mr. CORDRAY. —close as we can.

Mr. DUFFY. —there are some White borrowers who may be included in your analysis who will get checks from the Ally settlement?

Mr. CORDRAY. I would say that if you are administering any redress to consumers—and this is across the entire spectrum of what we do, what attorneys general do, what the courts do—

Mr. DUFFY. Yes or no?

Mr. CORDRAY. —it is always possible that redress will find its way—

Mr. DUFFY. So disparate impact checks will go to White borrowers potentially—

Mr. CORDRAY. It—

Mr. DUFFY. —and so that is fine—

Mr. CORDRAY. It is nothing unique in this area.

Mr. DUFFY. Great. So in your analysis I am sure that you saw some African-Americans who pay at higher rates than the White average, and some African-Americans who paid less than the White average. Is that right?

Mr. CORDRAY. What we saw was systematically African-Americans and/or Hispanics—

Mr. DUFFY. So are you telling—

Mr. CORDRAY. —borrowers in certain matters were paying more.

Mr. DUFFY. Is it your testimony that nobody paid less than the White average?

Mr. CORDRAY. Beg your pardon?

Mr. DUFFY. Is it your testimony that no one paid less than the White average?

Mr. CORDRAY. I don't know that I would say that, but again—

Mr. DUFFY. Okay, so my question for you is—

Mr. CORDRAY. —it depends on what matter we are talking about and what data we are talking about—

Mr. DUFFY. —is someone who paid less than the White average—are they also getting a disparate impact check?

Mr. CORDRAY. Again, I am not sure what—

Mr. DUFFY. Yes or no?

Mr. CORDRAY. —matter you are talking about or what data you are talking about. But what I would say is—

Mr. DUFFY. Director Cordray—

Mr. CORDRAY. —disparate impact discrimination is something I know has been under attack in certain quarters.

Mr. DUFFY. —are you—

Mr. CORDRAY. The Supreme Court reaffirmed—

Chairman HENSARLING. The time of the gentleman has expired.

Pursuant to clause (d)(4) of committee rule 3, the Chair recognizes the gentleman from Wisconsin for an additional 5 minutes.

Mr. DUFFY. Thank you, Mr. Chairman.

We are talking about the Ally settlement. You are well aware of that, right? And I am talking about the numbers that you used for that settlement.

So I am asking you simple questions. Are White borrowers getting disparate impact money? You are stonewalling me here. You are not answering my question and I think this is a pretty simple line of questions.

If you want to be open and transparent, do it here. If you are not going to give me the documents, answer my questions.

Mr. CORDRAY. Sure. Okay.

Mr. DUFFY. And so that was one that you are trying to waffle on. The next question is—

Mr. CORDRAY. I am ready to do it.

Mr. DUFFY. Hold on, and the next question is, you have individuals who probably—I know this for a fact—paid less than the White average. Do those African-American borrowers get disparate impact checks as well, or are you only sending checks to African-Americans who paid more than the White average?

Mr. CORDRAY. If you want to specify someone to me, we can look at it. What I know is that we set up a process here, working with the Justice Department who has experience in these matters going back decades, and that is a process that everyone has confidence in—

Mr. DUFFY. So you haven't—

Mr. CORDRAY. —and it is getting redress—

Mr. DUFFY. I will reclaim my time. You haven't sent—

Mr. CORDRAY. —hundreds of thousands of consumers.

Mr. DUFFY. Director Cordray, you haven't sent me the information on Ally, but we do have the information in regard to Toyota.

This comes from a document dated November 19, 2004; it was initialed by you. And on page, I believe it is 15, is a chart that shows non-subvented African-Americans, the total number of affected at 116,500, okay, if you want to look up at the—do you have the document in front of you?

Mr. CORDRAY. No, I don't.

Mr. DUFFY. Look at the screen. You can see that right there.

And the number of harmed prohibited basis borrowers is 66,000. So it is my reading of this document that there are 56 percent of African-Americans who paid more than the White average and 44 percent who paid less. Fair enough, in the Toyota study?

Mr. CORDRAY. I am not easily able to analyze these numbers taken out of context, but—

Mr. DUFFY. You signed off on the document.

Mr. CORDRAY. —but, go ahead with your questions—

Mr. DUFFY. Okay. So if you want to go down to the subvented African-Americans, the number who were affected was 7,559, but the number that I had prohibited—or were harmed was 2,668. So meaning on the subvented class of African-Americans only 35 percent paid more than the White average; 65 percent paid less. These are your documents, sir.

Mr. CORDRAY. What I would say is—

Mr. DUFFY. I want to be clear: If you are not going to give me the Ally documents, we will use Toyota.

Mr. CORDRAY. What I will say is subvented auto loans can behave differently from normal auto loans, and that is something we take account of in our analysis.

Mr. DUFFY. That is why I gave them both to you. Look at the chart.

Mr. CORDRAY. Yes.

Mr. DUFFY. In this document you don't show great disparity between African-American rates and White rates.

Mr. CORDRAY. I would disagree with your conclusions there. We did pursue a matter with Toyota. We thoroughly analyzed the underlying facts. The automaker lender had access to the same underlying facts—

Mr. DUFFY. I am going to reclaim my time.

In regard to the analysis that you have done, I find it interesting when the chairman brought up when they did their own statistical analysis on the CFPB and that would show, based on that analysis, that you pay African-Americans $16,000 less than White employees at the CFPB, before the chairman cut you off I think you were trying to say, "But it doesn't take into account pay bands. It doesn't take into account job—"

Mr. CORDRAY. I didn't know if it did or not. It didn't have any of the analysis—

Mr. DUFFY. You want to make sure that we consider what information you might have that could account for that disparity.

And so in regard to indirect auto lending, did you take into account credit scores, trade-ins and trade-in values, whether the car was new or used, the amount financed, the length of the term financed? Because this was all information that the auto lenders tried to get you to consider but you refused to do it.

Now, when the role was reversed and Mr. Hensarling asked you those questions you wanted to make sure, "Whoa, whoa, whoa—"

Mr. CORDRAY. I wouldn't agree with that—

Mr. DUFFY. —"there is qualifying information for this, sir."

Mr. CORDRAY. I wouldn't agree with that characterization, but I am happy to explain if you want me to.

Mr. DUFFY. I won't have you explain to me. We will do it in writing. Maybe I will get some documents from you.

I want to put up another exhibit. Or actually, I am not going to put it up; I am going to hand you a document.

This was provided to us in response to our subpoenas number 20 and 22. This was the only document that is in compliance with our subpoena, and this is in regard to records memorialized in the final remuneration plan in regard to Ally.

Do you have that document in front of you?

Mr. CORDRAY. No, I do not.

Mr. DUFFY. I believe your staff has it.

This is basically a computer printout—if you would hand it to the Director, please—it is a computer printout. This is the only document that you have given us to show us what the remuneration plan is. Could you read this document for the committee so we can understand what this document says in your sunshine and compliance with the committee?

Mr. CORDRAY. What do you want me to do? You want me to just start down here and read—

Mr. DUFFY. Yes, read it for me.

Mr. CORDRAY. Okay. "For official use only." Is that what you would like?

Mr. DUFFY. I was thinking in regard to—

Mr. CORDRAY. "Confidential. Not for distribution."

Is that—

Mr. DUFFY. Compute, space, back, equals, 900, period, backslash, star, money sign, dash, cap, on full, dash, term. What does this mean? This doesn't mean—

Mr. CORDRAY. All I know is if you ask for documents in an area, we give you the responsive documents that we can—

Mr. DUFFY. This is the one that you sent us.

Mr. CORDRAY. —and it may be that you aren't in a position to interpret this document. I don't know about that.

Mr. DUFFY. Are you? Can you interpret this document?

Mr. CORDRAY. I am not going to read you the document.

Chairman HENSARLING. The time of the gentleman has expired.

Pursuant to the committee's rules for extended questioning, the ranking member is now recognized for an additional 5-minute question period.

Ms. WATERS. Thank you very much, Mr. Chairman.

At the beginning of this hearing we started talking about the CFPB's work in racial discrimination in auto lending, and specifically the CFPB's $98 million settlement with Ally. And I also mentioned in my opening statement that the Bureau has fined banks and captive lenders such as Toyota, Honda, and Fifth Third Bank, for discriminatory practices.

These banks and auto lenders that you have fined, if they don't think that you are correct, if they want to oppose you, if they want to fight you, can they go to court? Can they sue? Can they defend themselves in some way?

Mr. CORDRAY. Sure. And there are a number of institutions that have required us to take them to court, not responded to the results of investigations. And if so, we pursue it and the courts have the ability to make that determination.

Ms. WATERS. Did Ally do this?

Mr. CORDRAY. They could have, but they did not.

Ms. WATERS. They did not.

Did Toyota do this?

Mr. CORDRAY. They could have, but they did not.

Ms. WATERS. Did Honda do this?

Mr. CORDRAY. They could have, but they did not.

Ms. WATERS. So while they are pretty big companies, they have the right to sue, they have the right to go to court, and even though they have friends on the opposite side of the aisle who would like to serve as their lawyers, they could have gone to court if they had wanted to. Is that right?

Mr. CORDRAY. Certainly.

Ms. WATERS. Thank you very much. Now, let's go further.

The Republicans are alleging that the CFPB used Ally's desire to change its status to a bank holding company to leverage the settlement. Isn't it true that the CFPB was investigating racial discrimination at Ally Financial prior to any knowledge of Ally's desire to change its status?

Mr. CORDRAY. I am glad to have the chance to correct the record on that, and some of the Members who asked those questions are not present in the hearing room I understand, but maybe they will see the transcript.

We opened an investigation against Ally into potential discrimination in auto lending more than a year, maybe a year-and-a-half before the matter was resolved. As often happens, parties that are being investigated, it moves slowly, they are not eager to resolve the matter, and sometimes they drag their feet, sometimes it just takes a while.

At one point Ally wanted to move more quickly to resolve the matter. That was a decision that they made, and that was a choice that they were making for their own reasons. I wasn't familiar with why those were. They then explained to me why they wished to proceed in that fashion.

Our purpose all along was to complete and resolve an investigation into discrimination in auto lending. That was our job. That is our job to enforce the law.

That is what we did, and we reached an appropriate resolution that the company agreed to and was willing to enter into and, as you say, could have fought in court if they wished to do so. That was up to them. Those were choices they made; those were not choices I was making.

Our choice was we were trying to enforce the law, we were seeking to complete an investigation and resolve a matter, and we did so. That is all there is to it as far as I am concerned.

Ms. WATERS. Isn't it true that the CFPB only consulted with the FDIC and the Fed regarding Ally's status after Ally themselves informed the CFPB of their desire to change their status?

Mr. CORDRAY. I believe that is correct.

Ms. WATERS. Isn't it also true that the CFPB had evidence that Ally Financial's policy surrounding a discretionary dealer markup resulted in widespread racial discrimination?

Mr. CORDRAY. That is certainly correct.

Ms. WATERS. Can you speak more about your investigation of Ally and how you came to that settlement? I know you just did, but I want you to reiterate because I think that my colleague on the opposite side of the aisle has framed this in such a way that you have been unfair, that somehow you are not following the law, and that somehow you leveraged their desire to change their status.

Would you please go ahead and—

Mr. CORDRAY. I would say quite the opposite.

The law of the land, reaffirmed by the Supreme Court last June, is that disparate impact discrimination is against the law. It is a violation of fair lending laws.

Given that is so, our responsibility is to enforce the law. It is a law that Congress enacted, again, that we have a job to enforce the laws Congress has enacted.

We approach every investigation the same way. Some of them start with exams that then lead to developing facts and conclusions that may lead to enforcement actions; some of them start as enforcement investigations.

We approach them all the same way, to comprehensively establish the facts, to determine legal conclusions, to work with the entity to try to resolve the matter—if we can, by consent; if we can't, by litigation. And we work with the Justice Department on these matters. They are our active partner, and we work together on them and we see eye to eye.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from California, Mr. Royce, chairman of the House Foreign Affairs Committee.

Mr. ROYCE. Thank you, Mr. Chairman.

On the question of exemptive authority, Mr. Corduroy, as it applies to your ability to exempt community banks and credit unions from rulemakings, you argued in a recent speech that it was not plausible for you to use such authority to override Congress' own judgment on such a broad-based policy matter.

And, Director, as you know, Section 1022 of the Dodd-Frank Act gave the CFPB the authority to adopt regulations by allowing it to exempt any class of entity from its rulemakings. Just this week 329 Members of this House wrote to you—it was Mr. Stivers' letter, actually—to tailor regulations for community banks and credit unions, citing Section 1022 exemptive authority specifically.

Do you believe that Section 1022 gives you the ability to tailor regulations for community financial institutions, and does a letter from—this would be over three-quarters of Congress—does such a letter change your view of congressional intent?

Mr. CORDRAY. I would say two things.

First of all, we have routinely tailored our rules to take account of different circumstances of small lenders as opposed to large lenders. We did that with our mortgage origination rule; we did it with our mortgage servicing rule; we did it with our remittance rule. We will continue to do it where appropriate.

Second, I always attempt to be responsive to letters from Members of Congress. I was in a more humble station, a member of the State legislature in Ohio, and I have understood the legislative role and I respect it.

I would also say that I think—what I think I know here—and I may not know as much as you all do certainly about the legislative process in the Congress, and I wasn't around for the Dodd-Frank debates—but both of the major credit union trade associations have said publicly that they sought a broad exemption from regulation or oversight of any kind in—when the—when Dodd-Frank was being debated. In both cases apparently it was rejected by the Congress. It was not written into the law.

What was written was differential treatment of banks under $10 billion—and credit unions under $10 billion in assets as compared to those above.

We have gone beyond that and at times provided special dispensations or special provisions for smaller creditors, often those of $2 billion in assets or below. And we will continue to do that where we find that to be appropriate on the facts.

In terms of a broad overwriting of what Congress made a judgment about in that statute, which was not to simply exempt all credit unions from everything having to do with consumer protection, I feel that Congress has spoken on that.

Mr. ROYCE. Let me ask you another question. In November 2015 you released your updated rulemaking agenda indicating that you expect to issue a final rule on prepaid cards in the spring of 2016, and I would ask if that is still accurate?

Mr. CORDRAY. I think that is still roughly accurate. I would comment that the spring starts, as I understand it, next week and will extend until the third week in June or so.

Mr. ROYCE. In proposing its rule governing prepaid cards, was it the Bureau's intent to prohibit issuers from offering overdraft protection to card users? If customers want and like overdraft protection for their prepaid card, is it the Bureau's position that they should still be denied the opportunity to choose such a feature?

Mr. CORDRAY. In the proposal for the rule that is not what we did. We could have done that. We could have sought to ban overdraft. There were a number of stakeholders who suggested that to us and actually urged us to do so.

We opted for more of a middle ground, which was that overdraft could be provided on prepaid products, but if so, it should be subject to the same Regulation Z approach as is used with credit cards, which is an accepted approach that has been in place for credit cards for many years, and that is what we proposed.

We will be finalizing that rule roughly on the timeframe you described, and we continue to consider how to approach that issue, among others.

By the way, I would say that one thing that has happened since the last time I testified here on prepaid cards was we did have this significant fiasco with the RushCard, where many thousands of consumers had prepaid money onto these cards and could not get access to the money. If anything, that shows me we need strong consumer protections for those prepaid cards, for which no consumer protections exist today.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Clay, ranking member of our Financial Institutions Subcommittee.

Mr. CLAY. Thank you, Mr. Chairman.

And thank you, Director Cordray, for attending today.

Just to expand on my friend from California's inquiry, can you give us a sampling of what CFPB rules are expected to be finalized this year?

Mr. CORDRAY. This year?

Mr. CLAY. Yes.

Mr. CORDRAY. It is hard for me to hazard a guess on what exactly will be finalized when because the process—it is kind of like a judicial opinion. It is under advisement and it just gets done when it gets done.

I think we clearly expect to finalize prepaid rules this year. I think we clearly expect to finalize further amendments to the mortgage servicing rules this year.

I think we are underway on a number of other rulemakings, and I just couldn't really hazard a productive guess at this point as to exactly when those will be completed.

Mr. CLAY. I see. Thank you for that.

And switching subjects, it has recently come to my attention that some of my constituents are offered loans by lenders that are not licensed to operate in Missouri. My understanding is that a customer will click on the online ad of a lead generator, with the customer doing so under the assumption that they are dealing with a licensed entity. But instead, their information may be sold to an unlicensed tribal or offshore lender.

In March 2015 Missouri Attorney General Chris Koster shut down 8 online payday lenders that were operating illegally and whose illegal lending practices impacted more than 6,000 Missouri residents. In one instance, a Missouri resident was charged a $500 origination fee on a $1,000 loan, which was immediately rolled into the principal of the loan, where she was then charged a 194 percent annual percentage rate, eventually paying $4,000 on a $1,000 loan.

Can you share insight on what—

Mr. CORDRAY. Yes. I have heard some horrific stories from the State of Missouri on lending that is occurring at interest rates effectively 1,950 percent annualized, and I read this in a court opinion from a Missouri court of appeals case in which they gave some examples from the record.

What I would also say is that Attorney General Koster, with whom I served when I was attorney general of Ohio, is absolutely right here. Anybody who seeks to make loans without being licensed in a State is violating State law.

We believe that if they attempt to collect on those loans, under Federal law they may be violating the Federal Debt Collection Practices Act, and Federal unfair and deceptive practices. We have open matters on that in the courts, and I think that is all quite appropriate.

Mr. CLAY. So Missouri has caught your attention as far as the abuses of consumers are concerned?

Mr. CORDRAY. Very definitely.

Mr. CLAY. Thank you for that.

As it relates to estimating the racial or ethnic impact of auto discrimination, to your knowledge, do any statistical methodologies exist that eliminate all false positives and false negatives?

Mr. CORDRAY. I am not a social scientist, but it seems to me unlikely that in any field of social science or natural sciences, that is easily possible. But I wouldn't claim to be an expert.

Mr. CLAY. Okay. If Republicans have concerns about using estimates for race or ethnicity, shouldn't Congress just tell auto finance companies to start collecting this data, as HMDA does for mortgages? Wouldn't that eliminate the need for estimation?

Mr. CORDRAY. Actually it would, yes, I believe so.

Mr. CLAY. Okay. Are proxy methodologies used in other civil rights enforcement contexts?

Mr. CORDRAY. They have been for decades.

Mr. CLAY. And they have been for decades.

Mr. CORDRAY. Yes.

Mr. CLAY. I appreciate your response.

And, Mr. Chairman, I yield back.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

I don't want to catch you off balance, Mr. Cordray, but I would like to thank you. Over the past couple of years, your staff has been working with the Coalition to Save Seller Financing, basically streamlining the rules under Title 14 of Dodd-Frank, just pertaining to the seller financing. That is something that you and I have discussed in one of our meetings so I appreciate whatever is going on there. There is some sense that we will come to resolution there.

So at what level do you think that people who are using payday loans are trapped? In other words, how many loans in a row constitutes that?

Mr. CORDRAY. I don't know if there is a hard and fast definition, but I guess what—from what we have seen, if half of the loans being made in that marketplace—more than half of the loans being made in that marketplace are going to people for whom this is marketed as a short-term, 14-day loan, and in fact, more than half of the loans are going to people who have rolled them 10 or more times. It seems like that crossed the line somewhere along the way.

Mr. PEARCE. That is not the direction I am going, but I appreciate that input.

Do you have a figure at the problem payday loans, about how much the people owe when they get to be problems? In other words, if somebody owes $100 is that a problem, or does it need to get to $1,000 or $10,000?

Mr. CORDRAY. I'm sorry, talking about tribal payday loans in particular or—

Mr. PEARCE. Yes, payday loans. That is something you all really have concentrated—

Mr. CORDRAY. I wouldn't have a specific figure to put on that—

Mr. PEARCE. —figure at which you identify people having payday loans that they are kind of in trouble?

Mr. CORDRAY. I think—

Mr. PEARCE. How much? If they owe—

Mr. CORDRAY. —many people have looked at that and have different points of view, but I would say the overwhelming consensus of a lot of people who look at it is that rolling loans in long sequences where you end up paying more in fees than you borrowed in the first place and you still owe at the end more than you borrowed in the first place—

Mr. PEARCE. With all due respect, sir, you tell me that many people have many different ideas. You are the top regulator in the dadgum country. I am asking you what is your opinion, and you can't give me an answer, and so I—

Mr. CORDRAY. My opinion of my authority—we are working through these issues. We have issued a very—

Mr. PEARCE. No. You are going after an industry and trying to shut them down. We may disagree, but there are people in my district who use them regularly and say, "Hey, if it weren't for that I wouldn't have been able to pay my rent this month." But forget that.

Let's go to exploitation. You have talked about exploitation today. I wrote notes down as you were talking.

Mr. CORDRAY. Yes.

Mr. PEARCE. So at what level are fees exploitative?

Mr. CORDRAY. Let me correct the record on one thing: We are not seeking to shut an industry down.

Mr. PEARCE. You are doing a pretty good job of it—

Mr. CORDRAY. We are seeking to restrict certain predatory practices that—

Mr. PEARCE. Please, sir, I am really limited in time. I would like to move on, and I think your actions speak louder than your words by far.

But at what level is exploitation a problem? In other words, would 5 percent per month be an exploitative fee?

Mr. CORDRAY. I don't have a particular comment on that. I think—

Mr. PEARCE. But you made comments that you are trying to stop exploitation, so how do you determine if it is exploitation?

Mr. CORDRAY. I would say and I think most reasonable people would agree that if you are offering a loan that you know more than half of the loans will involve rolling the loan over 10 times, owing—paying more in fees than you borrowed in the first place and owing more at the end than you borrowed in the first place—

Mr. PEARCE. Well—

Mr. CORDRAY. —that gets a lot of consumers into a lot of trouble.

Mr. PEARCE. We have already discussed that multiple times today and I appreciate it. I was hoping to have a substantive conversation. I don't think that is probably going to happen. I'm sorry about that.

So the 5 percent per month fee comes straight from the IRS website page. You are going to pay 5 percent per month when you are late.

And that, to me, I think crosses into the exploitation category, and so you and I have discussed this before and I would just ask you once more for the record: Do you ever deal with exploitation on the part of the U.S. Government?

Mr. CORDRAY. We don't have authority to address—

Mr. PEARCE. Okay. All right, fine.

Do you have any authority over student loans? Because student loans charge 5 percent where the Wall Street bankers pay less than 0.5 percent to get money and student loans you pay at 5 percent on those. Do you deal with student loans?

Mr. CORDRAY. I think there are various issues that might be looked at there, and maybe they are for the Congress.

Mr. PEARCE. Yes. So there are various issues that you haven't looked at. You are looking at other issues.

So if I would wrap the whole thing up in the direction I was going, you established a Q.M. rule and the Q.M. rule was supposed to protect consumers. But what it actually did was drive 95 percent of the loans into the GSEs, which are exempt according to the legislation that you try to impact.

Mr. CORDRAY. No, I don't think—

Mr. PEARCE. Ninety-five percent are driven into the GSEs and you have no action that you are taking on GSEs. You are coming down here and picking on the people who are making loans to people just trying to pay their rent at the end of the month, but when you drive them inside the government then your answer is here, "We cannot do anything to back the government off. We don't deal with the IRS; we don't deal with the government loans."

And what you do is you are driving people into a market where you don't care if they are being exploited or not. And so I just think that is—thank you, Mr. Chairman. I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Scott.

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

First of all, Mr. Cordray, it is very important for you, for the CFPB, for this Nation to know that there are Democrats on this side of the aisle who have serious, serious concerns and issues about how you are dealing and going forward with this racial situation at the CFPB. We have legitimate concerns, and I have expressed those.

But here is the most dramatic fact with the auto dealers, and that is this: Your methodology—now fair is fair, and when you start talking about discrimination and you start talking about giving people checks because they have been discriminated against, but then you use a methodology that is flawed, totally, based upon the last names of people.

So now what we have—and you know this for a fact—you have many White people out here whose last names are Johnson or Williams or Robinson or Smith or Scott or whatever, who are getting checks. And they are standing there at the mailbox wondering, "Wow, where did I get this check from?"

That is an unintended consequence that needs to be corrected. Yet, you ignore that glaring fact and continue that process.

The other area is this: If an African-American customer goes into a dealer and he tells that dealer that, "Mr. Dealer, I can only afford a $350 a month payment for an automobile," and that dealer looks at that and he decides that he will go in and cut his own retail margin into the deal and lower that discount rate to meet the demands of that African-American's budget, and yet your rule, your situation would deny that dealer, would deny that African-American customer whom the bank won't deal with, many of whom don't even have a credit card. There are 60 million unbanked or underbanked people in this country, and a huge percentage of them are African-Americans.

When you discriminate, that is discrimination against African-Americans when your rule and your action denies them access to that car. How are they going to get to a job? These are the unintended consequences.

This is a legitimate business reason, because allow the dealer to come in there and either meet or beat that. These dealers are in communities where they know families, in the rural areas especially. Those car dealers are everywhere in a community and they have relationships. Why deny this African-American the opportunity because he doesn't have that budget?

And here is the other point: The Department of Justice, which is, indeed, the legal and lawful arm of jurisdiction under which the dealers come—not you; you deal with the financial end, the lenders. But the unintended consequence of this is you are strangling the poor dealer and you are denying the very customers that you are supposedly trying to put this in view of to try to help. And then much of the money that you are getting out there for this is going to White people.

Now, that is as plain as the nose on our face. And we need protection from abuses, but this entanglement improperly was reflected with the overwhelming support of the Congress. And it wasn't just Republicans; 92 Democrats also stood up because of this basic reason.

So my point is that when you are willing and open to look at the whole picture—not just this narrow aspect, but—I guess my time is up, but I hope you understand that for both Democrats and Republicans, this is an issue of soaring magnitude—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Posey.

Mr. POSEY. Thank you, Mr. Chairman.

Director Cordray, it is no secret that I am still a little bit apprehensive about the CFPB.

Mr. CORDRAY. I am trying to help you get through that.

Mr. POSEY. Sometimes I get to feeling that despite the great-sounding name—Consumer Financial Protection Bureau; it sounds really so wonderful—it is going to just be another government entity that will be used to punish political enemies and bully law-abiding citizens, like Lois Lerner and the IRS, for example. I like to think that is the last thing we need, that Congress and other agencies like the IRS already do enough of that.

One of the many, many reasons that we don't have time to go into today that make me feel that way is your opposition to my proposed legislation, which would allow businesses and individuals to ask whether a particular transaction complies with your rules. Otherwise they might be left playing a guessing game as to how the CFPB might act or react to what they are doing or not doing.

Do you think it is important for the Bureau to communicate with the companies they regulate?

Mr. CORDRAY. We do all the time.

Mr. POSEY. Good.

Mr. CORDRAY. All the time.

Mr. POSEY. Is that a yes?

Mr. CORDRAY. Yes.

Mr. POSEY. Okay. Do you think it is important that businesses understand the regulations you enforce on them?

Mr. CORDRAY. We—

Mr. POSEY. Yes or no, just—

Mr. CORDRAY. —we try very hard to make that happen, yes.

Mr. POSEY. Okay. Do you think the CFPB has a role in helping companies understand and comply with the regulations that you implement?

Mr. CORDRAY. I think we have been by far the most active regulator ever in doing that, yes.

Mr. POSEY. Thank you. Do you think consumers fare better when more businesses understand how to comply with your regulations?

Mr. CORDRAY. Yes, because if the rules actually don't get implemented, then they aren't worth anything.

Mr. POSEY. Okay.

I like to think that you feel the way you said, which is why I was so disappointed with the Bureau's final no-action letter policy. Here is an excellent opportunity to provide some clarification to companies and individuals who are faced with a constant stream of new regulations.

In my office I have kept the register for the last 5 years. It has become a little bit of a tourist spot for people to come in and have their pictures taken with the regulations that the Federal agencies—not elected people but unelected people—have implemented in the last 5 years.

I ask people how high this stack of new regulations is, and the highest number I have had anybody guess so far was 7 feet. The reality is that it is 7 stacks over 7 feet.

Yet, it is my understanding that the Bureau is still expecting merely one to three requests per year, and that the policy you set up is the expectation that there is only going to be one to three requests per year. Is that correct?

Mr. CORDRAY. This is a fair line of inquiry, I think. I intend for us to do more than that.

We opined that we thought we might get as few as one to three applications a year. I think we may get more.

We also said that we would work to try to accommodate greater demand if there is a greater demand.

The purpose, as I had in mind, of having a no-action letter policy—and it took some time and effort to work through that—was to try to capture some of the spirit of the bill that you are talking about in terms of people being able to get their questions answered and have some clear space to go forward.

By the way, we also do this on a daily basis. We get thousands of questions a year that we—

Mr. POSEY. I understand. Reclaiming my time, I am limited here, I understand that. Have you had any inquiries yet?

Mr. CORDRAY. I think the policy has just taken effect and I don't even know whether the effective date has yet passed, so I don't know the answer to that at the moment. We would be glad to keep your staff informed if that is—

Mr. POSEY. If resources were taken off the table, if money wasn't an issue for the CFPB, which it is not, would you then have any objection to making the no-letters policy more expansive?

Mr. CORDRAY. Actually, money is an issue for us. We have a hard budget cap set by Congress that we have to comply with, so it—we always have to think about how we are allocating resources to different things and that bar against each other. We don't have an unlimited budget.

Mr. POSEY. This frustration that I see all the time is the only time we are concerned about money is if it—when it really, truly benefits the public—

Mr. CORDRAY. No, that is not—

Mr. POSEY. —like communicating with these people and letting them know what to expect. We have had—

Mr. CORDRAY. We are concerned about money all the time.

Mr. POSEY. We have had your assistant come in here, and I think a Member from the other side asked her how much money she made, and she refused to tell us. Money never seems to be a problem except when it is trying to help the public.

Mr. CORDRAY. It is not true. It is not true. Money is an issue for us all the time, and—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, ranking member of our Oversight and Investigations Subcommittee.

Mr. GREEN. Thank you, Mr. Chairman.

And I thank the witness for appearing, as well.

I also thank the ranking member.

Mr. Cordray, you and I and a good many other people are well aware of what this is all about. There are people who want to emasculate now the CFPB and ultimately eviscerate the CFPB.

It is over the airwaves. All sorts of things are being said. There was even an allegation made that I had some concerns with the CFPB to the extent that it was alleged in a sort of a sketchy way that I was supportive of emasculating the CFPB. Not in those words.

So that is really what this is all about.

There are people who really would like to have a Financial Protection Bureau, not a Consumer Financial Protection Bureau. And so all of these things are done to give the CFPB a bad image.

I want to go on record as making it very clear that I support the CFPB. I support what you are doing to help in the area of auto lending, to help us with payday lending. I support these things. I wish we could do more.

I don't believe that all dealerships are engaged in invidious discrimination. I don't think that all payday lenders are bad people. But those that are ought to be properly regulated and they ought to be penalized for what they do.

Let's talk quickly about Ally. It is true that Ally settled that case for about $80 million I believe. Is that correct?

Mr. CORDRAY. And they have paid out more since to remediate further problems year by year.

Mr. GREEN. And it is true that Ally was prepared, in the sense that they had their litigation contingency ready to do battle in court, which is the American way. That is why we have an independent judiciary. But they were prepared, they were in court, and they chose to settle the lawsuit. Correct?

Mr. CORDRAY. I assume so.

Mr. GREEN. Okay. With them settling this lawsuit, I assume that they thought this was in their best interest to do so. But what I marvel at is how these major businesses can lose in court but come to Congress to win.

Because that is really what this is all about. They want to now change the rules of the game so that they can continue to perpetrate these kinds of invidious acts upon people who need the money they have, are barely making it, and still find themselves being discriminated against and having money taken out of their pockets.

Everybody, it seems, wants to fight discrimination until they have to fight it. And then when they get to the point of having to do something about discrimination—invidious discrimination, I might add—that is when none of the tools seem to work for them.

Using testing doesn't work for them, which is probably one of the best ways to determine whether invidious determination takes place because you can send people out and those that come back with empirical evidence can share that with you, show that they were discriminated against. Then disparate impact, another tool, just doesn't seem to work for them.

Any tool that we design doesn't work for them. Everybody wants to fight invidious discrimination until they have to fight it or find a way to do it, unless it is at the CFPB.

If it is at the CFPB then all sorts of specious allegations are made, attempts to do everything that they possibly can to besmirch the CFPB because they have already said—and I admire them for being honest—that if ever they get a President they are going to do things to eviscerate—they don't use that terminology, but that is what is meant—to eviscerate the CFPB. It will be taken away from us.

I am reminded of what Ben Franklin said when he came out of Constitution Hall and someone queried, "What type of government, a monarchy or a republic?"

And he said, "A republic, if you can keep it."

We have a CFPB if we can keep it. I am not sure we are going to be able to keep it, to be quite candid with you. I am going to fight on my watch, but I know that there are many watches to come.

And just as the same people who are against the CFPB, the same people who want to do something about Social Security, they want to privatize it—all of this, in my opinion, goes back to something the Supreme Court did in *Citizens United* v. *FEC*. The Supreme Court said that money talks.

Money is talking right now. Right now, today, money talks.

These big corporations now know that they have an edge because they can do whatever they want and challenge us if we challenge them. It makes a difference in the lives of little people, people who are not big like the corporations. And we have to do something about it, and I thank God for what you are doing.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Ohio, Mr. Stivers.

Mr. STIVERS. Thank you, Mr. Chairman.

I appreciate you being here, Mr. Cordray. I'd like to welcome you before the committee.

Most people don't know it in the room, but Mr. Cordray is my constituent, so it is always good to have a constituent in the room.

I know you answered the question to Mr. Royce, from California earlier—we sent you a letter with 329 Members of Congress who signed it, bipartisan, a massive majority of the members of the Congress. And Mr. Royce asked you a little bit about it, but he left a little bit out and I just wanted to follow up a little bit.

Mr. CORDRAY. Okay.

Mr. STIVERS. So did you read the letter by any chance?

Mr. CORDRAY. I don't think it has come to me yet.

Mr. STIVERS. Okay, good. Well, I hope you read it—

Mr. CORDRAY. I think it came over yesterday and I have not seen it yet.

Mr. STIVERS. I know you are a busy man. I hope you read it soon.

So the bottom line is the Government Accountability Office—

Mr. CORDRAY. I read all the letters; I just haven't gotten that one yet.

Mr. STIVERS. No, I understand. I understand.

The Government Accountability Office did a study and they found the number of cases where community financial institutions, both small credit unions and small banks, had to discontinue or limit access to services as a result of your regulations. And you have the authority under Section 1022 of Dodd-Frank to modify your regulations and sort of adapt them to the people that they are applied to. So I would urge you to do that.

I am a very visual person, so I have a visual display for you. Jesse is going to hand you a t-shirt. Could you hold up that t-shirt and take a look at it really quick and maybe comment? Is it a nice t-shirt? Is it well-designed?

Mr. CORDRAY. I am not an expert on t-shirts, although I do wear—

Mr. STIVERS. It looks like a nice t-shirt. Could you hold it up a second, please?

Ms. WATERS. Excuse me.

Mr. STIVERS. So, okay, could you try to put it on? What size—

Mr. CORDRAY. I dressed in my normal uniform today and I am reluctant to deviate from—

Mr. STIVERS. Does it look like a big t-shirt or a small t-shirt?

Mr. CORDRAY. It looks to me like a small t-shirt.

Mr. STIVERS. It is a small t-shirt. That is a size 2T t-shirt, compliments of Sam Stivers.

Mr. CORDRAY. Two teen?

Mr. STIVERS. 2T, compliments of my son, 2T. He is—

Mr. CORDRAY. What does that mean?

Mr. STIVERS. It means he is a toddler.

Mr. CORDRAY. Okay, got it.

Mr. STIVERS. And so it means you wouldn't fit in it. So the two ways you could fit in that are go on a massive diet and restrict yourself, which is what a lot of our community financial institutions are doing to make themselves smaller to serve their clients less; or they could strain the t-shirt and break the t-shirt, the t-shirt being the regulation.

That is the problem you are putting folks in. So I would ask you to take a look—

Mr. CORDRAY. Could I have a moment?

Mr. STIVERS. You can in a second. I will give you time.

And take a look at your authority. You talked earlier about your authority. You took your authority seriously in another realm when you were talking to one of my colleagues and said, "We take our authority very seriously."

Take your authority under 1022 seriously, too. So what are you going to do about that? And I will give you about 20 or 30 seconds to tell me what you are going to do to help these folks under—and you admitted you haven't read it, so you probably can't tell me what you are going to do, but I guess I will ask you, are you going to read it and take this seriously? Could you answer that question?

Mr. CORDRAY. Sure. But let me also talk about the, because, for example, CUNA, they have economists on staff who actually present facts and reports and then they also write certain opinion pieces that don't jibe with the facts.

Credit union membership last year after 4 years of the CFPB is at a new all-time high in the Nation. That is good news, I think, but it is not consistent with this notion that we are killing credit unions.

Credit unions' share of the mortgage lending market, where supposedly our rules are stifling them and driving them out of business, is at its highest level than it has been for the last 20 years of keeping track. They are doing better in a marketplace that rewards responsible lenders.

It is also the case that we have contoured our rules in ways that give advantages or give differential treatment to smaller lenders, whether community banks or credit unions, because that is consistent with the data coming out of the crisis that they had lower defaults than other lenders. They should be able to continue their relationship-lending model, and our rules have provided specifically for that.

We will continue to think about those things on a case-by-case basis, but this argument that everybody is being driven out of business, they are stopping products, they can't fit into a 2T toddler t-shirt, isn't consistent with the HMDA data, which shows that total mortgage lenders—numbers of mortgage lenders were up last year, that credit union membership is at all-time highs, and that credit union mortgage lending in particular has increased its share of the market at the expense of large banks. So let's deal with the facts.

Mr. STIVERS. And I have given you a little time, and I would like to reclaim my time and tell you the problem is the number of small credit unions is going down because your regulations are making it difficult for small credit unions.

Mr. CORDRAY. No.

Mr. STIVERS. They are having to merge, and I had it happen in my district.

Mr. CORDRAY. Yes.

Mr. STIVERS. Three credit unions merged into one bigger credit union because of the regulatory burden. We are seeing it all over this country. The same thing with small banks.

And the regulatory climate is speeding it up. It is not the only cause, but it is speeding it up. And please use your authority—

Mr. CORDRAY. Congressman, it has been happening since the 1920s.

Mr. STIVERS. Use your authority—

Mr. CORDRAY. There is nothing specific about Dodd-Frank that is changing—

Chairman HENSARLING. The time of the gentleman has expired.

Mr. CORDRAY. —what has been happening since the 1920s.

Chairman HENSARLING. The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman, and Ranking Member Waters.

And thank you, Mr. Cordray, for being here today.

There are some benefits in being last. You get to hear all of the information, good or bad—

Mr. CORDRAY. I notice you actually sit through the entire hearing—

Mrs. BEATTY. I do.

First, let me just say how proud I am that you are from Ohio, and certainly I associate myself with all of the words that have saluted you protecting those folks we need to protect, which is in your charge.

Let me also say that we have not talked about the billions of dollars that you and your agency have been able to recover for those who have been wrongly defrauded.

Now, there are a lot of controversial issues here today, and I have been a part of some of it. But what is amazing to me, being a Black woman, is how we talk about protecting consumers, and we pick and choose when we want to use the words "disparity" and "discrimination." And sometimes for me it has seemed very political, that people are using it—whether it is you, whether it is President Obama, whether it is anybody who is helping those folks who look more like me.

I have looked on website pages of some of my congressional folks here, and it is all about destroying you; it is all about racism. But we only seem to do it when we are protecting those folks.

Now, here is what I think, and I am trying to look at both sides. So if we take one of the most controversial votes that—for me, and I am all with you. I am supportive. But here is my issue: I think we have wasted a lot of time in here—a lot of time arguing without resolve. And I was always taught if you complain, you should have a resolution.

So if we take the House bill that came up that we had Black dealers who were against it; we had dealers who let's say were more majority but there were some minority in there who were supportive of it. But here is a wonderful document.

And I think we all have it. Mr. Chairman, I would like to enter it into the record.

Because it is about what you do.

Chairman HENSARLING. Without objection, it is so ordered.

Mrs. BEATTY. And it talks about fair credit compliances. All three. You can take the Black folks; you can take the White folks; you can take the combination. They all signed off on this document.

So then we get this legislation that we are all in a tiff about, and the legislation really doesn't resolve the problem, so whether you are for it or against it it doesn't make any sense because here is the issue that I am going to allow you the last half of my time left to answer.

When I think about those African-Americans and minorities who walk into a dealership, do I think some of them are discriminated against? Yes. I think some of the people who walk in this room who look like me are discriminated against because of all the stereotypes that we all know about and, unfortunately, we have heard in this room.

Now on the other side, do I think somebody walks in a dealership that looks like me and is not discriminated against or they don't automatically get a higher rate? What is the difference? It might just be that I was more aware, had a better credit score.

Nobody is talking about the real systemic issues and the problems. Because we can't change the color that you go in, but we need to make sure that we put practices and things in place that is beyond names and zip codes.

But here is the other thing: If we start together on financial literacy, the seventh State in this United States, you have done more than any single person on financial literacy in that State. So my question is, we create Dodd-Frank—and I am all for Dodd-Frank; I wasn't here—there isn't a part of the Dodd-Frank legislation that talks about real financial literacy.

And we are not doing enough in this committee, that is charged with looking at the banking industries, looking at the financial industries, looking at the credit union industries, but we are not talking about a program, even from the minority dealers in their letter to me it said we are not dealing with the real issue of the transparency of the people's credit, and we are not coming up with any legislation.

So Dodd-Frank mandates that the CFPB's Office of Financial Education shall—not maybe think about it—shall develop and implement a strategy to improve financial literacies of consumers, okay? It doesn't say consumers who go into a candy store, so that means a consumer who goes into a automotive dealership. They have to have financial counseling; they have to have information to assist with the evaluation of a credit product—let's say that product is a car—and the understanding of credit histories and scores.

Lastly, I had a Member—an African-American person tell me that they got that high interest rate, and thank God they did because they could go to work, they could have a car, and they could feed their family. And I'm sorry I don't have enough time for you to answer, but—

Chairman HENSARLING. The time of the gentlelady has expired. The Chair now—

Ms. WATERS. I ask unanimous consent to enter into the record the letter from the National Association of Minority Automobile Dealers.

Chairman HENSARLING. Without objection, it is so ordered. And Members are reminded that they are all allowed to insert items into the record under general leave.

Ms. WATERS. The National Association of Minority Automobile Dealers is not in support of H.R. 1737.

Chairman HENSARLING. The Chair now recognizes the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. Thank you.

I want to follow up on some of the discussions that Mr. Neugebauer from Texas had with you about the interplay between Federal regulation and State regulation. I think Mr. Neugebauer was asking you specifically about some of your proposed rules on short-term what people call payday lending and how it interacts with State action in the same field.

During your questioning—and I am—seriously, despite what you may think, I am—in this particular circumstance I am not trying to put words in your mouth. But I think Mr. Neugebauer—

Mr. CORDRAY. I always take your comments at face value and listen close—

Mr. MULVANEY. Mr. Neugebauer asked you which States had failed to protect consumers, and I think in a back-and-forth you said all 37 who have failed to I think do something to—all 37 that still allow payday lending, or that haven't banned payday lending? So I will ask the question again, and see if we can get a clean answer.

In your research as you have prepared to produce these new rules on short-term lending, which States have you determined have failed to protect their own consumers?

Mr. CORDRAY. So again, and maybe I wasn't clear in trying to respond to the question before, that is not how we approach the issue. It is not my job to control States or tell State officials what to do. It is my job—

Mr. MULVANEY. Great. Let's stop right there. That is fine. Let's take that and go down a different road then.

Mr. CORDRAY. But it is my job to look at what kind of harm is occurring in the marketplace and potentially look at ways to intervene to address certain predatory practices of lenders.

Mr. MULVANEY. All right. Is it fair to assume, then, that if you promulgate a rule that is more protective of consumers than a State has made, that you deem that State not to be adequately protecting consumers?

Mr. CORDRAY. We will not seek to occupy the field and exert preemption in that manner. I think it wouldn't be consistent with the Dodd-Frank Act.

What we will do is if there is a Federal policy intervention—and again, this is not yet determined at this point—that will coexist with State regulations and authority just as it does in the field—

Mr. MULVANEY. Now, you do intend to preempt.

Mr. CORDRAY. —in other fields of law.

Mr. MULVANEY. Let's be clear and be honest: You do intend to preempt State law in certain areas.

Mr. CORDRAY. No, I don't think we intend to preempt State law. I think that what will happen is—

Mr. MULVANEY. I am just using your words, Mr. Cordray, in your letter of February 11, 2016, to my office—I asked you about this particular issue and you said, "Among the Bureau's goals is to ensure that consumers are offered certain minimum protections no matter where they are located or whether they receive their loans from storefront or online lenders. State laws that afford consumers greater protection would not be preempted by a Bureau regulation on small-dollar lending."

The obvious implication to anybody who speaks the English language is that States that offer consumers less protection will be preempted. This is your language.

Mr. CORDRAY. I don't know, maybe you are drawing that conclusion. What I would say is, as is true in securities law, as is true in antitrust law—I worked with these laws as a State attorney general—State and Federal law coexist.

Mr. MULVANEY. The SEC comes in here and the SEC gets money from us. The SEC has an entirely different oversight.

You are different. You don't get appropriations from us; you don't have the same level of oversight. You are your own thing, so you cannot compare yourself to the SEC.

Let me ask you this—

Mr. CORDRAY. I wasn't comparing—

Mr. MULVANEY. Your home State has acted in this area. Your home State, I think the last time they looked at short-term lending was in 2009. They have done it over the course of the last 10 or 15 years.

They have not provided a cooling-off period between transactions; your proposal requires 60 days. I will ask you, sir, who knows better how to protect consumers in the State of Ohio: the people of Ohio or the CFPB?

Mr. CORDRAY. What I would say is policymakers, as I was, for the State of Ohio do their best to protect the citizens of Ohio. Policymakers at the Federal level who are given—

Mr. MULVANEY. Have they failed in this circumstance?

Mr. CORDRAY. Policymakers at the Federal level who are given authority by Congress, as the CFPB has been given authority by Congress, do their best to protect people nationwide. The two coexist together.

Mr. MULVANEY. The last time that Ohio addressed this issue was in 2009. You were the A.G. in 2009. If you were the A.G. today in Ohio and the CFPB made a rule that preempted Ohio law, would you defend the Ohio law or would you acquiesce to the Federal preemption?

Mr. CORDRAY. I have been engaged in issues of preemption going back to when I was solicitor general of Ohio in 1993–1994, and I have addressed them on both sides of the issues over the years—

Mr. MULVANEY. Wonderful resume. What is the answer to my question?

Mr. CORDRAY. —and so it would very much depend on what circumstances we were talking about.

Mr. MULVANEY. This one.

Mr. CORDRAY. Okay.

Mr. MULVANEY. Ohio passes a law that says there is a 2-day wait period; the CFPB passes a regulation saying there is a 60-day period. Will you defend Ohio law against Federal regulation?

Mr. CORDRAY. That is entirely hypothetical.

Mr. MULVANEY. No, you want to be governor.

Mr. CORDRAY. We don't even have our proposal here.

Mr. MULVANEY. Can you actually say the words, "The people of Ohio know better how to protect consumers in Ohio than the CFPB?"

Mr. CORDRAY. The people of Ohio are also people of the United States. They have a dual capacity. That is—

Mr. MULVANEY. You can't say those words, can you?

Mr. CORDRAY. —true of our system of federalism.

Mr. MULVANEY. Are you capable—do you believe that statement?

Mr. CORDRAY. Do I believe what statement?

Mr. MULVANEY. Do you believe that the people of Ohio—

Mr. CORDRAY. People of Ohio are also people of the United States.

Mr. MULVANEY. —are better suited to protect consumers in Ohio than is the CFPB? Do you believe that statement to be true?

Mr. CORDRAY. That is a very general statement and I don't know what exactly that means.

Mr. MULVANEY. Fair enough. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from California, Mr. Sherman.

Mr. SHERMAN. I think the gentleman from South Carolina is misusing the word "preempt." To preempt means to prevent the State law from being effective. To supplement means that you have to obey the State law and you have to obey the Federal law.

Mr. MULVANEY. Will the gentleman yield for a brief—

Mr. SHERMAN. I'm sorry. I only have 5 minutes.

If the Chair will yield me additional time, I will yield.

Chairman HENSARLING. The Chair will yield an additional 30 seconds.

Mr. SHERMAN. I will yield the gentleman 30 seconds.

Mr. MULVANEY. We had this discussion last time when Mr. Cordray was here. My State has a law that has a 2-day waiting period. They are proposing a regulation that is a 60-day waiting period, and my question is doesn't, thus, the Federal regulation preempt State law? And I think you would agree that it would.

Mr. SHERMAN. No, I would not.

Reclaiming my time, if the Federal law requires me to wear a belt and the State law requires me to wear suspenders, I will comply with both laws. If you take the position that the State legislators are in the position to provide consumer protection, then you should repeal Dodd-Frank, as I am sure—or at least these provisions of Dodd-Frank, as I am sure has some support on your side of the aisle.

When we passed the law establishing the CFPB, we decided that in addition to following State law, which might provide a 2-day period, there could—there will also be an additional Federal law. Now you can say that a State that decides to have no regulation in a financial area has made a conscious decision that is the best policy for that State. But we passed a Federal law to say that there will be standards.

Preempt is when you tell a company they don't have to comply with State law. Supplement is when you say you have to comply with the State law plus you must comply with the Federal law.

Mr. Cordray, thank you for all you do. Part of what you do is coming here to Congress so that we can comment on what you do and perhaps help you do an even better job.

Mr. CORDRAY. And I think I just learned from you a little bit, so I appreciate that.

Mr. SHERMAN. Okay.

Now, as to Mr. Stivers' letter, there are some who say that letter, signed by many of us—and I want to say I signed the letter and I am a step ahead of you, I have read the letter. It does cite code section 1022(b)(3) and quotes it accurately, and some have said, "Well, therefore it is in favor of exempting some of the smaller institutions," so toddlers wouldn't be wearing shirts at all.

But in fact, it—what it calls for is look at each regulation, determine whether you can have a one-size-fits-all regulation—buy hats and one-size-fits-all, or shirts need to be tailored to the right size. And the only ask in the letter is to be sure that your regulations don't have unintended consequences, and the specific focus is that when you write a regulation and you would want a different regulation or a different approach for smaller institutions that you have a portion of the regulation applicable to smaller institutions.

Mr. CORDRAY. That is sound advice, and it is something we will continue to try to heed, yes.

Mr. SHERMAN. And there may be individual circumstances where we bring to your attention—

Mr. CORDRAY. And we will be glad to take input on that in particular issues, yes.

Mr. SHERMAN. We talked a couple of days ago. You have urged financial institutions to use text messages, and thank you for saying you will go to the FCC and make sure that the FCC will allow financial institutions to use text messages. If I can get a text message from my bank telling me I am about to overdraft my account, I will pay my phone company a nickel to get that information.

I want to focus on TRID. These are complicated regulations. They are particularly complicated for smaller financial institutions.

I want to commend you for having the hold-harmless period. And institutions would like to get more written guidance as to how to apply the regulations and what remediation steps they should take when remediation is necessary.

We have talked about the hold-harmless period continuing, and I think you should continue the hold-harmless period at least until you can issue the interpretations necessary to provide written guidance.

Mr. CORDRAY. That may not go on forever, but we will continue to be very attentive to the industry, and we have encouraged them to bring us their prioritized items for consideration.

Mr. SHERMAN. At least as long as it takes to answer the questions that have emerged in the first 4 months. Obviously, some newer question could come up.

And finally, as we have talked, the regulations require an inaccurate statement as to the cost of title insurance in those States like California, where there is a buyer's policy and an owner's policy and you get a discount on the owner's policy when you get the lender's policy.

To correct the record, there is a lender's policy and there is a buyer's policy.

I yield back.

Chairman HENSARLING. I was actually reminded that I gave you an extra 30 seconds, so you have 14 seconds to—

Mr. SHERMAN. Oh. Thank you.

Chairman HENSARLING. —go to town.

Mr. SHERMAN. So in any case, Mr. Cordray, you will be looking to make sure that the regulations deal with a situation where there is a stated price for the policy the buyer of the home is going to pay for, but there is an automatic discount that, once disclosed, is the net price that the buyer—

Mr. CORDRAY. I know that is an issue that has been under active consideration during the rulemaking process and, I believe, since.

Chairman HENSARLING. The time of the gentleman has now expired.

The Chair now recognizes the gentleman from Georgia, Mr. Westmoreland.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Director Cordray, on data security, what system do you use to determine if somebody is fulfilling their commitment on data security?

Mr. CORDRAY. There are a number of procedures that have been developed and actually really enhanced in the Federal Government over the last several years. The Federal Government has had some problems in this area, and the private sector has had many problems in this area. It is something that I think we are all very attentive to. Nothing would more discredit—

Mr. WESTMORELAND. What standard do you use if you are going to go out and evaluate a company and possibly fine them for not having the—

Mr. CORDRAY. Oh, I see. I thought you were talking about our own data security.

We are using the standards that we understand to be common in the industry. We are using the standards of best practices at different institutions.

Mr. WESTMORELAND. What standard would that be?

Mr. CORDRAY. We are taking some guidance from the Federal Trade Commission, which is ahead of us on this issue. We just had an enforcement, actually, against Dwolla in this area.

Mr. WESTMORELAND. What did you use for that enforcement? What standard did you use for that?

Mr. CORDRAY. What we did was we do—whenever we engage in an enforcement matter we open an investigation, took a look at their own security protocols, whether they were being followed.

By the way, that is the first thing: Whatever security level or threshold you are talking about, one is whether it is there on paper but two is whether it is actually being followed. If it is not being followed then you have a problem. That is one of the things that we thought we found—

Mr. WESTMORELAND. But what standard do you use for the CFPB?

Mr. CORDRAY. Again, we are looking at all of the standards in the industry and attempting to adapt to them. If you want me to have—

Mr. WESTMORELAND. So you don't have a standard now?

Mr. CORDRAY. If you want me to have my staff follow up with you on some of the details of that—

Mr. WESTMORELAND. I would just like to know what standard you are using because—

Mr. CORDRAY. I am not myself an expert in that area, but we could certainly inform you better—

Mr. WESTMORELAND. Okay. You stated that consumers entrust companies with significant amounts of sensitive personal information, and it is crucial that companies put systems in place that protect this information. I am assuming you think it is just as critical for the CFPB to protect this information that in your statement you said consumers entrust with companies, but the CFPB has a lot of information that the consumer would normally give to a credit agency. Is that true?

Mr. CORDRAY. I would say two things about that. Number one, I do think it is fair to hold us accountable for the security of data that we have.

But number two, the data that we have typically is anonymized and it is de-identified and it cannot identify either you or me, so it is less risky than the kind of data you are talking about private companies having, which tells all about you and all about me and it is very clear who is being identified there. That is much more risky. If they get my credit card information or yours, we can be defrauded; we can have our—

Mr. WESTMORELAND. So you think private companies' information is much more—the information is much more risky than yours?

Mr. CORDRAY. It is more risky because it is personally identified there, and that is typical. They are using it to market to you and me.

Mr. WESTMORELAND. Okay.

Mr. CORDRAY. Our data is not of that kind.

Mr. WESTMORELAND. Who has tested your data security system? What company has tested it?

Mr. CORDRAY. The folks in the Federal Government who deal with this across all agencies set standards, and they have now enhanced the standards and improved the standards that we are all seeking to meet. And I think we are all trying to keep up with the practices—

Mr. WESTMORELAND. I know that, but who tested your security of your data?

Mr. CORDRAY. Again, our I.T. group could come and give your office a briefing if you want to know the details—

Mr. WESTMORELAND. Well, no, I just want to know who tested it because you mentioned all the information that is available to other people and that you don't have that much information. I just want to give you a little rundown—

Mr. CORDRAY. No. I said we have a different kind of information. We don't have information that is identified by you or by me; it is anonymized information for the most part.

Mr. WESTMORELAND. Okay. I just know that in your system you have the borrower or co-borrowers' information of the name, address, zip code, telephone numbers, date of birth, race, ethnicity, gender, language, religion, Social Security, education, military, employment records, financial account numbers, financial events in the last few years, life events in the last few years, mortgage information, current balance, current monthly payment, delinquency grid monthly payment, refinanced amount, bankruptcy information, credit card account numbers, credit amount, loan balances, past-due amount, minimum payment requirements, high-balance amount, charge-off amount, second mortgages, household composition, single male, single female, presence of children by various age categories, number of wage earners in the household, household income, property attributes, number of bedrooms, bathrooms, square footage, light size, year built, age of structure, units in the structure, most recently assessed value, longitude, latitude, census block track, date purchased, origination date, acquisition. Do you think this is really—

Mr. CORDRAY. So I am not sure what data you are talking about. What particular data are we talking about—

Mr. WESTMORELAND. This data is given to you and is supposedly in your records—from the National Mortgage Database.

Mr. CORDRAY. What are we talking about, the mortgage market? We were talking about credit card—what are you talking about here?

Mr. WESTMORELAND. It is data that is in your system, and I think that we need to know how it has been protected—

Mr. CORDRAY. I would be glad to have my folks follow up with yours—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair wishes to advise all Members that votes are expected somewhere between 1:00 and 1:20. I expect to clear the Members in order in the queue, and we will adjourn once votes are roughly 5 minutes out. We will not ask our witness to come back, but instead we will adjourn at that time.

The Chair now recognizes the gentleman from Illinois, Mr. Hultgren.

Mr. HULTGREN. Thank you, Mr. Chairman.

Director Cordray, as you know, the committee has at length raised concerns with the guidance the Bureau issued in 2013, which it dubiously claimed is a simple interpretation of its authority under ECOA, despite explicit language and intent in Dodd-Frank to exclude automotive lending—

Mr. CORDRAY. Are we talking about—

Mr. HULTGREN. —from the Bureau purview.

We have also taken issue with the disparate impact theory and the questionable methodology used by the CFPB to administer it. This is also a major concern for my automobile dealers in my district and also all across Illinois.

You have now relied on disparate impact theory of discrimination under ECOA in at least three separate enforcement actions against businesses that underwrite auto loans. I suspect that what you are doing is extending the Supreme Court's holding in the Inclusive Communities case, but that case dealt with the Fair Housing Act, not ECOA, and that decision rested primarily on the unique congressional history of FHA—history that is plainly inapplicable to ECOA.

I wondered if you could spell out in detail the specific legal basis on which the CFPB is pursuing ECOA enforcement actions using disparate impact?

Mr. CORDRAY. I believe there was considerable hope among a lot of the industry that disparate impact would be disapproved by the Supreme Court. By the way, I understand there is interesting news: We have a new Supreme Court nominee this morning.

And that was a challenge that was raised in the Inclusive Communities case that you referenced and, in fact, the Supreme Court resoundingly upheld disparate—

Mr. HULTGREN. That was an FHA case, right?

Mr. CORDRAY. That is correct. That—

Mr. HULTGREN. This is an ECOA case, right?

Mr. CORDRAY. Yes, but—

Mr. HULTGREN. Very different. Very—

Mr. CORDRAY. No, I don't think—

Mr. HULTGREN. No, it is very different.

Mr. CORDRAY. I don't think so.

Mr. HULTGREN. —very specific requirements that we have there—

Mr. CORDRAY. I think the two—

Mr. HULTGREN. —were laid out, housing—fair housing, the—but you are, I think, extrapolating something that we just can't find any rationale for.

Mr. CORDRAY. Two laws have been applied hand-in-glove for decades—

Mr. HULTGREN. ECOA specifically had exemptions for this, and yet you are using that.

Mr. CORDRAY. —mortgage market and they work together in the—

Mr. HULTGREN. To me, the sense that we have is you are just pulling this out of nothing because there is an agenda that is being pushed.

Mr. CORDRAY. No, no. That is—

Mr. HULTGREN. Let me—

Mr. CORDRAY. Look, again—

Mr. HULTGREN. Let me just move on—

Mr. CORDRAY. —if that had been upset we wouldn't be enforcing the law. But we—

Mr. HULTGREN. We talked a little bit about HMDA, and I want to ask you specifically about some concerns—privacy concerns. My colleague from Georgia, Mr. Westmoreland, raised some issues of the amount of data that you already have—specific data on individuals.

And all of us have concerns of the Federal Government, I think, showing incredible weakness of being able to protect the privacy of our citizens. I hear it all the time from them.

The recently finalized HMDA rule is especially concerning to me because it looks like it is not enough. All the information that Mr. Westmoreland had listed off, item after item after item, and now it looks like the CFPB is looking for more private information that I question if it is safe.

Section 1094 of the Dodd-Frank Act, which made changes to HMDA, also required the Bureau to develop regulations that "modify or require modification of itemized information for the purpose of protecting the privacy interests of the mortgage applications or mortgagors that is or will be available to the public."

In a footnote to the final HMDA rule in October 2015 the Bureau states that, "Based on its analysis to date, the Bureau believes that some of the proposed new data points may create privacy concerns sufficient to warrant some degree of modification, including redaction, before public disclosure." However, the Bureau is only providing opportunity to comment on the balancing test for consumer privacy, not the actual data made public by FFIEC.

In a 2005 speech, former Federal Reserve Board senior advisor Glenn Canner raised concerns about HMDA privacy risks, noting that, "Approximately 95 percent of loan records are unique, meaning loan amounts and census tracks can be attributed to a single person. With a cross match to private lien transfer records, one can identify these individuals in 95 percent of the cases."

Shouldn't the Bureau proceed with extreme caution before finalizing any policy that would direct FFIEC to publish additional consumer information, even if steps are taken to anonymize it?

Mr. CORDRAY. Thank you for the question. As you pointed out, and I think you should be pleased, we are approaching this issue of the privacy issues very sensitively and we have engaged in a further notice and comment process on that—

Mr. HULTGREN. I am not pleased, and my consumers are not pleased, my banks are not pleased, because they have seen breach after breach after breach by the Federal Government. Mr. Westmoreland asked, "Who is the company that is looking at it?"

You said there isn't one, basically. It is internal.

Mr. CORDRAY. No, no, no. That is not what I—

Mr. HULTGREN. We have seen failures over and over again, and no my concern with HMDA is that you would be getting more information. It is stated by people in the Administration saying that this does identify people, that 95 percent chance as you are looking through this we can know exactly who it is even if it is anonymized.

I don't think it is enough. My citizens are concerned. And now you are adding more requirement of getting more private information of my citizens.

I think it is wrong. I think you ought to—all of us ought to proceed with extreme caution. To me, the least you could say is, "Yes, we will proceed with extreme caution."

I yield back.

Mr. CORDRAY. We will proceed very carefully in this area, yes.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Colorado, Mr. Perlmutter, for 5 minutes.

Mr. PERLMUTTER. Thanks, Mr. Chairman.

Mr. Cordray, thank you for being here. Thanks for your service to the United States of America. Thanks to the people that you lead in the agency.

And as I have said to you many times, being a regulator, you are never anybody's best friend. And that is not your job and that is not what you are supposed to be.

But you are supposed to be looking out for the good—the best interests of the people within the jurisdiction of your agency, and I thank you for doing that in so many different ways.

You and I have disagreed on auto lending issues and auto dealership issues from time to time, but in a civilized, I think, and a respectful way.

I was very disappointed to learn the other day about the deposition taken of one of your staff—one of your lead staff. I don't think that was appropriate, and I wanted to say that for the record. That kind of thing can happen in court if it needs to be. Depositions under the oversight of a judge, okay, that is how our system works.

And I am just saying this, you take it or leave it as you choose, that I would hope that the agency keeps a dialogue open with the auto dealer industry in the hopes that there is some kind of common ground that can be reached without them continuing to pursue a legislative approach but that there actually be some kind of an—something that is valuable for consumers, does our best to root out discrimination, respects due process.

Good luck. I just ask you to keep the line of communication open.

Mr. CORDRAY. I appreciate that.

And, of course, we had difficulty initially because we tried hard not to be reaching out to auto dealers to be respectful of our jurisdictional lines. We came to learn eventually they were interested in talking to us; they continue to be interested in talking to us on various issues, and we therefore have been willing to respond to them in kind.

Mr. PERLMUTTER. And I thank you for that, and I would like you—I just ask that you keep the lines of communication open.

Mr. CORDRAY. Yes. All right.

Mr. PERLMUTTER. To see if there is some kind of resolution short of legislation or lawsuits all the time, okay?

And I just want to thank you for all the other things that you have been working on, whether it is mortgages or credit cards or the like. Because we, the Congress, in Dodd-Frank—and I know many of my friends on the Republican side, they don't like a lot of the provisions in Dodd-Frank, and okay, fine, but we had a lot of problems going into the 2008 collapse of the financial sector, and a lot of it had to do with respect to consumer lending and consumer matters. And that is obviously the mission of the agency, to deal with those kinds of things.

So I didn't have anything specific I wanted to ask you. If you have—

Mr. CORDRAY. Yes, if I could just—

Mr. PERLMUTTER. —anything you would like to talk about?

Mr. CORDRAY. Yes. There was a point made earlier that I think is inaccurate and misguided, that somehow our rules have pushed the mortgage marketplace into the GSEs. The reality is that the irresponsible lending that precipitated the crisis and blew up the mortgage market and blew up the economy pushed most lending now to GSEs and eliminated, destroyed the secondary financing market, which has not yet recovered.

All of that preceded any of our rules, which didn't even take effect until 5 years after that. So again, just to set the record straight, there have been various statements today that I thought were not consistent with the facts, and I will do my best to try to set the record straight where I can.

Thank you.

Mr. PERLMUTTER. And actually, the record is more stark than you just stated, that in 2008, 2009, 2010 the only entities buying loans in the secondary market were Fannie Mae and Freddie Mac.

Mr. CORDRAY. Yes.

Mr. PERLMUTTER. There was no secondary market, okay? So, everybody can go into their rhetoric and their hyperbole—

Mr. CORDRAY. That is right. It blew up. It destroyed itself through very irresponsible behavior.

And by the way, another comment I saw the other day was that the Federal Reserve had kept interest rates too low leading into the housing crisis, and as I looked back at it, the interest rates were between 4 and 5 percent during that period. I am not sure how high people wanted them to be, but again, the timing on that is not accurate to the facts.

Mr. PERLMUTTER. The last thing I would say, and just to remind everybody, you are an agency of the Federal Government. You have a lot of power, and however you exercise that power, we all expect you to do it judiciously. I think you have done that, but it is always something that has to be in the forefront of the minds of you and your members of your agency.

Mr. CORDRAY. Yes, and it is power conferred on us by Congress.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Fitzpatrick, chairman of our Terrorism Finance Task Force.

Mr. FITZPATRICK. I thank the chairman.

Mr. Director, over here on the right. I just want to follow up on the issue raised by my friend, Mr. Perlmutter, on indirect auto lending.

Mr. Director, would you acknowledge that some borrowers, customers in the indirect auto lending area who have good credit have ended up paying higher interest rates and higher fees as a result of the approach of the CFPB and the enforcement actions that you have brought? Is that possible that people with good credit who otherwise would have had a lower rate, lower costs, whose costs have been increased?

Mr. CORDRAY. What I know our investigations found was that there were many people with good credit—

Mr. FITZPATRICK. Well, I—

Mr. CORDRAY. —who belong to different minority groups who were being charged more for their loans than White borrowers.

Mr. FITZPATRICK. But were some individuals of any racial or ethnic background who have good credit, did they pay higher rates and higher fees as a result of the approach and the enforcement action? Is that possible?

Mr. CORDRAY. I have heard different views about that.

Mr. FITZPATRICK. But it is possible. You would acknowledge it is possible?

Mr. CORDRAY. I have heard different views about that. It depends in part on what the response to enforcement actions are.

Mr. FITZPATRICK. Based on what you have heard, is it likely that has happened?

Mr. CORDRAY. I wouldn't say that.

Mr. FITZPATRICK. You think it probably has not happened?

Mr. CORDRAY. I just wouldn't say whether it is likely or not. It depends very much on the individual responses of individual lenders.

Mr. FITZPATRICK. Mr. Director, I want to get into an area—I had some very small community banks that I visited with yesterday, and they are from Bucks County, Pennsylvania. And it has to do with the subject of overdraft fees.

There are a lot of us who have concerns that the rulemaking is—of your Bureau is limiting the ability of small community banks to serve their customers and to provide real choices to their customers. And those customers could be individuals or small business owners. And these are sometimes customers who would otherwise seek out riskier nonbank alternatives, which is what I think we all collectively want to see them avoid.

In regards to the overdraft fees—and I am told that you are looking at a rule and a rule is being formulated now on this issue at the Bureau. Is that correct?

Mr. CORDRAY. We are working on that, yes.

Mr. FITZPATRICK. And when is that expected to be released?

Mr. CORDRAY. I think we have said that the proposed rule, which will, again, be subject to considerable comment, I am sure, and a public notice process, will be released this spring.

Mr. FITZPATRICK. This spring. So this particular bank that I met with yesterday wanted me to posit to you—she suggested that I ask the CFPB whether you have any willingness to de-identify data, which is something you were just talking with Mr. Westmoreland about, and release it to the public so that banks and financial institutions can interpret the data for themselves and can draw their own conclusions.

Is that something you would be willing to do?

Mr. CORDRAY. What kind of data are we talking about? For what purpose? What are we—

Mr. FITZPATRICK. The data that you are using to formulate the role on overdraft fees.

Mr. CORDRAY. I'm sorry, on small-dollar loans or on overdraft?

Mr. FITZPATRICK. On any of it.

Mr. CORDRAY. I thought you were talking about small-dollar loans when I said we were going to release a proposal this spring. On overdraft we are not releasing a proposal this spring.

Mr. FITZPATRICK. You would be willing to release more of the underlying data that forms the basis of your conclusions?

Mr. CORDRAY. We issued a couple of different White Papers on overdraft, if that is what you want me to address. Yes?

Mr. FITZPATRICK. What I would like you to address is to see if you would be willing to release more information.

I have introduced a bill called the Bureau Research Transparency Act, H.R. 3131. Are you familiar with that bill?

Mr. CORDRAY. Not particularly, no.

Mr. FITZPATRICK. What the bill would do is it would require the Bureau, when you make a report or recommendation or you issue a rule, that you release the underlying data, which many times is not released, so that, as I said in my first question, so that banks can form their own conclusions.

Mr. CORDRAY. Yes. So let me speak to—

Mr. FITZPATRICK. So are you willing to release more of the data that—

Mr. CORDRAY. Let me speak to circumstances where underlying data is not released, because our orientation and our inclination is to release as much data publicly as we can because we want people to be able to do their own analyses, draw their own conclusions. For example, that is why we have the public complaint database.

But some of the information we get is trade secret protected, so although one institution might want to know more about it, another institution might feel affected or aggrieved or disadvantaged if it is released—

Mr. FITZPATRICK. This is my question, Mr. Director: If it is de-identified and if it doesn't fall within one of your exceptions—and I would like to hear about those exceptions like trade secret—are you willing to release all the data that underlies your reports—

Mr. CORDRAY. Okay, so again—

Mr. FITZPATRICK. —so that the reports are transparent, so that banks and financial institutions can—and the public can draw their own conclusions.

Mr. CORDRAY. Yes. It isn't just whether it is de-identified; it could contain confidential trade secret information. It may have been obtained in such a way maybe we had to buy it from some provider in which there were conditions that we weren't able to negotiate away. It may be it was obtained through confidential supervisory information from a particular institution, which would be compromised if it were put forward—

Mr. FITZPATRICK. Mr. Director, my time has expired. Would you be willing to just lay out all the exceptions to transparency on releasing the data that you were going to give us today? Can you give us that information in writing?

Mr. CORDRAY. I think I just kind of verbally laid out—

Mr. FITZPATRICK. You just did.

Mr. CORDRAY. —much of it.

Mr. FITZPATRICK. Those are all the exceptions?

Mr. CORDRAY. There may be others, but I think that is the significant—

Mr. FITZPATRICK. If there are others, please provide it in writing to me. Would you—

Mr. CORDRAY. I would be happy—so if you are interested in this here I would be happy to have our staff brief your staff and hear from them about what they would like to know.

Mr. FITZPATRICK. Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Minnesota, Mr. Ellison‘.

Mr. ELLISON. Director Cordray, your agency has been under attack since its first day. I actually have a—I have something that I would like to post on the screen right now if I can.

Powerful interests have opposed the agency's every move. Many call for the abolition of your agency, and I have a slide up there right now. On the screen is an ad run by a secret group called Protect America's Consumers.

And I have no idea who is running these ads on MSNBC in D.C.; I have no idea who is paying for them. We have seen some addresses that lead us to conclude that they might be very, very powerful interests, but we haven't received the confirmation yet.

I was also angry at the deception in this ad and being quoted out of context by this front group that I made my own YouTube video.

So, not everyone is an opponent of the work of the CFPB. In fact, I want to congratulate the people here, the green shirts, who are standing with the CFPB today. What you are doing is standing up for consumer justice, and I think that is really excellent.

So I don't know if—was I planning on running my thing? Okay, so this is my video setting the record straight that I have at all times supported the CFPB, quite contrary to what the deceptive Protect Consumers ad implied.

Then also, you may have heard in a public speech that was given by our chairman yesterday on his vision of financial markets. I would like to ask you some questions about some ideas that were raised.

For example, do CFPB rules requiring lenders provide closing cost documents to homebuyers 3 days before they buy their house count as "regulatory waterboarding" of community bankers?

Mr. CORDRAY. I wouldn't describe them that way, no.

Mr. ELLISON. And do you think that limited forced arbitration in consumer and financial contracts is a "monument to arrogance and the hubris of man?"

Mr. CORDRAY. I understand the proposal to be trying to implement authority and direction given to us by Congress.

Mr. ELLISON. And when we limit interest rates on small-dollar loans to 36 percent for service members or act to prohibit lenders for charging African-Americans higher rates of interest for car loans, is that creating an "incomprehensible complexity of government control?"

Mr. CORDRAY. I think Congress legislated that limitation to protect service members against being exploited while they are trying to protect and defend our country. I think it is quite appropriate, but again, that was congressional judgment.

Mr. ELLISON. It is a strange place to be against service members.

Anyway, when the CFPB requires lenders to tell buyers of manufactured homes that the loans they are being offered are more expensive compared to other options in the market, is that an example of an "unaccountable, arrogant bureaucracy dragging us toward the failed economy of a European-style social democracy?"

You don't need to answer.

Mr. CORDRAY. I will. I think we are just trying to put consumers in a position so they can make choices that they won't regret later, so that they can know what they really would want to know at the time. That empowers consumers and promotes personal liberty.

Mr. ELLISON. It is fair to say that there—we don't all agree on this committee about the role of the CFPB, but I will say this: $11 billion turned back into the economy, in the hands of ordinary working people, is pretty good.

On the screen is a recent monthly report of consumer complaints about financial products made to your agency. Many experts decry the financialization of the economy. They note that overcharges, hidden commissions, arbitration contracts cost millions in wealth to ordinary Americans.

And yet, one of the quotes in the chairman's public speech was quoting Kanye West's statement that the only true freedom is economic freedom.

Would you say that ensuring a fair financial marketplace actually furthers economic freedom for American people? Do people have more wealth now that some of these costly schemes are stopped? What do you think?

Mr. CORDRAY. I think that enforcing the law fairly promotes economic freedom. It helps the free market work against a backdrop of law and order and law enforcement.

And I think that this Bureau has proven itself to be not only pro-consumer protection but also pro-consumers and pro-consumer opportunity. That is certainly how I see things.

Mr. ELLISON. And I would say being pro-consumer is being pro-business, and I will tell you why. If you are an honest business person trying to give a good product at a fair price, you are competing against unscrupulous—

Mr. CORDRAY. I agree.

Mr. ELLISON. —competitors and they can beat you out. And that hurts the marketplace; it doesn't help it.

I—

Mr. CORDRAY. I agree.

Mr. ELLISON. —will yield back to the chairman.

Mr. CORDRAY. It happened in the mortgage—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman.

Mr. Cordray, you and I have discussed this before and I would like to bring it up again. I, too, was in the Florida legislature; I, too, have some experience in dealing with payday loans.

We had a terrible problem in Florida. We addressed that back in the early 2000s.

We came out with a bill that I think has done a great deal of good to eliminate the predatory lending, the bad actors, and, in fact, make sure that the transaction has a duration between 7 to 31 days, cannot be greater than $500 dollars, and a processing fee of no more than $5. There is a cooling-off period of 24 hours.

We have been able to, in the State of Florida under our regulatory scheme, reduce the use of online loans, which we don't want to see our consumers go to—that would eliminate any regulatory control whatsoever—but we have been able to reduce it by 82 percent since then. Would you not agree that Florida by far is the gold standard when it comes to State regulation of payday loans?

Mr. CORDRAY. I would not.

Mr. ROSS. Why not? Is there another State out there better?

Mr. CORDRAY. What I would say is I—

Mr. ROSS. But is there a State out there better? There isn't, is there? And that is my point, Mr. Cordray, because, you see—

Mr. CORDRAY. I'm sorry, do you want me to answer the question or—

Mr. ROSS. Yes. Is there another State who has a better track record than—

Mr. CORDRAY. What I would say is there has been analysis done of the Florida model, and what it shows is these loans are still being made at above a 300 percent rate of interest and they are being rolled over an average of 9 times for many consumers.

Mr. ROSS. And there is no State better, though. But let me ask you this: Again, you are going to try to eliminate the demand, thinking—eliminate the supply, thinking you are going to eliminate the demand, which you are not.

But let's take your statistics up there. We have your monthly report on payday loans—in fact, my colleague just before me had it up there—and it shows that since its inception I believe that payday loans have had complaints registered with your office of 1.5 percent since 2011 have been complaints of payday loans.

Now, that is not a significant thing, but when you think that 10 times that have been credit reporting agencies, and you are not doing anything about that. Why are we focusing on an industry that has a need in the market?

Now, let's go back to Florida again—

Mr. CORDRAY. I appreciate the question. I am glad to lay out an answer for you.

Mr. ROSS. Go right ahead.

Mr. CORDRAY. For example, what we find is when we look at—some of these complaints are simply misclassified. People think they are complaining about debt collection—

Mr. ROSS. You are misclassifying. You have the greatest resources of any agency—

Mr. CORDRAY. No, no. I am saying that people are complaining about debt collection. What we find is the incidence of payday loan debt collection complaints is much higher than that for student loans or auto loans.

Mr. ROSS. Let me help you with the State of Florida again.

Mr. CORDRAY. So that needs to be counted in, as well.

Mr. ROSS. Do you realize they had over 8 million—or right at 8 million payday loans in the State of Florida last year? Do you know how many complaints they had registered with the Financial Services Regulatory? 117.

Mr. CORDRAY. Let's also look at debt collection complaints and how many of them proceed from payday loans.

Mr. ROSS. Do you know how much that is as a percentage? Two-one thousandths of a percent.

By gosh, what relationship would be great if all you had is two-one thousandths of a percent of complaints. We would have marriages everywhere if we had that.

But what I am suggesting—

Mr. CORDRAY. You are sort of ignoring the point I am making, which is—

Mr. ROSS. —to you, sir, is you are not using logic and reason to dictate what is going to be a policy that is forthcoming in spring. Sunday is spring, so I anticipate there is going to be a report come this spring, right, after Sunday? Can you give us a little trailer on it?

Tell us what it is going to say about the payday loan industry. Tell us how we are going to eliminate all the State regulatory environments so that you have a company out there known as the Self-Help Credit Union that is kind of assisting you because they want to take over this market.

Are you familiar with the Self-Help Credit Union?

Mr. CORDRAY. I have no idea what you are talking about. I have heard that allegation before.

Mr. ROSS. You don't know about the Self-Help Credit Union? Let me ask you this—

Mr. CORDRAY. Some suggestion that they are trying to take over this market is sort of beyond—

Mr. ROSS. Yes or no: Are you familiar with the Center for Responsible Lending?

Mr. CORDRAY. Beg your pardon?

Mr. ROSS. Are you familiar with the Center for Responsible Lending?

Mr. CORDRAY. Yes, I am familiar with—

Mr. ROSS. And they have had some impact on trying to allow their opinion or influence in promulgating the rule that you are going to—

Mr. CORDRAY. Many stakeholders have had impact—

Mr. ROSS. Are you also familiar with their subsidiary?

Mr. CORDRAY. I'm sorry?

Mr. ROSS. Self-Help Credit Union, their subsidiary—are you familiar—

Mr. CORDRAY. What I am not understanding is this argument—

Mr. ROSS. Have you ever heard of the Self-Help Credit Union, yes or no?

Mr. CORDRAY. I have, yes.

Mr. ROSS. And do you know that they are a subsidiary of the Center for Responsible Lending?

Mr. CORDRAY. I am not familiar with the corporate relationship.

Mr. ROSS. Have you had any relationships, any discussions, any e-mails, any communications with the Self-Help Credit Union?

Mr. CORDRAY. I have discussions with many stakeholders.

Mr. ROSS. With Self-Help—

Mr. CORDRAY. We have a payday lending—

Mr. ROSS. —on the record. The Self-Help Credit Union—any discussions, communications, directions, anything whatsoever?

Mr. CORDRAY. Okay. So—

Mr. ROSS. Yes or no?

Mr. CORDRAY. —what I don't understand—

Mr. ROSS. Yes or no?

Mr. CORDRAY. —is this claim that somehow this is going to lead to somebody taking over the marketplace.

Mr. ROSS. It is not a claim; it is a question. Yes or no, do you have any communication, any—

Mr. CORDRAY. I don't see what the basis for that is.

Mr. ROSS. So you can't say that you have. So would it surprise you that you have?

Mr. CORDRAY. I'm sorry, what are we—what is the question?

Mr. ROSS. Would it surprise you that you have had any communications with Self-Help?

Mr. CORDRAY. What is the question?

Mr. ROSS. Self-Help Credit Union—have you had any communications with them in any way, shape, or form?

Mr. CORDRAY. I don't know whether I have or haven't, what you are talking about exactly.

Mr. ROSS. Okay, well you don't know whether you have had communications with them, is what I am asking you.

Mr. CORDRAY. Look, I am sure I have. I have had communications with probably everybody who has had an interest in our rules going back for 5 years—

Mr. ROSS. Okay. Can you give me in 18 seconds or less a little anticipation of what we may see in the rule you are going to promulgate this spring with regard to short-term loans?

Mr. CORDRAY. First of all, we haven't promulgated it yet so nothing should be taken to the bank. But I think you can take a lot out of our White Paper and the small business review framework we provided, which is that we are going to seek to eliminate and limit predatory practices by lenders that embroil many consumers in a debt trap with consistent and prolonged rollover of—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger.

Mr. PITTENGER. Director Cordray, you have on a number of occasions touted the transparency of your agency, the Consumer Financial Protection Bureau. Is that correct?

Mr. CORDRAY. Say that again?

Mr. PITTENGER. You have touted the transparency of your agency. Is that correct?

Mr. CORDRAY. Yes, I—by the way, I would love to see some more transparency—

Mr. PITTENGER. Good. Thank you. So that is my question there.

Mr. CORDRAY. —on that group called Protecting America's Consumers and some attention to that.

Mr. PITTENGER. Taking my time back, sir.

Mr. CORDRAY. Okay.

Mr. PITTENGER. Let's be respectful.

Mr. CORDRAY. All right.

Mr. PITTENGER. Mr. Cordray, in that light, you have also admitted that you and 12 of your Directors have used private e-mails for official business. Is that not correct?

Mr. CORDRAY. I think that has been a very limited practice—

Mr. PITTENGER. No, sir. Have you used them or not?

Mr. CORDRAY. Very limited practice in—

Mr. PITTENGER. Then you have used them?

Mr. CORDRAY. —in days where our technology—

Mr. PITTENGER. Mr. Cordray, how does the American public have any confidence in the records, in the information that is captured and recorded if you are using private e-mail?

Mr. CORDRAY. First of all—

Mr. PITTENGER. Mr. Cordray, do you approve of what Secretary Clinton did with her private e-mails?

Mr. CORDRAY. I am not familiar with those situations.

Mr. PITTENGER. You are not familiar with that?

Mr. CORDRAY. Yes, I am not.

Mr. PITTENGER. That is very interesting that you are not familiar—

Mr. CORDRAY. I haven't been part of any of that, and I don't really know what to tell you.

Mr. PITTENGER. Do you believe that the public gets a proper accountability when you are using your private e-mails? Do you feel like the public is getting all the information that they deserve to have?

Mr. CORDRAY. I know that there are policies that we have in place to make sure that government work is being captured in government databases and that is—

Mr. PITTENGER. Will you turn over to the committee all these private e-mails?

Mr. CORDRAY. I don't really know what you are talking about. I would be glad to have our staff work with your staff to either try to understand your concerns—

Mr. PITTENGER. We would like to have a full understanding of what has been conveyed over private e-mails regarding official business. It is just that clear.

Mr. CORDRAY. I would be glad to follow up with you.

Mr. PITTENGER. Thank you, sir. We will.

Regarding our structure in the CFPB, you are the single Director. Do you believe that it would be more prudent and more acceptable to have perhaps a five-member bipartisan commission?

Mr. CORDRAY. I have seen different approaches to different organizations. In State Government it is quite common to have a single individual—

Mr. PITTENGER. Do you think that you could gain more wisdom from colleagues?

Mr. CORDRAY. I'm sorry?

Mr. PITTENGER. Do you think that you could gain wisdom from individuals who would join with you on such a—

Mr. CORDRAY. I do every day. I have a leadership group at the Bureau, and every organization does.

Mr. PITTENGER. Let's talk about your time in the general assembly in Ohio. You said you served on the general assembly, and as such, I am sure you served on committee, correct?

Mr. CORDRAY. Yes.

Mr. PITTENGER. Do you feel like that the public would be best-served if that committee Chair just issued his decision without the full support of those who are on the committee and aware of all those issues? He didn't act alone did he, sir?

Mr. CORDRAY. Some committee Chairs did and some committee Chairs didn't, so—

Mr. PITTENGER. He had accountability, didn't he?

Mr. CORDRAY. Sure. And as an individual member I had the ability to sponsor and introduce a bill if I wished to do so. I didn't have to ask anybody's permission.

Mr. PITTENGER. But you are accountable to nobody, are you, Director Cordray?

Mr. CORDRAY. I am accountable in the same way you are. I am accountable ultimately to the public for the substantive actions that I take.

Mr. PITTENGER. You have already stated that you don't act in full transparency.

Mr. CORDRAY. No, I didn't say that.

Mr. PITTENGER. You don't have a board.

Mr. CORDRAY. I don't agree with that.

Mr. PITTENGER. You can't be fired without some egregious abuse.

Mr. CORDRAY. My role in the Federal Government is a role that was established by Congress; the conditions were set by Congress. I didn't get to just write them up the way I please.

Mr. PITTENGER. And I think that is our point. I think we would like to hear your wisdom and what you believe would be the best accountability for the American people.

Mr. CORDRAY. Okay, so—

Mr. PITTENGER. Do you think it would be in the best interest of the American people that we had a five-commission bipartisan board?

Mr. CORDRAY. One of the things I think is that when I come here and testify in front of you, you can call me to account. There is nobody I can blame it on; there is nobody I can say, "Well, somebody else might think differently."

Mr. PITTENGER. And you spend 3 hours with us and then you leave for 6 months and come back.

Mr. CORDRAY. I am accountable directly to you.

Mr. PITTENGER. These are difficult hours, I know, for you. You don't enjoy them because you are having to be accountable.

Mr. CORDRAY. No, these are not difficult. I actually enjoy coming before the committee.

Mr. PITTENGER. And when you leave this room it is not—you don't have to be accountable again.

Mr. CORDRAY. I enjoy coming before the committee. When I was a single official in charge of the Ohio Attorney General's Office or the Ohio Treasurer's Office I was also accountable.

I always have felt that I am accountable in public service ultimately to the public to serve them well. And I appreciate the oversight of this body, that I come here not only when I am required but other times when I am invited. And I have never ducked or dodged, and I have always been willing to stay as long as you want me to stay, and I continue to do that.

Mr. PITTENGER. I think not dodging would mean that you are responsive when we contact you, when we write you, when we ask for information. There has been delay after delay in getting information from you on so many occasions.

Mr. CORDRAY. I think we have always—

Mr. PITTENGER. I am asking you now for the—

Mr. CORDRAY. I have always read, we have always answered your letters. If the response is not sufficient, we are happy to follow up.

We continue to do that. We will continue to do that. If there is anything that you think that we haven't sufficiently followed up on, let us know and I will come back.

Mr. PITTENGER. You are your own man. You run an agency, essentially, what, $600 million a year or more, accountable basically to nobody. You have no board that you are accountable to, and now—

Mr. CORDRAY. No, that is—look, we have all kinds of accountability in our statute. Congress set the terms. Congress set the terms for special—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Missouri, Mrs. Wagner.

Mrs. WAGNER. Thank you, Mr. Chairman.

Wow. Never ducked or dodged?

Mr. CORDRAY. Yes.

Mrs. WAGNER. Answer all letters?

All right, Director Cordray, let's have a conversation.

Mr. CORDRAY. Okay.

Mrs. WAGNER. Our committee sent you a subpoena back in December asking for documents regarding a variety of issues such as discrimination and retaliation, auto lending, and others. And despite you saying the CFPB is committed to transparency and compliance, you always answer our letters, you never duck or dodge, you all have failed once again to respond adequately to this subpoena.

Additionally, the committee sent this letter right here, I have a copy of it, I will submit to the good of the order—on how all of you are complying with the subpoena regarding the—such terms that you all are using.

Will you commit, Director Cordray, to providing this information to our committee here right now?

Mr. CORDRAY. We continue to work with the committee—

Mrs. WAGNER. Will you commit to providing information and complying to the request of this subpoena from your office? Will you commit to that?

Mr. CORDRAY. So I would be glad to know specifics from you about how—

Mrs. WAGNER. If so, when?

Mr. CORDRAY. I would like to know specifics about how we have not complied. I know that in response to that we have—

Mrs. WAGNER. You have failed to comply.

Mr. CORDRAY. In what way?

Mrs. WAGNER. That is the—

Mr. CORDRAY. Give me a specific—

Mrs. WAGNER. You haven't responded to the subpoena or to the letter.

Mr. CORDRAY. Of course we have responded. We have produced another I think 20,000 pages of documents.

Mrs. WAGNER. Not in any adequate way, shape, or form.

Mr. CORDRAY. Well, okay, tell me how it is inadequate? That is just—

Mrs. WAGNER. Will you absolutely right now commit to complying with our committee? If so, when?

Mr. CORDRAY. We have been working to comply all along. We will continue to work to comply.

Mrs. WAGNER. Working to comply, Director Cordray, is what we call ducking and dodging. Let me move on.

Director Cordray, last year I asked a question about who gave the authorization to renovate the leased headquarters of your agency, and I haven't forgotten the response you gave to me, which was, "And why does it matter to you?" Well, Director, it still matters to me because that is government expenditure of $215 million of taxpayer money.

Last year you said that Treasury made the decision. However, the committee sent a letter to Treasury asking about it and they said that you all—you, the CFPB—made the decision. Clearly, both of you can't be right, sir.

Mr. CORDRAY. Okay, so—

Mrs. WAGNER. You have had a year since that last time I have asked to look into this, and so who authorized the renovation, sir?

Mr. CORDRAY. First of all, this has been misstated and garbled, okay? I never said that why would you look into an expenditure of funds. You are entitled to look into an expenditure of funds and I appreciate that oversight. And we have given you—

Mrs. WAGNER. You said, "Why does it matter to you?" And it matters to the taxpayers—

Mr. CORDRAY. But the "it"—

Mrs. WAGNER. —to the Missouri 2nd Congressional District people that I represent.

Mr. CORDRAY. —was not expenditure of public funds. The "it" was who signed off originally—

Mrs. WAGNER. Who authorized it? A simple question. Who?

Mr. CORDRAY. Okay. So—

Mrs. WAGNER. Because I have more questions, sir. Who authorized it?

Mr. CORDRAY. As I said to you—and I have said it to this committee numerous times—I later reaffirmed that decision and I continue to stand behind the decision.

Mrs. WAGNER. As you know, Elizabeth Warren—

Mr. CORDRAY. In terms of who originally—

Mrs. WAGNER. Reclaiming my time, because you are clearly not answering the question—again. As you know, Elizabeth Warren was working at Treasury as a special advisor and was understood to be responsible for setting up the Bureau. She also published a blog post announcing that the CFPB headquarters would be located at 1700 G Street.

So let me ask you, was it Elizabeth Warren who absolutely ordered and authorized the renovation, sir?

Mr. CORDRAY. I don't know. It seems like that is what you are trying to get me to say. I—

Mrs. WAGNER. I want the truth, sir.

Mr. CORDRAY. Okay.

Mrs. WAGNER. Who ordered a $215 million expenditure of renovations using the taxpayers' money?

Mr. CORDRAY. First of all, it is not $215 million. That has never been true. It is not accurate. We have corrected the record on that numerous times.

Second, I have reaffirmed that decision and I take responsibility and accountability for it. I am totally—

Mrs. WAGNER. So you are saying that you gave the authorization for that.

Mr. CORDRAY. I was not in the position at the time—

Mrs. WAGNER. All right, reclaiming my time—

Mr. CORDRAY. —and we did not have authority separate from Treasury at the time.

Mrs. WAGNER. Reclaiming my time, Mr. Cordray, it is my time. It is really unbelievable that you don't know who authorized it and that you won't—

Mr. CORDRAY. No, no. That is not—look, the first—

Mrs. WAGNER. Mr. Cordray—

Mr. CORDRAY. —the first year—

Mrs. WAGNER. Reclaiming my time, especially since you don't even own it, and you know that the building has been assessed at $150 million. It really makes me question how else the CFPB spends its money.

Last month Representative Barr, a great colleague of mine, questioned Chair Yellen on whether the Federal Reserve approves the CFPB's budget and whether the Fed is even able to veto specific funding requests. The answer to both of those questions was no.

So, Director—

Mr. CORDRAY. Congress set up that system.

Mrs. WAGNER. I am not finished, Director Cordray.

So, Director Cordray, how exactly does this work? You simply send the Federal Reserve an invoice and as long as it doesn't hit the caps that were set by Dodd-Frank then it is approved automatically? How does this happen?

Mr. CORDRAY. We are simply carrying out the law that Congress enacted. You and your colleagues in the Congress or those who preceded you enacted that law. We are carrying it out.

Chairman HENSARLING. The time of the gentlelady has expired.

Members are advised there are votes on the Floor: there are 10 minutes left in the first vote. We anticipate clearing one more questioner.

The gentleman from Kentucky, Mr. Barr, is recognized.

Mr. BARR. Thank you, Mr. Chairman.

And, Director Cordray, I will just follow up from my colleague, Mrs. Wagner, on that question regarding the source of the CFPB's funding.

In your semi-annual report, you say that the Director of the CFPB requests transfers from the Federal Reserve System in amounts that he has determined are reasonably necessary to carry out the Bureau's mission. What was the transfer requested in Fiscal Year 2015?

Mr. CORDRAY. I would have to look at my—

Mr. BARR. What do you anticipate it being in Fiscal Year 2016?

Mr. CORDRAY. So our published budget for Fiscal Year 2016 is for $606 million.

Mr. BARR. Okay. And does the Fed approve that budget?

Mr. CORDRAY. The budget has to be within the parameters set by Congress.

Mr. BARR. I understand it has to be below the cap. Does the Fed approve that budget?

Mr. CORDRAY. You mean particulars of the budget—

Mr. BARR. Yes.

Mr. CORDRAY. —or the overall total of the budget?

Mr. BARR. Both. Total, particulars, anything?

Mr. CORDRAY. I assume if we were seeking to obtain more than our cap, that would not be—

Mr. BARR. But otherwise, the Fed doesn't approve the budget?

Let me ask it this way: Does the Fed ever—

Mr. CORDRAY. That is correct.

Mr. BARR. Has the Fed ever or does the Fed ever review the Bureau's transfer request?

Mr. CORDRAY. I believe they do. We send transfer requests and they fulfill them.

Mr. BARR. Okay. And it is as simple as that. So to your knowledge, the Fed has never asked any questions about that transfer.

Mr. CORDRAY. I don't deal with the details of the back-and-forth with the Fed, but I—

Mr. BARR. But to your knowledge they have never asked any questions about that transfer request.

Mr. CORDRAY. I wouldn't know what to say to that.

Mr. BARR. Let me ask the question this way: Has the Fed, to your knowledge, ever denied a particular transfer request?

Mr. CORDRAY. All of our requests have been within the bounds of the law established by Congress.

Mr. BARR. And the Fed has never vetoed a particular allocation of or a particular expenditure made by the Bureau.

Mr. CORDRAY. Again, that is a system established by Congress and we are carrying it out.

Mr. BARR. So the Fed is not involved in any way in the implementation of the Bureau's budget. That is the point.

And to that point, that is our concern, frankly, because the fact that the Bureau has been able to move forward with a $215 million luxury renovation to its headquarters, spent $60 million on management consulting services, and pays the average Bureau employee more than Members of Congress would support the conclusion that the Fed is merely a rubber stamp to your expenditures.

And we would hope that since you are not accountable to the Congress, not subject to the congressional appropriations process—as you point out, by a statutory design in the Dodd-Frank law, a fundamental flaw in the Dodd-Frank law, in my judgment—that we would hope that you would be at least accountable to the source of your funding.

Mr. CORDRAY. I think several of the things you just described are inaccurate, by the way, but I am happy to correct the record if you wish.

Mr. BARR. No, let's switch gears really quickly and talk about the arbitration rulemaking and the arbitration study that we asked about in that letter.

Your response to our letter did not answer our questions about the deficiencies in the data. Did the study in any way confirm that arbitration can be faster than a class action lawsuit?

Mr. CORDRAY. I think it would depend on the individual arbitration; it would depend on the class action—

Mr. BARR. Was there any data that supported that arbitration can result in a faster, more expedited resolution for the consumer?

Mr. CORDRAY. Sometimes a lawsuit can go faster; sometimes an arbitration—

Mr. BARR. Was there any data that arbitration can be less expensive for a consumer?

Mr. CORDRAY. Again, depending on the matter, some cases that go to court would be less expensive, and some cases that go to arbitration would be more expensive.

Mr. BARR. Okay. And so there is data to support that. Was there any data that it can be a more effective way for consumers to resolve disputes?

Mr. CORDRAY. I don't know what a more effective way to resolve—

Mr. BARR. The point is that you have said that you have a duty to enforce the law—the Dodd-Frank law, not the 1928 law—enacted by statute. Well, here is what the Dodd-Frank law says. It says that the rule must be in the public interest for the protection of consumers and consistent with the study.

My point is that your study shows that arbitration can sometimes—and in many cases—be in the best interest of the consumer, in terms of a faster resolution, a better result for the consumer. And so I would encourage the Bureau to not move forward with a rule that is inconsistent with the benefits of arbitration.

In preparing this study did the Bureau coordinate with the American Association for Justice?

Mr. CORDRAY. Beg your pardon?

Mr. BARR. Did the Bureau, in preparing this study, coordinate with the American Association for Justice?

Mr. CORDRAY. I don't know who that is.

Mr. BARR. That is the trade association for class action lawyers.

The reason I ask is because the Bureau cites a study by Professor Sovern that purports to analyze consumers' knowledge of whether their financial agreements contain an arbitration clause. Do you know how Professor Sovern's study was funded? Because it was funded by the American Association for Justice.

That is a conflict of interest that you are using data from a study that is funded by the class action plaintiff's bar.

Mr. CORDRAY. Look, we took input from all stakeholders. There were also studies that had been funded by industry. I don't hear you complaining about the conflict of interest there. What I would simply say is—

Chairman HENSARLING. The time of the gentleman has expired.

I will now recognize the ranking member for a unanimous consent request.

Mr. CORDRAY. We will carry out the statutory—

Ms. WATERS. I ask unanimous consent to submit for the record a study from the Center for Responsible Lending concerning—

Chairman HENSARLING. Without objection, it is so ordered.

Ms. WATERS. —African-Americans and Latinos on dealer-financed—

Chairman HENSARLING. I want to thank the 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.

I would ask you, Mr. Director, to respond as promptly and accurately as you are able.

Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing stands adjourned.

[Whereupon, at 1:15 p.m., the hearing was adjourned.]

A P P E N D I X

March 16, 2016

FINANCIAL SERVICES COMMITTEE

Remarks for Rubén E. Hinojosa

CFPB Semi-Annual Report
March 16, 2016
Rayburn 2128
10:00 AM

Thank you, Chairman Hensarling and Ranking Member Waters, for holding this important hearing on the CFPB's Semi-Annual Report.

Director Cordray, thank you for your appearance here today and for your exemplary leadership at the Consumer Financial Protection Bureau.

I wish to voice my support for the CFPB and its mission of protecting American consumers.

The CFPB is ensuring that financial service providers are held accountable if they offer predatory products or act in an unscrupulous manner. Since its creation, the CFPB has ensured approximately $11 billion in relief to consumers from enforcement activity, including delivering $95 million in relief to over 177,000 Americans in the last six months. Moreover, in just the last year, some 265,000 Americans have used the CFPB's complaint portal to lodge complaints on issues ranging from debt collection, mortgages, credit reporting, to pay-day lenders, and student loans.

Rather than attacking the CFPB, we should be supporting its mission and work to ensure that moving forward, its rulemaking efforts strike the right balance.

Testimony of Richard Cordray
Director, Consumer Financial Protection Bureau
Before the House Committee on Financial Services
March 16, 2016

Chairman Hensarling, Ranking Member Waters, and Members of the Committee, thank you for the opportunity to testify today about the Consumer Financial Protection Bureau's Semi-Annual Report to Congress. I appreciate our continued dialogue as we work together to strengthen our financial system and ensure that it serves consumers, responsible businesses, and the long-term foundations of the American economy.

The Bureau presents this Semi-Annual Report to Congress and the American people in fulfillment of its statutory responsibility and commitment to accountability and transparency. This report provides an update on the Bureau's mission, activities, accomplishments, and publications since the last Semi-Annual Report, and provides additional information required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Dodd-Frank Act).[1]

The Dodd-Frank Act created the Bureau as the nation's first Federal agency with a mission of focusing solely on consumer financial protection and making consumer financial markets work for American consumers, responsible businesses, and the economy as a whole. In the wake of the financial crisis of 2008-2010, the President and Congress recognized the need to address widespread failures in consumer financial protection and the rapid growth in irresponsible lending practices that preceded the crisis. To remedy these failures, the Dodd-Frank Act consolidated most Federal consumer financial protection authority in the Bureau.[2] The Dodd-Frank Act charged the Bureau with, among other things:

- Ensuring that consumers have timely and understandable information to make responsible decisions about financial transactions;
- Protecting consumers from unfair, deceptive, or abusive acts and practices, and from discrimination;
- Monitoring compliance with Federal consumer financial law and taking appropriate enforcement action to address violations;
- Identifying and addressing outdated, unnecessary, or unduly burdensome regulations;

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[1] Appendix B provides a guide to the Bureau's response to the reporting requirements of Section 1016(c) of the Dodd-Frank Act. The Bureau's most recent Semi-Annual Report, published in November 2015, and covered April-September 2015. The report may be viewed at: http://files.consumerfinance.gov/f/201511_cfpb_semi-annual-report-fall-2015.pdf.

[2] Previously, seven different federal agencies were responsible for rulemaking, supervision, and enforcement relating to consumer financial protection. The agencies which previously administered statutes for which authority transferred to the Bureau are the Federal Reserve Board (and the Federal Reserve Banks) (Board or FRB), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS).

- Enforcing Federal consumer financial law consistently in order to promote fair competition;
- Ensuring that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation; and
- Conducting financial education programs.[3]

The Bureau has continued its efforts to listen and respond to consumers and industry, to be a resource for the American consumer, and to develop into a great institution worthy of the responsibilities conferred on it by Congress.

Listening and responding to consumers is central to the Bureau's mission. The Bureau continues to provide consumers with numerous ways to make their voices heard. Consumers nationwide have engaged with the Bureau through public field hearings, listening events, roundtables and town halls, and through our website, consumerfinance.gov. Consumer engagement strengthens the Bureau's understanding of current issues in the ever-changing consumer financial marketplace and informs every aspect of the Bureau's work, including research, rule writing, supervision, and enforcement.

The Bureau has continued to improve the capabilities of its Office of Consumer Response to receive, process, and facilitate responses to consumer complaints. Consumer Response has also continued to expand a robust public Consumer Complaint Database. The database updates nightly and as of September 30, 2015 was populated by over 465,000 complaints from consumers about financial products and services from all over the country.

On June 25, 2015, the CFPB marked a milestone for consumer empowerment when the Bureau began to publish consumer complaint narratives in the Consumer Complaint Database.[4] Consumers now have the choice to share in their own words their experiences with the consumer financial marketplace. Only those narratives for which opt-in consumer consent is obtained and to which a robust personal privacy scrubbing process is applied are eligible for disclosure. The CFPB gives companies the opportunity to respond publicly to the substance of the consumer complaints they receive from the CFPB by selecting from a set list of public-facing response categories. Companies are under no obligation to avail themselves of the opportunity. The Bureau also issued a Notice and Request for Information[5] to seek input from the public on best practices for "normalizing" the complaint data it makes available via the database to make the complaint data easier for the public to use and understand.

On July 16, 2015, the Bureau launched the first in a new series of monthly reports to highlight key trends from consumer complaints submitted to the Bureau. The monthly report includes data on complaint volume, most-complained-about companies, state and local information, and product trends. Each month, the report highlights a particular product and geographic location and will provide insight for the public into the hundreds of thousands of consumer complaints on

[3] *See* Dodd-Frank Act, Pub. L. No. 111-203, Sec. 1021 (b) and (c).
[4] *See* Final Policy Statement on Consumer Narratives; 80 FR 15572, March 24, 2015.
[5] *See* Request for Information Regarding the Consumer Complaint Database: Data Normalization; 80 FR 37237, June 30, 2015.

financial products and services expected to be handled by the CFPB. The report uses a three-month rolling average, comparing the current average to the same period in the prior year where appropriate, to account for monthly and seasonal fluctuations. In some cases, month-to-month comparisons are used to highlight more immediate trends.

The Bureau is also working to provide tools and information to develop practical skills and support sound financial decision-making directly to consumers. These skills include being able to ask questions and to plan ahead. One way we are doing this is with our online tool, *Ask CFPB*.[6] This tool provides answers to over 1,000 questions about financial products and services, including on topics such as mortgages, credit cards, and how to dispute errors in a credit report. We are also focusing on helping consumers build the skills to plan ahead. For example, our Paying for College[7] set of tools helps students and their families compare what their college costs will be as they decide where to pursue a college education. Our Owning a Home[8] set of tools helps consumers shop for a mortgage loan by helping them understand what mortgages are available to them, explore interest rates, compare loan offers, and by providing a closing checklist. The *Money Smart for Older Adults*[9] curriculum, developed with the Federal Deposit Insurance Corporation (FDIC), includes resources to help people prevent elder financial exploitation and prepare financially for unexpected life events.

The Bureau is working with other government agencies, social service providers, and community service providers to develop channels to provide decision-making support in moments when consumers are most receptive to receiving information and developing financial decision-making skills. This support includes integrating financial capability into other programs and services where consumers may be seeking assistance. We are also tailoring our approaches to financial decision-making circumstances, challenges, and opportunities for specific populations, including servicemembers and veterans, students and young adults, older Americans, and lower-income and other economically vulnerable Americans.

When Federal consumer financial protection law is violated, the Bureau's Supervision, Enforcement, and Fair Lending Division is committed to holding the responsible parties accountable. In the six months covered by the most recent report, our supervisory actions resulted in financial institutions providing more than $95 million in redress to over 177,000 consumers.

During that timeframe, the Bureau also announced orders through enforcement actions for approximately $5.8 billion in total relief for consumers who fell victim to various violations of consumer financial protection laws, along with over $153 million in civil money penalties. The Bureau brought numerous enforcement actions for various violations of the Dodd-Frank Act, including an action against a company for blocking consumers' attempts to save their homes from foreclosure, an action against a lender for the failure to furnish clear information regarding the student loan interest consumers paid, and actions against two companies for mobile cramming. In joint actions, we worked with the New York Department of Financial Services to

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[6] *Available at:* consumerfinance.gov/askcfpb/.
[7] *See* http://www.consumerfinance.gov/paying-for-college/.
[8] *See* http://www.consumerfinance.gov/owning-a-home/.
[9] *See* https://www.fdic.gov/consumers/consumer/moneysmart/olderadult.html.

take action against two companies for deceiving consumers about the costs and risks of their pension advance loans. We also worked with the Office of the Comptroller of the Currency and the FDIC to take action against a depository institution for failing to credit consumers for the full amounts of their deposits, and worked with the Department of Justice to resolve actions with an auto finance company and a depository institution that will put in place new measures to address discretionary auto loan pricing and compensation practices. The Bureau also took action against a company for engaging in unfair, deceptive, and abusive acts or practices to collect debt from servicemembers, in violation of the Consumer Financial Protection Act. In addition, the Bureau continues to develop and refine its nationwide supervisory program for depository and nondepository financial institutions, through which those institutions are examined for compliance with Federal consumer financial protection law.

The Bureau also released one edition of *Supervisory Highlights* during this reporting period. The *Supervisory Highlights* series is intended to inform both industry and the public about the development of the Bureau's supervisory program and to discuss, in a manner consistent with the confidential nature of the supervisory process, broad trends in examination findings in key market or product areas. This edition reported examination findings in the areas of consumer reporting, debt collection, student loan servicing, mortgage origination, mortgage servicing, and fair lending. It also included information about recent public enforcement actions that were a result, at least in part, of CFPB's supervisory work.

The Bureau has also published new guidance documents, in partnership with other regulators where appropriate, to help institutions know what to expect and how to become, or remain, compliant with the law, including bulletins on private mortgage insurance cancellation and termination, the Section 8 housing choice voucher homeownership program, and interstate land sales.

Reasonable regulations are essential for protecting consumers from harmful practices and ensuring that consumer financial markets function in a fair, transparent, and competitive manner. The Research, Markets, and Regulations Division has focused its efforts on promoting markets in which consumers can shop effectively for financial products and services and are not subject to unfair, deceptive, or abusive acts or practices. During this reporting period, the Research and Markets teams released a data point on "credit invisibles" and technical reports regarding the National Survey of Mortgage Borrowers and the National Mortgage Database. The Regulations office issued regulations modifying and clarifying a number of rules implementing changes made by the Dodd-Frank Act to the laws governing various aspects of the mortgage market, including amendments relating to small creditors and rural or underserved areas under Regulation Z, which, among other things, increased the number of financial institutions able to offer certain types of mortgages in rural and underserved areas, a rule moving the effective date of the Know Before You Owe mortgage disclosure rule to October 3, 2015, and an interpretive rule on homeownership counseling organizations lists and high-cost mortgage counseling.

During this reporting period, the Bureau issued several other proposed or final rules or requests for information under the Dodd-Frank Act, including a final rule defining larger participants of the automobile financing market and defining certain automobile leasing activity as a financial product or service, which extends the Bureau's supervision relating to consumer financial protection laws to any nonbank auto finance company that makes, acquires, or refinances 10,000 or more loans or leases in a year, and a request for information regarding student loan servicing.

To support the implementation of and industry compliance with its rules, the Bureau has published a number of plain-language compliance guides summarizing certain rules, and it has actively engaged in discussions with industry about ways to achieve compliance.[10] The Bureau also continued its efforts to streamline, modernize, and harmonize financial regulations that it inherited from other agencies.

In addition to implementing the Dodd-Frank Act, the Bureau continues to explore other areas where regulations may be needed to ensure that markets function properly and possibly harmful or inefficient practices are addressed. Over the next six months, the Bureau will continue implementing the Dodd-Frank Act and using its regulatory authority to ensure that consumers have access to consumer financial markets that are fair, transparent, and competitive.

The Bureau continues to grow and evolve as an institution. As of September 30, 2015, the CFPB team consisted of 1,486 employees working to carry out the Bureau's mission. It has worked to build a human and physical infrastructure that promotes diversity, transparency, accountability, fairness, and service to the public.

The Bureau recognizes that the best way to serve consumers is to ensure that its workforce reflects the ideas, backgrounds, and experiences of the American public. The Bureau's Office of Minority and Women Inclusion supports the Bureau's mission by working with the offices of Human Capital and Civil Rights to continue building a diverse and inclusive workforce that can foster broader and better thinking about how to approach markets.[11]

Over the last year, the Bureau has continued to expand its efforts to support and protect consumers in the financial marketplace. The Bureau seeks to serve as a resource, by writing clear rules of the road, enforcing consumer financial protection laws in ways that improve the consumer financial marketplace and by helping individual consumers resolve their specific issues with financial products and services. While the various divisions of the Bureau play different roles in carrying out the Bureau's mission, they all work together to protect and educate consumers, help level the playing field for participants, and fulfill the Bureau's statutory obligations and mission under the Dodd-Frank Act. In all of its work, the Bureau strives to act in ways that are fair, reasonable, and transparent.

Chairman Hensarling, Ranking Member Waters, and Members of the Committee, thank you for the opportunity to provide the Bureau's Semi-Annual Report to you. The Bureau will continue working to ensure that the American people are treated fairly in the consumer financial marketplace. I look forward to your questions.

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[10] *See* http://www.consumerfinance.gov/guidance/#compliance.

[11] During the previous reporting period, the Bureau's Office of Equal Employment and Opportunity transitioned to the Office of Civil Rights (OCR), and it and the OMWI office moved under the umbrella of the newly created Office of Equal Opportunity and Fairness (OEOF), housed in the CFPB Director's Office and reporting directly to the Director.

NAMAD NATIONAL ASSOCIATION OF MINORITY AUTOMOBILE DEALERS | NADA | AmericanInternational AutomobileDealers

Fair Credit Compliance POLICY & PROGRAM

Table of Contents

Overview of Fair Credit Policy & Fair Credit Compliance Program Templates

The Equal Credit Opportunity Act ("ECOA") and its implementing regulation, Regulation B, prohibit discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age and other factors.[1] Regulation B states that this prohibition applies not just to intentional discrimination[2] but also to credit practices that appear neutral but nevertheless *result* in a negative "disparate impact" on customers who are members of one of these protected classes (assuming the customers in the different classes being compared are similarly situated).[3] Because a finding of disparate impact typically is established by a statistical evaluation of past credit transactions, dealers and other creditors cannot ensure they are complying with ECOA solely by training their employees to avoid considering these prohibited factors when making credit decisions. Dealers must also ensure that their policy for determining the amount they earn for arranging financing will not give rise to post-transaction claims that the policy resulted in a negative statistical disparity in the amount of dealer participation paid by customers in a protected class (i.e., a class defined by color, national origin or one of the other prohibited bases listed above).[4]

On March 21, 2013, the Consumer Financial Protection Bureau ("CFPB") issued a fair lending guidance bulletin to indirect auto finance sources (which the CFPB refers to as indirect auto lenders) stating "that certain lenders that offer auto loans through dealerships are responsible for unlawful, discriminatory pricing" and that lender policies "that allow auto dealers to mark up lender established buy rates and that compensate dealers [for originating credit contracts] in the form of dealer [participation]" create a "significant risk" of fair lending violations.[5] The bulletin instructs indirect auto finance sources on steps they should take to address this risk, which include either (i) eliminating dealer pricing discretion (such as by paying dealers a flat fee per transaction), or (ii) constraining dealer pricing discretion (by adopting a series of controls and monitoring the credit contracts the finance source purchases from dealers to see if there exists a statistical disparity in dealer participation as described above). Because the bulletin sets forth limitations on how indirect auto finance sources may compensate dealers for arranging financing for customers, it affects dealers even though the Dodd-Frank Act prohibits the CFPB from exercising any authority over dealers engaged in indirect financing transactions.[6]

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[1] Other factors include the fact that a credit applicant relies on social security, welfare or other public assistance or has exercised a right under a federal consumer credit law.

[2] The term usually associated with intentional discrimination is "disparate treatment." Disparate treatment involves treating credit applicants differently on a prohibited basis even if there is not a deliberate intent to discriminate. An example of disparate treatment would be if a creditor were to require that a minority applicant provide greater documentation to secure financing than a similarly situated non-minority applicant.

[3] While ECOA clearly prohibits disparate treatment, substantial controversy exists over whether ECOA also prohibits disparate impact. Consistent with NADA's cautious approach to disseminating compliance guidance to its members, this guidance and the policy and program templates assume (but do not concede) that a disparate impact theory of liability exists under ECOA.

[4] The term "dealer participation" (also known by such terms as "dealer reserve" or "dealer spread") refers to the dealer's participation in (i.e., its portion of) the contract interest rate that the customer pays to finance the purchase of a vehicle from the dealer. It is the difference between this retail rate (also known as the Annual Percentage Rate or "APR") and the wholesale "buy rate" at which a finance source buys the finance contract (also known as a retail installment sale contract or "RISC") from the dealer. Finance sources typically compensate dealers for arranging financing with the customer by permitting dealers to retain the dealer participation subject to parameters established by the finance source.

[5] The guidance bulletin (CFPB Bulletin 2013-02) and its accompanying press release are available at www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-hold-auto-lenders-accountable-for-illegal-discriminatory-markup/.

[6] The CFPB was created in Title 10 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. Law. §§ 111-203 (July, 21, 2010)("Dodd-Frank Act"). Section 1029 of the Dodd-Frank Act excludes motor vehicle dealers engaged in indirect financing transactions (in which a dealer enters into a RISC with a customer and then assigns the contract to a third party finance source) from the authority of the CFPB, while continuing to subject dealers to the authority of the federal agencies that could exercise authority over dealers prior to the enactment of the Dodd-Frank Act. The CFPB, therefore, may not take actions directly against dealers engaged in indirect financing. However, CFPB actions affecting indirect finance sources (over which the CFPB may exercise authority) can also affect dealers to the extent they

Since the CFPB issued its fair lending guidance bulletin, several indirect auto finance sources have informed dealers that they will monitor (i.e., conduct a statistical analysis of) the contracts they purchase from dealers. In many cases, these indirect finance sources have sent letters to dealers indicating that the finance source's statistical analysis identified unexplained differences in the amount of dealer participation paid by customers who are members of protected classes and customers who are not members of those classes. These letters typically offer the dealer the opportunity to respond to the finance source's preliminary findings. Usually as part of this process, dealers may provide to the finance source legitimate (non-prohibited) reasons that explain the purported pricing disparities.

In addition, on December 20, 2013, the CFPB and the Department of Justice announced an enforcement action against an indirect auto finance source (Ally) for alleged disparate impact discrimination. The action resulted in a consent order between the United States and Ally to resolve the government's allegation that "Ally engaged in a pattern or practice of discrimination on the basis of race and national origin in violation of ECOA based on the interest rate 'dealer markup' – the difference between Ally's buy rate and the contract rate – paid by African-American, Hispanic, and Asian/ Pacific Islander borrowers who received automobile loans funded by Ally." Ally did not admit to the allegations and no court determined their validity. In addition, Ally stated in a press release that "it does not believe that there is measurable discrimination by auto dealers."[7] Nevertheless, to resolve the matter, Ally agreed to undertake several actions, including the payment of a civil penalty and compensation to the alleged victims, monitoring the amount of dealer participation earned by dealers in retail installment sale contracts ("RISC") purchased by Ally, and taking "appropriate corrective action" if such monitoring reveals that dealers charged a higher amount of dealer participation to similarly situated protected groups of customers.[8]

cause indirect finance sources to amend the contracts that govern their relationship with dealers.

[7] Ally's press release is available at http://media.ally.com/2013-12-20-Ally-Financial-Statement-on-Auto-Financing-Consent-Orders.

[8] The full terms of the consent order are available at http://images.magnetmail.net/images/clients/NADA/attach/Ally_Consent_Order.pdf.

Fair Credit Compliance Program

These and other related developments have prompted dealers and their attorneys to seek from NADA compliance guidance to minimize the fair credit risk identified in the CFPB guidance bulletin. This guidance and the *Fair Credit Policy* and *Fair Credit Compliance Program* templates are intended to respond to these requests. NADA may issue supplemental guidance as necessary to address additional compliance issues or subsequent developments related to this topic.

Although NADA is not aware of any evidence demonstrating that the ability of automobile dealers to negotiate contract rates with their customers results in disparate impact discrimination in today's marketplace, we recognize that our members strive to adopt policies and procedures that will reduce their litigation exposure while demonstrating their ongoing commitment to regulatory compliance and the fair treatment of their customers. Therefore, in order to promote these goals, we set forth below and in the Fair Credit Compliance Program template that follows an alternative means for dealers to arrive at the amount of compensation they earn for arranging financing. **Keep in mind that the finance compensation model that dealers adopt is an individual dealer decision that must be consistent with federal and state law as well as any contractual restrictions imposed on the dealer by its finance sources. It is essential that dealers consult their legal counsel when making decisions related to this topic.**

The most obvious way to reduce the possibility of a finding of disparate impact discrimination is for individual dealers to establish a means of compensation in which the determination of the amount of finance income they earn does not vary on a customer-by-customer basis. Examples of such an approach include charging each customer (i) a fixed number of basis points over the wholesale buy rate (i.e., the rate at which the finance source will purchase the credit contract from the dealer), (ii) a fixed percentage of the amount financed or (iii) a fixed dollar amount. Of course, a major drawback to customers of such a rigid pricing policy is that it deprives dealers of the ability to "meet or beat" the most competitive credit offer that the customer has received from another creditor, which in turn limits the customer's ability to reduce the amount that the customer pays for credit. It also may be unrealistic to assume that most dealers would be able to adopt such an inflexible compensation approach when they typically have contractual arrangements with multiple finance sources and each of those sources establishes its own compensation schedule and financing parameters.

One potential way to eliminate a customer-by-customer determination of the amount the dealer earns for arranging financing while preserving sufficient flexibility to accommodate scenarios that may benefit customers, such as the "meet or beat" dynamic, is to establish a pre-set amount of compensation but allow for downward adjustments to that amount in the event that one or more pre-determined conditions occur. Examples of such conditions could include (i) the customer's inability to satisfy a monthly payment constraint at the pre-determined amount, (ii) the customer's access to a more favorable offer of credit from another creditor, (iii) a promotional offer that the dealer extends to all customers on the same terms, (iv) the fact that a particular transaction is eligible for a subvened interest rate from a manufacturer, finance source, or other non-affiliated third party, (v) the fact that a transaction is eligible for an employee incentive program, and (vi) documented inventory reduction considerations that are related to specific vehicles.[9]

If a dealer chooses to adopt this or a similar approach to dealer finance compensation, it should adopt written procedures that (a) identify each pre-determined condition that permits a downward deviation from its pre-set amount of dealer participation, (b) require its finance personnel to execute a standardized form that identifies the pre-set dealer participation amount, the final dealer participation amount, and, where the two differ, which pre-determined condition or set of conditions is present in the transaction that authorizes the deviation, (c) conduct formal training of all relevant personnel on its finance compensation policy, and (d) retain the compensation forms and otherwise monitor and document its compliance efforts.[10] The training and monitoring functions are particularly important as fidelity to the program from the employees who must carry it out is essential to its success.

An attractive feature of this approach is that if the dealer develops appropriate, well-defined allowable adjustments and ensures that its personnel properly and consistently apply, document and retain them, then the dealer is in a much better position to explain any unexplained pricing disparities that might otherwise lead a court, governmental enforcement agency or indirect auto finance source that is monitoring the dealer's credit contracts to conclude that such disparities are attributable to a customer's background[11] and therefore in violation of ECOA.

Dealers are not required to adopt this approach to standardizing the amount of dealer participation they charge in credit transactions and should consult with their individual legal counsel about whether they should do so. For dealers who wish to adopt this or a similar approach, we have developed the Fair Credit Policy and Fair Credit Compliance Program templates that begin at page 9. General and specific instructions for completing these forms are provided below.

[9] Dealers who follow this approach may wish to identify and include additional or different pre-determined reasons for deviating from their pre-set dealer participation amount. This should be acceptable provided the additional or different reasons are limited to neutral, pro-competitive factors that are completely unrelated to the customer's status as a member of a protected class and are executed in good faith. However, it must be noted that the ECOA compliance approach set out in the text and the attached Program is modeled after the ECOA compliance framework that the Department of Justice ("DOJ") incorporated into consent orders with two automobile dealers in 2007 to resolve claims of unintentional disparate impact discrimination. One of the consent orders is available at www.justice.gov/crt/about/hce/documents/pacifico_order.pdf (see, in particular, paragraph 7 entitled "Guidelines for Setting Dealer Reserves" and Appendix B). While this framework was developed solely for that purpose (and therefore does not create a safe harbor for complying with ECOA), it nevertheless provides a useful template for dealers to consider in developing their own approach to ECOA compliance. With this in mind, dealers should be aware that the specific allowable deviations noted in the text and the attached Program are those that were included in the DOJ consent orders. Dealers and their attorneys who adopt this compliance approach should proceed cautiously in adopting specific allowable deviations that differ from or are in addition to those contained in the DOJ consent orders.

[10] These features were also part of the DOJ ECOA compliance framework that was included in the 2007 consent orders referenced above.

[11] As used in this document, the term "customer's background" refers to the customer's status as a member of a protected class.

Instructions for Completing Fair Credit Policy & Fair Credit Compliance Program Templates

General Instructions and Disclaimers

Use of Templates. It is essential that, prior to adopting this *Fair Credit Policy* and *Fair Credit Compliance Program*, dealers read the templates carefully, make adjustments that are appropriate to their individual circumstances, and ensure that the final policy and program they adopt are reviewed by qualified counsel. While italicized language that appears in brackets identifies areas of the document where an individualized dealer entry is appropriate, dealers should modify both italicized and non-italicized portions of the document that they and their counsel determine is necessary.

Program Scope. The *Fair Credit Compliance Program* is broader than a pure dealer participation pricing policy that is designed to help mitigate a finding of disparate impact discrimination under ECOA and Regulation B. This is because, as explained above, ECOA and Regulation B prohibit intentional discrimination and (in the view of federal regulators) disparate impact discrimination, and it is therefore essential that fair credit training programs address both prohibitions. However, the *Program* does not attempt to address every issue that potentially relates to fair credit compliance at a franchised automobile dealership (e.g., how the dealership handles oral requests for financing, desking procedures, conditional sales agreements and the sale of products to protect the customer's investment in the financed vehicle). These issues are very dealer specific and need to be addressed in a manner that is appropriate to the dealership's circumstances. For these reasons, the *Program* template should be viewed as part of a broader dealership effort to develop a comprehensive approach to fair credit compliance.

Program Approval. Neither ECOA nor Regulation B require creditors to adopt a written fair credit program or, if they adopt such a program, to have it approved by any particular body or individual officer within their business.[12] However, for the reasons stated above, it is prudent for creditors to do so.

The *Program* template assumes that a board of directors will adopt the dealership's *Fair Credit Compliance Program*, appoint a Program Coordinator to administer the *Program*, receive compliance reports from the Program Coordinator, and amend the *Program* as necessary to address fair credit risks that are present at the dealership. If the dealership's governing structure dictates that another dealership body or officer should exercise these functions, the template should be modified accordingly. Regardless of which dealership body or officer acts in this manner, it is important that its leadership affirmatively establish and express support for its fair credit commitment.

Program Limitations. The *Program's* approach to determining the compensation dealers receive for arranging financing for customers is not, and the *Program* template has not been, mandated by ECOA or Regulation B and neither have been formally adopted by any federal agency as a means of satisfying the requirements of federal law. Nor is there any guarantee that adopting the attached *Program* or any component of it will adequately protect a dealership from a governmental enforcement action or private lawsuit.[13]

Notwithstanding these limitations, NADA believes the *Program* template represents a solid attempt to promote compliance with ECOA and Regulation B while preserving enough flexibility to allow customers to continue leveraging the overwhelming benefits that are produced by today's intensely competitive vehicle financing market.

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[12] This is in contrast to other regulatory requirements such as the FTC Red Flags Rule, which requires financial institutions and creditors to adopt a written identity theft prevention program and to have it approved by their board of directors or an appropriate committee of the board of directors. See 16 C.F.R. § 681.1(e)(1).

[13] As with other areas of the law, it is essential that dealers and their attorneys stay abreast of legislative, regulatory and judicial developments as well as finance source issuances that could affect their compliance obligations.

Specific Instructions

Fair Credit Policy

This document, which is set forth at Appendix A of the *Program*, serves as a strong, unambiguous statement affirming the dealership's commitment to ensuring equal credit opportunity and complying with all applicable fair credit laws. Whether adopting this or a different statement, dealers should ensure that their fair credit commitment is stated clearly and unequivocally. In addition, dealers should strongly consider prominently posting their fair credit policy in locations where it can easily be viewed by both consumers and employees.

Fair Credit Compliance Program

Section I – Scope. Paragraph (a) identifies the dealership employees, agents, and/or independent contractors ("dealership employees") who are covered by the *Policy* and *Program* and the consequences for failing to comply with the *Program*.

Paragraph (b) states that the *Program* (i) carries out the *Policy*, (ii) applies to all activity related to the extension of credit at the dealership, and (iii) establishes how dealership compensation will be determined in indirect vehicle financing transactions (which it defines).

Paragraph (c) states that the *Program* does not confer any rights, benefits or remedies to any person, except that it may be used by the dealership to discipline dealership employees who do not comply with the terms of the *Program*. This is intended to forestall a third party from bringing a legal action against the dealership for a violation of the *Program*.[14]

Section II – ECOA and Regulation B Compliance. Paragraph (a) states the dealership's strict prohibition against unlawful credit discrimination and defines what constitutes credit discrimination under ECOA and Regulation B. If the law of the dealer's state or municipality (or other states or municipalities where the dealer conducts business) identifies "prohibited bases" beyond those contained in ECOA (for example, some jurisdictions identify sexual orientation as a prohibited basis), the additional prohibited bases should be listed in this paragraph (by entering them either in subparagraph 1 or in a new subparagraph 4) and the name of the state or local law containing the prohibition should be added to the section heading (after "Regulation B"). Paragraph (a) also states that this prohibition applies to disparate treatment as well as disparate impact discrimination.

Paragraph (b) states that the dealership complies with all applicable requirements contained in ECOA and Regulation B (not just the prohibition against unlawful discrimination) and cites, in particular, the dealership's adherence to the law's adverse action and other notification requirements (such as the need to issue a notice of incompleteness to credit applicants if the credit application is missing information required to make a credit decision) and the law's records retention requirements.[15] It then includes a placeholder for dealers to either (i) incorporate into this portion of the *Program* its written procedures for adhering to these requirements, or (ii) cross-reference the separate procedures the dealer has adopted for this purpose.

Section III – Appointment of Program Coordinator. This section creates the position of Fair Credit Compliance Program Coordinator to administer the *Program* and specifies that the Program Coordinator will report directly to the board of directors. The employee who will perform this function is identified at the end of the *Program* (just above the resolution and signatures of the board of directors adopting the *Program*) and his or her specific duties are delineated in section V of the *Program*.

It is important to note that, as with the adoption of a written fair credit program, nothing in ECOA or Regulation B mandates the appointment of a Program Coordinator.[16] However, the dealership's ability to implement and carry out an effective fair credit compliance program will clearly be strengthened if it designates a senior manager to oversee (and, in many cases, execute) the multiple, recurring functions

[14] However, this language would not prevent a third party from bringing a legal action against a dealership for a violation of applicable federal, state or local law to the extent permitted by such law.

[15] Additional information on these topics is contained in NADA University's publications entitled *A Dealer Guide to Adverse Action Notices* (2011) and *A Dealer Guide to the Federal Records Retention Requirements* (1998), which are available at www.nadauniversity.com.

[16] This is in contrast to other federal rules, such as the requirement in the FTC Safeguards Rule that financial institutions appoint an employee or employees to coordinate the comprehensive written information security program that the rule requires financial institutions to develop, implement and maintain. See 16 C.F.R. § 314.4(a).

established by the *Program*.[17] It is essential that the Program Coordinator (i) have the full support of the board of directors, (ii) have the substantive expertise, time and seniority to carry out the duties established in sections IV and V of the *Program* (including the ability to initiate the corrective action identified in the Dealer Participation Certification Form Review process set forth in section IV.d and Appendix D of the *Program*), and (iii) is not routinely involved in establishing the Final Dealer Participation Rate offered to the customers in individual transactions. This last requirement is important because the *Program* (a) requires in section IV.d that a review of the transaction be conducted by a person who did not participate in it to ensure it was carried in a manner that is consistent with the terms of the *Program*, and (b) designates the Program Coordinator to carry out this function. While the *Program* permits the Program Coordinator to designate another employee to perform the review function, the Program Coordinator generally should not participate in transactions as this could compromise the integrity of the designee's review.

Section IV – Guidelines for Establishing Dealer Participation. This section establishes the manner in which the dealership will determine the dealer participation amount to include in credit offers to customers.

Paragraph (a) states that the Program Coordinator will establish the pre-set standard dealer participation rate for the dealership and identify that rate (the "Standard Dealer Participation Rate") on the form at Appendix B. Unless an allowable downward deviation identified in Paragraph (b) applies, the Standard Dealer Participation Rate will be added to the buy rate of the indirect finance source to which the dealer will assign the RISC to arrive at an APR that the dealership will offer to the customer.

Paragraph (b) identifies seven good-faith, competitive reasons that are unrelated to the customer's background which, if present, allow the dealership to include in credit offers a dealer participation rate that is lower than the Standard Dealer Participation Rate. These are the same reasons listed in the 2007 DOJ Consent Orders mentioned in footnote 9 above. As stated in that footnote, dealers should be able to identify additional or different reasons for downward deviations in paragraph (b) provided they are limited to neutral, pro-competitive factors that are completely unrelated to the customer's background and are executed in good faith. However, as also explained, dealers should proceed cautiously in adopting downward deviations that differ from those listed in the DOJ consent orders.

For each allowable deviation that is contained in this paragraph, dealers should clearly state the prerequisites, including the necessary supporting documentation, that must be present in order to apply that deviation. In addition, dealers should, to the maximum extent possible, standardize the application of each deviation. For example, the third deviation allows the dealership to reduce the Standard Dealer Participation Rate when the customer states that he or she has access to a more competitive offer from another dealer or finance source. Dealers should determine whether, as a matter of policy, it will (i) reduce the Standard Dealer Participation Rate by the amount necessary to meet the competing offer, or (ii) reduce the Standard Dealer Participation Rate so as to beat a competing offer by a certain number of basis points. The bracketed italicized language that appears in the description of this allowable deviation should be modified to reflect this determination.

Similarly, the seventh deviation allows the dealership to reduce the Standard Dealer Participation Rate based on Inventory Reduction Considerations. It is essential that this subparagraph explain the process by which such considerations will be applied. In addition, because inventory reduction criteria may change more frequently than the frequency with which the dealership would be able to amend this portion of the *Program*, it may be prudent to permit the Program Coordinator to establish the current inventory reduction criteria on a separate document that can be provided to dealership employees who arrange the credit sale with the customer. The *Program* adopts this approach and creates Appendix C for this purpose.

[17] Because dealerships require the services of a Program Coordinator to oversee their compliance efforts in a variety of areas (whether as a matter of prudence or as necessary to comply with federal mandates such as the FTC Safeguards Rule requirement mentioned in the previous footnote), dealers should consider whether their management structure would allow them to achieve greater operational efficiency by consolidating the various program coordinator functions under a single senior dealership manager.

Paragraph (c) states that dealership employees who arrange the credit sale with the customer must complete, sign, and date a Dealer Participation Certification Form that documents the Standard Dealer Participation Rate, the final Dealer Participation Rate, and, where the two rates differ, the allowable deviation that applies to the transaction. Appendix D has been created to record this determination. Note that dealership employees who arrange credit sales with customers should be required to complete a Dealer Participation Certification Form for every credit sale transaction regardless of whether the Standard Dealer Participation Rate or a different dealer participation rate based on an allowable deviation was applied.

Paragraph (d) states that the Program Coordinator, or his or her designee, must (i) review each dealership credit sale within two business days of the credit sale to ensure that the Dealer Participation Certification Form was executed properly and in a manner that is consistent with the terms of the *Program*, and (ii) complete, sign and date the Reviewer Certification that appears on that form. Should the reviewer determine that the form was improperly executed or that the *Program* terms were not otherwise followed, he or she will initiate the corrective action set forth in this paragraph and record that action in the Reviewer Certification. This may require coordinating with the finance source that took assignment of the RISC. In order to preserve the integrity of the review, the *Program* does not permit the reviewer to have participated in the credit transaction under review.

Dealers should ensure this paragraph and the corresponding language in Appendix D are tailored to reflect the dealership's operational circumstances. For example, dealers should determine whether the reviewer requires two business days or a slightly longer period to complete the review and the date on which that period will begin (e.g., date of the credit sale, date of delivery, etc.) Similarly, dealers should identify the employees within the dealership with whom the Program Coordinator must coordinate to ensure corrective action is carried out with regard to both the affected customer and the responsible employee.

Section V – Training, Oversight, and Reporting. This portion of the *Program* is intended to ensure that the dealer's fair credit commitment is fully carried out.

Paragraphs (a) through (h) delineate and explain the Program Coordinator's duties. Dealers should carefully review this list to determine whether any of these duties, such as setting and prospectively changing the Standard Dealer Participation Rate, should be retained by the board of directors. If dealers decide that the board should retain any of these duties, this must be reflected in the other portions of the *Program* (including the appendices) that reference the retained duty.

With regard to paragraph (d), the Program Coordinator must clearly identify and communicate to dealership employees who arrange credit sales with customers both the Standard Dealer Participation Rate (as required in section IV.a of the *Program*) and the documentation required to substantiate each of the allowable deviations contained in section IV.b. This will facilitate the consistent application of the allowable deviations by dealership employees and will assist the Program Coordinator or his or her designee in completing the Reviewer Certification set forth in section IV.d and Appendix D of the *Program*.

With regard to paragraph (f), the Program Coordinator must randomly monitor dealership credit offers and conduct periodic audits of dealership credit sales to ensure the *Program* is being effectively implemented. As part of this auditing function, the Program Coordinator should monitor the frequency with which different dealership employees who arrange credit sales apply the dealership's allowable deviations to the Standard Dealer Participation Rate. If such monitoring reveals that particular dealership employees have applied one or more allowable deviations significantly more or less frequently than the other dealership employees who arrange credit sales, then the Program Coordinator should closely scrutinize the employee's application of such deviations to determine whether the employee is correctly applying the deviations and whether additional corrective action may be necessary.

The documents that should be retained (or cross-referenced) in the deal jacket or other location specified by the Program Coordinator include, at a minimum, those that set forth the buy rate and –

- for the first deviation, the rate cap imposed by the finance source (including a transaction specific rate cap that is lower than the finance source's standard rate cap based on its assessment of the customer's repayment ability);

- for the second deviation, the monthly budget constraint stated by the customer (the Dealer Participation Certification Form records this information and therefore serves as appropriate documentation for this deviation);
- for the third deviation, the name of the dealer or lender that provided the more competitive offer and the APR contained in that offer (the Dealer Participation Certification Form records this information and therefore serves as appropriate documentation for this deviation);
- for the fourth deviation, the dealership advertisement or other communication identifying the terms of the dealership's promotional financing campaign;
- for the fifth deviation, the manufacturer's, finance source's, or other third party's advertisement or other communication identifying the terms of the subvention program;
- for the sixth deviation, the terms of the dealership's employee incentive program; and
- for the seventh deviation, a description of how the vehicle to which the indirect financing transaction applies satisfies the inventory reduction criteria set forth on the form at Appendix C (the Dealer Participation Certification Form records this information and therefore serves as appropriate documentation for this deviation).

Section VI – Program Amendments. This section establishes that the Program may only be amended by the board of directors, except that the Program Coordinator may, after consulting with the dealership's legal counsel, add an allowable deviation from the Standard Dealer Participation Rate provided it consists of a good-faith, competitive reason and the board of directors approves the amendment at its first meeting following such amendment. If this occurs, the Program Coordinator needs to ensure that dealership employees are trained on the appropriate application and documentation of the added deviation and it needs to be appropriately reflected on the Dealer Participation Certification Form. Program Coordinators should be reminded of the need to exercise caution in adding to the list of allowable deviations.

Appendix A – Fair Credit Policy

See the description above under Fair Credit Policy.

Appendix B – Standard Dealer Participation Rate

See the description above under section IV.a.

Appendix C – Inventory Reduction Criteria

See the description above under section IV.b.

Appendix D – Dealer Participation Form

See the description above under sections IV.c and IV.d.

Attached Templates

Fair Credit Compliance Program

Appendix A	Dealership Fair Credit Policy
Appendix B	Dealership Pre-Set Dealer Participation Rate ("Standard Dealer Participation Rate")
Appendix C	Dealership Inventory Reduction Criteria
Appendix D	Dealer Participation Certification Form

Nothing in this guidance or the *Fair Credit Policy* or *Fair Credit Compliance Program* templates is intended as legal advice. It is essential that dealers consult with an attorney who is familiar with applicable federal, state, and local law and their operations to determine appropriate fair credit compliance procedures for their business to adopt.

This information is also not intended to urge or suggest that dealers adopt any specific practices or policies for their dealerships, nor is it intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the price of any good or service.

[*Name of Dealership*]

Fair Credit Compliance Program

[It is essential that dealers and their attorneys read the NADA Overview and Instructions that accompany this Program template before deciding whether and how to adopt it.]

I. Scope

a. Persons Covered

This Program (which includes all appendices to this Program) applies to all employees, agents, and/or independent contractors of [*Name of Dealership*] who are involved in any aspect of the Dealership operations described in section I.b of this Program ("Dealership employees"). Failure to comply with any requirement in this Program may result in disciplinary action, including termination of employment and/or the agency or independent contractor relationship.

b. Operations Covered

This Program carries out the [*Name of Dealership*] Fair Credit Policy at Appendix A of this Program, sets forth the fair credit requirements applicable to all Dealership activity related to the extension of credit, and prescribes in section IV the manner in which [*Name of Dealership*] determines the amount of its compensation when it engages in an indirect vehicle financing transaction. For purposes of this Program, an "indirect vehicle financing transaction" refers to a transaction in which –

1. [*Name of Dealership*] enters into a retail installment sale contract ("RISC") with a customer for the purchase of a vehicle from [*Name of Dealership*];
2. [*Name of Dealership*] subsequently assigns the RISC to a third-party finance source ("the Assignee"); and
3. [*Name of Dealership*] retains its right to receive a portion of the finance charge payable under the RISC, specifically the difference between the retail annual percentage rate ("APR") and the wholesale interest rate at which the Assignee will buy the RISC from the dealer ("buy rate") within the parameters established by the Assignee. This amount is referred to in this Program as "dealer participation."

c. No Third-Party Beneficiaries

Nothing in this Program, express or implied, is intended to or shall confer upon any person any right, benefit, or remedy of any nature whatsoever under or by reason of this Program or by reason of any federal, state or local law. Notwithstanding this provision, this is a program of [*Name of Dealership*], and any violation of the Program by a Dealership employee can be the basis for disciplinary action, including termination of employment and/or the agency or independent contractor relationship.

II. Complying with the Equal Credit Opportunity Act and Regulation B

a. Prohibition Against Unlawful Credit Discrimination

As part of its fair credit commitment, [*Name of Dealership*] strictly prohibits discriminating against any credit applicant with respect to any aspect of the credit transaction --

1. on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to contract);
2. because all or part of the applicant's income derives from a public assistance program; or
3. because the applicant has in good faith exercised any right under the federal Consumer Credit Protection Act.

[These are the "prohibited bases" set forth in the federal Equal Credit Opportunity Act. Add any additional prohibited bases that are identified by the law of your state and/or municipality and add the title of that law to the heading of this section.]

This prohibition against credit discrimination extends to both disparate treatment (i.e., treating a credit applicant differently than other credit applicants on one of the prohibited bases mentioned above) and disparate impact (i.e., applying a facially neutral policy in a manner that has an adverse impact on credit applicants who are members of a class protected against discrimination relative to similarly-situated credit applicants who are not members of that protected class).

b. Other Requirements

[*Name of Dealership*] also fully adheres to and will comply with other applicable requirements set forth in the Equal Credit Opportunity Act and Regulation B including, but not limited to, the adverse action and other notification requirements prescribed in 12 CFR § 202.9 and the records retention requirements prescribed in 12 CFR § 202.12.

[Set forth or cross-reference the Dealership's specific procedures for complying with these requirements.]

III. Appointment of Fair Credit Compliance Program Coordinator

Upon its adoption of this Program, the [*Name of Dealership*] Board of Directors will appoint (and, thereafter, replace as necessary or appropriate) a Fair Credit Compliance Program Coordinator who will administer the Program. The Program Coordinator will report directly to the Board of Directors.

IV. Guidelines for Establishing Dealer Participation

The dealer participation rate that [*Name of Dealership*] will include in a credit offer to a customer in an indirect vehicle financing transaction will be determined in accordance with the guidelines set forth in this section.

a. Pre-Set Standard Dealer Participation Rate

The Program Coordinator will establish a pre-set rate of dealer participation that will be included in all credit offers that the Dealership extends to customers (the "Standard Dealer Participation Rate") except as provided in section IV.b of this Program. The Program Coordinator will set forth the Standard Dealer Participation Rate in writing on the form at Appendix B of this Program and provide it to all Dealership employees. The Program Coordinator may change the Standard Dealer Participation Rate prospectively on a periodic basis through a written declaration to all Dealership employees.

b. Pre-Determined Allowable Deviations

Dealership employees may include a lower dealer participation rate in a credit offer to a customer only for the good faith, competitive reasons listed below. (Immediately below each reason is how that reason appears on the Dealer Participation Certification Form at Appendix D of this Program, which is described in paragraph (c) of this section.) When this occurs, Dealership employees must include sufficient documentation in the deal jacket or other location specified by the Program Coordinator to support the Dealership employee's application of that reason and to verify that the final dealer participation rate was determined in a manner that comports with the terms of this Program.

1. Lower Cap Imposed by Assignee

❑ Dealer participation limited by finance source

If the Assignee has imposed a cap on the dealer participation that may be earned in the transaction that is lower than the Standard Dealer Participation Rate, the credit offer may include a dealer participation rate that is reduced to the rate cap level.

2. Monthly Payment Constraint

❑ Customer stated monthly payment constraint of $_____ per month

If the customer states a monthly payment constraint in a fixed dollar amount that would preclude the customer from accepting a credit offer made under this Program, the Standard Dealer Participation Rate may be reduced to the level that will allow the customer to satisfy the monthly payment constraint.

3. More Competitive Offer

❑ Customer stated competing offer by ________________ (name) of _____%

If the customer (i) states that he or she has access to a credit offer from another dealer or a lender that is lower than the credit offer from the Dealership made under this Program and (ii) identifies the terms and source of the competing credit offer, the Dealership's credit offer may include a dealer participation rate that is reduced so as to [*select one of the following— [meet the competing credit offer][beat the competing credit offer by a pre-determined number of basis points established by the Program Coordinator for all such scenarios*]].

4. Dealership Promotional Financing Campaign

❑ Customer qualified for Dealership Promotional Financing Campaign

If the Dealership extends a promotional credit offer to all customers on the same terms or to all purchasers of certain vehicles on the same terms, the credit offer may include a dealer participation rate that is reduced to the level necessary to extend the promotional credit offer.

5. Manufacturer Subvention Program

❑ Customer qualified for subvened interest rate of ____% from ________________ (name)

If the customer qualifies for a manufacturer, finance source, or other third-party interest rate subvention program, the credit offer may be made pursuant to the terms of that program without regard to the Standard Dealer Participation Rate.

6. Dealership Employee Incentive Program [*Include only if applicable.*]

❑ Customer qualified for Dealership Employee Incentive Program

If the customer qualifies for [*Name of Dealership*]'s Employee Incentive Program, the credit offer may include a dealer participation rate that is reduced pursuant to the terms of that program.

7. Dealership Inventory Reduction Considerations

❑ Customer purchased a vehicle that satisfies the Dealership's pre-determined inventory reduction criteria (describe how vehicle satisfies the criteria)

If the Dealership extends a credit offer pertaining to a vehicle that satisfies inventory reduction criteria that have been pre-determined by the Program Coordinator, the credit offer may include a dealer participation rate that is reduced in order to secure the sale of the vehicle. In establishing the inventory reduction criteria, the Program Coordinator will (i) consult with the manager(s) responsible for vehicle sales and the Dealership's floor plan line of credit, and (ii) identify in writing on the form at Appendix C of this Program and provide to Dealership employees the written inventory reduction criteria that a vehicle must satisfy in order to qualify for the reduction in the Standard Dealer Participation Rate. The written inventory reduction criteria should include relevant thresholds that the vehicle must satisfy such as the number of such vehicles in stock, the number of days the vehicle has been in inventory and/or the declining value of the vehicle. The Program Coordinator may revise the inventory reduction criteria on a prospective basis as warranted by the circumstances provided these requirements are satisfied.

c. Dealer Participation Certification Form

A Dealership employee who arranges a credit sale with a customer must fully complete, sign and date the Dealer Participation Certification Form set forth at Appendix D of this Program for each such credit sale and place the form in the deal jacket. The Dealer Participation Certification Form will be retained for the same period of time that the Dealership retains other documents related to credit transactions as set forth in section II.b of this Program.

d. Dealer Participation Certification Form Review

The Program Coordinator, or his or her Designee, will review each Dealership credit sale within two (2) business days of the sale to ensure that the Dealership employee who arranged the transaction executed a Dealer Participation Certification Form and completed and retained it in a manner that is consistent with the terms of the Program. The person conducting this review may not have participated in the credit transaction under review. If the reviewer determines that the Form was executed in a manner that is inconsistent with the terms of the Program, the reviewer will note the defect on the Form and initiate appropriate corrective action. Such action will include (i) ensuring that the customer receives a reduced interest rate or a refund if the transaction should have resulted in a lower interest rate for the customer, (ii) ensuring that appropriate corrective action is taken with regard to the Dealership employee who improperly executed the Form, and (iii) if the reviewer is not the Program Coordinator, promptly notifying the Program Coordinator of the defect. The Program Coordinator will coordinate with the [*enter position title of appropriate employee(s)*] to ensure such corrective action was carried out. Upon completion of the review, the reviewer will complete, sign, and date the Form's Reviewer Certification.

V. Training, Oversight and Reporting

The Program Coordinator will complete the tasks listed below.

a. Ensure all current Dealership employees receive training on the [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program within 60 days of the Board of Director's adoption of the Program.

b. Ensure all new Dealership employees receive training on the [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program prior to engaging in any credit operation described in Section I.b of the Program.

c. Ensure all current Dealership employees receive recurring training on the [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program on a periodic basis, at least once per year, and more frequently if the Program is amended in a substantive manner or if the Program Coordinator determines that additional training is necessary.

d. Establish the Standard Dealer Participation Rate as set forth in section IV.a of this Program and provide to Dealership employees this and any other information that is necessary to carry out the terms of the Program, including the documentation that must be present to support a Dealership employee's application of an allowable deviation to the Standard Dealer Participation Rate.

e. Complete or ensure the completion of the Dealer Participation Certification Form Review as described in section IV.d of this Program.

f. Randomly monitor Dealership credit offers and conduct periodic audits of Dealership credit sales to ensure the [*Name of Dealership*] Fair Credit Compliance Program is being effectively implemented.

g. Submit a report to the Board of Directors, at least once per year, that sets forth (i) the Dealership's level of compliance with the Fair Credit Compliance Program, and (ii) any recommended changes to the Program that may assist in carrying out its purpose.

h. Retain records documenting the completion of the training, oversight and reporting tasks outlined in this section.

VI. Program Amendments

a. Except as provided for in section VI.b of this Program, amendments to the Program may only be made by the [*Name of Dealership*] Board of Directors.

b. After consulting with the Dealership's legal counsel, the Program Coordinator may amend section IV.b of this Program in a manner that adds a good-faith, competitive reason for an allowable deviation from the Standard Dealer Participation Rate that is consistent with [*Name of Dealership*]'s Fair Credit Policy and is capable of being uniformly applied by Dealership employees. Any such amendment must be ratified by the Board of Directors at its first meeting following such amendment.

Appointment and Policy & Program Approval

The following employee has been appointed as the [*Name of Dealership*] Fair Credit Compliance Program Coordinator pursuant to section III of this Program:

____

[*Insert appropriate language indicating the Dealership's approval of this Policy and Program, such as:*]

By signing below, the undersigned, constituting all of the members of the [*Name of Dealership*] Board of Directors, acknowledge the Board's approval of the foregoing [*Name of Dealership*] Fair Credit Policy and Fair Credit Compliance Program and its appointment of the [*Name of Dealership*] Fair Credit Compliance Program Coordinator this ____ day of ____________, 201_.

[*Name of Dealership*]
Fair Credit Policy

[*Name of Dealership*] is fully committed to complying with the letter and spirit of federal, state, and local laws and regulations that are designed to protect its customers. This includes ensuring that all qualifying credit applicants have equal access to credit and are treated in a manner that is fair, professional and consistent with the terms of the [*Name of Dealership*] Fair Credit Compliance Program. Engaging in any form of unlawful credit discrimination is destructive, morally repugnant and will not be tolerated by [*Name of Dealership*].

[*Name of Dealership*]
Standard Dealer Participation Rate

The [*Name of Dealership*] Pre-Set Dealer Participation Rate ("Standard Dealer Participation Rate") is _____%.

This rate applies to all indirect vehicle financing transactions beginning on ________ (enter date) and is in effect until further written notice from the [*Name of Dealership*] Fair Credit Compliance Program Coordinator.

[*Name of Dealership*] Fair Credit Compliance Program Coordinator:

____

Signature

____

Printed Name

[Name of Dealership]
Inventory Reduction Criteria

In order for a Dealership employee to reduce the *[Name of Dealership]* Pre-Set Dealer Participation Rate ("Standard Dealer Participation Rate") based on Inventory Reduction Considerations as set forth in section IV.b.7 of the *[Name of Dealership]* Fair Credit Compliance Program, the vehicle must meet or exceed the following threshold(s):

____

____

____

____

These inventory reduction criteria apply to all vehicle indirect financing transactions beginning on __________ (enter date) and is in effect until further written notice from the *[Name of Dealership]* Fair Credit Compliance Program Coordinator.

[*Name of Dealership*] Fair Credit Compliance Program Coordinator:

____
Signature

____
Printed Name

Appendix D

Dealer Participation Certification Form

Buyer(s) Name(s) ____________________ Date ____________________

Assignee ____________________ VIN ____________________

Standard Dealer Participation Rate ____% Final Dealer Participation Rate ____%

If the Final Dealer Participation Rate does not equal the Standard Dealer Participation Rate, check the allowable deviation box below and fill in the corresponding blanks.

- ❑ Dealer participation limited by finance source
- ❑ Customer stated monthly payment constraint of $______ per month
- ❑ Customer stated competing offer by ________________ (name) of _____%
- ❑ Customer qualified for Dealership Promotional Financing Campaign
- ❑ Customer qualified for subvened interest rate of ____% from _______________ (name)
- ❑ Customer qualified for Dealership Employee Incentive Program
- ❑ Customer purchased a vehicle that satisfies the Dealership's predetermined inventory reduction criteria (describe how vehicle satisfies the criteria)

  ____

  ____

I certify that the information above is true and correct to the best of my knowledge and that any deviation from the Standard Dealer Participation Rate was made in good faith and in a manner that is consistent with the requirements of the [*Name of Dealership*] Fair Credit Compliance Program.

____
Signature

____
Date

____
Printed Name

____
Title

Reviewer Certification

I have reviewed the above information and supporting documentation and:

- ❑ certify that the Final Dealer Participation Rate complies with the [*Name of Dealership*] Fair Credit Compliance Program, or
- ❑ certify that I have initiated the corrective action noted below.
  - Reduced the customer's interest rate to ____% or provided a refund to the customer in the amount of $_____.
  - Taken the following employee corrective action (describe):

    ____

    ____
  - Other (describe):

    ____

    ____

____
Signature

____
Date

____
Printed Name

____
Title

Statement of the National Automobile Dealers Association
A Hearing Entitled
"The Semi-Annual Report of the Bureau of Consumer Financial Protection (CFPB)"
Before the House Financial Services Committee
March 16, 2016

The National Automobile Dealers Association (NADA), a national trade association representing more than 16,000 franchised new car and truck dealers that collectively employ more than 1 million individuals,[1] is pleased to submit comments for the record regarding the Consumer Financial Protection Bureau (CFPB). As the CFPB continues its efforts to change the $1 trillion auto financing market, it is vital that the House Financial Services Committee provide oversight on this important issue.

In March 2013, the CFPB issued informal indirect auto finance guidance which threatens to eliminate a dealer's flexibility to discount the annual percentage rate (APR) offered to consumers to finance vehicle purchases.[2] In the three years since, the Bureau has resisted efforts to provide a more transparent process.

With the CFPB's actions likely to raise the cost, or reduce the availability, of credit for car buyers, NADA appreciates the Committee's review of the CFPB actions on auto financing to ensure the Bureau is acting in the best interests of consumers and basing its policies on sound analysis.

The auto finance guidance is a classic case of the government not working properly. The CFPB released its guidance without prior notice or an opportunity for public comment. What makes this specific guidance problematic is that the CFPB chose to avoid the rulemaking process and use "guidance" as a way to make a major change in policy, i.e., eliminating a dealer's ability to offer its customers discounts on credit.

1. **The Bureau is not acting in the best interests of auto consumers**. The CFPB proceeded without considering the impact of its directives on auto consumers. And the CFPB continues to press its fair credit initiative in a way that eliminates consumer discounts. Of course, consumers are better served when they are able to leverage the competitiveness of the marketplace to negotiate lower interest rates on auto financing.

2. **The Bureau is not basing its policy on sound analysis**. The CFPB is attempting to eliminate or constrain dealers' ability to discount credit utilizing (1) a proxy analysis for determining the

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[1] NADA members are primarily engaged in the retail sale and lease of new and used motor vehicles, and also engage in automotive service, repairs, and parts sales. Last year America's franchised new car and truck dealers sold or leased approximately 17.5 million new cars and light duty trucks. NADA members operate in every congressional district in the country, and the majority of our members are small businesses as defined by the Small Business Administration.
[2] CFPB Bulletin 2013–02, issued March 21, 2013: http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf

ethnicity of borrowers that the CFPB knows to be flawed[3] and (2) a fair credit enforcement theory that fails both (i) to compare only "similarly situated" customers and (ii) to account for legitimate competitive business factors that explain any pricing differentials that may exist.

NADA has endorsed a fair credit compliance program based on a Department of Justice (DOJ) model as an alternative to the CFPB's guidance, and we continue to urge the Bureau to embrace this common sense approach to addressing the fair credit concerns the Bureau has raised. In 2014, NADA released its *Fair Credit Compliance Policy & Program*, based on prior work by the DOJ, which addresses fair credit risk in the showroom while also preserving a dealer's ability to discount credit. The program was developed jointly by NADA, the National Association of Minority Automobile Dealers, and the American International Automobile Dealer Association, and has been endorsed by numerous fair credit experts across the country. The CFPB has declined to take up this effective, DOJ-inspired approach to fair credit without providing a reasonable rationale.

Congress should pass S. 2663, the "Reforming CFPB Indirect Auto Financing Guidance Act", introduced by Sen. Moran (R-KS). The bill would rescind the CFPB's flawed auto finance guidance, and make the Bureau more transparent and accountable when issuing future auto finance guidance. The bill provides for a public comment period, coordination with other regulatory agencies, and a study of the impact of the guidance on small businesses and, most importantly, consumers. In particular, before issuing new auto finance guidance, S. 2663 would require the CFPB to:

- provide notice and a period for public comment;
- make public any studies, data, and analyses upon which the guidance is based;
- consult with the Federal Reserve Board, Federal Trade Commission and Department of Justice; and
- study the cost and impact of the guidance on consumers as well as women-owned, veteran-owned, minority–owned, and small businesses, including in rural areas.[4]

S. 2663 is a moderate bill that does not dictate a result or tie the CFPB's hands. The bill merely allows for transparency and public notice so the public has an opportunity to analyze and comment on the CFPB's attempt to change the auto financing market via "guidance."[5] It protects fair credit laws and their enforcement in order to safeguard equal opportunity in auto financing. For all of these reasons, the companion bill, H.R. 1737, introduced by Reps. Guinta (R-NH) and Perlmutter (D-CO) overwhelmingly passed the House on November 18 by a vote of 332-96 with strong support from Members across the political spectrum, including 88 Democrats.

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[3] The CFPB's own analysis of its methodology revealed errors as high as 20 percent in estimating individuals' ethnicity. And, an independent research study found that the CFPB's proxy methodology can overestimate certain populations by 41 percent. Charles River Associates, *Fair Lending: Implications for the Indirect Auto Finance Market* (Nov. 2014).

[4] The CFPB took none of these essential steps before issuing its far-reaching guidance.

[5] Significantly, the process for issuing guidance in S. 2663/H.R. 1737 is consistent and in accordance with OMB's practices on agency guidance documents. The Bulletin on "Agency Good Guidance Practices" sets forth general policies and procedures to ensure that guidance documents of Executive Branch departments and agencies are developed with appropriate review and public participation, accessible and transparent to the public, and of high quality.

Members should be concerned that, rather than embracing a fair credit approach emanating from the DOJ and endorsed by dealers, the CFPB continues to seek to be prescriptive in setting the *manner* and dictating the *amount* of dealer compensation for arranging financing, despite a clear prohibition in Dodd-Frank against regulating dealers.[6]

The current system of dealer assisted financing is fair, competitive, and boosts access to affordable credit for consumers. Any disruption in this highly efficient model can only be justified if supported by reliable and sound analysis. These significant flaws in the CFPB's policy could have been avoided if the Bureau had employed a process that was market-driven and transparent. S. 2663/H.R. 1737 would provide that needed transparency.

[6] Chris Kukla, of the Center for Responsive Lending and a "persistent critic of auto dealers and lenders," has a "theory that federal regulators... are still angry that when the CFPB was set up...franchised new-car dealerships won a 'carve out,' exempting them from the CFPB's jurisdiction." Mr. Kukla stated that he believes CFPB's actions are "...driven in part by the auto dealer exclusion." See Jim Henry, *"Did dealers hurt themselves with the carve out?"* Automotive News, Aug. 20, 2014.

Congress of the United States
Washington, DC 20515

June 17, 2015

The Honorable Richard Cordray
Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

We write to express our concerns with the *Arbitration Study*[1] that was recently released by the Consumer Financial Protection Bureau.

Under the Dodd-Frank Act, Congress delegated to the Bureau the authority to issue a rule regulating the use of arbitration agreements in consumer financial agreements, but required the Bureau to conduct an arbitration study as a prerequisite to regulation such that the "findings in [any] such rule shall be consistent with the study."[2] Thus, the decision as to whether the Bureau should prohibit consumer arbitration agreements is based on the findings and veracity of the study.

Unfortunately, the process that led to the Bureau's *Arbitration Study* has not been fair, transparent, or comprehensive. The Bureau ignored requests from senior Members of Congress for basic information about the study preparation process. The Bureau also ignored requests to disclose the topics that would be covered by the study, and failed to provide the general public with any meaningful opportunities to provide input on the topics. Because the materials were kept behind closed doors, the final *Arbitration Study* included entire sections that were not included in the preliminary report that was provided to the public.[3]

As a result, the flawed process produced a fatally-flawed study. Rather than focusing on the critical question – whether regulating or prohibiting arbitration will benefit consumers – and devising a plan to address the issues relevant to resolving that question, the Bureau failed to provide even the most basic of comparisons needed to evaluate the use of arbitration agreements.

For example, the Bureau failed to estimate the transaction costs associated with a consumer pursuing a claim in federal court as compared to arbitration. The Bureau also failed to estimate the ability of a consumer to successfully pursue a claim in federal court without a lawyer, despite the fact that consumers often are self-represented successfully in arbitration proceedings. The

[1] Consumer Financial Protection Bureau, *Arbitration Study Report to Congress, Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (2015) [hereinafter *Arbitration Study*], *available at* http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.
[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5518(b) (2015).
[3] *See Arbitration Study* at 9.

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absence of comparison to even these basic data points throws suspicion on where other useful information has been sidestepped, if not willfully ignored.

For ninety years, since the enactment of the Federal Arbitration Act in 1925, there has been – as the Supreme Court explained in a recent unanimous opinion – "an 'emphatic federal policy in favor of arbitral dispute resolution.'"[4] When the consumers' path to justice is impeded by a court system that is slow and costly, it is clearer than ever that Americans need alternative dispute resolution procedures that are fair, more accessible, less costly, and more efficient.

We therefore call upon the Bureau to reopen the study process, seek public comment, and provide the necessary cost-benefit analysis for understanding how a similarly situated consumer would fare in arbitration versus a lawsuit. Any rulemaking proceeding in the absence of such minimally fair procedures would be premature, biased, and fail to comply with Congress's intent in conferring this authority on the Bureau.

Sincerely,

PATRICK MCHENRY Member of Congress	TIM SCOTT United States Senator
Member of Congress	United States Senator
Member of Congress	United States Senator
Member of Congress	United States Senator
Member of Congress	United States Senator
Member of Congress	United States Senator

[4] *KPMG LLP v. Cocchi,* 132 S.Ct. 23, 25, (2011) (per curiam) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 631 (1985)).

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Andy Barr
Member of Congress

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Member of Congress

Member of Congress

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Blake Farenthold
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United States Senator

Kelly A. Ayotte
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[illegible]
Member of Congress

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Blaine Luetkemeyer
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Marsha Blackburn
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Pete Olson
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Paul A. Gosar
Member of Congress

Luke Messer
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Robert B. Aderholt
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Paul Baker
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Daniel Webster
Member of Congress

Bob Goodlatte
Member of Congress

Lamar Smith
Member of Congress

Randy Hultgren
Member of Congress

Non-Negotiable:

Negotiation Doesn't Help African Americans and Latinos on Dealer-Financed Car Loans

Delvin Davis

January 2014

CENTER FOR RESPONSIBLE LENDING

www.responsiblelending.org

TABLE OF CONTENTS

INTRODUCTION

Previous research shows that, on average, people of color pay more for their car loans than whites when financing a loan through a car dealer. African Americans receive higher interest rates on car loans obtained from car dealers than similarly-situated white borrowers, even after controlling for several credit measures, while those who receive loans directly from banks or credit unions do not.[1] In addition, African Americans pay higher purchase prices for their cars, even after actively negotiating with the seller.[2]

Theoretically, we would expect better rate pricing outcomes for consumers who both try to negotiate their interest rates and comparison shop for a loan in advance of their car purchase. Differences in levels of negotiating and comparison shopping could explain the disparities we see in rate pricing for dealer-financed loans. However, if consumers of color negotiate and shop around just as much as their white counterparts and still experience pricing disparities, it raises the possibility that other factors at the dealership prevent the car financing process from working the same for all consumers.

This report seeks to add to previous research on car loan pricing by examining differences in the car financing experience for borrowers receiving loans through car dealers. Specifically, we investigate whether racial disparities occur, considering the consumers' attempt to negotiate their interest rates and comparison-shop at other institutions. We also examine other aspects of car buying by race and ethnicity, including the purchase of ancillary "add-on" products[3] and the accuracy of information provided by the dealer to the customer during the buying experience.

With racial disparities in dealer interest rate pricing found in several reports, our research shows the possibility of outside factors preventing a level playing field for all consumers. This new research supports the likelihood that dealer practices, such as interest rate markups, have a discriminatory impact on borrowers of color. In brief, these are our main findings:

1. African-American and Latino consumers attempt to negotiate pricing on car dealer loans just as much as white consumers, if not more, and their levels of comparison shopping are similar to those of white buyers. Previous analyses have found racial and ethnic disparities in car loans obtained through car dealers even after controlling for credit risk factors. Here we find, in spite of attempting to negotiate pricing more than their white counterparts, people of color received higher interest rates on loans financed through dealers. Thirty-nine percent of Latinos and 32% of African Americans report negotiating their interest rate, compared to only 22% of white car buyers—yet people of color received worse pricing. In fact, we found that people of color received higher interest rates compared to white buyers who did not attempt to negotiate at all. People of color did report slightly lower levels of comparison-shopping than white car buyers, but the very small differences would not account for the disparities in interest rates received.

2. More borrowers of color reported receiving misleading information about their loans from car dealers. Misrepresentations serve to negate the impact of negotiations or comparison shopping. People of color are more likely to have the dealer indicate they are getting the "best rate available," and be told that add-ons are mandatory purchases. In addition, people of color are more likely to be unaware of dealer interest rate markups. These three factors are also associated with higher delinquency rates, and therefore a greater chance of losing the car through repossession.

More borrowers of color reported receiving misleading information about their loans from car dealers.

3. African Americans and Latinos are nearly twice as likely to be sold multiple add-on products as white consumers. Add-on products such as various kinds of warranty and insurance coverage are sold at the dealership's financing office, often with significant price markups. Dealers sell African Americans and Latinos multiple add-ons approximately 30% and 27% of the time, respectively, compared with 16% of the time for whites. Multiple add-ons are also associated with greater chances of delinquency and therefore create a greater risk of repossession.

BACKGROUND

Auto Dealer Interest Rate Markups

When dealers sell a car and finance the transaction, they are able to earn revenue in several ways: through the car's sales price, the sale of add-on products and by adding a markup to the loan's interest rate for compensation.[4] Most consumers are unaware that the dealer has discretion to increase the consumer's interest rate beyond what outside financial institutions require to purchase the loan at face value.[5] Dealers will then keep some or the entire rate markup as compensation. We have estimated that in 2009 dealer interest rate markups—also known as "dealer reserve" or "dealer participation"—cost car buyers $25.8 billion in additional interest over the life of their loans.[6] Rather than providing loans with interest rates based on purely objective risk measures, dealer interest rate markups increase interest rates based on the dealer's own discretion and ability to convince borrowers to pay a higher rate.

On car loans financed through the dealer, the loan's interest rate has two components. The first is the "buy rate" that the financial institution buying the finance contract offers the dealer. This rate is calculated based on the borrower's credit and financial information that the dealer collects and provides to the financial institution. The second component of the interest rate is the dealer markup, which is added to the buy rate, with the extra funds going to the dealer. The dealer markup is based solely on the additional interest the dealer is able to convince the consumer to accept.

Dealer Rate Markup:
Financial institutions allow the dealer to increase the buy rate before presenting the contract to the consumer. The markup serves as compensation for the dealer.

+

Buy Rate:
After evaluating a consumer's credit and financial profile, an outside financial institution will quote this interest rate to the dealership in order to purchase the loan contract.

Contract Rate:
After adding the rate markup, the dealer then presents the final interest rate on the car loan contract. Consumers are largely unaware their contract rate includes any dealer markup.

In the mortgage field, we do see some precedent in regulating discretionary pricing. Mortgage yield spread premiums, a practice between mortgage lenders and brokers that functioned very similarly to dealer interest rate markups on car loans, produced both racial and ethnic disparities in how much consumers were charged in broker compensation. Mortgage brokers received an upfront payment in exchange for selling the borrower a loan with less advantageous terms, like a higher interest rate than that for which the borrower qualified or a prepayment penalty. At a statistically significant level, African-American borrowers paid between $482 and $733 more in broker compensation through yield spread premiums than white borrowers, while Latinos paid between $351 and $398 more than whites.[7] These disparities appeared even after controlling for risk factors such as credit score and loan-to-value ratio, as well as loan characteristics, neighborhood demographics and geography.

Due to the lack of transparency and additional costs created by yield spread premiums, the Federal Reserve Board and Congress acted to prohibit mortgage lenders from paying broker compensation based on discretionary interest rate pricing.[8] Similarly, the Consumer Financial Protection Bureau (CFPB) issued a rule under the Dodd-Frank Act prohibiting mortgage loan originators from being compensated based on the terms of the loan.[9]

Prior Disparate Impact Research on Car Loan Interest Rate Pricing

Similar to the disparities found in mortgage yield spread premiums, previous research has also found racial and ethnic disparities when borrowers finance their car loans at the dealership rather than directly from a bank or credit union.

Using data provided through class action litigation, Mark Cohen of Vanderbilt University (2006) found that borrowers of color are more likely to receive an interest rate markup when financing a car through the dealer, and that the rate is typically increased at larger amounts, than for similarly-situated white borrowers.[10] His loan-level analysis of five major auto finance companies indicated that 54.6% of African Americans received an interest rate markup, compared to 30.6% of whites. Moreover, African Americans on average paid over twice the amount of rate markup ($742) compared with the average markup paid by whites ($315). Latinos also paid higher rate markups than whites, although not as high as those paid by African Americans.[11]

Lenders involved in the class action lawsuits settled out of court, and instituted temporary interest rate markup caps of between two and three percentage points, the first of which started in 2003. Even with the last of the markup caps expiring in early 2010, auto industry representatives claim that the caps have been generally accepted as a best practice with most lenders, which should limit discriminatory conduct. However, even since the rate markup caps were put into practice, recent investigations from the Consumer Financial Protection Bureau (CFPB) and the U.S. Department of Justice (DOJ) have found racial disparities in car loan interest rate pricing among dealer-originated loans. This implies that rate markup caps by themselves are insufficient in erasing disparate impact, and that further regulatory measures may be necessary.

Recently, the CFPB announced findings from their review of data acquired from several large financial institutions that purchase car loans from dealers. These reviews are in light of CFPB guidance issued March 2013 to financial institutions that purchase car loans financed at dealerships, indicating that they can be held accountable for purchased loans violating the Equal Credit Opportunity Act (ECOA).[12] In some instances, CFPB found rate disparities where African Americans, Latinos and Asian Americans paid rates of 10 to 30 basis points (0.10% to 0.30% percentage points) higher than whites with similar credit backgrounds.[13] On a typical new car loan of $26,500 with a 4.5% interest rate and loan term of 60 months, a 30 basis point increase would result in an additional $216 for a minority consumer. Cumulatively over the course of many purchases within a minority group, this amount can have a negative impact on minority communities as a whole.

According to Patrice Ficklin, CFPB Fair Lending Director, "What we've already seen amounts to tens of millions of dollars in overpayments each year in total. Across the entire indirect auto market, the total could be much greater than that."[14]

"What we've already seen amounts to tens of millions of dollars in overpayments each year in total. Across the entire indirect auto market, the total could be much greater than that."

Patrice Ficklin
CFPB Fair Lending Director

Even with caps on rate markups, the CFPB and DOJ still found statistical evidence of disparate impact, already prompting a settlement to recompense minority consumers that were harmed. In December 2013, the CFPB and DOJ ordered Ally Bank to pay $98 million in damages and penalties for discriminatory rate pricing against over 235,000 African-American, Latino, Asian and Pacific Islander consumers.[15] According to the consent order, loans purchased by Ally Bank showed disparities of 29, 20, and 22 basis points for African-American, Latino, and Asian/Pacific Islander consumers over similarly-situated white borrowers, respectively. The investigation also determined that Ally Bank had insufficient measures to monitor discriminatory practices. Additionally in September 2013, the DOJ settled a lawsuit against a Los Angeles dealership after finding that loans they generated disproportionately gave non-Asians, many of whom were Latino, higher rate markups than similarly-situated Asians.[16]

Other research also found disparate impact in car loan interest rates. Using data from the Survey of Consumer Finances, researchers Charles, Hurst, and Stephens (2008) find that for car loans with higher interest rates (at the 75th percentile), African Americans paid 168 basis points more than whites with similar credit profiles financing through a finance company. In contrast, the rates African Americans paid on car loans originated directly by a bank or credit union did not have a statistically significant difference from whites.[17]

Likewise, Edelberg (2007) found that interest rate data prior to 1995 showed racially disparate impact for several types of loan products, including car loans, even after controlling for the financial costs of issuing debt. For car loans specifically, minorities paid rates 80 basis points higher than whites on a statistically significant level.[18]

Impact of Negotiation and Comparison Shopping on Interest Rate Pricing

Some reasonable explanations for a consumer receiving a higher interest rate on a loan include having poor credit, failing to negotiate for a good interest rate if the originator has discretion on what rate they can charge, or failing to compare competing loan offers. However, if data reveals that these factors are all reported at comparable levels among racial and ethnic groups and disparities persist, other factors—including the borrower's race or ethnicity—are at play. To determine whether these borrower characteristics and activities are significant factors in interest rate pricing, we conducted a comparative analysis that looks at race/ethnicity, interest rate negotiation, and comparison shopping. Including rate negotiation and comparison shopping in the discussion of how interest rates are priced allows us to gauge the influence consumers have over the price of their interest rates, and whether consumers can prevent racial disparities on their own. It also provides a new angle of research on discretionary interest rate pricing that adds to a growing foundation of analysis already on the issue.

Negotiation and comparison shopping could be important factors in obtaining a good interest rate from a dealer. Negotiation should in theory reduce a discretionary price, and receiving multiple finance quotes before buying a car can empower consumers to negotiate knowing the best interest rate for which they qualify.

However, staff in a dealer's finance and insurance (F&I) office, where financing is finalized and add-on products are sold, may provide misleading information that discourages negotiation and comparison shopping. Dealer compensation, with its ability to mark up interest rates, creates an incentive for a dealer's staff to discourage the consumer's ability to negotiate well. For example, a dealer representative could tell consumers that he or she has found the "best rate available" when that is not the case. In this case, if consumers trust their dealer representative, they may forego any rate negotiation or not be able to negotiate effectively.

Likewise, a dealer representative may falsely assert that certain add-on products are mandatory in order for the loan to be approved. This puts pressure on the consumer to accept add-on purchases without argument. These problems are compounded for consumers with credit scores that are considered subprime, since there are far fewer options for those consumers outside of dealer financing. Thus, subprime consumers often accept whatever deal is offered because they are not confident that other choices exist for them.

Research by Ian Ayres of Yale Law School (1995), which evaluated mystery shoppers' attempts to negotiate a car's sales price at the dealership, showed statistically significant racial disparities for the prices dealers offered. After negotiating the sales price, African-American male shoppers had final sale offers $1,132 higher than similarly-situated white males for their car purchases. Likewise, African-American women had offers $446 higher than white males at a statistically significant level.[19]

Unlike a car's sales price, where information is freely accessible online, information on the interest rate for which a consumer should qualify is much less transparent.

Since this study was completed, the growth of information on the internet has added more transparency on car prices, allowing people of color more opportunity to comparison-shop for better prices. In fact, analysis by Morton, Zettelmeyer, and Silva-Risso (2002) found a statistically significant sales price disparity where African Americans and Latinos paid more than whites after controlling for income, wealth, education, occupation and search costs.[20] However, when using an internet search tool to shop for a car, these racial disparities do not appear.

Both the studies by Ayres and Morton et al determine disparities by the impact on sales price instead of interest rate. This is an important distinction considering the differences in how the sales price and interest rate are established. Unlike a car's sales price, where information is freely accessible online, information on the interest rate for which a consumer should qualify is much less transparent. Thus, we build on this prior research to examine the impact of negotiation and comparison shopping on interest rates when originated by car dealers.

METHODOLOGY AND FINDINGS

Data and Research Questions

To collect information on factors influencing car finance costs, we conducted a telephone survey of 946 consumers who had purchased a car at a dealership in the prior six years.[21] The survey captured several characteristics about the loan (interest rate, select add-on purchases,[22] loan amount, whether the car purchased was new or used, and whether any payments on the loan had been made late) and the consumer (race and ethnicity, credit grade, income, and whether they financed through their dealer). Additionally, the survey captured information about the buying experience that might influence rates, such as whether the borrower negotiated on the interest rate, the number of places shopped for a car loan, and what the dealer told the consumer during the buying process.

Using this survey data, we explored the following:

1. Are consumers of color as likely as white borrowers to attempt to negotiate and comparison-shop for a dealer-financed car loan?

2. Do consumers of color have different buying experiences at the dealership, particularly awareness of dealer interest rate markups and information they are told by their dealer? Additionally, is there any correlation between these instances and loan performance?

3. Are consumers of color more or less likely to finance add-on purchases into their loan, and do add-on purchases also have an impact on loan performance?

Using self-reported survey data has limitations compared to loan-level data derived from the records of individual transactions, in that survey data relies on the ability of the consumer to recall their loan and buying experience accurately. However, there is certain information that is obtained much more easily using surveys. For example, the best way to determine whether the consumer attempted to negotiate the interest rate or compare credit offers is to ask the consumer directly. Likewise, no industry data exists on consumer awareness of interest rate markups or dealer conduct in the loan process.

Descriptive Analysis and Findings

From a purely descriptive standpoint, African Americans and Latinos self-reported receiving interest rates higher than their white counterparts, and financing larger loans that represent a higher percentage of their household income. They also reported having poorer credit than whites. These findings are consistent with previously documented racial and ethnic disparities in credit scoring,[23] employment, and wealth.[24] Consumers of color were also more likely to purchase used vehicles, which usually carry higher interest rates.[25] We also found that people of color were somewhat more likely to use dealer financing for their loan, rather than obtaining financing from a bank or credit union.

Figure 1: Descriptive Statistics of Key Variables by Race and Ethnicity for Dealer and Retail Loans[26]

	White Non-Latino	African America Non-Latino	Latino	Overall
Loan Characteristics				
Overall Average APR	4.49%	6.23%	6.89%	5.04%
Average APR: New Vehicles	3.68%	4.95%	5.36%	4.03%
Average APR: Used Vehicles	5.71%	7.51%	8.71%	6.44%
Overall Average Loan Amount[27]	$19,306	$19,966	$19,646	$19,493
Average Loan Amount: New Vehicles	$22,990	$25,274	$24,600	$23,495
Average Loan Amount: Used Vehicles	$14,182	$15,351	$15,022	$14,568
% Purchasing a Used Vehicle	42.4%	53.8%	49.4%	45.0%
Consumer Demographics				
Average Annual Household Income	$79,865	$76,525	$61,927	$77,340
% Credit Grade "Below or Well Below Average"	6.4%	14.3%	14.0%	10.0%
% Financing Loan Through Their Dealer	54.9%	60.1%	57.8%	56.2%

These descriptive results do not necessarily demonstrate discrimination, because they do not hold all factors that may influence interest rate pricing as constant. Because the creditworthiness variable in the survey corresponds to the time of the survey, which may have been six years after the car purchase, we do not run regressions to determine the statistical significance of the different factors, including race and ethnicity. However, given the findings from aforementioned investigations, research and litigation, we can have confidence that correlations between rate pricing and race/ethnicity can still exist in today's market.

FINDING 1: African-American and Latino consumers attempt to negotiate pricing on car dealer loans just as much as white consumers, if not more, and their levels of comparison shopping are similar to those of white buyers. The implication that comparable credit, attempting to negotiate, and shopping around would not mitigate disparate impact suggests that outside factors at the dealership work against people of color receiving a comparably priced loan rate as white consumers.

With research finding racial and ethnic pricing disparities even after controlling for credit risk factors, the fact that people of color negotiate and comparison-shop at comparable levels is concerning. Encouraging racial and ethnic minorities to negotiate and shop more is unlikely to yield better results. Further, expecting people of color to negotiate and shop significantly harder to get the same loans as similarly situated whites can create an unfair environment where a different level of effort is required from certain groups, solely because of race or ethnicity.

In our data, a higher overall share of African Americans and Latinos reported having negotiated the interest rate than did their white counterparts. The amount of car loan comparison shopping—the number of financial institutions and car dealers offering car loans the consumer visited prior to the purchase—was at similar rates (slightly lower for buyers of color, though the differences were not very large). These figures are consistent for consumers who ultimately financed their auto loans at a dealership or directly with a financial institution.

Figure 2: Negotiation and Comparison Shopping by Race and Ethnicity

	White Non-Latino	African America Non-Latino	Latino	Overall
% Who Tried to Negotiate Interest Rate with Dealer	21.9%	32.1%	39.4%	26.4%
Average Number of Places Shopped for a Loan: Overall	2.67	2.37	2.47	2.62
Average Number of Places Shopped for a Loan: Financed at Dealership	2.58	2.30	2.56	2.56
Average Number of Places Shopped for a Loan: Financed Outside Dealership	2.77	2.47	2.35	2.71

Considering that African-American and Latino consumers in our data also saw higher interest rates (see Figure 1), the fact that they would be more likely to negotiate their rate could be troublesome. One valid explanation for the disparity would be that African Americans and Latinos were also more likely to report having "below" or "well below" average credit. However, previous studies found disparate impact even after controlling for credit risk profiles.

Another explanation could be that the amount of effort, skill, or information available used to negotiate and comparison shop may differ by race and ethnicity. However, when comparing people of color in our data that tried to negotiate and comparison-shop to whites that did not attempt either, we see that African Americans and Latinos still paid higher interest rates on average. This discounts the notion that the effort put forth by different groups is a factor when certain groups achieve better results than others with no effort at all.

Figure 3: Interest Rate Comparisons by Race and Ethnicity

Rate Negotiation Attempts	Average APR
White Non-Latinos that did not attempt to negotiate interest rate	4.33%
African American Non-Latinos attempting to negotiate interest rate	4.95%
Latinos attempting to negotiate interest rate	6.25%
Level of Comparison Shopping	
White Non-Latinos that did not comparison shop	4.56%
African American Non-Latinos that comparison-shopped at least three places	5.46%
Latinos that comparison-shopped at least three places	7.92%

In combination with other studies that held credit and other factors constant and still found disparities, these findings imply that negotiation and comparison shopping do not work in all circumstances or for all consumers. If consumers cannot reasonably avoid disparate impact on their own, then reforms may be necessary to create a level playing field.

FINDING 2: More borrowers of color reported receiving misleading information about their loans from car dealers. Misrepresentations serve to negate the impact of negotiations or comparison shopping. People of color are more likely to have the dealer indicate they are getting the "best rate available," and be told that add-ons are mandatory purchases. People of color are also more likely to be unaware of dealer rate markups. These three factors are also associated with higher delinquency rates, and therefore a greater chance of losing the car through repossession.

Car dealer representatives have asserted that dealer interest rate markups cannot be unfair to consumers, since consumers have the ability to control rate pricing by using negotiation and market competition to their benefit:

> "Price negotiability provides consumers with the ability to drive down the cost of credit for vehicle purchases. The way in which they do this is quite simple and occurs in the marketplace every day. There is an array of creditors that compete intensely to provide financing to consumers. This competition exists across the credit spectrum and includes the subprime market."[28]

The concept of using negotiation to force market competition to work in one's favor implies that the market is operating fairly without any distortions working against the consumer. The fact that both African Americans and Latinos were just as likely to attempt to negotiate their interest rates in our data, while other research is finding disparate impact in rate pricing, indicates that such a distortion may exist in this market. It also implies that more consumer education to promote active negotiation on interest rates would not solve the rate disparity problem systematically.

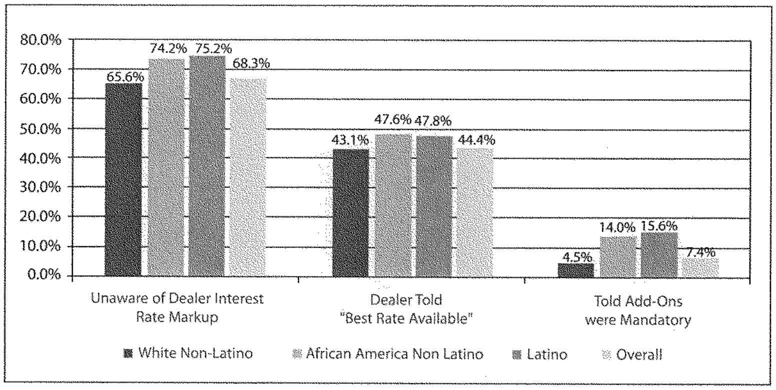
Various forms of dealer conduct have a minimizing effect of any benefits from negotiation. People of color were more likely to have their dealer indicate they were getting the "best rate available." Additionally, people of color were more likely to be told that optional add-on purchases were mandatory. This type of misleading information could act as a strong counter-weight to the benefits of negotiating, adding to the cost of the car.

Our survey indicates that the practice of dealer interest rate markups goes largely undetected by the consumer.

People of color were also more likely to be unaware of dealer interest rate markups. As shown in Figure 4 below, our survey indicates that the practice of dealer interest rate markups goes largely undetected by the consumer. Over two-thirds of respondents (68.3%) were not aware that this practice exists, making it highly improbable that they would use knowledge of the rate markup in negotiations. The likelihood of being unaware of interest rate markups is greater for African Americans (74.2%) and Latinos (75.2%) than for whites (65.6%). Disclosure of dealer interest rate markups is often not made until after the financing, including the interest rate, has been negotiated. This lack of transparency in the rate pricing process hinders negotiation. However, even if there were better disclosures, dealer misrepresentations about what rates the consumer can qualify for can still minimize the consumers' ability to effectively negotiate.

Likewise, being told that certain add-ons are mandatory purchases is a manipulative practice designed to produce more revenue for the dealership. As we will discuss further in Finding 3, financing several add-ons greatly adds to the loan's overall cost. Being pressed to buy optional add-on products can increase a consumer's debt burden, which can have a significant and negative impact on people of color who may already be financially vulnerable.

Figure 4: Likelihood of Consumer Experiences at the Dealership by Race and Ethnicity

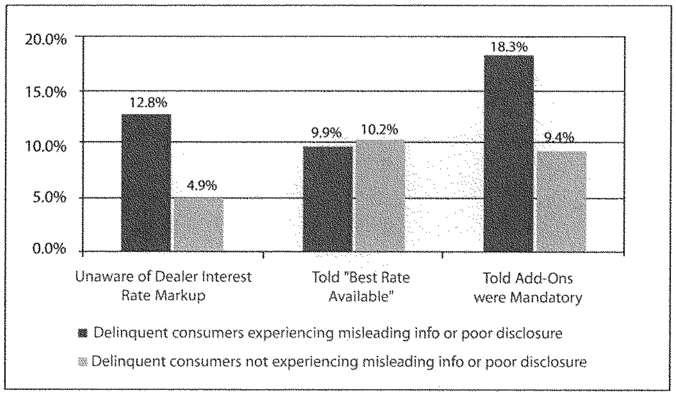


Each of these three situations could potentially impact a consumer's ability to negotiate and shop, and therefore affect the characteristics of their car loan. Consumers in our data reporting that they were unaware of dealer interest rate markups paid higher average interest rates of 1.64 percentage points. Those told that they had the best rate available had lower average rates than those that were not told they had the best rate by 0.61 percentage points. This may be influenced by the dealer's ability to offer promotional rates to well-qualified consumers. However, for those reporting they had below or well below average credit—people least likely to qualify for promotional rates—African Americans and Latinos told they had the best rate available had an average interest rate of 0.78 percentage points higher than those not told they had the best rate.[29] Also, consumers told that add-ons were mandatory purchases averaged more add-on purchases (1.38 purchases) compared to those that were not told that information (0.79 purchases). Altogether, the higher interest rates and additional add-on purchases create a more expensive loan.

Impacts of Dealer Practices on Delinquency Rates

At a statistically significant level, 12.8% of people unaware of interest rate markups in our survey were delinquent at some point with their car loan compared with 4.9% of those aware of the practice.[30] Likewise, 18.3% of people told that add-on purchases were mandatory were also behind on their car loan payment—nearly double the rate of people not having received this information. This is an important correlation, considering that both dealer interest rate markups and purchasing multiple add-ons can make for a more expensive, and possibly less sustainable, car loan.

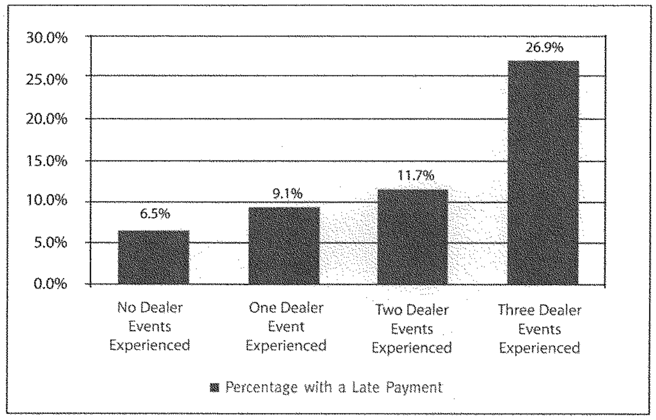
Figure 5: Likelihood of Late Payments Based on Dealership Events



The relationship we find between dealer conduct—i.e., raising interest rates arbitrarily and/or providing erroneous or misleading information—and car loan payment delinquency is consistent with prior CRL research, which has found a similar correlation between dealer interest rate markups and higher odds of delinquency and repossession for subprime borrowers.[31] Thus, market distortions at the dealership not only have the potential of creating pricing disparities between different groups of consumers, they can also create differences in loan performance.

Not being aware of rate markups and being told misleading information from the dealer can compound one another to have a greater impact on the loan's affordability. As the loan becomes more expensive with higher interest rates than borrowers qualified for and the extra cost of add-ons, we would also expect to see a higher rate of loan delinquency resulting from dealer conduct. In our data, over one in four consumers (26.9%) experiencing all three events at the dealership also had a late payment, compared with just 6.5% for those that did not experience any of these events. This is a statistically significant difference.[32]

Figure 6: Likelihood of Late Payments if Experiencing Multiple Dealer Events[33]



Since repossession due to default only occurs on delinquent loans, losing a car through repossession is more likely when a borrower experiences all three dealer events.

FINDING 3: African Americans and Latinos were nearly twice as likely to be sold multiple add-on products as white consumers. Add-on products such as various kinds of warranty and insurance coverage are sold at the dealership's financing office, often with significant price markups. Dealers sell African Americans and Latinos multiple add-ons approximately 30% and 27% of the time, respectively, compared with 16% of the time for whites. Multiple add-ons are also associated with greater chances of delinquency, and therefore create a greater risk of repossession.

Add-on products such as vehicle service contracts, "GAP" insurance, credit life insurance, and theft deterrent packages, are sold at the dealership's finance and insurance office with significant price markups. One dealer representative has stated that add-on price markups of 100% are "fairly common in the industry".[34] Another industry source reported that for vehicle service contracts—probably the most popular add-on product dealers sell—overall prices can range from $1,604 on a new compact car, to $2,458 on a used luxury SUV.[35]

Prior research has brought into question the actual usefulness and value of products like service contracts. According to complaint data from the Better Business Bureau (BBB) in St. Louis, consumers in their database spent $7.8 million on service contracts, and still had to spend an additional $2.7 million for car repairs.[36] The Missouri attorney general's office has reported that some plans are of "minimal value because the service contract actually contains numerous exclusions, limitations and conditions, and providers deny claims for the cost of repairs without reasonable investigation."[37]

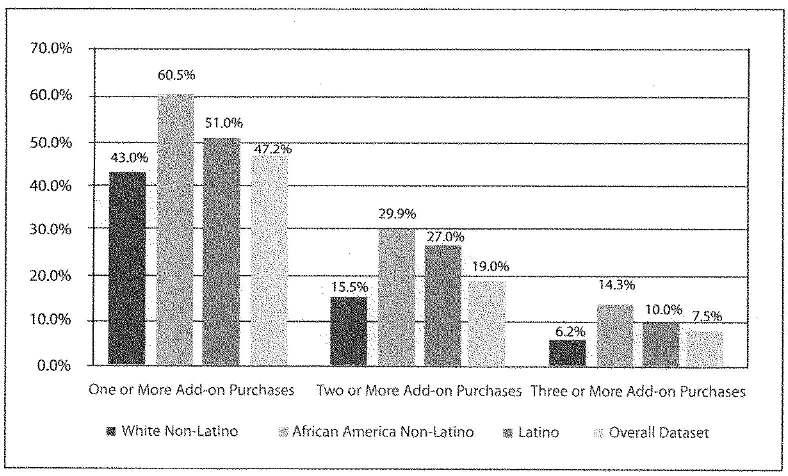
GAP and credit life insurance products both often duplicate benefits consumers would already have through their car insurance carrier. GAP insurance policies that cover negative equity become less useful with older used car purchases, financing with shorter loan terms, or deals with significant down payments, since these factors tend to minimize negative equity in the loan.[38] Credit life insurance loses value if its term expires before the loan is paid in full[39]—an occurrence that gains likelihood as loans financed 72 months and longer become more common.[40] Products like these can usually be purchased more cheaply from providers outside of the dealership.[41]

Dealers often obscure the true cost and value of add-on products during the sales process. The dealer typically presents the products in terms of the impact on monthly payment, not in terms of the overall cost of the product. Dealers often use sales presentations that bundle the costs of several products together. However, the presentation might not disclose the cost of each product individually, reveal the cost of the deal without the add-ons included, or easily allow for comparison shopping with other add-on providers outside the dealership. These problems are compounded if the dealer indicates that a certain add-on product is required to secure loan financing, which pressures consumers to buy an add-on they do not need or want. In the aforementioned BBB complaint data, 92% of survey respondents reported they felt the add-on sales tactics used by dealers were misleading or improper.[42]

Dealers often obscure the true cost and value of add-on products during the sales process.

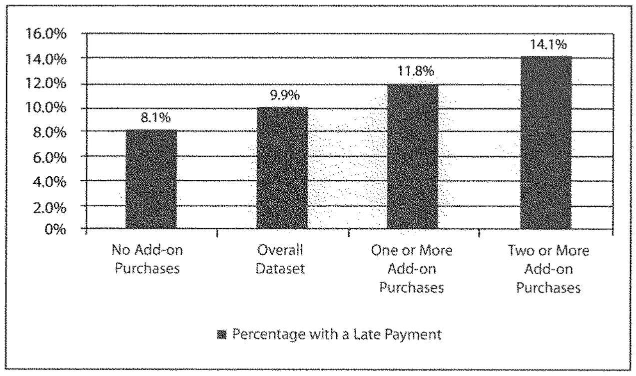
According to our survey data, the likelihood of an African-American (30%) or Latino (27%) customer being sold multiple (two or more) add-ons is nearly twice that of white consumers (16%). These differences are statistically significant.[43]

Figure 7: Likelihood of Add-on Purchases by Race and Ethnicity



Purchasing add-ons can increase the overall cost of a car loan, making it harder to pay on a monthly basis. In fact, our survey data also show a significantly greater likelihood of late payments for consumers purchasing multiple add-on products.[44] This makes the racial disparity in the likelihood of purchasing add-ons even more problematic.

Figure 8: Likelihood of Late Payment with Add-on Purchases



CONCLUSION

On car loans obtained from dealers, interest rates are determined by two primary factors: credit risk and dealer markups. However, previous research has found that racial and ethnic disparities exist with car loan interest rate pricing, even after controlling for credit risk. That leaves dealer markup as the most likely explanation for disparities.

In addition, we would expect interest rates to vary depending on buyers' attempts to negotiate their interest rate and prior comparison shopping. However, as shown here, for African-American and Latino buyers, negotiation and shopping don't necessarily produce better rates on car loans. They also report receiving misleading information more frequently than white buyers.

Taken together, dealer markups and misleading information appear to work hand-in-hand to create an unfair market for consumers of color, severely hobbling their ability to mitigate discriminatory pricing and avoid paying excessive interest on their car loans. Current business practices by car dealers need key reforms to ensure a standard of fairness for all races and ethnicities.

To address differential pricing by race for loans financed at the car dealership, CRL recommends rules prohibiting dealer compensation that varies based on the interest rate or other material terms of the loan, other than the loan's principal balance. Car dealers should be paid a flat fee by lenders for sourcing loans, not receive more for being able to convince unwary borrowers to pay a higher rate than they qualify for. Discretionary pricing allowed by outside financial institutions gives the dealer an incentive to steer the consumer into more expensive rates, rather than seeking lower rates that are in the consumer's best interest. Removing the incentive to link dealer compensation to interest rates would help protect all borrowers, particularly consumers of color that this and prior research have found are most vulnerable to the highest and most frequent markups.

Likewise, to address the findings that borrowers of color pay for more add-on products, we recommend rules that require dealers to disclose the actual costs of every add-on product sold during the financing process and to reveal the cost of the car with and without add-on products. Regulation should also prohibit dealers from representing that the buyer is required to purchase ancillary products in order to obtain financing. Sales tactics that mislead consumers about the true cost of the loan, especially regarding add-on purchases, impair the consumer's ability to make an optimal financial decision. We also call on regulators to collect data on the prevalence of add-on products in car loan transactions and to monitor whether certain groups of borrowers are disproportionately affected by these practices.

In the case of car finance, certain business practices—whether it is interest rate markups or misleading information—can create more expensive loans for one of the most valuable assets a household can own, increasing the monthly financial burden of repaying the loan and the chances of losing that car by repossession. Practices that needlessly take income from a household's budget and jeopardize car ownership are more than an inconvenience; they may result in significant harm to their economic security and advancement as well.

APPENDIX A: DESCRIPTIVE STATISTICS OF THE CAR CONSUMER SURVEY DATASET

CRL sponsored this survey of recent car loan consumers. The survey was administered through Social Science Research Solutions (SSRS) in October 2012 as part of its National Omnibus Survey. Administered through both mobile and landline phones, in English and Spanish, we gathered 946 responses from consumers that had purchased a car at a dealership within the prior six years. When fielding the survey, we requested that SSRS oversample for African Americans and Latinos to ensure we would have a representative sample of both groups, even in the event that African Americans and Latinos were underrepresented in having received a recent car loan.

Note that for the purposes of this research, 86 respondents who indicated that they had purchased their car from a buy-here, pay-here dealer were not included in the analysis since the loan pricing and business model is vastly different from the traditional dealerships we intended to analyze. The buy-here, pay-here model typically includes loans with APRs over 20%, weekly loan payments, and older used cars that are marketed to customers with seriously impaired credit.

	N	Minimum	Maximum	Mean	Median	Standard Deviation
Annual Household Income	798	$12,500	$275,000	$77,340	$62,500	$56,029
Loan Amount	733	$1,000	$200,000	$19,493	$18,000	$11,821
Loan APR	598	0%	25%	5.04%	4.00%	4.21%
Non-Promotional Loan APR (1% or greater)	532	1%	25%	5.66%	4.50%	4.05%
Non-Promotional Loan APR (2% or greater)	495	2%	25%	5.97%	5.00%	4.02%
Loan Term (in months)	784	30	78	51.8	54.0	12.2
Down Payment	742	$0	$35,000	$3,017	$1,200	$4,735
Trade-In Allowance	730	$0	$42,000	$2,679	$0	$5,027
Number of Places Shopped for a Loan	801	1	9	2.6	2.0	2.06
Number of Add-ons Purchased	860	0	6	0.78	0	1.08

	N	Percentage of Survey Respondents
% African American Non-Latino	147	17.1%
% Latino	100	11.6%
% White Non-Latino	582	67.7%
% Using "Indirect" Dealer Financing	461	53.6%
% Credit Grade "Below and Well Below Average"	76	8.8%
% Credit Grade "Well Above Average"	264	30.7%
% Unemployed at Time of Survey	27	3.1%
% Trying to Negotiate their Rate	215	25.0%
Total Sample Size	860	

APPENDIX B: CAR LOAN CONSUMER SURVEY INSTRUMENT

AU-1a Within the past six years have you bought a car from a dealer that you financed with a loan from either the dealer or a financial institution such as a bank, credit union, or finance company?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(IF YES, CONTINUE. ALL OTHERS SKIP TO NEXT INSERT)

AU-1b For these next questions, please think only about your most recent car purchase from a dealer that you financed through either the dealer or a financial institution. To clarify, we are asking about cars that were purchased and not leased.

Did you get your loan... (READ LIST. ACCEPT ONLY ONE.)

1 Through the dealer

2 From a financial institution or

3 Were you preapproved for a loan from a financial institution, but went through the dealer anyway

4 (DO NOT READ) Only leased a car/did not purchase

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(IF AU-1b=1, 2, 3 CONTINUE OTHERWISE SKIP TO NEXT INSERT.)

AU-2 Was this most recent car purchase through a dealer that you financed a new or used vehicle?

1 New

2 Used

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-3 What was the interest rate on this car loan?

(INTERVIEWER MAKE SURE TO ENTER AS A TWO PLACE DECIMAL – EG. 4.25% IS ENTERED AS A 4.25; 3% IS ENTERED AS 3.00)

__________ENTER PERCENTAGE (RANGE 0.00 TO 25.00)

DD (DO NOT READ) Don't know

RR (DO NOT READ) Refused

AU-4 How much was this car loan after subtracting the down payment, trade-in allowance, rebates, etc.? (IF DON'T KNOW, SAY: "Your best guess is fine.")

__________ENTER DOLLAR AMOUNT (RANGE 1,000 TO 200,000)

DD (DO NOT READ) Don't know

RR (DO NOT READ) Refused

AU-5 How much was the monthly payment on this car loan?
(IF DON'T KNOW, SAY: "Your best guess is fine.")

__________ENTER DOLLAR AMOUNT (RANGE 50 TO 9,999)

DD (DO NOT READ) Don't know

RR (DO NOT READ) Refused

AU-6 For how many months was this car loan financed?
(READ LIST IF NEEDED.)

1 Less than 36 months (3 years)

2 36-48 months (3 to 4 years)

3 49-60 months (4 to 5 years)

4 61-72 months (5 to 6 years)

5 Over 72 months (over 6 years)

DD (DO NOT READ) Don't know

RR (DO NOT READ) Refused

AU-7 How much did your dealer offer in trade-in value?
(IF DON'T KNOW, SAY: "Your best guess is fine.")

__________ENTER DOLLAR AMOUNT

NN Did not have a trade in

DD (DO NOT READ) Don't know

RR (DO NOT READ) Refused

AU-8 How much of a down payment did you have?
(IF DON'T KNOW, SAY: "Your best guess is fine.")

______________ENTER DOLLAR AMOUNT

NN Did not have a down payment

DD (DO NOT READ) Don't know

RR (DO NOT READ) Refused

AU-9 Dealers will often sell additional products separate from the sale of the vehicle, and roll the cost in to the loan financing. Products may include extended warranties, vehicle service contracts, GAP insurance, theft deterrent systems, and custom upgrades and accessories.

Which of these additional products, if any, did you finance with this most recent deal? (INSERT ITEM)

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(SCRAMBLE ROTATE)

a. Vehicle service contracts or extended warranties that cover maintenance and mechanical breakdowns not covered by the manufacturers' warranty.

b. Guaranteed Automobile Protection or "GAP" insurance which pays the remaining loan balance your insurance carrier does not cover in the event the car is totaled.

c. Theft deterrent packages that pay the customer a lump sum payment if the car is stolen.

d. Credit life and disability insurance which makes car payments in the event of your death or inability to work.

e. Tire and wheel protection plans that replace tires and rims in case of damage.

f. Custom upgrades and accessories such as new stereo systems, navigation systems, and custom paint jobs.

AU-10 There are some dealers called "buy-here, pay-here" dealerships that do their entire loan financing and processing in-house. Customers of these dealers usually pay their monthly payments directly to the dealer that financed them, as opposed to an outside lender the dealer arranged for them.

Was this most recent purchase from a buy-here, pay-here dealership?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-11 Did you try to negotiate on any of the following aspects of this car loan? (INSERT ITEM)

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(SCRAMBLE ROTATE)

a. Interest rate/APR

b. Monthly payment

c. Sticker price/MSRP

d. Trade-in value

e. Down payment amount

f. Loan term

g. Cost to purchase additional products such as extended warranties, service plans, and custom accessories

AU-12 Did your dealer tell you this deal had the best interest rate available?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-13 Were you told that the purchase of additional products such as extended warranties, service contracts, or insurance protections were required for the deal to be approved?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-14 Including both dealers and lenders, how many places did you visit while shopping around for this car loan?

________ENTER NUMBER OF PLACES (RANGE 1-9)

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-15 Were you aware that you could negotiate the following aspects of your car loan? (INSERT ITEM)

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(SCRAMBLE ROTATE)

a. Interest rate/APR

b. Monthly payment

c. Sticker price/MSRP

d. Trade-in value

e. Down payment amount

f. Loan term

g. Cost to purchase additional products such as extended warranties, service plans, and custom accessories

AU-16 On car loans financed at the dealership, dealers receive an interest rate quote from an outside lender. After receiving a rate from the lender, the dealer will often add an additional markup to the interest rate before presenting the loan offer to the customer. The interest rate markup is used as commission to the dealer for arranging the loan.

Were you aware your dealer could raise your interest rate, and keep the difference as commission for arranging your loan?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(IF AU-16=1)

.AU-17 How were you made aware of the dealer's ability to raise your interest rate? (READ LIST; ENTER ALL THAT APPLY)

(SCRAMBLE ROTATE)

1 I noticed a written disclosure

2 The dealer explained this to me verbally

3 I already knew this before negotiating my loan

0 (DO NOT READ) Some other way

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(IF AU-16=2, D, R)

AU-18 If you had known the dealer could raise your interest rate, what would have been your most likely response? (READ LIST. ACCEPT ONE.)

(SCRAMBLE ROTATE)

1 Try to negotiate the interest rate down

2 Try to find financing outside of the dealership instead

3 Walk away from the deal altogether

4 Still accept the interest rate the dealer offered

0 (DO NOT READ) Other

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(ASK AU-19 IF AU-1b= 1 OR 3- FINANCED THROUGH DEALER)

AU-19 Sometimes a dealer will allow a customer to drive home with a car before the loan is actually finalized. If the dealer is not satisfied with the available financing options, the dealer might ask the customer to return the car and renegotiate a new deal.

During the process of shopping around for this most recent car purchase, did any dealer give you the keys to a car before all financing was actually finalized?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(IF AU-19=1)

AU-20 Did the dealer ask you to return the vehicle and ask you sign a different financing agreement?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(IF AU-20=1)

AU-21 Upon returning the vehicle, did the dealer tell you that they could not return your:

(INSERT ITEM)?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

a. Trade-in vehicle
b. Down payment

(IF AU-20=1)

AU-22 What was the outcome after returning the vehicle to negotiate a new deal?
(READ LIST; ENTER ONE ONLY)

1 Negotiated on the new deal, and got a better deal than the original

2 Negotiated on the new deal, but got a worse deal than the original

3 Did not try to negotiate on the new deal, and got a better deal than the original

4 Did not try to negotiate on the new deal, and got a worse deal than the original

5 Ended up not purchasing a car from them at all

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-23 How much would you support a new rule that

(INSERT ITEM)? Would you…?

(READ LIST)

5 Strongly supportive

4 Somewhat supportive

3 Neutral

2 Somewhat oppose

1 Strongly oppose

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

(SCATTER ROTATE)

a. prohibits a dealer's ability to compensate themselves by increasing a car loan's interest rate?

b. would prohibit the dealer from asking the consumer to renegotiate a deal after the consumer has taken the car home?

c. would require Buy-Here Pay-Here dealers to post the sticker price and resale value visibly on each car?

AU-24 Still thinking about your most recent car purchase from a dealer that you financed through either the dealer or a financial institution How satisfied were you with this car loan? Were you...? (READ LIST)

5 Very satisfied

4 Somewhat satisfied

3 Neither satisfied nor dissatisfied

2 Somewhat dissatisfied

1 Very dissatisfied

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-25 How confident did you feel when negotiating this car purchase? (READ LIST)

5 Very confident

4 Somewhat confident

3 Neither confident nor unconfident

2 Somewhat unconfident

1 Very unconfident

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-26 On this car purchase, how much did you trust your dealer to get you the best deal possible? (READ LIST)

5 Strongly trusted

4 Somewhat trusted

3 Neither trusted nor distrusted

2 Somewhat distrusted

1 Strongly distrusted

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-27 How would you grade your current credit score? Is it…? (READ LIST)

5 Well above average

4 Above average

3 Average

2 Below average

1 Well below average

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-28 Have you ever been late on a payment for this most recent car loan?

1 Yes

2 No

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

AU-29 At any point in owning that vehicle did you consider refinancing the loan with another lender?

(PROBE YES FOR CORRECT RESPONSE)

1 Yes, You have already refinanced the loan

2 Yes, You have considered refinancing, and will pursue it in the future

3 Yes, You have considered refinancing, but will not pursue it

4 No, You have not considered refinancing

D (DO NOT READ) Don't know

R (DO NOT READ) Refused

ENDNOTES

1 Charles, Kerwin Kofi, Erik Hurst and Melvin Stephens Jr., *Rates for Vehicle Loans: Race and Loan Source,* American Economic Review, Vol. 8, Issue 2, 2008.

2 Ayres, Ian, *Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause,* 94 Michigan Law Review, 109 (1995).

3 Add-on products include extended warranties and various insurance and "protection" plans that are purchased through the dealership and rolled into the loan financing. Buying any combination of these products can add thousands to the bottom-line cost of the vehicle.

4 *Comments to the Federal Trade Commission Motor Vehicle Roundtables: Project Number P104811,* Center for Responsible Lending, Mar 30, 2012.

5 For example, Blueprint Public Policy Polling (2010) found in its survey that 79% of consumers are unaware of dealer interest rate markups. Similarly, our Center for Responsible Lending (2012) survey found that 68% of borrowers are unaware of this practice.

6 Davis, Delvin and Joshua M. Frank, *Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses,* Center for Responsible Lending, April 2011.

7 Burlingame, Laurie and Jackson, Howell E., *Kickbacks or Compensation: The Case of Yield Spread Premiums* (February 19, 2009). Stanford Journal of Law, Business & Finance, Vol. 12, p. 289, 2007

8 Federal Reserve System Federal Register, Rules and Regulations, Vol. 75, No 185, Sept 24, 2010, pp 58509-58538, 15 U.S.C. § 1639b(c)(1).

9 Bureau of Consumer Financial Protection, *Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z),* Docket No. CFPB-2012-0037, Jun 1, 2013.

10 Cohen, Mark A., *Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation,* Vanderbilt University, Dec 2006.

11 *Racial Disparities in Auto Lending: A State-by-State Reminder Why Auto Dealers Must Be Subject to the Consumer Financial Protection Bureau,* National Consumer Law Center, May 4, 2010. Using the same litigation data Cohen found for American Honda Finance Corporation and Primus, Latinos paid $191 and $251 more interest rate markup than whites with similar credit, respectively.

12 Consumer Financial Protection Bureau Bulletin 2013-02, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act,* Mar 21, 2013.

13 Abrams, Rachel, *Dealer Fees for Arranging Car Loans are Drawing Scrutiny from U.S.,* New York Times Dealbook, Nov 22, 2013.

14 Prepared statement from Patrice Ficklin, CFPB Fair Lending Director, CFPB Auto Finance Forum, Nov 14, 2013. Video can be found at http://www.consumerfinance.gov/blog/live-from-the-cfpb/

15 Consumer Financial Protection Bureau, *Consent Order in the Matter of Ally Financial Inc. and Ally Bank,* Dec 19, 2013.

16 *Justice Department Settles Lawsuit Alleging Auto Lending Discrimination in Los Angeles,* U.S. Department of Justice, Press Release, Sept 6, 2013.

17 Charles, Kerwin Kofi, Erik Hurst and Melvin Stephens Jr., *Rates for Vehicle Loans: Race and Loan Source,* American Economic Review, Vol. 8, Issue 2, 2008.

18 Edelberg, Wendy, *Racial Dispersion in Consumer Credit Interest Rates,* Jun 2007. Federal Reserve Board, Finance and Economics Discussion Series Working Paper, No 2007-28.

19 Ayres, Ian, *Further Evidence of Discrimination in New Car Negotiations and Estimates of Its Cause,* 94 Michigan Law Review, 109 (1995).

20 Fiona M. Scott Morton, Zettelmeyer, Florian and Silva-Risso, Jorge, *Consumer Information and Price Discrimination: Does the Internet Affect the Pricing of New Cars to Women and Minorities?,* Jan 2002. After analyzing over 700,000 records the researchers find a sales price "race premium" of 2.3% and 2.0% for African Americans and Latinos, respectively, when not

controlling for any demographics, 1.5% and 1.1% when including controls for neighborhood characteristics, 0.8% and 0.6% after including search costs in the model. Search costs refer to costs associated with researching and comparison shopping for a car, including transportation costs and time spent. Using the internet to shop eliminates any variation associated with race or ethnicity.

21 CRL commissioned the national survey, which Social Science Research Solutions conducted in October 2012 in both English and Spanish and using both mobile and land-line phone numbers. The 946 respondents included an oversample of African Americans and Latinos to ensure diverse representation in the data.

22 Our survey asked whether respondents specifically purchased any of six different add-on products: vehicle service contracts; GAP insurance ("Guaranteed Auto Protection," which pays loan deficiencies that the insurance carrier does not cover in the case the vehicle is totaled); theft deterrent packages; credit life insurance; custom upgrades and accessories; and tire/wheel protection. This is not an exhaustive list of products, but includes several of the most common products sold.

23 Fellowes, Matt, *Credit Scores, Reports, and Getting Ahead in America*, The Brooking Institute, May 2006.

24 Shapiro, Thomas, Tatjana Meschede, and Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute on Assets and Social Policy, Feb 2013.

25 According to third quarter 2013 data from Experian Automotive, new and used car interest rates stood at 4.27% and 8.63%, respectively. Comparatively, our consumer survey data report interest rates for new and used car purchases of 4.03% and 6.44%, respectively.

26 Reported values for household income, unemployment, and credit grade were as of the day the survey was taken, not necessarily when the loan was originated. These statistics include data for both dealer-financed and direct loans from a bank or credit union.

27 Total car loan amount is net of down payments, trade-in allowances, and rebates. This metric may include the additional costs of add-on aftermarket purchases.

28 Koblenz, Andrew D. and Paul D. Metrey, *Comment Memo to Federal Trade Commission re: Motor Vehicle Roundtables*, National Automobile Dealers Association, March 30, 2012, pp 12-13.

29 African Americans and Latinos reporting below or well below average credit had average interest rates of 10.00% if told they had the best rate available, while African Americans and Latinos of the same credit range not told this information had an average rate of 9.22%. Likewise, non-Latino whites reporting below or well below average credit had average interest rates of 8.12% if told they had the best rate available, while non-Latino whites of the same credit range not told this information had an average rate of 9.75%.

30 Being unaware of dealer interest rate markups has a significant correlation with late payments at a 0.1% level, whereas being told add-ons were mandatory purchases were significant at a 5% level. We determined statistical significance of the correlation between late payments, dealer interest rate markup unawareness and being told add-ons are mandatory by using chi square tests. Chi square can tell us if there are significant correlations between delinquency and the incidence of certain information relayed from the dealer. However, unlike with regression, chi square analysis does not allow us to control for other factors and hold them constant. Here, we chose chi square instead of regression to determining statistical significance, since there are several outside factors (i.e. length of time in the loan at time of the interview, other debt obligations, adverse trigger events, etc.) that can impact the incidence of late payments, but are not captured in our survey data.

31 Davis, Delvin and Joshua M. Frank, *Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses*, Center for Responsible Lending, Apr 2011. This report found that interest rate markups by subprime finance companies had increased odds of 60-day delinquency and cumulative loss by 12.4% and 33.0%, respectively.

32 Using chi square, the correlation between late payment and number of experiences at the dealership was significant at a 1% level.

33 Dealer "events" refer to the consumer being unaware of interest rate markups, being told that they have the best rate available, and being told that add-on products are mandatory purchases.

34 Wilson, Amy, *Product Caps Grow Amid Ethics Concerns*, Automotive News, Dec 26, 2012.

35 Arroyo, Gregory, *Tracking F&I Performance*, F&I Management and Technology Magazine, Jan 2012.

36 Teuscher, Robert H., *Vehicle Service Contract Industry: How Consumers Lost Millions of Dollars*, St. Louis Better Business Bureau, May 2011.

37 Teuscher, Robert H., *Vehicle Service Contract Industry: How Consumers Lost Millions of Dollars*, St. Louis Better Business Bureau, May 2011.

38 Gusner, Penny, *What gap insurance does—and does not—cover*, Carinsurance.com, Jun 24, 2011.

39 Landes, Luke, *Credit Life Insurance: You Don't Need It*, Forbes.com, Nov 16, 2012.

40 Overby, Joe, J.D. Power: *Long-Term Loans Hit Record Penetration*, Subprime Auto Finance News, Apr 13, 2012.

41 Reed, Philip, *Gap Insurance: How It Impacts Your Car Loan or Lease*, Edmunds.com, Apr 4, 2005 (Republished Nov 6, 2012).

42 Teuscher, Robert H., *Vehicle Service Contract Industry: How Consumers Lost Millions of Dollars*, St. Louis Better Business Bureau, May 2011.

43 Using chi square, people of color being sold 2 or more add-ons is statistically significant at a 0.1% level. Likewise, people of color being sold 3 or more add-ons is statistically significant at a 1% level.

44 Using chi square tests to determine relationships between add-on purchases and late payments, we find that the correlation between purchasing at two or more add-ons and having a late payment is significant at a 5% level.

About the Center for Responsible Lending

The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development financial institutions.

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NAMAD
NATIONAL ASSOCIATION OF MINORITY AUTOMOBILE DEALERS

November 13, 2015

The Honorable Congressman G.K. Butterfield
2305 RHOB
Washington, DC 20005

Dear Congressman Butterfield:

The National Association of Minority Automobile Dealers (NAMAD) is not in support of H.R. 1737, "Reforming CFPB Indirect Auto Financing Guidance Act", as we believe this issue can and should be resolved non-legislatively. This legislation does nothing to alter the Consumer Financial Protection Bureau's (CFPB) authority to enforce, or lenders' obligations under the Equal Credit Opportunity Act (Act).

We support the CFPB's mission to ensure that consumers are protected and treated fairly. Reversing guidance to lenders at a time of heightened regulatory scrutiny could delay lenders' efforts to comply with the Act.

Looking back on the great financial crisis of 2008, legislation enacted to bail out financial institutions and to aid General Motors and Chrysler through bankruptcy was not beneficial for minority dealers. Minority-owned dealers were disproportionally affected with a 40% (400 dealers) decline in its dealer body in comparison to non-minority dealers, who suffered only a 6% decline. Today, out of the 18,000 new automobile dealerships, only 1,100 are minority owned.

NAMAD finds that, to date, the recent consent orders between the CFPB, DOJ and financial institutions and captive finance companies to settle discrimination claims have not resulted in any negative outcomes or loss of revenue for minority dealers.

We are convinced that this matter should, and more importantly, can be resolved with a non-legislative fix. In particular, NAMAD believes that the *Fair Credit Compliance Policy & Program* it instituted in 2014 along with NADA and AIADA achieves this goal, as the program is designed to prevent any discriminatory practices for all consumers.

We do not support H.R. 1737, as the solution to discrimination in auto lending, but rather urge you and your colleagues to assist us in coming up with and implementing a non-legislative answer.

Sincerely,

Damon Lester
President

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House Committee on Financial Services
The Semi-Annual Report of the Bureau of Consumer Financial Protection
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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Andy Barr:

Question

In remarks you made during a February 3, 2016 field hearing on checking account access, you acknowledged as a "positive development" the decision some banks and credit unions have made to provide consumers with real-time information about their available account funds using modern communication tools, such as online banking and text and e-mail alerts. You stated that this real-time communication can reduce the risks that consumers inadvertently overspend from their accounts.

Is it not the case that consumers owing a debt would benefit similarly from early and effective access via modern communications interfaces to important financial information? Especially if those notifications could provide consumers with an opportunity to resolve their accounts in a timely way – particularly in instances when they may have inadvertently missed a payment – reducing the risk of future financial harm? Is that not a positive development?

Response

In addition to the positive developments in the use of technology for checking accounts, many consumers are taking advantage of modern communication technologies offered by many credit card issuers. These issuers are providing consumers with real-time text and e-mail alerts such as transaction and payment alerts and instant web or mobile account access to help consumers better manage their credit card debts and combat fraud.

Use of these technologies on more delinquent or charged off accounts may be more problematic for both consumers and debt collectors. Consumers may consider them more intrusive in terms of channel and frequency, especially when the purpose of the communications shifts from helping the consumer manage an active account to attempting to collect a debt. Email, text, chat, and other digital forms of communications are not widely used by third party debt collectors putatively due to regulatory uncertainty. For that reason, the Consumer Financial Protection Bureau (Bureau) is considering updating federal collection regulations to allow for the use of technologies not extant when the Fair Debt Collection Practices Act was enacted in 1977. The Bureau is hopeful that our debt collection rulemaking efforts will provide more clarity around the use of technologies for both the banks collecting in their own name and the third party vendors with whom they contract.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Frank Guinta:

Indirect Auto

I. Quid Pro Quo

In a recent Auto Dealer Today article, it was revealed that in 2014, the CFPB and the DOJ began notifying lenders that they could face enforcement actions related to their dealer compensation policies. This article noted that another news source stated, "that the regulators offered … three finance sources the chance to forgo civil penalties in exchange for cutting the price discretion they offer dealers by roughly half."[1]

Question 1

It seems there is a pattern by the CFPB, where large fines are threatened unless indirect lenders cut their compensation to dealers. I notice Ally received a large fine and refused to cut dealer reserve, while Toyota, which did cut compensation to dealers, did not. Was there any favorable treatment or related action offered to Honda and Toyota in exchange for agreeing to your consent agreements, by you or any other government entity?

Response

When the Consumer Financial Protection Bureau (Bureau) finds violations of the Equal Credit Opportunity Act (ECOA), it considers many factors in determining whether or not to pursue enforcement action, which is a decision made on a case-by-case basis. Matters are assessed individually to determine the appropriate corrective action and penalties based on the circumstances in the matter.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides a framework for imposing Civil Money Penalties, and takes into consideration a number of factors including the size of the financial resources, the good faith of the institution, the gravity of the violation, the severity of the loss to consumers, any history of previous violations, and other matters as justice requires. In each matter, including Ally, Fifth Third, Honda, and Toyota, the Bureau takes into account all of these factors in determining whether to assess a penalty and in what amount. Unlike the Ally matter, the Bureau did not assess penalties against Honda, Fifth Third, or Toyota because of those companies' responsible business conduct, namely the proactive steps the companies took to directly address the fair lending risk of discretionary pricing and compensation systems by substantially reducing or eliminating that discretion.

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[1] http://www.autodealermonthly.com/news/story/2016/02/toyota-captive-agrees-to-lower-markup-caps-to-settle-cfpb-allegations.aspx?utm_campaign=Enews-20160203&utm_source=Email&utm_medium=Enewsletter

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In general, if a party meaningfully engages in responsible conduct, as outlined in the Bureau's *Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation* bulletin,[2] it may favorably affect the ultimate resolution of a Bureau enforcement investigation. The Bureau's responsible business conduct bulletin serves to inform market participants that they may proactively self-police for potential violations, promptly self-report to the Bureau when they identify potential violations, quickly and completely remediate the harm resulting from violations, and affirmatively cooperate with any Bureau investigation above and beyond what is required.

Question 2

Did anyone in the White House offer counsel or consult with you or provide any assistance on the Ally, Honda or Toyota indirect auto loan settlements? Did you speak to any staff with the White House's National Economic Council about any of these settlements, please provide their name and title?

Response

No.

II. Legitimate Business Reasons

Mr. Cordray, former Assistant Attorney General for Civil Rights Tom Perez made a speech in 2011 on disparate impact. He said, "Under disparate impact theory, not all policies or practices that have a disparate impact are illegal. If a lender can show that the policy or practice serves a legitimate business need they may not be liable. You need to monitor the use of discretion to ensure compliance with fair lending laws, including by ensuring that the reasons for decisions are properly documented."[3] I know that you are familiar with the National Automobile Dealers Association, National Association of Minority Automobile Dealers, and the American International Automobile Dealers Association Fair Credit Compliance Policy & Program. This program encompasses all of the guidelines that Perez outlined to address compliance with fair credit laws.

Question 3

a. Do you disagree with Mr. Perez? And if so why?

b. What is your particular concern with Fair Credit Compliance Program?

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[2] http://www.consumerfinance.gov/guidance/
[3] https://www.justice.gov/opa/speech/assistant-attorney-general-thomas-e-perez-speaks-15th-annual-community-reinvestment-act

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c. Do you believe that dealers **should not be able to discount credit** in the showroom for a documented legitimate business reasons like budget constraints and competing offers?

Response 3(a)-(c)

Auto dealers are not subject to the Bureau's jurisdiction. The National Automobile Dealers Association's Fair Credit Compliance Policy and Program is based on two Department of Justice (DOJ) cases from 2007, where that model was negotiated in settlements involving dealers, over which the DOJ has jurisdiction. The Bureau's fair lending focus in the auto industry is on indirect auto lenders. The Bureau remains concerned about indirect lending programs built around discretionary compensation policies and financial incentives that create fair lending risks. Due to this concern, lenders should be careful about assuming that individual dealer-level actions will fully address their own fair lending risks. In general, lenders will likely consider a variety of factors in designing a discretionary compensation system, including the extent to which the fair lending risk presented by discretionary compensation is mitigated, whether the system would create new risks of discrimination or other consumer harm, and the economic sustainability of the system. Lenders who choose to implement such programs that provide for adjustments or exceptions to the established interest rate may want to review the Spring 2014 edition of *Supervisory Highlights*,[4] which includes guidance related to documenting exceptions to established credit standards to mitigate fair lending risk.

Small Dollar Lending

Question 4

Are consumers being misled into borrowing, or into taking out loans that they cannot afford?

a. If yes, why can't this be cured by better disclosures?

b. Are consumers unable to understand these concepts?

Response 4(a)-4(b)

The Bureau's preliminary findings with respect to the harms experienced by consumers from payday, vehicle title, and certain high-cost installment loans, and the evidence underlying those findings, is set forth in the notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans[5] at the section-by-section analysis of proposed §§ 1041.4, 1041.8, and 1041.13. Based on that evidence, the Bureau has proposed to identify two specific types of

[4] Supervisory Highlights: Spring 2014, available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.
[5] http://files.consumerfinance.gov/f/documents/Rulemaking_Payday_Vehicle_Title_Certain_High-Cost_Installment_Loans.pdf.

unfair and abusive practices with regard to covered loans: (1) failing to make a reasonable determination of ability to repay; and (2) attempting to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account.

The Bureau believes that a disclosure requirement would be significantly less effective at preventing the practices in the market that the Bureau has preliminarily identified as abusive and unfair in the notice of proposed rulemaking. However, certain harms to consumers may be mitigated through disclosure requirements and the Bureau has proposed certain notices associated with attempts to collect payment from a consumer's account. To address consumer harm from certain practices when lenders obtain payments for covered loans directly from consumers' accounts that tend to trigger substantial not-sufficient-funds and overdraft fees and that tend to increase the risk that consumers' accounts will be closed, the Bureau's proposed rule would include two types of disclosure requirements that would apply to all methods of lenders' obtaining payment directly from consumers' accounts. First, the Bureau has proposed an upcoming payment notice (generally three business days prior to initiating an attempt to collect payment from a consumer's account), including an unusual payments notice; second, the Bureau has proposed a consumer rights notice if the proposed limit on payment attempts is triggered.

Question 5

You've said "We're not going to be dictators in the market. We won't be making people's judgments for them. People have to make their own judgments and they have to take responsibility for those decisions, but if consumers aren't clear on what the options are, if they don't really understand the terms of the deal, because there's lots of fine print and it's confusing and it's complex, then the markets don't work very well and we saw that in so many ways [during the financial crisis]."[6] What has changed since you made that statement? Are you going back on your word?

Response

No, the Bureau recognizes that there is a need for access to small dollar credit and the proposed rule aims to provide such access while eliminating unfair and abusive practices in this market. The Bureau is concerned that lenders that make payday loans, vehicle title loans, and certain high-cost installment loans have developed business models that deviate substantially from the underwriting practices in other credit markets by failing to assess consumers' ability to repay their loans and by engaging in harmful practices in the course of seeking to withdraw payments from consumers' accounts.

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[6] *See* http://www.npr.org/blogs/thetwo-way/2012/01/05/144753031/new-consumer-czar-this-is-a-valid-appointment.

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The notice of proposed rulemaking referenced above sets forth the Bureau's preliminary findings with respect to the substantial injury that the Bureau believes consumers experience as a result of the practice that the Bureau proposed to find to be unfair. The Bureau also believes that such practices may be abusive within the meaning of section 1031 of the Dodd-Frank Act. The Bureau's analysis of evidence in this regard is described in the notice of proposed rulemaking released June 2, 2016. Under the proposed rule, the Bureau intends for consumers to have a marketplace that works both for short-term and longer-term credit products. For lenders that intend to offer responsible options for consumers who need such credit to deal with emergency situations, the Bureau is making conscious efforts to keep those options available. The proposal would require lenders to make a reasonable determination whether a consumer will have the ability to repay a covered loan and also would provide a conditional exemption that would allow lenders to make a limited number of covered short-term loans without following the full set of ability-to-repay requirements with residual income methodology. In addition, the Bureau proposed two conditional exemptions from the proposed ability-to-repay requirement for certain covered longer-term loans that share certain features with existing loans under the National Credit Union Administration's Payday Alternative Loan program and accommodation lending programs that are underwritten to produce low levels of consumer defaults.

Question 6

Have you identified any practice that materially interferes with consumers' ability to understand a term or condition of the small dollar loans at issue here?

a. What are these practices?

b. How do they interfere?

c. Couldn't this interference be cured by better disclosures?

Response 6(a)-6(c)

As described in a previous response, the Bureau has proposed to identify two specific types of unfair and abusive practices with regard to covered loans: (1) failing to make a reasonable determination of ability to repay; and (2) attempting to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account.

The Bureau believes that a disclosure requirement would be significantly less effective at preventing the practices in the market that the Bureau has preliminarily identified as abusive and unfair in the notice of proposed rulemaking. Concurrent with the notice of proposed rulemaking released in June 2016, the Bureau also released a Report on Supplemental Findings, which included analysis of the impact of a required disclosure in Texas that provides information on the length of time a borrower is likely to remain in payday loan debt and the total cost of that indebtedness. The Bureau's findings confirm that disclosures have only modest impacts on consumer borrowing patterns for small-dollar loans generally and negligible impacts on whether consumers reborrow.

The Bureau's considerations with regard to potentially unfair and abusive practices in this market is described in detail in the notice of proposed rulemaking at the section-by-section analysis of proposed §§ 1041.4, 1041.8, and 1041.13.

Question 7

Is there any evidence that consumers don't understand the risks, costs, or the conditions of these loans?

Response

As described in previous responses, the Bureau believes that lenders may be engaging in two types of unfair and abusive practices with regard to covered loans: (1) by failing to make a reasonable determination of ability to repay and (2) by attempting to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. The Bureau's analysis of evidence in this regard is described in the notice of proposed rulemaking released June 2, 2016.[7]

Question 8

Is there any evidence that consumers cannot protect themselves in selecting or using these loans?

Response

The notice of proposed rulemaking referenced above sets forth the Bureau's preliminary findings with respect to the substantial injury that the Bureau believes consumers experience as a result of the practice that the Bureau proposed to find to be unfair. The Bureau also believes that such practices may be abusive within the meaning of section 1031 of the Dodd-Frank Act.

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[7] Payday, Vehicle Title, and Certain High-Cost Installment Loans Notice of Proposed Rulemaking, *(July 22, 2016)*, *available at* https://www.federalregister.gov/articles/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans, *see* 81 FR 47919 et seq, 81 FR 47986 et seq, and 81 FR 480549 et seq.

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Question 9

The Dodd-Frank Act specifically prohibits the CFPB from imposing a usury limit on consumer credit.

a. How do you define "usury limit?"

b. Under your rule, if a loan has an interest rate in excess of 36%, the lender will have to collect and verify detailed information about income, obligations and borrowing history. In addition, in many circumstances, a lender charging more than 36% will be prohibited from extending the loan – for example if the consumer is refinancing into a lower payment loan. None of this would be required for a loan less than 36%. Said another way, in many cases these 36% loans that are otherwise illegal won't get made. Doesn't that effectively limit a lender's ability to charge more than 36%?

c. Isn't your proposal effectively a usury limit on longer-term loans, because making an ability to repay determination is so onerous for the dollar amounts involved that lenders will need to comply with the alternatives – one of which caps interest rates at 28%, and the other of which caps payments at 5% of gross monthly income?

Response 9(a)-9(c)

The Bureau is not prohibiting charging interest rates or annual percentage rates (APRs) above the demarcation for coverage of certain longer-term loans. Rather, the Bureau is proposing to require that lenders make a reasonable assessment of consumers' ability to repay certain longer-term loans above the 36 percent demarcation, in light of evidence of consumer harms in the market for loans with this characteristic. It is appropriate to focus regulatory attention on the segment of longer-term lending that the Bureau believes poses the greatest risk to consumers in the form of potential unfair and abusive practices and to recognize that price is an element in defining that segment.

The Bureau believes that the term "usury limit" in section 1027(o) of the Dodd-Frank Act is reasonably interpreted not to prohibit such differential regulation given that the Bureau is not proposing to prohibit lenders from charging interest rates above a specified limit.

The Bureau's considerations concerning section 1027(o) of the Dodd-Frank Act are described in the notice of proposed rulemaking in the section-by-section analysis of proposed § 1041.3.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Rubén E. Hinojosa

Question

According to annual surveys by the FDIC, nearly 35 million U.S. households – representing over a quarter of the population – are either unbanked or underbanked. Many of these consumers are low-income, living paycheck to paycheck. But that doesn't mean they should not have access to safe financial products and services afforded to those that are better off.

Director Cordray, many consumers that lack access to the traditional banking sector have relied on general purpose reloadable prepaid cards to securely deposit their paycheck, save for the future, and access small-dollar credit when it is needed. As the use of prepaid cards has grown dramatically in recent years, I'm glad the CFPB is crafting rules to ensure appropriate safeguards for those that use these products.

However, I also want to make sure that the regulations are balanced so that they do not eliminate consumers' access to features that they sometimes need, including opt-in overdraft protection. Consumers sometimes need access to $100 or less to smooth the transition between paychecks when their balance is low, so that they can still purchase medicine, groceries, gas, or other necessities.

How is the CFPB working to ensure the final rules provide adequate safeguards but do not eliminate consumers access to overdraft and other features?

Response

The Consumer Financial Protection Bureau (Bureau) agrees that consumers, including subprime consumers, need access to affordable credit. The Bureau also wants to ensure that customers receive appropriate protections when using any credit products that are offered. As detailed in the Bureau's prepaid final rule, the Bureau sought to balance the concern you raise by considering a range of potential approaches to overdraft credit features on prepaid accounts in connection with this rulemaking. As part of this process, the Bureau carefully considered multiple sources of information and various other factors, including existing consumer protection regulations governing overdraft services and a range of credit products subject to Regulation Z, and consumers' use of those features to the extent offered in today's market. In conjunction with the Bureau's notice of proposed rulemaking on prepaid accounts, the Bureau also released a study of publicly available account agreements for prepaid products,[8] which we conducted to better understand the features and consumer protections currently provided by the financial institutions that offer these products.

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[8] http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf

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As part of the notice-and-comment rulemaking process, the Bureau received a wide range of public comments addressing this issue from numerous stakeholders, including prepaid industry members, industry trade associations, members of Congress, consumer advocacy groups, and individual consumers. The Bureau carefully considered these comments, some of which raised similar concerns as in your question, in crafting the prepaid final rule. Generally, the final rule provides that overdraft credit features offered in conjunction with prepaid accounts will be covered under Regulation Z if the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, and credit can be accessed in the course of a transaction conducted with a prepaid card. In addition, the final rule includes disclosure and other requirements to ensure that consumers are fully informed before opening or using an overdraft credit feature offered in conjunction with a prepaid account. Ultimately, as discussed in detail in the final rule, the Bureau believes this approach appropriately balances the need and desire of some consumers to access an overdraft credit feature in conjunction with a prepaid account while at the same time implementing guard rails to make sure such credit is offered with protections similar to those that apply to other card-based credit (*i.e.*, credit cards).

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Bill Huizenga:

Question 1

Director Cordray, the Qualified Mortgage Rule has been in effect for over two years. At the time, you stated that there would be a lively non-QM mortgage market but that it might take some time to develop. But more than two years out and as far as I can tell the non-QM market is almost completely dead. From what I hear from the lending community, it's true that some balance sheet non-QM loans are being made but only to the wealthiest borrowers with perfect credit. So while I agree with you that there has likely been little to no litigation regarding non-QM loans, I would attribute that to the fact that very few have been made and only to people with an extremely clear ability to repay. Why do you still think the non-QM market will emerge in a substantial way when there is no evidence of it after two years?

Response

The Consumer Financial Protection Bureau (Bureau) is actively monitoring all aspects of the mortgage lending market, including non-qualified-mortgage (non-QM) lending. Uncertainty in the non-QM market has been slow to recede, however progress has been made. Lenders are becoming more comfortable with underwriting non-QM loans and are gradually introducing more non-QM products. The Bureau has met with a number of industry participants to provide further guidance and has developed additional regulatory implementation tools to assist with compliance with the ability-to-repay (ATR) rule.[9] As lenders, due diligence firms, and ratings agencies continue to become more comfortable with their approaches to non-QM lending, the Bureau believes there will be more traction and an increase in origination volumes.

Question 2

What frankly isn't clear is why you seem to want to emphasize lenders making non-QM loans when the statute clearly contemplates QM loans as the safer loan option with the most built-in consumer protections. The QM market is certainly the mainstream market that offers the broadest credit access with the deepest source of liquidity. Congress clearly saw it that way since the QM statute offers lenders protection from ability-to-repay litigation. We should be doing everything we can to encourage that market to flourish. On that point, one major issue involves borrowers without traditional W-2 income. These borrowers are the backbone of America. They are the self-employed, the retiree, and the seasonal worker. The Bureau of Labor Statistics estimates that self-employed borrowers alone compose 30% of the workforce. Too many of these borrowers are being relegated to the non-QM market which denies credit to all but the wealthiest

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[9] *See* http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/title-xiv-mortgage-rules/.

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with perfect credit. But I'm told there are solutions that would responsibly allow these borrowers to access QM markets without hurting a borrower's protections under the rule. One simple option would be modifying Appendix Q of the QM rule to permit use of the current GSE seller/servicer guides for the purposes of fully documenting income, employment, assets, and debt. Director, the lending community has made it abundantly clear for more than two years that they won't invest significantly in non-QM loans and it's a real head-scratcher why we would want to encourage them to do so anyway when it clearly isn't necessary. Will you commit to revising Appendix Q and helping all self-employed, retired, and seasonal workers obtain the benefits of QM status and with it the goal of homeownership?

Response

Currently, the Bureau's QM provisions do permit use of the current Government Sponsored Enterprise (GSE) seller/servicer guides. There is more than one category of QM, and only one of those categories relies on Appendix Q. A loan that is eligible for purchase or guarantee by the GSEs, meaning a loan that meets the current GSE seller/servicer guides for the purposes of fully documenting income, employment, assets, and debt, can qualify as a QM without any reliance on Appendix Q. Such a QM loan does not have to be purchased or guaranteed by a GSE, it only has to be eligible for purchase or guarantee. While the GSE-eligible category of QM is designed to sunset on January 10, 2021, or when the GSEs exit receivership, whichever occurs first, the Bureau will continue to monitor the market for pertinent information regarding the ATR rule's effects. This market monitoring includes both our general, ongoing market monitoring and our plans for conducting an assessment of the ATR rule and reporting on that assessment by January of 2019, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) section 1022(d). It also includes looking at any impacts on credit availability for all consumers, including self-employed, retired, and seasonal workers. In addition, small creditors are permitted to make QM loans without relying on either Appendix Q or the GSE seller/servicer guides. There is nothing about these provisions that precludes extending such QM loans to self-employed, retired, or seasonal workers. With these alternatives available, the Bureau believes that very few consumers are likely to be unable to receive QM loans solely because of Appendix Q.

The Bureau disagrees with the implication that non-QM loans are somehow "unqualified" mortgages that should not be made. Rather, the Dodd-Frank Act included, and the Bureau implemented in Regulation Z, the baseline ability-to-repay standards (which also do not rely on Appendix Q). Under these standards, even those rare loan applicants who cannot obtain a QM loan under Appendix Q, the GSE seller/servicer guides, or the QM underwriting standards for small creditors, nevertheless may qualify for appropriate mortgage credit. The Bureau believes creditors can make responsible, sustainable mortgage loans, even if the loans are not QMs, based on a reasonable and good faith determination of a consumer's ability to repay the loan with common-sense underwriting, which many creditors, especially community banks and other small creditors, successfully employed before the financial crisis. Those creditors and their mortgage originations did not cause the financial crisis. Such creditors can continue lending in much the same manner today.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Randy Hultgren:

Question 1

The CFPB finalized a rule on October 15, 2015, implementing Section 1094 of the Dodd-Frank Act, which mandates a number of additional reporting requirements under the Home Mortgage Disclosure Act. Sec. 1094 also requires the Bureau to develop regulations that "modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applications or mortgagors, that is or will be available to the public." In a footnote to the October 2015 final rule the Bureau states, "Based on its analysis to date, the Bureau believes that some of the proposed new data points may create privacy concerns sufficient to warrant some degree of modification, including redaction, before public disclosure…"

a. Shouldn't the Bureau proceed with extreme caution before finalizing any policy that will direct the FFIEC to publish additional consumer information, even if steps are taken to anonymize it?

Response

The Consumer Financial Protection Bureau (Bureau) is carefully considering how to protect applicant and borrower privacy while also fulfilling the public disclosure purposes of the Home Mortgage Disclosure Act (HMDA). As you know, HMDA's purposes are to provide the public and public officials with sufficient information to enable them to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located, to assist public officials in distributing public sector investments in a manner designed to improve the private investment environment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

The Bureau recognizes that public disclosure of unmodified itemized HMDA data may create risks to applicant and borrower privacy. In issuing the final rule, the Bureau adopted a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public. Under the balancing test, HMDA data will be modified when the release of the unmodified data creates risks to applicant and borrower privacy interests that are not justified by the benefits of such release to the public in light of the statutory purposes. This approach establishes applicant and borrower privacy as an element to be explicitly considered prior to any decision to release itemized information. Additionally, the Bureau will provide a process for the public to provide input on the application of the balancing test to determine the HMDA data to be disclosed. This process will ensure that information will not be disclosed until the Bureau has considered feedback from the public on these important issues.

b. In addition to providing an opportunity to comment on what information will be made public by the Federal Financial Institution Examination Council (FFIEC), has the Bureau

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conducted any of its own tests or studies to address potential privacy concerns? If so, have the findings raised any consumer privacy concerns?

Response

The Bureau is working diligently to determine whether and how HMDA data should be modified prior to its disclosure to the public under the balancing test. The Bureau's internal analysis draws on various sources, including public comments received during its recent HMDA rulemaking process concerning the benefits of disclosure of HMDA data and the risks to applicant and borrower privacy created by such disclosure. This analysis is ongoing.

c. Wouldn't it be more appropriate to prioritize consumer privacy, and not publish any of this new information?

Response

HMDA is principally a public disclosure statute, which provides the public and public officials with information necessary to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located; to distribute public sector investments in a manner designed to improve the private investment environment; and to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. For over 40 years, HMDA has provided the public with this critical information on mortgage lending activity. Today, HMDA data are the primary source of information for regulators, researchers, economists, industry, and advocates analyzing the mortgage market both for HMDA's purposes and for general market monitoring. In amending HMDA to expand the information financial institutions must compile and report and to authorize the Bureau to require additional information, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) recognized the enduring importance of HMDA's primary goals. The Bureau believes that depriving communities, researchers, public officials, and other data users of the information required under amended Regulation C would be inconsistent with HMDA's objectives. The balancing test adopted by the Bureau appropriately safeguards the privacy interests of applicants and borrowers while fulfilling HMDA's public disclosure purposes.

Question 2

There are many people who believe the Bureau has been doing an end-run around the Administrative Procedure Act by relying on enforcement actions to create rules that have industry-wide application, rather than by proposing rules, receiving public comments, and then adopting final rules. The CFPB seems to be doing this in three areas in particular: (1) the definition of "abusive" acts and practices, (2) the standards for a company's liability for the actions of its third party service providers, and (3) the test for disparate impact liability in the context of indirect auto lending.

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The CFPB acknowledged this criticism in a March 9, 2016, speech at the Consumer Bankers Association annual conference, but you also said that while "some have criticized this approach as regulation by enforcement," you "think that criticism is badly misplaced.[10]" Please explain why the CFPB's use of its enforcement authority as a method for imposing industry-wide standards should not instead be established through the rulemaking process as required by Dodd-Frank and the Administrative Procedure Act. Isn't that the process followed by every other federal agency?

Response

The Bureau's approach to enforcement and regulation is consistent with the Administrative Procedure Act and the practices of other federal agencies. The Dodd-Frank Act gave the Bureau a number of tools – including enforcement and rulemaking – to address and prevent consumer harm. In each action the Bureau takes, we endeavor to choose the appropriate tool to protect consumers and honest businesses in the marketplace. The Bureau has taken enforcement actions where we believe violations of existing laws warranted that response.

The Bureau is entrusted with enforcing the law, and accordingly, we try to develop a thoughtful strategy for how to deploy our limited resources most efficiently to protect the public. The Bureau cannot articulate rules for every eventuality, particularly in a complicated and evolving area like consumer financial protection. Courts have consistently recognized that it is appropriate for agencies to determine whether to proceed via rulemaking or adjudication.

When it comes to specific enforcement actions, the Bureau aims to deter unlawful behavior and return money to harmed consumers. Consent orders are the result of meticulous investigations, in which the Bureau has discovered specific violations of the statutes we are responsible for enforcing. The Bureau strives to present specific enforcement orders that catalogue the facts we have found in our thorough investigations and set out the legal conclusions that follow from those facts. The Bureau aims to enforce the consumer protection laws within the Bureau's jurisdiction consistently and to support consumer protection efforts nationwide by investigating potential violations both independently and in conjunction with other federal and state regulatory and law enforcement agencies.

Where our research and analysis suggests the need for regulatory intervention, the Bureau seeks to develop regulations which will protect consumers without unintended consequences or unnecessary costs. As part of the rulemaking process, the Bureau carefully assesses the benefits and costs that such proposals may have on consumers and financial institutions. Balanced regulations are essential for protecting consumers from harmful practices and ensuring that consumer financial markets function in a fair, transparent, and competitive manner.

[10] Prepared Remarks of CFPB Director Richard Cordray at the Consumer Bankers Association (March 9, 2016)

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Blaine Luetkemeyer:

Question 1

In your semi-annual testimony before our Committee on September 29, 2015 in response to a question from Rep. Keith Ellison, you indicated that the Bureau intended to "preserve access to certain forms of traditional installment credit". Please provide more clarity about the structure of the products to which you were referring. Specifically, are they extensions of credit that i) are paid back in equal payments of principal/interest (no balloons), ii) test the ability to repay, and iii) while the lender may accept an automotive title they do not require it as a condition of the loan?

Response

The Consumer Financial Protection Bureau's (Bureau's) proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans would cover loans with a contract term greater than 45 days if the loans (1) have a total cost of credit greater than 36 percent, *and* (2) the lender takes either (a) access to a borrower's account or paycheck for repayment of the loan or (b) a non-purchase money security interest in a vehicle. Loans with a duration of longer than 45 days that do not have these features would not be covered by the Bureau's proposed rule. The Background section of the Bureau's notice of proposed rulemaking described some of the features of traditional installment loans offered by nonbank installment lenders.

For installment credit that would be subject to the Bureau's proposed requirements, if finalized, lenders would be required to make a reasonable determination that the consumer has the ability to repay the loan. This determination would require lenders to obtain information about and verify the amount and timing of the consumer's net income and payments under major financial obligations and determine whether the difference is enough to make the loan payments while meeting other basic living expenses. As described in part VI of the notice of proposed rulemaking, the Bureau anticipates that many consumers would continue to be able to access installment credit that would be covered by the rule.

In addition, the Bureau's proposed rule contains conditional exemptions from the ability-to-repay requirements for certain covered longer-term loans that share certain features with existing loans under the National Credit Union Administration's Payday Alternative Loan program and accommodation lending programs that are underwritten to produce low levels of consumer defaults. Among other conditions, these loans would need to be repayable in fully amortizing payments of substantially equal amount and in substantially regular intervals. Lenders would be permitted to take a vehicle security interest.

Question 2

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Is the expectation that borrowers who lose access to payday or other credit products as a result of the Bureau's imminent rule making will have their credit needs met in the form of traditional installment credit?

Response

The Bureau's proposed rule seeks to balance consumers' need for affordable credit with protections to mitigate the effects of the practices often associated with these loans – such as holding interest in a vehicle as collateral, accessing the consumers' account for repayment, and performing costly withdrawal attempts. In crafting the proposal, the Bureau carefully sought to curtail harmful practices while incentivizing greater access to more sustainable credit products. The proposed rule would preserve access to small-dollar credit products that pose less risk of harm to consumers, including through an ability-to-repay requirement that provides some degree of flexibility for lenders and consumers alike and through three proposed conditional exemptions that increase flexibility and encourage the provision of lower-risk small dollar loans. In addition, the proposed rule would not cover other common sources of emergency credit, including typical pawn loans, and would not cover longer-term installment credit on which the total cost of credit does not exceed 36 percent or for which the lender does not take a leveraged payment mechanism or vehicle security interest.

Question 3

In his Fiscal Year 2017 budget, President Obama calls for $10 million of federal dollars for a new small-dollar, short-term lending program to be administered by community development financial institutions (CDFIs). In what manner will the CFPB regulate those products? Will the forthcoming CFPB rule on payday lending apply to those loans made by CDFIs? Will the CFPB become regulators for participating CDFIs?

Response

The Bureau's notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans would cover two types of loans: (1) very short-term loans, repayable within 45 days; and (2) loans with a contract term greater than 45 days if (a) the total cost of credit exceeds 36 percent, *and* (b) the lender takes either (i) access to a borrower's account or paycheck for repayment of the loan or (ii) a non-purchase money security interest in a vehicle. The Bureau's proposed rule would apply to covered products, regardless of the charter status or other designation of the creditor.

Question 4

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In regards to the CFBP rule on payday lending, how did you determine that 5% of gross monthly income is affordable? What economic analysis did you engage in? Are loans with payments in excess of 5% of gross monthly income abusive or unfair?

Response

Before issuing its notice of proposed rulemaking in June of this year, in March 2015, the Bureau released an outline of proposals under consideration as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) process. The SBREFA outline included an alternative to the contemplated ability-to-repay requirement providing that, among other conditions, the payment-to-income (PTI) ratio of the loan did not exceed a specified threshold, such as five percent. The Bureau was considering the proposal as a way to ease operational costs for loans that may be likely to satisfy the more general underwriting methodology being considered to assess consumers' ability to repay. Based on feedback the Bureau received during the SBREFA process and through ongoing engagement with industry and consumer groups, the Bureau did not propose a PTI alternative as part of the notice of proposed rulemaking released on June 2, 2016. While the Bureau did not propose the PTI alternative, the Bureau is seeking comment generally on such an approach.

Question 5

The Bureau plans to require lenders to collect a great deal of especially sensitive information from borrowers. Is this consistent with data security best practices and data minimization? Why do lenders need to keep this data for 36 months?

Response

The notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans would require lenders to retain evidence of compliance with the proposed rule for 36 months after the date that a covered loan ceases to be an outstanding loan. The Bureau believes this requirement, if finalized, would facilitate compliance and supervision related to the requirements of the proposed rule.

Question 6

If there are risks associated with sustained use or with providing access to one's bank account through a recurring payment authorization, why can't we warn consumers of these risks by improved disclosures?

Response

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The Bureau believes that a disclosure requirement would be significantly less effective at preventing the practices in the market that the Bureau has preliminarily identified as abusive and unfair in the notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans released on June 2, 2016. However, certain harms to consumers may be mitigated through disclosure requirements and the Bureau has proposed certain notices associated with attempts to collect payment from a consumer's account. To address consumer harm from certain practices when lenders obtain payments for covered loans directly from consumers' accounts that tend to trigger substantial not-sufficient-funds and overdraft fees and that tend to increase the risk that consumers' accounts will be closed, the Bureau's proposed rule would include two types of disclosure requirements that would apply to all methods of lenders' obtaining payment directly from consumers' accounts. First, the Bureau has proposed an upcoming payment notice (generally three business days prior to initiating an attempt to collect payment from a consumer's account), including an unusual payments notice; second, the Bureau has proposed a consumer rights notice if the proposed limit on payment attempts is triggered.

Question 7

You have made references to this Committee and before other groups that abusive practices can differ from circumstance to circumstance. Given that the proposed rule relies in large part on what the Bureau believes to be abusive practices, please explain how a "situational" standard can serve as the basis of a generally applicable rule. Might this rule sweep in practices that may not be abusive?

Response

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides the Bureau with authority to prescribe rules to identify and prevent unfair, deceptive, and abusive acts or practices. The Bureau's preliminary findings with respect to the harms experienced by consumers from payday, vehicle title, and certain high-cost installment loans, and the evidence underlying those findings, is set forth in the notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans at the section-by-section analysis of proposed §§ 1041.4, 1041.8, and 1041.13. Based on that evidence, the Bureau has proposed to identify two specific types of unfair and abusive practices with regard to covered loans: (1) failing to make a reasonable determination of ability to repay; and (2) attempting to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. The Bureau's analysis of evidence in this regard is described in the notice of proposed rulemaking released June 2, 2016.[11] The Bureau has proposed requirements intended to prevent these specific practices.

Question 8

What evidence do you have that sustained use and account access injured consumers? What evidence do you have that your proposal will remedy this perceived harm?

Response

The notice of proposed rulemaking referenced above sets forth the Bureau's preliminary findings with respect to the substantial injury that the Bureau believes consumers experience as a result of the practice that the Bureau proposed to find to be unfair. The Bureau also believes that such practices may be abusive within the meaning of section 1031 of the Dodd-Frank Act. The Bureau has undertaken extensive research into small dollar loans. The Bureau recognizes that people who live from paycheck to paycheck sometimes need access to credit, for example to deal with drops in income or spikes in expenses. The Bureau has made it clear that the credit products marketed to these consumers should help them, not hurt them. The Bureau's research has shown that too many of these loans pull borrowers into extended debt traps, instead of, for example, tiding them over in an emergency. The Bureau's analysis of evidence in this regard is described in the notice of proposed rulemaking released June 2, 2016.[12]

Question 9

In many states the only way to borrow small amount of money is a payday loan – there is no longer term option. This proposal will effectively eliminate many of those loans. That is, there are loans that would be permitted under State law but prohibited under federal law. How do you justify this preemption of State laws?

Response

The Bureau's proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans seeks to prevent the types of consumer injuries that result from lenders extending short-term and longer-term loans with payments that a consumer cannot afford to repay. The Bureau's proposed rule also seeks to address harms that may arise from certain lender practices in collecting

[11] Payday, Vehicle Title, and Certain High-Cost Installment Loans Notice of Proposed Rulemaking, *(July 22, 2016), available at* https://www.federalregister.gov/articles/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans, *see* 81 FR 47919 et seq, 81 FR 47986 et seq, and 81 FR 480549 et seq.
[12] Payday, Vehicle Title, and Certain High-Cost Installment Loans Notice of Proposed Rulemaking, *(July 22, 2016), available at* https://www.federalregister.gov/articles/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans, *see* 81 FR 47919 et seq, 81 FR 47986 et seq, and 81 FR 480549 et seq.

repayment from a consumer's account. The proposed rule, if finalized, would establish a federal floor for consumer protection for covered loans.

As described in the notice of proposed rulemaking released on June 2, 2016, the Bureau believes that the requirements of the proposed rule would coexist with State laws that pertain to the making of loans that the proposed rule would treat as covered loans. Consequently, any person subject to the proposed rule would be required to comply with both the requirements of the proposed rule and applicable State laws, except to the extent the applicable state laws are inconsistent with the requirements of the proposed rule. This approach is entirely consistent with our system of cooperative federalism.

Question 10

How will the CFPB determine whether a lender's ability to repay determination is "reasonable"? How will the CFPB enforce the "reasonable determination" requirement?

Response

The Bureau's notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans would require lenders to make a reasonable determination whether a consumer will have the ability to repay a covered loan and would set out a specific methodology for lenders to use to determine ability to repay.

Under the proposed rule, to make a reasonable ability-to-repay determination, a lender would need to: (1) obtain a written statement from the consumer and verification evidence to determine the amount and timing of the consumer's past net income and payments under major financial obligations; (2) make a reasonable projection of the amount and timing of a consumer's net income and payments for major financial obligations going forward; (3) calculate an appropriate amount for basic living expenses either based on information from the individual consumer or other reliable generalized sources; and (4) subtract the elements from the consumer's income to determine whether the consumer can cover major financial obligations, basic living expenses, and the payment on the new loan. In addition, lenders would be required to determine that any presumptions of unaffordability have been overcome. For covered short-term loans and covered longer-term balloon-payment loans, a lender would be required to include in its ability-to-repay determination the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment. The Bureau's proposed commentary provides examples of ability-to-repay determinations that would not be reasonable and emphasizes that loan performance would be used as evidence to determine whether a particular lender's ability-to-repay determinations are reasonable.

Question 11

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For longer-term covered loans, there is a presumption of inability to repay, if the consumer is seeking to refinance a loan and they have "indicated" that they cannot make payments or that the loan is causing in financial distress. Will lenders be required to ask the borrower these questions? Are they required simply to listen for indications – for example, in the borrower's tone of voice?

Response

The Bureau's proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans would include a presumption of unaffordability for a covered longer-term loan in certain circumstances where a consumer's recent borrowing history indicates that the new loan, like the existing or recent loan, would not be affordable. The Bureau's proposal would apply a presumption of unaffordability when a consumer that is showing certain signs of distress with one outstanding loan returns to the same lender or that lender's affiliate seeking another loan. The specific circumstances that would give rise to this presumption for covered longer-term loans are listed at proposed § 1041.10.

Question 12

Lead generation is an increasingly important means of offering financial products to consumers, particularly through more innovative channels such as the Internet or mobile devices. The Federal Trade Commission (FTC) had a workshop on lead generation for consumer financial products. Is the CFPB following this issue? Do you see any problems in the market? Has the Bureau brought any enforcement actions in the area?

Response

The Bureau follows the involvement of lead generators in the market for consumer financial services and products. The Bureau believes there are potential risks for consumers who use online websites that may involve lead generators disseminating or selling consumers' personal financial information, including social security and checking account numbers. In addition, the Bureau believes that lead generators may not find consumers the lowest cost loans and that consumers should be cautious of websites that promise otherwise. Also, the involvement of lead generators may generate confusion for consumers about the identity of the actual lender.

The Bureau's supervisory examinations of online lenders include reviews of the relationships that payday lenders have with lead generators and other service providers to ensure that the statements and representations made by lead generators on the lender's behalf are accurate and non-deceptive and that referral fees are appropriately disclosed. In addition, the Bureau's enforcement authority can cover lead generators that engage in unfair and abusive acts or

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practices.[13] The Bureau's enforcement authority also extends to those that knowingly or recklessly provide substantial assistance to covered persons or service providers who are engaged in unfair, deceptive or abusive acts or practices.

Question 13

How does the CFPB determine charges of "deceptiveness?" It's my understanding that the FTC looks at a specific product or service and associated consumer complaints, determining whether the perceived violation was an issue unique to one consumer or something more widespread. Does the Bureau take a similar approach?

Response

The Consumer Financial Protection Act of 2010 (CFPA) outlaws deceptive acts or practices, just as it proscribes unfair or abusive acts or practices by covered persons or service providers. Where applicable, the Bureau assesses relevant case law to determine whether a particular representation is deceptive based on the evidence we obtain during our examinations and investigations. The Bureau's goal in enforcing these provisions of the CFPA is to address harms to consumers in the financial marketplace, which can often be widespread.

Consumer complaints also play an important role in the detection of deceptive acts or practices for the Bureau. Consumer complaints have been an essential source of information for examinations, enforcement, and rule-making for regulators. As a general matter, consumer complaints can indicate weaknesses in elements of the institution's compliance management system, such as training, internal controls, or monitoring. While the absence of complaints does not ensure that unfair, deceptive, or abusive acts or practices (UDAAPs) are not occurring, complaints may also be an indication of UDAAPs.

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[13] *See, e.g.*, http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-lead-aggregators-for-online-trafficking-of-personal-information/.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Gregory W. Meeks:

Question

There have been a number of complaints in recent years related to deceptive practices in the solar leasing market, with consumers being made promises about cost savings, lower monthly bills, and no money down. These reports have multiplied as the number of solar installations has increased. New York is one of the fastest growing solar markets, having registered an increase of 226 percent in 2014, and second in the nation for residential solar capacity, trailing only California.

I am strong supporter of renewable energy and technologies that effectively offset significant amounts of C02 emissions. However, because residential solar is so expensive to install, ranging from $15,000 to $29,000, most consumers can only afford panels through leasing or PPAs. In fact, the third party ownership solar market, which includes leasing and power purchase agreements (PPAs) presently makes up about 68 percent of all residential solar. I am concerned that consumers may not be receiving proper disclosures, and are unaware of the implications of selling their home when leasing such equipment.

I support solar and want our communities in New York to benefit, but at the same time, I want to ensure that deceptive practices from some of the bad actors are prevented. The reports I have read would suggest that regulatory oversight is required.

In addition, I also want to ensure that the benefits of solar are not withheld from communities that could benefit the most. Currently, minimum credit scores to qualify for a lease are between 680 and 700. We need to ensure that solar is an opportunity for all communities.

I know that my colleague, Representative Kysten Sinema, wrote to your office back in 2014 on some of these issues. As follow-up, where are we now? and what are the next steps for the CFPB in exercising appropriate oversight to address market abuses and equal access in this sector?

Response

The Consumer Financial Protection Bureau (Bureau) is committed to ensuring that all consumers benefit from fair, transparent, and competitive markets for consumer financial products and services and that consumers are protected under applicable Federal consumer financial laws. The Bureau continues to research the solar financing market and engage with industry stakeholders and other agencies to better understand the market and to identify areas of potential consumer harm. As part of that effort, the Bureau will carefully consider the issues you raise and welcome any additional information or feedback you and other stakeholders may have regarding potential consumer impacts.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Luke Messer:

Question 1

Director Cordray--Last August, the CFPB issued a civil investigative demand to the Accrediting Council for Independent Colleges and Schools (ACICS); an entity that accredits more than 900 higher education institutions.

Title IV of the Higher Education Act sets up a robust process for the Department of Education to oversee accreditation agencies, not the CFPB. There isn't anywhere in the Consumer Financial Protection Act (Title X of Dodd-Frank) that grants the CFPB jurisdiction over questions of higher-ed accreditation.

How do you explain the CFPB radically departing from its jurisdiction by launching this investigation into ACICS? And how does the CFPB justify taking action against such an entity that does not sell financial products of any kind?

Have you coordinated or communicated with the Department of Education regarding this investigation? If not, do you plan to in the future?

Does the CFPB employ staff members who are experts or specialize in the higher education accreditation process? If so, how many?

Response

The Consumer Financial Protection Bureau (Bureau) generally does not comment on active investigations. In this case, the fact of the Bureau's civil investigative demand (CID) to the Accrediting Council for Independent Colleges and Schools (ACICS) was made public when ACICS challenged the demand through the Bureau's administrative procedures. ACICS filed a petition to modify or set aside the CID. The Bureau then issued an order denying the petition. In accordance with the Bureau's ordinary procedures, the petition itself and the order denying it have been made publicly available on the Bureau's website.[14]

Because ACICS did not comply with the CID after the Director's order, the Bureau moved to enforce the CID in federal district court in the District of Columbia. While the district court declined to enforce the CID, the Bureau believes the CID, and the investigation of which it is a part, are well within the Bureau's authority. The Bureau has appealed the district court's order to the United States Court of Appeals for the District of Columbia Circuit. The appeal was docketed on June 20, 2016.

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[14] *Available at* http://www.consumerfinance.gov/guidance/petitions-to-modify-or-set-aside/.

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The Bureau is empowered under § 1031 of the Consumer Financial Protection Act of 2010 (CFPA) to take action to prevent "unfair, deceptive, or abusive act[s] or practice[s] . . . in connection with any transaction with a consumer for a consumer financial product or service." Further, § 1036 of the CFPA prohibits certain entities from committing "unfair, deceptive, or abusive" acts or practices and prohibits any other person from "knowingly or recklessly provid[ing] substantial assistance to" an entity engaged in such acts or practices. An investigation to determine whether such violations have occurred, and whether Bureau action is appropriate, is squarely within the Bureau's mandate.

The Bureau coordinates closely with the Department of Education in our work related to student lending. The Bureau plans to continue this coordination in the future.

Question 2

Director Cordray-- On page 45 of the CFPB's March 26th report entitled "CFPB Considers Proposal to End Payday Debt Traps," you suggest that lenders will lose 60-74% of their revenue should the proposals become law. Clearly, any business would be hard pressed to keep their doors open if they lose 74% of their revenue.

After learning about this CFPB rule, one of my constituents in Muncie, Indiana wrote me a letter saying, "I used [a] payday loan to keep my electricity from getting shut off. It was the only option I had at the time. Please make sure I will still be able to use this service in the future."

What would you say to my constituent, who without access to a payday loan, would have had, a basic necessity, his electricity shut off?

Have you talked to consumers to understand what they will do without these products?

Will the rule have different effects on consumers in rural or urban areas?

What evidence do you have that sustained use and account access injured consumers? And what evidence do you have that your proposal will remedy this perceived harm?

Response

The Bureau's preliminary findings with respect to the harms experienced by consumers from payday, vehicle title, and certain high-cost installment loans, and the evidence underlying those findings, is set forth in the notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans. Based on that evidence, the Bureau has proposed to identify two specific types of unfair and abusive practices with regard to covered loans: (1) failing to make a reasonable determination of ability to repay; and (2) attempting to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. The Bureau's analysis of evidence in this regard is described in the notice of proposed rulemaking released June 2, 2016.[15]

The Bureau has undertaken extensive research into small dollar loans. The Bureau recognizes that people who live from paycheck to paycheck sometimes need access to credit, for example to deal with drops in income or spikes in expenses. The Bureau has made it clear that the credit products marketed to these consumers should help them, not hurt them. The Bureau's research has shown that too many of these loans pull borrowers into extended debt traps, instead of, for example, tiding them over in an emergency.

In crafting the proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans, the Bureau carefully sought to curtail harmful practices while incentivizing greater access to more sustainable credit products. The proposed rule would preserve access to credit that poses less risk of harm to consumers, including through an ability-to-repay requirement that provides some degree of flexibility for lenders and consumers alike and through three proposed conditional exemptions that increase flexibility and encourage the provision of lower-risk loans.

The Bureau's analysis of the impact on consumers in rural areas is described in part VI of the notice of proposed rulemaking released on June 2, 2016.

Question 3

Director Cordray--Contrary to the press release marketing the CFPB's arbitration study, the findings in the study confirm that arbitration is a faster, less expensive and far more effective way for consumers to resolve disputes with companies than class action litigation. According to the study, in 60% of the class actions studied by the CFPB consumers received nothing at all because the named plaintiff settled individually or voluntarily withdrew the suit. In the 15% of class actions that settled, consumers who received settlement cash payments got a paltry $32 on average after waiting for up to two years.

As few as 4% of the class members who were eligible to receive benefits conditioned on submitting a claim form actually filed a claim. In sharp contrast, the study showed, consumers who prevailed in an individual arbitration recovered an average of over $5,000, and the entire arbitration process was concluded in an average of 2-7 months.

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[15] Payday, Vehicle Title, and Certain High-Cost Installment Loans Notice of Proposed Rulemaking, (July 22, 2016), available at https://www.federalregister.gov/articles/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans, see 81 FR 47919 et seq, 81 FR 47986 et seq, and 81 FR 480549 et seq.

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Moreover, the cost to the consumer for the entire arbitration was only one-half of the cost of simply filing a federal court complaint. While class members each received about $32, the attorneys were awarded over $400 million. Given those figures, why is the CFPB planning to ban the use of pre-dispute arbitration agreements in class litigation?

Response

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the Bureau to conduct a study and provide a report to Congress regarding "the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services." The Dodd-Frank Act authorized the Bureau to issue regulations to prohibit or impose conditions or limitations on the use of arbitration agreements if the Bureau found, after completing the Study, that such rules would be in the public interest and for the protection of consumers. The Dodd-Frank Act also required that the findings in any such rule be consistent with the Bureau's Study. The Bureau released its Study of pre-dispute arbitration agreements in March 2015.[16]

On May 5, 2016, pursuant to the authority outlined above, the Bureau released a Notice of Proposed Rulemaking (NPRM) regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration. The Bureau's Study, as described in the NPRM, sheds considerable light on the benefits of a class action system as compared to the benefits most consumers derive from individual resolution of their disputes. The Study found, for example, that few consumers of financial products and services seek relief individually, either through the arbitration process or in court. In its review of all American Arbitration Association consumer disputes for the period of 2010 through 2012 relating to credit card, checking/debit account, payday loan, prepaid card, auto purchase loan, and student loan products, the Bureau found only an average of 616 arbitration proceedings a year were filed for all six product markets combined, of which only 411 were recorded as filed by consumers acting alone. Only 25 disputes a year involved consumers bringing affirmative claims for $1,000 or less than that amount. Of all of the arbitration cases in which the Bureau could determine the results, the consumer obtained relief on an affirmative claim in just over 20% of the cases. All told, these consumers received a total of $189,109 in relief.

In contrast, the Study found that consumers derive substantial benefits from class action settlements. As noted, the Bureau identified a significant volume of consumer financial class settlements that were approved between 2008 and 2012.[17] In the 419 settlements that we analyzed, there were 350 million total class members.[18] These settlements included cash relief,

[16] *See* Arbitration Study (March 2015) available at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.
[17] Arbitration Study, section 8 at 3.
[18] Arbitration Study, section 1 at 16. Excluding one large settlement (In re TransUnion Privacy Litigation) with 190 million class members, these settlements included 160 million class members.

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in-kind relief, and relief relating to fees and other expenses that companies paid. The total amount of gross relief in these settlements—that is, aggregate amounts promised to be made available to or for the benefit of damages classes as a whole, calculated before any fees or other costs were deducted—was about $2.7 billion.[19] This estimate included cash relief of about $2.05 billion and in-kind relief of about $644 million.[20] Some 251 settlements contained enough data for the Bureau to calculate the value of cash relief that, as of the last document in the case files, either had been or was scheduled to be paid to class members. Based on this subset of cases alone, the value of calculable cash payments to class members to that point was $1.1 billion.[21] This excludes payment of in-kind relief and any valuation of injunctive relief.

With respect to the percentage of putative class cases that your question states yield "nothing at all," for consumers, the Bureau identified classwide settlements in approximately 17% of the putative class cases identified in its Study, as of the "cutoff" date for its analysis in February 2014. The Bureau cannot definitively determine the extent to which the class actions that did not result in class settlement delivered benefits to absent class members. Most of the remaining putative class cases are known to end in individual settlement or with outcomes that are consistent with an individual settlement. The terms of those individual settlements are generally unknown.

Your question notes that around 4% of consumers who were required to submit claims forms to receive settlement benefits submitted those forms. As you note, this figure does not reflect the scope of consumer relief from class settlements, as it excludes the significant share of consumer finance cases in which class members did not need to file a claim to obtain compensatory relief. Of 382 consumer financial settlements analyzed in the Bureau's Study that included cash relief, the Bureau found that 37%, representing 140 disputes in total, included some form of automatic cash distribution. These cases included approximately 24 million class members, almost all of whom were eligible for automatic cash relief, meaning that they stood to receive cash payments without submitting a claim. These class members are not included in the claims rates figure you cite, which is based only on cases in which there is a claims process. Furthermore, these numbers focus on compensatory relief. These numbers do not cover class members and other consumers who benefit from behavioral components of the settlement. Injunctive class members all stand to benefit from these aspects of a given settlement. Often, when companies agree to settle a case, they agree to stop engaging in a particular practice on a going-forward basis. This provides additional benefit to future customers and other consumers not part of the class.

After the Bureau completed the Arbitration Study, it has continued accepting input from outside stakeholders as it weighs whether regulatory intervention would be in the public interest and for the protection of consumers. The Bureau is currently reviewing the comments on the proposed

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[19] Arbitration Study, section 8 at 24. The Study defined gross relief as the total amount the defendants offered to provide in cash relief (including debt forbearance) or in-kind relief and offered to pay in fees and other expenses.
[20] These figures represent a floor, as the Bureau did not include the value, or cost to the defendant, of making agreed changes to business practices.
[21] Arbitration Study, section 8 at 28.

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rule and will consider any comments received in accordance with its obligations for notice-and-comment rulemaking.

Question 4

Director Cordray-- Charles River Associates issued a report over a year ago critiquing the CFPB's disparate impact methodology, but the CFPB did not respond. Even internal CFPB memos show that the Department of Justice had developed a better way to distribute settlement proceeds that would avoid fraud. Why has the CFPB refused to change its disparate impact methodology or the way it distributes settlement proceeds?

Response

Disparate impact is the law and has been upheld by courts and used by federal agencies for decades. The Bureau's disparate impact methodology is appropriate to determine whether credit underwriting or pricing complies with the law. On September 17, 2014, the Bureau published a white paper, entitled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*,[22] that details the methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

The Bureau and the paper you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup and compensation policies, and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

The Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in consultation with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

As we stated in our white paper, the Bureau is committed to continuing our dialogue with other federal agencies, lenders, advocates, and researchers regarding the Bureau's methodology, the

[22] *Available at* http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. We expect the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance. For further information regarding the Bureau's methodology, issues raised by stakeholders, and the Bureau's response, see the Bureau's 2015 and 2016 Fair Lending Reports.[23]

The Bureau and the Department of Justice will work together, as appropriate on a case-by-case basis, to ensure that as many eligible consumers as possible receive remuneration from settlement funds, while putting in place important safeguards to ensure that eligible consumers were the recipients of relief. The Bureau and the Department of Justice will work closely with lenders and settlement administrators, as appropriate, on consumer outreach efforts necessary to distribute settlement funds, as required by the specifics of each Administrative Order or Consent Order that governs resolution of the agencies' enforcement action. The Bureau is confident in the integrity of its current process and in the analysis that underpins distribution of these funds to harmed consumers.

[23] *See* http://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf, pgs. 38-40; and http://files.consumerfinance.gov/f/documents/201604_cfpb_Fair_Lending_Report_Final.pdf, pgs. 53-55.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Gwen Moore:

Question

I am interested in the success of residential solar and energy efficiency adoption. However, regarding solar and energy leasing arrangements, I have concerns that consumers in the solar leasing market may be experiencing abusive or deceptive acts and practices. State Attorneys General are offering advisories, and consumers are filing suit. Can you provide some additional information regarding what the agency doing to ensure appropriate oversight is in place in the residential solar and energy efficiency leasing market?

Response

The Consumer Financial Protection Bureau (Bureau) is committed to ensuring that all consumers benefit from fair, transparent, and competitive markets for consumer financial products and services and that consumers are protected under applicable Federal consumer financial laws. The Bureau continues to research the solar financing market and to engage with industry stakeholders and other agencies to better understand the market and identify areas of potential consumer harm. As part of that effort, we will carefully consider the issues you raise and welcome any additional information or feedback stakeholders may have regarding potential consumer impacts.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Mick Mulvaney:

Question 1

Director Cordray, in remarks you made during a February 3, 2016 field hearing on checking account access, you acknowledged as a "positive development" the decision some banks and credit unions have made to provide consumers with real-time information about their available account funds using modern communication tools, such as online banking and text and e-mail alerts. You stated that this real-time communication can reduce the risks that consumers inadvertently overspend their accounts.

Wouldn't the use of modern communication methods with consumers who owe a debt offer a similar benefit of early and effective access to important financial information, giving consumers an opportunity to resolve their accounts in a timely way? This seems particularly helpful in instances when they may have inadvertently missed a payment, reducing the risk of future financial harm. Wouldn't this also be a positive development?

Response

In addition to the positive developments in the use of technology for checking accounts, many consumers are taking advantage of modern communication technologies offered by many credit card issuers. These issuers are providing consumers with real-time text and e-mail alerts such as transaction and payment alerts and instant web or mobile account access to help consumers better manage their credit card debts and combat fraud.

Use of these technologies on more delinquent or charged off accounts may be more problematic for both consumers and debt collectors. Consumers may consider them more intrusive in terms of channel and frequency, especially when the purpose of the communications shifts from helping the consumer manage an active account to attempting to collect a debt. Email, text, chat, and other digital forms of communications are not widely used by third party debt collectors putatively due to regulatory uncertainty. For that reason, the Bureau is considering updating federal collection regulations to allow for the use of technologies not extant when the Fair Debt Collection Practices Act (FDCPA) was enacted in 1977. The Bureau is hopeful that our debt collection rulemaking efforts will provide more clarity around the use of technologies for both the banks collecting in their own name and the third party vendors with whom they contract.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Patrick E. Murphy:

Question 1

I have heard from constituents about major mistakes in their credit scores that remain uncorrected. What action is the Bureau taking to see that consumer reporting agencies keep their records current?

Response

Credit scores are based on the information in consumer reports. Lenders often use consumer reports and scores to determine a consumer's eligibility for credit. Credit information is also used for a range of other determinations, including eligibility for rental housing and employment. The Fair Credit Reporting Act (FCRA) and its implementing Regulation V impose certain accuracy requirements on consumer reporting companies. and the entities that furnish information to them ("furnishers").[24] Holding consumer reporting companies and furnishers accountable for complying with these requirements is one of the Consumer Financial Protection Bureau's (Bureau's) top priorities.[25]

The Bureau is especially focused on three aspects of consumer reporting accuracy. First, the consumer reporting companies that create consumer reports are legally required to maintain reasonable procedures to assure the maximum possible accuracy of the information in those reports.[26] The Bureau is the first federal regulator with authority to supervise larger consumer reporting companies. A major focus of the Bureau's supervisory work is assessing compliance with the law's accuracy requirements.[27] Using the Bureau's supervision authority, the Bureau has already brought significant improvements to the consumer reporting system regarding the accuracy of information in consumer reports. For example, consumer reporting companies are building comprehensive quality assurance programs to provide feedback to each furnisher on the quality of its data and are improving their oversight of public records providers. The Bureau has also brought enforcement actions against consumer reporting companies for violating accuracy requirements. In October 2015, for example, the Bureau took enforcement action against two of the largest employment background screening companies for failing to take basic steps to assure the accuracy of the information they reported about job applicants.[28] The Bureau has also

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[24] *See* 15 U.S.C. §§ 1681-1681x; 12 C.F.R. pt.1022.
[25] *See* Consumer Fin. Protection Bureau, Policy Priorities Over the Next Two Years (Feb. 26, 2016), at 3-5, *available at* http://files.consumerfinance.gov/f/201602_cfpb_policy-priorities-over-the-next-two-years.pdf.
[26] 15 U.S.C. § 1681e(b).
[27] *See, e.g.*, Consumer Fin. Protection Bureau, Supervisory Highlights (Summer 2015), at 5-7, *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf.
[28] *See* Press Release, Consumer Fin. Protection Bureau, CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies (Oct. 29, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/.

brought enforcement actions against consumer reporting companies that do not properly investigate mistakes in consumer reports.[29]

Second, furnishers are legally required to maintain policies regarding the accuracy and integrity of the information they furnish to consumer reporting companies.[30] The Bureau's supervisory authority extends to many of the largest furnishers, including banks, debt collectors, and mortgage and student loan servicers. As part of its supervisory work, the Bureau continues to assess the furnishing practices of these entities. The Bureau has cited certain entities for violations of the FCRA and Regulation V, and directed corrective action where appropriate.[31] The Bureau has also brought enforcement actions against furnishers for violating the law's accuracy requirements. Examples include two separate enforcement actions against two auto finance companies for providing inaccurate information to consumer reporting companies.[32]

Third, when consumers find inaccurate information in their consumer reports, they are entitled to dispute that information with the consumer reporting company that created the report and the furnisher that supplied the information.[33] Consumer reporting companies and furnishers, in turn, have a legal obligation to investigate disputes and correct, delete, or modify inaccurate information.[34] Dispute investigations provide a critical check on system-wide accuracy, as they can help remove inaccurate information from the system and alert consumer reporting companies and furnishers to systemic problems that could affect many consumers. The Bureau's supervisory work has focused on how consumer reporting companies and furnishers meet the law's dispute-handling requirements.[35] The Bureau has directed consumer reporting companies to improve the way they handle consumer disputes by requiring them to be data-driven in upgrading their processes for tracking disputes, and resolving them in a timely manner.[36] The

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[29] *See, e.g.*, CFPB Orders Subprime Credit Reporting Company and Owner to Pay $8 Million Penalty for Illegal Practices (Dec. 3, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-subprime-credit-reporting-company-and-owner-to-pay-8-million-penalty-for-illegal-practices/.

[30] 12 C.F.R. § 1022.42.

[31] *See, e.g.*, Consumer Fin. Protection Bureau, Supervisory Highlights (Winter 2016), at 5-8, 18-19, *available at* http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.

[32] *See* Press Releases, Consumer Fin. Protection Bureau, CFPB Orders CarHop to Pay $6.4 Million Penalty for Jeopardizing Consumers' Credit (Dec. 17, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-carhop-to-pay-6-4-million-penalty-for-jeopardizing-consumers-credit/; Consumer Fin. Protection Bureau, CFPB Takes Action Against Auto Finance Company for Distorting Borrower Credit Reports (Aug. 20, 2014), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-auto-finance-company-for-distorting-borrower-credit-reports/.

[33] 15 U.S.C. §§ 1681i, 1681s-2(a)(8); 12 C.F.R. § 1022.43.

[34] 15 U.S.C. §§ 1681i, 1681s-2(a)(8), 1681s-2(b); 12 C.F.R. § 1022.43. *Id.*

[35] *See, e.g.*, Consumer Fin. Protection Bureau, Supervisory Highlights (Summer 2015), at 5-7; Press Release, Consumer Fin. Protection Bureau, CFPB Puts Companies on Notice About Duty to Investigate Credit Report Disputes (Sep. 4, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-puts-companies-on-notice-about-duty-to-investigate-consumer-credit-report-disputes/.

[36] The Bureau requires the largest consumer reporting companies to provide it with regular, standardized accuracy reports as part of the Bureau's ongoing examinations of key risk areas for consumers. Most notably, these reports specify the number of times consumers disputed information on their consumer reports during that period. The reports also identify furnishers with the most consumer disputes, industries with the most disputes, and furnishers

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Bureau has also directed companies to replace their outdated, paper-based processes with modern, online dispute processes that convey information appropriately to resolve disputes. Finally, the Bureau has brought enforcement actions against consumer reporting companies and furnishers for violating the law's dispute handling requirements.[37]

The Bureau will continue to examine and investigate consumer reporting companies and furnishers of information, focusing on accuracy and dispute resolution processes, and it will continue to hold institutions accountable for remedying any deficiencies. The Bureau's vision for this market is that consumers have confidence that their consumer reports are accurate and reliable, and that the decisions made about consumers are made fairly and based on the right information. Similarly, consumers should feel confident that they can get suspected errors investigated, and fixed as needed, to ensure the reliability of their consumer reports.

To help consumers troubleshoot problems they might be having with their consumer reports, the Bureau handles complaints from consumers who experience accuracy or dispute handling problems, among other consumer reporting related issues.[38] Complaints also inform the Bureau's work on consumer reporting issues. Through the Bureau's public Consumer Complaint Database, complaints are used to inform the public, industry, researchers, and anyone interested in the financial marketplace.[39]

The Bureau has also taken steps to educate consumers about consumer reporting and the importance of report accuracy. For example, the Bureau's online *AskCFPB* tool provides answers to many frequently asked questions, including questions about what to look for in a consumer report and how to dispute suspected inaccuracies.[40] In addition, the Bureau provides information that helps consumers exercise their legal right to obtain the information in their consumer reports.[41] Consumers are frequently in the best position to know whether the information about them in a consumer report is accurate and complete. To help empower

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with particularly high dispute rates relative to their peers. The Bureau will also see the percent of disputes forwarded by the consumer reporting companies that are verified by the furnisher as accurate, modified, or deleted. The accuracy report template is available online. *See* Consumer Reporting Data Request Report, *available at* http://files.consumerfinance.gov/f/201412_cfpb_sample-accuracy-report.pdf.

[37] *See, e.g.*, Press Release, Consumer Fin. Protection Bureau, CFPB Orders Subprime Credit Reporting Company and Owner to Pay $8 Million Penalty for Illegal Practices (Dec. 3, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-subprime-credit-reporting-company-and-owner-to-pay-8-million-penalty-for-illegal-practices/; Press Release, Consumer Fin. Protection Bureau, CFPB Takes Action Against Medical Debt Collector (Jun. 18, 2015), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-medical-debt-collector/.

[38] Consumers can submit complaints at: http://www.consumerfinance.gov/complaint/.

[39] For information about how the Bureau handles complaints see, Consumer Response Annual Report (March 2016), *available at* http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf. The Consumer Complaint Database can be accessed at: http://www.consumerfinance.gov/data-research/consumer-complaints/.

[40] *See* http://www.consumerfinance.gov/askcfpb.

[41] *See* You have the right to request your consumer reports (Jan. 27, 2016), *available at* http://www.consumerfinance.gov/about-us/blog/you-have-the-right-to-request-your-consumer-reports/.

consumers, the Bureau publishes a list of consumer reporting companies and their contact information.[42] This information is intended to make it easier for consumers to exercise their rights to obtain the information in their consumer reports, fact-check that information, and dispute inaccuracies.

Finally, the Bureau has also called on companies to make credit scores and related content freely available to consumers. Providing free and easy access to credit scores could raise awareness of credit issues and prompt busy Americans to review their credit standing. If scores are lower than expected or if they change over time, more consumers may take the initiative to request their credit reports. This information will allow them to address concerns, dispute errors or fraud-related entries, and improve negative aspects of their credit usage. The Bureau considers this initiative to be a "best practice" in the industry.[43]

Question 2

I joined hundreds of Members of Congress in a letter requesting that the Bureau's regulations be appropriately tailored according to the business model and risk profile of smaller financial institutions. What type of regulatory flexibility does the Bureau plan to provide that will prevent unintended burdens on credit union members or community bank customers, such as limiting services or increasing costs?

Response

Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorizes the Bureau to engage in rulemaking and issue orders and guidance to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. In doing so, Section 1022 requires that the Bureau consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access to consumer financial products and services to consumers. Section 1022 also requires the Bureau to consider the impact of a proposed rule on insured depository institutions and credit unions with total assets of $10 billion or less as well as the impact on consumers in rural areas. Moreover, Section 1022 gives the Bureau the authority to create exemptions from the Consumer Financial Protection Act of 2010 or rules issued under that Act for any class of covered persons, service providers, or consumer financial products or services if the Bureau determines an

[42] *See* Consumer Fin. Prot. Bureau, List of Consumer Reporting Companies (2016), *available at* http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf.
[43] *See* Press Release, Consumer Fin. Protection Bureau, CFPB Calls on Top Credit Card Companies to Make Credit Scores Available to Consumers (Feb. 27, 2014), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-calls-on-top-credit-card-companies-to-make-credit-scores-available-to-consumers/, and http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-consumer-advisory-board-meeting/.

exemption is necessary or appropriate to carry out the purposes and objectives of the Consumer Financial Protection Act after taking into consideration a set of factors specified in the statute.

To date, the Bureau has sought to carefully calibrate its efforts to ensure consistency with respect to consumer financial protections across the financial services marketplace, while accounting for the different business models and classes of financial institutions. For example, as part of the Bureau's commitment to achieving tailored and effective regulations, the Bureau has taken the following actions for different models and classes of institutions:

- **Expanded safe harbor for small creditors.** A small creditor has a broader safe harbor for its Qualified Mortgage (QM) loans than non-small creditors. The Bureau's rules provide a safe harbor for QMs with annual percentage rate (APR) spreads over Average Prime Offer Rate (APOR) up to 350 basis points, whereas non-small creditors have a safe harbor for spreads up to 150 basis points. The Bureau's rules also allow a small creditor to make QMs with debt-to-income ratios that exceed the otherwise applicable 43 percent cap. (Small creditors must hold these loans in portfolio for three years.)

- **Exempted small creditors in rural and underserved areas.** Initially, small creditors that operate predominantly in rural or underserved areas were exempt from requirements to establish escrow accounts for higher priced mortgage loans and could offer QMs and Home Ownership and Equity Protection Act (HOEPA) loans ("high cost" mortgages as defined in the HOEPA) that have balloon payment features. QMs and HOEPA loans generally cannot have balloon payments. In March 2016, the Bureau issued an interim final rule which extended certain exemptions for small creditors in rural and underserved areas.

- **Implemented a two-year pause for small creditors.** The Bureau established a two-year transition period (until January 10, 2016) allowing small creditors to make balloon-payment QMs and balloon-payment HOEPA loans regardless of whether they operate predominantly in rural or underserved areas, while the Bureau revisited and reconsidered the definition of "rural" for this purpose.

- **Expanded exemptions for rural and underserved areas.** In connection with other changes to amend the definitions of "small creditor" and "rural area," the Bureau published a final rule in October 2015 that extended this two-year transition period from January 2016 until April 2016. The Bureau's final rule also provided a significant expansion of "rural," as well as an expansion of which entities can qualify as "small creditors." The Bureau's final rule took effect on January 1, 2016, before the two-year transition period expired. In March 2016, the Bureau issued an interim final rule that implements the Helping Expand Lending Practices in Rural Communities Act, and makes these provisions available to small creditors that extend at least one covered transaction secured by property located in a rural or underserved area in the previous calendar year. About 6,000 additional small creditors will be eligible as a result of this change.

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- **Relaxed requirements for appraisals.** Small creditors have relaxed rules regarding conflict of interest in ordering appraisals and other valuations.

- **Exempted small servicers from providing periodic statements.** Small servicers are exempt from the Truth in Lending Act requirement to provide periodic statements.

- **Exempted small servicers from loss mitigation requirements.** Small servicers are exempt from all of the Real Estate Settlement Procedures Act provisions on policies and procedures; early intervention; continuity of contact; and loss mitigation, except that a small servicer may not file for foreclosure unless the borrower is more than 120 days delinquent on the mortgage. Small servicers may also not file for foreclosure (or move for a foreclosure judgment or order of sale, or conduct a foreclosure sale) if a borrower is performing under the terms of a loss mitigation agreement.

- **Exempted lower-volume depository institutions from Home Mortgage Disclosure Act (HMDA) reporting.** In October of 2015, the Bureau adopted a final rule revising Regulation C, which implements HMDA. HMDA and Regulation C, among other things, require covered mortgage lenders to report data concerning their mortgage lending activity. Changes to coverage in the final rule will reduce the number of banks, savings associations, and credit unions that are required to report HMDA data. The revisions will relieve about 22 percent of currently reporting depository institutions from the burden of reporting HMDA data.

- **Provided regulatory certainty for small entities under the Electronic Fund Transfer Act.** In the Bureau's rules implementing the Dodd-Frank Act's amendments to the Electronic Fund Transfer Act, the Bureau determined that the remittance requirements do not apply to transfers sent by entities that provide 100 or fewer remittances each year.

Small financial institutions play a vital role within many communities across the nation, as well as within the economy. Their traditional model of relationship lending has been beneficial to many people in rural areas and small towns throughout the country. For these reasons, the Bureau attempts to ensure that rules and regulations are not burdensome to these smaller financial institutions.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Bill Posey:

Question 1

If the Consumer Financial Protection Bureau (CFPB) proposes a small-dollar rule similar to the SBREFA proposal that was released, what would be the justification for preempting state lending laws that in some states have been working well for a number of years? In other states, legislatures have recently passed new lending laws to ensure that their citizens have access to credit so what gap in state law is the CFPB trying to fill?

Response

The Consumer Financial Protection Bureau's (Bureau's) proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans seeks to prevent the types of consumer injuries that result from lenders extending short-term and longer-term loans with payments that a consumer cannot afford to repay. The Bureau's proposed rule also seeks to address harms that may arise from certain lender practices in collecting repayment from a consumer's account. The proposed rule, if finalized, would establish a federal floor for consumer protection for covered loans.

As described in the notice of proposed rulemaking released on June 2, 2016, the Bureau believes that the requirements of the proposed rule would coexist with State laws that pertain to the making of loans that the proposed rule would treat as covered loans. Consequently, any person subject to the proposed rule would be required to comply with both the requirements of the proposed rule and applicable State laws, except to the extent the applicable state laws are inconsistent with the requirements of the proposed rule. This approach is entirely consistent with our system of cooperative federalism.

Question 2

In a report issued by Charles River Associates over a year ago, the CFPB's disparate impact methodology was critiqued but the CFPB did not respond to this report. Furthermore, internal memos at the CFPB indicate that the Department of Justice had developed a better way to distribute settlement proceeds that would avoid fraud. **What is the reasoning behind the CFPB's unwillingness to change its disparate impact methodology or the way it distributes settlement proceeds?**

Response

Disparate impact is the law and has been upheld by courts and used by federal agencies for decades. The Bureau's disparate impact methodology is appropriate to determine whether credit underwriting or pricing complies with the law. On September 17, 2014, the Bureau published a white paper, entitled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*,[44] that details the methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

The Bureau and the paper you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup and compensation policies, and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

The Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in consultation with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

As we stated in our white paper, the Bureau is committed to continuing our dialogue with other federal agencies, lenders, advocates, and researchers regarding the Bureau's methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. We expect the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance. For further information regarding the Bureau's methodology, issues raised by stakeholders, and the Bureau's response, see the Bureau's 2015 and 2016 Fair Lending Reports.[45]

The Bureau and the Department of Justice will work together, as appropriate on a case-by-case basis, to ensure that as many eligible consumers as possible receive remuneration from settlement funds, while putting in place important safeguards to ensure that eligible consumers were the recipients of relief. The Bureau and the Department of Justice will work closely with lenders and settlement administrators, as appropriate, on consumer outreach efforts necessary to distribute settlement funds, as required by the specifics of each Administrative Order or Consent Order that governs resolution of the agencies' enforcement action. The Bureau is confident in the integrity of its current process and in the analysis that underpins distribution of these funds to harmed consumers.

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[44] *Available at* http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.
[45] *See* http://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf, pgs. 38-40; and http://files.consumerfinance.gov/f/documents/201604_cfpb_Fair_Lending_Report_Final.pdf, pgs 53-55.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Dennis A. Ross:

Question 1

In your testimony, you stated Florida consumers pay over 300% in interest on a Florida deferred presentment transaction. If a Florida consumer takes out only one $100 payday loan over the course of the entire year, what is the CFPB's calculation of the APR based on the Florida statute?

Response

Regulation Z, which implements the Truth in Lending Act, sets out how an annual percentage rate (APR) is calculated. The APR on a particular loan depends on factors such as the amount borrowed, the finance charge associated with that loan, and the length of the loan.

Question 2

Given that you continue to quote the Center for Responsible Lending and the PEW institute, has the CFPB conducted any direct research in conjunction with the Florida Office of Financial Regulation to determine consumer harm or has the CFPB simply relied on 3rd parties commentary to form its policy position?

Response

The Consumer Financial Protection Bureau (Bureau) has conducted its own analysis of consumer borrowing in Florida. On June 2, 2016, the Bureau published Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products[46] concurrently with the notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans. In that report, the Bureau measured the rates of reborrowing in a number of states, including Florida, and found that despite Florida's 24-hour cooling-off period between payday loans, the reborrowing rate after 14 days was essentially identical to states that had no restrictions on rolling over or renewing loans.

Question 3

In your same testimony, you stated that Florida consumers "roll-over" their loans an average of 9 times per year. According to Florida statute 560.404(18) ***A deferred presentment provider or its affiliate may not engage in the rollover of a deferred presentment agreement. A deferred***

[46] Available at http://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products.

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presentment provider may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by the same or an affiliate. Do you have any evidence that lenders in Florida are violating Florida statute?

Response

Florida does prohibit rollovers and requires a cooling-off period between each loan. To clarify, a significant share of loans are reborrowed, not rolled-over, once the cooling-off period expires. In Florida, 73 percent of loans are reborrowed within seven days, over 80 percent of loans are reborrowed within 14 days, nearly 90 percent are reborrowed within 30 days, and over 90 percent are reborrowed within 60 days. Despite Florida's cooling-off period, Florida reborrowing rates are on par with, or exceed, reborrowing rates in states such as Idaho, Missouri, Ohio and Texas, which do not have the same cooling-off restrictions, when we look at loans taken within 14, 30 or 60 days of a previous loan being repaid.[47]

Question 4

Has the CFPB referred its examination findings of violations of Florida's consumer protections concerning "roll-overs" occurring in Florida to the Florida Office of Financial Regulation and the Florida Attorney General for prosecution?

Response

While the Bureau cannot comment on or confirm any Bureau supervisory activity or investigations, in general, the Bureau, through the State Coordinating Committee, makes available supervisory letters, examination reports and related information to state bank and nonbank regulators that have jurisdiction over an entity, and have entered into an information sharing Memorandum of Understanding with the Bureau. Such state regulators include the Florida Office of Financial Regulation.

Question 5

Concerning the alleged activity in Florida of roll-overs, does the Director have any evidence that based on the CFPB's definition of a roll-over in the April 2013 White Paper is occurring in Florida? I have outlined the definition that the CFPB has determined as a definition of a rollover: *A primary focus is on what we term "sustained use"—**the long term use of a short-term high-cost product evidenced by a pattern of repeatedly rolling over or consistently re-borrowing, resulting in the consumer incurring a high level of accumulated fees."*** Given the above CFPB

[47] *See* http://www.consumerfinance.gov/data-research/research-reports/supplemental-findings-payday-payday-installment-and-vehicle-title-loans-and-deposit-advance-products/ at 105.

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definition, does the CFPB have any evidence that fees are accumulating in Florida that would be a violation of State law?

Response

The Bureau has measured reborrowing using several definitions, including same-day reborrowing, and reborrowing within seven, 14, 30 and 60 days. Using definitions other than same-day, Florida has high rates of reborrowing, but the Bureau has not analyzed whether the fees associated with that reborrowing constitute a violation of State law.

Question 6

Given your testimony that the CFPB found that the average borrower takes out 9 loans per year, would you like to change your testimony given published regulator data from the Florida Office of Financial Regulation that shows only 4.5% of Florida consumers take out 9 loans per year? In fact, would the CFPB agree that Florida tracks and enforces every loan issued by Florida lenders and can report on every level of consumer usage?

Response

As noted in a previous responses, Florida's reborrowing rates, once the 24-hour cooling-off period expires, show that 73 percent of loans are reborrowed within seven days, over 80 percent of loans are reborrowed within 14 days, nearly 90 percent are reborrowed within 30 days, and over 90 percent are reborrowed within 60 days. Despite Florida's cooling-off period, Florida reborrowing rates after each cooling-off period expires are on par with, or exceed, reborrowing rates in some states which do not have the same cooling-off restrictions, when we look at loans taken within 14, 30 or 60 days of a previous loan being repaid.

Question 7

Public data available from Florida shows that over 5 years, over 65% of consumers no longer use the product in Florida. In fact, after one year of usage, over 20% of Florida consumers no longer use the product, given the CFPB's concern about long-term sustained use, has the CFPB studied usage and borrower financial outcomes over a longer period than simply a single year for Florida consumers?

Response

The Bureau's own research is based upon data covering a twelve-month period of time. However, the Bureau has carefully reviewed published studies which track payday borrowers over longer periods.

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Question 8

Given your claim that consumers are experiencing financial harm in Florida, will the CFPB provide direct statistical evidence and explanation of the financial harm? An example of harm would be the continued lowering of credit scores in correlation of utilizing the Florida Deferred Presentment Product, an increase in personal bankruptcies specifically correlating to the issuance of the average transaction in Florida of $390.00, a year over year increase in utility late payments, late mortgage or rental payments that correlate with the year over year usage of the product in Florida.

Response

The Bureau's preliminary findings with respect to the harms experienced by consumers from payday, vehicle title, and certain high-cost installment loans, and the evidence underlying those findings, is set forth in the notice of proposed rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans at the section-by-section analysis of proposed §§ 1041.4, 1041.8, and 1041.13. Based on that evidence, the Bureau has proposed to identify two specific types of unfair and abusive practices with regard to covered loans: (1) failing to make a reasonable determination of ability to repay; and (2) attempting to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. The Bureau's analysis of evidence in this regard is described in the notice of proposed rulemaking released June 2, 2016.[48]

Question 9

What standard or definition of financial harm does the CFPB use in looking at whether Florida's statutes and enforcement are allowing consumer harm?

Response

The notice of proposed rulemaking referenced above sets forth the Bureau's preliminary findings with respect to the substantial injury that the Bureau believes consumers experience as a result of the practice that the Bureau proposed to find to be unfair. The Bureau also believes that such practices may be abusive within the meaning of section 1031 of the Dodd-Frank Act.

[48] Payday, Vehicle Title, and Certain High-Cost Installment Loans Notice of Proposed Rulemaking, (July 22, 2016), available at https://www.federalregister.gov/articles/2016/07/22/2016-13490/payday-vehicle-title-and-certain-high-cost-installment-loans, see 81 FR 47919 et seq, 81 FR 47986 et seq, and 81 FR 480549 et seq.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congresswoman Kyrsten Sinema:

Question

It is my understand that the CFPB has been studying a number of overlapping issues that may implicate the leasing of rooftop solar panels, including the financing, market conditions and industry practices that may affect consumers.

Could you please provide me with an update regarding your assessment of these issues?

Response

The Consumer Financial Protection Bureau (Bureau) is committed to ensuring that all consumers benefit from fair, transparent, and competitive markets for consumer financial products and services and that consumers are protected under applicable Federal consumer financial laws. The Bureau continues to research the solar financing market and to engage with industry stakeholders and other agencies to better understand the market and identify areas of potential consumer harm. As part of that effort, the Bureau welcomes any additional information or feedback you or other stakeholders may have regarding potential consumer impacts.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Steve Stivers:

Question 1

Enforcement Actions - In its enforcement action against Frederick J. Hanna & Associates, the CFPB argued that attorneys representing consumers are the only ones qualifying for the Practice of Law Exclusion in 1027(e) of Dodd Frank. Since that is not expressed anywhere in the plain reading of the statute how does the Bureau come to that conclusion?

Response

The Consumer Financial Protection Bureau (Bureau) has enforced and will continue to enforce Federal consumer financial laws against those who violate those laws to the full extent of our legal authority, including attorneys who are providing a financial product or service with respect to any consumer who is not receiving legal advice or services from the attorney in connection with such product or service. The legal exclusions that, in certain circumstances, shield attorneys from the Bureau's enforcement authority do not apply to lawyers who are not actually providing legal services to the harmed consumers, as in the *Hanna* case. In its order denying the defendant's motion to dismiss the *Hanna* action dated July 14, 2015, the district court found that under 12 U.S.C. § 5517(e)(2)(B), the Bureau may exert its authority over an attorney's debt-collection practice when the attorney is not offering legal advice or services to the consumer, but is merely collecting the consumer's debt. The court held that "the plain terms" of the Consumer Financial Protection Act's (CFPA's) "exception to the practice-of-law exclusion allow the Bureau to bring a CFPA claim here."

Question 2

Arbitration - Contrary to the press release marketing the CFPB's arbitration study, the findings in the study confirm that arbitration is a faster, less expensive and far more effective way for consumers to resolve disputes with companies than class action litigation. According to the study, in 60% of the class actions studied by the CFPB consumers received nothing at all because the named plaintiff settled individually or voluntarily withdrew the suit. In the 15% of class actions that settled, consumers who received settlement cash payments got a paltry $32 on average after waiting for up to two years. As few as 4% of the class members who were eligible to receive benefits conditioned on submitting a claim form actually filed a claim. In sharp contrast, the study showed, consumers who prevailed in an individual arbitration recovered an average of over $5,000, and the entire arbitration process was concluded in an average of 2-7 months. Moreover, the cost to the consumer for the entire arbitration was only one-half of the cost of simply filing a federal court complaint. While class members each received about $32, the attorneys were awarded over $400 million. Given those figures, why is the CFPB planning to ban the use of pre-dispute arbitration agreements in class litigation? Please don't say that individual arbitration will still be available. Without the class action waivers, there will not be enough support for arbitration for individual arbitrations to continue.

Response

Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the Bureau to conduct a study and provide a report to Congress regarding "the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services." The Dodd-Frank Act authorized the Bureau to issue regulations to prohibit or impose conditions or limitations on the use of arbitration agreements if the Bureau found, after completing the Study, that such rules would be in the public interest and for the protection of consumers. The Dodd-Frank Act also required that the findings in any such rule be consistent with the Bureau's Study. The Bureau released its Study of pre-dispute arbitration agreements in March 2015.[49]

On May 5, 2016, pursuant to the authority outlined above, the Bureau released a Notice of Proposed Rulemaking (NPRM) regarding agreements for consumer financial products and services providing for mandatory pre-dispute arbitration. The Bureau's Study, as described in the NPRM, sheds considerable light on the benefits of a class action system as compared to the benefits most consumers derive from individual resolution of their disputes. The Study found, for example, that few consumers of financial products and services seek relief individually, either through the arbitration process or in court. In its review of all American Arbitration Association consumer disputes for the period of 2010 through 2012 relating to credit card, checking/debit account, payday loan, prepaid card, auto purchase loan, and student loan products, the Bureau found only an average of 616 arbitration proceedings a year were filed for all six product markets combined, of which only 411 were recorded as filed by consumers acting alone. Only 25 disputes a year involved consumers bringing affirmative claims for $1,000 or less than that amount. Of all of the arbitration cases in which the Bureau could determine the results, the consumer obtained relief on an affirmative claim in just over 20% of the cases. All told, these consumers received a total of $189,109 in relief.

In contrast, the Study found that consumers derive substantial benefits from class action settlements. As noted, the Bureau identified a significant volume of consumer financial class settlements that were approved between 2008 and 2012.[50] In the 419 settlements that we analyzed, there were 350 million total class members.[51] These settlements included cash relief, in-kind relief, and relief relating to fees and other expenses that companies paid. The total amount of gross relief in these settlements—that is, aggregate amounts promised to be made

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[49] *See* Arbitration Study (March 2015) available at http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.
[50] Arbitration Study, section 8 at 3.
[51] Arbitration Study, section 1 at 16. Excluding one large settlement (In re TransUnion Privacy Litigation) with 190 million class members, these settlements included 160 million class members.

available to or for the benefit of damages classes as a whole, calculated before any fees or other costs were deducted—was about $2.7 billion.[52] This estimate included cash relief of about $2.05 billion and in-kind relief of about $644 million.[53] Some 251 settlements contained enough data for the Bureau to calculate the value of cash relief that, as of the last document in the case files, either had been or was scheduled to be paid to class members. Based on this subset of cases alone, the value of calculable cash payments to class members to that point was $1.1 billion.[54] This excludes payment of in-kind relief and any valuation of injunctive relief.

With respect to the percentage of putative class cases that your question states yield "nothing at all," for consumers, the Bureau identified classwide settlements in approximately 17% of the putative class cases identified in its Study, as of the "cutoff" date for its analysis in February 2014. The Bureau cannot definitively determine the extent to which the class actions that did not result in class settlement delivered benefits to absent class members. Most of the remaining putative class cases are known to end in individual settlement or with outcomes that are consistent with an individual settlement. The terms of those individual settlements are generally unknown.

Your question notes that around 4% of consumers who were required to submit claims forms to receive settlement benefits submitted those forms. As you note, this figure does not reflect the scope of consumer relief from class settlements, as it excludes the significant share of consumer finance cases in which class members did not need to file a claim to obtain compensatory relief. Of 382 consumer financial settlements analyzed in the Bureau's Study that included cash relief, the Bureau found that 37%, representing 140 disputes in total, included some form of automatic cash distribution. These cases included approximately 24 million class members, almost all of whom were eligible for automatic cash relief, meaning that they stood to receive cash payments without submitting a claim. These class members are not included in the claims rates figure you cite, which is based only on cases in which there is a claims process. Furthermore, these numbers focus on compensatory relief. These numbers do not cover class members and other consumers who benefit from behavioral components of the settlement. Injunctive class members all stand to benefit from these aspects of a given settlement. Often, when companies agree to settle a case, they agree to stop engaging in a particular practice on a going-forward basis. This provides additional benefit to future customers and other consumers not part of the class.

After the Bureau completed the Arbitration Study, it has continued accepting input from outside stakeholders as it weighs whether regulatory intervention would be in the public interest and for the protection of consumers. The Bureau is currently reviewing the comments on the proposed rule and will consider any comments received in accordance with its obligations for notice-and-comment rulemaking.

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[52] Arbitration Study, section 8 at 24. The Study defined gross relief as the total amount the defendants offered to provide in cash relief (including debt forbearance) or in-kind relief and offered to pay in fees and other expenses.
[53] These figures represent a floor, as the Bureau did not include the value, or cost to the defendant, of making agreed changes to business practices.
[54] Arbitration Study, section 8 at 28.

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Question 3

a. **Small-Dollar Rule** - If the CFPB proposes a small-dollar rule similar to the SBREFA proposal that was released, what would be the justification for preempting effective state lending laws that in some states have been working well for a number of years? In other states, legislatures have recently passed new lending laws to ensure that their citizens have access to credit. What gap in state law are you trying to fill?

b. **Small-Dollar Rule** - If your intent was to address payday, title, and similar loans, which have triple-digit APRs, why did you set the threshold at 36% and change the definition of APR?

Response

The Bureau's proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans seeks to prevent the types of consumer injuries that result from lenders extending short-term and longer-term loans with payments that a consumer cannot afford to repay. The Bureau's proposed rule also seeks to address harms that may arise from certain lender practices in collecting repayment from a consumer's account. The proposed rule, if finalized, would establish a federal floor for consumer protection for covered loans.

As described in the notice of proposed rulemaking released on June 2, 2016, the Bureau believes that the requirements of the proposed rule would coexist with State laws that pertain to the making of loans that the proposed rule would treat as covered loans. Consequently, any person subject to the proposed rule would be required to comply with both the requirements of the proposed rule and applicable State laws, except to the extent the applicable state laws are inconsistent with the requirements of the proposed rule. This approach is entirely consistent with our system of cooperative federalism.

The Bureau's proposed rule would not change the definition of "annual percentage rate" under Regulation Z of the Truth in Lending Act. Under the proposed rule, longer-term loans would be covered if they have an all-in annual percentage rate of greater than 36 percent. The notice of proposed rulemaking refers to this as the "total cost of credit." This would include interest, fees, and the cost of add-on products such as credit insurance, memberships, and other products sold along with the credit.

Question 4

- **Disparate Impact** - Please tell us why the CFPB has refused to change its disparate impact methodology or the way it distributes settlement proceeds? Charles River Associates issued a report over a year ago critiquing the CFPB's methodology, but the CFPB did not respond. Internal CFPB memos show that the Department of Justice had

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developed a better way to distribute settlement proceeds that would avoid fraud, yet it appears that the CFPB was more interested in inflating numbers.

- **Disparate Impact** - With a number of distinct consent orders on the books, we still continue to hear of the Bureau's interest in a "global solution to the deal compensation issue." Can you please tell the Committee where the Bureau is in relation to pursing a global solution and how the consent orders inform that effort?

Response

Disparate impact is the law and has been upheld by courts and used by federal agencies for decades. The Bureau's disparate impact methodology is appropriate to determine whether credit underwriting or pricing complies with the law. On September 17, 2014, the Bureau published a white paper, entitled *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*,[55] that details the methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

The Bureau and the paper you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup and compensation policies, and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

The Bureau's approach is designed to arrive at the best estimate of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in consultation with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios.

As we stated in our white paper, the Bureau is committed to continuing our dialogue with other federal agencies, lenders, advocates, and researchers regarding the Bureau's methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. We expect the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance. For further information regarding

[55] *Available at* http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

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the Bureau's methodology, issues raised by stakeholders, and the Bureau's response, see the Bureau's 2015 and 2016 Fair Lending Reports.[56]

The Bureau and the Department of Justice will work together, as appropriate on a case-by-case basis, to ensure that as many eligible consumers as possible receive remuneration from settlement funds, while putting in place important safeguards to ensure that eligible consumers were the recipients of relief. The Bureau and the Department of Justice will work closely with lenders and settlement administrators, as appropriate, on consumer outreach efforts necessary to distribute settlement funds, as required by the specifics of each Administrative Order or Consent Order that governs resolution of the agencies' enforcement action. The Bureau is confident in the integrity of its current process and in the analysis that underpins distribution of these funds to harmed consumers.

The Bureau's goal, first and foremost, is to address discrimination. It is the end of discrimination, not the market's election of a particular means of doing so, that is the Bureau's main concern.

Question 5:

- **Press Releases** - Why does the CFPB's press office continue to misrepresent the content of enforcement actions? For example, in the T3Leads enforcement action, the headline reads, "CFPB Takes Action Against Lead Aggregators for Online Trafficking of Personal Information," but actually, there is no evidence of actual consumer harm. The enforcement action was taken merely on the possibility of future harm to consumers.

Response

The Bureau has done significant work to address consumer harm, including providing $11.4 billion in relief to approximately 25 million consumers using its enforcement authority. It is important for the Bureau to communicate the results of these efforts to the public and industry. One way the Bureau strives to be transparent is through our press releases that discuss enforcement actions.

With respect to the Bureau's actions against T3Leads (and other related individuals, referred to collectively herein as "T3Leads"), the headline "CFPB Takes Action Against Lead Aggregators for Online Trafficking of Personal Information," accurately describes allegations in the lawsuit. Specifically, the Bureau alleged T3 Leads failed to vet the lenders that obtained consumer applications through their network of lead generators and ignored false or misleading statements

[56] *See* http://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf, pgs. 38-40; and http://files.consumerfinance.gov/f/documents/201604_cfpb_Fair_Lending_Report_Final.pdf, pgs 53-55.

about these lenders, yet consumers had no control over which lenders received their application. In addition, the Bureau alleged that consumers were harmed by T3Leads' business practices. For example, consumers were allegedly steered by T3Leads' process to lenders offering less favorable loan terms than otherwise available. In particular, consumers were likely to be connected to lenders that ignore state usury limits or claim immunity from state regulation and jurisdiction, despite representations that T3Leads' selection of lenders "follow the rules" or offer "reasonable" terms. These entities often charge consumers higher interest rates than lenders that do comply with state laws.

More generally, the Bureau's Ombudsman's Office recently completed an independent review[57] of the language used in consent orders as compared with their corresponding press releases, in response to concerns raised by certain trade groups and companies. That independent review concluded that Bureau press releases generally reflect the language in the consent orders. The Bureau will continue to work to ensure that our communications regarding enforcement actions accurately reflect the consumer harm we are addressing in the marketplace.

[57] http://files.consumerfinance.gov/f/201507_cfpb_ombudsman-office-mid-year-update.pdf.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Scott Tipton:

Question 1

General purpose reloadable (GPR) prepaid cards have become an important product for millions of unbanked and underbanked consumers. As the CFPB crafts its final rule to regulate these vital products, I want to ensure these Americans are not denied access to certain features simply because they don't have or don't want a traditional bank-issued checking account.

The CFPB's proposed rule would apply credit card regulations (Regulation Z) to overdraft transactions on a prepaid card. This is likely to curtail or altogether eliminate providers offering of this opt-in feature, allowing them fewer tools to manage small-dollar spending needs. My understanding is that companies offering this feature cap the dollar amount that consumers can overdraft. Companies may not be able offer a traditional credit card feature restricted to such a low dollar amount.

Therefore, is the CFPB considering an exemption from Regulation Z for low-dollar overdraft features (e.g. $150 or less)? How will consumers that do not qualify for or do not want a traditional credit card be able to manage low-dollar spending needs if overdraft protection is not available?

Response

The Consumer Financial Protection Bureau (Bureau) evaluated a range of potential approaches to regulating overdraft credit features offered in conjunction with prepaid accounts. Specifically, some commenters suggested adopting a dollar-amount threshold below which overdraft transactions would not be covered as "credit" under Regulation Z (such as $250 in magnitude). The Bureau carefully considered this idea and ultimately adopted a provision that permits prepaid account issuers to offer incidental "payment cushions" of $10 without triggering the rules governing credit cards under Regulation Z so long as the issuer generally does not impose credit-related fees. However, the Bureau believed that it was appropriate to apply full credit card projections where consumers can incur more substantial debt and/or credit-related fees in connection with a prepaid account. Ultimately, as discussed in detail in the final rule, the Bureau believes its approach appropriately balances the need and desire of some consumers to access an overdraft credit feature in conjunction with a prepaid account while at the same time implementing guard rails to make sure such credit is offered with protections similar to those that apply to other card-based credit (*i.e.*, credit cards).

Question 2

Director Cordray has made several statements over the years regarding prepaid accounts. At field hearings in 2012 and 2014 he made statements that prepaid cards have far fewer regulatory

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protections than bank accounts, debit cards or credit cards. However, in February 2016 at a field hearing in Kentucky he said that "many general purpose reloadable prepaid cards are specifically designed to help consumers manage their spending while limiting their transactional costs and risks. While prepaid cards were developed by entrepreneurs as an alternative to banking, the funds in these accounts are almost always held by a bank or credit union and enjoy federal deposit insurance." As well, last month he said at a field hearing on checking account access that for people unable to get a traditional checking account, prepaid accounts are a type of lower-risk alternative for institutions.

If prepaid cards were so dangerous in 2012, and merited an 870-page rulemaking in 2014, why is he recommending them as a safe alternative to checking accounts in 2016 before the Bureau has even issued their Final Rules on Prepaid Accounts?

Response

The Bureau does not consider prepaid cards to be "dangerous." As indicated by my remarks in 2012 and 2014, the Bureau was concerned that prepaid accounts do not enjoy the same protections under federal law as credit cards or debit cards linked to a checking account. The Bureau's proposed rule, accordingly, was aimed at closing the loopholes in this market and ensuring that prepaid consumers are protected whether they are swiping a card, scanning their smartphone, or sending a payment.

As I noted at the February 2016 field hearing, although currently lacking complete federal protections, certain general purpose reloadable prepaid cards are specifically designed to help consumers manage their spending while limiting their transactional costs and risks. In addition, some prepaid accounts are made available by banks and credit unions to their existing customer base, and as such could make a convenient alternative to checking accounts, for which many consumers do not currently qualify. Finally, the Bureau has finalized the prepaid rule, which will ensure, among other things, that prepaid consumers have error correction and dispute resolution rights comparable to those for checking accounts. With these caveats in mind, prepaid cards may not be the first choice for every consumer, but every consumer deserves the opportunity to choose what is best for him or her. The Bureau does not agree that this sentiment undermines the clear need for a consistent federal regime for prepaid accounts.

Question 3

On page 15 of the Bureau's March 2016 Monthly Complaint report there is a table that includes the most complained about companies and a comparison of the three month averages from last fall to this fall. If you remove the outlier company that experienced service interruptions last fall, prepaid companies have always received less than 20 complaints per three-month period. For an agency that purports to be data driven, how does this data rightly justify over three years of work and an 870 page proposed rule? How does the Bureau receive complaints for prepaid cards that

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represent less than .05% of the total number of complaints sent to the complaint portal and see this as an area of major concern?

Response

The Bureau considers a wide range of information and data when making policy decisions, including decisions to initiate the process of developing a new regulation. Consumer complaints can be an important source of information about problems consumers experience with different financial products. However, a relatively low number of complaints about a product does not mean there is no consumer harm. Depending on the nature of the financial product and how consumers use the product, consumers may be harmed in ways that do not cause them to complain to the Bureau or to blame the product or provider for the harm they have suffered.

The Bureau engaged in the prepaid rulemaking process to address an existing regulatory gap affecting a product that is increasingly being used by America's unbanked consumers. These consumers need and deserve products that are safe and whose costs and risks are clear upfront. Historically, prepaid accounts have had far fewer regulatory protections than bank accounts, debit cards, or credit cards. The fact that most types of prepaid accounts have fewer regulatory protections is especially troubling given that consumers who use these products are, in many instances, among the most vulnerable. The prepaid final rule will ensure that good practices are not a matter of individual issuer discretion and will enable the market to grow responsibly. The Bureau continues to believe that clear rules in the prepaid market will help prevent the spread of "low-road" competition that hurts both consumers and the honest businesses that seek to serve them well.

It is important to note that there has been great public interest in this rulemaking. Indeed, the Bureau received thousands of comment letters from industry, trade groups, consumer groups, and consumers themselves. The Bureau considered possible modifications to its proposal based on these comments, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedure Act, and made certain revisions accordingly.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congresswoman Nydia Velazquez:

Question

The CFPB recently announced that they would be accepting consumer complaints regarding loans from online marketplace lenders. The CFPB also posted a bulletin that offers tips for consumers interested in acquiring an online marketplace loan. As you know, many marketplace lenders make both consumer and small business loans. Do you consider loans to sole proprietors as business loans or consumer loans? And how does your view compare with that of the IRS?

Response

As some of the Consumer Financial Protection Bureau's (Bureau's) rules, including Regulation Z, make clear, ordinarily there is no precise test for whether a product or service is offered or extended for personal, family, or household purposes. However, many of the Bureau's rules provide illustrative examples and interpretations for making such determinations across a range of products, including in some cases noting factors that should be considered. For example, under Regulation Z, consumer credit generally means credit offered or extended to a consumer primarily for personal, family, or household purposes,[58] whereas business credit generally refers to extensions of credit primarily for business, commercial or agricultural purposes, or to other than a natural person.[59] While some of the laws the Bureau administers have limited or no application to business-purpose loans, other laws generally apply regardless of whether a loan is for a business or consumer purpose. For example, the Equal Credit Opportunity Act, which prohibits credit discrimination on the basis of race, color, religion, national origin, sex, or marital status, applies to business loans as well as consumer loans, although some of the regulatory requirements differ for business loans.[60]

The Bureau cannot speak to the view of the U.S. Internal Revenue Service on whether loans to sole proprietors are business loans or consumer loans for their purposes.

[58] See, e.g., 12 CFR § 1026.2(a)(12).
[59] See, e.g., 12 CFR § 1026.3(a).
[60] See, e.g., 12 CFR § 1002.2(h), (g).

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Lynn Westmoreland:

Question 1

Significant questions have been raised about the practical application of certain provisions of the proposed prepaid rule. For example, it does not seem that the force pay scenario was given adequate consideration in the drafting of the proposed rule. Do you anticipate that any portions of the prepaid rule will be put back out for additional comment?

Response

The Consumer Financial Protection Bureau (Bureau) addressed force pay transactions in the prepaid final rule. In accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedure Act, the Bureau considered the concerns raised by commenters, and their suggested modifications, including, for example, those addressing the operational challenges posed by force pay transactions. Under the final rule, a prepaid card is not a credit card (and therefore not subject to the Regulation Z overdraft credit features requirements) when the prepaid card only accesses credit that is incidental to certain transactions and where the issuer does not charge credit-related fees for the credit. One such exemption addresses credit extended as a result of force pay transactions. The Bureau believes this modification will address the concerns raised by industry commenters regarding operational challenges and compliance costs related to force pay transactions.

Question 2

The Dodd-Frank Law established a clear requirement for the CFPB to act based on fact and data. Given that complaints about prepaid cards in general represent less than 1% of the total financial-product complaints you receive, why is this area of such intense focus? Furthermore, why single-out the Overdraft feature? Given that overdraft complaints factor as less than half of one percent of consumer complaints – how are we "protecting" consumers by taking away an option they seem to be satisfied with?

Response

The Bureau considers a wide range of information and data when making policy decisions, including decisions to initiate the process of developing a new regulation. Consumer complaints can be an important source of information about problems consumers experience with different financial products. However, a relatively low number of complaints about a product does not mean there is no consumer harm. Depending on the nature of the financial product and how consumers use the product, consumers may be harmed in ways that do not cause them to complain to the Bureau or to blame the product or provider for the harm they have suffered.

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Question 3

In talking to colleagues, we find there is growing consensus that a small-dollar exemption to the proposed rule on prepaid card overdraft would be more productive than the blanket proposal to reclassify all overdraft products under Regulation Z. Would an amount not to exceed $150 be appropriate? If not, how would a small-dollar exemption to this rule, at the $150-level, constitute a "debt trap?"

Response

The Bureau has not stated that overdraft fees on prepaid products have caused consumers to fall into "debt traps."

In developing its proposal and the final rule, the Bureau evaluated a range of potential approaches to overdraft credit features in conjunction with its prepaid accounts. Specifically, some commenters suggested adopting a dollar-amount threshold below which overdraft transactions would not be covered as "credit" under Regulation Z (such as $250 in magnitude). The Bureau carefully considered this idea and ultimately adopted a provision that permits prepaid account issuers to offer incidental "payment cushions" of $10 without triggering the rules governing credit cards under Regulation Z so long as the issuer generally does not impose credit-related fees. However, the Bureau believed that it was appropriate to apply full credit card projections where consumers can incur more substantial debt and/or credit-related fees in connection with a prepaid account. Ultimately, as discussed in detail in the final rule, the Bureau believes its approach appropriately balances the need and desire of some consumers to access credit in conjunction with a prepaid account while at the same time implementing guard rails to make sure such credit is offered with protections similar to those that apply to other card-based credit (i.e., credit cards).