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PUTTING CONSUMERS FIRST? A SEMI-ANNUAL REVIEW OF THE CONSUMER FINANCIAL PROTECTION BUREAU

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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PUTTING CONSUMERS FIRST? A SEMI-ANNUAL REVIEW OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Thursday, March 7, 2019

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

The committee met, pursuant to notice, at 10:07 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Velazquez, Sherman, Meeks, Clay, Scott, Green, Cleaver, Himes, Foster, Beatty, Heck, Vargas, Gottheimer, Gonzalez of Texas, Lawson, San Nicolas, Tlaib, Porter, Axne, Casten, Pressley, McAdams, Ocasio-Cortez, Wexton, Lynch, Adams, Dean, Garcia of Illinois, Garcia of Texas, Phillips; McHenry, Wagner, Lucas, Posey, Luetkemeyer, Huizenga, Stivers, Barr, Tipton, Williams, Hill, Emmer, Zeldin, Loudermilk, Mooney, Davidson, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Gooden, and Riggleman.

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

Today's hearing is entitled, "Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau." I will now recognize myself to give an opening statement.

Today, this committee convenes for a hearing on the Semi-Annual Report of the Consumer Financial Protection Bureau (CFPB). Testifying today before the committee for the first time is the Consumer Bureau's new Director, Kathy Kraninger. The Consumer Bureau is the centerpiece of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which Congress passed after the financial crisis to provide America's consumers with a watchdog that would swiftly and effectively crack down on unscrupulous financial practices, products, and actors.

Under the leadership of former Director Richard Cordray, the Consumer Bureau was a tremendous success, returning nearly $12 billion to over 30 million consumers who were harmed, handling over 1.2 million consumer complaints about financial institutions, and making the financial marketplace stronger and fairer for all Americans. Because of the Consumer Bureau, American consumers no longer must worry about exploding mortgages, hidden prepaid

card fees, or unnecessary foreclosures due to weak servicing standards.

The Consumer Bureau has also helped to take the confusing jargon out of consumer lending by requiring clear disclosures from financial institutions and providing consumers with easy-to-understand materials to empower them to make the best decisions. However, despite the successes, congressional Republicans have done everything they can to stymie the Consumer Bureau's good work, and the Trump Administration has undertaken a sustained effort to destroy the agency. I am deeply concerned about the damage they have done.

During his tenure running the Consumer Bureau, Mick Mulvaney—who is currently Trump's acting Chief of Staff—took many actions that hurt consumers. Mr. Mulvaney closed the Office of Young Consumers, stripped the Office of Fair Lending of its ability to enforce fair lending laws, cozied up to payday lenders, gave lenders a free pass to abuse active-duty servicemembers and their families, and fired the Consumer Bureau's Consumer Advisory Board.

His mission was to dismantle the agency from within and he leaves behind no less than 12 political appointees who are continuing to cause damage. I am disappointed Mr. Mulvaney declined to respond to our invitation to testify here today. This committee still has serious questions for him, so I am expecting our new Director, Director Kraninger, to answer for him.

As chairwoman of this committee, I am committed to reversing the damage that Mr. Mulvaney caused, to ensure that the Consumer Bureau can resume its important work. That is why I have reintroduced my bill, H.R. 1500, the Consumers First Act, which restores the agency's supervisory and enforcement powers, and provides the transparency and accountability needed for the agency to carry out its important mission.

This committee will not tolerate the Trump Administration's anti-consumer actions and we will act to ensure that the Consumer Bureau is fully empowered to protect consumers. So I look forward to Director Kraninger's report on the Consumer Bureau's activity, and to discussing the agency's recent harmful proposal to undermine its payday rule, as well as the loss of more than 10 percent of agency staff, among other important issues. I also look forward to the second panel's testimony on how Congress can help ensure the Consumer Bureau is putting consumers first.

The Chair now recognizes the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes for an opening statement.

Mr. MCHENRY. Thank you, Chairwoman Waters, for yielding.

And Director Kraninger, thank you for being here. And thank you for your first testimony before this committee. Many of us have expressed serious reservations over the establishment of the CFPB. Those are still the initials, as you have re-established. Our concerns were driven by the fear that Congress was creating one of the most powerful and unaccountable bureaucracies ever; unfortunately, we were right.

For nearly a decade, America's small businesses, community banks, and families have experienced firsthand what an unaccept-

able agency looks like. Since 2011, the CFPB has run roughshod over due process and advanced a political, partisan agenda rather than serving as a place to help consumers.

Want to know whether the CFPB thinks the product is abusive? Well, the Bureau knows it when it sees it. And you will find out as soon as there is an enforcement action. Want to understand how to comply with financial regulations? Yes, you will see that, too, just wait and see if the Bureau's enforcement team visits you. It is called "regulation by enforcement" and it is a dangerous and destructive approach to supervision.

That is why we invited Scott Weltman on the second panel today. He is someone who fought Mr. Cordray's CFPB and its abusive practices and won. Several years ago, Mr. Weltman's firm was awarded a State contract by Ohio's then-Attorney General, Richard Cordray. Mr. Weltman's firm worked with Mr. Cordray on disclosure language and ultimately had his contract renewed.

The debt collection disclosures were acceptable to Attorney General Cordray, but not to then-CFPB Director Richard Cordray, who charged that Mr. Weltman's firm had harmed consumers by using the very disclosures he had previously approved. Now, keep in mind, there is no evidence of consumer harm and the Bureau had never promulgated standards on debt collection; yet, the Bureau still tried to extract $1 million from this firm because, well, they just didn't like the look of it. Is that how we are going to regulate? Is that a government standard? Is that best practices?

Despite the heavy-handed approach, Mr. Weltman decided to fight the CFPB in court and won. The good news is that it is a new day in the CFPB, and I welcome that. Under Director Kraninger's leadership, she has pledged to provide more transparency and stop the Bureau's ugly history of regulation by enforcement. And she has prioritized the importance of financial innovation to drive greater financial inclusion, which should be the core of the mission for the Bureau.

Director Kraninger, I applaud your commitment to innovation. I welcome your new leadership for this Bureau. The work being done by your Office of Innovation is very important and I hope you will continue to make it a priority.

Still, today you will face criticism from my friends on the other side of the aisle over some of the steps you have taken. The reality is that you have had unilateral authority to do whatever you want, and I am not sure everyone in this room thinks that is a good idea; they have a point.

While we have seen more transparency in the last year since the inception of the Bureau, the structure of the agency still alarms me. It is run by a single individual who has no real oversight or accountability. We expect that you will testify next year as well, and we are hopeful you will respond to letters in the meantime. That is not really the best way for us to have executive oversight.

The Bureau still has an unfettered line of credit with the Federal Reserve and there still isn't a CFPB Inspector General. It is not you, Director Kraninger, that has me worried, it is your successor, and your successor's successor, and what we do to American regulation going forward.

Good government should not be a partisan exercise. So to you I offer a welcome, and my hope that you will follow the rule of law and the letter of the law at the creation of the Bureau. But in spite of the improvements that we have sought legislatively, the Bureau still is in need of reform.

And to my friends on the other side of the aisle, I ask you to work with us to pursue sensible improvements to the CFPB. Let us not allow politics to distract the consumer protection that is so vital and so important and that we all hold so dear.

I yield back.

Chairwoman WATERS. Thank you.

The Chair now recognizes the subcommittee Chair, Mr. Meeks, for 1 minute.

Mr. MEEKS. Thank you, Chairwoman Waters, for calling this very important hearing.

An often-overlooked driver of the financial crisis was the failure of prudential regulators to identify and curb systemic patterns of consumer abuse. When Wall Street collapsed and businesses across the country began to fail, American families and consumers bore the brunt of the financial burden, losing their jobs, their homes, and what little savings they had. To address this systemically, we established the CFPB, an independent bureau focused solely on consumer protection.

And I am extremely concerned that actions taken since President Trump assumed office have undermined these central pillars of the organization. The independence of the CFPB is greatly undermined by the inappropriate injection of a dozen or more un-vetted senior political appointees, focused not on fulfilling the organization's mission but rather on political outcomes at the expenses of the American consumers. I hope that Director Kraninger will address this in detail and commit to remedy this promptly.

And I yield back.

Chairwoman WATERS. The Chair now recognizes the subcommittee ranking member, Mr. Luetkemeyer, for 1 minute.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Director Kraninger, we are happy to welcome to you to your semi-annual testimony before this committee, and to congratulate you as the newly confirmed Director of the Bureau of Consumer Financial Protection. The Bureau is a unique entity. As CFPB Director with no commission or board over you, you are accountable to no one. To quote your predecessor, Mr. Mulvaney, "The Director has a kind of absolute power which would frighten most of us."

In the past, my Democratic colleagues sang the praises of a CFPB Director's ability to independently lead the Bureau in its well-intended mission. Today, my colleagues are going to pick apart every single decision you have made or could make as Director, simply because President Trump appointed you.

Transparency and accountability are guiding principles of our American democracy, not the tenants of partisan politics. I trust that in your tenure at the CFPB, you will ensure consumers are well protected by prioritizing increased accountability and transparency in the actions of the Bureau and those it oversees. I congratulate you, again, on your well-deserved confirmation. I look for-

ward to working alongside you as you lead the Bureau to meet its mission.

And I yield back.

Chairwoman WATERS. Today, we have two panels. I want to welcome the first panel, the Honorable Kathy Kraninger, the Director of the Consumer Financial Protection Bureau. Ms. Kraninger has served as Director of the CFPB since December 2018 and is appearing for the first time before the committee.

Prior to assuming this position, Ms. Kraninger was Associate Policy Director at the Office of Management and Budget (OMB), where she was involved in overseeing the budgets of the Departments of Homeland Security, Justice, and Treasury, among others. Prior to her work in OMB, she served as a committee staff member for several Senate and House committees, finishing as Clerk for the Senate Appropriations Committee's Subcommittee on Homeland Security.

Ms. Kraninger, without objection, your written statement will be made a part of the record. You will have 5 minutes to summarize your testimony. When you have 1 minute remaining, a yellow light will appear. At that time, I would ask you to wrap up your testimony so we can be respectful of both the witnesses' and the committee members' time.

You are now recognized for 5 minutes to present your testimony. Thank you, Ms. Kraninger.

STATEMENT OF THE HONORABLE KATHY KRANINGER, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Ms. KRANINGER. Chairwoman Waters, Ranking Member McHenry, and distinguished members of the committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's most recent semi-annual reports to Congress. While the reports describe actions undertaken before I arrived, they provide a touchstone as we create the fresh outlook at the agency under my leadership.

This testimony appropriately takes place during National Consumer Protection Week. As such, I want to take a moment to thank the dedicated team at the Bureau. I am impressed by these exceptionally talented staff and their commitment to the mission.

I also want to recognize the many partners in our work, stakeholders in Congress, the media, financial institutions, educators, consumer advocates, as well as fellow regulators at the Federal and State level. Since my confirmation, I have been engaged in a listening tour to meet as many of those stakeholders as possible, including many of you, and those I just mentioned.

I have visited our regional offices in San Francisco, New York, and Chicago, interacting first and foremost with Bureau staff. In D.C., and in the field, I have held roundtables and met with consumer advocates, faith leaders, banks of all sizes, credit unions, non-depository financial companies, and innovators.

I have spoken with current and former members of the Bureau's Consumer Advisory Board, and many individuals who care about the Bureau, including Senator Dodd, Congressman Frank, and former Director Cordray. Hearing all perspectives is critical to

bringing the best thinking as we carry out our mission of protecting consumers.

The following gives you a flavor for the discussions I have been having. I have heard far and wide that the Bureau produces phenomenal financial education content. Stakeholders and the Bureau, however, are struggling with the challenge of measuring how education changes behavior and leads to action. I have talked to my examiners about working with institutions to build a culture of compliance and how supervision should be a more prominent tool in the Bureau's toolkit.

Also, on exams, financial institutions and non-bank lenders alike have noted the value of the exam process, as well as their interest in having clear rules of the road. State Attorneys General and bank supervisors have cited the valuable work that we have done together, particularly on enforcement actions. And I have heard from legal aid providers how they play whack-a-mole against bad actors until one of the Bureau's enforcement actions deters certain behavior.

As I look to wrap up my listening tour this month, I have pledged that these engagements will continue on a regular basis. As one example, I have invited all the members of this committee to visit the headquarters on Monday, May 20th. I hope that all of you will be able to participate in this event.

In the midst of the listening tour, I have also ensured that the ongoing work of the Bureau continues at-pace. I will highlight a few of our most recent actions.

First, I pledge to protect consumers from bad actors, and the Bureau's enforcement attorneys continue their work to that end. I have announced five enforcement actions since I started, including one against a payday lender that failed to prevent overcharges, and made harassing collection calls; and a second against an online lender that debited consumers' bank accounts without authorization, and failed to honor loan extensions.

Second, with the intent to maintain access to credit and ensure more choice for consumers in need of emergency funds, the Bureau is reconsidering the sufficiency of the evidence and analysis supporting the underwriting requirements of the short-term, small-dollar lending rule. We want consumers empowered to make their own decisions that best suit their individual financial needs and we want to make sure our evidence is sufficiently robust and reliable. I have an open mind on this matter and look forward to reviewing the comments and evidence that are submitted in response to our proposals.

During America Saves Week, I announced the Start Small, Save Up initiative to help promote the importance of savings among Americans. A simple message but one urgently needed, given a study that 40 percent of adults lack enough liquid savings to cover a $400 emergency expense. We have also issued a number of important reports, including our assessments of significant rules and some on consumer credit trends, as well as an analysis of suspicious activity reports on elder financial fraud.

Last, I have spent significant time understanding the Bureau's operations and looking at ways to improve delivery of the Bureau's mission. With the incredible flexibility that Congress has provided

this agency, I feel a deep sense of responsibility for ensuring we become a model for efficient and effective use of resources in delivering that mission.

Looking ahead, I will be setting our priorities for the Bureau, including setting the tone for how we will operate as an agency. I expect to emphasize stability, consistency, and transparency as hallmarks as we mature the agency and institutionalize the many partnerships that are key to our success in protecting consumers. I am also examining how we can best utilize all of the tools that Congress has given this agency, broadening our efforts to focus on prevention of harm is a primary goal for our actions.

Thank you, again, for the opportunity to present the CFPB's work to you and to provide you with an update on the activities so far in my tenure. I would be happy to answer your questions.

[The prepared statement of Ms. Kraninger can be found on page 150 of the appendix.]

Chairwoman WATERS. Thank you very much, Ms. Kraninger.

I want to start by recognizing myself for 5 minutes for questions. My first question has to do with fair lending.

Mr. Mulvaney's tenure at the Consumer Bureau was extremely harmful to consumers. In just over a year, the Consumer Bureau's staffing was reduced by more than 10 percent, and public enforcement actions dropped nearly 70 percent from 2017 to 2018. In addition, there was zero fair lending public enforcement actions taken during Mr. Mulvaney's tenure.

Perhaps that should not come as a surprise since he stripped the Office of Fair Lending and Equal Opportunity of its supervisory and enforcement powers, and he installed a political appointee with a well-documented perspective, who is not worthy of overseeing fair lending enforcement.

Director Kraninger, I have several questions for you. Given the lack of fair lending public enforcement actions since Mr. Mulvaney's tenure, does the Consumer Bureau have any ongoing fair lending investigations that have been initiated since you became Director?

Ms. KRANINGER. Chairwoman Waters, I can assure you that fair lending is a continuing priority in the Bureau. Supervision and enforcement work is ongoing. Many of the examiners and enforcement attorneys who did that work prior to the transition continue to do it.

Chairwoman WATERS. Ms. Kraninger, I am going to interrupt you—

Ms. KRANINGER. There are currently open investigations—

Chairwoman WATERS. I am going to interrupt you and reclaim my time.

Ms. KRANINGER. Yes.

Chairwoman WATERS. I am asking you a direct question. I am asking you, does the Consumer Bureau have any ongoing fair lending investigations that have been initiated since you became Director?

Ms. KRANINGER. There are—

Chairwoman WATERS. Yes or no?

Ms. KRANINGER. —ongoing investigations in the fair lending space—

Chairwoman WATERS. Has the Bureau initiated any lending investigations since you became Director? Not ongoing ones. I want to know what you have done since you have been there.

Ms. KRANINGER. Generally speaking, the opening of an investigation is actually a decision made by the enforcement—by attorneys.

Chairwoman WATERS. Excuse me. I am going to reclaim my time. What you are saying is, "no."

Ms. KRANINGER. I am actually saying enforcement attorneys make the decision to open an investigation.

Chairwoman WATERS. I am saying that you are not able to answer the question by saying that there have been fair lending investigations that have been initiated since you became Director, that you know about.

Will you restore the Office of Fair Lending and Equal Opportunity's supervisory and enforcement powers?

Ms. KRANINGER. The ongoing work of the Bureau in enforcement and supervision of fair lending laws continues. The change with respect to where the Office of Fair Lending is and bringing that into the office of the Director, I believe, facilitates the larger policy interests and considerations for outreach and education, and brings fair lending—again, broadening it across the agency to make sure that we are focused—

Chairwoman WATERS. Thank you very much.

Ms. KRANINGER. —absolutely on that mission.

Chairwoman WATERS. Do you believe that there is a need to restore the Office of Fair Lending and Equal Opportunity's supervisory responsibility and powers? Do you believe that it has been weakened and that it needs to be restored?

Ms. KRANINGER. I believe that it has indeed been strengthened, Madam Chairwoman, with the Director's office—

Chairwoman WATERS. Do you believe that it needs to be restored because of what Mr. Mulvaney has done? And will you do it?

Ms. KRANINGER. I believe that the importance of fair lending has actually been enhanced by the change in the organization.

Chairwoman WATERS. So you are saying that you do believe that there is a need to restore it and you will do that, is that right?

Ms. KRANINGER. I commit to you that fair lending continues to be a strong priority.

Chairwoman WATERS. I am asking you, do you believe that it needs to be restored and that you will do it? You will restore the Office of Fair Lending and Equal Opportunity's supervisory and enforcement powers. Will you do that?

Ms. KRANINGER. The mission of fair lending has been enhanced by the reorganization, in my perspective.

Chairwoman WATERS. I am going to move on. Mr. Mulvaney appointed Eric Blankenstein to oversee supervision and enforcement, including fair lending enforcement, even though many of his colleagues at the Consumer Bureau believe his blog posts uncovered by The Washington Post and The New York Times were racist, and that these posts directly conflict with the agency's mission and responsibility.

Let me quickly review some of the racist and reprehensible comments that he has written. I will not repeat them all, but let me just ask, are you aware of this comment on the University of Vir-

ginia's honor code and acting against hate crimes? He wrote, "Until a hood-wearing KKK member is caught, why should the honor system be changed?" Are you aware of that?

Ms. KRANINGER. Chairwoman, I have read what is—

Chairwoman WATERS. Are you aware of that? Please, Ms. Kraninger, just answer the question.

Ms. KRANINGER. I have read what is reported by the press. All of this took place in his—

Chairwoman WATERS. Oh, so you know that the press has indicated that this was something that he said, you are aware of that?

Ms. KRANINGER. I have read what has been covered in the press, I would also—

Chairwoman WATERS. And so you are aware of the fact that this was reported in the press. You have seen, heard or you know about that, is that correct?

Ms. KRANINGER. That is correct and I would—

Chairwoman WATERS. Okay. Thank you.

Ms. KRANINGER. There is an ongoing investigation on it.

Chairwoman WATERS. That is all I need to know. Here is another quote, fine, let's say they called him the n-word, this is a quote from him, "Would that make them racists, or just an a-hole?" Are you aware of that quote?

Ms. KRANINGER. Chairwoman, I have stipulated that I have read the press reporting on this matter and—

Chairwoman WATERS. Okay. Then you are aware—

Ms. KRANINGER. —it preceded my time at the Bureau.

Chairwoman WATERS. You are aware that that has been quoted. Thank you very much. We will continue to move on.

Mr. McHenry, the ranking member, the gentleman from North Carolina, is recognized for 5 minutes.

Mr. MCHENRY. Director, I said in my opening statement that the design of your Bureau, you have a fixed term of office, and absent—as the courts have found and the statute pertains—some exceedingly grievous act, you can't be removed from office. So the Bureau, as designed by my Democrat colleagues without Republican votes in the Dodd-Frank Act, designed this Bureau to be unaccountable.

The chairwoman spent time, I would say, badgering you about the design of offices within your Bureau that are fully within the purview of you as Director to design. So let me just drill in on this question of independence of your Bureau. Would you describe, as you see it, what Dodd-Frank, the Act that created the CFPB and your office, gives you the power to do?

Ms. KRANINGER. Congressman, as you stipulated, there is tremendous authority that Dodd-Frank vests in the Director of the Bureau, including related to the organization of the Bureau itself. Section 1012 stipulates that the Director has the flexibility to organize the Bureau as it sees fit. Many of the sections of the Act stipulate that the authority is vested, in fact, in the Director and certain activities can be delegated further at the Director's discretion.

Mr. MCHENRY. Okay. So that does include the power to make decisions as to staffing?

Ms. KRANINGER. Yes.

Mr. MCHENRY. Does it include limitations on political appointees or no limitations on political appointees?

Ms. KRANINGER. Dodd-Frank reiterates the powers to the Executive Branch under Title V for the hiring authorities that are there.

Mr. MCHENRY. So does that include the availability of a consumer complaint database?

Ms. KRANINGER. Yes, it does. There is a responsibility to collect consumer complaints, and Dodd-Frank stipulates some ways that those complaints should come to the Bureau.

Mr. MCHENRY. Okay. Does that include redesigning offices within the Bureau, to the question of the chairwoman?

Ms. KRANINGER. Yes, it does.

Mr. MCHENRY. So you have that capacity to change the structure of the offices that report to you as Director?

Ms. KRANINGER. Yes. There are some offices that are listed in the statute that shall exist, but, again, there is flexibility with respect to which responsibilities go to those.

Mr. MCHENRY. So absent a change of statute, you have that flexibility on reporting structures?

Ms. KRANINGER. That is correct.

Mr. MCHENRY. Okay. And as you highlighted, you think this reporting structure that you currently have is better than what you previously saw?

Ms. KRANINGER. With respect to fair lending, I do believe that. Again, the purpose was to enhance the prominence of that as part of the Bureau's mission. In the office of the Director, as in many other agencies across the government, putting that in the front office is something that actually enhances the ability of that office to influence the other activities and coordinate activities across the entire agency.

Mr. MCHENRY. And you also have flexibility on the membership and structure of the Consumer Advisory Board, do you not?

Ms. KRANINGER. Yes, the statute does stipulate some skill sets that must be present in the membership but there is much flexibility there.

Mr. MCHENRY. Okay. Have you had a chance to review the Consumers First Act that the chairwoman has offered?

Ms. KRANINGER. Yes, I am generally familiar with it. We are still looking at it. I know it is similar to, in some ways, a previously introduced legislation—

Mr. MCHENRY. And it seems as though that legislation mandates specifics on every one of the questions I just asked, does it not?

Ms. KRANINGER. I believe that it does.

Mr. MCHENRY. But you could also implement all the changes within this legislation without the bill getting signed into law, could you not?

Ms. KRANINGER. Some of them, certainly, with respect to organizational issues you raised, yes.

Mr. MCHENRY. So if we are talking about the Democrat message today, it is that you are an independent Bureau but we don't like you, right? It is a very confusing thing when we see legislation to get into your space and interfere with your independence, right?

We are talking about the broad structural challenges at the CFPB we see and how that impacts consumers. So I think we just

have a fundamental debate here within Congress that is a debate for us as lawmakers to make.

You need to act under the statute as designed, not based off of what is being yelled at you via a congressional hearing. We would like for you to hear our input. Unfortunately, in the design of your statute, you don't have requirements to do so.

I want to change that statute so that we have a structure that is a bipartisan board, a structure that puts you on budget, but that is something that is for me to fight about, not you. You are the Director and you have a statute to operate under. The final thing I would ask for is one final—commensurate with your time, chairwoman—question about innovation.

We had a hearing last week about consumer credit reporting agencies. In your written testimony, you say the number one consumer complaint in 2018 was about consumer credit reporting agencies. Do you believe that innovation in the marketplace and competition can create better options for consumers?

Ms. KRANINGER. As a general matter, absolutely, yes.

Chairwoman WATERS. The gentleman's time has expired.

Mr. MCHENRY. Would you please let her finish answering the question? I didn't hear, if you—

Chairwoman WATERS. I will give you that courtesy. You know the time has expired, but I will give you that courtesy.

Mr. MCHENRY. I would give the witness that courtesy.

Chairwoman WATERS. I will give it to you; you are asking for it, for the witness.

Ms. KRANINGER. As a general matter, the answer to that question is absolutely, yes, Congressman.

Mr. MCHENRY. Thank you.

Chairwoman WATERS. Thank you very much.

The gentlewoman from New York, Mrs. Maloney, the Chair of our Investor Protection Subcommittee, is recognized for 5 minutes.

Mrs. MALONEY. Thank you, Chairwoman Waters, and Ranking Member McHenry. And thank you, Chairwoman Waters, for introducing yesterday the Consumers First Act.

Welcome, Director Kraninger.

Director Kraninger, the Consumer Bureau published a study on overdraft fees in 2014. Are you familiar with this study?

Ms. KRANINGER. Congresswoman, we had a very nice conversation about this. I did go back and look at the overdraft reports we have issued. I can't say I will be able to recite every fact from them, but I have a general familiarity.

Mrs. MALONEY. Do you have any reason to question the numbers in that study? Have you reviewed the study and found any factual errors?

Ms. KRANINGER. I know that the Bureau continues to look at this issue from a research standpoint. But I would stipulate that we are continuing to look at the issue.

Mrs. MALONEY. Okay. Well, let me just remind you that the Bureau study found that most overdraft fees are incurred on purchases of just $24 or less and are paid back within 3 days. But the median overdraft fee for these small overdrafts is still a whopping $34. So if I overdraft with a cup of coffee, my fee would be $34.

Now, if you borrowed $24 for 3 days and paid $34 in interest, do you know what the annual percentage rate on that loan would be?

Ms. KRANINGER. It would be substantial, certainly.

Mrs. MALONEY. Yes, it is. I will tell you exactly what it will be. It is an annual percentage rate of about 17,000 percent.

So my question is, given the Consumer Bureau's own research on overdraft fees, which you don't dispute, do you plan to do anything about these excessive overdraft fees? Do you plan on a rulemaking on overdraft?

Ms. KRANINGER. Congresswoman, I absolutely appreciate where you are coming from on this issue and know that you have spent a lot of time on this issue. I have asked the staff about this topic per our conversation. We are actively looking at what the priorities are for the rulemaking agenda. I commit to you that this is certainly on the table in terms of what we would look at and when we can get to it.

Mrs. MALONEY. Thank you. I want to ask you about the Credit CARD Act, which I authored along with many Democrats on this committee. In that bill, we required the Consumer Bureau to do a study on the credit card market and the impact of the CARD Act every 2 years.

Now, the bill cut down on unfair, deceptive practices but we wanted a report on what it meant. When the Bureau published its CARD Act study in 2015, it estimated that the bill had saved consumers roughly $16 billion in unnecessary fees and that credit had actually become more available and more affordable. I call this the "Democratic stimulus package" because it kept the money in the consumers' hands.

But when the Bureau published its latest CARD Act study in December of 2017, it removed that estimate of how much the bill has saved consumers. So my first question is, why did the Bureau remove that estimate?

Ms. KRANINGER. Well, Congresswoman, I am, again, generally familiar with this issue. I knew you would ask this question about it and I understand your concern. My understanding is that there was an assessment of what is required under the statute to be reported and that was what is included in the report.

Mrs. MALONEY. Okay. Well, do you believe that the CARD Act has saved consumers money?

Ms. KRANINGER. I will say I have not spent detailed time on that topic, but I take you at your word in terms of what the prior reports say.

Mrs. MALONEY. Well, $16 billion a year. That is a lot of money.

Now, in the Consumer Bureau's recent payday loan proposal it said that one of the reasons it was removing the ability-to-repay requirement was that it "does not believe it is cost-effective for itself and for lenders and borrowers to conduct the necessary research" to determine whether an ability-to-repay requirement is necessary.

By refusing to even do the necessary research, you are basically putting your head in the sand, which I think is totally inappropriate for the agency charged with protecting consumers. Will you commit to doing the necessary research on the need for an ability-to-repay requirement for payday loans before finalizing the Bureau's revision to the rule?

Ms. KRANINGER. Congresswoman, as I know I will discuss extensively, and as I mentioned in my opening statement, the review of the short-term, small-dollar lending rule does look at the sufficiency of the legal arguments as well as the fact basis. That proposal is out for open comment right now under the Administrative Procedure Act. We welcome all of the comments and data and we will certainly look at the full record going forward once all that information is in—

Chairwoman WATERS. The gentlelady's time has expired.

Mrs. MALONEY. Okay. I yield back.

Chairwoman WATERS. The gentlelady from Missouri is recognized for 5 minutes, Mrs. Wagner, the vice ranking member.

Mrs. WAGNER. I thank the Chair.

Protecting consumers is one of my most important missions. But the Consumer Financial Protection Bureau deprives consumers of necessary choices and complicates access to financial products. Director Cordray's CFPB abused its power and it issued regulations that make it more difficult for consumers to qualify for a mortgage, obtain auto loans, and access forms of credit. It is imperative that this committee exercises oversight over the CFPB to reign in abuses. And I can't tell you how much I am looking forward to your leadership, Director Kraninger.

Director Kraninger, thank you for your testimony and, again, your leadership at the CFPB. You took the helm in December, and have since taken what I believe to be a thoughtful approach to the duties of an agency that many of my colleagues, myself included, believed to be unconstitutionally structured.

You have conducted a 3-month listening tour to hear from State regulators and consumer advocates, and to talk with your employees to see what is working well and what isn't. What have you discovered through these discussions in terms of how to ensure the Bureau is actually helping consumers and not abusing its powers?

Ms. KRANINGER. Thank you for that question, Congresswoman; it is a really central one to what I am trying to do in hearing from all perspectives on this matter. I think, again, protecting consumers is our mission and I have been truly impressed by the staff who are there, and are truly dedicated.

I have had a lot of discussions with our own examination staff, understanding even the most mundane pain points that they are experiencing from how they have to manage their travel. That is time away from the mission and that is my focus on how we best utilize our resources. It is, again, how do we make sure that every dollar is actually going to protect consumers and not towards administrative activities, bureaucratic things that are standing in people's ways. So certainly, they have raised those issues.

I have talked to educators about the most effective ways to get the American people and the public to understand better the products and services they are interacting with, how to help Americans make the best financial decisions for themselves in their own lives, and to give them the information that they need to do that, and carry out all the missions of the Bureau, of which there are many.

Mrs. WAGNER. When your predecessor appeared before this committee last April, he was very blunt. And he described the scope of his individual authority and power as Director, explaining at the

outset that he could, if he chose, decline to answer any questions from committee members or refuse even to appear at all. Because the plain reading of this failed statute does not require it.

He went on to describe the Director's sole authority and complete discretion to define entire classes of financial institutions and products, to target regulations and enforcement actions as he alone saw fit.

In your read of the law, do you as Director have unfettered power and authority?

Ms. KRANINGER. Congress vested tremendous power and authority and responsibility in the Director, yes.

Mrs. WAGNER. Which is something that we, here in Congress, need to fix. How will you approach the directorship to best serve Americans, and what tools does the Bureau need from Congress to be successful in following through with your mission to end the era of regulation by enforcement?

Ms. KRANINGER. I appreciate that question, Congresswoman. We have, certainly, a very important responsibility to establish clear rules of the road. As I noted, I have heard that from industry; in some respects, I have heard that from the examiner's staff as well, making sure that they can hold institutions accountable and to have clear rules and ensure a culture of compliance in the way that they are operating.

So that is something that I am looking at very carefully. I don't have a specific ask of Congress to that point. There is a lot of flexibility in how we do things, but the law is certainly our touchstone in terms of what we undertake for supervision.

Mrs. WAGNER. I thank you for your answers. I thank you, again, for your leadership. We look forward to your leadership, moving forward. You do not deserve to be berated or badgered; you are a fine public servant, and I appreciate all of the work that you are doing.

It is Congress' job to change the statutory authority and rein in the CFPB. I thank you, and I yield back.

Chairwoman WATERS. The gentlelady from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Madam Chairwoman. Director Kraninger, I was here for the passage of Dodd-Frank. We designed the CFPB to be an independent organization, outside the influence of Congress and, most importantly, from the Executive Branch.

At his appearance before the committee last year, I expressed my concerns to Mr. Mulvaney about his dual roles at OMB and the CFPB. Given your previous employment at OMB, and your reported close ties to Mr. Mulvaney, I feel it is necessary to ask you a similar set of questions.

First, how many conversations have you had with Mr. Mulvaney since being confirmed as Director of the CFPB?

Ms. KRANINGER. I have certainly seen Mr. Mulvaney several times socially since I was confirmed.

Ms. VELAZQUEZ. Okay. So no conversations—

Ms. KRANINGER. I have seen him socially. I can assure you, if where you are going is about the independence of my decisions—

Ms. VELAZQUEZ. Yes, correct.

Ms. KRANINGER. I can tell you that I absolutely take seriously the responsibilities vested in me, and that the decisions that I make at the Bureau are my decisions.

Ms. VELAZQUEZ. Reclaiming my time, how many conversations have you had with President Trump since being confirmed as Director of the CFPB?

Ms. KRANINGER. None.

Ms. VELAZQUEZ. Has the President given you any directive that you felt interfered with your authority as an independent regulator?

Ms. KRANINGER. No.

Ms. VELAZQUEZ. Has Mr. Mulvaney or any other person from inside the Trump Administration given you a directive that you felt interfered with your authority as an independent regulator?

Ms. KRANINGER. No, definitely not.

Ms. VELAZQUEZ. Have you been to the White House since you have been sworn in as the Director of the CFPB?

Ms. KRANINGER. I went there for one social event.

Ms. VELAZQUEZ. Just one social event. Have you conducted official CFPB business from within the White House since you have been sworn in?

Ms. KRANINGER. I have only been there once for a social event.

Ms. VELAZQUEZ. Okay. Director Kraninger, last week The Washington Post published an article describing how a lawyer with ties to the payday lending industry directed a report which concluded that repeatedly taking out payday loans didn't harm borrowers, and then later discussed those results with a CFPB economist.

First, is it your continued position that the CFPB was not influenced by the payday lending industry lobby on the issue as you were reconsidering the rule?

Ms. KRANINGER. I also saw the article you referenced by The Washington Post. I have never heard that person's name before. I can tell you that in the entire history of the prior rulemaking in addition to this one, the Bureau has taken input from all kinds of stakeholders.

Ms. VELAZQUEZ. Okay. Thank you. Specifically, what evidence and academic research did the CFPB use in its recent determination to rescind the original rule?

Ms. KRANINGER. The reconsideration of the rule is driven by a concern about the legal and factual sufficiency of the determination of unfairness and—

Ms. VELAZQUEZ. Legal interpretation is not influenced by the report by the payday lending industry, so tell me, what evidence did you use? What report or study did you use as you were rescinding this rule?

Ms. KRANINGER. Again, it is a proposal, so we are in the comment phase and we welcome all comments and evidence as we have stipulated, and I continue to stipulate publically, there is a decision to make on the full docket but as a result of what was the reconsideration—

Ms. VELAZQUEZ. Okay, so no research and no study.

I would also like to point out for the record that the Community Financial Services Association, which is the trade association for

the payday lending industry, held their 2018 Annual Conference at the Trump National Doral Club in Miami.

So maybe it is true that the CFPB was not influenced by the payday industry when making its determination to rescind the rule, but holding their conference at the President's golf club, and the Director's prior connection to Mr. Mulvaney certainly gives the appearance of impropriety and corporate influence.

I yield back.

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

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

Not a single person in this room, I believe, would suggest that consumers shouldn't be protected from unfair practices in dealing with financial institutions to obtain the products and services that they need.

But I regret to say that the history of the Bureau and the legislation that created it has caused many of us pause to see what we feared when Dodd-Frank was actually passed.

The Bureau gets direct funding from the Federal Reserve and it is completely outside the oversight of the annual appropriations process. The history of the Bureau under Mr. Cordray has received just criticism for the heavy-handed way that it regulated through enforcement.

Consumer protection is important, for sure, but when it is pursued with excess intimidation as it has been, the very consumers we seek to protect suffer a decline in services as financial institutions face negative incentives and crippling uncertainties to take risks and serve the public. The power to regulate should not become the power to destroy. I am pleased former Acting Director Mulvaney had a year to right the ship and curb the excesses, or many of them. And I look forward to your leadership and to the moderate and temperate protection of consumers.

Director Kraninger, in the last Congress I sponsored the Bureau Advisory Opinion Act that was ultimately included in the House financial package, the CHOICE Act that passed on the House Floor. As you know, Federal regulations can be complicated and hard for smaller businesses to comprehend unless agencies are willing to offer guidelines.

They can say, we want this done in red. And we know there are a thousand different shades of red, from fire engine red to Ferrari red and 998 more others in between. And the agency seemed to get some kind of thrill out of saying, "Oh, you chose the wrong red."

And so, the advisory opinions, I would suggest, would let people know specifically which red, just for example, you were talking about. Many Federal agencies already do that. And we had hoped the CFPB would on its own do that but they refused to, said there was no need. I don't believe that is true.

I was just wondering if you would consider implementing such a rule administratively?

Ms. KRANINGER. I appreciate the question. Because, again, the clarity of what the rules are and ensuring that institutions who are seeking to comply and working to comply know what those rules are, is critically important.

We need to spend time taking enforcement actions against those true bad actors who have no intention of complying, and that is where the focus should be on the enforcement front. That is why we have a great supervision tool; we have regulatory authority to provide the clarity you are discussing.

Mr. POSEY. Well, thank you.

Before us today, we have a bill called the Consumers First Act. Now, most of the text of this bill is a set of findings, including a long list of complaints about Mr. Mulvaney's tenure as acting Director.

One of the complaints is that he had the nerve to create an Office of Cost-Benefit Analysis to see actually what the cost was to consumers for the alleged benefits that they receive on the other end. Many, many other agencies have those. President Reagan issued such a directive. President Clinton and President Obama continued along that same line. And it seems like applying the same principle to the Bureau regulations makes sense to me. Can you comment on that principle?

Ms. KRANINGER. Absolutely, I agree that it is an important principle in the way the government should operate in looking at the costs and benefits, and weighing those, and quantifying them.

To the extent that there is an opportunity to do that, really laying those out is a core part of every part of analysis that we should be doing with the Bureau's activities. I am certainly looking to do that moving forward, and working with the staff about how we do that best and how we best organize to do that.

Mr. POSEY. Well, I want to thank you for your direct answers, and I want to apologize for some of the contentious approaches, antagonistic approaches toward you today. Keep up the good work.

I yield back, Madam Chairwoman.

Chairwoman WATERS. The gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. Thank you for being here, Director.

Dodd-Frank Section 1022 allows the Bureau to exempt certain classes from rulemaking at its discretion or to have one rule applied to the giant institutions and a separate rule applied to smaller institutions, or even small or medium-sized institutions. And I would hope that as you go through the process, whether it is reviewing older regulations or promulgating new ones, that you fully use that power because it was not the intent of Congress that one size would fit all.

I want to draw your attention to what are called PACE loans, the property assessed clean energy loans. We are all for clean energy, but even if you are buying an improved air conditioning system that will help save the planet, you still should be protected from any kind of loan document that you don't fully understand, and that is why the Economic Growth and Regulatory Relief and Consumer Protection Act has led to you issuing regulations dealing with PACE loans.

I know that you have issued the advanced notice of proposed rulemaking on this issue. I hope you will give it a high priority and move it forward. But if it is still germane, I hope that you would consult with California Commissioner of Business Oversight Jan Owen. These loans started in California. We have had a wealth of

experience, we have passed legislation, and I think that it can provide you with additional input.

Ms. KRANINGER. Thank you, Congressman. If I may on that, I actually have met with Jan, and spoke to her about this topic, and I appreciate what California has done on it. We are working very closely together on it.

Mr. SHERMAN. Thank you. Because these things come in as, in effect, something higher than a first trust deed.

And another issue that has confronted us is wire fraud. I had a chance to—when Jay Powell was there at the Fed, this is both a bank regulatory issue and consumer protection issue. What happens is people are buying a home, so they know they are going to be wiring a bunch of money to somebody. Somebody hacks their account, impersonates the home seller, and gets them to wire the money to the Bahamas, Peru, or Saint Petersburg.

So I hope that you, along with the bank regulators, would look at what we can do. What Britain has done is payee identification, so that when you wire money you are not just wiring it to a numbered account. You are wiring it to a numbered account that must be held in the name of the person you are trying to send the money to. And I hope that you would view that as a consumer protection issue.

We have had some recent court decisions that have been helpful in interpreting the Real Estate Settlement Procedures Act (RESPA). Will the CFPB work to eliminate the uncertainty that led to this litigation to begin with, and issue new regulations, particularly in light of the new judicial decisions?

Ms. KRANINGER. Congressman, I think you are talking about the TILA–RESPA Integrated Disclosure? Or is there a particular RESPA issue that perhaps I am not as familiar with? The disclosures that Congress directed us to do a rulemaking on, combining the Truth in Lending Act and Real Estate Settlement Procedures Act disclosures process and that is a rulemaking that I have heard from stakeholders that there are perhaps some questions or clarifications that we need to deal with. So that is something that we are looking at.

Mr. SHERMAN. I hope that you would look at whether to modify or withdraw the 2015 RESPA bulletin which has been problematic, and I believe that recent court decisions point to different conclusion than that document.

With that, I will yield back, unless you have any further comments?

Chairwoman WATERS. Thank you, the gentleman's time is almost expired. You have 20 seconds.

Ms. KRANINGER. Congressman, no, I appreciate the issues you have raised and they are certainly all the ones that I am looking at. I am not familiar with that 2015 RESPA bulletin but we will go back and look at it.

Mr. SHERMAN. We will get you some material. Thank you. I yield back.

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

Mr. HUIZENGA. I thank the Chair for that, and it's good to see you, Director Kraninger.

How do you define success for the Bureau?

Ms. KRANINGER. I am obviously listening right now to a lot of different stakeholders to hear their perspectives. I am starting to think around a philosophy of focusing on prevention of harm. Again, we have tremendous tools and powers that Congress gave us to drive to that end.

There are certainly institutions that are also motivated to support their customers and consumers and prevent harm. That is what is going to be what is best for consumers at the end of the day. I think that is certainly, again, a goal that I have that doesn't take away from the fact that we know there are bad actors who absolutely are seeking to take advantage of and engage in unfair practices that need to be addressed.

But I think that is the kind of message and the power that I think the Bureau can bring forward.

Mr. HUIZENGA. So it is not just the Bureau that is concerned about consumers?

Ms. KRANINGER. No, a myriad of stakeholders are, as I have heard across the country and certainly here.

Mr. HUIZENGA. Should success be defined by the number of complaints that the Bureau receives or the number of fines or the amount of those fines or the number of employees that the Bureau has? Should that be the standard? Because that is what we heard earlier.

Ms. KRANINGER. I do not believe any of those measures alone tell the story that is important to tell.

Mr. HUIZENGA. Because I kind of think it would be nice to have fewer complaints and fewer reasons to have these complaints coming in. And, in fact, you had kind of the closing statement in your testimony that prevention of harm was a primary goal. And I want to commend you on that. Because I think that really ought to be the goal. Not the number of paychecks that are collected by CFPB employees but about the number of people who don't need the services of the CFPB, that ought to be your measurement.

I have a background in real estate and construction, and something that has been an issue that I have been dealing with for a number of years now, or a number of Congresses, has been on points and fees. You certainly have a qualified mortgage situation, and I am concerned that there is a difference without a distinction that we have here with affiliated and unaffiliated companies, and the distinction that that this causes is for first time homebuyers especially, but all homebuyers, to potentially be paying more in costs, not less in costs.

And I think it stems from a lack of understanding of exactly how the mortgage industry—title insurance industry works. It may be one way in Massachusetts where lawyers are doing this but it is very different in Michigan where everybody has to charge the exact same amount for title insurance.

And in addition to this affiliated/unaffiliated distinction, because of vagaries in the Dodd-Frank Act, escrowed homeowner's insurance premiums may count as points and fees in this, which makes absolutely no sense and is not even connected to any of the affiliation or non-affiliation.

The Bureau has repeatedly asked Congress to deal with this; we have attempted to deal with it; I certainly have attempted to deal with it in this committee, and this committee has moved forward on a few of those things.

But, in the meantime, I am curious what the CFPB is doing to help these smaller companies, especially these title insurance companies, compete in the mortgage lending space while we are working on a legislative fix. And do you agree that supporting these businesses actually increases access to mortgage credit and consumer choice and, therefore, lowers those costs for those buyers?

Ms. KRANINGER. Certainly, access to credit and the cost to consumers are key considerations. I know through the request for information that we have put out and the call for evidence, there were a lot of ideas on reducing regulatory burden.

I believe we received 1,750 comments specific to that, including on the issue that you raised. So there are a number of regulatory issues that, to the extent we have the authority, we certainly are looking at how we can prioritize and act on them.

Mr. HUIZENGA. Are you considering changes to that 3 percent cap as you review the QM?

Ms. KRANINGER. That is something we have been asked to reconsider. It is something I am talking to the staff extensively on the issues that are—

Mr. HUIZENGA. Okay. Well, please do. And, by the way, let's get into the structure of the CFPB. That is all we can do is request. Because the way that my friends—I wasn't here for the passage of Dodd-Frank but I am living with the echo effects. And I guess for some folks, a double standard is better than no standard. Before, they wanted no accountability for this Bureau; now, they want all of the accountability in Congress. I hope that they will be working with us on this side, who have been consistent in asking to make sure that we have the same type of structure in place for the CFPB—

Chairwoman WATERS. The gentleman's time has expired.

Mr. HUIZENGA. —as other agencies. I yield back.

Chairwoman WATERS. The gentleman from New York, Mr. Meeks, the Chair of our Subcommittee on Consumer Protection and Financial Institutions, is recognized for 5 minutes.

Mr. MEEKS. Thank you, Madam Chairwoman.

Madam Director, let me ask first, how many career staff are on board currently with the CFPB?

Ms. KRANINGER. We have a total of just about 1,500 employees on staff now. That is roughly the number.

Mr. MEEKS. Okay. Well, have you worked with any of the career staff members there, sort of the upper echelon?

Ms. KRANINGER. I have made it a priority to meet as many as I possibly can. I would venture to say I have met with hundreds of the staff to date, including in New York and Chicago and San Francisco, how could I forget.

Mr. MEEKS. So would you say that many of the career staff who are there came because they were motivated and dedicated, had some background with regards to consumer protection?

Ms. KRANINGER. I have found all the staff to be truly dedicated and committed and, frankly, a very talented staff.

Mr. MEEKS. And do you rely upon them?

Ms. KRANINGER. I absolutely rely upon them.

Mr. MEEKS. And have you heard about any dissatisfaction? Because I understand that at least 10 percent of them have left.

Ms. KRANINGER. I can tell you that certainly there are people—

Mr. MEEKS. Low morale.

Ms. KRANINGER. —who reported—I'm sorry, the?

Mr. MEEKS. They have low morale since Mr. Mulvaney has been there, and now you.

Ms. KRANINGER. Yes, certainly it is natural for people to depart from an agency. I can give you an example. I actually knew a number of the chiefs who departed recently and knew their reputation, they knew me—

Mr. MEEKS. But I am just trying to—

Ms. KRANINGER. They were moving on for again their own time. They would have been there for 5 or 6 years—

Mr. MEEKS. I am just trying to find out, because when I look at your background, for example, prior to this job, you never had an interest in consumer protection. You have not done anything in that regard, correct?

Ms. KRANINGER. I am a consumer and I would definitely stipulate I have—

Mr. MEEKS. No, no. You have never had as a motivation as far as your career is concerned, or any of your ambition or anything that you have done previously has not related to consumer protection.

Ms. KRANINGER. Certainly, I have had an extensive public service career and one that I take seriously. And I welcome the opportunity to do this job.

Mr. MEEKS. I think the answer to that is no, just looking at your resume. And it is a fine resume. But this is a serious agency, correct? And, you agree with that, that the agency's focus should be on consumer protection and you have hired or there had been hired a number of individuals who interviewed and went through an interview process.

And they were evaluated based upon their expertise in consumer protection and how they could fulfill their roles. Is that not correct?

Ms. KRANINGER. I would hope that everyone who was interviewed—

Mr. MEEKS. I would hope so also.

Ms. KRANINGER. —was actually looked at from the lens of their interest in the mission.

Mr. MEEKS. Good.

Ms. KRANINGER. And carrying out their responsibilities—

Mr. MEEKS. So, correct. So, when you also see that—because it has been reported that there are a number of individuals—I look at Mr. Brian Johnson. I guess he is your number two, correct?

Ms. KRANINGER. He is the acting Deputy Director, yes.

Mr. MEEKS. Right. And when I looked at his resume, I also see that there is nothing in there that he has ever done that has resulted from a desire and an opportunity to help and be involved in consumer issues.

Now the reason I asked that question is because if you look at any of our other regulatory agencies, you would always find at the

top of those agencies, someone who has done something and has worked in those areas for an extensive period of time.

Because I would imagine that a President of the United States, in putting whomever they put in, they would put someone in who has experience in that area.

Now, if you don't want a—or don't consider an agency to be significant and important because the mission of this agency is consumers, then you put in someone who may not have that experience. Generally, you would work your way up.

From the way I look at it, though, I don't see anyone now, I saw before those who had some experience, were in the top of the chain at 10 percent. Most of those who left weren't those guys on the bottom, they were those on the top who came there because their mission in life was to make a better way.

And now they felt that under the current leadership, they cannot perform their jobs to do what they were there to do. And as a result, they left. I am out of time, unfortunately.

Ms. KRANINGER. If I could, Madam Chairwoman, I would just note that I am sure you would stipulate that congressional staff absolutely care and have experience in the issues, and frankly, make great hires in the Executive Branch and across the government and in industry as well.

Chairwoman WATERS. The gentleman's time has expired. The gentleman from Missouri, Mr. Luetkemeyer, is now recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman. Welcome, Director Kraninger. The last time Mr. Mulvaney reported for this committee, he outlined four ways to make the CFPB more transparent and accountable.

Those four proposals included requiring the CFPB to be funded through the congressional appropriations; requiring major CFPB regulations to be reviewed by Congress; compelling a CFPB Director to answer to the President; and creating a dedicated Inspector General for the Bureau.

I guess my first question will be, do you agree that these principles would improve transparency and accountability for the CFPB?

Ms. KRANINGER. Congressman, I will say that is a matter for Congress to determine. I can tell you I am committed with the authority that I have to transparency and accountability.

Mr. LUETKEMEYER. Do you believe that Congress should enact these principles, then?

Ms. KRANINGER. I believe that is up to Congress. I recognize where you are coming from, and certainly I welcome additional accountability and transparency.

Mr. LUETKEMEYER. Very good. Yes, I think this is a concern that we all have. And I think going down the road of questioning your abilities for the job, this is a job for the Senate to confirm you.

And I think we need to continue to require of you that you do what the law says, which is I think what Mr. Mulvaney tried to do: to get the CFPB back in this pew so to speak to be able to adhere to the law and the principles of the law. So, we thank you for that.

In terms of the recent actions taken by the CFPB on payday lending, the proposed rulemaking discusses how aspects of the original final payday rule had insufficient evidence and legal support. What about this evidence of legal support was insufficient in your view?

Ms. KRANINGER. I'm sorry, I missed the premise—are we talking about the short-term small dollar lending rule, sir? Or is there something else?

Mr. LUETKEMEYER. Yes, in the rulemaking, discuss how aspects of the final payday rule had insufficient evidence and legal support to be able to come to a decision, apparently. And so, what about this evidence of legal support is insufficient, in your mind?

Ms. KRANINGER. The basis of the rulemaking was certainly the determination that it was inherently unfair and abusive to engage in short-term small dollar lending without stipulating the mandatory underwriting requirements that were laid out in the rule itself. That is the subject of an ongoing litigation, and the courts in fact have stayed our ability to move forward with the rule. Last year, the Bureau told the courts that there would be reconsiderations.

I look forward to the full evidence. But that is largely what this is about. It is that the basis of the rulemaking itself and the opportunity to gather the evidence on that issue.

Mr. LUETKEMEYER. So what you are saying is that the previous Administration's Director basically didn't do his due diligence on this and didn't support his decisions with the kind of evidence and fact-based stuff that would be important to be able to put something like this together? Is that what you basically just said?

Ms. KRANINGER. Congressman, I certainly would not say it that way.

Mr. LUETKEMEYER. You wouldn't say it that way, well doggone.

Ms. KRANINGER. I have a responsibility to protect the record of the agency and we are reconsidering it. But—yes.

Mr. LUETKEMEYER. Okay, let me ask the question this way: Do you suspect other actions by the Cordray regime were conducted with insufficient evidence and legal support?

Ms. KRANINGER. As I noted in my opening statement, I have spoken to Director Cordray, and I do appreciate the challenges of standing up an organization, and I know that the staff of the Bureau have certainly done their best with not a lot of time on a lot of different tasks that they undertook in the early days of the agency.

Mr. LUETKEMEYER. Just a final comment here before I yield back. In the fall of 2018, in some annual report submitted to Congress, the CFPB listed the current enforcement actions of the Bureau. I went though and counted those actions, and there are roughly 35 current enforcement actions ongoing by the CFPB.

I know you cannot discuss ongoing cases. However, many of the cases currently pending for the CFPB are from the Cordray regime. For these cases, the CFPB, in my judgment, should look directly at the consumer harm. If consumer harm is present, CFPB needs to pursue these bad actors.

However, if there is no consumer harm, I would hope that you would dismiss the case as quickly as possible. The CFPB needs to

protect consumers and be good stewards for the tax dollars and not tie up businesses with unnecessary litigation for years to come. Would you like to comment?

Ms. KRANINGER. I certainly am reviewing all of the ongoing matters. I take advice and input from all sides, and certainly from my own staff, so we are certainly looking at the issues here and making the best use of our resources to protect consumers as a focus.

Mr. LUETKEMEYER. Thank you. I yield back.

Chairwoman WATERS. Thank you. The gentleman from Missouri, Mr. Clay, Chair of our Housing, Community Development, and Insurance Subcommittee, will be recognized for 5 minutes.

Mr. CLAY. Thank you, Madam Chairwoman. Director Kraninger, in a report published in November of 2018, the Senate Banking Committee's minority staff noted that the enforcement role of the Bureau is intended to be mandatory, not discretionary.

In all fairness, this was written in response to Mr. Mulvaney's actions which stripped the agency of its enforcement and supervisory powers. And why is that important? Because the Bureau had adjudicated over $400 million in remediation for consumers who were harmed under fair lending statutes and policy. But post-Mulvaney, zero dollars—not one penny has been reclaimed for consumers. Have you read this report?

Ms. KRANINGER. Yes, Congressman, I have read the report.

Mr. CLAY. And what are the staffing plans for fair lending? How many attorneys and examiners would devote all or a portion of their time to make sure our markets don't discriminate?

Ms. KRANINGER. I appreciate the question, Congressman, because fair lending continues to be a substantial priority.

I can tell you I am absolutely looking now at the resources that are allocated across the Bureau, and particularly within supervision enforcement and fair lending where that supervision and enforcement work continues on fair lending, as well as in the office of fair lending which has moved into the Director's office. It is looking at coordinating the fair lending activities and issues across the Bureau and working with partner agencies on that issue.

Mr. CLAY. Okay, give me a number—how many attorneys and examiners?

Ms. KRANINGER. I don't have the specific number of that—now, I can tell you that many of the examiners and enforcement attorneys who worked on fair lending before continue to do that, and I have talked with some of them about some of the cases they are working on.

Mr. CLAY. Wait a minute, now, does your staff sitting behind you have a number?

Ms. KRANINGER. I can tell you it is certainly—it is similar to what was the case before the reorganization, but I may have to get back to you on very specific—

Mr. CLAY. Okay, give us a hard number, please.

Ms. KRANINGER. Yes.

Mr. CLAY. Are you familiar with a coalition called Americans for Financial Reform?

Ms. KRANINGER. Yes, I am.

Mr. CLAY. Okay, Linda Jun, who will provide testimony this morning, notes in her statement that after 2 months on the job,

you haven't gotten the memo. She notes that you have already presided over the proposed repeal of the heart of the CFPB's rule against payday and car title lending abuses, and lax enforcement actions that are missing the mark when it comes to trying to curb abuses that harm consumers.

And harm consumers in my district in St. Louis, Missouri, and across this nation—and I ask you in all sincerity, are you prepared to reverse the course of your predecessor, Mick Mulvaney, and return the CFPB to its mandate of consumer protection?

Ms. KRANINGER. I pledge to you, Congressman, that protection of consumers and the mission of this agency is at the heart of every decision that I will make, and certainly has been at the heart of every decision I have made so far.

Mr. CLAY. Okay. Consumers are supposed to get relief when they are harmed, so can you explain how they are entitled to relief in your last few orders like payday lending? What kind of relief is there for consumers?

Ms. KRANINGER. So there were civil monetary penalties that were imposed in several of the cases that I had the honor of signing in terms of the consent orders that have finalized under my term. It is a years-long investigation in many cases, as you know, to get to this stage of the game.

The one thing I would say is that restitution and harm to consumers, and the remedies there are certainly something that we consider as we are seeking to get justice in these cases. There are a lot of factors that go into the decision to, for example, bring suit and litigate, or settle a case. In addition, the settlements consider that remedies, injunctive relief and—

Mr. CLAY. Okay—

Chairwoman WATERS. The gentleman's—

Mr. CLAY. My time is up—but restitution is important for consumers.

Chairwoman WATERS. The gentleman's time has expired. The gentleman from Oklahoma, Mr. Lucas, is recognized for 5 minutes.

Mr. LUCAS. Thank you, Madam Chairwoman. Director Kraninger, many members of this committee have some concerns about the recent small-dollar rule from the Bureau. And I also have concerns, specifically, that the rule allows three pings on an account for an automatic payment.

In my opinion, this feels like an arbitrary number that has no real consequences. For longer loans and loans offered by online lenders, an automatic payment is often the only way payment happens over the life of the loan. If the number stays at three, I worry that lenders who rely at all on automatic payments might be forced to use the third ping as a balloon payment, or send the loan to the collection agencies.

In my opinion, that puts lenders in a tough spot—we are trying to eliminate balloon payments, and also find ways to preserve credit scores of consumers. The payments section of the proposed rule, I think endangers both of those objectives. Director, can you walk us through any steps you think should be taken to ensure that the payments options don't damage credit reports?

Ms. KRANINGER. I appreciate the question. I have certainly heard from a number of entities on the payments portion of the rule. Our

focus on the reconsideration of the underwriting requirements was, again, related to the legal and factual basis. That was a little different when it came to the payments provisions.

In the reconsideration we said that certainly entities can submit comments on the payments portion, but we are not looking at that at this time through that method. But we have also gotten a petition for reconsideration of the payments provisions and that is something that under the Administrative Procedure Act, we have to consider. So the short answer is that we are considering the issue there and looking at it.

Mr. LUCAS. I will give you a short question, would you support reopening the payment portion to implement those steps?

Ms. KRANINGER. I don't want to pre-judge the outcome of that process, Congressman.

Mr. LUCAS. Thank you.

Lastly, Director, I want to commend your agency for being willing to consult with lending entities of all sizes and shapes. I represent a few in Oklahoma that really appreciate the Bureau's willingness to discuss various issues, and I thank you for that.

And in the efficient use of my time, I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you very much.

The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

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

Director, it is very important for you to understand why this hearing is so important. It is important for this reason. First of all, Director Mulvaney did some very, very terrible things in his position as Director that really affected what is the sole purpose of the CFPB: consumer protections.

First, he stopped monetary payments from the Civil Penalty Fund to consumers who were harmed. Second, he stopped efforts to combat discrimination for consumers and he failed to promote fair lending.

And this one gets me most of all. Under Director Mulvaney, he abandoned supervision of regulated entities for compliance with the Military Lending Act, which gives critical protections for our precious military servicemembers and their families.

That is why we are here, to erase those things. And so that is why I am a proud co-sponsor with Chairwoman Maxine Waters of the Consumers First Act. And here's what we want to do, we want to reverse these things. And they are there to protect consumers.

We also want to re-establish a definite and dedicated Student Loan Office. So many of these problems emanate from our student loans, and we have to correct that. And it will re-establish transparency at the CFPB. Now, will you support our bill?

Ms. KRANINGER. Congressman, I understand that—

Mr. SCOTT. No, no, no, I don't have much time. I have to know your answer. Yes or no, please?

Ms. KRANINGER. Congressman, I—

Mr. SCOTT. You are a very pleasant person, I enjoyed meeting you, but please, will you support the—I don't see how in the world you can't. That is your job. To lessen the protections for our mili-

tary? To do away and to stop monetary payments for consumers who are harmed? Won't you support us?

Ms. KRANINGER. Congressman, I very much support your oversight actions. And what Congress finds—

Mr. SCOTT. Well, all right. Let me say this then—I understand, because I have another important one coming—I want to talk with you. I want to help you be a great Director here. But in order to do that you have to help us fix the damage that your predecessor did.

I have another question, the FDIC said in 2017, that 25.2 percent of all American families are unbanked or underbanked. So I have introduced a bill that would put your agency at the leadership in helping the unbanked and underbanked establish stable relationships with depository banks. Could you support that bill?

Ms. KRANINGER. I absolutely share your interest in the issue—

Mr. SCOTT. No, no, but—

Ms. KRANINGER. —and have taken actions on it.

Mr. SCOTT. Listen, we have a serious problem here. And I hope you will leave this hearing with the knowledge that we have to correct this mess—and it is a mess. I like Mr. Mulvaney, we served together. He is a friend. He served on this committee. But you know it was the wrong situation for him when the President turns right around and puts him in another position at the same time: he is Director of the CFPB, and he is the Budget Director. That lets you know right there that consumer financial protection was on a backburner at this Administration.

Chairwoman WATERS. The gentleman's time has expired.

Mr. SCOTT. Thank you.

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

Mr. BARR. Thank you, Madam Chairwoman.

And Director Kraninger, welcome to the committee. Congratulations on your appointment to the CFPB. I want to follow up on my friend, Mr. Scott's, line of questioning related to the Military Lending Act.

And I ask this question to you, not only as a member of this committee, but also as a member of the House Veterans Affairs Committee. And we are all very interested in making sure that our military families, not only are protected, but also have access to credit given the financial strains that many of these families are facing on an annual basis.

Director, my staff shared with you a draft of my latest legislation that would grant Military Lending Act supervision authority to the CFPB. And I would like to quickly discuss the need for this legislation. My friend from Georgia's questions seemed to insinuate that Director Mulvaney pulled back the Bureau's supervisory authority.

But just for the record, clear this up for us. Do you believe that the current law, that the current statute actually gives the CFPB authority to supervise lenders for MLA compliance?

Ms. KRANINGER. I do not.

Mr. BARR. And so the issue is not that your predecessor withdrew the CFPB from supervisory activities; it is that the law does not grant the CFPB that authority, is that your interpretation?

Ms. KRANINGER. That is correct.

Mr. BARR. And would you, Director Kraninger, like a bill like mine to fix that and actually grant specifically in statute authority to you to supervise for MLA compliance?

Ms. KRANINGER. Yes, I would, and I have submitted draft legislation to the Members here.

Mr. BARR. Thank you. And I think that helps, maybe, clear this up. Now, I do want to address Chairwoman Waters' draft bill. In her draft text released before this hearing, and I think we all have a copy of it, there is a provision that would direct the Bureau "to reverse all anti-consumer actions taken during Mr. Mulvaney's tenure." And this presumably would include the MLA supervision issue. Would that provision, and would that language in her bill, prevent the Director who follows your tenure from acting under the same interpretation that you just provided to the committee?

Ms. KRANINGER. I don't have that particular language in front of me, so I don't want to offer a legal opinion as I am sitting here, but I do want explicit authority from Congress to carry on this kind of supervisory work.

Mr. BARR. Yes. And so, let me ask the question a different way. Wouldn't it be better that we would—if we wanted to do this, if we wanted to confer a CFPB supervisory authority for MLA, wouldn't it better to clear this up with an explicit statement giving the Bureau supervisory authority as opposed to the language that I just read to you?

Ms. KRANINGER. Yes, getting explicit authority is what I am seeking.

Mr. BARR. Okay. Thank you for that. Let me ask you about unfair, deceptive or abusive acts and practices (UDAP) really quickly, in the remaining time that I have. Section 1031 of Dodd-Frank gave the Bureau what is called UDAP authority.

However, when I talk to lenders back in Kentucky, they tell me that there is no clear definition or guidance regarding what exactly constitutes an "abusive act or practice under UDAP."

Further, these institutions state that they are in full compliance with the regulations of their primary regulator, but because of the lack of clarity from the Bureau about UDAP violations, and what constitutes an abusive act or practice, they sometimes fall short of these unknown standards.

The result of this regulatory uncertainty is less financial innovation, less consumer choice, less competition, and, ultimately, less access to credit for Americans. Can you provide more clarity about what constitutes a UDAP violation, and what do you plan to do to provide that clarity?

Ms. KRANINGER. So with respect to the definition of "abusive," there certainly is one in the statute, and the Bureau has taken actions in its history that rely on that definition. The one thing that I would note also though is that the regulatory agenda for the agency includes consideration of pre-rulemaking activity to have a discussion around that definition.

In particular, the statute contemplates—it involves an unreasonable advantage taken of a consumer. If there is an unreasonable advantage, then there must be reasonable advantage. And certainly, the definition of that reasonable advantage is one that deserves some exploration and conversation in a transparent way.

Mr. BARR. Thank you. I encourage you to pursue that and provide additional guidance and clarity for the regulated parties.

Chairwoman WATERS. The gentleman's time has expired.

Mr. BARR. Thank you. I yield back.

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

Mr. GREEN. Thank you, Madam Chairwoman. I thank the witness for appearing as well. Madam Director, you are a Georgetown lawyer. Is that correct?

Ms. KRANINGER. That is correct, sir.

Mr. GREEN. And as a Georgetown lawyer, you understand that the public has a right to know certain things, true?

Ms. KRANINGER. Absolutely. I believe in accountability and transparency.

Mr. GREEN. And as a believer in accountability and transparency, you understand that persons who commit felonies are exposed to the public before they are convicted, and some who are never convicted have their names published. Some of the President's friends have been charged, and we know who they are and we know what at least one is charged with. That is the public's right to know. Do you think the public doesn't have the right to know this kind of information?

Ms. KRANINGER. Certainly, when a case is filed and the—

Mr. GREEN. I take it your answer is "yes." Thank you so much. And I would also add that the public has a right to know because they can make decisions based upon what they know. The Consumer Complaint Database has served us well, 1.5 million consumers have many complaints, and 97 percent of these consumers receive timely responses.

They have a right to know; they file their complaints. There is a belief that you do not support the public's right to know, that the public should be placed in a position such that regulators can find out about these complaints but that the public can't. That is what people think.

My guess is that if you were given the opportunity to say that you would have the complaint database that exposed Wells Fargo that you would have this complaint database continue to remain public because the public has a right to know. Do you think the public has a right to know and see the complaints that are not felonies, that are not criminal charges, but to see these complaints?

Ms. KRANINGER. Congressman, you are asking a very reasonable question.

Mr. GREEN. I understand that it is reasonable. If I may, I don't mean to be rude, crude, and unrefined, but this is a question wherein I will tell you the answer. The answer is yes, I think the public has a right to know. Now if you hesitate or equivocate—if you don't do this without hesitation, reservation or consternation, then I have to conclude that you don't think the public has a right to know. Again, I ask, does the public have a right to know?

Ms. KRANINGER. Congressman, the statute establishes a process for submission of complaints—

Mr. GREEN. I do understand. But will you allow that process, that statute, to continue to expose the names of the complaints

that have been filed, as has been the case for over 1.5 million complaints? No consumers are complaining about this. The public believes that it has a right to know. Now I will give you final response, and when you finish, then I will give my commentary.

Again, will you keep the database in place because you understand that even if felons, they have their names published and they are found not guilty, not felons, people just simply charged, found not guilty, or cases are dismissed—you are a Georgetown lawyer, you know many cases are dismissed, but their names have been exposed to the public. Does the public have a right to know about these complaints at the Consumer Financial Protection Bureau by and through its complaint database?

Ms. KRANINGER. We have a responsibility to take in complaints, and absolutely—

Mr. GREEN. I understand. Look, I know a "no" when I hear it. I know when a person says, "no." Madam Director, you are not the person for this job. You don't believe in the public's right to know. I yield back.

Chairwoman WATERS. The gentleman's time has expired. Mr. Williams, the gentleman from Texas, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Madam Chairwoman. And first of all, a lot of people are beating up on Mr. Mulvaney. I thought he did a great job. Ms. Kraninger, I think you are doing a great job and you are certainly qualified. And thanks for speaking to us, Director. I start off asking all witnesses before this committee a simple question. Are you a capitalist or are you a socialist?

Ms. KRANINGER. I am a capitalist.

Mr. WILLIAMS. Thank you for that. I am, too. I am a Main Street businessman, have been for 50 years, and I am a car dealer. And I am probably the only person in this room who was affected by Operation Chokepoint, where the bankers decided that they would not want my business anymore because government—that the government was playing such a heavy hand on with—with CFPB. And for those who think Obamacare was a mess, I can tell you the CFPB was a mess to Main Street America; it cost a lot of jobs. And we have been talking about consumer protection and maybe since you are a consumer, you are qualified for this job.

And I can tell you the best people to take care of the consumer is Main Street America because if we don't take care of consumers, we don't have consumers. And so this is a lot of bureaucracy we do not need. During the Obama years, under the direction of Director Cordray, it seemed as if the sentiment of the CFPB was that business is bad, and if you are being profitable, it must be because you are taking advantage of the consumer rather than giving service to the consumer. This simply isn't true and everybody knows that. And profits are a good thing, not a bad thing.

So I asked Federal Reserve Chairman Powell the other day a question, and I would love to get your opinion as well. The question is this: Do you believe that the probability of an industry is justification for increasing regulations?

Ms. KRANINGER. No, I do not.

Mr. WILLIAMS. Thank you. And I said earlier, I am a small business owner: 50 years. I know how uncertainty affects business decisions. This is especially true for smaller financial institutions that

operate along tighter profit margins. I received information from a community mortgage lender whose compliance costs for every single loan increased by 35 percent because of the uncertainty surrounding CFPB supervision authority. They had to hire more compliance officers than they did loan officers. And it was a lot easier to just not make the loan than to mess with this bureaucracy. So when these small institutions have to spend more money on compliance, it reduces, as I said, the amount of money that is loaned in the communities they serve and affects the consumer and affects the economy.

So my question is, what steps has the CFPB taken to try to better tailor regulations and supervision for smaller institutions?

Ms. KRANINGER. I truly appreciate that question, Congressman, because that is what I have been asking as well. Certainly, reduction of the burden is something that we have as a statutory responsibility on institutions as well as authorities to look at tailoring appropriately based on considerations, again, in a lot of the different statutes that we enforce and regulate under.

One issue about which I have heard extensively from smaller entities, and one thing that I am looking at—and we are in the middle of the discussions again about it is how to most effectively carry out our examination process, certainly looking at, to your point, how much time we spend with different institutions, how much we require of them when they are setting up their compliance management system.

So many of them feel helped by the examination process, so we have had those conversations. I think, too, on the regulatory front, as I noted to one of your colleagues, there were 1,750 comments that came back on reduction of regulatory burden. And we are working through those. Many of them were comments about how best to tailor. So I am certainly looking at that issue.

Mr. WILLIAMS. Thank you. Leadership from the top down is important in any business or government agency. From its conception, the CFPB has commonly been referred to as Elizabeth Warren's brainchild. Now I don't think that is a very good label to have. If you want to be taken seriously, you don't need that. And as a nonpartisan financial regulator, you don't want to be an organization that is being described as a brainchild, so how have you been changing the culture of the CFPB into an agency that protects consumers without removing choice from the marketplace?

Ms. KRANINGER. Congressman, I think that is an important point as well. Certainly at this stage, I am 86 days in, and that includes weekends, holidays, and snow days that we have had, so it is a conversation that we are having. I believe the staff is dedicated and committed and frankly excited to have stable, consistent leadership and I am setting that tone with respect to making sure that we are looking at maintaining choice in the marketplace and understanding what impact we have on consumers' access to credit when we are looking to take action.

Mr. WILLIAMS. Thank you very much. I yield back.

Chairwoman WATERS. The gentleman from Illinois, Mr. Foster, is recognized for 5 minutes.

Mr. FOSTER. Thank you. Director Kraninger, thank you for being here today.

I would like to talk about an issue of tremendous importance to the people in my district and to 44 million Americans across the country, the enormous economic and consumer protection challenges posed by student debt. Today, you have heard a lot of enthusiasm for fact-based policies here and there is a considerable concern across the ideological spectrum about the significant lack of data for what is now the second largest consumer debt market in the country.

Collecting data to better understand consumer markets and so being able to anticipate the next crisis before it happens was a critical design goal when we created the Bureau less than a decade ago, one that I hope the Bureau still considers a top priority. And with that backdrop in mind, I was heartened to see the Bureau under Director Cordray take steps to begin systematically collecting data on the student loan market. In February 2017, the Bureau, using its specific authorization under Section 1022(c)(4) of Dodd-Frank published a proposal to require that the largest private companies in the student loan industry, including some of the biggest banks and the government's biggest contractors, provide data directly to the Bureau about the performance of more than $1 trillion in outstanding student debt and about the borrowers' experiences in repaying that debt.

This included information, for example, about the total size of the loan market, the percentage of the loan modifications that are entered into, delinquency rates, forbearance of the deferment rates, default and discharge information. You know, basic stuff, but all of which would be crucial in understanding the student loan market at a macro level and potentially preventing version 2.0 with the mortgage lending crisis. And after taking public comment on this proposal, the Bureau then submitted it to the OMB in September 2017, 8 weeks prior to Director Cordray's departure.

The OMB would then normally evaluate comments from the public and authorize the Bureau to finalize this market monitoring initiative, collecting data and greatly improving the transparency of the student loan market. But in this case, no OMB approval was issued, and your agency has done nothing. Notably, Mick Mulvaney was operating both as acting Director of the CFPB and the Director of OMB during much of this time. It now appears that this critical data collection initiative has been in a state of limbo for nearly a year and a half, during which time more than 1.5 million Americans defaulted on their student loans.

What I am trying to understand is why this important initiative, one that simply seeks to gather data and shed greater transparency on the student loan market, has been ignored for so long. You know, I am a scientist, and I see this as really a troubling pattern from this Administration of suppressing even the collection of data, when they are afraid that the facts may not support their opinions, a pattern that we see everywhere from climate change to the default rates for for-profit colleges. So Director Kraninger, first question, did Betsy DeVos or any other political appointees at the U.S. Department of Education provide feedback or encourage the Bureau to abandon or delay this proposal?

Ms. KRANINGER. Congressman, I am sorry to say that I am unfamiliar with the proposal you are referring to. I have actually just

asked the staff too, and we are trying to find out what it is. I have not had anyone mention this to me before.

I understand why you would be interested in it. I certainly understand the extent of the marketplace and the growing student debt issues. It is something that I am paying attention to. I can tell you some things that I am doing in this space, but I will have to get back to you on this particular study.

Mr. FOSTER. Okay, yes, I would like to know specifically any feedback you received from any political personnel after the Department of Education, whether the Office of Management and Budget has ever communicated any specific concerns about this, or did they just sit on that?

And does the Bureau plan to retract it, or continue? And I encourage you to perhaps contact Mr. Frotman, a member of the second panel, who is familiar with some of the details in this.

So let's see, I have 44 seconds—just quickly to another issue, it has been noted that several recent CFPB enforcement settlements didn't require compensation for victims for any of the harm they suffered from the firm's conduct, and so who personally takes that decision as to whether or not a firm should have to pay restitution to victims?

Ms. KRANINGER. That is a complicated issue. Certainly in the course of the investigation, the enforcement attorneys are looking at trying to quantify consumer harm and look at how they can identify—

Mr. FOSTER. But who makes the decision, do you make the decision, or—

Ms. KRANINGER. Ultimately, I make the decision based on the recommendations of the staff who worked the issue and reviewed it along the way to get to me.

Mr. FOSTER. Thank you. I yield back.

Chairwoman WATERS. The gentleman's time is up. The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Madam Chairwoman. Director, thank you for being here, I appreciate the effort that you have made in the 86 days—I think it was commented—that you have been in office. I come from a rural district, and one of the most important things is to be able to grow jobs and to be able to create opportunities, and one of the big issues that we face continues to be—and we have had the concern in this committee as well, is going to be on access to capital. I do coach here the Small Business Caucus, here on the House side.

We have had a variety of different meetings and I thought there were some interesting statistics that came out. The U.S. Chamber of Commerce just reported in the fall of last year that lending to small businesses—which are the businesses that make up my district—is down 13 percent since 2008.

Now on top of that, a recent report which came from the Senate found that women account for just 16 percent of the conventional small business loans and received only 4 percent of all commercial loan dollars. So Director, is this an issue that has come to your attention during your limited tenure at the CFPB? And do you think that this is part of an issue that could possibly be addressed in terms of some of the regulatory burden that you mentioned?

Ms. KRANINGER. Yes, in terms of small business lending we have—when it comes to the Equal Credit Opportunity Act, and we have some authority there to look at discrimination in small business lending which we have done at our supervisory and enforcement work.

And we also have responsibility under Section 1071 to enter into a rulemaking to try to assess what is happening in this small business lending space.

Mr. TIPTON. Great. I appreciate that, and would encourage you to go ahead and formalize that rule to be able to get that data—7 out of 10 jobs in the country are created by small businesses. A lot of them are out in the rural areas, and I think that is going to be important for us to be able to keep the economy moving.

You have had a few comments that you have been making here that I would like you to maybe follow up and expand on a little bit. Your predecessors had opposing views when it came to the use of enforcement actions and determining policy. Could you expand on that, maybe just a little bit more, would you share those thoughts on regulations versus enforcement?

Ms. KRANINGER. I am certainly committed to having clarity in the rules that entities that are seeking to comply can rely upon, and I do think that the regulatory tool that Congress gave the Bureau is an important one in terms of setting out what those rules are. Certainly, the supervisory and exam process that we have is also, again, geared to that.

I am looking at all of the tools that the Bureau has in trying to assess how best to utilize them and apply them in terms of a rubric perhaps of prevention of harm, and thinking about how that can really assist in thinking about the way that we carry out our mission. When it comes to enforcement specifically, it is absolutely still a critical tool that we use because we know there are entities that have no intention of trying to comply.

They are not going to be the ones that are going to self-report what they have found or mistakes that have been made. They are not going to be in a productive relationship with their regulator, they are going to be thwarting and they are going to be engaged in unfair practices vis-a-vis consumers, and that is where the enforcement tool really is most effective and where we need to focus it.

Mr. TIPTON. So would we be in agreement that you don't enforce first, then regulate? You stay within the boundaries of congressional intent and the law? And would you make any recommendations on—is there something that Congress should actually be doing to help give you clarity on those boundaries?

Because this is an unbridled agency that it seems when we looked at Director Cordray and the enforcements that he was putting into place that extended, in the opinion of many, far beyond some authorities—is there something that we should be doing legislatively to be able to put those guardrails in place to give you greater clarity?

Ms. KRANINGER. The law is certainly my guidepost in the activities that I will undertake, and the approach I am taking to the position of Director. I do leave to Congress consideration of what

other things should be enacted, and I encourage, as I mentioned earlier, continued transparency and accountability of the agency.

Mr. TIPTON. And with just a few seconds left, you didn't really get a chance to answer on the fair lending, in regards to in the investigative process. I assume you don't individually do that, but do you want to lay out quickly what that process is for fair lending?

Ms. KRANINGER. Yes, it is similar to all the other enforcement actions. The enforcement attorneys are the ones who open investigations and they certainly carry that through research stages, and others it takes many, many months and years to build the case for those who are litigators they know that. Certainly, it becomes public at the time of actually filing the case, or having a consent order in place.

Chairwoman WATERS. The gentleman's time has expired—

Mr. TIPTON. I yield back.

Chairwoman WATERS. The gentleman from Missouri, Mr. Cleaver, the Chair of our Subcommittee on National Security, International Development and Monetary Policy, is recognized for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. I will announce my pedigree, as I guess we are going to start doing that. I am a Methodist, not a capitalist or a socialist, just a Methodist.

What I would like to do is to focus in on—well, first of all, I was here when we did Dodd-Frank and I didn't miss any meetings. I never remember having a meeting about how we could politicize it. It didn't happen; in fact, it was the contrary.

We were trying to figure out a way to avoid the politicization of it by having a Director who would go over one term, so that it would be possible for a Director to serve, actually, under two different Presidents. And there was no funding to be received from Congress, there was no decision to be ratified by the President or Congress, and the budget wasn't going through the congressional budget process.

Do you agree with those decisions that we made as it relates to the CFPB?

Ms. KRANINGER. Congressman, I take the law as it has been presented to me in the responsibilities that I have as Director. I did note that I am going to take advantage of the flexibility I have in terms of administering the agency when it comes to the resources, certainly, as an example.

Mr. CLEAVER. Because what I just laid out about the independence is actually the same independence for the Federal Reserve. And actually the Federal Reserve, as you very well know, provides the funding. And their structure is very similar to the—to the Federal Reserve. Do you support the Federal Reserve as an independent agency as well?

Ms. KRANINGER. I will leave to Congress these issues in terms of how these entities are established, but I certainly work closely with them.

Mr. CLEAVER. Do you believe that the CFPB should be independent?

Ms. KRANINGER. I am carrying out my duties as Director, consistent with the independent agency status.

Mr. CLEAVER. I am with you on that, except that the problem was we tried to make sure that was one political appointee, the President appointed Mr. Cordray, one. And I am just wondering what the number of political appointees is today?

Ms. KRANINGER. The number of political appointees, I would say, specifically it is a Schedule C appointment. The Dodd-Frank Act did give us the ability to hire under all of the Title V authorities, including Schedule C.

Mr. CLEAVER. Yes, I am not mad.

Ms. KRANINGER. There are 13 Schedule Cs at the Bureau today.

Mr. CLEAVER. Yes, that is what I was getting at.

Ms. KRANINGER. Yes.

Mr. CLEAVER. I am not upset. I am not growling or anything. I want you to look at the difference. We were saying, let's depoliticize it. I think you would agree that the politicization is a little higher, based on your answer a few minutes ago.

Ms. KRANINGER. Well, if you are stipulating because there are Schedule Cs, I would note that there were more than 500 people hired at the Bureau appropriately, by the way, under a waiver authority from Congress who were noncompetitively hired. And that was over the first 4 years of the Bureau's establishment: 423 of them are still at the Bureau today.

Mr. CLEAVER. Yes, I am not saying anything was done wrong, and some of the people—I know at least one of the people, and I know that person is eminently qualified. But I just—there is this push that suggests that somehow there was a plan that politicized this agency, and there wasn't.

And one of the problems that we are having right now is that the MLA, and I—because my time is running out—all these are military agencies, all of them, who are opposed to what just took place with MLA—all, it is not just something a Democrat is pushing. These military agencies are concerned about what is going on, all of them.

I will give you this. You probably already know all of them because I think they have communicated with your office. Does this give you pause to want to make corrections?

Ms. KRANINGER. I am committed to protecting servicemembers. I have worked much of my career with servicemembers.

Mr. CLEAVER. I know, Madam Director. I am not mad at you. You look like a nice person and you probably, you know, cheer for the Chiefs and stuff. But all I am just trying to get you to say is, don't you agree that something needs to be done?

Ms. KRANINGER. I do, and I have asked Congress to grant the Bureau the authority to supervise for the Military Lending Act specifically.

Mr. CLEAVER. All right, thank you.

Chairwoman WATERS. The gentleman's time has expired.

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

Mr. HILL. I thank the Chair. I appreciate that.

And Director, thank you for appearing before the committee. During my first two terms in Congress, I spent a lot of time with Director Cordray working through all the problems with the TRID rule, which is the merger of Truth in Lending with Real Estate

Settlements, which is very costly to the industry, and confusing to consumers. So I tried to get them to make improvements along the way. And he was very cooperative and recognized that his guidance wasn't informative, his guidance wasn't binding and that, occasionally, the rule was very confusing.

One of those things was the consumer disclosure for combined rate on title insurance. And I had a bill last Congress to straighten that out, to make sure consumers really knew what they were paying. Because the current disclosure required by the lawyers—the Georgetown lawyers, I am sure—at the Bureau make it appear that it is more expensive than it actually is for a consumer. Would you support changing that disclosure rule?

Ms. KRANINGER. I can tell you, Congressman, that I am aware of the issue. I have heard it from you and I know that you have a bill on the issue. We are looking at this very carefully, so I don't want to prejudge the outcome of what we can and cannot do, and how fast, but I am absolutely aware of the issue.

Mr. HILL. Well, I would ask you to study that. And I will be reintroducing that legislation and I would like to—I think you have the authority to change it at the Bureau and not go through the legislative process. So thank you for that.

I was looking at your consumer complaints, only 0.8, so less than 1 percent, 0.8 percent of consumer complaints relate to payday lending. So I guess that is good. That must mean that, generally, regulation of payday lending across the country is decently successful, looking at your consumer database.

But I wondered when I was looking at your rule—following up on Congressman Lucas' question—NACHA, the clearinghouse, has a common set of ways of looking at this issue of how many times you can try to debit in an account in a payday rule. Did you look at the NACHA standard and consider just using that, since that is already out in the marketplace?

Ms. KRANINGER. Congressman, you raise an interesting point. It is actually a question that I had as well in terms of looking at this issue. It is something that I want to explore further.

I can tell you, with respect to the reconsideration of the rule, the basis of that really is the sufficiency of the legal and factual basis for that unfairness and abusive determination. That is really where the reconsideration is focused.

Mr. HILL. Thank you, because you know if you do try to debit the debit card, that doesn't go against the NSF. And so, I thought that was a good point. I would urge you to take a look at that in your rule.

As you know, the committee is very interested in financial technology (Fintech) and the CFPB has been a leader on that under Director Cordray and under Director Mulvaney and now you to urge innovation to reduce compliance costs and get consumer products out to our consumers, particularly the underserved community.

Are you aware of the U.K.'s effort at open banking and giving consumers more control over their data when it comes to selecting financial products?

Ms. KRANINGER. Yes. I probably know enough to be dangerous on that particular topic. But we are certainly looking at what other

countries are doing, and Paul Watkins, who heads up the Office of Innovation, knows this deeply and understands it.

Mr. HILL. I think that is a real trend, to make sure that the consumer controls more of their information and protects it more capably and is not preyed upon by either Facebook or a financial services company.

I note in your annual report that education is a major part of the Bureau's mandate. And so, when you look at again your customer complaints that are reported to the Bureau, over 50 percent relate to credit or consumer reporting and debt collection way over 50 percent.

And so, when you look at FICO Scores, the FICO Score of 400—something under 500, that is considered a very poor FICO Score. Does the Bureau help consumers with information about how to improve their credit through either education resources at your website or when they file a complaint?

Do you help them understand how to improve their score, because clearly someone with a 400 credit score has a financial literacy challenge or a huge financial problem in their family at that time?

Ms. KRANINGER. There are a number of tools on our website and that we share with financial educators around this issue, because having a good credit history is part of financial well-being. It is part of your ability to build opportunity and certainly build wealth.

So, there are a number of things that we have produced on that front, the challenge largely is getting that information to those who need it in the best way that they can receive it and measuring the effectiveness of our efforts in changing people's behavior.

Chairwoman WATERS. The gentleman's time has expired.

Mr. HILL. Thank you, Madam Chairwoman.

Chairwoman WATERS. The gentlewoman from Ohio, Ms. Beatty, Chair of our Subcommittee on Diversity and Inclusion, is recognized for 5 minutes.

Mrs. BEATTY. Thank you, Madam Chairwoman, and to our witnesses, thank you for being here today. I am going to start with a question that I have asked every one of your predecessors since I have been here. I have asked every Director and Chair who has sat in that seat as a witness. So, I wanted to start with that.

But before I ask you the question, how did you prepare for this hearing? Did you have your staff talk about some of the questions and answers to Director Mulvaney or to Director Cordray?

Ms. KRANINGER. First and foremost, it is the time on the job. I actually have been spending a lot of time with the staff getting briefed on various topics.

Mrs. BEATTY. But did you listen to or watch any of the tapes with the questions?

Ms. KRANINGER. Yes, I have watched prior hearings of this committee.

Mrs. BEATTY. Okay. So, you know that we have had Directors sit in that seat who have been questioned for some 5 hours, and some reports have said that it was a new level of hostility by those in charge. Others have said it was a withering attack on Mr. Cordray, very contentious.

And the only reason I do this is, a couple of my colleagues have used the word "battered." So, I don't want you to feel that I am battering you. I am just trying to ask a few questions. My question that I have asked everyone—as you heard, I serve as the Chair of the Subcommittee on Diversity and Inclusion, and the Office of Minority and Women Inclusion (OMWI) falls under that.

I read your press release on January 25, 2019, where CFPB announced changes in senior leadership and acknowledged Lora McCray as your new Director of OMWI. So my question to you is, does the OMWI office have enough staff and resources to carry out the responsibilities in Section 342? Yes or no?

Ms. KRANINGER. I can tell you—

Mrs. BEATTY. Yes or no, please. Either they have it or they don't. I know you—

Ms. KRANINGER. I certainly—

Mrs. BEATTY. Let me finish. I know you didn't go out and hire somebody who has been the Vice Chair of Diversity through the Federal Reserve, with all of her experience, and bring her into an environment where there is not enough money or enough staff.

So, do you believe that the office has enough staff and resources to carry out the responsibilities of Section 432? Please, yes or no?

Ms. KRANINGER. I—

Mrs. BEATTY. Yes—that means you either have the money—

Ms. KRANINGER. Moment—

Mrs. BEATTY. I will if you give me the answer—

Ms. KRANINGER. Lora—

Mrs. BEATTY. —to my question.

Ms. KRANINGER. Lora and I are both very new. And she knows that I am committed to ensuring that she does have enough resources, and she has the ability to—

Mrs. BEATTY. So, that would be a yes?

Ms. KRANINGER. —ask for them. So again, we are absolutely assessing that. The answer is there are—

Mrs. BEATTY. So, you hired somebody without knowing if she is going to have enough staff and funding to do her job?

Ms. KRANINGER. She absolutely will. You are asking me to affirmatively say—

Mrs. BEATTY. So—

Ms. KRANINGER. At this moment—

Mrs. BEATTY. So, then let me ask the question—

Ms. KRANINGER. The answer is yes.

Mrs. BEATTY. —differently. Will you assure us that as you testify today, the OMWI office will have enough staff and resources to carry out the responsibilities as identified in Section 342 of Dodd-Frank?

Ms. KRANINGER. The answer is absolutely yes.

Mrs. BEATTY. Okay, thank you. And welcome aboard, Ms. McCray. My next question is, have you heard of the term that is being used inside the Consumer Financial Protection Bureau called the "Mulvaney Discount?" Have you heard of that?

Ms. KRANINGER. I have certainly heard the term, yes.

Mrs. BEATTY. Okay, because I have a press release right here with your picture on it. I think this is you where you all talk about it.

Ms. KRANINGER. I would say—

Mrs. BEATTY. Well, it is mentioned in the headlines.

Ms. KRANINGER. I certainly have not talked about it.

Mrs. BEATTY. Okay, where it was brought up, and I can read you some quotes. So, you are familiar with it?

Ms. KRANINGER. I have heard the term used.

Mrs. BEATTY. So for those situations where people have been abusing and some would say swindling veterans, minorities, and others, and the fee for something, if you swindled somebody out of hundreds of thousands of dollars, you would have to pay thousands in fees, while the Mulvaney Discount is $1.00.

Do you agree with that? And do you plan to continue it, yes or no? Do you plan to continue, because it exists, I can give you case after case.

Ms. KRANINGER. Every—

Mrs. BEATTY. Wait a minute; I am going to let you talk afterwards. Do you plan to continue it, yes or no?

Ms. KRANINGER. Every enforcement case presents its own facts—

Mrs. BEATTY. Will you have dollar discounts for people who have been swindled out of hundreds of thousands of dollars?

Ms. KRANINGER. These are all negotiated settlements. And there are factors—

Mrs. BEATTY. So, you are not answering. Okay. My time is up.

Ms. KRANINGER. —that are taken into consideration.

Chairwoman WATERS. Mr. Loudermilk, the gentleman from Georgia, is recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Madam Chairwoman. Director, I am going to make sure I see this. It doesn't say, "Mulvaney," it says, "Kraninger," am I right? Okay. I just want to make sure that we are actually—it seems that a lot of the discussion we have had here is as though you were your predecessor, and I think it's important that we engage on what is actually happening in the Bureau right now. And I appreciate you being here. I understand by Dodd-Frank you are required to come occasionally and provide a report, but as it was brought up before, I don't think the law requires you to even answer the questions when you are here, so the fact that you are here and engaging, I appreciate that.

Before I get to the questions—because I want you to answer the questions. I think there's so much that we need to be doing and there are so many issues out there, it's important that we engage and we have a relationship and that we can work together and just not be adversarial. When Director Cordray was here, I questioned him on the consumer complaint database because I felt like at the time it was actually being used as a shaming system of businesses. And I apologize that you were not given the opportunity to answer the questions—obviously, there was a preconceived idea there. I just want to give you a moment.

Is there anything you would like to—I will give you a moment of my time to answer the question that you weren't given the opportunity to answer earlier.

Ms. KRANINGER. Thank you, Congressman. I recognize how important an issue this is. I have certainly heard from consumer groups and researchers in particular—I was actually visiting Consumer Reports last week and they talked about how much they use

the data that is available in the consumer database. So also on the other side of that, certainly some very real reputational harm concerns from institutions about making sure people understand what the complaints that they are seeing mean will put them in some kind of context. So I have heard those comments.

This is certainly an active issue. I am talking to the staff inside the Bureau. We did a whole request for information on this issue as well about what should be public, and what should not be public. Those were all questions that were asked and I am actively looking at the issue now.

Mr. LOUDERMILK. Thank you, I appreciate that. Because the only way that we are going to be able to get things resolved is to actually have dialogues. And I think you deserve the respect to bring that up. I think a lot of the frustration that you hear is that regardless of what you answer, there's not really a thing we can do about it. That is because of the organization, the way it was established. So one of the years that is key to me is in the Fintech community. I from Georgia, and we have two-thirds of the country's payment processing there. I also come from an IT background, and I understand the value of technology and how it empowers the individual, the consumer, and I'm particularly interested in the bank Fintech partnerships.

One of the concerns that we usually hear is how these partnerships can raise safety and soundness and consumer protection concerns. So the question I have is, when a Fintech company is interfacing with a consumer and it's actually a bank or credit union that's filling the loan, the loan has to meet the same safety and soundness protection standards as if the consumer walked into the local bank, is that correct?

Ms. KRANINGER. Yes, I believe so.

Mr. LOUDERMILK. Okay. What is it that we, and I am talking about Congress and the regulators, what can we do to ensure that these partnerships can continue and flourish?

Ms. KRANINGER. That is an excellent question because innovation and facilitating innovation are a key part of the Bureau's mission, something we take very seriously. I have met with innovators and seen the kind of things that they are doing. I would note that I recognize the concerns that advocates have brought up on the other side of this. But I would certainly venture that the entities that are actually actively coming forward seeking to work with the regulators, seeking to understand what the rules are so that they can follow them, are those that certainly like to be—there looks to be an opportunity there. And certainly for the underserved, as Mr. Hill mentioned.

Mr. LOUDERMILK. And one of the things about technology is you get into areas where the rules don't exist if you are really progressing and bringing in new technology. An example is the Wright Flyer, which is on display down at the Air and Space Museum here. These guys were bicycle mechanics and they achieved something scientists and engineers couldn't. I don't think you could replicate that today because of the adversarial relationship between regulators and innovators. I think the sandboxes are important to give them the ability to try new products, new ideas. Can you brief-

ly—I know we are out of time, but this Office of Innovation, what is it that you are doing to help innovators?

Ms. KRANINGER. In the last 6 months in all we have issued proposals for a disclosure sandbox policy, a no-action letter policy and a product sandbox policy, and we got robust comments back on all of them. That is also something that I am actively looking at and we are looking to close out and address those and again, put these processes in place to facilitate innovation.

Chairwoman WATERS. The gentleman's time—

Mr. LOUDERMILK. Thank you.

Chairwoman WATERS. —has expired. The gentleman from Washington, Mr. Heck, is recognized for 5 minutes.

Mr. HECK. Thank you, Madam Chairwoman, very much. Thank you, Director Kraninger, for being here. Thanks for the phone call a couple of weeks ago to introduce yourself. I suspect you know where I am going with my time opportunity today.

As you will recall, I have the honor to represent some 44,000 men and women who report to work every day at Joint Base Lewis-McChord. I consider it frankly a sacred part of my job to look out for their best interest. Do you consider it an important part of your job to look out for the servicemembers and their families?

Ms. KRANINGER. I absolutely do. I have been honored to also work with servicemembers and their families throughout my career. And I certainly recognize that Congress created an office inside the Bureau specifically to ensure that—

Mr. HECK. We will get to that in a second. So have you yet visited a military base or met with a military community?

Ms. KRANINGER. Yes, I have. I was actually at Travis Air Force Base outside of San Francisco as one of my first trips.

Mr. HECK. I noted that on January 25th, you announced the hiring of 5 senior positions. We kind of did a little research and dug down. It does not appear—and I hope I am wrong—as though any of them is a veteran or a member of the Reserves or the National Guard.

Ms. KRANINGER. I do not recall if any of them are. I can tell you that it is certainly a consideration in the hiring process and an important one. And there are a number of veterans.

Mr. HECK. And yet five senior people were hired without any of them being veterans or members of the Reserve or the Guard. In fact, the position of the Office of Servicemember Affairs Director has been "acting" for a year and a half. Can you share with us today what your specific and concrete plans are to name a permanent Director of the Office of Servicemember Affairs?

Ms. KRANINGER. I can tell you that I have one. He started on the job literally—I believe last week. We are gathering—

Mr. HECK. A permanent Director?

Ms. KRANINGER. A permanent Director who actually—who is a veteran, by the way. His name is Jim Rice, and he just started, as I said, 2 weeks ago, and we are going to gather up again some more—

Mr. HECK. Somebody is trying to get your attention behind you.

Ms. KRANINGER. Oh. Oh, he starts Monday. Well, then, I am making news. I thought he was here already since I was talking to folks about it.

Mr. HECK. Great.

Ms. KRANINGER. But he starts on Monday.

Mr. HECK. We weren't aware of that. I want to tell you—

Ms. KRANINGER. Yes.

Mr. HECK. I am very pleased that you have done this. Finally, have you allowed the Bureau's examiners to resume reviewing compliance with the Military Lending Act?

Ms. KRANINGER. I know that we are not in agreement on this issue, Congressman. I want to just at least note that. I would say that I do not believe that we have the authority, that is why I sought, to again specifically—

Mr. HECK. Well, wait a second, they have been doing it.

Ms. KRANINGER. —conduct compliance for the Military Lending Act.

Mr. HECK. They have been doing it for—

Ms. KRANINGER. We have robust enforcement authority—

Mr. HECK. They have been doing it since the inception of the Bureau and it is at a minimum, arguable, at a minimum. I assert in fact, you absolutely do have the authority to do this. General Cantwell, who is the former Director of the Office of Servicemember Affairs, likens failure to exam, as standing down the guards or the sentinels around military base. It seems like a perfect analogy—at a minimum, after nearly 10 years of actually doing it, it is arguable given that you have said that it is an important part of your job to look out for servicemembers.

Why wouldn't you continue to do that which has occurred for 10 years, if in fact your values are as you state they are? Because I want to remind you of, I think the eternal wisdom of the suffragette movement, which in Great Britain and later in the United States, adopted the slogan, "deeds not word." So we would be looking for deeds, not words, to comport with what you assert are your values, that you care about servicemembers.

Ms. KRANINGER. We absolutely continue to take enforcement actions and look at enforcement issues associated—

Mr. HECK. That is completely reactive. If you are not examining to look for that, then all you are doing is reacting to the committee—it is as though you have stood down the sentinels of the base, and only when they have come over the ramparts, do you react. How is it that you can deny the 10-year history of these examinations, never having been stated in a court of law as not being within your authority?

Please be clear. We will not go gently into the night on the issue of how it is we protect the servicemembers, the people who put on uniforms and put themselves in harm's way on our behalf every single day, nor their families, especially in the context of the longstanding practice of the agency.

Ms. KRANINGER. Congressman, to read into the statutory authority—

Chairwoman WATERS. The gentleman's time has expired.

Ms. KRANINGER. —is beyond what I believe I should do. I am staying true—

Mr. HECK. And you are wrong.

Chairwoman WATERS. The gentleman from Tennessee, Mr. Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Madam Chairwoman. Thank you, Director, for appearing today. We appreciate it. If I could, I would like to follow back up on some comments that you made in your opening statement, and also the line of questioning by Congressman Lucas and Congressman Hill, about the small dollar lending rule, if I could. I do applaud the efforts by the CFPB in taking and reviewing certain provisions of the rule as the rule is written.

We know that the CFPB issued a notice of proposed rulemaking that would examine the underwriting provisions of the rule and also issue a delay until, I believe August the 19th of this year. I believe that is correct as the compliance date. While I think that the two notices do not address the provision governing payments, it is my impression that the CFPB may be still evaluating the comments and also the evidence prior to making a decision as to whether to reopen this portion of the rule as well.

I do have concerns, and I know that Congressman Hill asked about this as it relates to debit cards, debit cards and method of payment on the loans. Payment provision, the way I understand it is written, would apply when a payment is made through a debit card, despite the fact that this method of payment doesn't result in a charge to the consumer if there are insufficient funds.

Now in light of the fact that debit cards could prevent overdrafts or further economic harm, should the CFPB promote this method of payment as a preferred choice to consumers instead of maybe limiting it?

Ms. KRANINGER. I certainly have heard a number of concerns about the payment provisions in addition to the underwriting portion of the rule. The proposal seeks specifically to address the underwriting issues because of the access to credit concerns and the impact to the industry in general as that relates to access for consumers of credit. On the payment provisions, we have a petition in hand that is asking us to reconsider, and under the Administrative Procedure Act, that is absolutely something that we now need to respond to. So that is something that we are looking at.

Mr. KUSTOFF. I would appreciate that. I appreciate your candid answer. Education is an important part of the CFPB, part of your mandate, part of the agency's mandate. Can you talk about what role education has in promoting clarity and guidance, if you will, to consumers, and also the businesses to seek and understand the responsibilities that they may have?

Ms. KRANINGER. Definitely. I think it is an important part of our mandate and we strive to put the tools in consumers' hands, both by working with educators and putting things on our website to get them the right tools in their hands so they can make the best decisions for themselves financially. There are a lot of products and services and a lot of issues and we seek to have it organized in a way that consumers can get to it readily and easily.

But it is a challenge, frankly, for any education process, to understand what the impact of that is and how to continue to improve that, improve the access to the information, and it is, I think, an exciting part of what we are doing, that we have tailor-made for different types of consumers, whether it is those looking to buy a home, so the whole know-before-you-owe and homebuyer guides.

If you are looking to get a student loan, if you are looking to bolster your savings and ways to do that, so all of those things are critical. I think Mr. Hill or others asked about understanding what the credit reporting agency's role is, and what your credit score actually means. So a lot of things like that, that we are seeking to make sure there is good information for consumers on.

Mr. KUSTOFF. Thank you very much. In my remaining time, in past Congresses in this committee, we have discussed and debated about an Inspector General for the CFPB. Can you talk in your term now as Director, as I understand it, now less than 3 months or around 3 months, the importance, in your opinion, one way or the other, of having your own Inspector General?

Ms. KRANINGER. I understand why you are asking the question, Congressman. I have noted this is a matter certainly for statute and Congress to consider, and anything that Congress would pass to address accountability and transparency concerns that they have, I would welcome.

Mr. KUSTOFF. Thank you. I yield back my time.

Chairwoman WATERS. Thank you. The gentleman from Guam, Mr. San Nicolas, is recognized for 5 minutes.

Mr. SAN NICOLAS. Thank you, Madam Chairwoman. Forgive me, Director, is it "Kraninger" or "Kraninger?"

Ms. KRANINGER. I accept both, but it is "Kraninger," thank you.

Mr. SAN NICOLAS. "Kraninger." Well, thank you for being here today and thank you for answering everyone's questions. I wanted to first begin with a casual observation. It appears that depending on what snapshot in time you are looking at, at the CFPB, you have both sides of the aisle upset at some point.

And it has been my experience that when we have both sides of the aisle upset about something, we are either dealing with a colossal mistake or a colossal success. But I think that the variable on either extreme has been the predecessors who have sat in your chair. And I think that variable has caused either side of the aisle to want to always try and find balance because they felt like the boat was tipping too far one way or too far the other.

And that is why in Chairwoman Waters' bill, the Consumers First Act, I think she is doing her due diligence in trying to rebalance the boat that she feels, and I feel because I co-sponsored it, that your predecessor might have tipped too far. I do have a deep appreciation for your position. Your predecessor is the right hand of the individual who appointed you to the position.

And I can understand how that would make it very difficult for you to reconsider or walk back or change some of the activities that he has put into place. And so, at this juncture, we are left with having to rely on you to be that source of balance, so to speak, but also with the context of having to do so with that weight of your predecessor and his position and how that reflects on the position that you are in.

I wanted to, I guess, tie it all together by saying that one of the things that provides a lot of stability to organizations is not just the leadership that is in place, but everybody behind the leadership. And all of the employees who make up the organization can have a very strong balancing effect on whether or not the organiza-

tion is going to continue to pursue its purpose and its mission with the veracity for which it is intended.

And so, I wanted to pose a question to you as to whether or not you would be open to establishing a precedence within CFPB to perhaps do a biannual survey of the employees, as to whether or not they feel that the organization is staying true to its mission and whether or not you would allow for that survey to perhaps be done anonymously and provide it to this committee?

Ms. KRANINGER. I do appreciate the question because the people of the Bureau are absolutely essential to how we carry out the mission and are fundamental to it. They are very important to me, in supporting my decision-making processes. On the survey specifically, there is an annual employee survey that happens. It is anonymous. The Bureau actually has added some specific questions, Bureau-related, to it over time. And the results of that are certainly something I am using, looking forward, so that we can make sure we address concerns that the staff have.

Mr. SAN NICOLAS. I think that it would be useful for those results perhaps to be done—for these surveys to be done a little bit more frequently and for those surveys to even be forwarded to the committee. Not necessarily as a reflection on you, but as one of my colleagues on the other side of the aisle mentioned, it may not necessarily be you who are concerned about it but those who may come after you.

But if we have that precedent established within CFPB, especially given the very unique powers that your single position has, it could really help for this committee to be able to review those surveys to provide the necessary checks and balances, because the rank and file employees, the boots on the ground, might, on an anonymous basis, be willing to express concerns that, if brought to the attention of this committee, we may able to address and ask specifically.

So I would like for you to perhaps consider, in the interest of finding that balance in your position and setting that kind of precedence, perhaps doing that survey more frequently and making the results of the survey available to the committee. Thank you, Madam Chairwoman. And I yield back.

Chairwoman WATERS. Thank you. The gentleman from Indiana, Mr. Hollingsworth, is recognized for 5 minutes.

Mr. HOLLINGSWORTH. Good afternoon. I am so excited that you are here, and I really appreciate the testimony and the answers that you have given thus far and I really appreciate the work that I know you are doing and I know you are committed to doing going forward. Obviously, the CFPB's aims are laudatory, and many of us welcome the work that will be done in protecting consumers.

But many of my Hoosiers back home feel that they would been disempowered by some of the regulatory efforts that have taken place before you. They feel like they have been pushed further away from the financial system instead of included in the financial system. I represent a part of Indiana that has some suburban areas, a great college town, and also some rural areas.

And those rural areas are dramatically underserved, compared to their suburban and urban counterparts, with regard to financial services. And I wonder, as you continue to look at the process—you

are going on this listening tour, continuing to undertake an understanding of the wide variety of impacts that regulatory actions can have on individuals and Americans from sea to shining sea—if you are continuing to take into account the fact that the higher the regulatory burden, the more challenges and hoops these companies have to go through in order to serve customers and potentially find new customers, and that more and more people might be pushed aside and pushed further from the banking system, that 6.5 percent of Americans remain unbanked and we want to get them into the system.

We want to create better financial futures for them and then give them the power to create better financial futures for themselves. And I wondered if you might talk a little bit about the effort that is being undertaken, just to understand the other side of the argument, that though the aims are laudatory, that perhaps sometimes that misguided approach ends up hurting the very people we all in this committee want to help the most.

Ms. KRANINGER. Certainly, the outcomes are critically important to understanding. I think there are two things that I would say in response to that. One is that Congress did have the foresight in looking at our regulatory actions to require a 5-year assessment to say, what was the actual impact of that regulation. And I am looking at the process of that. I want to make sure it is robust; I want to make sure we have the information and the evidence base to actually make a judgment on that, that is valuable.

Mr. HOLLINGSWORTH. Right.

Ms. KRANINGER. I will say, with the ones we have done so far in the mortgage space, it was challenging because pulling apart various regulations on their own, in terms of the impact they had on the marketplace, with all of the changes that happened after the financial crisis, on mortgages, was a huge challenge, but again, the economists are endeavoring to do that, and I am challenging them to do that.

I want that 5-year look back to truly be a mechanism for us to look at reconsideration and address things. The second thing I would say is very much related. The flexibility that Congress did give the Bureau is a flexibility that we can take in applying logic and reason to these things. If something didn't work, we can throw it away.

Mr. HOLLINGSWORTH. Great.

Ms. KRANINGER. And that is absolutely what I want to do to get to the right outcomes to protect consumers.

Mr. HOLLINGSWORTH. I love that. The evaluation of these rules that have been put in place and their effects, not only on the consumers who were already part of a system but those consumers who aren't a part of the system, is hugely important to me and hugely important to my rural Hoosiers back home.

So I really appreciate the fact that you are going through that robust process and acknowledge that, on occasion, we have to revise and even remove rules that have had a more deleterious impact than expected. Now you mentioned a little bit about the process. The other thing I wanted to ask about the process is, I know Mr. Mulvaney, under his leadership, had sent out an RFI to talk

about what is the practice that we can do in order to improve enforcement, and you have talked about that a lot already.

But I wondered if you might talk a little bit about some of the early indications that you have gotten. We have seen some of that referenced, under Mr. Cordray, how enforcement actions were perhaps taken. But in addition to that, fishing expeditions were undertaken to where one opened an investigative process that seemingly had no results and seemingly cost these companies millions of dollars in order to provide the information necessary and cost the taxpayer more and more dollars to go about all these fishing expeditions.

Can you talk a little bit about that and the process that you are trying to reform there?

Ms. KRANINGER. Yes. I certainly want to talk about that looking forward. I would say from where I sit, the enforcement tool is one that is not the first tool we used. For entities that are seeking to comply, for entities that self-report, that is the mechanism for examination. The supervisory authority we have is a great way to work with those kinds of entities, where enforcement is, I think, most powerful is obviously those who are not seeking to comply and who are bad actors in the system and are engaged in unfair practices and they are the ones that enforcement, under my leadership, will go after.

Mr. HOLLINGSWORTH. Great. Well, I certainly agree with that. Mitch Daniels, the Governor of Indiana, used to say we are going to hit the bad actors with a sledgehammer but we are going to enable and empower the good actors to serve more Hoosiers and more Americans. Thank you for the service that you undertake, and with that, I will yield back.

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

Ms. TLAIB. Thank you so much. Thank you, Director, for being here. The 2018 report detailed how a subprime auto-lending company called Credit Acceptance Corporation has been preying on consumers for decades, extending credit to people it knows are likely to default. Indeed, the Credit Acceptance Corporation has admitted that it repossesses 35 percent of its vehicles it finances.

And its debt collectors have hounded consumers for as many as 25 years. Ground zero for this crisis, and I believe it is a crisis, is in my district: one out of eight civil lawsuits filed in the district court in my district and collection cases filed by the actual corporation. And I mentioned 12 percent of those are open civil lawsuits in my district.

And tens of thousands of my constituents are subject to wage garnishment actions which can take up to 25 percent of their wages and push more families into bankruptcy. Please tell me what the CFPB is doing to hold predatory subprime auto lenders accountable, including what the Bureau is doing to hold the Credit Acceptance Corporation accountable.

And one other question, if you can remember that one for me, please, I just want to get this one in because this is the one that really shocks me. Increasingly, subprime auto lenders have been using kill switches that allow them to turn off and lock a car when a consumer misses a payment. Owning or leasing a car is the price

of admission to the economy and society in much of America, including my district, where public transit fails to connect our region very much. And we still struggle with it. What is the Bureau doing to investigate the use of kill switches? And do you think it should be permitted?

Ms. KRANINGER. Congresswoman, I appreciate where you are coming from, certainly this being a priority. I can tell you that I have not committed to memory every enforcement action that was reported in the reports, I apologize for that; 86 days on the job and things that occurred prior to my arrival. But I can tell you that this is an issue, so we will get back to you on specifically what is happening with the Credit Acceptance Corporation and where the status of that is and holding them accountable pursuant to what I presume is a consent order, but as I said, I don't have it in front of me.

With respect to auto lenders in general and our posture, we are continuing to conduct the supervisory work, and look at enforcement actions in a wide variety of markets and areas within our purview. This is something that I will continue to have more conversations with the staff about specifically.

As I said earlier, the enforcement matters that do come to the Bureau come via myriad methods, frankly certainly complaints from consumers through the supervisory process from State partners whether it is attorneys general or State supervisors. And so those opportunities to work in partnership with them are also important.

Ms. TLAIB. So are you familiar with kill switches?

Ms. KRANINGER. Oh, I'm sorry—on kill switches—

Ms. TLAIB. Please do, yes.

Ms. KRANINGER. I am familiar with it as a concept, but I do not know at this stage what the Bureau has looked at on that issue.

Ms. TLAIB. I would love maybe a follow-up, maybe investigate more, Director. But do you think it should be permitted? I think this would lead to a huge crisis in our country to have kill switches on these vehicles, especially when we know that they are targeting certain communities they know will not be able to pay for the vehicle, and they have no business loaning to those individuals in the first place.

One of the things that I heard in committee—profits are a good thing, and I am not against that, I don't think anybody really is, right? But not when it is a scam. When it is scamming the people we serve, and it is a scam, a scheme, or whatever you want to call it. We serve people, not the corporations. And I feel like the Bureau—the full intent was that. Do you believe that we even need the Bureau at all?

Ms. KRANINGER. I absolutely believe consumer protection is a responsibility of the Federal Government, and as I said, Congress created the Bureau to that end.

Ms. TLAIB. One of the things that I struggle with also is where people—I think the first thing I heard in committee was "regulation by enforcement." I am a lawyer just like you, and I don't know—how do we make people do the right thing?

Especially when it comes to corporate greed, how do you make a corporation not do the things that they do, primarily because

they are looking only at numbers, not the impact or the harm on people?

And I applaud you for saying you want to prevent the harm, but the only way you could ever do that is to really hold them accountable, and that is to hold investigations and open them up, and really hold their feet to the fire. It is a really important approach, I think for the Bureau, and I really would urge you to do so.

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

Mr. ROSE. Thank you, Chairwoman Waters, and Director Kraninger, thank you for being here with us today and subjecting yourself to these questions. I think it is an important part of the transparency that the American people demand and deserve, and my only concern is that I am not sure you are really obligated to be very forthcoming, and I would like to change that so that both you and those who might follow you are held to a stricter standard by the Members of this Congress.

Back in my district, and I am a new Member of Congress having been here about 8 or 9 weeks—one of the people I look to for guidance and advice is a fellow named Senator Ferrell Haile, and Senator Haile is a Senator in the State Senate in Tennessee, and he has a good way of saying it, I think when it comes to the regulatory function of government and that is that he views the role of regulators to be to help the regulated comply, not first to punish them when they fail to comply.

I think Senator Haile is exactly right about that, and so I encourage you as you pursue your reign—and I use that word somewhat euphemistically—at the CFPB that you would encourage the staff around you, including the career staff to keep in mind that what we want is to protect consumers, not to punish premarket actors when they might make a mistake.

And so I encourage you to go about that business aggressively so that free market actors know what they are supposed to do, and don't just get punished for it.

I have a little boy who is 17-months-old, I think I showed you a picture of him recently, and his name is Guy. Guy is at that age where he is starting to explore the boundaries of his world, and anyone who has children has been through that. Guy is constantly looking to see what he can get by with, and what can he do? And so he has learned very much the meaning of the word, "no."

In fact, he is at that very early stage of using the word "no." And so what I have learned as a young parent—or a new parent, I am not young—with a new child is that it is important to set those boundaries and to set them clearly.

And so again my point here is that I hope that your leadership at the agency will guide the agency away from regulation by enforcement, or in some cases what I have seen is regulation by press release and more toward regulation by rule making and by setting boundaries, and by working with the regulated and the industries that touch consumers, so that they understand what they are supposed to do and so they can follow the rules.

Guy likes to follow the rules; he doesn't like to get spanked. And I hope my colleagues on the other side of the aisle would agree that it is probably not good when Guy gets a lot of spankings for break-

ing the rules. It would be better if we told him what the rules were and then he learned to follow them.

I want to echo the comments from Mr. Lucas and Mr. Hill and Mr. Kustoff about the small-dollar rule, particularly the ability-to-repay section, but also the payment provision including both ACH and debit card use, and I think those are good options for consumers, and I hope you will take a strong look at those and make sure that we are not denying these important tools to customers who want to borrow money and need access to credit.

I want to shift gears now and talk a little bit about Section 1035 of Dodd-Frank, which conferred jurisdiction over private student loans to the Bureau. During the reign of one of your predecessors, they saw fit to expand the scope beyond private student loans, which is clearly set out in the statute, I think without statutory authority to do so, and brought an enforcement action that is still ongoing today against what they thought was a borrower harm, but where no borrower harm has been identified, it is my understanding. And I know you can't comment on existing litigation, but I would encourage you to take a strong look at those enforcement actions where millions of dollars have been spent, and yet no borrower harm, it is my understanding, has yet to be identified.

I know you have an unlimited budget, courtesy of the Federal Reserve, and so unfortunately consumers end up picking up the tab for defending those actions even when they are meritless. And so I hope you will take a look—will you take a look at those cases and make sure that there are justifications for continuing them?

Ms. KRANINGER. I certainly am looking at all the ongoing litigation and getting familiar with the history of the issues.

Chairwoman WATERS. The gentlelady from California, Ms. Porter, is recognized for 5 minutes.

Ms. PORTER. Hello, Director. Could you please explain to this committee the difference between an interest rate and an APR?

Ms. KRANINGER. APR is the extrapolation if it were a 1-year term in terms of the loan. So that is the calculation that is laid out in particular.

Ms. PORTER. So if I take the stated interest rate, and do the math to deal with the fact it is annualized, the APR, I would be correct?

Ms. KRANINGER. Yes.

Ms. PORTER. Okay. Ms. Kraninger, the annual percentage rate—and I will be happy to send you a copy of the textbook that I wrote, which explains that the APR is derived from the finance charge, the amount financed, and the payment schedule. It is a mathematical transformation of those three numbers into the cost of credit expressed at a yearly rate.

Ms. KRANINGER. It is a simplification, I understand, that you know well—

Ms. PORTER. Well, my concern is whether you know well, ma'am, because you are the one responsible for making sure that American consumers know well when they take out loans. Let's do an example. I am a single mom, I am by the side of the road, and my car is broken down. I need money right now. I pick up my cell phone, and I call Speedy Cash, an online lender. I am in California, I have

to get to work, and I have to have the cash to fix my car to get to work.

I can barely read the little disclosure on my phone. The cost of Speedy Cash is—you may want to write this down—$10 per $100 borrowed. I need $200 to fix my car. The origination fee is $20. The term of the loan is 2 weeks, typical, for what I get paid. What is the APR? And if you would like a calculator, we have one for you.

Ms. KRANINGER. I understand what you are getting at. At the end of the day, the issue is certainly when you actually are able to repay the loan and whether or not you take out an additional loan going through this and you are certainly—

Ms. PORTER. Ms. Kraninger—

Ms. KRANINGER. —short-term small dollar—

Ms. PORTER. Reclaiming my time. Ms. Kraninger, I am asking you what the APR is. I am not asking you to wax eloquently on the pros and cons of—

Ms. KRANINGER. I understand. This is not a math exercise, though, this is a policy conversation about what the implications are—

Ms. PORTER. Reclaiming my time.

Ms. KRANINGER. —and what the appropriate level of an interest rate—

Ms. PORTER. Reclaiming my time.

Ms. KRANINGER. And—

Ms. PORTER. Reclaiming my time.

Chairwoman WATERS. The time belongs to the gentlelady from California.

Ms. PORTER. Thank you, Madam Chairwoman. I am asking if you could even ballpark on a $200 loan for a term of 2 weeks with a $20 origination fee and a rate of $10 per 100, that is 10 percent. Ballpark, what is the APR?

Ms. KRANINGER. And I am telling you that the APR calculation is—

Ms. PORTER. Is that a "no?"

Ms. KRANINGER. —a math exercise and the question is—

Ms. PORTER. Okay, but it is a—

Ms. KRANINGER. —when am I going to pay off the term of my loan—

Ms. PORTER. Reclaiming my time.

Ms. KRANINGER. —and what are the other issues that are happening in my life?

Ms. PORTER. Reclaiming my time, I take that as a "no," that you cannot do the calculation, but I am particularly concerned about this given that you could not even correctly define the APR. Changing directions, since that isn't going well, do you think the Military Lending Act harms servicemembers?

Ms. KRANINGER. I think Congress passed the Military Lending Act to provide protections to servicemembers.

Ms. PORTER. Can I count on you personally, in your role as Director, to robustly enforce and defend the Military Lending Act?

Ms. KRANINGER. The Bureau has very clear enforcement authority when it comes to the Military Lending Act and absolutely, we will carry out that authority.

Ms. PORTER. In your capacity as Director, how many military servicemembers or their families have you met with since you began service, to understand the way in which servicemembers—the challenges that they face in the marketplace for consumer financial services?

Ms. KRANINGER. With 86 days on the job, I visited Travis Air Force Base in San Francisco—outside of San Francisco—and I met with a number of servicemembers and educators, their C.O.s, I met with the chaplain, I met with a number—

Ms. PORTER. Great. Thank you. I am glad you did that.

Ms. KRANINGER. —at the air force base.

Ms. PORTER. The Consumer Financial Protection Bureau, in 2015—I am going to contrast two things—took 56 enforcement actions and there were 168,000 complaints; in 2016, 42 enforcement actions, 191,000 complaints; in 2017, 32 enforcement actions, 243,000 complaints; and in 2018, 6 enforcement actions. The number of complaints is going up and your number of enforcement actions is going down. Thank you.

Chairwoman WATERS. The gentleman from Ohio, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman. Thank you, Director Kraninger, for being here and sitting through this interesting experience, to say the least.

You testified earlier and I think it has been well-established that the CFPB has broad authority and almost unilateral authority to do essentially whatever it wants. And I think Director Cordray, when he was in your shoes—and we are going to hear from someone just outside my district later on about just how abusive that can be. To me, as we sit here, it makes no sense why Congress would provide an agency with such broad authority and no accountability. I believe the lesson we have learned today, quite frankly, is that neither side is really happy with this outcome and that we need structural reforms.

I think the case for structural reform is actually very clear and that it should be a bipartisan initiative. One of my concerns—and I have had this concern since we started this Congress—is that all the bills that come forth are purely partisan, appear to have no input from the other side, and so therefore I can't help but sit here and think that as long as I am in Congress, if this is going to continue to be the M.O., that we will be right back in this position next time you are here and for the next Director and the Director after that.

We simply have to solve these in a bipartisan way, and I think we all agree that the CFPB is just not working the way that we want. Having said that, the issue specifically that I want to ask you about today is the 3 percent cap. As you are aware, the Dodd-Frank Act requires that the CFPB cap, the total on mortgage cost of 3 percent of the loan amount. I am personally not a big believer in price controls. I think you have all kinds of unintended consequences. You see that wherever they are used. Given the fact that just creating a mortgage costs close to $8,500 per loan, how do you see this affecting lower loan amounts, loans for middle-income and lower-income folks?

Ms. KRANINGER. Certainly, this is something that the Bureau has looked at and that a number of lenders have mentioned to us, particularly smaller banks and community banks and credit unions and entering into these loans and the cost of even providing that service to their members. So I recognize the challenge that you are laying out. There is not a decision directly before me at this time. This is something that we are looking at carefully.

Mr. GONZALEZ OF OHIO. Okay. And then are you aware of any studies that have been done to kind of look at the effects that this has had? And if not, are you currently looking at conducting any yourself?

Ms. KRANINGER. I would like to get back to you on that. I think I know the answer, but I would rather give you an accurate answer.

Mr. GONZALEZ OF OHIO. That is fine. And then switching gears, I want to touch base on what I think is a positive initiative taking place at the CFPB. Too often, I think lawmakers and regulators are not forward-thinking with our ideas. This is why I was encouraged to see the CFPB with the No-Action Letter proposal. Can you discuss how this proposal would allow for innovation but also ensure that consumers remain protected?

Ms. KRANINGER. Absolutely. I do think, as I have said before, facilitating innovation is an important part of our mission. I think there was a recognition, frankly, in the past by the Bureau that it is a challenging balance to strike. And the prior No-Action Letter policy was a step in seeing that we didn't get entities coming forward, wanting to use it. We are looking at reassessing it.

We issued the new No-Action Letter proposal with a number of protections for consumers in place, first of all, that there is a self-selection. These are entities that are voluntarily coming forward because they are seeking a way to provide a service and make sure that they are complying and make sure that they understand what the rules are.

There is, of course, the application process where they would have to identify consumer harms, if we laid it out. The Bureau reviews that. We certainly could revoke that, in what was stipulated. And there is room for reporting, as well as enforcement action where the entities would not comply. So, we have some guardrails. We got back comments on it, too. So we are looking at those comments, but I would like to put a robust process in place.

Mr. GONZALEZ OF OHIO. Great. Thank you. And I yield back the balance of my time.

Chairwoman WATERS. The gentlewoman from Ohio, Mrs. Axne, is recognized for 5 minutes.

Mrs. AXNE. Thank you, Madam Chairwoman, and thank you, Director Kraninger, for being here. I appreciate it. I just want to follow up on Ms. Porter and Mr. Heck's earlier questions about our military. In my State, in Iowa alone, we have 255 active duty men and women and another 10,000 National Guardsmen.

When you took office as Director, I was really hoping that you would reverse Mr. Mulvaney's misguided decision not to supervise the Military Lending Act. In your response to Mr. Heck, you said that you don't have the authority to conduct examinations. How-

ever, in your opening statement, you said that supervision should be a more prominent tool.

Can you provide me with a legal analysis backing up this decision not to use that tool? Because I have a letter, right here, from 33 State attorneys general, including my own Tom Miller from my own home State, that said you do have that authority and that you are failing to abide by your statutorily mandated duty to enforce the MLA by not using it.

Ms. KRANINGER. I have asked Congress for this authority. I would very much like to get this authority. As you look at the Dodd-Frank statute, there were a number of places where the authority on supervision was specifically limited. The reference that I think the people are hanging their hat on is in—

Mrs. AXNE. I appreciate that, but can you provide me with a legal analysis backing up your decision?

Ms. KRANINGER. I'm sorry. I was trying to get to that, but if you would like it in writing, we can do that as well.

Mrs. AXNE. What is the exact legal—

Ms. KRANINGER. Yes. So what the legal pin that people are hanging their hat on here is 1024(b)(1)(c) that gives the Bureau the ability, and I want to make sure I say it properly, to assess and determine risks to consumers. It is to conduct examinations, and to do that in a very broad sense. But again, it is very deep in where limitations are already otherwise provided.

Mrs. AXNE. I understand what you just said, but I am not following where there is a legal decision to not use that tool of oversight.

Ms. KRANINGER. So the reason not to, again, it is the reading of that specific language that is the point of contention in where I made my determination that I do not have the authority to do it. It is that—

Mrs. AXNE. So am I correct—

Ms. KRANINGER. There is an encouragement of an incredibly broad reading of that provision that would actually open the door to all kinds of other things—

Mrs. AXNE. Reclaiming my time, please. So am I correct here, when you said you made the decision to not use that authority, that you would discount the legal decision by 33 State attorneys general, including my own attorney general, who is the longest-serving attorney general in this whole United States?

Ms. KRANINGER. I met him, yes.

Mrs. AXNE. Wonderful, isn't he?

Ms. KRANINGER. Yes, he is. I am saying I made the determination that that statute does not actually grant this authority in this case.

Mrs. AXNE. Okay. So if I am hearing this correctly, you believe that your understanding of this authority outweighs that of 33 State attorneys general, including the longest-serving attorney general in the United States?

Ms. KRANINGER. I am telling you that Congress vested this authority and responsibility for running this agency in the Director, and that is me. So, yes.

Mrs. AXNE. Well, thank you so much for that. I would argue that the lack of supervision puts all the onus on our servicemembers to

fix, and that absolutely contradicts with our earlier statement that said prevention of harm is your primary goal.

But moving onto another topic that I know we are all concerned with, 65 percent of my Iowa college students did have student loans in this past year, owing an average of almost $30,000.

But despite that—and more than $1.5 trillion in student loans nationwide—unfortunately, Mr. Mulvaney eliminated the CFPB's office for protecting students.That was the Office of Students and Young Consumers. Do you, and I am not tying you to what his decisions were, but I am asking if you will reestablish the Office of Students and Young Consumers?

Ms. KRANINGER. There is an office for protecting students; it is called a section. I don't want to parse things or make you think things are different. But we have a group of people at the Bureau who are focused on student issues, and that continues. I have actually posted the job that is a statutorily required position to hire, which is the private education loan ombudsman—so that position would leave that office.

Mrs. AXNE. I appreciate an office that serves our students, but I believe earlier you mentioned that it is about financial literacy, less about financial protection. Is that correct?

Ms. KRANINGER. It is the same organization that office was in before. So that is—

Mrs. AXNE. So are you focused on financial protection for our students or financial literacy? What is the priority?

Ms. KRANINGER. The organization, writ large, our responsibility is consumer protection. And we do that using all of the tools that Congress gave us.

Mrs. AXNE. But I believe that what you are providing more is financial literacy. Is that correct?

Ms. KRANINGER. So again, the office that you are referring to that was the source of concern existed in that same division which is called consumer education and engagement.

Mrs. AXNE. Okay. Thank you.

Chairwoman WATERS. The gentlelady's time has expired. The gentleman from Wisconsin, Mr. Steil, is recognized for 5 minutes.

Mr. STEIL. Director, thanks for joining us. If there is any benefit of being at the end of the dais at the end of a long hearing, it is that I get to hear a lot of my colleagues on both sides of the aisle ask you questions.

If there is one theme, and it really seems like there is today, it seems like both sides want to provide oversight to CFPB, which is kind of interesting, because we have an entity that doesn't allow for congressional oversight. And if you look at the funding mechanism, it comes from the Fed. So you would logically think, being relatively new to Congress and from the private sector, that logically that oversight would stem from the Fed. But that is not true. It is an independent entity without oversight, so if I look at the questions—some of which seem a little big badgering to you—being from Wisconsin, I like the Badgers in general, but it seems like you are getting badgered. Congress should sit and have that conversation as to how we allow Congress to do our role of oversight and not to allow independent agencies to be off and running. But that is a conversation for us; that is not a conversation for you.

So I would like to ask you a couple of questions. Early in your tenure you said that the Bureau would follow the rule of law and not engage in regulation by enforcement. And I am concerned that there are still cases of regulation by enforcement that are ongoing inside the agency. And so I would like to ask you, have you conducted a review of the factual basis for CFPB's claims in the cases that it is currently pursuing?

Ms. KRANINGER. Congressman, I appreciate the question fully, and I take that responsibility to do that. In the 86 days that I have been Director, I have not gone through every case. We have been looking at the cases, particularly enforcement actions as they are coming to decision. But that is something that—

Mr. STEIL. Understood. So you can't assure us that today, regulation by enforcement is not occurring?

Ms. KRANINGER. I can tell you that I believe that the staff are trying to carry out the mission, and are following the direction that I have given them as the leader. They welcome the stability and consistency and my approach to this, so I have had some very good conversations with them.

I believe that they are seeking to follow the direction. The one thing I would say is that it is challenging when you have ongoing actions, there is a regulatory record—there is a litigation record, there is a reputation with the courts in terms of making sure that we continue to be recognized from that vantage point too. So all of those things need to be considered as we look at what actions we might take going forward.

Mr. STEIL. I appreciate that—I appreciate your direction, obviously new to the tenure, but I will just reiterate my concern that we are looking at cases where there are actual consumers who are treated illegally or harmed rather than looking at the broad picture. And so I appreciate your efforts in that regard.

Before coming to Congress, I served on the University of Wisconsin Board of Regents, and was heavily involved in higher education. And so student loan debt is front of mind for me, as we look at student loan debt increasing dramatically approaching $1.5 trillion that is sitting out there. And given that CFPB's mission is to protect and educate financial consumers, I assume you are concerned with this trend of increasing student debt?

Ms. KRANINGER. Yes, I am.

Mr. STEIL. What role can the CFPB play in improving the outcomes for students and their families? What are you working on?

Ms. KRANINGER. There are a number of things—I referenced earlier some of our education efforts, there is a literacy component to this, certainly in terms of understanding when you actually enter into a loan what that means for you.

We have a few things going on in this space, one is seeking to hire the person who is going to be responsible for thinking about these issues on an hour and minute basis as opposed to where I am coming from.

So that position is out to hire, and Congress created that position of the private education loan ombudsman. The other thing that Congress directed the Bureau to do is to enter into a memorandum of understanding with the Department of Education.

Obviously, the largest in the student loan market—the largest part of it is the Federal Government in terms of both the lender and the servicing arrangements and by contract that they enter into. So that is an important relationship that we are just starting—at least under my tenure to make sure that we can work on there. I hope to have some progress on that front before the next time I come before you.

Mr. STEIL. I appreciate that. I look forward to following up, and I appreciate your efforts in those regards. Thank you. I yield back the remainder of my time.

Chairwoman WATERS. The gentleman from Illinois, Mr. Casten, is recognized for 5 minutes.

Mr. CASTEN. Thank you, Madam Chairwoman, and thank you Director. Staying on the theme of student loan debt, as you know, in our next panel we are going to have Seth Frotman, who in August of 2018 resigned from the CFPB, and in his resignation letter to your predecessor, he said that the Bureau, under your leadership, has abandoned the very customers it is tasked by Congress with protecting. Are you aware of any changes that were made in response to his concerns with the Bureau?

Ms. KRANINGER. I can tell you certainly I am taking a fresh look at everything that the Bureau does. The office of students, which is now a section focused on student issues, there is certainly a robust focus on research and other things that we need to do across markets. I can't speak specifically to those allegations, frankly, but I am certainly making sure that we are protecting the consumers that we are directed to protect.

Mr. CASTEN. Between August and March, the ombudsman who was tasked to be your ombudsman said that you were failing in your obligations that were granted by Congress. So are you aware, during the prior 6 or 7 months, whether any changes were made to address those concerns?

Ms. KRANINGER. So again we—I moved to hire that position, it is a statutory position—it is important to have someone who is carrying out those responsibilities. That is certainly where I am going to go in my tenure is working with that individual to set the path forward.

Mr. CASTEN. Okay, well, let me roll back the clock a little bit earlier then. Back in January of 2018, acting Director Mulvaney said, "We work for the people and that means everyone, those who use credit cards and those who provide those cards, those who take out loans and those who make them, those who buy cars and those who sell them."

Essentially, he was saying that he saw an obligation both to consumers and lenders. Do you share Mr. Mulvaney's sentiment that your job is to serve both the consumers and the industry?

Ms. KRANINGER. The Dodd-Frank Act, in fact, gives us a number of responsibilities—and just speaking specifically to industry setting a fair and competitive marketplace or setting it is an overstatement. Supporting a fair and competitive marketplace is certainly part of that niche, and I would say that does help lenders—good lenders that are looking to offer credit and help consumers—

Mr. CASTEN. No, but I am asking specifically—

Ms. KRANINGER. —and reducing regulatory burden. Those are the two things with respect to the market and the lenders themselves for which we have a responsibility.

Mr. CASTEN. I am asking very specifically—in the title of the Bureau is "Consumer Protection Bureau," not "Lender Protection Bureau." Is it your experience that lenders are regularly victimized by consumers and need Federal protection?

Ms. KRANINGER. I understand what you are saying, Congressman. But I would say that the impact to consumers of what regulatory actions are taken vis-a-vis the market are the things that we are looking at. When there is a burden or a cost, the lenders are in many cases passing that on to consumers, so it has a consumer impact.

Mr. CASTEN. So what—

Ms. KRANINGER. That is the part that is our focus is certainly the consumer impact.

Mr. CASTEN. So it is your view that the Consumer Financial Protection Bureau has an obligation to pursue a deregulatory agenda at the expense of consumer protection, is that what you are suggesting?

Ms. KRANINGER. I am telling you that Congress gave us as a responsibility among others, that we need to weigh—and I need to weigh in every action that we take, that regulatory burden is a consideration.

Mr. CASTEN. I guess I would submit to you that Mr. Mulvaney's quote was not held by his predecessor. My last question is, in March of 2018 the Department of Education said that student loan services should be exempted from State rules that may be tougher than Federal law. This matters for us in Illinois because we recently passed a student loan bill of rights, and all other States have adopted a wide range of requirements to protect borrowers and keep students in check.

Do you agree that the Federal Government should be able to override States' rights, and that States' rights should not be allowed to set a higher standard of protection than the Federal Government provides when the Federal Government is failing to fully protect consumers, in the views of the States?

Ms. KRANINGER. There is a lot packed into that question, Congressman. I would tell you that certainly what is happening in the student lending marketplace is important for the Bureau to understand. We have a responsibility to act from many different facets on that and I certainly do, from my standpoint, as a very general matter, support the States' abilities to exercise their authorities on behalf of their consumers in a variety of ways.

That is something that is important. When it comes to this issue that you raised very specifically, that is something that I think we will need to talk to the Department of Education about. I would say having that conversation is something I have not gotten to yet, but it is important. I wanted to have my private education loan ombudsman in place before we had that conversation.

Chairwoman WATERS. The gentleman's time has expired.

Mr. CASTEN. Thank you.

Chairwoman WATERS. The gentleman from Texas, Mr. Gooden, is recognized for 5 minutes.

Mr. GOODEN. Thank you, Madam Chairwoman. And thank you, Director, for the great work you are doing. I realize your job is not to comment on pending legislation, but to carry out what is already passed. Would you agree with that?

Ms. KRANINGER. Yes, thank you.

Mr. GOODEN. And kind of think going down the same path with respect to congressional intent of the legislation that created your CFPB and with your oversight responsibilities, do you feel that the CFPB has oversight authority over insurance products in the insurance industry?

Ms. KRANINGER. The Dodd-Frank Act specifically precluded activity that is State-regulated when it came to insurance.

Mr. GOODEN. So that would be a "no?" Okay, thank you. I yield back.

Chairwoman WATERS. The gentlewoman from New York, Ms. Ocasio-Cortez, is recognized for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you, Madam Chairwoman. Many of my colleagues here today have rightfully highlighted the extent of the student loan crisis. And it is not just a concern, it really looks like it is a debt crisis that is going to get worse. And so I want to make sure that we are doing everything we can to make sure that we are preventing what could be a major threat to our overall economy.

Bloomberg News has reported that the student loan debt crisis is about to get worse, and in fact, the next generation of graduates will include more borrowers who will never be able to repay their loans. Student loans are growing—I have seen almost 157 percent cumulative growth, compared to auto loans, which is just 52 percent. They are being issued at unprecedented rates as tuition and interest rates get higher but wages aren't keeping pace.

Student loan debt currently has a 90 percent delinquency rate of all household debt despite the fact that it is now the second largest amount of debt load. So all of these things are pointing to a crisis. In fact, Fed Chairman Powell told Congress last year that these delinquencies may come with a significant negative impact on the broader economy.

It is preventing household formation: millions of houses and apartments aren't being purchased. And in fact, Ira Jersey, the chief U.S. rate strategist for Bloomberg stated, "You have to wonder if the lack of transparency surrounding student loans is intentional." He also said that students shouldn't assume their loan servicer has their best interests in mind. So with all that, I have a few questions to make sure we are addressing these issues.

Section 1035 of the Dodd-Frank Act requires the Bureau to send Congress reports every year documenting consumer complaints submitted by student loan borrowers. And the Bureau has sent a report to Congress each October from 2012 to 2017. Did the Bureau publish that report in October 2018, as required by Federal law?

Ms. KRANINGER. No, because the position that is required to submit it under Federal law, which is the private education loan ombudsman—there was no one in that position at the time.

Ms. OCASIO-CORTEZ. So, has it been filed in the 5 months since?

Ms. KRANINGER. No, it has not been. I am actually in the process of hiring that position and that is, again a part of the reason why it has not been done.

Ms. OCASIO-CORTEZ. When do you think we will be able to get that report?

Ms. KRANINGER. It is going to take a little bit of time. There are staff in the student office, in terms of—

Ms. OCASIO-CORTEZ. Is there a projection? Six months, a year?

Ms. KRANINGER. I would certainly hope that we can get the next report in timely. It is just what time period that is meeting. I hope to get someone on board relatively quickly, but it is a—

Ms. OCASIO-CORTEZ. So no hard time commitment on when we will get the 5-month-overdue report?

Ms. KRANINGER. I am happy to get back to you, Congresswoman, on that, specifically.

Ms. OCASIO-CORTEZ. Great. Let me see here, in December of 2016, the Bureau explained how banks and colleges are teaming up to gouge college students with high debit bank account fees, and committed to publishing a report each year documenting the risks to students as part of the annual report on college credit card agreements required by Congress.

In December of 2017, did the Bureau include information in its college credit card report about banks like Wells Fargo that are charging exorbitant debit card fees on college campuses across the country?

Ms. KRANINGER. My understanding—and I responded to another one of your colleagues earlier on this—is that the report included what was statutorily required to be included, but that does predate me.

Ms. OCASIO-CORTEZ. Great. And I am concerned as well that in this balance between wrongdoing by some lenders and consumers, that the agency may be erring too much on the side of these lenders that may be engaging in predatory practices.

In July of 2017, the CFPB settled with TCF National Bank, a regional bank in Minnesota. The CFPB issued a fine in 2017, claiming the bank deceitfully forced customers to opt into its overdraft services for debit and ATM card transactions, subjecting them to costly fees when their balance dropped too low. In fact, the CEO of the bank that was sued, was also the former head of the Minnesota Republican Party. He owned a yacht named, "Overdraft." But the CFPB issued a fine of $5 million. He agreed to remit $3 million of that to the Federal Comptroller's office. The TCF carries assets that are very large, and I am wondering why the agency agreed to reduce the amount of their fine by $3 million?

Ms. KRANINGER. Congresswoman, that case in particular, predates my term, but we are happy to get back to you on what we can on that.

Chairwoman WATERS. The gentlelady's time has expired. The gentleman from Virginia, Mr. Riggleman, is recognized for 5 minutes.

Mr. RIGGLEMAN. Thank you, Madam Chairwoman, and thank you, Director, for testifying today. You know, I am pretty new to politics, so before I get started, I would like to address an issue that many of my colleagues have mentioned today, which is the

politicization of the Bureau. And I would like to note that former Director Cordray, who ran the CFPB from 2012 to 2017, then ran for Governor of Ohio, and was a Democrat. So I think it is inherently political, it is seems to me, based on, we passed a law for the CFPB, but that is suddenly new to politics. So maybe I am naive.

It is not a secret and it shouldn't be a secret that I am a freshman Member of Congress. And compared to many of my colleagues on both sides of the aisle, I don't have a whole lot of experience. But even without political experience, I have live experience as a former and current business owner; as somebody who dealt in strategic intelligence, and helping DHS; and also as a 9/11 veteran.

And there is something I wanted to thank you for, I looked at your resume. Thanks for what you did during 9/11. I was part of that operation as soon as it happened, so it is something I am very impressed with. I am a novice in politics, but after looking at your resume, I think you are uniquely qualified to do this.

With me doing multiple businesses, people would say, "Why are you running for politics? Why are you trying to get into government?" I think life experience in trying to manage people but also resources, assets, operational issues, measures of effectiveness, anything to do with H.R., but also mission creep, mission specifics, and every piece of language when you are actually running an organization that big is an incredible challenge. So I thank you for being here today. You are not a novice; I am.

So anyway, as we get going, as Director of the Consumer Financial Protection Bureau, you have an awesome amount of power and authority in the Federal financial regulatory sphere. Wouldn't you agree?

Ms. KRANINGER. I would agree.

Mr. RIGGLEMAN. Yes. And—

Ms. KRANINGER. As granted by Congress.

Mr. RIGGLEMAN. Yes, granted by Congress. And on the website of the CFPB, it reads, "The aim is to make consumer financial markets work for consumers, responsible providers, and the economy as a whole. We protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law. We arm people with the information, steps, and tools that they need to make smart financial decisions."

As a new Member of Congress, I can already see—including as recently as yesterday in the committee—that the debate about your agency is not about the Bureau's mission or objectives, but about a power grab that is dictated by the political seesaw of what party is in the Majority. I fully support your agency's mission and I think most of my colleagues would agree with that.

My question for you, Director Kraninger is, in your opinion, what has your agency done well to protect consumers and what are some areas where that agency has fallen short of its mandate?

Ms. KRANINGER. I appreciate that question, Congressman, because we always seek ways to continually improve how we are delivering on that mission, and that is certainly where I am coming from. I can tell you, with my interactions with the staff, they have raised themselves opportunities to improve, issues to address, ways to do things better and differently, and I am encouraging that kind

of thinking because, again, I don't think it is a full-scale criticism of the past.

You know, this is an agency similar to—again, experiences that you noted—standing up any agency or an organization, in the early days there are a lot of mandates that are before you and a lot of things that have to happen in a short period of time given pressure and, frankly, the mission need. And the financial crisis was certainly something that drove many people to come to the Bureau and to want to serve.

So I think, in terms of ways to improve, we have talked about using all of the tools at our disposal and thinking about how best to do that. Certainly in our conduct of exams, we have matured and will continue to. I want to be more agile in our examination process as we think about how we are able to pivot to address the risks that we see, how we are able to work with entities that are seeking to comply in a more consistent and stabilized manner.

And education, frankly, I am very interested in how we can, again, measure the effectiveness of the things that we are doing in that arena. I am finding a staff that is very excited about the opportunity to do that.

Mr. RIGGLEMAN. Well, my time is short, but I want to say this. My staff in Congress has allowed me to transition in a way I didn't think possible, especially the professionalism of it. It looks like your staff has done the same thing.

And obviously, I had two or three more questions because I actually read some of this and I am pretty excited about what the CFPB could do for consumers, but I am also well aware of what overreach and regulatory weaponization can do to companies, based on when I have been in the DOD, but also in the manufacturing space and also trying to get loans in rural areas.

So I thank you for your time. I am not even going to go over time. I think we have about 10 seconds left. So, thank you.

And I yield back.

Chairwoman WATERS. Thank you very much. And let me just remind Mr. Riggleman that serving as the Director of the Consumer Financial Protection Bureau, no matter what your party is, does not eliminate your choice to run for office.

The gentlewoman from Virginia, Ms. Wexton, is recognized for 5 minutes.

Ms. WEXTON. Thank you, Madam Chairwoman.

And thank you, Director Kraninger, for joining us here today. As you know, the CFPB was created to protect consumers from unfair, deceptive or abusive practices in the financial marketplace. But I am troubled by many of the anti-consumer actions taken by the CFPB under your leadership and that of your predecessor, Mick Mulvaney, someone who called the CFPB a "sick, sad joke" and sponsored legislation to dissolve the very agency he later headed.

And it is troubling to me because I am no longer confident the CFPB will fulfill its mission. Now, Director, in your written remarks you discuss the nine items that you are statutorily mandated to report to us about semi-annually. Is that correct?

Ms. KRANINGER. That is correct.

Ms. WEXTON. Okay. And the first of those items is significant problems faced by consumers in shopping for or obtaining consumer financial products or services. Is that correct?

Ms. KRANINGER. Yes.

Ms. WEXTON. Yes. And the first item that you mention are credit products marketed to non-prime borrowers, correct?

Ms. KRANINGER. I think that might be the spring one? There are two reports here and both pre-date me. So I apologize, but I am probably a little more familiar with the fall points. I will address it when you have asked the question.

Ms. WEXTON. Generally, one of the top things that—

Ms. KRANINGER. Yes.

Ms. WEXTON. That appears in that section, right?

Ms. KRANINGER. Yes.

Ms. WEXTON. Okay. And would you agree that payday loans and car title loans are lending instruments that are marketed to subprime borrowers?

Ms. KRANINGER. I believe that it is important to ensure that we do have access to credit. That is why we are looking at this issue—

Ms. WEXTON. No. Would you agree—the question was, do you agree that those are loans that are marketed to subprime borrowers?

Ms. KRANINGER. I do believe that is available to a wide variety of consumers. But I think there have probably been studies to that point.

Ms. WEXTON. I am from Virginia, and we instituted very strict consumer protection rules on payday lenders at the State level. But I appreciate your remarks about whack-a-mole here today.

Because what we have seen is that, although we don't have payday lenders really anymore, we have a lot of car title lenders who have popped up. These storefronts have popped up in low-income areas or especially near our military bases. We have Marine Base Quantico, Norfolk Naval Base, and a number of others here in Virginia.

They are not required at this time to determine ability to repay, is that correct, in making those loans?

Ms. KRANINGER. I won't stipulate exactly what every single company decides to do with respect to its underwriting and with State laws that are in place. There are a number of things—

Ms. WEXTON. The question was, they are not required to by the CFPB? The rule that would require that assessment has not gone into effect, is that correct?

Ms. KRANINGER. It was set to go in effect in—or is set in August, except that it is stayed by the court. So yes, there is not a Federal requirement on them on this point.

Ms. WEXTON. Okay. Now, would it surprise you to hear that despite the fact that these are marketed as short-term loans, in Virginia in 2015, the average duration of such a loan was 354 days, or just short of a year? Would that surprise you?

Ms. KRANINGER. There are a lot of studies that have been done on this in terms of what happens in different States—

Ms. WEXTON. Right, but this is—

Ms. KRANINGER. I am not familiar with that particular study—

Ms. WEXTON. Well, I will tell you that I am using statistics from the Virginia State Corporate Commission—

Ms. KRANINGER. Understood.

Ms. WEXTON. So it is not a study, it is statistics from the State itself. Okay, would it surprise you to hear that the average APR for these loans in 2015 in Virginia was 221 percent? Does that surprise you?

Ms. KRANINGER. Again, you are listing statistics I haven't seen, but I stipulate that they are accurate.

Ms. WEXTON. But would it surprise you that these loans that are marketed to people who by definition have more trouble repaying them than wealthy folks, or than people who don't have to put their car on the block for it, does it surprise you to hear that the average APR is 221 percent?

Ms. KRANINGER. I understand what you are getting at in terms of looking at this industry in general. The reconsideration of the rule, and the—

Ms. WEXTON. I'm sorry, we are running out of time. If you don't want to give me a yes or a no, I will just reclaim my time. Does it surprise you to know that more than 38 percent of these borrowers went into arrears by 60 days or more and incurred additional fees and penalties, does that surprise you, yes or no?

Ms. KRANINGER. Again, I know what you are getting at, and in terms of—

Ms. WEXTON. Thank you. Reclaiming my time, would it surprise you to know that more than 15 percent of these people had their cars repossessed in 1 year?

Ms. KRANINGER. Again, I will stipulate that you are listing statistics from the cite that you said in terms of what happens in Virginia.

Ms. WEXTON. Okay, thank you very much. Given statistics like those, it surprises me that you want to rescind this rule that protects these people. And with that, I yield back.

Chairwoman WATERS. The gentleman from Utah, Mr. McAdams, is recognized for 5 minutes.

Mr. MCADAMS. Thank you, Chairwoman Waters. Director Kraninger, I know this is your first appearance before our committee, so I want to welcome you to the committee and I hope that we can work together in the coming years to fulfill the CFPB's mission of protecting consumers, while also making sure that consumers have safe access to financial products—that is important.

In general, I am a believer that capitalism with proper guardrails and direction can be a force for good. The modern financial system is able to provide credit to borrowers who would otherwise be locked out, and lending can fuel economic growth, which is also important.

Whenever I talk to small businesses in my district, they always mention access to capital as one of the biggest hurdles in starting a business and scaling up their business. And so I want to encourage that form of capitalism in particular, because I know the potential a small business loan can unleash for an entrepreneur.

And unlike some of my colleagues, I was not in Congress when the Dodd-Frank Act was enacted into law. And I know that everything in that law wasn't perfect, but I remember the Great Reces-

sion, and I know, and remember, the pain so many Utah families suffered as they lost their homes.

I don't want to go back to those days, and I don't want to go back to the days before the CFPB existed, because I believe it has an important mission and that it fills a critical role—a critical void that existed during the financial crisis.

So Director Kraninger, I wanted to ask you about one of the first steps you took after you were confirmed and sworn into your current role regarding the rollback of the payday rule. In the CFPB's press release announcing the payday rule rollback, and the proposal to rescind ability to pay requirements, your agency said, "Rescinding this requirement would increase consumer access to credit."

I wanted to contrast that statement with findings from the CFPB's 2017 final rule, and in the 2017 final rule the CFPB found that half of all storefront payday loan sequences contain at least four loans. One-third contained 7 loans or more, and almost one-quarter of loan sequences contained at least 10 loans in a row.

So Director Kraninger, my question, for the one-quarter of people who have taken out 10 loans in a row is, is access to credit their biggest problem, or are they stuck in a debt trap?

Ms. KRANINGER. I understand the premise of your question, and I would say there are—again, a lot of the rulemakings have different impacts on a number of different consumers.

We looked at a wide variety of things from the number of loans affected, the storefronts affected, the loan revenue affected, physical access affected—how that worked with respect to the vehicle title loans versus the payday loans, and the lien sequence—the loan sequences affected. So there are a vast array of cost and benefits that we need to continue to look at.

The preceding issue really is the legal sufficiency of the basis for the unfair and abusive practice determination. That is what is being looked at—that is what is being litigated as well, so we were in litigation when I took office—there is a stay in place on that particular issue. It is with that pledge to the court to reconsider and take action—

Mr. MCADAMS. Expanding access to credit certainly is important, but my question is, what role did consumer protection play in making that decision, because there is a balance between expanding access to credit, and consumer protection, so what role did consumer protection play in making that decision to rescind the rule?

Ms. KRANINGER. I would say again that is certainly at the heart of what we do as an agency, but at the same time, the guidepost is the law. The legal sufficiency of the arguments that we make is paramount and critically important.

I have an open mind because this is an active rulemaking, and because I am telling you that I do have an open mind on this issue, we need to review the record and the evidence through this process, and—

Mr. MCADAMS. Are you concerned that the proposal on the table now will subject more consumers to high-cost loans that they can't afford and that they will never be able to pay off? How much is that weighing into the factor?

Ms. KRANINGER. Again, that is certainly a consideration as we are looking at the full body of evidence, and the data that comes forward on this.

Mr. MCADAMS. You know, I think ultimately payday lending can quickly become a debt trap, and I don't think that the proposed rollback strikes the right balance between consumer protection and access to credit. Thank you. I yield back.

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

Ms. DEAN. Thank you, Madam Chairwoman. Director, just in a sentence or, for the clarification of the folks who may be listening in who hate acronyms just as much as I do, what is the mission of the agency that you direct?

Ms. KRANINGER. The mission of the agency in short is consumer protection, that is absolutely at the heart of what we do.

Ms. DEAN. Wonderful, and I am so glad for that clarification because it seemed like it morphed into consumer protection and lender protection. So I am so glad to get that clarity from you. With whom did you interview before becoming Director of this agency?

Ms. KRANINGER. There were certainly a variety of people involved in the process as there are in any of the personnel processes in the White House, and ultimately it is the President's decision whom he is going to nominate.

Ms. DEAN. So could you tell us some of the people you interviewed with? Names?

Ms. KRANINGER. I would say again, I don't want to get outside—National Economic Council—again if anyone has worked inside the system they know that is the core organization inside the White House that would be responsible for providing policy input—

Ms. DEAN. I don't know who those people are. Could you say who you interviewed with in order to achieve this terrific position?

Ms. KRANINGER. Well, I can tell you that Larry Kudlow is the National Economic Advisor who runs that organization.

Ms. DEAN. Meaning you interviewed with Larry?

Ms. KRANINGER. Yes, I did.

Ms. DEAN. Okay.

Ms. KRANINGER. The Presidential Personnel Office, again, helps through the process. And there were interviews with folks there.

Ms. DEAN. Director Mulvaney?

Ms. KRANINGER. No, Director Mulvaney was not part of the process.

Ms. DEAN. Okay. And through that interview process, how were you informed that you got the job?

Ms. KRANINGER. I had my last step with the President, and my nomination went forward from there.

Ms. DEAN. So you spoke with the President about the position?

Ms. KRANINGER. Yes, I did. It is his nomination.

Ms. DEAN. Okay. And what direction did the President give you in order to appoint you to this important position?

Ms. KRANINGER. The President told me to go do a good job.

Ms. DEAN. By that, he meant what?

Ms. KRANINGER. I presume he meant that I should carry out the responsibilities Congress has given this position as I intend to do and have done.

Ms. DEAN. He didn't specifically articulate what he thought the job was?

Ms. KRANINGER. He did not give me any particular direction. I know that is what you are looking for, in terms of anything that I should do on the job or not. He wanted to make sure and satisfy himself that I was the person he wanted to nominate for the job.

Ms. DEAN. Okay. Well, I am not clear on what the conversation was like, but we will move on from there. In terms of student loan debt, I too care deeply about that because I come from Pennsylvania, and in my home State of Pennsylvania, students have an average debt when they leave college of almost $37,000.

Unfortunately, we suffer the second-highest rate in the United States. And as many of our colleagues have discussed, this is not just a problem of student loan debt but the barriers that it creates to other types of borrowing, whether this cripples them from being able to borrow for purchase of a house or save for retirement.

So I was interested that the agency, under your stewardship for the last 3 months, left open the ombudsman position. Could you explain to us why that was left open for 6 months?

Ms. KRANINGER. Yes. I would say first that my predecessor was hoping that I would get the opportunity to actually appoint that position. So it did take a little bit of time to get confirmed. In the time that I have been on board, we had to work with the Treasury Department because Congress actually gave the authority to appoint this position to the Treasury Secretary, despite the fact that the person works for me. There was a little bit of conversation to work out. The position was posted just this week because we got through all of that.

Ms. DEAN. It was actually posted yesterday.

Ms. KRANINGER. Yes.

Ms. DEAN. I was fascinated. One of my colleagues—

Ms. KRANINGER. And I could tell you, actually, despite the fact that you may be skeptical, it literally was as fast as I could do it. It had absolutely nothing to do with this hearing. It was getting that done—

Ms. DEAN. No, nothing to do with that. "Wednesday, March the 6th, at 1:30 pm, good afternoon. We are currently seeking candidates for the private education loan ombudsman position." I think that is terrific. Finally, we are going to fill that, and we let it go for 6 months, a statutorily created and required position. I might go on.

Ms. KRANINGER. There are folks in the student offices who are paying attention to student lending issues, and I have certainly met with them and talked to them. But I think that is—

Ms. DEAN. Even though your predecessor shattered those.

Ms. KRANINGER. It is an important note to know.

Ms. DEAN. In your passion for controlling student loan debt, what recommendations have you made or will you make to this committee to address the student debt crisis?

As many of my colleagues have talked about, $1.5 trillion is approaching the burden of home mortgage debt. What specific ambitions do you have to tamp that down and to control predatory lending and to help young people claim their education without burdening their future?

Ms. KRANINGER. I can tell you very quickly, since we are being gaveled, that education already, I know, is a huge part of this. We need to give students the information, and the parents and the grandparents who are helping them the information they need to assess whether to undertake the loan to begin with. And there is certainly much more.

Chairwoman WATERS. The gentlelady's time has expired.

Ms. DEAN. Thank you, Madam Chairwoman.

Chairwoman WATERS. Mr. Garcia, the gentleman from Illinois, is recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Madam Chairwoman. Good afternoon, Director. In some of the previous remarks that you made, you mentioned bad actors in the financial services market. Can you tell us who some of the bad actors are?

Ms. KRANINGER. Congressman, I appreciate why you are asking that. I would say, I can't stipulate that. There are a number of entities who have had enforcement actions taken against them by the Bureau. There are ongoing investigations right now that are not public, where there is a concern that unfair practices and other violations of the law have taken place.

Mr. GARCIA OF ILLINOIS. Okay. I appreciate ongoing investigations, but who are some of the bad actors that were moved on by the Bureau?

Ms. KRANINGER. Perhaps the best example I can give you of a public action that was recently taken, and that is one that I know the committee asked about but perhaps it sets the tone, in terms of injunctive relief—one of the things that the Bureau can do is actually preclude an entity from engaging in and debarring them from an opportunity to even participate in the marketplace to begin with. We had an entity with an extraterritorial presence. They were not present in the United States and they were yet trying to deceive and engage in illegal conduct in the process.

Mr. GARCIA OF ILLINOIS. And who was that?

Ms. KRANINGER. It is Northway that we were—it is a complicated, again, structure, in terms of who it is.

Mr. GARCIA OF ILLINOIS. Any others come to mind?

Ms. KRANINGER. That one just, at least, gives you the example because they are completely debarred as part of the consent order from engaging at all in our financial system.

Mr. GARCIA OF ILLINOIS. Okay, fair enough. Any others within the last 3 months of your tenure?

Ms. KRANINGER. Certainly, there are enforcement actions that have been taken. I mentioned in my statement, and it is public information, that I signed consent orders on Cash Time, Enova, Sterling Jewelers, and an individual name, Mr. Corbitt.

Mr. GARCIA OF ILLINOIS. Okay, good. I like the specificity. I think that helps to send a message to the bad actors if we truly care about that. Let me change gears quickly to the topic of student lending, which previous Members have raised with you.

Latinos comprise about one-third of the folks who are not currently making payments on their student loans. This is less than African Americans but still slightly higher than whites. Of those Latinos who are not making payments, almost half, 46.4 percent,

are not making payments because they are in forbearance or in the grace period.

What is the CFPB looking at doing for communities of color, in terms of student debt counseling? And how are student debtors being guided away from forbearance and default?

Ms. KRANINGER. I can tell you, Congressman, we do provide a number of educational tools, and information to students. I think we can do a better job getting some of that information out more widely in the different stages of the process.

Mr. GARCIA OF ILLINOIS. Are you going to?

Ms. KRANINGER. Yes, it is absolutely something I am looking at. As I noted, having the private education loan ombudsman position filled will be extremely helpful, in terms of getting recommendations on the inside.

I have a number of individuals dedicated to this issue, in the students' office. And they have made recommendations and certainly set a strategic plan of the activities that we are going to undertake in this space by their recommendation. But having the person in charge of the office will certainly help.

Mr. GARCIA OF ILLINOIS. We will be watching closely on that front. My last question is, are you seeking to renew the memorandum of understanding (MOU) that was done away with by the Secretary of Education and your agency, since it seemed to have a pretty doggone good purpose and function?

Ms. KRANINGER. I would agree that it had a good purpose and function. And I would note that, obviously, Congress required us to have that MOU in place. So it is a priority to have the conversation—

Mr. GARCIA OF ILLINOIS. By when?

Ms. KRANINGER. —with the Department of Education on that.

Mr. GARCIA OF ILLINOIS. So is that a yes?

Ms. KRANINGER. Yes, it is. It is a definitely a priority to move forward on that.

Mr. GARCIA OF ILLINOIS. Okay. Thank you. I just want to point out that matters like the MOU and the student loan study are very, very important, and it is very key to be aware of the student loan study, and to have a full understanding of the student debt problem, particularly as it is affecting communities of color. And I will be asking in the future for reports on that.

Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you very much.

The gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman.

And thank you, Director, for your endurance. I know it has been a long hearing. And the good news is, I am the last one who appears, unless Mr. Phillips shows up. So the end is in sight, perhaps. Somebody else is waiting, too? Well, that is what happens.

Ms. KRANINGER. Yes.

Ms. GARCIA OF TEXAS. But I want to zero-in on your listening sessions. I had some questions related to payday loans and payday lenders. I always tell everybody payday lenders do nothing but make poor people poorer.

And I don't usually even use the word "hate" because my parents taught me at an early age, and my faith, not to hate anybody. But I really do hate anchovies, eggplant, and payday lenders. Because I really do think that they prey on poor people and the most vulnerable populations. And I hope that you do reconsider changing any of the rules that have been in place, that have provided more protections.

But I wanted to zero-in on people who have cultural language barriers, that add to this issue and that make it harder for them to do business with some of the financial institutions that are under your oversight. I saw that you all have looked at fair lending enforcement. I looked at this and I also found a report that you all made on serving the limited English language population.

So I was curious, when you went to New York and Chicago and San Francisco on your listening tours, did you visit any of the minority or poverty populations, or any of the community-based organizations that are involved with representing them, to really look at the concerns of that population of consumers?

Ms. KRANINGER. I did absolutely meet with the organizations. It was due to time and some very constrictive things that I didn't get to go out to those organizations but I have expressed my interest in doing that. But I have met with—

Ms. GARCIA OF TEXAS. Which organizations did you visit with?

Ms. KRANINGER. We can probably get back to you with a list. I apologize that it is not readily at my fingertips. But it was a myriad of organizations and hearing their concerns was important to me.

Ms. GARCIA OF TEXAS. Right. Because it strikes me that at least New York, Chicago, and San Francisco—I may have missed one that you mentioned—are certainly recognized as financial banking centers. I was afraid that you were listening to the lenders and not to the poor consumers.

Ms. KRANINGER. No. I absolutely have met with consumer advocates in those cities, legal aid organizations as I said, too. And I did have a housing counselor and his client actually there at one of them, and he was an Hispanic-American gentleman.

Ms. GARCIA OF TEXAS. Well, I would certainly hope that when you continue these sessions—and I would encourage you to do that—that, of course, you come to Texas, you come to Houston—

Ms. KRANINGER. Yes.

Ms. GARCIA OF TEXAS. And that you come to listen to those who are not as proficient in English or not as culturally used to using some of our lending in financial institutions.

And Madam Chairwoman, I do have a document I wanted to submit for the record. It is called, "Spotlight on Determining Limited English Proficient Consumers—

Chairwoman WATERS. Without objection, it is so ordered.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman.

Also, I wanted to zero-in on immigrant communities. Have you visited with any immigrant communities, or any people who deal with immigrant communities other than payday lenders? Because immigrant communities, from some of the data I have seen, make up about 14 to 15 percent of the consumer borrowing, consumer

transactions in this country, so they are obviously contributing a lot.

So what protections are you going to plan, or are you involved with or what is on your horizon as you are moving on with your position, on making sure that we protect the immigrant population from the abuse of payday lenders and others?

Ms. KRANINGER. I can tell you that the purview of the CFPB is to protect all consumers and I take that seriously. I did remember one other institution that, perhaps, gets to an answer of both of your questions. There was a community banker, actually, who was in a New York meeting who was an Asian American and running a bank specifically to help the Asian American community in New York where much of the population was immigrants—

Ms. GARCIA OF TEXAS. Thank you. I would encourage you to do more of that. And very quickly, what efforts would you be making for outreach to those communities? I know this same report that you gave us today outlines a lot of materials, pamphlets.

And it takes more than just preparing a preparing a pamphlet in Spanish. It takes more than preparing a pamphlet in Chinese. It is really about outreach and making sure that people have an opportunity to learn how to use the banking system and, frankly, they learn how not to get ripped off.

Chairwoman WATERS. The gentlelady's time has expired.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman.

Ms. KRANINGER. If I could, Madam Chairwoman, there is an Office of Public Engagement and External Affairs and an Office of Community Affairs that is responsible for thinking about the issues that those populations face.

Ms. GARCIA OF TEXAS. Okay. Thank you.

Chairwoman WATERS. Thank you.

The gentleman from West Virginia, Mr. Mooney, is recognized for 5 minutes.

Mr. MOONEY. Thank you, Madam Chairwoman.

Direcor, if there was anything else you wanted to follow-up on that, I am happy to yield you another minute.

Ms. KRANINGER. No, but thank you.

Mr. MOONEY. Okay. Well, I know it has been a long day and I am sure you have had a lot of tough questions. And some of my friends on the other side of the aisle would like to see you be more active, go outside your area, be more aggressive.

I am, frankly, the opposite of that. I don't think your department should exist. I would abolish it tomorrow if I could. It should never have been created to begin with.

But that being said, you are there now, and your predecessor testified last year. And he bragged that for every dollar CFPB used to investigate people, they were able to bring back $7 into the CFPB. And that was, for him, a point of pride.

I was a little concerned that he is measuring his success by how much money he can get from people he investigates. How do you measure your success in what you are doing? Is it by how much money you can get from people in settlements?

Ms. KRANINGER. Congressman, this is a very important question because I think it gets to the heart of how we do what we do. I

am still in the midst of my listening tour, really trying to hear from all the stakeholders about what they think on that front.

What I am starting to formulate around is a focus on prevention of harm, that is obviously a challenge to measue, to your point, in getting at measuring success is important, looking at that challenge from how education changes behavior certainly in this space and how we can get our education materials to those who need them, and see change happen, frankly all communities in need on that front.

But no one measure, as in the number of fines that are imposed, or the measure of staff that we have—others have said that to me, it is not that alone, it really is about outcomes and achievement of the mission which is protecting consumers.

Mr. MOONEY. Well, thank you for that. There is a new movement in this country of socialism, some of my colleagues on the other side of the aisle are socialists—they don't think capitalism should exist in America. They don't think that companies that they would like you go to after should exist as profitable companies. They have a different view of the world, and I hope you do not take that view.

This country was founded and became successful because of capitalism and free markets, and just because they have a corporation after their name or their business is profitable doesn't make them bad, doesn't make them guilty. And I think there are those who believe all companies are somehow guilty, and they have to prove that they are innocent, and I take great offense at that.

Everybody is innocent until proven guilty in this country—not guilty until proven innocent. And I think from what I have seen in a lot of departments in the last Administration and in your department, there might have been a view—I am not saying you have this view, I hope you do not.

But I think there was a view that you just go after these businesses and you dig, and dig, and dig until you find something. And they are all going to be guilty, so let's just keep going until they basically pay a settlement and beg for mercy and get out of whatever investigation is going on.

So I urge you not to do that going forward. Follow-up question, the CFPB structure has been an issue in multiple jurisdictions. Judge Loretta Preska of the U.S. District Court for the southern district of New York ruled the structure to be unconstitutional, limiting the Bureau's authority to pursue claims, how do you interpret these rulings?

Ms. KRANINGER. Congressman, I recognize that the litigation is ongoing on these issues, and I don't intend to comment on, nor does the Bureau comment on ongoing litigation. I will tell you that it is my responsibility to continue to carry out the mission that Congress gave this Bureau until that changes.

Mr. MOONEY. Okay. I am just going to conclude by saying there are a lot of patriotic Americans who love this country, who have built businesses and treat their employees very well. They want to make a profit so that their employees can have good paying jobs and take care of their families, invest in their children's futures, be able to go to college and have a better life.

There are a lot of good men and women out there who have done this, that I think have been unfairly treated by their own govern-

ment from various agencies. So I am glad we have some new blood in there now. Again, as I said at the beginning, I don't think this ever should have been created and Dodd-Frank was a mistake, but I encourage you to be fair to people. Thank you.

Chairwoman WATERS. Mr. Mooney, I would caution you to refrain from identifying others or characterizing them in relationship to their political party or whether or not they are capitalists or socialists. I don't think anybody has identified that to you, and so I would hope you would refrain from doing that—

Mr. MOONEY. If the Chair is announcing a point of parliamentary procedure—

Chairwoman WATERS. No, the Chair is not, the Chair—

Mr. MOONEY. But if the Chair is giving an opinion, this is not a conformist—

Chairwoman WATERS. The Chair is taking the opportunity to utilize her ability to intervene when she thinks it is necessary.

Mr. MOONEY. Am I allowed to say my friends on the other side of the aisle—

Chairwoman WATERS. No, you may not.

Mr. MOONEY. Is that against the rules too?

Chairwoman WATERS. The gentlewoman from Massachusetts is recognized for 5 minutes.

Mr. MOONEY. Is the Chair stating a point of parliamentary procedure? Is the Chair stating a point of parliamentary proceeding—

Chairwoman WATERS. No, the Chair is not asking or stating parliamentary procedure. The Chair has made her statement and is moving on.

Mr. MOONEY. Does the Chair believe in free speech? I hope you believe in free speech because I do.

Chairwoman WATERS. The gentlewoman from Massachusetts, Ms. Pressley, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Madam Chairwoman, and thank you, Director Kraninger. You know, certainly you have a job to do, and it just so happens that our job is to make sure that you are doing your job, which is to protect borrowers.

I will be picking up on some of the line of questioning that was offered earlier, and I apologize in advance if it is repetitive, but some things I just want to make sure that we have clarity on for the purposes of the record, if you will indulge me.

So across my home State of Massachusetts, more than 850,000 people owe $33 billion in student debt. As was alluded to earlier, the Massachusetts seventh district is certainly not an anomaly; this is true for many Congressional districts.

This debt is acting as a barrier to economic mobility and further exacerbating inequities and economic disparities—it impacts purchasing power, one's ability to start a family, to purchase a home, to save for retirement.

So there is an individual impact and then a tsunami of hurt, I do believe, on our economy and perhaps for generations. Yes or no, would you agree that we have a student debt crisis in our country?

Ms. KRANINGER. Certainly, growing student debt is a concern that we absolutely need to look at and ensure that people going into debt—

Ms. PRESSLEY. Yes or no—would you agree that we have a student debt crisis in this country?

Ms. KRANINGER. I think that word is a very loaded word and—

Ms. PRESSLEY. I will take that as a "no." Okay. Research has shown that student debt, particularly defaults and delinquencies, have a disproportionate impact on certain borrowers, particularly black and Latino borrowers.

Despite the fact that all Federal student loan borrowers have a right under Federal law to an affordable student loan payment, the Bureau is responsible for administering fair lending laws including the Equal Credit Opportunity Act intended to protect consumers including student loan borrowers from discrimination by financial service firms. Does the Bureau expect student loan companies, specifically student loan servicers, to abide by these fair lending laws, yes or no?

Ms. KRANINGER. Yes.

Ms. PRESSLEY. Thank you. In April 2017, under Director Cordray, the Bureau announced that it was prioritizing oversight of student loan servicers in its fair lending work. Since the Bureau's 2017 announcement, has the CFPB ever informed the public that it is no longer your priority to police discrimination in the student loan servicing market, yes or no?

Ms. KRANINGER. I think what you are asserting is not perhaps accurate. I think that we continue to take actions through the supervisory work and through the enforcement work in this area. The broader challenge is of course that the Federal Government is a very large player in the student loan arena and so the Department of Education has roles and responsibilities here that have also been given to them by Congress.

Ms. PRESSLEY. Okay, so are you honoring the law or not?

Ms. KRANINGER. Absolutely, the Bureau continues to operate in this space, with identified student loan servicers as a larger participant in the market place. The issue is Federal—

Ms. PRESSLEY. And policing specifically discrimination, because this is what I am really concerned about—that the Bureau is unwilling to take on Betsy DeVos and the student loan industry to obtain the records and data needed to effectively police this potential discrimination or fair lending violations in the student loan market.

Ms. KRANINGER. So now you are getting to the heart of the matter. I absolutely want to address this issue with the Department of Education. We have a responsibility in statute to have a memorandum of agreement on the issue that you are relating.

Ms. PRESSLEY. Okay.

Ms. KRANINGER. It is not an MOU that is in place today. It is a conversation that we need to have. I want to have the private education loan ombudsman in place to have that conversation and facilitate a productive working relationship going forward with the Department of Education so they can carry out their responsibilities and the Bureau can carry out its responsibilities.

Ms. PRESSLEY. Very good. Has any student loan servicer ever relied on the December 2017 memo or refused to provide documents to the Bureau's office of supervision, or office of fair lending?

Ms. KRANINGER. I'm sorry, can you repeat the beginning of that? I am not sure I am familiar with the particular matter—

Ms. PRESSLEY. Okay, so this is the matter that you said was getting at the heart of the matter. In December 2017, the Department of Education sent a memo to all the private sector companies it contracts with to perform student loan servicing. The memo specifically instructed these firms to stop sending documents to third parties, which in turn blocked State law enforcement officials, such as attorneys general, from accessing key records. Are you familiar with that?

Ms. KRANINGER. Yes, I am.

Ms. PRESSLEY. Okay. Has any student loan servicer ever relied on this December 20, 2017, memo, and refused to provide documents to the Bureau's office of supervision or office of fair lending, yes or no?

Ms. KRANINGER. I do not know the answer to that question, but we can certainly find out.

Ms. PRESSLEY. Thank you.

Chairwoman WATERS. The gentlelady's time has expired.

Ms. PRESSLEY. I yield back.

Chairwoman WATERS. Thank you. The gentleman from Connecticut, Mr. Himes, is recognized for 5 minutes.

Mr. HIMES. Thank you, Madam Chairwoman, and thank you for that attempt to call out the intellectually bankrupt statement of one of our colleagues on the other side.

I have a slightly different view, which is that if that is the best they got, calling us who are here because we want a capitalist market system that is regulated in such a way as to provide a decent opportunity to most Americans—if they are so intellectually bankrupt that they can only respond to that by name-calling and taking Fox talking points and calling us socialists, if they would rather do that than defend the one thing they got done which was a massive tax cut handing $2 trillion to the very wealthiest people in this country, if all they have is to point at us and call us socialists, Madam Chairwoman, I would say let us let them do that and let us let the American people see what is going on.

But Director, I want to say thank you for being here. I may be the last questioner and I appreciate your-stick-to-it-iveness on this hearing. I really believe that the mission of the CFPB is essential, and we talked about this when we had a phone call a number of weeks ago. I don't understand why people would look to do away with an agency, even as we have a debate about how it should be structured and what its scope of activity should be, I don't know why we would do away with an entity that has returned $12 billion to consumers who were defrauded when we all know that there is predatory behavior out there.

I have a set of questions that you have heard before and I am hoping to elicit maybe some specific commitments on your part. You have heard a lot about student borrowing here and I think that is because there has been a track record of actions taken prior to your leadership of the agency that have really taken some of the fangs out of the institution with respect to student learning. And we care about this because we are talking about a very vulnerable group of young people in which we have a huge outstanding volume

of student loans. There will be some testimony later on that alleges a couple of things and I would like to get your specific responses to them.

The Student Borrower Protection Center is testifying that in December of 2017, the Bureau refused to publish findings documenting the behavior of large banks with respect to their treatment of student borrowers, alleging that in February 2018, the political leadership of the Bureau blocked attempts by career staff to stop the Department of Education from regulating the market. In May of 2018, the political leadership of the Bureau shuttered the only office in the Federal Government whose sole mission was protecting student borrowers. So I would love to get you in this last 2 minutes or so to respond to those.

Do you support them, do you intend to reverse those things, and specifically, apart from the ombudsman which you have talked about, what specific commitments can we expect from you in terms of protecting student borrowers?

Ms. KRANINGER. Thank you for the question, Congressman. I think the ombudsman position heads up the office—it is called a section, so I think that is where we are parsing words here, but there is a group of people at the Bureau who are focused on this particular set of borrowers and the challenges that they face. And so that office is already actively engaged in looking at the needs of students in particular and trying to respond to them consistent with our mission. We have a number of educational tools and things that are available to students to think about how they enter into the process, what they can expect after the process, so we are trying to get that educational information out as best we can.

I would say the means of providing education these days and technology changes to reach students is something that I think we need to look at further to make sure we can actually reach them where they want to be reached with this kind of information. But that is—

Mr. HIMES. Let me stop you there quickly because you are describing an office that exists. I appreciate that and you said you think it needs to be looked at. I guess I am looking for just a little bit more sense from you as a Director with a great deal of discretion about how you allocate resources and where you focus. I guess I am looking for a specific statement from you about how important you think this is and whether you think you will devote a meaningful portion of your time and resources to making sure that this market is well-regulated and fair to students beyond what exists today.

Ms. KRANINGER. Understood. It is certainly a significant market. I think it is something that the Bureau needs to work on with the Department of Education to set up what the rules are going to be in this space and make sure they can carry out their responsibilities and we can carry out ours.

And that is a conversation that, again, in my short term I have yet to have and I would like to have the private education loan ombudsman position in place to do it. But you certainly have my commitment that we will move forward on that MOU with them and we will understand better what those relationships need to be so

that we can provide the certainty and carry out what the Federal Government's responsibilities are.

Mr. HIMES. I appreciate that. In my remaining 2 seconds, I would just draw your attention in particular to the fact that a lot of students experience problems as loans are sold to additional servicers. So I would just highlight that. I had some personal experience with that and I would just highlight that as an area where I hope for focus on your part. And thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you. The gentleman's time has expired, and that is our last Member who will be questioning you today, Ms. Kraninger. I would like to thank Ms. Kraninger for her testimony and her time. I know it has been 4 hours, and I appreciate the fact that you were able to stay with us today and respond to our concerns. So thank you very, very much. With that, the committee will take a 30-minute recess and reset the room for the second panel. The committee will stand in recess.

[recess]

Chairwoman WATERS. The committee will come to order. We now have a distinguished second panel: Mr. Hilary Shelton, director and senior vice president for advocacy and policy, National Association for the Advancement of Colored People, that is the NAACP; Ms. Linda Jun, senior policy counsel, Americans for Financial Reform; Ms. Jennifer Davis, government relations deputy director, National Military Family Association; Mr. Seth Frotman, executive director, Student Borrower Protection Center; and Mr. Scott Weltman, managing director at Weltman, Weinberg and Reis.

Without objection, your written statements will be made a part of the record. Each of you will have 5 minutes to summarize your testimony. With 1 minute remaining, a yellow light will appear. At that time, I will ask you to wrap up your testimony, so we can be respectful of both the witnesses' and the committee members' time.

Mr. Shelton, you are recognized for 5 minutes to present your oral testimony.

STATEMENT OF HILARY O. SHELTON, DIRECTOR & SENIOR VICE PRESIDENT FOR ADVOCACY AND POLICY, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)

Mr. SHELTON. Thank you, and good afternoon, Chairwoman Waters, Ranking Member McHenry, and the sitting members of the Financial Services Committee. It is a real honor and pleasure to be here today to speak on a crucial issue to the NAACP: the need for the restoration of a strong Consumer Financial Protection Bureau. As I have often said in congressional hearings and briefings prior to the passage in 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, predatory lending is one of the leading civil rights equal opportunities and equal protection issues of our era.

During those briefings, I was referring primarily to targeted, unsustainable mortgage lending. Although predatory lending, in fact, refers to this problem and so much more. In 2010, however, Congress passed and the President signed into law, the Dodd-Frank Wall Street Reform and Consumer Protection Act. This bill

not only prohibits some of the most outrageous practices we were witnessing by predatory mortgage lenders, but it also created the CFPB.

From our perspective, it is the job of the CFPB to educate and protect consumers from experiencing any horrors, the like of the economic collapse of 2008. This is especially important to groups like ours, and the people we serve at present and represent in every State in our country as well as American soldiers, including those deployed overseas.

These are the people who were targeted by unscrupulous lenders. In the first 5 years of its existence, I would argue the CFPB was on the right track in terms of informing the American people and protecting American consumers. In my written testimony, I have supplied a number of CFPB successes up to December of 2016.

They are sufficiently numerous that I will simply refer you to my written testimony. Today, unfortunately, the CFPB is but a shell of its former vibrant and effective self. In just 2 years, Congress and the current Administration have effectively neutered the CFPB.

And in doing so, they have dramatically decreased the protections we were able to gain. Since 2016, Congress has passed and the President has signed no fewer than 16 congressional view acts, CRA resolutions, some of which were aimed at actions taken and rules issued by the CFPB. Congress also passed, and in May of last year the President signed, the misnamed Economic Growth, Regulatory Relief, and Consumer Protection Act.

Among other things, this law will represent 85 percent of depository and lending institutions from full reporting on loan data under the Home Mortgage Disclosure Act or HMDA.

Without this crucial data, which is currently required, regulators and others like the NAACP would once again be left without the information we need to see patents and loan terms and loan amounts that would unfairly increase cost and risk of foreclosure for borrowers.

Furthermore, Acting Director Mulvaney took the teeth out of the office of Fair Lending and Equal Opportunity by illuminating its supervisory and enforcement powers, a trend which has sadly been continued by his successor, Director Kraninger.

There is also the fact that CFPB's Office of Fair Lending and Equal Opportunity is now being led by a political appointee who has expressed numerous questionable views on the challenges faced by every American it is meant to protect. To say that he does not inspire the confidence of racial and ethnic minority communities served by the NAACP, as well as other members of protected classes, is simply being polite.

We fear for the economic well-being of our families, neighborhoods, communities, and our nation because we were beginning to see the good that a strong CFPB can do, and we know what we are losing.

The NAACP is proud to support a number of pieces of legislation to rebuild the CFPB, most notably the bill which was introduced by you, Chairwoman Waters, and many of our colleagues here today, entitled the Consumers First Act.

Put simply, the Consumers First Act pushes the CFPB back to the carrying out of its statutory purpose of putting American consumers first and protecting them from bad actors by taking a number of proactive, pro-consumer steps.

Madam Chairwoman, the income gap between white Americans and Americans of color continues to widen. Yet, our communities are consistently being targeted by nefarious financial servicers with their unsustainable wealth steaming products. We need protection.

I have often compared the communities we represent and serve to the proverbial canary in the coal mine. The weakening of the very agency that was designed to provide information and protection should be seen as a warning, one that we remember all too well leading up to the 2008 financial meltdown.

The decimation of the CFPB hurts all Americans. We should all be concerned and quite frankly outraged. Thank you again for allowing me to testify. I stand ready to answer whatever questions the committee may have. Thank you so much.

[The prepared statement of Mr. Shelton can be found on page 158 of the appendix.]

Chairwoman WATERS. Thank you very much. Ms. Jun, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF LINDA JUN, SENIOR POLICY COUNSEL, AMERICANS FOR FINANCIAL REFORM

Ms. JUN. Chairwoman Waters, Ranking Member McHenry, and members of the committee, I thank you for inviting me to participate in today's hearing. My name is Linda Jun, and I am senior policy counsel at Americans for Financial Reform (AFR), a coalition of over 200 groups working for a safer and fairer economy.

Our member organizations represent the consumers, workers, seniors, servicemembers and veterans, students, people of color, and unrepresented communities across our country who rely on the consumer protections that the CFPB was created to strengthen, support, and enforce. But before coming to AFR, I was a legal aid attorney representing low-income families in foreclosure cases. Most of my clients were people of color.

My clients, just to give you an example, included an African-American police officer who fell behind on his mortgage after his sister fell into a coma, an immigrant family from Nepal who were tricked into taking out an interest-only adjustable rate mortgage to buy their first home in America, and a Vietnamese-American homeowner who spent 2 years trying to negotiate with his bank on a resolution to save his home when the bank sued him anyway on foreclosure without ever giving him an answer.

I saw the most vulnerable consumers, including the elderly and disabled, especially them, targeted for scams and predatory products. Households like these are the ones who suffered the most harm in the 2008 crisis. They are the very people in need of the strong consumer protections the CFPB put into place. Before the CFPB's mortgage servicing rules went into effect, even with my assistance, negotiations with banks would drag on for months or years because often banks and their attorneys would provide us with inaccurate or incomplete information.

The CFPB's mortgage servicing rules directly improved my ability to help people and have improved outcomes for the people I served, because they provided me with a tool to push companies to either give us an answer or to properly review my client's applications. As a result, we were able to keep more people in their homes. We were able to give them the fair deal for which they qualified.

One of my cases that sticks out is of a client who was overcharged $3,000 of attorney's fees past the guidelines that is allowed to be charged. It was through the CFPB's error resolution procedures that we were able to get that amount taken off her account. It made her mortgage ultimately more affordable.

The public complaint database also greatly improved my ability to help people. Before the database, both my client and I suffered enormously trying to get the answers that we needed from the bank, froms simple questions about accounting, to more complicated answers about why they were being denied whatever resolution they were seeking.

After the complaint database, once we were able to start filing complaints, companies started responding. Sometimes even just the threat of filing a complaint would finally give us an answer we weren't able to get for months, simply because the database is a public place. I have seen firsthand, through these experiences, how the CFPB has strengthened consumer protections, giving the ability to help consumers stand up for themselves, which is why I am especially concerned about the ways the current CFPB is undermining consumer protection.

Instead of understanding for people like my clients, the Mulvaney CFPB has favorite industry interests, and this pattern is continuing with Director Kraninger. Under their leadership, the CFPB has proposed to resend the ability-to-pay requirement of the 2017 payday rule, which simply requires lenders to determine whether a borrower can afford to repay before issuing them a loan. These loans again, as we have heard this morning, average approximately 300 percent.

The 2017 rule was a culmination of 5½ years of research, evidence, and stakeholder input, and nothing has changed in the payday lending over the last 18 months that supports a rollback of these protections. They have also issued proposals that would exempt not only individual companies, but trade associations and entire industries from oversight, and seek to guarantee them a sweeping safe harbor from liability, enforcement or supervisory rate findings, both by the CFPB but also for enforcement by Federal agencies, States, and consumers' own private rights of action.

There is no guarantee a new product will be better for consumers, just because it is new, and there is no guarantee that products won't harm consumers, either intentionally or unintentionally, and yet the CFPB's no action letter and product sandbox policy proposes to just excuse companies from liability for a new idea.

More disturbingly, even despite the particularly unknown dangers of new products, the CFPB does not require any consumer input into the process or ongoing reporting after their application is granted. The CFPB should do more, not less, when looking into new products.

As you have heard this morning, the CFPB has also on relaxed its enforcement. We are concerned because robust outcomes serve as a deterrence to bad actors, but recent settlements have been sending the opposite message. The CFPB has an obligation to put consumers first, and it is currently falling woefully short. We thank you for holding this hearing and ask that you hold the CFPB accountable to the statutory purpose of protecting consumers. Thank you.

[The prepared statement of Ms. Jun can be found on page 136 of the appendix.]

Chairwoman WATERS. Thank you very much. Ms. Davis, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF JENNIFER DAVIS, GOVERNMENT RELATIONS DEPUTY DIRECTOR, NATIONAL MILITARY FAMILY ASSOCIATION

Ms. DAVIS. Chairwoman Waters, Ranking Member McHenry, and committee members, thank you for holding this hearing and for extending the opportunity to testify before the committee on behalf of the National Military Family Association.

As a veteran and a spouse of an active duty servicemember, I am both honored and humbled to speak from the military community perspective regarding recent policy shifts of the Consumer Financial Protection Bureau and the importance of protections found in the Military Lending Act.

Prior to the enactment of the Military Lending Act or MLA, quick cash stores, used car lots, pawnshops, and title loan companies clustered around military installation gates. The net laid by these predatory lenders was extensive, and for some military families struggling financially due to a recent move or lack of spouse employment, the draw was too great.

These lenders provided attractive options to military families, offering quick loans and anonymity with no intrusive questions surrounding credit history or the ability to repay. Often, however, interest rates soared into the triple digits, annual percentage rates of 200 and 300 percent were common, and in States that had no rate caps, they ran as high as 700 percent.

And then the Military Lending Act (MLA) was passed. The MLA's passage capped interest rates at 36 percent on many loan products for servicemembers, and protected military families from mandatory allotments of pay, forced arbitration, and penalties due to early loan repayment.

In 2010, the Consumer Financial Protection Bureau or CFPB, was created after the financial crisis of 2008, and granted executive and administrative authority and implementation of Federal consumer financial laws through rules, orders, guidance, interpretations and statements of policy, examinations, and enforcement actions.

While the MLA was not included in that group of laws at the time, it was CFPB's creation, the Fiscal Year 2013 National Defense Authorization Act, that changed that, specifically referencing administration of the MLA in compliance with Section 108 of the Truth in Lending Act and any applicable authorities.

However, recently we have become alarmed at CFPB's decision to no longer supervise lenders for compliance with the Military Lending Act. Current leadership has expressed the opinion that the agency does not explicitly have the authority to supervise examinations to ensure Military Lending Act compliance. We disagree. We urge CFPB to reverse this decision.

In February, CFPB announced a proposal to delay implementation of the payday lending rule. Currently, the rule is set to be implemented in August of this year, but the proposal would push this date back to November 2020. In the same announcement, CFPB introduced a proposal to reverse underwriting requirements of lenders before issuing loans.

CFPB's belief is that such a reversal would enable consumers to obtain increased access to credit. While reversing this provision may, in fact, increase access to credit, what would be the cost to consumers? Conventional wisdom and economic theory state a lender should ensure a consumer's ability to repay before extending credit.

We believe lenders who do not take this approach are simply preying on consumers with a business model that relies on revenue from rollovers, late fees, and penalties. Reversal of the payday lending rule would place consumers at greater financial risk, which goes against CFPB's very purpose to protect consumers.

The National Military Family Association believes, due to the importance of the payday lending rule as currently written with underwriting requirements included, that any delay by CFPB would put consumers—to include veterans and their families who are not protected by the MLA—at increased financial risk. We urge CFPB to maintain the integrity of the payday lending rule as written, thereby protecting consumers.

Evolving world conflicts keep our military servicemembers and their families on call, even as they are dealing with the long-term effects of almost 2 decades of war. The government should ensure that military families have the tools to remain ready, and MLA is one of those tools. The Military Family Association implores CFPB to maintain the integrity of the MLA and protect the financial readiness of America's servicemembers and their families.

Thank you for your time. I look forward to your questions.

[The prepared statement of Ms. Davis can be found on page 114 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Frotman, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF SETH FROTMAN, EXECUTIVE DIRECTOR, STUDENT BORROWER PROTECTION CENTER

Mr. FROTMAN. Thank you. Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for the opportunity to testify today.

In March of 2011, I had the honor of joining the CFPB, and that is where I would like to start today, by recalling what this country looked like in 2011. It had been 3 years since the peak of the financial crisis, but for millions across the country it was still raging, leaving real, tangible human affliction in its wake. And this afflic-

tion was fueled by companies that had no shame when stealing the last dollar in someone's bank account, in large part because they knew they could get away with it.

Across the country, American families needed someone, needed their government in their corner, and that is where the CFPB stepped in. Congress created the Consumer Bureau to serve as this desperately needed lifeline to the families being pushed off the edge of a financial cliff. But that was not our only job.

We were tasked with fixing a broken credit market that declared open season on American consumers and, in turn, destroyed the nation's economy. Were we perfect? Of course not, but the work we did during those 7 years mattered. The CFPB returned $12 billion back to American consumers, returned over half a billion dollars to victims of discrimination, closed loopholes exploited by unscrupulous companies that targeted military families, and so much more.

The Consumer Bureau had one simple mission, to protect consumers. We were there to make sure our neighbors, our grandparents, our children, your constituents, were not being ripped off by big banks or small scams. Americans rely on credit and a well-functioning credit market to achieve the American dream.

But the stakes are much bigger than simply credit markets. At stake is the character of our country, whether the American Dream, a house to raise our family, a car to get to work, a college education for a better life, will be the province of only a select few, while the rest have their money stolen at every turn. That is why the Bureau matters, because consumer financial protection matters. And that is why the actions of the Trump Administration and the political leadership installed at the Bureau have been so devastating.

The last 15 months at the Bureau have been plagued with inaction and incompetence, all under the guise of some supposed ideology. They have prioritized the wishes of the most powerful financial companies in America over the needs of the very people they were tasked by Congress to protect, all under the selective invocation of statutory restraint.

The efforts of Mick Mulvaney and Kathy Kraninger are hurting people. And perhaps the most poignant example of this is how their actions are hurting the 44 million Americans with student loan debt. These Americans collectively owe $1.5 trillion in student debt, and after piling historic levels of debt onto an entire generation, we push them into a market plagued with illegal practices that drive them to financial ruin.

And that is what the Bureau worked to stop. We helped servicemembers, disabled veterans, teachers, nurses, and borrowers in all 50 States and in every U.S. territory. We never shied away from doing our job of independently implementing and enforcing the consumer financial protection laws of the United States, even when it made those in the Administration, in any Administration, uncomfortable.

And it worked. In those 7 years, the Consumer Bureau returned more than $750 million to student loan borrowers. But almost immediately upon the arrival of Mick Mulvaney and his political appointees, this work came to a grinding halt. And what my written testimony shows, from varying reports and shuttering offices, is

that the Bureau systemically undercut enforcement of the law, undermined the Bureau's independence, and shielded bad actors from scrutiny.

And since I left the Bureau last year, this abdication of responsibility has continued. The position of Student Loan Ombudsman, as mandated by Congress, sits vacant. The Bureau's congressionally mandated student loan complaint report remains unwritten. Perhaps most disconcerting, in the last 15 months, it is impossible to cite a single significant action that the Bureau has initiated on behalf of student loan borrowers.

There is no ideology that justifies these actions—or more accurately, inaction. Shielding companies from the consequences of their lawlessness is not "making markets work." Protecting Betsy DeVos from the consequences of the Education Department's failures is not conservative. The Bureau is not meant to be a political appendage of any Administration, particularly one that is flailing as it mismanages the trillion-dollar portfolio it holds.

And that is why the work of this committee is so important, both in terms of oversight and policymaking. Because right now we have $1 trillion black hole in our financial markets. Millions of Americans with student debt are falling further behind as their Federal Government coddles predatory players.

So thank you for asking the tough questions of this Administration. Thank you for taking on the challenge to make sure that student loan borrowers have the rights and protections that exist in nearly every other debt market. I look forward to your questions. Thank you.

[The prepared statement of Mr. Frotman can be found on page 120 of the appendix.]

Chairwoman WATERS. Thank you very much.

And Mr. Weltman, you are recognized for 5 minutes.

STATEMENT OF SCOTT WELTMAN, MANAGING SHAREHOLDER, WELTMAN, WEINBERG & REIS CO., LPA

Mr. WELTMAN. Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for inviting me today.

My name is Scott Weltman. I am managing shareholder of Weltman, Weinberg & Reis Company, L.P.A., a creditor's rights firm headquartered in Cleveland, Ohio. It has been in business since 1930. I am grateful for the opportunity to share our firm's experience with the CFPB.

Our case with the CFPB was the epitome of an effort to legislate through misguided enforcement instead of by rulemaking. We encountered overzealous enforcement attorneys with the power of the U.S. Government behind them.

Our nearly 4-year ordeal included an extensive CID process, followed by a lawsuit that we won. Our law firm incurred nearly $2 million in attorney's fees. And as a direct result of being sued, numerous clients of the firm fired us. And over 100 employees out of a total 650 lost their jobs.

Our story with the CFPB, however, began before the Bureau was formed. In 2009, our law firm was hired by Ohio Attorney General Richard Cordray as special counsel, which meant that our law firm was directly responsible for collecting the State of Ohio's debts.

Mr. Cordray not only significantly vetted our firm and condoned exactly how we did business; he also required that our letters be written precisely to his specifications. And after observing firsthand how we did business, he hired us a second time.

Once he became Director of the CFPB, however, Mr. Cordray then approved a lawsuit against us, claiming that virtually identical letters violated the law. And he authorized a press release accusing us of illegal behavior, which was subsequently reprinted by every major local and industry news agency.

That makes Mr. Cordray's deposition testimony in our case all the more troubling since he admits, you know, I don't know what the state of the law was then—I am not sure what the state of the law is now.

He was a former State Attorney General, the Director of the CFPB, and had no clue what the law was or is. I have included the full transcript of his deposition in my written testimony. I have also submitted and encourage you to read the final opinion in our lawsuit from Judge Donald Nugent, whom I would like to point out was a democratic presidential appointee.

The Judge specifically wrote that despite requiring similar indications and disclosures of attorney involvement in the debt collection letters used on behalf of the State of Ohio, Richard Cordray, when he became head of the CFPB, authorized this lawsuit against Weltman. The singularly most offensive part of the lawsuit against our firm was the aggressiveness with which we were pursued by the CFPB despite the complete absence of any consumer harm.

The CFPB continually insisted that our firm provide consumer redress but never once identified a single consumer harmed by any of our alleged illegal conduct. Our firm provided the CFPB with over 1 million call recordings for its review, and how many did it play at trial? None. It claimed that our phone calls violated the law, but it dismissed that portion of the lawsuit, half of its original claims on the first day of trial and never had any evidence.

In my written testimony, I have provided a letter from the CFPB enforcement attorneys threatening to pursue us for more than $95 million in ill-gotten gains, and over $13 million in civil monetary penalties. This claim of ill-gotten gains called, "disgorgement," was also dismissed by the CFPB on the first day of the trial; again, it never had any evidence.

I implore the committee to question the CFPB's goals when it made its allegation against us in a very public lawsuit and press release, the allegations with no facts behind them which damaged our firm's reputation and ultimately cost 100 of our employees their jobs.

Additionally, I hope the committee will investigate just how much money was spent by the CFPB to pursue our firm's case. Those expenses also included the hiring of an expert, a marketing professor from Georgetown whose discounted government rate was $750 per hour, and whose testimony the judge deemed not credible.

And when the case was over and our firm had won, when the CFPB decided not to appeal and was ordered to pay our firm about $10,000 out-of-pocket costs, what happened? The CFPB asked if we would take a credit card for the $10,000.

Before I wrap up, I would be remiss if I did not touch on rulemaking. When the CFPB was established in 2011, its power to make rules in the debt collection area was welcomed. To this day, however, 7½ years after its formation, how many rules has it published? None. If it made rules, then it would lose its ability to regulate through enforcement.

On January 23, 2018, former interim Director Mulvaney sent an e-mail to every employee of the CFPB in which he stated, "It is not appropriate for any government entity to push the envelope when it comes to conflict with our citizens.

"The damage that we can to do people can linger for years and cost them their jobs, their savings, and their homes. If the CFPB loses a court case because we pushed too hard, we simply move on to the next matter. But where do those who we have charged go to get their time, their money or their good names back?

"If a company closes its doors under the weight of a multiyear civil investigative demand, you and I will still have jobs at the CFPB, but what about the workers who are laid off as a result? Where do they go the next morning?" I can tell you this, for our firm and for our employees who lost their jobs, those are empty words. Thank you very much.

[The prepared statement of Mr. Weltman can be found on page 163 of the appendix.]

Chairwoman WATERS. Thank you very much. I now recognize myself for 5 minutes for questions, and I am going to ask Mr. Shelton and Ms. Jun to engage with me about their lending. I am looking at information here—data that has been compiled.

And some of this information, I think paints a picture that I think we must be concerned about. The 2017 HMDA data showed that disparities in underwriting and pricing persist. Underwriting of conventional loans—the type that Fannie Mae and Freddie Mac buy—are described as such. The white loan origination rate in 2017 was 25.23 percent compared to 58.29 percent for blacks, thus whites had a 28 percent higher origination rate.

Black loans were denied at 22.97 percent versus 8.14 percent for whites, which means that blacks were denied 82 times more often than whites. Also, the black fallout rate was 10 percent higher than whites, and with respect to pricing, blacks had higher cost loans 2.86 times, and Hispanics 2.96 times more often than whites for conventional home purchase loans.

And this is just part of the information that we had. We went through the crisis in 2008, and we discovered an awful lot about what was happening in targeted communities, for the most part communities of color, where people had been basically lured into signing on the dotted line for all of these exotic products like interest rates that were going to reset, when people didn't understand what they were, and then of course, foreclosures started wiping out communities all over this country.

Now without going further into that, I know that you panelists kind of know what happened with this targeting, and absolutely it was identified that blacks earning the same amount of money as whites, and basically paying their bills at the same rate, et cetera, were ushered into these bad loans.

And we would expect the Consumer Financial Protection Bureau to have every reason to be concerned about fair lending. But yet it seems as if not only have they cut back on it, it is not the mission of the Consumer Financial Protection Bureau. Could you elaborate a bit on what this means in terms of not having enforcement and not having investigations, starting with Mr. Shelton?

Mr. SHELTON. Thank you very much, Madam Chairwoman. The issue for us has been very clear. In 2008, what we started seeing was the kind of targeting that was actually done in African-American and other racial and ethnic minority communities.

As opposed to going after those with a fixed income, oftentimes brokers were being utilized—we rarely hear that term "utilized" these days, but brokers were being utilized in the most unscrupulous manners.

I can think of a woman I sat next to testifying in 2008 from Ohio. Her husband had worked for one of the larger tire manufacturers in the country, they had a pension fund, they paid off the house as they planned on doing, and after he retired, he later passed away, and she was there managing the house herself.

It looked like everything was very well in place, until the broker showed up. The broker came into her community, and recognized that her home, through nicely kept, was quite old and utilizing oil heat, and as such, quite expensive in a place like Ohio to manage. As such, he talked to her about how he could refinance her home and allow her to pay for all the improvements she needed in everything from insulation to new windows and everything else, and a new heating system for roughly $50,000.

He told her she could manage it, but gave her an exploding ARM mortgage that she knew nothing about, an exploding ARM in which she had a very nice introductory rate but it increased every 2 years until the end of the sixth year, in which case both her insurance, and her taxes were dropped altogether.

She found herself in an awful position in which she began losing the home. She testified at a hearing in Congress. Let me tell you the thing that was most outrageous, and why I share this story. It is to show you how these issues not only impact disproportionately racial and ethnic minorities, but because she had no place else to go.

Sadly, one of the other things her husband left behind as he passed away was his old shotgun that she ultimately used on herself. This level of outrage is something that we have to focus on, and is why the Consumer Financial Protection Bureau was put together as it was, to provide the kind of protection and oversight we very well needed.

The last point I will make is this. I heard the term "whack-a-mole" used a little bit earlier. One of the reasons that we pushed forward for the passage of the Dodd-Frank Wall Street Reform Bill, as well as the Consumer Financial Protection Bureau, was because we needed someone at the helm that would have the dexterity and the flexibility to be able to move very quickly to address these new products with a different—

Chairwoman WATERS. Thank you so very much. I know that there is a lot more information you could share, but that is very

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

Mr. ROSE. Thank you, Chairwoman Waters. Mr. Weltman, thank you for joining us today. We appreciate you being here. And thank you to the other panel members as well. In earlier questioning, I shared with the panel and with my colleagues the adage that I have heard and learned about from our State senator in Tennessee, and that is his view that regulators should be in the business of helping the regulated comply, as opposed to punishing them, as in the first instance, for failing. Would you agree with that mindset for a regulating body?

Mr. WELTMAN. Yes, Congressman. Thank you. Yes, I would agree with that.

Mr. ROSE. And if you would, tell me a little bit about your broader practice, your creditors' rights firm. And so, if you could give us a little bit of a sense of a broader understanding of what you do.

Mr. WELTMAN. Thank you, Congressman. Our law firm is a creditors' rights law firm. Again, we are down to about 550 people, and we practice in the areas of consumer debt collection and litigation, and commercial debt collection and litigation. I represent creditors of all types in bankruptcies and foreclosures, and have a general creditor litigation practice as well.

We are licensed in a number of different States. We have offices, more than just in Ohio. And we have a lot of very solid professionals who take great pride in their work. And quite honestly, we focus on ethics and compliance all the time; we invest a lot of money in that area.

Mr. ROSE. And this experience that you have been through with fighting with the Consumer Financial Protection Bureau, had you ever experienced anything like that in your career?

Mr. WELTMAN. Never in my career, at all. It is unique.

Mr. ROSE. One of the concerns that I and think others on my side of the aisle have, and I think actually maybe some on the other side have about the CFPB is the lack of oversight and the lack of control that Congress retained, if you will, or gave even to the Executive Branch. Does that concern you?

Mr. WELTMAN. Congressman, we focus a lot on our job and what we do, we don't get involved in the political issues related to the Bureau. We are happy to do our job every day, to the best of our ability, and we let Congress worry about those things.

Mr. ROSE. Okay. I can appreciate that. Well, it does concern me. And you know, as I think about the province of the CFPB and the structure that has been set up, it concerns me greatly that we have very little oversight opportunity, that we do not even control, in any way, their budget or get the chance, on behalf of the taxpayers, to exert any influence there.

And so, as I heard of your case and, and looked over some of the background information, the old adage of fighting city hall came to mind and how it difficult it is when the plenary power of government is brought down upon you. And it kind of hearkened back in my mind to the earliest days of our country and the revolt that led to the formation of this country against King George and the notion of taxation without representation.

I believe our founding fathers would be horrified that we have created such an entity that draws its funding from a source where there are there really no limits to how much money it spends, and then uses those resources to, without oversight, without really any limits or control, to pursue whomever the current leader of that organization chooses to pursue and without really any recourse on their part.

And so, these are major concerns of mine. And I think it is something—as I have visited with folks in the 6th District of Tennessee at least, I hear very little about what CFPB is doing to protect the consumers in my district. I hear a great deal about the problems that occur when a regulator is really untethered and is able to exert plenary power and doesn't even have the restrictions of budgetary controls to limit the province of what they do.

I am sorry that your firm suffered through the ordeal that you have, and I appreciate you taking the time to be here today and share that story with us. I have heard similar stories from other businesses in the 6th District of Tennessee who have been, in my opinion, abused by the overreaching of this regulator. And so, thank you for being here. I yield back.

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

Mr. SCOTT. Thank you, Madam Chairwoman. Mr. Shelton, let me start with you. The CFPB took away the Office of Student Loans and Young Consumers. Tell me how devastating this is? This is a very serious issue, not only in terms of the amount of loans that our students have to pay, but there are some unsavory characters out there that take advantage of young consumers who are eager to consume but are not knowledgeable enough about the rules and regulations.

And these young consumers are taken advantage of. I want to ask you, how serious is this? Can you share with us the seriousness of this issue of students and the fact that the Consumer Bureau removed that office?

Mr. SHELTON. In a very short way, it is overwhelming. As we think about just African-American students alone, about 75 percent of African-American college students come from an income level that allows them maximum Pell Grants. That means they are the poorest of the poor. And as we are thinking about the purchasing power of a Pell Grant, we know that, nowadays, it does not cover nearly as much of the tuition or the educational cost as we were hoping it would at the time of origin.

What that means is students have to take out more loans much more often. The presumption of most students is that their lending source is watching out for their best interest. The truth is, that is not the case. And as such, we are finding that students and even myself found ourselves in a very awkward position of now having a great education but not enough income to be able to pay off that student loan and other living expenses.

It is tremendous; we are getting more and more reports from across the country. It is outrageous on so many levels.

Mr. SCOTT. And what do you think we need to do about that, Mr. Shelton, to correct that problem? Very briefly.

Mr. SHELTON. Very briefly, greater oversight. The Consumer Financial Protection Bureau needs to do what it started doing—

Mr. SCOTT. Which means we must pass Ms. Waters' Consumers First Act—

Mr. SHELTON. That would be my vote.

Mr. SCOTT. —because that is one of the things we are going to do, is reestablish this office and the CFPB that will address student loans and young consumers. Now Ms. Davis, I mentioned earlier when the acting Director was here, about the Military Lending Act, and I stated unequivocally that under Mr. Mulvaney, they abandoned supervision of regulated entities for compliance with the Military Lending Act. They did that. Can you explain for the committee how devastating that is in removing the protections we have for, as I said, our precious military servicemembers and their families?

Ms. DAVIS. Thank you for your question. It is devastating. And it is a national security, it is a readiness issue for our servicemembers and their families. So when you think about what we heard earlier was preventing harm, well, when you supervise for compliance you are preventing harm.

What happens when you don't do that is that it puts the burden on the servicemember and their family to figure out that they have been defrauded, what law applies to them, what protections are out there—it is the Military Lending Act, you know, in this case that we are talking about—and then what law enforcement agency is protecting them, and file the complaint.

So it distracts from the mission. There are huge ripple effects out from there. It is not just the servicemember or their family, but it affects the unit, it affects the mission downrange and at home.

Mr. SCOTT. It is very important because we have a pretty sizable C-SPAN audience, and this is very important to this committee, pointing out these discrepancies against our military servicemembers and our young people, particularly. And rest assured, we will address that, and it is also will be a part of Ms. Waters' Consumers First Act to reestablish that supervision for our military servicemembers. Thank you.

Ms. DAVIS. Thank you.

Chairwoman WATERS. The gentleman from Ohio, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman. I want to thank our panel for being here today and for answering all of our questions. Mr. Weltman, it is always great to have a fellow Buckeye in the room and a Northeast Ohioan, and it is great to see your family here. I met your father earlier. So, welcome. I am thrilled to have you here. I especially want to thank you for sharing your story with the committee and for the courage that you had to stand up to the overreach of the CFPB, to fight for not only your company's reputation but also for the reputation of your family.

In your testimony, you quoted former interim Director Mulvaney's comments on the CFPB, which I think are just so powerful they need to be said again. He said, "It is not appropriate for any government entity to push the envelope when it comes into conflict with our citizens. The damage we can do to people could linger for years and cost them their jobs, their savings, and their

homes. If the CFPB loses a court case because we push too hard, we simply move on to the next matter, but where do those that we have charged go to get their time, their money or their good names back?" That is so powerful and it speaks directly to your situation.

Just 2 seconds ago, I Googled your name, just to see what would come up, where you work, and profile pages. The first article is a negative article written by one of our papers about your experience. It talks about how you are being sued and all the terrible things that come along with it. That is the first article that comes up. So let me ask you this. Do you have children?

Mr. WELTMAN. Yes, I have three children in college.

Mr. GONZALEZ OF OHIO. So if your kids are going to Google your name, this is the first thing they are going to see, right?

Mr. WELTMAN. My kids and probably their friends as well.

Mr. GONZALEZ OF OHIO. That is completely unacceptable. Mr. Weltman, can you talk more about the impact that this experience with the CFPB has had on your company and also your family? And let's keep in mind that you won your case.

Mr. WELTMAN. Yes, we did win our case. And thank you, Congressman. It was a very trying time for our company. It caused a lot of internal strife and again, as I mentioned in my testimony, within days of being sued—being accused with, as it turns out, no evidence, numerous clients of the firm fired us. Clients to this day that we haven't gotten back. We have to continue to explain our situation, and to be honest with you, to add insult to injury, if you were to Google and go to the Bureau's active enforcement action website, it shows our matter as still active.

Mr. GONZALEZ OF OHIO. Really?

Mr. WELTMAN. Yes, it does. I went to that website yesterday to see the status of our enforcement action, and it shows it as active. So we are going to have to continue to explain the situation. We did win and we are very proud of that and we certainly tout that. We had a lot of clients stay with us, so we are still in business and we are doing just fine, thank you very much. But it is something we have to explain. And by the way, when we go to hire people, we have to explain it.

Mr. GONZALEZ OF OHIO. Of course. And just to reconfirm, you were initially hired by Richard Cordray?

Mr. WELTMAN. Yes. Our managing shareholder at the time was appointed a special counsel, which really meant that our firm was being hired when Richard Cordray was Attorney General of Ohio, yes.

Mr. GONZALEZ OF OHIO. And presumably, he vetted you. He actually rehired you.

Mr. WELTMAN. It was a very extensive vetting process with a significant amount of information that had to be provided to him twice.

Mr. GONZALEZ OF OHIO. And then he became Director of the CFPB and sued you?

Mr. WELTMAN. That is correct. He authorized that lawsuit and was quoted accusing us of illegal activity in a press release.

Mr. GONZALEZ OF OHIO. I think everybody in this committee, everybody here agrees that consumers need to be protected. Nobody disagrees with that. We all agree on that.

But what happened to you is patently unfair. It is unfair to you, it is unfair to your employees, unfair to your clients, and unfair to your family. The CFPB needs reform but that reform needs to be bipartisan.

The bill that we are talking about today is a pure partisan bill. We are going to be—we know for sure it is not going to pass. It will pass out of this committee, it might come up to the Floor, but it is not going to get passed into law, but we actually all agree that this system needs to be reformed, and so what I would urge the committee to do is actually put in a process where we are going to agree on some things that might actually get signed into law, because what happened to you and what happens to all the folks who are sitting here, we all agree it is broken.

The system needs to be fixed and it needs to be fixed in a way to make sure that we are not having the same arguments over and over and over again, every single Congress. So thank you, Mr. Weltman, for your testimony. I thank you and your family. I am so sorry that this happened to you; it doesn't make any sense. It is flat out wrong, and I hope that it never happens again. I yield back.

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

Mr. GREEN. Thank you, Madam Chairwoman. Mr. Weltman, thank you for your testimony. You are a litigator, is that correct?

Mr. WELTMAN. Yes, I am.

Mr. GREEN. And as a litigator, have you had courts rule, perhaps against you, and on appeal, have those decisions overturned?

Mr. WELTMAN. If I can understand your question, you are saying, when I am litigating on behalf of a client?

Mr. GREEN. Yes, sir. Have you ever lost a case at the trial level that you won on appeal at the appellate level?

Mr. WELTMAN. I am thinking back over 27 years—

Mr. GREEN. Did you win all of your cases?

Mr. WELTMAN. I do not win all of my cases.

Mr. GREEN. Okay. Well, let's just assume you did. When this occurred, do you want to eliminate the judiciary?

Mr. WELTMAN. Pardon me?

Mr. GREEN. Do you want to eliminate the judiciary? Because see, a lot of my friends on the other side, they don't want a CFPB at all. And they want to use you, sir, as a part of a process to eviscerate and decimate the CFPB. Do you want to be a part of that?

Mr. WELTMAN. Congressman, I want—

Mr. GREEN. I will take it, your answer is "no." Because you are a reasonable person, you would not want to be a part of the evisceration of the Consumer Financial Protection Bureau, would you, simply because of one bad experience?

Mr. WELTMAN. Congressman, our experience was not a pleasant experience.

Mr. GREEN. I understand. I have had unpleasant experiences in life, but that doesn't mean that I want to eliminate the police department because I had an unpleasant encounter with one police officer. Do you tend to be of the type of person who takes his one

experience as an assault against all of society? Is that your position?

Mr. WELTMAN. Congressman, our employees were accused of illegal activity after a 2½-year investigation with no evidence.

Mr. GREEN. I see.

Mr. WELTMAN. That was our experience.

Mr. GREEN. So from your point of view, the CFPB is of no value. All right, let me move on to someone else. Thank you for your point of view, kind sir.

I want talk for just a moment about invidious discrimination. My assumption is that everyone on the panel agrees that there is invidious discrimination in lending. But for fear that I may be incorrect, if you think that there is invidious discrimination in lending, would you kindly raise a hand?

Invidious discrimination is harmful discrimination against persons who are seeking to borrow money. Please put your hands up, and keep them up. Okay, so we have Mr. Weltman, you don't believe there is discrimination in lending, I see. And you understand "invidious" because you are a lawyer. So now you want to eliminate the CFPB, and you don't think that people are discriminated against in lending. The empirical evidence is there to support it.

Lawsuits have supported it. I am just amazed that you, living in the United States of America, would come to the conclusion that there is not invidious discrimination in lending.

Let's move on to the next question. There is something called "testing." This is the methodology by which we acquire the empirical evidence necessary to prove the invidious discrimination. As a matter of fact, I know of no better way to acquire the empirical evidence.

If you are familiar with what testing is, would you kindly extend a hand into the air? All right, let the record show that we have two people who are not familiar. If you will lower your hands. For edification purposes, this is where you send in persons, lets assume you have three, and one of them happens to be Anglo, and the Anglo person will receive a loan at an interest rate, let us call it 5 percent, and then two African Americans will come in afterwards and they will receive loans at a higher interest rate. And the African Americans will be more qualified than the Anglo-American that went in.

That is the way you test to ascertain whether or not discrimination exists. Do you believe that this is a fair way of acquiring intelligence? If so, would you kindly raise your hand?

Okay, I said, Mr. Weltman, you don't think that testing is a fair way to acquire intelligence. So Mr. Weltman, are you a person who believes that people like me and others who have been discriminated against—and by the way, some of us are still being discriminated against—should just suffer, because you had an unpleasant incident? I yield back, thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you. Our ranking member, Mr. McHenry, the gentleman from North Carolina, is recognized for 5 minutes.

Mr. MCHENRY. Well, Mr. Weltman, I don't question your motives for being here. I don't think that it would be appropriate for a Member of Congress to do that to a panelist, I don't think it is be-

coming of this Congress to do something like that, nor do I think that was the intention of anybody who was questioning you about your awful experience. And I know you have already testified as to your story.

The reason why you were invited to be on this panel is to provide an example of the harm that Richard Cordray's CFPB pushed upon consumers and individuals and companies. Let us just talk through structural changes here. You have dealt with an attorney general, you have dealt with the Bureau, and you are quite familiar with the law. So did the CFPB ever provide you with any guidance on how to word your disclosures?

Mr. WELTMAN. Thank you, Ranking Member McHenry. We had discussions with the enforcement attorneys at the CFPB throughout the process and actually invited them to provide us the language that they would condone and endorse in writing, and they would not do that for us.

Mr. MCHENRY. Okay, so have you dealt with other banking regulators?

Mr. WELTMAN. I have not.

Mr. MCHENRY. Have you dealt with other regulators?

Mr. WELTMAN. Others at our firm—we have a very robust compliance department whom I think deal with various other regulators. I personally haven't.

Mr. MCHENRY. Okay. Were there any rules of the road that were given to you from the CFPB?

Mr. WELTMAN. Before the enforcement attorneys served us with our CID, we had had no interaction with them directly. So beyond that, no.

Mr. MCHENRY. In the wording of that document, did it give you reference to law that they were enforcing, a specific law that they were enforcing or words of a law or reference to a piece of a criminal code?

Mr. WELTMAN. When the Bureau attorneys presented us with what they considered to be a consent order that they would agree to, it was, for the most part, their way, take it or leave it.

Mr. MCHENRY. Okay. And you have testified to this, but just to be clear, did you just base your disclosures off what would have been previously approved by Richard Cordray as attorney general?

Mr. WELTMAN. Our law firm has invested millions of dollars over the years in compliance. And again, we have a very robust compliance department, headed by one of my partners, who heads up our compliance area, who studies the law constantly and stays on top of all the legal requirements.

And we based our disclosures and how we craft our letters on the state of the law at all times, which was confirmed when we did work for the State of Ohio and what they would find acceptable as well.

Mr. MCHENRY. Okay. So in this process, were you ever made fully aware of how you violated CFPB rules?

Mr. WELTMAN. Well, Congressman, there were no rules that were promulgated in this area by the CFPB.

Mr. MCHENRY. So as a legal matter, you had no point of reference for whether or not you were in fact breaking the law until you were served?

Mr. WELTMAN. And just to be clear, there is statutory and case law that we follow at all times. I think the Bureau had a different interpretation, which was found by the court, as it turns out, to not be correct.

Mr. MCHENRY. Okay. So what you are telling me is what was good for Attorney General Cordray was not good for Director Cordray. That is something else.

This scenario has happened many times to many other individuals and companies. What other structural reforms do you think are needed so that this doesn't happen again? Just as a matter of best practices in the law, in your view?

Mr. WELTMAN. Again, we like to stick to doing our job and doing it to the best of our ability representing our clients. And as far as structural changes within the Bureau, I would certainly defer to Congress on that.

Mr. MCHENRY. Would a rules-based regime be better than "sue and find out later?"

Mr. WELTMAN. As I stated—

Mr. MCHENRY. And I don't mean this as a knock on lawyers.

Mr. WELTMAN. As I stated in my testimony, and I am certainly aware that there have been discussions of rules in the debt collection area, when we have rules, we certainly intend on following them. And we would welcome the publication of those, finally.

Mr. MCHENRY. Thank you.

Chairwoman WATERS. The gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman. And I find it really interesting that we have an almost unanimous opinion on this and—and I wanted to start with one of the questions—I think most of you were in the room when I asked them of the Director.

Do you think that it is necessary to fully implement and do outreach for limited English-speaking populations to make sure that we reach all consumers? And I just want a yes or no from the whole panel.

Mr. Shelton?

Mr. SHELTON. Yes.

Ms. JUN. Yes, most definitely.

Ms. DAVIS. I'm sorry. Can you ask the question again?

Ms. GARCIA OF TEXAS. I asked her the question about the outreach and what we were doing to ensure that the limited English-speaking populations of consumers, those particular populations were getting the information they need so that they would not get "ripped off."

Ms. DAVIS. Right. Yes.

Ms. GARCIA OF TEXAS. Okay.

Mr. FROTMAN. Absolutely, Congresswoman.

Mr. WELTMAN. It is—

Ms. GARCIA OF TEXAS. Mr. Weltman?

Mr. WELTMAN. It is more for all consumers to get information, yes.

Ms. GARCIA OF TEXAS. So is that a yes?

Mr. WELTMAN. Yes.

Ms. GARCIA OF TEXAS. Finally, a unanimous decision here. Well, thank you. And now I will ask you the follow-up question. How can we best do that? And in the interest of time, let's keep our answers short.

Mr. Shelton?

Mr. SHELTON. Mandate that everything is transcribed into the language that you are trying to make sure were covered, I would think something along the lines of Section 205 of the Voting Rights Act, and apply it to these financial services issues.

Ms. GARCIA OF TEXAS. Great. Ms. Jun?

Ms. JUN. I would also just add that the CFPB has done really good consumer testing in other areas, and all of those documents, once they are translated, should be extensively tested to make sure they can reach lots of different populations with different dialects and that sort of thing.

Ms. GARCIA OF TEXAS. Ms. Davis?

Ms. DAVIS. I would like to answer that one in writing for the record.

Ms. GARCIA OF TEXAS. Okay.

Mr. FROTMAN. I think this is another example about why disbanding things like the Consumer Advisory Board are so devastating. I know in my time at the Bureau, we learned a ton from that advisory board about how to better do our job. I think it is another example about not wanting to necessarily hear from consumers because there was a particular point of view already.

Ms. GARCIA OF TEXAS. Mr. Weltman?

Mr. WELTMAN. Unfortunately, I don't think I am qualified to contribute an answer to that. It is not my area of—

Ms. GARCIA OF TEXAS. Do you not have any clients from any of the populations I may be talking about?

Mr. WELTMAN. Do we have clients that serve that population?

Ms. GARCIA OF TEXAS. No. No—clients, yes, correct.

Mr. WELTMAN. Yes, we do.

Ms. GARCIA OF TEXAS. You do? Okay, well, thank you.

Now the other question I have, and, again, it is for the whole panel, is, I, too, was a legal aid lawyer and I did do consumer laws, and back then, we were all concerned about redlining—do you think that redlining still exists?

Mr. SHELTON. Is it racist? Yes.

Ms. GARCIA OF TEXAS. No. Does it exist?

Mr. SHELTON. Oh, absolutely. Yes.

Ms. GARCIA OF TEXAS. No, I know it is racist. But we were talking about that earlier, and my colleague from Houston, Congressman Green, was alluding to some of it. But do you think that redlining exists? I know that there were so many things put in place to try to correct that, but are we there yet?

Mr. SHELTON. The short answer is that it does still exist. We get reports about just across streets, as a matter of fact, how differently people are treated with various services. So the short answer is yes, it does.

Ms. GARCIA OF TEXAS. And do you think it is just in the financial services or in other sectors as well?

Mr. SHELTON. Oh, no, many other sectors as well, as a matter of fact. I think we find the experience not only in financial services but even education and other issues along those lines.

Ms. GARCIA OF TEXAS. Ms. Jun?

Ms. JUN. I think the other thing I will add is we have heard a lot about new ideas. And there have been some studies about using algorithms and alternative underwriting as if hopefully, a computer won't be discriminatory.

But a lot of studies lately have been showing that those automatic computer type models and new ideas are still concluding discriminatory results in lending. So I think it is still very much a problem and we as a society need to do a lot more about it.

Ms. GARCIA OF TEXAS. Ms. Davis?

Ms. DAVIS. Again, I would like to answer that one for the record.

Ms. GARCIA OF TEXAS. Okay, thank you.

Mr. Frotman?

Mr. FROTMAN. I think it obviously still exists. But I think I would encourage the committee to think about it in a broader sense than just the traditional mortgage context. I think we see this extend out to issues in Fintech, we see it in student lending issues, and I think it is a significant problem where there are real concerns about the Bureau's commitment to addressing it.

Ms. GARCIA OF TEXAS. Mr. Weltman?

Mr. WELTMAN. Yes, and I am sorry. I am just not qualified to speak to that issue.

Ms. GARCIA OF TEXAS. You are not qualified? I thought lawyers knew the answers to everything. I always thought—that is the kind of lawyer I was, but maybe that is a discussion for another time.

Now, Ms. Jun, I wanted to ask you because you do the legal aid work, if you could think of one single thing that we could do in changing to help poor people have more access to credit, and to lending, and to being able to have some access to capital, what would that be?

Ms. JUN. I think that is actually just more regulation and not less, because what is filling the hole right now are more bad choices and more predatory practices. And so I think the way you open up the space for better ideas to fill that space with better options is to make sure that bad practices are in fact very strongly discouraged by the CFPB and other regulators, and that real innovation, real new products as companies develop them are closely scrutinized to see how they are benefiting people.

Ms. GARCIA OF TEXAS. Okay, well, thank you all.

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

Mr. HUIZENGA. I appreciate the Chair for recognizing me, and Mr. Weltman, I am sorry, it was almost 6 hours ago when this hearing started. I was here for a number of hours at the beginning, and then had to step out for a few things.

As I was listening to the ranking member here, I am fascinated by this notion that an attorney general would act in one way at the State level, and then come to Washington, D.C., with a bright, new shiny object called the CFPB and act in a completely different way.

So why did he reverse course? Did you ever hear in the explanation as to why there was a reversal?

Mr. WELTMAN. Thank you, Congressman, no, he did not address that in his deposition. He was asked the question and didn't really provide a sufficient answer.

Mr. HUIZENGA. Oh, that would have been like when he was here testifying in front of us. But, okay. So literally, he did not have an answer as to why he thought it was okay as attorney general but then reversed himself—I mean, that is 180 degrees. Going back to then try to hold you culpable, whom he had blessed, checked the box, whatever you want to say, had approved your process that he as attorney general had oversight of.

Mr. WELTMAN. That is accurate to my testimony, yes.

Mr. HUIZENGA. Okay, well, that is stunning—but I had an experience around a couple of other things, and I will ask the question this way. Do you believe that the tactic of regulation by enforcement is a problem?

Is the Bureau going after a business without issuing any guidance or promulgating any rule—so in other words, there is a course of action—this might be a little different than what you had dealt with, but there is a course of action, and that is deemed legal and acceptable, and then suddenly a regulator decides that no longer is that acceptable—and by the way we are going to then go after you for doing something that had been approved before?

Mr. WELTMAN. I am familiar with our experience and haven't really spent a lot of time worrying about other experiences outside of our own. I certainly felt that our experience was an attempt at regulation through enforcement, just based upon some of the terms that the Bureau was requiring us—if they weren't going to sue us, things that weren't the current law, things that they didn't include in the lawsuit.

Mr. HUIZENGA. Explain that a little bit—unpack that a little bit.

Mr. WELTMAN. Well, their tactic, after their 2½-year investigation and before they sued us, they came to us and said, we are going to sue you unless you sign a consent order. And we asked to see what it would look like because certainly we were interested—

Mr. HUIZENGA. You would want to know what you are agreeing to.

Mr. WELTMAN. We wanted to know what they had in mind—

Mr. HUIZENGA. Yes.

Mr. WELTMAN. And what they had in mind, again, some of which was not the current state of the law and it was something that we felt they were going to use that as an example to tell people what the law should be.

Just because we agreed to something—we wouldn't agree to it because it wasn't the law. And again, that was validated that when they finally filed the lawsuit—and again, the lawsuit had no basis as it turned out. But they didn't even include those terms in the lawsuit because it wasn't law—they couldn't have even gotten—

Mr. HUIZENGA. Well, that is exactly the experience I had with a small title insurance company back in the second district of Michigan, and I won't incriminate my colleague on the other side of the aisle because I want him to have a future here in Washington. But he actually helped me when I went to him with this issue and

called the CFPB on my behalf to kind of work through this. And it was exactly that situation.

They were conducting themselves in a way that was completely legal and acceptable, but the CFPB decided that they no longer wanted companies to act like that, so they sued them and fined them, would have put them out of business had it not been for my friend on the other side of the aisle who helped mitigate that a bit.

I think that is why a number of us believe that there need to be some safeguards that the Dodd-Frank Act didn't have in it, but we need to have some safeguards to prevent the CFPB from overreaching. And I am assuming in your opinion that would have helped your situation have more clarity, transparency? Knowing the rules of the road as you were moving forward?

Mr. WELTMAN. We asked the CFPB for the rules that they wished us to follow because we certainly are interested in those and would love them to be published.

Mr. HUIZENGA. I think that that had been the last Administration's M.O. I am hopeful that this current Administration and Director Kraninger, who was here earlier, is going to follow through that. My time is expired. I appreciate your time.

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

Ms. ADAMS. Thank you, Madam Chairwoman, and thank you for convening today's hearing, and to the witnesses, thank you very much for your testimony. Each of you know that the Consumer Financial Protection Bureau's primary role is to protect consumers, and I have never believed that that should be a partisan issue. But having said that, let me ask a question first of all to Mr. Shelton. I was troubled by the way Mr. Mulvaney fired the 25 members of the Consumer Advisory Board last June, and by the changes that he made which seemed to diminish the role that the board plays with the agency.

And yesterday, as you have heard me introduce compliments in legislation—the Consumers First Act attempts to address this issue. But can you just share from your point of view which steps should be taken to ensure that the Consumer Advisory Board and the other advisory boards are diverse and inclusive in every opportunity to provide meaningful advice to the Consumer Bureau's staff?

Mr. SHELTON. Let me first say that I believe passing the Consumers First Act is a good start. Mandating many of these provisions and making sure that the voices of the American people, as diverse as they may be, as those of us who worked on passing the original Dodd-Frank Wall Street Reform bill had intended.

I think it is crucial that that kind of information is available, and again with the great diversity we call the U.S., and of course the type of redlining and other problems we have experienced with the financial institutions in our country.

Ms. ADAMS. I am curious about whether your organization or any other organizations represented here on the existing boards—anybody from NAACP?

Mr. SHELTON. Can you say that one more time—I'm sorry, the last part?

Ms. ADAMS. Is anyone from the NAACP on the board?

Mr. SHELTON. We were with the first board—

Ms. ADAMS. Oh, okay.

Mr. SHELTON. We weren't more recently.

Ms. ADAMS. So you were asked off, pretty much?

Mr. SHELTON. Yes, ma'am.

Ms. ADAMS. Okay. Let me follow up and ask—I was an educator for 40 years, I taught at the Bennett College in Greensboro, and I believe deeply in the value of creating opportunities for students to access and complete their higher education. For many, especially students who attend Historically Black Colleges and Universities (HBCUs), it is the key to upward economic mobility.

But our students today are young and overburdened by the student loan debt that is putting the so-called American Dream out of reach. So can you talk a little bit about—I understand that we don't have an ombudsman anymore for young people to stand in the gap for them, no one looking out for them. And I would really like to hear your thoughts about that, not only from Mr. Shelton, but also from Mr. Frotman.

Mr. SHELTON. Let me just start it by saying very quickly, that of course the cost of higher education continues to spiral upwards. And as such, we are looking at some of the tools that have been made available in the past. The Pell Grant program was one of the most effective and successful ways to keep from going into debt, because that provided resources that we didn't have to pay back.

But unfortunately, if you can go back to 1980 in the Reagan Administration, first cutting Pell Grants and then freezing them and thus never catching up with the buying power that was intended for Pell Grants, which are a really good start for low- and moderate-income students. Just look at the lack of control for student loans as we know, we continue to raise that issue here for the assumption, we have to address as well. It means more and more students are dependent on student loans that have to be paid back with a group of lenders that are quite frankly not regulated in the manner in which they should be.

Ms. ADAMS. Mr. Frotman, I understand that you were the former student loan ombudsman and you are not there anymore, you resigned. Can you tell me a little bit about your concerns?

Mr. FROTMAN. Thank you for the question. On top of the historic debt that we have pushed upon tens of millions of Americans, they face a financial marketplace that is littered with predatory players, from for-profit schools to student loan servicers, debt collectors, private student lenders, private equity funds, you name it, that view the trillion plus dollars in student debt as their chance to make a quick buck. And that is what we worked on at the Bureau for 7 years while I was there.

This is an issue that should know no partisan bounds. The fastest growing segment of student loan borrowers is actually older Americans. We see huge problems in rural America. Issues impacting everything from infantrymen to clergyman. And what I saw at the Bureau, nearly instantaneously after Director Cordray left, there was just zero desire to actually work on these consumer protection issues anymore. Maybe because of partisan reasons, maybe because of industry, but the result is the same.

Ms. ADAMS. Thank you very much, I am out of time. Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much. The gentlelady from New York, Ms. Ocasio-Cortez, is recognized for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you, Madam Chairwoman. Mr. Frotman, can you very quickly tell us why the CFPB was established?

Mr. FROTMAN. I think the CFPB was established for two reasons. One is that families throughout America were hurting after the financial crisis and we were there to help those individual folks. And when I first started, it was helping servicemembers who were ripped off by predatory lenders. Later, it was individual borrowers who were struggling with student loans. But we always had a view that was broader, which was that our job was to be sure nothing like the financial crisis ever happened again.

Ms. OCASIO-CORTEZ. And in your time there, can you give, maybe a quick example of some of the most important and vital pieces of work and protections that you all, kind of carried out?

Mr. FROTMAN. Sure. In my first job, standing up for military families, it was definitely helping the Department of Defense strengthen the Military Lending Act. Because for years, I was lucky enough to travel the country with Holly Petreaus, and everywhere we went, we saw predatory lenders just camped outside of military bases. So for years, we worked with all the banking regulators within the Department of Defense to pass a rule to close all of those loopholes. In my second role at the Bureau, working on student lending issues, we did a considerable amount of work, especially on predatory for-profit colleges, but also around the fundamental breakdowns in student loan servicing.

Ms. OCASIO-CORTEZ. Thank you. And do you think that it is possible there are special interests or industries that would like to see the CFPB weakened or abolished?

Mr. FROTMAN. Absolutely. I think the steps that Mick Mulvaney and Kathy Kraninger have taken are pretty indefensible across the board.

Ms. OCASIO-CORTEZ. And sorry to interrupt, just because I have a short period of time, what would some of those special interests that would really want to abolish the CFPB be? Who would be some of those actors?

Mr. FROTMAN. When it comes to student lending issues, I think the fundamental issue is that the Bureau has become the political arm of the Department of Education and is willing to do anything that Congress casts it to do to stand up for student loan servicers.

Ms. OCASIO-CORTEZ. So the Department of Education under the leadership of Secretary Betsy DeVos, has kind of the interest there, could have sought, potentially with political appointments to the CFPB, to dismantle it from within, north, in order to continue predatory student lending? Is that what you are—

Mr. FROTMAN. I think that the Bureau is unwilling to do anything that they think makes the Department upset.

Ms. OCASIO-CORTEZ. Now, why on earth would a corporation or a special interest group, so let's say, for-profit colleges or universities, want to dismantle that? What is going on here? Why do you

think that these political appointments are happening? To what end does it serve?

Mr. FROTMAN. We now have $1.5 trillion in debt and a lot of folks want to get rich off of the misery of student loan borrowers, and for 7 years, the Bureau stood as the most vocal bulwark against that happening. And unfortunately, now the Bureau is in a place where it is open season on student loan borrowers.

Ms. OCASIO-CORTEZ. So you are saying that the Consumer Financial Protection Bureau was one of the guardrails against this runaway student lending crisis, and so there is a vested interest to take that guardrail away?

Mr. FROTMAN. Absolutely.

Ms. OCASIO-CORTEZ. Do you think we are kind of on the way to a potential precipice or cusp with the student lending?

Mr. FROTMAN. I know there is a lot of debate about where we are in the student lending market. I think the truth is you are unable to say this is anything but a crisis. There are now 8 million student loan borrowers in this country who are in default, and another million student loan borrowers default each and every year. That means every 28 seconds, another student loan borrower defaults. We heard on this morning's panel, Director Kraninger talk a lot about how she is getting up to speed. In her nearly 90 days at the Bureau, 250,000 student loan borrowers have defaulted.

Ms. OCASIO-CORTEZ. And very quickly, you bring up an excellent point about earlier, and so you are saying that the Consumer Financial Protection Bureau is one of the only agencies that we have to check the student loan crisis? And just this morning, Director Kraninger was asked by my colleague here from Michigan, if she thought the CFPB should even exist, and she refused to say yes, unequivocally. Do you believe that it should exist?

Mr. FROTMAN. Of course. I think for the nearly 45 million Americans with student debt and the 300 million American consumers, the CFPB is a lifeline for them in the consumer financial markets.

Ms. OCASIO-CORTEZ. Thank you.

Chairwoman WATERS. The gentleman from Illinois, Mr. Foster, is recognized for 5 minutes.

Mr. FOSTER. Thank you, Madam Chairwoman, for holding this hearing and thank you to our witnesses here. Mr. Frotman—well, first off, I want to thank you for your current work at the Student Borrower Protection Center and your previous work at the CFPB as a student loan ombudsman, and the light that you have shed on all of the issues surrounding the student loan market. This is something that affects 44 million Americans and yet we are not doing what we should about it.

You probably saw during the previous panel during my questioning of Director Kraninger—well, I personally was very surprised to learn that after almost 3 months in the job that she was unaware of the—that neither she nor her company staff actually seemed aware of the market monitoring data initiative that the Bureau had previously spearheaded and was specifically authorized under Section 1022(c)(4) of Dodd-Frank. Did this surprise you that she and her staff seemed unaware?

Mr. FROTMAN. It did. It is hard to be surprised a lot now, right? But I think this is exactly why the United States Congress created

the CFPB: to better understand the emerging risks on the horizon so they could take action and folks on this committee could understand what steps were necessary.

This was an action that was entirely authorized within Dodd-Frank Section 1022(c)(4), which specifically authorizes the Bureau to engage in market monitoring activity. And this was an effort that we spent a ton of time getting right.

And it is just another example of the indefensible. This is the second largest class of consumer debt in America. People are really hurting, and the fact that the Bureau has been sitting on their hands for months on this project, it is just indefensible.

Mr. FOSTER. What are the sort of risks that that opens us up to if we don't have access to this data?

Mr. FROTMAN. As I mentioned before, we are in the midst of a student debt crisis, and I think one of the goals of this project, which I guess has been put in the drawer, at OMB, was for regulators to better understand what was happening. Student loans are a completely opaque market. Even some of the tools we have in the mortgage context like OCC—had an ability for policy makers—for regulators to understand what the true harm was.

I was the top person in charge of student loans at the CFPB for years, and I couldn't tell you right now what the true scope of the problems were in the market because we just don't have access to the data. And for whatever reason, if it was to appease industry or to appease the Department of Education that this project was just stopped, runs fundamentally in the opposite direction of where the Bureau needs to be.

Mr. FOSTER. Was the absence of this data going to be something that will make it difficult to identify the bad actors? For example, for-profit colleges with a very high rate of student loan defaults?

Mr. FROTMAN. It will be. This project was 100 percent focused on trying to better understand where there were problems in this market on the student loan servicing side. So, what type of borrowers were being driven into consecutive forbearances and not getting help? Where was that happening?

And I think this is a testament to what the Bureau was trying to be and what this committee tried to create, which was a data-driven enterprise which would look at where the data was, where consumers were hurting, and take action from that. By essentially stonewalling and stopping this project, the top regulator in charge of overseeing over a trillion dollars of non-bank serviced loans is just putting its head in the sand when it comes to student debt.

Mr. FOSTER. In the remaining minute or so, what are the emerging things having to, risks having to do for example with Fintech that we are going to need the CFPB's help with?

Mr. FROTMAN. I think one of the big issues that I worked on and you had one of the experts here talk about this, too, is the concern about using alternative data as a part of black box algorithms and what comes out the other end.

One of the things I would love to talk to you more about is the use of educational criteria in terms of underwriting decisions which I think raises a whole host of fair lending concerns.

Mr. FOSTER. Thank you.

Ms. Jun, did you have any comments?

Ms. JUN. I think I will just add that there are a lot of new interesting ideas in the world and I think that it is really important that CFPB keeps track of how they are actually doing in the market. I hope some of those ideas are actually good and to the results and the consequences that they intend, but I think it is really important that we keep an eye on all of that because there are dangers that come with new things, too.

Mr. FOSTER. Thank you. I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Pennsylvania, Ms. Dean, is recognized for 5 minutes.

Ms. DEAN. I thank you, Madam Chairwoman.

Good afternoon. It has been a long day. Before I came to public service, in my previous life I taught at La Salle University for 10 years. It was a real privilege. And so, I have to point out that we are joined today by a former student of mine, Christopher Goins, who is here reporting for us today. How about that? So, it is heartwarming to have you here.

But the underlying subject matter is particularly troubling. I care deeply about student loan debt for the reasons that I was a professor, but also because I am a parent. My community members struggle with it. It is certainly not something that anyone should want to ignore or anyone should want to shut down an agency tasked with an independent oversight in this area.

I said earlier this morning that in Pennsylvania, my home State, students have an average debt when they leave college of nearly $37,000. Unfortunately, we are the second highest rate in the United States. And as you, Mr. Frotman, have pointed out, it is not just the crushing burden of the debt. It is the long-term consequences, and it is of course consequences to our economy whether we want to grow it or not, because those struggling with this kind of debt are hindered by predatory loan services.

They wind up in short-term repayment processes that are crippling, that keep them from borrowing for buying houses. It keeps them from saving for retirement. All of these things build up and become something much greater.

I read with interest your letter of resignation and your testimony. And I have to tell you and maybe I want to know your reaction, I was baffled by our earlier panel, because I didn't hear a passion for the mission and in fact, we heard a split passion that somewhere along the way and I think you experienced this in your professional journey, somewhere along the way, this agency went from a goal of protecting consumers to a tug-of-war between protecting consumers and undoing regulations because lenders didn't like them.

That is what I heard. That is what I think is at the crux of this problem and who's caught in the balance? Student loan debt, students, and all other consumers. So, I ask you and I will read just a little bit of your letter really quick: "It is with great regret that I tender my resignation." This letter was to Acting Director Mulvaney. "It was an honor of a lifetime to spend the past 7 years working to protect American consumers. However, after 10 months under your leadership, it has become clear that consumers no longer have a strong, independent consumer bureau on their side."

And I will skip down, "Instead, you have used the Bureau to serve the wishes of the most powerful financial companies in America." Can you describe to us what you saw in the change of mission and specifically who got caught? And what does student loan debt look like in its problematic pieces?

Mr. FROTMAN. Sure. So, for years, I ran the Bureau's student loan work and it was obviously a massive team effort. We did a lot of good. I think the flipside of that is we saw families across the country hurting. We got 60,000 complaints from student loan borrowers. These were active duty servicemembers, nurses, and teachers who were just trying to get a better life for them and their families.

And they chased the American Dream like we all do and we want for our families. And then, they were pushed into a market that was just littered with predatory players. Your home State Attorney General is suing one of the largest servicers for a lot of these practices. And for years, we worked with the Department of Education when they wanted to help borrowers, but never once under my tenure, under Director Cordray, or under Elizabeth Warren, did we ask for a permission slip to do the right thing.

And for months, I have been trying to figure out how to articulate this, and I think you heard it this morning in response to your questions and others, the answer to what is the Bureau going to do on student debt always came back to, "We want to meet with the Department of Education." That is not why this committee created the Bureau.

Ms. DEAN. I really appreciate that. I apologize because we are tight on time.

Mr. FROTMAN. Yes.

Ms. DEAN. I just want to note, and I am sure you noted that the Ombudsman position, a statutory position, was left empty for 6 months. And yesterday, one of my staff members learned that there is an opening, "Good afternoon. CFPB is currently seeking candidates." This was 1:39 yesterday—coincidence? I don't know.

I want to end on the payday lending issue and I want to get your opinion of this, the Director said that the removal of the rule of checking whether or not there was an ability to repay had to do with—I love this euphemism—access to borrowers. We want to give them access.

If I could—may I indulge just to ask for a response to the question?

Chairwoman WATERS. The gentlelady's time has expired. We must move on. We are going to have a vote on the Floor in a few minutes.

Ms. DEAN. Thank you, Madam Chairwoman.

Chairwoman WATERS. All right. Thank you.

The gentlewoman from Michigan, Ms. Tlaib, is recognized for 5 minutes.

Ms. TLAIB. Thank you, Madam Chairwoman. Thank you all so much for being here.

Mr. Weltman, I have a question for you. Do you believe the Bureau should exist?

Mr. WELTMAN. I spend my time focusing on our firm and doing our job. And again, I leave those type of policy issues for Congress.

Ms. TLAIB. But you are before our committee. I mean, I honestly as your expertise, a lot of colleagues on the other side ask you a question I am just asking. Like, in your opinion, I mean you are here before congressional body educating us on the pros and cons or your experiences. Do you believe the Bureau should exist?

Mr. WELTMAN. I was invited today to share my experience.

Ms. TLAIB. Sure.

Mr. WELTMAN. And certainly the way we were treated—

Ms. TLAIB. Yes. You wouldn't answer it either. It is so bizarre to me that out of anybody we could have had here is to have somebody who actually doesn't support consumer protection. I mean, the whole idea of the Bureau was actually in many ways supported by a lot of colleagues on both sides. That is what's so bizarre about it. And now, we are here trying to dismantle it in many ways by some of the rhetoric.

Thank you. This question is for the panel. You all know Mr. Mulvaney. We keep hearing about him. He clearly did not act in conformity with the Dodd-Frank Act, nor within the spirit and purpose of what the Consumer Bureau was designed by Congress to do. We all remember the period of reckless and unchecked lending that nearly sent this nation into a second Great Depression and most certainly caused the Great Recession of 2008.

I saw it in my neighborhood in Detroit. So many people to this day are still struggling to get out of it. Trillions of dollars of household wealth was lost and many hardworking communities are still recovering from this disaster caused by unchecked predatory lending. In your opinion, how important is it that we have a strong and functional Consumer Bureau for America's families?

Second, and this one I am really wanting you to dig deep, I know it is hard to pick one, but if you could ask the Director, if she was here right now, to do at least one thing for consumers in her position, what would that be?

Mr. SHELTON. The one thing would be simply to restore it back to the conditions and the position it was in, in 2016 at the time they took over and took office. In essence, what we are trying to do is restore something that proved to be successful and let us continue to move in that direction.

Ms. JUN. The people that you just mentioned, and all of the clients, they are all the people who were destroyed by the foreclosure crisis and even the ones who were able to save their houses are still struggling.

So, yes, overall, pre-CFPB is one that really, really disturbs me. That idea scares me. And I was trying to think of one thing, but I feel like to tie this entire hearing together, it would be to put consumers first again and to protect consumers. And whether you reduce regulation or create new rules or do anything else at this Bureau, the whole point, number one, is to protect consumers. So, I think that would be the one thing I would choose.

Ms. DAVIS. I was going to say the same thing, put consumers first and upholding the authorities that have been granted regarding examinations and comprehensive rules and exercising all the authorities given.

Mr. FROTMAN. I think, listen to the career staff. The people that I worked with for 7 years were some of the best and brightest out

there. And where you see the worst coming out of the Bureau is the politicization, from the dropping of Golden Valley to the Military Lending Act. This is what is happening when you politicize an agency that is supposed to be independent and standing up for consumers.

Mr. WELTMAN. Again, thank you. I don't know that I am qualified to comment on the operation of the Bureau, but what I would ask her to do is exactly what I ask you to do: just do her job to the best of her ability.

Ms. TLAIB. Sure. So, please tell me, if any of you know, the last time that the Bureau brought a fair lending enforcement action against a financial institution and tell me what you think is happening with racial discrimination in mortgage lending?

Mr. SHELTON. The last time we can remember?

Ms. TLAIB. Yes.

Mr. SHELTON. It was prior to 2016, and the second part of your question was—

Ms. TLAIB. That is fine. It is part racial discrimination—I am just going to submit this for the record. I am new here and this timing thing, there is nothing that Chairwoman Waters can do, but it really—it is just awful, and I come from the Michigan legislature and we never had this like timing thing. But I want to submit this for the record.

But I think it is really important to show that right now black applicants were almost twice as likely to be denied conventional home purchase loans as white applicants in 2016, and Detroit alone ranked 44 out of 48 communities nationally that found blacks were denied loans at a higher rate. That is really important and I want the Bureau to be able to address that, but I will submit this for the record.

Thank you, Madam Chairwoman.

Chairwoman WATERS. Without objection, it is so ordered.

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

Mr. GARCIA OF ILLINOIS. Thank you, Madam Chairwoman.

I want to return to the office of ombudsman, because I think it is so important given the crushing amount of student indebtedness that is out there. So, for 7 years, the Bureau's Office of Students and Young Consumers was led by an independent student ombudsman who stood up for student loan borrowers and young consumers.

And according to the Consumer Federation of America, among some of the good work that was done was returning over $750 million to student loan borrowers. You helped more than 60,000 borrowers demand answers from student loan companies and you held predatory companies like Navient and ITT Tech accountable for their practices.

So, earlier today, it seemed that Director Kraninger conflated the ombudsman role which she now says she is hiring, which I think is a positive development, with the Office of Students and Young Consumers which has been shuttered. So, my question is, how is the student loan ombudsman role more limited now that the Office for Students and Young Consumers has been eliminated, if that is the case?

Mr. FROTMAN. When they first, in May, announced that they were closing down my office, the Office for Students and Young Consumers, there were a lot of promises about how nothing was going to change. We obviously quickly realized that that was not the case.

You don't have to take my word for it. There was a Bloomberg article recently published titled, "New Head of Student Loan Oversight Office Will Have Less Power." This is just factually true. And I think it is really concerning, because what you heard on the panel earlier, every answer the Bureau had about student debt, about education, trying to encourage borrowers to make better decisions, which we all agree with.

What you didn't hear once was how is the Bureau going to go after financial companies that are preying on student loan borrowers, and that is the flipside of a very important mission that the Bureau undertook. And I think based on everything that I witnessed, based on what you guys heard this morning, there is a real concern about whether the Bureau is still undertaking that role and this is where that work used to emanate from.

Mr. GARCIA OF ILLINOIS. Thank you.

Ms. Jun, you relayed in your testimony earlier a powerful story about a consumer in New York who was able to get $1,200 back from their bank after filing a complaint in the CFPB's public database. As you know, while he was heading the CFPB, Mr. Mulvaney said of his compliance database, "I don't see anything in here that says I have to run a Yelp for financial services sponsored by the Federal Government."

Can you elaborate on why it is important that the database remain public?

Ms. JUN. Sure. And I will again draw back on my legal aid experiences. That story in my testimony is actually from a colleague of mine, and I saw her handle that case. Another example with the complaint database that comes to mind is we had a client who couldn't get a copy of their credit report. They kept calling Equifax, requesting it. They just couldn't get it. Her attorney filed a complaint with the complaint database and suddenly Equifax was mailing the report. The reason this all works though as you alluded to, Congressman, is because it is public. Companies are aware that it is public and they want a good reputation.

In one of my foreclosure cases, opposing counsel would not give me an answer, and the bank would not give my client an answer, but their accountant eventually had filed a complaint and I remember the attorney was very, very upset with me and he said, "My client really doesn't like being called out in public." And I share that all to say the reason this database works is not because the CFPB is merely collecting the complaints, but because that information is available for anyone to see it.

Individual consumers can use it to decide where they want to take their business. Advocacy organizations can look at patterns. Regulators can look at that and do research on what is going on in the marketplace. That all happens because it is public and available to a lot of people as an important tool.

Mr. GARCIA OF ILLINOIS. And when it isn't public, what happens?

Ms. JUN. I would fear that—I would refer again to the pre-CFPB world where I was litigating, where either you would have to try to sue to get that information and I am a lawyer. So, I have other tools. But an individual consumer probably just keeps calling the 1–800 number for months or years on end, and if they are lucky enough, they might be able to get help and if not, I would really be afraid that they would just never get the information or the help that they need.

Mr. GARCIA OF ILLINOIS. Thank you.

Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much.

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

Mr. LAWSON. Thank you, Madam Chairwoman, and welcome to the committee, witnesses.

In a debate that we had earlier today, I was very disappointed that Congress allowed the CFPB to have the independent status that they have today, and they have people in control of the organization right now who really I don't think really care about the consumers.

I have heard the testimony from you all which I think was very credible but one of the things that really bothered me, and I know it is a stressful time and probably the Federal Government still makes about $1.6 billion off of students. And from the standpoint of the vampires at the corporate level, makes even more than that.

Even though you stress, Mr. Frotman, that we have about $1.5 trillion in defaults, people are still making a tremendous profit off of students, and according to Mr. Shelton and he is absolutely right, higher education cost is increasing. So, higher education cost increases, student loans increase, and as a result, it creates more debt, and higher education can continue to increase because we can't stop it the way it is exploding.

But we have corporate vampires that are sucking the blood out of this situation. And there is something that needs to be done. It is going to have to be Federal legislation that really changes it. And I don't know whether any of you all care to respond. The $1.6 billion that was made by the Federal Government in 2016, now in 2018, how much money is still being made by the Federal Government? I don't think the Federal Government should be, in my opinion, making a profit off of the back of students. If you all care to respond, please do.

Mr. SHELTON. I might start it. I think the response is we have to be—we have to think about it freshly and anew. If you think about when programs like Pell Grants were initially put in place and student loan programs were simple, they were done to respond to the present cost of higher education hoping to open the doors of real opportunity for all students across the country.

We have to go back to that, at least look at the programs they put in place and see what the buying power is now. Forcing students into debt is absolutely unacceptable. We are very clear on that. We are seeing today on how damaging and destructive it is to one's future. Going to college in the first place, making that investment in yourself in the first place or your children was all set planning for that future and indeed, what we are seeing is some-

thing that is doing just the opposite, we see those who are making tremendous profits again at the hides and the very future of our young people.

So, we are going to have to move along those, assess each of the programs, move them away from student debt into Pell Grant programs and other grant programs along those lines. So, again, every student in our country can truly get an opportunity.

Let me say this last point. We are one of the few industrialized countries on the face of the earth that forces our students into this level of debt. Let's take a look at some of those other countries as well and see why it is different. I met a Ph.D. candidate who works for one of our Congresswomen right now here in Washington who was in Germany because the tuition to get her Ph.D. was free.

Mr. LAWSON. Wow.

Mr. Frotman, would you like to respond?

Mr. FROTMAN. Just to add quickly, we also see a whole host of private sector companies who are getting hundreds of millions of dollars, of taxpayer dollars, to then service that debt. So, one of the things that the Bureau spent a lot of time on was trying to improve Federal student loan servicing, which is good for consumers, but also represents the fact that we are paying these companies to try to help borrowers and they are failing miserably.

One of the companies, in Federal court, Navient, wrote, "There is no expectation that the servicer will act in the interest of consumers." And that is what the Bureau was trying to tackle while I was there.

Mr. LAWSON. I am not going to ask, my time is running out, but what is happening at the university level? I am a former coach and athlete, and they are paying athletes now more money to perform. They don't leave with debt. But at the same time, and wind it down is our students at the same level leave with tremendous amount of debt.

Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much.

I would like to thank our witnesses from this second panel for your testimony today. I am so appreciative for your patience. Many of you or all of you I think have been here all day. You sat through the first panel and you stayed. You didn't run away and I am very grateful for that, and I thank you so very much.

And while we don't normally give applause to our witnesses, I break the rules all the time.

[applause]

The Chair notes that some Members may have additional questions for these witnesses, 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.

And with that, this hearing is adjourned. Thank you very much.

[Whereupon, at 4:43 p.m., the hearing was adjourned.]

A P P E N D I X

March 7, 2019

Statement

by the

NATIONAL MILITARY FAMILY ASSOCIATION

UNITED STATES HOUSE
FINANCIAL SERVICES COMMITTEE

March 7, 2019

Not for Publication Until Released by
The Committee

The National Military Family Association (NMFA) is the leading nonprofit dedicated to serving the families who stand behind the uniform. Since 1969, NMFA has worked to strengthen and protect millions of families through its advocacy and programs. We provide spouse scholarships, camps for military kids, and retreats for families reconnecting after deployment and for the families of the wounded, ill, or injured. NMFA serves the families of the currently serving, retired, wounded or fallen members of the Army, Navy, Marine Corps, Air Force, Coast Guard, and Commissioned Corps of the USPHS and NOAA.

Association Volunteers in military communities worldwide provide a direct link between military families and the Association staff in the Nation's capital. These volunteers are our "eyes and ears," bringing shared local concerns to national attention.

The Association does not have or receive federal grants or contracts.

Our website is: *www.MilitaryFamily.org*.

Jennifer J. Davis, Government Relations Deputy Director
Jennifer became a Government Relations Deputy Director of the National Military Family Association in 2018. In her role as a Government Relations Deputy Director, Jennifer monitors issues relevant to the quality of life of families of the uniformed services. Her areas of responsibility include spouse employment and education, financial literacy and military housing. She previously served as Director of Military and Government Relations at the Air Force Sergeants Association.

Jennifer serves on several committees of The Military Coalition (TMC), an organization of 33 military-related associations. She is co-chair of the Coalition's Taxes and Social Security Committee.

Jennifer served in the United States Air Force from 2001 to 2004 as an imagery analyst stationed at the United States Strategic Command, Offutt AFB, NE. She is also a military spouse of an active duty Master Sergeant, to whom she's been married for 15 years. A North Carolina native and third generation veteran, Jennifer earned her B.S. in Interior Design from The Art Institute of Pittsburgh. Jennifer resides in Springfield, Virginia with her family.

Prior to the enactment of the Military Lending Act (MLA) in 2007, "quick cash" stores, used car lots, pawn shops and title loan companies clustered around military installation gates. The net laid by these predatory lenders was extensive and, for some military families struggling financially due to a recent move or lack of spouse employment, the draw was too great. These lenders provided attractive options to service members and their families, offering quick loans and anonymity with no intrusive questions surrounding credit history or ability to repay. Often, however, interest rates soared into the triple digits. Annual percentage rates of 200 and 300 percent were common and in states with no rate cap, they ran as high as 700 percent.

And then the Military Lending Act was passed. The MLA's passage capped interest rates at 36 percent on many loan products for service members, protected military families from mandatory allotments of pay, forced arbitration and penalties due to early loan repayment.

For more than a decade, service members and their families have enjoyed relief, seeing a decrease in predatory lending due in large part to the passage of the MLA. According to data provided by the Navy-Marine Corps Relief Society (NMCRS), in 2006 approximately 1,500 active-duty personnel sought financial assistance due to payday lending issues, resulting in as much as $1.2 million granted by NMCRS. However, since the implementation of the MLA, numbers have dropped steadily. In 2007, requests for assistance dropped by half to 700 resulting in $51,500 granted - only 4 percent of the previous year. Each year since, the number of requests for assistance and amounts granted has continued to decline with only ten requests in 2010, further falling to three requests for assistance in 2018, resulting in less than $4,000 granted.

CONSUMER FINANCIAL PROTECTION BUREAU

The Consumer Financial Protection Bureau (CFPB) was created in 2010 after the financial crisis of 2008 to protect American consumers from predatory financial products and practices that helped lead to a bloated and unsustainable economy.

The National Military Family Association appreciates CFPB's work over the last decade to keep service members, veterans and military family consumers educated and empowered through financial literacy, ensuring supervision and enforcement of consumer financial laws and offering a space to seek resolution through the complaint database. Much of this work is accomplished through the Office of Servicemember Affairs (OSA). We are grateful for various programs and initiatives such as the "Military Financial Lifecycle," which highlights many of the constant challenges that affect service members and their families throughout a military career and post-military life. We also appreciate OSA taking the initiative to create understandable factsheets relating to service member protections within the Servicemembers Civil Relief Act (SCRA) as well as the MLA.

SUPERVISORY EXAMINATIONS OF THE MILITARY LENDING ACT

Recently, we have become alarmed by CFPB's decision to no longer supervise lenders for compliance with the MLA. Current leadership has expressed the opinion that the agency does not explicitly have the authority to do supervisory examinations to ensure MLA compliance. We disagree.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 established the CFPB, granting executive and administrative authority in implementation of "the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions."[1] While the MLA was not included in the consumer financial laws to be enforced at the time of CFPB's creation, the FY13 National Defense Authorization Act (NDAA) changed this, granting enforcement authority of the MLA to CFPB. The FY13 NDAA specifically references administration of the MLA in compliance with section 108 of the Truth in Lending Act and *any* applicable authorities.[2] A plain reading of that law includes supervisory examination authority.

While CFPB seems to remain concerned with the overall financial readiness of service members and their families, forgoing its previously recognized MLA supervisory authority opens up military families to fraudulent lending by regulated entities. Furthermore, this reversal puts the onus on military families to catch potential fraud based on their understanding of the law and its protections and to work through the process of reporting such infractions to CFPB in the hopes of reconciliation. This arduous process would distract service members from their missions and result in decreased personal readiness, which would almost certainly impact safety of units and jeopardize operational success on the battlefield.

In January of this year, CFPB's own OSA report identified that complaints and requests for assistance have continued to increase over time. In fact the report states, "From 2016 to 2017 there was a 47 percent increase in complaints received from service members."[3] If even with supervision to ensure compliance the MLA service member complaints have continued to increase, what does CFPB expect will happen as a result of no supervisory examinations? Surely this disturbing trend will continue to grow at exponential rates. ***We urge CFPB to reverse their decision to no longer include MLA compliance in their supervisory examinations of financial institutions.***

We understand CFPB has proposed a legislative fix to explicitly grant authority to supervise the MLA. However, as previously outlined, we believe CFPB already possesses that authority, and we are concerned that any attempts to revise the MLA could open the door to watering down other protections contained in that law.

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act. https://www.congress.gov/bill/111th-congress/house-bill/4173/text

[2] FY13 National Defense Authorization Act. https://www.congress.gov/bill/112th-congress/house-bill/4310/text

[3] Office of Servicemember Affairs Annual Report. January 2019. https://files.consumerfinance.gov/f/documents/cfpb_osa_annual-report_2018.pdf

Therefore, in an effort to prevent erosion of the law, we strongly caution Congress against revision of the MLA.

DELAY OF IMPLEMENTATION OF PAYDAY LENDING RULE

In February of this year, CFPB announced a proposal to delay implementation of the Payday Lending rule. Currently the rule is set to be implemented on August 19, 2019, but the proposal would push this date back to November 19, 2020. Our Association believes, due to the importance of the Payday Lending rule as currently written with underwriting requirements included, any delay by CFPB would put consumers, to include veterans and their families, at increased financial risk.

REVERSAL OF CERTAIN PROVISIONS OF PAYDAY LENDING RULE

In February of this year, CFPB announced a proposal to "rescind certain provisions" of the Payday Lending rule. Specifically, the desire is to reverse underwriting requirements of lenders "before issuing payday, single-payment vehicle title, and longer-term balloon payment loans."[4] CFPB's belief is that such a reversal would enable consumers to obtain increased access to credit.

While reversing this provision may, in fact, increase access to credit, what would be the cost to consumers? Conventional wisdom and economic theory state a lender should ensure a consumer's ability to repay before extending credit. We believe lenders who do not take this approach are simply preying on consumers with a business model that relies on revenue from rollovers, late fees and penalties. Reversal of the Payday Lending rule would place consumers (including military veterans, who are not protected by the MLA) at greater financial risk, which goes against CFPB's very purpose to protect consumers.

We urge CFBP to maintain the integrity of the Payday Lending rule as written, thereby protecting consumers.

CONSUMERS FIRST ACT

The proposed Consumers First Act would address several missteps by CFPB leadership. Most notably the proposed legislation would highlight CFPB's "abandoning of accepted and efficient practice of having its examiners review, as part of their routine examinations, creditors' compliance with the Military Lending Act". It would urge CFPB to "immediately resume supervision of its regulated entities for compliance with the MLA to ensure the most robust and efficient protection of active-duty service members and their families."[5] We strongly stand behind this proposal within the Consumers First Act.

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[4] Consumer Financial Protection Bureau Releases Notices of Proposed Rulemaking on Payday Lending. February 6, 2019. https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-releases-notices-proposed-rulemaking-payday-lending/

[5] Consumers First Act

MILITARY CONSUMER PROTECTION ACT

Our Association appreciated the introduction of the Military Consumer Protection Act in the 115th Congress. The Military Consumer Protection Act proposed granting CFPB oversight and enforcement authority of certain provisions of the SCRA. We supported this legislation in the last Congress and encourage reintroduction and passage in the 116th Congress.

MILITARY FAMILIES –CONTINUING TO SERVE

Evolving world conflicts keep our military service members on call. Our military families continue this call as well, even as they are dealing with the long-term effects of almost two decades at war. The government should ensure military families have the tools to remain ready and to provide for the readiness of their service members – the MLA is one of these tools. Our Association implores CFPB to maintain the integrity of the MLA and protect the financial readiness of America's service members and their families.

Testimony of Seth Frotman
Before the United States Congress
House Financial Services Committee
March 7, 2019

Chairwoman Waters, Ranking Member McHenry, Members of the Committee, thank you for the opportunity to testify today.

In March of 2011, I had the honor of joining the Consumer Financial Protection Bureau, and that is where I would like to start today—by recalling what this country looked like in 2011. Because if we are to have any meaningful discussion around the mission and future of the Bureau, it is important to recall what people's lives looked like—what this nation looked like—as the CFPB opened its doors.

It had been three years since the peak of the financial crisis, but for millions across the country, the crisis was still raging, leaving real, tangible human affliction in its wake.[1] Families were losing their homes.[2] Servicemembers were falling victim to financial predators who viewed them as dollar signs in uniforms.[3] Everyday Americans were targeted with bogus add-ons and hidden fees, leading to financial ruin by a thousand cuts.[4]

And this affliction was fueled by companies that had no shame when stealing the last dollar in someone's bank account in order to pad their own bottom line—in large part, because they knew they could get away with it. The combined force of these ripples of deceit and devastation left millions of shattered families and shattered dreams.

Across the country, American families needed someone—needed their government—in their corner. That is where the CFPB stepped in.

The United States Congress created the Consumer Financial Protection Bureau to serve as this desperately needed lifeline to the families being pushed off the edge of a financial cliff.[5] It was the Bureau's job to look out for people who were being crushed by a financial industry whose nefariousness knew no bounds.

And that is exactly who we helped. We helped the family who was at the brink of an illegal foreclosure. We helped the servicemember who was preyed upon by a predatory lender. We helped the single parent who was having her wages garnished after unlawful debt collection efforts.

But that was not our only job. From those early days, all the way until November 2017, we had an equally important mission: make sure that something like this never happened again. We were tasked with making sure another recession was not spurred on by the same systemic illegal conduct that drove the last one.[6] We were tasked with protecting against practices that, in totality, could lead to trillions of dollars of lost household wealth.[7] We were tasked with fixing a

broken credit market that declared open season on American consumers, and in turn, destroyed the nation's economy.

And every day we went to work, we knew that millions of American families depended on us to do exactly that.

Were we perfect? Of course not. But the work we did during those years mattered. Between July 21, 2011 and November 24, 2017, the CFPB:

- Put $12 billion back in the pockets of American families;[8]
- Created rules for mortgages that halted the worst practices that drove the financial crisis;[9]
- Returned over half a billion dollars to borrowers who were discriminated against by their lender;[10]
- Created servicing protections that prevented tens of thousands of homeowners from defaulting on their mortgage and created a pathway for more than a hundred thousand people to dig out of delinquency;[11]
- Cracked down on dubious payday lenders making loans they knew could never be repaid and trying to collect on debt that was not legally owed;[12]
- Sought to swing open the courtroom door for consumers seeking justice and relief for wrongdoing;[13]
- Implemented and oversaw the credit card protections that this very Committee worked so hard to pass and saved American consumers billions of dollars;[14]
- Obtained hundreds of millions of dollars in consumer relief as a result of supervisory activity;[15]
- Worked with the Department of Defense to close loopholes exploited by unscrupulous companies targeting military families;[16]
- Handled over a million and a half consumer complaints, including more than 60,000 from student loan borrowers;[17]

And so much more.[18]

Each action by the Bureau meant real money back in the hands of hard-working families. Each action meant real oversight and protections that kept their money there in the first place.

From the day it opened its doors, the Consumer Financial Protection Bureau listened. We listened to the millions of borrowers ripped off at every turn and we took action.

We demonstrated to hundreds of millions of people that the federal government had their back.

Because the Consumer Bureau had one simple mission—protect consumers.

There were no mixed messages. There was one message—protect consumers. We were there to make sure our neighbors, our grandparents, our children—your constituents—were not being ripped off by big banks or small scams.

And that work mattered.

Over the course of my seven years at the CFPB, I traveled all around the country and talked to thousands of people. Out of all of those conversations, the one unifying theme was that consumer financial protection matters.

People are not buying a house in cash or cutting a check to pay for their car or paying for their children's full college tuition with what they have in their savings accounts. Americans rely on credit—and a well-functioning credit market—to accomplish each of these goals.

But the stakes are much bigger than simply credit markets.

At stake is the character of our country. At stake is the answer to whether the American dream—a house to raise our family, a car to get to work, a college education to earn a better life—will be the province of only a select few, while the rest have their money stolen at every turn, or worse, face denials and discrimination based on factors like race or sex.

That is why the CFPB matters. That is why this hearing matters. That is why this Committee's work matters. Because consumer financial protection matters.

And that is why the actions of the Trump Administration and the political leadership installed at the Bureau have been so devastating.

The last 15 months at the Bureau have been plagued with inaction and incompetence, all under the guise of some supposed ideology.[19] The political leadership has engaged in costly vanity exercises while real people are getting hurt.[20] They have prioritized the wishes of the most powerful financial companies in America over the needs of the very people they were tasked by Congress to protect, all under the selective invocation of "statutory restraint."[21]

The fact of the matter is that the efforts of Mick Mulvaney and Kathy Kraninger have hurt—and are continuing to hurt—real people. Their actions have hurt families. Their actions have hurt communities. And in the process, their actions have hurt our nation.

And perhaps the most poignant example of this is how their actions are hurting the 44 million Americans with student loan debt.

The Student Debt Crisis

Forty-four million Americans collectively owe $1.56 trillion in student loan debt.[22] Student debt is now the second largest class of consumer debt in this country, larger than both auto and credit cards, behind only mortgages.[23] And people are drowning under the weight of this unprecedented burden.

Last year, over a million borrowers defaulted on their student loan.[24] These borrowers joined the one-million-plus borrowers who defaulted the year before that, and the year before that.[25] In fact, every 28 seconds, another borrower defaults on their student loan. Today, more than eight million student loan borrowers are in default.[26] Another five million are at least two payments behind—borrowers we can expect the system to fail as we continue to do nothing.[27]

But it is not only those who are behind on their loans who are struggling. For every borrower who misses a student loan payment or defaults on a debt, there is another borrower who is struggling to buy a home,[28] start a business,[29] or save for retirement.[30] Student debt has imperiled access to these key pillars of the middle class for far too many Americans.

We now see evidence that declines in household formation and homeownership are being driven by student debt—creating barriers to economic mobility for borrowers across the country.[31] One study found that rising levels of student debt resulted in 400,000 fewer homes purchased by only millennials over the last 15 years.[32] Another study showed that student loan borrowers are less likely to stay in rural communities, raising questions about the impact student debt is having on rural economies across America.[33] We are also beginning to see how this debt fuels economic,[34] gender,[35] and racial inequality,[36] inhibits asset accumulation,[37] accelerates wealth gaps,[38] and carves out a generational divide that, even in the best of circumstances, will take decades to erase.

After piling historic levels of debt onto an entire generation, we push them into a market plagued with harmful and illegal practices that drive them to financial ruin.[39] Collectively, this adds billions of dollars of additional student debt to household balance sheets, damaging the financial future for millions of people.[40]

From student loan servicers[41] to for-profit schools,[42] from debt collectors[43] to private student lenders,[44] from private equity firms[45] to debt relief scams[46]—we have seen entire industries build their profit models off of taking advantage of student loan borrowers.

And that is what the Bureau worked to stop. For the first time, 44 million people had a champion in the federal government. From the work of Elizabeth Warren and Rohit Chopra up until the day Richard Cordray left, the Bureau fought on behalf of the tens of millions of our fellow Americans with student debt.

We helped servicemembers[47] and disabled veterans.[48] We helped teachers and nurses.[49]

We helped borrowers in all 50 states and every US territory.[50] We helped borrowers of every age, from the 18-year-old being targeted by for-profit schools, to the 83-year-old navigating her loan disability discharge.

Student loan borrowers were being ripped off from before they even got their first bill, until they paid off their last loan, and we were there to help.[51]

We took enforcement action against those who broke the law, from small scammers to large financial institutions like Wells Fargo, Discover, and Navient.[52]

Our perspective was clear—if you were chasing the American dream, you should not be ripped off at every turn.

And we worked with anyone and everyone who wanted to help student loan borrowers, from federal agencies like the Departments of Education, Treasury, and Justice,[53] to state law enforcement,[54] to city governments.[55] But most importantly we never shied away from doing our job. Our job was to independently enforce and implement the consumer financial protection laws of the United States against providers of consumer financial products and services—even when it made those in the Administration—in any Administration—uncomfortable.[56]

We were an independent agency that utilized every authority bestowed upon us by Congress—from supervision to enforcement, from documenting complaints to helping individual consumers.

And it worked. In those seven years, the CFPB returned more than $750 million to student loan borrowers.[57]

But almost immediately upon the arrival of Mick Mulvaney and his political appointees, this work came to a grinding halt. For example:

- In December of 2017, the Bureau refused to publish findings documenting how large banks such as Wells Fargo were siphoning off the last dollars of vulnerable students on college campuses through legally dubious fees;[58]

- In February of 2018, the political leadership of the Bureau blocked attempts by career staff to alert the Department of Education to the far reaching harm borrowers would face due to the Department's illegal and unprecedented attempts to place student loan servicers above state consumer protection laws.[59] The Education Department's effort was publicly rebuked by the National Governors Association,[60] the Conference of State Banking Commissioners,[61] a bipartisan group of 25 state attorneys general,[62] and Members of Congress on both sides of the aisle.[63]

- In May of 2018, the political leadership of the Bureau shuttered the only office in the federal government whose sole mission was protecting student borrowers against predatory practices in the financial sector.[64]

- In May of 2018, the political leadership of the Bureau withdrew a planned student loan servicing rulemaking that would have provided enhanced consumer protections, leaving student loan borrowers with fewer protections when compared to consumers in nearly any other consumer market.[65]

- In July of 2018, the political leadership of the Bureau refused to document concerns raised by the Offices of Servicemember Affairs and Students about how the proposed roll backs of accountability regulations of for-profit schools would disproportionately harm military families.[66]

- As documented in public accounts throughout 2018, there exists significant questions about the extent to which the Bureau is engaged in full and robust supervisory oversight of the private sector companies that manage $1.2 trillion in federal student loans on behalf of 42 million people.[67] There remains real and substantial questions about whether the Bureau's political agenda has left a trillion-dollar blind spot in the nation's financial markets.

And since I left the Bureau in September of 2018, this abdication of responsibility has continued. The position of the Student Loan Ombudsman, as mandated by Congress, sits vacant.[68] The Bureau's congressionally mandated student loan complaint report remains unwritten.[69] The Bureau has once again failed to highlight how big banks continue to take advantage of students on campuses across the country.[70]

Perhaps most disconcerting is that, in the last 15 months, it is impossible to cite a single significant or substantial action that the Bureau has initiated on behalf of the 44 million student loan borrowers in this country.

There is no ideology that justifies these actions—or more accurately—inaction. The complete abdication of the Bureau's responsibility for this market will have real and lasting consequences both for American families and the larger economy. Shielding companies from the consequences of their lawlessness is not "making markets work."[71] Protecting Betsy DeVos from the consequences of the Department of Education's failures is not "conservative." The Bureau is not meant to be a political appendage of any administration—particularly one that is flailing as it mismanages the trillion-dollar portfolio it holds.[72]

The last 15 months at the Consumer Financial Protection Bureau reflect a fundamental lack of seriousness in the work that Congress tasked the Bureau to perform and willful negligence in addressing the deep, systemic problems that plague borrowers owing the second largest class of consumer debt in this nation.

Keeping the Promise

And that is why the work of the Financial Services Committee is so important—both in terms of oversight and policymaking.

The student debt crisis is more than a higher education policy issue. It is a significant—perhaps the *most* significant—consumer finance issue threatening our nation at this time.

We cannot continue to treat student loan borrowers as second-class citizens simply because the word "student" comes before the word "loan." Student loan borrowers face breakdowns and harmful practices that we would simply never permit in other markets. We cannot only focus on making the system better for the next applicant while ignoring the plight tens of millions of people face every day.

Because right now, we have a trillion-dollar black hole in our financial markets. Millions of Americans with student debt are falling further behind as their federal government coddles predatory players.

So, thank you for asking the tough questions of this Administration. Thank you for taking on the challenge to make sure that student loan borrowers have the rights and protections that exist in nearly every other debt market.

And I would like to close with this: the student debt crisis is not political. It knows no ideology, and it has no bounds—rural and urban, young and old, black and white.

Over the last two weeks, I was in both Oregon and Massachusetts—states that are three thousand miles apart, yet share this in common: their elected leaders are working together, in a bipartisan fashion, to stand up for student loan borrowers.[73] Their leaders understand that an entire generation is being crushed by student debt, and these borrowers need help.

We cannot forget the promise the federal government made to American consumers back in 2011. Because these people are still standing at the edge of that cliff. They need that lifeline. And they are relying on our promise never to let something like this happen again.

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[1] *See* Emilia Istrate & Tadas Pack, *County Economies 2016: Widespread Recovery, Slower Growth* (2017), http://www.naco.org/sites/default/files/documents/County-Economies-2016.pdf; Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Res. Ctr. (Dec. 12, 2014), http://www.pewresearch.org/facttank/2014/12/12/racial-wealth-gaps-great-recession; *Ten Years After Financial Crisis, Nearly One-in-Three Americans Still Feeling the Sting*, Country Fin. (July 13, 2017), https://www.prnewswire.com/news-releases/ten-years-after-financial-crisis-nearly-one-in-three-americans-still-feeling-the-sting-300487945.html; Gerald P. Dwyer & James R. Lothian, *The Financial Crisis and Recovery: Why so Slow?*, Fed. Res. Bank of Atlanta (Sept. 2011), https://www.frbatlanta.org/cenfis/publications/notesfromthevault/1110.aspx.

[2] *See, e.g.*, Patricia A. McCoy, *Barriers to Foreclosure Prevention During the Financial Crisis*, 55 Ariz. L. Rev. 723, 726 (2013) (finding that artificial barriers to foreclosure prevention programs inflicted "enormous, needless losses on borrowers, investors, and society at large").

[3] *See, e.g.*, Jean Ann Fox, *The Military Lending Act Five Years Later*, Consumer Fed. of Am. (May 29, 2012), https://consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf; Staff of S. Comm. On Health, Educ., Labor and Pensions, 112th Cong., *For Profit Higher Education: The Failure to Safeguard the Federal Investment and*

Ensure Student Success, (Majority Staff Rep. 2012), https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf.

[4] *See, e.g.*, Consumer Fin. Prot. Bureau (CFPB), *CFPB Orders Auto Lenders to Refund Approximately $6.5 Million to Servicemembers* (Jun. 27, 2013), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-auto-lenders-to-refund-approximately-6-5-million-to-servicemembers; Steven Forry, *2012: The CFPB Sets its Sights on Credit Card Companies*, Am. Bar. Ass'n (Mar. 2013), https://www.americanbar.org/groups/business_law/publications/blt/2013/03/02_forry/.

[5] Pub. L. 11-203 (July 21, 2010); *see also* Rep. Maxine Waters, *How to Prevent Another Financial Crisis*, U.S. H. Comm. on Fin. Serv. (Sept. 19, 2014), https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=398641.

[6] *See, e.g.*, Press Release, U.S. Dep't of Treasury, *Treasury Deputy Secretary Neal Wolin Written Testimony before the Senate Banking Committee on "Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act"* (Sept. 30, 2010), https://www.treasury.gov/press-center/press-releases/Pages/tg881.aspx ("The Act builds a stronger financial system by addressing major gaps and weaknesses in regulation that helped cause the financial crisis that led to the recession. It puts in place buffers and safeguards to reduce the chance that another generation will have to go through a crisis of similar magnitude.").

[7] *See generally* William R. Emmons & Bryan J. Noeth, *The Nation's Wealth Recovery Since 2009 Conceals Vastly Different Balance-Sheet Realities among America's Families*, Fed. Res. Bank of St. Louis (May 23, 2013), https://www.stlouisfed.org/publications/in-the-balance/2013/the-nations-wealth-recovery-since-2009-conceals-vastly-different-balancesheet-realities-among-americas-families.

[8] *See* CFPB, https://www.consumerfinance.gov (last visited Mar. 2, 2019); *see also* Christopher L. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 Tulane L. Rev. 1057 (2016), https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1051&context=scholarship.

[9] *See e.g.*, CFPB, *Ability-to-Repay and Qualified Mortgage Rule Assessment Report* (Jan. 2019), https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.

[10] *See* CFPB v. BancorpSouth Bank, No. 1:16cv118-GHD-DAS (N.D. Miss. June 29, 2016); CFPB v. Nat. City Bank, No. 13-1817 (W.D. Pa 2014); U.S. v. Provident Funding Assoc., LP, No. 15-2373 (N.D. Cal. 2015); Ally Fin. Inc., CFPB No. 2013-CFPB-0010 (Dec. 20, 2013); Am. Express Centurion Bank, CFPB No. 2017-CFPB-0016 (Aug. 23, 2017); Am. Honda Fin. Corp., CFPB No. 2015-CFPB-0014 (July 14, 2015); Fifth Third Bank, CFPB No. 2015-CFPB-0024 (Sept. 28, 2015); Mortg. Master, Inc., CFPB No. 2013-CFPB-0006 (Oct. 9, 2013); Nationstar Mortg., LLC, CFPB No. 2017-CFPB-0011 (Mar. 15, 2017); Toyota Motor Credit Corp., CFPB No. 2016-CFPB-0002 (Feb. 2, 2016); CFPB v. Hudson City Savings Bank, F.S.B., No. 15-7056 (N.J. 2015); Synchrony Bank, CFPB No. 2014-CFPB-0007 (June 19, 2014); Wash. Fed., CFPB No. 2013-CFPB-0005 (Oct. 9, 2013).

[11] *See* CFPB, *2013 RESPA Servicing Rule Assessment Report* (Jan. 2019), https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.

[12] *See* Payday, Vehicle Title, and Certain High-Cost Installment Loans, 12 C.F.R. § 1041 (2017); Mem. of Decision and Order on Def.'s Mot. for Summ. J.; CFPB v. CashCall, No. 15-0722-JFW-RAO (C.D. Cal. Jan. 19, 2018); Complaint, CFPB v. Golden Valley et al., No. 17-cv-3155 (N.D. Ill. 2017); CFPB v. Think Fin., No. CV-17-127-GF-BMM (D. Mont. 2018); Cash Am. Int'l, Inc., CFPB No. 2013-CFPB-0008.

[13] *See* Arbitration Agreements, 81 Fed. Reg. 32829 (proposed May 24, 2016) (to be codified at 12 C.F.R. pt. 1040).

[14] *See* Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24; CFPB, *CFPB Finds CARD Act Helped Consumers Avoid More Than $16 Billion in Gotcha Credit Card Fees* (Dec. 3, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-card-act-helped-consumers-avoid-more-than-16-billion-in-gotcha-credit-card-fees; *see also* Rep. Carolyn B. Maloney, *Maloney: 5 Years Later, Credit CARD Act has saved consumers billions* (May 22, 2014), https://maloney.house.gov/media-center/press-releases/maloney-5-years-later-credit-card-act-has-saved-consumers-billions.

[15] *See, e.g.*, CFPB, *Consumer Financial Protection Bureau: By the numbers* (Dec. 2016), https://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf.

[16] *See, e.g.*, CFPB, *CFPB Statement On Department of Defense Military Lending Act Final Rule* (July 21, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-on-department-of-defense-military-lending-act-final-rule.

[17] *See* CFPB, https://www.consumerfinance.gov (last visited Mar. 2, 2019) (stating that the CFPB has handled "1.5 million+ complaints . . . from consumers"); CFPB, *Annual report of the CFPB Student Loan Ombudsman*, 2 (Oct. 2017), https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf (stating that as of August 31, 2017, the CFPB handled 50,700 private and federal student loan complaints and 9,800 debt collection complaints about private or federal student loans).

[18] *See, e.g.*, Am. For Fin. Reform, *10 Ways the Consumer Financial Protection Bureau Safeguards Your Money* (Feb. 2015), http://ourfinancialsecurity.org/wp-content/uploads/2015/02/TenWaysCFPBSafeguardsYourMoney-AFR.pdf; CFPB, *Consumer Financial Protection Bureau: By the numbers*, *supra* note 15; CFPB, *Consumer Financial Protection Bureau: Enforcing federal consumer protection laws* (July 2016), https://files.consumerfinance.gov/f/documents/07132016_cfpb_SEFL_anniversary_factsheet.pdf.

[19] *See, e.g.*, Staff of S. Comm. On Banking, Housing, and Urban Affairs, 115th Cong., *Pushing the Envelope: The Consumer Financial Protection Bureau Under the Trump Administration*, (Minority Staff Rep. 2018), https://www.banking.senate.gov/download/mulvaney-cfpb-report; Christopher L. Peterson, *Missing in Action? Consumer Financial Protection Bureau Supervision and the Military Lending Act*, Consumer Fed. of Am. (Nov. 1, 2018), https://consumerfed.org/wp-content/uploads/2018/11/missing-in-action-cfpb-supervision-and-the-military-lending-act.pdf.

[20] *See, e.g.*, Sylvan Lane, *Exclusive: Consumer bureau name change could cost firms $300 million*, The Hill (Dec. 3, 2018), https://thehill.com/policy/finance/419527-exclusive-consumer-bureau-analysis-says-name-change-could-cost-firms-300; Robert O'Harrow Jr., Shawn Boburg & Renae Merle, *How Trump appointees curbed a consumer protection agency loathed by the GOP*, Wash. Post (Dec. 4, 2018), https://www.washingtonpost.com/investigations/how-trump-appointees-curbed-a-consumer-protection-agency-loathed-by-the-gop/2018/12/04/3cb6cd56-de20-11e8-aa33-53bad9a881e8_story.html?utm_term=.d4aba24fe702.

[21] *See, e.g.*, Chris Arnold, *Under Trump Appointee, Consumer Protection Agency Seen Helping Payday Lenders*, Nat. Pub. Radio (Jan. 24, 2018), https://www.npr.org/2018/01/24/579961808/under-trump-appointee-consumer-protection-agency-seen-helping-payday-lenders; George Zornick, *Why Loan Sharks, Car Salesmen, and Payday Lenders Love Mick Mulvaney*, The Nation (Sept. 13, 2018), https://www.thenation.com/article/why-loan-sharks-car-salesmen-and-payday-lenders-love-mick-mulvaney; Yuka Hayashi, *Mick Mulvaney's Year at CFPB Has Pleased Financial Industry, Which Wants More*, Wall St. J. (Nov. 25, 2018), https://www.wsj.com/articles/mick-mulvaneys-year-at-cfpb-has-pleased-financial-industry-which-wants-more-1543158000.

[22] *See* U.S. Fed. Res. Bd., *Consumer Credit – G.19* (Feb. 7, 2019), https://www.federalreserve.gov/releases/g19/current/default.htm.

[23] *See* Fed. Res. Bank of N.Y., *Quarterly Report on Household Debt and Credit, 2018:Q4* (Feb. 2019), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2018Q4.pdf.

[24] *See* U.S. Dep't of Educ., *Direct Loans Entering Default*, 2018 Q1-Q4; https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLEnteringDefaults.xls (last visited Mar. 2, 2018).

[25] *See id* at 2017 Q1-Q4, 2016 Q1-Q4.

[26] *See* U.S. Dep't of Educ., *Federal Student Loan Portfolio*, https://studentaid.ed.gov/sa/about/data-center/student/portfolio (last visited Mar. 3, 2018); U.S. Dep't of Educ., *Federal Perkins Loan Program Status of Default as of June 30, 2016* (June 12, 2017), https://ifap.ed.gov/perkinscdrguide/1516PerkinsCDR.html.

[27] *See* U.S. Dep't of Educ., *Portfolio by Delinquency Status*, https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/DLPortfoliobyDelinquencyStatus.xls (last visited Mar. 3, 2018).

[28] *See, e.g.*, Meta Brown & Sydnee Caldwell, *Young Student Loan Borrowers Retreat from Housing and Auto Markets*, Fed. Res. Bank of N.Y.: Liberty Street Econ. (Apr. 17, 2013), https://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html (illustrating the potential for lost asset accumulation opportunities, homeownership rates of 30-year-old student loan borrowers decreased by more than 5 percent compared with homeownership rates of 30-year-old non-borrowers); Fed. Res. Bank of N.Y., *Press Briefing On Household Debt, With Focus On Student Debt* 36–47 (Apr. 3, 2017), https://www.newyorkfed.org/medialibrary/media/press/PressBriefing-Household-Student-Debt-April32017.pdf (finding that college attendees with student debt have lower homeownership rates than college attendees without student debt and that higher debt balances are associated with lower home ownership rates).

[29] *See, e.g.*, Brent W. Ambrose et al., *The Impact of Student Loan Debt on Small Business Formation* (Mar. 31, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2417676; Brandon Busteed, *Student Loan Debt: Major Barrier to Entrepreneurship*, Gallup (Oct. 14, 2015), https://news.gallup.com/businessjournal/186179/student-loan-debt-major-barrier-entrepreneurship.aspx.

[30] *See, e.g.*, CFPB, *Snapshot Of Older Consumers And Student Loan Debt* 14 (2017), http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf (reporting that borrowers nearing retirement "had a lower median amount in their employer-based retirement account or an Individual Retirement Account (IRA) than consumers without student loan debt"); Joseph Egoian, *73 Will Be the Retirement Norm for Millennials*, NerdWallet (Oct. 23, 2013), https://www.nerdwallet.com/blog/investing/73-retirement-norm-millennials (finding that a 4 year college graduate with median student loan debt of $23,000 has about $115,000 less in retirement savings than a 4 year college graduate with no student loans by the time they reach age 73).

[31] *See, e.g.*, Daniel Cooper & J. Christina Wang, *Student Loan Debt and Economic Outcomes*, Fed. Res. Bank of Bos.: Current Pol'y Persp. (Oct. 2014), https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/economic/cpp1407.pdf ("In addition, the distribution of total wealth excluding student debt liabilities is lower for homeowners with student debt than for homeowners without student loan debt (again conditional on at least some college attendance). This wealth disparity remains even after controlling for a wide range of demographic and other factors.").

[32] Alvarro Mezza, Daniel Ringo & Kamila Sommer, *Can Student Loan Debt Explain Low Homeownership Rates for Young Adults*? at 5, Fed. Res. Consumer & Cmty. Context (Jan. 2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf.

[33] PJ Tabit & Josh Winters, *"Rural Brain Drain": Examining Millennial Migration Patterns and Student Loan Debt*, Fed. Res. Consumer & Cmty. Context (Jan. 2019), https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf.

[34] *See* Daniela Kraiem, *The Cost of Opportunity: Student Debt and Social Mobility*, 48 Suffolk U. L. Rev. 689, 699 (2015) ("Students with unmanageable debt are more likely to be low-income, female, black, and have dependent members such as children or elderly parents.").

[35] *See* Kevin Miller, *Women's Student Debt Crisis in the United States*, Am. Ass'n U. Women (May 2017), https://www.aauw.org/research/deeper-in-debt.

[36] *See* Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, Ctr. For Am. Progress (Oct. 16, 2017), https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers; *see also* Judith Scott-Clayton, *The Looming Student Loan Default Crisis Is Worse than We Thought*, Brookings (Jan. 11, 2018), https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought ("Debt and default among black college students is at crisis levels, and even a bachelor's degree is no guarantee of security: black BA graduates default at five times the rate of white BA graduates (21 versus 4 percent), and are more likely to default than white dropouts."); Marshall Steinbaum & Kavya Vaghul, *How the Student Debt Crisis Affects African Americans and Latinos*, Wash. Ctr. For Equitable Growth (Feb. 17, 2016), https://equitablegrowth.org/how-the-student-debt-crisis-affects-african-americans-and-latinos.

[37] *See, e.g.*, Meta Brown & Sydnee Caldwell, *Young Student Loan Borrowers Retreat from Housing and Auto Markets*, *supra* note 28; *see generally* William Elliot & Melinda Lewis, *Student Debt Effects on Financial Well-Being: Research and Policy Implications*, 29 J. Econ. Surveys 614 (2015), http://onlinelibrary.wiley.com/doi/10.1111/joes.12124/full (finding that student loan debt can delay asset accumulation for years and can decrease a family's net worth by 63 percent).

[38] *See* Robert Hiltonsmith, *At What Cost? How Student Debt Reduces Lifetime Wealth* 9, Demos (2013), https://www.demos.org/publication/what-cost-how-student-debt-reduces-lifetime-wealth; *see also* Richard Fry, *Young Adults, Student Debt, and Economic Well Being*, Pew Res. Ctr. (May 14, 2014), http://www.pewsocialtrends.org/2014/05/14/young-adults-student-debt-and-economic-well-being ("[S]howing that millennials who incur debt after graduation have an average net worth of seven times less than that of their non-indebted counterparts. Millennials with no debt when graduating have an average net worth of $64,700, while millennials graduating with student debt have only $8,700 on average."); Cooper & Wang, *supra* note 31; *see generally* Emily Rauscher & William Elliott, *The Relationship Between Income and Net Worth: A Virtuous Cycle for High but Not Low Income Households*, 20 J. Poverty 380 (2016) (finding that a college graduate with an extra $10,000 in student loans will achieve the nation's median net worth 26 percent slower than a college graduate without that debt, concluding that financing higher education through student loans can put college graduates who begin school with few assets even further behind their wealthier peers).

[39] *See, e.g.*, Sen. Patty Murray, *Senator Murray Delivers Keynote Speech Outlining Need for Bold, Federal Action in Higher Education to Help Students Succeed* (Feb. 28, 2019), https://www.murray.senate.gov/public/index.cfm/mobile/newsroom?ID=FF5FF711-10D2-43BF-999C-9784EF2C7590 ("We see servicing breakdowns at every servicer, for all types of borrowers, and at every stage of repayment—and it must be fixed now.").

[40] *See, e.g.*, Complaint at 23, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2018) (stating "At the conclusion of those forbearances, Navient had added nearly four billion dollars of unpaid interest to the principal balance of their loans.").

[41] *See, e.g.*, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2018) (stating "Navient's compensation policies for its customer service representatives have incentivized them to push numerous borrowers to forbearance without adequately exploring income-driven repayment plans with those borrowers, and in some cases, without even mentioning income-driven repayment plans at all."); Complaint at 11, California v. Navient Corp., No. CGC-18-567732 (2018) (stating "Navient's compensation policies for customer service representatives incentivized this misconduct."); Complaint at 13, Mass. v. Pa. Higher Educ. Assistance Agency, No. 1784-cv-02682 (2017) (". . . PHEAA has wrongfully held borrowers' money that it was not entitled to collect."); Complaint at 18, Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0013 (Aug. 22, 2016) at 9 (Respondent . . . maximized late fees incurred by many consumers . . .); Office of N.Y. Att'y Gen., *Attorney General James And Superintendent Vullo Announce $9 Million Settlement Of Federal Student Loan Servicing Claims With Acs Education Services* (Jan. 4, 2019), https://ag.ny.gov/press-release/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement-federal.

[42] *See, e.g.*, Complaint at 10, CFPB v. Corinthian Colleges, Inc., No. 14-4194 (N.D. Ill. 2014) (stating "Regardless of whether students were able to repay the private student loans, Corinthian would profit from the increased availability of Title IV monies."); Complaint at 26, CFPB v. ITT Educational Services, Inc., No. 1:14-cv-292 (S.D. Ind. 2014) (stating "While ITT remains profitable—it reaped approximately $59 million in net income during 2013—former ITT students, having been coerced by ITT into the ITT Private Loans, face a high likelihood of defaulting."); Bridgepoint Education, Inc., CFPB No. 2016-CFPB-0016 (Sept. 9, 2016); Complaint, California v. Ashford University, LLC, No. RG17883963 (2017); U.S. v. Educ. Mgmt. Corp., No. 07-461 (W.D. Pa. 2011); U.S. Dep't of Justice, *For-Profit College Company to Pay $95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations* (Nov. 16, 2015), https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and; M.D. Att'y Gen., *AG Frosh:$1.4 Million in Loans Forgiven for Nearly 1,000 Maryland Students* (Nov. 16, 2015), http://www.marylandattorneygeneral.gov/Press/2015/111615.pdf.

[43] *See, e.g.*, Complaint at 45, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2017) ("Pioneer's false promises that rehabilitation would remove all adverse information regarding the borrowers' loans from their credit

reports."); Minn. Commerce Dep't, *Minnesota Commerce Department announces action against improper student loan debt collections* (Aug. 11, 2017), https://mn.gov/commerce/media/news/?id=17-307713 ("Minnesota Commerce [Department] . . . and regulators in four other states have reached a $500,000 joint settlement with two subsidiaries of iQor Holdings Inc. for improper debt collection practices, including making abusive and harassing phone calls to increase student loan payments."); Complaint at 70, Ill. v. Navient Corp., No. 17-CH-00761 (Jan. 18, 2017) (". . . ...Pioneer Credit Recovery, and General Revenue Corporation's unfair and deceptive debt collection practices."); Transworld Systems, Inc., CFPB No. 2017-CFPB-0018 (Sept. 18, 2017), https://files.consumerfinance.gov/f/documents/201709_cfpb_transworld-systems_consent-order.pdf ("In support of many of these lawsuits, [Transworld] executed affidavits that falsely claimed personal knowledge of the account records and the consumer's debt, and, in many cases, personal knowledge of the chain of assignments establishing ownership of the loans.").

[44] *See, e.g.*, Complaint at 10, Wash. v. Navient Corp., No. 17-2-01115-1 SEA (2017) ("From 2006-2007 Sallie Mae claimed 42% of the private student loan market by pursuing an unfair and deceptive subprime lending strategy of providing expensive subprime loans to vulnerable borrowers even though Sallie Mae knew many — even most — of those loans would default."); Consent Judgment, CFPB v. Nat. Collegiate Master Student Loan Trust, No. 1:17-cv-01323-UNA (Del. 2017); Discover Bank, CFPB No. 2015-CFPB-0016 (July 22, 2015), https://files.consumerfinance.gov/f/201507_cfpb_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf; Citibank, N.A., CFPB No. 2017-CFPB-0021 (Nov. 21, 2017), https://files.consumerfinance.gov/f/documents/cfpb_citibank-n.a._consent-order_112017.pdf.

[45] *See, e.g.*, CFPB, *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme* (Aug. 17 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme; Or. Dep't of Justice, *AG Rosenblum Announces $192 Million Aequitas Settlement; $2.1 Million for Oregon Students* (Aug. 17, 2017), https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-announces-192-million-aequitas-settlement-2-1-million-oregon-students; *see also* Charlie Eaton, Sabrina Howell & Constantine Yannelis, *When Investor Incentives and Consumer Interests Diverge: Private Equity in Higher Education*, (Nat. Bureau of Econ. Res. (Aug. 2018), https://www.nber.org/papers/w24976.

[46] *See, e.g.*, CFPB, *CFPB Takes Action to Shut Down Illegal Student Debt Relief Scheme* (Mar. 15, 2016), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-to-shut-down-illegal-student-debt-relief-scheme; Complaint, CFPB v. IrvineWebWorks, Inc., No. 8:14-cv-1967 (C.D. Cal. 2014); Wash. Att'y Gen., *AG Ferguson Surpasses $1 Million in Student-Borrower Recoveries* (Jan. 5, 2017), https://www.atg.wa.gov/news/news-releases/ag-ferguson-surpasses-1-million-student-borrower-recoveries ("Since November 2015, Ferguson has brought lawsuits or resolved allegations against 15 out-of-state student loan adjusters for violating Washington's Debt Adjustment Act and Consumer Protection Act by charging illegal fees for debt adjusting and ignoring legal obligations to inform customers of important rights."); FTC, *FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams* (Oct. 13, 2017), https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown.

[47] *See, e.g.*, CFPB, *Statement* by CFPB's Holly Petraeus on DOJ, FDIC Enforcement Actions Against Sallie Mae (May 13, 2014), https://www.consumerfinance.gov/about-us/newsroom/statement-by-cfpbs-holly-petraeus-on-doj-fdic-enforcement-actions-against-sallie-mae; *see also* CFPB, *Overseas & Underserved* (July 2015), https://files.consumerfinance.gov/f/201507_cfpb_overseas-underserved-student-loan-servicing-and-the-cost-to-our-men-and-women-in-uniform.pdf.

[48] *See, e.g.*, Rohit Chopra & Holly Petraeus, *Veterans: Take advantage of student loan forgiveness, but don't let it damage your credit* (Nov. 17, 2014), https://www.consumerfinance.gov/about-us/blog/veterans-dont-let-student-loan-forgiveness-damage-your-credit; CFPB, *CFPB Sues Nation's Largest Student Loan Company Navient Failing Borrowers at Every Stage of Repayment* (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment (...[T]he Bureau charges that Navient . . . [h]armed the credit of disabled borrowers, including severely injured veterans.").

[49] *See, e.g.*, CFPB, *CFPB Spotlights Borrower Complaints About Student Loan Servicers Mishandling Public Service Loan Forgiveness Program: Consumer Bureau Launches "Certify Your Service" Campaign to Help Teachers, First Responders, and Other Public Servants Stay on Track* (Jun. 22, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-spotlights-borrower-complaints-about-student-loan-servicers-mishandling-public-service-loan-forgiveness-program.

[50] *See* CFPB, *50 state snapshot of student debt* (Oct. 2017), https://files.consumerfinance.gov/f/documents/cfpb_student-loans_50-state-snapshot_complaints.pdf.

[51] *See, e.g.*, CFPB, *CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment* (Jan. 18, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest- student-loan-company-navient-failing-borrowers-every-stage-repayment; CFPB, *Supervisory Highlights: Issue 10, Winter 2016* (Mar. 2016), https://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf; CFPB, *Supervisory Highlights: Issue 13, Fall 2016* (Nov. 2016), https://www.consumerfinance.gov/documents/1389/Supervisory_Highlights_Issue_13_Final_10.31.16.pdf.

[52] *See, e.g.*, Complaint, CFPB v. Student Fin. Aid Services, Inc., No. 2:15-at-00821 (E.D. Cal. 2015); Discover Bank, CFPB No. 2015-CFPB-0016 (July 22, 2015), https://files.consumerfinance.gov/f/201507_cfpb_consent-order-in-the-matter-of-discover-bank-student-loan-corporation.pdf; Complaint, CFPB v. Navient Corp., No. 3:17-cv-00101-RDM (M.D. Pa. 2018); Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0013 (Aug. 22, 2016), https://files.consumerfinance.gov/f/documents/2016-CFPB-0013Wells_Fargo_Bank_N.A.--_Consent_Order.pdf.

[53] *See, e.g.*, U.S. Dep't of Educ., *Departments of Education and Treasury and the Consumer Financial Protection Bureau Announce New Joint Efforts to Protect and Support Student Loan Borrowers* (Apr. 28, 2016), https://www.ed.gov/news/press-releases/departments-education-and-treasury-and-consumer-financial-protection-bureau-announce-new-joint-efforts-protect-and-support-student-loan-borrowers; U.S. Dep't of Justice, *Nearly 78,000 Service Members to Begin Receiving $60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans* (May 28, 2015), https://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement ("The department's investigation of Navient was the result of a referral of service member complaints from the Consumer Financial Protection Bureau's Office of Servicemember Affairs, headed by Holly Petraeus.").

[54] *See, e.g.*, CFPB, *CFPB Takes Action Against Aequitas Capital Management for Aiding Corinthian Colleges' Predatory Lending Scheme* (Aug. 17, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme (stating "In collaboration with the CFPB, several state attorneys general have also reached proposed settlements with Aequitas."); CFPB, *Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices* (Sept. 12, 2016), https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices (quoting former CFPB Director Richard Cordray as stating "Together with our state partners, we will continue to be vigilant in rooting out illegal practices facing student borrowers in the for-profit space."); Danielle Douglas-Gabriel, *Student loan servicer Navient hit with three government lawsuits in one day*, Wash. Post (Jan. 18, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/01/18/student-loan-servicer-navient-hit-with-three-government-lawsuits-in-one-day/?utm_term=.5e6b7992fe1c ("The state attorneys general teamed with the consumer bureau in a multiyear investigation into the business practices of Navient and its subsidiaries, finding widespread breakdowns in servicing. . .).

[55] *See, e.g.*, CFPB, *The CFPB and City of Columbus Team Up to Help Local Consumers with Questions and Complaints* (Nov. 12, 2013) https://www.consumerfinance.gov/about-us/newsroom/the-cfpb-and-city-of-columbus-team-up-to-help-local-consumers-with-questions-and-complaints; CFPB, *CFPB and Jackson, Miss, Team Up to Help Local Consumers with Questions and Complaints* (Sept. 20, 2013) https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-jackson-ms-team-up-to-help-local-consumers-with-questions-and-complaints.

[56] *See, e.g.*, Shahien Nasiripour, *The Government Can't Agree With Itself on Policing Student Loan Companies*, Bloomberg (Aug. 24, 2016), https://www.bloomberg.com/news/articles/2016-08-24/the-government-can-t-agree-with-itself-on-policing-student-loan-companies.

[57] *See* CFPB, *Annual report of the CFPB Student Loan Ombudsman*, 3 (Oct. 2017), https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf.

[58] *See* CFPB, *College credit card agreements* (Dec. 2017), https://files.consumerfinance.gov/f/documents/cfpb_college-credit-card-agreements-report_2017.pdf; *see also* CFPB, *FOIA Record: Letter to the Department of Education* (Feb. 5, 2018), https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/letter-department-education. When forced to publish this document in response to demands from journalists, advocates and Congress nearly a year later, the public finally learned that even though Wells Fargo's student customers made up only a quarter of all college-sponsored bank accounts nationwide, they paid more than half of all bank fees. *See also* Michael Stratford, *Trump administration hid report revealing Wells Fargo charged high fees to students*, Politico (Dec. 10, 2018), https://www.politico.com/story/2018/12/10/student-loan-fees-wells-fargo-1021129.

[59] In February 2018, the Office of Management and Budget shared a "Notice and Interpretation" authored by the U.S. Department of Education, for review by the Consumer Financial Protection Bureau. This interpretation purported to block the enforcement of all state consumer protection laws against student loan servicers. *Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers*, 83 Fed. Reg. 10619 (Mar. 12, 2018), https://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan. CFPB staff prepared a memorandum to Acting Director Mick Mulvaney warning the Acting Director that this maneuver was harmful to consumers and lacked a firm legal basis under the law. Rather than "pass back" expert, staff-level comments to the Department of Education, CFPB's political leadership suppressed these views. Recently, one federal judge dismissed an industry effort to give legal weight to this notice, explaining that it "lacks requisite thoroughness and persuasiveness...[and] [t]hus, the court gives no deference…". Student Loan Servicing Alliance v. Taylor, No. 2018-0640 (D.D.C. Nov. 21, 2018); *see also* Danielle Douglas-Gabriel, *Education Dept. tells student loan companies to ignore state authority*, Wash. Post (Mar. 9, 2018), https://www.washingtonpost.com/news/grade-point/wp/2018/03/09/education-dept-tells-student-loan-companies-to-ignore-state-authority/?utm_term=.3d5f919850c2.

[60] *See* Nat'l Governors Ass'n, *Governors Voice Concerns Over New Student Borrower Proposal* (Mar. 12, 2018), https://www.nga.org/news/press-releases/governors-voice-concerns-over-new-student-borrower-proposal.

[61] *See* Conf. of State Banking Supervisors, *CSBS Opposes Department of Education Plan to Preempt ate Authority on Student Loans* (Mar. 2, 2018), https://www.csbs.org/csbs-opposes-department-education-plan-preempt-state-authority-student-loans.

[62] *See* Letter from Att'y Gen. Schneiderman et al. to Secretary of Education Betsy DeVos (Oct. 23, 2017), https://ag.ny.gov/press-release/ag-schneiderman-led-bipartisan-coalition-25-ags-calls-secretary-devos-reject-student.

[63] *See* Rep. Suzanne Bonamici, *Bipartisan Lawmakers Challenge Education Department's Attempt to Block State Consumer Protection Laws* (May 16, 2018), https://bonamici.house.gov/media/press-releases/bipartisan-lawmakers-challenge-education-department-s-attempt-block-state.

[64] *See* Glenn Thrush & Stacy Cowley, *Mulvaney Downgrades Student Loan Unit in Consumer Bureau Reshuffle*, N.Y. Times (May 9, 2018) https://www.nytimes.com/2018/05/09/us/student-loans-consumer-financial-protection-bureau-cfpb.html; Danielle Douglas-Gabriel, *Mick Mulvaney take aim at consumer bureau's student protection unit*, Wash. Post (May 9, 2018), https://www.washingtonpost.com/news/grade-point/wp/2018/05/09/mick-mulvaney-takes-aim-at-cfpbs-student-protection-unit/?utm_term=.ad3448878acd; Emily Wilkins, *New Head of Student Loan Oversight Office Will Have Less Power*, Bloomberg Gov. (Mar. 1, 2019), https://about.bgov.com/news/new-head-of-student-loan-oversight-office-will-have-less-power.

[65] *See* Michael Stratford, *CFPB gives up on plans to regulate student loan servicers* (May 9, 2018), https://subscriber.politicopro.com/education/article/2018/05/cfpb-gives-up-on-plans-to-regulate-student-loan-

servicers-526274. In May of 2018, in the same week in which it shuttered the Office for Students and Young Consumers, the political leadership of the Bureau withdrew a planned student loan servicing rulemaking from its regulatory agenda. This rule was intended to provide enhanced consumer protections to student loan borrowers. The political leadership withdrew this planned rulemaking despite widespread recognition that student loan borrowers have fewer protections than borrowers with any other major class of consumer debt. In fact, just seven weeks after scrapping this rulemaking, the Trump Administration's own Treasury Department warned of significant risks to student loan borrowers and taxpayers because "[f]ederal student loan servicing currently lacks effective minimum servicing standards.". U.S. Dep't of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation* 125 (July 2018), https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf.

[66] In July 2018, the Office of Management and Budget provided the Bureau with an opportunity to review the Department of Education's draft Notice of Proposed Rulemaking on a proposal to roll back protections developed in response to the collapse of Corinthian and ITT, past targets of CFPB predatory lending lawsuits. *See* CFPB v. Corinthian Colleges, Inc., No. 1:14-cv-07194 (2015); CFPB v. ITT Educ. Serv., Inc., No. 1:14-cv-292 (2014). CFPB leadership refused to transmit concerns raised by the Offices of Servicemember Affairs and Students about how this proposal would disproportionately harm military families. Further, CFPB leadership refused to transmit concerns about how this new proposal would impact the ongoing and legacy enforcement work of the Bureau, including work related to the collapse of for-profit giant ITT. The Administration initially moved forward with this misguided and poorly developed regulation, only to face fierce resistance from stakeholders across the higher education and consumer protection landscape. *See, e.g.*, Letter from Att'y Gen. Lisa Madigan et al. to Secretary Betsy DeVos, et. al, *How For-profit Schools Have Harmed Student Borrowers: the Need for the Gainful Employment Rule, Vigorous Federal Oversight of Accreditors, and the Borrower Defense to Repayment Rule* (Feb. 22, 2017), http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2017/03/Multistate-letter-on-for-profits-Feb-2017.pdf; Letter from military organizations to Sen. Lamar Alexandar, et al. (Feb. 2, 2017), http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2017/02/Letter-on-Education-Protections.pdf. Earlier this year, the Administration announced it had scrapped this proposal and would restart this process again in 2019. *See* Andrew Kreighbaum, *DeVos to Rewrite Overhaul of Obama Loan Rule*, Inside Higher Ed (Jan. 21, 2019), https://www.insidehighered.com/quicktakes/2019/01/21/devos-rewrite-overhaul-obama-loan-rule.

[67] *See* U.S. Dep't of Educ., Portfolio by Loan Status (2018 Q4), https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfoliobyLoanStatus.xls; U.S. Dep't of Educ., *Memorandum on Ownership and Access to U.S. Department of Education Records and Data* (Dec. 27, 2017), https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf; Letter from Sen. Patty Murray and Rep. Rosa L. DeLauro to Secretary Betsy DeVos (Feb. 19, 2019), https://www.help.senate.gov/imo/media/doc/Secretary%20DeVos%20Enforcement%20Disclosure%202192019.pdf; Michael Stratford, *DeVos escalates fight with states over student loan companies*, Politico (Sept. 7, 2018), https://subscriber.politicopro.com/financial-services/article/2018/09/devos-escalates-fight-with-states-over-student-loan-companies-774599; Pa. Att'y Gen., *Case Update: Attorney General Shapiro Announces Win in Court Battle with Nation's Largest Student Loan Company* (Oct. 18, 2018), https://www.attorneygeneral.gov/taking-action/updates/case-update-attorney-general-shapiro-announces-win-in-court-battle-with-nations-largest-student-loan-company ("Until now, Navient has refused to produce records for direct loans. . .").

[68] *See* 15 U.S.C. § 5535(a).

[69] *See* 15 U.S.C. § 5535(d) (requiring the CFPB to publish a student loan complaint report every year. Historically, reports have been published on October 16); CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 16, 2012), https://files.consumerfinance.gov/f/201210_cfpb_Student-Loan-Ombudsman-Annual-Report.pdf; CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2013), https://files.consumerfinance.gov/f/201310_cfpb_student-loan-ombudsman-annual-report.pdf; CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 16, 2014), https://files.consumerfinance.gov/f/201410_cfpb_report_annual-report-of-the-student-loan-ombudsman.pdf; CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2015), https://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf; CFPB,

Annual report of the CFPB Student Loan Ombudsman (Oct. 2016), https://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf; CFPB, *Annual report of the CFPB Student Loan Ombudsman* (Oct. 2017), https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf. As of March 1, 2019, the 2018 report has not been published.

[70] *See* CFPB, *College credit card agreements* (Dec. 2018), https://files.consumerfinance.gov/f/documents/College_Credit_Card_Agreements_Report_2018_Final.pdf (where the CFPB failed to include a section on campus debt cards) and CFPB, *College credit card agreements* (Dec. 2017), https://files.consumerfinance.gov/f/documents/cfpb_college-credit-card-agreements-report_2017.pdf; *but see* CFPB, *Student banking* 9-21 (Dec. 2016), https://files.consumerfinance.gov/f/documents/2016_cfpb_student_banking_report.pdf (where the Bureau included a section on the "high cost account fees and aggressive marketing" used by banks with college-sponsored accounts.).

[71] *See* CFPB, www.consumerfinance.gov (last visited Mar. 3, 2018) (stating that the Bureau "aim[s] to make consumer financial markets work for consumers, responsible providers, and the economy as a whole.").

[72] *See* U.S. Dep't of Educ., Office of the Inspector Gen., ED-OIG/A05Q0008, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans* (Feb. 12, 2019), https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf; *see also* Ken Sweet, *Report finds problems with student loan servicing, oversight*, Assoc. Press (Feb. 14, 2019), https://apnews.com/cc655fdea293469d86231e4bcb10a5ee.

[73] *See* H.B. 2588, 80th Leg. Assemb., Reg. Sess. (Or. 2019); S. 160, 191st Gen. Court, Reg. Sess. (Mass. 2019); *see also* S. 2380, 190th Gen. Court, Reg. Sess. (Mass. 2018) (where the bill was passed unanimously by the Senate); Christine Lytwynec, *State Senate passes student loan bill of rights*, Daily Hampshire Gazette (Apr. 11, 2018), https://www.gazettenet.com/Student-loan-bill-advances-in-Mass-Senate-16801763; Aubrey Wieber, *Attorney general, legislators look to protect student loan borrowers from predatory lenders*, Salem Reporter (Feb. 25, 2019), https://www.salemreporter.com/posts/549/attorney-general-legislators-look-to-protect-student-loan-borrowers-from-predatory-lenders ("The bill has bipartisan support, evidenced by Republican and Democratic representatives and senators who appeared at Rosenblum's press conference for the bill Monday afternoon.").

Testimony before the

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

"Putting Consumers First? A Semi-Annual Review of the

Consumer Financial Protection Bureau,"

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Linda Jun
Senior Policy Counsel
Americans for Financial Reform
1615 L Street, NW, Suite 450
Washington, DC 20009
(202)715-8919
linda@ourfinancialsecurity.org

I. Introduction

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting me to testify today regarding the Consumer Financial Protection Bureau's semi-annual review and the need to put consumers first. My name is Linda Jun and I am Senior Policy Counsel at Americans for Financial Reform (AFR). AFR is a coalition of over 200 national, state and local groups who are working together to lay the foundation for a strong, stable, and ethical financial system that serves the economy and the nation as a whole. Members of our coalition include consumer, civil rights, labor, faith-based, investor, and business groups. Our member organizations represent the consumers, workers, seniors, servicemembers, veterans, students, people of color and underrepresented communities across our country who rely on the consumer protections that the Consumer Financial Protection Bureau ("CFPB" or "Consumer Bureau") was created to support and enforce.

Nearly eight years have passed since the Consumer Bureau first opened its doors in 2011, and the CFPB's work has confirmed the decisions Congress made in 2010 to create a strong, independent agency to protect consumers from fraud and abuse in the financial marketplace. Through its rulemaking, supervision, enforcement, consumer education, and consumer complaint system, the Consumer Bureau has taken important steps to make the financial marketplace fairer for consumers by establishing clear guard rails against abusive conduct, creating more accountability, ensuring and providing better information, and giving consumers more opportunities to share their experiences.

When Mick Mulvaney took over the helm of the Consumer Bureau in November 2017, he inherited an agency that had made significant strides in improving the financial marketplace and strengthening protections for consumers in a broad range of financial transactions. During his time at the CFPB, Acting Director Mulvaney made clear he did not stand with consumers. He focused his efforts on shifting the CFPB away from protecting consumers and towards reducing accountability for industry actors by reducing penalties and relief for harmed consumers and minimizing or eliminating consequences for illegal behavior. Acting Director Mulvaney stripped enforcement powers from the Office of Fair Lending and Equal Opportunity,[1] shuttered the Office of Students and Young Consumers,[2] and started rulemakings designed to reduce consumer protections. Rather than increase transparency and participation, Acting Director Mulvaney tried to take steps to reduce the accessibility of the Consumer Bureau to the public by threatening to end public access to the consumer complaint database[3] and firing members of the Consumer Advisory Board.[4]

In her two months on the job, new CFPB Director Kathy Kraninger unfortunately seems to be following a similar path. She has already presided over the proposed repeal of the heart of the CFPB's rule against payday and car title lending abuses and lax enforcement actions that fail to impose meaningful relief or significant penalty for illegal activities. If Director Kraninger

[1] https://www.americanbanker.com/news/cfpbs-mulvaney-strips-his-fair-lending-office-of-enforcement-powers
[2] https://www.washingtonpost.com/news/grade-point/wp/2018/05/09/mick-mulvaney-takes-aim-at-cfpbs-student-protection-unit/
[3] https://www.nytimes.com/2018/04/25/business/cfpb-complaints-database-mulvaney.html
[4] https://www.npr.org/2018/06/06/617612219/mick-mulvaney-effectively-fires-cfpb-advisory-council

wishes to return the Consumer Bureau to its consumer protection mission, she would need to dramatically change direction, including by not finalizing the payday and 'sandbox' rules currently under consideration, and by putting a stop to decisions that leave consumers more vulnerable to harm.

Congress created the CFPB to protect all Americans from fraud and abuse in the consumer, financial, and housing markets. All of us engage with these markets day in and day out to manage our financial lives as we take out loans, deposit and withdraw money into our bank accounts and/or debit cards, charge purchases to our credit cards, finance our education, send money to family or other loved ones overseas, or buy a home or a car. Interactions with these markets can help people save money, build wealth, and expand opportunities, or they can create burdens that do tremendous harm. Wrongdoing by big banks and predatory lenders costs people – often those who are the most economically vulnerable – tens of billions of dollars a year. We ask Congress to hold the Consumer Bureau accountable to stay true to its purpose to protect consumers from harm, and hold powerful interests accountable if they break the law.

II. The Importance of the CFPB and How it Protects Consumers

In the wake of the 2008 financial crisis and the enormous losses suffered by many Americans, Congress recognized the need for an effective single regulator specifically dedicated to protecting consumers from harm. Through the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Congress created the Consumer Bureau to carry out this consumer protection mandate and gave it the "authority to issue rules applicable to all financial institutions," and "the authority and accountability to ensure that existing consumer protection laws and regulations are comprehensive, fair, and vigorously enforced."[5] Congress tasked the CFPB "to exercise its authorities under Federal consumer financial law" to ensure the following:

> (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.[6]

The CFPB under previous leadership made major strides in carrying out these objectives and improving the financial marketplace through its primary statutory functions:

[5] Joint Explanatory Statement of the [Dodd-Frank] Committee of Conference at 874 (June 29, 2010), https://www.llsdc.org/assets/DoddFrankdocs/dodd-frank-act-it-expl-statement.pdf
[6] 12 U.S.C. § 5511(b).

(1) conducting financial education programs;
(2) collecting, investigating, and responding to consumer complaints;
(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;
(4) subject to sections 5514 through 5516 of this title, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;
(5) issuing rules, orders, and guidance implementing Federal consumer financial law including exemptions from rules, and updating rules to address modern technology; and
(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.[7]

The Consumer Bureau's website has provided a centralized place to find financial education resources to navigate the financial marketplace for a wide variety of financial transactions, including credit cards, debt collection, mortgages, auto loans, credit reports, and student loans. The Ask CFPB[8] feature gives consumers a direct place to ask questions, and the Find a Housing Counselor[9] tool makes it easy for consumers to locate a nonprofit housing counselor certified by the U.S. Department of Housing and Urban Development (HUD) in their area for assistance with mortgage issues.

While financial education is certainly valuable, the Consumer Bureau's role becomes far more critical when consumers run into problems with companies in the marketplace. The CFPB's consumer complaint database is an important tool that gives consumers a voice and keeps companies publicly accountable by providing the CFPB, consumers, businesses, and the public with information about the problems consumers are facing in the marketplace. In seven years, the Consumer Bureau received a total of over 1.5 million complaints from consumers through its complaint database.[10] Because the complaint database is public, it has proven to be a far more effective way to resolve disputes or get information from an unresponsive company. For example, a New York consumer had filed a complaint directly with his bank to recover $1200 that was fraudulently withdrawn from his account, but the bank denied his claim. When his attorney filed a complaint with the CFPB, he received his money back. As a legal aid attorney representing clients facing foreclosure, I often filed complaints on behalf of clients with accounting errors or other problems with their mortgage because that was the only way to get the company to respond. Attorneys representing the companies told me that their clients paid attention to how their complaints were resolved because they were public and the CFPB tracked how quickly they responded to the problems.

Research is another one of the Consumer Bureau's primary functions, and its research plays a crucial role in evaluating market trends, identifying gaps, and informing its direction on how to best protect consumers and foster a fairer marketplace. The CFPB has historically prioritized collecting and analyzing data of all kinds, including qualitative and quantitative data, to direct its

[7] 12 U.S.C. § 5511(c).
[8] https://www.consumerfinance.gov/ask-cfpb/
[9] https://www.consumerfinance.gov/find-a-housing-counselor/
[10] https://www.consumerfinance.gov/ (figures as of June 4, 2018).

decision making, which has helped the CFPB to thoroughly review financial products, marketplace trends, and consumer harm. For example, in September 2015, the CFPB published a report on student loan servicing practices, which included an analysis of 30,000 comments from the public that they received on the issue.[11] In 2012, the Consumer Bureau and the Department of Education put together a comprehensive report looking into the private student loan market using existing studies, new market data, and public input.[12] This type of extensive research has often proven useful to inform the Consumer Bureau's guidance and rulemaking processes. Data and research are particularly important to understand new products and new developments, and the CFPB should continue to extensively collect and analyze data in order to evaluate and research their impact on the marketplace.

As of June 2018, the CFPB has recovered $12.4 billion in relief for over 31 million consumers harmed by illegal practices.[13] This figure understates the amount of money CFPB actions have saved people, because it does not take into account the results of changes in practices also required by many CFPB settlements, nor the impact of setting a higher standard of accountability for other marketplace actors who have not themselves been the subjects of enforcement or supervisory actions. The CFPB's enforcement authority is a fundamentally important tool to protect consumers from unfair, deceptive, or abusive acts and practices, and use of this authority promotes a fair marketplace by holding companies that break the law accountable for the harm they cause. For example, in July 2015, the Consumer Bureau settled a case with JP Morgan Chase for trying to collect "zombie debts," including inaccurate accounts, settled debts, debts discharged in bankruptcy, and debts not owed or not collectible, selling the zombie debts to third party debt buyers, and for illegally robo-signing court documents to sue people for unverified debt. The settlement resulted in at least $50 million for consumer relief and $30 million in civil penalties, and required changes in business practices, such as requiring the company to cease collection on bad debts, stop selling zombie debts, stop robo-signing affidavits, and verify debts before initiating a debt collection lawsuit.[14]

The Consumer Bureau's supervisory authority is particularly important because the CFPB supervises many entities that were not effectively supervised on the federal level before Dodd-Frank. Under the CFPB's supervision, many financial companies are now subject to regular monitoring. Through its supervisory authority, the CFPB is able to understand market practices, identify problems, and ascertain patterns of harm or illegal practices, which it can address either through the supervisory process or through enforcement actions.

Finally, the Consumer Bureau's rulemaking has resulted in improved protections for many financial transactions. For example, in the mortgage space, the Qualified Mortgage/Ability to Repay rule requires lenders to consider a borrower's ability to repay, and protects against the kinds of unaffordable predatory mortgages that led to the foreclosure crisis. Five years after the rules went into effect, the CFPB's Assessment Report on this rule found that the Ability to Repay requirement and Qualified Mortgage rule deterred unaffordable loans and mortgages with

[11] https://www.consumerfinance.gov/data-research/research-reports/student-loan-servicing/
[12] https://files.consumerfinance.gov/f/201207_cfpb_Reports_Private-Student-Loans.pdf
[13] https://www.consumerfinance.gov/ (figures as of June 4, 2018).
[14] https://www.consumerfinance.gov/about-us/newsroom/cfpb-47-states-and-d-c-take-action-against-jpmorgan-chase-for-selling-bad-credit-card-debt-and-robo-signing-court-documents/

risky features. The report also showed that the rule did not restrict access to credit or materially increase costs.[15]

Also in 2013, the Consumer Bureau issued the Mortgage Servicing rules, which impose new obligations on mortgage servicers in their handling of mortgage accounts, and add new consumer protections. Before the Mortgage Servicing rules went into effect, homeowners had limited recourse when they ran into loss mitigation problems with their mortgage companies. As a litigator, I found that the Mortgage Servicing rules gave me a strong additional tool to push mortgage companies to properly review my clients' loss mitigation applications through the company's required loss mitigation and error resolution procedures. As a result of the Mortgage Servicing rules, I was able to help more of my clients negotiate the loan modification for which they qualified and ultimately keep their homes. The CFPB's findings in its Assessment Report confirmed my own and my colleagues' advocacy experience: delinquent loans were less likely to proceed to foreclosure and more likely to recover from delinquency after the mortgage servicing rules went into effect.[16]

The CFPB's Prepaid Account rule is another example of improved consumer protections. In 2016, the Consumer Bureau's issued its Prepaid Account rule, which provides for clear fee disclosures, access to account information, fraud and error protection, and protection against dangerous overdraft and credit features. The CFPB wisely drafted the rule to adapt to an evolving market by not limiting the rule to physical plastic cards and by including newer mobile and Fintech transaction accounts that hold consumer deposits. As a result of this rule, consumers are able to use prepaid accounts with greater confidence knowing that they will be protected from fraud and abuse.

As the only regulator tasked fundamentally with protecting consumers in their financial transactions, the CFPB's dedication to carrying out its Congressional mandate through its primary functions has resulted in relief for harmed consumers, increased accountability, and a safer and fairer marketplace. Consumer protection remains a high necessity and Americans remain susceptible to harm in their constant interactions with the consumer financial marketplace. They need a strong, independent CFPB that does what Congress intended it to do: protect consumers.

III. The CFPB Under Current Leadership: Undermining Consumer Protections

Without a strong, independent CFPB, consumers are left vulnerable to be preyed upon by financial companies unscrupulously seeking profit at all costs – the world they faced before the 2008 crisis, where regulatory gaps, inattention to consumer protection, industry capture of regulators, and insufficient enforcement allowed companies to avoid consequences for the harm they caused. But rather than protect consumers, Acting Director Mulvaney's and Director Kraninger's decisions threaten to expose consumers to greater risk of harm by eliminating crucial protections based on extensive research, expressly permitting companies to disregard the

[15] https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf
[16] https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf

law, and drastically reducing penalties and consumer relief for unfair, deceptive, or abusive acts and practices.

Not only is consumer protection the CFPB's statutory duty, but voters across the political spectrum want a strong Consumer Bureau too. Following the 2008 financial crisis, there has been consistent, widespread, bipartisan voter support for the CFPB's mission and for tough regulation and oversight of financial services.[17] In 2018, the majority of Americans, regardless of political affiliation, disapproved of Acting Director Mulvaney's actions to weaken the agency's efforts to protect ordinary Americans.[18] So far, Director Kraninger's decisions have been in line with Acting Director Mulvaney's instead of with the interests of the American public.

a. Removing Protections: Proposed Payday Rule to Repeal Ability to Repay

It is well documented that payday and car title loans create a deliberate debt trap that locks borrowers into long-term debt because they cannot afford to repay the high-cost loan. Payday and car title lenders gain access to the borrower's bank account and/or the ability to repossess the borrower's car in exchange for a high-cost loan. Payday and car title loans have an average interest rate of over 300 percent, and some loans charge as high as 600 percent interest. Given the astronomical cost of borrowing at such a high interest rate and the lenders' extraordinary leverage over paychecks and vehicles, payday and car title lenders lack the incentive to make loans that borrowers have the ability to repay while still being able to afford basic necessities like food, rent, transportation and utilities.

Payday and car title lenders make more money when they can trap borrowers in unaffordable debt for extended periods of time. A 2013 CFPB study found that 75% of payday lending fees are generated from borrowers who take out more than 10 loans a year.[19] When the borrower receives a paycheck or public benefits like social security, the lenders swiftly grab the money from the borrower's account, leaving the borrower unable to pay for other expenses, which then creates the need for another loan shortly thereafter. This cycle repeats itself, trapping the borrower into another high-cost loan again and again, incurring exorbitant fees and interest every time, often along with overdraft and non-sufficient funds fees. This debt trap is the core of the payday and car title lender business model. It extracts billions of dollars annually from people with average incomes of about $25,000 and causes serious financial harms even beyond the billions of dollars, including bank penalty fees, lost bank accounts, reduced credit scores, and bankruptcy.

In most places in the country, a car is necessary to get to work, the grocery store, and the elementary school, but car title loans allow lenders to immediately seize and sell the car as collateral. Knowing that borrowers cannot survive, work, or pick up their children without a car, car title lenders use this power to coerce payment, forcing borrowers to continue borrowing to

[17] http://ourfinancialsecurity.org/wp-content/uploads/2018/07/LRPpublicmemo.AFR_.CRL_.PollRelease.f5.073118-for-website.pdf
[18] *Id.*
[19] https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf#page=22

maintain access to their only mode of transportation. One in five car title borrowers lose their car to repossession, often after they have been paying for months.

Given the devastating consequences of payday and car title loans, sixteen states and the District of Columbia have outlawed payday loans entirely, and car title loans are prohibited in 28 states. The payday and car title industry has fought hard against these restrictions. Despite repeated public concerns and advocacy, campaign contributions and insider lobbying have helped them prevail in several state legislatures. Many of the lending restrictions that ultimately became law were passed through citizen ballot initiatives.

In states where they are permitted, these loans continue to wreak havoc on the financial lives of many Americans. One payday borrower shared that she took out a $500 payday loan at nearly 400 percent interest when she lost hours at work, and once the payday lender garnished the wages in her bank account, she was left with less than $100 to survive each month. Because she had no money for gas, food, or emergencies, she was forced to turn back to the payday lenders for additional loans, and it took her six years to pick up the pieces.

Once the CFPB was created, faith groups, civil rights organizations, consumer advocates, working families, and others across the country urged it to take action to protect their communities from the destructive payday lending debt trap. In 2017, the CFPB released its final rule on payday and car title lending.[20] The CFPB's 2017 rule was the result of more than five years of extensive CFPB research, analysis, and stakeholder input, which included town hall meetings around the country and consideration of 1.4 million public comments from a wide variety of interested parties.[21]

The CFPB's 2017 rule represented a step forward in protecting the millions of people trapped in 300-plus percent interest rate loans. For payday or auto title loans of 45 days or less or with a balloon payment, the rule simply requires lenders to determine whether a borrower can afford to repay, based on consideration of a borrower's income and expenses. Given the debt trap business model, the ability-to-repay provisions provide an important protection to prevent payday lenders from intentionally preying on consumers by giving them loans the lenders know are unaffordable for them.

During the five and a half period before the 2017 rule was finalized, payday lenders and other market participants had many opportunities to present their views and their position was documented and considered with all of the other evidence. The final rule did not have everything that either the payday lenders or those opposed to the debt trap asked for in their comments. In early 2018, payday lenders attempted to overturn the rule through a Congressional Review Act resolution, which failed. Congress - with Republican majorities in both houses - had the opportunity to overturn the rule, and did not do so.

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[20] https://files.consumerfinance.gov/f/documents/201710_cfpb_fact-sheet_payday-loans.pdf

[21] https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?font=Default&height=650&initial_zoom=2&lang=en&source=1BsTT1rwht8T2015Bz_oRyLflqIJEXv5ZovOKNXBs4tQ

Payday lenders contributed to Acting Director Mick Mulvaney's campaign while he was in Congress,[22] and during his time at the CFPB, he demonstrated his loyalty to them over the consumers trapped by their predatory practices. Under his leadership, the Consumer Bureau dropped investigations and settled cases against payday lenders with minimal consequences for the harm they caused.

Even though the 2017 rule was the result of over five and a half years of comprehensive study and examination, and there was no new evidence to consider, Acting Director Mulvaney announced his intent to rewrite the rule very early in his tenure at the Consumer Bureau. In April 2018, payday lenders sued the Consumer Bureau to prevent the rule from going into effect, and under Acting Director Mulvaney's leadership, the CFPB joined hands with the very payday lenders that were suing them to ask the Court to delay the 2017 rule indefinitely because the CFPB was going to be reconsidering the rule.[23]

After being confirmed, Director Kraninger said that she would not be automatically following Mulvaney's footsteps and that as the director, "I will be fully accountable for the decisions that I make going forward and they will be mine."[24] Although she said that she wanted to spend her first few months listening to stakeholders and bringing herself up to speed, she wasted no time in advancing her first significant proposed rule only two months into the job.

In February 2019, under Director Kraninger, the CFPB released a proposed rule to repeal the 2017 rule's ability-to-repay provisions[25] and an accompanying rule to delay the compliance date for the 2017 rule.[26] The reasoning and rationale offered for these actions are demonstrably weak, and no more than a thinly veiled effort to give the payday lenders what they want. The 2019 proposal rests on the false premise that the 2017 rule was not supported by the evidence, when in fact the CFPB has simply now chosen to listen to the payday lenders defending their own predatory business model rather than the extensive evidence gathered through its own rulemaking, supervision, and enforcement.

The CFPB's first proposed rulemaking under Director Kraninger's leadership guts essential consumer protections and would allow payday and car title lenders to continue ripping off vulnerable families. If the rule is finalized, millions of people will be caught in well-documented debt traps that cause serious and lasting harm.

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[22] https://www.usatoday.com/story/money/2017/12/04/mick-mulvaney-payday-lending-campaign-contributions-pose-no-conflicts-interest/920056001/

[23] *Community Financial Services Ass'n v. Consumer Financial Protection Bureau*, Civ. No. 1:18-cv-295 (W.D. Tx), motion filed May 31, 2018, available at https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/05/https-ecf-txwd-uscourts-gov-doc1-181120208482-6.pdf.

[24] https://www.latimes.com/business/la-fi-kathy-kraninger-cfpb-20181211-story.html

[25] https://files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-reconsideration.pdf

[26] https://files.consumerfinance.gov/f/documents/cfpb_payday_nprm-2019-delay.pdf

b. Exempting from Liability: Sandbox/NAL/Trial Disclosures

Under Acting Director Mulvaney's leadership, the CFPB issued a proposed trial disclosure policy in September 2018 that oversteps the CFPB's legal authority and would allow entire industries to ignore consumer protection requirements for a decade or longer with no showing of consumer benefit and no public input. Recognizing the need for limited pilots for model forms, Congress gave the Consumer Bureau limited authority to grant waivers to individual companies for improving model disclosure forms.[27] But the CFPB's proposed disclosure policy far exceeds this limited waiver authority.

The proposal is focused almost entirely on industry interests without regard for potential consumer harm. Under the proposed policy, waivers can be approved solely on the basis of industry cost savings, without consideration of consumer understanding or increased risk to consumers. Furthermore, it allows trials to go on for years on end for entire industries without data collection, oversight, or public comment. AFR and 49 public interest groups joined together to sharply criticize this proposal to gut important consumer-protection rules, emphasizing that the Consumer Bureau's waiver authority for model disclosure pilot programs is very narrow and does not give the Bureau the authority to create potentially unlimited exemptions from the disclosure laws that the CFPB is obligated to enforce.[28]

Going even further to exempt companies from their legal obligations, in Acting Director Mulvaney's final hours at the CFPB, the CFPB proposed drastic, sweeping changes to its no-action letter policy along with a new sandbox proposal.[29] To an even greater extent than the proposed trial disclosure policy, the no-action letter and project sandbox proposal oversteps the CFPB's legal authority and puts consumers at significantly increased risk of the very harms the CFPB was tasked to prevent. Going beyond disclosures, the CFPB's proposed drastic revision to its "no-action letter" policy and new "Product Sandbox" policy has the potential to exempt not only companies but entire industries from wide swaths of consumer protection laws and oversight without public input about the serious potential harm they might cause. Instead of protecting consumers from unfair, deceptive and abusive practices, the CFPB's proposal provides a pathway to guarantee companies, trade associations, and entire industries a sweeping safe harbor from liability, enforcement, or supervisory findings by the CFPB or from enforcement by other federal agencies, states or consumers that have rights under the law. Congress has not given the Consumer Bureau the authority to grant the types of broad approvals or exemptions from liability and compliance with the law that it proposes in its sandbox policy.

Like the trial disclosure policy, the proposed no-action policy and product sandbox provide companies with the possibility of indefinite relief from regulation with little or no oversight or examination of the effect of these financial products and practices are having on the very consumers the CFPB is tasked to protect. Companies that receive no-action letters have no reporting requirements to provide data on how a new product or service is affecting consumers and the marketplace. Recipients of either no-action letters or product sandbox acceptance have

[27] 15 USC § 5532(e)

[28] https://ourfinancialsecurity.org/2018/10/afr-letter-public-interest-groups-criticize-cfpb-proposal-regulatory-sandbox/

[29] https://www.govinfo.gov/content/pkg/FR-2018-12-13/pdf/2018-26873.pdf

no obligation to report to the CFPB if they discover unintended consequences that cause harm. Moreover, if the CFPB grants an exemption from supervision or enforcement, the Consumer Bureau will not be monitoring the new product or service's performance to check for any problems. Nearly 80 consumer, civil rights, legal services, labor and community groups and environmental groups, including AFR, wrote in strong opposition to these proposals and the grave dangers they pose.[30]

Predatory, unfair, deceptive, or abusive products or practices are no less harmful because they are packaged as innovation, access to credit, or consumer choice. New proposals may have hidden dark sides that may not be apparent without listening to all sides and without monitoring how new products and practices play out in the market. A company or trade association may be able to make a convincing presentation about the burden of complying with regulations for their new product, but merely introducing a new product does not justify exemption from critical consumer protections. There is no guarantee that a new product will be better for consumers because it is a new and uses technology, and certainly no guarantee that a new product will not harm consumers, either intentionally or unintentionally, simply because it is new. For example, alternative underwriting models are often touted as a new and innovative practice, but one recent study found that the use of algorithmic credit scoring in loan origination resulted in discrimination against qualified borrowers of color, who were charged higher interest rates than their white counterparts.[31]

Given the particularly unknown dangers of new products, it is even more important that the CFPB hear from consumers about their experiences with these products, and monitor their performance. But the Consumer Bureau's proposals would allow for widespread regulatory exceptions or exemptions without any consumer input or reporting requirements. In many situations, applications would not be public, so consumers and their advocates could not even know that a company or industry was seeking a no-action letter or sandbox participation until after the decision had been made. As a result, consumers would have no way of raising any concerns with a proposed product or practice. Because of the broad exemptions from supervision, enforcement, and reporting, the CFPB is unlikely to know of potential harm or unintended consequences caused by any of new product or practice until it is too late.

The history of the devastating spread of risky practices in the mortgage market that culminated in the 2008 foreclosure crisis is illustrative. At the time, the reckless pick-a-payment and exploding rate mortgages that led to the foreclosure crisis were an "innovation" with risks that were largely ignored by regulators, even though the problems were apparent to many families and consumer advocates. Loosening credit standards and predatory subprime lending were defended by those pushing them as broadening access to homeownership, even as homeowners in targeted communities began losing their homes to foreclosure and consumer advocates tried to sound the alarm about the danger they posed. The problem was allowed to multiply, and the results were devastating across the country.

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[30] https://ourfinancialsecurity.org/2019/02/joint-letter-80-groups-oppose-cfpbs-no-action-letter-sandbox-proposal/

[31] https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

As we now know, the "innovations" of predatory subprime mortgages caused havoc and destruction on American households and the economy as a whole. Many consumers are still suffering from the irreparable harm of foreclosure, which particularly devastated communities of color. Black and Latinx homeowners were almost 50% more likely to face foreclosure than their white counterparts.[32] The vast majority of the clients I represented as a legal aid attorney were either black or Latinx first time homebuyers. For most of my clients, their home was their only major asset. For my immigrant clients, facing foreclosure meant watching the American dream slip through their fingers after being scammed by the false promises of brokers and loan officers. Even homeowners who were able to save their homes from foreclosure are still grappling with the loss of wealth that came from losing their equity and may never fully recover because much of the relief was insufficient to cover their losses. The absence of a tough regulator, guard rails to protect people, and lack of accountability resulted in extraordinary harm to American families and the economy as a whole. The CFPB's proposals propose a return to the vulnerable pre-2008 world without proper oversight and accountability.

There are plenty of ways to encourage innovation without abdicating the Bureau's fundamental statutory duties to enforce the law and protect consumers, but the CFPB's current proposals unjustifiably provide companies with overbroad regulatory relief without any accountability for the harm such exemptions could cause. The CFPB's proposals have little to do with fostering responsible innovation and instead demonstrate a willingness to abandon its responsibility to regulate.

c. Removing Accountability: Insufficient Enforcement and Consumer Relief

Under Mulvaney's leadership, and continuing under Director Kraninger, the CFPB has announced several settlements without requiring relief for consumers harmed by illegal practices. Several settlements also fail to impose meaningful penalties to hold companies accountable for their behavior. American consumers need a regulator that pursues tangible relief for harmed consumers and enforces the law with meaningful penalties. Many of the Consumer Bureau's settlements over the past year and a half fall short of these standards. For example:

- In the Matter of State Farm Bank FSB (File No. 2018-BCFP-0009): The Consumer Bureau's settlement with State Farm Bank provides no consumer relief and no penalties for its violations of the Fair Credit Reporting Act, including furnishing inaccurate information to the credit-reporting agencies, failing to update or correct information reported to the credit-reporting agencies, and accessing consumer credit reports without a legitimate purpose.
- In the Matter of Security Group, Inc. (File No. 2018-CFPB-0002): The Consumer Bureau's settlement with the Security Group provides no consumer relief for the company's unfair debt collection practices.
- In the Matter of National Credit Adjusters LLC and Bradley Hochstein (File No. 2018-CFPB-0004): The Consumer Bureau's settlement provides no consumer relief for the company's unfair debt collection practices.

[32] https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf

In addition to these weak settlements, under Mulvaney's leadership, the CFPB dropped several lawsuits and investigations without explanation. Against the advice of the entire enforcement staff, Mulvaney directed the Consumer Bureau to drop the lawsuit against Golden Valley, a payday lender who had made illegal payday loans at 950 percent interest to struggling families in violation of state and federal law.[33]

The Consumer Bureau also dropped its investigation against subprime lender World Acceptance, a company that had contributed to Mulvaney's political campaign,[34] and Libre by Nexus,[35] a company preying on detained immigrants.

Under Director Kraninger's leadership, the pattern of soft penalties and no consumer relief has continued:

- Consumer Financial Protection Bureau v. NDG Financial Corp, et. al. (15-cv-5211 S.D.N.Y): The Consumer Bureau's settlement provides no penalties and no consumer relief for the borrowers harmed by NDG Financial's illegal payday loans.
- In the Matter of Enova International (File No. 2019-CFPB-0003): The Consumer Bureau's settlement provides no relief for consumers harmed by Enova's practice of extracting millions of dollars in unauthorized debits from consumers' accounts.
- In the Matter of Cash Tyme (File No. 2019-CFPB -0004): The Consumer Bureau's settlement provides no relief to the consumers Cash Tyme harassed or who were injured by Cash Tyme's failure to promptly monitor, identify, correct, and refund overpayments and the CFPB imposes a limited penalty of $100,000.

By weakening its supervision and enforcement, the Consumer Bureau under Mulvaney and Kraninger have sent companies the message that they can harm consumers without being held accountable or having to redress the harm they cause. If the CFPB continues this pattern with its enforcement authority, the risk to consumers will increase because companies will be emboldened to pursue profit without careful consideration of the legality of their conduct. Inadequate settlements that do not provide for meaningful penalties and restitution leave consumers cheated out of their hard-earned money and reduce incentives for companies to treat people fairly, which ultimately will lead to a more unfair and risky marketplace.

[33] https://www.npr.org/2018/02/12/584980698/trump-administration-to-defang-consumer-protection-watchdog
[34] https://www.propublica.org/article/consumer-financial-protection-bureau-drops-investigation-of-high-cost-lender
[35] https://www.washingtonpost.com/local/federal-consumer-watchdog-suspends-probe-into-firm-accused-of-preying-on-detained-immigrants/2017/12/05/3452f8ca-d9e3-11e7-a841-2066faf731ef_story.html?noredirect=on&utm_term=.89b389aba7ff

IV. Conclusion: Returning to Consumer Protection

The CFPB has a clear statutory mission to put consumers first, and all of its activities must be measured against that standard. In evaluating Acting Director Mulvaney's tenure and Director Kraninger's leadership thus far by this framework, the CFPB is falling woefully short of this consumer protection mandate. We thank you for holding this hearing to discuss the importance of having a Consumer Bureau that protects consumers from harm, and ask you to hold the CFPB accountable to its statutorily mandated purpose.

Written Testimony of Kathy Kraninger
Director, Consumer Financial Protection Bureau
Before the House Committee on Financial Services
March 7, 2019

Chairwoman Waters, Ranking Member McHenry, and distinguished Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's most recent Semi-Annual Reports to Congress. While the reports describe actions undertaken before I arrived, they provide a touchstone as we create a fresh outlook at the agency under my leadership.

The Bureau presents these Semi-Annual Reports to Congress and the American people in fulfillment of its statutory responsibility and commitment to accountability and transparency. The Bureau's Spring 2018 (October 1, 2017 to March 31, 2018) and Fall 2018 (April 1, 2018 to September 30, 2018) Semi-Annual Reports meet this mandate. My testimony highlights the contents of these reports.

1. *Significant problems faced by consumers in shopping for or obtaining consumer financial products or services*

In each Semi-Annual Report, the Bureau identifies relevant trends affecting consumers shopping for or obtaining consumer financial products or services. In the two Reports submitted to Congress in 2018, the Bureau identified a total of four trends of relevance.

First are credit products marketed to "non-prime borrowers." Given the higher late payment and default rates associated with "non-prime borrowers," products issued to these consumers generally feature higher all-in costs than products issued to consumers with higher scores, but offer such consumers the dual possibility of access to the credit card market as well as an avenue for building or rehabilitating credit records when timely repayments are made.

Second are secured credit cards. Consumer awareness and demand for secured cards have increased in recent years, however, low product awareness remains a barrier to secured credit card adoption. Outside research has found that many "non-prime borrowers" may not be aware that secured credit cards are a potential option for them, or even that the product exists.

Third, the Bureau found that credit invisibility—i.e., lacking a credit record that is treated as "scorable" by widely used credit scoring models—among adults 25 and older is concentrated in rural and highly urban geographies. Lack of internet access appears to have a stronger relationship to credit invisibility than does the presence of a bank branch. Among consumers who successfully transition out of credit invisibility, the overall rate of using a credit card as an entry product is much lower for those living in rural areas and in lower-income neighborhoods.

Lastly, many homebuyers do not comparison shop for their mortgages even though mortgage interest rates and loan terms can vary considerably across lenders. Reasons may include that rates change regularly, getting an accurate rate quote generally requires sharing personal financial information, and most consumers believe comparison shopping doesn't make a difference. A Bureau study found that consumers

who were encouraged to comparison shop became more knowledgeable and confident regarding the mortgage market.

2. *Justification of the budget request of the previous year*

The Bureau is funded principally by transfers from the Federal Reserve System, up to the limits set forth in the Dodd-Frank Act. Funding from the Federal Reserve System for FY 2018 is capped at $663 million. As of September 30, 2018, the Bureau had received a total of $381.3 million in transfers for FY 2018, which was added to the $177.1 million the Bureau had in unobligated balances at the end of FY 2017.

As of September 30, 2018, the end of the fourth quarter of FY 2018, the Bureau had spent approximately $553 million in FY 2018 funds to carry out the authorities of the Bureau under Federal financial consumer law. Approximately $320.5 million was spent on employee compensation and benefits for the 1,510 Bureau employees who were on-board by the end of the quarter.

3. *Significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period*

In its Semi-Annual Reports, the Bureau set forth the rules it had produced during the year preceding each report and the initiatives it intends to take during the upcoming reporting period. Below is a selection of the most relevant such matters.

Significant Rules Adopted by the Bureau During the Preceding Year:

- Final Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans.
- Final Rule: Arbitration Agreements (note, however, that this rule will not go into effect because Congress subsequently adopted a joint resolution of disapproval which the President signed pursuant to the Congressional Review Act).[1]

Less Significant Rules:

- Final Rule: Mortgage Servicing Rules under the Truth in Lending Act (Regulation Z).[2]
- Final Rule: Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z).[3]

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[1] www.federalregister.gov/documents/2017/07/19/2017-14225/arbitration-agreements, www.federalregister.gov/documents/2017/11/22/2017-25324/arbitration-agreements.
[2] www.federalregister.gov/documents/2018/03/12/2018-04823/mortgage-servicing-rules-under-the-truth-in-lending-act-regulation-z.
[3] www.federalregister.gov/documents/2018/02/13/2018-01305/rules-concerning-prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth.

- Interim Final Rule: Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X).[4]
- Final Rule: Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection.[5]
- Final Rule: Home Mortgage Disclosure Act (Regulation C).[6]
- Final Rule: Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z).[7]

Significant Initiatives:

- Notice of Proposed Policy Guidance: Policy to Encourage Trial Disclosure Program.
- Symposium on Building a Bridge to Credit Visibility.
- Call for Evidence.

Plan for Upcoming Initiatives

- Policy Statement: Public Release of Home Mortgage Disclosure Act Data.
- Pre-Rule Activity: Threshold Adjustment to Escrow Provision for Higher Priced Mortgage Loans.

Plan for Upcoming Rules

- Payday, Vehicle Title, and Certain High-Cost Installment Loans: the Bureau announced in January 2018 that it intends to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The Notice of Proposed Rulemaking was issued by the Bureau on February 6, 2019.[8]
- Debt Collection Rule: The Bureau is working toward releasing a proposed rule regarding FDCPA collectors' communications practices and consumer disclosures.
- Home Mortgage Disclosure (Regulation C): The Bureau announced in December 2017 that it intends to engage in a rulemaking to reconsider various aspects of the Bureau's 2015 rule under the Home Mortgage Disclosure Act (Regulation C), which could involve issues such as the institutional and transactional coverage tests and the rule's discretionary data points.
- Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C):

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[4] www.federalregister.gov/documents/2017/10/16/2017-21912/mortgage-servicing-rules-under-the-real-estate-settlement-procedures-act-regulation-x.
[5] www.federalregister.gov/documents/2017/10/02/2017-20417/equal-credit-opportunity-act-regulation-b-ethnicity-and-race-information-collection.
[6] www.federalregister.gov/documents/2017/09/13/2017-18284/home-mortgage-disclosure-regulation-c.
[7] www.federalregister.gov/documents/2017/08/11/2017-15764/amendments-to-federal-mortgage-disclosure-requirements-under-the-truth-in-lending-act-regulation-z.
[8] www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-of-compliance-date/

The Bureau will incorporate into Regulation C interpretations and procedures set forth in an interpretive and procedural rule issued to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amended certain provisions of the Home Mortgage Disclosure Act.

4. *Analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year*

The Bureau's Office of Consumer Response analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses. The Bureau uses insights gathered from complaint data to scope and prioritize examinations and ask targeted questions when examining companies' records and practices, to help understand problems consumers are experiencing in the marketplace, to provide access to information about financial topics and opportunities to build skills in money management that can help them avoid future problems, and to inform enforcement investigations to help stop unfair, deceptive, or abusive acts or practices.

In the Spring 2018 Semi-Annual Report, the Bureau noted that it had received approximately 326,200 consumer complaints and sent approximately 260,200 (or 80%) to companies, and companies responded to approximately 94% of complaints that the Bureau sent to them. In the Fall 2018 Semi-Annual Report, the Bureau received approximately 329,000 consumer complaints and sent approximately 263,200 (or 80%) to companies, and companies responded to approximately 93% of complaints that the Bureau sent to them. The Bureau does not verify all the facts alleged in complaints, but takes steps to confirm a commercial relationship between the consumer and the company.

In both reports, the credit or consumer reporting categories received the most complaints, at 37% in the most recent report, and debt collection received the second highest number of complaints, at 25% in the most recent report. The remaining categories, from highest to lowest percentage of total complaints, are: mortgage (10%), credit card (9%), checking or savings (7%), student loan (3%), money transfer or service or virtual currency (3%), vehicle loan or lease (3%), personal loan (1% each period), payday loan (0.7%), prepaid card (0.7%), credit repair (0.3%), and title loan (0.2%).

5. *Public supervisory and enforcement actions to which the Bureau was a party during the preceding year*

The Bureau's supervisory activities with respect to individual institutions are non-public. The Bureau has, however, issued numerous supervisory guidance documents and bulletins described in the Spring and Fall Semi-Annual Reports.

The Reports note that the Bureau was a party in several public enforcement actions, as well as actions involving Office of Administrative Adjudication Orders with respect to covered persons which are not credit unions or depository institutions, between the two Reports. For a list of each case, along with brief descriptions, please refer to the Bureau's Semi-Annual Reports.

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

The Bureau's Semi-Annual Reports list all its public enforcement actions, noting when the action was taken against a covered person that is not a credit union or depository institution. Additionally the Bureau's *Supervisory Highlights* publications provide general information about the Bureau's supervisory activities and key findings at banks and nonbanks without identifying specific companies.

7. *Assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law*

For purposes of the section 1016(c)(7) reporting requirement, the Bureau determined that any actions asserting claims pursuant to section 1042 of the Dodd-Frank Act are "significant." The reporting period of the two most recent Semi-Annual Reports is October 1, 2017, through September 30, 2018. The Bureau is aware of three State Attorney General actions that were initiated during the reporting period(s) and that asserted Dodd-Frank Act claims: State of Alabama et al. v. PHH Mortgage Corporation, No. 18-cv-0009 (D.D.C. Jan. 3, 2018); Navajo Nation v. Wells Fargo & Company, Wells Fargo Bank, N.A., and Does 1-10, No. 17-cv-1219 (D.N.M. Dec. 12, 2017); and Commonwealth of Pennsylvania v. Navient Corporation and Navient Solutions, L.L.C., No. 17- cv-1814 (M.D. Pa. Oct. 5, 2017).

8. *Analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau*

The Bureau's Spring and Fall 2018 Semi-Annual Reports highlight the Bureau's fair lending enforcement and rulemaking activities, along with its continued efforts to fulfill the Bureau's fair lending mission through, for example, supervision, interagency coordination, and outreach.

For exam reports issued by Fair Lending Supervision during the reporting period, the most frequently cited violations of Regulation B and Regulation C were:

- Section 1002.5(d)(2): Improperly requesting information about an applicant's source of income.
- Section 1002.6(b)(2): Improperly considering age or whether income is derived from any public assistance program.
- Section 1002.9(c)(2): Failure to adequately notify an applicant that additional information is needed for an application.
- Section 1002.14(a): Failure to routinely provide a copy of an appraisal report to an applicant for credit secured by a lien on a dwelling.
- Section 1003.4(a): Failure by a financial institution to collect data regarding applications for covered loans that it receives, originates, or purchases in a calendar year, or, failure to collect data regarding certain requests under a preapproval program in a calendar year.

In the Spring Report, the Bureau conducted fewer fair lending supervisory events, and issued fewer matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period, and cleared a substantially higher number of MRAs or MOU items from past supervisory events than in the prior period. In the Fall Report, the Bureau initiated a higher number of fair lending supervisory events, and issued a greater number of MRAs or MOUs than in the prior period, and found that entities satisfied a lower number of MRAs or MOU items from past supervisory events than in the prior period.

In addition to fair lending supervision, the Bureau has the statutory authority to bring enforcement actions pursuant to the Home Mortgage Disclosure Act (HMDA) and the Equal Credit Opportunity Act (ECOA). The Bureau announced a fair lending public enforcement action involving credit cards, as described in the Semi-Annual Reports.

The Bureau continues to administer prior fair lending enforcement actions, including consent orders requiring defendants to pay redress to affected consumers. These matters include ongoing orders pertaining to auto-lending that govern American Honda Finance Corporation and mortgage lending governing Provident Funding Associates and BancorpSouth Bank.

The Bureau also conducts fair lending outreach through issuance of Reports to Congress, Interagency Statements, *Supervisory Highlights*, Compliance Bulletins, letters and blog posts, as well as through the delivery of speeches, meetings, and presentations addressing fair lending and access to credit matters. As set forth in the two most recent Semi-Annual Reports, Fair Lending staff worked directly with stakeholders, and, on September 17, 2018, the Bureau held a day-long symposium titled Building a Bridge to Credit Visibility. The symposium explored challenges related to access to consumer and small business credit and potential innovations and strategies to expand credit access. On the day of the symposium, the Bureau also released a new research publication providing a closer look at the relationship between geography and credit invisibility.

The Spring and Fall 2018 Semi-Annual Reports also describe that Fair Lending staff coordinated with partners on the Interagency Task Force on Fair Lending, the Interagency Working Group on Fair Lending Enforcement, and the Federal Financial Institutions Examinations Council (FFIEC) HMDA Data Collection Subcommittee.

9. *Analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion (OMWI)*

The Bureau developed its "Diversity and Inclusion Strategic Plan 2016-2020" to guide the Bureau's efforts to manage its diversity and inclusion goals, and objectives. The Bureau also publishes an Annual OMWI report in the spring of each year; its 2017 report was issued on March 29, 2018.

As of September 2018, an analysis of the Bureau's current workforce reveals the following key points:

- Women represent 49% of the Bureau's workforce in 2018 with no change from 2017.
- Minorities represent 40% of the Bureau workforce in 2018 with a one percentage point increase of ethnic minority employees (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander (NH/OPI), American Indian/Alaska Native (AI/AN) and employees of

Two or More races) from 2017.

- As of September 30, 2018, 12.4% of Bureau employees (excluding interns) identified as an individual with a disability. Out of the workforce, 3.2% of employees identified as an individual with a targeted disability. The Bureau has already exceeded the workforce goals of 12% for employees with disabilities and 2.0% for employees with targeted disabilities — exceeding in both salary categories as required in the EEOC's Section 501 regulations.

The Bureau enhances diversity by recruiting, hiring, and retaining highly qualified individuals from diverse backgrounds to fill positions at the Bureau. To promote an inclusive work environment, the Bureau focuses on strong engagement with employees and utilizes an integrated approach to education, training, and engagement programs that ensures diversity and inclusion and non-discrimination concepts are part of the learning curriculum and work environment. The Bureau also ensures that senior leaders are aware of demographic trends of the Bureau's workforce. Planning is done to increase inclusion and retention of the diverse workforce.

Further, in accordance with the mandates in section 342(b)(2)(B) of the Dodd-Frank Act, the Bureau takes efforts to increase contracting opportunities for diverse businesses including Minority-owned and Women-owned Businesses (MWOBs), including: creating and publishing a procurement forecast; proactively making recommendations that promote the use of qualified MWOB contractors in Bureau contracts; updating, distributing, and publishing online technical assistance guides for businesses; publishing the Bureau's supplier diversity policy on the Bureau website; participating in four national supplier diversity conferences aimed at MWOBs; and providing technical assistance meetings to businesses new to government contracting or doing business with the Bureau. As a result of these efforts, 32.6% of the $139 million in contracts that the Bureau awarded during this time went to MWOBs.

Finally, in accordance with the mandates in section 342(c)(2) of the Dodd-Frank Act, the Bureau's Diversity and Inclusion Plan describes the Bureau's efforts to determine that a contractor will ensure, to the maximum extent possible, the fair inclusion of women and minorities in the contractor and subcontractor workforce. The Bureau developed and inserted a contract clause, known as the Good Faith Effort, into all Bureau contracts, and as a result more than 200 Bureau contractors will submit documentation detailing their workforce diversity practices in FY 2019.

Conclusion

The reports describe actions undertaken before my tenure as Director of the Bureau, yet they provide a touchstone as we create a fresh outlook at the agency under my leadership.

Since my confirmation, I have been engaged in a listening tour to meet as many of our stakeholders as possible, including many of you. Through listening, I am building relationships, both inside and outside of the Bureau. Hearing all perspectives is critical to bring the best thinking as we carry out our mission of protecting consumers.

Looking ahead, I will be setting priorities for the Bureau, including setting the tone for how we

will operate as an agency. I expect to emphasize stability, consistency, and transparency as hallmarks as we mature the agency and institutionalize the many partnerships that are key to our success. I am also examining how we can best utilize all the tools that Congress has given us—broadening our efforts to focus on prevention of harm as a primary goal for our actions.

Thank you again for the opportunity to present the CFPB's work to you.

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

Testimony of

Mr. Hilary O. Shelton,

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

for the

National Association for the Advancement of
Colored People (NAACP)

before the

Committee on Financial Services

of the

U.S. House of Representatives

March 7, 2019

Thank you and good morning Chairwoman Waters, Ranking Member McHenry, and esteemed Members of this committee. It is a real pleasure to be here today to speak on a crucial issue to the NAACP: the Consumer Financial Protection Bureau (CFPB).

My name is Hilary O. Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have been with the NAACP Washington Bureau for over 21 years.

Founded in 1909, the NAACP is our nation's oldest, largest, and most widely recognized grassroots based civil right organization. We currently have over 2200 membership units in every state in the nation, as well as on American military installations in Asia and Europe. Our mission statement declares that our goal is "...to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination."

As I said often prior to 2010, predatory lending is one of the leading civil rights issues of our era. At the time, I was referring primarily to targeted, unsustainable mortgage lending, although predatory lending in fact refers to this problem and so much more.

In 2010, however, Congress passed and the President signed into law the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Not only did this bill prohibit some of the most outrageous practices we were witnessing by predatory mortgage lenders, but it also created the CFPB.

The goals of the CFPB were multi-faceted. It was to help consumers navigate the often-complicated world of finances; to ensure that unsustainable loans of any kind, whether they be for home mortgages, automobiles, getting a higher education, or just covering a family emergency with a small dollar loan to name but a few were a thing of the past; and that loans were equally and fairly made without regard to a person's gender, age, race, ethnicity, sexual orientation or preference, Veterans or disability status, or station in life.

In short, and from our perspective, it was the job of the CFPB to educate and protect consumers from experiencing again the horrors that lead to the economic collapse of 2008. This was especially important to groups like ours and the people we serve and represent who were targeted by unscrupulous lenders.

In the first five years of its existence, I would argue that the CFPB was on the right track, in terms of informing the American people and protecting consumers.

By December, 2016, the CFPB had obtained approximately $11.8 billion in relief to consumers through its supervisory and enforcement work, including: $3.7 billion in monetary compensation to consumers as a result of enforcement activity; $7.7 billion in principal reductions, cancelled debts, and other consumer relief as a result of enforcement activity; and $371 million in consumer relief as a result of supervisory activity. Furthermore, as a result of CFPB supervisory and enforcement work consumers will receive $29 million. Money ordered to be paid in civil penalties as a result of CFPB enforcement work neared $590 million

As of January 1, 2017, the CFPB had handled more than 1 million complaints, and the CFPB website "Ask CFPB" had over 13 million unique visitors. Almost 4 ½ million mortgages were close on after consumers received the CFPB's Know Before You Owe disclosures. Not only were these programs going strong, but the CFPB had proposed rules to put an end to payday debt traps, which would have helped the more than 12 million American consumers who take out payday loans every year. Furthermore, the CFPB was developing proposed rules to protect consumers from harmful collection practices, which would have helped the estimated 70 million consumers who have debts in collection on their credit record.

Lastly, over 3,200 colleges and universities across the country had voluntarily adopted the CFPB and Department of Education *Financial Aid Shopping Sheet*, and the CFPB Office of Service Member Affairs had visited almost 150 U.S. military installations across our nation to hear from our brave men and women about the financial problems facing them and their families[1].

Today, unfortunately, the CFPB is but a shell of its former, vibrant, self. In just two years, Congress and the current Administration have neutered the CFPB and in doing so, they have dramatically decreased the few protections we were able to gain.

Since 2016 Congress has passed, and the President has signed, no fewer than 16 Congressional Review Act (CRA) resolutions, some of which were aimed at actions taken by the CFPB.

- For example, a regulation finalized by the Consumer Financial Protection Bureau on 7/10/17 which prohibits companies involved in financial services from using forced arbitration was overturned by a CRA that was signed into law on November 1, 2017.
- Furthermore, on May 18, 2018, President Trump signed a CRA which overturned a guidance issued by the CFPB in 2013 which was simply reaffirmed that discriminatory auto lending is illegal. Under this guidance, large banks or "indirect lenders" were

[1] CFPB Factsheeet: "Consumer Financial Protection Bureau: By the numbers," December, 2016. Available at https://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf

warned that they may be held responsible for discriminatory activities by auto dealers who use their money.

Furthermore, the CFPB's Office of Fair Lending and Equal Opportunity is now being led by an individual, Eric Blankenstein, who has, as reported by the Washington Post and New York Times, questioned whether the use of the "N word" is racist, raised doubts about the motivations of people who use racial slurs, baselessly claimed that the overwhelming majority of hate crimes are "hoaxes," espoused patently incorrect views about hate crime laws, and more recently claimed that "birther" conspiracy theories about President Obama had nothing to do with racism. If the CFPB is serious about eradicating discrimination, which it should be, it must ensure that the Office of Fair Lending actually has the power to do something about it, and that it is led by someone who is capable of looking out for it. Mr. Blankenstein does not inspire confidence, to say the least.

Since the departure of Director Rich Cordray and the appointment of Acting Director Mick Mulvaney, albeit on a part-time basis, the CFPB has gone through drastic changes that take away the emphasis on its mission of protecting all American consumers. Sadly, his legacy appears to be continuing under Director Kraninger.

While she is to be commended for taking a few small steps, such as retaining the name of the CFPB and coming before you this morning to talk about the status of the CFPB, that in no way excuses her actions. Just recently, she issued an updated small dollar loan rule that does nothing to stop the abuses or the targeted destruction of wealth building by whole sectors of people, and most notably by racial and ethnic minorities.

Furthermore, she has not taken any steps to rebuild or strengthen the Office of Fair Lending. In contrast to you, Madame Chair, she does not appear to be concerned about the role of the CFPB in protecting consumers.

The NAACP is the proud supporter of a number of pieces of legislation to rebuild the CFPB, most notably the bill which was introduced by you, Madam Chair, and many of your colleagues, yesterday, the *Consumers First Act*. Put simply, the Consumers First Act pushes the CFPB back to carrying out its statutory purpose of putting consumers first and protecting them from bad actors by taking a number of pro-consumer steps, including reestablishing the full duties of enumerated offices, including the Office of Fair Lending and Equal Opportunity; restoring the supervisory and enforcement powers of the fair lending office; and requiring adequate agency staffing, including for supervision and enforcement, to fully carry out the Consumer Bureau's

statutory mandates.

Madame Chair, the income gap between white Americans and Americans of color is growing, and more people of color are on the losing side of that arc. According to the Harvard Joint Center for Housing Studies, the median wealth of white households in 2016 was ten times higher than that of black households and eight times higher than that of Hispanic households. Yet our communities are consistently being targeted by nefarious financial servicers with their unsustainable, wealth-stripping goods

Between 2005 and 2008, almost 240,000 African Americans lost their homes to foreclosure. I have often compared the communities we represent and serve to the proverbial "canary in a coalmine." If nothing else, the devastation, the hopelessness that these foreclosures, too many of which were the result of "unique" financing schemes, caused African American individuals, families, neighborhoods and whole communities was nothing less than calamitous. Yet it took these foreclosures, and too many others like it, for Congress to act.

Not only did Congress pass the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to put an immediate end to many of the more unscrupulous mortgage practices, but it created the CFPB to protect all Americans from future schemes and plans designed to strip wealth from unsuspecting people. I would argue that many of the initiatives undertaken by the CFPB were good starts towards protecting Americans as they tried to build wealth, or in too many cases, just make ends meet. Yet despite good proposals like the *Consumer First Act*, we are seeing fewer and fewer protections against unscrupulous, targeted products.

I must restate my earlier claim. From small dollar loans to auto purchases to who gets a mortgage, at what rate and in which area, targeted, predatory lending is a major civil rights issue for our generation.

Weltman
Weltman, Weinberg & Reis Co., LPA

Scott S. Weltman
Managing Shareholder

323 W. Lakeside Ave., Suite 200
Cleveland, OH 44113
216-685-1032

Written Statement of Testimony From:
Scott S. Weltman
Managing Shareholder, Weltman, Weinberg & Reis Co., LPA

Prepared For:
Chairwoman Maxine Waters
The U.S. House Committee on Financial Services

Session:
March 7, 2019
"Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau"

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting me today. My name is Scott Weltman. I am the Managing Shareholder of Weltman, Weinberg & Reis Co., LPA, a creditors' rights law firm headquartered in Cleveland, Ohio that has been in business since 1930. I am grateful for the opportunity to share our firm's experience with the Consumer Financial Protection Bureau ("CFPB").

Our case with the CFPB was the epitome of an effort to legislate through misguided enforcement instead of by rulemaking. We encountered overzealous enforcement attorneys with the power of the U.S. Government behind them. Our nearly four year ordeal included an extensive Civil Investigative Demand ("CID") process – with which we fully cooperated, albeit at great expense – followed by a lawsuit that we won. Our law firm incurred nearly $2 million dollars in attorney's fees. And, as a direct result of being sued, numerous clients of the firm fired us, and over 100 employees (out of a total of 650) lost their jobs.

Our story with the CFPB, however, began before the Bureau was formed. In 2009, our law firm was hired by Ohio Attorney General Richard Cordray as Special Counsel, which meant that our law firm was directly responsible for collecting the State of Ohio's debts. Mr. Cordray not only significantly vetted our firm and condoned exactly how we did business, he also required that our letters be written precisely to his specifications. And after observing firsthand how we did business, he hired us a second time. My written testimony includes the Certificates verifying those appointments.

Once he became Director of the CFPB, however, Mr. Cordray then approved a lawsuit against us claiming that virtually identical letters violated the law. And he authorized a press release accusing us of this illegal behavior, which was subsequently reprinted by every major national, local and industry news agency. This makes Mr. Cordray's deposition testimony in our case all the more troubling, since he admits, "You know, I don't know what the state of the law was then. I'm not sure what the state of the law is now." He was a former State Attorney General, the Director of the CFPB, and had no clue what the law was or is? I have included the full transcript of his deposition in my written testimony, for those of you who would like to review it. I have also submitted, and encourage you to read, the final Opinion in our lawsuit from Judge Donald Nugent (who, I would like to point out, was a Democratic Presidential appointee). The Judge specifically wrote that, "Despite requiring similar indications and disclosures of attorney involvement in the debt collection letters used on behalf of the State of Ohio, Richard Cordray, when he became head of the CFPB, authorized this lawsuit against Weltman...."

The singularly most offensive part of the lawsuit against our firm was the aggressiveness with which we were pursued by the CFPB despite the complete absence of any consumer harm. The CFPB continually insisted that our firm provide consumer redress, but never once identified a single consumer harmed by any of our alleged illegal conduct. And in the Opinion, the Judge stated that the CFPB, "offered no evidence to show that any consumer was harmed...."

Our firm provided the CFPB with over 1 million call recordings for its review. How many did it play at trial? None. It claimed that our phone calls violated the law, but it dismissed that portion of the lawsuit – half of its original claims – on the first day of trial. It never had any evidence. In my written testimony, I have provided a letter from the CFPB enforcement attorneys threatening to pursue us for more than $95 million dollars in "ill-gotten gains" and over $13 million dollars in civil monetary penalties. This claim of "ill-gotten gains," called disgorgement, was also dismissed by the CFPB on the first day of trial. Again, it never had any evidence.

I implore the Committee to question the CFPB's goals when it made its allegations against us in a very public lawsuit and press release; allegations with no facts behind them, which damaged our firm's reputation and, ultimately, which cost 100 of our employees their jobs. Additionally, I hope the Committee will investigate just how much money was spent by the CFPB to pursue our firm's case; more than a year's worth of time and travel. The expenses also included the hiring of an expert, a marketing professor from Georgetown whose "discounted" rate was $750 dollars per hour, and whose testimony the Judge deemed not credible.

And when the case was over, and our firm had won; when the CFPB decided not to appeal and was ordered to pay our firm about $10,000 in out-of-pocket costs, what happened? The CFPB asked if we would take a credit card for the $10,000.

Before I wrap up, I would be remiss if I did not touch on rulemaking. When the CFPB was established in 2011, its power to make rules in the debt collection area was welcomed. To this day, however – 7 ½ years after its formation – how many rules has it published? None. If it made rules, then it would lose its ability to regulate through enforcement.

On January 23, 2018, former Interim Director Mulvaney sent an email to every employee of the CFPB which stated, "It is not appropriate for any government entity to 'push the envelope' when it comes into conflict with our citizens. The damage that we can do to people could linger for years and cost them their jobs, their savings, and their homes. If the CFPB loses a court case because we 'pushed too hard,' we simply move on to the next matter. But where do those that we have charged go to get their time, their money, or their good names back? If a company closes its doors under the weight of a multi-year Civil Investigative Demand, you and I will still have jobs at CFPB. But what about the workers who are laid off as a result? Where do they go the next morning?"

I can tell you this. For our firm and for our employees who lost their jobs, those are empty words.

Thank you very much.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

This certifies that

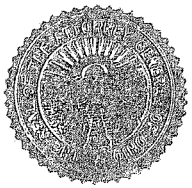
Alan H. Weinberg

Has been appointed as

Special Counsel

I take great pleasure in appointing you Special Counsel to the Attorney General of Ohio to provide legal services to the State as assigned by me and on my behalf through June 30, 2010.

This appointment reflects my highest confidence in your legal expertise, integrity, and ability. Therefore, I have affixed my name and the Seal of the Attorney General.



Richard Cordray

July 1, 2009
Date

DEFENDANT'S
TRIAL EXHIBIT
Civil Action No. 1:17-cv-00817
B-001

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

This certifies that

Alan H. Weinberg

Has been appointed as
Special Counsel

I take great pleasure in appointing you Special Counsel to the Attorney General of Ohio to provide legal services to the State as assigned by me and on my behalf through June 30, 2011.

This appointment reflects my highest confidence in your legal expertise, integrity, and ability. Therefore, I have affixed my name and the Seal of the Attorney General.

Richard Cordray

July 1, 2010
Date

DEFENDANT'S
TRIAL EXHIBIT
Civil Action No. 1:17-cv-0987
D-001

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff v. Weltman, Weinberg & Reis Co., L.P.A., Defendant.	Civil Action No. COMPLAINT *Electronically Filed*

COMPLAINT

Plaintiff, the Consumer Financial Protection Bureau ("Bureau"), alleges the following against Weltman, Weinberg & Reis Co., L.P.A. ("Weltman").

INTRODUCTION

1. The Bureau brings this action under Sections 807(3), 807(10), and 814(b)(6) of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e(3), (10), and 1692*l*(b)(6); and Sections 1031(a), 1036(a)(1), 1054, and 1055 of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§ 5531(a), 5536(a)(1), 5564, and 5565.

2. The Defendant engages in unlawful collection activities by misrepresenting the level of attorney involvement in demand letters and calls to consumers.

JURISDICTION AND LEGAL AUTHORITY

3. This Court has subject-matter jurisdiction over this action because it is "brought under Federal consumer financial law," 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

4. Venue is proper in this District because the Defendant does business here and a substantial part of events or omissions giving rise to the claims occurred here. 12 U.S.C. § 5564(f); 28 U.S.C. § 1391(b).

PARTIES

5. The Bureau is an independent agency of the United States that is authorized to take enforcement action to address violations of Federal consumer financial law, 12 U.S.C. §§ 5511(c)(4), 5512(a), 5563, 5564, including the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1).

6. Respondent Weltman, Weinberg & Reis Co., L.P.A. ("Weltman" or "the Firm") is a law firm, organized under the laws of Ohio that has offices in this district.

7. Weltman regularly collects or attempts to collect, directly or indirectly, consumer debts, including debts from credit cards, installment loan contracts, mortgage loan deficiencies, and student loans. Weltman collects such debts on behalf of original creditors and debt buyers who purchase portfolios of defaulted consumer debt.

8. Weltman is therefore a "debt collector" under the FDCPA, 15 U.S.C. § 1692a(6), and it is a "covered person" under the CFPA, 12 U.S.C. § 5481(5), (6), (15)(A)(i), (15)(A)(x), because it collected debt related to credit extended to consumers.

STATEMENT OF FACTS

9. Since at least July 21, 2011, the Firm has regularly collected or attempted to collect debts on behalf of original creditors and debt buyers.

10. These alleged debts included the following types of debt: credit card; installment loan contract; mortgage loan deficiency; and student loan.

11. The alleged debts have been incurred by consumers primarily for personal, family, or household purposes.

12. When Weltman acquires the rights to collect on a new debt portfolio, the Firm's representatives (which may or may not include an attorney) discuss the portfolio's attributes with the creditor, including prior collection efforts and the age of the debts in the portfolio.

13. As part of the initial intake process, Weltman attorneys may review a sample of individual accounts within a portfolio of debts from the creditor for whom Weltman is collecting the debt. But non-attorneys may perform this review.

14. As part of its debt collection efforts, Weltman sends letters to consumers requesting payment ("demand letters").

15. If a consumer does not respond to an initial demand letter, then Weltman frequently sends a follow-up demand letter reiterating its request for payment or offering to settle the debt for a reduced amount.

16. The vast majority of the time, Weltman generates these demand letters through an automated process. Specifically, consumer account information provided by Weltman's clients is populated into a form letter template and printed by a third-party vendor.

17. Weltman's demand letters are printed on the Firm's letterhead, which states "WELTMAN, WEINBERG & REIS Co., LPA" at the top of the first page, and directly underneath the Firm's name, "ATTORNEYS AT LAW." In almost all versions of this template, the name of the Firm and the phrase "ATTORNEYS AT LAW" are in bold type.

18. "Weltman, Weinberg & Reis Co., L.P.A." appears in type-face in the signature line of nearly all of Weltman's demand letter templates.

19. Weltman's form letters typically include a detachable payment remission slip indicating that payments should be sent to Weltman, Weinberg & Reis Co., L.P.A., and provide a mailing address.

20. Since at least July 21, 2011, some of Weltman's form letters have included the following language: "Failure to resolve this matter may result in continued collection efforts against you or possible legal action by the current creditor to reduce this claim to judgment."

21. Since at least July 21, 2011, Weltman's form letters have also sometimes included the following language: "This law firm is a debt collector attempting to collect this debt for our client and any information obtained will be used for that purpose."

22. Since at least July 21, 2011, at times some form letters stated: "Please be advised that this law firm has been retained to collect the outstanding balance due and owing on this account."

23. When Weltman sends demand letters, Weltman attorneys generally have not reviewed a corresponding consumer's individual account file to reach a professional judgment that sending the letter is appropriate because, for example, the information in the letter is accurate and the debt is due and owing.

24. In most cases, Weltman attorneys do not review any individual account information or any other aspects of a consumer's file before Weltman sends a demand letter.

25. None of the subject demand letters include any disclaimer notifying consumers that an attorney has not reviewed the consumer's file or formed an independent professional judgment about the subject debt.

26. Weltman's demand letters misrepresent that attorneys at the firm have reviewed the consumer's file and determined that the consumer owes the amount demanded, when in fact no such review has occurred.

27. Rather, at the time a consumer receives a demand letter, Weltman is acting as a collection agency.

28. Weltman has sent millions of demand letters to consumers since July 21, 2011. Consumers have paid millions of dollars after Weltman sent a given demand letter but before Weltman filed any related collection lawsuit.

29. In addition to sending demand letters, Weltman also attempts to collect debts through outbound telephone calls to consumers.

30. These calls are generally handled by non-attorney collectors who are part of Weltman's "Pre-Legal" Department.

31. In addition, consumers sometimes call Weltman after receiving a demand letter from Weltman, and are routed to these collectors. During these inbound calls, the collectors similarly request payment on the consumer's alleged debt.

32. From at least July 21, 2011 through as late as July 2013, it was Weltman's practice and policy to identify Weltman as a law firm during these collection calls. Some training materials and collection scripts instructed Weltman collectors to tell

consumers: "This law firm is a debt collector attempting to collect this debt for our client and any information will be used for that purpose."

33. Even after July 2013, at times collectors continued to refer to Weltman as a law firm during calls with consumers. Sample statements made to consumers by collection agents that referred to Weltman's law firm status included that Weltman was the "largest collection law firm in the United States," an account was forwarded to "the collections branch of our law firm," and that the account has been "placed here with our law firm."

34. When such calls occurred, however, Weltman attorneys generally had not reviewed a corresponding consumer's individual account file to reach a professional judgment regarding whether the consumer owed the debt.

35. Consumers were typically not cautioned that an attorney had not reviewed their account information or formed an independent professional judgment about the subject debt.

36. Weltman's statements to consumers during collection calls implied that attorneys at the firm reviewed the consumer's file and determined that the consumer owed the amount demanded, when in fact no such review had occurred.

VIOLATIONS

Count I

(FDCPA) - Letters

37. The allegations in paragraphs 1-28 are incorporated by reference.

38. As described above, Weltman's demand letters were sent on its law firm letterhead, which prominently features the name of the firm and the phrase

"ATTORNEYS AT LAW" at the top. The law firm was also the signatory of the letters. Furthermore, many demand letters have explicitly referred to Weltman as a "law firm."

39. The Firm thus misrepresented that the letters were from attorneys and that attorneys were meaningfully involved, when in most cases the attorneys were not meaningfully involved in preparing and sending the letters.

40. This practice was material because it had the potential to influence consumers to pay an alleged debt when they would not have otherwise.

41. The Firm's acts and practices constituted violations of sections 807(3) and 807(10) of the FDCPA, 15 U.S.C. § 1692e(3), (10).

Count II

CFPA - Letters

42. The allegations in paragraphs 1-28 are incorporated by reference.

43. Defendant's FDCPA violations, as described in Count I, constitute violations of section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Count III

CFPA (Deception) - Letters

44. The allegations in paragraphs 1-28 are incorporated by reference.

45. As described above, the demand letters sent to consumers by Weltman before a suit was filed represented, directly or indirectly, expressly or by implication, that attorneys were meaningfully involved in preparing and deciding to send the demand letters.

46. In fact, this was misleading to a reasonable consumer because demand letters sent by Weltman were prepared and sent without meaningful attorney involvement.

47. This practice was material because it had the potential to influence consumers to pay an alleged debt when they would have not otherwise.

48. The Firm's representations as set forth in paragraphs 17-22 therefore constituted deceptive acts and practices, in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a)(1), 5536(a)(1)(B).

Count IV

FDCPA – Telephone Communications

49. The allegations in paragraphs 1-13 and 29-36 are incorporated by reference.

50. Weltman routinely placed phone calls to consumers in an attempt to collect alleged debts from them, and also responded to phone inquiries from consumers regarding its debt collection efforts.

51. Weltman's collection agents frequently referred to Weltman as a law firm during these calls. But in most instances, attorneys had not actually reviewed the consumer's file and formed an independent professional judgment that making the collection call was warranted or about whether the consumer owed the amount requested.

52. The Firm thus misrepresented by implication that attorneys were meaningfully involved in the assessment of an alleged debt's validity before a collection call took place.

53. The Firm's acts and practices constituted violations of sections 807(3) and 807(10) of the FDCPA, 15 U.S.C. § 1692e(3), (10).

Count V

CFPA - Telephone Communications

54. The allegations in paragraphs 1-13 and 29-36 are incorporated by reference.

55. Defendant's FDCPA violations, as described in Count IV, constitute violations of section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Count VI

CFPA (Deception) – Telephone Communications

56. The allegations in paragraphs 1-13 and 29-36 are incorporated by reference.

57. By referring to Weltman as a "law firm" during collection calls, Weltman collection agents implied that attorneys had formed an independent professional judgment that making the collection call was warranted or that the individual consumer owed the alleged debt.

58. This was misleading to a reasonable consumer because Weltman attorneys generally had not evaluated individual accounts at the time of the collection calls.

59. This practice was material because it had the potential to influence consumers to pay an alleged debt when they would have not otherwise.

60. The Firm's representations as set forth in paragraphs 29-36 constituted deceptive acts and practices, in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

PRAYER FOR RELIEF

Wherefore, as permitted by 12 U.S.C. § 5565 *et seq.*, the Bureau requests an Order granting:

A. an injunction that permanently prohibits Weltman from committing future violations of the FDCPA and CFPA;

B. restitution against Weltman to compensate consumers harmed by Weltman's unlawful practices;

C. disgorgement of ill-gotten revenue against Weltman, in an amount to be determined at trial;

D. civil money penalties against Weltman;

E. recovery of costs in connection with prosecuting the instant action; and

F. any other legal or equitable relief deemed just and proper.

Dated: April 17, 2017

Respectfully submitted,

Attorneys for Plaintiff
Consumer Financial Protection Bureau

ANTHONY ALEXIS
Enforcement Director

DEBORAH MORRIS
Deputy Enforcement Director

MICHAEL G. SALEMI
Assistant Litigation Deputy

/s/ Sarah Preis
Sarah Preis
1700 G Street NW
Washington, DC 20552
Phone: (202) 435-9318
Facsimile: (202) 435-7722
Email: sarah.preis@cfpb.gov
Rebeccah Watson
Phone: (202) 435-7895
Email: rebeccah.watson@cfpb.gov

Enforcement Counsel

CFPB Files Suit Against Law Firm for Misrepresenting Attorney Involvement in Collection of Millions of Debts

CFPB Alleges Weltman, Weinberg & Reis Deceived Consumers with Misleading Calls and Letters

APR 17, 2017

WASHINGTON, D.C. - Today, the Consumer Financial Protection Bureau (CFPB) filed a lawsuit in a federal district court against the debt collection law firm Weltman, Weinberg& Reis for falsely representing in millions of collection letters sent to consumers that attorneys were involved in collecting the debt. The law firm made statements on collection calls and sent collection letters creating the false impression that attorneys had meaningfully reviewed the consumer's file, when no such review has occurred. The CFPB is seeking to stop the unlawful practices and recoup compensation for consumers who have been harmed.

"Debt collectors who misrepresent that a lawyer was involved in reviewing a consumer's account are implying a level of authority and professional judgement that is just not true," said CFPB Director Richard Cordray. "Weltman, Weinberg & Reis masked millions of debt collection letters and phone calls with the professional standards associated with attorneys when attorneys were, in fact, not involved. Such illegal behavior will not be allowed in the debt collection market."

Weltman, Weinberg & Reis, based in Cleveland, Ohio, regularly collects debt related to credit cards, installment loan contracts, mortgage loans, and student loans. It collects on debts nationwide but only files collection lawsuits in seven states: Illinois, Indiana, Kentucky, Michigan, New Jersey, Ohio, and Pennsylvania.

The CFPB alleges that the firm engaged in illegal debt collection practices. In form demand letters and during collection calls to consumers, the firm implied that lawyers had reviewed the veracity of a consumer's debt. But typically, no attorney

had reviewed any aspect of a consumer's individual debt or accounts. No attorney had assessed any consumer-specific information. And no attorney had made any individual determination that the consumer owed the debt, that a specific letter should be sent to the consumer, that a consumer should receive a call, or that the account was a candidate for litigation.

The CFPB alleges that the company is violating the Fair Debt Collection Practices Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Since at least July 21, 2011, the law firm has sent millions of demand letters to consumers. Specifically, the CFPB alleges that the law firm:

- **Sent collection letters falsely implying they were from a lawyer:** Weltman, Weinberg & Reis sent letters on formal law firm letterhead with the phrase "Attorneys at Law" at the top of the letter and stated the law firm's name in the signature line. The letters also included a payment coupon indicating that payment should be sent to the firm. Some demand letters referred to possible "legal action" against consumers who did not make payments. Despite these representations, the vast majority of the time, no attorneys had reviewed consumer accounts or made any determination that the consumer owed the debt, that a specific letter should be sent to the consumer, or that the account was a candidate for litigation before these letters were sent.
- **Called consumers and falsely implied a lawyer was involved:** Weltman, Weinberg & Reis's debt collectors told consumers during collection calls that they were calling from a law firm. Specifically, sometimes they told consumers that it was the "largest collection law firm in the United States," or that the debt had been placed with "the collections branch of our law firm." This implied that attorneys participated in the decision to make collection calls, but no attorney had reviewed consumer accounts before debt collectors called consumers.

The Bureau is seeking to stop the alleged unlawful practices of Weltman, Weinberg & Reis. The Bureau has also requested that the court impose penalties on the company for its conduct and require that compensation be paid to consumers who have been harmed.

The Bureau's complaint is not a finding or ruling that the defendant has actually violated the law.

The full text of the complaint can be found at:
http://files.consumerfinance.gov/f/documents/201704_cfpb_Weltman-Weinberg-Reis_Complaint.pdf

###

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

Topics: • DEBT COLLECTION • ENFORCEMENT

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

Consumer Financial Protection Bureau,	:	
	:	
Plaintiff,	:	
vs.		Case No. 1:17-cv-817
	:	
Weltman, Weinberg & Reis Co., L.P.A.,	:	
Defendant.	:	
	:	

- - - - -

DEPOSITION OF RICHARD CORDRAY, ESQ.

- - - - -

Taken at Jones Day
325 John H. McConnell Boulevard, Ste. 600
Columbus, OH 43215
December 19, 2017, 8:59 a.m.

- - - - -

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- - - - -

1 A P P E A R A N C E S

2

ON BEHALF OF PLAINTIFF:

3

Consumer Financial Protection Bureau
4 1700 G Street NW
Washington, DC 20552
5 By Thomas McCray-Worrall, Esq.
Michael G. Salemi, Esq.
6 Steven Bressler, Esq.

7

ON BEHALF OF DEFENDANT:

8

Jones Day
9 901 Lakeside Avenue
Cleveland, OH 44114
10 By James R. Wooley, Esq.
Ryan A. Doringo, Esq.

11

12 ON BEHALF OF THE WITNESS:

13 Crabbe, Brown & James, LLP
500 South Front Street, Ste. 1200
14 Columbus, OH 43215
By Andy Douglas, Esq.

15

16 ALSO PRESENT:

17 Scott Weltman, Esq.
Sue Douglas, Paralegal

18

19

20

21

22

23

24

1 Tuesday Morning Session
2 December 19, 2017, 8:59 a.m.
3 - - - - -
4 S T I P U L A T I O N S
5 - - - - -
6 It is stipulated by counsel in attendance that
7 the deposition of Richard Cordray, a witness
8 herein, called by the Defendant for
9 cross-examination, may be taken at this time by
10 the notary pursuant to notice and subsequent
11 agreement of counsel that said deposition may be
12 reduced to writing in stenotypy by the notary,
13 whose notes may thereafter be transcribed out of
14 the presence of the witness; that proof of the
15 official character and qualification of the notary
16 is waived.
17 - - - - -
18
19
20
21
22
23
24

1 I N D E X

2 Examination By Page

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Exhibits Page

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9 Exhibit C - Ohio Attorney General's Office RFQ for Special Counsel, 5-18-09 55

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23 (Original exhibits returned to Mr. Woley.)

24

1 RICHARD CORDRAY, ESQ.
2 being first duly sworn, testifies and says as
3 follows:
4 CROSS-EXAMINATION
5 BY MR. WOOLEY:
6 Q. Could you please state your full name
7 and spell your last name for the reporter, please.
8 A. Richard Adams, plural, Cordray,
9 C-O-R-D-R-A-Y.
10 Q. Mr. Cordray, thank you for making time
11 for us today for your deposition. Am I correct
12 that you're represented by counsel today?
13 A. I am.
14 Q. All right. And that is Mr. Douglas?
15 A. Justice Andrew Douglas, yes.
16 MR. WOOLEY: Okay. And, Justice, would
17 you prefer I referred to you as Justice Douglas?
18 MR. DOUGLAS: I'd be happy for you to
19 call me Andy and I can call you Jim.
20 MR. WOOLEY: That will be fine. I
21 don't have that history, so I have no title
22 associated with my history, unless you want to
23 call me assistant district attorney.
24 MR. DOUGLAS: I don't know. It says

1 lead counsel here, so I suspect --
2 MR. WOOLEY: Okay.
3 MR. DOUGLAS: Whatever you're
4 comfortable with is fine with me.
5 MR. WOOLEY: Okay. I just wanted to
6 make sure --
7 MR. DOUGLAS: I was raised in the
8 system, too, where I still call my friends judge.
9 MR. WOOLEY: All right. And do you
10 have the appearances for the CFPB on the record as
11 well?
12 THE REPORTER: Yes.
13 MR. WOOLEY: Okay. We won't bother
14 with that.
15 BY MR. WOOLEY:
16 Q. Okay. What did you do to prepare for
17 your deposition today, Mr. Cordray?
18 A. I reviewed the subpoena and spoke with
19 my counsel.
20 Q. Anything else?
21 A. No.
22 Q. Did you speak to anybody from the CFPB?
23 A. I don't believe that I did.
24 MR. DOUGLAS: Better speak up so

1 everybody can hear you.
2 A. I don't believe that I did. I received
3 an e-mail from them indicating that they were
4 aware that I had a subpoena and if I was
5 represented by counsel, that they would like to
6 talk with my counsel, and from there I think
7 counsel and they may have spoken. But I did not.
8 Q. All right. Did you review any
9 documents besides the subpoena?
10 A. I believe I reviewed the motion for
11 sanctions briefly --
12 Q. All right.
13 A. -- in the case.
14 Q. And did someone bring that to your
15 attention besides your lawyer? I have no interest
16 in your conversations with your lawyer. But did
17 someone bring that to your attention besides your
18 lawyer?
19 A. No.
20 Q. All right. Did you review the
21 complaint?
22 A. I did not.
23 Q. Okay. It's a complaint that you
24 approved to be filed in this case, correct?

1 A. Correct.
2 Q. You reviewed it back then, didn't you?
3 A. Correct.
4 Q. All right. And it was filed with your
5 approval of course?
6 A. Correct.
7 Q. All right. So other than perhaps
8 reviewing the motion for sanctions and speaking to
9 your lawyer -- which I won't get into -- and
10 looking at the subpoena, that's pretty much what
11 you did to prepare for your deposition?
12 A. Yes.
13 Q. All right. Thank you.
14 Briefly on your background, you were
15 the Attorney General from January 2009 to January
16 2011; is that correct?
17 A. Correct.
18 Q. Okay. And I know you were the director
19 of the CFPB. But I don't know, sir, the exact
20 tenure of your directorship.
21 A. I was first appointed by recess
22 appointment in January of 2012. I was confirmed
23 by the Senate thereafter and served until I
24 resigned November, I believe, 24th, 2017, a little

1 less than a month ago.
2 Q. Okay. And what did you do between -- I
3 see there's a gap that I was not aware of --
4 January 2011 and your appointment to the
5 directorship of the CFPB?
6 A. I was chief of the enforcement team for
7 the CFPB.
8 Q. All right. As the director of the
9 CFPB, what responsibility did you have with
10 respect to lawsuits that would be brought by the
11 CFPB?
12 A. I had ultimate responsibility but
13 delegated much of the actual work and could not
14 personally be involved in it. But I had decision
15 making authority --
16 Q. All right.
17 A. -- over major junctures in cases and
18 investigations.
19 Q. All right. So with respect to the
20 filing of the complaint, that's something that you
21 would have actually seen and signed off on; is
22 that correct?
23 A. Correct. It would have been a
24 recommendation memo that I would have signed,

1 perhaps modified.
2 Q. Okay.
3 A. But, yes, ultimately approved.
4 Q. And if a complaint referred to
5 documents such as demand letters from a collection
6 firm, would you have reviewed the supporting
7 document before approving the complaint as well?
8 MR. MCCRAY-WORRALL: Objection. To the
9 extent this calls for privileged information, I
10 would instruct Mr. Cordray not to respond.
11 MR. WOOLEY: You're instructing him not
12 to respond?
13 MR. MCCRAY-WORRALL: Well, we're
14 certainly asserting the Bureau's privilege.
15 MR. WOOLEY: I understand. But I
16 believe the only person that could probably
17 instruct him is him or his lawyer. But you're
18 asserting a privilege with respect to what he
19 reviews before he files a case?
20 MR. MCCRAY-WORRALL: To the
21 decision-making process by which he comes to
22 approve a matter, yes.
23 MR. WOOLEY: Okay.
24 A. I think I can answer the question

1 generally.
2 Q. All right.
3 A. Typically when a recommendation --
4 MR. DOUGLAS: Sir, would you restate
5 the question because I think he should answer it.
6 Go ahead.
7 MR. WOOLEY: Would you mind if you --
8 just digging it out for me?
9 A. Let me just answer the question. When
10 a recommendation memorandum would come to me there
11 would be a package of documents including the
12 complaint. The package of documents would vary
13 from case to case. I have no particular
14 recollection of what package of documents would
15 have come with the complaint in this matter.
16 Q. All right. Okay. When did you resign
17 from the CFPB?
18 A. So I believe it was -- it was the day
19 after Thanksgiving, so it was November 24th, 2017.
20 Q. And why did you resign?
21 A. You can check that date to make sure
22 it's correct, but I believe that's the correct
23 date.
24 Q. And why did you resign, sir?

1 MR. DOUGLAS: Objection. You may
2 answer.
3 A. I determined that it was time for me to
4 leave.
5 Q. Anything more to it than that?
6 MR. DOUGLAS: Objection.
7 A. I don't think that I can --
8 MR. DOUGLAS: A recollection of that
9 makes really no difference to this case. It's not
10 designed to -- to help your defense any. Under
11 401(b) I think it's not relevant.
12 MR. WOOLEY: Justice Douglas, every
13 witness that they've deposed they've asked them
14 detailed questions about their background, why
15 they move from this job to that job, what was the
16 reason for every career move. I'm just asking
17 some questions about career moves.
18 MR. DOUGLAS: Okay. Well, he has no
19 reason not to answer the question except that I'm
20 not going to let you explore about his resignation
21 because I don't think it's relevant to this case.
22 MR. WOOLEY: And you're instructing him
23 not to answer on the grounds of relevance?
24 MR. DOUGLAS: I am.

1 MR. WOOLEY: To not answer?
2 MR. DOUGLAS: I am.
3 MR. WOOLEY: As opposed to preserving
4 the record?
5 MR. DOUGLAS: I understand the record.
6 Now, if you are comfortable answering that and
7 want to answer it, you may.
8 A. I resigned because I determined that it
9 was time for me to leave.
10 Q. Okay. That's it?
11 A. I think that's why people resign from
12 any job.
13 Q. Okay. When did you inform the staff
14 that you were going to resign?
15 A. When did I inform the staff
16 specifically when I was going to resign, that it
17 was going to be on November 24th?
18 Q. Yeah.
19 A. I think I informed the staff that
20 afternoon.
21 Q. Did you tell anybody on the staff prior
22 to that time?
23 A. I had indicated and it had become known
24 publically that I was likely to step down by the

1 end of the month earlier in the month. I believe
2 that was in the press and can be verified.
3 Q. All right. I can certainly read the
4 press. I'm asking about things that maybe I can't
5 read in the press. Did you tell the staff earlier
6 to that report that you were going to resign?
7 MR. BRESSLER: Objection as to
8 relevance to this line of questioning.
9 A. I've already answered the question.
10 Q. Pardon me?
11 A. I already answered the question.
12 Q. Okay. That's the best answer to that
13 question?
14 A. Yeah. As I said, it was not until the
15 24th that I informed people that I was going to
16 resign on the 24th.
17 Q. All right.
18 A. I had generally indicated earlier in
19 the month that I would likely step down. It
20 wasn't specific, it wasn't a promise, but I would
21 likely step down by end of the month.
22 Q. Okay. And so that would have been
23 earlier in November? I'm just nailing the time
24 frame down.

1 A. I believe so, yes.
2 Q. Okay. Did you speak to Ms. Preis about
3 it?
4 A. Who?
5 MR. MCCRAY-WORRALL: Objection. Calls
6 for privileged information.
7 MR. WOOLEY: A conversation about his
8 resignation is privileged?
9 MR. MCCRAY-WORRALL: It may have.
10 Ms. Preis is an attorney on this case. It may
11 have been subject to attorney/client privilege.
12 To the extent that --
13 THE WITNESS: Okay. I'll answer it.
14 A. I did not speak to Ms. Preis about
15 that.
16 Q. All right. Mr. Watson?
17 A. Well --
18 Q. Ms. Watson. I apologize.
19 MR. MCCRAY-WORRALL: Same objection.
20 A. I didn't speak to any of the attorneys
21 in this case about that. I did generally a couple
22 days before I actually resigned made a tour of the
23 office to meet with as many people as I could just
24 to simply say good-bye to have pictures taken.

1 Again, I did not specify exactly when I would
2 resign.
3 Q. Okay. When you were the Attorney
4 General for Ohio, one of your responsibilities was
5 to collect debts owed to the State; is that
6 correct?
7 A. That is correct.
8 Q. All right. And what kind of debts?
9 A. A vide variety of debts.
10 Q. Like taxes? Student debt?
11 A. Yes. Yes.
12 Q. Overpayments from benefit plans like
13 Medicaid?
14 A. Yes.
15 Q. All right. On February 26th, 2014 --
16 Exhibit A. I'll tell you what, I will just need
17 two all the time -- off the record.
18 (A short recess is taken.)
19 - - - - -
20 Thereupon, Exhibit A is marked for
21 purposes of identification.
22 - - - - -
23 MR. DOUGLAS: Thank you.
24 Q. Mr. Cordray, do you recognize

1 Exhibit A? Take your time.
2 A. So I don't have a particular
3 recognition of Exhibit A, but I'm -- what I'm
4 reading here seems to be a copy of prepared
5 remarks that I would have delivered at the
6 National Association of Attorneys General in
7 February of 2014. And they seem familiar enough
8 to me that I could verify that I did deliver these
9 remarks in roughly this form.
10 Q. All right. If you could look at the
11 third page --
12 A. Uh-huh.
13 Q. -- of it. After the break --
14 A. Yep.
15 Q. -- there are paragraphs relating to
16 debt collection.
17 A. Yep.
18 Q. Do you see those?
19 A. I do.
20 Q. Okay. And I think I asked you what you
21 looked at before. But you didn't look at this
22 before you testified today, did you, to prepare
23 for your deposition?
24 A. I did not.

1 Q. All right. The first paragraph there
2 that starts with, "Debt collection is another
3 example that shows how your work reverberates."
4 Do you see that? I'd like you to tell me when
5 you're done reading that first paragraph because I
6 have a couple of follow-up questions, please.
7 A. Okay. I'm done reading the first
8 paragraph.
9 Q. All right. When you were the Attorney
10 General, the Weltman firm, Alan Weinberg and the
11 Weltman firm assisted you in collecting debts. Do
12 you recall that?
13 A. I believe that's so, yes.
14 Q. Yeah. They were your special counsel
15 collecting debts.
16 A. They were one of many --
17 Q. Do you recall that?
18 A. -- special counsel collecting debts,
19 yes.
20 Q. Who in this paragraph are you referring
21 to as an "unscrupulous debt collectors"?
22 A. Well, over my time as Attorney General,
23 we saw a number of people that we thought were
24 violating the law and we would take steps to

1 remedy that when we saw it occurring.
2 Q. Okay. Do you recall who any of those
3 firms or people were, sir?
4 A. I don't recall offhand. But there were
5 a number of such matters. At times they were even
6 collectors who had been collecting on behalf of
7 the State.
8 Q. Okay. Do you recall the names of any
9 collectors that you --
10 A. Not offhand, no.
11 Q. All right. If you took a minute, could
12 you perhaps think of one?
13 A. If I went back through the record and
14 read press reports --
15 Q. Okay.
16 A. -- I'm sure I could come up with a
17 number of them, yes.
18 Q. Do you recall thinking that Weltman,
19 Weinberg & Reis was an unscrupulous debt
20 collector?
21 A. I have no particular recollection of
22 that, no.
23 Q. Okay. Do you recall having any problem
24 at all with the way they collected debt for the

1 State?
2 A. I do not recall any particular
3 problems, no.
4 Q. All right. Read the next paragraph,
5 please. And tell me when you've finished it.
6 A. I don't know that my recollection is
7 complete or accurate. But that is what I recall
8 as I sit here.
9 Q. Well, when you approved the complaint
10 in this case, you saw the name of the firm,
11 correct?
12 A. I would have, yes.
13 Q. Right. And did any part of you then
14 say, ah, this is the firm that I had problems with
15 when I was at the State?
16 A. I would say no part of me said either
17 that I did or did not remember any problems that
18 would have occurred.
19 Q. Okay. If you had problems with a
20 special counsel when they were collecting debt for
21 you, would somebody have escalated that to you,
22 somebody who was directly dealing with them?
23 A. Probably. Not necessarily, but
24 probably.

1 Q. Do you recall --
2 A. There are many firms that collect debt
3 on behalf of the State.
4 Q. Do you recall anybody on your staff
5 escalating to you any concerns whatsoever with
6 respect to the way the Weltman, Weinberg & Reis
7 firm collected debt for the State?
8 A. Again I do not recall that that
9 happened, nor do I recall that that did not
10 happen. I do not recall, period.
11 Q. Okay. What sorts of records would we
12 need to subpoena to determine whether or not there
13 was some record of a complaint regarding Weltman,
14 Weinberg & Reis?
15 A. I wouldn't know the answer to that
16 question. That would be for you to determine.
17 Q. Well, who would know that worked on
18 your staff if there was such a problem?
19 A. People who worked there at the time.
20 Q. They have names. Who are their names?
21 A. You know, I don't know who would have
22 worked with Weltman and Weinberg. I honestly
23 don't know.
24 Q. You have no idea?

1 A. I don't have any particular
2 recollection of that, no.
3 Q. What lawyer in your office was involved
4 with the debt collection process?
5 A. There were a number of lawyers in my
6 office. There were a number of nonlawyers in my
7 office. And there were a number of debt
8 collection firms.
9 Q. Okay. Do you have any names?
10 A. Names? What do you mean "names"?
11 Q. People that would have dealt with
12 Weltman, Weinberg & Reis?
13 A. I would not know who had dealt Weltman,
14 Weinberg & Reis.
15 Q. Who were the people that could have
16 dealt with Weltman, Weinberg & Reis?
17 A. I believe you could go back through
18 personnel files of the Attorney General's Office
19 and determine that. I don't know offhand who
20 would have dealt with this firm.
21 Q. You're unable to recall anybody?
22 A. I'm not able to recall who dealt with
23 Weltman, Weinberg & Reis, that is correct.
24 Q. Okay. And you're not able to recall

1 even a list of people who may have? You just
2 can't come up with a name?
3 A. Look, I could throw out names. In
4 response to your question, I do not know whether
5 they would be the ones, so --
6 Q. Okay.
7 A. -- in specific response to your
8 question, I do not recall specifically.
9 Q. All right. I got sidetracked. I'm
10 sorry. Read this second paragraph, please.
11 A. Okay. Okay.
12 Q. Fast reader.
13 In that second paragraph it says,
14 quote, and tell me if I'm reading this correctly,
15 "this market is one that attorneys general know
16 backwards and forward...." Is that correct?
17 A. That's what it says.
18 Q. Yeah. Well, it's your statement. And
19 were you one of the attorneys general that knew
20 debt collection backward and forward?
21 A. I would say I think I knew it. I think
22 other attorneys general knew it. Who knew it
23 better than others, I would not know.
24 Q. Okay. And then in the middle it says,

1 "When you collect debts owed to the state
2 government, or to state universities, you learn as
3 I did that this work can and should be done the
4 right way." Do you see that?
5 A. I do.
6 Q. All right. And you certainly had an
7 understanding of what "the right way" is?
8 A. I had some understanding. Might not
9 have been a comprehensive understanding.
10 Q. Okay. What's the right --
11 A. Would have been -- would have been an
12 understanding based on the laws that stood as I
13 understood it, mostly state law but perhaps
14 federal law. Eight, nine years ago, yes.
15 Q. Well, the speech is in 2014.
16 A. Okay.
17 Q. So you certainly had some understanding
18 of the federal law, too, at that time?
19 A. Well, what I'm saying is "the right
20 way" as I would have understood it at the time I
21 was a state attorney general, which is what I was
22 understanding you to ask about is law that's eight
23 years now, yes.
24 Q. Okay. What's "the right way" to make

1 an initial demand?
2 MR. DOUGLAS: Objection. Draws a
3 conclusion. There's an issue in this case and I
4 really don't think it is relevant. And I've let
5 this go on for a long time, as I told you I would.
6 But in the end, even if the Attorney General's
7 Office did it wrong, that doesn't affect your
8 client. Your client might have done it wrong,
9 too, or may not have done it wrong. But I think
10 that's a conclusion that the judge has to draw in
11 this case. And I'm going to let him answer a few
12 more questions and then --
13 Q. What's the right --
14 MR. DOUGLAS: And then I will instruct
15 him not to answer.
16 Q. What's "the right way" to make an
17 initial demand?
18 MR. MCCRAY-WORRALL: Objection. Vague
19 and calls for speculation.
20 A. I don't know quite how to answer that
21 question. I don't know whether you're talking
22 about in writing, in person.
23 Q. An initial demand letter.
24 MR. DOUGLAS: If you know.

1 A. Well, I would say "the right way" to
2 make a demand is to present truthful, accurate
3 information, and that would be the way in which I
4 would assume is "the right way" to present a
5 demand.
6 Q. Does a law firm that's a debt collector
7 need to have a lawyer look at account level
8 detail?
9 MR. DOUGLAS: Objection. You're
10 instructed not to answer that. That's a
11 conclusion to be drawn in this case.
12 MR. WOOLEY: Well, I'm going to go
13 ahead and ask the question then, all right?
14 MR. MCCRAY-WORRALL: I'll make the same
15 objection. Calls for a legal conclusion.
16 Q. Okay. Does a law firm that's a debt
17 collector need to have a lawyer look at account
18 level detail before sending a demand letter?
19 A. I'm not sure what you mean when you say
20 need to do something. Do you mean because the law
21 requires it, because it's better practice, because
22 it would be --
23 Q. Oh, I --
24 A. You know, what -- what are you asking?

1 Q. This is --
2 A. I'm not clear.
3 Q. I'm unpacking your statement about you
4 learn as I did this can and should be done "the
5 right way." I'm not asking you about the law; I'm
6 asking about your statement about "the right way."
7 These are your words.
8 MR. WOOLEY: They're his words.
9 Q. So I'd like to know what do you mean --
10 what's "the right way" for someone to send an
11 initial demand?
12 A. So the speech that you're reading from
13 does not speak to initial demand letters. It
14 doesn't say anything about initial demand letters.
15 It talks about debt collection generally. You're
16 now wanting me to tell you what is "the right
17 way." I assume you mean the legal way. I'm not
18 sure what you mean by the right way to send a
19 demand letter. I'm not quite sure what you're
20 asking and therefore how to respond.
21 Q. All right. I'm asking what you meant
22 by "the right way." I'm asking do you know the
23 right way to send a demand letter?
24 A. The right way to collect debts was not

1 -- the speech was not about demand letters
2 specifically.
3 Q. Okay. Then --
4 A. Is there any mention of demand letters
5 in the speech that you are reading from?
6 Q. Then tell us what you meant by "the
7 right way." When you stand up in front of the
8 attorneys general and say I know this backwards
9 and forwards, "this can and should be done the
10 right way." What's "the right way"?
11 A. The right way is to proceed on truthful
12 and accurate information and be candid with those
13 you're dealing with and to also operate within the
14 parameters of federal law, such as calling
15 restrictions and other things that are meant to
16 prevent harassment.
17 Q. Okay.
18 A. There's a number of pieces to that.
19 Q. How many debts did the AG's office
20 attempt to collect each year? I mean how active
21 were you in this?
22 A. Many.
23 Q. Can you ball park it at all?
24 A. Not really. It would have been very,

1 very many.
2 Q. How many attorneys were in your office
3 that worked on debt collection matters?
4 A. In the Attorney General's Office?
5 Q. Yes, sir.
6 A. I don't know offhand. There were a
7 number.
8 Q. Was it handled through a particular
9 division? I know, you know, attorneys generals
10 have different divisions set up. Was it a
11 particular division?
12 A. I believe it was, yes.
13 Q. And did the division have a name?
14 A. I don't recall the name. But it
15 probably had something to do with revenue
16 collection or collection or debt collection or
17 something of the type.
18 Q. Okay. Was it a large division, a small
19 division?
20 A. Well, it's all relative I suppose.
21 There were 1,800 people in the Attorney General's
22 Office, so some pieces were larger, some pieces
23 were smaller, some pieces were completely internal
24 to the office, some pieces as this one was also

1 included people external to the office who were
2 working on our behalf such as this law firm.
3 Q. Headcount-wise, how many people in the
4 office worked on debt collection?
5 MR. DOUGLAS: Objection.
6 A. I don't recall.
7 MR. DOUGLAS: Asked and answered. He
8 told you he doesn't know.
9 Q. 10?
10 A. I don't recall. But you could
11 certainly look at the Attorney General's Office
12 organizational structure and find that out.
13 Q. 1,800? You knew that number. I'm
14 asking how many people worked on debt collection?
15 A. I'm not sure -- I'm not sure what your
16 point is. It was more than 10, less than 1,800.
17 Q. More than 10 and less than 1,800. And
18 there's no way you can narrow that for us? So
19 your sworn testimony is there's more than 10, less
20 than 1,800? I --
21 A. My sworn testimony is I don't recall
22 exactly how many people worked in that part of the
23 office.
24 Q. Okay.

1 A. And you're trying to ask me something
2 that I do not remember.
3 Q. How many of them were lawyers?
4 A. I do not know.
5 Q. No idea?
6 A. I don't recollect at this point.
7 That's correct. Do I need to say it many times
8 for you or just a few times?
9 Q. Would it have been five lawyers?
10 A. I don't recollect. You can ask it
11 again.
12 Q. Could it have been 200 lawyers?
13 A. I don't recollect.
14 Q. Okay. Were you personally involved in
15 trying to collect debt?
16 A. I'm not sure what you mean by
17 "personally involved." I was ultimately
18 responsible. I was not working files myself.
19 Q. All right. Who was working the files
20 then?
21 A. People in the office and people from
22 outside the office who are on contract with the
23 office.
24 Q. And within the office, that included

1 lawyers and nonlawyers, correct?
2 A. That is correct.
3 Q. All right. Did you review the
4 circumstance at the account level detail like down
5 to the individual debtor, the student that didn't
6 pay the fees at Ohio State? Did your office
7 review those details at the account level before
8 seeking to collect any debt?
9 MR. DOUGLAS: Are you asking if he
10 personally did it?
11 Q. Well, I'll -- thank you. I'll break it
12 down. You personally, I'm sure the answer is no,
13 right?
14 A. Well, it would depend. There might
15 have been accounts that were important enough that
16 I personally would have reviewed the details.
17 There may have been others where others did that
18 in a delegated basis.
19 Q. Okay. But you believe somebody in your
20 office would have reviewed the -- each account
21 before somebody would have been sent an initial
22 demand letter?
23 A. I believe that would be the case, yes.
24 Q. Okay. Somebody in your office would

1 have looked -- on a tax case, let's just -- and
2 said before we write this person a letter, we're
3 going to look at the W-2, we're going to look at
4 the checks, we're going to look at the tax return
5 and verify that it's a valid debt before we write
6 a letter; is that correct?
7 A. I don't believe I would know the
8 details of that, so I -- so I don't know is the
9 answer.
10 Q. Okay. Well, is it something that you
11 think lawyers did or nonlawyers did?
12 A. It would depend on the matter and it
13 would depend on the situation.
14 Q. Okay. Are there circumstances in which
15 you know lawyers did not look at the --
16 A. I don't have that kind of microscopic
17 knowledge of how delegated activity was handled in
18 my office.
19 Q. All right. Well, let me just ask some
20 general questions. The people that did this work
21 in your office who you -- can you recall one name?
22 A. Could I understand the relevance of
23 this?
24 Q. Can you recall one name?

1 A. Could I understand the relevance of
2 this to the -- to the case that we're here on?
3 Q. Well, one day maybe you'll take my
4 deposition, but now I'm asking you. Can you
5 recall the name of one person that worked on debt
6 collection in your office?
7 MR. DOUGLAS: And I'm going to object
8 to that again and a continuing objection. That's
9 not relevant to whether or not your client
10 violated the law. And I think it violates the
11 relevancy section. More than that, he's already
12 -- been asked that at least five times by my
13 notes, and I think he answered it every time.
14 He'll answer it one more time and then I'm going
15 to instruct him not to answer.
16 Q. Can you recall the name?
17 A. What name?
18 Q. Of anybody in your office that worked
19 on debt collection?
20 A. I don't recall anybody who would have
21 worked on debt collection with this firm. There
22 were people in the office who worked on debt
23 collection, and I could go and refresh my memory,
24 but I don't offhand recall who --

1 Q. Anybody?
2 A. -- the people were who were the players
3 on that. I'm sure you can find that out
4 separately.
5 Q. Okay. So no name. All right.
6 When you were --
7 MR. MCCRAY-WORRALL: I'm sorry. Could
8 you clarify? Was that a question, Counselor?
9 Q. When you --
10 MR. MCCRAY-WORRALL: Counsel, you said
11 "no name." Was that a question or was that a
12 statement for the record?
13 MR. WOOLEY: Here's what I'm not here
14 to do: Answer your questions.
15 Q. When you were --
16 MR. MCCRAY-WORRALL: Counsel, I'm
17 asking for a clear record.
18 Q. When you were in the AG's office, did
19 anybody ever complain to you, that escalated up to
20 you, about the way in which the AG was collecting
21 debt?
22 A. I believe so, yes.
23 Q. Okay. Tell me what you recall about
24 that, sir.

1 A. I recall at some point, and I don't
2 recall specifics or who was involved, that there
3 would have been complaints being made and we
4 needed to review whether certain collectors,
5 whether law firms or otherwise or both had
6 violated the law. And I believe at some point
7 along the way maybe multiple points along the way
8 one or another of those might have been people who
9 were currently collecting debts for the State of
10 Ohio as well, which I would consider and did
11 consider to be a problem.
12 Q. Okay. Well, do you recall any specific
13 instance?
14 A. I do not.
15 Q. All right. I'm just thinking if I can
16 unpack that to maybe trigger recollection.
17 Do you recall the names of any law
18 firms that might have been implicated or mentioned
19 in those conversations?
20 A. I do not.
21 Q. Okay.
22 A. If we brought action, they would have
23 been public and you could find those records.
24 Q. Right.

1 A. But I don't recall offhand.
2 Q. Yeah. Well, do you remember suing any
3 of your collection law firms?
4 A. I believe we may have, but I don't
5 recall offhand.
6 Q. All right.
7 A. We may also have terminated collection
8 agents.
9 Q. Yeah.
10 A. And I'm sure we did that at times, so.
11 Q. So, look, my request for the name is if
12 there's somebody who might recall these things
13 better than you --
14 A. I understand that.
15 Q. -- then that's maybe somebody I should
16 talk to.
17 A. Look, I'm not resisting you on this.
18 But if you're asking me for information and I
19 don't have it, then I can't provide it to you.
20 Q. Right.
21 A. You'll have to find it elsewhere.
22 Q. Appointment of special counsel. Okay.
23 Can you describe that process for us, please, when
24 you were in the AG, how did that work?

1 A. Well, we set up a fairly elaborate
2 process to ensure that special counsel were
3 qualified, had experience, had the ability to
4 collect debts on behalf of the State effectively.
5 And there was a process around that, of which I
6 don't recall the specific details but it was not
7 negligible.
8 Q. It was -- I'm sorry?
9 A. Not negligible.
10 Q. That's your description of the process,
11 it was not negligible?
12 A. It was substantial.
13 Q. Substantial. Okay.
14 Do you recall that it involved an RFQ
15 process?
16 A. Very likely, although I don't recall
17 the specifics.
18 Q. All right. What's the purpose of an
19 RFQ?
20 A. I believe it is to obtain qualified
21 services that will be effective to fulfill the
22 purpose for which the State is contracting.
23 Q. All right. And were you directly
24 involved in that process?

1 A. I would have been on a delegated basis.
2 I would have approved the process, made sure I
3 thought it was sufficient, and then ultimately
4 probably accepted the recommendations in terms of
5 appointments.
6 Q. Understood. I mean -- understood.
7 So the people to whom you delegated
8 this -- and I just need this on the record. But
9 I'm sure there's people whose judgment and
10 experience you trusted?
11 A. I would have thought so, yes.
12 Q. Okay.
13 A. I wouldn't have delegated to people
14 that I didn't trust.
15 Q. I understand.
16 A. Although I will say that I delegated
17 many matters in the Attorney General's Office to
18 many attorneys with whom I was not all that
19 familiar, especially retained attorneys who had
20 been hired before.
21 Q. So the process for hiring special
22 counsel to collect debt, did you have any direct
23 involvement with the counsel themselves perhaps
24 even as a final interview when it got down to a --

1 you know, a select few that were in the running?
2 A. I don't recall. I'm not sure that I
3 did.
4 Q. Do you think you might have?
5 A. I think I might have, but I don't
6 recall doing that. So I -- so I can't say for
7 sure.
8 Q. So nothing stands out?
9 A. Not particularly.
10 Q. You don't remember some particular
11 riveting interview with Scott Weltman?
12 A. If we had had one, I'm sure I would
13 have recalled it. No. I don't recall.
14 Q. How many special counsel were hired to
15 collect debt at any given time? How many were
16 working with the AG on a contract basis?
17 A. A considerable number. And I don't
18 have -- I know you want specifics. I don't have
19 specifics. I'm sure those records could be
20 obtained.
21 Q. Right. And I understand your
22 reluctance to try to give a number if you can't
23 recall it. Sometimes a ball park is helpful for
24 us so we understand how much more work we have to

1 do.
2 A. I understand. I've been on your side
3 of the table before.
4 Q. Yeah. But sometimes it's helpful
5 information. And we're in discovery.
6 Was it five, was it 500?
7 A. Firms?
8 Q. Yeah.
9 A. Law firms or nonlaw firms? We used
10 both I believe.
11 Q. All right.
12 A. I wouldn't know. I would certainly
13 think more than five, I would certainly think less
14 than 500. What the number was, I don't recall.
15 Q. All right. Did you understand though
16 that there was a process by which your office
17 would vet applicants to be special counsel,
18 perhaps do some background on them and --
19 A. Yes.
20 Q. Okay. And have them submit
21 applications?
22 A. Yes.
23 Q. And then somebody would go and contact
24 references and sort of verify the bonafides of the

1 applicants?
2 A. Yeah. That was my intention.
3 Q. That makes sense, yeah.
4 A. Yeah.
5 Q. Okay. Did you understand that once
6 special counsel were appointed that there was an
7 ongoing review of their performance as well?
8 A. I believe that's correct, yes. And
9 there was also a general period of which they
10 would be renewed, so there would have been a
11 review at that point.
12 Q. Do you know who conducted the review?
13 A. I don't recall names offhand. But it
14 would have been people who worked in that section,
15 yes.
16 Q. So I understand your answer is about
17 names, and I'm going to back off that for a
18 second.
19 A. Uh-huh.
20 Q. Is it the same people that were
21 involved in collecting the debt, were they the
22 same ones involved in assessing the special
23 counsel who would collect the debt and then also
24 reviewing their performance? Am I talking about

1 one bucket of people?
2 A. I believe so. There may have been
3 different relationships in the office. But
4 roughly yes.
5 Q. All right. Do you recall any -- were
6 you direct -- were you involved in any of the
7 ongoing reviews of special counsel once hired?
8 A. I may have been, but it wouldn't have
9 commanded a great deal of my time.
10 Q. All right. Do you recall any instance
11 in which somebody brought to your attention a
12 particularly alarming or disturbing report about
13 the performance of a special counsel?
14 A. That may well have been the case. I
15 don't recall any specific instances.
16 Q. Okay. Do you recall -- and I apologize
17 if I've already asked this. But I'm just putting
18 a bracket on this.
19 A. That's fine.
20 Q. Do you recall anybody ever coming to
21 you saying our special counsel is behaving in a
22 way that I think may violate the law?
23 A. I believe that may well have happened;
24 although, I can't recall any specific instances.

1 Q. All right. Had that happened, you
2 certainly would have been concerned about that?
3 A. I would have taken notice, yes, I would
4 have.
5 Q. And what sort of action would you have
6 taken if it was determined that they violated the
7 law?
8 A. It would have depended on the
9 circumstances. But, you know, there are very
10 minor, technical violations of the law, there are
11 very substantial violations of the law. You know,
12 it would have depended on the facts and
13 circumstances.
14 Q. Okay. If we were to -- through other
15 sources to sort of establish that no special
16 counsel were discharged while you were the AG,
17 would it be a fair conclusion for us to draw that
18 you didn't find any substantial violations of the
19 law by any of your special counsel?
20 A. I'm not sure what to tell you about
21 that. I think that if we had found that, and we
22 may have, I'm not recalling offhand whether we did
23 or didn't, I believe that appropriate steps would
24 have been taken. That would have certainly been

1 my intention.
2 Q. Do you ever recall an instance in which
3 your office either fired or reprimanded special
4 counsel for making false or misleading
5 communications with debtors?
6 A. I don't recall, but it's entirely
7 possible that it happened.
8 Q. Entirely possible. All right.
9 A. Uh-huh. I think that -- look, the
10 short story you're aiming at here is I have no
11 reason to think that my Attorney General's Office
12 was perfect in this regard. If I knew of
13 imperfections that I thought were more serious
14 problems, we would have dealt with them.
15 Q. Right.
16 A. I don't have any particular
17 recollection of instances.
18 Q. Yeah. And I appreciate your sort of
19 anticipating, and you're right. I am kind of
20 curious about that. At the same time it strikes
21 me, though, that someone as rigorous as you are in
22 your thinking would recall a particularly
23 problematic situation. If somebody says this law
24 firm is misleading debtors, it strikes me, sir,

1 that you'd remember that.
2 A. There were times when I would and
3 perhaps times I wouldn't. There are many, many
4 matters that cross my desk as Attorney General.
5 Many matters that cross my desk as head of the
6 CFPB. Some of them I recall, some of them I
7 don't. I don't have the same recollection now
8 that I did 30 years ago, unfortunately, or
9 fortunately perhaps, so.
10 Q. Yeah. Well, I appreciate -- nobody
11 does 30 years ago. I'm talking about 2010, 2011?
12 A. Uh-huh.
13 Q. Yeah.
14 THE WITNESS: You do. But I don't any
15 more.
16 Q. Yeah. All right.
17 MR. WOOLEY: Give me one second. I got
18 my loose leaf stuff out of order here.
19 Okay. I got it.
20 Q. You appointed Alan Weinberg of Weltman,
21 Weinberg & Reis -- well, we'll mark this as
22 Exhibit B.
23 - - - - -
24 Thereupon, Exhibit B is marked for

1 purposes of identification.
2 - - - - -
3 Q. Exhibit B I've handed you is a
4 certificate dated July 1, 2009. Do you recognize
5 that document?
6 A. Not in particular. Although I've seen
7 documents like it I believe.
8 Q. All right. And what is it?
9 A. Well, it appears to be a copy of a
10 certificate that the Attorney General's Office
11 would have issued in this instance to Alan H.
12 Weinberg who was appointed as special counsel
13 providing legal service to the State of Ohio. It
14 has a signature that appears to me to be my
15 signature. And it's dated July 1st, 2009, has the
16 seal of the Attorney General in the bottom left
17 corner.
18 Q. Okay. Do you recall how many of these
19 certificates you would have signed in a given
20 year?
21 A. I do not, although it would have been
22 many.
23 Q. All right. 10? 20? When you use the
24 word "many," I mean, I think a fair question is --

1 A. In this case --
2 Q. -- what do you mean by "many"?
3 A. In this case, certainly more than 20.
4 I don't know if it was hundreds. Could have been
5 hundreds even. I'm not sure.
6 Q. Okay. Looking at this, do you recall
7 any conversations at all about Mr. Weinberg and
8 his firm in connection with this particular
9 appointment?
10 A. Do I recall any conversations about
11 this appointment?
12 Q. Yeah. Somebody brought you this to
13 sign I assume; is that correct?
14 A. I do not. I do not. I do not recall
15 any specific conversations, no.
16 Q. Okay. And can you read for the record
17 the second paragraph -- the second sentence on
18 there, please.
19 A. "I take great pleasure...." Is that
20 the one you're looking for?
21 Q. No. No. I'm sorry. The narrative?
22 A. "This appointment...."
23 Q. Yeah. The narrative.
24 A. Okay. "This appointment...." Is that

1 where you want me to be?
2 Q. Yes, sir.
3 A. "This appointment reflects my highest
4 confidence in your legal expertise, integrity, and
5 ability. Therefore, I have affixed my name and
6 the Seal of the Attorney General." This is in
7 reference to Alan H. Weinberg being appointed as
8 special counsel for the Attorney General.
9 Q. Right. And when you signed it, you
10 certainly believed that was true, correct?
11 A. I did.
12 Q. Based on what?
13 A. Based on work that had been done by my
14 staff and perhaps myself to provide assurance that
15 Mr. Weinberg would be an effective special counsel
16 on behalf of the State and would deliver quality
17 service to the State.
18 Q. What part of the perhaps yourself --
19 you said perhaps yourself. What perhaps might
20 have you done?
21 A. Again, you asked earlier about the
22 process for vetting and approving special counsel.
23 I would have had some involvement in that process,
24 both in terms of approving the process generally,

1 perhaps had some involvement in -- in the
2 evaluations that were made. I don't recall in
3 particular whether that was true in this case, but
4 it might have been.
5 Q. Do you recall ever having met
6 Mr. Weinberg?
7 A. I do. But I don't recall it clearly.
8 Q. Would it have been in connection with
9 his role as special counsel or in some other
10 setting?
11 A. I don't know offhand. I might have met
12 him a number of times. I'm not sure.
13 Q. Okay. You say you do recall though.
14 So what do you recall about meeting him?
15 A. I believe I do. I mean, I certainly
16 don't mean to say that I was unaware of
17 Mr. Weinberg or any of my special counsel.
18 Q. My question is a little more specific.
19 And it's a follow-up to what you said, you said
20 you believed you met him?
21 A. I --
22 Q. Under what circumstances do you believe
23 you met him?
24 A. I don't know the circumstances.

1 Q. Okay. Did you know that he was the
2 Weinberg in Weltman, Weinberg & Reis?
3 A. I believe I would have understood that,
4 but I don't recall specifically.
5 Q. Okay. Had you heard of that firm at
6 the time that they were appointed special counsel?
7 A. Well, I would have heard of all the
8 firms that were appointed special counsel because
9 I would have approved and signed their
10 certificates and --
11 Q. So had you heard of Weltman, Weinberg &
12 Reis?
13 A. Here's a certificate that I signed
14 appointing them special counsel. Yes, I was
15 aware.
16 Q. Okay. And had you heard anything about
17 their reputation?
18 A. I don't recall specifics that I would
19 have heard. But what I would have heard I assume
20 would have been sufficient to determine that they
21 should be appointed as special counsel among many
22 applicants.
23 Q. All right. Do you recall ever meeting
24 Bob Weltman?

1 A. I don't recall specifically. I may
2 have.
3 Q. You may have.
4 A. I may have.
5 Q. Yeah. I mean, in what context?
6 A. I don't know.
7 Q. Okay. What was the process for placing
8 debts with Mr. Weinberg and his firm for
9 collection?
10 A. Well, there was a process in the office
11 for placing debts that were in need of collection,
12 and some of those would have gone to Mr. Weinberg,
13 others would have gone to others.
14 Q. What do you not understand about the
15 process?
16 A. Well, there was a process. There might
17 have been specific expertise that was appropriate
18 in certain types of collection matters such as
19 bankruptcy or student loans or other types of
20 matters. Apart from that, there would have been
21 simply a division of work because everybody could
22 only handle so much work probably effectively and
23 that would have all been part of the calculation I
24 suppose. Would have perhaps been regional in

1 nature, although I think that's less important in
2 this day and age where most of the collection is
3 not done in person.
4 Q. Well, what information would your
5 office provide to Mr. Weinberg and his firm to
6 collect debt on behalf of the State? How did that
7 happen? How did that work?
8 A. Well, there would have been a provision
9 of the debts at issue, the source of the debt,
10 information about the debt, amounts at issue, all
11 the usual particulars of a debt collection file.
12 Q. Okay.
13 A. I would hope, hope and expect as
14 complete as possible.
15 Q. Okay. Had lawyers in your office
16 reviewed account level detail for each debtor
17 before a debt would be placed with Mr. Weinberg's
18 firm for collection, lawyers?
19 A. I think very likely, although the
20 nature of "reviewed" covers a spectrum of possible
21 activities.
22 Q. What do you mean by that?
23 A. Well, I mean it -- I mean just what I
24 said.

1 Q. Well, you described a spectrum, and
2 that's your word. What's on one end of the
3 spectrum and what's on the other end of the
4 spectrum?
5 A. Well, reviewed can be faster or slower,
6 it can be word for word, or it can be reviewing
7 documents as I did with this document you handed
8 me. I mean, reviewed can be a lot of different
9 things. As I'm sure you're aware in your life,
10 you review lots of things, and that can mean a
11 variety of different approaches.
12 Q. Did lawyers review the actual sort of
13 source documents for each debtor's debt before it
14 was placed with Mr. Weinberg? And I'll just give
15 you a for instance and we can talk about this.
16 A. Okay.
17 Q. My son went to Ohio State. If he had
18 parking tickets, he didn't pay his books, there
19 will be invoices, there will be dates, there will
20 be documents that relate to that debt. Did a
21 lawyer review each of those documents before
22 sending it to Mr. Weinberg's firm for collection?
23 A. Let the record reflect that counsel's
24 comments about his son are hypothetical in nature,

1 so --
2 Q. No, they're not. No, they're not.
3 A. Okay. Look, that was a delegated
4 function. I don't know exactly what was done, so
5 I don't know that I can answer your question
6 particularly helpfully so --
7 - - - - -
8 Thereupon, Exhibit C is marked for
9 purposes of identification.
10 - - - - -
11 Q. All right. Exhibit C is -- it's a
12 multi-page document, and unfortunately the
13 paginating of it doesn't -- because it was
14 exhibits doesn't make sense, the page numbers.
15 But do you recognize what this is?
16 A. I see what it is. It was a Ohio
17 Attorney's General request for qualifications for
18 special counsel that I believe reflects a
19 submission made by the Weltman, Weinberg & Reis
20 law firm.
21 Q. Okay. And have you seen it before?
22 A. It's possible, but I couldn't recall
23 offhand whether I had or have not seen it before.
24 Q. Okay. Do you recall it being a

1 practice of yours to read these submissions or was
2 it something you delegated, sir?
3 A. I honestly do not recall. There were
4 probably many things I should have delegated
5 entirely that I didn't necessarily delegate
6 entirely. But it's possible that I read this and
7 a number of these. It's also possible I
8 delegated. It might have depended on what the
9 workload was at the time.
10 Q. Okay. With regard to -- and I know
11 what he's going to say. But with respect to this
12 function of looking at RFQ responses and
13 delegating it, who in your office -- do you recall
14 anybody that might have this function been
15 delegated to? Is there a name of someone?
16 A. I --
17 MR. DOUGLAS: You're allowing me to
18 object and say asked and answered. But he can try
19 again.
20 A. Okay. I would not recall who this
21 would have been delegated to. And it's also as I
22 said entirely possible that I looked at it myself.
23 Q. Right. And, sir, to be clear -- I'm
24 trying to be clear. I don't mean just this one in

1 particular, I mean the process. Was there
2 somebody below you that was in charge of the
3 process of reading through these RFQs and then
4 making recommendations to you?
5 A. Well, there were probably a number of
6 people, and it's not necessarily the same people
7 who would have reviewed every single one and --
8 and, you know, might have been a team. I don't
9 recall.
10 Q. Right. A team of folks whose names we
11 -- just for the record, you can't recall today?
12 A. But I'm sure you can find records that
13 would give you that indication.
14 Q. All right. I'd like to look -- let's
15 turn to page -- the fifth page in, it's not
16 numbered at the bottom of the page, but it's a
17 page that at the top says Alan Weinberg - Managing
18 Partner. Do you see that?
19 MR. DOUGLAS: I don't. On the fifth
20 page? Are you including the cover page,
21 Counselor?
22 MR. WOOLEY: It looks like this.
23 A. This one?
24 Q. Yeah. Yeah.

1 A. Okay. Yep. I'm on that page.
2 Q. Yeah. So this is in response to the
3 question for who's applying, the name of the firm.
4 Do you see the name Alan Weinberg - Managing
5 Partner Weltman, Weinberg & Reis? Do you see
6 that?
7 A. I do see it.
8 Q. Okay. So the applicant here as a
9 person is Mr. Weinberg, but it's clear from this
10 that his firm is actually who's applying; is that
11 correct?
12 A. It's not obvious to me from this
13 document if it was the case, but I see that he is
14 listed as specified and his bar number is given.
15 There's another partner whose bar number is given.
16 And then there's a number of partners and
17 associates who are listed but their bar numbers
18 are not given.
19 Q. Understood.
20 But is it a fair read of this -- if you
21 don't recall reading it then, is it a fair read of
22 it now that it's clear that they're saying that
23 this firm is who's going to do this work?
24 Mr. Weinberg's name is what ends on the

1 certificate, but it's the firm that's going to do
2 the work, correct?
3 MR. MCCRAY-WORRALL: Objection, calls
4 for speculation.
5 A. I don't know whether Mr. Weinberg was
6 going to do the work and have others work with him
7 on a delegated basis or whether it was the firm
8 that was going to do the work. It's not clear to
9 me. I'm not clear what the difference is in your
10 mind.
11 Q. But you didn't think Mr. Weinberg alone
12 was going to do the work; he was going to be
13 supported?
14 A. I just said that if he did the work
15 himself, it would be probably with others working
16 with him on a delegated basis.
17 Q. All right. Can you turn to the next
18 page, please.
19 A. And the certificate you showed me was
20 specific to him --
21 Q. Right.
22 A. -- not to the firm. So I'm honestly
23 not sure what this represents.
24 Q. Well, I'll represent to you this is the

1 RFQ that led to you giving the certificate.
2 A. I'm aware of that.
3 Q. Yeah.
4 A. And the certificate was to him, not to
5 the firm.
6 Q. Understood.
7 A. Correct. Okay.
8 Q. Yeah. Understood.
9 A. So you're now asking me whether this
10 somehow indicates it's the firm rather than him.
11 I'm not clear which it was.
12 Q. Okay. If you'd like, you can read the
13 whole thing. Because, in fact, it talks about --
14 A. I don't know that it matters so --
15 Q. It talks about everything the firm's
16 going to do --
17 A. That's fine.
18 Q. -- which is my point of this inquiry.
19 Look at the next -- it says, "Our
20 firm...." The next page, "Our firm provides
21 collection and bankruptcy representation...." Do
22 you see that?
23 A. I see that.
24 Q. Yeah.

1 A. I'm not sure what you're driving at.
2 If you want to give the testimony on it, you can.
3 But I'm not clear which it is.
4 Q. Can you just read the sentence out loud
5 for the record, please.
6 A. Which sentence?
7 Q. The first sentence on the top of that
8 page.
9 A. Which page?
10 Q. It's weird. It's says page 1 on the
11 bottom right, but it's not page 1, but it's the --
12 MR. DOUGLAS: Page 6.
13 A. It begins "Our firm provides...."
14 Q. Yeah. Yes.
15 A. What do you want me to read, that
16 sentence?
17 Q. I'm sorry.
18 A. "Our firm provides collection and
19 bankruptcy representations on a very large volume
20 of matters for the State of Ohio pursuant to a
21 Retention Agreement for this work."
22 Q. Okay. So this RFQ reflects that they
23 were already doing work for the State, correct?
24 A. Seems to so reflect that, yes.

1 Q. Do you recall that?
2 A. I don't recall offhand, no.
3 Q. You don't recall offhand. But looking
4 at it now, and if you read the rest of the
5 paragraph it will talk about the work that they've
6 been doing, the firm's been doing. I'd ask you to
7 take a look at that and see if it refreshes a
8 recollection of whether you had an understanding
9 that they were already doing work for the State.
10 A. Well, I think the document speaks for
11 itself. If you want me to speculate about it, I
12 can. But I think the document speaks for itself.
13 Q. Well, I'm asking you to, and it's --
14 it's up to you. If you read it and took a second
15 to read it, maybe -- whether it would refresh your
16 recollection.
17 A. It doesn't.
18 Q. Okay.
19 MR. DOUGLAS: Counselor, if I may for
20 just a moment, to shorten this so I don't have to
21 ask questions after you're finished, would you
22 mind if he read the next sentence that you've
23 asked him to read here on page 6?
24 MR. WOOLEY: Uh-huh.

1 MR. DOUGLAS: Have him read the second
2 sentence into the record now because I'm going to
3 ask him to do that if you don't.
4 MR. WOOLEY: Sure. Go ahead.
5 MR. DOUGLAS: Page 6. Read the second
6 sentence.
7 A. "All matters placed with Alan Weinberg
8 and Weltman, Weinberg & Reis Co., L.P.A. have
9 originated from the State of Ohio Office of the
10 Attorney General Collections Enforcement Unit."
11 MR. DOUGLAS: That's enough. Thank
12 you.
13 MR. WOOLEY: Yeah.
14 Q. All right. There you go. So now we
15 have a name of a division. Who --
16 MR. DOUGLAS: That's right.
17 Q. Who was in the Attorney General's
18 Collection Enforcement Unit?
19 A. Many people.
20 Q. Who ran it?
21 A. I don't recall.
22 Q. Would that have been someone who
23 directly reported to you or would there have been
24 an intermediate supervisor between you and that

1 person?
2 A. I don't recall. But I believe there
3 would have been some intermediate supervisor.
4 Q. Do you know who the intermediate
5 supervisor would have been between you and them?
6 A. I don't recall. It might have changed
7 during my time there as well.
8 Q. All right. Go to the next page,
9 please.
10 A. Okay.
11 Q. Look at under the paragraph that says
12 "State Representation," please.
13 A. Okay.
14 Q. Do you see there that it says "...we
15 have handled over 69,000 collection matters for
16 the State...."
17 A. I see that.
18 Q. Okay. Was it your understanding that
19 special counsel generally and in particular
20 Weltman, Weinberg & Reis were handling high volume
21 collection matters?
22 MR. MCCRAY-WORRALL: Objection, vague.
23 A. Well, that sentence certainly seems to
24 indicate that, yes.

1 Q. Well, it does indicate it. I'm asking
2 if that's your recollection as well.
3 A. What I read here is consistent with my
4 general recollection.
5 Q. If you go up three paragraphs above
6 that where it says, "Through the visionary
7 leadership and Partnership and Management
8 committee...." Do you see that paragraph?
9 A. I do.
10 Q. Do you see the reference to innovative
11 collection technologies, custom programmed
12 software applications, advanced dialers?
13 A. I do.
14 Q. Did you understand that in this
15 high-volume collection practice there would be
16 some automation involved?
17 MR. MCCRAY-WORRALL: Objection.
18 Foundation. Assumes facts not in -- that have not
19 yet been established.
20 MR. DOUGLAS: You can answer if you
21 know.
22 A. Yeah. I'm not entirely sure what you
23 mean by some automation involved. If you mean,
24 for example, the use of computers, certainly I

1 would assume that.
2 Q. Yeah. Thank you. That was a clumsy
3 question. Yeah. I mean that's what I mean.
4 Was there going to be technology
5 involved, electronic information would be
6 processed?
7 A. Certainly, yes.
8 Q. Okay. It wasn't as though there were
9 going to be boxes of actual documents that were
10 going to be looked at and scrubbed?
11 A. Well, I -- you know, I can't say for
12 sure that that wasn't the case. The government
13 was not always on the cutting edge of technology,
14 but there might have been both. But certainly
15 there would have been electronic methods
16 involved --
17 Q. Okay.
18 A. -- and everybody was moving in that
19 direction, perhaps had gotten there by this point
20 in time, yes.
21 Q. And look at the bottom of the page
22 where it says "Strengths."
23 A. Uh-huh.
24 Q. "We are a law firm that is structured

1 to offer in-house collection agency services." Do
2 you see that?
3 A. I do.
4 Q. Yeah. And then if you read that
5 paragraph all the way through you'll see that the
6 second-to-last sentence says, "Our collection and
7 legal representation seamlessly continues, even if
8 the debtor has filed bankruptcy or is deceased."
9 Do you see that?
10 A. I do.
11 Q. So did you understand or do you
12 understand from reading this that Weltman,
13 Weinberg & Reis is a collection firm that's housed
14 within a law firm?
15 A. I don't know that I would have known
16 that specifically. It's a fair inference perhaps,
17 but I don't know that I would have ever known what
18 the organization of the firm itself was or at
19 least certainly my own personal impressions.
20 Q. Okay. Well, in your unit, the -- here
21 we go. Attorney general collections enforcement
22 unit, that included lawyers and nonlawyers,
23 correct?
24 A. Where are we here?

1 Q. I'm just using -- we've identified your
2 unit was called the Attorney General Collections
3 Enforcement Unit. I'm not asking you about the
4 document, I'm just --
5 A. Okay.
6 Q. -- using that for my own purposes.
7 A. You seem to be pointing to the
8 document.
9 Q. No. The Attorney General Collection
10 Enforcement Unit, there were nonlawyers in that
11 unit?
12 A. Correct. Lawyers and nonlawyers,
13 correct.
14 Q. And did a nonlawyer -- did a nonlawyer
15 head it?
16 A. You know, I do not recall. And whether
17 that would have ever been the case during my time
18 there, I -- I don't recall offhand.
19 Q. Okay. But is it accurate to say that
20 -- that in this high volume collection work that
21 was being done both either within your -- your
22 office or by special counsel, lawyers and
23 nonlawyers were involved?
24 A. Correct.

1 Q. All right. Could you go to the next
2 page, please.
3 A. Next page suggests I know which page we
4 were on before.
5 Q. I'm sorry. It -- bottom of page 3.
6 It's got a 3 at the bottom.
7 MR. DOUGLAS: It's yellow.
8 A. Yes.
9 Q. Okay. The paragraph in the middle,
10 read that to yourself.
11 A. Which one?
12 Q. The one that says, "Due to our
13 scale...."
14 A. Okay. All right. Uh-huh. Okay.
15 Q. There's a sentence that says, "State
16 Clients will have access to all of our staff
17 members, including the collectors working files,
18 the clerical and administrative staff processing
19 executions and typing, the supervisory staff
20 managing the matters and the attorneys covering
21 hearings and handling legal aspects."
22 A. Uh-huh.
23 Q. Okay. So did your office understand
24 that what Weltman, Weinberg & Reis was bringing

1 was a staff of nonlawyers to handle the matters
2 described and then lawyers to cover the legal
3 aspects?
4 A. I don't know what to tell you about
5 that. What my office would have understood is as
6 we said earlier, we were placing matters with Alan
7 Weinberg. He was on the certificate. Weltman,
8 Weinberg & Reis was the law firm that he was
9 working with. And I guess the entire firm would
10 have worked on these matters in some manner or
11 another in the way in which a law firm has
12 nonlawyer staff as well as supporting lawyer
13 staff.
14 Q. Right. I understand. But this RFQ --
15 and you can take your time reading it -- says that
16 the law firm is a collection firm, too. It's got
17 a collection firm within the law firm. It's a
18 debt collector.
19 A. If you say so.
20 Q. Okay.
21 A. I haven't read through the whole
22 document.
23 Q. Okay. And I think the easiest way to
24 do that is just go to the back of the document

1 and, like, the fourth page from the back there's a
2 chart with a staff of the office.
3 MR. DOUGLAS: Do you mind if we stop
4 here again and have him read another sentence
5 there; otherwise, I'm going to have to ask him at
6 the end. I'd like him to read the third sentence
7 into the record.
8 THE WITNESS: The one that begins WWR?
9 MR. DOUGLAS: Let him -- no. Is that
10 the third sentence or the fourth? The one that
11 starts, "State Clients." No. Negative. The one
12 that starts "WWR." Yes.
13 THE WITNESS: So I --
14 MR. WOOLEY: Yeah. I don't -- go
15 ahead. Yeah.
16 MR. DOUGLAS: Okay.
17 THE WITNESS: So read this sentence
18 that begins "WWR"?
19 MR. DOUGLAS: Yes.
20 THE WITNESS: "WWR is capable of
21 providing reporting on request...."
22 MR. DOUGLAS: No. The one that says
23 "WWR also maintains...." Read that one.
24 THE WITNESS: Are we on the same

1 paragraph?
2 MR. DOUGLAS: I'm not sure we are.
3 THE WITNESS: "WWR also maintains both
4 a Compliance and Client Services Department as
5 well."
6 MR. DOUGLAS: That's fine. Thank you.
7 MR. WOOLEY: Okay.
8 Q. And then on that chart right below it
9 it has collections and supervisory staff. Do you
10 see the names of those folks?
11 A. I do.
12 Q. People ready to assist, right? And
13 there's a breakdown, some are lawyers and some are
14 not lawyers, correct?
15 A. I guess I can assume that the two legal
16 secretaries are not lawyers, legal secretary and
17 legal assistant. The others, I wouldn't know --
18 Q. All right.
19 A. -- for certain.
20 Q. And then if you find your way to the
21 back of the document, four -- there's an
22 attachment, the fourth page from the back that's
23 page No. 1. It looks like that.
24 A. Okay. Does it have Brooklyn Heights,

1 Chicago, Cincinnati, is that the one you're
2 talking about?
3 Q. The chart.
4 A. Yeah. Okay.
5 Q. He's got it.
6 A. Yep.
7 Q. And it says here that they had 100
8 attorneys. Do you see that?
9 A. I see that.
10 Q. And 227 debt collectors, collectors, do
11 you see that?
12 A. I see that.
13 Q. And everybody else at the firm is a
14 nonlawyer besides those 100 people, right?
15 A. If you say so. I wouldn't know that.
16 Q. Okay. Well, the grand total is 1,076
17 employees, 100 of whom are lawyers?
18 A. That's what it seems to say. Whether
19 any of the others are lawyers or not, I wouldn't
20 know.
21 Q. Okay.
22 A. But I assume that if you're calling out
23 the lawyers, then the others are not. But I
24 wouldn't know that for sure.

1 Q. Did you or your office have an
2 understanding -- and it -- well, I'll ask you.
3 Did you have an understanding that before an
4 initial demand letter would be sent out collecting
5 a debt, seeking to collect a debt on behalf of
6 your office, that a lawyer, one of these 100
7 people in this high-volume practice would have
8 looked at the account level detail before the
9 letter went out?
10 MR. DOUGLAS: Objection. That's going
11 to draw a conclusion that's at issue in this case,
12 and I'm going to let him answer if he chooses to.
13 If he chooses not to, I'm going to instruct him
14 not to.
15 Q. Did you have an understanding of that?
16 A. I don't know that I would have known
17 that one way or the other for sure, but it might
18 have depended on what the wording of the letter
19 was.
20 Q. Okay. Depends on the way the letter
21 went out?
22 A. It might have depended on the wording
23 of the letter in terms of what kind of demand was
24 made and what kind of representation was made

1 about what was going to happen to the person being
2 communicated with.
3 Q. Understood.
4 So if it were I'm going to sue you and
5 I'm going to bring an action against you, that
6 would be something you would expect perhaps a
7 lawyer to have looked at the underlying detail,
8 correct?
9 A. You know, I don't know what the state
10 of the law was then. I'm not sure what the state
11 of the law is now. So I don't know really how to
12 answer that question.
13 Q. Well, I want to make sure -- you don't
14 know the state of the law -- you didn't know the
15 state of the law in 2000 --
16 A. I don't know now what the state of the
17 law was in in 2009 or which courts had said which
18 things about that, exactly what law was being
19 followed. I don't know what the state of the law
20 is at this moment either, so I don't know quite
21 how to answer your question.
22 Q. All right. I'm trying to follow up on
23 you're saying that there are circumstances under
24 which depending on the wording of the letter you

1 would have expected a lawyer to have reviewed the
2 underlying detail. And that depends on the exact
3 state of the law at the time?
4 A. In terms of what could be said or could
5 not be said by a lawyer or nonlawyer, I would
6 imagine, yes.
7 Q. You would imagine or do you know?
8 A. I would -- I would imagine, yes.
9 Q. Well, who doesn't -- if you don't know,
10 who does? I mean you said you were an expert at
11 -- when you were the Attorney General and you ran
12 the agency. Who know that's? How clear is that
13 to the collection work --
14 A. What I'm saying is I don't recall now
15 what the state of the law would have been at that
16 time.
17 Q. How about now?
18 A. Well, again, I have views. But
19 ultimately these are cases that brought and judges
20 have to decide. So what the judges tell us is
21 what the law is, although if judges disagree there
22 might have to be appeals and other things.
23 Q. You approved the complaint in this case
24 which accused the firm of misleading consumers

1 regarding the amount of lawyer involvement with
2 respect to an initial demand. Do you recall that
3 that's what you approved in this case?
4 A. I recall that I would have approved a
5 complaint being filed in this case. I don't
6 recall all the particulars.
7 Q. You don't recall looking at the demand
8 letters that your staff brought to you and said
9 these are the ones that Weltman, Weinberg & Reis
10 are --
11 A. So you just --
12 Q. -- sending?
13 A. -- packed some things into that
14 question that are assumptions --
15 MR. MCCRAY-WORRALL: Objection. Calls
16 for a legal conclusion.
17 A. -- that I don't know that are
18 necessarily correct. I said earlier that the
19 package of materials that would have come to me on
20 a recommendation would have varied from case to
21 case. You just stated that the demand letters
22 were part of that, and I don't know offhand
23 whether that was so. Might have been so, might
24 not have been so.

1 Q. All right. Well, if a letter went out
2 from the State with your name on it to a consumer,
3 would you have expected a lawyer would have
4 reviewed the account level detail before it went
5 out?
6 A. I would have expected that what was
7 done would have been understood to be in
8 compliance with the law at that time.
9 Q. Yeah. So a specific question, would
10 you have expected that a lawyer in your office
11 would have looked at the account level detail
12 before sending a letter out on your letterhead?
13 A. I'm not sure what the answer is to that
14 question at that time.
15 Q. You're not sure?
16 A. I'm not sure what the law was in 2009
17 on that issue. I think the law has been evolving
18 across the country on this and continues to
19 evolve.
20 Q. Okay.
21 A. And may in this case for all I know.
22 Q. All right. Set the law aside for a
23 second, all right?
24 A. Uh-huh.

1 Q. On the issue of whether it's
2 appropriate, was it appropriate for someone to
3 send out letters on your letterhead with your name
4 on it without a lawyer having looked at the
5 account level detail?
6 MR. DOUGLAS: Objection. That's an
7 issue in this case and the judge is going to
8 decide. And it calls on him to give a legal
9 conclusion that I don't think he's competent to
10 give or should give. You're not to answer that.
11 MR. WOOLEY: He's not to answer that?
12 MR. DOUGLAS: Not to answer that.
13 Q. Okay. All right. Let's move to
14 Exhibit D.
15 - - - - -
16 Thereupon, Exhibit D is marked for
17 purposes of identification.
18 - - - - -
19 THE WITNESS: Thank you.
20 MR. DOUGLAS: Thank you.
21 Haven't we done this already?
22 THE WITNESS: Two years later.
23 MR. DOUGLAS: Oh, two years later.
24 Q. It's actually one year.

1 A. One year later.
2 MR. DOUGLAS: One year later.
3 A. Yeah. Sorry.
4 Q. Do you recognize Exhibit D?
5 A. I do not particularly recognize it, but
6 I see what it is. And it seems to be comparable
7 to Exhibit B that we dealt with a moment ago,
8 exactly the same in fact other than the date and
9 perhaps a more or less more legible signature by
10 me.
11 Q. Okay. So we had Exhibit C was the RFQ
12 that described the work they were going to do in
13 May of 2009, correct?
14 A. Right. Yes.
15 Q. All right. And so they got the job.
16 And then in 2010 you reupped them?
17 A. That appears to be the case, yes.
18 Q. Right. So they described how they were
19 going to do it and what they were going to do in
20 2009. And then they were reupped in 2010; is that
21 correct?
22 A. Well, I would say they described what
23 they were going to do in May of 2009 as Exhibit C.
24 Q. Yeah.

1 A. In July of 2009 they received the
2 appointment.
3 Q. Right.
4 A. And then in July of 2010 they were
5 renewed for appointment, yes.
6 Q. Right. So actually I should do that.
7 You're right. This is Exhibit -- the next one?
8 A. Uh-huh. I don't think there's really
9 any question at issue here. They applied and they
10 were approved both in 2009 and 2010.
11 Q. Yeah.
12 A. And that would have represented my
13 judgment at the time that they would be effective
14 in collecting debts on behalf of the State.
15 Q. Exhibit E.
16 A. Just wondering if we could telescope a
17 bit of this.
18 Q. I'm sorry?
19 A. I'm just wondering if we could
20 telescope this a bit if that's what you're trying
21 to establish.
22 - - - - -
23 Thereupon, Exhibit E is marked for
24 purposes of identification.

1 - - - - -
2 Q. Exhibit E is the RFQ response the
3 following year?
4 A. Uh-huh.
5 Q. And I'll represent to you, and you can
6 look through it as much as your want or your
7 lawyer can, but it contains the same basic
8 information regarding the firm, the breakdown of
9 the lawyers, the nonlawyers, how they're going to
10 handle things?
11 A. Agreed.
12 Q. All right. And then --
13 A. And then it led to the approval and the
14 certificate issued in July of 2010.
15 Q. Okay.
16 A. Yes.
17 Q. Okay.
18 MR. DOUGLAS: Counselor, have you gone
19 through this? Are you representing it's all the
20 same as --
21 MR. WOOLEY: I'm representing it's an
22 updated document. It reflects an updated status
23 on the work that they had done including for the
24 prior year.

1 MR. DOUGLAS: So the sentences that you
2 had him read into the record and the ones that I
3 had him read into the record are probably the
4 same.
5 MR. WOOLEY: The firm didn't change.
6 The firm did the work the same way it did it all
7 the way --
8 MR. DOUGLAS: Not the firm, the RFQ
9 we're talking about.
10 MR. WOOLEY: Yeah. I mean I'll let you
11 make that conclusion if you want to look at it
12 during a break. But it -- I read it as being
13 largely -- largely the same. But I don't -- I
14 don't want to put that conclusion --
15 A. I have no reason to think it was
16 particularly different.
17 Q. Right.
18 A. So we can move on.
19 MR. BRESSLER: Jim, can I ask for
20 comfort purposes how long do you expect before a
21 break?
22 MR. WOOLEY: We can break right now.
23 THE WITNESS: Do you know a sense of
24 how long we will be here today?

1 MR. WOOLEY: No.
2 THE WITNESS: Okay.
3 MR. WOOLEY: But I -- people are going
4 -- they have afternoon flights, they'll make it.
5 THE WITNESS: Okay. I don't
6 particularly need a break. I'll need a break at
7 some point to feed my meter, but other than that,
8 I'm happy to proceed.
9 MR. WOOLEY: Okay. Well, I mean
10 somebody from your side of the table asked.
11 MR. BRESSLER: I was just curious when
12 you were planning to break.
13 MR. WOOLEY: I'm completely open to it
14 whenever you guys want.
15 MR. BRESSLER: If he's -- that's fine.
16 THE WITNESS: I'd rather not have a
17 break, Steven, thank you.
18 Q. Okay. So in 2010 your office approved
19 the Weinberg firm again?
20 A. We did.
21 Q. Okay. And you don't recall anybody
22 specifically bringing you any complaints about the
23 Weltman, Weinberg & Reis firm --
24 A. I don't recall --

1 Q. -- between?
2 A. -- either way. But we did reapprove
3 them in 2010.
4 Q. Okay. Based on their performance so
5 far and based on the information that they'd
6 provide in their updated RFQ?
7 A. That would be correct.
8 Q. Okay. Do you recall anybody ever
9 before you reupped them or at any point in time
10 saying to you we are going to make sure we have
11 lawyers look at account level detail before we
12 send initial demand letters?
13 A. I don't recall either way.
14 Q. Either way. All right.
15 Exhibit F.
16 - - - - -
17 Thereupon, Exhibit F is marked for
18 purposes of identification.
19 - - - - -
20 THE WITNESS: Thank you.
21 MR. DOUGLAS: Thank you.
22 BY MR. WOOLEY:
23 Q. Do you recognize Exhibit F?
24 A. Not particularly. But I see what the

1 document purports to be, yes.
2 Q. And it is the retention agreement
3 between your office and the collection's special
4 counsel, the Weinberg firm, correct?
5 A. That's what it appears to be, yes.
6 Q. Okay. Could you look at page 2,
7 please, of it?
8 A. Yes.
9 Q. Under the Attorney-Client Relationship?
10 A. Yes.
11 Q. And the middle paragraph, can you read
12 that for us, please.
13 A. Yes. "In all pleadings, notices and/or
14 correspondence created pursuant to the work being
15 performed hereunder, Special Counsel shall
16 indicate that such document is prepared by the
17 Special Counsel in its position as Special Counsel
18 for the Attorney General."
19 Q. All right. And do you know who would
20 have approved the form of particular covered
21 documents covered by that?
22 A. I do not know that offhand, no.
23 Q. So it says notices. Notices could be
24 fairly read to include demand letters?

1 A. I don't know. You're giving that
2 definition. I'm not sure.
3 Q. Actually, no, I'm -- that's a bad
4 question. The correspondence, when you're writing
5 correspondence as a debt collector, you'll be
6 writing to people about their debts, correct?
7 A. Not necessarily always, but I would
8 think often.
9 Q. Right. And it's mandated in the
10 retention agreement that "Special Counsel shall
11 indicate that such document is prepared by the
12 Special Counsel in its position as Special Counsel
13 for the Attorney General." That's mandated,
14 correct?
15 A. It says "shall."
16 Q. Right. And the exact form within that
17 mandate would have been something that would had
18 to have been approved by your office, correct?
19 A. I don't recall offhand. That may be
20 so. I don't recall offhand.
21 Q. You don't recall insisting that your
22 letterhead be used?
23 A. I don't recall whether and how much --
24 whether and how much we would have specified the

1 particular form to be used. I don't recall
2 offhand.
3 Q. Okay. Would that have been -- well,
4 strike that.
5 Page 3, the next page, please.
6 Specific Performance Measures talks about "On a
7 quarterly basis, a personal performance review
8 will be conducted...." Do you see that?
9 A. Yes, I see that.
10 Q. Can you take a second and read that
11 whole clause, please, it's only three short
12 paragraphs.
13 A. All right.
14 Q. Okay. What do you understand this
15 quarterly performance review to entail?
16 A. Well, it says that will be reviewed
17 based on the following areas, "collection ratios,
18 performance measures based on historical averages
19 and comparisons of new and old accounts and
20 various account types, customer service
21 complaints, reports, legal actions taken, status
22 updates, and interviews." And there may be
23 additional specific performance review
24 requirements as referenced here, but it doesn't

1 specify what those would be.
2 Q. Does it also specify that special
3 counsel will provide access to the attorney
4 general for all the documents, papers, records,
5 computer searches?
6 A. It does say that, yes.
7 Q. Right. So the quarterly review would
8 be by your office, and your office would have
9 access to all the paperwork that was being
10 maintained and/or transmitted by the Weltman firm,
11 correct?
12 MR. DOUGLAS: Objection. I don't think
13 that paragraph says that. But he may answer.
14 A. I think the paragraph speaks for
15 itself. It says what it says.
16 Q. So your office in the quarterly review
17 would have access to the documents, papers,
18 records, computer searches involving the
19 collection services performed by the Weltman,
20 Weinberg & Reis firm, correct?
21 A. Well, it says that the special counsel
22 agrees to provide that. It doesn't necessarily
23 say that we got it. But --
24 Q. Do you recall anybody ever telling you

1 in connection with a quarterly review that the
2 Weltman, Weinberg & Reis firm was not providing
3 documents required under the retention agreement?
4 A. I don't recall one way or the other.
5 But I would assume that that was not the case.
6 Q. Do you recall anybody ever saying to
7 you we're looking at their documents and we think
8 that they're sending correspondence or
9 communications with debtors that are problematic?
10 A. Again, I do not have a recollection one
11 way or the other. So I -- so I don't have a
12 recollection one way or the other.
13 Q. Okay. They're the largest collection
14 firm in the midwest. Would you have recalled if
15 someone would have said to you they're sending
16 correspondence to debtors that is misleading?
17 A. I don't know that I knew the size of
18 the collection firms.
19 Q. I'll make that representation to you.
20 A. Okay.
21 Q. Would you recall if someone had said to
22 you this collection firm is making misleading
23 representations to debtors, would you recall that?
24 A. So I do recall there were times when --

1 first of all, there were times when debt
2 collection firms, whether law firms or otherwise,
3 were viewed by people in our office as having
4 violated the law, potentially violated the law and
5 were investigated and actions were taken. And I
6 do recall that that happened I believe possibly
7 more than once involving firms that were
8 collecting on behalf of the State. I have no
9 particular recollection of that being true of this
10 firm. I do not one way or another have a
11 recollection of that.
12 Q. Okay. In fact, you had a zero
13 tolerance for such behavior; isn't that correct?
14 A. What are you referring to?
15 Q. I'm asking you. You had a zero
16 tolerance for such behavior?
17 A. Well, I don't know what "such behavior"
18 means. Again --
19 Q. Misleading debtors?
20 A. As we discussed earlier, if people were
21 committing violations, it might have depended on
22 how substantial the violation was, how frequent it
23 was, how objectionable it was. But I would say it
24 depends on the facts and circumstances.

1 Q. Okay. Can you go to --
2 A. We would have had a -- we would have
3 had a low threshold of tolerance for problems.
4 But we would have certainly tried to ascertain
5 whether any problems were substantial problems or
6 minor, insignificant problems.
7 Q. Okay. If you go to page 12, please.
8 Section 19, Constituent Complaints.
9 A. Yeah.
10 Q. Would you mind reading that paragraph
11 aloud, please.
12 A. "Special Counsel must conduct business
13 in a manner that supports the Ohio Attorney
14 General's Office's goal of fair and equitable
15 treatment for debtors during the collection of
16 debts. At a minimum, fair and equitable treatment
17 means debt collection without harassment --
18 MR. DOUGLAS: Slow down.
19 A. -- or verbal abuse of the debtor, or
20 compromising the debtor's rights. The Attorney
21 General's Office expects Special Counsel to
22 provide services to the public in a manner that
23 will preserve or enhance goodwill between the
24 public and the State of Ohio."

1 Q. Okay. If you can read the next -- the
2 next page, please.
3 A. The Attorney General's Office has zero
4 tolerance for collection actions or activities --
5 this is in bold print -- "that demonstrate
6 anything less than complete respect for the rights
7 and reasonable expectations of the public."
8 Q. Right. This is -- this is the only
9 part of the retention agreement that's in bold,
10 your zero tolerance policy. Do you see that?
11 A. I haven't looked through the entire
12 document, but it was certainly meant to stand out.
13 Yes. There's actually more bold on other pages I
14 see. But I would say that it's meant to stand
15 out, which was your point.
16 Q. What do you mean by "zero tolerance for
17 collection actions...that demonstrate anything
18 less that complete respect for the rights and
19 reasonable expectations of the public"?
20 A. I think it means that if we understood
21 that there were problems and we thought that they
22 were significant enough to affect the rights and
23 expectations of the public that we would take
24 action accordingly.

1 Q. Okay. Did anybody ever bring to your
2 attention actions or activities that they believe
3 were committed by the Weltman firm that would have
4 implicated this zero tolerance clause?
5 A. Again, you've asked me this several
6 ways over the course of the morning. I don't have
7 specific recollection one way or the other with
8 respect to this firm, which is to say I don't have
9 any particular recollection that they ever had any
10 problems nor do I have any particular recollection
11 that they never had any problems. I just wouldn't
12 know one way or the other. So I -- I don't know
13 what else to tell you.
14 Q. All right. Do you recall ever -- this
15 zero tolerance policy, this clause being
16 implicated in any setting with respect to any
17 collection agency that you dealt with? Because
18 zero tolerance --
19 A. So I mentioned to you earlier that I
20 was aware -- I was aware and perhaps was on more
21 than one occasion that there was an instance or
22 instances of firms who were working on behalf of
23 the State of Ohio who -- where issues had been
24 raised about whether their debt collection

1 processes were consistent with the law. So there
2 were at least an or maybe several such instances.
3 I don't recall who that was in particular.
4 Q. The next section paragraph 20,
5 Compliance with Law?
6 A. Uh-huh. Yep.
7 Q. It's a must "...Special Counsel must
8 comply...." Right?
9 A. It says "agrees to comply."
10 Q. No. No. The last paragraph -- the
11 last sentence in that paragraph. "...must comply
12 with the same standards of behavior as set
13 forth...." Do you see that?
14 MR. DOUGLAS: I don't. What paragraph?
15 MR. WOOLEY: Just read the whole
16 paragraph.
17 MR. DOUGLAS: I did.
18 A. Okay. Well, look, I mean I'm not sure
19 what point you're trying to make here. "Special
20 Counsel agrees to comply with all applicable
21 federal, state, and local laws," it says at the
22 beginning. Later it says, "Special Counsel must
23 comply with the same standards of behaviors as set
24 forth in..." some specific statutes.

1 Q. Right.
2 A. You know, those certainly were
3 expectations that the office had of all the firms
4 doing business with the State.
5 Q. Right. Your answer about how these
6 circumstances may have been brought to your
7 attention about this collection firm or that
8 collection firm that --
9 A. I believe they were as I said.
10 Q. Yeah.
11 A. But I don't recall exactly who that
12 would have been.
13 Q. Did your office ever take any action
14 against the Weltman, Weinberg & Reis firm?
15 A. Not that I'm aware of. They would know
16 perhaps better than I. I don't have a
17 recollection one way or the other, but again I
18 don't have any particular recollection that we
19 did.
20 Q. Okay. And in fact, you were there two
21 years, you approved them twice?
22 A. I approved them each year I was there,
23 correct.
24 Q. Okay. Is there a place as we continue

1 our discovery where we could go to find where
2 these complaints and these discussions about
3 possible problems with collection firms would be
4 documented? Is there a place where we could go to
5 find that?
6 A. I don't know offhand. You know,
7 perhaps there's someplace in the Attorney
8 General's Office, perhaps you could look at the
9 public record. If anything ever became a public
10 matter, it would have been I assume known, there
11 would be -- would have been some public evidence
12 of it, either complaints that were filed or -- I
13 don't know. You're asking me to sort of speculate
14 as to what documentation there may be. I don't
15 know.
16 Q. I'm asking if you know. If it's
17 speculation, it's speculation.
18 A. I don't know in particular.
19 Q. Yeah. Okay.
20 Exhibit G, the complaint.
21 - - - - -
22 Thereupon, Exhibit G is marked for
23 purposes of identification.
24 - - - - -

1 MR. WOOLEY: We actually do need a
2 break right now. Let's take a break for --
3 MR. DOUGLAS: At my age is a good idea.
4 MR. WOOLEY: All right.
5 (A short recess is taken.)
6 Q. Back on the record. The Complaint has
7 been marked as Exhibit G. Do you recognize that
8 as the complaint that you approved for filing
9 against Weltman, Weinberg & Reis in April of this
10 year?
11 A. Generally, yes.
12 Q. Okay. I'm going to ask you about some
13 specific paragraphs in it. If you want to take
14 some time to look through the whole thing now,
15 that's fine with me.
16 A. That's fine. We can proceed.
17 Q. Okay. You'll see the first paragraph
18 is an introduction, right, paragraph 1?
19 A. Two paragraphs, yes.
20 Q. Right. And then paragraph No. 2 -- I'm
21 going to use the numbers.
22 A. Uh-huh.
23 Q. Is --
24 A. I see. Okay.

1 Q. Yeah. "The Defendant engages in
2 unlawful collection activities by misrepresenting
3 the level of attorney involvement in demand
4 letters and calls to consumers." Do you see that?
5 A. I see that.
6 Q. And then if you turn to the next page,
7 we go right into Jurisdiction and Legal Authority?
8 A. Okay. Yes.
9 Q. So I mean paragraph 2 is sort of a
10 summary of the gravamen of the Bureau's complaint,
11 correct?
12 A. I would say that's fair, yes.
13 Q. Okay. And you do recall approving the
14 Complaint?
15 A. Generally, yes. Not specifically.
16 Q. Okay. Going on to page 4, please. And
17 there's some specific paragraphs I want to --
18 MR. DOUGLAS: Before you go further,
19 Counselor, we ought to establish, are you
20 interrogating him as a former director of the
21 Bureau or as an attorney? Because he's not going
22 to be answering questions with regard to being an
23 attorney.
24 MR. WOOLEY: I'm asking him

1 questions --
2 MR. DOUGLAS: And for instance about --
3 MR. WOOLEY: -- about a complaint he
4 approved.
5 MR. DOUGLAS: Pardon me?
6 MR. WOOLEY: I'm asking him questions
7 about a complaint he approved. And if people want
8 to object about a particular question, go ahead.
9 But I'm going to ask him questions about a
10 complaint he approved. He said he approved it.
11 MR. DOUGLAS: Yeah, I'm sure if he
12 hadn't have been an attorney and the head of the
13 Bureau, he would have approved it anyway in the
14 course of his duties.
15 Q. Okay. Paragraph 17, 18 and 19 refer to
16 "demand letters." Do you see those?
17 A. I see that. Yes.
18 Q. Yeah. Do you recall having seen the
19 demand letters that are referenced in these
20 paragraphs?
21 A. I do not recall that offhand, no.
22 Q. Okay. And then if you look at
23 paragraph 23, it talks about, "When Weltman sends
24 demands letters, Weltman attorneys generally have

1 not reviewed a corresponding consumer's individual
2 account file to reach a professional judgment that
3 sending a letter is appropriate." Do you see
4 that?
5 A. I see that.
6 Q. And then paragraph 26, the "...demand
7 letters misrepresent...."
8 A. I see that paragraph.
9 Q. Okay. I take it you stand by the
10 complaint?
11 A. Well, I'm no longer the director of the
12 Bureau, so I don't know that it matters one way or
13 another at this point.
14 Q. But do you have any reason to believe
15 that those allegations are not true?
16 A. What I will say is that this complaint
17 would not have been filed without my approval,
18 that would have been based on a recommendation
19 memo that would have laid out their understanding,
20 the attorney's understanding of the facts that
21 they had investigated in the matter and their
22 understanding of what they thought the law -- how
23 the law stands in terms of what the significance
24 of those facts are, and that would have been the

1 basis on which the complaint was filed.
2 Q. Okay. You made a public statement
3 about the complaint when it was filed, correct?
4 A. We often did. I don't recall whether
5 we did here or not. But I assume you're going to
6 show me a document and tell me that we did.
7 Q. Exhibit H.
8 MR. DOUGLAS: Are you finished with the
9 complaint?
10 MR. WOOLEY: I might go back to it.
11 MR. DOUGLAS: Okay.
12 - - - - -
13 Thereupon, Exhibit H is marked for
14 purposes of identification.
15 - - - - -
16 Q. Exhibit H is a press release that was
17 issued by your office. And you'll see the second
18 paragraph quotes you. Do you see that?
19 A. I do.
20 Q. Would you mind reading that for the
21 record, please?
22 A. No, I would not mind. "'Debt
23 collectors who misrepresent that a lawyer was
24 involved in reviewing a consumer's account are

1 implying a level of authority and professional
2 judgement that is just not true,' said CFPB
3 Director Richard Cordray. 'Weltman, Weinberg &
4 Reis masked millions of debt collection letters
5 and phone calls with the professional standards
6 associated with attorneys when attorneys were, in
7 fact, not involved. Such illegal behavior will
8 not be allowed in the debt collection market.'"
9 Q. So that's your quote. Did you write
10 that?
11 A. I would have edited a draft of a quote.
12 Q. All right. But somebody would have
13 prepared a draft for you?
14 A. I take responsibility for it.
15 MR. MCCRAY-WORRALL: Objection to the
16 extent this is getting into privilege information.
17 Q. But you stand by the quote?
18 A. I do.
19 Q. All right. And what was it based on?
20 A. So --
21 MR. MCCRAY-WORRALL: Objection, vague.
22 A. The quote would have been based on the
23 materials I saw recommending the filing of a
24 lawsuit that I approved. It would have laid out

1 the Bureau's investigation of the facts and what
2 they understood the facts to be. And it would
3 have been based on Bureau attorneys'
4 representations as to what they thought the law
5 was in the area as applied to those facts. And --
6 and that would have been the basis for this
7 characterization of what the lawsuit was about.
8 Q. Yeah. "Weltman, Weinberg & Reis masked
9 millions of debt collection letters...with
10 professional standards." What do you recall about
11 the letters that was -- that you found to be
12 illegal behavior?
13 MR. MCCRAY-WORRALL: Objection.
14 A. So I don't recall the specifics of what
15 was in my mind or what I found. I think the
16 specific allegations, factual and legal are in the
17 complaint and have been documented in documents
18 filed in the case and they probably speak for
19 themselves.
20 Q. You've said several times things speak
21 for themselves. I understand. I'm just trying to
22 in discovery to understand your understanding.
23 A. I understand. I understand.
24 Q. Sure. Yeah.

1 Is there anything that -- about the
2 sending of the letters that isn't set forth in the
3 complaint?
4 MR. MCCRAY-WORRALL: Objection.
5 A. Well, I can just speak generally. A
6 complaint lays out with sufficient particularity
7 to initiate a case as to what our understanding of
8 the facts were. And they are allegations, they
9 are not yet proven, and they have to be determined
10 ultimately by a court. And there is a
11 representation as to the legal claims that are
12 based on those facts. And then there will be
13 further documents filed in the case that will
14 flush that out with more particularity or perhaps
15 might migrate as discovery and other matters
16 evolve. And as you know well, the cases can go
17 beyond the mere allegations that were initially
18 contained in a complaint at the outset of the
19 case.
20 Q. And the complaint that you've just read
21 here lays out problems that the agency has or with
22 the demand letters appearing on the firm's
23 letterhead. Do you see that? I directed your
24 attention --

1 A. Where are you directing my attention at
2 this point?
3 Q. The same place I had you look before,
4 paragraph 17 through 19.
5 A. So we're back to the Complaint?
6 Q. Yeah.
7 A. I do see that.
8 Q. All right. And do you recall that that
9 was part of the problem that you had with them,
10 which is why you'd have to make a public statement
11 that this was illegal behavior in these millions
12 of debt collection letters because they used the
13 letterhead?
14 MR. DOUGLAS: Objection. If you could
15 rephrase that.
16 MR. WOOLEY: I think it was clear.
17 MR. DOUGLAS: Well, I don't think so.
18 You said that you had with him. Do you mean the
19 department?
20 MR. WOOLEY: Could you just read it
21 back, please.
22 MR. DOUGLAS: The agency --
23 A. Look, I would just simply say there's a
24 complaint here. It represents the Bureau's

1 position at that time that the facts that have
2 been investigated and are alleged in the complaint
3 give rise to legal violations as specified in the
4 complaint. Paragraph 17 through 19 state what the
5 Bureau understood to be the facts. They're
6 alleged; they're not yet proven. They would need
7 to be determined by a court but those are part of
8 the complaint, yes.
9 Q. I'm focusing on your statement because
10 it's your statement in the press release that they
11 masked millions of debt collection letters in an
12 improper way that you called "illegal behavior."
13 Is that based on anything other than what is in
14 this complaint?
15 MR. MCCRAY-WORRALL: Objection to the
16 extent that calls for privileged information.
17 A. I think I already answered that. I
18 mean, I can answer it again. It would be based on
19 what was specified in this complaint and on the
20 package of materials whatever it was that came to
21 me with the recommendation memo that I would have
22 reviewed. Some of which not, all of which, may
23 have been captured in the complaint.
24 Q. Before making this public statement,

1 did it occur to you at all that Weltman, Weinberg
2 & Reis had collected debt for you when you were
3 the Attorney General and that you had twice
4 appointed them to do so?
5 MR. MCCRAY-WORRALL: Objection to the
6 extent it calls for privileged information.
7 A. I don't know that I recalled that at
8 the time. I don't know that it would or should
9 have mattered had I recalled it. You know, they
10 were collecting debt on behalf of my office when I
11 was an Ohio Attorney General. My office did many
12 things during my time there. We always attempted
13 to do what we thought was right. We did not
14 always get things correct. Often courts corrected
15 us and told us otherwise. And if so, we would
16 adapt to that and adjust to it. I'm not quite
17 sure how your line of inquiry bears on the
18 bringing of this case.
19 Q. But did you have any -- did you have
20 any reason to believe that Weltman, Weinberg &
21 Reis had improperly collected debt on your behalf
22 when you were the Attorney General?
23 MR. DOUGLAS: Objection.
24 A. Well --

1 MR. DOUGLAS: Again, on your behalf.
2 You're talking about on behalf of the State of
3 Ohio, right? You need to make a distinction
4 between the State of Ohio, the Bureau and him
5 individually.
6 MR. WOOLEY: Well, I'm talking about
7 when he was the Attorney General.
8 A. So again what the state of the law may
9 have been in 2009, what it may now be in 2017, I'm
10 not clear what kind of gap or migration may have
11 occurred during that time. So I -- so I think
12 we've been over this question before and I think I
13 answered it before.
14 Q. Yeah. I've been -- I'm going to have
15 to unpack that a little bit.
16 A. Okay.
17 Q. Do you believe there was a change in
18 the state of the law that would have made the way
19 they collected debt for you when you were the
20 Attorney General somehow a violation of the law
21 fast-forward seven years?
22 A. I don't know.
23 MR. MCCRAY-WORRALL: Objection to the
24 extent it calls for a legal conclusion.

1 A. I don't know that for sure one way or
2 the other.
3 Q. One way or the other you don't know
4 that?
5 A. Yeah, not as I sit here.
6 Q. Okay. So you had hired them twice and
7 said twice that you had the highest confidence in
8 their legal expertise, integrity and ability.
9 You'd hired them twice. You had taken no action
10 to terminate their involvement when you were the
11 Attorney General, right?
12 A. Not -- not that I can recall.
13 Q. Okay.
14 A. Uh-huh.
15 Q. And now in April of 2017, they're being
16 sued for misleading consumers, correct?
17 A. That is correct.
18 Q. Okay. What did you understand that
19 they were doing differently in collecting debt?
20 MR. MCCRAY-WORRALL: Objection.
21 Q. Between the time they collected debt
22 for the State of Ohio and when they collected debt
23 during the period -- time period covered by this
24 complaint?

1 MR. MCCRAY-WORRALL: Objection to the
2 extent it calls for privileged information.
3 A. I didn't make that comparison. I don't
4 know what to tell you on that. What I know is
5 that in the spring of this year, a recommendation
6 came to me based on an investigation that had been
7 conducted by the Bureau to file this lawsuit. And
8 I approved the lawsuit, believing that the
9 allegations of fact and the laws apply to them
10 made out a good faith case for a violation of
11 federal law. As to what would have happened or
12 might have happened eight years before that, that
13 was not part of my consideration nor do I think it
14 was germane to that decision.
15 Q. Okay. And again the gravamen of the
16 complaint is what is summarized in paragraph 2,
17 "The Defendant engages in unlawful collection
18 activities by misrepresenting the level of
19 attorney involvement in demand letters and calls
20 to consumers." Correct?
21 A. That's what paragraph 2 says.
22 Q. Okay. Exhibit I.
23 - - - - -
24 Thereupon, Exhibit I is marked for

1 purposes of identification.
2 - - - - -
3 Q. I'll represent to you that Exhibit I is
4 the form template that was sent by Weltman,
5 Weinberg & Reis as an initial demand letter when
6 they collected debt for the State of Ohio. The
7 date is an artifact of when it gets printed
8 because it remains in the system as a macro. So
9 we printed December 14 because we were getting
10 ready to come see you.
11 A. Understood.
12 Q. Understood?
13 A. Uh-huh.
14 Q. Okay. Do you recognize this document?
15 A. Offhand, no. But I see what it is.
16 And I understand what it -- what it is.
17 Q. Okay. Do you recall, though, approving
18 and in fact insisting that this be the document
19 that be sent as an initial demand letter by
20 special counsel when collecting debt for the State
21 of Ohio?
22 A. I don't recall that specifically. But
23 I don't dispute that that was the case.
24 Q. All right. It certainly would have

1 been approved by you; is that correct?
2 A. Again, not this specific letter per se.
3 But the general template I assume was -- it
4 certainly went out under my authority.
5 Q. All right. And let's just look at some
6 of the characteristics of it. So the letterhead
7 says "Richard Cordray Ohio Attorney General,"
8 correct?
9 A. Correct.
10 Q. And on the right "Collections
11 Enforcement-Special Counsel," correct?
12 A. Correct.
13 Q. And it names Alan Weinberg as special
14 counsel, correct?
15 A. On the left side and also in the
16 closing, yes.
17 Q. And then in the body of the letter
18 there's a reference to "Special Counsel" and the
19 "Attorney General" and then signed by a particular
20 lawyer. Do you see that?
21 A. I see that. Yes.
22 Q. Okay. Do you believe this letter was
23 in any way misleading to the consumers that
24 received that letter?

1 MR. DOUGLAS: Objection.
2 MR. MCCRAY-WORRALL: Objection. Calls
3 for a legal conclusion.
4 MR. DOUGLAS: And I would renew that
5 objection. Again that's an ultimate issue in this
6 case and he's not qualified, nor should he be
7 representing that he is to answer that question
8 that a judge is required to answer.
9 Q. Do you believe the letter is misleading
10 to consumers regarding the level of attorney
11 involvement?
12 MR. MCCRAY-WORRALL: Same objection.
13 A. I think that would be a matter for a
14 judge to decide.
15 Q. A judge should decide whether your
16 letter -- this is your letter, it's on your
17 letterhead?
18 A. It's on my letterhead.
19 Q. Do you have any concerns that this
20 letter may have in fact misled consumers in the
21 state of Ohio? Do you have any concerns
22 personally?
23 A. Again, you're asking for me to make a
24 judgment about a legal conclusion, and I would

1 say --
2 Q. I'm not.
3 A. And I would say --
4 Q. I'm not. I'm using plain English.
5 A. That's how --
6 Q. Do you have any concerns --
7 A. That's how I'm --
8 Q. Do you have any concerns whatsoever
9 whether this letter was misleading to consumers,
10 sir?
11 MR. MCCRAY-WORRALL: Counsel, can I
12 interject for a second? You're interrupting the
13 witness. Could you please allow him to finish --
14 A. That's not --
15 MR. DOUGLAS: -- his answer before you
16 ask another question?
17 A. So that's how I'm understanding your
18 question. "Misleading" is a legal term. But what
19 I would say is this, and again it might short
20 circuit some of what you're doing here. What we
21 may have thought in the Attorney General's Office
22 in 2009 based on the state of the law as we
23 understood it at the time may or may not be what I
24 would have thought in 2017 at the Consumer Bureau

1 based on the state of the law as it appeared to me
2 at that time. So I might have had a judgment in
3 2009 that might no longer have been my judgment in
4 2017. But I can't really speak to exactly what I
5 would have thought in 2009.
6 Q. So how would Weltman, Weinberg & Reis
7 know that?
8 A. I assume that they would keep up with
9 changes in the law and Court decisions and --
10 Q. And what sort of --
11 A. -- adapt accordingly.
12 Q. What sort of guidance did the CFPB put
13 out to make sure that if somebody said, boy, this
14 is a problem you need to change, where would we
15 find that guidance?
16 A. I can't speak specifically to where
17 that would have been.
18 Q. I've been on your website. I can't
19 find it. Where would we find it?
20 A. Well, I'm not quite sure what you're
21 getting at here. There have been no rules or
22 regulations issued on debt collection, although
23 there -- there are matters pending at the Bureau.
24 The Bureau has brought enforcement actions and

1 given guidance through other enforcement actions
2 and orders and court decisions have been rendered,
3 you know, around the country. I assume that as
4 was true then and is true now, debt collectors
5 keep up with the Court decisions and adjust their
6 behavior accordingly. And, you know, sometimes
7 those court decisions may be clear, sometimes
8 they're not clear. But the law evolves and
9 changes and it happens all the time.
10 Q. Okay. To my specific question, did the
11 CFPB put out guidance that said a letter like this
12 is illegal? A letter like Exhibit I, did the CPPB
13 put out guidance that said that?
14 A. What do you mean "guidance"?
15 Q. Guidance.
16 A. Well, the CFPB put out a lot of
17 information in a continuing flow. There would
18 have been other enforcement actions that might
19 have been decided and there would be decisions and
20 consent decrees and Court decisions. There might
21 be supervisory highlights which were put out from
22 time to time about what happened in supervising
23 entities in terms of their debt collection
24 practices, there could be guidance documents

1 separate from those. I don't know offhand whether
2 there were or weren't. There could be rules and
3 regulations which have not yet been adopted by the
4 Bureau that are in process.
5 Q. Yeah.
6 A. There's a variety of different things.
7 As to whether there was some specific document
8 that said specifically what you're asking, I don't
9 know offhand.
10 Q. Okay. This is Exhibit J.
11 - - - - -
12 Thereupon, Exhibit J is marked for
13 purposes of identification.
14 - - - - -
15 Q. This is Exhibit J. This is the demand
16 letter that was used by Weltman, Weinberg & Reis
17 during the period of time that's the subject of
18 your -- the CFPB's complaint. Do you recall
19 having seen this before?
20 A. I don't recall offhand whether I could
21 have seen it before, but I may well have.
22 Q. All right.
23 MR. MCCRAY-WORRALL: Counsel, I just
24 want to step back for just -- I want to object to

1 the extent you're making characterizations about
2 these documents.
3 Q. Do you recall seeing something like
4 this, though, when you approved the complaint?
5 A. I may well have. I don't have a
6 particular recollection of exact documents --
7 Q. Okay.
8 A. -- that were part of that package of
9 materials.
10 Q. So here's the thing. A press release
11 says this letter is horrific illegal behavior.
12 A. I don't believe it said that.
13 Q. Okay.
14 A. That's not what the --
15 Q. Let's -- let's be precise.
16 A. I don't remember it.
17 Q. You're right. You're right. I'm --
18 you're right. I'm just getting a little --
19 A. Uh-huh. Yeah.
20 Q. And I apologize. That was -- I
21 apologize.
22 A. You don't need to apologize. I
23 understand that you're passionate in supporting
24 your client here. And --

1 Q. Well --
2 A. -- I think that there are -- reasonable
3 minds could disagree about this.
4 Q. Yeah. But my client is facing an
5 existential threat to its firm because of this
6 lawsuit.
7 MR. MCCRAY-WORRALL: Counsel, are you
8 asking a question?
9 Q. And I would like to understand --
10 A. I'm sorry. Is that -- is that --
11 MR. MCCRAY-WORRALL: Or is that a
12 statement of fact?
13 Q. What's the difference between that
14 letter?
15 A. Is that a statement of fact?
16 Q. What's the difference between this
17 letter and this letter? The letter that you
18 approved that has the names of your -- you're the
19 Attorney General, the names of special counsel in
20 it approved by you, then the one that caused your
21 agency to sue them?
22 A. I'm sorry. So what documents are we
23 referring to?
24 Q. We were looking at Exhibit I and J.

1 MR. DOUGLAS: Objection. I'm going to
2 let him answer it if he wants to answer it. But
3 my point again is that even if the Attorney
4 General was wrong in his application of this law,
5 it does not affect and it does not go to relevancy
6 under 401(b) and is not a fact in consequence in
7 determining this action. Even if they're wrong
8 and your client was wrong doesn't make your client
9 right because they were wrong.
10 MR. WOOLEY: Well --
11 MR. DOUGLAS: So I'm not going to let
12 him answer -- draw that conclusion unless he
13 chooses to do so.
14 MR. MCCRAY-WORRALL: I'll also object
15 that question is vague and appears to call for a
16 legal conclusion.
17 MR. WOOLEY: Andy, I'm going to say on
18 the record intent is an issue in the case. If
19 there -- no. No. We understand the underlying
20 violations. It's our case. You're representing a
21 third party witness.
22 MR. DOUGLAS: Yes.
23 MR. WOOLEY: If there's no intent,
24 there is zero damages. Intent is a defense. If

1 you do things exactly the way the Attorney General
2 said was fine and they never tell you to change
3 it, how in the world can they establish we engaged
4 in intentional misconduct?
5 MR. DOUGLAS: That's for you to defend
6 and somebody else to prove.
7 MR. WOOLEY: But it's also for --
8 MR. DOUGLAS: Not their --
9 MR. WOOLEY: But it's also for me to
10 develop facts in discovery on, Andy, and that's
11 what I'm doing.
12 MR. DOUGLAS: Would you let us answer
13 before you proceed? That's all. I'm just telling
14 you he is not in a position to answer the
15 comparison between those two documents as a lay
16 witness. He is a lay witness in this case.
17 Q. All right. Okay. I and J. I know
18 you're a lay witness. But your -- your name's on
19 the letterhead.
20 A. It is certainly on the letterhead,
21 yeah.
22 Q. And so a consumer receives this letter,
23 sees the name of an Attorney General, there are
24 seven different references to a specific lawyer,

1 either you or Mr. Weinberg in the letter, okay?
2 Had you reviewed the account level detail before
3 this letter was sent?
4 MR. DOUGLAS: Objection. It's been
5 asked and answered --
6 MR. WOOLEY: It has not.
7 MR. DOUGLAS: -- several times.
8 MR. WOOLEY: It has not.
9 MR. DOUGLAS: Answer it one more time
10 then.
11 Q. Had you reviewed the account level
12 detail for each letter before this letter was
13 sent?
14 A. Which letter are we referring to?
15 Q. I.
16 A. Exhibit I?
17 Q. I.
18 A. Had I -- had I reviewed the account
19 level detail before the letter was sent?
20 Q. Right. Back to my son with the parking
21 tickets and the books at Ohio State.
22 A. Yeah.
23 Q. Had you reviewed his account before
24 sending this letter?

1 MR. MCCRAY-WORRALL: Objection, vague.
2 A. I don't know that I would have. But I
3 would have a sense that someone would have and in
4 the Attorney General's Office --
5 MR. DOUGLAS: To be fair about the
6 question --
7 A. -- and I don't know who that would be.
8 MR. DOUGLAS: -- he didn't send the
9 letter.
10 Q. A lawyer? Would a lawyer have reviewed
11 it?
12 A. It would depend on the facts and
13 circumstances. I don't know offhand.
14 Q. Okay. You say you don't know that you
15 would have. Were you actually looking at account
16 level detail in this high volume collection debt
17 collection?
18 MR. MCCRAY-WORRALL: Objection.
19 Q. Were you doing that, sir?
20 A. At this point you're talking about a
21 letter that was sent from the Weinberg offices,
22 okay. I would not have reviewed that letter
23 before it was sent by Alan Weinberg.
24 Q. Would you have reviewed the underlying

1 account level detail?
2 MR. MCCRAY-WORRALL: Objection.
3 Q. Would you have done that?
4 A. I'm not quite sure what you are getting
5 at here. There are multiple lawyers' names on
6 that letter, okay? It's been sent by Alan
7 Weinberg, all right? My assumption is that Alan
8 Weinberg or someone on his behalf would have
9 reviewed that detail, okay?
10 Q. Exactly. Someone on his behalf. A
11 lawyer on his behalf?
12 A. You know, depending on the wording of
13 the letter, that might be appropriate.
14 Q. Well, you have the letter in front of
15 you.
16 A. It might not --
17 Q. You have the letter in front of you.
18 A. Look, you're asking me to make
19 judgments that the judge in this case will have to
20 make. And I think you've going to have to get
21 those judgments from the judge not from me.
22 Q. It's a factual question. You have the
23 letter in front of you. For that letter, would
24 you have expected that Mr. Weinberg would have

1 reviewed the account level detail?
2 A. Or a lawyer in his firm.
3 Q. A lawyer, a lawyer, prior to that
4 letter being sent?
5 A. I may well have, I may not have. It
6 would depend on what the state of the law was and
7 how we understood it at that time. That was eight
8 years ago. Been court decisions since then, may
9 be the law has changed. So I -- you know, I don't
10 know what to tell you. You've tried to ask me
11 this a number of times --
12 Q. All right.
13 A. -- and I only have what I can say in
14 response. And I've tried to give it to you
15 several times.
16 Q. All right. So Exhibit J, the Bureau's
17 complaint says, "demand letters misrepresents that
18 attorneys at the firm have reviewed the consumer's
19 file and determined that the consumer owes the
20 amount demanded, which in fact no such review has
21 occurred." That's what the allegation is about,
22 this letter.
23 MR. MCCRAY-WORRALL: Objection. You're
24 characterizing the complaint.

1 Q. That's the --
2 A. Well, the Complaint speaks for itself.
3 It says what it says.
4 Q. So look at the letter. What letter --
5 what lawyer is represented in this letter to have
6 reviewed the consumer's file in letter J?
7 A. Well, look, again, it's up for a judge
8 to decide, not me. But the question is whether
9 that would be a fair characterization based on the
10 entirety of what is presented on this page and
11 received by an average consumer.
12 Q. You know, I appreciate it, but I
13 understand what the judge's job is. I get that.
14 I don't need -- we don't need to be continually
15 reminded of that.
16 But you have made the public statement
17 that this is illegal behavior. That's your
18 statement in the press release and it's your
19 complaint.
20 MR. MCCRAY-WORRALL: Objection.
21 A. That's -- that is what the complaint
22 alleges.
23 Q. Right.
24 A. It's not a matter for the Bureau itself

1 to determine finally, it's a matter for a Court to
2 determine, and a Court will do that.
3 Q. But in fact before you made this
4 statement to the press and called it illegal
5 behavior, you made that conclusion yourself?
6 A. I -- I did believe based on what I had
7 understood.
8 Q. You did believe?
9 A. That was --
10 Q. Looking at this now and looking at what
11 you sent out, do you still believe it? Do you
12 still believe that the letter that was sent out by
13 Weltman, Weinberg & Reis during the period of time
14 at issue in the complaint is in fact a
15 misrepresentation and is illegal?
16 MR. MCCRAY-WORRALL: Objection, it
17 calls for a legal conclusion, also object on
18 relevance grounds.
19 A. I'm not sure -- you know, I'm no longer
20 the director of the Bureau. I'm not sure what --
21 what your point is here.
22 Q. On April 17th, you described this
23 collection letter as, "'Such illegal behavior will
24 not be allowed in the debt collection market.'"

1 MR. MCCRAY-WORRALL: Objection.
2 You're --
3 Q. And you said it misrepresented that a
4 lawyer was involved in reviewing a customer's
5 account. You can look at the Exhibit H yourself.
6 I think it's a fair paraphrase from your quote.
7 MR. MCCRAY-WORRALL: Objection to the
8 extent you're assuming that it's this letter
9 that's at issue in that statement. That has not
10 been established.
11 MR. WOOLEY: For the record, we should
12 say -- I -- the objections are being interposed by
13 somebody who has yet to appear in this case --
14 MR. MCCRAY-WORRALL: I have noted my
15 appearance.
16 MR. WOOLEY: -- in any substantive way.
17 He's not been in a deposition. He's not been in a
18 court conference. And I have no basis to believe
19 that he knows anything about the file.
20 MR. MCCRAY-WORRALL: Objection.
21 BY MR. WOOLEY:
22 Q. So you make the statement in the press
23 release that this letter is "illegal behavior"?
24 A. I think the press release speaks for

1 itself. You've quoted it several times now and I
2 think accurately enough, but it speaks for itself.
3 Q. Okay. All right. I'm asking you not
4 about -- I'm not asking you for a conclusion that
5 judge might make. Richard Cordray said, "Such
6 illegal behavior...." This is the letter, I'm
7 representing that to you. If I'm wrong, I'm
8 wrong; but I'm right. This is the letter. What's
9 illegal about this letter?
10 MR. MCCRAY-WORRALL: Objection.
11 A. The allegations in the complaint detail
12 that, and there's probably been further filings in
13 the case which I have not seen that further flesh
14 out the Bureau's theories on this. And they may
15 be right or they may be wrong, but that's the case
16 that was brought.
17 MR. DOUGLAS: I recognize you're in
18 discovery.
19 A. You're --
20 MR. DOUGLAS: You're in discovery.
21 Q. I want to repeat that.
22 MR. DOUGLAS: I want to make sure that
23 you understand that he's not speaking on behalf of
24 Richard Cordray. At that time the press release

1 is the Bureau issuing it. It happens to be under
2 his name.
3 MR. WOOLEY: It's his quote, though.
4 A. As the director of the Bureau.
5 MR. DOUGLAS: We all are quoted in the
6 press on behalf over our clients.
7 Q. Am I hearing you correctly, though,
8 that you just said this was complaint that you
9 approved to sue this law firm that you worked with
10 before, they may be right and they may be wrong?
11 A. Look --
12 Q. Did I accurate -- did I just hear you
13 say that?
14 MR. DOUGLAS: I didn't hear it.
15 A. There's really nothing at issue here
16 and you're trying to make something an issue. We
17 file complaints --
18 Q. Tell him that.
19 A. No. Listen to me.
20 Q. No. No. No. You tell him that.
21 MR. MCCRAY-WORRALL: No.
22 A. I'm answering. Let me answer. We file
23 complaints in cases, we know we're not going to
24 necessarily win every case. And if a court

1 decides otherwise, we will accept that and we will
2 adapt our approach accordingly. We filed this
3 case because we thought we had an appropriate case
4 to bring. We understand at the outset of every
5 case we may be right or we may be wrong and a
6 judge will ultimately tell us that. But we feel
7 we have sufficient grounds to bring the case based
8 on the facts as we know them and the law as we
9 understand it. And that's what we did here and
10 that's what we did in every case. Now having said
11 that, we do not win every case. And that's -- you
12 know, unfortunately, that's the case. But that is
13 the fact as well.
14 Q. Okay. Do you have any basis to believe
15 -- and if you do, explain it to me -- that
16 Weltman, Weinberg & Reis would have somehow been
17 told in any way, shape or form that this letter,
18 Exhibit I, was now considered to be problematic?
19 A. I don't know on what basis.
20 MR. MCCRAY-WORRALL: Objection.
21 A. Who would tell them that? The current
22 Attorney General or -- or --
23 Q. Or perhaps the agency --
24 A. -- their own lawyers or --

1 Q. -- that puts out guidance --
2 A. -- you?
3 MR. MCCRAY-WORRALL: Objection to the
4 extent that's calling for privileged information.
5 MR. WOOLEY: A conversation with
6 Weltman, Weinberg & Reis and him is privileged?
7 MR. MCCRAY-WORRALL: About knowledge
8 that he might have had about the communication
9 with Weltman, Weinberg.
10 A. What conversation?
11 Q. I'm asking you. I'm asking you.
12 A. Do you have a hypothetical conversation
13 in mind now.
14 Q. Well, I've said it to your lawyer and I
15 talked over him, and I'm sorry. I do apologize
16 for my pace getting a little ahead of me. But as
17 you can tell, it's -- I won't say anymore.
18 Okay. There is an element of intent in
19 the case. Did people know they were doing
20 something or believe they were --
21 A. Are you testifying now?
22 Q. No. Hear me out. Hear me out.
23 A. Are you asking a question? What are
24 you doing?

1 Q. There's an element of that. Did they
2 know that they were doing something inappropriate?
3 And I'm asking you because we have you on the
4 record. Do you have any basis to believe that
5 they were told in some way, shape or form that --
6 that they couldn't send letters like --
7 A. Look --
8 Q. -- either the one as Exhibit I --
9 A. I'm not sure what you're getting at.
10 Q. -- or J?
11 A. You seem to be suggesting that I should
12 somehow change my mind about something. I'm no
13 longer the director of the Bureau. I have no
14 influence or authority to address any further
15 conduct of this case. Nobody's asking my opinion
16 at the Bureau. They will -- they will proceed
17 themselves from here. What you might think you're
18 persuading me of or what the elements of the claim
19 are and so forth is not very relevant at this
20 point. I'm not in that position anymore, so --
21 Q. Right. Okay.
22 On are you aware of any differences
23 between the way in terms of the practices,
24 procedures that were employed by Weltman between

1 the way they collected debt for the State when you
2 were the AG and the way they collected debt during
3 the time period covered by the complaint?
4 A. Am I familiar --
5 Q. Are you personally?
6 A. Am I familiar with the differences?
7 Q. Yeah.
8 A. I am not particularly familiar with the
9 differences, no. But I could also -- a relevant
10 point here is whether the law itself might have
11 evolved during that period of time. So you know
12 what --
13 Q. I see.
14 A. -- might have been done in 2009 might
15 or might not be viewed in the same way in 2017 and
16 that's -- that's a difference that you're sort of
17 -- you're wishing away here that might well
18 matter. I don't -- I don't -- I haven't followed
19 the law in this -- as carefully as people who do
20 debt collection for a living.
21 Q. I'm going to resist now -- fail to
22 resist a temptation. You said I'm wishing away.
23 I don't -- because it's not for you to ask me
24 questions. I'm trying to understand. I'm not

1 wishing away. If there is a change that made
2 something that was appropriate in 2009 and 2010
3 and 2011 inappropriate between 2014 and 2017 --
4 A. Two things.
5 Q. -- I would like to know what that is.
6 A. Yeah.
7 Q. That's all. It's a matter of fact.
8 What is that?
9 A. That's fine.
10 MR. DOUGLAS: And you'll argue that to
11 a Judge. I'm sure.
12 MR. MCCRAY-WORRALL: Objection, to.
13 A. Two things. One is you're suggesting
14 that the two letters you're comparing I and J are
15 exactly the same in all particulars. I don't know
16 that that's so. I haven't done a minute
17 comparison of them. It's not something I would
18 have done in filing the lawsuit in this case.
19 You're also suggesting that the law applicable to
20 I and J, even if they were exactly the same which
21 they may or may not be is a factual matter, is the
22 same law in 2009 as it is in 2017, and I don't
23 know that to be the case either. But those are
24 matters that you'll end up arguing to a Judge and

1 a Judge will decide them or -- or maybe you'll
2 reach a resolution prior to that. I don't know
3 how this case will proceed, but I don't really see
4 how my opinions on this at this point are
5 particularly helpful to you or to anyone in
6 deciding this case.
7 MR. WOOLEY: Okay. We're going to take
8 a little break. We want to go over some notes and
9 we can figure out how much more of this we need to
10 do.
11 MR. DOUGLAS: Yeah.
12 (A short recess is taken.)
13 BY MR. WOOLEY:
14 Q. And just one question back to the era
15 when you were the Attorney General. There were
16 people to whom you had delegated responsibility
17 for this collection activity, I've asked you
18 questions about who those people were and you're
19 clear about who you don't remember. Do you have
20 any reason to believe that those people engaged in
21 any illegal behavior with respect to the
22 correction of debt?
23 A. I certainly would hope that they
24 didn't. I don't have any reason to think that

1 they did, but it's not impossible that someone
2 might have. But I thought we put processes in
3 place to try to prevent that from happening.
4 Q. All right. Back to Exhibit H briefly.
5 In your paragraph -- in the quote that's
6 attributed to you, you talk about "professional
7 standards associated with attorneys, when
8 attorneys...." What professional standards are
9 you referring to?
10 A. I assume that I was referring to the
11 kind of professional standards that you and your
12 colleagues operate under, standards of
13 professional conduct and the like.
14 Q. Okay. So that's your assumption. Do
15 you recall, though, a little more clearly? This
16 isn't that long ago. It's --
17 A. Well, look, I would say --
18 Q. Seven, eight months ago?
19 A. I assume three things. It would be
20 professional standards that apply specifically to
21 lawyers and how they conduct themselves. It would
22 be general professional standards in the
23 profession that may or may not be written down
24 somewhere in specific, but kinds of, you know,

1 better practices. And it would also be compliance
2 with the debt collection laws since we're talking
3 about debt collection here.
4 Q. Yeah. And so set aside the compliance
5 with debt collection laws, the professional
6 standards piece --
7 A. I don't know that you can set it aside,
8 I think they're all wrapped together --
9 Q. Okay. All right.
10 A. -- in this quote. This is a shorthand,
11 nonlegal quote here.
12 Q. All right. But it is a public
13 statement that the CFPB directors believe that
14 Weltman, Weinberg & Reis hasn't lived up to the
15 professional standards required of it as
16 attorneys?
17 A. It's a shorthand version, then a
18 complaint was filed alleging violations of the
19 law, correct.
20 Q. Okay. Is it part of the CFPB's purview
21 to be the arbitrator of whether lawyers comply
22 with their professional standards?
23 MR. MCCRAY-WORRALL: Objection.
24 A. I'm not really understanding -- I mean,

1 the CFPB's authority is specified in statute, it
2 includes enforcing the law and that's what the
3 purview is. We're not disciplinary counsel if
4 that's what you're getting at.
5 Q. And so that is for other people?
6 MR. MCCRAY-WORRALL: Objection.
7 A. I'm not sure what -- what are you
8 saying "for other people"?
9 Q. You said we're not disciplinary
10 counsel. So whether or not Weltman, Weinberg &
11 Reis violated professional standards associated
12 with the practice of law, that's for other people
13 to decide; is that what you're saying?
14 A. It doesn't say professional standards
15 associated with the practice of law.
16 Q. No. I'm saying -- you're right. It
17 says professional standards associated with
18 attorneys. I'm sorry.
19 A. Yeah. Well, you know, look, you're
20 taking a comment in a press release and trying to
21 give it precise legal particulars. I don't think
22 it was intended as such. This is a
23 characterization that a lawsuit was filed based on
24 allegations of fact and claims that have to be

1 proven, have to be determined only by a court that
2 the law was violated. That's what it -- that is
3 what it's about.
4 Q. Right. Have you seen press releases
5 issued by the Department of Justice in criminal
6 matters?
7 A. I --
8 MR. DOUGLAS: Objection. There's no
9 relevance.
10 A. Relevance.
11 MR. DOUGLAS: Objection. There's no
12 relevance to that.
13 MR. WOOLEY: Well, I just want to draw
14 a comparison. If he hasn't seen them, he hasn't
15 seen.
16 MR. DOUGLAS: Well, but there's no
17 relevance to it. And if we keep letting you go
18 on, on and on as I have with regard to relevant,
19 nonrelevant matters, who knows where it's going to
20 go. I'll let him answer that one, but stay to the
21 issues in this case. He wants to know.
22 A. I'm not that familiar with Justice
23 Department criminal press releases actually.
24 Q. I might be missing it. But I'm not

1 seeing in any -- any of this press release your
2 statements about how we might be right, we might
3 be wrong, it's up for a Judge to decide. Is that
4 anywhere in here?
5 A. Look, I think that's true of every case
6 that you bring. You bring a case in a court
7 knowing that a judge will decide it.
8 Q. Yeah. And the DOJ actually says that
9 in its press releases, this is not evidence of
10 guilt, the guilt is to be determined by a court if
11 it's proven beyond a reasonable doubt. Do you
12 understand --
13 MR. MCCRAY-WORRALL: Objection.
14 Q. But that's not finding its your way
15 into your press releases?
16 MR. MCCRAY-WORRALL: Objection.
17 A. I'm not sure what you're getting at and
18 whether you're asking a question or commenting for
19 the record.
20 MR. DOUGLAS: And beyond a reasonable
21 doubt is a criminal standard, not a civil
22 standard.
23 MR. WOOLEY: I understand. Yeah.
24 So since we have everybody on the

1 record, Mr. Douglas, is -- if the case goes to
2 trial in the spring, I assume that you'll still be
3 representing Mr. Cordray, and I wouldn't want to
4 send a process server to his house. But if you
5 agree to accept service of a trial subpoena --
6 THE WITNESS: You sent a process server
7 to my house before. I had no objection to that,
8 it's perfectly permissible.
9 MR. WOOLEY: I'm trying to extend a
10 courtesy.
11 THE WITNESS: It doesn't matter.
12 MR. DOUGLAS: Send the process server
13 to his house.
14 MR. WOOLEY: Okay. No. I just -- I
15 just don't want to be accused of having contact
16 with a represented party because --
17 MR. DOUGLAS: I understand.
18 MR. WOOLEY: -- we do intend to issue a
19 trial subpoena.
20 THE WITNESS: I don't have any problem
21 with that.
22 MR. DOUGLAS: Because I don't know
23 whether or not he's -- I'm going to be
24 representing him. That's going to be up to him.

1 But I can tell you I moved into a new neighborhood
2 and I don't want to be voted out of it because a
3 process server.
4 MR. WOOLEY: Well, I don't want to have
5 contact with a represented party.
6 MR. DOUGLAS: You wouldn't do anything
7 unethical, we know that.
8 MR. WOOLEY: Thank you.
9 THE WITNESS: No problem.
10 MR. WOOLEY: Anything else? We're
11 done.
12 (A short recess is taken.)
13 MR. DOUGLAS: I'm was going to ask some
14 questions, but I don't need to. That takes care
15 of it.
16 MR. MCCRAY-WORRALL: No questions.
17 (Signature not waived.)
18 - - - - -
19 Thereupon, the foregoing proceedings
20 concluded at 11:35 a.m.
21 - - - - -
22
23
24

1 State of Ohio : C E R T I F I C A T E
County of Franklin: SS
2
I, Stacy M. Upp, a Notary Public in and for the
3 State of Ohio, certify that Richard Cordray was by
me duly sworn to testify to the whole truth in the
4 cause aforesaid; testimony then given was reduced
to stenotype in the presence of said witness,
5 afterwards transcribed by me; the foregoing is a
true record of the testimony so given; and this
6 deposition was taken at the time and place
specified on the title page.
7
Pursuant to Rule 30(e) of the Federal Rules of
8 Civil Procedure, the witness and/or the parties
have not waived review of the deposition
9 transcript.
10 I certify I am not a relative, employee,
attorney or counsel of any of the parties hereto,
11 and further I am not a relative or employee of any
attorney or counsel employed by the parties hereto,
12 or financially interested in the action.
13 IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office at Columbus, Ohio, on
14 December 21, 2017.
15
16
17
18
19
20
Stacy M. Upp, Notary Public - State of Ohio
21 My commission expires August 6, 2021.
22
23
24

Witness Errata and Signature Sheet
Correction or Change Reason Code
1-Misspelling 2-Word Omitted 3-Wrong Word
4-Clarification 5-Other (Please explain)

Page/Line	Correction or Change	Reason Code

I, Richard Cordray, have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date_____Signature_____

The witness has failed to sign the deposition within the time allowed.

Date_____Signature_____

Ref: SU26625RC S-SU P-BW

Exhibits

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CONFIDENTIAL SETTLEMENT COMMUNICATION UNDER FED. R. EVID. 408 AND LOCAL RULE 16.6(h)

1700 G Street NW, Washington, DC 20552

February 28, 2018

Via Email

James Wooley
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Re: Consumer Financial Protection Bureau v. Weltman, Weinberg & Reis Co., L.P.A. (N.D. Ohio, Case No. 1:17-cv-00817-DCN)

Dear Mr. Wooley:

Pursuant to the Court's Order dated February 26, 2018, the Consumer Financial Protection Bureau ("Bureau") submits the following itemized damages and settlement demand to Defendant Weltman, Weinberg & Reis Co., L.P.A. ("Defendant").

Damages Itemization

If successful, by statute the Bureau can obtain, among other relief, costs, civil money penalties, disgorgement or compensation for unjust enrichment, and injunctive relief limiting the activities or functions of Defendant. *See* 12 U.S.C. § 5565(a)(2).

Civil Money Penalties

Any person that violates any provision of Federal consumer financial law (including the Consumer Financial Protection Act of 2010 and the Fair Debt Collection Practices Act) shall forfeit and pay a civil penalty. 12 U.S.C. § 5565(c)(1).

Civil money penalties at the first tier may not exceed $5,639 for each day during which the violation continued. *See* 12 U.S.C. § 5565(c)(2)(A); 12 C.F.R. § 1083.1 (adjusting CFPA civil money penalties for inflation). Here, the violations continued from at least July 21, 2011 through December 31, 2017, and potentially longer if WWR continued the violative conduct at issue beyond the close of discovery. Accordingly, the maximum First Tier civil money penalties for that 2,356-day period is $13,285,484.

Disgorgement or Compensation for Unjust Enrichment

The Bureau estimates that the approximate ill-gotten gross revenue of the Defendant for July 21, 2011 through December 31, 2017, is up to $95,278,549. This amount includes the approximate gross revenue for Defendant's agency collections for the years 2016-2017 as well as an estimate of gross revenues attributable to Defendant's pre-legal collections activities for the years prior to that.

Settlement Demand

For the purposes of the mediation scheduled for March 8, 2018, and in an attempt to settle all of the claims in this action, the Bureau demands civil money penalties of $600,000.

The Bureau also demands injunctive relief as follows:

(1) Defendant and its officers, agents, servants, employees, and attorneys who have actual notice of any stipulated judgment, whether acting directly or indirectly, may not violate sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531 and 5536, or sections 807(3) or 807(10) of the FDCPA, 15 U.S.C. § 1692e(3),(10); and

(2) Defendant and its officers, agents, servants, employees, and attorneys who have actual notice of any stipulated judgment, whether acting directly or indirectly, in connection with the collection of any debt may not represent, or assist others in representing, expressly or impliedly that a communication is from an attorney, that an attorney was meaningfully involved in reviewing the consumer's account or had reached a professional judgment that making a collection attempt was warranted (including by sending demand letters or making collection calls identifying Defendant as a law firm) unless:

a. An attorney was meaningfully involved in reviewing the consumer's account and had reached a professional judgment that making a collection attempt was warranted; or

b. The representation clearly and prominently discloses that no attorney has reviewed the debt.

The Bureau believes this demand is appropriate because it addresses the conduct that violates the CFPA and the FDCPA, appropriately takes into account the mitigating factors under 12 U.S.C. § 5565(c)(3), and will enable the parties to avoid the expenditure of resources associated with trying this matter.

This demand is subject to the parties agreeing to a stipulated judgment that would be subject to approval by the Acting Director of the Bureau as well as the Court. *See* 12 U.S.C. § 5564(c).

Thank you for your attention to this matter and we look forward to WWR's response.

Sincerely,

Sarah Preis
Enforcement Attorney

CC: Rebeccah G. Watson, CFPB (via email)
Zol D. Rainey, CFPB (via email)
Jehan Patterson (via email)
Tracy K. Stratford, Jones Day (via email)
Ryan Doringo, Jones Day (via email)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CONSUMER FINANCIAL PROTECTION BUREAU,	)	CASE NO. 1:17 CV 817
Plaintiff,	)	
v.	)	JUDGE DONALD C. NUGENT
WELTMAN, WEINBERG & REIS CO., L.P.A.,	)	MEMORANDUM OPINION AND ORDER
Defendant.	)	

This matter is before the Court subsequent to a four-day trial to the Court, with an advisory jury duly empaneled and sworn pursuant to Fed. R. Civ. Pro. 39(c)(1). Following trial, the parties each submitted proposed findings of fact and conclusions of law. The issues have now been fully presented and are ready for the Court's consideration.

PROCEDURAL HISTORY

Plaintiff, the Consumer Financial Protection Bureau ("the Bureau"), filed this action on April 17, 2017, alleging that Defendant Weltman, Weinberg & Reis Co., L.P.A. ("Weltman")

violated Sections 807(3), 807(10 and 814(b)(6) for the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e(3), (10), and 1692*l*(b)(6); and, Sections 1031(a), 1036(a)(1), 1054, and 1055 of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§5531(a), 5536((a)(1), 5564, and 5565, by "misrepresenting the level of attorney involvement in demand letters and calls to consumers. (ECF #1, ¶ 1, 2). Following discovery both parties moved for summary judgment. (ECF # 44, 45). Both of these motions were denied. (ECF #61).

Trial of this matter commenced on May 1, 2018, before an advisory jury, pursuant to Fed. R. Civ. Pro. 39(c)(1). Prior to the jury's empanelment, the Plaintiff voluntarily dismissed Counts 4, 5 and 6, with prejudice, and withdrew its request for disgorgement. (ECF #79). This left Counts One through Three for trial. Count One alleged that Weltman's demand letters "misrepresented that the letters were from attorneys and that attorneys were meaningfully involved, when in most cases the attorneys were not meaningfully involved in preparing and sending the letters" in violation of Sections 807(3) and 807 (1) of the FDCPA, 15 U.S.C. § 1692e(3), (10). Count Two alleged that the same letters violated Section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A), for the same reason. Count Three alleges that this also constituted deceptive acts and practices in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§5531(a)(1) and 5536(a)(1)(B).

At trial, the Plaintiff called three witnesses: (1) Ms. Eileen Bitterman; (2) Mr. David Tommer; and, (3) Dr. Ronald Goodstein, and submitted exhibits. Defendant called two additional witnesses: (1) Chuck Pona; and, (2) Scott Weltman. On May 4, 2018, after four days of trial, the jury submitted their answers to the following interrogatories:

> 1. Do you find that the Plaintiff proved by a preponderance of the evidence that the initial demand letter sent by Weltman contained any false, deceptive, or misleading representations or means in connection with the collection of a debt? __YES__ (Enter "yes" or "no").
>
> If your answer to Interrogatory Number 1 is yes, continue to Interrogatory Number 2. If your answer is no, your deliberations are finished and you should not answer any further questions.
>
> 2. Do you find that the Plaintiff proved by a preponderance of the evidence that Weltman's lawyers were not meaningfully involved in the debt collection process. __NO__ (Enter "yes" or "no").
>
> If your answer to Interrogatory Number 2 is yes, continue to Interrogatory 3. IF your answer is no, your deliberations are finished and you should not answer any further questions.

After the advisory jury returned these findings, the parties were given a final opportunity to present their proposed findings of fact and conclusions of law.

The Court is not bound by the advisory jury's determination, but finds that their answer to Interrogatory Number 2 comports fully with the weight of the evidence presented at trial. The jury's answer to Interrogatory Number 1, however, does not correctly reconcile the evidence presented with the Court's instructions or the standard of proof required of the Plaintiff in this case. Although there was some evidence presented in support of the idea that the letters could be misleading to certain consumers, that evidence came exclusively from an expert that the Court does not find credible. Further, the Complaint relies solely on the assertion that the demand letters were misleading because they were sent from a law firm, and lawyers were not meaningfully involved in the debt collection process. The jury's finding, adopted by this Court,

that lawyers were meaningfully involved disproves the Plaintiff's sole theory of liability, and precludes recovery under the Complaint.

ANALYSIS

1. Applicable law

Neither party disputes that Weltman is a debt collector to whom the FDCPA and the CFPA apply, or that Weltman's demand letters were sent in connection with the collection or attempt to collect debts. The question at issue in this case is whether Weltman's debt collection demand letters violated the FDCPA or the CFPA. The FDCPA and the CFPA were violated if the letters used "any false, deceptive, or misleading representation or means in connection with the collection of any debt," or if they falsely represent or imply that communication is "from an attorney." 15 U.S.C. §1692e and 1692e(3). A demand letter is not false or misleading for using letterhead that "accurately describes the relevant legal entities," had an accurate and truthful signature block, and includes a "conspicuous notation that the letter is sent by a debt collector." *Sheriff v. Gillie*, 136 S. Ct. 1594 (2016).

The letters are alleged to have violated the FDCPA and the CFPA not because they contain false statements, but because they allegedly falsely imply that an attorney was meaningfully involved in the collection of the debts to which the letters relate. According to case law from various circuits, a demand letter indicating that it comes "from an attorney" can be found to be deceptive even if literally true, if the letter is not the product of an attorney's professional judgment, or if the attorney was not sufficiently involved in the collection of the debt or the drafting of the letter. *See, e.g., Nielsen v. Dickerson,* 307 F.3d 623 (7th Cir. 2002);

Lesher v. Law Offices of Mitchell N. Kay, P.C., 650 F.3d 993, 1003 (3d Cir. 2011); *Greco v. Trauner, Cohen & Thomas, LLP*, 412 F.3d 360, 364 (2d Cir. 2005); *Consumer Fin. Prot. Bureau v. Frederick J. Hanna & Assoc., P.C.*, 114 F. Supp. 3d 1342, 1363 (N.D. Ga. 2015). In order to establish any of the violations alleged in the Complaint, the Plaintiff must show, by a preponderance of the evidence, that:

1. The least sophisticated debtor would believe, based on the initial demand letter, that Weltman was acting as an attorney in the debt collection process;[1] and,

2. Weltman's lawyers were not meaningfully involved in the debt collection process; and,

3. The representation that Weltman was acting as an attorney in the debt collection process was material.

The least sophisticated debtor is to be considered uninformed, naive, and trusting, but also possessing reasonable intelligence, and capable of making basic logical deductions and inferences. *Sanford v. Portfolio Recovery Assocs.*, LLC, NO. 12-11526, 2013 WL 3798285, at *12 (E.D. Mich. July 22, 2013)(citations omitted). It is not a requirement that the Defendant intended to mislead or deceive a consumer. This standard is "lower than simply examining whether particular language would deceive or mislead a reasonable debtor," *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1054 (6th Cir. 1999), but does not give credence to "frivolous

[1] A violation of CFPA's prohibition against using deceptive acts or practices uses a "reasonable person" standard rather than a "least sophisticated consumer" standard. The elements otherwise mirror those in the FDCPA. Therefore, if an act or omission does not violate the FDCPA's provisions, it will not violate the less stringent standard under the CFPA. *See, e.g., Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1192 (9th Cir. 2016); *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611 (6th Cir. 2014).

misinterpretations or nonsensical interpretations. . . ." *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 592 (6th Cir. 2009).

There is no specific test for what constitutes "meaningfully involved." Cases have held that an attorney has sufficient personal involvement in the process if one reviews the file of the individual consumer to whom the letter was sent and/or exercises some "professional judgment as to the delinquency and validity of any individual debt" before the letter is issued. *See, e.g. Consumer Financial Protection Bureau v. Frederick J. Hanna & Assoc.*, P.C., 114 F.Supp. 3d 1342, 1363 (N.D. Ga. 2015); *Avila v. Rubin*, 84 F.3d 222, 229 (7th Cir. 1996); *Lesher v. Law Offices of Mitchell N. Kay, P.C.*, 650 F.3d 993, 999 (3d Cir. 2011). This is not necessarily a set requirement for meaningful involvement, however, as this is a question that must be determined based on the individual facts and totality of the circumstances in each case. *See, Miller v. Wolpoff & Abramson, LLP*, 321 F.3d 292, 304 (2d cir. 2003).

In order for a representation to be material, it must be likely to influence the least sophisticated debtor's decision on whether or not to pay a debt. *See, Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323, 326-27 (6th Cir. 2012). Creating a legitimate fear of the actual consequences of owing a valid debt is not misleading or deceptive under the act.

2. Stipulated Facts[2]

The parties stipulated to the following facts:

1. The Bureau (Plaintiff) is an independent agency of the United States that enforces and

[2] The stipulated facts were taken from the Parties' Stipulation of Facts (ECF #66), and from stipulations agreed to by the parties at trial, which were communicated to the Jury through the Court's jury instructions. (ECF #77 at 80-81).

issues regulations pursuant to federal consumer financial law, including the Fair Debt Collection Practices Act and the Consumer Financial Protection Act of 2010.

2. Weltman (Defendant) is an Ohio professional corporation organized under the laws of Ohio that operates as a law firm.

3. Weltman has maintained a website, www.weltman.com, from at least July 21st, 2011, to date.

4. Weltman is a debt collector under the Fair Debt Collection Practices Act and a covered person under the Consumer Financial Protection Act of 2010.

3. Evidence at Trial

Eileen Bitterman, the compliance officer and a shareholder of Weltman, is a lawyer licensed to practice law in Ohio. She is responsible for creating policies and overseeing training. (ECF #75 at 44). She testified as follows.

Weltman is owned by shareholders, all of whom are attorneys. (ECF #75 at 130). Weltman is hired by creditors to collect a variety of types of consumer debt. (ECF #75 at 44-45). During the relevant time period, Weltman had up to 7,000 creditor clients. (ECF #75 at 98). Weltman has a consumer collection unit that is staffed by non-attorneys but is overseen by an attorney who is the business unit leader, and collections support attorneys. (ECF #75 at 48). They are paid on a contingency fee basis, based on the amount of money they are able to collect from consumers. (ECF #76 at 94, 107).

In an attempt to collect on consumer debts, Weltman sends out letters that are generated from attorney-approved templates. (ECF #75 at 50-51). One of these templates is an initial

demand letter that includes the name of Weltman, Weinberg & Reis Co., L.P.A. and the words "Attorneys at Law," at the top of the letter. (ECF #75 at 57, 86). These letters are signed by Weltman, and are on Weltman letterhead. (ECF #75 at 57-58, 80, 86). Ms. Bitterman testified that 4.2 million demand letters, from these templates, were sent to consumers between July 21, 2011 and October 31, 2017. (ECF #75 at 91). She also testified that some templates for follow-up letters also state that "this law firm is a debt collector attempting to collect this debt for our client," or other references indicating that Weltman is a law firm, which are a truthful statements. (ECF #75 at 64-66).

Weltman does not contend that they are practicing law when they send demand letters. (ECF #76 at 96). They do not require an attorney to review every individual consumer account before a demand letter is sent. (ECF #75 at 98-99). Weltman attorneys do not form a professional judgment about the validity of a debt or the appropriateness of sending a demand letter before the letters are sent. (ECF #75 at 99). Weltman receives information from creditor clients about consumer accounts and data is loaded into Weltman's computer system. (ECF #75 at 73-74). The data is then "scrubbed." Scrubbing is a process by which outside vendors use criteria established by Weltman's lawyers to flag consumers who should not be sent collection letters. (ECF #75 at 102-103).

Some of Weltman's training manuals indicate that "because WWR is a law firm, a consumer may have the incorrect assumption that a legal action will be automatically filed against them" and that "certain consumers may have prioritized paying the debt because the law firm is in a better position to file suit than a collection agency." (ECF #75 at 108, 112). If a client wants advice on whether to pursue litigation, Weltman has non-attorney audit employees

review the consumer's information to see if the account is eligible. These employees follow policies and procedures provided to them by Weltman attorneys. (ECF #75 at 114). If an account is flagged as not eligible for litigation, an attorney could then review the file, and before a lawsuit can be filed, an attorney must review the consumer's account. (ECF #75 at 114). Weltman has attorneys licensed in only seven states, but does nationwide debt collection. If an account is elevated to litigation in a state where no Weltman attorney is licensed, Weltman may refer the case to a different law firm, who would then have to send another demand letter informing the consumer that the firm is acting as a debt collector. (ECF #75 at 115-116).

Weltman has a formal compliance program that is developed and approved by attorneys, including the shareholders and the Board. (ECF #130-131). It has hundreds of policies and procedures for delegating, educating, and supervising staff, for auditing compliance across the business units and ensuring compliance with client processes and procedures as well as Weltman's processes and procedures. (ECF #75 at 127-129, 132-134, 180; ECF #76 at 10-36). These are drafted by attorney shareholders, go through several layers of attorney review, and are eventually approved by attorney Board members. (ECF #75 at 128-130, 132, 182-183; ECF #76 at 10-36). They are also enforced by attorneys. (ECF #76 at 11-35). Attorneys are involved in bringing clients to the firm, drafting client contracts, checking their reputation, interacting with the client, and discussing the available data and documentation, the history of their portfolio and types of accounts, which consumers are represented by attorneys, any asset reviews that have occurred, and arbitration or bankruptcy information, reviewing the clients procedures and policies, and evaluating whether the client is a trustworthy and legally compliant creditor. (ECF #75 at 149-150, 167-169; ECF #76 at 72-73). Attorneys assess issues that may arise with

statutes of limitations, arbitration clauses, choice of law issues, how interest is calculated, last date of payment, deceased debtors and other legal questions. (ECF # 153-54; ECF #76 at 8-9)). Many of these issues must be addressed by an attorney before a demand letter ever goes out. (ECF #75 at 157). Using their legal knowledge the attorneys create procedures for analysis that can be taught to non-attorney employees or programmed for automated implementation or programming of the "scrubbing" criteria. (ECF #75 at 157-159).

Ms. Bitterman also testified that these same procedures used in the processes complained of in this lawsuit, including electronic communication and automated scrubbing processes were previously approved by the Ohio Attorney General and used by the firm when working as special counsel for the collection of debts owed to the State of Ohio. (ECF #76 at 43-44, 58-59). The evidence showed that Richard Cordray, who was the head of Plaintiff, CFPB when this lawsuit was filed, was the Ohio Attorney General when Defendant Weltman was hired to collect those state debts. When collecting for the State of Ohio, Attorney General Cordray, the same person ultimately responsible for the filing of this lawsuit, directed Weltman to use the Ohio Attorney General's letterhead on Weltman's demand letters for the state. He also required Weltman to state in the letter that they were "special counsel," and to use the words "Attorney at Law" and "collections enforcement special counsel" on the demand letter. (ECF #76 at 52-54).

Ms. Bitterman testified that as a Weltman attorney, in charge of compliance, having talked to debtors and having access to the complaint log, she is not aware of any complaints given directly to the firm stating that their letters were confusing due to their identification as a law firm. (ECF #76 at 62-64). She also stated that she is not aware of any holding from any court finding that Weltman had misled a consumer. (ECF #76 at 89, 105). She acknowledged,

however, being aware of multiple lawsuits, in both state and federal courts, filed against the firm alleging that their demand letters were misleading for implying that there is meaningful attorney involvement in the demand letters. (ECF #76 at 86-89). She testified she is also unaware of any person who prioritized payment, or paid a debt not owed, because the demand letters came from a law firm, rather than identifying simply as a debt collector. (ECF #76 at 63-64). Weltman provided "over a million recorded consumer phone calls," none of which were cited by the Plaintiff as evidence of confusion, materiality, or harm stemming from the alleged misrepresentation in this case. (ECF #76 at 67-68).

Mr. Tommer, the director of consumer collections and a non-attorney, also testified at trial. He testified that he works with law firm attorneys to develop workflow strategies for the collection of consumer debts. (ECF #76 at 114-115). He testified that the supervisors in the "agency unit," which falls under the consumer collection business unit, are not attorneys. (ECF #76 at 117-119). He reports to Chuck Pona, who is an attorney, and who oversees the consumer collection unit. (ECF #76 at 139). He also testified that no attorneys work "directly under " the agency collections group. (ECF # 76 at 120). When accounts are taken in by Weltman, Weltman load the data, scrub the electronic data, and then if the files survive the scrub, and there is a valid address, a demand letter is generated and sent within two to three days from intake. (ECF #76 at 129-130). This entire process is automated. (ECF #76 at 130). Attorneys develop the scrub process, but Mr. Tommer was unaware of any other role attorneys would have in the scrub process. (ECF #76 at 130).

When initial demand letters don't result in payment, clients may reclaim the files or the files may go to the audit department to be assessed for additional actions, including the filing of a

suit. (ECF #76 at 133). The suit audit department gathers information to give to the attorneys to make this determination. (ECF #76 at 133-134).

Mr. Tommer testified that attorneys are meaningfully involved in a debt collection before the consumer is mailed an initial demand letter. (ECF #76 at 141). They run the firm, and every day he and his team interact with or take direction from an attorney while doing their jobs. (ECF #76 at 141-142). The demand letters were written by Eileen Bitterman, an attorney, and her team. (ECF #76 at 142). Attorneys make the decision whether to take on a client, and perform the reviews of potential clients' documents, legal terms and conditions relating to the debt. (ECF #76 at 143-144). Attorneys are involved at the onset of the scrubbing process for the high volume clients. (ECF #76 at 144). Attorneys also look at and oversee any alterations and changes in internal processes, implementation of any new letter, and procedures and policies utilized on a day to day basis, scripting for collectors, and training materials. (ECF #76 at 146-147).

The Plaintiff also called Dr. Ronald Goldstein, an associate marketing professor at the McDonough School of Business at Georgetown University, who was asked to assess whether consumers believe a lawyer is involved in reviewing an account, and the decision to send demand letters. (ECF #76 at 154-155). He was offered and accepted as an expert witness. (ECF #76 at 162).

Dr. Goldstein testified that he gave a field study survey to 634 people from the "relevant population," defined as "people who had used their credit card in the last five years for personal or household reasons" or "had borrowed money in the last five years for personal, household reasons," but not from a friend or family. (ECF #76 at 177-180). He stated that he did not want

to survey anyone who actually received Weltman's demand letter, any lawyers, or any marketing researchers because they would be biased, but he did not take any action to determine if anyone in the survey group had actually ever received a Weltman letter. (ECF #76 at 178-180, 195-196). He used three groups. One was shown the Weltman demand letter, and one was given a letter that purported to be from Weltman, Weinberg & Reis Ltd. , used the phrase "collection services" rather than "attorneys at law." The third group used the name WW&R, rather than "Weltman, Weinberg & Reis, Ltd. (ECF #76 at 182 -183). Dr. Goldstein then asked a series of questions which led him to the finding that 40% of the first group believed a lawyer reviewed the account, 20% of the second group believed a lawyer reviewed the account, and 13% of the third group believed that a lawyer reviewed the account. (ECF #76 at 191-192). No definition was provided for what it means to "review the account." (ECF #76 at 202). He also tested the question "who sent the letter" and found that 50% of the people with the original letter believed it was sent by a law firm or lawyer. He himself testified that simply the use of the name Weltman, Weinberg & Reis, without any reference to a legal indicator, such as L.P.A. or "attorney at law," was perceived as sounding like a law firm. (ECF #76 at 195).

Dr. Goldstein also testified that while he designed the survey, he did not conduct the initial interviews; did not recruit the people who were surveyed; did not design the technological programming; delegated work to a research team; and, hired graphic designers to make changes to the letters. Nonetheless he testified that he was "meaningfully involved" in conducting the survey because all of the other people were working under his guidance and supervision. (ECF #76 at 199).

Defendant called Charles Pona to testify. He is an attorney who is currently managing the

consumer collections department at Weltman, is a shareholder in the firm, and is on the management committee. (ECF #76 at 216-217). There are currently 20-25 attorneys in the consumer collections department. (ECF #76 at 222). The attorneys are continuously available to any non-attorney members of the unit to answer questions and give advice. They hold weekly meetings with the managers, and invite people from the client services area, human resources and IT staff to participate. (ECF #76 at 224). All attorneys are involved in compliance issues, but about 8-10 years ago a full time compliance department was started to focus on compliance with state and federal laws. (ECF #76 at 224). All written procedures and policies are sent to the attorneys on the management committee by a steering committee which includes compliance members. (ECF #76 at 225). Mr. Pona also testified that the firm has never been found to have violated any law related to debt collection practices, and that he is not aware of any ethical violations that have ever been found against the firm in any state. (ECF #76 at 227).

Mr. Pona testified that attorneys are involved in client acquisition and due diligence; IT requirements; contracting, including obtaining warranties as to the validity of the debts put forth for collection; sampling documentation and terms from collection accounts, including calculation of interest rates, analyzing default provisions, reviewing statutes of limitations, and determining when arbitration is required; reviewing for responsible parties; debtor asset review; permissible fees; develop criteria for scrubs that weed out non-collectible accounts; and, drafting the demand letters. (ECF #76 at 230-256).

Mr. Scott Weltman was also called by the defense. He is also an attorney who is currently the managing shareholder of the Weltman firm. (ECF #77 at 28). There are currently 25 attorney shareholders in the firm, and approximately 60 attorneys overall. (ECF #77 at 34).

At times the firm has had up to 120-140 attorneys at a time. (ECF #77 at 34). Mr. Weltman testified that the firm has never been found to have violated any law, and that none of the firm's lawyers have ever been found to have committed ethical violations. (ECF #77 at 39). When working for the Ohio Attorney General the firm was chosen and continuously audited and the state never had a complaint with how they managed their debt collection practices. (ECF #77 at 40). He also testified that Ms. Bitterman and Mr. Pona correctly testified as to the involvement that attorneys have in the debt collection processes at Weltman. (ECF #77 at 41-42). Mr. Weltman testified that everything in the demand letter is truthful. (ECF #77 at 62).

FINDINGS OF FACT/CONCLUSIONS OF LAW

The Court makes the following findings of fact and conclusions of law based upon the evidence presented at trial:

1. This Court has subject-matter jurisdiction over this matter under 12 U.S.C. §5565(a)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

2. Weltman regularly collects or attempts to collect consumer debts and, therefore, is a "debt collector" as defined under the FDCPA.

3. Weltman collects debt related to consumer credit, and is, therefore, a "covered person" as defined under the CFPA.

4. Weltman is a legal professional association operating as a law firm, with a fully integrated collection agency. The firm is owned exclusively by attorney shareholders and the Board of Directors consists of five such shareholders.

5. Weltman also employs non-attorneys in the debt collection units.

6. Weltman sends out letters that are generated from attorney created and attorney approved templates. One of these templates is an initial demand letter printed on law firm letterhead, with the name of the firm appearing in all caps and in bold at the top with "ATTORNEYS AT LAW" printed directly beneath. "Weltman, Weinberg & Reis Co., L.P.A." is listed as the signatory on these letters.

7. The demand letters accurately describe the identity and legal description of the entity sending the letter. As such, it cannot be fairly described as false or misleading simply for correctly identifying Weltman as a law firm, and as the signatory.

8. The initial demand letter advises the putative debtor (1) that the debt has been placed with Weltman for collection and (2) that the consumer has specific rights under the FDCPA. These representations are both truthful.

9. The demand letter is sent on Weltman's letterhead, and accurately conveys the fact that Weltman is a law firm that has been retained to collect the putative debt. The letter does not state that an attorney has reviewed the particular circumstances of the account, does not mention any potential legal action, and is not signed by an attorney.

10. The demand letter template, used to generate the demand letters sent by Weltman reads as follows:

> Please be advised that the above referenced account has been placed with us to collect the outstanding balance due and owing on this account to the current creditor referenced above. As of the date of this letter you owe the amount listed above. Therefore, it is important that you contact us at [phone number] to discuss an appropriate resolution for this matter.
>
> This communication is from a debt collector attempting to collect this debt for the current creditor and any information obtained will be used for that purpose. Unless you dispute the validity of this debt, or any portion

> thereof, within thirty (30) days after receipt of this letter, we will assume the debt is valid. If you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment and a copy of such verification or judgment will be mailed to you. If you request in writing within the thirty (30) day period, we will provide you with the name and address of the orginal creditor if different from the current creditor.
>
> Thank you for your attention to this matter.
>
> Sincerely,
>
> Weltman, Weinberg & Reis Co., L.P.A.

11. Most of the content of the letter follows the language of the FDCPA. The first two sentences provide the information required by 15 U.S.C. §1692g(a)(1) and (2). The disclosure in the next paragraph that the communication is from a debt collector is nearly identical to the language of 15 U.S.C. §1692e(11), and the rest of that paragraph contains the exact language required by 15 U.S.C. §1692g(a)(3)-(5).

12. Weltman is not practicing law when they send demand letters.

13. Weltman's demand letters can be interpreted to imply that an attorney is "meaningfully involved" in the debt collection process.

14. Weltman does not require an attorney to review every individual consumer account before a demand letter is sent, and Weltman attorneys do not form a professional judgment about the validity of a debt or the appropriateness of sending a demand letter before the letters are sent.

15. Weltman obtains information from creditor clients about consumer accounts, and data is loaded into Weltman's computer system. Attorneys are involved in bringing clients to the firm, drafting client contracts, checking their reputation, interacting with the client, and

discussing the available data and documentation, the history of their portfolio and types accounts, which consumers are represented by attorneys, any asset reviews that have occurred, and arbitration or bankruptcy information, reviewing the clients procedures and policies, and evaluating whether the client is a trustworthy and legally compliant creditor. This takes place before demand letters are sent.

16. Attorneys obtain warranties as to the validity of the debts put forth for collection; sampling documentation and terms from collection accounts, including calculation of interest rates, analyzing default provisions, reviewing statutes of limitations, and determining when arbitration is required; reviewing for responsible parties; debtor asset review; and the validity of fees.

17. The data provided by Weltman's clients is "scrubbed." Scrubbing is a process by which outside vendors use criteria established by Weltman's lawyers to flag consumers who should not be sent collection letters. Attorneys, using their legal knowledge create procedures and criteria for analysis that can be taught to non-attorney employees or programmed for automated implementation or programming of the "scrubbing" criteria. This takes place before demand letters are sent.

18. Weltman has a formal compliance program that is developed and approved by attorneys, including the shareholders and the Board.

19. Weltman has hundreds of policies and procedures for collecting debts, as well as educating, and supervising staff.

20. Weltman's policies and procedures are drafted by attorney shareholders, go through several layers of attorney review, and are eventually approved by attorney Board members. They

are also enforced by attorneys.

21. Weltman conducts routine audits for compliance across the business units and ensures compliance with client's processes and procedures as well as Weltman's internal processes and procedures.

22. Attorneys assess issues that may arise with statutes of limitations, arbitration clauses, choice of law issues, how interest is calculated, last date of payment, deceased debtors and other legal questions. Many of these issues must be addressed by an attorney before a demand letter is sent.

23. Attorneys draft the demand letter templates, and they are approved by the attorneys in Weltman's Compliance Audit Department.

24. Attorneys and non-attorney staff work together on a daily basis, and interact in weekly meetings. Weltman attorneys oversee all departments and are responsible for the training and oversight of all non-attorney staff.

25. Weltman reviews cases for litigation and litigates collection actions in the states where its attorneys are licensed.

26. There has never been a finding in any jurisdiction that Weltman's letters or any other of its statements contain falsehoods or misrepresentations.

27. Weltman collected debts for the State of Ohio using substantially similar demand letters to the ones at issue in this case, and following the same processes and procedures it follows for all other debt collection clients. The Ohio Attorney General, Richard Cordray, approved of these letters and with full knowledge of their content approved the use of these letters for the State of Ohio's collection efforts.

28. Despite requiring similar indications and disclosures of attorney involvement in the debt collection letters used on behalf of the State of Ohio, Richard Cordray, when he became head of the CFPB, authorized this lawsuit against Weltman for truthfully identifying themselves as a lawfirm and as attorneys, and for signing their demand letters with the firm name.

29. Plaintiff offered no evidence to show that any consumer was harmed by Weltman's practice of identifying itself as a law firm in their demand letters.

30. Plaintiff offered no evidence to show that any consumer did or would be inclined to prioritize payment for the debts referenced in Weltman's demand letters over any other debt they may have owed.

31. Plaintiff offered no evidence to show that any consumer did or would be inclined to pay the amount sought in Weltman's demand letters even if they did not owe the debt.

32. Plaintiff's expert witness did not present credible evidence from which the fact finder could infer that any consumer's were misled by Weltman's demand letter.

33. The expert testified that his research showed that 40% of the people who read the letter would think that a lawyer had "reviewed " the account.

34. His testimony also showed, however, that 20% of people thought a lawyer "reviewed" the account even when no mention of a law firm, or attorney was made in the letter.

35. His survey did not ask what a consumer meant when they said a lawyer "reviewed" the account; did not ask whether a consumer could have been biased based on collection actions they may have experienced or other criteria; did not ask whether consumers would have felt misled or confused if they knew an attorney was involved in the debt collection process to the same extent that Weltman attorneys were shown to have been involved; and, did not ask whether

a perceived attorney review would have influenced their decisions about whether and when to pay the debt reference in the letter.

36. The FDCPA prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. §1692e. This includes using any "false representation or deceptive means to collect or attempt to collect any debt," and making "false representation or implication that . . . any communication is from an attorney." 15 U.S.C. § 1692e(3), (10).

37. This determination must be made from the point of view of the "least sophisticated consumer." *Kistner v. Law Offices of Michael P. Margalefsky LLC*, 518 F.3d 433, 438 (6th Cir. 2008).

38. The CFPA prohibits any violation of the FDCPA, as well as "any unfair, deceptive, or abusive practice" in connection with consumer products or services. 12 U.S.C. §§ 5481(12)(H), (14); 5531(a); 5536(a)(1)(A), (B). The standard under the CFPA is the same as the standard under the FDCPA, but is viewed from the perspective of reasonable consumers.

39. If there is no violation under the FDCPA in this case, there can be no violation under the CFPA.

40. Courts have held that when an attorney signs a letter on law firm letterhead, the least sophisticated consumer may believe that the attorney was involved in the debt collection process. Thus, they have concluded that if the attorney is not meaningfully involved in that process, the letter may be deceptive or misleading under the FDCPA.

41. Weltman's demand letters were truthful on their face.

42. Weltman attorneys were meaningfully and substantially involved in the debt

collection process both before and after the issuance of the demand letters.

43. Plaintiff did not prove by a preponderance of the evidence that Weltman's letters were false, misleading, or deceptive.

44. A misleading representation is only actionable under the FDCPA if it is material. *See FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 630-31 (6th Cir. 2014).

45. A representation is material under the FDCPA if it would influence the least sophisticated consumer's decision on whether and when to pay a debt. *See, e.g., Boucher v. Fin. Sys. Of Green Bay, Inc.* , 880 F.3d 362, 366 (7th Cir. 2018). Under the CFPA, a false representation is material if it is likely to influence a reasonable consumer to pay a debt. *See Fanning v. F.T.C.*, 821 F.3d 164, 173 (1st Cir. 2016).

46. Even if Weltman's letters had misrepresented the level of attorney involvement, Plaintiff could not prevail because there is no evidence that any consumer's decision on when and whether to pay a debt was influenced by the inclusion of the attorney identifiers in Weltman's demand letters.

47. In light of the above factual findings and conclusions of law, the Court finds that Plaintiff has failed to prove its case by a preponderance of the evidence.

CONCLUSION

For the foregoing reasons this Court finds that Plaintiff failed to prove by a preponderance of the evidence its claims in Counts One, Two, and Three of the Complaint. Therefore, judgment is entered in favor of the Defendant, Weltman, Weinberg & Reis Co., L.P.A. and against Plaintiff, Consumer Financial Protection Bureau, on all of its remaining

claims. All costs are assessed to the Plaintiff. This case is hereby terminated. IT IS SO ORDERED.

Donald C. Nugent
Judge Donald C. Nugent

DATED: July 25, 2018

From: Patterson, Jehan (CFPB) <Jehan.Patterson@cfpb.gov>
Sent: Monday, November 26, 2018 11:34 AM
To: Wooley, James R. <jrwooley@JonesDay.com>; Stratford, Tracy K. <tkstratford@JonesDay.com>; Doringo, Ryan A. <radoringo@jonesday.com>
Cc: Preis, Sarah (CFPB) <Sarah.Preis@cfpb.gov>; Rainey, Zol (CFPB) <Zol.Rainey@cfpb.gov>; Watson, Rebeccah (CFPB) <Rebeccah.Watson@cfpb.gov>
Subject: CFPB v. WWR

Jim, Tracy, and Ryan,

So that we may comply with the Court's order granting in part and denying in part WWR's bill of costs (ECF 97), please provide the following information for your client:

Full name
Addressee (if applicable)
Address
Tax Identification Number

Please also advise whether WWR will accept payment of taxed costs by credit card.

Thank you.

Best,
Jehan

Jehan Patterson
Enforcement Attorney
Bureau of Consumer Financial Protection
Office: (202) 435-7264
Cell: (202) 578-1384
consumerfinance.gov

UNITED STATES GOVERNMENT
CONSUMER FINANCIAL PROTECTION BUREAU
JERRY J SALINAS
FOR OFFICIAL USE ONLY
US GOVERNMENT TAX EXEMPT

78-964/914 1198

Date 12-4-2018

Pay to the Order of Weltman, Weinberg + Reis Co., L.P.A. $10,845.65

Ten thousand eight hundred forty-five & 65/100 Dollars

NOT TO EXCEED 2500.00

citibank

PAYABLE THROUGH CITIBANK, N.A.
701 E. 60TH STREET NORTH, SIOUX FALLS, SD 57104 605-331-2626

Memo Court Costs

Jerry Salinas

[redacted]

STATEMENT FOR THE RECORD

SUBMITTED TO THE

HOUSE COMMITTEE ON FINANCIAL SERVICES

FIRST SESSION

116th CONGRESS

MARCH 7, 2019

Chairwoman Waters, Ranking Member McHenry and Members of the Committee on Financial Services,

Veterans Education Success (VES) is a nonprofit 501(c)(3) organization dedicated to advancing higher education success for veterans, service members, and military families, and to protecting the integrity and promise of the GI Bill and other federal education programs.

In executing that mission, particularly when it comes to student loans, VES has found that the Consumer Financial Protection Bureau's (Bureau) Office of Servicemember Affairs (OSA) and Student Loan Ombudsman are extremely helpful in protecting the interests of servicemembers, veterans, their dependents and their survivors.

VES appreciates the opportunity to address the Committee about the Bureau's actions in regard to the Military Lending Act, the proposed changes to the Payday Rule, and the Consumers First Act.

MILITARY LENDING ACT

Broad bipartisan support led to enactment of the Military Lending Act in the Fiscal 2007 National Defense Authorization Act (FY '07 NDAA) in response to an escalating problem of military separations of servicemembers from service due to financial problems caused by predatory lending that the Department of Defense (DoD) had noticed over the preceding half-decade or so.

The MLA's provisions include:

- 36 percent annualized rate referred to as the Military Annual Percentage Rate (MAPR)
- Provides an optional safe harbor from liability for certain procedures that creditors may use in connection with identifying covered borrowers;
- Requires creditors to provide written and oral disclosures in addition to those required by Truth In Lending Act (TILA);
- Prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses, and certain unreasonable notice requirements;
- Restricts loan rollovers, renewals, and refinancing by some types of creditors;

Amendments to the MLA in 2013 granted enforcement authority for the MLA's requirements to the agencies specified in section 108 of TILA. These agencies include the Board of Governors of the Federal Reserve System (Board), the Bureau, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Federal Trade Commission (FTC).

2015 DoD revisions to the MLA implementing regulation enhanced the MLA by:

- Extending the MLA's protections to a broader range of credit products;
- Modifying the MAPR to include certain additional fees and charges;
- Altering the provisions of the optional safe harbor available to creditors for identification of covered borrowers;
- Modifying the disclosures creditors are required to provide to covered borrowers;
- Modifying the prohibition on rolling over, renewing, or refinancing consumer credit; and
- Implementing statutory changes, including provisions related to administrative enforcement and civil liability for MLA violations (for knowingly violating the MLA,

there is potential for criminal penalties). Participation fees generally must be included in the MAPR, but would not be included in the APR.[1]

One way to measure the impact of the MLA's success is by tracking military relief society loans to servicemembers for payday loan problems. The Navy-Marine Corps Relief Society (NMCRS) provides zero-interest loans to Navy and Marine Corps active duty servicemembers and retirees. From 2004 until 2006 the NMCRS had annual requests for assistance with payday loans from on average more than 1500 active duty servicemembers, and over 100 retired servicemembers.[2]

Those numbers plummeted after the MLA took effect. In 2018, the Navy-Marine Corps Relief Society had to help only ***three*** servicemembers due to their involvement with payday loans, and 14 Navy or Marine Corps retirees. (The fact that more retirees are currently asking for help because of trouble with payday loans than active duty servicemembers is probably indicative of the fact that retirees are not protected by the MLA.)

This represents an approximately 99.8% reduction in financial distress among active duty sailors and marines caused by payday loans. Admittedly, the NMCRS does not see every single case of financial distress that occurs in the Department of the Navy, but the reduction gives a fairly accurate sense of the current scale of the problem. The MLA is inarguably an incredibly successful federal consumer protection law.

The importance of the MLA to DoD is also reflected in its position in the Federal Code. DoD has been described in the past by military personnel advocates as being 'allergic' to taking on missions that are not viewed as part of its core war-fighting mission. The Servicemember Civil Relief Act, which has been codified in various forms since at least 1940, traces its roots back to the Civil War but is located at 50 U.S.C. § 3901.[3] The Post 9/11 GI Bill, over which DoD retains the authority to set eligibility requirements for purposes of personnel retention, is located at 38 U.S.C. § 3301.

The MLA is located at 10 U.S.C. § 987, right in the heart of Title 10 and the law on military personnel. This reflects Congress and DoD's determination that the MLA is integral to its war-fighting mission.

Last Fall, news reports began to trickle out that the Bureau was considering halting supervisory examinations of lenders for MLA compliance.[4] It has come to the attention of VES that while the Bureau has decided that it does not have sufficient authority to conduct supervisory examinations and in fact has halted them, to our knowledge none of the other federal financial regulators

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[1] FDIC Consumer Compliance Examination Manual, V-13.1 (September 2016); *available at* https://www.fdic.gov/regulations/compliance/manual/5/v-13.1.pdf. (Last viewed: March 3, 2019)

[2] *Available at* https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5c7d3ec0e79c70579f44162c/1551711937100/Navy-MarineCorps+Relief+PayDay+Loans.March2019.pdf

[3] Mason, R. Chuck (27 August 2014). "The Servicemembers Civil Relief Act (SCRA): An Explanation". U.S. Department of Justice. Congressional Research Service. (Last viewed: March 3, 2019)

[4] Chris Arnold, White House Takes Aim at Financial Protections for Military NPR (2018), https://www.npr.org/2018/08/13/637992389/white-house-takes-aim-at-financial-protections-for-military (last visited Mar 4, 2019).

empowered by TILA to enforce the MLA (as mentioned earlier: the Board, the FDIC, the FTC, the NCUA, and the OCC) have taken a similar position.

There's a negative impact on business, too: Non-depository lenders that previously would have been warned about unintentional MLA violations and given the chance to correct their actions during supervisory examinations are instead now not given any supervisory check and allowed to continue violating the law (most likely unwittingly) and therefore becoming subject to the possibility of multi-million dollar fines. In fact, the Bureau's actions have created a situation where only one class of lender, non-depository lenders that otherwise escape scrutiny of financial regulators, enjoy the freedom from supervisory MLA examinations. Specifically, only payday lenders are currently excluded from supervisory exams. It could be said that through this action the Bureau is 'picking winners and losers' when it comes to financial regulation. There isn't a single business in America that would prefer to run the risk of seven-figure penalties versus being warned and given the option of correcting their behavior beforehand. This is the equivalent of regulatory Russian roulette.

Last year the Army failed to meet its recruiting target by 6,500 soldiers.[5] The Marine Corps is offering up to $70,000 retention bonuses to infantry squad leaders, which is historically high.[6] At a time of sub-four percent unemployment it is extremely hard to find qualified people to serve in the United States Armed Forces. Additionally, DoD has put into place a policy of "Continuous Evaluation" (CE) of security clearance eligibility, meaning that servicemembers with security clearances will have their financial status reviewed in real time.[7] Without the Bureau's vigilance, the tightening of the security clearance eligibility process will result in even more servicemembers unnecessarily losing their security clearances and most likely their careers.

Servicemember advocates have repeatedly sounded the alarm. They have written to the Administration[8] that "the harm is not only to servicemembers. The harm also extends to the Pentagon's costs and military readiness. The Defense Department has explained:

> "[T]he anticipated benefit of [ensuring the Military Lending Act's 36% interest rate cap] are the savings attributable to lower recruiting and training expenses associated with the reduction in involuntary separation of Service members where financial distress is a contributing factor. Each separation of a Service member is estimated to cost the Department $58,250, and the Department estimates that each year approximately 4,640 to 7,580 Service members are involuntarily separated where financial distress is a

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[5] Meghann Myers, The Army Is Supposed To Be Growing, But This Year, It Didn't At All (September 2018), https://www.armytimes.com/news/your-army/2018/09/21/the-army-is-supposed-to-be-growing-but-this-year-it-didnt-at-all/ (last visited March 4, 2019).

[6] Shawn Snow, The Corps Is Dishing Out Big Bonuses for Grunts and Other Jobs. Here's What's in it For You (June 2018), https://www.marinecorpstimes.com/news/your-marine-corps/2018/07/02/the-corps-is-dishing-out-big-bonuses-for-grunts-and-other-jobs-heres-whats-in-it-for-you/ (last visited March 4, 2019).

[7] Anthony Camilli and Joshua Friedman, WARNO: New Security Clearance Guidelines Make it More Important Than Ever for Servicemembers To Monitor Their Credit (August 2018), https://www.consumerfinance.gov/about-us/blog/warno-new-security-clearance-guidelines-make-it-more-important-ever-servicemembers-monitor-their-credit/ (last visited March 4, 2019)

[8] *Available at:* https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5b907bc62b6a2870db064a79/1536195527148/MLA+Letter+w+Additional+signers+%28FINAL%29.Sept2018.pdf (last visited March 4, 2019).

> contributing factor. If the Department's proposed regulation could reduce the annual number of involuntary separations where financial distress is a contributing factor from between 5 to 30 percent, the savings to the Department could be in the range of approximately $13.51 million to $132.52 million each year."[9]

Enacting policies that have the potential to exacerbate the situation is curious to say the least. The Bureau has chosen a course of action that is bad for national security, bad for the Treasury, bad for the careers of individual servicemembers and bad for industry.

VES is aware of the fact that the Bureau has been unable to complete formal supervisory findings after examining non-depository lenders for MLA compliance. In a perfect world, the legal ambiguities that the Bureau's lawyers have identified would prompt quick action by Congress. Unfortunately, we don't live in a perfect world.

Thus, while we respect the Director's request for Congress to act to shore up legal authorities, we remain concerned about the negative impacts on national security, the Treasury, servicemembers' careers and non-depository lenders that unintentionally violate the MLA, as well as the potential for a lengthy legislative process that could drag on for years. The ghosts of old bills with powerful bipartisan support but never made it to a President's desk for signing are common on Capitol Hill.

We humbly request that while Congress considers the Bureau's request, the Bureau resume supervisory examinations for MLA compliance.

PAYDAY RULE

Last month the Bureau announced that it was reopening the "Payday Rule," specifically the underwriting provision called "ability to repay" that applies to payday, single-payment vehicle title and longer-term balloon payment loans.

In their 2006 report "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents," DoD called for there to be an ability to repay provision in what was to become the Military Lending Act.[10] Unfortunately, that did not come to pass. But in 2017 the Bureau announced the Payday Rule, which had as its centerpiece such a provision.

'Ability to repay' a loan is not a foreign concept when it comes to basic principles of economics. As New Keynesian economists have explained:

> "To be more concrete, let us use the 'good borrower, bad borrower' example. In writing a loan contract with a potential borrower, the bank has two polar options. First, it might try to approximate the complete state-contingent contract by making the borrower's actions part of the agreement and by allowing repayment to depend on the outcome of the borrower's project.... [I]ts obvious drawback is the cost of monitoring that it involves.

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[9] 80 FR 43559 (July 22, 2015).

[10] Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents, 7 (2006), http://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf (last visited Mar 4, 2019).

> The bank's other option is to write a very simple agreement ('payment of such amount to be made on such date') and then ***to make the loan only if it believes that the borrower is likely to repay*** (emphasis added). The second approach usually dominates the first, of course, especially for small borrowers."[11]

VES considers the Payday Rule to be the flip side of the same coin as the MLA. Whereas the 36 percent rate cap of the MLA does a provably good job of protecting the ability of servicemembers to repay the short-term, small-dollar loans that they take out, we consider the 'ability to repay' provision of the Payday Rule as providing needed protections for veterans, their families and their survivors once servicemembers are out of uniform.

A 2012 report by Pew Charitable Trusts revealed that only 16 percent of payday loan borrowers used them to deal with an unexpected expense, such as a car repair or emergency medical expense. A whopping 69 percent used it to cover a recurring expense, such as utilities, credit card bills, rent or mortgage payments, or food.[12] As we all know, the numbers of Americans living paycheck to paycheck has not declined in the intervening years.

A 2015 Pew article tackles one of the main misconceptions about borrowers who use payday loans: "Many people mistakenly assume that borrowers go to payday lenders because they are 'unbanked,' meaning they're outside the traditional banking system either by choice or by necessity. However, two of the key requirements for obtaining a payday loan are proof of income and a checking account. Thus, these customers, by definition, have to be 'banked.'"[13] This is the case for many veterans as well, because DoD has required servicemembers to open checking accounts to receive direct deposit payments for several decades.

The 2015 Pew article went on to point out that "the average payday loan borrower is in debt for nearly six months a year and pays an average of $520 in fees for $375 in credit."[14] Borrowers who are taking out high-interest, small-dollar loans to meet every day living expenses are ill-equipped to handle such a large, prolonged expense and often resort to repeat borrowing – prolonging the cycle of debt.

One of the main criticisms of the 'ability to repay' provision is that of access to credit: If lenders are forced to make loans only to borrowers who are able to meet more stringent underwriting standards they could go out of business. The resulting dearth of lenders could possibly be more harmful to borrowers, the argument goes.

A 2016 report that found "likely military [payday] borrowers showed increased access to credit card borrowing after the restrictions placed on payday lending by the MLA – credit limits increased by an average of 17-25% on total credit card accounts following passage of the

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[11] N. Gregory Mankiw, David Romer & Benjamin M Friedman, 2 New Keynesian Economics, 305 (1997).
[12] Payday Lending in America: Who Borrows, Where They Borrow, and Why, The Pew Charitable Trusts (2012), https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why (last visited Mar 5, 2019).
[13] Nick Bourke, Reforming Payday Loans Begins with Understanding How They Really Work the Pew Charitable Trusts (2015), https://www.pewtrusts.org/en/research-and-analysis/articles/2015/12/03/reforming-payday-loans-begins-with-understanding-how-they-really-work (last visited Mar 5, 2019).
[14] *Ibid.*

MLA."[15] It is suspected that improved credit scores, largely due to the absence of cyclical, long term, high-interest debt, enabled access to cheaper credit card debt. Even subprime credit card debt is cheaper than many payday loans.[16]

Another report noted that usage of Tax Refund Anticipation Loans (RAL) dropped in states where payday lending was capped, which is "apparently a reflection of an interruption in the debt cycle of most former payday borrowers and the improved consumer welfare that follows;" however, pawn shop usage and traditional installment loan usage both saw increases in the wake of payday interest rate caps.[17]

Pew noted that after Colorado regulated the payday lending nearly a decade ago some stores closed, while the customer base of other stores grew to accommodate more borrowers, ultimately "serving about the same number of borrowers under the reform legislation but with better outcomes, including more affordable repayments, fewer defaults, and more reasonable loan durations."[18]

This is an important point: neither the 'ability to repay' provision in the Payday Rule nor the 36 percent rate cap in the MLA are intended to prevent short term, small-dollar lending and borrowing. Access to credit is a legitimate concern, but as has been noted, 36 percent interest rate caps and more stringent underwriting requirements are more akin to financial pruning of the marketplace, rather than financial clear-cutting or slash and burn farming. VES does not want to end the sale of financial products to low income borrowers; we merely want to ensure that the products that are offered do not result in financial catastrophe for military-connected borrowers.

For these reasons we oppose the Bureau's proposed revisions to the Payday Rule.

CONSUMERS FIRST ACT

Because of limited knowledge and expertise, VES declines to endorse the bill in its entirety.

However, we welcome and wholeheartedly agree with the provision that contains a Sense of Congress that calls on the "Bureau to immediately resume supervision of its regulated entities for compliance with the Military Lending Act to ensure for the most robust and efficient protection of active-duty servicemembers and their families," for all of the reasons noted earlier.

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[15] Roman Galperin and Kaili Maricio, Tough Times Borrowing: Effects of Fringe Lending Regulation on Credit Standing, Search, and Access, April 2016.
[16] Center for Responsible Lending, Shark Free Waters (2016), 4, https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-shark-free-waters-aug2016.pdf (last visited Mar 5, 2019).
[17] Id, 4-5.
[18] Nick Bourke, Reforming Payday Loans Begins with Understanding How They Really Work the Pew Charitable Trusts (2015), https://www.pewtrusts.org/en/research-and-analysis/articles/2015/12/03/reforming-payday-loans-begins-with-understanding-how-they-really-work (last visited Mar 5, 2019).

VES supports the proposed amendments to Section 1013(a)(1) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(a)(1)), which would add a limitation on political appointees at the Bureau.

VES sees this as a way to limit the regulatory uncertainty that has been noted earlier, which has the potential to cause negative impacts on lenders who unintentionally violate the MLA, as well as the recent negative impact on DoD's retention of security clearance holders (and thus national security as a whole), the careers of security clearance holders, and the nation's finances.

VES declines to support the other proposed amendments to Section 1013(a)(1) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(a)(1)), which would give the Bureau a duty to provide adequate staffing, due to a lack of expertise on the issue. We would encourage the Bureau to consider the effect on the servicemembers, veterans, their families and survivors that we serve before making any drastic staffing reductions in the future.

Finally, we support the provision of the Consumers First Act that would create an Office of Students and Young Consumers. Student loan concerns are a surprisingly large issue for both active duty servicemembers and veterans, their family members and survivors, not to mention America as a whole. It has been estimated that over 200,000 servicemembers collectively owe $1.9 billion in outstanding student loans, and that roughly 25 percent of veterans carry some amount of student loan debt.[19]

Establishing this Office would elevate the issues the people that we represent face, particularly in regards to student loan servicers and predatory schools.

Veterans Education Success is grateful for the commitment of the Members of the House Financial Services Committee in supporting our nation's servicemembers, veterans, their families and their survivors.

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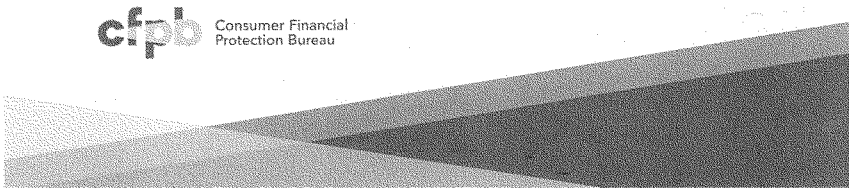
[19] Mike Saunders, Here Are Some Surprising Ways Troops and Vets Can Cut Their Student Loan Debt, Military Times (2019), https://rebootcamp.militarytimes.com/veterans/2019/02/19/here-are-some-surprising-ways-troops-and-vets-can-cut-their-student-loan-debt/ (last visited Mar 5, 2019).

November 2017

Spotlight on serving limited English proficient consumers

Language access in the consumer financial marketplace



CFPB research, tools, and resources for financial educators

An essential part of the mission of the Consumer Financial Protection Bureau (CFPB) is to empower consumers to take more control over their financial lives. Since the CFPB opened its doors in 2011, it has worked to improve the financial literacy of consumers in the United States and to ensure access to tools, information, and opportunities for skill-building that can support consumers in managing their finances and working to achieve their own life goals.

The CFPB's principal financial education mandate is set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act created the CFPB and mandated the establishment of an Office of Financial Education to "be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions."[1]

To better help consumers make well-informed financial decisions and achieve their own life goals, the CFPB has sought to increase understanding of effective practices in financial education.

The CFPB conducts this research to inform the CFPB's own financial education efforts and to amplify the work of others who have a common interest in improving the financial well-being of consumers.

The CFPB's goal for its financial education activities is to help consumers move toward financial well-being. In the CFPB's definition of financial well-being, consumers:

- have control over day-to-day, month-to-month finances;
- have the capability to absorb a financial shock;
- are on track to meet financial goals; and

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[1] *See* 12 U.S.C. § 5493(d)(1).

- have the financial freedom to make choices that allow them to enjoy life.

To learn more, visit the CFPB Resources for Financial Educators webpage at consumerfinance.gov/adult-financial-education.

To contact the CFPB regarding this report or financial education in general, send an email to financialeducation@cfpb.gov.

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1. Introduction and executive summary

1.1 Background

The CFPB works to ensure a fair, transparent, and reliable consumer financial marketplace. A well-functioning marketplace includes financially capable consumers. Financial education can help consumers make the most of their circumstances and what the consumer financial marketplace has to offer. However, consumers who are Limited English Proficient[2] (LEP) often encounter significant barriers to participating in the consumer financial marketplace, including completing key financial documents, managing bank accounts, resolving problems with financial products, and accessing financial education. Further, a lack of English-language skills can hinder their financial literacy, making it difficult to conduct everyday financial affairs.[3]

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[2] As used in this document, LEP means individuals who do not speak English as their primary language and who have a limited ability to speak, write, read, or understand English.

[3] U.S. Government Accountability Office, GAO-10-518, *Consumer Finance: Factors Affecting the Financial Literacy of Individuals with Limited English Proficiency* (May 2010), *available at* http://www.gao.gov/products/GAO-10-518.

As consumers navigate their financial lives, they face many choices and decisions. A principle of effective financial education is the creation of an environment that empowers consumers to take actions that support their financial goals.[4] This principle can be applied to the creation of a well-functioning financial marketplace that is accessible to all consumers regardless of their primary language.

Financial institutions can play an important role in creating an inclusive environment in the financial marketplace. They are uniquely positioned to support access to financial products and services because of the various touch points they have with consumers, including those with limited English proficiency. Financial transactions can present an opportunity for consumers to build their financial capability and participate in the financial system. Building education into the offering and use of financial products can be an effective strategy for facilitating positive financial outcomes for consumers.[5] Moreover, the effective integration of LEP consumers into the financial marketplace has the potential to create positive benefits for consumers and the financial services industry alike.

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[4] The CFPB released a report in June 2017 entitled *Effective financial education: Five principles and how to use them* (2017), *available at* consumerfinance.gov/data-research/research-reports/effective-financial-education-five-principles-and-how-use-them/. The five principles build on insights marshalled from many fields of study about how people make financial decisions, and on what the CFPB has learned about consumers' experiences in the financial marketplace. The Principles are compiled from research on what drives people to take actions aimed at improving their money situation. The five principles are: (1) know the individuals and families receiving services; (2) provide actionable, relevant, and timely information; (3) improve key financial skills; (4) build on motivation; and (5) make it easy to make good decisions and follow through.

[5] Journal of Financial Counseling and Planning, *Saving for Success: Financial Education and Savings Goal Achievement in Individual Development Accounts* (January 2011), *available at* http://files.eric.ed.gov/fulltext/EJ952959.pdf.

1.2 Report content

This report presents information that the CFPB learned in interviews with a broad spectrum of stakeholders, including representatives from financial institutions of various sizes, trade associations, other federal agencies, and non-profit consumer advocacy groups. In addition, this report includes secondary research on current practices for serving LEP individuals in the financial services industry and on the experience of consumers as reflected through the CFPB's complaint system.

It is important to note that the practices described in this report are not exhaustive and that this document is not intended to interpret federal consumer financial law or any other statute or rule and should not be construed as a mandate, guidance, or a requirement. The purpose of this report is to share general consumer information and raise awareness about the issues that LEP consumers face when participating in the consumer financial marketplace. It is not intended to provide legal advice or regulatory guidance or serve as a substitute for financial institutions' own legal counsel.

1.2.1 Insights from financial institutions

The CFPB identified several common themes in its interviews with representatives from several financial institutions. The themes are outlined below and further detailed in Section 3.

- **Assessment of language needs.** Many institutions review demographic data about the localities they serve from sources such as the U.S. Census Bureau to determine their potential customers' likely language preferences. Some institutions with a national footprint largely focus their resources on building out capabilities to serve Spanish-speaking consumers, while regional institutions typically align any language-focused resources with local demographics.
- **Centralized point of contact for technical assistance.** Many larger institutions that provide some language services have a central point of contact that provides internal technical assistance to the institution's employees on any language-related initiative. Depending on the institution, some functions of the central point of contact may include: annually reviewing processes and procedures for using non-English languages; evaluating which areas of business would most benefit from LEP services; developing quality control mechanisms; and establishing translation and interpretation policies.

- **Translation and interpretation systems.** Most of the larger institutions that provide language services reported having systems for translation (written) and interpretation (oral) to help ensure consistency and accuracy.[6] Many institutions translate for meaning (rather than word-for-word), use back-translation (which involves taking a translated document and having another party translate it back to English) to validate third-party translations, and use internal or external bilingual glossaries. Some institutions leverage various technological solutions, including those from third-party vendors, to assist with translations and interpretations.

- **Training and support for staff and contractors.** Institutions that provide language services use various methods to ensure that staff and contractors have the necessary language and cultural competencies to serve LEP consumers. Some institutions hire employees with foreign language fluency, cultural competency, or financial expertise. These institutions often require either an internal or external certification for written and verbal competency. Institutions that rely primarily on third-party translators or interpreters often retain some language experts on staff for quality control purposes.

- **Interactions with consumers.** Institutions that provide language services shared a range of approaches to interact with LEP consumers in their preferred language in different settings. Many institutions provide verbal interpretations via phone and offer multiple language settings on their digital services and access points. Most of the institutions reported that their written contracts or agreements were available only in English.

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[6] This paper follows the convention of translation referring to written language and interpretation referring to spoken language.

1.2.2 Additional insights

The CFPB identified additional insights from trade associations, federal agencies, and non-profit consumer advocacy groups. These insights are outlined below.

- There is a general understanding that language cannot always be separated from culture, and that offering information in languages other than English does not necessarily mean that all LEP populations will be able to access, understand, or use the information provided.
- In some cases the challenge is not translating materials, but rather ensuring that materials are written at a reading level that is accessible to the average U.S. adult regardless of the language used.
- In many families, children play a role in helping LEP relatives understand legal terms and other highly-specialized terminology, which the children may or may not translate or interpret accurately or fully understand themselves.
- There are no nationally-recognized organizations that offer *financial* interpreter and translator certification.
- In general, the number of certified financial interpreters and translators is low and the availability of translation services with the capacity to handle high volumes of translation work is limited, particularly for languages other than Spanish.
- Using a glossary of terms is helpful to maintain consistency. However, not all financial institutions or other entities use glossaries, and those that use glossaries vary in the translations used. The inconsistency of the translation of terms across the financial services industry and other entities can sometimes cause confusion for consumers.
- To communicate the intended meaning, successful translation and interpretation of financial terms requires language fluency, cultural competency, and financial expertise. For example, technical terms in the U.S. financial system such as "overdraft protection," "balloon payment," "401(k)" – may not have equivalent terms in some languages. Even if equivalent terms exist, translations may create more confusion than clarity.

2. Background

2.1 Language needs

Over 65 million people, or about 21 percent of the U.S. population over the age of five, speak a language other than English at home.[7] Of these, two-fifths have limited proficiency in English.

Spanish is the most common non-English language spoken at home, with approximately 40 million speakers in the U.S.[8] Spanish speakers also comprise the largest share of the LEP population, followed by Chinese, Vietnamese, Korean, and Tagalog speakers. The number and share of LEP speakers of each of these languages is shown in Table 1. These five languages are spoken by more than 78 percent of LEP individuals. While LEP individuals tend to be concentrated in the states with the largest populations, several smaller states including New Jersey, Hawaii, and Nevada have relatively high proportions of residents with limited English

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[7] U.S. Census Bureau, *2016 American Community Survey 1-Year Estimates , Table B16001: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over* (2016), *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.

[8] *Ibid.*

proficiency.[9] Overall, LEP residents in California, Texas, and New York account for nearly 50 percent of the total LEP population in the United States.

The LEP population overlaps significantly with the immigrant population in the United States. The U.S. Census Bureau collects data on the English-speaking ability of the U.S. foreign-born population, which they define as anyone who is not a U.S. citizen or national at birth.[10] Of the approximately 43 million foreign-born individuals over the age of five living in the U.S., about half have limited English proficiency.[11] Moreover, foreign-born individuals comprise more than 80 percent of the LEP population in the United States.

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[9] U.S. Census Bureau, *2016 American Community Survey 1-Year Estimates, Table B06007: Place of Birth by Language Spoken at Home and Ability to Speak English in the United States* (2016), *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_B06007&prodType=table.

[10] U.S. Census Bureau, *2015 Subject Definitions* (2015), *available at* https://www.census.gov/programs-surveys/acs/technical-documentation/code-lists.html.

[11] U.S. Census Bureau, *2016 American Community Survey 1-Year Estimates , Table B16005: Nativity by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Older* (2016), *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_B16005&prodType=table.

TABLE 1: TOP FIVE MOST COMMONLY SPOKEN LANGUAGES BY LEP INDIVIDUALS IN THE U.S.[12]

Language	Speaker population*	LEP population	Percent of speaker population	Percent of total LEP population
Spanish	40,489,813	16,590,392	41.0%	63.6%
Chinese	3,372,930	1,854,311	55.0%	7.1%
Vietnamese	1,509,993	875,720	58.0%	3.4%
Korean	1,088,788	583,054	53.6%	2.2%
Tagalog	1,701,960	542,749	31.9%	2.1%

*Number of people who reported speaking a language other than English at home.

2.2 Challenges associated with limited English proficiency

LEP consumers often face numerous obstacles to accessing financial products and services. Many of these challenges stem from language access issues. Financial disclosures and written documents are generally not available in LEP consumers' preferred languages, and some financial institutions do not have bilingual employees or access to interpretation services.

2.2.1 Language access

Consumers with limited English proficiency face language-based barriers across the financial services industry. The Federal Deposit Insurance Corporation's (FDIC) biennial survey on

[12] U.S. Census Bureau, *2016 American Community Survey 1-Year Estimates , Table B16001: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over* (2016), *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk.

unbanked and underbanked households indicated that households that spoke only Spanish were unbanked (defined as lacking a checking or savings account) at five times the rate of households where Spanish was not the only language spoken.[13] In particular, the 2015 survey found that 31 percent of households that spoke only Spanish were unbanked compared to 6.5 percent of households where Spanish was not the only language spoken. Nearly a third of households that only spoke Spanish were underbanked (defined as having an account at an insured institution but also obtaining financial services and products outside the banking system), compared to one-fifth of households where Spanish was not the only language spoken. The share of households that only spoke Spanish that were underbanked in the 2015 survey increased significantly from the share in the 2013 survey, from 23.7 percent to 29.1 percent.[14] These results show that many Spanish-speaking LEP households continue to face persistent barriers to accessing mainstream financial products.

The CFPB's research on the financial education needs of immigrants, including those with limited English proficiency, further demonstrates the language access issues in the financial marketplace.[15] The CFPB identified the ubiquity of technical terms unique to the U.S. financial system as a key challenge for immigrants. Inconsistency in the translations of such terms was also identified as an issue. Technical terms may not have equivalent terms in some languages, and even if equivalent terms exist, translations may create more confusion than clarity. As a result, successful translation and interpretation of financial terms requires language fluency, cultural competency, and financial expertise.

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[13] Federal Deposit Insurance Corporation, *2015 FDIC National Survey of Unbanked and Underbanked Households* (2016), *available at* https://www.fdic.gov/householdsurvey/.

[14] The report noted that the increase in the underbanked share of households that spoke only Spanish between 2013 and 2015 was statistically significant at the 10 percent confidence level.

[15] CFPB, *Financial education programs serving immigrant populations* (2016), *available at* consumerfinance.gov/about-us/blog/immigrants-facing-unique-financial-challenges/.

The CFPB's report on the financial education needs of immigrants also identified that children often play a role in helping LEP relatives understand legal terms and other highly-specialized terminology.[16] However, children might not translate or interpret accurately, or fully understand the complex financial or legal concepts themselves.

In addition to the research reviewed above, the CFPB accepts consumer complaints about financial products and services and has received complaints from consumers that express common themes associated with limited English proficiency. In many of these complaints, consumers described a lack of translated material. Others noted a lack of interpretation services. Complaints about translation and interpretation services also tended to describe confusion and misunderstanding. In many complaints, consumers reported that they did not understand the terms of a financial product or service due to a language barrier. These observations illustrate the challenges that some consumers face when attempting to participate in the consumer financial marketplace.

2.2.2 Financial literacy

In addition to language access issues, LEP consumers frequently face unique barriers to strengthening their financial capability. The Government Accountability Office (GAO) studied the extent to which limited English proficiency creates barriers to developing the knowledge and skills necessary for effective money management in the U.S. financial system.[17] The GAO interviewed staff at financial institutions, federal agencies, and community and advocacy organizations that work with LEP individuals. It found that limited proficiency in English hindered LEP consumers' ability to communicate with English-speaking staff, initiate financial transactions, and access financial tools and educational materials. The GAO has specifically reported that LEP individuals have difficulty completing key financial documents such as

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[16] GAO 2010.

[17] *Ibid.*

applications and contracts; managing bank accounts, including writing checks and tracking withdrawals and deposits; asking questions about and resolving problems with financial products and services; and accessing financial education materials.

The GAO also found that having limited English proficiency exacerbates the challenges that many consumers, including proficient English speakers, confront with complex financial products. Citing two of its previous reports, the GAO in 2010 noted that credit card disclosures were often written above the eighth-grade reading level, which, at that time, the GAO identified as the average reading level of about half the U.S. adult population.[18] Similarly, the GAO identified eleventh-grade reading level as the average difficulty of disclosures for alternative mortgage products.[19] Focus groups conducted by the GAO[20] and a report by Lutheran Immigration and Refugee Service[21] indicated it can take up to five years of regular communication and practice in English for an individual who lacks English proficiency to acquire the advanced literacy skills necessary to understand complex written communication.

The relationship between English proficiency and financial literacy is especially apparent in the mortgage market. According to focus groups conducted on behalf of Freddie Mac and Fannie Mae, Spanish-speaking and Vietnamese-speaking LEP mortgage borrowers often do not

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[18] *Ibid.*

[19] U.S. Government Accountability Office, GAO-06-1021, *Impact on Defaults Remains Unclear, but Disclosure of Risks to Borrowers Could Be Improved* (September 2006), *available at* http://www.gao.gov/products/GAO-06-1021.

[20] GAO 2010.

[21] Lutheran Immigration and Refugee Service, *Financial Literacy for Newcomers: Weaving Immigrant Needs into Financial Education* (2006), *available at* www.higheradvantage.org/wp-content/uploads/2012/05/rw_financial_literacy.pdf.

understand English documents and often misinterpreted the English documents.[22] A report by the California Reinvestment Coalition that analyzed Home Affordable Modification Program (HAMP) data and survey data from housing counselors also found that LEP borrowers had an especially difficult time navigating the complex mortgage loss mitigation process.[23]

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[22] Freddie Mac and Fannie Mae, *Language Access for Limited English Proficiency Borrowers: Final Report* (2017), *available at* https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-Access-Final-Report-June-2017.pdf.

[23] California Reinvestment Coalition and Urban Strategies Council, *Race to the Bottom: An Analysis of HAMP Loan Modification Outcomes by Race and Ethnicity for California* (2011), *available at* http://www.calreinvest.org/news/race-to-the-bottom-an-analysis-of-hamp-loan-modification-outcomes-by-race-and-ethnicity-for-california.

3. Industry interviews: Common themes

While LEP communities often face challenges in the marketplace, there are many financial service industry entities that serve them.

To prepare this report, the CFPB conducted unstructured interviews with representatives from a number of financial institutions of various sizes and trade associations in April 2017. The CFPB then summarized what it heard from these entities about how they interact with LEP consumers. The practices described below were drawn from these conversations and the CFPB's broader understanding of the market. The list of practices is not intended to be comprehensive or representative of industry practices as a whole.

While the CFPB believes that gathering and sharing information about providing financial products and services to LEP consumers is important, the practices described in this document are for informational purposes and do not constitute an endorsement of specific practices by the CFPB. Moreover, we recognize that language services may not be available in many circumstances. Whether a financial institution decides to provide services in languages other than English and the extent of those services throughout the product lifecycle may depend on many considerations, including the institution's particular circumstances.

It is important to note that the practices described in this report are not exhaustive and that this document is not intended to interpret federal consumer financial law or any other statute or rule and should not be construed as a mandate, guidance, or a requirement. The purpose of this report is to share general consumer information and raise awareness about the issues that LEP consumers face when participating in the consumer financial marketplace. It is not intended to provide legal advice or regulatory guidance or serve as a substitute for financial institutions' own legal counsel.

3.1 Assessment of language needs

Many institutions review demographic data from the U.S. Census Bureau on the localities they serve to determine their potential customers' likely language preferences. Some institutions request their customers' language preferences to inform communications with customers. In fact, the Federal Housing Finance Agency recently announced the addition of a language preference question to the Uniform Residential Loan Application (URLA), to assist lenders in identifying the language preference of mortgage applicants who choose to provide that information.

Institutions with a national footprint largely focus their language access resources on building out their capacity to serve Spanish-speaking consumers, including hiring bilingual agents and providing in-language servicing for particular product lines. Many cited national demographics as the reason for this choice. These institutions generally provide some services in languages other than English or Spanish through third-party language line interpreters. To align any language-focused resources with local demographics, some institutions with a regional focus provide certain support in Spanish, Chinese, and several other languages.

Those institutions with whom the CFPB spoke also noted that they pay close attention to the demographics and language preferences around current and planned branch locations. For example, some institutions hire branch personnel with specific language and cultural competencies.

Some institutions specifically highlighted their efforts to have the language capabilities of their employee base reflect the diversity of their customer base and to develop products and services with that customer base in mind. For example, one institution mentioned that 80 percent of its branch staff is bilingual. This institution provides forms to consumers in English, but offers translations online in Chinese and Spanish.

3.2 Centralized point of contact for technical assistance

Many of the larger institutions that provide language services indicated they have a central point of contact for technical assistance to help the institution's employees address any matters

related to language. While this central group or office may have a variety of functions across institutions, commonalities include providing subject matter expertise on relevant laws and regulations and developing translation and interpretation frameworks and processes.

The central point of contact is often used to discuss, document, and evaluate policies on a regular basis for any business lines that provide products and services in one or more non-English languages. This group or office may also conduct annual reviews for improving and refining relevant processes and procedures.

At some larger institutions, this central point of contact may also provide assistance to the institution as it evaluates which areas of its business would most benefit from LEP services. This could include the products and the stage in those products' lifecycles where language services might provide the greatest value for LEP consumers.

Depending on the institution, this central point of contact may develop quality control mechanisms for interpretation and/or translation. For example, the point of contact may conduct quality assurance testing and monitoring of customer assistance provided in languages other than English.

Across the larger institutions that use a central point of contact, this group or office generally establishes translation and interpretation policies, including legal review of written documents (if available); manages glossaries of financial terms; establishes methods to validate translation; and provides vetting of third-party providers, among other functions.

3.3 Translation and interpretation systems

Most of the large financial institutions that provide language services have systems to ensure consistency and accuracy of translation and interpretation. The institutions with such systems have established protocols to ensure that translations are accurate, culturally appropriate, and

at the proper reading comprehension level for the intended audience. In addition, many of these institutions either have developed or use publicly-available bilingual glossaries to ensure that terms, including technical financial terms, are translated appropriately and consistently.

Regarding translations, several interviewees indicated their preference for "transcreation" which is translating for meaning, rather than word-for-word.[24] For some institutions, the practice of back-translation is a way to validate third-party translations. Back-translation involves taking a translated document and having another party translate it back to English to confirm the accuracy of the translated document. Some institutions noted limitations of using back-translation, citing that necessary context can sometimes be lost.

Some larger institutions also use technology to assist with translation consistency, such as translation memories, which store previously-translated text and can ensure that the specific terms are appropriately and consistently translated based on an established glossary of terms. These institutions indicated that, over time, using translation memories can lead to long-term cost efficiencies. Some institutions also noted that while technology has increased the ease with which translated documents can be produced, it is still important to have certified professionals provide quality reviews.

Regarding interpretations, some institutions have established internal standards for oral support to LEP consumers, such as having certified interpreters and a glossary of terms for verbal consistency, among others. Many institutions also noted that they contract with a third-party vendor to provide interpretation for other languages. For languages other than Spanish, most assistance is provided via third-party interpreters.

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[24] While most dictionaries have not yet added the word "transcreation," the term is used to describe the process of developing materials that are culturally relevant. The goal of "transcreation" is to translate from a source language to a target language while maintaining the original intent and context. *See* The ATA Chronicle, *Culturally Capable Translations: The Essential Role of Culture in Translation Quality Processes* (2007), *available at* http://www.atanet.org/chronicle-online/wp-content/uploads/3603_20_nataly_kelly_darci_graves_rocio_txabarriaga.pdf.

While interpretation and translation certification programs are generally available, the CFPB learned that the number of certified professionals, particularly for languages other than Spanish is low. Some of the institutions indicated that there are no nationally-recognized organizations that manage interpreter and translator certification with a specialty in financial terms. By comparison, the healthcare industry has language assistance through nationally-certified interpreters in several languages.[25]

3.4 Training and support for staff and contractors

Some institutions hire employees who possess foreign language fluency, cultural competency, or financial expertise. These employees may serve as an internal voice for the organization on language-related activities. These employees are also often trained to ensure that other staff are able to communicate effectively to LEP customers about the financial products and services offered by the institution.

A subset of institutions providing language services require that anyone communicating in a language other than English is either externally- or internally-certified on both written and verbal competency. Other institutions have an in-depth interview process for candidates who may provide bilingual services. Some institutions that hire bilingual agents use scripts in specific languages to facilitate conversations with customers.

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[25] Certified Languages International, *Input for FHFA: Improving Language Access in Mortgage Lending and Servicing* (2017).

3.5 Interactions with consumers

For institutions that provide language services, the CFPB found a range of approaches to interacting with LEP consumers in their preferred language in different settings.

Many institutions expressed awareness of the connection between language and culture, and recognized the importance of cultural competency in providing information to LEP populations. Separately, institutions cited concerns about maintaining the confidentiality and security of customer information when choosing a third-party language service provider. They also indicated that the pool of translation and interpretation companies that can fulfill requirements for confidentiality, customer security, and scale is small.

For some institutions, if a consumer indicates a preference for Spanish on an application in a particular line of business (e.g., credit cards), all future communications will be conducted in Spanish, as available. These communications include onboarding, servicing, and customer management. One institution indicated that Spanish-serviced accounts have high levels of customer satisfaction.

3.5.1 Digital settings, such as ATMs, websites, and mobile applications

Many institutions that provide language services allow customers to choose a language preference at an ATM, on their websites, or on their mobile apps, and save that preference for subsequent use. Some use disclosures and other forms of messaging to inform customers and set expectations when some pages of the website are not available in the preferred language.

The level at which institutions offer translated versions of their websites varies. Some institutions offer a fully translated website, while others offer translated versions of some portions of their website. For example, some institutions have a Spanish option for secure sites that are accessible for existing customers to view their account information. One institution indicated that it offers translations online in Chinese as well as in Spanish.

3.5.2 Verbal interactions, such as in-person or over the phone

Most institutions that provide language services offer some level of oral support via bilingual staff, a third-party phone interpreter service, or both.

For institutions that use a third-party phone interpreter service, staff provide flyers in other languages to the LEP customer to explain that he or she will receive language support through an interpreter or from a call center.

Some institutions have a dedicated number for Spanish speakers to call or sophisticated routing systems to ensure that LEP customers reach a bilingual agent or language line.

3.5.3 Written documents

Some institutions that offer language services provide customers with translations of certain documents in languages other than English, including monthly statements, privacy notices, or other correspondence. Most of the institutions the CFPB spoke to indicated that they provide contracts only in English.

4. Conclusion

Entities in the financial industry serve consumers with limited English proficiency using a variety of approaches. The CFPB is sharing common themes and resources gathered from various stakeholders in order to provide an overview of some of the current practices for serving LEP consumers. Interviews with financial institutions of various sizes, nonprofit organizations, and government agencies, in addition to secondary research, informed the common themes identified by the CFPB.

The CFPB encourages the financial services industry to continue to explore ways to expand, innovate, and improve the service it provides to consumers with limited English proficiency. The CFPB also looks forward to learning more about how the industry is serving the LEP population and welcomes financial institutions to engage further with the CFPB on this topic.

APPENDIX A: LEP RESOURCES

Federal interagency LEP website

- *Language Map App*: An interactive mapping tool that helps users find out the concentration of and languages spoken by LEP individuals in a community, available at https://www.lep.gov/maps/.
- *Before You Hire - Ask Yourself: What Are My Project's Language Needs?*: A workflow chart for making language service hiring decisions, available at https://www.lep.gov/resources/resources.html.
- *Hiring the Right Telephonic Interpretation Vendor*: A process flow for finding a high-quality telephone interpretation vendor, available at https://www.lep.gov/resources/resources.html.
- *Working with Telephone Interpreters*: A tool for planning, placing, and troubleshooting phone-calls with telephone interpreters, available at https://www.lep.gov/resources/resources.html.
- *What Does It Mean to Be a Certified Linguist?*: A resource outlining the qualifications for a certified interpreter or translator, available at https://www.lep.gov/resources/resources.html.
- *Building an Effective Staff Language Service Program*: A publication for recruiting, hiring, assessing, and retaining staff linguists, available at https://www.justice.gov/crt/file/923341/download.

Bilingual glossaries

- *CFPB glossaries*: English-Spanish financial terms and English-Chinese financial terms. In 2015, the CFPB published its glossaries of financial terms translated from English into Spanish and Chinese as a resource tool. Stakeholders that may be interested in using this tool include, but are certainly not limited to, financial educators, government agencies, financial service providers, and other organizations serving LEP consumers. The glossary of terms is not a mandate, guidance, or a requirement. The English-Spanish glossary is available at https://www.consumerfinance.gov/documents/5542/cfpb_adult-fin-ed_spanish-style-guide-glossary.pdf, and the English-Chinese glossary is available at https://www.consumerfinance.gov/documents/5540/cfpb_adult-fin-ed_chinese-style-guide-glossary.pdf.
- *Housing and Urban Development glossary*: Spanish-English dictionary. The dictionary is available at https://portal.hud.gov/idc/groups/public/documents/hudgov_html/main_terms_span.html.

Forms and disclosures

- Fannie Mae and Freddie Mac provide lenders with Spanish translations of a loan application, loan estimate, verification forms, closing disclosures, and a sample adverse action notice. The translations provided by Fannie Mae can be found at https://www.fanniemae.com/singlefamily/spanish-resources-for-lenders and https://www.fanniemae.com/singlefamily/spanish-resources-for-servicers. The

translations provided by Freddie Mac can be found at http://www.freddiemac.com/uniform/spanish.html.

- A few of the CFPB's major rules address language access by, in accordance with pre-existing law, permitting required disclosures to be provided in a language other than English, as long as the disclosures are also made available in English.[26] A few other CFPB rules provide more specific guidance about facilitating access for LEP consumers to markets for consumer financial products and services and helping ensure that such markets are fair, transparent, and competitive. For example, the CFPB's TILA-RESPA Integrated Disclosure (TRID) Rule explicitly permits creditors to translate certain mortgage disclosures into languages other than English and provides consumer-tested Spanish language translations of those mortgage disclosures.[27] Pursuant to the Dodd-Frank Act, the CFPB's Remittance Transfer Rule provides that certain advertising, soliciting, or marketing of remittance transfer services in a foreign language triggers the requirement to provide remittance disclosures in that language.[28] The CFPB's Prepaid Rule similarly provides that principally using a foreign language to, among other things, advertise, solicit, or market a prepaid account may trigger a requirement to provide certain disclosures in that language.[29]
- The Dodd-Frank Act amended the Real Estate Settlement Procedures Act (RESPA) to, among other things, provide that the Director shall "prepare the [home buying information] booklet in various languages and cultural styles, as the Director determines

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[26] *See, e.g.*, 12 C.F.R §§ 1002.4(e) (Regulation B), 1005.4(a)(2) (Regulation E), 1024.32(a)(2) (Regulation X), and 1026.27 (Regulation Z). Most Bureau regulations may be found at https://www.consumerfinance.gov/eregulations/.

[27] *See* 12 C.F.R. §§ 1026.37(o)(5)(ii), 1026.38(t)(5)(viii), and App. H-28.

[28] *See* 12 C.F.R. § 1005.31(g).

[29] *See* 81 FR 83934, 84334 (Nov. 22, 2016) (to be codified at 12 C.F.R. § 1005.18(b)(9)); *see also* 82 FR 18975 (Apr. 25, 2017).

to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds."[30]

Financial education resources

- *Ask CFPB*: An interactive online tool that gives consumers answers to questions about financial products and services, including credit cards, mortgages, student loans, bank accounts, credit reports, payday loans, and debt collection. Ask CFPB is available in Spanish at consumerfinance.gov/es/obtener-respuestas/.
- *CFPB brochures*: The CFPB has created a range of publications for consumers that provide straightforward information about money management and other financial issues. These publications include brochures about accounts, credit, money management, mortgages, and other topics. The CFPB makes many of these resources available in English and Spanish as well as many of them in eight other languages. The CFPB provides them for download or free bulk ordering at pueblo.gpo.gov/CFPBPubs/CFPBPubs.php.
- *CFPB en Español*: CFPB en Español provides Spanish-speaking consumers a central point of access to the CFPB's most-used consumer resources that are translated into Spanish. This page offers:
  - Ask CFPB en Español.

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[30] *See* 12 U.S.C. § 2604(a).

- A consumer complaints page that highlights the complaint process and the phone number consumers can call to submit a complaint in Spanish.
- An About Us page with Spanish-language videos and introductory content about how the CFPB works to protect consumers.
- A home page that offers details on the CFPB's resources for consumers in search of a mortgage and those who already own a home. CFPB en Español can be found at consumerfinance.gov/es/.

- *Your Home Loan Toolkit*: The Dodd-Frank Act amended the Real Estate Settlement Procedures Act (RESPA) to, among other things, provide that the Director shall "prepare the [home buying information] booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds." To support this mandate, the toolkit is available in Spanish and guides consumers through the process of shopping for a mortgage and buying a home. The Spanish guide can be found at files.consumerfinance.gov/f/201507_cfpb_your-home-loan-toolkit-web-spanish.pdf.
- *Remittances*: The CFPB's first substantive rule provides important consumer protections to users of international money transfers, or remittances. The CFPB developed materials to educate consumers about the protections for remittance transfers. These materials are available in English, Spanish, Haitian Créole, Chinese, and Tagalog and include fact sheets, flyers, posters, and brochures. The CFPB provides them for download or free bulk ordering at pueblo.gpo.gov/CFPBPubs/CFPBPubs.php.
- *Financial Education Programs Serving Immigrant Populations Field Scan*: The Office of Financial Education conducted a field scan of programs, practices, and initiatives that serve immigrant populations to help inform the CFPB's financial education initiatives and to raise visibility about the financial education challenges that many immigrants face. The field scan outlines promising financial education strategies that financial education providers can use to better serve immigrants who seek their services and are part of their communities. The ultimate goal is to help consumers achieve their own financial goals. The field scan was released in summer 2016 and can be found at consumerfinance.gov/data-research/research-reports/financial-education-programs-serving-immigrant-populations/.

City & Community

Riding the Stagecoach to Hell: A Qualitative Analysis of Racial Discrimination in Mortgage Lending

Douglas S. Massey*
Princeton University at Princeton

Jacob S. Rugh
Brigham Young University at Provo

Justin P. Steil
Massachusetts Institute of Technology at Cambridge

Len Albright
Northeastern University at Boston

Recent studies have used statistical methods to show that minorities were more likely than equally qualified whites to receive high-cost, high-risk loans during the U.S. housing boom, evidence taken to suggest widespread discrimination in the mortgage lending industry. The evidence, however, was indirect, being inferred from racial differentials that persisted after controlling for other factors known to affect the terms of lending. Here we assemble a qualitative database to generate direct evidence of discrimination. Using a sample of 220 statements randomly selected from documents assembled in the course of recent fair lending lawsuits, we code texts for evidence of individual discrimination, structural discrimination, and potential discrimination in mortgage lending practices. We find that 76 percent of the texts indicated the existence of structural discrimination, with only 11 percent suggesting individual discrimination alone. We then present a sample of texts that were coded as discriminatory to reveal the way in which racial discrimination was embedded within the social structure of U.S. mortgage lending, and to reveal the specific microsocial mechanisms by which this discrimination was effected.

INTRODUCTION

Quantitative work has shown that the level of black–white segregation powerfully predicted the number and rate of foreclosures across U.S. metropolitan areas during the Great Recession (Rugh and Massey 2010), and that African Americans and Latinos were much more likely to receive high-cost, high-risk loans than white borrowers during the housing boom, even after controlling for credit scores, loan to value ratios, subordinate liens, income, assets, expense ratios, neighborhood characteristics, and other relevant variables (Bayer et al. 2014; Been et al. 2009; Bocian et al. 2011; Rugh et al. 2015).

*Correspondence should be addressed to Douglas S. Massey, Office of Population Research, Wallace Hall, Princeton University, Princeton, NJ 08544; dmassey@princeton.edu.

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Although the quantitative findings were convincing enough to compel several large mortgage lenders to settle lawsuits alleging discrimination, the evidence they offer is ultimately statistical and indirect. After controlling for the characteristics of borrowers, properties, and neighborhoods, racial differences in lending outcomes are *presumed* to indicate racial discrimination. The discriminatory behavior is never directly observed.

Here we endeavor to supplement existing quantitative studies by developing direct qualitative evidence of the racial discrimination during the recent housing boom. To accomplish this goal, we compiled a sample of interviews, depositions, and statements made by borrowers, mortgage brokers, loan officers, credit managers, due diligence employees, investment bankers, and others who were involved in subprime lending and securitization in the years leading up to 2008. We then systematically coded the statements to identify specific reports of racial discrimination and generate a sample of associated texts to reveal the nature of the racial bias and the mechanism of discrimination. The selected passages speak directly to the racialized knowledge, intent, and motivations of those who marketed high-cost, high-risk lending products to minority borrowers during the housing boom. We offer these qualitative data as powerful direct evidence of racial discrimination in U.S. lending markets, complementing the strong indirect evidence provided by earlier quantitative studies.

We begin by discussing the historical evolution of racial discrimination in U.S. real estate and lending markets and then move on to describe the qualitative database we constructed from recent fair lending cases and the analytic methods we applied to code these data to identify instances of discrimination described in the texts. Our findings lead us to conclude that racial discrimination was quite common in the institutions under study. We end by discussing the microsocial processes by which black and Latino individuals and communities were channeled into high-cost, high-risk loans that left them uniquely exposed to risks of default, foreclosure, repossession, and the loss of home equity, thus serving to exacerbate already skewed racial inequalities in the distribution of wealth.

HISTORICAL SEGREGATION AND DISCRIMINATION

Prior to the Civil War, African Americans were not very residentially segregated in either the north or the south (Massey and Denton 1993). In southern rural areas slave populations were housed on plantations with their masters and in urban areas of the south they typically lived "downstairs" in servants' quarters or in cottages located on side streets and alleys near white-owned homes and businesses. In northern cities, African Americans were small in number and not highly concentrated spatially. Although black residents were generally relegated to poor neighborhoods, within them they mingled with poor white urbanites, both native and immigrant. The small number of elite African Americans were by no means accepted as social equals, but if they could afford it they were often tolerated in higher status white neighborhoods.

The situation changed dramatically in the late 19th century with industrialization and urbanization, which increased the size, density, and heterogeneity of U.S. cities to elevate the potential for spatial segregation (Massey and Denton 1993). As immigrants from Southern and Eastern Europe flowed into burgeoning industrial areas, they experienced far higher levels of segregation than earlier waves of immigrants from Northern and Western Europe (Hershberg et al 1981). Black rural–urban migration was small at first but

picked up around the turn of the century and accelerated after 1914 when the First World War curtailed immigration from Europe and increased the demand for unskilled workers in manufacturing centers. The demand for black workers increased further when national origins quotas were imposed on immigrants from Southern and Eastern Europe in 1921 and 1924 despite soaring labor demand during the economic boom of the Roaring Twenties.

As black migration into urban areas surged, color lines hardened, especially in the Northeast and Midwest, as successively higher levels of residential segregation were imposed on African Americans (Lieberson 1980). Although immigrants from Southern and Eastern Europe were also segregated within the industrializing landscape, their levels of spatial separation and isolation never reached the heights experienced by African Americans. At first, city governments sought to manage racial tensions by mandating separate areas for black and white residents, and systems of de jure residential segregation spread rapidly throughout the nation until 1917, when the Supreme Court declared them to be unconstitutional (Massey and Denton 1993).

Despite this legal ruling, white resistance to coresidence with African Americans intensified and blacks daring to cross recognized residential color lines were met with hostility, ostracism, and increasingly violence. As densities rose to new heights within black neighborhoods during the years of wartime housing scarcity, African Americans were increasingly forced across the color line, prompting a wave of urban race riots that culminated in the Great Chicago Riot of 1919 (Chicago Commission on Race Relations 1922).

In response to wanton property destruction during the riots (though not to the toll in black lives), the real estate industry took control of the situation and created new legal mechanisms to restrict and control black residential expansion (Massey and Denton 1993). Deed restrictions were developed to prohibit the rental or sale of any property to unwanted outsiders, which always meant African Americans and at times other groups. Realtors also invented racially restrictive covenants, private contracts between property owners within a defined geographic area who agreed not to rent or sell their homes to black home seekers. Violation of these terms would spur a lawsuit for breach of contract. Model covenants were drawn up and distributed for use by real estate agents nationwide, and a provision against the introduction of "unwanted population elements" into residential neighborhoods was enshrined in the profession's code of ethics (Helper 1969).

With these legal mechanisms in place, levels of violence subsided though never entirely disappeared. Neighborhoods still regularly underwent racial transitions from white to black but usually at times and places chosen by the real estate industry; and the process of "blockbusting" was perfected to maximize rents and profits. Whenever the existing ghetto filled to capacity, an adjacent neighborhood was targeted for managed turnover and the color line shifted outward in space (Duncan and Duncan 1957; Taeuber and Taeuber 1965). Black confederates of real estate agents were typically sent into white neighborhoods to sow fears of racial change and induce panic selling. Since banks generally refused to lend to black borrowers, these transitions were organized and financed by unscrupulous agents who extracted high rents from incoming movers or imposed onerous sales terms that led to foreclosure and serial sales of the same property (Massey and Denton 1993; Satter 2009).

These institutionalized private mechanisms of discrimination built the modern black ghetto and perpetuated segregation through the 1920s, but with the advent of the Great Depression the federal government was compelled to intervene to stabilize the

housing and banking industries and it adopted the private sector's discriminatory practices (Jackson 1985). Two of the first agencies established under Franklin Roosevelt's New Deal were the 1933 Homeowners Loan Corporation and the 1934 Federal Housing Administration, which created new loan programs in which the government guaranteed 90 percent of the value of a home loan, provided it conformed to federally specified criteria, such as 10 percent down and a 30-year amortization period.

As in the private sector, the HOLC and the FHA discouraged lending to black borrowers and recommended the use of restrictive covenants. In addition, however, federal authorities developed a new discriminatory tool known as the "residential security map," which was used to color-code neighborhoods in a given city according to their credit worthiness. Red indicated ineligibility for a federally insured loan and black neighborhoods were invariably coded red (Jackson 1985). Although banks had avoided lending in black neighborhoods before the New Deal, the practices of the HOLC and the FHA gave them a federal seal of approval and contributed to the institutionalization of redlining throughout the lending industry. According to Jackson (1985), neighborhoods that were coded red were much less likely to receive federally insured loans, though research by Hillier (2003) in Philadelphia found that redlining had a greater effect on interest rates than on loan provision itself, at least in that city.

HOLC's discriminatory lending practices were taken up by the Veterans Administration when it established its own lending program for returning soldiers in 1944 and became the standard for private lending during the suburban boom of the 1950s and 1960s (Katznelson 2005). With white Americans being federally subsidized to move to the suburbs by FHA and VA loan guarantees, spending on freeways from the Interstate Highway Trust Fund, and the tax deductibility of mortgage interest payments, blacks moved into the homes and neighborhoods they left behind in central cities. Once a neighborhood became black, of course, it was substantially cut off from capital and credit, both public and private, thereby creating underserved and financially unsophisticated communities of people living in deteriorating circumstances (Massey and Denton 1993; Squires 1992).

This status quo persisted through the 1960s and 1970s and served to perpetuate racial segregation and create the classic American configuration of "chocolate cities and vanilla suburbs" (Farley et al. 1978). Racial discrimination in the rental or sale of housing was not outlawed until the 1968 Fair Housing Act; and although this legislation also prohibited discrimination in lending, it was not until the 1974 Equal Credit Opportunity Act that discrimination in mortgage lending was firmly enjoined, and not until the 1977 Community Reinvestment Act that banks were actually required to make loans to underserved minority neighborhoods (Metcalf 1988).

As a result, when Massey and Denton (1987) undertook their initial analysis of black residential segregation using the 1980 census they found that levels of black residential segregation had barely changed. Discrimination did not end after the passage of civil rights legislation in the 1960s and 1970s, of course (Yinger 1997). Traditional forms went underground and became clandestine while new mechanisms of discrimination were invented (Massey 2005). In real estate, outright refusals to market or show housing were increasingly replaced by steering, the systematic channeling of black home seekers to black or already integrated neighborhoods (Charles 2003). In banking, categorical denials of access to credit were replaced by the systematic offering of credit on unfavorable terms to black individuals and neighborhoods (Squires 2003). As time passed, financial institutions increasingly sought out black individuals and neighborhoods explicitly to

market them high-cost, high-risk loans and boost their own profits (Engel and McCoy 2008; Immergluck 2009).

During the 1980s and 1990s, the mortgage industry shifted from direct lending by banks to the origination of loans by intermediaries—independent brokers and retail lenders who marketed mortgages and then sold them to investment banks that, in turn, bundled them together to create payment streams that backed securities that were then sold to investors, a process known as securitization (Stone and Zissu 2012). Under the new system, profits for financial organizations depended on the size of the gap between the prevailing interest rate and the rate paid by borrowers, known as the "yield spread." Brokers, retail banks, and investment banks made greater profits when the gap between a loan's interest rate and the prevailing interest rate was wide, creating incentives for loan originators to charge as much as possible for the loans (Botein 2013).

In this new context, minority communities shifted from being seen as a pool of borrowers to be avoided to being perceived as an attractive market for loan sales that might expand the number of mortgages available for securitization. Historical disparities in wealth and access to credit could now be profitably exploited to fuel a boom in subprime lending, thus yielding a new mechanism of racial discrimination known as "predatory lending," in which minority borrowers and neighborhoods were targeted for costly and risky lending products (Rugh and Massey 2010; Squires 2011). In this context, historically underserved black and Latino communities came to be seen as a lucrative untapped market characterized by established home equity, ample room for increased home ownership rates, and a pool of potential borrowers with little financial experience who could be deliberately targeted for the marketing and sale of subprime loans (Botein 2013; Rugh et al. 2015).

These loans not only contained higher rate spreads, but also included other provisions that drove up the cost to borrowers while increasing the profits of lenders at the expense of home owners and other borrowers, who assumed greater financial risk. Securitization, for example, created new incentives to push borrowers into loans with adjustable rates so that if interest rates rose, investors would maintain their yield spread and thus their income streams. It also led banks and brokers to favor loans with high prepayment penalties to prevent them from paying off their loans early or refinancing at a better rate, again maintaining cash flows for investors in mortgage backed securities (Steil et al. 2015).

In the end, predatory lending practices evolved from ostensibly neutral technologies that were manipulated to take advantage of racial segregation, racial prejudice, and a large population of underserved and unsophisticated borrowers, thus ensnaring otherwise creditworthy black and Latino homeowners and into high-cost, high-risk loans. Estimates suggest that during the middle 1990s anywhere from 10 to 35 percent of the people put into subprime loans were, in fact, eligible for prime loans (Mahoney and Zorn 1996). As the housing boom accelerated, this percentage grew until by 2006 as many as 62 percent of subprime borrowers, disproportionately black and Latino, actually qualified for prime loans (Brooks and Simon 2007). As a result, African Americans not only lost money by paying higher fees for more costly products than did equally qualified whites during the boom; but during the bust these products also put them at greater risk of default, foreclosure, and the catastrophic loss of assets through repossession, as quantitative studies have amply demonstrated (Rugh and Massey 2010; Rugh et al. 2015).

DATA AND METHODS

In order to develop direct qualitative evidence of how discrimination in mortgage lending functioned, we assembled statements from publicly available documents in civil rights cases brought before federal courts alleging violations of fair lending law. We began by seeking to identify the universe of cases alleging predatory lending and reverse redlining violations of the Fair Housing Act and the Equal Credit Opportunity Act over the past decade. Cases were identified through a Westlaw search of state and federal cases bringing claims pursuant to the Fair Housing Act or Equal Credit Opportunity Act and alleging reverse redlining. Table 1 presents a list of public and private lawsuits alleging discrimination in lending that were filed against financial institutions over the past two decades, which does not include administrative complaints filed with HUD or with state and local agencies.

Many of the lawsuits were brought by the Civil Rights Division of the U.S. Department of Justice and were settled before going to trial, leaving little in the public record aside from the lending violations alleged and the terms of the consent order. Other cases settled quickly or were dismissed early in the litigation process, likewise leaving a sparse public record. We identified four cases, however, that both survived preliminary motions to dismiss and included a wealth of publicly available documents that could be analyzed.

The first of these cases, Barkley v. Olympia Mortgage, was brought in federal court by eight first-time homebuyers in Brooklyn, New York, who alleged that a real estate investor purchased properties, performed cosmetic repair work, and then conspired with mortgage lenders, appraisers, and attorneys to resell the homes to black and Latino first-time buyers using high-cost loans appraised at far more than a property's true value. After a three-week trial, the jury found the real estate investor and mortgage companies guilty of fraud, conspiracy to commit fraud, and deceptive practices. The verdict was upheld on appeal by the United States Court of Appeals for the Second Circuit, yielding a record of more than 25 depositions by key actors in the trial, with some interviews lasting for eight hours or more.

The second and third cases were brought against Wells Fargo Bank by the City of Baltimore and the City of Memphis (in partnership with Shelby County, Tennessee). Both plaintiffs alleged that Wells Fargo intentionally targeted minority communities and used discriminatory and deceptive methods to steer minority customers into predatory mortgages, resulting in extraordinarily high rates of foreclosure that caused local governments to lose property tax revenue and spend additional resources maintaining vacant homes. In both cases, the federal district court denied Wells Fargo's motions to dismiss and the bank ultimately chose to settle both cases, agreeing to pay millions of dollars to borrowers who were overcharged and to the municipalities that brought suit. The public record in these cases includes multiple declarations made by employees at various positions in Wells Fargo from several different regions.

The fourth case, Adkins et al. v. Morgan Stanley, was brought by black residents of Detroit who alleged that they were fraudulently steered into subprime loans by New Century Financial Corporation, the second largest originator of subprime mortgages in the United States in 2006. The plaintiffs argued that the investment bank, Morgan Stanley, acting as a warehouse lender for New Century, encouraged the latter to issue mortgages that ignored fair lending principles, and violated the Equal Credit Opportunity Act in

TABLE 1. Fair Lending Cases Filed by Plaintiffs Alleging Racial Discrimination in Lending 1994–2014

Plaintiff	Defendant	Court
Alleyne	Flagstar Bank, FSB et al.	D. Mass.
Barkley	Olympia Mortg. Co.	E.D.N.Y.
Barrett	H&R Block	D. Mass.
City of Birmingham	Argent Mortgage Company, LLC et al.	Alabama
Commonwealth of Massachusetts	Countrywide Fin. Corp.	Suffolk Cnty. Sup. Ct.
Consumer Financial Protection Bureau	National City Bank	W.D. Pa.
Cook County	Bank of America	N.D.Ill.
Cook County	HSBC	N.D. Ill.
De Kalb	HSBC	N.D. Ga
Garcia	Countrywide Financial Corporation	CD. Cal.
Guerra	GMAC LLC et al.	E.D. Pa.
Hargraves	Capital City Mortgage	D.C.
Hoffman	Option One Mortg. Corp.	N.D.Ill.
In re GreenPoint Mortgage Co.		New York
In re Wells Fargo		N.D. Cal.
Johnson	EquiCredit Corporation et al.	N.D.Ill.
Lathern	NationsBank Corporation et al.	D.D.C.
Los Angeles	JP Morgan Chase	CD. Cal.
Los Angeles	Wells Fargo Bank, NA	CD. Cal.
Los Angeles	Citigroup	CD. Cal.
Los Angeles	Bank of America	CD. Cal.
Matthews	New Century Mortg. Corp.,	S.D. Ohio
Miami	Bank of America	S.D. Fla.
Miami	Citigroup	S.D. Fla.
Miami Gardens	Bank of America	S.D. Fla.
Miller	Countrywide Bank, N.A.	D. Mass.
NAACP	Ameriquest Mortgage Company et al.	CD. Cal.
Ramirez et al.	GreenPoint Mortgage Funding, Inc.	N.D. Cal.
Stackhaus et al.	NationsBank Corporation et al.	D.D.C.
Steele	GE MoneyBank	N.D.Ill.
Taylor	Accredited Home Lenders, Inc. et al.	S.D. Cal.
United States	AIG Federal Savings Bank and Wilmington Finance, Inc.	D. Del.
United States	C&F Mortgage Corporation	E.D. Va.
United States	Chevy Chase Bank, F.S.B.	E.D. Va.
United States	Countrywide Financial Corporation	CD. Cal.
United States	Delta Funding Corporation	E.D.N.Y.
United States	Fleet Mortgage Company	E.D.N.Y.
United States	GFI Mortgage Bankers, Inc.	S.D.N.Y.
United States	Huntington Mortgage Company	N.D. Ohio
United States	Long Beach Mortgage Company	CD. Cal.
United States	Plaza Home Mortgage, Inc.	S.D. Cal.
United States	PrimeLending	N.D. Tex.
United States	Security State Bank	W.D. Tex.
United States	Southport Bank	E.D. Wis.
United States	SunTrust Mortgage, Inc.	E.D. Va.
United States	Wells Fargo Bank, NA	D.D.C.
United States	Shawmut Mortgage	D. Conn.
Watson et al.	EquiCredit Corp. et al.	N.D. Miss.

order to generate large numbers of high-cost mortgages to realize greater profits from securitization. They alleged that borrowers were more likely to receive such high-cost, high-risk loans if they were African American or lived in African American neighborhoods. They also argued that the loans fraudulently extracted short-term fees and extra costs from borrowers in ways that unfairly diminished the wealth of black borrowers and exposed them to an elevated risk of foreclosure and repossession.

The federal district court denied a motion to dismiss the case against Morgan Stanley and the plaintiffs filed briefs seeking certification as a class of borrowers. The public record includes hundreds of pages of exhibits and depositions by key individuals in the case, including internal emails, data about the characteristics of the loan pools, as well as bid stipulations and purchase agreements for Morgan Stanley's purchase of loans from New Century along with other documents. The federal district court recently denied the plaintiffs' motion for class certification, but litigation is ongoing.

The declarations, depositions, and other exhibits from these four cases provide a valuable window into the organizational context of mortgage lending during the pre-2008 housing boom. The cases involve different types of mortgage originators, ranging from small regional nonbank lenders to nationally dominant firms and industry-leading banks. The depositions include interviews with actors at every step of the lending process, from borrowers to mortgage brokers, to loan officers, to credit managers, to due diligence employees, to investment bankers. The depositions also include interviews with appraisers, closing attorneys, and real estate investors, and other actors involved in the lending process. Together, the hundreds of pages of interviews offer a unique opportunity to analyze the social processes underlying the quantitative evidence of discrimination developed to date.

To conduct our analysis, we randomly selected a sample of deposition statements and testimonies stratified on the geographic area of the mortgage lending, which yielded a dataset of 220 statements that were subject to a systematic content analysis. Of the depositions and declarations selected, 63 percent were witnesses for the defendants and 37 percent were witnesses for the plaintiffs. Among the latter, 60 percent were borrowers, 20 percent were loan officers, and 20 percent were credit managers. Among the former, in contrast, 24 percent were investment bankers, 20 percent were realtors, 16 percent were bank officers responsible for due diligence, underwriting standards, or valuations, 16 percent were lawyers, 12 percent were loan officers, and another 12 percent were senior executives at lending institutions, real estate firms, or other organizations (12 percent).

The resulting sample obviously is not a random sample of all lenders active during the housing boom. Those shown in Figure 1 represent cases where discrimination was formally alleged, a charge unlikely to be filed without substantial prior evidence of discrimination; and of course most of the defendants listed in the table never went to trial or settled early in the litigation process. The four cases we analyze, however, did go trial, which suggests that the defendants and their lawyers believed the behavior in question was defensibly nondiscriminatory, a suggestion supported by the fact that 63 percent of the declarations in our sample were by witnesses for the defense; and the vast majority of these worked in the real estate or banking industry, people who presumably would not have been deposed had the defendants feared there was something to hide. In this sense, our sample may understate the degree of discrimination prevalent in the lending industry during the mortgage boom.

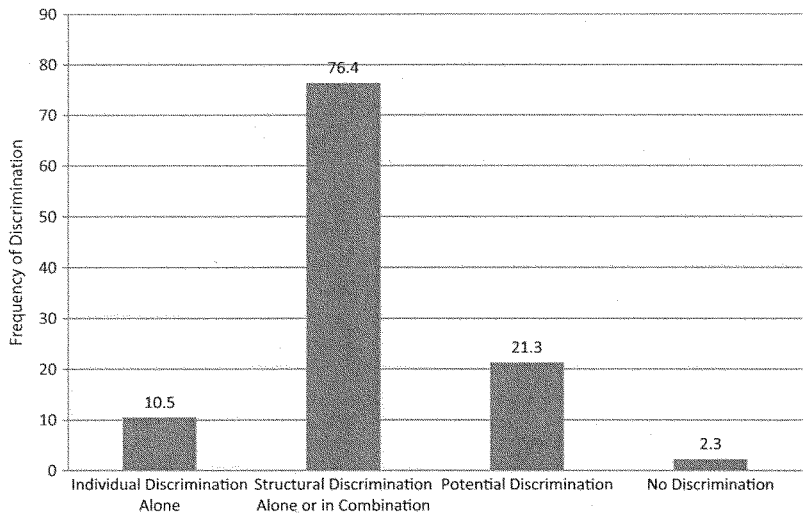

FIG. 1. Percentage of statements coded into content-categories of racial discrimination.

Whatever one concludes about the likely direct of bias in the sample, the fact remains that it is nonrandom, and thus we do not seek to generalize our findings to the entire lending industry. Instead we draw on the testimonies to identify the means and mechanisms by which discrimination was carried out in cases where it probably did occur. We began our analysis by coding the 220 sampled statements to identify specific instances of either individual or structural discrimination. Individual discrimination was coded if the behavior in question increased the likelihood that a minority borrower received a high-cost or high-risk loan and the action appeared to stem from the motivations of the individual rather than the firm. Structural discrimination was coded when standard institutional procedures and practices in effect guaranteed that minority borrowers would receive disadvantageous lending products, irrespective of individual motivations.

Statements that described a discriminatory institutional structure in which individuals were nonetheless required to act in a biased manner to carry it out were *not* coded as individual discrimination if the policy was fixed by the institution but were coded as individual discrimination if institutional policies allowed for discretion. If neither individual nor structural discrimination was detected in the text, we coded for "potential discrimination," defined as behavior that *could* contribute to a pattern of structural discrimination but did not necessarily provide direct evidence that structural discrimination had, in fact, occurred.

Cases identified as discriminatory were subcoded into the following content categories to identify the specific mechanisms by which discrimination was effected: racial targeting for subprime lending, loan approval when available information indicated nonapproval, withholding information from the borrower, deceptive marketing practices, ensnaring customers in debt to entice them into equity loans, incentive structures that

encouraged discrimination, the use of customer leads obtained from lists of borrowers in debt to neighborhood businesses, existence of a workplace culture tolerant of racism, unethical management structures, racial stereotyping of minority customers, segmented marketing of loan products to consumers by geography, use of technology to facilitate discrimination, inclusion of fraudulent information in paperwork, lack of effective management oversight, and use of social networks within segregated neighborhoods for consumer prospecting.

Data coding and analysis were conducted independently by two of the authors (Steil and Albright), with each coder labeling the text with "Evidence Present," "Evidence Not Present," or "Not Applicable." Intercoder reliability was cross-checked utilizing the ReCal2 Online Utility to compute Krippendorff's α on a 10 percent sample of the 220 texts yielding an inter-rater reliability coefficient of 0.86 (see Freelon 2013; Hayes and Krippendorff 2007). From this 10 percent sample, we then extracted texts coded as showing individual, structural, and potential discrimination and assembled the relevant passages into a table to demonstrate the nature of the reported discrimination, which we then interpret to reconstruct the underlying social processes. By drawing on multiple cases involving different lenders and originators, we are able to undertake a small-N comparison that combines "the interpretive and narrative subtlety" of archival analysis with the "analytic strength that echoes standard causal analysis" (Abbott 2004: 58).

THE MICROSOCIOLOGY OF MORTGAGE DISCRIMINATION

Figure 1 presents the result of our content coding of the textual materials to demonstrate that discrimination in our sample was overwhelmingly structural in nature and not attributable to individual biases or solo acts of racism. Whereas at least one coder identified discrimination as being structurally embedded in 76 percent of the transactions being described (many in combination with individual discrimination), only 11 percent of the transactions were similarly coded as displaying individually motivated racial discrimination alone, yielding a total of 86 percent of the 220 cases in which some form of discrimination was judged to have occurred. Another 21 percent of the cases were coded as describing actions or behaviors that potentially could yield racially discriminatory outcomes, leaving just 2.4 percent displaying no indication of discrimination at all. From these data we conclude, at least in this sample, that racial discrimination was structurally embedded within the mortgage lending industry and was systematic rather than the consequence of individual prejudices or personal racism.

Table 2 extracts from the 22 coded statements selected for the computation of Krippendorff's α. Since 98 percent of the full dataset of 220 passages displayed evidence of actual or potential discrimination, it is not surprising that all 22 in the subsample were judged to display some indication of discrimination, with 11 coded as structural, 9 coded as both structural and individual, and 2 coded as potential. In looking over the texts included in the table, readers should remember they are extracts and that codes were assigned based on a reading of the entire statement, so that the context in which the coding judgment was made is largely absent. The first panel of Table 2 contains the ten extracts judged to display structural discrimination; the second contains those judged to display both structural and individual discrimination; and the final panel displays the two

TABLE 2. Specific Examples of Texts Describing Structural and Individual Discrimination in a Random 10 Percent Sample of 220 Coded Passages

Structural Discrimination

(1) Would your split be higher if the—if the borrower paid a higher interest rate? A. If the company made a little more money, I would make a little more money.

(2) The commission and referral system at Wells Fargo was set up in a way that it made it more profitable for a loan officer to refer a prime customer for a subprime loan than make the prime loan directly to the customer.

(3) The trading desk also set the bid terms and purchase agreement terms for those loans. The trading desk's decisions were not the workings of some lone, rogue employees. Instead, it was essential to Morgan Stanley's business model to vest the trading desk with the ultimate power to decide which loans to buy—regardless of their quality—because doing so maximized the supply of New Century loans and the cash flow from those loans.

(4) I complained many times about what I thought were unethical or predatory loan practices that Wells Fargo was engaged in. Managers never took any actions to respond to my concerns. In my office we morbidly joked that we were "riding the stagecoach to hell."

(5) Another practice that I thought was especially unethical was the use of "live" draft checks. Wells Fargo would mail checks in the amount of $1,000 or $1,500 to leads. Once these checks were deposited or cashed, they instantly became loans with Wells Fargo at very high interest rates. Individuals who cashed these checks became an instant "lead" target for a home equity refinance loan, which of course would end up placing the borrower's home at risk.

(6) I was constantly butting heads with my district manager. I told him repeatedly about the practices I objected to. He knew that loans were being falsified; and he knew that many of the aggressive practices he instructed us to follow were causing borrowers to get behind on their loans. Yet he still pressured us to engage in the most aggressive loan practices and threatened employees with their jobs if they did not do things his way. The bonus system was lucrative, so there was plenty of financial incentive to engage in high-pressure and deceptive sales practices, even if one knew they were wrong.

(7) Since loan offers made more money when they charged higher interest rates and fees to borrowers, there was a great financial incentive to put as many minority borrowers as possible into subprime loans and to charge these borrowers higher rates and fees.

(8) Credit managers targeted African American borrowers in several different ways. One way was to partner with local businesses that were located in African American areas ... to identify customers who had financed purchases at these stores. Credit managers would "cold-call" people off of these lists or simply show up at these individuals' homes or businesses. Managers identified African American customers by talking to them over the telephone, or by meeting them in person. Most of the leads on the lists that managers were given to call were African American.

(9) Most (80 percent or more) of the leads on the lists I was given were African American. I know this both from meeting these individuals, and from talking with them on the phone. The people on the list of the leads did not represent a random cross section of the people who lived in the area around the office, because our office was located in an area where a lot of white people lived.

(10) Approximately 80–90 percent of the leads I was given turned out to be individuals who were African American. Although I don't know exactly how Wells Fargo came up with the leads, I believe that Wells Fargo targeted African Americans for these subprime loans. The prevailing attitude was that African American customers weren't savvy enough to know they were getting a bad loan, so we would have a better chance of convincing them to apply for a high-cost, subprime loan.

(11) Wells Fargo also discriminated against minority loan applicants by advising to them that the interest rate on their loan was "locked," when in fact, Wells Fargo had the ability to lower the rate for the applicant if the market rates dropped prior to the loans closing.

Both Individual and Structural Discrimination

(12) Wells Fargo management tolerated a culture of discrimination.

(13) Wells Fargo discriminated against minority loan applicants by not offering them their better or new products which had lower fixed interest rates and fees.

(14) Another technique would be to tell the customer that the only way to get the loan closed quickly would be to submit it as a subprime loan.

Continued

TABLE 2. Continued

Both Individual and Structural Discrimination, Cont.	
(15)	Wells Fargo loan officers also discriminated against minority refinance applicants by encouraging them to take out more cash on their home equity. By taking out more cash, the borrower would unwittingly increase the commission the loan officer received on the loan while at the same time eliminating his ability to qualify for a prime or FHA loan.
(16)	Elderly African American customers were thought to be particularly vulnerable and were frequently targeted for subprime loans with high interest rates. I remember one instance where an elderly African American woman who was over 65 could not qualify for subprime loan that a credit manager wanted to put her into, so the credit manager convinced her to transfer the property to her son so the subprime loan could be made in the son's name
(17)	It was the practice at the Wells Fargo offices where I worked to target African Americans for subprime loans. It was generally assumed that African American customers were less sophisticated and intelligent and could be manipulated more easily into a subprime loan with expensive terms than white customers. I heard employees joking with one another about the race of customers, saying things like: "You know that guy isn't so smart—is it because he's black?"
(18)	They (loan officers in the Mortgage Resources division, known as MORE) referred to subprime loans in minority communities as "ghetto loans" and minority customers as "those people who have bad credit," "those people who don't pay their bills," and "mud people."
(19)	I believe that Wells Fargo did not promote me for two reasons. First, Wells Fargo's management culture is white. Second, Wells Fargo management knew that I treated Wells Fargo customers well by offering them to refinance to prime and FHA loans when they qualified for these products.
(20)	Wells Fargo also targeted African Americans through special events called "wealth building seminars." . . . I remember preparing for a wealth building seminar to be held in Greenbelt, Maryland. It was understood that the audience would be virtually all black. The point of the seminar was to get people to buy houses using Wells Fargo Loans. At the seminar the plan was to talk about "alternative lending." This was code language for subprime lending, but we were not supposed to use the word "subprime." I was supposed to be a speaker at this seminar but was told by the emerging markets manager that I was "too white" to appear before the audience. I was offended by these statements and complained to several higher ranking managers about what had been said. The company did not respond to my complaints and no action was taken.
Potential Discrimination	
(21)	I also worked during much of this period as a community development representative. In this capacity, I contacted and worked with community groups in the goal of expanding Wells Fargo's business, particularly in African American communities. I as an African American.
(22)	As a credit manager, my job was to find as many potential borrowers as I could for Wells Fargo and get them to apply for a loan. Credit managers were given a list of what were called "leads." These were names of people we were supposed to call to encourage them either to come into the office so we could get them to apply for a loan, or to apply directly over the telephone. We were instructed to make as many as 35 calls an hour and to call the same borrower multiple times each day.

instances of potential discrimination. Readers may judge for themselves the degree to which the statements indicate discrimination.

EVIDENCE OF STRUCTURAL DISCRIMINATION

The first six extracts in the first panel do not mention race explicitly, but the statements appeared in the context of a broader discussion about race and were considered to indicate the existence of structural discrimination. The extracted statements essentially describe institutional features of the mortgage lending industry that promoted exploitive practices that were disproportionately directed at minority borrowers. Extracts (1)–(3),

for example, speak to the incentives for fraud and deception that were built into the organizational structure of the lending institutions in question, incentives that made discrimination against underserved minority borrowers especially attractive. In extract (1), for example, a loan officer admits that both he and the loan company made more money by steering borrowers into loans with high interest rates, noting that "if the company made a little more money, I would make a little more money." In the second extract the speaker describes the commission and referral system at Wells Fargo, a leading retail bank that was a major player in the origination of mortgages for securitization, asserting that it was "set up in a way that it made it more profitable for a loan officer to refer a prime customer for a subprime loan than make the prime loan directly to the customer."

In describing the relationship between one investment bank and the retail lender where he worked, the speaker (3) stated that "it was essential to Morgan Stanley's business model to vest the trading desk with the ultimate power to decide which loans to buy—regardless of their quality—because doing so maximized the supply of New Century loans and the cash flow from those loans." In other words, the investment bank pushed its principal mortgage retailer to include in their referred pool of mortgages loans known to be of poor quality—those with incomplete documentation, questionable sources of income, poor loan to value ratios, bad credit ratings, and other problems pointing to a greater risk of default.

The passage also suggests that the loan originator felt compelled to acquiesce to this pressure in order to maintain its cash flow and remain in business. Indeed, when Morgan Stanley ultimately declined to purchase a set of New Century loans in early 2007, the firm promptly went bankrupt, indicating the degree to which the pressure to generate more loans irrespective of risk was built into structure of the system, thereby making easily located, unsophisticated minority group members a juicy target.

The structural nature of the exploitation is underscored by the reported reaction of bank executives when suspicious, risky, or unethical lending practices were brought to their attention. The speaker in extract (4), for instance, stated that he "complained many times about what I thought were unethical or predatory loan practices that Wells Fargo was engaged in. Managers never took any actions to respond to my concerns. In my office we morbidly joked that we were 'riding the stagecoach to hell.'" Another loan officer complained to a superior about the use of "live draft checks" to ensnare borrowers, which he found "especially unethical." As speaker (5) explained:

> Wells Fargo would mail checks in the amount of $1,000 or $1,500 to leads. Once these checks were deposited or cashed, they instantly became loans with Wells Fargo at very high interest rates. Individuals who cashed these checks became an instant "lead" target for a home equity refinance loan, which of course would end up placing the borrower's home at risk.

The deponent in extract (6) reported that he "was constantly butting heads with my district manager":

> I told him repeatedly about the practices I objected to. He knew that loans were being falsified; and he knew that many of the aggressive practices he instructed us to follow were causing borrowers to get behind on their loans. Yet he still pressured us to engage in the most aggressive loan practices and threatened employees with their jobs if they did not do things his way.

The structural nature of the resulting exploitation is confirmed by the speaker's conclusion that "the bonus system was lucrative, so there was plenty of financial incentive to engage in high-pressure and deceptive sales practices, even if one knew they were wrong."

The speaker in extract (7) explicitly links the systemic incentives for exploitation to the targeting of minority group members, noting that "since loan offers made more money when they charged higher interest rates and fees to borrowers, there was a great financial incentive to put as many *minority* borrowers as possible into subprime loans and to charge these borrowers higher rates and fees" (emphasis added). Speaker (8) explained that the credit managers who oversaw mortgage sales agents "targeted African-American borrowers in several different ways":

> One way was to partner with local businesses that were located in African-American areas... to identify customers who had financed purchases at these stores. Credit managers would "cold-call" people off of these lists or simply show up at these individuals' homes or businesses. Managers identified African-American customers by talking to them over the telephone, or by meeting them in person. Most of the leads on the lists that managers were given to call were African-American.

In extract (9), a sales agent confirms the disproportionate targeting of black borrowers by stating that "most (80% or more) of the leads on the lists I was given were African Americans":

> I know this both from meeting these individuals, and from talking with them on the phone. The people on the list of the leads did not represent a random cross section of the people who lived in the area around the office, because our office was located in an area where a lot of white people lived.

Speaker (10), another sales agent, reported roughly the same frequency of black prospects in the leads he was given, stating that "approximately 80–90 percent of the leads I was given turned out to be individuals who were African American" and frankly stated that "I believe that Wells Fargo targeted African Americans for these subprime loans."

Lies and deception were often used as tactics to steer minority borrowers into high interest loans. According to extract (11), "Wells Fargo also discriminated against minority loan applicants by advising to them that the interest rate on their loan was 'locked,' when in fact, Wells Fargo had the ability to lower the rate for the applicant if the market rates dropped prior to the loans closing." The systemic nature of racism at Wells Fargo is indicated by speaker (10)'s observation that the "prevailing attitude" in the organization "was that African-American customers weren't savvy enough to know they were getting a bad loan, so we would have a better chance of convincing them to apply for a high-cost, subprime loan."

EVIDENCE OF STRUCTURAL AND INDIVIDUAL DISCRIMINATION

In many cases, the coders saw evidence of both individual and structural discrimination in the passages they read, extracts from which appear in the second panel numbered 12—20. The coders both felt that the deponent in extract (12) was referring to both individuals and the institution in reporting that "Wells Fargo management tolerated a culture

of discrimination." Statements coded as displaying both structural and individual racism contained a number of examples of the mechanisms by which racial discrimination was enacted in the marketing of mortgage loans. Extract (13), for example, pointed out that "Wells Fargo discriminated against minority loan applicants by not offering them their better or new products which had lower fixed interest rates and fees." According to extract (14), "another technique would be to tell the customer that the only way to get the loan closed quickly would be to submit it as a subprime loan."

Similarly, in extract (15) the speaker reported that "Wells Fargo loan officers also discriminated against minority refinance applicants by encouraging them to take out more cash on their home equity," even though "by taking out more cash, the borrower would unwittingly increase the commission the loan officer received on the loan while at the same time eliminating his ability to qualify for a prime or FHA loan." Another common technique was to target elderly African Americans for special attention. As loan officer in extract (16) explained, older black homeowners "were thought to be particularly vulnerable and were frequently targeted for subprime loans with high interest rates":

> I remember one instance where an elderly African-American woman who was over 65 could not qualify for subprime loan that a credit manager wanted to put her into, so the credit manager convinced her to transfer the property to her son so the subprime loan could be made in the son's name.

With such practices embedded within the social structure of mortgage lending, it is not surprising that racist attitudes, stereotypes, and jokes were often bandied about by sales agents and loan officers. According to the Wells Fargo employee in extract (17):

> It was generally assumed that African American customers were less sophisticated and intelligent and could be manipulated more easily into a subprime loan with expensive terms than white customers. I heard employees joking with one another about the race of customers, saying things like: "You know that guy isn't so smart—is it because he's black?"

Similarly, the deponent in extract (18) reported that loan officers in the Mortgage Resource division "referred to subprime loans in minority communities as 'ghetto loans' and minority customers as 'those people who have bad credit,' 'those people who don't pay their bills,' and 'mud people.'"

Extract (19) offers another statement coded as displaying both structural and individual racism in the mortgage lending industry. In this case, a loan officer perceived himself to be the victim of discrimination because he was black and refused to engage in predatory lending:

> I believe that Wells Fargo did not promote me for two reasons. First, Wells Fargo's management culture is white. Second, Wells Fargo management knew that I treated Wells Fargo customers well by offering them to refinance to prime and FHA loans when they qualified for these products.

The loan officer in extract (20) also felt discriminated against, but this time it was because she was "too white" to participate in a "wealth building seminar" that was to be held in a black community, which she frankly admitted were nothing more than sales pitches for predatory loans:

> I remember preparing for a wealth building seminar to be held in Greenbelt, Maryland [a community in black-majority Prince Georges County, a suburb of Washington]. It was understood that the audience would be virtually all black. The point of the seminar was to get people to buy houses using Wells Fargo Loans. At the seminar the plan was to talk about "alternative lending." This was code language for subprime lending, but we were not supposed to use the word "subprime." I was supposed to be a speaker at this seminar but was told by the emerging markets manager that I was "too white" to appear before the audience. I was offended by these statements and complained to several higher ranking managers about what had been said. The company did not respond to my complaints and no action was taken.

EVIDENCE OF POTENTIAL RACISM

Two examples from the set of extracts included in Table 1 were coded as having possible discriminatory effects even though racial discrimination was not explicitly present in the statement under consideration. In extract (21), the speaker explains that as a Credit Manager, he was pressured "to find as many potential borrowers as I could for Wells Fargo and get them to apply for a loan" using a list of leads:

> Credit managers were given a list of what were called "leads." These were names of people we were supposed to call to encourage them either to come into the office so we could get them to apply for a loan or to apply directly over the telephone. We were instructed to make as many as 35 calls an hour and to call the same borrower multiple times each day.

This passage reveals the pressure sales agents were under to bring in subprime loans, though it lacks the specific racial language and intent of other statements.

The speaker in extract (21), an African American, described working as a "community development representative" in which he "contacted and worked with community groups with the goal of expanding Wells Fargo's business in African American communities—I as an African American." Although working with "community groups" carries the same potential for discrimination as the firm's "wealth building seminars," this statement did not include the explicit racial content of the prior extract. Nonetheless it illustrates an important technique employed by loan officers and credit managers to target minority individuals and communities for predatory lending: the recruitment of trusted members of minority communities to act as intermediaries in introducing lenders to community members.

In effect, the strategy involves using and manipulating leaders of nonprofit organizations and churches as pawns to unwittingly vouch for the legitimacy of loan originators, often by promising a donation to a charity of the borrower or community leader's choice for each referral that produced a new loan. Although not included in the sample of extracts reproduced in Table 2, in another coded statement the speaker in extract (20) explained the strategy this way:

> The Emerging Markets Unit specifically targeted black churches. Wells Fargo had a program that provided a donation of $350 to the profit of the borrower's choice

for every loan the borrower took out with Wells Fargo. Wells Fargo hoped to sell the African American pastor or church leader on the program because Wells Fargo believed that African American church leaders had a lot of influence over their ministry, and in this way would convince the congregation to take out subprime loans with Wells Fargo.

In other words, the strategy in this and other examples emerging from our content coding was to tap into the social structure of minority communities, making use of central figures in community networks and organizations to build trust and develop prospects through these leaders' sets of interpersonal contacts and acquaintances.

CONCLUSION AND DISCUSSION

Although the data in Table 2 emerge from a small sample of the total number of statements included in our qualitative database, it nonetheless suggests the degree to which racial discrimination was systemic and not a result of a few racist "bad apples" in an otherwise race-neutral barrel. The fact that structural racism was judged to be evident in 76 percent of the 220 passages implies that racial discrimination was common in the institutions under investigation. In contrast, only 11 percent of all the texts were judged to display individual racism.

The statements presented in Table 2 also reveal the microsocial mechanisms by which discrimination was carried out by predatory lenders who peddled high-cost, high-risk mortgages to individuals and communities of color throughout the United States, an operation that black humorists in one retail lender mockingly termed "riding the stagecoach to hell." These mechanisms included deliberate deception and misrepresentation of lending terms; the falsification of loan documents; the recruitment of unwitting confederates within the social structure of minority communities; the use of "live draft checks" to ensnare unsuspecting consumers in high-interest loans; the targeting of the elderly for deceptive, high-pressure marketing; the encouragement of refinance borrowers to take out loans for more than their home's worth, thereby putting it automatically into the subprime category; using business records, church directories, and telephone exchanges to build lists of prospective borrowers for cold-calling; the organization of sales events in minority neighborhoods that were euphemistically labeled "wealth building seminars." The racialized nature of these mechanisms is indicated by the language used to describe the transactions, referring to subprime mortgages as "ghetto loans" and minority customers as "less sophisticated and intelligent," "easier to manipulate," and "people who don't pay their bills," and even "mud people."

These data supplement prior quantitative studies documenting racial differentials in mortgage lending by revealing some of the underlying mechanisms' racial discrimination. In their study of mortgage loans made by Wells Fargo in Baltimore (one of the sources of qualitative data for this study), for example, Rugh et al. (2015) showed that black borrowers paid an estimated additional 5–11 percent more in monthly payments than comparably qualified whites, resulting in some $1,739 in excess mortgage payments for the average black borrower from the time of loan origination and $1,861 in excess payments for the average resident of a black neighborhood, yielding respective figures $14,904 and $15,948 in excess payments over the course of a 30-year mortgage. The authors also estimate that as a result of predatory lending, in 2012 black borrowers in

Baltimore were threatened with $3.8 million in potential losses from foreclosure with nearly $2.1 million already forfeited through completed repossessions.

These examples concretely demonstrate how the racialized mechanisms elucidated here worked to produce an ever-growing cumulative disadvantage for African Americans during the U.S. housing boom and bust. Based on our qualitative data, which we see as a complement to this earlier quantitative work, we propose that the cumulative disadvantage in wealth experienced by African Americans today is no mere coincidence, but the outcome of systemic racism deeply embedded within the social structure of America's mortgage lending industry. If our conjecture is correct, then structural discrimination in the lending industry constitutes a prime reason why the racial wealth gap in the United States increased fourfold in the wake of the housing bust (see Shapiro et al. 2010).

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Chairwoman Maxine Waters:

Fair Lending

The Consumer Bureau's Office of Fair Lending and Equal Opportunity has had many successes, including a number of settlements for consumers who were illegally discriminated against in credit card, mortgage, and indirect auto lending. Mr. Mulvaney made an effort to gut the powers and undermine the role of this critical office.

Question 1

How many enforcement attorneys are allocated to work on fair lending issues and how does this compare to the time-period before your predecessor Mr. Mulvaney removed the supervisory and enforcement powers of the fair lending office?

Response

As of July 1, 2019, 104 line attorneys work within the Consumer Financial Protection Bureau's (Bureau's) Office of Enforcement, which is responsible for all investigations at the Bureau. Prior to the fair lending transition, the Office of Fair Lending and Equal Opportunity dedicated nine attorneys to fair lending investigations. Five of those attorneys have joined the Office of Enforcement as line attorneys. All eighty of the line attorneys in the Office of Enforcement, including the five attorneys who transferred from the Office of Fair Lending, are generalists who can participate in the investigation of any potential violation of Federal consumer financial law, including those focused on fair lending. The resources the Office of Enforcement deploys on fair lending matters is dependent on a number of factors, including the facts and circumstances of particular investigations.

Question 2

As we discussed during the hearing, we have seen alarming comments, some as recent as 2016, from Eric Blankenstein, a political appointee hired by Mr. Mulvaney who continues to serve as the Policy Associate Director for Supervision, Enforcement and Fair Lending. After Mr. Blankenstein's racist blog posts came to light, Patrice Ficklin, a career staffer who runs the Office of Fair Lending and Equal Opportunity, shared her thoughts an email to her colleagues, writing, quote – "The tone and framing are deeply disturbing to me as a woman, African American, advocate for LGBTQ rights, and human being. And while he has been collegial, thoughtful and meticulous, I have had experiences that have raised concerns that are now quite alarming in light of the content of his blog posts – experiences that call into question Eric's ability and intent to carry out his and his Acting Director's repeated yet unsubstantiated commitment to a continued strong fair lending program under governing legal precedent." – end quote.

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Should anyone with this kind of record and reputation hold a leadership position regarding fair lending enforcement? What does that do to morale for professional staff working on fair lending issues?

Response

Mr. Blankenstein is no longer an employee of the Bureau.

Question 3

Are you aware that the union has called for his removal? What communications have you had with the union and other staff about his role at the Consumer Bureau?

Response

See above.

Question 4

Director Kraninger, yes or no, does Mr. Blankenstein have your full support?

Response

As you are aware, Mr. Blankenstein is no longer an employee of the Bureau, so I do not believe this question is relevant any longer.

Payday Rule

On February 6, 2019, the Consumer Bureau announced that it would rollback its payday lending rule. It has been reported by the New York Post that that the Consumer Bureau worked closely with the payday loan industry before the agency proposed to rollback the rule, contrary to what your spokesperson told the public.

Question 5

Who on Consumer Bureau staff was a part of these conversations?

Response

The referenced *New York Post* article incorrectly reported on communication between Bureau staff and a person named Hilary Miller. The statement by the Bureau spokeswoman was correct,

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and Mr Miller sent the Bureau a letter dated March 6, 2019 in which he stated that no such communication occurred. He also supplied an email he sent to the *New York Post* on March 3, 2019 requesting an update to its article, in which he explained his view that the reporting was erroneous. These documents from Mr. Miller have been provided to the House Financial Services Committee previously, but we would be happy to provide them again if that is helpful.

Question 6

How many times did you or Consumer Bureau staff meet with members of the payday loan industry?

Response

See response to Question 7 below.

Question 7

Can you please provide the names of each organization and individual from the payday loan industry who met with you or your staff while you were contemplating proposing to roll back of the rule?

Response

Bureau staff regularly meet with a wide variety of stakeholders, including representatives of consumer groups and industry, during its development of a regulatory proposal. The Bureau engaged in such consultations during the development of the 2017 Payday Rule, as it continues to monitor and support industry implementation since the 2017 Payday Rule was issued, and while seeking input from a variety of stakeholders. Specific to my calendar, as demonstrated in the calendars that have been released to the public, I have not had any such meetings.

Bureau staff met with industry stakeholders to discuss payday lending during the time period referenced. The Bureau took part in meetings or calls coordinated or attended by the Office of Financial Institutions and Business Liaison or the Consumer Lending, Reporting, and Collections Markets between November 27, 2017 and February 6, 2019, including those with Dennis Shaul, Robert Batson, Chris Vergonis, Community Financial Services Association (CFSA); Ed D'Alessio, Allen Denson, Financial Service Centers of America (FiSCA); Mary Jackson, Michael Day, Lisa McGreevy, the Online Lenders Alliance (OLA); Patrick O'Shaughnessy, Jamie Fulmer, Advance America; Jay Shipowitz, Eric Norrington, Ace Cash Express; Cary Silverman, Waldo General; Doug Clark, Axcess Financial; Lynn DeVault, Check Into Cash; Ian MacKechnie, Fraser MacKechnie, Amscot; Jennifer Robertson, Pacific Rim Alliance; Dan Gwaltney, Payday Loan, LLC; Ted Saunders, Rob Greiser, David Schwartz, Community Choice Financial Services; Kirk Chartier, Enova; Don Gayhardt, Melissa Soper, CURO; and Jeff

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Silverman, MS Management. This list may not be exhaustive, as the Bureau does not maintain a single comprehensive list of all meetings attended by all personnel.

Question 8

Were any similar conversations held by you or Consumer Bureau staff with consumer advocates?

Response

The Bureau met with consumer groups to discuss payday lending during the time period referenced. On February 7, 2018, Acting Director Mulvaney hosted a meeting at Bureau headquarters, in which the topic of payday loans was discussed with representatives from approximately 60 community and nonprofit organizations from different areas of the country. During this meeting, faith leaders and consumer advocates told stories of borrowers' experiences with payday loans and discussed how these experiences varied by state.

On July 17, 2018, Acting Director Mulvaney hosted a roundtable discussion at Bureau Headquarters with approximately 25 community and consumer groups to discuss the Bureau's *Call for Evidence* Requests for Information initiative. The roundtable offered various groups an opportunity to elaborate on issues noted in comments submitted to *regulations.gov*, including the topic of payday loans.

Additional listening sessions with Bureau staff and consumer and community-based organizations were held in the field in which the topic of small-dollar lending and payday loans were raised:

- August 9, 2018 in Los Angeles, California
- August 22, 2018 in Goffstown, New Hampshire; and
- September 18, 2018 in Columbus, Georgia.

On January 22, 2019, I met with the following consumer advocacy, civil rights, and community organizations to discuss a variety of topics, including payday lending: Americans for Financial Reform (AFR); Atlanta Legal Aid Society; Center for American Progress; Center for Responsible Lending (CRL); Connecticut Fair Housing Center; Consumer Action; Consumer Federation of America (CFA); Consumer Reports (Advocacy); Generation Progress; Georgia Watch; Housing Assistance Council; Leadership Conference on Civil and Human Rights; Maryland Consumer Rights Coalition; NAACP; National Association of Consumer Advocates (NACA); National Community Reinvestment Coalition (NCRC); National Consumer Law Center (NCLC); National Fair Housing Alliance (NFHA); National Housing Resource Center; National Urban League; Northwest Side Housing Center; Prosperity Now; Public Citizen; Rural LISC; Texas Appleseed; Texas RioGrande Legal Aid; The Institute for College Access and Success (TICAS); UnidosUS; U.S. PIRG; Veterans Education Success; and Woodstock Institute.

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Additionally, on January 22, 2019, I met separately with the following faith leaders to discuss payday lending exclusively: Bend the Arc Jewish Action; Catholic Charities USA; Center for Public Justice; Faith for Just Lending; Cooperative Baptist Fellowship; Ecumenical Poverty Initiative; Ethics & Religious Liberty Commission (Southern Baptist Convention); Evangelical Lutheran Church in America; Faith & Credit Roundtable, Center for Responsible Lending; Faith in Action; Jubilee USA Network; Missouri Faith Voices; National Association of Evangelicals; National Baptist Convention USA, Inc., Project GREEN; Religious Action Center of Reform Judaism; and U.S. Conference on Catholic Bishops (USCCB)

I have also conducted listening sessions with advocates in which payday lending was raised:

- January 18, 2019 in San Francisco, California with the following organizations: ASIAN Inc.; California Capital Financial Development Corporation; California Reinvestment Coalition; CALPIRG; Center for Responsible Lending; Consumer Action; Consumer Reports; East Bay Community Law Center; Invest in Women Entrepreneurs Initiative; Mission Asset Fund (MAF); Mission Economic Development Agency (MEDA); MyPath; National Coalition for Asian Pacific American Community Development; National Diversity Coalition; National Housing Law Project; Opportunity Fund; PolicyLink; Richmond Neighborhood Housing Services; UnidosUS; and Western Center on Law & Poverty.
- February 5, 2019 in Chicago, Illinois with the following organizations: Chicago Urban League; Hunger Network of Ohio; LAF (Legal Assistance Foundation); NHS of Chicago; Northwest Side Housing Center; Northside Community Development Corporation; Samuel DeWitt Proctor Conference; Shriver Center on Poverty Law; Spanish Coalition for Housing; Woodstock Institute; and Young Invincibles.

This list may not be exhaustive, as the Bureau does not maintain a single comprehensive list of all meetings attended by all personnel. Furthermore, I (and Bureau staff) have continued to engage in numerous conversations with a wide array of community and consumer groups to discuss the NPRM since it was issued on February 6, 2019.

Question 9

Will you provide the Committee with specifics on all interactions senior Consumer Bureau officials had with the payday lending industry about the rule?

Response

Please see responses to Questions 5, 6 and 7.

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Student Loan and Student Debt

Under statute the Bureau is required to publish a student loan complaint report every October 16th. One of the purposes of that report is to inform Members of Congress about the problems borrowers face in the student loan market. However, your agency inexplicably decided against publishing this report last year.

Question 10

When will the report be published?

Response

Section 1035 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) specifies that the Private Education Loan Ombudsman "shall prepare an annual report" that describes the Ombudsman's activities. The former Private Education Loan Ombudsman did not prepare this report prior to his resignation, and, accordingly, the Bureau will not be submitting a 2018 report.

The Bureau is in the process of hiring that position. As the statute states that "[t]he Secretary [of the Treasury], in consultation with the Director [of the Bureau], shall designate" the Private Education Loan Ombudsman, the Bureau does not have unilateral authority to fill the position. The Bureau is working with the Secretary of the Treasury to designate a qualified candidate as quickly as practicable. The position posted in March, and I am very much looking forward to having someone in that position.

The Bureau will make clear to any future designated Private Education Loan Ombudsman the importance of fulfilling this statutory requirement.

Question 11

As the Consumer Bureau did not publish that report in 2018, can you provide us information about complaints related to student loans, including for both federal and private loans?

Response

The Bureau published its Consumer Response Annual Report to Congress on March 29, 2019.[1] This report details complaint data and trends across products and services for the prior year, including complaints submitted to the Bureau about federal and private student loans. For more

[1] https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf.

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recent student loan complaint data, or for information prior to the report's time period, visit the Bureau's Consumer Complaint Database.[2]

Question 12

What is the Consumer Bureau doing specifically to make sure that student loan servicers are complying with all applicable consumer protection laws?

Response

In addition to Enforcement work mentioned in response to question 13, the Bureau supervises certain student loan servicers under its authority for compliance with applicable consumer protection laws. Annually, the Bureau's prioritization process identifies entities and topics for examination within the student loan servicing market. Entities are prioritized and selected based on their size, complaint volume, previous supervision history, and other market intelligence obtained by the Bureau. For each of these examinations the Bureau identifies topics based on the characteristics of the product, complaint data, field market intelligence, and overall consumer risk. These examinations addressed a range of topics including account maintenance, compliance management systems, payment processing, payment allocation, Equal Credit Opportunity Act compliance, and unfair, deceptive, or abusive acts or practices.

Furthermore, the Section for Students, a dedicated team within the Office of Financial Education, is focused on educating and empowering student loan borrowers with respect to decisions and options for taking out and repaying student loans. Providing existing student loan borrowers with education directly and through intermediaries on managing student debt including repayment plans avoiding default, post-default decisions, and debt collection is a priority for this team.

Question 13

What are you seeing out of the Consumer Bureau's supervisory and enforcement student loan work?

Response

Many of the Bureau's previous supervisory findings of violations by student loan servicers are summarized in earlier editions of *Supervisory Highlights*.[3] For example, the Bureau cited one or more student loan servicers for failing to reverse adverse consequences of erroneous deferment

[2] https://www.consumerfinance.gov/data-research/consumer-complaints/.
[3] *See* https://files.consumerfinance.gov/f/documents/201704_cfpb_Supervisory-Highlights_Issue-15.pdf; https://files.consumerfinance.gov/f/documents/Supervisory_Highlights_Issue_13__Final_10.31.16.pdf; https://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf; and https://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.

terminations. The Bureau found that student loan servicers' reliance on the National Student Clearinghouse resulted in automatically terminating in-school deferments prematurely due to inaccurate data. When the data were corrected, servicers made appropriate forward looking adjustments and retroactively placed the borrowers back in deferment. However, the Bureau found that the servicers did not reverse the adverse financial consequences of the erroneous deferment termination, including late fees and interest capitalization.

Similarly, the Bureau cited one or more student loan servicers for deceptive statements about interest capitalization during successive deferments. Student loans frequently allow for a variety of deferment and forbearance options. At one or more servicers, the Bureau found that servicers were placing borrowers into successive periods of forbearance or deferment. At the end of each period, servicers capitalized interest, rather than capitalizing once the borrower eventually reentered repayment. One or more servicers stated that interest would capitalize at the end of the deferment period. The Bureau cited this as a deceptive practice because reasonable consumers likely understood this to mean interest would capitalize once, when the borrower ultimately exited deferment and entered repayment. Finally, the Bureau cited one or more student loan servicers for failing to provide borrowers with an effective choice for payment allocation.

The Bureau has also brought a number of public enforcement actions related to student lending. These actions have addressed issues with the origination of private student loans, servicing of student loans, student loan debt collection, and student loan debt relief companies.[4]

Question 14
What are the trends you are seeing on complaints relating to student loans? In particular, what are the problems and the reporting rates of low-income and minority borrowers with student debt consumer complaints?

Response

As noted in my previous response, the Bureau published its Consumer Response Annual Report to Congress on March 29, 2019.[5] This report details complaint data and trends across products and services for the prior year, including complaints submitted to the Bureau about federal and private loans. The Bureau does not currently collect race, ethnicity, or income-related data from consumers as part of the complaint process.

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[4] https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-fall-2014/; https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-spring-2015/; https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-fall-2015/; https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-spring-2016/; https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-fall-2016/; https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-spring-2017/; https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-fall-2017/; and https://www.consumerfinance.gov/data-research/research-reports/semi-annual-report-spring-2018/.
[5] https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf.

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Question 15

Whose interest is it in to keep accurate and well researched information a secret from the public, like the report that was allegedly suppressed by your predecessor that uncovered several bank abuses, including by Wells Fargo?

Response

On February 5, 2018, an analysis on student debit and prepaid card agreements was prepared by the Office for Students and transmitted to the U.S. Department of Education in the form of a letter. This letter is publicly available in the Bureau's FOIA reading room on consumerfinance.gov.[6]

Question 16

According to recent reports from publications including Forbes magazine, approximately ninety-nine out of every hundred public service worker who applied for public service loan forgiveness were rejected by the Department of Education since the program started. That is a major problem. As you know, the Consumer Bureau has certain duties with respect to student lending and servicing to make sure that consumers are protected.

Has the Consumer Bureau received any consumer complaints about the high rates of public service loan forgiveness rejections and what it means for impacted student loan borrowers? If so, please describe those complaints, along with any steps the Consumer Bureau would recommend to help these student loan borrowers.

Response

As previously noted, the Bureau published its Consumer Response Annual Report to Congress on March 29, 2019. As noted in that report, federal student loan borrowers reported issues with the Public Service Loan Forgiveness program. Many borrowers stated that they made payments on loans that they thought would be forgiven; however, after making payments over several years, they learned they were not eligible for forgiveness. In response, their servicers often stated that they were not eligible for forgiveness because, for example, they did not have the right type of loan, were in the wrong type of payment plan, or did not work at a qualifying public service employer. Many borrowers who were earlier in the payment process, and still had some time before reaching the requisite 120 payments, stated that their loan servicer did not calculate the number of current payments correctly. In response, servicers often reported researching the calculation and updating the payment count or explained why certain payments were ineligible.

[6] https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/letter-department-education/

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Borrowers seeking individual assistance about Public Service Loan Forgiveness should contact the Department of Education. The Department of Education may provide additional resources or information on next steps to qualify or apply for Public Service Loan Forgiveness.

For those consumers seeking additional information about Public Service Loan Forgiveness, the Bureau offers resources to help consumers navigate the complexities of the program including information on how to apply and qualify.[7]

Question 17

As you know, 45 million Americans have student loans, with an average balance of approximately $30,000. This adds up to $1.56 trillion in student loan debt, which is about $521 billion more than the total U.S. credit card debt. When student loans are serviced improperly, many Americans and their families are negatively affected.

How many professional staff are currently working at the Consumer Bureau and focused solely on student loan issues?

Response

While many of the staff within the Division of Consumer Education and Engagement work on issues for their respective stakeholders regarding student loans, the focus of these efforts is within the Section for Students. As of July 1, 2019, the Section for Students is staffed by three full-time staff. The Bureau is in the process of hiring a total of five full-time staff to support the Section for Students. The Bureau is also in the process of hiring for the Private Education Loan Ombudsman position.

As discussed in the answer to question 12, Supervision conducts certain examinations reviewing student lending and servicing activities each year. While individual staff members in Supervision conduct compliance oversight in multiple consumer finance markets over any given year, a number of professional staff expend resources on student loan compliance issues annually, in a proportion determined by the prioritization process discussed above. Consistent with enforcement priorities and investigations, Enforcement staff are also engaged in student loan issues.

In addition, the Bureau's Student Loan Program Manager continues to lead the Bureau's market monitoring activities with respect to student lending with support of analysts in Markets. The Office of Research has published two studies addressing student lending and has ongoing research activities in this area.

Question 18

[7] https://www.consumerfinance.gov/about-us/blog/guides-public-service-loan-forgiveness/.

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We understand that you recently posted a job opening for Student Loan Ombudsman. Why has this position been inactive for this long? When can we expect this position to be filled?

Response

In the past, the Assistant Director of the Office of Students, which was under the Consumer Education and Engagement Division, was also designated the Private Education Loan Ombudsman. I have established a new career position titled Private Education Loan Ombudsman, which will now be part of the Office of the Director. As required by the statute, the Bureau is working with the Secretary of the Treasury to designate a qualified candidate as quickly as practicable. The position posted in March, and I am very much looking forward to having someone in that position.

Question 19

Will the Office of Student Loan Ombudsman - whose main job it is to help student loan borrowers with consumer complaints and document the issues that borrowers face – be adequately staffed and have your full support?

Response

As noted in the previous response, as required by the statute, the Bureau is working with the Secretary of the Treasury to designate a qualified candidate as quickly as practicable. The position posted in March, and I am very much looking forward to having someone in that position. I believe it is important to fill this position to carry out the position's statutory responsibilities.

Political Appointees

Federal financial regulators, like the Federal Reserve and Office of the Comptroller of the Currency (OCC), for example, are independent agencies like the Consumer Bureau. They are not intended to be political operations that report directly to the President, but rather independent bodies that focus on implementing and enforcing the law. According to the 2016 Plum Book, the Fed, OCC and the Consumer Bureau at that time had zero political appointees on staff beyond their Senate-confirmed leadership. I understand that during Mr. Mulvaney's tenure, he brought on as many as 12 political appointees on staff.

Question 20

Do you believe having political appointees embedded within the Consumer Bureau undermines its independence and politicizes its work? Why or why not?

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Response

The Dodd Frank Act vests significant authority in the Director, including with regard to fixing the number and means of appointment of all Bureau staff in accordance with title 5, United States Code. It is priority for me to develop a diverse, capable and motivated team at the Bureau to carry out our important mission. As such, I will use the authorities Congress provided to that end.

Question 21

Have you hired any political appointees since you were sworn in?

Response

Section 1013 of the Dodd-Frank Act states, "The Director may fix the number of, and appoint and direct, all employees of the Bureau in accordance with the applicable provisions of title 5, United States Code." This authority includes the appointment of employees under Schedule C hiring authority.

The Bureau has hired four Schedule C appointees during my tenure at the Bureau – Policy Associate Director for External Affairs, Deputy Assistant Director for Communications, Deputy Chief of Staff, and Deputy Director. The Policy Associate Director for External Affairs was hired to replace a previous Schedule C appointee who held the position and resigned from the Bureau.

Question 22

How many political appointees are currently on staff?

Response

There are 11 Schedule C appointees on staff, as of June 28, 2019.

Consumer Advisory Board

As we have discussed, I was troubled by the way Mr. Mulvaney dismissed the prior members of Consumer Advisory Board and made changes that seem to diminish the role Board plays with the agency.

Question 23

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We attempted to address that in the Consumers First Act, but what steps are you taking to ensure the Consumer Advisory Board, and the other advisory boards are diverse and inclusive, and have the opportunity to provide meaningful, in-person advice to you and the Consumer Bureau's staff?

Response

I have seen firsthand how the Bureau benefits from the valuable input provided by the Consumer Advisory Board and the Bureau's other advisory committees. On March 21, 2019, I announced a series of enhancements to the overall advisory committee program. Effective fiscal year 2020, the committees will expand their focus to broad policy matters, increase their in-person meeting frequency from two times a year to three times a year, and committee members will receive two-year terms upon appointment. Additionally, the Bureau recently accepted applications for members to serve on its advisory committees. As Director, I will ensure the Bureau's advisory committees are diverse and inclusive bodies that have the opportunity to provide meaningful, in-person advice to me and the Bureau's staff.

Question 24

Since the agency was created to protect consumers, what steps can you take to ensure that consumers are well-represented on these boards?

Response

As noted in the previous response, on March 21, 2019, the Bureau announced that it will begin accepting applications for members to serve on its advisory committees. The Bureau welcomed all qualified candidates to submit their application for consideration of appointment. I will ensure that the membership of the committees is properly representative of consumer interests.

No-action letter/ product sandbox policy

There is strong support in Congress to seek ways to promote responsible innovation and the use of technology in the financial services marketplace, however, it should only be done within the appropriate legal framework with sufficient consumer protections and safeguards. In the Consumer Bureau's recent no-action letter and product sandbox proposal, the agency proposes to give designated officials the authority to give companies immunity from enforcement of consumer protection laws by other federal authorities, states, or consumers.

Question 25

Can you explain why it is a good idea, outside of public rulemaking where everyone can participate, to let individual Consumer Bureau employees, in a secretive process with a cursory

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60-day review, to hand out exemptions from consumer protection laws to certain, if not favored, companies?

Response

While I do not accept the premise of this question, this response provides some information on the process the Bureau is following to develop its innovation policies. Let me also reiterate my commitment to transparency and public discourse regarding Bureau proposals.

In December 2018, the Bureau proposed the Policy on No-Actions Letter and the BCFP Product Sandbox (Policy), including making certain exemptions available to Product Sandbox participants. The Bureau voluntarily sought comment on the proposed Policy. The comment period closed on February 11, 2019. The Bureau received 31 comments from a broad spectrum of stakeholders, including industry trade associations and other industry groups; individual financial services providers; consumer advocacy groups and civil rights organizations; and two groups of State Attorneys General. Industry groups generally supported the proposal, as did one of the groups of State Attorneys general. Consumer groups and the other group of State Attorneys General generally had concerns about many aspects of the proposal. The comments addressed nearly every facet of the proposal, including the proposed (i) streamlining of the application and review process; (ii) the shift from staff recommendations of no-action to Bureau commitments of no-action; (iii) procedures for third-party applications from service providers, trade associations, and other entities; (iv) the grounds and procedures for revocation; and (v) the intent to coordination operation of the Policy with similar programs operated by State regulators. The Bureau is in the process of carefully reviewing the comments and considering changes to the proposed Policy.

The regulatory relief in the proposed Product Sandbox policy, including exemptions by order, is intended to facilitate consumer-beneficial innovation and thus enable the Bureau to more effectively carry out its statutory purpose and objectives, including facilitating access and innovation. However, as with the proposal overall, the Bureau specifically sought comment on the proposed relief and is carefully considering those comments to develop a final Policy that will facilitate innovation to promote the purposes of the Bureau, including fairness, transparency, competition, and consumer access within financial services.

Question 26

The Consumer Bureau has proposed changing its no-action letter policy to make it binding on the agency and to encourage letters that promise no-action even for potential unfair, deceptive or abusive acts or practices. Please explain why you think that it is a good idea to hamstring the Consumer Bureau from pursuing potential unfair, deceptive or abusive practices that may not be apparent in a quick, one-sided 60-day review of a company presentation?

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Response

As noted in a previous response, the Bureau voluntarily sought comment on the proposed Policy and received a number of comments on this aspect of the proposal. The Bureau is in the process of carefully reviewing the comments and considering changes to proposed Policy.

To clarify what the Bureau proposed, the contemplated 60-day review period would begin when the Bureau notifies the applicant that it has deemed the application to be complete. The proposed Policy encourages applicants to contact the Bureau's Office of Innovation for informal, preliminary discussion of a contemplated proposal prior to submitting a formal application. Accordingly, if this aspect of the proposed Policy were finalized, the period during which the Bureau would be reviewing a proposal and interacting with a company would be longer than 60 days in a typical case.

Under the current Policy on No-Action Letters (2016 Policy), the Bureau could issue deceptive and abusive acts or practices-focused (UDAAP-focused) No-Action Letters, but the preamble of the 2016 Policy states that the Bureau expects them to be particularly uncommon. In the preamble of the proposed Policy, the Bureau has removed this statement to indicate that it would be no less open to applications for UDAAP-focused No-Action Letters than to applications focused on other laws or regulations.

Question 27

The Consumer Bureau has proposed to allow trade associations to apply for admission to a product sandbox that exempts all of their members from consumer protection laws, without any input from consumers or the public. Please explain why lobbying groups are being provided with a special opportunity to help their members collectively escape regulations with little to no scrutiny.

Response

As noted in a previous response, the Bureau voluntarily sought comment on the proposed Policy and received a number of comments on this aspect of the proposal. The Bureau is in the process of carefully reviewing the comments and considering changes to proposed Policy.

Question 28

Plenty of innovative practices, such as exploding interest rate mortgages, have harmed consumers. Do you agree that it is important to closely scrutinize new products, services and approaches, to get input from all sides including consumers and consumer advocates before granting exemptions from the law, and not to take a face value that something is innovative or beneficial to consumers?

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Response

Yes.

Question 29

The Consumer Bureau has created the Office of Innovation. Please describe what steps this office is taking to ensure that consumers are protected at the same time when the Consumer Bureau is proposing to give companies immunity from consumer protection laws?

Response

The proposed Policies are intended to benefit consumers and contain numerous features that are aimed at protecting them from harm. The Bureau received a number of comments on this aspect of the proposal, and is in the process of carefully reviewing the comments and considering changes to the proposed Policies.

Question 30

The Consumer Bureau announced it is the only United States member of the Global Financial Innovation Network (GFIN), an organization of 29 regulatory agencies worldwide working together to support financial innovation in the best interests of consumers. When GFIN released a document in August 2018 requesting comment, there were topics discussed – for example, "regulation of securities and Initial Coin Offerings (ICOs), know your customer (KYC) or anti-money laundering (AML)" – that are not in your agency's jurisdiction.

Under what legal authority is the Consumer Bureau working on these matters?

Response

The Global Financial Innovation Network (GFIN) initiative grew from a 2018 proposal from the United Kingdom's Financial Conduct Authority and creates a framework for cooperation between financial services regulators on innovation-related topics. GFIN has the following three main functions:

- Act as a network of regulators to collaborate and share experiences related to innovation in respective markets, including emerging technologies and business models;
- Provide a forum for joint policy work and discussions; and
- Creating an environment that allows for trials of cross-border solutions.

GFIN members participate in one or more "workstreams" covering topics such as regulatory technology and interagency collaboration. The Bureau has participated only in those

workstreams – or aspects of workstreams – that fall within its authority and jurisdiction. The Bureau does not intend to participate in matters unrelated to its authority or jurisdiction – such as regulatory technology developed for know your customer or anti- money laundering legal/regulatory compliance, unless aspects of the technology used could be beneficial for understanding technology that may have an application within the Bureau's jurisdiction.

The Bureau does not currently participate in GFIN's efforts to allow firms to trial cross-border solutions.

Question 31

Has the Consumer Bureau consulted with U.S. government agencies responsible for those policy matters? If so, please list what agencies the Consumer Bureau has consulted with on the work of GFIN, and please describe the kind of consultation you have engaged in.

Response

The Bureau has engaged in staff-level collaboration with other U.S government agencies on innovation-related issues, including with staff from the Board of Governors of the Federal Reserve System, the Commodities Futures and Trading Commission, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

In connection with its membership in GFIN, the Bureau is participating in GFIN's regulatory technology workstream. The workstream seeks to, among other things, share knowledge on regulatory technology among GFIN members and encourage collaboration on areas of mutual interest. The Bureau looks forward to consulting with other U.S. government agencies regarding regulatory technology. Moreover, as Chair of the Federal Financial Institutions Examination Council (FFIEC), I look forward to engaging with FFIEC members on the appropriate use of technology for the supervisory process.

Debt Collection

Americans throughout the country, are hounded by debt collectors, oftentimes third parties with no known relation with the purported creditor, with no end in sight. Sometimes these debt collection amounts are inaccurate, artificially inflated, or double count amounts that have already been paid off. Your predecessor previously stated that one-third of consumer complaints received by the Bureau are associated with debt collection, noting "data like that should, and will, guide our actions."

Question 32

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Why then did the Consumer Bureau cancel a survey of consumers about their experiences with debt collection, under your predecessor? And why have you not restarted this survey?

Response

In November 2017, the Bureau sought Office and Management and Budget (OMB) approval under the Paperwork Reduction Act to conduct a web survey for the purpose of quantitative testing of disclosures in connection with the Bureau's ongoing debt collection rulemaking. Then-Acting Director Mulvaney decided that, before proceeding with the survey, he wanted to review the proposals under consideration for the rulemaking so that any data collection could be tailored to the scope of the rulemaking. The Bureau withdrew its original submission to OMB to permit this review. On February 4, 2019, the Bureau re-published a 30-day notice regarding this disclosure testing. The comment period closed on March 6, 2019, and the Bureau has begun consumer testing.

Question 33

The debt collection industry and consumer groups both believe a rule is needed to govern debt collection practices and to protect consumers from unfair and abusive practices. In addition, as you are aware, the Consumer Bureau has delayed the issuance of this very important rule for quite some time. Could you please provide us an update on when we should expect a final rule?

Response

On May 7, 2019, the Bureau issued a Notice of Proposed Rulemaking (NPRM)[8] to implement the Fair Debt Collection Practices Act (FDCPA). The proposal would provide consumers with clear protections against harassment by debt collectors and straightforward options to address or dispute debts. Among other things, the NPRM would set clear, bright-line limits on the number of calls debt collectors may place to reach consumers on a weekly basis; clarify how collectors may communicate lawfully using newer technologies, such as voicemails, emails and text messages, that have developed since the FDCPA's passage in 1977; and require collectors to provide additional information to consumers to help them identify debts and respond to collection attempts. The Bureau will carefully consider feedback received in response to the NPRM before issuing a final rule.

Question 34

As the Bureau writes rules to implement the Fair Debt Collection Practices Act, one proposal under consideration is to exempt from the Act limited content communications that only ask the consumer to call back.

[8] https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-regulations-implement-fair-debt-collection-practices-act/

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Setting aside whether the Bureau even has the authority to exempt these communications, do you think that it is wise to permit debt collectors to leave an unlimited number of messages, emails or texts without any of the protections of the FDCPA – including potentially to the wrong person who does not owe the debt? Do think a barrage of these communications could be unduly harassing?

Response

The proposal would not exempt limited content communications from the FDCPA. The FDCPA prohibits collectors from harassing or abusing consumers or engaging in unfair practices. These standards apply today and under the proposed rule; they would continue to apply, including where limited content messages are used to harass or abuse consumers or subject them to unfair practices. A collector who emails or texts too frequently may face liability, even if the emails or texts are limited content messages.

The Bureau's proposed rule generally would limit debt collectors to no more than seven attempts by telephone per week to reach a consumer about a specific debt including telephone calls that are limited content message. Once a telephone conversation between the debt collector and consumer takes place, the debt collector must wait at least a week before calling the consumer again, even to leave a limited content message. The proposed rule would clarify how debt collectors may lawfully use newer communication technologies, such as voicemails, emails and text messages, to communicate with consumers and would protect consumers who do not wish to receive such communications by, among other things, allowing them to unsubscribe to future communications through these methods. The proposed rule would also clarify how collectors may provide required disclosures electronically. In addition, if consumers want to limit ways debt collectors contact them, for example at a specific telephone number, while they are at work, or during certain hours, the rule clarifies how consumers may do so. The Bureau specifically sought comments on these issues and will carefully consider feedback received in response to the NPRM before issuing a final rule.

Question 35

The debt collection industry estimates that it contacts consumers more than one billion times per year. Repeated, harassing phone calls are a frequent source of complaints from consumers. For example, data obtained by FOIA from the FTC indicates that, in 2017, more than 200,000 consumers complained about repeated calls from debt collectors. Do you think it is important to impose stringent limits on the number of times collectors can call?

Response

The FDCPA section 806 prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection

of a debt. FDCPA section 806(5) describes one example of debt collector conduct that section 806 prohibits: causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

As noted in the previous response, the Bureau's proposed rule generally would limit debt collectors to no more than seven attempts by telephone per week to reach a consumer about a specific debt. Once a telephone conversation between the debt collector and consumer takes place, the debt collector must wait at least a week before calling the consumer again. The proposed rule also would clarify how debt collectors may lawfully use newer communication technologies, such as voicemails, emails and text messages, to communicate with consumers and would protect consumers who do not wish to receive such communications by, among other things, allowing them to unsubscribe to future communications through these methods. The Bureau will carefully consider feedback received in response to the proposed rule before issuing a final rule. In addition, the Bureau has taken law enforcement action against a debt collector whose calling practices violated FDCPA section 806 and 806(5).[9]

Question 36

Protecting consumer privacy is a central goal of many of the provisions in the Fair Debt Collection Practices Act. Debt collectors have been pushing for permission to use voicemails, email (including potentially work email), texts and other technologies that did not exist in 1974, but these forms of communication are not always private. Do you view it as critical to stay faithful to the FDCPA's goal of privacy even in new forms of communication?

Response

Today, consumers may prefer communicating with debt collectors using newer technologies, such as emails, text messages, or web portals, because these technologies may offer greater efficiency, convenience, and privacy. These technologies also may allow consumers to exert greater control over the timing, frequency, and duration of communications with debt collectors. At the same time, the Bureau is aware of certain privacy risks in newer communication technologies. For example, many employers have a legal right to read, and in fact frequently do read, messages sent or received by employees on their work email accounts. Workplace emails therefore present a particularly high risk of third-party disclosure through an employer reading an email sent by a debt collector to a consumer's work account. The NPRM therefore would generally prohibit a debt collector from communicating or attempting to communicate with a consumer using an email address that the debt collector knows or should know is provided to the consumer by the consumer's employer. The Bureau will carefully consider feedback received in response to the proposed rule before issuing a final rule.

[9] https://www.consumerfinance.gov/policy-compliance/enforcement/actions/green-tree-servicing-llc/.

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Question 37

Debt collectors sometimes pursue debts long after the statute of limitations has expired. The FDCPA is designed to protect the least sophisticated consumer. One of the potential disclosures the CFPB has been testing is:

> "Because of the age of this debt, we cannot sue you for it. Take note: You can renew the debt and the statute of limitations for the filing of a lawsuit against you if you do any of the following: Make any payment on the debt, sign a paper in which you admit that you owe the debt or in which you make a new promise to pay, or sign a paper in which you give up or waive your right to stop the creditor from suing you in court to collect the debt."

Please explain whether you think a consumer would be harmed by making a payment on an out of statute debt.

Response

Statutes of limitations typically are established by state law and provide time limits for bringing suit on legal claims. Under the laws of most states, expiration of the applicable statute of limitations, if raised by the consumer as an affirmative defense, precludes the debt collector from recovering on the debt using judicial processes. However, in most states the running of the statute of limitations does not extinguish the debt itself, so collection of such debts can continue.

The benefit or harm to a consumer from paying a time-barred debt depends on the consumer's specific circumstances. Consumers who pay a debt that is time-barred but not obsolete (*i.e.*, a debt that is still generally reportable by credit reporting agencies) could, depending on the circumstances, benefit from having their credit reports show the debt as paid rather than as unpaid. Consumers who pay a time-barred debt for moral reasons could benefit from acting consistent with their principles. Consumers who pay part of a time-barred debt in some states may revive the statute of limitations, which would permit collectors once again to file suits to collect and thus could harm consumers. The Bureau may propose that debt collectors must provide disclosures to consumers when collecting time-barred debts. The Bureau currently is completing its evaluation of whether consumers take away from non-litigation collection efforts that they can or may be sued on a debt and, if so, whether that take-away changes depending on the age of the debt. In many states, a consumer's partial payment on a time-barred debt or acknowledgment of a time-barred debt in writing restarts the statute of limitations period and "revives" the debt collector's right to sue for the full amount.

The Bureau is also completing its evaluation of how a time-barred debt disclosure might affect consumers' understanding of whether debts can be revived. The disclosures under consideration include a disclosure that would inform a consumer that, because of the age of the debt, the debt collector cannot sue to recover it. They also include, where applicable, a disclosure that would

inform a consumer that the right to sue on a time-barred debt can be revived in certain circumstances. The Bureau is conducting additional consumer testing of possible time-barred debt and revival disclosures, and expects this additional testing to further inform the Bureau's evaluation of any time-barred debt disclosures. At a later date, the Bureau intends to issue a report on such testing and any disclosure proposals related to the collection of time-barred debt. Stakeholders will have an opportunity to comment on such testing if the Bureau intends to use it to support disclosure requirements in a final rule.

Question 38

Should debt collectors be allowed to pursue someone for an alleged debt for the rest of that person's life? Should any limits be placed on the collection of time-barred debts? Do you think that the least sophisticated consumer, being pressured by a collector to pay, would understand that they are opening themselves up to being sued if they make a payment?

Response

As noted in the previous response, under the laws of most states, expiration of the applicable statute of limitations, if raised by the consumer as an affirmative defense, precludes the debt collector from recovering on the debt using judicial processes, but it does not extinguish the debt itself. The Bureau is conducting additional consumer testing of possible time-barred debt and revival disclosures, and expects this additional testing to further inform the Bureau's evaluation of any time-barred debt disclosures. Stakeholders will have an opportunity to comment on such testing if the Bureau intends to use it to support disclosure requirements in a final rule.

Question 39

Debt collection is consistently one of the top sources of consumer complaints. What do you think are the most important issues facing consumers with respect to debt collection and how do you propose to address these problems?

Response

As noted in a previous response, on May 7, 2019, the Bureau issued an NPRM to implement the Fair Debt Collection Practices Act (FDCPA). The proposal would provide consumers with clear protections against harassment by debt collectors and straightforward options to address or dispute debts. Among other things, the NPRM would set clear, bright-line limits on the number of calls debt collectors may place to reach consumers on a weekly basis; clarify how collectors may communicate lawfully using newer technologies, such as voicemails, emails and text messages, that have developed since the FDCPA's passage in 1977; and require collectors to provide additional information to consumers to help them identify debts and respond to collection attempts. The Bureau will carefully consider feedback received in response to the NPRM before issuing a final rule.

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As the Bureau summarized in its 2019 Fair Debt Collection Practices Act Annual Report,[10] written notifications about the debt were the second-most common debt collection issue consumers complained to the Bureau about in 2018, while complaints about communication tactics were the third-most common issue. Any final debt collection rule issued by the Bureau will aim to bring clarity for both consumers and collectors as to the application of this over forty-year-old statute.

Question 40

You reportedly visited a debt collection agency last month while you were in Chicago. Have you visited any legal services programs that help people with alleged debts? Any credit counseling agencies? Any trial courts where consumers are being sued on debts?

Response

Since becoming Director of the Bureau, I have made it a priority to hear from various community and consumer groups, including legal aid organizations that provide direct client services. I have hosted a series of listening sessions and met with consumer advocates including legal aid attorneys to learn more about consumer finance issues affecting their communities.

On January 18, 2019, I hosted a community listening session in San Francisco, CA where I met with approximately 21 consumer advocacy, civil rights, community organizations as well as legal service providers including staff representing the following organizations: the East Bay Community Law Center, National Housing Law Project, and Western Center on Law and Poverty. Debt collection was one of several issues discussed during the meeting.

On January 22, 2019, I met with nearly 40 consumer advocacy, civil rights, and community organizations at the Bureau's headquarters to discuss a variety of topics, including debt collection. The National Consumer Law Center (NCLC) and the National Association of Consumer Advocates (NACA), both of which represent legal aid and private consumer attorneys, participated as did representatives from the Atlanta Legal Aid Society and Texas RioGrande Legal Aid.

On February 5, 2019, I hosted a community listening session in Chicago, IL where I met with approximately 14 consumer advocacy, civil rights, community organizations as well as legal service providers including staff representing the following organizations: Legal Assistance Foundation, Northwest Side Housing Center, Shriver Center on Poverty Law, and Spanish Coalition for Housing. The legal aid attorneys and local advocates in attendance discussed debt collection among other issues affecting local consumers.

[10] https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2019/.

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On March 28, 2019, I met with approximately five consumer advocacy, civil rights, community organizations. Debt collection was the primary topic of my meeting with consumer groups in New York City. Representatives from legal aid organizations, including Legal Services NYC, Mobilization for Justice, and The Legal Aid Society relayed client stories and made policy recommendations.

On April 30, 2019, I hosted a community roundtable in Los Angeles with approximately 20 community groups. Debt collections was one of few topics discussed. Representatives from legal aid organizations, including Bet Tzedek Legal Services, Legal Aid Foundation of Los Angeles, Legal Aid Society of San Diego, Public Counsel, NACA, and the University of Berkeley Center for Consumer Law and Economic Justice. I also visited Bet Tzedek Legal Services during that trip.

On May 8, 2019 I hosted a community roundtable in Philadelphia following a public town hall on debt collection. NCLC, Clarifi, Community Legal Services of Philadelphia, National Consumer Bankruptcy Rights, Public Interest Law Center, Senior Law Center, and members of NACA attended to discuss their views on the Bureau's proposed debt collection rule.

Most recently, I met with legal aid and private consumers attorneys in Austin on May 22, 2019, including Texas Rio Grande Legal Aid and members of NACA to discuss a few policy issues, including debt collection.

Bureau staff continue to engage in discussions with these groups to maintain regular exchanges of information about how issues such as debt collection affect consumers. In addition, Bureau subject matter experts have met with credit counseling agencies, such as Money Management International, and legal advocacy organizations, such as NCLC and the National Association of Consumer Bankruptcy Attorneys (NACBA), to discuss debt collection and debt settlement issues.

Consumer Complaint Database

As you know, the Consumer Bureau's public consumer complaint database tracks complaints made by consumers to the agency, as well as how they are resolved. This enables the Consumer Bureau to identify financial practices that may harm consumers, while providing the additional benefit of enabling the public to evaluate both the performance of the financial industry and of the Consumer Bureau while also guiding the Bureau's supervisory priorities. In fact, the complaint database was crucial in aiding the investigation into Wells Fargo account scandal. James Clark, the Chief Deputy of the Office of the Los Angeles City Attorney, testified last year that his Office used the Consumer Bureau's complaint database in its investigation into Wells Fargo.

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Question 41

Your predecessor, Mr. Mulvaney, made no efforts to conceal his disdain for the consumer complaint database, despite that over one million consumers have submitted complaints, and over 97% of those consumers have had their issues with financial institutions resolved in a timely manner. Are you planning in any way to reduce the effectiveness of the database, or completely remove it from public view?

Response

I recognize the significance of this issue and have heard from consumer groups and researchers on their desire to keep the database public. I have also heard from financial institutions that have expressed concerns about reputational harm from the Bureau's publishing consumer complaint data. Acting Director Mulvaney issued a Request for Information on this topic through which the Bureau received extensive public comments, and I am actively looking into this issue.

Question 42

Do you believe that the consumer complaint database is an invaluable resource for consumers and lenders alike to actively detect, monitor, and remedy issues found in our communities? Why or why not?

Response

The Bureau has a statutory responsibility to collect, track, and provide responses to consumer complaints. Consumers' complaints and companies' responses to complaints further the Bureau's understanding of current issues in the financial marketplace. I recognize the importance of this issue, and I am actively looking into it.

Employee Morale

The dedicated public servants of the Consumer Bureau have had to deal with two years of efforts to diminish their work. This has included a lack of support from their leadership, belittlement from the current administration, the winding down of ongoing consumer protection investigations, and an overall lack of direction. It is understandable why morale of for these dedicated and hardworking employees is at an all-time low. According to a government-wide annual survey published in December 2018 that was conducted by the nonprofit, nonpartisan Partnership for Public Service, the Consumer Bureau experienced the largest decline in employee morale for a government agency of its size. A workplace with low morale presumably undermines, among other things, the agency's ability to hold bad actors accountable when they harm consumers.

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Question 43

What steps, if any, are you taking to boost employee morale at the Consumer Bureau?

Response

The staff of the Bureau are highly committed to the Bureau's mission and care deeply about the organization. I respect them, I take their views and opinions seriously, and their input is integral in my decision-making.

Shortly after I was sworn in as Director, I was briefed on the results of the Bureau's 2018 Annual Employee Survey (AES). While this survey reflects sentiments expressed before my arrival, it was important to me to understand what staff perceived to be working well and where they saw opportunities for improvement.

It was also important for me to hear input from staff directly, and I made it a priority during the first months of my tenure to visit as many Bureau staff as possible – both at Headquarters and in all four of our regional locations. This type of engagement will continue throughout my term.

I have used the data from the AES and the feedback I received directly from staff to inform a number of my actions and decisions thus far as Director:

- Recognizing that the "hiring freeze" was of concern to staff, one of my first actions as Director was to review staffing levels and ask each division if they had any critical unmet hiring needs so that I could address them. It is important to me that we have the right people in place to carry out the Bureau's mission.
- I have approved a number of initiatives designed to help determine optimal staffing levels for the long term. These initiatives include better aligning resources with my top policy priorities, improving how cross-Bureau legal functions are performed, and enhancing how administrative and operational functions are performed across the Bureau.
- In response to staff concerns about the amount of administrative and bureaucratic activities they have to engage in that take away from time dedicated directly to the mission, I have asked our Operations team to examine the Bureau's travel process, among other processes, and determine what improvements can be made to address the biggest pain points.
- I have established a Workforce Effectiveness Committee to ensure that the Bureau takes a holistic, consistent approach to considering workforce-related plans and initiatives with a particular view towards improving workforce effectiveness, employee engagement, and diversity and inclusion efforts.
- In response to employee feedback regarding "senior leadership," I am working with the senior leadership team to clarify roles and responsibilities of senior leadership, improve

the way we make and communicate decisions as a leadership team, and improve transparency and build trust with employees.

- Beyond the senior leadership team, leaders across the Bureau are examining the results of the AES and identifying issues that should be addressed at the division, office, and/or team level. Senior leaders will be accountable for tracking whatever actions are taken to address the survey results and for reporting progress to me.

I will continue to take the pulse of employee sentiment via feedback from my leadership team, the Workforce Effectiveness Committee, our Office of Minority and Women Inclusion (OMWI), and members of the Bureau's Employee Resource Groups which are networks of Bureau employees with similar interests, backgrounds, or experiences.

Consumer Credit Reporting

Members of Congress from both sides of the aisle will agree that credit reporting is an area rife with inaccuracies that harms consumers significantly. In fact, in a February 2017 Complaints Snapshot Report, the Consumer Bureau stated that complaints related to inaccuracies on consumers' credit reports continue to be a leading source of overall complaints submitted to the Bureau. Last month, this Committee heard the testimony from the heads of Experian, Equifax, and Transunion, and their answers on how they intend to strengthen consumer privacy and reduce inaccurate reporting did not give my colleagues or me much comfort.

Question 44

Please describe how the Bureau deals with credit reporting complaints? Similar to other in-depth research the Consumer Bureau has conducted on other issues, like payday lending and mortgages, is the agency currently undertaking any significant studies, investigations, or soliciting public engagement on the credit reporting industry?

Response

As referenced above, one of the primary functions of the Bureau is collecting, investigating, and responding to consumer complaints. The Bureau's Office of Consumer Response handles consumer complaints, and analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses, including complaints submitted to the Bureau about credit reporting, so that the Bureau, other regulators, consumers, and the marketplace have relevant information about consumers' challenges with financial products and services. The Bureau uses a variety of approaches to analyze consumer complaints, including cohort and text analytics to identify trends and possible consumer harm. These analyses support the Bureau's work to supervise companies, enforce federal consumer financial laws, propose rules, and develop tools that help empower consumers to make informed financial decisions.

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Oversight of the consumer reporting agencies is a key priority for the Bureau. The Bureau's oversight has focused on helping to ensure the consumer reporting system is one where furnishers provide accurate information and consumer reporting companies comply with the Fair Credit Reporting Act by maintaining and distributing data that are accurate, and having an effective and efficient dispute management and resolution process for consumers.

Question 45

Do you believe the credit reporting system is broken and should be reformed in some way? If so, what are some recommendations that would help to resolve some of the recurring issues consumers encounter within this space?

Response

The consumer reporting market plays a critical role in the overall consumer financial services market. Consumers should have confidence that their consumer reports are accurate and reliable, and that the decisions made using those reports are based on correct information. Federal law provides a framework to ensure the players in the consumer reporting system receive the benefits of our risk-based credit economy. The Fair Credit Reporting Act sets forth a dispute and investigation framework to ensure errors are corrected promptly, as well as requirements around accuracy and maintaining reasonable policies and procedures.

In March 2017, the Bureau published a special edition of *Supervisory Highlights* dedicated to consumer reporting.[11] The Bureau explained in that publication that, in the preceding two years, the Bureau identified failings in compliance management systems and violations of law both at consumer reporting companies and at furnishers.

The law requires both bank and nonbank furnishers to establish and implement reasonable written policies and procedures regarding accuracy and integrity of the information they furnish, and to take corrective action when they determine they have furnished inaccurate information. In addition, the Bureau made suggestions about how furnishers' dispute handling processes could better comply with the law in response to failures either to conduct investigations or to send results of dispute investigations to consumers. The Bureau will continue faithfully exercising its authorities under the Fair Credit Reporting Act and the Dodd-Frank Act.

Question 46

Currently, the Bureau supervises the three largest Credit Reporting Agencies – Equifax, TransUnion, and Experian – for compliance with the Fair Credit Reporting Act and other consumer protection laws. Could you please elaborate on how the Consumer Bureau supervises

[11] https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf.

these credit bureaus, including the frequency in which the agency examines them, and whether the Consumer Bureau could do more to protect consumers in this area?

Response

Since the beginning of the Bureau's Supervision program, the Bureau prioritized supervising consumer reporting agencies (CRAs). Every year, the Bureau dedicates substantial resources to supervising CRAs and furnishers. The Bureau conducts examinations at CRAs by sending information requests, reviewing responses, having examiners conduct onsite visits of institutions, and making determinations and findings for each review. Annually and on a regular cadence, the Bureau conducts reviews at CRAs using a national consumer reporting team, the same cohort of examiners managed by a senior examination manager to ensure calibrated and coordinated findings.

Military Lending Act Supervision

Under your predecessor, the Consumer Bureau decided to suspend Military Lending Act (MLA) compliance examinations. And in January, you wrote a letter to Congress requesting that we grant "clear authority" for the Consumer Bureau to examine lenders for MLA Compliance. Yet, Congress has already granted "clear authority" for the Consumer Bureau to supervise lenders for compliance with the Military Lending Act. Even the Consumer Bureau's own legal opinion, which you recently provided to Congress, concedes, "One possible reading of the statute would allow that the Bureau may seek to uncover and remedy violations of the MLA in the course of exercising its authorities pursuant to 1024(b)(1)(C) and 1025(b)(1)(C)." The latter of which are the Consumer Bureau's supervisory authorities.

Question 47

Since becoming Director, have you consulted with the Department of Defense, the agency Congress tasked with implementing the MLA, about your decision to refrain from examining lenders for MLA compliance?

Response

Yes. In addition to Bureau staff, I have discussed this issue with Department of Defense officials, Members of Congress, and many stakeholder representatives since becoming Director. I take seriously my responsibility to protect service members and, for that reason, officially transmitted a legislative proposal to Congress seeking the authority to conduct examinations for compliance with the Military Lending Act (MLA).

Question 48

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Despite having a legal opinion that indicates the statute allows for the Consumer Bureau to supervise its' regulated entities for MLA compliance, why are you choosing not to protect our men and women in uniform from unlawful lending practices when in fact there is clear authority to do so? How did you come to this decision? Did you consult with any professional, career staff at the Consumer Bureau, and did you properly alert the appropriate staff of this decision?

Response

In July 2018, Acting Director Mulvaney determined that the Bureau lacks statutory authority to supervise for compliance with the MLA. I agree with his determination. In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority. This is why I submitted a legislative proposal to Congress on January 17, 2019 to explicitly grant the Bureau authority to supervise for compliance with the MLA. The requested authority would complement the work the Bureau currently does to enforce the MLA.

Question 49

While it appears supervising for MLA compliance stopped before you arrived, when was the last date the Consumer Bureau examined any financial institution for compliance with MLA? When this practice stopped, who at the Consumer Bureau ordered the supervisory staff to stop examining institutions for MLA compliance?

Response

By August 2018, the Bureau stopped including reviewing for MLA compliance as part of any new supervisory exams. By October, 2018, all ongoing supervisory work on MLA compliance issues concluded.

Intention of Congress for the Consumer Bureau

Question 50

How important is it that we have a strong, independent and fully functional Consumer Bureau fighting for consumers?

Response

I believe consumer protection is a responsibility of the federal government. Congress created the Bureau to that end.

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Question 51

Although the law has clear requirements of the Consumer Bureau's obligations to reporting to Congress, this has not occurred under your predecessor. Will you pledge to submit all required reports to Congress as required under law?

Response

Yes.

Question 52

Will the Consumer Bureau resume a more orderly schedule in publishing its Semi-Annual Reports? When do you expect to send the next semi-annual report to Congress?

Response

As required by the statute, the Bureau will continue to provide the report on a semi-annual basis.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Ted Budd:

Question 1

As you probably know, Dodd-Frank restricted the Bureau from regulating insurance in favor of our current, state-based system of insurance regulation that has worked so well for consumers for over 150 years. However, many of us on both sides have worried about the Bureau potentially moving into the insurance regulation space.

So that being said, can you describe for this committee your views and your beliefs on the Bureau's role in the insurance space? And do you believe you have the authority as Director of the CFPB to examine and regulate insurance?

Response

The Consumer Financial Protection Bureau (Bureau) is not an insurance regulator. In Section 1027(f) of Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress made clear its intention not to provide the Bureau jurisdiction over state-regulated insurance companies except to the extent they offer a consumer financial product or service or are otherwise subject to a federal consumer financial law. Furthermore, the "business of insurance" is expressly excluded from the Dodd-Frank Act's list of those consumer financial products and services subject to the Bureau's authority.[12]

Question 2

Would you support a bill that clarifies the already existing restriction on the CFPB regulating insurance?

Response

As noted in the previous response, the Dodd-Frank Act made clear its intention not to provide the Bureau jurisdiction over state-regulated insurance companies except to the extent they offer a consumer financial product or service or are otherwise subject to a federal consumer financial law.

[12] See 12 U.S.C. § 5481(3), (5), (15)(C).

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Emanuel Cleaver:

Political Independence and Harm to Student Borrowers

CFPB's political independence was a topic that generated vigorous debate during the Financial Services Committe's Budget Views and Estimates markup on 6 March. Politicization of the CFPB was not what we intended when designing the agency. I was concerned when I initially learned that after Mr. Mulvaney assumed authority, he broke agency practice and installed a number of political appointees. The Federal Reserve, which funds your agency, does not have any non-senate confirmed political appointees and there were no political appointees prior to Mr. Mulvaney assuming his position.

I would like to get a sense of the level of political influence that is being brought to bear at the agency in the wake of CFPB's Assistant Director and Student Loan Ombudsman's resignation letter. As you may know, the letter stated that Mr. Mulvaney's practices were "Undermining the Bureau's independence" and were hurting "families being ripped off by predatory for-profit schools." He noted senior leaders "blocked attempts to alert the Department of Education to the far-reaching harm due to the department's unprecedented and illegal attempts to preempt state consumer law and shield student loan companies." (Appended please find a copy of former Assistant Director and Student Loan Ombudsman Seth Frotman's resignation letter[13])
When reviewing testimony from yesterday's Appropriations hearing by the Department of Education's Assistant Inspector General he stated there were recurring instances of noncompliance related to Consumer Protection

Question 1

What is the total number of "schedule C" political appointees serving in the CFPB? What are their job titles and descriptions? What is the total yearly compensation for each appointee?

Response

The Consumer Financial Protection Bureau (Bureau) currently employs 11 Schedule C appointees. The table below provides the names, titles and salary for each appointee as of June 28, 2019.

Employee	Position and Pay Band	Annual Salary
Karla Carnemark	Deputy Chief of Staff, Office of the Director, CN-301-82	$239,595

[13] https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/08/Frotman-Letter.pdf.

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John Czwartacki	Chief Communications Officer, Office of the Director CN-1035-82	$239,595
Andrew Duke	Policy Associate Director, External Affairs CN-301-90	$259,500
Olivia Edwards	Executive Assistant, Office of the Director CN-303-41	$60,416
Marisol Garibay	Assistant Director, Communications CN-1035-71	$185,615
Evan Gillissie	Executive Assistant, Office of the Director CN-303-43	$74,384
Brian Johnson	Principal Policy Director, Office of the Director CN-301-90	$259,500
Althea Kireilis	Associate Director, Office of Equal Opportunity and Fairness CN-301-90	$259,500
Kirsten Sutton	Chief of Staff CN-301-90	$259,500
Thomas Pahl	Policy Associate Director, Research, Markets, and Regulations CN-301-90	$259,500
Paul Watkins	Assistant Director, Office of Innovation CN-301-81	$219,042

Question 2

What, if any role, did each appointee play in debates related to the CFPB's decision making to roll back agency practices undertaken under former Director Cordray?

Response

The Dodd-Frank Act vests significant authority in the Director, including with regard to fixing the number and means of appointment of all Bureau employees, in accordance with the provisions of title 5, United States Code. It is a priority for me to develop a diverse, capable, and motivated team at the Bureau to carry out our important mission. As such, I will use the authorities Congress provided to that end. In addition, I am committed to transparency and productive, public discourse on important matters before the Bureau. To facilitate that, I have sought and will continue to seek robust input from Bureau employees and stakeholders in my decision-making processes.

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Question 3

How do you intend to investigate these concerning allegations made by former Assistant Director Seth Frotman as the newly confirmed director?

Response

I am taking a fresh look at all Bureau activities. With respect to student issues, the Bureau maintains a strong focus through the Section for Students and Young Consumers. The dedicated staffers in that section have made recommendations and set a strategic plan for Bureau activities going forward. These efforts will include a robust focus on research and other market issues as well as support from other parts of the Bureau. I am also looking forward to bringing a new Private Education Loan Ombudsman onboard to carry out the position's statutory responsibilities.

Question 4

Is your agency's Inspector General looking into the concerns raised by former Assistant Director Frogman's allegations? If yes, at what phase of their investigation are they? If not, why have they not initiated and investigation?

Response

This question should be directed to the Inspector General.

Question 5

Would you support an independent investigation from the CFPB's Inspector General into all of the allegations made in Mr. Frostman's resignation letter and work to resolve any concerning findings an investigation may generate?

Response

Pursuant to Section 6 of the Inspector General Act, the Inspector General may make such investigations and reports relating to the administration of programs and the operations of the Bureau as are, in the judgment of the Inspector General, necessary or desirable. The Bureau will cooperate with the Inspector General with respect to any investigation he undertakes.

Military Lending Act

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My home state of Missouri is home to nearly 20,000 active duty service members. I was deeply concerned when I learned that the CPFB decided to stop examining financial firms for compliance with the Military Lending Act. The CFPB's website says that the Act is intended to protect active duty service members and their families from what I read to be predatory lending practices.

Protecting military service members and their families from predatory lending seems like it would fall under the purview of the CFPB. I understand that this issue was not initiated by you and was inherited from Mr. Mulvaney. But you did send a letter to Congress requesting authority to do what the agency had been doing before Mr. Mulvaney's arrival leading me to believe you don't intend to reconsider these practices.

Question 6

The Department of Defense stated that they were not consulted during the CFPB's decision to roll back its military lending supervision. Is that right?

Response

This predates my arrival at the Bureau. I understand that on November, 21, 2018, the Bureau communicated to the Department of Defense that the Bureau believes it does not have clear legal authority to supervise for compliance with the Military Lending Act (MLA). In addition to Bureau staff, I have discussed this issue with Department of Defense officials, Members of Congress, and many stakeholder representatives since becoming Director. I take seriously my responsibility to protect service members and, for that reason, officially transmitted a legislative proposal to Congress seeking the authority to conduct examinations for MLA compliance.

Question 7

If the CFPB did not consult with DoD, who exactly did your agency consult with before rolling back Military Lending Act supervision?

Response

As stated above, this predates my arrival at the Bureau. I would note that it would be unusual for the Bureau to consult with outside parties regarding a core legal question involving the statutory scope of its supervisory authority under title X of the Dodd-Frank Act. I understand that appropriate Bureau staff were consulted.

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Question 8

Was there any test regarding how this roll back would impact military service members and their families?

(a) If yes, what was it and what were the findings?

(b) If not, would you be willing to now?

Response (a and b)

It is my view that when Congress enacted the Dodd-Frank Act establishing the Bureau in 2010, Congress did not give the Bureau the authority to supervise for compliance with the Military Lending Act (MLA). In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority. This is why I submitted a legislative proposal to Congress on January 17, 2019, that would explicitly grant the Bureau authority to supervise for compliance with the MLA. The requested authority would complement the work the Bureau currently does to enforce the MLA.

Question 9

I understand that roughly 30 Military and veterans' groups are opposed to this decision. Have you met with any of them or the DoD since assuming office?

Response

Since arriving at the Bureau, I have had a number of conversations with my colleagues at the Department of Defense (DoD), and visited two bases: Travis Air Force Base in January and Joint Base San Antonio in May. In addition, I met with several military and veterans groups on April 11th, 2019, including:

- Air Force Sergeants Association (AFSA)
- Military Officers Association of America (MOAA)
- Military Order of the Purple Heart (MOPH)
- National Military Family Association (NMFA)
- Student Veterans of America (SVA)
- The American Legion (TAL)
- The Retired Enlisted Association (TREA)
- Veterans Education Success (VES)
- Veterans of Foreign Wars of the United States (VFW)

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Since then, my staff has continued to meet with military groups and discuss potential legislative solutions to give the Bureau explicit supervisory authority.

(a) If yes, how did you reassure them that your agency would protect them from the protections provided under the Military Lending Act.
(b) If no, do you agree that, in order to understand their perspective on why this change in supervision is problematic for our service members and their families, it is important to meet with them and will you?

Response (a and b)

One way for the Bureau to promote MLA compliance is by using its enforcement tools, which include investigations, civil investigative demands, and litigation. While the 2013 amendment to the MLA did not give the Bureau explicit supervisory authority, it gave the Bureau explicit enforcement authority, which I am firmly committed to utilizing. The Bureau remains committed to the financial well-being of America's servicemembers, and that commitment includes ensuring that those lenders subject to our jurisdiction comply with the MLA. I submitted a legislative proposal to Congress on January 17, 2019, to explicitly grant the Bureau authority to supervise for compliance with the MLA by amending the Consumer Financial Protection Act. The requested authority would complement the work the Bureau currently does to enforce the MLA. Furthermore, the Bureau has worked with members of Congress as well as military and veterans advocacy groups to develop legislative language to amend the MLA to give the Bureau explicit supervisory authority. We would be happy to share this with you.

GAO Report Finds that the "CFPB Needs a systematic process to prioritize Consumer Risks"

The GAO released a report in December[14] recommending that the CFPB implement "a systematic process for prioritizing risks to consumers and considering how to use its available policy tools—such as rulemaking, supervision, enforcement, and consumer education—to address these risks." The report stated that the CFPB did not agree or disagree with the recommendation but agreed with the importance of having processes in place to prioritize and address consumer financial risks.

Question 10

What are your views on the GAO report issued in December and its recommendations?

[14] https://www.gao.gov/products/GAO-19-158.

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Response

The stated purpose of the Government Accountability Office's (GAO's) report was to examine the steps the Bureau has taken to (1) identify, monitor, and report on risks to consumers in support of its rulemakings and other functions and (2) retrospectively assess the effectiveness of certain rules within 5 years of their effective dates. I believe the report fairly and accurately describes the Bureau's work in these areas. As the report details, the Bureau's market monitoring work informs the Bureau's rulemaking and other functions, including supervision, guidance to industry, consumer education, and reporting. GAO also found that the Bureau has taken steps to meet the statutory requirements for retrospectively assessing significant rules. Note that the Bureau has now issued statutorily-required assessments for three rules: the Remittances Rule, the ATR-QM Rule, and the Mortgage Servicing Rule.

Nevertheless, GAO concluded that the Bureau lacks a systematic Bureau-wide process for prioritizing which consumer financial risks to address and recommended that the Bureau implement such a process. I take seriously GAO's recommendation and while the Bureau has existing processes in place designed to ensure that the Bureau monitors risks to consumers and elevates those risks for appropriate action, I am committed to improving Bureau processes to ensure the Bureau is appropriately prioritizing which consumer risks to address and how best to address those risks.

Question 11

The recommendations and findings are relatively concerning. Would you be willing to provide a report on what GAO says the CFPB lacks, "a systemic process to prioritize consumer risk?"

Response

As previously mentioned, I take seriously GAO's recommendation and am committed to improving Bureau processes to ensure the Bureau is appropriately prioritizing which consumer risks to address and how best to address those risks. GAO is currently working on a report that will examine the work financial regulators, including the Bureau, have done on implementing recommendations GAO has issued in its previous eight reports on financial services regulations. There are two such recommendations made to the Bureau, including the recommendation you reference. We are working closely with GAO to close out the Bureau's outstanding recommendations, and we expect GAO to issue a report, which will include the Bureau's progress, at the end of 2019.

Additional Questions

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Question 12

I would like a detailed number of exams the CFPB is conducting each quarter, the nature of those exams, and how many of them are getting elevated to enforcement? Can you furnish that information for the past three years and into the future?

Response

The Bureau is responsible for examining banks and credit unions with assets greater than $10 billion and their affiliates, as well as certain nonbanks that offer or provide consumer financial products and services, as defined in the Dodd-Frank Act. As part of its supervision function, the Bureau is generally authorized (1) to assess their compliance with the requirements of Federal consumer financial law, (2) to obtain information about their activities and compliance systems or procedures, and (3) to detect and assess risks to consumers and to markets for consumer financial products and services.[15] The Bureau uses a risk based-approach in determining how to use our supervisory resources, prioritize our supervisory responsibilities, and compare product lines at particular institutions across charters and markets. Each year, the Bureau looks across companies under our authority to assess where we can be the most effective in protecting consumers. The Bureau consider factors such as how big the product market is, the company's market share, the riskiness to consumers of a particular company's strategy and practices, along with prior regulatory history and consumer complaints. The result of the Bureau's risk-based approach is that we prioritize our supervisory resources where we see the greatest risks to consumers.

One implication of this approach is that the number of examinations the Bureau conducts of each product line varies from year-to-year and the number of examinations we conduct of each product line reflects, in part, the Bureau's assessment of the relative risk in that market. For these and other reasons, the Bureau does not generally disclose confidential supervisory information on the number and type of exams beyond that disclosed in its annual performance plan and report. As disclosed in our annual performance plan and report,[16] for the past three fiscal years (FYs), we have opened the following number of supervisory events:

- FY 2016: 174;
- FY 2017: 171;
- FY 2018: 146.

Similarly, the Bureau has provided the number of Fair lending supervision events opened during each fiscal year in our annual performance plan and report. For the past three fiscal years, we have opened the following number of fair lending supervision events:

- FY 2016: 32;
- FY 2017: 27;

[15] 12 U.S.C. § 5514(b)(1); 12 U.S.C. § 5515(b)(1).
[16] https://files.consumerfinance.gov/f/documents/cfpb_performance-plan-and-report_fy19.pdf.

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- FY 2018: 22.

Finally, the Bureau has an Action Review Committee (ARC) that deliberates and makes a recommendation about whether select matters that originate from examinations should be resolved through confidential supervisory action or through a public enforcement action. Information on the number of ARC decisions that have resulted in findings referred at least in part to the Bureau's Office of Enforcement during the last three fiscal years is as follows:

- FY 2016: 15 out of 46 decisions;
- FY 2017: 9 out of 58 decisions;
- FY 2018: 7 out of 24 decisions.

Question 13

What is your position on existing workforce satisfaction and sentiment at the CFPB? What if anything are you doing to address reports of workforce dissatisfaction?

Response

The staff of the Bureau are highly committed to the Bureau's mission and care deeply about the organization. I respect them, I take their views and opinions seriously, and I am using their input in my decision-making.

Shortly after I was sworn in as Bureau Director, I was briefed on the results of the Bureau's 2018 Annual Employee Survey (AES). While this survey reflects sentiments expressed before my arrival, it was important for me to understand what staff perceived to be working well and where they saw opportunities for improvement.

It was also important for me to hear input from staff directly and I made it a priority during the first months of my tenure to visit as many Bureau staff as I could – both here in Washington and in all four of our regional locations. This type of engagement will continue throughout my term.

I have used the data from the AES and the feedback I received directly from staff to inform a number of my actions and decisions thus far as Director:

- Recognizing that the "hiring freeze" was of concern to staff, one of my first actions as Director was to review staffing levels and ask each division if they had any critical unmet hiring needs so that I could address them. It is important to me that we have the right people in place to carry out the Bureau's mission.
- I have approved a number of initiatives designed to help determine optimal staffing levels for the long term. These initiatives include better aligning resources with my top policy priorities, improving how cross-Bureau legal functions are performed, and enhancing how administrative and operational functions are performed across the Bureau.

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- In response to staff concerns about the amount of administrative and bureaucratic activities they have to engage in that take away from time dedicated directly to the mission, I have asked our Operations team to examine the Bureau's travel process and determine what improvements can be made to address the biggest pain points.
- I have established a Workforce Effectiveness Committee to ensure that the Bureau takes a holistic, consistent approach to considering workforce-related plans and initiatives with a particular view towards improving workforce effectiveness, employee engagement, and diversity and inclusion efforts.
- In response to employee feedback regarding "senior leadership", I am working with the senior leadership team to clarify roles and responsibilities of senior leadership, improve the way we make and communicate decisions as a leadership team, and improve transparency and build trust with employees.
- Beyond the senior leadership team, leaders across the Bureau are examining the results of the AES and identifying issues that should be addressed at the division, office, and/or team level. Senior leaders will be accountable for tracking whatever actions are taken to address the survey results and for reporting progress to me.

I will continue to take the pulse of employee sentiment via feedback from my leadership team, the Workforce Effectiveness Committee, our Office of Minority and Women Inclusion (OMWI), and members of the Bureau's Employee Resource Groups which are networks of CFPB employees with similar interests, backgrounds, or experiences.

Question 14

I understand an advance notice of proposed rulemaking was issued on the property assessed clean energy (PACE) loan program. What is your agency's time frame for issuing a final rule on this point? How does CFPB plan to treat states like Missouri, where PACE financing is currently authorized, in its rulemaking process?

Response

The Bureau intends to implement Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) section 307 as efficiently as feasible while ensuring that the regulations are effective and appropriate in scope. The Bureau is currently in the information gathering process. As you note, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) on March 4, 2019, soliciting information that will help the Bureau understand the market and unique nature of Property Assessed Clean Energy (PACE) financing.[17] The comment period for the ANPR has ended, and the Bureau is currently reviewing submissions.

[17] https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-advance-notice-proposed-rulemaking-property-assessed-clean-energy-financing/.

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In addition to gathering information through the ANPR, the Bureau intends to engage in outreach with a wide range of stakeholders before issuing proposed regulations. In particular, the Bureau intends to engage, on an ongoing basis, with state and local governments where PACE is authorized—including Missouri—in order to ensure that we understand the programs and can account for the perspectives of government stakeholders in the rule development process. On June 14, I met in St. Louis with state and local government participants from Missouri; and the rulemaking team has begun to engage the same organizations. The Bureau will review and analyze the information we receive through the ANPR and other outreach as we develop a notice of proposed rulemaking (NPRM), and then consider comments we receive on the NPRM to develop a final rule.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Jesús "Chuy" García:

Question 1

During your testimony, we discussed how important it is for the Bureau to collect good data. After all, you cannot solve a problem that you don't understand. Access to credit for small businesses, as well for businesses owned by women and people of color, is important to a healthy and fair market. A key element for making progress is an accurate understanding the current state of those markets.

Section 1071 of Dodd-Frank amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and report information about credit applications made by women-owned, minority-owned, and small businesses. Dodd-Frank states the purpose of this section is to facilitate enforcement of fair lending laws and enable communities, government, and creditors to identify business and community development needs and opportunities.

In May 2017, the Bureau requested information regarding this data collection requirement. However, the Bureau's fall 2018 unified agenda moved this rule from the pre-rule phase to the long-term action status, thus delaying the rule indefinitely. To quote, the Bureau stated in the Unified Agenda: "In light of other responsibilities, the Bureau has moved this rulemaking from pre-rule to long-term action status. The Bureau intends to continue certain market monitoring and research activities to facilitate resumption of the rulemaking."

Are you committed to implementing the data collection required by Dodd-Frank? If so, what is the timeline for implementing Section 1071 of Dodd-Frank? Can you describe the market monitoring and research activities that are taking place before the rulemaking is resumed? How can the Bureau undertake such work to understand the market without conducting the data collection required by Dodd-Frank?

Response

I am committed to implementing Section 1071. In the Spring 2019 Unified Agenda, the Bureau has now reclassified the section 1071 project from long-term status to pre-rule status. To move forward in this effort and other challenging issues facing the Bureau, I announced a symposia series on a variety of topics related to the Bureau's mission, including Section 1071. This series will build on the approach we took last year in convening experts on access to credit issues and credit invisibles, and the Bureau's more recent symposium on the definition of "abusive acts or practices." Our symposia series will facilitate a robust discussion by experts on the given topic in a public forum.

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Previously, in May 2017 the Bureau issued a Request for Information (RFI) to solicit comments on a number of issues that are implicated by Section 1071. That RFI generated over 700 unique comments and provided the Bureau with useful information and perspectives on these issues.

In addition, within the Regulations, Markets and Research (RMR) division, the Bureau maintains the Office of Small Business Lending Markets (SBLM). SBLM serves as the subject matter expert regarding small business lending and informs on such matters and is staffed by industry experts with extensive small business lending experience obtained at major financial institutions and in Community Development Financial Institutions. The SBLM provides the Bureau with insights from monitoring the market, understanding of the operational dimensions associated with such financing, and the needs of small business borrowers. SBLM meets on a regular basis with key stakeholders including industry (banks, credit unions and non-bank providers), business organizations and the community advocacy community. It also provides other parts of the Bureau with ongoing support on supervisory and regulatory matters.

Question 2

During the second panel of Thursday's hearing, we heard a powerful story about a consumer in New York who was able to get $1,200 back from their bank after filing a complaint in the CFPB's public complaint database.

As you know, while he was heading the CFPB, Mick Mulvaney said of this complaint database, "I don't see anything in here that says I have to run a Yelp for financial services sponsored by the federal government."

Do you share Mr. Mulvaney's apparent view that the information logged in the complaint database does not need to be public information? Will you commit to keeping the complaint database public?

Response

I recognize the significance of this issue and have heard from consumer groups and researchers on their desire to keep the database public. I have also heard from financial institutions that have expressed concerns about reputational harm. Acting Director Mulvaney issued a Request for Information on this topic through which the Bureau received a number of comments, and I am actively looking into this issue.

Question 3

In your testimony, you emphasized a "focus on prevention of harm as a primary goal for our actions," and throughout your remarks during the hearing, you returned to the idea of proactive harm prevention. However, the CFPB's new no action-letter policy and so-called product sandbox proposal suggest giving approved companies a safe harbor rendering them "immune

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from enforcement actions by any Federal or State authorities, as well as from lawsuits brought by private parties." I am concerned that these proposals distort the CFPB's mission, allowing the Bureau to let the entities that it regulates off the hook.

In order to secure a safe harbor under the proposal, companies would need to commit only to avoiding "material, quantifiable, economic harm," but would not need to commit to avoiding other potential harms. In other words, companies could apply for an exemption from CFPB enforcement, and would have no obligation to address consumer harms that may emerge in the future. How do you reconcile the implications of these proposed rules with your espoused commitment to the principle of harm prevention? If these proposals are finalized, how will you ensure that the CFPB maintain its commitment to harm prevention and ensure that the CFPB still has power to act if consumer harm can be identified?

Response

While the proposed No-Actions Letter and the BCFP Product Sandbox (Policy) was issued before my tenure, I can assure you that I am considering the Policy very carefully consistent with the Bureau's mission and the priorities I have set as Director.

In December 2018, the Bureau proposed the Policy, including making certain exemptions available to Product Sandbox participants. The Bureau voluntarily sought comment on the proposed Policy. The comment period closed on February 11, 2019. The Bureau received 31 comments from a broad spectrum of stakeholders, including industry trade associations and other industry groups; individual financial services providers; consumer advocacy groups and civil rights organizations; and two groups of State Attorneys General. Industry groups generally supported the proposal, as did one of the groups of State Attorneys general. Consumer groups and the other group of State Attorneys General generally had concerns about many aspects of the proposal. The comments addressed nearly every facet of the proposal, including the proposed (i) streamlining of the application and review process; (ii) the shift from staff recommendations of no-action to Bureau commitments of no-action; (iii) procedures for third-party applications from service providers, trade associations, and other entities; (iv) the grounds and procedures for revocation; and (v) the intent to coordination operation of the Policy with similar programs operated by State regulators. The Bureau is in the process of carefully reviewing the comments and considering changes to the proposed Policy.

The regulatory relief in the proposed Product Sandbox policy, including exemptions by order, is intended to facilitate consumer-beneficial innovation and thus enable the Bureau to more effectively carry out its statutory purpose and objectives, including facilitating access and innovation. However, as with the proposal overall, the Bureau specifically sought comment on the proposed relief and is carefully considering those comments to develop a final Policy that will facilitate innovation to promote the purposes of the Bureau, including fairness, transparency, competition, and consumer access within financial services.

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman Vicente Gonzalez:

Question 1

Isn't it true that consumers use automatic recurring debits to pay for a range of products, from mortgages to gym memberships? Apart from small dollar loans, are you aware of any other financial or non-financial product where a regulation requires the consumer to reauthorize auto-debits after some number of failed payment attempts?

Response

The Consumer Financial Protection Bureau (Bureau) is not currently aware of any other financial or non-financial product where a regulation requires the consumer to reauthorize auto-debits after some number of failed payment attempts. However, the expiration of a payee's access to funds via a chosen payment vehicle such as a debit authorization is not uncommon. Checks and credit cards are two typical examples of payment vehicles that can expire, at which time the payee can no longer obtain payment without a new authorization for a payment vehicle. The reauthorization requirements in the 2017 Payday Rule's payments provisions prompt lenders to work with borrowers to obtain payment through the original payment channel or through an alternative channel if the original payment channel is no longer feasible.

Question 2

The ACH system is one of the largest payments systems in the world. Its success is due in large part to a set of widely accepted rules and standards that its administrator, NACHA, has adopted. Notably, NACHA rules reduce charges to consumer accounts by, among other things, setting a 15% total return cap and by only allowing one original presentment plus two re-presentments on each payment. Are there any specific flaws in the NACHA rules that require further regulation by the Bureau?

Response

In deciding whether and how to use its authority, the Bureau considers the extent to which private and self-regulatory systems address consumer protection problems in payments. The Bureau is aware that NACHA implemented a 15 percent return rate inquiry threshold rule in 2015, which allows NACHA to request information from merchants who have high return rates. The Bureau is also aware the NACHA Rules are limited to automated clearing house (ACH) payments and that certain rules do not apply to check payments that are represented over the ACH network. NACHA has indicated to the Bureau that new NACHA Rules have resulted in a shift to other payment methods, such as remotely created checks and debit network transactions that are not governed by the NACHA Rules. The Bureau continues to monitor the effect of the

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NACHA Rules and will, where appropriate, use its supervision, law enforcement, rulemaking, and other tools to address consumer protection problems that the NACHA Rules do not address.

Question 3

Some states limit the circumstances in which lenders may communicate with borrowers about payments. The notices required by the Small Dollar Rule could create conflicts with these types of state laws. Ms. Kraninger, in the case where a payment reminder notice would conflict with state law and the lender is presented with the "lose/lose" choice of violating either federal law or state law, how should the lender proceed?

Response

Section 1041(a)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) sets forth the standard for resolving any apparent conflicts between state law provisions and provisions of the Dodd-Frank Act, including provisions of Bureau rules issued pursuant to the Dodd-Frank Act. Under that standard, state law provisions are preempted by the rule's provisions only to the extent they are inconsistent with the rule's provisions. As further set forth in section 1041(a)(2) of the Dodd-Frank Act, a state law provision is not inconsistent with a provision of the rule if the protection it affords to consumers is greater than the protection provided by the rule. Thus, lenders subject to the rule are required to comply with both state law and the rule except when state law affords *less* protection than the rule, in which case the rule preempts state law. Lenders subject to the rule have the right under section 1041(a)(2) of the Dodd-Frank Act to petition the Bureau for a determination of whether a provision of state law is inconsistent with a provision of the rule.

Question 4

In developing the Rule's payment notification requirement, did the CFPB take into account the scenario where due to state law restrictions a lender could be forced to forego making the payment reauthorization request, leading the loan to go into collections?

Response

In developing the payment notification requirement, the Bureau took many sources of information into account, including interactions from consumer disclosure testing, industry outreach (including a Small Business Regulatory Enforcement Fairness Act [SBREFA] panel), and comment letters submitted in response to the proposed Payday Rule. In order to facilitate timely payments, the Bureau incorporated the single immediate transfer at the consumer's request. This payment type, defined in section 1041.8(a)(2), allows consumers to make certain payments without regard to the disclosure requirement. A single immediate transfer at the consumer's request includes, "(i) A payment transfer initiated by a one-time electronic fund transfer within one business day after the lender obtains the consumer's authorization for the one-

time electronic fund transfer," and, "(ii) A payment transfer initiated by means of processing the consumer's signature check through the check system or through the ACH system within one business day after the consumer provides the check to the lender."[18] In situations in which a lender is initiating a single immediate transfer at the consumer's request according to the exclusion provided in section 1041.8(d), such transfers are not subject to the authorization and related payment notification requirements provided in section 1041.8(c) and section 1041.9.

[18] See § 1041.8(a)(2).

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Questions for the Honorable Kathleen Kraninger, Director, Bureau of Consumer Financial Protection, from Congressman David Kustoff:

Regarding CFPB's plans for the public disclosure of the Home Mortgage Disclosure Act (HMDA) data:

The 2015 HMDA rule more than doubled the data fields banks must collect and report annually. On multiple occasions, information has been shared with the Bureau on concerns about the quality and integrity of the data arising from unanswered interpretive questions about how the data is to be reported. Information has also been shared about implementation challenges presented by ongoing vendor software and system changes. In late December, the Bureau announced it intends to publically release the loan level data on March 29—only 28 days after financial institutions submit it.

Question 1

Can you describe the Bureau's plans to investigate the degree to which interpretive questions and implementation challenges created by ongoing vendor software and system changes have downgraded the integrity of the HMDA data?

Response

The release of the Modified Loan Application Register (LAR) data is generally required by statute by March 31 of each year. The data released are modified by the Consumer Financial Protection Bureau (Bureau) to protect borrower and applicant privacy in accordance with Bureau guidance issued in December 2018.

The Bureau's Home Mortgage Disclosure Act (HMDA) Help system for regulatory inquiries was able to assist financial institutions with questions related to Regulation C during the HMDA filing season. Any financial institutions with unanswered questions, and that have made a good faith effort to submit data by the HMDA filing deadline, will be able to submit corrections and updates as needed. The Bureau will continue to analyze the results of the 2018 data and is in contact with software vendors, industry groups, and individual filers to assess concerns raised during the preparation and submission of the 2018 HMDA data.

Question 2

Each lender's individual loan level data will be made available to the public through the Bureau's HMDA Portal. Does the Bureau plan to caution HMDA Portal users about data integrity issues that it has discovered? If a lender has to correct and refile data, will that fact (and the date of refiling) be indicated on the Portal?

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Response

In cases where the Bureau or anther regulator has identified a potential issue with a financial institution's annual HMDA submission, the institution is notified and may then correct the error should they agree with the Bureau's conclusions. The HMDA portal for access to the 2018 Modified Loan Application Register (LAR) reflects the most recent data submission but does not note when or if a HMDA filer has resubmitted its data.

Question 3

When the Bureau publically releases the aggregate HMDA data, do you plan to follow the practice of the Federal Reserve and preface the public release with an expert analysis intended to inform the media and researchers of the conclusions that can reasonably be drawn from the data?

Response

In 2018, the Bureau took on the responsibility of making the Loan Application Registers (LARs) of each HMDA reporter publicly available to reduce the burden on lenders who previously were required to do so. By statute, the LARs must be made publicly available by March 31st. When the Bureau released a consolidated public use dataset in 2018 that release was accompanied by an expert analysis similar to the analysis that the Federal Reserve previously issued. The Bureau likewise intends to issue such an analysis this year when it releases the public use dataset for data reported at the beginning of this year.

Regarding the Bureau's reconsideration of its 2017 final rule on "Payday, Vehicle Title, and Certain High-Cost Installment Loans":

I am greatly concerned that the Bureau's final rule on payday lending would impose unnecessary regulation on bank loans that do not raise consumer protection concerns. For example, wealth management products, bridge loans, and loans secured by securities held in a brokerage account would be subject to the same requirements as a two-week loan for $500. That simply makes no sense.

Question 4

Would you agree that the loans I just mentioned — wealth management products, bridge loans, and loans secured by securities held in a brokerage account — do not raise consumer protection concerns intended to be addressed by the Bureau's rule?

Response

The Bureau's Payday Reconsideration Notice of Proposed Rulemaking (NPRM) focuses on the

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Bureau's reconsideration of the Mandatory Underwriting Requirements of the 2017 Final Rule. The Bureau is currently considering new information it received over the course of its reconsideration of the mandatory underwriting provisions, including arguments from financial service providers that they should be exempt from the 2017 Payday Rule's coverage. As the Bureau has conveyed previously in the preamble for the Reconsideration NPRM, though these issues are outside of the scope of its current proposal, the Bureau will continue to examine these issues and "if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing a request for information or an advance notice of proposed rulemaking)."[19]

Question 5

Will you commit to revising the rule to exclude from the rule's coverage these traditional consumer loan products offered by banks?

Response

The Bureau's Payday Reconsideration proposal focuses on the Bureau's reconsideration of the Mandatory Underwriting Requirements of the 2017 Final Rule. The Bureau is currently considering new information it received over the course of its reconsideration of the mandatory underwriting provisions, including arguments from financial service providers that they should be exempt from the Rule's coverage. As the Bureau has conveyed previously in the preamble for the reconsideration NPRM, though these issues are outside of the scope of its current proposal, the Bureau will examine these issues and "if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing a request for information or an advance notice of proposed rulemaking)."[20]

Question 6

Will you commit to delaying the effective date of the entire final rule, so that banks do not have to design a new compliance program for these traditional consumer loan products in only six months?

Response

On June 6, 2019, the Bureau issued its final rule to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the 2017 Payday Rule. The compliance date for the payments provisions in the 2017 Payday Rule is August 19, 2019, although a federal court has issued an order staying that compliance date. To help industry prepare to comply with these

[19] 84 FR 4301.
[20] 84 FR 4301.

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provisions when required, the Bureau is providing guidance and implementation support for market participants covered by the 2017 Payday Rule. For example, on February 20, 2019 the Bureau released a small entity compliance guide summarizing the payment-related provisions of the Payday Rule.[21]

[21] https://www.consumerfinance.gov/documents/7271/cfpb_payday_small-entity-compliance-guide.pdf.