IMPROVING TRANSPARENCY AND ACCOUNTABILITY AT THE BUREAU OF CONSUMER FINANCIAL PROTECTION

HEARING

BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

JUNE 6, 2018

Printed for the use of the Committee on Financial Services

Serial No. 115–98
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

BLAINE LUETKEMEYER, Missouri, Chairman

KEITH J. ROTHFUS, Pennsylvania, Vice Chairman
EDWARD R. ROYCE, California
FRANK D. LUCAS, Oklahoma
BILL POSEY, Florida
DENNIS A. ROSS, Florida
ROBERT PITTENGER, North Carolina
ANDY BARR, Kentucky
SCOTT TIPTON, Colorado
ROGER WILLIAMS, Texas
MIA LOVE, Utah
DAVID A. TROTT, Michigan
BARRY LOUDERMILK, Georgia
DAVID KUSTOFF, Tennessee
CLAUDIA TENNEY, New York

WM. LACY CLAY, Missouri, Ranking Member
CAROLYN B. MALONEY, New York
GREGORY W. MEEKS, New York
DAVID SCOTT, Georgia
NYDIA M. VELÁZQUEZ, New York
AL GREEN, Texas
KEITH ELLISON, Minnesota
MICHAEL E. CAPUANO, Massachusetts
DENNY HECK, Washington
Gwen Moore, Wisconsin
CHARLIE CRIST, Florida

(II)
CONTENTS

Hearing held on:
June 6, 2018 ................................................................. 1
Appendix:
June 6, 2018 ................................................................. 43

WITNESSES

WEDNESDAY, JUNE 6, 2018

Day, Steven G., President, American Land Title Association .................. 4
Hunt, Richard, President and Chief Executive Officer, Consumer Bankers
Association ................................................................. 6
Prochaska, Kate (Larson), Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce .......................................................... 7
Shelton, Hilary O., Director, NAACP Washington Bureau, Senior Vice President, Advocacy and Policy, National Association for the Advancement of Colored People ................................................................. 9
Whitaker, Elmer K., Chief Executive Officer, Whitaker Bank Corporation of Kentucky ................................................................. 11

APPENDIX

Prepared statements:
Day, Steven G. ................................................................. 44
Hunt, Richard ................................................................. 61
Prochaska, Kate (Larson) ............................................... 73
Shelton, Hilary O. ............................................................. 87
Whitaker, Elmer K. ............................................................ 97

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Luhtemeyer, Hon. Blaine:
Written statement from the Association of Credit and Collection Professionals (ACA) ................................................................. 103
Written statement from the Credit Union National Association (CUNA) .... 130
IMPROVING TRANSPARENCY AND ACCOUNTABILITY AT THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Wednesday, June 6, 2018

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:04 p.m., in room 2128, Rayburn House Office Building, Hon. Blaine Luetkemeyer [chairman of the subcommittee] presiding.


Also present: Representative Duffy.

Chairman LUETKEMEYER. The committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

I apologize for the coming and going here of everybody, but we had votes on the floor, so there will be some more members coming and going. And obviously, we have got one witness that is still looking for the Rayburn building, apparently, so we will see how that works out. But we do thank our witnesses for being here today, and I think we have got a great panel of folks, and I think we are going to have a great hearing.

So this hearing is entitled, “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection.” Before I begin, I would like to thank the witnesses for appearing today, and we appreciate your participation and look forward to the discussion.

I now recognize myself for 5 minutes for the purpose of delivering an opening statement.

As prescribed in Dodd-Frank, the mission of the Bureau of Consumer Financial Protection is to regulate the offering and provision of consumer financial products or services under the Federal consumer protection laws, and to educate and empower consumers to make better informed financial decisions. Unfortunately, the Bureau has failed to carry out its mission.

The Bureau of Consumer Financial Protection hasn’t regulated based just on Federal consumer protection laws. Under Director Cordray, the agency took upon itself to essentially write law
through guidance and regulate through enforcement. Further, the Bureau hasn't worked to educate and empower consumers to make better informed financial decisions. This hasn't been a partnership between the Government and the people. Rather, the bureaucrats have worked diligently to eliminate options for Americans verily thinking that they are better equipped than consumers to make financial decisions.

Thankfully, Acting Director Mulvaney is striving to foster an environment that promotes transparency, legitimacy, and greater consumer choice. He also would like to have us call the Bureau by its correct name, which is Bureau of Consumer Financial Protection, instead of Consumer Financial Protection Bureau (CFPB).

The Bureau of Consumer Financial Protection hasn't regulated—excuse me. There we go. We will get 'er done.

Mr. Mulvaney has committed to a more temperate and data-driven process. He is outlining a vision that for the first time conforms to Congress' mandate. The acting director is to be commended for the progress he has made thus far, but we must recognize that not all reforms can be done administratively.

In his latest semiannual report to the President and Congress, Mr. Mulvaney sent a clear message to us: Congress must act in an effort to establish meaningful accountability. Specifically, Acting Director Mulvaney first pointed to the need to fund the Bureau through the congressional appropriations process. Next, subject the Director to the full power of the President's executive authorities. Further, require legislative approval of major Bureau rules. And finally, establish an independent inspector general to oversee the Bureau, its leadership, and its staff.

Members of this committee have promoted these very ideas since the inception of the Bureau. I am very pleased to see that the House Appropriations Subcommittee on Financial Services and General Government Chairman Tom Graves included all these provisions in his Fiscal Year 2019 Financial Services bill.

Today, our distinguished panel will discuss their views on these and other ideas for reform, many of which were also included in title VII in Chairman Hensarling's CHOICE Act. We look forward to a productive conversation of initiative that will increase transparency and ensure that the Bureau focuses more intently on its actual mission, rather than abusing its authorities to promote a political agenda and in actuality does little to protect consumers. The American people deserve a Bureau of Consumer Financial Protection that enforces law rather than creates it, and that gives power and choice back to the consumers.

We thank our witnesses for appearing and look forward to your testimony.

With that, the Chair recognizes the gentleman from Missouri, Mr. Clay, the Ranking Member of the subcommittee, for 5 minutes for an opening statement.

Mr. CLAY. Thank you, Mr. Chairman. Let me thank the panel of witnesses for being here today.

For 6 years, America's consumers had a bureau that won significant victories in the name of financial justice. The CFPB was so effective that 29 million consumers received nearly $12 billion in the aftermath of the housing crisis that devolved into a deep reces-
sion, a Federal law assigned authority to accept complaints, investigate, and when warranted, take enforcement actions against bad financial actors.

Rules affecting financial transactions as large as mortgages and as small as payday loans were finalized after extensive public hearings where lenders and borrowers alike were afforded the opportunity to share their respective views before any decisions were reached. And that is called transparency and accountability. Homeownership was touted by Presidents Clinton and Bush as a means of increasing minority wealth through home equity, but the relaxing of regulations of the housing market by Members of both parties produced the dramatic rip-off of the most vulnerable.

Black and brown college grads lost more than 60 percent of their wealth during the 2007–2008 financial crisis because of laxed regulations. These homeowners have not recovered from their losses to this day.

In June, the CFPB uncovered discriminatory lending practices by BancorpSouth. According to the Department of Justice, CFPB alleged that BancorpSouth bank violated the Fair Housing Act and the Equal Credit Opportunity Act by using policies and practices that unlawfully discriminated against African Americans and other residents of predominantly minority communities.

The CFPB took the uncommon practice of using secret shoppers in its investigation. The settlement agreement dictates that BancorpSouth pay millions of dollars in relief and civil penalties. And that is called accountability.

In 2014, when a company named U.S. Bank illegally billed customers for services they never received, the CFPB ordered that the bank refund these consumers $48 million. And that is called transparency.

And so I look forward to this testimony, and I yield back.

Chairman Luetkemeyer. The gentleman yields back.

Today we welcome the testimony of Mr. Steven Day, President, American Land Title Association; Mr. Richard Hunt, President and CEO of Consumer Bankers Association; Ms. Kate Larson Prochaska, Director, Center for Capital Market Competitiveness, U.S. Chamber of Commerce; Mr. Hilary Shelton, Director of the Washington Bureau and Senior Vice President for Advocacy and Policy, NAACP.

And at this moment I would like to recognize the gentleman from Kentucky, Mr. Barr, for purposes of introducing the final witness.

Mr. Barr. Thank you, Mr. Chairman.

And Chairman Luetkemeyer and Ranking Member Clay, it is an honor to introduce my constituent, the CEO of Whitaker Bank, Elmer Keith Whitaker. As a third-generation banker and head of the largest family owned community bank in Kentucky, Mr. Whitaker works every day with Kentucky consumers who have been negatively impacted by the Consumer Financial Protection Bureau, and is here today to help Congress better understand what we can do to reform the Bureau to help consumers.

Mr. Whitaker, his father Jack, and his late grandfather Elmer, who rose from the coal fields of eastern Kentucky as a coal miner to build a very successful banking business, really represent the best in the financial services industry, not only as successful bank-
ers, but also as philanthropists whose charitable activities and community involvement reflect their strong faith and their commitment to lifting up the people of Kentucky, and we thank you for that.

So from financing a car loan, donating money to establish a new YMCA, or helping a family purchase a home, to the University of Kentucky Whitaker Bankshot, which is my favorite, that supports the Cawood Ledford Scholarship Fund, community banks are critical to our towns, and I am pleased to welcome Mr. Whitaker here today.

I yield back.

Chairman Luetkemeyer. I thank the gentleman.

And we want to thank and welcome our witnesses. Just a little bit of a tutorial on the timing mechanism, the lights in front of you. Each one of you has 5 minutes to give your presentation. The light when it turns green, means go. Please pull the microphones to you. Those boxes in front of you do move forward, so please pull them forward because we like to have you very close to the microphones. It works very well that way. And when a light comes on and it is yellow, that means you have 1 minute to wrap up, and when it is red, we need to stop and move on.

So with that, Mr. Day, you are recognized for 5 minutes, and you may begin.
dustry like a bulletin or be narrow and specific to a single person, like an IRS private letter ruling.

Clear reliable guidance and examples are important for two reasons. First, it provides businesses with a solid basis for making decisions and investments that they know will not harm consumers or lead to potential enforcement actions and fines. Second, guidance improves the effectiveness of regulators’ supervision by providing a reference point for judging business practices for compliance.

Our industry acutely felt the need for guidance when implementing TRID, where both the quality and quantity of the Bureau’s guidance was lacking. Hundreds of questions arose as we implemented this rule. Rather than answer these questions in writing, the Bureau hosted five webinars. The problem with these webinars is that from onset, staff read a disclaimer telling us not to rely on their answers. At the same time, the Bureau drafted 11 sample disclosures reflecting generic real estate transactions. Despite their usefulness, the Bureau refused to develop additional samples of more complex transactions, such as construction loans and FHA (Federal Housing Administration) and VA (Veterans Administration) loans.

The GUIDE (Give Useful Information to Define Effective) Compliance Act would require the Bureau to have a standard process for assessing these requests and timelines for responding to them.

In the past, the Bureau refused to publish guidance under the belief that saying less to the companies it regulates will provide them with more flexibility. This was the case with the Bureau’s three-page memo that reminded banks they needed to oversee their third-party service providers.

Instead of providing flexibility, it had the opposite effect and led to confusion. Lenders tried to read the Bureau’s tea leaves and developed compliance processes that reduced consumer choice or treated small businesses the same as large national firms.

A more valuable bulletin would provide banks and nonbanks with examples of vendor management programs based on different risks. This is what the OCC (Office of the Comptroller of the Currency) and the FDIC (Federal Deposit Insurance Corporation) did in their comparable bulletins.

I also mention to you ALTA’s support of a commission for more bipartisan leadership at the Bureau.

And last, we want to applaud this committee and the House for passing the bipartisan TRID (TILA RESPA Integrated Disclosure) Improvement Act. The TRID Improvement Act fixes one of the most confusing requirements of the Bureau’s mortgage disclosure rule and a main topic of questions the Bureau did not address in guidance. We urge the Senate to follow the House’s lead on this important bill.

Thank you for offering us this opportunity to share our views on how to improve the Bureau. Compliance is about more than protecting consumers; it protects a company’s reputation, financial well-being, and employee morale. As an industry predominantly made up of small and medium-sized businesses, we need a regulator that helps remove the gray. We need a regulator that matches simple and clear regulations with helpful and illustrative guidance
and examples. The GUIDE Compliance Act makes us part of the Bureau's DNA, and we urge Congress to pass this legislation. Thank you.

[The prepared statement of Mr. Day can be found on page 44 of the Appendix.]

Chairman LUETKEMEYER. Thank you, Mr. Day.

And one little housekeeping thing right quick before we move on. Without objection, each of the written statements will be made part of the record.

So with that, Mr. Hunt, you are recognized for 5 minutes.

STATEMENT OF RICHARD HUNT

Mr. HUNT. Chairman Luetkemeyer, Ranking Member Clay, and members of the committee, a very good afternoon. Thanks for the invitation to discuss the importance of bringing increased transparency and accountability to the Bureau of Consumer Financial Protection. My name is Richard Hunt, and I am President of the Consumer Bankers Association (CBA). Our members operate in all 50 States, provide $4 trillion in consumer loans, serve 140 customers, and employ 1.7 million people in the United States.

Let me say from the onset, CBA and our members support the mission of the Bureau, the mission to protect consumers and take action against companies that break the law. That is why I am happy to be here today to talk about the ways to strengthen and to depoliticize the Bureau.

When Congress created the Bureau, it was granted jurisdiction of over 11,000 banks and credit unions, as well as countless non-depository institutions. It was given unprecedented rulemaking, supervision, and enforcement powers for nearly every financial institution and virtually every financial consumer product.

All that power was given to one single director, which means one person decides all enforcement actions. One person decides all rules. One person controls every dollar of their $600 million budget and has the power to adjudicate appeals of their own enforcement decisions. It also means the next director has the sole authority to undo every one of these actions, like a political pendulum, swinging with each new Administration.

As Congress contemplates changes to the Bureau, any meaningful discussion should start with the Bureau’s leadership structure. Congress should create a bipartisan Senate-confirmed commission to ensure all views, voices, and opinions are given a seat at the table. Also to achieve greater balance and stability for consumers and the industry and in an attempt to depoliticize the Bureau.

I want to thank Representatives Ross, Sinema, Wagner, Scott, Luetkemeyer, Gonzalez, and McHenry for their bipartisan approach in introducing and supporting legislation to achieve this goal. They are not the only ones who believe the commission is the right way to go.

The House of Representatives recently passed legislation to enact a commission at the Bureau, and as a reminder, as the then Dodd-Frank bill was moving through the House and this committee in 2009, it contained a five-person bipartisan commission. Acting Director Mulvaney; former FDIC Chair, Sheila Bair; members of this committee; and the American people in a recent Morning Consult
poll all support or have supported a commission over a sole director.

In Mr. Mulvaney’s testimony before this committee in April, he expressed support for a commission and also outlined four other recommendations.

Number one, he recommended creating an independent inspector general at the Bureau. CBA fully supports that endeavor. He also recommended placing the Bureau under congressional appropriations. In the absence of a bipartisan commission and other meaningful reforms, CBA supports this recommendation. He also recommended making the director fireable at will. We believe this would increase the overt political nature of the Bureau. Finally, he recommended congressional approval of major rulemaking. Our member institutions need clarity, and requiring congressional approval could create uncertainty. Also, Congress already has the Congressional Review Act authority to overturn rulemaking.

Looking beyond those four recommendations, CBA also supports the Protecting Consumers from Frivolous Claims Act, the GUIDE Act, and ECOA (Equal Credit Opportunity Act). Improving the financial lives of consumers is a goal that unites lawmakers, regulators, and the industry. There are many changes that can be made to enhance the functioning of the Bureau and increase access to credit for consumers. But improving the Government structure of the Bureau underpins them all.

A bipartisan commission of the Bureau would depoliticize it, bring long-term stability, and benefit consumers and small businesses. We stand ready to work with Congress, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Hunt can be found on page 61 of the Appendix.]

Chairman Luetkemeyer. Thank you, Mr. Hunt.

Ms. Prochaska, you are recognized for 5 minutes.

STATEMENT OF KATE (LARSON) PROCHASKA

Ms. Prochaska. Good afternoon, Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee. My name is Kate Larson Prochaska, Director at the Center for Capital Markets Competitiveness (CCMC) at the U.S. Chamber of Commerce where I lead consumer finance issues.

The Chamber is the world’s largest business federation representing the interests of more than 3 million businesses of every size, sector, and region. Thank you for holding this important and timely hearing about improving transparency and accountability at the Bureau of Consumer Financial Protection. We at the Chamber have long advocated for improvements to this influential agency and are grateful for the opportunity to share our views here today on behalf of the businesses we represent.

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act created the Bureau to consolidate consumer protection functions under one roof. We strongly believe in the Bureau’s statutory mission to, quote, seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services, and that the market for
consumer financial products and services are fair, transparent, and competitive.

However, we believe the Bureau lost sight of portions of their mandate, namely the directives to foster transparent and competitive markets and to ensure that all consumers have access to markets for the consumer financial products. Indeed, the lack of accountability of the Bureau led to an abuse and lack of process that made it difficult to meet this mandate and to provide certainty needed for consumer protection.

Since the Bureau’s inception, we tried to work with the new leadership and create a trustworthy dialog between industry stakeholders and policymakers. However, we were disappointed to find our insight seemed more perfunctory rather than seriously considered. With new leadership there is an opportunity to make the Bureau a more mature, transparent, and accountable agency. Only with this approach will the Bureau adequately fulfill its entire mandate.

The Chamber deeply supports strong consumer protections and a robust, transparent marketplace of consumer products and services. This is why this past March, we released a comprehensive agenda to reform the Bureau.

In the report, we noted that any consumer protection agency, including the Bureau, has a three-part mission: One, ensure consumers have access to the marketplace and choice in products and services. Two, promote the availability of information that consumers can use to make informed decisions. And three, provide protection against bad actors.

We made six principal reforms that encompassed 23 individual recommendations to offer a series of concrete steps to improve the Bureau. One, provide clear rules of the road. Two, enforce the law fairly. Three, educate consumers with accurate data-driven information. Four, commit to transparency. Five, avoid regulatory duplication and burden. And six, structure the Bureau for long-term success. The 23 recommendations are discussed extensively in my written testimony, and the full report can be found on the CCMC website.

We have also been providing feedback to the Bureau on how to create a more transparent and accountable agency through recent comment letters. We thank the Bureau for releasing their call to evidence, which is a compilation of 12 separate requests for information to audit the agency. To date, we filed six comment letters addressing civil investigative demands, adjudication proceedings, the enforcement process, supervision process, external engagements, and the complaint database. We look forward to filing our rulemaking comment tomorrow and the subsequent comments through July 16.

This brings me to the Bureau’s 13th semiannual report that was issued in April. In his opening letter, Acting Director Mulvaney suggested four statutory changes to the Bureau: One, fund the Bureau through appropriations. We have long supported putting the Bureau under true congressional oversight and included this in our reform agenda. A CCMC Morning Consult poll found that 66 percent of those surveyed recognized the importance of appropriations
to provide effective checks and balances over Governmental agencies.

Two, require legislative approval of major Bureau rules. While we do not take a position on this legislation, we do think there should be more oversight.

Three, ensure the Director answers to the President in the exercise of executive authority. We also believe that a commission structure would be a more balanced approach, however, there should not be insulation from the Presidential authority. Create an independent inspector general for the Bureau. Just based on sheer bandwidth, an IG would be better instead of looking at the Federal Reserve as well.

I look forward to working with the committee and this subcommittee on legislative proposals that make the Bureau more mature, accountable, and transparent. Thank you again to the Chairman, Ranking Member, and committee for holding this hearing and for the opportunity to testify. I am happy to take any questions.

[The prepared statement of Ms. Prochaska can be found on page 73 of the Appendix.]

Chairman Luetkemeyer. Thank you, Ms. Prochaska.

And, Mr. Shelton, you are welcome. I saw from your bio you are from Missouri, so welcome to a fellow Missourian. You may begin. Five minutes. Please turn on your microphone, sir.

STATEMENT OF HILARY O. SHELTON

Mr. Shelton. Thank you.

Good afternoon, Chairman Luetkemeyer, Ranking Member Clay, and esteemed members of this subcommittee. Thank you so much for inviting me here today to testify and requesting the input of the NAACP (National Association for the Advancement of Colored People). We currently have more than 500,000 card-carrying members, 2,200 membership units across the Nation. We have members in every one of the 50 States, as well as units on military bases throughout the world.

Earlier this year, the National Fair Housing Alliance released a report which demonstrated that racial and ethnic minorities are, on average, charged a higher interest rate, offered fewer financial options, and subjected to submissive and disrespectful treatment more frequently than their Caucasian counterparts who had lower credit scores. In fact, on average, non-White testers who experienced discrimination would have paid almost $2,700 more over the life of a loan than well-qualified White testers.

The important study demonstrates the continuing economic discrimination faced by people of color every day. It is because of this ongoing bias and the resulting persistent wealth gap between people of color and Whites in America that financial empowerment and the economic security of communities served and represented by the NAACP has been and continues to be a cornerstone of our national policy agenda.

We need a strong, robust, and vibrant Consumer Financial Protection Bureau which operates as it was intended by law. Americans need facts and data which they can make informed decisions. We also need protections from unscrupulous predatory individuals and companies; industry needs to know where corrections and their
practices are needed. The policymakers need to have concrete indisputable facts from which it makes laws and regulations. In my written testimony, I have made 10 suggestions which, if taken, will allow the CFPB to continue on its current important trajectory to protect and educate Americans everywhere. By brevity’s sake, I will summarize my suggestions with this:

Suggestion No. 1, do not subject the CFPB to congressional appropriations process. This will threaten its independence and effectiveness.

No. 2, promulgate the short-term loan rule which covers payday and car title loans as originally crafted and implemented in the time set. Payday and car title lenders tend to concentrate their abusive operations which charge an average of almost 400 percent equivalent of interest and fees for a 2- to 3-week loan in communities of color.

No. 3, Reassert the enforcement powers of the Office of Fair Lending. By moving the Office of Fair Lending, the CFPB is demonstrably weakening its efforts to fight discrimination in the consumer financial marketplace, even as the Bureau returned over $400 million from discriminatory financial institutions to American families who have been overcharged and denied credit.

No. 4, do not require explicit congressional approval of any proposed regulation in order for the rule to take effect. This requirement will create crippling barriers to administrative actions necessary to protect the public and implement the law.

No. 5, do not revise or reduce access to CFPB’s complaint database. The current public complaint database is a tool that empowers individuals to inform and protect themselves in the financial services marketplaces.

No. 6, retain and reinvigorate the Office of Student and Young Consumers. To close this office is an incredibly short-sighted move with far reaching consequences which will harm millions of students who are already struggling with debt or those who are seeking an affordable higher education.

No. 7, increase, do not decrease, the amount of information and the number of mortgage lenders required to make public their loans under the Home Mortgage Disclosure Act. Without this crucial data, regulators and others like the NAACP are once again left without the full information we need to determine patterns in loan terms and loan amounts that could increase costs and risk of foreclosure for borrowers.

No. 8, retain a single director of the CFPB as opposed to a commission. A single director facilitates effective decisionmaking and ensures a clear point of responsibility. A single director can often move quickly to respond when a new national threat has been discovered.

No. 9, do not create a situation in which the director of the CFPB must be responsive to the whims of a President. Make sure that he or she retains independence.

And No. 10, reject efforts to establish an independent inspector general for the CFPB. You see, the CFPB already has an IG shared with the Federal Reserve within which the CFPB is housed. To create an independent IG would be of questionable value and debatable as to the use of taxpayers’ money.
In closing, I would just like to say, reemphasizing the need of a CFPB to stay on course, to remain a strong, transparent, and robust tool for protecting all consumers in the often confusing and too often predatory world of financial services.

Dodd-Frank was enacted and the CFPB was created to respond in response to the economic crisis of 2008. As of late, we appear to be going backward in a pre-Dodd-Frank deregulation much to the detriment and the potential economic ruin of the American consumer.

We have not forgotten that many of our people and communities are still hurting from the recession of 2008. Many will never own a home again, have a nest egg pass or be able to pass the nest egg on to future generations as a result. We have not forgotten many of our people were targeted by unscrupulous, nefarious lenders who had no concern for the economically destructive—

Let me just say in closing, sir, I look forward to your questions. I think you get my point.

[The prepared statement of Mr. Shelton can be found on page 87 of the Appendix.]

Chairman LUETKEMEYER. Mr. Whitaker, you are recognized for 5 minutes.

STATEMENT OF ELMER K. WHITAKER

Mr. Whitaker. Chairman Luetkemeyer, Ranking Member Clay, and members of the subcommittee, my name is Elmer Whitaker. In addition to being CEO of Whitaker Bank, I am President of Whitaker Bank Corporation of Kentucky, a family owned bank holding company founded in 1978 and located in Lexington, Kentucky. We operate two banks and Kentucky Trust Company, which offers wealth management and insurance services with 45 locations in 17 counties and total assets of $1.75 billion.

I am pleased to be here today to share my views on improving transparency and accountability at the Bureau of Consumer Financial Protection. Before speaking on this subject, I would like to first commend Chairman Hensarling and Members of the House of Representatives for their support of the Economic Growth, Regulatory Relief and Consumer Protection Act. This commonsense legislation is long overdue. This new law will help community banks like mine better serve our customers and communities.

I would also like to thank Congressman Andy Barr for his steadfast support on a number of provisions in the bill. In particular, his leadership on creating a safe harbor for qualified mortgage products. As a community banker, I fully support effective consumer protection.

As you are aware, proposals have been introduced to replace the position of director of Consumer Financial Protection Bureau with a bipartisan five-member commission, similar to other financial regulatory agencies. We believe a commission would broaden the perspective on rulemaking and enforcement activity of the Bureau. It would provide appropriate checks and balances and a better appeals process. The Bureau has been given the broad authority that can alter financial markets, but it lacks accountability that comes with budget oversight.
Today, the Bureau is funded by a fixed portion of the Federal Reserve’s total operating expenses. I believe this should be changed to have the Bureau funded through the regular congressional appropriations process. This would allow the very consumers who the Bureau was designed to protect to hold it accountable through their elected officials.

Similarly, we support efforts to create transparency by creating an independent inspector general. The inspector general’s function is to serve as an independent unit that conducts audits, investigations, and reviews programs and operations. I would hope the CFPB would welcome an independent review of its operations. This is generally deemed a best practice by the other regulatory agencies.

Mr. Chairman, as I noted, my bank supports consumer protection. However, even the best intended regulations must be reviewed to ensure they are meeting their intended purpose. Bank regulatory changes have a big impact on the cost of providing banking products and services and can adversely impact consumers. In many communities, appraisal costs alone for a home loan have doubled since the implementation of Dodd-Frank.

Many community banks simply lack the resources and staffing to stay up to date with the rapidly changing rules. The cost to implement training is overtaxing, but the time it takes to conduct the training is worse. This is time taken away from serving the daily needs of their customers. It is the consumer that suffers in that scenario. The rules in Dodd-Frank have caused some banks to stop offering certain loan products, and some banks have been forced to merge with other banks.

As reported by the Federal Reserve Bank of St. Louis, from the first quarter of 2011 to the first quarter of 2018, the number of commercial banks in Kentucky has been reduced by 20 percent. The number of commercial banks nationally has been reduced by 24 percent.

Simply stated, community banks continue to be the backbone of Kentucky and hometowns all across America. My bank’s presence means we have a personal stake in the economic growth, health, and vitality of the communities we serve. By eliminating unnecessary impediments and ensuring that the agencies that oversee our products are fully transparent, Congress can help stem the tide of the community bank consolidation driven by unnecessary regulation which negatively impacts every community across the United States.

Thank you again for the opportunity to testify today, and I welcome your questions.

[The prepared statement of Mr. Whitaker can be found on page 97 of the Appendix.]

Chairman LUETKEMEYER. Thank you, Mr. Whitaker. I appreciate your input this afternoon.

And with that, I recognize myself for 5 minutes as we begin our questioning portion of the hearing.

Let me just begin by asking you a question with regards to data collection. I know that Director Mulvaney made the comment—or when he first came in, suspended the ability or the collection of information. And recently I think as last week, he went back to be-
gining to collect some information again because of their concerns with regards to protecting information.

Are any of you concerned about that? Do any of you have some ideas about that particular action of the Director?

Ms. Prochaska. Sure. I will start. We definitely have concerns about that. We all know that the Federal Government is not immune to data breaches, and to have everything in one spot for the hackers to come in I think is a huge concern. I think for most consumers who are getting a mortgage, they would be surprised that all of their mortgage data is then put into a giant database. So I think for a lot of folks that would be a little bit upsetting to them, so I do hope that the privacy protections are adequately in place.

Chairman Luetkemeyer. I know that Director Cordray made the statement that he collects 80 percent of all the credit card transactions of this country, which is very, very, very disturbing to me, so I appreciate the comment.

Ms. Prochaska, you made the comment during your discussion here in your presentation, and I went back through your testimony because I was concerned when you didn’t indicate that you were supporting a cost-benefit analysis of something. But in your testimony, you did make that comment as one of your recommendations. So would you like to elaborate on the importance of having a cost-benefit analysis on all the rules and regulations?

Ms. Prochaska. Absolutely. I think a lot of the rule writers formerly at the CFPB, it is hard to know how it is going to happen in practice, and so a robust cost-benefit analysis, which is conducted at most of the other agencies, is critical to see how this is actually going to impact consumers and small business organizations. So I think that is a preeminent concern that we have at the Chamber, especially because we are so focused on economic growth and how that is going to be in the marketplace.

Chairman Luetkemeyer. Mr. Whitaker, would you like to elaborate on how much it costs you to comply with some of these rules and regulations and guidance that the CFPB has put out?

Mr. Whitaker. I would simply state that as a small bank, in terms of national presence, it has significantly changed my cost structure. Hundreds of thousands of dollars a year just in compliance staff has been added since the beginning of Dodd-Frank.

Chairman Luetkemeyer. Have you changed your business model as a result of this?

Mr. Whitaker. I'm sorry?

Chairman Luetkemeyer. Have you changed your business model as a result of this?

Mr. Whitaker. I have been forced to, yes. I have had to add locations just to house the staff to process work.

Chairman Luetkemeyer. Mr. Hunt, I know you have lots of members that are dealing with these additional costs. Can you give us a little—elaborate on some of the costs that your members are incurring, or the total amount perhaps, of what CFPB is costing?

Mr. Hunt. Yes. I don’t have the total amount, but I will tell you, in the first quarter of next year, we are going to be giving to the regulators all the new HMDA (Home Mortgage Disclosure Act) requirements that is going to increase it two- to threefold from previously. So we are collecting information.
There was a report earlier by the inspector general a couple—8 months ago, I believe, saying there were not enough safeguards. We fully supported Mr. Mulvaney taking down the collection of the data for a while until those safeguards are there. Thankfully, he has concluded the safeguards are now in place.

Chairman LUETKEMEYER. One of the questions I have got is, several of you have all advocated for the commission. And I know that Mr. Shelton’s testimony actually made the comment that he supported, actually, something that would be illegal, quite frankly, because the Congressional Review Act says that Congress should be presented with all rules and guidance to be able to be approved, and in his testimony he suggests that that not happen, which quite frankly, would be illegal. So I would point that out to Mr. Shelton and to all of you.

From the standpoint that I know recently we passed in the Senate and now in the House a couple weeks ago, and it was signed a week before last by the President, with regards to the congressional Review Act, a rescission—a rescinding of a rule that was done by CFPB with regards to indirect auto lending.

So would any of you have some other rules or regulations that you are familiar with that need to be reviewed under the CRA and perhaps rescinded? And if you don’t, I have got a homework assignment for each one of you.

Mr. HUNT. Well, I don’t think there are any more rules that fall within the 60-day calendar. They just obviously lead to arbitration last year by a landslide 50 to 50 vote in the Senate. I can’t think of any rule that is forthcoming by the Bureau that will require a CRA rule.

Chairman LUETKEMEYER. OK.

Ms. PROCHASKA. One guidance I think that might be worth looking at is the vendor management guidance. I think that that might be tantamount to a rule, and GAO might want to take a look at that.

Chairman LUETKEMEYER. OK. All right. Very good. Well, thank you.

So again, I will make mention of that when we close the hearing that we do have a homework assignment for you. OK.

Thank you very much. My time is up.

With that, I recognize the gentleman from Missouri, Mr. Clay, the Ranking Member, for 5 minutes.

Mr. CLAY. Thank you, Mr. Chair.

I just wanted to point out that I wanted to welcome a young man from my hometown, St. Louis, and our State of Missouri, back to the committee, Mr. Shelton, who I will start with.

As you know, the Center for Investigative Reporting recently published results from their extensive analysis of lending throughout America, and found modern-day redlining in more than 60 metro areas across the country. And this is despite the fact that most banks, some 99 percent of banks get passing grades on their Community Reinvestment Act, or CRA exams, even though that law was intended to help combat discriminatory lending practices. And now, Mr. Mulvaney is reorganizing the CF—the Consumer Bureau’s Fair Lending Office, eliminating its enforcement capabilities
and diminishing fair lending as an important priority of the Bureau.

So, Mr. Shelton, will Congress be helping to combat discriminatory lending or weakening those efforts if we advance proposals to radically reform and weaken the Bureau?

Mr. SHELTON. Well, it would certainly weaken them, Congressman. And it is very good to see you.

Indeed, we have not forgotten the challenges and problems that we had that actually pushed us to create a Consumer Financial Protection Bureau or pass the Dodd-Frank reform bill as we did. We saw what happened with the so-called protections that were in place and, quite frankly, the disparate impact that they had on racial and ethnic minorities, women-owned houses and other properties, and other problems in our communities.

Anything can be done to actually step back or put back in place the lack of oversight and protections would be derelict, to say the least. In essence, it has not been that long. It has not been that long since we sat before this very committee, quite frankly, with other victims of those who were not provided the protection of regulatory oversight that lost their homes, that found themselves victim to predatory lending processes and practices throughout the country. We need these protections to prevent this from happening again.

Mr. CLAY. OK. The regulators are discussing modernizing CRA, though some seem to be more focused on making those CRA exams easier. Does that make sense to you that now is the time to make CRA exams easier, even though most banks pass their exams, and yet we have pervasive redlining throughout this country?

Mr. SHELTON. Clearly, with the problems that we have now, doing anything to weaken those very protections, again, would be extremely problematic. It is moving in the wrong direction. The reason we need a robust, powerful, comprehensive, and transparent process that is covered by the CFPB is for these very reasons.

You were, I believe, here when we heard from many of the victims of the forms of discrimination that we are very well trying to provide protections for. It would be outrageous to make things weaker and easier for this kind of discriminatory practice to continue.

Mr. CLAY. Thank you for that response.

Mr. Hunt, do you believe that the time has come and gone for the Fair Housing Act and collecting HMDA data or have we—or do you think we have closed the disparity gaps in mortgage lending and the way it impacts certain communities of color? And is everything OK in the mortgage lending?

Mr. HUNT. Mr. Clay, thank you very much for the question. First off, let me say, discrimination is just morally wrong. It should not be allowed, and it cannot be allowed. It is totally unacceptable. There is no place for it.

Credit profile is what we are looking at when we are trying to find somebody who is creditworthy. We are about to send to the regulators tons of information under HMDA. We were not exempt under the Crapo bill, like other institutions were, so we are fully in compliance. We are fully in compliance with the ECOA and the fair housing law as well.
So, look, we don’t want to have any discrimination. We want to make sure our customers are happy and being served, and if they choose to have a mortgage, make sure they are creditworthy to make sure they can afford the monthly payment. And I go back to what you addressed in your opening comments. We want the Bureau to be very strong and diligent as well with us, so we are not trying to weaken the Bureau at all in this regard.

Mr. CLAY. So can we do both? Can we ensure that we close the disparity gap, while still correcting, making corrections at the Bureau? Can those both run simultaneously?

Mr. HUNT. I have no doubt in my mind that Acting Director Mulvaney is going to make sure no one is discriminated against.

Mr. CLAY. Thank you for that response.

Chairman LUETKEMEYER. The gentleman’s time has expired.

With that, we go to the gentleman from Pennsylvania. The Vice Chairman of the committee, Mr. Rothfus, is recognized for 5 minutes.

Mr. ROTHFUS. Thank you. Thank you, Mr. Chairman.

Mr. Day, in your testimony, you discussed the importance of having clear rules of the road. Unfortunately, until Acting Director Mulvaney took over, the Bureau tended to prefer ambiguous rules that provided a platform for broad regulation by enforcement.

Can you provide an example of how uncertainty about the rules of the road has hurt the members of the American Land Title Association?

Mr. DAY. Certainly. Probably the prime example is with regard to, in my testimony, the three-page memo with regard to lenders; just reminding lenders as to the requirements to police their third-party vendors. There was not a lot of explanation concerning that, and it left two issues in that regard. One from the lending community. They were unsure as to the best way to control that. Are we able to control based on a sizing of that? Do we treat an agent who has five employees in a rural community the same way we do with someone who has locations in 45 States and hundreds of locations? So lenders tended to shrink their controls and actually impact the consumer choice.

On the other side, with our members, they look at it and say which—where do we have to go to be able to be in compliance? And some sought out our best practices as a way of going forward. We could not get clarification from the Bureau as to whether or not this was a viable way for the lenders to feel comfortable that third-party vendors, our members were going to be in compliance with the Act. So it added additional expenses, additional concerns, the threat of enforcement. So it just—that uncertainty really impacted a number of especially small businesses.

Mr. ROTHFUS. Mr. Hunt, in your testimony, you wrote that the Bureau, quote, “has an unprecedented scope of authority over almost the entire universe of consumer financial service providers, ultimately touching almost all Americans.” Can you describe some of the consumer impacts that have followed from the Bureau’s aggressive use of its broad authority?

Mr. HUNT. Sure. There are many I could describe. I will start with small dollar lending. They just wrote a rule not too long ago that would not make it desirable for our banks to get into small
dollar lending. You have to keep in mind, some 50 percent of all Americans in this country do not have $500 in their bank account to meet an emergency need. We need to be in that space. I think they also played politics with that rule. They exempted in financial institutions doing less than 2,500 loans.

Now, when it comes to consumer protection, I think every consumer should be protected, not based upon where you bank. So you can bank at Bank of America and have one set of rules, but if you go to the local community in Kentucky, there will be a different set of rules over there for the consumer. Not for the bank, but for the consumer. So I think that has severely impacted the short-term liquidity needs when Americans need it most to meet a financial need.

Mr. ROTHFUS. Ms. Prochaska, we are all committed to ensuring that the rules and enforcement actions taken by the Bureau are fair to all parties and maximize consumer protection. Putting the Bureau on appropriations will go a long way toward improving the responsiveness of this agency and enhancing the integrity of its rulemaking. Do you believe that putting the Bureau on appropriations would in any way harm consumer financial protection?

Ms. PROCHASKA. Thank you very much for the question, first. And second, I do not think it would harm consumer protection in any way, shape, or form. The rules are on the books. Mr. Mulvaney has made it absolutely clear that he is a steward of the law, that he is going to execute the law fairly and accurately.

Just because the Fair Lending Office has now been rolled into the Director’s office doesn’t necessarily mean that a ECOA has been repealed, the Fair Housing Act has been repealed, HMDA has been repealed. I think there is a discussion, and there can be an argument made that that has actually made it even more of a priority. So I think that having some sort of oversight over the Bureau would be much better in the long term for everyone.

Mr. ROTHFUS. I have long been an advocate of putting it on the appropriations process and also having a commission, because this goes to some of the core principles of our country, our republic. There is a whole notion of self-rule and self-government, and recalling Abraham Lincoln even talking about Government of the people, by the people, and for the people, and this does happen through elected representatives. It has to do with the nature of law in this country and the three branches of Government we have. The Executive branch, to enforce the law; the Legislative branch, to make the law; the Judiciary branch, to adjudicate.

And when you see an agency that would make rules that the people are not making, that really goes against, to me, the principles of self-rule and self-government. Certainly, a commission I could think be as effective as a single director, perhaps more effective at going after discrimination. You have a diversity of ideas that are going to be exchanged among multiple commissioners.

So again, I thank everybody for participating in this hearing, and it has been very informative. Thank you.

Chairman LUETKEMEYER. The gentleman’s time has expired.

With that, we go to the gentleman from Georgia. The distinguished Mr. Scott is recognized for 5 minutes.
Mr. SCOTT. Thank you very much, Chairman. This is a very important and very timely, timely hearing. And I have been sitting here and I have been very impressed by the diversity of thought on this most pressing of financial services industry.

The CFPB represents the interests and the protections of over 330 million Americans. They cover the entire waterfront of our financial services system. It is the greatest financial service system in the world, but it is a very complex system. It is a very diversified system.

Now, the CFPB has done some great things, no question about that, but here is the situation. The CFPB has become a political fire pit. Now, let me explain what I mean. And I hear Mr. Shelton who brought some excellent points, but here, we have a CFPB that is constructed to shift and sway with political winds. All of what Mr. Shelton was so grateful for occurred when the sole director reported to and was authorized by President Barack Obama, but he is no longer President. And so we have another President. And they have another sole director that is coming in and trying to erase everything that the previous Administration did. That is why we are in the fix we are in. And that is why when we worked hard to put the CFPB together, we did it as a commission for a reason: So it wouldn’t be subjected to this every 4 years. That Administration comes in, changes what it does.

Here is a headline my staff just handed me, and it just came over from the Associated Press: Mulvaney disbands Consumer Advisory Board. The only simple thing there. That is gone. There has been a lessening of the fair housing; changes made.

So here is my point: We worked hard to put this together, this commission, and let me just say, Elizabeth Warren, the President, Barney Frank, all of us here, most of us, all of us here for sure, worked on this, passed it out as a commission. But when it got over in the Senate, something happened. That was, in my estimation—and even Barney Frank came back and said, man, this is deceitful what they have done, they changed this. And you know what happened? They never even had the courtesy or the decency in the Senate to bring it back over here. They passed it at that. But President Obama is not going to be President for life. It changes, and so we have a measure that is bipartisan.

Let me just tell you, let’s suppose the Securities and Exchange Commission wasn’t a commission or the Commodities and Futures and Trading Commission wasn’t a commission. Look, if you want stability, if you want accountability, that has to come from the entity that birthed it. We did in Congress. We must in Congress reclaim our position of responsibility in bringing that accountability.

And so we have a bill I want to mention. It is House Resolution 5266. Now, we all can come together and figure this out with this piece of legislation and do it the way it should have been in the first place and make it a commission with direct responsibility, shared responsibility and authority with the Executive branch and us, but the buck will stop here where it was born.

Chairman LUETKEMEYER. The gentleman’s time has expired, and we appreciate his eloquence.

With that, we go to the gentleman from Oklahoma. Mr. Lucas is recognized for 5 minutes.
Mr. LUCAS. Thank you, Mr. Chairman.
If I could, I would like to, with our witnesses, turn back to the issues I hear back at home. And, with this, I would like to begin with you, Mr. Hunt.
I hear frustrations from our bank and credit union folks that multiple regulators are in their offices asking the same questions. And this has the appearance of a lack of coordination and redundancy.
Could you share with us what you hear from your members with respect to regulatory coordination? And do you think more can be done to improve the communication or, at the very least, try to reduce some of the duplication of effort?
Mr. HUNT. So thank you very much for the question.
I will tell you, unfortunately, there is or there has not been any regulatory coordination. I do believe, in the last couple of years, each of the agencies has been trying to justify their existence, trying to prove their value.
I will give you a perfect example under cross-selling. The OCC and the CFPB and the FDIC took upon themselves, rightly so, to go to our banks and examine cross-selling practices. I understand that. It was very important. It was something that needed to be done.
However, at several of our banks, you would have the OCC and the CFPB in the bank at the same time asking sometimes for the same identical documents. Sometimes one of the agencies would hear what the other agency wanted, ask for the same information, and said, “We need more than that.” That is absurd. There is no reason you can’t have one regulator in there supervising us at all times. And I am hoping, under the new heads of the agencies, that is something they will address quickly.
Mr. LUCAS. Follow up on that, if I could, Ms. Prochaska.
I believe your report included a little bit about the CFPB in particular duplicating the activities of the other agencies. Can you describe some of your findings and ways in which the Bureau might improve on that duplication?
Ms. PROCHASKA. Yes. Thank you so much for the question, Mr. Lucas.
I believe your report included a little bit about the CFPB in particular duplicating the activities of the other agencies. Can you describe some of your findings and ways in which the Bureau might improve on that duplication?
Ms. PROCHASKA. Yes. Thank you so much for the question, Mr. Lucas.
To echo Richard’s point, I think we get a lot of feedback from bankers that there is inconsistent guidance within the agency, different standards. So that can be incredibly confusing, especially from an examiner level. And then one note, at least—actually, two examples, one of which being the small dollar rule. As we know, the OCC and the FDIC eradicated the deposit advance product back in 2013 with their guidance. The OCC has now repealed that guidance, and we hope that the FDIC will follow suit.
But then the CFPB has their small dollar rule hanging out there as well. And so then that creates confusion in the marketplace. When, as Mr. Hunt mentioned earlier, according to the Federal Reserve, 40 percent of the country can’t foot an emergency $400 expense, that, to me, is a travesty. And the fact that there still is going to be that demand, even if there isn’t the small dollar loans out there. So we need to be able to get consumers into those small dollar loans.
Another piece of duplication that I think has been a little bit frustrating for industry both in banks and in online lenders and other innovative companies is the confusion around no action letters and who is minding the store when it comes to innovation? Is there going to be an OCC fintech charter? Is the FDIC going to get into the space. So those are two things that have been very confusing.

Mr. Lucas. Mr. Whitaker, in your testimony, you also mention whether there might be some duplication by the Bureau when it comes to HMDA disclosures.

If someone were to do an analysis to the rule surrounding HMDA, do you, as a community banker, manager think that the analysis would find significant duplication between CFPB and the other agencies?

Mr. Whitaker. What we have seen is the trickle down of CFPB guidelines trickling down into the other agencies. While they are not always applicable to a financial institution of my size, I am often held to the standard of larger institutions because of that trickle-down effect.

Mr. Lucas. Mr. Whitaker, one last question to you. And there is lots of discussion in different quarters about the idea potentially on the table of establishing an independent inspector general at CFPB.

As a regulated entity of CFPB, do you have any sense of how an inspector general would affect institutions like yours when interacting with the Bureau?

Mr. Whitaker. I think it would add stability. That is the number one thing. It adds accountability to the CFPB so that perhaps we don't have the trickle down, and the rules stay on the levels and platforms they were intended to stay when the CFPB was created out of congressional law.

I think ultimately you have to have that accountability. I have internal auditors. I have external auditors. I have State regulators. I have the Federal Reserve as my primary regulators. And it adds accountability. And I think you have to have the inspector general to run those audits for the CFPB just for that same checks-and-bal ance system.

Mr. Lucas. One last thought, Mr. Chairman, if you will tolerate me. Being one of those folks who was here for the conference committee process on Dodd-Frank, I would simply note to my colleagues everything in Dodd-Frank has worked exactly the way I think the authors intended at the time. None of this has been accidental.

I yield back, Mr. Chairman.

Chairman Luetkemeyer. The gentleman’s time has expired.

With that, we go to the gentlelady from New York. Ms. Velazquez is recognized for 5 minutes.

Ms. Velazquez. Thank you, Mr. Chairman.

Mr. Shelton, whenever Republicans talk about the need to structurally reform the CFPB to make it more accountable, I always like to remind people of where we have come from. The American consumers lost $19.2 trillion in wealth, $3.4 trillion in retirement money.
So can you describe the factors that led to the 2008 financial crisis and why it was so important to create the strong consumer watchdog in the first place?

Mr. SHELTON. Thank you very much, Congresswoman, for that question.

The issues and challenges that we had at that time were we had so many Americans, and disproportionately racial and ethnic minority Americans, women-owned households, the elderly, that were actually being abused by many of the financial services institutions because of a lack of protection and regulation. Many of them were approached by not only the lending institution themselves but, in many cases, actually by brokers that actually came forward offering them great deals to address other challenges happening at that time.

That was also a time in which fuel costs were surging. And as such, we had a number of Americans that were on fixed incomes that had paid off their mortgages who were approached by brokers telling them that they could refinance their homes to put in everything from systems to provide more insulation, windows, new heating systems, and the like.

I sat next to a woman at this very table whose husband had worked hard his entire life for a rather large tire company in Ohio. He had retired with a pension and with other retirement funds and Social Security. He passed away. Fuel prices began to go up. She needed to do something about the home in which she lived in, that she owned.

What they brought her was a mortgage that started out at about $25,000 as a loan. But before things were over, it had compounded to over $100,000 in something we call an exploding ARM. Let me just say the sadness of those problems went far beyond her just losing her home. The day that the marshals came to take her home—her furniture out on the side of the street. One of the other things her husband left behind was an old shotgun. Sadly, she used that shotgun on herself as well.

That was simply one indication of how extraordinary those circumstances were and how clear it was to us that the protections that everyday American consumers need in the financial services arena are not there.

Ms. VELAZQUEZ. Thank you.

Mr. SHELTON. There is so much more that needs to be done.

Ms. VELAZQUEZ. Thank you.

Mr. Shelton, when OMB Director Mulvaney was here in April, I questioned him on his dual role as head of OMB and the CFPB. During our exchange, he did nothing to reduce my concern that his dual roles present a conflict of interest and potentially undermines the independence of the Bureau.

Do you share my concerns?

Mr. SHELTON. Absolutely. I know what the job is like at the CFPB. I have had an opportunity to spend much time with Rich Cordray, our former Director. We have been in and out of that office addressing the many issues of the communities that the NAACP serves. It is very clear to me: If one person can handle that job well, it is extraordinary. But suggesting a man can run two major U.S. agencies at the same time is rather concerning.
Ms. Velázquez. And we all know that Mulvaney’s mission is to basically deconstruct the CFPB. They cannot eliminate it. They will gut it.

Mr. Shelton. Exactly.

Ms. Velázquez. And today’s announcement is a clear example of that.

So according to—well, yes, we heard, and I echo the concerns expressed by Mr. Scott regarding the announcement of Mr. Mulvaney today.

Mr. Day, in your testimony, you talk about the Bureau needing to provide more regulatory guidance in the form of examples of what will be permissible and impermissible business practices.

Could you explain a situation in which more examples from the Bureau will be helpful?

Mr. Day. Thank you for the question.

Yes, the example again concerning TRID when we were involved with, we had—and I would say that the department was very forthcoming with assisting the—giving information. But having clarity as far as the examples, we have an industry that wants to do the right thing. But, it is like getting a speed limit guidance to understand where directions should you follow or a street map. If we had more information on this is how the disclosure should read on a more complicated situation, be it a construction loan, be it a VA loan, an FHA loan, it would be helpful for our members to then have that and to be able to share that information with the consumers. So that is all we are really looking for is to have better information that we can best serve the consumer as far as the information we share.

Ms. Velázquez. So that is not an argument to say that the CFPB should be restructured in a way that will be unable to provide the protections to consumers.

Mr. Day. Certainly we support the department and what—and the Bureau in what they have done relative to consumers, because we share that concern. And so we are looking forward to just having that clear guidance which will be necessary for our operations.

Ms. Velázquez. I yield back, Mr. Chairman.

Chairman Luetkemeyer. The gentlelady yields back.

With that, we go to Mr. Ross. The gentleman from Florida is recognized for 5 minutes.

Mr. Ross. Thank you, Chairman. And I thank the panel for being here.

All of us here have experienced the adage that elections have consequences, and to the victor goes the spoils, and usually at the detriment of the electorate. And I think this example that we have talked about today with a single Director of CFPB is a shining example of that; as has been explained by my colleague Mr. Scott so well, that it has been not only the desire of this committee but the sense of this House that the CFPB be a commission, that no one person, especially with no accountability to Congress or anyone else, should be in this position, not only for purposes of a denial of due process but also for protection of the consumers.

And so my concern has been, and why I filed H.R. 5266, which creates a commission, a five-member commission, is that we need
to have continuity and stability in the decisionmaking process and the rule-promulgation process of the CFPB.

As members of this panel have discussed today, there is a sense of uncertainty because of whomever is in power will appoint whomever they want to do whatever is necessary to implement their desires, and then the next Administration who is contrary to that will appoint something just differently. And as a result, we have seen an investment in capital that would otherwise be used to help the commerce of this country to now be tied up in the regulatory compliance arena.

And so my first question to Mr. Hunt, this pendulum swing, what effect does it have on consumers and small businesses from a banking perspective?

Mr. HUNT. Sure.

It has tremendous effect on everything they do, every financial product, every loan they make. What are new rules? What are the new regulations every single time?

I actually am going to agree with Mr. Shelton here for a second. He said it is hard for one man to run the agency. One person. He is correct. You can't have one person with all this power under them to run this agency, this Bureau. So we concur it should be a five-person commission from day one.

It is not just the rules but examination mentality, enforcement mentality. One person gets to get up out of bed every day with all that power.

You are having a great debate right now. There is no debate at the Bureau about—

Mr. ROSS. And can you estimate how much capital is tied up in trying to just being able to anticipate the uncertainty of who may be next Director of CFPB without any continuity?

Mr. HUNT. Sure.

S&P had an estimate that came out of about $30 billion in the United States that is tied up in complying with all the different rules and regulations.

Mr. ROSS. That could be used to oil the wheels of commerce and allow for innovators to start new businesses and expand and employ more people and grow this economy.

Now, my concern about one person. Look, I know my limitations, and I think everybody knows, to some degree, their limitations. And it is why we rely on others to assist us in performing our obligations. And so a commission might have certain expertise in one area different from another commissioner, different from another commissioner that would allow even a safety net so that those commissioners can oversee that what one may have missed in their expertise would be found in their expertise.

So my concern is, would not there be a greater sense of accountability and maybe even a better sense of innovation for consumer protections if you have a commission of five as opposed to a person of one?

Mr. Shelton—

Mr. SHELTON. Oh, I would be delighted. Thank you so much for giving me the opportunity to respond to that.
Our biggest concern is the lack of flexibility. Having five people trying to make decisions as we play a game of whack-a-mole that we—

Mr. ROSS. But we do that in the SEC.

Mr. SHELTON. May I finish?

Mr. ROSS. We do it in FSOC. We do it in all types of—

Mr. SHELTON. And we also have the President—

Mr. ROSS. We do it with the Supreme Court.

Mr. SHELTON. We have an Attorney General that runs an incredible agency. We have many single people that run Government agencies throughout this country that do an excellent job. A commission under these circumstances, in our opinion, would create the same kind of problems we had before.

Mr. ROSS. But it would not abridge the rights of the individuals and consumers.

Mr. SHELTON. —lending products that pop up looking just like the last lending product with a different name and expect the commission to respond as flexibly as it needs to be, as quickly to respond to these kinds of problems is exactly the situation we found ourselves in prior to the 2008 economic downturn.

Mr. ROSS. I appreciate that, Mr. Shelton.

Mr. Hunt, do you want to respond?

Mr. HUNT. I do.

The Attorney General was appointed by the President, can be fired by the President, fired at will. So that is not an independent agency.

Mr. ROSS. And there’s congressional oversight there too—

Mr. HUNT. Yes. The CFTC, the NCUA. Remember, the NCUA is a commission of three. Just three. So they can operate with three. We are looking for five. Maybe we go down to three. I don’t know.

But also the FDIC, the FCC (Federal Communications Commission), even the Consumer Product Safety Commission, a commission the Bureau was modeled after, a commission.

Mr. ROSS. Correct.

I see my time is up. I yield back.

Chairman LUETKEMEYER. The gentleman yields back.

With that, we go to the gentleman from New York.

Mr. MEEKS. Thank you, Mr. Chairman.

And I thank you, each and every one of you, for your testimony.

And I think that, just for the record, what I want to do is to make sure—I will start with Mr. Day and just go down the line.

Do you agree that there is a need for the CFPB?

Mr. DAY. I do.

Mr. MEEKS. Mr. Hunt?

Mr. HUNT. We do indeed.

Mr. MEEKS. Ms. Prochaska?

Ms. PROCHASKA. We do.

Mr. MEEKS. Mr. Shelton?

Mr. SHELTON. Yes, sir.

Mr. MEEKS. Mr. Whitaker?

Mr. WHITAKER. Yes. It doesn’t apply to my community banks, but I do think we have a need for it in the country, yes.

Mr. MEEKS. Right. Because what happened after—
Mr. WHITAKER. Just because of my size. Just because of my asset size. Someday maybe.

Mr. MEEKS. And I think I want to subscribe to some of the things that Mr. Scott said and the reason why we worked hard and created the CFPB, because there was a need. We didn't have one, and we looked at it. And we saw that there were, in fact, individuals who could not deal with and comprehend a lot of the complicated issues that come to consumers. Because we would agree that financial services, and at times, I know even here in Washington, we have members on the committee who have not been in the business of financial services; they don't understand. So we need somebody at least that can give people advice on what is or is not predatory because I think we would also agree that certain individuals, individuals—and this is whether you are Democratic or Republican or not, you don't understand a product, and you can be taken advantage of. You can be gouged. And I think Mr. Shelton indicated that it seemed to be particularly prevalent with people of color where they were gouged. And I think that was clear when we talked about the financial crisis that we had and the mortgages. It was clear that a lot of the high mortgages were steered toward people of color when people had equal credit ratings.

So, if we can agree, and I think we can all agree, in the history of our country, there has been redlining and things of that nature. Will everybody agree with that? So there have been some bad actions that have taken place that I don't think that anybody that has a reputable bank or credit union or financial institution, you want to get rid of the bad guys so that you can continue to do your business. I think the chamber would be in accord with that.

Ms. PROCHASKA. Absolutely.

Mr. MEEKS. Is that correct?

Ms. PROCHASKA. Absolutely.

Mr. MEEKS. And I know here the argument that we are having now, whether or not we are going to—whether it is a single person or a commission, I think Mr. Scott was right in that, when it initially left the House—I worked on it—we did talk about a commission at the time so that we did not get into the kinds of headaches and the problems that we are having now so that it swings—the pendulum swings one way or the other so drastically as the result of who is in power, because for me the Consumer Financial Protection Bureau is to protect the American citizen, and it shouldn't be part of the politics. But it is difficult.

And then I think that the problem that we have and how we are in this now, when we look at—well, Mr. Hunt, I think you just said in your testimony, we just spent a lot of money complying with this new Government agency, complying with the rules. The last thing we want to do is spend the same amount of money going 180 degrees in the opposite direction, which I think gives everybody a problem, because what you want to do is—really is—we may have some arguments whether or not a rule is too stringent or too loose, et cetera. But I think that it will benefit everyone if you just know what the rule is so that you can comply by the rule. And, so those arguments are going to go back and forth. But if we know what the rule is, then I think that makes it easier for everybody. And it is easier to give the consumer the advice because we know what those
rules are. So we got to set those rules. And I think that is what we are trying to do other than—because what we see now, rules were set. Whether you like commission, whether you not, or an individual person, rules had been set. That is what Mr. Hunt had said. And to apply by those rules, you spent a lot of money. And now we want to change the rules.

Mr. HUNT. Please don't mistake what I meant by that. There are some rules that need to be turned 180 degrees but not every 4 years by a new Administration.

Mr. MEEKS. Right. But there is going to be some debates on that already. You look at sports. There are the rules. When you play the games, some people say that shouldn’t be the rule. They want to change the rules. But the game—the rules are the rules, and you got to abide by the rules, right?

That is what this thing is all about. And I think that what Mr. Shelton was talking about was that we have some rules; let’s abide by the rules because if you get rid of the rules, guess who gets hurt? What did you say it was? The 330 million Americans that are dependent upon the CFPB. If we don’t abide by rules that have certain rules, 330 million American citizens, American consumers, are the ones that will get hurt. That is who I think that we should all be here to protect. They are our constituents.

I yield back.

Chairman LUETKEMEYER. The gentleman’s time has expired.

With that, we go to the gentleman from North Carolina, Mr. Pittenger. He is recognized for 5 minutes.

Mr. PITTEGRINGER. Thank you, Mr. Chairman.

And thanks to each of you for your willingness to come and offer your advice.

I would like to say that my concerns related to the CFPB in its inception, that they have essentially pushed the envelope on the enforcement of regulatory matters, which, in many cases, has done more harm than good, in any opinion. Director Mulvaney, I believe, has done a very good job in addressing many of these matters, but there is a lot of work left to be done.

In that light, Mr. Hunt, I would like to ask you what can be done at this time by regulators to encourage banks to offer short-term credit to our constituents?

Mr. HUNT. Go back and look at the small dollar rule offered by the Bureau. First off, as Ms. Larson mentioned earlier, A, the OCC has removed its guidance. That is terrific. I am hoping, under Ms. McWilliams, the FDIC will do the same thing. We had six of our banking institutions offering short-term liquidity needs. Once our Federal Government did that through the OCC and FDIC, all six exited that business. Now, the OCC is trying to get our banks back in because we have a much better product than payday lending trying to help people meet their financial emergency needs.

The CFPB needs to craft a rule that does not require banks to underwrite a $500 loan as they would a $500,000 mortgage. That is absurd to do that.

Allow us the flexibility to work with our customers. The deposit advance product, sir, was one of the most favorably rated products we had at the bank. Once it was removed from the bank, guess what happened? Complaints at the CFPB rose, and the CFPB then
got on us for having more complaints. It was a circular firing squad. So we need to be in this arena. We need to do so very quickly.

Mr. Pittenger. Thank you.

Mr. Day, I am curious about something that you highlighted in your testimony about the Bureau’s third-party service provider bulletin. You mentioned that some small businesses were pushed to exit the market because of confusion among the lenders whether they met the Bureau’s service provider requirements.

What exactly were lenders concerned about which led them to end these business relationships?

Mr. Day. Thank you for the question.

And, actually, that was part of the confusion in our request for improving on as far as guidance because the lenders were given just a three-page edict of “you have to be concerned” but not a lot of guidance of, what should they be concerned about?

So the natural recourse of that is to be very restrictive. And in doing that, one, as I mentioned earlier, it eliminated consumer choice as to being able to select a provider for title insurance because they were no longer on an approved lenders list. It also made it difficult for those who were lenders who came up with creating standards to the same degree for an entity that was doing 2,000 loans a month for someone who does two or three loans. And we think there is an appropriateness for scalability to be able to say this is a provider that I have a notice and comfort with that I should be able to allow that provider to service and not have to put them under the same constraints and restrictions and all of the expense to meet the guidelines, many of them either merged out or just closed their businesses because they could no longer engage in that expense.

Mr. Pittenger. Very good. Thank you.

Mr. Hunt, I am concerned about the effects of section 1071, which requires HMDA-like reporting for business loans, and what that will have on the small business community and the availability of capital.

What are your thoughts on the timing of future rulemaking mandate about section 1071? And in your view, is it even possible to construct a rule that will not impede business lending and stifle economic growth?

Mr. Hunt. Yes, sir. We are very concerned about this rule that may be coming down from the Bureau within, I don’t know, the next 4 to 5 years. Who knows.

I think this is a tough one. The Bureau has been working on developing some type of rule for the last 6 years under Director Cordray, and they could not reach a favorable conclusion as well.

A small business loan is completely night-and-day different than a mortgage loan. A mortgage loan is actually quite simple. But a small business loan is very complex determining the definition of a small business, how many people own the small business, and the different types of loans as well. We will continue working with the Bureau. But I think, sir, at the end of the day, this is going to be tricky. What I don’t want to see happen is it to become so complex and erroneous that our banks exit the small business area.

Mr. Pittenger. Thank you.
One last quick question. I would just like to know, do enforcement actions provide companies with enough information to know how to operate within the law? How do these companies respond to an enforcement action against another company in your industry? Mr. Day.

Mr. DAY. Yes. I am sorry. Thank you.

No. Unfortunately, a lot of these enforcement actions are negotiated resolutions. They are also fact-specific. So although they may have reached a result, it is hard to glean guidance from that to really understand that, how do I conduct my business so as to not be subject to a future enforcement action?

Mr. PITTENGER. Thank you.

My time is expired.

Chairman LUETKEMEYER. The gentleman’s time has expired.

With that, we go to the gentleman from Texas.

Mr. Green is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the Ranking Member as well. I welcome the witnesses.

Mr. Chairman, it appears to me that Mr. Mulvaney has indicated that he would like to ensure that the Director answers to the President in the exercise of executive authority, the Director being the Director of the CFPB, Consumer Financial Protection Bureau.

The law currently, as codified, allows the President to remove the Director of the CFPB for cause. For cause. And I must tell you that I am adamantly opposed to the President who would ban the LGBTQ from the military with a tweet. The same President who would ban Muslims from this country. The same President who refers to professional athletes as SOBs, meaning their mothers are dogs. The same President who found that there was some very fine people among those at Charlottesville who were saying Jews will not replace us, blood and soil. One can only imagine if one of them happens to be a banker how he would treat a loan from a person of African ancestry or a Jewish person.

The same President who says that countries in Africa refers to some of them as s-hole countries. The same President who would fire the current AG, but for his belief that it would impact his future; has already fired one AG. I am adamantly opposed to this President having the ability to fire the Director of the CFPB at will.

This President has already demonstrated that he is including, integrating, if you will, his bigotry into policy. This President, if he had complete authority over the CFPB, given the way he is treating the Justice Department, one can only imagine what he would require of the CFPB. I am adamantly, absolutely, totally, and completely opposed to this President having that kind of authority to interfere with the independence of the CFPB.

Now, let’s talk about discrimination. Everybody says: I am opposed to discrimination. I don’t think anybody ought to be discriminated against. As a matter of fact, let’s do this quickly, if you think that people should be discriminated against in lending, raise your hand, please.

Let the record reflect that no one has raised their hand.

Now the question becomes, do you believe that discrimination in lending exists? If you believe that it exists, raise your hand, please.
Only one person on the panel—let the record reflect that of the persons on this panel, but one person has raised his or her hand indicating a belief that discrimination exists in banking.

For fear that someone may have misunderstood my question, allow me to ask it again politely. Sirs and ma’am, do you believe that discrimination exists in lending in banking institutions? If you do, would you kindly raise your hand.

Mr. Hunt. I don’t think it is a yes-or-no question.

Mr. Green. Again, there is only one hand. And we have one person who believes that it is not a yes-or-no question as to whether or not discrimination exists in lending in this country today as I speak.

The empirical evidence shows it. Testing has revealed it. It exists, and we know it. And what we do is deny the existence so that we don’t have to do anything about it. And for prominent persons such as yourselves to, by and through your testimony, indicate that you don’t believe that invidious discrimination exists in banking—maybe I didn’t use “invidious.” Permit me to ask again.

Do you believe that invidious, harmful—that is what “invidious” means—harmful discrimination exists in lending in the United States of America today? If you do, raise your hand.

Let the record show that Mr. Shelton is the only person who has raised his hand.

Ms. Prochaska. I will second Mr. Hunt. I don’t think it is a yes-or-no question.

Mr. Green. You don’t think it is a yes-or-no answer.

We have come a long way. But, my friends, we have a long way to go because you control what happens. And if you control what happens, you control what happens, and you sincerely believe that there is no discrimination in lending, we have come a long way, but we have a long way to go.

I will yield back the balance of my time because there is not enough time to go into the behavior that has manifested itself today in this testimony. It is a sad day for this House.

I yield back.

Chairman Luetkemeyer. The gentleman’s time has expired.

With that, we go to the gentleman from Kentucky, Mr. Barr.

Mr. Barr. Thank you, Mr. Chairman.

And since my colleague did not offer the opportunity for Mr. Hunt to offer an explanation and testimony, I will provide that to him right now.

Mr. Hunt. Thank you very much for that opportunity to respond. I will tell you, our banks move Heaven and Earth to make sure there is no discrimination, period. We do not support it. Obviously, we work with the regulators all the time through examinations, through the ECOA, through the Fair Housing Act. On and on again, we do not—we totally—condone any type of discrimination at our banks. As I mentioned earlier, I hope the only profile we look at is the credit profile, that and that alone.

Mr. Barr. Mr. Whitaker, again, welcome to the committee. And as a constituent, I am honored to have you here in front of us. And as I said in my introduction of you, I have had the privilege of meeting your father. I had the privilege of meeting your late grandfather. And they were pillars of our community. And as I said, we
are so grateful for the philanthropy, not just the business and banking services that you provided to the consumers of central and eastern Kentucky all these many years, protecting consumers by offering them opportunities of credit and giving them the American Dream, but also, sir, for the charitable work that you and so many in your industry offer to your communities.

The YMCA that you built in Hamburg and Lexington, the Whitaker Bankshot, the scholarships that your institution has provided for years and years and years. So not just protecting consumers but lifting people up. Lifting people up. Thank you to you and your industry for helping people. That is the business you are in. And I know you have learned humility from your dad and your grandfather. I know that about your family.

But I want you to just put that humility aside for a minute. And I want to just confirm what I read in your written testimony was that, when your grandfather started that bank in 1978, he started it with about $59 million in assets. Is that about right?

Mr. WHITAKER. That is correct.

Mr. BARR. And today your bank has grown to $1.7 billion in assets. Is that correct?

Mr. WHITAKER. That is correct.

Mr. BARR. So, by my reading, in over about 40 years, you have grown about 30 times. Is that about right?

Mr. WHITAKER. That is correct.

Mr. BARR. You are still a relatively small institution relative to the banking sector. You are a community bank still. But let me just ask you this, asking you to set that instinctual humility aside. How did you grow? How did your bank grow?

Mr. WHITAKER. We grew primarily through acquisition and product development and through integrity and our reputation of treating people fairly and honestly.

Mr. BARR. Yes. And so you picked up customers because you offer good service, because you offered affordable products, because you provided folks with opportunity that they didn't have before.

Let me ask you this: What would happen if one of your competitors didn't do that? What would happen if one of your competitors mistreated or discriminated against a customer? What would happen then?

Mr. WHITAKER. To your question, Congressman, that is why I always say that community banks like mine, we function without regulation because our reputation is our regulation. And if I had a competitor that treated people unfairly, my company would grow.

Mr. BARR. And so you grew by offering good services, by serving your customers well, and by not—and by performing with integrity.

Let me ask you this: Does it help or hurt consumers when banks consolidate? When there are fewer community banks, does that help or hurt customers?

Mr. WHITAKER. That hurts our customers because it makes credit less accessible, especially in our rural communities where, if you close down the only bank in town, it is very challenging for them to obtain the credit they need to help recover that economic condition in those communities.

Mr. BARR. And so that just counsels in favor of exactly what we are saying. Reform the CFPB, give you all more flexibility, encour-
page greater competition and choice, and guess what the result is? Better consumer protection.

Mr. Whitaker, as you know, and you pointed out, the Bureau is not subject to the congressional appropriations process. And you have supported putting it on the congressional appropriations process. I introduced a bill, H.R. 2553, the Taking Account of Bureaucrats' Spending Act, which would subject the Bureau to the congressional appropriations process.

Let me quickly go back to Mr. Hunt.

Mr. Hunt, you testified that the current Bureau receives direct funding from the Federal Reserve at the request of the Director capped at 12 percent of the Federal Reserve's operating expenses. And you said, as long as the budget request falls below this cap, the budget request cannot be denied.

Mr. Hunt, does that mean that Acting Director Mulvaney has the legal discretion to make a budget request well below its budget today?

Mr. HUNT. He can, and he has.

Mr. BARR. And so I would like to finish with Mr. Shelton.

Mr. Shelton, would you or the NAACP have a grievance if Acting Director Mulvaney did what is in his legal authority to do, which is request a much lower budget?

Mr. SHELTON. I would say that we would want to make sure that the budget that is being requested is one that would actually fulfill the task and needs of the—

Mr. BARR. And so Mr. Shelton—

Mr. SHELTON. —in the communities we serve.

Mr. BARR. —this is the whole point.

Mr. SHELTON. —demonstration—

Mr. BARR. Why wouldn't you want Congress to have the authority to appropriate?

You have no—and your organization has no input into the process. If you have a grievance, we want your grievance to be recognized by your elected Representatives in Congress.

My time has expired, and I yield back.

Mr. SHELTON. And, Mr. Chairman, if I might respond to the question he left on the table with the time that is not left for him at this point.

We had no problems whatsoever with the previous CFPB Director in getting our points, our concerns, and the issues of our communities heard by that very important agency. And as a result, we were able to get much done to prevent the kinds of discrimination that led to the economic downturn and the discriminatory impact in the African American community and—

Chairman LUETKEMEYER. We are going to allow a little bit longer to go here because we are running out of folks here, and we do have some time this afternoon.

So, Mr. Barr, if you would like another minute or two, I see—

Mr. SHELTON. Well, we could go for a drink.

Mr. BARR. Mr. Shelton—

Chairman LUETKEMEYER. OK. Mr. Barr, you are recognized to continue.

Mr. BARR. Very quickly, Mr. Shelton.
So I recognize we have a difference of opinion on some of these things. But I do think we have an agreement here. And the agreement is that you would have—the point is you would have a grievance with Acting Director Mulvaney. And you have expressed some of those grievances today.

And my only point is this. Let’s go back to the Founding Fathers, the two of us together, and look at what James Madison said. James Madison wrote in Federalist No. 58 that the power of the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people for obtaining a redress of every grievance and for carrying into effect every just and salutatory measure. And so the point is this: I want you, as a citizen of the United States, to be able to hold this Congress accountable for this grievance that you have. Under the current law, you cannot do that because the statute says you have no say in your Government.

And I yield back.

Mr. CLAY. Would the gentleman yield before he yields his time?

Mr. BARR, could I engage you just—

Chairman LUETKEMEYER. You have 1 minute left, guys.

Mr. CLAY. Thank you.

Just to bring your attention. You talk about the power of the purse string. You talk about antidiscrimination measures. When you look at how much wealth was stripped from the minority communities during the Great Recession—I am from Missouri. And in Missouri, we have a saying: You have to show us.

Anybody on this panel that would not answer Mr. Green’s question, all I ask for is the data to show me that you are being fair, that you are being fair with your customer, that you actually can show me by ZIP Code, not by credit score, by ZIP Code, that you are lending into these ZIP Codes. And not tell me about credit scores. A lot of that is discretionary. And you know it, Mr. Hunt.

But that is the point I raise to Mr. Barr.

Look, the numbers tell it all.

I see our time has expired.

Chairman LUETKEMEYER. The gentleman’s time has expired.

With that, we go to Mr. Tipton. He is recognized for the next 5 minutes. He is from Colorado. You may begin.

Mr. TIPTON. I thank the panel, and I appreciate you taking the time to be able to be here.

Interesting listening to the conversation because I think there is a lot of common ground. Nobody is antiregulation. We just want to make sure that we have got sensible regulation that people can actually understand.

I would like to actually go back. Mr. Hunt, if you speak to this just a little bit. My colleague Mr. Ross brought up the ultimate impact ultimately on consumers of overregulation—or regulation that can’t really be understood and some of the costs associated with that.

What are the real impacts ultimately on the ultimate consumer?

Mr. HUNT. I think it is consumer choice, consumer financial product choices. There are only so many products that we will be able to offer to our consumer. So, when they need—short-term liquidity needs or a mortgage, the rules set forth by the Bureau may
be too draconian for us to stay in that business, so they have less choices to do it.

Mr. TIPTON. In some of the cases where you do stay, it is marginal. Does it increase the cost for the consumer?

Mr. HUNT. Of course, it does. In Economics 101, if you drive the cost up in one, somebody has to feel the cost, whether it is higher interest rates or fees or whatnot.

Mr. TIPTON. So not having clarity and regulations, not understanding what the field is actually is hurting access to capital for the very people that you would like to be able to help.

Mr. HUNT. Sir, we can handle bad news. What we don’t like to talk about is uncertainty. Just tell us the clear rules of the road, and we can adjust.

Mr. TIPTON. Great.

Now, when we go back, and we are looking at TRID right now, Mr. Day, you had spoken to this a little bit in your testimony. And when I looked at your written testimony, you noted that webinars were held to try and be able to give some clarity to the proposed rule that was coming out, but the Bureau staff reading the disclaimer stated this presentation does not represent legal interpretation, guidance, or advice from the Bureau. Did you say, why are we here?

Mr. DAY. Thank you for the point. It was exactly the—why we support the GUIDE Act in saying that it is very important to have guidance, but it needs to be guidance we can rely upon. We can’t just have a conversation and then have our members go forward and then have a contrary result come back because, well, that really wasn’t what we meant.

And there have been a few examples where we have had these kinds of discussions with the Bureau, and they would go so far but then not continue it. And I think—I share with Mr. Hunt, we are an industry that is very willing to take guidance and to understand what the rules are that we need to follow. We just need that level of certainty which the GUIDE Act would provide to us in being able to not only have the guidance but be able to rely upon it.

Mr. TIPTON. Great.

And I think that led, actually, to my question. You have spoken to that, the importance of being able to have actual clarity for you.

And, Mr. Hunt, would you maybe like to be able speak to the importance of what the GUIDE Act, Mr. Duffy’s bill, can actually achieve?

Mr. HUNT. Yes. I think the overarching theme of the GUIDE Act, obviously, is to make sure that we know the rules of the road. It is one thing to issue a rule, but a rule could be 800 pages long. We want to know what the Bureau was thinking at all times.

I love the debate we are having today. We don’t have that at the Bureau today. I don’t think there is anything wrong with a five-person commission at 2 p.m. on a Wednesday saying why they brought out this rule; here is exactly what we are thinking; and here is why we are thinking, to bring more clarity to it. Right now, all the person has to do is get up and issue a press release, and it is over.

Ms. PROCHASKA. Mr. Tipton, could I add to that really quickly?

Mr. TIPTON. You bet.
Ms. Prochaska. I just wanted to tie something back to Mr. Meeks' point earlier about sports and how there are certain rules and regulations.

What the Bureau has been doing for the past 6 years, 7 years now, is calling a strike after the fact and not delineating what the actual strike box is and then moving the goalpost. So I am mixing metaphors now. But you know what I mean. There hasn’t been clear delineation.

Chairman Luethke Meyer. They are all sports, so you are OK.

Ms. Prochaska. Yes. Exactly, right?

So there haven’t been clear delineations, and that is exactly our point. If there were clear regs that institutions could follow and clear guidance on how to actually implement them, we would think that is wonderful, and at least we will know how to meet that.

The problem is when you do enforcement actions after the fact, the disparate impact, the auto cases are a perfect example. Not exactly knowing what the rules of the road are and then, on the aftermath, getting slapped on the wrist because of it.

Mr. Tipton. Well, I know my colleague Mr. Williams will be more than happy to be able to cover some of the auto industry rules and regulations as well.

Ms. Prochaska. Happy to chat any time.

Mr. Tipton. He is a humble, small businessman.

But I do appreciate you all taking time to be able to be here, and I do appreciate that concept of—I come from the small business world. And we had a regular review process in business and a very simple philosophy that if it isn’t working, fix it. If you can’t, stop doing it. Not a bad policy. And I think we are making some good moves and do applaud the efforts by Mr. Duffy with the GUIDE Act.

And, with that, Mr. Chairman, I yield back.

Chairman Luethke Meyer. The gentleman yields back.

And, with that, the gentleman from Texas is also recognized now for 5 minutes. Mr. Williams.

Mr. Williams. Thank you, Mr. Chairman.

And thank you for holding today’s hearing. While the regulatory relief package recently signed into law by President Trump is a major win for all America, work remains particularly concerning to CFPB reform. For too long, the CFPB has undertaken a mission to impose big Government, one-size-fits-all policies with far-reaching implications for businesses and consumers. While I am glad Acting Director Mulvaney has begun to take steps to rein in this unaccountable Bureau, the burden falls on Congress to ensure that lasting reform occurs.

Ms. Prochaska, I gather you are a baseball fan.

You mentioned it.

Ms. Prochaska. I sure am. I played softball for 10 years.

Mr. Williams. First question. Should Pete Rose be in the Hall of Fame?

Ms. Prochaska. I am a Padres fan.

Mr. Williams. Let me get to more matters at hand.

Acting Director Mulvaney recently appeared before this committee and offered his perspectives on how to best reform the CFPB. Among these reforms, Acting Director Mulvaney identified
the CFPB through congressional appropriations as a way to successfully subject the CFPB to congressional oversight.

So my question to you: Do you feel that subjecting the Bureau to true congressional oversight would impede the Bureau's ability to successfully carry out statutory consumer protection obligations?

Ms. ROCHASKA. Absolutely not. I think that Mr. Barr made a very good point earlier. Earlier this year, Mr. Mulvaney actually did request zero dollars from the Fed. He indicated that, because he already had the money allocated in his budget, he was able to keep operations going. Theoretically, under law, he doesn't have to do that. He could ask for zero yet again and yet again, and that can go on for 5 years.

So, although he is going to be asking for more money in the future, the fact that we don't have congressional oversight—and I will reference again a poll that we conducted—66 percent of Americans said that actual checks and balances of appropriations are what we need to have over our Governmental agencies. Most people, when I go back home to California, don't understand what is going on in the regulatory State, and that is something that we need to have some purview over.

Mr. WILLIAMS. Thank you.

Mr. Hunt, one of the most concerning past actions of CFPB was their process for creating and implementing rulemakings. Past rulemakings have lacked robust industry input, adherence to formal rulemaking processes, and a flexible implementation process following the issuance of a final rule.

So, without clear, predictable regulations, the Bureau cannot issue proper guidance to ensure compliance across countless industries. The CFPB's practice of issuing rules and worrying about implementation later has caused damaging effects for the consumer and businesses alike.

So how did the CFPB fall short in previous rulemakings? And what must be done to prevent the shortcomings in the future?

Mr. Hunt. Yes. If I could point to one specific, I think it would be the TILA-RESPA implementation. We were not opposed to the rule. We understood the rule. But they basically want us to implement it overnight. And they did not understand what takes place in the banking industry. I would have to guess at the Bureau probably less than 10 percent of their 1,600 employees have real-world banking experience.

Now, I am not saying the Bureau should be 90 percent. They wanted to create a different type of bureau than other regulators, and they have accomplished that. But I do believe you need to have real-world experience both from the consumer protection side and on the banking side within the Bureau itself.

Mr. WILLIAMS. OK. Thank you.

Mr. Whitaker, as a small business owner myself for over 47 years, I know all too well that banks like yours are the backbone of Main Street America and continue to struggle under the weight of an overly burdensome regulatory environment. One of the main ways that we can fix this is through reforms offered in my bill, the Community Financial Institution Exemption Act, that would strengthen already existing language within Dodd-Frank by exempting credit unions and community banks under $50 billion in
Mr. WHITAKER. It absolutely would. I will say that with my current regulators, we have a great working relationship. And I would like to see that continued, and that bill would certainly help accomplish that.

Mr. WILLIAMS. Thank you.

Mr. Day, thank you for being here on behalf of the land title professionals, many of whom I represent back home in Texas. And these small businesses are critical to communities across the Nation. And the lack of clarity from the CFPB has left them with too many unanswered questions.

So, briefly, do you feel that enforcement actions of the CFPB provide companies with enough information to know how to operate within the law? And how do companies respond to an enforcement action against another company in your industry?

Mr. DAY. Thank you for the question.

No, unfortunately, it is difficult to glean from the enforcement actions how they would like to proceed, and so that is why our focus is on getting improved guidance. And, in fact, you could have an improving factor as far as the consumers in having better guidance because we get the rules of the road. Our small businesses can follow what are the appropriate actions, and then the CFPB would have less enforcement actions because it would not be necessary. The guidelines would be clear, and we could follow it, and we can move forward and protect the consumer.

Mr. WILLIAMS. Thank you.

I yield back my time.

Chairman LUETKEMEYER. The gentleman's time has expired.

With that, we go to Mr. Kustoff. The gentleman from Tennessee is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman.

I do want to thank all the witnesses for appearing this afternoon.

Ms. Prochaska, the years before the Bureau was established, prudential regulators collected and helped to resolve complaints but refrained from publishing comments as many of them contained unsubstantiated and false claims.

With the enactment of Dodd-Frank, the Bureau was mandated to collect complaints. Despite this—I don’t think anywhere in the statute does it even allude to making these comments public, public comments. The Bureau did so regardless of whether there was a statutory mandate. In fact, there wasn't. And the fact that many times, sometimes the complaints, frankly, they are unverified. They provide questionable—in my opinion, questionable utility to consumers and certainly could compromise consumer privacy.

With all that, do you think it is appropriate to publish these comments or these complaints even though they could be a serious threat to consumer privacy and there could be a likelihood of misinterpretation? Your response.

Ms. PROCHASKA. Congressman Kustoff, thank you for that very important question. I can’t tell you how many comment letters I
have written to the Bureau about this exact topic. So very nice to speak about it.

Nowhere in the statute does it say that it needs to be public. And as you mentioned, the OCC, the Fed, the FTC, the FCC, all of the alphabet soup, keep those complaints private for the exact reasons that you just mentioned, one being privacy and, two, that it is unverified.

Another issue is that it is not normalized. It is no surprise that the four largest banks generally get the majority of the complaints because they have the largest consumer base.

A couple years ago, the CFPB was producing monthly reports that were saying the 10 most complained about companies, while in reality, of course, it is the 10 largest companies, and it was the same people every month. I don't really think that is going to be valuable information for consumers.

Another point I would like to make as well is in the CFPB's annual reports on complaints, 75 percent are closed with explanation. So that could be inquiries. So that means that there was theoretically nothing wrong that the institution did. I have spent hours reading that complaint portal. I am probably the only person who does. And, oftentimes there are complaints about bank hours or that—there are just so many different things that it wasn't an actual issue that arose with the bank.

So I think in the interest of keeping consumer information private, we should have the Bureau just for market monitoring purposes at the agency for the time being.

Mr. KUSTOFF. I do appreciate the response.

Earlier, I introduced legislation, and the title of it is Protecting Consumers from Frivolous Claims Act. And it seeks to prevent the CFPB from making public these consumer complaints.

Do you have—and I don't know if you are familiar with the proposed bill. Do you have any opinion about this bill and whether it would, in fact, lead to the prevention of those complaints?

Ms. PROCHASKA. I am not familiar with the exact text. But as you summarized it, it seems like something we would be definitely supportive of. I think it has been a large concern of industry that it is actually misleading customers by thinking that, if you get a complaint, which it may actually be an inquiry that you are a bad institution when, in reality, that is definitely not the case.

Mr. KUSTOFF. Thank you very much.

Mr. Day, again, I appreciate you being here as well. I have listened to all of your comments, your statements. And most of you, if not all of you, talked about the complexity of having a single inspector general and multiple inspector generals.

The Bureau and the Federal Reserve, of course, share an inspector general. He or she is tasked with conducting the audits and investigations relating to the program and the operations of each of the agencies. Your opinion, given the size, the scope, the complexity of the Bureau and the Federal Reserve, do you think—is it hard for a single inspector general to have the bandwidth, if you will, to identify problems within both agencies? Your response.

Mr. DAY. Thank you for the question.

I certainly support Acting Director Mulvaney's request that there be an independent inspector general for the department. It is a Bu-
reau that is quite diverse with a lot of activities and feel it would be very appropriate to have an independent inspector general in supporting that effort.

Mr. KUSTOFF. Thank you, Mr. Day.

And I have got 2 seconds. I yield back the balance of my time.

Chairman LUETKEMEYER. The gentleman's time has expired at this moment. We thank him for that.

Ms. Tenney is now recognized, the gentlelady from New York, for 5 minutes.

Ms. TENNEY. Thank you, Mr. Chairman. I appreciate it. And thank you so much to all of you for being witnesses here today. It has been a little bit more entertaining than most Financial Services Committee meetings.

We have gotten into some sporting events, and now we are going to talk a little bit about constitutional issues, which I think is one of the most important issues in dealing with the new bureau which has a new name, but I will still refer to it as CFPB for simplification. And I am just going to follow a little bit on what my colleague, Mr. Barr from Kentucky, said. And I know I discussed this with Mr. Mulvaney when he was here, and this is why I think the constitutional issue is really important.

And I like to look at another section of James Madison's Federalist Papers, which is Federalist No. 10 that states, "Enlightened Statesmen will not always be at the helm." And that is the very reason we need to have checks and balances like we do with every other agency and why we have checks and balances in our Government. If we do have an unenlightened person, and God forbid we ever have that happen, never happened in the history of the republic, but we have an opportunity to vote that person out or we have an opportunity to deal with a funding issue. And so I really appreciate your comments.

I come from a small business community and also an owner of a small business, so I know how crushing regulatory burdens can really hurt a small business and make it unfair for us to compete against larger entities, and also how unfair it is when often our competitors who are larger are getting subsidies from Government, which makes it even harder. But I wanted to ask Mr. Day, because I was really compelled by some of the testimony you had.

First of all, I am a bank attorney. I used to represent a number of small business. I was examining counsel until January 3, 2017, for a small title insurance agency in New York State, which, is an attorney State versus a title State, so we are still trying to have dominion over title insurance as lawyers in New York.

But some of the issues that I am just shocked to find out how big the tentacles are with the Bureau in being able to regulate an industry, such as title insurance, where so many of your small businesses are really trying to—to—they are exceedingly careful in trying to make sure their loans are—they are the ones insuring the actual title, which is really important in New York, our property rights are important.

So can you tell me just a couple of things or maybe an example of how the rules have made it difficult for your industry to function? And you can choose a title or attorney State, whichever you—
Mr. DAY. Well, we will stay with New York and certainly the practices there. Thank you for the question and the opportunity. I believe where the difficulty is with the level of uncertainty is that as businesses look to try to align themselves with other professionals. Is this an appropriate structure? Is this a new venture that will be supportive of regulators? When business has looked to get into a new area, how much capital do they have to invest to make sure they are in full compliance? Can there be a scalability as I startup or do I have to be, as you mention, competing with the big boys and have to come in and have a SOC 2 audit and be at that level to just be able to be approved by a lender?

So, yes, in our industry, the title end does not fall into it, but the settlement practices do. And so with the confusion with our lender partners, it then trickles down to confusion as to our title entities who are just trying to proceed with their settlements and not truly understanding. So that is really a level of difficulty as far as—how far do I have to go? Can I go and invest here? Will I be subject to constraints or controls or possibly enforcement and not have any ability to get guidance in that regard?

Ms. TENNEY. And I appreciate your comments and your testimony where you are distinguishing between the Administrative Procedures Act in the laws versus guidance and the failure on the part of the Bureau to really give good guidance and tutorials and the ability of these businesses to comply. So I do appreciate that.

And also, I do believe that the old RESPA form, the Real Estate Settlement Procedures Act, I had a friend that worked in Albany and said they are all in a storage house somewhere in Albany and no one has ever looked at them again. But that is the essence of overregulation is we regulate to the point where we are preventing the most needy, and some people who maybe aren't being treated fairly, for having the opportunity to have a loan, to buy a house. And as Mr. Williams talked about, to be able to buy a car, which is really important.

So I am going to be running out of my time, but I thank you very much all of you. This has been really informative. And I am just going to say go Yankees, and I hope you all have a great day.

Mr. DAY. Thank you.

Chairman LUETKEMEYER. Keeping up with our baseball theme. Thank you for your yielding back.

And with that, we go to the gentleman from Michigan, Mr. Trott. He is recognized for 5 minutes.

Mr. TROTT. I want to thank the Chairman for organizing this most interesting hearing today. And for the record, I don't believe Pete Rose belongs in the hall of fame.

So I apologize I didn't hear the opening statements. For the record, I don't believe Pete Rose belongs in the hall of fame.

But let me start with you, Mr. Shelton. You said you spent some time with Director Cordray. And Mr. Scott in his 5 minutes said that the CFPB has created a political fire pit, and I would agree with him. And I think it is in part because it is not on budget and it is not accountable. But I would also suggest that Director Cordray really had a political—who is now running for Governor of Ohio, really had a political agenda that he pursued while he was the director.
Did you ever have occasion to read some of his press releases that he issued after he entered into a settlement with one of the targets of his investigation?

Mr. SHELTON. Yes, sir.

Mr. TROTT. So isn’t it interesting that in the settlements, if you look at those, almost always the defendant never admitted any guilt or responsibility or culpability, but all of the press releases made it sound like the CFPB had brought this terrible big, bad company to justice and the consumers can be safe once again? Don’t you think that contributed to the political fire pit problem?

Mr. SHELTON. I am not convinced I agree with your characterization of those press releases, though I appreciate your right to have the positions you do. Let me say that my experiences were quite different.

Mr. TROTT. OK. I appreciate your comment, and we will agree to disagree.

Mr. Day, let me go to you. And so one of the arguments proffered by those who oppose any attempt to hold the CFPB accountable is that it will lead to rampant pillaging and abuse of consumers. So let me give you a hypothetical. You have been at Fidelity and Chicago before that for a few years, so you would be able to answer this perhaps better than anyone.

Let’s assume that one of your members entered into an MSA with a real estate broker that clearly violated and they knowingly violated RESPA. If the CFPB was now on budget and accountable, do you think that member would have nothing to worry about?

Mr. DAY. Thank you for the question. No, absolutely not. It is—I think as several of the witnesses here have talked today, the intent is still for the protection of the consumer and the focusing. And our industry is very much focused on that. And the bad practices are the ones that aren’t actually being controlled through this. It is—the good practitioners who are being forced out, the bad practitioners may still be engaged in it. I don’t think the accountability or—in any way creates a limitation that still would restrict the Bureau from enforcing the law.

Mr. TROTT. How many lawyers do you have at Fidelity who are trying to make sure your company does things right?

Mr. DAY. We have a multitude of lawyers that are—

Mr. TROTT. Thirty, 30 lawyers, 50 lawyers?

Mr. DAY. Probably closer to 50.

Mr. TROTT. Yes. And those lawyers are not only worried about the CFPB in compliance with their ambiguous directives, but they are worried about State licensing authorities. They are worried about litigation. They are worried about whistleblowers. They are worried about class action lawsuits. They are worried about shareholder liability. They are worried about State attorney general, other Federal bodies. Isn’t that a fair statement? There are an awful lot of people, aside from the CFPB, that you are worried about making sure you do things right with?

Mr. DAY. And I wouldn’t—I don’t know if I categorize this as worried about, but I would say that, yes, we have a multitude of regulators and watchdogs through either private actions or public regulators that our industry is subject to and regulated by in its
rules and regulations, which we have been living up to through our careers.

Mr. Trott. So the Democrats want this discussion to be about the Republicans' desire to return to the wild frontier where consumers can be abused and discriminated against, but your answer—I have a prop; I am glad I went toward the end here, Mr. Chairman.

This is what this discussion is about. This is the oversight of the financial services industry. Every one of those little dots is a regulatory body or rule that they have to worry about.

Mr. Hunt, I don't know how your members are in business. How can you possibly comply with this kind of regulatory oversight?

Mr. Hunt. I will tell you that the fastest growing department within a bank is in compliance. If you are a lawyer—

Mr. Trott. And that doesn't generate any money, does it?

Mr. Hunt. No, sir, it doesn't. If you are a lawyer in this country, you are going to be wealthy and fully employed for many years.

Mr. Trott. Let's go back in the remaining seconds here, Mr. Day. Let's talk about TRID and the 1,900-page rule. So that lack of ambiguity and direction, no advisory opinion, no guidance whatsoever, what impact did that have on your members, on mortgage companies, and on consumers with respect to real estate closings that were either delayed or having to be postponed due to the lack of clarity relating to a 1,900-page rule?

Mr. Day. Well initially, it delayed the closing process significantly. And as Mr. Hunt noted, that a lot of it was put forward without really a consideration of what all of the pieces are that needed to be put into play as to allow for its implementation. Costs from our members, all of new forms, new procedures, understanding with the disclosures, the fear of getting it right, and not having a real clarity or guidance as to how to go forward. So it was a major disruption, but our industry stepped forward, our association and the trade association led the charge and I think helped the industry overall to comply with it and move forward.

Mr. Trott. I appreciate it. I am out of time.

But I will close, Mr. Chairman, I would have raised my hand when Mr. Green was asking about whether there is discrimination today. Clearly, there is discrimination, unfortunately, in all aspects of our society, but the solution that Mr. Green was headed toward was to have a member of the central State Federal Government be the last decisionmaker on any and all loans, because that is the only way he could solve it through a Federal bureaucracy.

Thank you for your time today. I yield back.

Chairman Luetkemeyer. The gentleman's time has expired.

And with that, we have exhausted all of our witnesses in more ways than one.

We also thank you, our witnesses, today for being here. It has been a very lively and entertaining and informative afternoon, and we appreciate your participation.

Just a couple closing thoughts on my part here. Throughout the hearing, I think we have heard a theme of less choice of services, more costly services is what has happened as a result of some of CFPB's actions. I think we all know, and we have had testimony before, with regards to the numbers of banks and credit unions are
going down one a day. I have even got a county or two in my State that no longer have any banks or credit unions headquartered in that county whatsoever, so all we are left with is so much as a facility or two.

So what has to happen? Even the director himself was here and testified in committee recently and had four suggestions on how to improve it. He himself made the comment, he said, I am one of the most powerful guys in D.C., and I shouldn’t be. And so we need to take look at this long and hard as to how we continue to work with the CFPB, what we need to be doing.

Mr. Barr, I think it was, and Ms. Tenney both made some good comments with regards to what the Founders believed. They believed in checks and balances. That is the nature of our system here. You have got the three branches of Government, and each one of them should be a check and balance, and the CFPB should fall under that same situation, in my judgment. I appreciate your comments to that effect.

And it is kind of interesting because, imagine, if you would, the Federal Reserve or the FDIC with no commission over it. What would happen if they had a single—if the Federal Reserve chairman would be the president of the Federal Reserve and he had nobody to answer to, or the chairman of the FDIC would have nobody to answer to? That is on the banking side. Would you like to have that? I think not. So why would we allow the director of the CFPB to be that independent? I struggle with that.

And I think Mr. Hunt made some great points with regards to the amount of uncertainty that is caused by this pendulum effect that goes back and forth, back and forth. And Mr. Whitaker made a comment to that effect as well that, how do you prepare for that? How do you as somebody in business sit there and try to invest either in services or in people to try and figure out how you are going to position yourself to be able to, with a crystal ball on your desk, figure out what is the next rule and regulation coming down from above that you are going to have to figure out?

This is where we are with this particular agency, and I think we have got to look at ways to find—to allow the pendulum to swing back where it needs to be where you protect the consumers, but you don't run the businesses out, provide the services. And so we want to find that sweet spot, and we appreciate what you have done today as witnesses to give us your information. It has been very helpful.

The Chair notes that some Members may have additional questions for this panel, 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 these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

With that, the hearing is adjourned.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned.]
APPENDIX

June 6, 2018
IMPROVING TRANSPARENCY AND ACCOUNTABILITY AT THE BUREAU OF CONSUMER FINANCIAL PROTECTION

House Committee on Financial Services
Subcommittee on Financial Institutions

Tuesday, June 6, 2018
2:00 p.m.

Written Testimony Submitted By Steven G. Day NTP, President

AMERICAN LAND TITLE ASSOCIATION

www.alta.org
Chairman Luetkemeyer, Ranking Member Clay and members of the subcommittee, my name is Steven G. Day NTP. I am President of National Agency Operations for Fidelity National Title Group, a subsidiary of Fidelity National Financial.

I also have the privilege of serving as the President of the American Land Title Association (ALTA). ALTA is the national trade association representing more than 6,400 title insurance companies, title and settlement agents, independent abstracters, title searchers, and real estate attorneys. I am here today testifying on behalf of ALTA.

I have been in the title insurance and settlement business for nearly 37 years. I started my career as an attorney and title agent in a small town in Rhode Island. From there, I became a state underwriting counsel for Chicago Title in Providence, R.I. Over the years, I've held a
variety of positions, including state manager assisting our agents build their business in New York and New Jersey, and division manager overseeing our direct, agency, and commercial operations in the Northeast and Mid-Atlantic. In February, I assumed the role of president of agency operations.

Through these experiences, I have gained unique insight into how the small and micro businesses that make up the bulk of the title and settlement industry make decisions to help them not only comply with the law but also grow their company.

The title and settlement industry is primarily made up of small businesses that serve their local communities and operate in every county in the United States. The average title agency has fewer than five employees and revenue between $250,000 and $500,000 annually. Even with our large nationwide footprint, the bulk of Fidelity’s business comes from these small- and mid-sized title agencies.

**The Best Way to Improve Transparency at the Bureau is to Ensure it Provides Reliable Guidance to Businesses**

As in every industry, change is happening in the title and settlement industry at an ever-increasing and unpredictable pace. As I travel the country talking with our small business members, I hear how changes in regulations and waves of innovation are threatening to disrupt businesses. Our members feel like they are in a holding pattern – testing the winds and biding their time to make just the right move.

Whether in business or in life, I’ve learned a simple truth, more information is never a bad thing when it comes to decision making. This is especially true when it comes to making decisions that can cost your business millions of dollars.
In his appearance before the committee in April, Acting Bureau Director Mick Mulvaney made four recommendations to Congress to improve accountability and transparency for the agency. These include:

1. “Fund the Bureau through Congressional appropriations;
2. Require legislative approval of major Bureau rules;
3. Ensure that the Director answers to the President in the exercise of executive authority; and
4. Create an independent Inspector General for the Bureau.”

These proposals are designed to provide Congress and the President with stronger oversight over the Bureau. These may be beneficial steps, but what would help the most is a Bureau that consistently provides the businesses it regulates with written, reliable guidance on how to comply with the law and protect consumers in real-world scenarios.

This is why the American Land Title Association believes the most important step Congress can take to improve the Bureau of Consumer Financial Protection is to pass H.R. 5534, the Give Useful Information to Define Effective Compliance (GUIDE Compliance) Act. Introduced by Reps. Sean Duffy (R-WI) and Ed Perlmutter (D-CO), the bill creates a process for the Bureau to issue formal and reliable written guidance on how to comply with its written regulations. In other words, the bill requires the Bureau to provide businesses with more information and examples of how to comply with regulations. Additionally, the bill requires the creation of a civil money penalty matrix similar to those used by all other federal financial regulators.
Consumers benefit when regulators discourage bad acts through enforcement while also encouraging good behavior through guidance. Today, the Bureau takes its enforcement role seriously; we encourage the Bureau to take its ability to promote good practices seriously, too.

In May, Acting Director Mulvaney spoke to our members at our ALTA Advocacy Summit. He mentioned his philosophy that the Bureau should tell companies the rules of the road and provide concrete guidance and examples prior to enforcement. We believe this should not just be Acting Director Mulvaney’s philosophy but rather the approach of the Bureau itself. Congress can help ensure this through passage of the GUIDE Compliance Act.

What is Guidance?

According to the Government Accountability Office, the purpose of regulatory guidance is to, “clarify statutes or regulatory text and to inform the public about complex policy implementation topics.” Under the Administrative Procedures Act, guidance differs from a rule. Rules are defined as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” Such rules must go through a public, notice of proposed rulemaking (NPRM).

Guidance is considered a class of interpretive statements of policy. These statements advise the public of an agency’s plans for exercising its authority. They also inform the public about how to comply with applicable law and regulations.

2 5 USC §500 et. seq.
Guidance highlights how laws and regulations apply in real-life scenarios. It provides examples and explanations that help people and businesses make more informed decisions on how to comply with law in real life.

Guidance can come in the form of advisory opinions, bulletins, no-action letters, statements of policy and answers to frequently asked questions. They can apply widely and guide an entire industry. An example of this type of guidance would be bulletins published by the Office of the Comptroller of Currency. Guidance can also be narrow and specific to a single set of circumstances and apply only to the requesting person. An example of this would be private letter rulings from the Internal Revenue Service.

The GUIDE Compliance Act encourages the Bureau to publish more of these interpretative examples. Unlike with the Bureau’s Bulletin on Indirect Auto Lending, guidance developed under the GUIDE Compliance Act is designed to interpret requirements of a regulation that was adopted as part of a formal Administrative Procedures Act (APA) process.

Guidance Provides Businesses and Regulators with Valuable Information to Make Better Decisions

It is in providing businesses with more information to use when making decisions that guidance proves its value. Clear, reliable guidance and examples are important for two reasons. First, clear reliable guidance makes it easier for businesses to comply with regulations. As opposed to regulations that tend to be written in more universal language, the best guidance provides businesses with clear examples of acceptable practices that provide parallels to the decisions businesses make every day. This type of guidance gives businesses a solid basis for
making decisions and investments that they know will not harm consumers and not lead to potential enforcement actions and fines.

Second, guidance improves the effectiveness of regulators' supervision and enforcement processes. It provides examiners with more reference points for judging business practices for compliance purposes. For an agency like the Bureau, this can be invaluable because of the myriad industries and business products its examiners oversee.

Guidance also provides common language for businesses and examiners to discuss their compliance practices and how they make decisions. Effective supervision programs often focus on the way businesses make decisions and the types of information they rely upon along with the potential outcomes of those decisions. Guidance provides a stronger basis for those conversations among businesses, consumers and regulators than just regulation alone. The result would be a supervision program with lower examination costs and shorter examination timeframes (allowing examiners to visit more companies), ideally leading to fewer enforcement actions and improved consumer protections.

The GUIDE Compliance Act

The purpose of the bipartisan GUIDE Compliance Act is to streamline and improve the Bureau's process for supporting implementation and compliance efforts for new and existing regulations. The legislation requires the Bureau to:

1. Issue guidance that is necessary or appropriate to carry out the purpose of the law it is responsible for, including facilitating compliance;
2. Publish in the Federal Register within one year of enactment the definitions, criteria, timelines and process for issuing each type of guidance the Bureau shall provide, with a final rule required within 18 months of enactment;

3. Allow industry to rely on guidance in good faith;

4. Establish a process and timeframes for requests for guidance, including time limits to provide answers in response to requests for guidance;

5. Create a process for amending or revoking guidance, including a process for public notice and comment;

6. Develop guidelines for determining the size of any civil money penalties.

This simple five-page bill will help improve the way the Bureau works with the title and settlement industries.

The Title and Settlement Industry’s Experience with CFPB

ALTA members provide two primary services to consumers and financial institutions. First, the industry prepares and writes title insurance policies protecting both purchasers and mortgagees of real property. This service falls outside the Bureau’s regulatory and supervisory authority as it is part of the business of insurance.

Second, our members act as third-party settlement agents in real estate and mortgage transactions. This service is within the Bureau’s authority and is the subject of the Real Estate Settlement Procedures Act (RESPA).

While the Bureau does not directly supervise ALTA members, it is important to remember that supervision and regulatory drafting are two sides of the same coin. This is
particularly apparent given the complexity of the Bureau’s TILA-RESPA Integrated Disclosure (TRID) or Know Before You Owe (KBYO) rule.

The Bureau Provided Some Guidance on TRID But More Would Have Made Implementation Easier

At 1,888 pages, the Bureau’s final TRID rule included a lot of detail and discrete instructions for completing the new consumer mortgage disclosures. Along with the regulatory text, the Bureau produced more than 100 official staff interpretations. These staff interpretations provided helpful guidance about how to correctly complete the new disclosures in different transactions scenarios.

The problem was that despite that forethought while drafting the regulation, there were still hundreds of questions that arose only after the industry began to develop systems to implement the regulation.

The Bureau provided our industry with 21 months to develop processes and technology to implement TRID. This was extremely helpful because of the time it took to update software needed to produce new mortgage documents. Unfortunately, during this 21 months the Bureau missed opportunities to provide meaningful guidance that would have made implementation much easier.

Prior to TRID’s effective date, the Bureau hosted five webinars to review and respond to frequently asked questions. The webinars were intended to provide information to help businesses make compliance decisions. However, the webinars didn’t achieve their objective because of the way they were designed.
Each webinar began with Bureau staff reading a disclaimer that said, “This presentation does not represent legal interpretation, guidance, or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.” This disclaimer made it impossible for industry to rely on the information provided in the webinars. They essentially said, “Trust us, but don’t rely on us.”

While webinars are a helpful way of disseminating information to a large group at one time, the Bureau refused to provide written public answers to the questions they addressed during the webinars. This decision is difficult to understand because Bureau staff produced written answers that they read during the webinars.

Our customers rely on title professionals to lead and serve as the authority in real estate transactions. During implementation and every day since, our members get questions from real estate agents, mortgage lenders and attorneys about compliance with the TRID disclosures.

The failure to provide answers in writing made the webinars extremely difficult for the industry to use. Title professionals had to find a way around these limitations. Publicly available written guidance is ideal because it makes it easy for title professionals to copy and paste their source of information when answering customer questions. It also allows them to provide others with a citation to the guidance.

Instead of providing a simple answer, title professionals had to send links to the recording of the webinar. They then provided instructions for the listener to fast forward to
specific time frames in the recording to hear the answer. This method was time consuming but it also intruded more opportunity for mistakes as people needed to get both the time stamps and transcript of the recording correct before discussing a topic.

Guidance is most effective when it is in written format and published on an agency’s website. This is a central requirement of the GUIDE Compliance Act.

Another area where more guidance would have been helpful in TRID is with sample completed disclosure forms for different transactions. Over the course of the 20-plus months of implementation, the Bureau wound up producing 11 sample completed disclosures. These included samples of a Loan Estimate and Closing Disclosure for a simple fixed-rate purchase and refinance mortgage loan, along with samples showing closing costs increasing in excess of the good-faith requirement, the issuance of a simultaneous second mortgage loan and disclosure of funds paid outside of the closing.

These 11 samples were hugely helpful for the title and mortgage industries. They especially helped the software vendors, who used the samples to test their systems through the upgrade process. Mock-ups also are valuable training tools for understanding compliance, especially given the various permutations of real estate transactions across the country.

The problem was not the quality of the samples, but rather the volume. Prior to the final rule being implemented and during the implementation period, ALTA and the lending trade associations asked for model forms showing both simple transactions (like those produced by the Bureau) and more complex ones involving construction loans, loans with specific fee limits and requirements like Federal Housing Administration and Veterans Administration loans, and
loans on properties that required unique fees, such as homeowners association transfer fees and flood zone determination fees.

The Bureau declined to provide these mock-ups. The rationale conveyed to us was that the Bureau wanted to be flexible and not limit the industry by suggesting there was only one way to complete the disclosures. The problem with this flexibility is that the lack of examples only made it harder to make decisions. The GUIDE Compliance Act would require the Bureau to have a standard process for assessing these requests and timelines for responding to them.

**The Best Example of How the Market Reacts When Guidance is Not Available is the Bureau Bulletin on Third-Party Service Providers**

ALTA members are indirectly supervised by the Bureau’s oversight of both depository and nonbank mortgage lenders. Our industry acutely feels this indirect supervision due to CFPB Bulletin 2012-03, Service Providers.³

The bulletin simply reminded supervised banks and nonbanks that they are expected to oversee their business relationships with service providers in a manner that ensures compliance with federal consumer financial law. It restated longstanding guidance from other federal regulators. However, given the lack of examples in the bulletin, it shook the title insurance industry and our lender customers.

Unlike similar guidance from prudential regulators, the Bureau’s bulletin provided little direction to banks and nonbanks. The Bulletin was two and a half pages long, compared with the 16 pages of guidance from the Office of the Comptroller of the Currency (OCC) and 14-page

---

document from the Federal Reserve Board. Examples of more useful guidance on this topic include the OCC in 2001, the Federal Deposit Insurance Corporation (FDIC) in 2006, as well as subsequent guidance from the OCC and Federal Reserve Board in 2013, and the Mortgage Servicing Settlement and accompanying consent judgments in 2012.

This lack of guidance provides businesses with many unanswered questions about how to demonstrate compliance. Because of the bulletin, some lenders require small title companies only doing a handful of closings with them a year to follow the same processes as a large company doing thousands of closings. This uncertainty pushed some small businesses to exit the market, reducing consumer choice.

Another area of uncertainty was on oversight of consumer versus lender-selected providers. Commonly, the consumer—and not the lender—selects their title and settlement company (with the advice of a real estate agent, attorney or other trusted party). Given the lack of guidance, most lenders treated vendors they selected and vendors selected by the consumer the same. To manage the risk, some lenders chose to severely limit consumers’ options. This is the wrong outcome and created a conflict in states where the law limits a lender’s right to restrict consumer choice.

The title industry stepped up and attempted to deliver clarity to its customers by creating the Title Insurance and Settlement Company Best Practices in 2012. This standard compliance management system for title companies provides lenders with a framework for understanding how the title companies they work with do the right thing, the right way—before, during and after the transaction. Today, lenders use this tool to manage and mitigate the risks inherent within the vast national network of more than 20,000 settlement companies.
Many lenders have adopted the Best Practices as part of their compliance management program. However, due to lack of guidance, lenders are unsure whether the Best Practices keep them in compliance with regulatory requirements. A public statement in support of the ALTA Best Practices from the Bureau would provide much desired clarity and guidance to supervised entities.

After more than four years of discussions with Bureau staff, they made a few minor clarifications in October 2016\(^4\). The guidance clarified that a lender’s risk-management program for service providers may be scalable depending on several factors. This has been helpful, but more is still needed, especially regarding the collision between consumer choice and vendor management.

A more valuable guidance bulletin would provide banks and non-banks with examples of vendor-management programs based on different risks. It should highlight ways to review a potential vendor’s operations, while not limiting consumer choice. It should note that the vendor management program should be tailored to the specific consumer risks posed by each type of vendor. Additionally, the Bureau could call out companies with good vendor management programs in its supervisory highlights publication. These are all options that the Bureau would be required to consider if Congress passed the GUIDE Compliance Act.

**Advisory Opinions**

Guidance that is applicable to the entire industry is helpful. However, Congress should also consider establishing an advisory opinion program at the Bureau. Advisory opinions allow

---

the Bureau to provide specific guidance to individual companies about individual products or process. While only that company can rely on the opinion, they provide more clarity and certainty for companies looking to launch new products.

The use of advisory opinions is widely used by other federal agencies including the Internal Revenue Service and Securities and Exchange Commission. They analyze how the applicable laws apply to a specific set of facts or a proposed design, operation or maintenance of a consumer financial product or service. Publishing redacted versions can help other companies make better decisions. This proposal was included as Section 721 of the Financial Choice Act sponsored by Chairman Hensarling and passed by this committee last year.

Financial Product Safety Commission Act of 2018

Lastly, we believe the committee should consider legislation to change the leadership structure of the Bureau from a single director to a five-member bipartisan commission as proposed by H.R. 5266, the Financial Product Safety Commission Act of 2018. We believe the bipartisan bill sponsored by Reps. Dennis A. Ross (R-FL), Kyrsten Sinema (D-AZ), Ann Wagner (R-MO) and David Scott (D-GA) would make the Bureau a more open, transparent and accessible regulator. Experience demonstrates that a commission lends itself to better collaboration between regulator and industry. We can see good examples of this collaboration at other financial regulators, such as the Federal Deposit Insurance Corporation, the Federal Reserve Board and the National Credit Union Administration. This ultimately benefits consumers and business.

Last year, ALTA commissioned a poll with the Consumer Bankers Association and Independent Community Bankers of America. The poll found that 58 percent of registered
voters in key battleground states believe entities run by a commission are more transparent and accountable. Commissions help ensure that minority viewpoints have a strong voice during the regulatory process. They also help ensure that an agency’s leadership better reflects the industry and consumers it serves.

**TRID Improvement Act**

We applaud this committee and the House for passing H.R. 5078, the bipartisan TRID Improvement Act. The TRID Improvement Act fixes one of the most confusing requirements of the Bureau’s mortgage disclosure rule. It is a simple one-page bill that allows title insurance and settlement companies to accurately disclose available discounts for title insurance on the Bureau’s required disclosure forms. This ensures that those disclosures match the rates for title insurance filed with state insurance regulators.

This problem spawned much confusion for consumers, over 40 percent of American homebuyers feel taken advantage of or are confused by the Bureau’s rule. It also causes significant confusion for industry about how to compliantly account for this discrepancy in prices. Despite these questions about how to ensure consumers understand the costs of their transaction, the Bureau did not address the topic through reliable guidance. We urge the Senate to follow the House’s lead on this important bill.

**Conclusion**

Thank you for offering this opportunity to provide input. Our experience with the Bureau gives us a unique view on how it can improve its processes.

Compliance is about more than protecting consumers. It protects a company’s reputation, financial well-being and employee morale.
As an industry predominantly made up of small- and medium-sized businesses, we need a regulator that helps remove the gray. We need a regulator that matches simple and clear regulations with helpful and illustrative guidance and examples. A regulator that makes it easier for us to protect our reputation, bottom line and ultimately our consumers.

I think everyone would agree that the more reliable information you have available, the better decision you are likely to make. The GUIDE Compliance Act is narrowly tailored to do just that. It requires a process to provide more information and examples so businesses can make better decisions and comply with the law. This helps not only businesses like ones that ALTA represents, but also the consumers our members strive to protect every day. The GUIDE Compliance Act also makes providing reliable guidance a part of the Bureau’s DNA, ensuring that industry will have the information it needs regardless of changes in administration.

The best step this committee and Congress can take to improve transparency and accountability at the Bureau is to pass the GUIDE Compliance Act.

I appreciate the opportunity to discuss the need for a formal guidance mechanism at the Bureau. ALTA is eager to serve as a resource to this subcommittee, and I am happy to answer any questions.
Testimony of
Richard Hunt, President & CEO
Consumer Bankers Association

Before the
U.S. House of Representatives Financial Services Committee
Subcommittee on Financial Institutions & Consumer Protection
Hearing Titled, “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection”
June 6, 2018

Introduction

Chairman Luetkemeyer, Ranking Member Clay, members of the committee, my name is Richard Hunt and I am the President and CEO of the Consumer Bankers Association. Thank you for the opportunity to testify in front of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit’s hearing titled, “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection.”

CBA preserves and promotes the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business. As the voice of the retail banking industry, CBA represents nearly 70 members whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country’s total depository assets. Additionally, our members operate nearly half of all the bank branches in the country, and employ over 1.6 million Americans. CBA members serve their communities by extending over $3 trillion in consumer loans and $275 billion in small business loans.

Today’s hearing examines an important topic in the retail banking space as the Bureau of Consumer Financial Protection (BCFP or the Bureau) has vast jurisdiction over a multi-trillion dollar financial services industry, including over 11,000 depository and countless non-depository institutions, regulating more entities than all other federal financial regulators combined. To put it into perspective, the Office of the Comptroller of the Currency has jurisdiction over just 1,600 institutions. In addition to supervisory authority over each depository institution with assets over $10 billion, the BCFP has supervisory authority over all those in the business of origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; private education loans; and short term liquidity products. Additionally, the agency has the ability to define, by rulemaking, its own scope of

1 The BCFP supervises compliance with consumer protection laws; the OCC’s supervisory authority includes prudential supervision, CRA, and consumer protection for national banks with assets of $10 billion or less.

CONSUMER BANKERS ASSOCIATION | 1225 EYE STREET, NW, #550 | WASHINGTON, DC 20005 | consumerbankers.com
supervisory authority, which it has so far defined to include authority over larger consumer reporting agencies, debt collectors, nonbank student loan servicers, and international money transmitters. Overall, the Bureau’s vast jurisdiction includes an entire sector of American finance from banks and credit unions, to innumerable financial services companies of all sizes, including larger participants in the American financial system.

But the Bureau’s authority does not end there. It also has the authority to write the consumer financial services regulations that apply to virtually all consumer financial service providers, whether or not they are supervised by the Bureau. These include rules applying to almost all of the consumer laws transferred to the Bureau when it was created, and any new rule it creates under its Dodd-Frank statutory authority to regulate “unfair, deceptive or abusive acts or practices.” In short, it has an unprecedented scope of authority over almost the entire universe of consumer financial service providers, ultimately touching almost all Americans.

Pursuant to the Dodd-Frank Act, the Bureau is led by a sole director, who enjoys unprecedented authority with very little oversight and accountability. We applaud Acting Director Mick Mulvaney and his leadership at the BCFP in seeking to make the Bureau more accountable, identify rules that are outdated or burdensome, improve the efficacy of rules, and enforce federal consumer financial protection law. However, the Bureau continues to be too politicized, unaccountable, and lacking in transparency. It is crucial that Congress legislate to bring greater bipartisanship, transparency, and credibility to an agency that has such an important mission and broad jurisdiction. CBA has provided the below recommendations to Congress that would bring long-lasting and meaningful reforms to the Bureau, improve transparency and accountability, and increase consumer and small business access to credit.

Bringing Greater Transparency and Accountability to the Bureau

Despite the Bureau’s vast jurisdiction, it is subject to very little Congressional or presidential oversight. Unlike most independent regulatory agencies, the BCFP is led by a sole director rather than a multi-member, bipartisan commission. The unchecked power and decision making authority vested in one person hyper politicizes every decision it makes. The sole director has budgetary authority to request funding for the Bureau from the Federal Reserve without Congressional approval. The sole director has the ability to steer rulemaking in one direction or another without regard to stakeholder input. The sole director enjoys great autonomy over enforcement actions having the unilateral authority to start and cease actions at will. The sole director can regulate through enforcement, providing very little clarity to financial institutions that want to comply, which results in stifling product development and limiting consumer access to credit. Moreover, the sole director adjudicates appeals of their own enforcement decisions. As such, the sole director has enormous, autonomous power over an industry that affects a major part of our economy, and therefore, it is critical improvements be made to increase its transparency and accountability.

Included below are a number of suggested reforms that Congress should consider that will increase accountability and transparency at the Bureau.

2
Bipartisan Commission at the Bureau of Consumer Financial Protection

A bipartisan, Senate confirmed commission would increase accountability and transparency at the Bureau. CBA strongly supports H.R. 5266, the “Financial Product Safety Commission Act,” which would create a bipartisan, five-member commission to lead the BCFP. H.R. 5266 is a bipartisan bill cosponsored by Reps. Dennis Ross, Kyrsten Sinema, Ann Wagner, David Scott, Blaine Luetkemeyer, Vincente Gonzalez, and Patrick McHenry. We urge the committee to quickly pass this bipartisan legislation to bring much needed stability, accountability, and certainty for consumers and industry stakeholders.

A lack of certainty and long-term consistency in leadership at the Bureau adversely affects consumers, our economy, and the financial services industry. As the past months have indicated, the BCFP’s current governance structure is subject to dramatic political shifts with each change in presidential administration, making it difficult for the financial services industry to plan for the future, which ultimately stifles innovation, limits access to credit, and hurts consumers. A bipartisan commission would bring more certainty and stability to the highly regulated financial services marketplace so that banks can properly plan for the future and better serve consumers.

A commission would also bring much-needed transparency to the BCFP as it would provide an open forum for dissenting voices and viewpoints from multiple stakeholders. A sole director can unilaterally make decisions, oftentimes behind closed doors and without public debate. Alternatively, a commission structure would require open debate of opposing ideas, viewpoints, and solutions, encouraging both sides to work together to come to moderated rulemakings that can better stand the test of time.

Furthermore, the concept of a commission has historically shared bipartisan support. Under President Obama, the Department of Treasury issued a report stating, “The CFPA [Consumer Financial Protection Agency] should be structured to promote its independence and accountability. The CFPA will have a Director and a Board. The Board should represent a diverse set of viewpoints and experiences.” Under the Trump Administration, Acting Director Mulvaney testified, “...A five person commission could help smooth out some of the variations from one director to another, Mr. Cordray and I are very different people and we plan to run the agency very differently, and a five person commission might bring some stability.” Treasury Secretary Steve Mnuchin testified he does “support the concept of a board to oversee [the Bureau]” in a recent House Appropriations Subcommittee hearing.

In Congress, bipartisan legislation establishing a commission has passed the House Financial Services Committee six times and passed the House of Representatives four times, with Democrats and Republicans voting in favor. When Dodd-Frank passed the House in 2009, under the leadership of then-House Financial Services Committee Chairman Barney Frank (D-MA), it included a provision that would establish a five-member commission at the Bureau. And just last

1 Department of Treasury, Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation, p. 58.
2 Senate Banking Committee, BCFP Semi-Annual Hearing, April 12, 2018.
3 House Appropriations Subcommittee Hearing, FY19 Budget Hearing, Department of Treasury, March 6, 2018.
Congress, the House Financial Services Committee passed on a bipartisan basis, legislation that would establish a bipartisan, five-member commission at the CFPB.

Importantly, the American people are supportive of a bipartisan commission at the Bureau. A recent Morning Consult poll found that by a margin of three to one, registered voters support a bipartisan commission over a sole director, with only 14 percent of those polled stating they prefer to keep the Bureau's current leadership structure. Additionally, two-dozen trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes support this needed change.

**Single Director, Removable At-Will**
In the Bureau's April 2018 Semi-Annual Report to Congress, Acting Director Mulvaney recommended changing the structure of the Bureau to allow for the President to remove the Director at will. CBA appreciates the Acting Director's goal to make the Bureau more accountable to the taxpayer, but it is our belief that making the Director removable at will could increase the overt political nature of the CFPB. Right now, it is possible for a Director from one party serving a five-year term to continue on even under new presidential leadership. If the Director is removable at will, the direction of the Bureau will only ping-pong more frequently, creating greater uncertainty for industry and consumers. CBA therefore believes the only course of action to reduce political volatility is for Congress to pass H.R. 5266, which would foster bipartisanship and increase certainty and stability, so banks and credit unions can properly plan for future investment in technology, innovate new products, all resulting in better service for consumers.

**Independent Inspector General**
In its semi-annual report, the Bureau requested Congress establish an independent Inspector General at the CFPB as opposed to sharing one with the Federal Reserve. CBA agrees this is an appropriate step to providing some independence and oversight at the Bureau. We strongly support H.R. 3625, the CFPB-IG Act of 2017, a bill that would create an independent Inspector General at the CFPB. The adoption of an independent Inspector General is of paramount importance to ensure the operations of the agency are audited by an independent and impartial entity. Most financial services regulatory agencies, and more than 30 other federal agencies, have their own dedicated Inspector General. Having a third-party auditor will bring increased accountability to the Bureau and provide Congress with important information on the internal workings of the CFPB.

**Clarify Guidance**
In addition to the CFPB's four legislative requests outlined in the semi-annual report, CBA believes the Bureau should define and clearly establish procedures for guidance. CBA strongly supports H.R. 5534, the Give Useful Information to Define Effective (GUIDE) Compliance Act, which would provide greater clarity to what constitutes guidance, improve compliance with consumer financial protection laws, and bring predictability to the Bureau's rulemaking.

---

The Bureau has been historically slow to issue guidance, which has created an environment of uncertainty in the financial services industry. The bill would require the Bureau to issue guidance necessary or appropriate to comply with consumer protection laws. It would provide for public notice and comment period for the issuance, amendment, or revocation of guidance, with clear timelines for industry. It would provide for protection from liability for acting in good faith in accordance with guidance. The bill would also create a penalty matrix that would require the Bureau to publish penalty guidelines that determine the size of any civil monetary penalties issued by the Bureau based on the severity of the violation of Federal consumer law. By requiring the Bureau to issue clear guidance and rules, the practice of regulation through enforcement could be reduced.

The GUIDE Act would create a more transparent regulatory environment and better achieve the Bureau’s goals of compliance with consumer protection laws.

Subject BCFP to the Congressional Appropriations Process

CBA strongly believes the BCFP needs greater oversight and accountability. The BCFP’s Semi-Annual report called for Congress to put the Bureau under appropriations to achieve these goals. Pursuant to the Dodd-Frank Act, the BCFP currently receives direct funding from the Federal Reserve at the request of the BCFP Director, capped at 12 percent of the Federal Reserve’s operating expenses. As long as the budget request falls below this cap, the budget request cannot be denied.

Placing the Bureau on budget and under the Congressional appropriations process will provide greater oversight and accountability. In the absence of a bipartisan commission and other meaningful reforms, CBA supports this recommendation by Acting Director Mulvaney and the passage of H.R.2553, the TABS Act of 2017 that would subject the Bureau to the annual Congressional appropriations process.

It is important to note that putting the BCFP under appropriations would not address industry concerns regarding day-to-day management of personnel, operations, supervision, and enforcement proceedings that require daily transparency and oversight. Only a bipartisan board with dedicated commissioners who are there day in and day out would provide the level of transparency, accountability, and stability needed at such a powerful regulator. Nevertheless, putting the BCFP under Congressional appropriations would make the Bureau more accountable to the American people, and CBA believes the Bureau requires greater transparency and oversight.

Congressional Approval of Major Rules

CBA fully respects the role of Congress as the authoritative lawmaking body that utilizes a deliberative and measured approach. Nevertheless, agencies do play an important role in developing and implementing regulations and guidance to clarify expectations of industry. Prolonged delays in approval of rules could slow the introduction of products and services to bank customers.
We understand and appreciate that Congressional approval could bring more accountability to the Bureau; however, we believe more discussion is needed to get a better understanding of the unintended effects this could have on financial regulation. Additionally, Congress already has Congressional Review Act authority to overturn rulemakings with which it disagrees. It has been used several times; specifically, it has been used to overturn the arbitration rule and indirect auto guidance issued by the Bureau.

Requests for Information

As part of its effort to evaluate the agency’s prior actions and policies, the Bureau has initiated several requests for information (RFIs) on its functions and past actions. CBA appreciates this opportunity for stakeholders to comment and will continue to submit responses on the RFIs, sharing our members’ perspectives as banks regulated and supervised by the BCFP. Some of the comments we will be sharing with the Bureau during this comment period include the following:

Enforcement and Supervision

The BCFP has historically used the enforcement process as a regulatory tool. Former Director Richard Cordray stated on numerous occasions that companies should draw their understanding of the compliance and legal requirements of federal law by studying consent orders and other enforcement actions by the BCFP. The result is not in the best interest of either industry or consumers. This policy, which is often called “rulemaking by enforcement,” appealed to the BCFP because it was swifter and did not require as much substantiation. The rulemaking process, as mandated by the Administrative Procedures Act and the Dodd-Frank Act, is time-consuming for a reason: it demands the BCFP adhere to a strict process that invites those who are affected by a proposal to have a say in the creation of the rule. Enforcement actions do not; and if they are negotiated consent orders, they may not even be a very fair representation of the regulator’s compliance expectations of others. In order to attempt to know what the law is and how to comply, one has to hire a team of expensive lawyers to decipher the tea leaves. We believe this is simply bad public policy and leads to nothing more than excess legal cost and a lack of clear guidance.

The absence of regulatory agency coordination is also a concern. CBA member banks are often supervised by multiple federal regulators (not to mention the state regulatory bodies that supervise state chartered banks). A single financial services company can be examined by the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the BCFP. In some cases, more than one agency is examining a bank for similar or related issues, each with a slightly different set of lenses. The same documents can be requested or variations can be sought, and similar inquiries can be made to the same people. Better coordination is needed to minimize the cost and burden to the financial institutions, permitting them to better serve their customers.

In a similar vein, enforcement can be a multiple agency process, with each agency taking on the same issue and imposing its own penalties for related violations. At times this appears to be driven by a desire to demonstrate its regulatory authority and not defer to any other regulatory body, but it is unnecessary to have redundancy, and it is a cost that ultimately reduces the
effectiveness of the entire enforcement process. The Treasury Department, in its 2017 report on financial services, recommended a single entity act as a kind of traffic cop or coordinator. CBA would support this approach to increased regulatory coordination.

**Rulemaking**

The BCFP’s record regarding discretionary rulemaking has also been concerning. The Bureau’s small-dollar rule is a prime example. Here, the Bureau produced an overly restrictive, broadly-applied rule based on little data. Despite industry efforts to develop a workable solution to meet consumers’ small-dollar needs, the Bureau instead implemented a rule that will make small-dollar lending impractical and nearly impossible. This drastic approach and implementation of preconceived policy positions will only leave consumers with fewer options. They will now be forced into unregulated and unsupervised markets that offer few, if any, protections or will simply have their needs unmet. Consequences of this type of pre-determined rulemaking could be drastic for consumers, leaving them unable to pay rent, buy gas or groceries or meet an unexpected medical expense.

CBA is strongly supportive of clear and rational regulations that promote the industry’s ability to comply and provides consumers with access to credit. We believe these twin objectives would be best served by a robust public comment process, a firm adherence to the formal rulemaking process, and a flexible implementation process following the issuance of a final rule. Indeed, the Dodd-Frank Act’s standards for rulemaking require the Bureau to consider, among other things, “the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumer to consumer financial products or services resulting from such rule.” Under this framework, we would encourage the Bureau to not focus solely on policy-based rulemaking and to base new regulations on real-world data and rigorous economic cost-benefit analysis, as required by the Act.

**Consumer Complaint Database**

CBA supports H.R. 3607, the “Protecting Consumers from Frivolous Claims Act” that will limit the public dissemination of unsubstantiated information submitted through the BCFP complaint portal. The authors of Dodd-Frank did not intend for the Bureau to publicly share complaints. In fact, plain reading of the statute demonstrates that Congress did not specifically call for it to be made public. Under previous leadership, the Bureau went far beyond its statutory authority of establishing the Database, by publishing the data publicly, adding unverified narratives, and proposing a subjective consumer survey on resolution satisfaction that has no proven benefit.

First, the Dodd-Frank Act requires the Bureau to create a public data base. Second, the purpose of the complaint portal is to provide the Bureau with information that permits them to target problem areas, which does not require them to make it public. Third, a public YELP-like data base where comments are shared publicly, sponsored by the Government, and has not been shown to be of any value — indeed can do more harm than good.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. This is why our members have robust complaint
management procedures outside of the BCFP's Consumer Complaint Database to ensure they are resolving disputes as quickly as possible.

With the BCPP's database exceeding 1 million complaints, the inclusion of potentially personally identifiable narrative information, and reports of insufficient data security protocols at the Bureau, CBA is strongly concerned about the potential for compromising consumer privacy. In addition, the database erodes consumer privacy by impairing the confidential nature of the exchange between customer and banker. The Database does not protect consumers from re-identification risks and creates consumer harm. The Bureau has in the past claimed privacy is not a serious concern because “modern scrubbing standards” can de-identify nonpublic, personal information to “acceptable levels.” However, recent audits of the database have revealed many cases of re-identification.

The Bureau does not currently attempt to verify the legitimacy or accuracy of the information provided by the consumers, except to ensure the consumer is in fact a customer of that company, and the company is a covered financial service provider. While this is stated on the database website, this fact alone does not give consumers adequate information to draw conclusions about the data. If the Bureau is releasing results, consumers can be excused for believing the information is legitimate, notwithstanding any disclaimer to the contrary. The releasing of narrative information on each complaint only makes this worse and does not give enough information for the public to draw any information on the validity of the complaints.

CBA applauds Acting Director Mulvaney’s review of whether to publicly release consumer complaint data. We believe this will ensure consumer privacy and prevent the dissemination of misleading information. Congress too has an important role to ensure future releases of consumer data is safeguarded by passing H.R. 3607.

**BCFP Rulemaking and Needed Congressional Action**

**Small-Dollar Bank Lending**

Millions of Americans live paycheck-to-paycheck, and need help making ends meet. Yet, regulators in Washington have chipped away at products and services that provide short-term, small-dollar credit, leaving consumers with limited and more expensive alternatives. CBA strongly supports H.R. 4861, the “EQUAL Act of 2018” which would nullify guidance from the federal banking agencies that limit deposit advance products banks can offer customers. In addition, we are encouraged by the Bureau’s announcement earlier this year that it will review the small-dollar rule for possible amendment.

Historically, federal banking regulators have encouraged banks to help finance these small-dollar consumer loans, rather than sending their customers to nonbank lenders. This is a preferable scenario: Customers receive the services they want – and need – but remain in the well-regulated and supervised banking system. In response, some banks, working closely with regulators, developed a way to meet short-term lending needs with a tool known as deposit advance products (DAP). These loans were carefully designed to ensure strong safeguards, like an ability to repay analysis that took into account a customer’s cash flow patterns and direct deposit
history. Additionally, deposit advance products are cheaper than payday loans, offer greater transparency, require substantial disclosures and compliance with federal law, receive positive feedback from borrowers, and have low default rates.

Before the rule was proposed, CBA and many of our member banks worked in good faith with the Bureau to provide insight and counsel on how a rule could be crafted that would allow for banks to serve the small-dollar loan market, providing a well-regulated bank product to compete with payday loans. Unfortunately, the Bureau’s final rule on small-dollar lending will only act as a disincentive for banks to enter this important market. Under the Bureau’s rule, lenders will be required, among other things, to determine whether consumers have the ability to repay by applying overly complicated underwriting requirements similar to those for a home mortgage, which will make the product costly to consumers and unviable for depositories to offer. While the Bureau did provide for some very specific exceptions that would allow for lenders to make loans that are not subject to the rule, these exceptions offer little in the way of practical application and are so minimal they will fail to meet the incredible demand that exists for small dollar loans, forcing consumers to look to more expensive, less regulated options to fulfill their short term credit needs.

CBA urges Congress to work with prudential regulators and the Bureau to revoke any rule or guidance that would limit consumer access to small dollar bank products and implement a structure that will allow depository institutions to enter the small dollar lending market

Small Business Lending
CBA supports H.R. 4452, the “Right to Lend Act” that would repeal Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that amends the Equal Credit Opportunity Act to increase data collected on small business loans. In brief, under that section, every financial institution (broadly defined in the section) must inquire of any business applying for credit whether the business is a small business, or a women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application (location of business, action taken, amount of credit provided, etc.), to the Bureau. The information must be made public on request in a manner to be established by regulation, and will be made public annually by the Bureau. The Bureau is given considerable flexibility to establish the requirements, define the scope, provide for exemptions, and protect the privacy of individuals.

CBA and its member institutions strongly believe that although the Dodd-Frank Act mandates this rule, it will be more difficult than the data reporting efforts undertaken on mortgages and would be of little value in uncovering violations of law. The notion that business lending parallels nicely to residential mortgage lending is misplaced. Small business loans are not commoditized in a way that readily permits comparisons. Increasing reporting for small business lending, although well intentioned, is a tremendously flawed premise. Requiring institutions to collect more data on small business loans goes against the need to streamline the credit process for customers with greater speed and ease. Plus, it could decrease the ability for institutions to provide such loans, while increasing their liability risk. Also, the BCFP and prudential regulators have the authority under the ECOA to supervise for and enforce fair lending in the small
business market – a tool currently in use. As a result, CBA recommends that Congress repeal Section 1071.

Privacy of Information – Home Mortgage Disclosure Act

Our members are dedicated to responsibly and fairly serving the housing needs of their communities and are committed to the purposes of the HMDA, which are to: “1. help determine whether financial institutions are serving the housing needs of their communities; 2. assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and 3. assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.”6

The Dodd-Frank Act mandated the expansion of information collected under Regulation C, HMDA’s governing regulation. However, the Bureau’s final HMDA rule the Director used his authority to almost triple the number of data fields and greatly increased the complexity of reporting. This is in addition to increased compliance pressures stemming from the Dodd-Frank Act’s strengthened enforcement monitoring due to the uncertainty of what are Unfair, Deceptive, and Abusive Acts and Practices (UDAAP), and additional rules and requirements that have inundated the banking industry, including the implementation of the Qualified Mortgage rules and TILA-RESPA Integrated Disclosure. The compliance burden placed on banks requires expenditures of resources that inevitably reflect in the cost and availability of credit for consumers.

CBA has long been concerned about the sensitive nature of the HMDA data and applauds Director Mulvaney’s decision to revisit the rule to closely review the data fields that would be collected, stored and ultimately published. The new data fields are even more sensitive than many of those previously collected, with the addition of credit score, debt to income ratio, and property address, among other new fields. Re-identifying the consumer using existing HMDA data can be achieved in over 80 percent of all cases. The addition of the new data fields raises the probability to virtually 100 percent, particularly in rural markets.

In addition, CBA appreciates the introduction of H.R. 4648, the Home Mortgage Reporting Relief Act that will delay the enforcement of and addresses the privacy concerns with the BCFP’s final Home Mortgage Disclosure Act (HMDA) rule. H.R. 4648 acknowledges many CBA member banks have already prepared for implementation and does not penalize those institutions that have striven to be compliant while providing those institutions not yet ready with one-year compliance safe harbors for collecting and reporting.

CBA strongly supports Acting Director Mulvaney’s commitment to reconsider elements of the rule and pursue a non-punitive approach to the new collection efforts in the meantime. Given the sensitive nature of the expanded HMDA data and the risk of re-identification, CBA strongly believes the new data fields should be limited and not made public unless in aggregate form.

Debt Collection

CBA recognizes the important role the collection of debt plays in the proper functioning of the consumer credit markets, as it reduces creditors’ losses from non-repayment and promotes the availability and affordability of consumer credit. We support the Bureau’s goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing their loan agreements with borrowers. Congress clearly enacted the FDCPA to establish ethical guidelines for the collection of consumer debt by third-party debt collectors, and it never intended nor designed the Act to cover the collection practices of creditors. In that same vein, CBA strongly opposes placing FDCPA-like restrictions and requirements on creditors. They are unwarranted and incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

CBA is also concerned by the overly restrictive communication standards set out in the Bureau’s Outline of Proposals issued ahead of its small business panel hearing for third-party debt collections. We believe setting communication barriers too high between collectors and borrowers has the potential to significantly harm consumers. Based on our members’ experience, consumers facing financial hardship are best served if they are able to freely communicate with collectors and their creditors. Doing so helps consumers avoid late fees, minimize negative impacts to their credit report, avoid account closures, and allows them to take advantage of loss mitigation or other workout programs. As a result, we firmly believe it is essential that any new rules promote, not inhibit, consumer engagement with collectors and creditors.

We strongly urge Congress and the BCFP to work with industry to establish debt collection regulations for third-party debt collectors that strike the right balance between consumer protection and consumer engagement.

 Harmonizing UDAP Authority

In the 114th Congress, H.R.5112, the “Unfair or Deceptive Acts or Practices Uniformity Act” was introduced that would remove the abusive standard set out in Section 1031 of the Dodd-Frank Act. The Federal Trade Commission Act prohibits Unfair and Deceptive Acts or Practices (UDAP), and this concept has been developed and refined over many decades by regulation and case law. The FTC employs UDAP in its enforcement of consumer financial service providers.

The bank regulatory agencies—including the FDIC, OCC and Federal Reserve Board, examine the banks under their authority for compliance with UDAP.

By giving the Bureau the authority to regulate unfair, deceptive and abusive acts or practices, the Dodd-Frank Act created an anomaly. And, by not being clear as to why an additional violation needed to be created, it also put all companies under the Bureau’s jurisdiction in the position of not knowing what the law is or how to comply. It is unclear how an “abusive” standard will be
applied or how it is different from unfair or deceptive. We encourage Congress to pass legislation similar to H.R. 5112 that would provide regulatory harmony between the BCFP and other Federal regulatory agencies.

Conclusion

The retail banking industry is best able to serve its customers when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road. CBA stands ready to provide industry expertise to Congress and the Bureau in the pursuit of legislative changes to the BCFP that will result in reasonable regulatory rules and guidance to improve consumer protection and the financial services marketplace.

Improving the financial lives of our customers is a goal that unites lawmakers, regulators and industry. The best way to ensure that shared outcome for consumers is for Congress to pass legislation that will bring more accountability to the Bureau. It is our belief that true, long-lasting change will not be successful until a governance structure at the Bureau is established that promotes debate and deliberation among leaders with diverse experiences and expertise so rules and regulations are written for the financial betterment of consumers. A bipartisan commission of five, Senate-confirmed commissioners would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress to implement the suggested legislative improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.
STATEMENT OF THE U.S CHAMBER OF COMMERCE

ON: Improving Transparency and Accountability of the Bureau of Consumer Financial Protection

TO: The House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit

BY: Kate (Larson) Prochaska, Director at the U.S. Chamber of Commerce
Center for Capital Markets Competitiveness

DATE: June 6, 2018

The Chamber’s mission is to advance human progress through an economic, political and social system based on individual freedom.
The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America’s free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation’s largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber’s international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.
Testimony of Kate (Larson) Prochaska  
Director, Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce  
Before the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit  
June, 6, 2018  

Chairman Luetkemeyer, Ranking Member Lacy Clay, and members of the Subcommittee on Financial Institutions and Consumer Credit:  

My name is Kate (Larson) Prochaska, director at the Center for Capital Markets Competitiveness ("CCMC") at the U.S. Chamber of Commerce ("Chamber") where I lead consumer finance issues. The Chamber is the world’s largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. I appreciate the opportunity to testify before the subcommittee today on behalf of the businesses and financial institutions that the Chamber represents.  

Thank you for holding this important and timely hearing about "Improving Transparency and Accountability at the Bureau of Consumer Financial Protection" ("Bureau"). We at the Chamber have long been advocating for improvements to this influential agency and are grateful for the opportunity to share our views here today.  

Creation of the Bureau  

Consumers, small businesses, and the American economy rely on the availability of credit to meet their financial needs. Every day, financial institutions are working with their customers to try to get them the best loan that fits their goals — whether it is financing a dream home, finally starting a business, or financing their daughter’s education. Since each consumer’s needs are different, it is critical that there are a diverse set of credit products available and that consumers are able to build credit within the mainstream banking system. Diverse financial products and ample credit supply are heavily influenced by financial institutions’ ability to innovate, and the presence of a strong, competitive consumer marketplace.  

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) created the Bureau to consolidate the consumer protection functions of multiple regulators under one roof. We strongly believe in the Bureau’s statutory mission to "seek to implement and, where applicable, enforce Federal
consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”

Consumer protection and a strong regulator to implement consumer finance laws are critical for a highly functioning and fair consumer marketplace. However, we believe the Bureau had growing pains and, as a result, lost sight of its mandate to foster “transparent” and “competitive” markets, and to ensure “that all consumers have access to markets.” The lack of accountability to Congress has exacerbated problems at the Bureau.

Within consumer financial services, the Bureau is instructed to ensure that:

1. Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;
2. Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;
3. Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;
4. Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and
5. Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

To be clear, rooting out unfair, deceptive, or abusive acts and practices and discrimination (“UDAAP”) is imperative to protect consumers and to foster a robust and fair consumer marketplace. However, the Bureau’s focus should not stop there. Under the past leadership, the last three prongs seemed to have lower priority, which is why we urge the new leadership to promote all aspects of the Bureau’s mandate and make recommendations on how to do so throughout this testimony.

---

1 Dodd-Frank Act §1021(a).
2 Id. at §1021(b).
Chamber Advocacy for Changes to the Bureau throughout the Years

Years ago, the Chamber urged the Bureau to: promote access to credit, competitiveness, and choice for consumers and small businesses; reduce regulatory burden to spur economic growth; and produce policy in a data-driven and transparent manner. These important tenants help to create a financial marketplace that provides the diverse financial products and services consumers and small businesses need, while also protecting borrowers and guarding against unintended consequences. Unfortunately, the Bureau’s past leadership often did not prioritize these goals to the detriment of the financial marketplace and ultimately consumers.

After the Bureau opened its doors in 2011, we tried to work with the new leadership and create a trustworthy dialogue between industry stakeholders and policymakers. Naturally, practitioners in this industry can explain how certain products work and how best to avoid unintended consequences in the real world when creating policy. These practitioners are on the front lines and understand how words in a guidance or rulemaking translate into the real world, which makes them valuable resources during the policymaking process. However, we were disappointed to find that our conversations, comment letters, and meetings seemed more perfunctory rather than seriously considered by the Bureau.

Here are some illustrations to describe our interactions further:

TILA/RESPA Integrated Disclosure (TRID): The Chamber advised the Bureau that the new mortgage systems would not be ready in time due to a small number of vendors equipped to implement the change. This was not for a lack of trying on the part of financial institutions -- it was simply due to a backlog and complex system integration. The Bureau did not heed these concerns until immediately before the compliance date. The Bureau extended implementation because, as industry had stressed, not every institution was able to be compliant. While we were grateful the implementation date was finally extended, it was after years of stressing the issue to a regulator that seemingly did not trust our concerns. Much stress and confusion could have been avoided if there was an open and trusting dialogue.

Arbitration rulemaking: Throughout the arbitration rule-writing process, industry came to the table to propose solutions to address the Bureau's concerns surrounding arbitration, however it seemed that the Bureau had settled on its
preferred approach (banning class action waivers) before discussions even began. The Bureau’s final arbitration rule was based on faulty data, and would have effectively banned the use of arbitration even though it is faster and cheaper for consumers. Unfortunately, due the high cost of attorney fees our legal system does not lend itself to consumers getting their “day in court” over small dollar amounts. While the attorneys profit, consumers are left with pennies on the dollar or coupons in the mail. Thankfully, Congress acted to overturn the Bureau’s harmful rulemaking last fall so consumers will still have access to the arbitration system.

Complaint database: The complaint database can be a valuable tool for the Bureau when assessing markets; however, data that has not been verified or normalized should not be released to the public. Out of context data may lead consumers to think the companies that have the most individual complaints are the worst companies, when in reality they are the largest companies and could have a relatively low number of complaints compared to their number of customers. Previously, the Bureau would release monthly reports that included the “most complained about companies,” even though that data had no value and would only serve to lead consumers to needlessly distrust those companies. After multiple meetings and discussions, the Bureau discontinued using this flawed practice.

With new leadership, there is the opportunity to make the Bureau a more mature, transparent, and accountable agency. Only with this approach will the Bureau adequately serve and protect consumers, while still promoting a competitive and transparent marketplace that fosters access to credit to all consumers.

Chamber Reform Agenda to Improve the Bureau

The Chamber deeply supports strong consumer protections and a robust, transparent marketplace of consumer products and services. This is why, on March 28, 2018, we released a comprehensive agenda to reform the Bureau ("Chamber Reform Agenda"). The report includes numerous recommendations to promote consumer protection, create clear rules of the road for market participants, improve the management of the agency, and ensure that the Bureau is accountable to Congress.

In the report, we noted that any consumer protection agency, including the Bureau, has a three-part mission:
1. Ensure consumers have access to the marketplace and choice in products and services;

2. Promote the availability of information that consumers can use to make informed decisions; and

3. Provide protection against bad actors.

Further, we outlined six principle reforms comprised of 23 individual recommendations that constitute a series of concrete steps to ensure that the Bureau fulfills its statutory mandate to faithfully implement and enforce federal consumer financial laws, while putting in place the controls necessary to be a properly managed and effective agency. Each recommendation is discussed below.

1. Provide Clear Rules of the Road

Recommendation 1: Promulgate regulations. Notice-and-comment rulemaking under the Administrative Procedures Act ("APA") is the best tool for setting regulatory policy because it gives stakeholders an opportunity to engage in the policy-making process. Companies can thrive when they have clear rules to follow. Uncertainty creates confusion in the marketplace and consumers ultimately lose out because responsible, compliance-minded companies hesitate to invest in new products and services when they are unsure of the potential legal ramifications.

Recommendation 2: Avoid rulemaking by enforcement. We applaud Acting Director Mulvaney for declaring that the “CFPB has pushed its last envelope” and for committing to refrain from “regulation by enforcement.” Businesses work hard to understand and comply with the countless rules governing consumer financial services. It is unreasonable and inappropriate to expect companies to draw generally applicable legal principles from the limited facts included in a consent order, especially because every company and fact scenario is different.

Consumers agree. On the same day we issued the Chamber Reform Agenda, we also released a CCMC/Morning Consult poll that found consumers overwhelming preferred the current administration’s approach to rulemaking. A resounding 66% of those surveyed across party lines indicated they prefer the current

---

1 15 U.S.C. §§ 500 to 596
approach of writing rules instead of governing by enforcement actions because it “creates rules that protect consumers and provides businesses with the certainty of clear guidelines.”

**Recommendation 3: Limit the use of informal guidance.** Clarifications about existing rules, whether in guidance or exam manuals, can be helpful for institutions to better understand a policy that is already in place. However, these tools should not be used to create new policy since, unlike the APA process, they do not afford an opportunity for public input.

**Recommendation 4: Use sound economic analysis in the rulemaking process.** Rulemaking must be based on sound economic analysis to anticipate unintended consequences that might arise in the real world. Only with a true cost benefit analysis, instead of subjective conclusions, can policymakers understand the practical ramifications of a new policy.

**Recommendation 5: Eliminate areas of substantial legal uncertainty.** We urge the Bureau to clear up areas of uncertainty, such as outlining the types of practices that are considered “abusive” under UDAAP. Also, we urge the Bureau to work with industry when areas of uncertainty arise to ensure institutions understand the rules of the road, and all companies are playing by the same standard.

**Recommendation 6: Adopt a robust no-action letter and advisory opinion process.** Companies need legal certainty to create new products and services. To promote this critical component of innovation, we urge the Bureau to create a robust “no-action” letter policy that gives companies legal certainty. To be clear, this does not just apply to “fintech” innovation, but all types of innovation in various areas of products and services from small dollar loan offerings to marketing and disclosures.

Further, we ask the Bureau to start issuing advisory opinions if there are repeated questions from industry on a particular policy. This is a practice that was successful at the Federal Reserve Board, and can serve as a method to clear up confusion.

---

2. Enforce the Law Fairly

Recommendation 7: Respect the bounds of the Bureau’s authority. Congress gave the Bureau clear boundaries on what offices to create and what to regulate. We ask the Bureau to respect these boundaries in the types of activities and institutions they try to oversee.

Recommendation 8: Give companies fair notice of what the law requires. We urge the Bureau to adhere to clear regulations, instead of inconsistent interpretations in the enforcement and supervision functions. Only by adhering to concrete rulemaking will companies have the due process they are legally entitled to.

Recommendation 9: Respect statutes of limitations. Congress imposes statutes of limitations so companies are not potentially subject to lawsuits in perpetuity. In the past, the Bureau has taken the position that statutes of limitations do not apply to administrative actions. We urge the Bureau to clearly state that it has abandoned this position.

Recommendation 10: Reform the investigative process. We urge the Bureau to reform the investigative process to ensure that enforcement actions are only brought based on clearly articulated violations, instead of hunches or “fishing expeditions;” avoid regulation by enforcement; promote a fair marketplace by enforcing clearly established legal principles; enforce the law within the limits of the Bureau’s authority; and avoid regulatory duplication in enforcement activities. We also ask that the timeframes and data to be collected are more reasonable.

Recommendation 11: Ensure the adjudication process is fair. We hope the Bureau will develop internal policies limiting the use of administrative adjudication to ministerial cases that can be resolved expeditiously; allow a respondent company to have a limited right of removal to move more complex cases to federal district court; and institute safeguards to avoid abuse in any matter that proceeds an administrative adjudication.

---

6 Dodd-Frank Act § 1022.
Recommendation 12: Reform supervision. We ask the Bureau to refrain from treating supervision as a pipeline to enforcement; reform supervisory processes to promote consumer protection and reduce unnecessary burdens; and implement supervisory authorities clearly, consistently, and fairly across companies.

3. Educate Consumers with Accurate, Data-Driven Information

Recommendation 13: Emphasize consumer financial education. Consumers can better protect themselves from bad actors if they have access to valuable financial resources and education. We ask the Bureau to treat financial education as a top priority, and work in public/private partnerships and across governmental bodies to ensure consumers receive meaningful and pertinent information.

Recommendation 14: Reform the complaint database. The complaint database can be a helpful resource for the Bureau to monitor markets, but individual complaints should not be shared publicly. A federal government agency has the responsibility to ensure the data they are making public does not mislead the public or violate privacy protections. Until the Bureau can ensure these two critical pillars are met, the complaint database should be kept private.

Moreover, the vast majority of regulators keep complaint data private because the issues are not verified and there are privacy concerns with releasing the data. We ask the Bureau to follow the lead of other regulators by refraining to publish the data, at least until these concerns can be resolved.

4. Commit to Transparency

Recommendation 15: Facilitate appropriate congressional oversight. We hope the Bureau's new leadership can foster a relationship of trust with Congress. An open dialogue will hopefully create a more collaborative environment and foster better policy for Americans.

Recommendation 16: Facilitate meaningful public dialogue. We urge the Bureau to use its megaphone to facilitate meaningful, constructive public dialogue with stakeholders. Previously, the Bureau took an adversarial tone with midnight embargoes and hyperbolic press releases. Consumers deserve accurate, not one-sided, information and we hope the Bureau will provide that going forward.
Recommendation 17: Reorganize the Consumer Advisory Board. Congress tasked the Bureau with creating a Consumer Advisory Board ("CAB") to "advise and consult with the Bureau in the exercise of its functions" and to "provide information on emerging practices in the consumer financial products or services industry."7 Unfortunately, the Bureau seemed to use the CAB for publicity and policy releases, instead of substantive dialogue. We hope the CAB will be more balanced going forward with an increased amount of stakeholders who have experience in the financial services industry and can articulate how policies will affect consumers in the real world.

Recommendation 18: Rescind the proposed gag order. In August 2016, the Bureau proposed a rule that would prevent businesses from disclosing civil investigative demands ("CIDs"). The Chamber and other stakeholders view this as a violation of businesses' free speech rights, and we ask the Bureau to formally rescind this proposal.

5. Avoid Regulatory Duplication and Burden

Recommendation 19: Coordinate regulatory activities with other agencies. The patchwork of federal regulators is complex and unwieldy. But don't take our word for it – the Government Accountability Office ("GAO") said in a 2016 report: "The U.S. financial regulatory structure is complex, with responsibilities fragmented among multiple agencies that have overlapping authorities."8 We hope the Bureau will work to minimize duplication and promote efficiencies when working with its federal and state counterparts.

Recommendation 20: Defer to regulators with primary authority. In an effort to minimize duplication, we hope the Bureau will defer to regulators that have clear authority or who have been leading an enforcement action or rulemaking instead of duplicating the work. Designating a lead agency will also help to coordinate efforts.

Recommendation 21: Avoid unnecessarily burdensome information requests. In the supervisory, enforcement, and rulemaking process, immense data is requested of companies to better understand issues. There is often need for this information, however, requests can also be outside the scope of the pertinent questions, require

---

7 Dodd-Frank Act § 1014(a).
lengthy responses in a short timeframe, and require pulling together information from legacy systems that do not function together. We ask that information requests be thoughtful and limited to only truly necessary matters.

6. Structure the Bureau for Long-Term Success

Recommendation 22: Adopt a commission structure. For years, we have advocated a five-person bipartisan commission instead of a sole director oversee the Bureau. A commission structure would mitigate the pendulum swing from one director to the next, and create more certainty for industry and better outcomes for consumers. Acting Director Mulvaney has repeatedly stated he has too much power – Congress must finally remedy this by passing legislation instituting a bipartisan commission structure for the Bureau.

Recommendation 23: Institute congressional control over the Bureau’s budget. The Constitution gives Congress the power of the purse, which provides the opportunity for continual and meaningful oversight. Only with this check and balance will the Bureau be subject to real oversight. Again, the CCMC/Morning Consult poll found that consumers agreed – 66% of people polled supported government agencies with checks and balances.

The Bureau’s Call to Evidence

In addition to the Chamber Reform Agenda, we have been providing feedback to the Bureau on how to improve the agency through recent comment letters. We thank the Bureau for releasing their “Call to Evidence,” which is the compilation of 12 separate requests for information (“RFIs”) to conduct an audit of the agency. As we know, this is the very first time the Bureau has transitioned power, which makes it incredibly important to conduct such thoughtful analysis to hopefully create a more mature, transparent, and accountable agency.

In preparing our responses to the RFIs, we have spent countless hours receiving feedback from businesses on how to best improve the Bureau, and identifying concrete principles that can guide the agency for the long run. To date, we have filed six comment letters addressing CIDs, adjudication proceedings, the enforcement process, the supervision process, external engagements, and the

---

9 U.S. Constitution, Article I.
complaint database. We look forward to filing our rulemaking comment tomorrow, and subsequent comments due through July 16th. In the interest of time, I will not address each letter individually, but will provide them for the record.

**Bureau's Semi-Annual Report and Congressional Recommendations**

This brings me to the Bureau’s thirteenth Semi-Annual Report that was issued on April 2, 2018. In his opening letter, Acting Director Mulvaney suggested four suggested statutory changes, which I will address individually.

1. **Fund the Bureau through appropriations:** We have long supported putting the Bureau under true congressional oversight, which is the practice at the majority of federal agencies. As discussed above, the Chamber Reform Agenda also recommended that the Bureau come under the regular order of appropriations and be accountable to Congress. The CCMC/Morning Consult poll found that the public agreed: 66% of those surveyed recognized the importance of appropriations to provide checks and balances over governmental agencies.¹¹

2. **Require legislative approval of major Bureau rules:** While we do not take a position on whether legislative approval should be required for all regulations, we do believe regulations should be based upon clear statutory authority and subject to rigorous oversight.

3. **Ensure that the Director answers to the President in the exercise of executive authority:** The Chamber believes that all agencies should be held accountable and the Bureau is no different. As I noted earlier, we support moving to a bipartisan commission structure to manage the agency. So long as a single director heads the Bureau, it is critical that the limitation permitting the director’s firing only “for cause” be repealed as it completely insulates the Director from the President’s authority and accountability.

4. **Create an independent Inspector General (“IG”) for the Bureau:** Just based on sheer bandwidth, it seems logical that the IG would be more effective...

¹¹ Id.
if it had only one agency to oversee instead of having to oversee the Federal Reserve as well. We agree with this recommendation.

**Conclusion**

I look forward to working with the Committee and this Subcommittee on legislative proposals that make the Bureau more mature, accountable, and transparent. Thank you again to the Chairman, Ranking Member, and Committee for holding this hearing and for the opportunity to testify. I am happy to take any questions.
TESTIMONY OF HILARY O. SHELTON
Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy

Before the Committee on Financial Services of the
U.S. House of Representatives
Subcommittee on Financial Institutions and
Consumer Credit
On
“Improving Transparency and
Accountability at the Bureau of Financial
Consumer Protection”

Wednesday, June 6, 2018
TESTIMONY OF HILARY O. SHELTON

Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy

Before the Committee on
Financial Services
Subcommittee on Financial Institutions and Consumer Credit
U.S. House of Representatives

Wednesday, June 6, 2018

Good morning, Chairman Luetkemeyer, Ranking Member Clay, and esteemed members of this subcommittee. Thank you so much for inviting me here today to testify on this important topic and for requesting the input of the NAACP.

Founded more than 109 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation’s oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 2,200 membership units across the nation, with members in every one of the 50 states as well as units on overseas military bases. In addition to our regular adult units, we also have youth and college units in any number of communities and schools across the country as well as units in prisons.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have served as the Director of the NAACP Washington Bureau, our Association’s federal legislative and national public policy arm, for over 20 years.

Financial empowerment and the economic security of the communities served and represented by the NAACP has, since our inception, been a cornerstone of our agenda. “Economic Sustainability” continues to be a priority for the NAACP in that it is one of the “game changers” (along with criminal justice, education, health, civic participation/voting rights, and activating, educating, and promoting our youth) outlined in the most recent NAACP strategic plan, designed to carry us through our second century in fighting against racial bias and racial and
ethnic inequality. To that end, we have been and continue to be active in advocating on issues of economic importance to the people we serve and represent, as well as all Americans, from supporting an increase in the federal minimum wage towards a living wage to opposing predatory lending of all sorts in our communities.

**Introduction**

It is therefore with great appreciation that I was honored to receive your invitation to testify today. The sad truth is that rampant discrimination still exists in the world of financial services. The extent to which you are accepted into the world of mainstream financial transactions, from who gets financing and on what terms on almost every issue imaginable, including mortgages, owning or leasing a car, is still based largely on what you look like and/or where you live. How much you pay depends largely on who you are: your race or ethnicity, your age, gender, station in life, or zip code. We as a society, led by a government that is charged with ensuring that all people are allowed to pursue life, liberty, and happiness can and must do better.

We, the people, the average consumer, need more transparency and accountability from the financial sector. We need to know when there may be discrimination and we need a strong voice in stopping the devastating impact. We need to know that the government is working for and with us, not to our demise or on behalf of corporations and billionaires who want to make even more profit, regardless of the cost to others.

In short, we need a strong, robust, and vibrant Consumer Financial Protection Bureau ("CFPB" or "Bureau") which operates as it was intended. Americans need facts from which they can make informed decisions and we need protection from unscrupulous predatory individuals and companies.

I should hasten to add here that not all financial servicers are bad. In my tenure as an advocate for racial and ethnic minorities as well as low- and moderate-income Americans, I have witnessed financial institutions of all types and sizes go to great pains to help the communities served and represented by the NAACP. Unfortunately, I have also witnessed instances – too many cases – in which entire communities are not able to build wealth or establish a nest egg for their children because they do not have access to fair or equal credit.

**The Consumer Financial Protection Bureau from inception through today**

It is because of the bad actors in the financial landscape – an often confusing and bewildering world in which we must all operate – that the NAACP was instrumental in and therefore pleased with the creation of the CFPB by the Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd Frank"). Finally, there is a federal agency whose sole purpose is to "seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair,
transparent, and competitive.\(^1\) Furthermore, one of the six prime objectives of the newly formed bureau is to ensure that "consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination.\(^2\) In other words, a strong CFPB would help bring about the fairness and equity in financial products that the NAACP and so many other consumer protection groups have been working for.

Under the first confirmed Director of the CFPB, Rich Cordray, the Bureau started off strong. Between mid-2011 and the end of 2017, the CFPB’s rulemaking process has been inclusive, transparent, evidence-based and comprehensive. The Bureau tackled issues including, in conjunction with the US Department of Education, the creation of a financial aid shopping sheet for potential student loan borrowers which is currently being used by more than 3,270 colleges, to strong mortgage rules for home buyers, to saving our hard working military families from potential debt traps created by unscrupulous pay-day lenders.

Furthermore, since its establishment, the CFPB’s supervision and enforcement actions alone resulted in nearly $12 billion in ordered relief for more than 29 million consumers victimized by unlawful activity.\(^3\) Working with the financial services industry, civil rights organizations, consumer groups, individual consumers and other interested parties, the CFPB created rules, regulations, procedures, and guidances, that were well informed, balanced, and which protects all Americans. The CFPB also engages in creating countless factsheets and helpful tip sheets on navigating the often complicated world of finances. The CFPB helps finance markets work by making rules more effective, consistent, and fair and by empowering consumers to better understand and take more control over their economic lives.

**Recommendations for the future**

The CFPB, and the federal government, must continue to provide more information and more transparency to advocacy groups, industry, researchers, and consumers. It is the role of the government to continue to pass laws and issue strong rules, regulations, and guidances to protect all of its citizens from unscrupulous financial servicers which may target particular groups or communities with higher terms or the outright rejection of products simply because of what they look like or where they live.

As such, we recommend that the CFPB stay on its current trajectory which is built on its current successes. This includes a strong commitment to issuing even-handed rules and regulations to protect American consumers. To date, the CFPB has embraced an inclusive approach to public

---

1. P.L. 111-203, Subtitle B, Section 1021
2. Ibid
outreach from the financial services industry, advocacy organizations, and consumers to provide additional opportunities for input from all sides in its rulemaking processes. The CFPB should continue its efforts to hear from consumers and other stakeholders as much as possible to inform its rulemaking at all stages of the process.

It is in this vein that I offer the following recommendations for a strong, vibrant and robust CFPB which continues to work with all interested parties to protect and inform Americans everywhere. As such:

1. **Do not subject the CFPB to the Congressional appropriations process:** It would be a serious mistake for Congress to undo the CFPB’s current independent funding. Like the other bank regulatory agencies, the CFPB is currently funded in a way that insulates it from the pressures Wall Street and other financial sectors can too easily manipulate. Making this change would leave the CFPB more vulnerable than the Federal Reserve, the OCC, and the FDIC to industry influence, once again treating consumer financial protection as a less important matter. It would give Wall Street and the worst elements of the financial services industry endless lobbying opportunities to deny the CFPB the funding to do its job if and when the regulator takes an action that a sector of the industry did not like.

2. **Promulgate the “Short Term Loan” rule as it was originally drafted:** Americans, particularly Americans of color, need relief from high-interest short term loans, such as pay-day and car title loans, which charge an average of 400% in interest and fees for a 2 to 3 week loan. Released in October of last year, the rule was scheduled to go into effect in the summer of 2019, 21 months after being published in the federal register. At the heart of the rule, which took years of strenuous research and input from stakeholders on all sides to develop, is the common-sense ability-to-repay principle based on a borrower’s income and expenses. This means that lenders will be required to determine whether a loan is affordable to the borrower before making it. An affordable loan is one a borrower can reasonably be expected to pay back without re-borrowing or going without the basic necessities of life like food or rent money. Re-opening the rule, as was proposed by Director Mick Mulvaney of the Office of Management and Budget (OMB) in January of this year, would needlessly send more Americans into a debt trap. Furthermore, given that payday and car title lenders tend to concentrate their operations in low-income and communities of color, the NAACP stresses a sense of urgency in stopping this loss of wealth building.

3. **Reassert the enforcement powers of the Office of Fair Lending:** The January decision to move the Office of Fair Lending and Equal Opportunity, which was previously an equal division alongside supervision and enforcement, and which is now part of the office that handles internal agency concerns about employees sends a clear signal to
unscrupulous lenders that it is okay to discriminate. Stripping the office of its enforcement abilities appears contrary to one of the central components of the creation of the CFPB in Dodd Frank, which explicitly states that one of the responsibilities of the Bureau was “oversight and enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the bureau.” By moving the Office of Fair Lending, the CFPB is leaving neighborhoods and consumers across the country more vulnerable to bias. It is demonstrably weakening CFPB’s efforts to fight discrimination in the consumer financial marketplace even as the agency returned $400 million from discriminatory financial institutions to American families who had been overcharged or denied credit.

4. **Do not require explicit Congressional approval of any proposed regulation, major or otherwise, in order for the rule to take effect:** Legislation currently before Congress would require explicit Congressional approval of any proposed “major” regulation in order for the rule to take effect. While the bills would affect the full range of Federal regulations, including rules that ensure consumer products are safe for children, rules that protect worker safety in coal mines, environmental rules that protect the safety of our air and water, financial regulations, and many more. It has also been suggested that a more narrowly tailored provision be considered only for rules that safeguard the financial system and financial consumers. In other words, significant rules governing the financial sector will not go into effect unless both Houses of Congress vote again to approve each individual rule and the President once again approves the rule—even though the laws authorizing these rules have already been passed by Congress and the President. The implementation of administrative rules are necessary to give laws actual effect. This massive presumption against actually putting rules in place will be an enormous barrier to agency actions that protect the public and implement the law.

5. **Do not revise the bulk of the CFPB’s public reporting practices:** Dodd Frank considers “collecting, investigating, and responding to consumer complaints” such vital tasks that it is specifically enumerated as one of the six statutory “primary functions” of the CFPB. The resulting public complaint database is a tool that empowers individuals to inform and protect themselves in the marketplace. It helps consumers evaluate a company’s practices as they decide where to take their business and creates incentives for companies to treat their customers fairly. It helps both consumers and businesses

---

4 P.L. 111-203, Subtitle B, Section 1021
5 HR 26, / S. 21, the “Regulations from the Executive In Need of Scrutiny Act of 2017,” also known as the REINS Act
6 Dodd-Frank 5511(c)2
resolve problems when they arise and helps the market reward good products and services by providing consumers with the ability to publicly share their experiences. The complaint database also allows companies to identify and correct problems on their own without the impetus of a new rule or enforcement action. The database can also provide consumers, advocates and the CFPB with the substance required to prompt a review of business behavior that can detect and challenge abusive and discriminatory practices.

The CFPB’s process facilitates responses to individual complaints, which helps to hold companies accountable. The fact that the complaint database is available to the public is the deterrent some that companies need to address complaints they would otherwise ignore, and the impetus for other firms to resolve complaints, where possible. We therefore urge the Bureau to maintain public access to the complaint database and to include additional detailed data in its statutory reports to provide the most meaningful information possible for consumers to make responsible financial decisions.

6. **Retain the Office for Students and Young Consumers:** In the six short years of its existence, the CFPB Office for Students and Young Consumers has spurred actions that returned $750 million to student borrowers, and helped demand answers on over 50,000 complaints about student loans, making it a crucial contributor to fulfilling the Bureau’s consumer protection mission. In May, OMB Director Mulvaney announced that he was disassembling the office and folding its duties into the CFPB Office of Financial Education, thereby dismantling the only unit in the federal government solely dedicated to protecting student loan borrowers from predatory actors in the financial sector. This is an ill-advised move, given that roughly 42 million Americans owe more than $1.5 trillion in student loans. To close this office is an incredibly short-sighted move, with far-reaching consequences which will harm millions of students who are already struggling with debt or those who are seeking an affordable education.

7. **Increase – do not decrease – the amount of information and number of mortgage lenders required to make public their loans under the Home Mortgage Disclosure Act (HMDA):** The NAACP is a firm believer in the old adage that “to truly manage a problem, we must first accurately and fully measure it.” If we as a nation learned anything from the 2008 financial crisis, it is that American consumers need more information, regulation, and protection – not less. The stark disparities in access to mortgage credit and the continued struggle for economic recovery in the communities hit hardest by the financial crisis of 2008 that still exist, call for a strengthening of our nation’s fair lending laws, specifically HMDA, not a weakening of them.
For this reason, the NAACP was extremely dismayed with enactment of S. 2155.  Specifically, we were adamantly opposed to section 104 of the legislation which exempted roughly 5,400 (or almost 85%) of depositories from submitting updated reporting on their mortgages. The higher threshold which has been newly established will sacrifice key data about lending in underserved communities that would help to ensure the flow of credit to qualified borrowers, stimulate the economy, and prevent future mortgage crises. Without this crucial data regulators and others like the NAACP are once again left without the full information we need to determine patterns in loan terms and loan amounts that could increase costs and risk of foreclosure for borrowers.

8. **Retain a single director of the CFPB as opposed to a commission:** Making a single director responsible for the agency’s functioning facilitates effective decision-making and ensures a clear point of responsibility for the CFPB’s actions and performance. In this instance, the NAACP agrees with the wisdom of the federal appellate court in its decision of January 31, 2018, when it decided in favor of the current CFPB governing structure in the case of *PHH Mortgage Corp. v. CFPB*. Writing for the majority, Judge Cornelia Pillard said “Congress designed an agency with a single Director, rather than a multi-member body, to imbue the agency with the requisite initiative and decisiveness to do the job of monitoring and restraining abusive or excessively risky practices in the fast-changing world of consumer finance... A single Director would also help the new agency become operational promptly, as it might have taken many years to confirm a full quorum of a multi-member body.” “By providing the Director with a fixed term and for-cause protection, Congress sought to promote stability and confidence in the country’s financial system.”

Several Bureaus and Agencies within the U.S. government, from the Office of the Comptroller of the Currency, to the U.S. Environmental Protection Agency, to the Department of the Treasury all utilize a single Director with great efficiency and effectiveness.

9. **Do not create a situation in which the Director of the CFPB must be responsive to the whims of the President. Retain his or her independence:** The U.S. Supreme Court has held that whether the Constitution requires the president to enjoy unfettered authority to remove the head of an agency “depend[s] upon the character of the office.” The CFPB is characteristic of the administrative agencies for which the Supreme Court has upheld for-cause removal. In upholding such removal protections restrictions for the FTC, the Supreme Court explained that “[i]n administering the [prohibition] of ‘unfair methods of competition’ — that is to say in filling in and administering the details embodied by that general standard — the [FTC] acts in part quasi-legislatively and in

---

7 Public Law 115-174
9 *Humphrey’s Executor*, 295 U.S. at 631; accord *Wiener*, 357 U.S. at 353 (“the most reliable factor for drawing an inference regarding the president’s power of removal...is the nature of the function that Congress vested”).
part quasi-judicially.” The CFPB has the same quasi-legislative and quasi-judicial responsibilities to define and enforce the prohibition of “unfair, deceptive, or abusive act[s] or practice[s]” in consumer finance, as well as to make rules and enforce for the consumer finance statutes.10

10. Reject efforts to establish an independent inspector general (IG) for the CFPB:
Congress is currently considering legislation to establish a separate IG for the CFPB11. This legislation is unnecessary because the CFPB already has an IG, shared with the Federal Reserve, within which the CFPB is housed. Since the CFPB sits administratively inside the Federal Reserve, it is illogical not to have it under a single shared IG with the board, a system that has worked well. Dodd Frank establishes that the Federal Reserve’s Office of Inspector General presently has oversight authority for Bureau, conducting audits, investigations, and other necessary reviews.

The current Inspector General’s detailed work plan for CFPB oversight lays out the fact that the IG has completed, is conducting, and is planning a variety of CFPB oversight functions. In fact, in 2015 alone, the IG has issued 10 reports on CFPB operations. The current IG has repeatedly stated in letters to Congress and to the Bipartisan Policy Center, that it has the authority, resources, and independence to conduct oversight activities of the CFPB. There is no evidence that the existing structure is inadequate.

Conclusion
In closing, I would just like to reemphasize the need for the CFPB to stay on course, to remain a strong, transparent, and robust tool for protecting all consumers in the often-confusing and too-often predatory world of financial services. To that end, I would be remiss if I did not voice my objections to the multitude of Requests for Information (RFIs) that the CFPB has issued as of late. Not only does this signal a change in course for the bureau, but the amount of time and attention required to adequately address these RFIs on a wide variety of subjects in a very short amount of time has diverted valuable consumer advocacy and third party resources to respond to these requests. The very structure of these RFIs, the nature of many of the questions, gives us grave concerns about any attempts to weaken consumer protection through this process.

Dodd Frank was enacted, and the CFPB was created, in response to the economic crisis of 2008. As of late, we appear to be going backwards to a pre-Dodd Frank deregulation, much to the chagrin and dismay of the NAACP. Many of the people and communities we serve and represent are still hurting from that recession; many will never own a home again or have a nest egg to pass on to future generations as a result.

11 H.R.3625, the CFPB-IG Act of 2017
We shall never forget. We were targeted by unscrupulous, nefarious lenders and others who had no concern for the economically destructive impact that their costly wares would have on the lives of individuals, families, and entire neighborhoods and communities. One result of the devastation was our clear and strong support for Dodd Frank and the CFPB. They gave our pain some salve, and they worked to ensure that future generations would not suffer our fate. I thus urge you, in the strongest terms possible, to continue to work for a CFPB that is strong, transparent, and willing and able to stand up to anyone who tries to make money by targeting others with too-high interest rates or confusing language.

Thank you again for inviting me here today and for requesting the thoughts and concerns of the NAACP. I welcome your comments or questions.
June 6, 2018

Testimony of

Elmer K. Whitaker

before the

Financial Services Committee

Subcommittee on Financial Institutions and Consumer Credit

United States House of Representatives
Testimony of Elmer K. Whitaker
before the
Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit
United States House of Representatives
June 6, 2018

Chairman Leutkemeyer, Ranking Member Clay, and members of the subcommittee, my name is Elmer Whitaker. I am President of Whitaker Bank Corporation of Kentucky, a family-owned bank holding company located in Lexington, Kentucky. Our holding company owns and operates two banks in Kentucky – Whitaker Bank, Inc, where I serve as Chief Executive Officer and Peoples Bank and Trust of Madison County. We also own and operate Kentucky Trust Company, which provides wealth management and insurance services.

Whitaker Bank Corporation of Kentucky was founded by my Grandfather in 1978 with five locations in three counties and total assets of $59 million. Today we have 45 locations in 17 counties with combined assets of $1.75 billion. We are proud of the community banking services we have provided to homeowners, businesses and neighbors throughout our market in Kentucky. While we offer the convenience of online banking, text banking, and mobile banking, our success is rooted in the relationships based on honesty and trust between our bank and the customers we serve.

I am also pleased to be before the subcommittee today to share our views on “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection.” Before speaking on this subject, I would first like to commend Chairman Hensarling and members of the House of Representatives for their support of S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act. This commonsense legislation is long overdue. This new law will help community banks, like mine, better serve our customers and communities. I would also like to thank Congressman Andy Barr for his steadfast support on a number of provisions in the bill, in particular his leadership on creating a safe harbor for qualified mortgage products. It is these types of commonsense proposals that help us better serve our mortgage customers.
June 6, 2018

As a community banker, I fully support effective consumer protection. We believe that Kentuckians are best served by a financially sound banking industry that safeguards customer deposits, lends those deposits responsibly, and processes payments efficiently. To achieve those goals, effective controls are needed to ensure that measures designed to help customers do not inadvertently limit credit. This committee is charged with crafting legislative proposals that provide the proper balance of protections to help the financial industry serve our customers.

Since the creation of the Dodd-Frank Act, several proposals have been introduced that would replace the position of Director of the Consumer Financial Protection Bureau (CFPB) with a bipartisan five-member commission, similar to other financial regulatory agencies. We support this commission concept and believe that a commission structure is appropriate to address the extremely broad authority of a single director. We believe that a commission would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and it would provide necessary and appropriate checks and balances in the exercise of the Bureau’s authority. We would also like to see an appeals process that is reviewed by more than a single director; the commission concept could address this need.

Bills have also been introduced that eliminates the direct funding of the Bureau by the Federal Reserve and subjects the Bureau to the regular congressional appropriations process.

The Bureau has been given broad authority that can alter financial markets, but it lacks accountability that comes from budget oversight. Funding for the Bureau comes not from Congress, but from the Federal Reserve as a fixed portion of its total operating expenses. Oversight by Congress would allow the very consumers who the Bureau was designed to protect to hold it accountable through their elected officials.

In my opinion, there needs to be an effective check and balance on the Bureau’s authority. We support the principle of accountability and balance and commend this committee for continually pushing for greater accountability at the Bureau.

Similarly, we support efforts to create transparency by creating an Inspector General. The Inspector General’s function is to serve as an independent unit that conducts audits, investigations, and reviews programs and operations. The CFPB handles a large portfolio of financial industry and consumer issues. I would hope that the CFPB would welcome an independent review of its operations.
June 6, 2018

Mr. Chairman, as I noted, my bank fully supports consumer protection. We believe, however, that new regulations must be reviewed to ensure they are meeting their intended purpose. Regulation, whether by the CFPB or other regulatory agencies, shapes the way banks do business and can help or hinder the smooth functioning of the credit cycle and economic expansion. Bank regulatory changes—through each and every law and regulation, court case and legal settlement—directly affect the cost of providing banking products and services to customers. Even small changes can have a big impact on bank customers by reducing credit availability, raising costs and driving consolidation in the industry. Everyone who uses banking products or services is touched by changes in bank regulation. In many communities, appraisal costs alone for a home loan have doubled since the implementation of Dodd-Frank.

The rules in Dodd-Frank have caused some banks to stop offering certain products altogether, such as mortgage and other consumer loans. The fact is that most community banks are small businesses by any definition. The median sized bank in this country has only 44 employees. There is simply not enough capacity to read and understand what rules apply; implement, train, and test for compliance with those that do; and still have the time and resources to meet with individuals and businesses about their financial needs. Faced with the thousands of new regulations, the economics have forced many strong, well-run community banks to sell or merge with another bank. As of the first quarter of 2011, there were 179 commercial banks in Kentucky; 6,402 nationwide. By the first quarter of 2018, this number had decreased to 143 in Kentucky; 4,852 nationwide (FFIEC, retrieved from FRED, Federal Reserve bank of St. Louis).

As Congress continues to review the Dodd-Frank Act and the role of the CFPB, we would encourage you to take into consideration additional changes at the Bureau, as follows:

**Create CFPB Advisory Opinion Process**

Innovation and consumer protection in financial products and services is currently hampered because there is no effective way to obtain an advanced ruling from the Consumer Financial Protection Bureau (“Bureau”) regarding whether or not a proposed product or service would conform or would potentially violate the federal consumer laws. This lack of legal and regulatory certainty chills innovation and prevents consumers from benefitting from such products and services and harms economic growth.
Innovators and CFPB staff do not have a means to formally review a product before it reaches consumers, which unnecessarily delays important consumer protection conversations until a costly enforcement action is potentially undertaken. This reactionary posture creates an information vacuum, depriving innovators of vital compliance information and preventing CFPB staff from staying abreast of emerging consumer product trends – knowledge which is important to their effectiveness as a regulator.

Legislation is needed that directs the Bureau to establish a formal process for innovators to voluntarily ask for an opinion on whether a proposed product or service would conform or violate federal consumer law. The Bureau’s opinion should be one that can be relied upon by the innovator making the inquiry as an official interpretation of the applicable underlying federal consumer law.

Review Section 1071 of the Dodd-Frank Act

Section 1071 of the Dodd-Frank Act requires the Bureau to prescribe rules for collecting and reporting data on lending to minority-owned and women-owned small businesses. Unfortunately, this HMDA-like data collection over-simplifies the nature of the small business lending environment, and will mislead community leaders, government entities and creditors from identifying the business and community development needs and opportunities for local small businesses. Moreover, there has been no analysis of whether this new data collection duplicates existing data on small business lending collected by the Small Business Administration (SBA) and the banking agencies pursuant to the Community Reinvestment Act.

Perhaps most troubling is there has been no analysis of its impact on economic growth given the potential negative effects this may have on what loans are made or not made in a local community. The considerable burdens associated with this data collection and reporting regime would add significant costs and red tape to small business lending, discouraging a primary engine for economic growth. Moreover, the majority of small business lending is originated by community and mid-size banks, which try to adapt to the needs and circumstances of individual borrowers. Compliance with this rule, however, will impede this individualized approach due to potential fair lending liability concerns. This will inevitably lead to the homogenization of small business loans, which will hurt small businesses and the banks that want to serve them. This would be counterproductive to the provision’s underlying goal of facilitating increased credit access and economic growth.
To correct this, the Bureau and the Small Business Administration (SBA) should be required—before the Bureau is authorized to prescribe any rule for collecting and reporting loan data—to conduct a joint-study to determine whether the proposed collection would be duplicative of existing data collections and to determine whether the costs for such data collection exceed the potential benefits. The agencies should also be required to submit a report to Congress on their findings along with their recommendations, if any, for prescribing rules for the collection and reporting of minority-owned and women-owned small business loan data.

Conclusion

Community banks continue to be the backbone of Kentucky and hometowns throughout America. My banks presence means we have a personal stake in the economic growth, health, and vitality of the communities we serve.

By eliminating unnecessary impediments and ensuring that the agencies that oversee our products are fully transparent, Congress can help stem the tide of community bank consolidation driven by these unnecessary regulations which negatively impact every community across the United States.

Thank you again for the opportunity to testify today. I look forward to the continued commonsense legislation from this committee.
June 5, 2018

The Honorable Blaine Luetkemeyer  
Chairman  
Subcommittee on Financial Institutions and  
Consumer Credit 
United States House of Representatives  
Washington, DC 20515

The Honorable William “Lacy” Clay  
Ranking Member  
Subcommittee on Financial Institutions and  
Consumer Credit 
United States House of Representatives  
Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing regarding the Subcommittee on Financial Institutions and Consumer Credit Hearing entitled, “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection.” We respectfully request that you accept this letter for the record.

Without an effective collection process, the economic viability of businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls. Furthermore, without the information that ACA members provide to consumers, they cannot make informed decisions that help preserve their ability to access credit, medical care, and a host of other goods and services. ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market. Consumers often want and need the information that ACA members provide them and there should be clear and workable rules for communicating with them.

Since the inception of the Bureau of Consumer Financial Protection (BCFP or Bureau) there have been many instances where it has failed to fulfill its statutory mission and obligations, which require it to make markets for consumer financial products and services work in a fair, transparent, and competitive manner. ACA has outlined detailed suggestions for improving transparency and accountability in several recent comment letters to the BCFP (attached) and plans to provide additional feedback in other BCFP Requests for Information. It is critical that the BCFP address the serious concerns that have been outlined about past Bureau practices, so that consumers and businesses can count on a financial services marketplace with due process, which includes clearly defined requirements and obligations.

Moreover, ACA remains concerned that the Bureau’s current structure, including a single director removable only “for cause” and funding outside the appropriations process, leads to a lack of accountability and uncertainty. This uncertainty is not only borne by financial services market participants, including the debt collection industry, but also negatively impacts American consumers, small businesses, and our local economies. Dramatic shifts in the BCFP’s philosophy
and approach with each change in presidential administration make it difficult for small businesses to plan for the future.

To that end, we encourage the Subcommittee to enact H.R. 5266, the Financial Product Safety Commission Act of 2018, which creates a multi-member bipartisan commission, addressing many of the concerns about the BCFP’s transparency and accountability. Additionally, we support efforts to bring the BCFP under the appropriations process, so that Members of Congress can provide checks and balances on the BCFP, and so that their constituents can have a voice in how the Bureau operates.

Thank you for your leadership in holding today’s hearing. We look forward to continuing our engagement with the Subcommittee about issues that are important to our industry.

Sincerely,

Mark Neeb
Chief Executive Officer
May 21, 2018

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Ms. Monica Jackson,
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments of ACA International on Request for Information Regarding the Bureau’s Supervision Program, Docket Number CFPB-2018-0004

Dear Ms. Jackson:

ACA International (“ACA”), the Association of Credit and Collection Professionals, submits these comments in response to the request by the Bureau of Consumer Financial Protection (“Bureau”) for comments in response to its “Request for Information Regarding the Bureau’s Supervision Program,” 83 Fed. Reg. 7166 (Feb. 20, 2018). ACA appreciates the opportunity to provide input on the Bureau’s Request for Information.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations (831 companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

ASSOCIATION HEADQUARTERS
801 WEST WISCONSIN AVENUE
SUITE 700
WASHINGTON, DC 20005
TOLL-FREE: 1-800-252-ACA1 (2221)
FAX: (202) 826-1024

FEDERAL GOVERNMENT AFFAIRS OFFICE
1000 24TH STREET NW, WASHINGTON, DC 20037
TOLL-FREE: 1-866-222-ACA1 (2221)
FAX: (202) 826-1024

ACA@ACAI.COM, www.acainternational.org
As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community’s businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars – dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

In its Request for Information (“RFI”), the Bureau seeks comments in response to a list of questions. ACA’s comments address both overarching points and specific questions raised by the Bureau.

Overarching Points

As noted above, ACA members are overwhelmingly small businesses, and even those eligible for supervision are small entities. While some aspects of the supervision program have received positive reviews, such as the Bureau’s willingness to cooperate in advance of the onsite examination, to coordinate on information technology issues, and to take reasonable approaches in the initial set of Information Requests, problems predominate once the process is underway. Those subject to the Bureau supervision program report overly broad ongoing information requests not targeted to relevant issues, disorganization and upheaval in the onsite team, higher-level reversals of positions taken by examination teams, insensitivity to disruption of business activity, excessive cost, and a perception that the examination process often is not directed toward objective fact-finding but instead operates as a “gotcha” exercise designed to find shortcomings and serve a pre-ordained agenda. Suggestions for improvement focus on the Bureau’s adoption of best practices from other federal agencies, such as the Federal Trade Commission and Federal Communications Commission.

Specific Points on Which the Bureau Seeks Comment
1. The timing, frequency, and scope of supervisory exams.
   No comments were received in response to this question.

2. The timing, method or process used by the Bureau to collect information and documents from a supervised entity prior to the commencement of an examination. Typically, the Bureau sends an examination Information Request (IR) to a supervised entity prior to the commencement of an examination. An IR is a list of information and documents that the supervised entity is asked to provide to the bureau for off-site review or to make available when examiners are onsite at the entity. An IR is typically sent to an entity at least 60 days prior to the onsite start of an examination.

   Comments from ACA members indicate that the initial IRs were reasonable, as was the length of time designated for the onsite examination. In contrast, the numerous ongoing requests that followed were overly burdensome, unnecessary, and unlikely to provide additional insight into the examination. The Bureau’s process was disorganized, inefficient, and inconsistent. High turnover rates among examination staff (from top to bottom) created serious problems with consistency. The Bureau was unwilling to negotiate on the scope of its information demands, instead threatening to send the matter to Enforcement if anything less than full compliance was provided.

3. The type and volume of information and documents requested in IRs.
   Comments noted the massive amount of information that was requested, much of which was too voluminous to be reviewed. Producing the requested information was a major undertaking, made particularly onerous for a small business. Another commenter objected to the fact that the IRs covered information not relevant to the examination.

4. The effectiveness and accessibility of the CFPB Supervision and Examination Manual (Exam Manual). The Exam Manual provides internal direction to supervisory staff, including summaries of statutes and regulations and specific examination procedures for use by examiners in conducting exams. It is published on the Bureau’s website to promote transparency and assist the public in understanding how the Bureau oversees supervised entities.

   One commenter said that the Exam Manual does explain how the examination process should be managed and evaluated and is useful for companies preparing for an examination. However, one deficiency is that it does not reference the MOU with the Conference of State Bank Supervisors ("CSBS"), nor does it indicate that the CSBS would bring an additional fifteen examiners to the same facility in the same week.
demanding information already provided to the Bureau, but in a different format and in a different manner. The two authorities did not coordinate, and to add insult to injury, the CSBS demanded payment for its costs, which totaled close to $100,000, an intolerable burden for a small business.

5. The efficiency and effectiveness of onsite examination work. Typically, while onsite, examination teams may review documents and data, hold meetings with management, conduct interviews with staff, make observations, and conduct transaction testing.

In the experience of one ACA member, the examiners drill company representatives with questions, and appear to be driving for answers consistent with a pre-conceived agenda focused on how the examiners subjectively believe things should work, as opposed to what is statutorily mandated. The commenter objected to excessive time demands on employees for examination interviews. See also response to question 1 above.

6. The effectiveness of Supervision’s communications when potential violations are identified, including the usefulness and content of the potential action and request for response (PARR) letter. A PARR letter provides an entity with notice of preliminary findings of conduct that may violate Federal consumer financial laws and advises the entity that the Bureau is considering taking supervisory action or a public enforcement action based on the potential violations identified in the letter. Supervision invites the entity to respond to the PARR letter within 14 days and to set forth in the response any reasons of fact, law or policy why the Bureau should not take action against the entity. The Bureau often permits extensions of the response time when requested.

In general, comments provided to ACA were negative, describing examiners as lacking an understanding of both the regulations and business operations. The examination team had no real “say” in the outcome of the examination; decisions were made at levels well above those inspecting the operation, and more than once reversed positions taken by the examination team. PARR letters arrived in piecemeal fashion, topic by topic, and not infrequently asked for additional information, rather than asking the party to respond. The perception was that a preconceived agenda was being pressed, rather than an objective examination of actual findings.

7. The clarity, organization, and quality of communications that report the results of supervisory activities, including oral communications from examiners and Supervisory Letters and Examination Reports.

Comments received by ACA expressed the view that the Bureau’s examination process should follow the policies and practices of the FTC or FCC, which are required to evaluate the regulations, identify any wrongdoing, and then frame and pursue the case, as
opposed to pressing for results that go beyond existing regulation and can be secured through settlements that companies enter into to avoid costly litigation with the Bureau. Other comments view the Supervisory Letters as lacking credibility; for example, the Bureau’s explanation of Reg E and the E-Sign Act reflect a lack of understanding in suggesting that a recording of a phone call complies with the E-Sign Act. Reliance on this Supervisory Letter has caused harm to companies that relied on it.

8. The clarity of matters requiring attention (MRA) and the reasonability of timing requirements to satisfy MRAs. An MRA is used to address violation(s) of Federal consumer financial law or compliance management weaknesses. MRAs often require a written response to the Bureau and will include a due date for completion.

No comments were received in response to this question.

9. The process for appealing supervisory findings.

The appeal process was not viewed as an open-minded, genuine opportunity to be heard and to change the outcome of the process.

10. The use of third parties contracted by supervised entities to conduct assessments specified in MRAs, or to assess the sufficiency of completion of an MRA.

No comments were received in response to this question.

11. The usefulness of Supervisory Highlights to share findings and promote transparency.

The Bureau periodically publishes Supervisory Highlights to apprise the public about its examination program, including the concerns that it finds during the course of its work.

One commenter noted that the Bureau intends the Supervisory Highlights publication to inform regulated entities of issues, probably a necessary measure given that parties subject to examination are covered by confidentiality agreements, but points out that Supervisory Highlights never relates good practices, approved conduct, or ways to address problems highlighted in the publication.

12. The manner and extent to which the Bureau can and should coordinate its supervisory activity with Federal and state supervisory agencies, including through use of simultaneous exams, where feasible and consistent with statutory directives.

See response to question 4.
***

ACA appreciates the opportunity to provide comments to the Bureau in response to its RFI Regarding the Bureau's Supervision Program.

Mark Neeb
Chief Executive Officer
May 14, 2018

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Ms. Monica Jackson,
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments of ACA International on Request for Information Regarding Bureau Enforcement Processes, Docket Number CFPB-2018-0003

Dear Ms. Jackson:

ACA International ("ACA"), the Association of Credit and Collection Professionals, submits these comments in response to the request by the Bureau of Consumer Financial Protection ("Bureau") for comments in response to its "Request for Information Regarding Bureau Enforcement Processes," 83 Fed. Reg. 5999 (Feb. 12, 2018); 83 Fed. Reg. 12567 (March 22, 2018). ACA appreciates the opportunity to provide input on the Bureau's Request for Information.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations (831 companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent (1,784) have 99 or fewer employees.
As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars – dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

In its Request for Information (“RFI”), the Bureau seeks comments in response to a list of questions. ACA’s comments address both overarching points and specific questions raised by the Bureau.

Overarching Points

To fulfill its statutory mission and obligations properly, the Bureau must strictly adhere to fair, clear, and transparent enforcement processes and practices. Too often in the past, the Bureau’s actions have fallen short of these standards. Many who have been the subject of enforcement actions view the experience as a one-sided imposition of the Bureau’s interpretation of the law, with firms lacking effective recourse to put forward a contrary view and, more often than not, pressured into settling to avoid the high cost of contesting the allegations. This sense of pressure is particularly strong for small businesses that lack the resources for dealing with an opaque, protracted, and unresponsive process.

Concerns are widespread about the Bureau’s practice of characterizing conduct as an unfair, deceptive, or abusive act or practice (“UDAAP”) without prior notice, and then holding other businesses accountable under this retroactive interpretation of legally required or proscribed behavior. Moreover, it remains unclear how the Bureau defines UDAAP, with the “unfair” prong continuing to be a particularly subjective matter for individual enforcement attorneys and examiners. Objections on fairness grounds to an enforcement action that faults a business for conduct in the past that was legal at the time have fallen on deaf ears. Other concerns relate to the Bureau’s poor record on communications during the enforcement process. Overall, because of the Bureau’s often agenda-driven rulemaking through enforcement approach, businesses suffer from a lack of due process in knowing what is expected and required of them.
This harms both consumers and industry members who function more efficiently when regulatory expectations are clear.

ACA strongly urges the Bureau to review its enforcement policies and practices, and to institute fair, clear, and transparent processes that are properly implemented, as the best way to maximize positive results for both regulated entities and consumers.

Specific Points on Which the Bureau Seeks Comment

1. Communication between the Bureau and the subjects of investigations, including the timing and frequency of those communications, and information provided by the Bureau on the status of its investigation.

ACA’s members who provided views on this question reported a number of negative experiences with the Bureau’s communications during the investigation. Respondents noted infrequent, unpredictable communications from Bureau staff and a lack of responsiveness to questions and feedback from the subjects of investigations. Some felt that the Bureau was unreasonable in springing a set of information requests without warning and demanding quick responses, regardless of time, cost, or impacts to business operations. Others said that the Bureau made demands and then went silent for long periods of time.

Suggestions for improvement include requiring greater diligence on the Bureau’s part to ensure an investigation is warranted, explaining the purpose of the investigation, providing a clear and reasonable outline of expectations and schedule at the beginning of the process, adopting better two-way communications practices, and developing greater understanding of and consideration for business operations, to reduce unnecessary adverse business impacts while achieving legitimate enforcement objectives. The Bureau should not be using the enforcement process as a fishing expedition. It should clearly explain, at the beginning of the process, the purpose and reason for any actions taken, and not fill in the details later after months of rifling through sensitive documents.

2. The length of Bureau investigations.

Some ACA members reported that their investigations lasted only one to two months, but others expressed concern about the extended duration of the processes they experienced, further objecting to the lack of any defined timeline for resolution of the matter. Respondents felt that the process should have taken far less time, money, and effort, and that efforts to communicate with Bureau staff to speed the investigation were ignored.

Unnecessarily drawing out the length of investigations or failing to provide results in a timely manner keeps industry in a state of flux, which can inhibit the ability to put time
and resources into initiatives and innovation that can improve the consumer experience. If there is a problem, the Bureau should identify it in a clear and timely manner that allows the collection industry to promptly address and then move forward.

3. **The Bureau’s Notice and Opportunity to Respond and Advise process including:**

   a. CFPB Bulletin 2011-04, Notice and Opportunity to Respond and Advise (NORA), issued November 7, 2011 (updated January 18, 2012) and available at [https://files.consumerfinance.gov/f/2012/01/Bulletin10.pdf](https://files.consumerfinance.gov/f/2012/01/Bulletin10.pdf), including whether invocation of the NORA process should be mandatory rather than discretionary; and

   b. The information contained in the letters that the Bureau may send to subjects of potential enforcement actions pursuant to the NORA process, as exemplified by the sample letter available at [https://files.consumerfinance.gov/f/2012/01/NORA-Letter1.pdf](https://files.consumerfinance.gov/f/2012/01/NORA-Letter1.pdf).

   ACA members stressed the importance of making sure the NORA process is fairly implemented and genuinely responsive, with objective consideration of points and defenses presented by subjects of potential enforcement actions. There was support for making the NORA process mandatory.

4. **Whether the Bureau should afford subjects of potential enforcement actions the right to make an in-person presentation to Bureau personnel prior to the Bureau determining whether it should initiate legal proceedings.**

   ACA members view the opportunity to face accusations in person as an important right that allows firms to provide relevant information and defenses and “make their case” before the Bureau institutes legal proceedings. Companies believe the ability to have this kind of discussion in person rather than by phone or email, and to offer information about the company and its size, scope, capabilities, and practices could change the Bureau’s view of the merits of the case, impacts of particular actions on the company and consumers, and any changes in practice or penalties to be imposed.

5. **The calculation of civil money penalties, consistent with the penalty amounts and mitigating factors set out in 12 U.S.C. 5565(e), including whether the Bureau should adopt a civil money penalty matrix, and if it does adopt such a matrix, what the matrix should include.**

   Respondents viewed penalties that have been imposed as arbitrary and based not on a rational basis in law such as the severity of the violation or the degree of harm, but rather on the company’s ability to pay, looking to make the penalty as high as possible. Support was unclear for a civil money penalty matrix, but those who favored it urged that it
include transparent and objective elements.

6. The standard provisions in Bureau consent orders, including conduct, compliance, monetary relief, and administrative provisions.

ACA members expressed two sets of concerns in response to this question. One view felt the Bureau did not make clear the standard requirements it includes in consent orders, but rather imposed provisions that varied considerably from one case to the next. Another view focused on the confidential nature of consent orders, which decreases the ability of other firms to understand the Bureau’s evolving interpretation of the law and allow them to modify their practices to comply. This concern is magnified because of the Bureau’s history of holding other companies to standards imposed during enforcement actions and applying interpretations retroactively to conduct that was considered lawful at the time. As noted previously, businesses felt this was an unfair and punitive approach that should be changed so that the Bureau announces new interpretations of the law and applies them prospectively.

7. The manner and extent to which the Bureau can and should coordinate its enforcement activity with other Federal and/or State agencies that may have overlapping jurisdiction.

Respondents felt it was very important for the Bureau to coordinate its enforcement activities with other federal agencies such as the FCC and FTC, as well as the states. In addition, more clarification and safe harbor rules are needed so that consumers, businesses, and attorneys are all clear on and fully aware of compliance requirements. ACA members are very concerned with an onslaught of litigation over technical violations of various laws, and urge the Bureau to play an active role in providing clarity and working to eliminate ambiguity and conflict among regulatory requirements.

* * *

ACA appreciates the opportunity to provide comments to the Bureau in response to its RFI on Bureau Enforcement Processes.

Respectfully submitted,

Mark Neib,
Chief Executive Officer
May 28, 2018

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Ms. Monica Jackson,
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments of ACA International on Request for Information Regarding Bureau External Engagements, Docket Number CFPB-2018-0005

Dear Ms. Jackson:

ACA International ("ACA"), the Association of Credit and Collection Professionals, submits these comments in response to the request by the Bureau of Consumer Financial Protection ("Bureau") for comments in response to its "Request for Information Regarding Bureau External Engagements," 83 Fed. Reg. 8247 (Feb. 26, 2018). ACA appreciates the opportunity to provide input on the Bureau’s Request for Information.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations (831...
companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community’s businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars—dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

In its Request for Information (“RFI”), the Bureau seeks feedback on all aspects of conducting future external engagements. The Bureau has provided seven areas of interest on which it seeks comment. ACA’s comments address both overarching points for the Bureau to consider as well as past experiences that may provide insight into the Bureau’s decision-making on external engagements going forward.

Overarching Points

Since the Bureau’s inception, ACA as an association as well as its individual members have had on-going engagement with the Bureau. However, often ACA and its members have felt that the Bureau’s approach to engagement seemed somewhat disinterested and that Bureau staff was just “going through the motions.” Members report that their views and opinions, during this engagement, were not given appropriate consideration by the Bureau.

Overall, ACA members report being “very dissatisfied” or “dissatisfied” in the way the Bureau solicited feedback from external stakeholders. In regard to public events like field hearings, ACA members state that the Bureau was not transparent in its processes, especially with respect to the timing, location, and representation of entities that were asked to participate at the event. Members expressed frustration that stakeholders favorable to the Bureau were offered better preparation through advance knowledge, and were more deliberately involved in those
events. Furthermore, when Bureau staff was asked to appear at industry conferences, many times they came with a prepared script that did not provide any useful information for audience members. In many instances, audience members were either not permitted to ask questions of Bureau staff or questions had to be approved in advance. Constructive feedback about the Bureau and Bureau processes was discouraged.

As it relates to the Consumer Advisory Board, members express concerns that not enough industry members were invited to be on the board, making it often nothing more than a rubber stamp for the Bureau’s activities.

Specific Points on Which the Bureau Seeks Feedback

1. Strategies for seeking public and private feedback from diverse external stakeholders on the Bureau’s work.

ACA supports the Bureau’s effort to seek feedback from all stakeholders. It is hard to measure whether the Bureau is being transparent or fair to all sides if feedback is received privately. ACA understands that in some instances, due to the sensitive nature of the topic or the information being presented, some engagement must be private. Nevertheless, all stakeholders should be aware of who is visiting or meeting with the Bureau in order to ensure that all viewpoints are equally heard. It is certainly possible to review public comments, but the Bureau must think about ways to provide information about the private feedback it receives. ACA suggests that the Bureau consider publishing a monthly list that documents the meetings it has had and who attended those meetings. ACA does not believe that greater transparency forecloses opportunities to gather diverse input.

2. Structures for convening diverse external stakeholders and the public to discuss Bureau work in ways that maximize public participation and constructive input, including but not limited to structures utilized by the Bureau to date, such as field hearings, town halls, roundtables, and meetings of the advisory groups.

The Bureau would benefit from better organization and advance notice when it comes to public events like field hearings, town halls, roundtables, and advisory group meetings. Events and the topics to be addressed should be announced at least 60-90 days in advance using a “save the date” notice. Additional information and specifics can be provided as the event date approaches. If the Bureau truly wants diverse viewpoints, then ample time must be provided, especially when it comes to including the general public who, more than likely, would need to take time from work as well as travel to attend these events. While the Bureau has done a good job of broadcasting many of these events over the internet, web participants should be able to provide comments and questions, in real time, that potentially could be addressed by Bureau staff.
3. **Processes for transparency in determining topics, locations, timing, frequency, participants, and other important elements of both public and private events.**

ACA is not aware of the process the Bureau currently uses to determine topics, locations, timing, frequency, or participants at public and private events. However, it appears to ACA that consumer groups and advocates were provided advance notice or had a role in the development of these events prior to notice provided to the general public and certainly industry. On multiple occasions the Bureau announced the time and location of field hearings without including information about what the topic was, despite clearly knowing why it was planning to host a field hearing.

Moreover, certain press outlets and other consumer advocacy groups often seem to have advance notice of what would be discussed at field hearings, when very often industry groups received the materials the day of, or the evening before, they were set to speak. Industry participants in field hearings are often asked to speak about proposed rules or policies that are hundreds of pages long and that are received the morning of the event. This creates an unfair playing field and at times seems like an opportunity for the Bureau to surprise or embarrass volunteer participants.

In general, there are some industry concerns that the Bureau’s past practice of “pomp and circumstance” for proposing rules in conjunction with a field hearing can send the wrong message to consumers that a wrong has been committed, when there may be a number of reasons for proposing federal rules and policies. Additionally, embargoed press releases that were frequently shared at midnight before events often sensationalized the Bureau’s actions and painted industry in an unfair light.

ACA therefore recommends that the Bureau consider more public outreach and feedback from stakeholders regarding event topics, who should participate in these events, and where these events should take place. As noted in Paragraph #2, advance notice is critical to ensure a broad and diverse audience.

4. **Vehicles for soliciting public and private perspectives from outside of Washington, D.C. on the Bureau’s work.**

The Bureau should continue to seek feedback and information from national trade associations who have a diverse and broad membership to ensure and maintain real-world perspective rather than focusing solely on activities in Washington, D.C.

The Bureau may also want to consider using its regional field offices for external engagement to consumers and industry, in additional to supervision activities that occur in those offices. Establishing relationships in regional areas and communities may provide opportunities
for important engagements that the Bureau may not otherwise have. The Bureau should also not
be offering these opportunities only to favored industries or groups throughout the country. For
example, the BCFP often hosts industry roundtables in conjunction with events in different
cities. These should be open to all participants in the financial services marketplace and
regulated entities, not just certain consumer and trade groups.

5. Strategies for promoting transparency of external engagements, including
Advisory Board and Council meetings, while protecting confidential business
information and encouraging frank dialogue.

Since the beginning of the year, all Advisory Board and Council meetings have been
public. It does not appear to ACA that these public meetings have compromised the dialogue
and discussion. In general we support the concept of advisory councils because we believe it is
beneficial for Bureau staff to have more information about industries, particularly if they do not
have any specific industry experience.

ACA also recommends that the Bureau consider having a nonbank advisory board since
the Bureau already has broad supervision and examination authority over such entities.
Nonbanks should not be overlooked in their ability to provide important feedback.

Finally, ACA would encourage the Bureau to work with Board and Council participants
to develop a protocol for dealing with confidential business information in open meetings so that
speakers could make general points, while providing specific, sensitive information to the
Bureau under procedures that protect confidentiality but ensure actual supporting data is
supplied.

6. Strategies and channels for distributing information about external engagements
to maximize awareness and participation.

The Bureau does a good job of utilizing electronic communications such as email and
Twitter to promote Bureau activities. As noted above, the Bureau would be well served if its
activities were better organized and coordinated with all stakeholders to maximize awareness and
participation. National trade associations representing diverse stakeholders from all areas of the
country are more than willing to assist the Bureau in its efforts, as long as the Bureau can
provide better advance notice and relevant background information. As also noted above, the
Bureau should consider using its regional offices as platforms for more widespread engagement.

7. Other approaches, methods, or practices not currently utilized by the Bureau that
would elicit constructive input on the Bureau’s work.
In general we think that it would be beneficial if the Bureau streamlined its internal process to ensure that information discussed in industry meetings accurately represents the views of the agency. For example, we have seen court filings from the BCFP that conflict with positions expressed by BCFP staff. There are multiple departments at the Bureau that work on certain issues and at times it does not seem that communication between them is always timely and accurate.

***

ACA appreciates the opportunity to provide comments to the Bureau in response to its RFI Regarding Bureau External Engagements.

Mark Neeb
Chief Executive Officer
June 4, 2018

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

Ms. Monica Jackson,
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Comments of ACA International on Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information, Docket Number CFPB-2018-0005

Dear Ms. Jackson:

ACA International ("ACA"), the Association of Credit and Collection Professionals, submits these comments in response to the Bureau of Consumer Financial Protection’s ("Bureau") “Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information,” 83 Fed. Reg. 9499 (March 6, 2018). ACA appreciates the opportunity to provide input on the Bureau’s Request for Information.

I. BACKGROUND ON ACA INTERNATIONAL

ACA International is the leading trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents approximately 3,000 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide. Given its longstanding history and broad membership, ACA is uniquely positioned to assist the Bureau with information gathering related to debt collection, as well as to collaborate with the Bureau on how its proposed policies and regulations will impact the credit and collection industry.

ACA members include the smallest of businesses that operate within a limited geographic range of a single state, and the largest of publicly held, multinational corporations that operate in every state. The majority of ACA-member debt collection companies, however, are small businesses. According to a recent survey, 44 percent of ACA member organizations...
(831 companies) have fewer than nine employees. Additionally, 85 percent of members (1,624 companies) have 49 or fewer employees and 93 percent of members (1,784) have 99 or fewer employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars—dollars that are returned to and reinvested by businesses and dollars that would otherwise constitute losses on the financial statements of those businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

Importantly, ACA members are committed to fair, reasonable, and respectful practices and take their obligations in collecting debt very seriously. As legitimate credit and collection professionals, ACA members play a key role in helping consumers fulfill their financial goals and responsibilities while facilitating broad access to the credit market.

II. COMMENTS OF ACA INTERNATIONAL

In its Request for Information ("RFI"), the Bureau seeks comments and information in order to assess potential changes to the Bureau’s public reporting practices of consumer complaint information including the publication process and the reporting methodology. ACA's comments address both overarching points for the Bureau to consider as well as ACA member concerns regarding the complaint reporting process and recommendations for future activities.

Overarching Points

The Bureau has repeatedly reported that debt collection receives the highest number of complaints. However in 2017, the Bureau received 84,500 complaints about debt collection as compared to 100,000 complaints regarding consumer reporting and credit repair and 37,300 complaints regarding mortgages. The amount of debt collection complaints reported to the Bureau actually decreased as compared from 2016, yet the Bureau has continued to assert incorrectly that this category of complaint exceeds all others. Beyond this mischaracterization, the Bureau fails to contextualize the number of complaints as compared to the number of contacts the debt collection industry makes to consumers over a given year, which the Philadelphia Federal Reserve estimates to be well over one billion. Providing better understanding of and perspective on the debt collection marketplace would better serve the Bureau—and consumers—in the Bureau’s analysis of the debt collection industry. The Bureau should focus its resources on actual harm rather than raw numbers of complaints provided

without context. In doing so, the Bureau would realize that debt collection complaints account for only 0.005% of all consumer contacts made in a given year by debt collectors.

Ironically, the Bureau also reports that the debt collection industry has a response rate of 94.4% in 2017, one of the highest rates of any industry that receives Bureau complaints. The Bureau fails to publicize that 84% of debt collection complaints are closed "with explanation," meaning the consumer's issue was specifically addressed and/or resolved. This too is an extraordinarily high percentage.

Complaints are Defined Too Broadly and Not Otherwise Verified.

The most troubling aspect of the complaint database for ACA members is the Bureau's treatment of complaints including: (1) the Bureau's broad definition of a complaint as "submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer's personal experience with a financial product or service," and (2) the Bureau's failure to verify the accuracy of the complaints it receives. The Bureau's approach to consumer complaints in this fashion results in complaints being counted against debt collectors for conduct, which even if true, is not otherwise unlawful, but more importantly is often factually inaccurate. For example, a consumer may submit a complaint that his or her insurance company should have paid a medical bill. In this instance, the debt collector did not engage in any unlawful conduct, yet the complaint is counted against it even though the debt collector had the right to contact the consumer. In the same scenario, if the consumer makes the same complaint against the owner of the debt, the medical provider, the complaint is also counted against the debt collector, and thus two complaints are recorded for the one debt. The Bureau simply accumulates all complaints submitted by consumers without considering the nature of the complaint and without regard to its accuracy or legitimate characterization as a complaint against a debt collector. The result is an artificially inflated amount of complaints against the debt collection industry which the Bureau continues to represent as the most complained about market.

The Lack of Statutory Authority to Publish Consumer Complaint Data

Although two provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) require the Bureau to report annually to Congress about the number of consumer complaints in general, and to report semi-annually to the President and

3 CFPB, Consumer Complaint Database, as of December 2017 available at https://www.consumerfinance.gov/dun-research/consumer-complaints/.


designated congressional committees, certain analyses of the complaints the Bureau has received and collected in its databases from the prior year. However, nothing in either section of the statute authorizes the Bureau to make the consumer complaint database public. The publishing of inaccurate and unverified information about any debt collector results in reputational harm that cannot otherwise be reversed. It also misleads consumers, which could lead to unfounded concerns about engaging with the collections industry, despite that this engagement is often essential to preserve credit options and avoid other problems that result from unpaid debt. One academic called the complaint database a “government sponsored Yelp.”

Analyzing complaint data on a broad scale and highlighting trends appears to fulfill the Bureau’s statutory mandate; public shaming does not.

ACA Member Feedback

60% of the ACA members surveyed suggest that the Bureau endeavor to normalize complaint statistics across financial services industries in order to provide greater context for understanding consumer complaints. Rather than just reporting on the sheer number of complaints, the Bureau would be better served in reporting that the collections industry has proven responsive to complaints and has an excellent record of resolving consumers concerns. Finally, the Bureau’s complaint portal serves as a reminder that the free flow of information and open communication are the only way to resolve a consumer’s concerns about a debt.

Specific Points on Which the Bureau Seeks Feedback

1. Specific, statutorily-permissible suggestions regarding the frequency of the Bureau’s reporting on consumer complaints.

ACA and its members have been extremely vocal in their concerns about the Bureau’s reporting of the consumer complaint database. An overwhelming majority of surveyed ACA members report being “very dissatisfied” or “dissatisfied” with the overall frequency of the Bureau’s reporting of consumer complaints. The Bureau’s weekly tweets highlighting the number of consumer complaints it receives, especially in regard to debt collection complaints, paints a false light, while at the same time instilling fear about the entire financial services industry as a whole. While the Bureau is required to report to Congress and the President about aggregate amounts of complaint data, the frequency with which the Bureau reports that data to the public along with a slanted public relations spin, does nothing to help consumers, but is viewed as instead bolstering the Bureau’s political agenda. The Bureau should discontinue its

10 CFPB, Complaint Snapshot: Debt Collection (May 31, 2018), available at, https://s3.amazonaws.com/files.consumerfinance.gov/Fi1edocuments/bcfp_complaint-snapshot_debt-collection_053118.pdf, which the Bureau states “provides a high-level overview of trends in consumer complaints and supplements the Consumer Response Annual Report with more recent information about monthly changes in complaint volume.” For the first time, the Bureau noted that “debt collection complaints submitted by consumers can be more meaningful when considered in context with other data, such as the number of consumers who have an
current practice of weekly tweets and its inaccurate portrayal of debt collection complaints and undertake a full review of how best to use the information it collects in useful and effective ways to serve consumers’ needs. Several other financial regulators accept consumer complaints but do not report them publicly or promote them on social media – this has not stopped consumers from having the ability to register complaints or the ability of an agency to address any concerning trends or harm it sees in the information it collects.

2. **Specific, statutorily-permissible suggestions on the content of the Bureau’s reporting on consumer complaints, including:**

   a. Whether the Bureau should include more, less, or the same amount of reporting on State and local complaint trends;

   Generally, ACA members did not indicate the need for any more or less information about state or local complaints trends. However, given that the Bureau recently reported that 40% of all complaints received by the Bureau are forwarded to other regulators, including state regulators and Attorneys General, ACA has concerns that state and local trends based upon unverified complaint data will result in unwarranted referrals to state agencies. The fact that the Bureau is receiving so many complaints that would be better directed to other local regulators, raises questions about whether the marketing and continual self-generated press about the Bureau’s database is confusing consumers about where and who they should be directing complaints to.

   b. Whether it is net beneficial or not harmful to the transparent and efficient operation of markets for consumer financial products and services for the Bureau to publish the names of the most-complained-about companies;

61.1% of ACA members surveyed report that publishing the names of the “most-complained about” companies is net harmful for a business’s reputation and problematic, especially given the fact that none of the complaints are verified as accurate. Furthermore, the Bureau does not publish the resolution rate of these same complaints against these same companies. Unless and until the Bureau can verify the accuracy and validity of these complaints, including whether the complaints are just inquiries or questions, none of this type of data should be published. ACA reiterates its position that the Dodd-Frank Act does not authorize the Bureau to publish complaint information including the publication of company names. This information can also be misleading because the largest companies often receive the most complaints, which logically makes sense because they often have a presence in multiple states and areas and are engaged in more consumer related transactions. However, if these large companies continue to be highlighted in complaint reports it could unfairly paint them as bad actors when in fact they just have a much larger volume of contact with consumers.

---

account in collection.” The Bureau did not provide any specific data points but as noted above reports estimate more than a billion contacts per year are made to consumers regarding debts. This is the first time the Bureau has put the number of debt collection complaints into perspective and ACA encourages the Bureau to provide more context when publishing data on the amount of debt collection complaints.

11 Id.
c. Whether the Bureau should provide more, less, or the same data fields in the Consumer Complaint Database;

ACA members that expressed a view were evenly split in their opinion on whether there should be more or fewer data fields, stating that for the most part the data fields currently provided were sufficient. Some members recommended that the Bureau include field(s) that would better qualify the complaint as an inquiry, question or true complaint.

d. Whether the Bureau should provide more, less, or the same amount of context for complaint information, particularly with regard to product or service market size and company share;

ACA members overwhelmingly support efforts to provide better context regarding complaint information including the product complained of and the company’s share of the market. For instance, healthcare debt has a larger share of the market than utilities or municipal debt. The Bureau needs to inform consumers and the public of the true nature of the debt collection marketplace in order for the consumer complaint data to have useful meaning.

e. Whether the Bureau should supplement observations from consumer complaints with observations of company responses to complaints;

ACA members support the publication of company responses to consumer complaints as a way to normalize the complaint process and provide consumers with a better perspective on the issues that resulted in the complaint, as well how the complaint was resolved. The complaint portal has significant utility in its potential to help consumers. But rather than punish a company for being on the receiving end of an unverified complaint, it would be better to publicize those companies that do a good job in addressing consumer issues in a prompt and efficient manner.

ACA reiterates its position that the Dodd-Frank Act does not authorize the Bureau to publish consumer complaint data like consumer narratives. However, ACA would reconsider its position if the Bureau leveled the playing field in the complaint process and permitted company narratives to be published as well.

f. Whether the Bureau should share more, less, or the same amount of information on month-to-month trends;

ACA members generally feel that the amount of information provided on month-to-month trends should stay the same. ACA members provided no other additional feedback. In general however, we remain concerned with reporting raw number data without providing additional context and analysis about the numbers.

g. Whether the Bureau should share more, less, or the same amount of information on particular products and services;

ACA members recommend that more information about the product or service being complained about would provide more context to the complaint. If the goal of the complaint process is to achieve a resolution of the problem for the consumer, having the consumer better understand the marketplace would be more productive in informing the consumer about ways to
resolve a particular issue. Market information would also add value to the reports the Bureau generates and submits to Congress and the public by offering perspective on the complaint data.

3. **Specific suggestions on the reporting methodology, including:**

   a. **Should the Bureau continue to analyze data for seasonal fluctuations? If so, how; and**

   ACA members are evenly split on whether the Bureau should continue to analyze data for seasonal fluctuations. Half the members surveyed felt that this data was helpful while others saw it as meaningless. Should the Bureau continue to analyze data for seasonal fluctuations, the product type and service should also be included in order to provide context.

   b. **Should the Bureau provide more, less, or the same amount of context for complaint information, particularly with regard to product and service market size and company share, including what data set(s) or data source(s) the Bureau should use;**

   As these ACA comments consistently show, members encourage the Bureau to add more context to its complaint reporting. Some recommended suggestions for data points are:

   - The number of consumers reached in a given time period to show the breadth of a company’s output;
   - The number of accounts the company is currently working;
   - The number of contact attempts a company makes in a given time period;
   - The number of responses the company makes to complaints;
   - The kinds of services/types of collection accounts the company works; and
   - The nature of the communication by the consumer (i.e. inquiry, questions, complaint).

4. **Specific, statutorily-permissible suggestions for the publication process of consumer complaint information, including:**

   a. **Whether the Bureau should provide the public with a publication schedule;**

   ACA members favor a publication schedule. Some comments suggest that having a set publication schedule will discourage the Bureau from publishing information that aligns with its current agenda or PR campaign. For example, if the Bureau is currently focusing on credit reporting, publishing an ad hoc report paints an inaccurate picture of problems in that market where there may be none.

   b. **Whether the Bureau should notify the most-complained-about companies of their inclusion in a Bureau report prior to publication and invite company comment;**
100% of the ACA members surveyed agreed that the Bureau should notify the most-complained about companies of their inclusion in Bureau reports in advance and invite them to respond. The stigma of being the “most-complained-about” is harmful and can be highly inaccurate for no other reason than not all “complaints” are true complaints. Furthermore, the larger the company the more likely it will receive a higher number of complaints, but this number could merely reflect inquiries and not complaints at all. The Bureau should reconsider labeling a company as “most-complained-about” until it has established a process of verifying complaints.

In the interim, some commenters suggest that to permit and disclose a company response would allow the consumer to make a better informed decision about future contact with the company as well as provide consumers with more information that would provide context to the complaint. At one time the Bureau considered publishing positive comments about companies, which would be invaluable information for consumers in choosing companies with which to do business. The Bureau should revisit that initiative.

c. **Whether the Bureau should devote resources to building tools to enable users to analyze complaint information; and**

Several ACA members were confused by this question but overall there was support for better tools available to consumers in order to analyze complaint information. As noted in prior responses, ACA supports the idea of offering more information to consumers so that they can make better and informed decisions. If the database allows consumers to get a better understanding of the company they are dealing with, it could result in the consumer’s having a better understanding about his or her complaint and how to resolve it.

d. **Whether the Bureau should expand, limit, or maintain the same level of access to complaint information available to external stakeholders such as financial institutions and the public.**

ACA reiterates its position that the Dodd-Frank Act does not authorize the Bureau to publish consumer complaint data. Therefore a majority of its members do not support expansion of complaint information to financial institutions and certainly not to the public. Until the Bureau can verify the complaints it receives, outside third parties who are not a party to the issue between the consumer and the company should not be given access to what is a private dispute.

***

ACA appreciates the opportunity to provide comments to the Bureau in response to its RFI Public Reporting Practices of Consumer Complaint Information

Mark Neeb
Chief Executive Officer
June 6, 2018

The Honorable Blaine Luetkemeyer
Chairman
Subcommittee on Financial Institutions and
Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Luetkemeyer and Ranking Member Clay:

On behalf of America’s credit unions, I am writing regarding the hearing titled “Improving Transparency and Accountability at the Bureau of Consumer Financial Protection.” The Credit Union National Association (CUNA) represents America’s credit unions and their 110 million members.

Credit unions are the original consumer financial protectors. Because of their not-for-profit, cooperative ownership structure, credit unions do not face the same market pressures and they do not have the same structural motives as for-profit financial services providers. This distinction, combined with decades of providing consumer friendly financial services, is the key reason that consumer protection regulation should be tailored so that it is not overly burdensome on credit unions.

Unfortunately, the Bureau, in its first several years of existence, missed opportunities to leverage credit unions’ mission and history to the benefit of consumers, and finalized regulations that harmed credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of the providers engaged in the very activity that the rules were designed to curtail. Under its new leadership, the Bureau has the responsibility to examine all aspects of its activity to ensure it is fulfilling its mission without impeding the delivery of safe and affordable financial services. We applaud the process the Bureau is undertaking.

We urge the Bureau to look closely at the impact that its rules have had on credit unions and their members and to streamline regulations to reduce burden or exempt credit unions entirely, as appropriate: the Bureau’s rules should focus on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. If the Bureau spent less time regulating and supervising credit unions, it could spend more time on the abusers of consumers, which is why the Bureau should work more closely with the National Credit Union Administration (NCUA) to ensure credit union compliance with pertinent regulations and transfer supervision of the largest credit unions back to NCUA.

Throughout its history, the Bureau has invited feedback from stakeholders on its rulemakings but there has been little evidence in final rules that the Bureau has heard and responded to the concerns; this should change and we make several recommendations related to the Credit Union Advisory Council (CUAC) and other feedback mechanisms.
We also hope the Bureau will make significant changes to the consumer complaint database to ensure that the complaint intake process is effective and fair. And, as the Bureau takes steps to address the rules that have been promulgated in recent years, it is important that it take steps to reduce regulatory burden while at the same time recognizing the cost to credit unions and consumers of any change in regulation.

As the Bureau moves forward with new rulemakings, we encourage it to make use of the Advance Notice of Proposed Rulemaking (ANPR) process to solicit additional stakeholder views, and work with the Small Business Administration (SBA) to ensure that the Small Business Regulatory Enforcement Fairness Act (SBREFA) process is efficient and effective. Once rules are finalized, the guidance provided by the Bureau must be accurate, easy to understand, and timely; and, enforcement must be fair.

Credit unions and the Bureau share a common mission related to financial health. By leveraging credit unions’ expertise in financial education rather than implementing additional rulemaking to guide certain consumer choices, the Bureau could provide a strong foundation for good consumer health. Credit unions are ready to be partners with the Bureau in this regard.

Credit Unions Want Change at the Bureau

CUNA has received feedback for years from credit unions about the Bureau’s regulatory burden and its effect on their members. In a recent survey conducted in March by CUNA, credit unions provided extensive feedback on how regulatory burden is negatively impacting their operations. 1

The survey showed the following:

- Nearly 75% of reporting credit unions “strongly agree” that the Bureau’s rulemaking processes and procedures should be improved, and that there are aspects of the Bureau’s engagement with credit unions and other credit union industry stakeholders that should be improved.

- Of the rulemaking changes examined, survey respondents found the following to be the most important, with not less than 73% and as many as 89% of credit union survey respondents indicating it is “very important” that a change be made with respect to each of these five processes and procedures:
  - More carve-outs and exemptions for credit unions;
  - Better guidance and tools for implementing rules;
  - More focus on the impact on small credit unions through the SBREFA Process;
  - More time implementing rules; and
  - More cost-benefit research and analysis to inform the rules.

---

1 CUNA conducted a survey entitled, “2018 CFPB Improvements (Request for Information) Survey” in March 2018; 272 credit union professionals completed the study, which was administered by CUNA’s Market Intelligence unit. The purpose of the study was to: (1) measure credit unions’ perceptions of the rulemaking activities, policies, and procedures that have been undertaken by the Bureau over time, and (2) give the Bureau feedback and suggestions on ways to improve outcomes for credit unions and the consumers that they serve.
Credit unions were asked to indicate how important it is to them that the Bureau revisit and change a list of already-established rules, taking into consideration the investment of resources the credit union has already incurred to implement the rule. Survey respondents were most adamant that the following rules be changed:

- TILA/RESPA requirements;
- Mortgage origination rules; and
- Qualified mortgage requirements.

When it comes to the Bureau supporting credit unions’ ability to innovate, at least 90% of credit union survey respondents “strongly” or “somewhat agree” that the Bureau should:

- Do more to support credit union innovation;
- Increase financial literacy and education collaboration; and
- Better define what is considered an unfair, deceptive, or abusive act or practice (UDAAP) to improve credit unions’ ability to innovate.

Among the steps the Bureau could take to encourage and support innovation:

- Nearly 90% of credit union survey respondents believe (1) less complex rules and (2) more flexibility in areas where there is no pattern of consumer abuse are very important.
- About 75% indicate that (1) fewer rules; (2) policy that aligns better with NCUA requirements; (3) more research and analysis before proposing a rule; and (4) more narrowly tailored rules focusing on culprits are very important.

Roughly 30% of the credit unions surveyed believe the Bureau is doing well in its (1) willingness to engage with the credit union industry and (2) compliance guides and other materials.

About 15% of the credit unions surveyed believe the Bureau does well in (1) informing examiners and staff and (2) communicating with the credit union industry via blogs, social media, and websites.

CUNA urges the Bureau to consider this feedback from credit unions, as it is illustrative of the regulatory burden experienced since the Bureau’s inception and its ramifications for consumers.

**Bureau External Engagements**

CUNA values the outreach that the Bureau has engaged in with the credit union industry. We appreciate the frequent meetings, discussions, and roundtables the Bureau has conducted with credit unions throughout the country. We encourage the Bureau to continue to engage credit unions in its external outreach, as these efforts will assist in its understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

We have the following recommendations for the Bureau moving forward:

- The Bureau’s CUAC is a valuable asset and should be preserved. Credit unions have different structures and business models. This Council can educate the Bureau on credit union differences and how various regulations and requirements affect their operations.
For CUAC meetings, we encourage the Bureau to maintain a balance between public and confidential portions of the meetings. Indeed, increasing the confidential portion of the meeting can lead to greater candor and frank dialogue by all parties. Former CUAC members have told CUNA that it would be helpful to have additional time for non-public meetings where constructive feedback can be more easily provided to Bureau officials and staff.

- The Bureau should provide frequent webinars and open communication through all channels with industry stakeholders about new rules and requirements. This outreach is critical for smaller financial institutions with fewer compliance resources.

Bureau Complaints Processing

CUNA supports the ability of consumers to access timely and clear information on consumer financial products and services. Further, we recognize that the Dodd-Frank Act requires the Bureau to maintain a user-friendly and efficient method for consumers to lodge complaints regarding the improper activities of financial institutions. However, we continue to have concerns with the Bureau’s consumer complaint database overall.

We believe we are in an exceptionally strong position to evaluate the complaint system objectively for two reasons. First, the high level of consumer satisfaction with credit union services suggests that relatively few complaints will be filed with the Bureau concerning credit unions. As member-owned cooperatives, credit unions are simply less likely to offend their member-owners compared to institutions that serve customers only for purposes of rewarding investors. Second, only a small number of credit unions are large enough to have any consumer complaints included in the Bureau’s database.

Even though the number of credit union-related complaints is extremely low, to ensure the complaint intake process is effective, we urge the Bureau to take steps so that the number of non-substantive and meritless complaints does not increase. Thus, we urge the Bureau to revisit the complaint intake system’s process of filtering out clearly frivolous consumer complaints. While soliciting complaints via the Bureau’s website makes the process efficient for consumers, it also has the potential of increasing unfounded complaints. It is important that the Bureau be aware that each complaint a credit union receives—regardless of merit—has a cost to the credit union and in turn its members.

CUNA urges the Bureau to take appropriate steps to verify the legitimacy and accuracy, to the extent possible, of a consumer’s complaint and/or compliment prior to public disclosure. Further, under the current system, we believe it is possible that some institutions are effectively unable to respond to consumers’ narrative description of complaints due to privacy restrictions. We ask the Bureau to explore improvements to the process.

In addition, we ask the Bureau to reexamine its marketing of the complaint system to consumers. Since most credit unions are not supervised by the Bureau, any complaints regarding them should be directed to the NCUA, not the Bureau. The Bureau’s marketing directs consumers to the Bureau’s complaint system, which causes confusion and delays in response when those consumers are then redirected to the NCUA and/or the credit union directly. The Bureau should explore how it can revise its marketing to alleviate
consumer confusion and reduce unnecessary correspondence among agencies, institutions, and consumers.

**Notice of Proposed Rulemaking/Advance Notice of Proposed Rulemaking**

The Dodd-Frank Act included numerous statutorily required rules with specific deadlines, most of which were concerning the mortgage rules that have already been issued. The only statutorily required rule remaining for the Bureau to implement is the Small Business Lending rule.

As future Bureau rules, including the small business lending rule, lack a statutorily required or set implementation timeline, we strongly urge the Bureau to employ greater use of ANPRs rather than only using the Notice of Proposed Rulemaking (NPR) process. An illustrative example of rulemaking that would have benefited from more external stakeholder engagement before moving forward is the Bureau’s payday and small dollar lending rule.

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

Credit unions are member-owned financial cooperatives that operate for the purpose of promoting thrift and providing access to credit. One-size-fits-all regulation does not work for Main Street: local credit unions, small community banks, and the consumers and small businesses they serve. This regulatory philosophy has created a rigged system favoring the largest institutions—the very institutions that caused the financial crisis that adversely impacted so many Americans—that can afford to comply with the “solutions” dreamt up in Washington. Now, over-regulation of small institutions is hurting consumers, costing them time and money, and limiting their financial product and service choices.

Congress anticipated the possibility of such problems and enacted protections for credit unions and other small financial service providers. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) amended the Regulatory Flexibility Act of 1980, to require some federal agencies to hold a SBREFA panel if the agency finds its proposed rule is likely to have a significant impact on a substantial number of small entities. The Bureau is one of the agencies required to engage in the SBREFA process, and credit union representatives have served as Small Entity Representatives (SERs) on several panels for its rulemakings.

While we appreciate that SBREFA adds a layer of protection for small credit unions, we believe the Bureau should consider the feedback it receives during this process more seriously, including by making changes to the rules before the proposal stage instead of merely asking for public comment in response to SER feedback. Additionally, we believe reforms to this process are needed to ensure there is more accountability if Bureau rules do not reflect feedback provided prior to publication of final rules, including during SBREFA panels.

Credit union employees divert time and resources from their daily jobs serving members to provide feedback to the Bureau on extremely complex SBREFA outlines of proposed rules. During the SBREFA process, these representatives are usually given less than a month to: read and digest complex outlines which can require legal and economic analysis, work to determine how the Bureau’s proposals could impact their credit union, and compile data and feedback that the agency itself may not have even collected on a wide scale basis or analyzed. In short, SERs are often asked to do as much work as a
federal government agency, and meanwhile continue to operate their credit union and serve the many members relying on them for financial services. Moreover, they are asked to travel to Washington, D.C. to participate in a day long panel on their own dime, as well as participate in several conference calls beforehand.

While this process can be burdensome to the small credit unions that participate, they nonetheless continue to volunteer in the SBREFA process because they know that rules which do not account for different institutions’ size and structure can be catastrophic, lead to the elimination of products and services, and accelerate small credit union consolidation. Too often in prior SBREFA panels, Bureau officials have willfully ignored the feedback credit union representatives have provided about harmful proposals, improperly tailored to their size and structure.

We are concerned that the Bureau views the SBREFA process as a check-the-box exercise, and often has not included the suggestions and feedback small credit unions have provided in proposed or final rules, despite the multiple sacrifices made to participate in the process. The condensed timeframe of SBREFA and the complexity of the outlines of rules under consideration have also made it difficult for credit unions to analyze and provide feedback on all aspects of multifaceted outlines within the 60-day window. On several occasions, some of the major problems that a rule could cause for credit unions were identified after the SBREFA process.

We have received feedback from many credit unions that participated on SBREFA panels that they felt final rules did not include enough changes and/or exemptions to limit the impact on small credit unions. As a result, small credit unions have had the most difficulty complying with new mortgage rules, even after participating in SBREFA. In August 2016, the Government Accountability Office released a report with observations from some of the earlier Bureau SBREFA panels, which found that out of the 57 SERs who participated, seven were reportedly satisfied with the Bureau’s final rules.²

Based on CUNA’s experience and the feedback we have received from credit unions, we have the following recommendations for the Bureau to ensure its SBREFA process is efficient and effective moving forward:

- SERs should receive preparation materials well in advance of a SBREFA panel to allow them to gather information and feedback prior to the meeting.
- The Bureau should conduct a series of calls with SERs prior to the SBREFA panel to review materials and receive feedback.
- The Bureau should thoroughly consider comments by SERs before proposing rulemakings. Comments made by SERs should influence a proposed rule, not merely be mentioned in the proposal for public comment. If the Bureau must redraft proposals based on SER feedback, it should do so.

• SERs should receive the final SBREFA report before it is published in the Federal Register along with the proposed rulemaking.

The Bureau Should Work with the NCUA

As the prudential regulator for federally-insured credit unions, the NCUA is the government expert on credit union operations. Because credit unions operate differently than banks and other for-profit financial institutions, regulatory requirements affect them differently. The NCUA understands the unique structure and business model of credit unions, and therefore should be engaged throughout the entire rulemaking process.

The Bureau should work with NCUA and use its credit union experience on future rulemakings affecting credit unions.

The Bureau Should Apply a Cost/Benefit Analysis to Rules for Credit Unions

The Bureau prides itself on being a data-driven organization. Former Director Cordray often referred to the data beneath consumer complaints as the Bureau’s “compass,” playing a key role in identifying and prioritizing the agency’s actions, including in the realm of rulemakings.

Data for data’s sake is insufficient, and it is critical that the agency’s policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it is not uncommon for a Bureau rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking.

It is critical that the Bureau base its decisions on data. Almost equally as critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally identifiable information—the Bureau relies on as a foundation of its rulemakings.

The Bureau Should Coordinate Future Efforts

Under Section 1042(a)(1) of the Dodd-Frank Act, state attorneys general and state regulators are empowered “to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law.” Therefore, subject to some exceptions, state officials can enforce both the generic ban in Title X against unfair, deceptive or abusive conduct and any specific rules that the Bureau enacts. Without coordination between federal and state regulators, enforcement of consumer protections will overlap, leading to a patchwork of conflicting resolutions which will create uncertainty in the industry and confusion among the public.

Recently, several states have ramped up enforcement of consumer financial protections. At least two states, New Jersey and Pennsylvania, have created a “state-level” Bureau to spearhead enforcement. In December, state attorneys general from 17 states sent a letter to President Trump emphasizing their statutory authority to enforce state and federal consumer protection laws. The attorneys general further vowed to “redouble [their] efforts at the state level to root out such misconduct and hold those responsible to account” should the Bureau pursue a less aggressive enforcement posture.
While we respect the authority of the Bureau and the states to enforce Dodd-Frank Act provisions, we strongly urge the parties to coordinate to ensure enforcement is transparent and consistent.

**Bureau Guidance and Implementation Support**

The past several years has seen a massive increase in consumer financial services regulations. The increase in regulations is particularly burdensome for credit unions which, unlike massive banks, do not have dozens of legal experts in house to assist with compliance questions. There are, however, ways in which the Bureau can assist the industry in complying with consumer financial services regulatory requirements.

CUNA has the following recommendations to enhance the Bureau’s ability to assist the industry with compliance with consumer financial services rules and requirements:

- The Bureau should accept inquiries regarding compliance with its regulations and guidance by telephone, email, or through its website. Responses to inquiries should be provided by Bureau staff within 24-48 hours of receiving the inquiry. For questions that require additional research, we strongly encourage Bureau staff to provide an initial response at least within the 24-48-hour timeframe.

- The Bureau should track questions it receives from the industry. These questions should be used by Bureau staff to make annual adjustments to regulations or commentaries to address ambiguities.

- If there are questions the Bureau receives frequently, we encourage it to also publish written guidance or Frequently Asked Questions (FAQs) with written interpretations to assist industry stakeholders on regulatory implementation. An example of helpful FAQs was the Department of Housing and Urban Development’s RESPA FAQs, which the industry regularly used as a resource.

- The Bureau should conduct interactive webinars on proposed and final rulemakings. Webinars should provide information about regulatory requirements and practical examples of how to comply with new requirements. Bureau staff should also take and answer industry questions received during the webinars. Questions can be answered during the live webinars or through follow-up written communications such as FAQ documents.

- We encourage the Bureau to provide both comprehensive final rule summaries and short one-page summaries for final rules. Both summaries are helpful resources and tools for industry compliance. When possible, we strongly encourage the Bureau to provide flow charts that illustrate how to comply with various regulations. These resources can be especially helpful for smaller credit unions with limited compliance resources.

- The Bureau should place all its compliance resources, including recorded webinars, final rule summaries, and FAQ documents, in a central location on its website for easy and quick access.
• The Bureau should frequently update compliance guides on its website so industry stakeholders always have the most recent information accessible.

• The Bureau should also conduct annual outreach with industry stakeholders, especially credit unions, to receive feedback on its current compliance resources and what additional resources would be helpful to the industry.

Conclusion

As CUNA indicated when the Dodd-Frank Act was enacted,

"Consumers of financial products, especially consumers of products and services provided by currently unregulated entities, need greater protections and a consumer financial protection agency could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions. In order for such an agency to work, consumer protection regulation must be consolidated and streamlined; it should not add to the regulatory burden of those who have been regulated and performed well, such as credit unions."3

The need for consumer protection remains. Over the last several years, the Bureau has missed opportunity after opportunity to ensure that its rulemakings do not adversely impact credit unions' ability to serve their members. We hope this process will lead the new leadership at the Bureau in the direction of ending one-size-fits-all regulation and bringing common sense to credit unions' regulatory requirements.

On behalf of America's credit unions and their 110 million members, thank you for holding this important hearing and considering our views.

Sincerely,

Jim Nance
President & CEO

3 Letter from Credit Union National Association to Members of the House of Representatives regarding H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (June 30, 2010). Available upon request.