PROTECTING CONSUMERS DURING THE PANDEMIC? AN EXAMINATION OF THE CONSUMER FINANCIAL PROTECTION BUREAU

HYBRID HEARING

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PROTECTING CONSUMERS DURING THE PANDEMIC? AN EXAMINATION OF THE CONSUMER FINANCIAL PROTECTION BUREAU

Thursday, July 30, 2020

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

The committee met, pursuant to notice, at 12:38 p.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Velazquez, Sherman, Clay, Cleaver, Himes, Foster, Heck, Vargas, Gottheimer, Gonzalez of Texas, Lawson, Tlaib, Porter, Axne, Casten, McAdams, Wexton, Lynch, Adams, Garcia of Illinois, Garcia of Texas, Phillips; McHenry, Wagner, Lucas, Posey, Luetkemeyer, Huizenga, Stivers, Barr, Tipton, Williams, Hill, Emmer, Zeldin, Mooney, Davidson, Budd, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Gooden, Riggleman, and Taylor.

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.

Before we begin today's hearing, I want to remind Members of a few matters, including some required by the regulations accompanying House Resolution 965, which established the framework for remote committee proceedings.

First, I would ask all Members on the Webex platform to keep themselves muted when they are not being recognized by the Chair. This will minimize disturbances while Members are asking questions of our witnesses. Members on the Webex platform are responsible for muting and unmuting themselves. The staff has been instructed not to mute Members except when a Member is not being recognized by the Chair, and there is inadvertent background noise.

Members on the Webex platform are reminded that they may only attend one remote hearing at a time, so if you are participating today, please remain with us during the hearing. Members should try to avoid coming in and out of the hearing, particularly during the question period.

If, during the hearing, Members wish to be recognized, the Chair recommends that Members identify themselves by name, so as to facilitate the Chair's recognition.

I would also ask that Members be patient as the Chair proceeds, given the nature of the online platform the committee is using.

In addition, the Chair informs the Members participating in person that in enforcing order and decorum in the hearing room, the Chair has a duty to protect the safety of the Members.

The attending physician provided the following guidance: "For U.S. House of Representatives meetings in a limited enclosed space, such as a committee hearing room, for greater than 15 minutes, face coverings are required." Accordingly, the Chair will treat wearing masks as a matter of order and decorum, and all Members should wear masks.

The Chair has a strong preference for Members to wear masks even while being recognized. Members who do not wish to wear masks may participate virtually through the Webex platform.

Today's hearing is entitled, "Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau."

I will now recognize myself for 5 minutes for an opening statement.

I would like to welcome Director Kraninger to what I hope will be her last appearance before this committee as Director of the Consumer Financial Protection Bureau (CFPB).

Ten years after we passed the Dodd-Frank Act to end the predatory and discriminatory practices that caused the financial crisis, we find ourselves in the midst of an economic and health crisis caused by incompetence and exacerbated by narcissism, that once again hits the most vulnerable Americans the hardest. The scale of the crisis is unprecedented.

Today, we learned from the Bureau of Economic Analysis that the gross domestic product (GDP) decreased at an annual rate of 32.9 percent in the second quarter of 2020, which is the largest drop ever recorded. Our consumers need a strong Consumer Bureau that provides robust protections on their behalf and holds financial institutions accountable when they commit abuse. A record number of people have filed complaints about financial institutions with the CFPB during the COVID-19 crisis.

We know that consumers are reporting major hardships in working with payday lenders, mortgage servicers, credit card companies, and the credit reporting bureaus. They are reporting long wait times, inconsistent information from consumer representatives, and a lack of follow-up.

Unfortunately, our witness today, CFPB Director Kathy Kraninger, has done next to nothing of substance about any of this. Instead, she has focused the Consumer Bureau on weakening critical consumer protections, relaxing enforcement against financial institutions, and undermining the agency from the inside.

Director Kraninger, let's review some of the harmful actions you have taken since March, when the pandemic began. You issued a final rule, rolling back key safeguards for payday, car title, and installment loans, exposing consumers to high-cost predatory loans. It is shameful to open the floodgates to predatory loan products to trap consumers in a cycle of debt at any time. But to do so during a pandemic is egregious. It is hands-down the most anti-consumer action you have taken as Director, and given your record, that is saying a lot.

You also weakened the reporting requirements under the Home Mortgage Disclosure Act (HMDA), willfully hindering the ability of the Consumer Bureau researchers, journalists, advocates, and the public to detect redlining and patterns of discrimination in mortgage lending.

An investigation by Reveal News found evidence of modern-day redlining in 61 metropolitan areas across the country, using the public data set that you are now degrading. It is deeply irresponsible and malicious to undermine this important tool.

In addition, you have issued an Advance Notice of Proposed Rulemaking (ANPR) to make substantial changes to the agency's Qualified Mortgage (QM) rule, which is the rule implementing the standards with which lenders first demonstrate that a borrower can repay a loan before signing mortgage documents.

It is, unfortunately, all too fitting that you seek to undermine the standard on the 10-year anniversary of Dodd-Frank. You may not remember the financial crisis, but I and the members of this committee do. We included the standard in Dodd-Frank because the proliferation of unaffordable and predatory mortgage loans was an essential driver of the 2008 financial crisis, and caused millions of families, and especially borrowers of color, to unfairly lose their homes.

These actions are just the latest that you have carried out to sabotage the very agency you have been entrusted with leading. Your actions are betrayals of the consumers you are tasked with protecting.

And so, having said that, I am a little bit disturbed that I am missing the television portrayal of the funeral of John Lewis, with magnificent speakers there today, but we have to carry on with the business.

And I now recognize the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 5 minutes for an opening statement.

Mr. MCHENRY. Thank you, Madam Chairwoman. I would point out that the Majority schedules the timing of these hearings. But the partisan nature of the Chair's opening comments, I think, belies the seriousness of our current politics in the midst of this pandemic, sadly.

But, Madam Chairwoman, I want to welcome Director Kraninger for the first of what I hope are many appearances before the committee in the coming years. If I were not wearing a mask, you would see that I say that with a smile and in an attempt to be lighthearted in the midst of what is a pretty disastrous political discussion we are having here in Washington.

Look, to me, Democrats are asking questions. The CFPB is protecting consumers both during and outside of the pandemic. If you look at the facts in a fair-minded way, and recent actions by the Bureau, I can safely answer my colleagues' questions with, yes, they are. Despite what the Democrats say to score political points, this CFPB, under your leadership, Director Kraninger, has worked diligently to provide resources, guidance, and protection for consumers most at risk in these unsettling times.

The reorder has encouraged financial institutions to work with borrowers; provided increased flexibility for supervision enforcement activity; clarified guidance to mortgage servicers to comply with the Coronavirus Aid, Relief, and Economic Security (CARES) Act forbearance requirements; created an elder fraud prevention response network development guide; released an updated COVID-19 consumer complaint data bulletin; and outlined the roles and responsibilities of credit reporting companies and furnishers to create a consumer relief guide for mortgage payment forbearance and foreclosure protection.

Pretty darn good work, I must say, and at the same time, keeping your workforce safe. These are just a few of the CFPB's pandemic-related initiatives.

Apart from its response to the pandemic, this Bureau, under your leadership, has approached difficult and polarizing topics with a steady hand over the last year-and-a-half. And I want to thank you for that.

You have increased clarity in the market for consumer lending. One example is the Bureau's recent rulemaking to revise the 2017 small-dollar lending rule.

We know that small-dollar loans are a lifeline for millions of Americans in need. They help consumers cover unexpected expenses or income shortfalls during periods of economic stress, like we are currently experiencing now.

The decision to revise that 2017 rule is a necessary step to increase clarity and access in a market that serves millions of Americans trying to make ends meet. We must continue to review and right-size burdensome regulations that inhibit lending into the real economy at a time when the American people need it most, and they can at least afford that inhibited lending.

Lastly, Director Kraninger, as we have discussed in the past, my colleagues and I believe you have too much power.

The structure of the Bureau is unchecked by Congress and the President. And you have even agreed with me on that consistently, both before and after your confirmation. And since Dodd-Frank's enactment, Republicans have argued that the Bureau's structure is unconstitutional; the funding mechanism leaves it unaccountable to anyone. This past June, the Supreme Court agreed with what Republicans have been saying all along.

In striking down a structure created by the Democrats in 2010, the Supreme Court found that the Director holds too much power and violates the separation of powers.

We now have a real opportunity to work together on necessary statutory reforms to the Bureau, reforms that will benefit consumers and bring clarity and clear guidance. A leader in that effort is my colleague and friend, Blaine Luetkemeyer.

Director Kraninger, I want to thank you for your leadership. And I want to yield the balance of my time to Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you.

Thank you, Ranking Member McHenry, and thank you, Director Kraninger for being here today. Just a few weeks ago, the Supreme Court confirmed that the structure of the CFPB is unconstitutional. The Director can be fired at will by the President of the United States. The structure and in-person authority of the CFPB have turned into a political football that will no doubt swing back and forth, on a political pendulum, creating uncertainty and confusion for financial institutions and consumers for decades to come.

That is why I have introduced legislation that changes the leadership structure of the CFPB from a single Director who can be fired at will, to a bipartisan five-member commission.

Last Congress, this legislation enjoyed bipartisan support in this committee. However, in the 116th Congress, this solution only garners support from my side of the aisle. Changing the leadership structure and increasing government oversight of the CFPB are vital to protect businesses and consumers.

I look forward to discussing these issues with you today.

With that, Madam Chairwoman, I yield back.

Chairwoman WATERS. It is now time to hear from Director Kathy Kraninger. Director Kraninger has testified before the committee previously, so I believe she needs no further introduction.

You will have 5 minutes to summarize your testimony. When you have one minute remaining, a yellow light will appear, and at that time, I will ask you to wrap up your testimony so we can be respectful of the committee members' time. And without objection, your written testimony will be made a part of the record.

You will now be recognized for 5 minutes to present your oral testimony.

STATEMENT OF THE HONORABLE KATHLEEN L. KRANINGER, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Ms. KRANINGER. Chairwoman Waters, Ranking Member McHenry, and members of the committee, thank you for this opportunity to provide you with an update on the fantastic work the CFPB has been doing since we last met.

I appear before you as the country is engaged in the national conversation on racial inequality and confronting the unprecedented pandemic. Today, I would like to discuss both of these topics with you.

Under my leadership, the CFPB is taking steps to help create real and sustainable changes in our financial system so that African Americans and other minorities have equal opportunities to build wealth and close the economic divide.

Earlier this week, I authored a blog outlining the Bureau's important fair lending work. We also issued a request for information on how best to create a regulatory environment that prevents credit discrimination in all aspects of the transaction and expands access to credit. The information that is submitted will help us Enforce the Equal Credit Opportunity Act (ECOA).

Among the topics the public can comment on are how to better protect consumers with limited English proficiency, as well as applicants who derive income from any public assistance program. I encourage the public to respond so that we can build a financial system that treats everyone fairly and provides clear rules of the road.

Having clear standards helps us identify any violations in fair lending laws. Recently, the Bureau filed a lawsuit alleging a lender had violated ECOA by discouraging African Americans from applying for loans through its advertising.

The Bureau also announced a settlement last year with the mortgage corporation that violated the Home Mortgage Disclosure Act and Regulation C by intentionally submitting years of mortgage loan data that contained errors in the fields of race, ethnicity, and sex.

Since my last testimony before the committee, I have requested critical authority from Congress to allow the Bureau to compensate whistleblowers. In our enforcement work, we have seen firsthand that whistleblowers can provide key information on fair lending violations.

I want to thank Congressman Green for introducing legislation similar to what I requested. I stand ready to work with Congress to secure this important authority.

Now, let me take a moment to discuss how we are protecting consumers during the pandemic.

We have worked to expand our reach to consumers to provide them with actionable, useful information about their rights, options, and expectations in the market for consumer financial products and services. We have produced over 70 blogs and videos that have been accessed directly by more than 3 million users.

Through our social media reach, staff estimates our materials have been sent to 41 million unique users. These materials are available in seven different languages and have been constantly updated to adapt to the changing dynamics.

We have also promoted our consumer complaint system. When consumers submit complaints to the Bureau, they help inform our work in supervision, enforcement, regulation, and education. Specifically, in response to complaints and other market and stakeholder feedback, we worked with interagency partners to quickly address a student loan-related credit reporting issue, as well as CARES Act mortgage forbearance lump sum payment concerns.

From January 1, 2020, through July 26, 2020, consumers have submitted more than 270,000 complaints to the Bureau, of which more than 14,000 complaints specifically referenced the coronavirus. Each month, from March through June, set a new monthly record for complaints. Our consumer contact center and our online portal have operated efficiently and effectively throughout the pandemic to take those consumer complaints and refer them to companies for response and ensure those responses are received.

We also partnered with other Federal agencies to develop and launch a unified housing website to provide consumers with comprehensive and accurate information on their rights during this time.

The Bureau has also developed a new targeted supervisory approach called Prioritized Assessment to focus on those markets and institutions that pose the greatest risk to consumers as a result of pandemic-related issues.

We remain fully engaged in the execution of the Bureau's critical mission, including continued progress on our regulatory agenda, which is relevant to the pandemic and ultimate economic recovery, as well as our supervisory and enforcement work.

We work closely with partners and stakeholders, recognizing the important roles that others play in supporting our consumer protection mission and preventing harm.

I am particularly proud of the Bureau staff's excellent work during these challenging and unprecedented times. And thank you again for allowing me the opportunity to testify today. I look forward to the questions.

[The prepared statement of Director Kraninger can be found on page 76 of the appendix.]

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

Director Kraninger, under your leadership, the Consumer Bureau has brought fewer lending enforcement options, rolled back consumer protections against predatory and payday lending, scaled back data used to combat discriminatory practices like redlining, and engaged in inappropriate personnel practices, such as allowing political appointees like Thomas Ward to burrow into the Agency and take what should be a nonpartisan career position, and in hiring Eric Blankenstein, who has well-documented racist views, and Paul Watkins, who was affiliated with an anti-LGBTQ hate group.

Director Kraninger, when we were in a financial crisis more than a decade ago, Congress determined that consumers needed an agency solely dedicated to protecting them from the abusive practices and products that contributed to the crisis.

When Congress passed the Dodd-Frank Act and created the Consumer Bureau, we clarified the rules of the road and tasked the Agency with enforcing the law and protecting consumers in the financial marketplace. The pandemic has only heightened the need for the Consumer Bureau to protect struggling consumers.

Unfortunately, the Consumer Bureau has engaged in deregulation without facts or reasoning and seems to be protecting the interest of industry over the interest of consumers.

Director Kraninger, what proactive supervisory and enforcement steps has the Consumer Bureau taken to protect consumers who have lost income due to COVID-19 and are struggling through no fault of their own? How are you utilizing the authorities at the Consumer Bureau's disposal to protect consumers against bad actors that are taking advantage of our communities during this crisis? What have you done?

Ms. KRANINGER. Chairwoman, our supervisory and enforcement work continues through the pandemic. I will say briefly about supervisory actions, because I think it is a very different approach than we have had. Typically, examiners go to an institution and look at loan files from 2 years ago, and assess compliance against the law, which is important.

We instituted, as a result of the pandemic, a prioritized assessment process. We are going to hundreds of institutions across the spectrum in a risk-based approach to look at what they are doing with respect to the pandemic.

What are their operational challenges? Are they following the guidance to accommodate their customers? Are they following the CARES Act processes? Are they providing clear information to consumers? And we are looking to again prevent consumer harm by addressing that right at the issue and right at the point where that activity—

Chairwoman WATERS. Director Kraninger, after you do all of those reviews and ask those questions, then what do you do?

Ms. KRANINGER. Chairwoman, if we find violations, we will act on them. But I will say that the vast majority—

Chairwoman WATERS. Give us an example of one of those actions you have taken?

Ms. KRANINGER. I'm sorry, Madam Chairwoman, I didn't understand that.

Chairwoman WATERS. After you have done your reviews making sure that people are doing what they are supposed to do, when you find that they have not been doing it, what do you do, and give us an example of one that you have taken care of?

Ms. KRANINGER. That is a confidential process through the examination, but we do get restitution for consumers through supervision. There are a bunch of examples in the semi-annual report of the amount of restitution that has been gotten through supervision.

We also certainly believe there are bad actors or if this is a sustained issue with respect to violations, that is referred to enforcement. We also independently take enforcement actions. And in the pandemic, we have been incredibly active with all of our law enforcement partners from State Attorneys General to the Justice Department and the FTC and—

Chairwoman WATERS. Director Kraninger, are those enforcement options that you have taken available to Members of this Congress? Can we see what you have documented that you have done when you have done your reviews and discovered that you have people in departments who are not doing what they are supposed to do? Can we review what you have done?

Ms. KRANINGER. Yes, Madam Chairwoman—

Chairwoman WATERS. Thank you. Let the record indicate that the chairwoman is interested in reviewing actions taken by the Director of the Consumer Financial Protection Bureau after she has done reviews in which she has determined that those who have not been following the rules, the laws, the procedures, et cetera, so we can understand exactly what she has done.

Also, while I have a few minutes here, consumer complaints during the COVID-19 period have surged. Nearly half of all complaints, 46 percent, were related to credit reporting. Nevertheless, in April, the Consumer Bureau announced that it would allow much greater flexibility in how long credit reporting agencies may take to investigate consumer report disputes.

Do you think it is appropriate for the Consumer Bureau to announce that it would weaken enforcement of the Fair Credit Reporting Act's requirements for credit reporting agencies, like Equifax, to investigate disputes in a timely fashion?

My time is up. You do not have time to answer that. I will submit that question to you in writing for further answers.

The gentleman from North Carolina, Ranking Member McHenry, is recognized for 5 minutes.

Mr. MCHENRY. Thank you, Director Kraninger, for being here, and thank you for managing this process. I know it is awkward to speak with a mask on and to sit behind, effectively, a salad guard, or whatever those things are that you are behind, but we are trying to do our best.

And there are a couple of broad things I want to talk about. Obviously, a Supreme Court decision, which is something I brought up in my opening statement—you have consistently said that you believe that the Director is given too much power, and that Congress should remedy this. And I appreciate the fact that you have continued to have that same view, even though you have this enormous power and it sort of lacks accountability standards as well.

Has your view of your role shifted since the Supreme Court decision?

Ms. KRANINGER. Congressman, certainly, we reviewed the case. I was very gratified that the Supreme Court took up that case and made the decision on it. It created a lot of uncertainty in the Agency's enforcement actions and around the Agency's mission. And I think that is incredibly helpful to the process.

I will say with respect to additional changes in structure or otherwise, I leave those in the hands of Congress. To the extent that you all decide to make changes to that, and that it becomes law, we will certainly work to institute those changes.

Mr. MCHENRY. I also mentioned a small-dollar lending rule. There are details of this that I agree with, and there are details of it with which I disagree. But why did you take the action on the small-dollar lending rule?

Ms. KRANINGER. Congressman, there was a lot of concern. Frankly, we were in litigation over that rulemaking. There was a lot of concern about the dramatic impact that would have on the availability of small-dollar credit.

We know there is significant demand and need and interest in small-dollar credit. That has been documented, and Congress has even taken action, funding a small-dollar program through CDFI.

So, trying to promote competition in that space is an important aspect of it. And there were a lot of issues with respect to the payday rule that were undermining that.

Most pointedly, though, we followed the Administrative Procedure Act and noted and documented that the initial rule did not have the robust evidence and legal basis given that dramatic impact on small-dollar credit availability.

Mr. MCHENRY. So, there are benefits in terms of credit availability and benefits for certainty, right? Regulatory certainty? And that will have a positive impact on consumers and their access. Will you continue to ensure that there is diligent oversight of the industry?

Ms. KRANINGER. Absolutely. Our enforcement actions have continued apace in this industry as in others. We know there are bad actors in every market. And so, we will continue to enforce the law and engage in examinations of payday lenders, which we have done.

But in addition to that, we are doing work on disclosure testing to ensure that consumers do understand this product. There is a lot of evidence that they understand it, but let's actually continue to do the disclosure testing as well. So, there are a lot of different aspects of this.

Mr. MCHENRY. Director Kraninger, I want to thank you for reviewing Section 1033 of Dodd-Frank, and reaching out to the industries about this, and consumers. That section focuses on consumers' ability to access their financial information. I know Congress, we want to do our work for data privacy for our jurisdictions. I think there is consensus between all parties on the need, and then we can dial down in terms of changes.

But this statutory requirement is interesting in light of the massive change that is happening in banking, and the feedback we have gotten.

For example, Fintech companies offer improved personal financial management, faster loan underwriting, and better payment services. And those are positive developments. And I want to make sure that we continue to foster that exact sort of innovation.

Is that the reason why you are undertaking this? What are the benefits for review of the regulatory framework?

Ms. KRANINGER. Certainly, one key priority and principle of the activity is continuing to promote innovation in this case. And we had a symposium just a few months ago to talk through this issue and bring experts together. It was truly a robust conversation.

The Agency has allowed the industry and all stakeholders and the public to continue to take advantage of those innovations in the marketplace. But we are at the point now where we really should examine the way in which that data transmission occurs, and that is why we are moving to an advance notice of proposed rulemaking.

Mr. MCHENRY. And let me close by saying, thank you. You have been a good public servant, and you continue to act in accordance with the law, you have been open to feedback, and I appreciate that. I very much appreciate it.

Madam Chairwoman, I ask unanimous consent to insert into the record two letters. The first is a July letter to the Financial Services Committee from the Consumer Bankers Association articulating a number of thoughts on the CFPB's rulemaking and actions. And the second is a July letter from the Association of Credit and Collection Professionals opining on the CFPB's rulemaking as it relates to the Fair Debt Collection Practices Act.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. MCHENRY. Thank you, Madam Chairwoman.

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

Ms. VELAZQUEZ. Thank you, Madam Chairwoman, and Ranking Member McHenry, for holding this important hearing, especially at this time.

Director Kraninger, earlier this month the CFPB finalized its revision to the payday lending rule, keeping out a key provision of the regional rule developed by Dr. Cordray, the ability-to-repay requirement.

Do you believe the Bureau's revised rule will leave low-income borrowers and those of color more or less protected from unscrupulous payday lenders during this pandemic?

Ms. KRANINGER. Congresswoman, the mandatory underwriting provisions are having the impact of a substantial reduction in the availability of small-dollar credit for all communities, and particularly the communities you mentioned, vulnerable communities who are really in need of access to responsible products for small-dollar loans. And that was the primary consideration. If protections continue with respect to the payments provision—

Ms. VELAZQUEZ. I hear you. I disagree with you in terms of access to credit. Basically, smaller institutions are the ones that are providing loans to individuals and small businesses, not the—so how would you respond to the president of the Center for Responsible Lending, Mike Calhoun, who said that the pain caused by the CFPB regarding the payday rule will be felt most by those who can least afford it, including communities of color who are disproportionately targeted by payday lenders?

Ms. KRANINGER. Congresswoman, the availability of credit had—and that rulemaking did have a broader impact. The number of banks that are issuing small-dollar products was substantially limited. There are no mitigating factors to support that—

Ms. VELAZQUEZ. You are saying that Mr. Calhoun is wrong, but you are right?

Director Kraninger, a review of the CFPB's consumer complaint database shows that consumer complaints have increased dramatically in the start of the pandemic. However, CFPB rules still allow companies up to 60 days to respond to a consumer complaint.

Given the rising number of complaints and the economic uncertainty many individuals and households are facing, why has the CFPB not started to shorten this response time?

Ms. KRANINGER. Congresswoman, I should, off the top of my head, have the response time, but it is substantially shorter than that. I believe we are basically in a week for most turnarounds. The 60-day allowance is really because of some of these more complicated issues, in terms of what the complaint is and making sure it is addressed. So, I think we have a fantastic record of actually getting a meaningful response—

Ms. VELAZQUEZ. So, why not shorten the 60-day requirement, or the 60 days timeline, given the fact that consumers are suffering in this country? These are people who are in trouble right now, so why not shorten the 60 days?

Ms. KRANINGER. Congresswoman, the vast majority—we will get back to you with an actual number—

Ms. VELAZQUEZ. It would be great to have some empathy.

Director Kraninger, mortgage-related concerns represent the highest percentage of COVID-related complaints received by the Bureau. Earlier this month, we held an Oversight Subcommittee hearing in which we learned that some mortgage servicers are failing to notify borrowers of their right of forbearance under the CARES Act.

Is the CFPB concerned that some servicers are failing to accurately represent borrowers' rights under the CARES Act? How is the CFPB working to address this issue?

Ms. KRANINGER. We have produced a significant amount of material in cooperation with HUD and FHFA scripts for servicers so they have very clear messages that they are supposed to provide to their customers. We have done videos for customers. And, in fact, many of the servicers are pulling the information off the CFPB's website and sending it to their customers in multiple languages. This is all available—

Ms. VELAZQUEZ. Do you have any data as to any complaints coming from individuals who feel that their rights have not been protected?

Ms. KRANINGER. There were complaints right around the CARES Act passage about concerns about being able to pay their mortgages, and concerns about the messages that they were getting. We acted expeditiously, really, since March-April complaints and address them through a lot of different actions and they have gone down substantially since that time.

We are certainly still monitoring, and if we see an increase, or if we see any bad action, working really closely with FHFA, actually, we were looking at all of this, and we are acting.

Ms. VELAZQUEZ. Thank you.

Chairwoman WATERS. Thank you.

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

Mrs. WAGNER. Thank you, Madam Chairwoman.

And welcome back, Director Kraninger. I want to just first thank you for your service to our country and for your service to all of the consumers in Missouri's Second Congressional District. I appreciate your leadership now, and I look forward to it in the future.

Before I begin my questions, I also wanted to thank you for all the work that you have done, not only increasing transparency at the CFPB, but also streamlining and tailoring regulations to better protect and provide, I think, clarity for consumers and the private sector. So, thank you for that.

While I am proud of your efforts to increase transparency and accountability, the CFPB issues regarding its structure go beyond that of any one Director. Now that the Supreme Court has made its decision regarding the structure of the Bureau, it is time for Congress to work together to put the Bureau on a budget, overseen by Congress, and run by a bipartisan board.

Director Kraninger, would you please discuss how the credit reporting provisions in the CARES Act are working to protect consumers who have been impacted by COVID-19?

Ms. KRANINGER. That is a very important issue, and I think we are in a much better position than we were after the financial crisis in recognizing the importance of the credit reporting system, and our ability to act very quickly on issues as they occur, and address them so that they don't impact consumers.

The CARES Act provision first requires that those who are affected by the pandemic be reported as, "current," when they are in a forbearance program under the CARES Act. And that is something that we are monitoring. I mentioned earlier the prioritized assessment that includes a constant presentation that the CFPB has with the national credit reporting agencies. We are looking at, specifically, what they're doing with the information that comes in. We are also doing examinations of furnishers on the other side to make sure they are reporting the right way.

Of course, "current," is not the only thing that is in the data that gets transmitted by the furnishers. There are a lot of different details about how precisely you continue to comply with FCRA in terms of accuracy and otherwise. But we are all working very closely together to keep that intent of Congress implemented.

Mrs. WAGNER. Recently, the Bureau announced that it would be issuing an advance notice of proposed rulemaking regarding consumer-authorized access to financial records. How does the Bureau intend to address privacy and security concerns in an environment where many unregulated or underregulated companies are eager to, as we know, obtain and resell consumers' financial data?

Ms. KRANINGER. Section 1033 is, of course, what you are referencing, and Congress anticipated there might be a need for rulemaking. We are still looking at that. The primary driver is that the consumer should be the one who authorizes the data use. But to your point, privacy and security issues are intertwined with that, and are incredibly important.

The means by which many of the data aggregators have been accessing that data is by consumers providing their banking credentials. And that, of course, means the entity can go in and screen scrape the data and take it out. That has caused a lot of concerns by those who believe they are stewards of that data.

So, we have a lot of technical data access issues there with respect to how that happened. And it was not pre-decided that there needs to be a rule, but it will be a challenging rulemaking to take precisely the privacy and security, and make it lasting so that it doesn't change based on technology changes as well. So, we are really looking to do that right.

Mrs. WAGNER. I think so, too. How will the Bureau ensure that the password's enhanced data portability does not lead to consumer exploitation or an uneven playing field between depositing holding institutions and potentially underregulated Fintech companies? I have concerns about that, too, as you move forward.

Ms. KRANINGER. No, you are outlining precisely the challenge here. Again, the consumer is front and center in Section 1033, but there also needs to be information to that consumer about what they might be opening up.

Mrs. WAGNER. Okay. Thank you. My time has expired, and I yield back.

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

Mr. SHERMAN. I have five quick, easy questions. First, paced loans: Congress passed a law in 2018 requiring regulations, including the ability to repay. In March 2019, you issued a proposed rule. In October 2019, and February 2020, I had a chance to ask you about the status. We need to protect the consumers. When do we get the regulations?

Ms. KRANINGER. Congressman, I can give you a slightly better answer than I did in February. The data collection that we need to predicate that notice of proposed rulemaking will begin in September, early September. The Paperwork Reduction Act requirement does take a significant amount of time. But by early September, that data collection will happen. We will have the data this year.

Mr. SHERMAN. So, the work you promised in February will start in September. Next, I want you to be as quick as possible on that.

Ms. KRANINGER. Understood.

Mr. SHERMAN. Next, consumer credit scores: People lose their jobs because of COVID. They have negative—they are unable to pay this or that bill. Is that a fair entry on their credit report and a good predictor of how well they will be able to pay their bills once the crisis is over?

Ms. KRANINGER. Congressman—

Mr. SHERMAN. Can we prevent these negative items during the COVID crisis from being on the credit report?

Ms. KRANINGER. I know you are asking a critically important question that you in Congress are actually thinking about and looking at now.

Mr. SHERMAN. You could solve the problem for us. You could simply prohibit—I hope you will look at preventing these negative items from being on the credit report.

But one particular area where Congress has acted, the CARES Act, said that mortgage forbearance is allowed to homeowners and prohibits negative credit reporting from using that forbearance.

But FHFA charges premiums on mortgages to borrowers who have accessed the forbearance, which means that that is being reported and it is disadvantaging the homeowner.

What can you do to make sure that the forbearance that the CARES Act indicates should not be on the credit report, is not reported in a way that causes FHFA to raise the premiums?

Ms. KRANINGER. I can't speak to the premium aspect, Congressman, but I can in the overall context of this. We are working very closely with the NCRAs and with the furnishers to understand what else they are reporting—

Mr. SHERMAN. Can you call the folks over at the FHFA and say, "Hey, it is my job to make sure that you don't get this information on the credit report, so where are you getting it?"

Ms. KRANINGER. We will talk about this because you are the first person to mention the premium issue, so I will go back and look at that, and we will certainly get back to you on what the decision is there.

Mr. SHERMAN. The next issue is Facebook. The entities you regulate are supposed to make sure they don't discriminate based on age, gender, race, et cetera. Facebook has this complicated algorithm, so that when you buy an ad on Facebook, you don't quite know whom you are reaching.

Facebook probably isn't going to reveal its algorithms. But if one of the entities being regulated by your Agency gets a certification from Facebook saying, you have opted for an ad campaign that we are making sure does not discriminate against the people you are not supposed to discriminate against, would that be adequate, or do the entities that you regulate have to not be on Facebook unless Facebook reveals the algorithm?

Ms. KRANINGER. There are a lot of facts and circumstances behind, obviously, the premise to your question. And I wouldn't want to answer that in this unique case. I will tell you overall that we do engage in fair lending examinations of the institutions. That certainly includes looking at their advertising. And beyond that, I can't get into too much more depth here, that—

Mr. SHERMAN. I hope you will look at the specifics. Back in the old days, you would put an ad in the newspaper, and that would be the way—the town had one big newspaper.

Now, you have so many different choices. When you advertise with Facebook, it is one big entity, but you have thousands of different advertising campaigns you can ask for. And I would assume that you would create a circumstance where if you specify non-discrimination, that it is on Facebook if they violate that.

One last thing is these Fintech companies that ask you to give them all of your information so they can access your bank account and your brokerage statement, and then, they can sell the information they know about you; they are providing this free service at the cost of your privacy.

What is your perspective? What can we do to protect consumer privacy?

Ms. KRANINGER. Certainly, we have some limitations on our oversight of privacy. But I will say on this point, we do have Section 1033 to look at what the data aggregators are telling consumers in terms of the product what they are getting from it.

And there are a number of things that we are doing on that front for the disclosure and access.

Mr. SHERMAN. Thank you.

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

Mr. LUCAS. Thank you, Madam Chairwoman.

Director, can you detail the resources that CFPB has provided to consumers experiencing financial hardship during the COVID-19 pandemic?

Ms. KRANINGER. Certainly. We have announced public enforcement—in terms of educational resources, I will admit, my mind went to money. But I will say, educational resources are extensive. We have issued over 70 blogs and videos in multiple languages, extensive information on how to manage your finances and think about them, and what questions to ask your servicers.

As soon as the CARES Act was passed, we issued that video and that information within a week, which was a significant accomplishment in moving mountains here to make sure we clearly and concisely told consumers what they were entitled to. And we have had millions of people watch that video in English and in Spanish, and that is something that I think we are particularly proud of in terms of, again, making sure consumers understand their rights.

And I commend the financial institutions and other consumer advocates, and Members of Congress, who are also sharing that very same information with their constituents or with their customers.

Mr. LUCAS. It is important, because many of our constituents have never faced the kind of challenges they are facing economically as a result of a pandemic, just as virtually no one alive has had to deal with this kind of a circumstance before.

Continuing my line of questioning, you mentioned in your testimony that the Bureau will launch a website with HUD and FHFA for consumers to find accurate information about relief options. Do you outline what consumers should expect when seeking out a forbearance or mortgage relief as provided in the CARES Act?

Ms. KRANINGER. Yes, Congressman, that website is launched. It has a lot of the resources I just talked about on it. Consumers can expect that they can contact their servicer and say, I have experienced a hardship, and therefore they are entitled to forbearance if it is either a federally-backed loan or a GSE-backed loan. So, that is clear to them.

In addition, even those that are privately-funded loans, certainly, they have direction from all of us as regulators to accommodate their customers, and many of them are also providing different kinds of forbearance, again, consistent with their contractual obligations and abilities.

But a significant, overwhelming number of institutions are providing options to their customers, and the first step is having those customers contact them.

The second is to come to us, the CFPB, if they have any issues or questions or complaints, and we are expeditiously addressing those.

Mr. LUCAS. I very much appreciate that, Director. As I mentioned earlier, there are many of my constituents, our constituents out there who are facing the kind of economic challenges we have never faced before, and this is a whole new terrifying experience to them.

With that, Madam Chairwoman, I yield back the balance of my time.

Chairwoman WATERS. Thank you.

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

We will move on. I think there is some technical difficulty with the gentleman from Missouri.

The other gentleman from Missouri, Mr. Cleaver, who is also 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 appreciate very much this subject today with Director Kraninger, because I don't know if there are very many other issues that are in the same area of importance.

I am wearing my protective gear because someone close to me has now contracted the virus, and so I am trying to be as protective of others as I can possibly be.

Director Kraninger, I have a couple of questions, and I will try to make them as clear as I can. I think everybody has already been mentioning about how things are difficult economically.

And so, I am concerned about minority consumers, who are frankly, hemorrhaging, right now and are at heightened risk of attack by financial predators. There is a saying that a sign of blood in the water is a sign that someone can be attacked, especially because they are already in a weakened state, and that is the case right now.

Last Friday, July 24th, the CDC released a report, and the first sentence read, "Longstanding systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19."

The report goes on to highlight discrimination as a primary factor and the heightened rate of death of minorities, and especially noted housing and financial discrimination.

We know that the access to emergency relief to help communities of color who are being disparately impacted is not being equitably distributed.

A national online survey of 500 African Americans and Latinx who owned small businesses conducted by the Global Strategy Group released a report, and they said that after the second round of funding for the program was allocated, they found that just 12 percent received the full assistance they requested, and two-thirds reported that they had not received any.

If you go to the Center for Responsible Lending, 100 percent of businesses owned by people of color were shut out of the Paycheck Protection Program, and of the pending evictions, that 40 million Americans may have been evicted.

So, I think the first issue is, it would be helpful for me to find out your belief as it relates to systemic racial discrimination. Director, do you believe that it exists in this country?

Ms. KRANINGER. Yes, Congressman, I know that it exists in this country, but it is abhorrent, and it is certainly part of my duty to root that out in the financial system.

Mr. CLEAVER. Yes, I agree with you, and thank you. Do you think that consumers of color and women have been experiencing this disparate impact during the crisis, or do you think they have been harmed by discrimination?

Ms. KRANINGER. Certainly, the evidence that you stated does show that they are not starting in precisely the same place.

And we have been doing everything we can to make sure that they do. And I will say that CFPB, specifically, is supporting our fellow agencies in trying to get the word out on economic impact payment entitlement, and on forbearance options, to limited English proficiency groups, and to African-American communities.

And even on the Paycheck Protection Program, again, I have had significant outreach as well with communities of color to make sure that they have the information they need, and then we can increase access to these programs.

Mr. CLEAVER. I believe my time is running out. But maybe, you understood that the enforcement and supervisor authority of the Office of Fair Lending and Equal Opportunity, that that might be an adequate response to the problems we are having. What say you?

Ms. KRANINGER. I'm sorry, Congressman. I didn't quite catch the last question.

Mr. CLEAVER. Have you considered restoring the supervisory and enforcement authorities of the office?

Ms. KRANINGER. I'm sorry, you are asking about the supervisory enforcement activities we are doing in fair lending, is that—

Mr. CLEAVER. Yes, of the Office of Fair Lending and Equal Opportunity.

Ms. KRANINGER. The Supervision, Enforcement, and Fair Lending Division still engages very deeply in supervisory enforcement matters across-the-board, including fair lending, and we can get you some more information on that.

Mr. CLEAVER. I think my time is up. Thank you.

Chairwoman WATERS. Thank you.

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

Mr. POSEY. Thank you very much, Madam Chairwoman, for calling this hearing, and I thank the ranking member as well.

For a number of years now, I have tried to get the CFPB to issue advisory opinions. [inaudible] Pretty much [inaudible] Filing that [inaudible] I am afraid to ask that [inaudible] Comply [inaudible] Rules and regulations of the agency. [inaudible] What they are asked to deal with [inaudible] Eliminate so many problems of the plans with them. As we [inaudible] Emphasis should be on the recovery, the economic woes [inaudible] And our hard-working Americans [inaudible].

Regulation should not be a burden to society, [inaudible] Recovery before this vicious virus brought so much [inaudible] Imposed for the nation's economy [inaudible] Across this nation.

President Trump's policies to reduce taxes and regulations, we are finally bringing, coming back from the long stop national luggishness that we suffered.

Getting government off the backs of our hard-working people gave us the strongest economy in our history. There are important lessons to learn, moving forward. My first question for you, Ms. Kraninger, is, what your early experience [inaudible] advisory [inaudible].

Ms. KRANINGER. I'm sorry, Congressman, you broke up a little on the question. The experience with, what, specifically?

Mr. POSEY. The advisory opinion [inaudible].

Ms. KRANINGER. With the advisory opinion program we have launched, what has come in, I am guessing, you would like to know?

Mr. POSEY. Yes, ma'am.

Ms. KRANINGER. Okay. Thank you, sir. As you know, we are engaged right now in the pilot, and we are in a Paperwork Reduction Act process to get comments on the full program. We have not gotten anything in yet, specifically, but it has only been a few weeks since we launched that. And we do anticipate it.

And as I told you, the biggest part about this is, it is making formal and transparent interpretive rules that we have essentially been giving to individuals as they have asked along the way. So, it's incredibly useful.

Mr. POSEY. Thank you.

Many of us believe that the rules and regulations must be applied with [inaudible] Overregulate credit in such a way that [inaudible] Approach [inaudible] And puts a burden on families [inaudible]. Please tell us about your strategy to carry out the standard [inaudible] Without unduly constraining our economic recovery from this pandemic as we go forward.

Ms. KRANINGER. I'm sorry, Congressman, your sound is cutting in and out, so it is hard to actually gather the question.

Mr. POSEY. I don't know why. Maybe the lowest bid here is not the best bid for communications. [inaudible]

Ms. KRANINGER. That I heard, of course.

Mr. POSEY. What metrics and policies would give you [inaudible] To ensure that we protect consumers but [inaudible].

Ms. KRANINGER. I have no idea. I'm sorry, sir.

Chairwoman WATERS. We are having technical difficulties, and I can't hear Mr. Posey either. So, we are going to come back to him.

And we are going to move on, so that he can finish the remainder of his time.

With that, we will start the clock over. The gentleman from Missouri, Mr. Clay, who is also the Chair of our Subcommittee on Housing, Community Development, and Insurance, is recognized for 5 minutes.

Mr. CLAY. Thank you, Madam Chairwoman, and let me thank Director Kraninger for her testimony today.

Director Kraninger, the CARES Act includes important foreclosure forbearance protections for homeowners struggling to pay their mortgages.

Given these protections, it is very concerning that 55 percent of COVID-19-related mortgage complaints identified struggling to pay the mortgage as a primary issue, according to the most recent Bureau report. Consumers reported that some mortgage servicers are providing information that conflicts with guidance regarding lump sum payments.

What are you doing to ensure that mortgage servicers are complying with the CARES Act?

Ms. KRANINGER. Thank you, Congressman. That is obviously a significant issue right now. The complaint that you are referencing came in very significantly, particularly, in March and early April. We actually looked carefully at those. And we took a bunch of actions with FHFA and with HUD, including producing scripts for servicers to make sure they are clearly conveying their CARES Act rights to consumers who contact them.

In addition, with respect to the complaints, we noted that a lot of them came around what happened after the forbearance period.

So we worked together, and actually the CFPB issued an interim final rule enabling servicers who offer consumers a beneficial outcome, which is a lump sum payment at the end of the mortgage term, rather than having a question over what loss mitigation options would be there.

And under the mortgage servicing rules, the fact of the matter is that servicers would have to literally start a full application process that was probably going to confuse consumers.

So we gave them this option, and acted very quickly with that, in partnership with the other Federal regulators.

I can say we are working very closely on an ongoing basis to monitor those complaints, to monitor what the servicers are concerned about or hearing, and what consumer advocates are saying in terms of concerns they are hearing, as well as housing counselors.

And I will say, it seems as though those primary early issues have been addressed, and we will keep monitoring as things dynamically change.

Mr. CLAY. Last month, the Bureau released a proposed rule that would dramatically change the definition of "qualified mortgage"

(QM) and weaken consumer protection by replacing the debt-to-income (DTI) threshold with a standard based on a loan's pricing.

Many consumer and industry groups have expressed concerns with such a QM definition that only relies on the price of the loan and the broad, Dodd-Frank statutory product restriction, a definition that relies on pricing reflects investors' assessment of risk, but does not assess an individual borrower's ability to repay. Can you address that?

Ms. KRANINGER. Gladly, Congressman. I think that is a critically important misunderstanding. The Dodd-Frank statutory requirements remain in effect. That includes consideration and verification of debt and income and the ability to repay. That is still very much a critical part of the process.

The question is, in addition to that, how would you determine what is a qualified mortgage? As we looked at the hard, 43 percent debt-to-income ratio requirement out there, many consumer organizations and financial institutions have supported our approach, as a pricing approach. It takes into account wider aspects about the applicant and their creditworthiness, but it is not a replacement of consideration and verification of debt and income. That is in the statute, and that continues.

Mr. CLAY. I guess, as a final question, have you been able to prevent foreclosures of any great number, or have you been able to err on the side of the homeowner to keep people in their homes? Is there any anecdotal or documentary evidence of that?

Ms. KRANINGER. Congressman, I certainly believe that Congress took the right action, and I supported HUD and FHFA actually prior to the CARES Act when they put in place a foreclosure and eviction moratorium on the properties that they back. It is critically important during this uncertain time, and I know it is something that you are all looking at again now.

Mr. CLAY. Thank you so much.

And Madam Chairwoman, I yield back.

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

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Thank you for being here today, Ms. Kraninger. I appreciate your testimony.

As you heard in my opening statement, I am supportive of changing the CFPB structure and putting a commission in charge of the CFPB. I was just curious as to your thoughts on whether the commission, if structured correctly, would be able to complete the mission of the CFPB, and whether you thought it would stop it from being a political football, which we had another example of yet today in our opening statement?

Ms. KRANINGER. Congressman, I certainly would support things that would take down the political temperature. I think you will recall that that is something I have talked about since my nomination, and that has certainly been my intent with the actions I have taken.

But I do think there are some inherent issues that are stacked against a single director in this dynamic.

In terms of the solutions to put into place, I respectfully defer to Congress and what actions you all decide to take there, and I would look forward to helping the Agency transition to the extent that such changes are enacted.

Mr. LUETKEMEYER. I think in response to Mrs. Wagner's concerns with regards to data and screen scraping and things like that, you articulated some concerns and indicated you are watching and looking at it and looking to try and do some things.

Could you articulate a few ideas that you have with regards to how we can do certain things?

I was a part of a group today that discussed this very issue of privacy, how do you protect, where do you draw the line, who owns the data, and how much access should you allow? Can you give us just some of your thoughts of directions you might be going on some of this stuff?

Ms. KRANINGER. Yes. Certainly, we have been talking extensively to all of the stakeholders who care about this, including the industries that are running the technical back-and-forth of the data.

Progress has been made at least to reduce screen scraping as the primary method. There are now APIs that are agreed-upon between entities that allow you to actually have a transmission of that data in a more secure way.

That doesn't mean the consumer needs to hand over their banking credentials to accomplish that data-sharing, but I think in our symposium discussion, we found a lot of questions around, what truly is the consumer's financial data? There are concerns by institutions, likely for competitive reasons, over what data might be proprietary around pricing and otherwise.

At the same time, the consumer may very well think that data is their own, because it is what they are paying, it is what they are getting, it is the servicers that they have.

So, I think there are some legitimate questions around that, that really do get to why we decided to do the advance notice of proposed rulemaking step as our next step on this topic.

As I noted to the Congresswoman, this is going to be a complicated area for rulemaking, and to the ranking member as well, there is a broader conversation happening around data privacy and data security that also complicates it. But we will endeavor to again get feedback and think about the smartest way to proceed in this issue.

Mr. LUETKEMEYER. Okay, very good. I want to talk a little bit about the breadth of the ideas today about some of the pandemic problems that we are having with regards to consumers being able to pay back their debts and the concern with regards to reporting on it.

One of the concerns I have is with regards to forbearance. To me, I am concerned that if the regulators don't give the banks and credit unions and those lenders the ability to give forbearances, I am concerned that we are going to wind up with an elongated recovery here that is going to be very difficult to get out of.

And it will destroy local economies, destroy businesses, and take away jobs, much as it did in 2008 and 2009, whenever the regulators came in and basically got rid of lots and lots of the lines of business.

Although your area of oversight is a little bit more narrow, it still is in the area where forbearance would be a big help to some of the consumers. Would you like to comment on that just a little bit?

Ms. KRANINGER. Congressman, you are very correct, and that is certainly something that many consumers would benefit from, and have frankly benefitted from. The first action that we took with prudential regulators was an FFIEC-issued statement about accommodating consumers.

I do think that my fellow regulators have sent that clear message. So if you are hearing otherwise, we would love to get some specifics on that, so that we can make sure that is done.

I recognize it gets to safety and soundness issues potentially that are outside of my—

Mr. LUETKEMEYER. I appreciate your comments, but my concern is, I have been a former regulator, and I know that the regulators themselves are hamstrung by the rules and regulations that they have to operate under.

So when you go in, much as they did in 2008 and 2009, they said, okay, well, my rules say I have to do this, so therefore, I have to classify this loan, which means I classify the loan. Then, you have to reserve more against it, you have to have more capital, whatever the case my be. And at some point, you turn around and force the banks to liquidate those loans.

We are in a position where if we allow the time that it takes to get these loans back up, because of the uniqueness of the recession that we are in, I think we can get back out of this with minimal damage to a lot of our businesses and, therefore, our jobs and our local economies. So, to me, I have a bill to fix this problem, and I appreciate your comments. Thank you very much.

With that, I yield back, Madam Chairwoman.

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

Mr. FOSTER. Thank you, Madam Chairwoman, and Director Kraninger. The Bureau's proposed definition of a qualified mortgage would remove the 43 percent debt-to-income limit from the QM loan definition and instead use a price-based approach that creates a new limit on the spread between a loan's annual percentage rate (APR) and the average prime offer rate (APOR).

Now, as someone who has lived through the financial crisis and saw firsthand how much havoc was wreaked on the economy from shoddy underwriting practices, this, to me, shows an amazing confidence in the ability of a mortgage crisis to appropriately price risk.

The proposed rule itself identifies several shortcomings with relying on pricing. It says, "The Bureau anticipates that a price-based approach would incentivize some creditors to price some loans just below the threshold in order to receive QM status. More broadly, a lender's pricing of a mortgage reflects many factors outside of a borrower's individual risk profile, including prepayment speeds, balance sheet capacity, business goals, as well as broader economic conditions."

I am very concerned with having a definition that could be so easily manipulated. So, Director Kraninger, how will you ensure that this rule does not just incentivize an irresponsible race to the bottom, reminiscent of what we saw in the lead-up to the 2008 financial crisis?

And if the CFPB acknowledges that the APR can be manipulated by lenders, "to meet the mark," then how can this serve as an effective measure of a borrower's ability to repay?

Ms. KRANINGER. Congressman, the nature of a rulemaking process, of course, is that you put a proposal forward, and you acknowledge all sides of the argument, so you are definitely doing that with the quote in there. But I will say, just taking one step back, that the requirements of the Dodd-Frank Act remain in effect. So, the features that were so concerning during the financial crisis that are precluded from being qualified mortgage and precluded from being offered this way, are still statutorily-prohibited features.

In addition, the statute still requires debt and income to be considered and verified. So, that is part of the proposal as well as a premise of the pricing approach. The pricing approach is then what we get to. The 43 percent DTI cap, well, we frankly found in 2018, a third of the loans that the GSEs backed had DTIs that were higher than 43 percent, and many of these loans are performing, and many of these loans are also to those in minority communities.

And so, again, thinking holistically about what a pricing approach benefit has, and that is that it really does take away—it provides that opportunity above that DTI threshold that is so hard and it will go into effect in January without additional action by me, which is why we put the rule out, but we are trying to alter that effect.

Mr. FOSTER. I am very worried about the word, "consider." While the CFPB's proposal does eliminate the 43 percent DTI, it does, as you say, require lenders to consider a borrower's DTI as part of the underwriting process. But it also emphasizes that lenders would be given great latitude in how they considered a borrower's DTI. And I am concerned that, "consider," is just so loose that people are going to drive a truck through it, and we are going to see this all over again.

Do you have any—

Ms. KRANINGER. Congressman, if I could, there are standards—I know you probably have other questions, but there are standards proposed in the rule for the debt and income consideration, and we are open to industry and consumer groups coming together and coming up with other standards.

So, there does have to be a standard, to be clear.

Mr. FOSTER. I think that having some clarity on exactly what, "consider," means, would help a lot in this, and so that is—I am close enough to being out of time, that I think I am just going to yield back the balance of my time. I don't really have time to get the next question out.

Thank you, and I yield back.

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

Mr. HUIZENGA. Madam Chairwoman, at this point, I would prefer if you could go to the next person and then come back to me, if that is okay?

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

Mr. STIVERS. Thank you, Madam Chairwoman. And thank you, Director, for being here today. I want to thank you for everything you do on behalf of consumers. I am really sorry to see that the nature of your agency has gotten so partisan. I am convinced that is driven by the structure of your agency.

Recently, the Supreme Court, in a Supreme Court opinion, said that your structure violates the constitutional separation of powers.

I am curious what action the agency is either taking or planning to take, to ensure some certainty and stability, given the recent Supreme Court decision, certainty and stability in your actions, decisions, and the things you do?

Ms. KRANINGER. Congressman, as I said, I welcomed the decision and the action in this because bringing that stability and certainty is certainly what I was hoping to do.

And we have looked at prior actions, litigation that is ongoing, and prior rulemaking actions, and I did ratify those prior actions again, just in an abundance of caution, to make sure that those can continue to be relied on, because they have been relied on appropriately, and certainly going forward, I don't know that it changes a lot, but we are certainly looking at the opinions still and talking to the Justice Department about anything else that that may impact.

Mr. STIVERS. Thank you, Director.

Second, there has been a lot of talk today about your QM rule, and you also temporarily extended the sunset on the GSE Patch that is out there. The Bureau is proposing to extend that patch for 6 months after the publication in the Federal Register of the final rule.

Do you believe 6 months is an adequate time for the mortgage market participants to develop, test, and implement new standards, models, and business operations?

Is it possible that maybe 12 to 18 months might be a better transition, especially given everything that is going on with COVID-19 and the pandemic?

Ms. KRANINGER. It is a proposal in terms of the time length, and we asked for comments on it. I think, again, based on experience, the 6 months seems appropriate.

I will say the pricing threshold is not new. It is actually part of the current safe harbor and rebuttable presumption of the qualified mortgage. So it is not a new concept, and institutions are already doing those calculations.

DTI—they are still considering debt and income as required under statute, so it is not precisely a DTI ratio necessarily—

Mr. STIVERS. It is because of the change. It is a change.

Ms. KRANINGER. It is a change.

Mr. STIVERS. You take the DTI, safe harbor, add a percentage, take it away. It is still considered. You look at costs more than you are in today's—and it is a little more—it is a change.

I want to ask you to think about how long that transition will take for folks, that's all.

Ms. KRANINGER. Absolutely.

Mr. STIVERS. The next issue I wanted to bring up is online security. With the pandemic, more people are doing everything online. And according to the FBI, in 2019, victims lost over $221 million to real estate scams and fraud, and that is based only on crimes that were reported.

I have had individual constituents who had mortgage closings where the entire proceeds of the closing have been wired to different accounts through fake emails and scams.

And I am curious what the agency is doing to build awareness on this massive consumer problem, and what you are doing to help potentially address real estate fraud and scams, and prevent them in the future?

Ms. KRANINGER. The particular scheme that you mentioned is one that we were aware of. I don't recall precisely when. It has been at least a year-and-a-half, I feel like, so that is something that we, right away, worked with industry on. We actually, I believe, produced a video on that frankly, that REALTORS were sending out to their customers close to closing to make sure they are aware of that, make sure they know precisely how they should be contacted and where they should be sending closing money. So, that is a significant issue.

It highlights the need in general to make folks aware of the frauds that are out there and certainly to use our enforcement actions to go after fraudsters. I will say a lot of those things, like those online frauds, are particularly hard because they are—

Mr. STIVERS. They use offshore accounts, they do lots of other things. This happened to my constituent about 18 months ago, and it is something I have become aware of, and I am trying to build an awareness of, and I would ask you to continue to build awareness.

We are talking about a quarter billion dollars of reported real estate scams and fraud in 2019, and probably it is higher today, and given that more things are moving online, I hope you will continue to look after those consumers because they need protection, and we are talking about in many cases, somebody's biggest asset and the entire proceeds scammed from them.

Ms. KRANINGER. You are absolutely right. I will say, the Department of Justice, the Federal Trade Commission, all of us are pretty engaged in this.

Mr. STIVERS. Thank you, I yield back.

Chairwoman WATERS. Thank you.

The gentleman from Connecticut, Mr. Himes, is now recognized for 5 minutes.

Mr. HIMES. Thank you, Madam Chairwoman, And Director Kraninger, thanks very much for being with us today.

I would like to follow up on the question that Ms. Velazquez was talking to you about, which is the revised payday lending rule.

You commented to her that it was your opinion that the rule promulgated under Director Cordray resulted in a lower availability of credit, and I think you implied that the new rule would, therefore, make credit more available.

I understand that, and if I can just frame my question—and I think you agree with this framing—financial regulation is hard because it is always a balance. And always, availability of credit is on one side of the balance, and the safety of consumers, somehow defined, is on the other side of that balance.

So, I want you just to elaborate, please, for us—presumably you did a lot of quantitative work, and we don't have the time to get into all of the quantitative work, but I am really interested, if you could give us a minute or two on how the revision to the rule will provide how much more credit out there at the cost of how many more people who may find themselves in difficult financial straights?

Whether that is defined as personal bankruptcy or finding themselves in a situation where debts spiral. I am interested in what the quantification was of finding that revised balance point.

Ms. KRANINGER. And I appreciate you framing it as a balance point, because I have often found in my public policy life that that seems to be the spectrum we talk on. I certainly believe it is my job to protect consumers while increasing availability of credit. And I don't think it is an either/or.

I think with respect to this, I would offer a few other things. The rulemaking itself did have a substantial and dramatic impact on small-dollar credit availability, as its own terms said. So, roughly 70 percent of branches would be closed or those locations would be closed by the rules assessments. But there were other factors to the effect of credit—

Mr. HIMES. I'm sorry, 70 percent of locations of what?

Ms. KRANINGER. Of the payday and title loan outlets, and so the distance that people had in terms of availability.

But what I want to get to is also banks and credit unions and others who were also due to other actions, but also influenced by the rule, other guidance issued by regulators that reduced their interest in engagement in this area. And so I think it is not an either/or.

There are a couple of things that we are trying to do, and one is, disclosure testing, to look at—for those individuals who may be more vulnerable, is that something that will help? There are clearly consumers who understand the product well. There are consumers who pay within the term. The data that we produced in the rule demonstrated that. There is a substantial portion.

And there is a substantial portion who also defaulted on the loan very early in the term, very early in the process. That also demonstrates understanding of the product. So, how do we support and help that last group?

Mr. HIMES. Director, I'm sorry, I do want to get an answer to my question. You partly answered it.

You said that your work indicated that 70 percent of payday loan locations would be closed under the old rule. Thank you. That is a very specific, checkable fact.

But before you go on to the other stuff you are doing, tell me what the CFPB's analysis showed in terms of the increase associated with bad outcomes, however defined, under the new rule? Or is it your belief that there actually won't be an increase in irresponsible borrowing or negative effects as a result of the newly promulgated rule?

Ms. KRANINGER. I would say the way that was—it was the total lending under payday loans that was in that original rulemaking, and I think that is where you start to get to a challenge, because parsing out what was lost, you don't understand what choice that individual consumer was making—what outcome did they get that might have made it worse to them, in terms of that loan, and what was the alternative they had at the time?

And so that is something that, again, additional research could probably bear out, but there is data in the rule that gets to the point that you are making. I just don't have it at my finger tips here.

Mr. HIMES. I have one last question—I really would like to understand. I really do believe there is a balance here, and I really would like to hear from you as to kind of what the implications are if this form of credit is more available, how many more people get themselves in trouble with it?

But in my very short remaining time, I am having a hard time—this gets pretty technical, but basically, the revised rule eliminates the necessity for a payday lender or other lender to come to a conclusion that there is a reasonable ability to pay on the part of the borrower. And just for the people watching at home, why does that make any sense at all? Why shouldn't a lender undertake a very basic process to determine that there is a reasonable ability to repay?

Ms. KRANINGER. Madam Chairwoman, I know time is out, so I can—

Chairwoman WATERS. The gentleman's time has expired. Could you please respond to the gentleman in writing?

Ms. KRANINGER. Yes, certainly.

Chairwoman WATERS. Thank you, Mr. Himes. She will respond to you in writing.

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

Mr. BARR. Thank you, Madam Chairwoman, and welcome back to the committee, Director Kraninger.

Thanks also for your work to give consumers access to fair, transparent, and competitive markets by focusing your work on clarifying the rules of the road.

I do think giving consumers access to competitive markets and clear rules of the road is, by definition, consumer protection, and because of that good work, I certainly hope this is not your last time in front of this committee.

Last July, in my capacity as the ranking member of the Oversight and Investigations Subcommittee, I wrote to the Inspector General of the Federal Reserve asking for details about how the Fed reviews the Bureau's budget request prior to approval. This week the Fed IG published its report. This is it. This is the report—I think you have probably seen it—in response to my letter.

The report and the ensuing briefing with my staff confirmed what I initially suspected, which is that it is more or less a rubber stamp. The Fed only reviews whether the request is within the statutorily-mandated cap. If the request is under the cap, the Fed approves the request. There is no back-and-forth between the Bureau and the Fed. There is no discussion of any line item. It is just a version of a blank check.

And given the fact that Dodd-Frank gave the Bureau extraordinary powers—rulemaking, enforcement, adjudicatory powers, including the authority to conduct investigations, issue subpoenas, civil investigative demands, initiate administrative adjudications, prosecute civil actions in Federal court, and issue binding decisions in administrative proceedings—

And given the fact that the Bureau can seek restitution, disgorgement, injunctive relief, and significant civil penalties for violations of 19 Federal statutes under its purview, it is troubling that the Bureau's budget and funding process lacks any meaningful external oversight.

Of course, the Supreme Court, as many of my colleagues have noted here today, recently held that the Dodd-Frank law violated the separation of powers, concluding that the Bureau's structure, limiting the President's power to remove the Bureau's single Director, is unconstitutional.

In my view, this decision properly vindicates the President's power under Article II to supervise and, if necessary, remove those who exercise the President's authority on his behalf.

The Court's decision holds that the Bureau must be accountable to the President, but I would argue that the Bureau should also be accountable to Congress. And the Supreme Court recognized this in its opinion, noting that the lack of accountability is alarming.

And the majority opinion said this, "The CFPB's receipt of funds outside the appropriations process further aggravates the agency's threat to Presidential control."

So, there is clearly a lack of accountability at the Fed, and as you know, I have been a frequent and vocal critic of this lack of transparency and accountability in the Bureau's spending. I have a bill, the Taking Account of Bureaucrats' Spending Act (TABS Act), which would place the Bureau under the congressional appropriations process.

Unfortunately, my colleagues in the Majority refuse to consider this common-sense measure. But I want to ask you, Director Kraninger, do you believe that subjecting the Bureau to the congressional appropriations process would enhance accountability and fix this lack of external check, and would it in any way diminish your ability, or the Bureau's ability, to protect consumers?

Ms. KRANINGER. Congressman, I certainly appreciate where you are coming from in asking this. I respectfully defer to Congress on determining how best to operate this. I do take seriously, of course, the internal controls that I put in place in our budget process and I believe I am accountable for the fund, but—

Mr. BARR. And the IG recognized that good work, by the way. The IG recognizes that good work, and that is encouraging. I just think that we shouldn't leave it just to the agency and your leadership. We, as representatives of the American people, owe it to the taxpayers, I think, to also hold the Bureau accountable as well.

Let me ask one final question also about the QM rule and the change to the loan definition, the QM loan definition. Can you detail what impacts the rule might have on the portfolio lending market and how might the changes proposed help struggling borrowers especially during this time?

Ms. KRANINGER. Certainly, providing that certainty with respect to the Patch replacement is part of what we think will be helpful coming out of—hopefully, coming out of the pandemic.

In addition, in terms of helping struggling borrowers, we did take into account and ask about how this time period should be treated in terms of that consideration and verification of debt and income for borrowers who may have experienced a hardship. So, that is also something that will be part of the ultimate rule, to address that issue that you raised.

Mr. BARR. Thanks for your testimony and your work, and I yield back.

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

Mr. VARGAS. Thank you very much, Madam Chairwoman, and thank you for holding this hearing. I appreciate it very much. I also want to thank the Director for being here. Thank you very much, Director.

You did say earlier that it would be nice to take the political temperature down a bit. I don't know if you witnessed when Director Cordray was here, the yelling and screaming that would normally come from this side, including some of my good friends, who now find it to be political. It sounds like the old Captain Renault in, Casablanca, "Gambling, I am shocked."

The truth of the matter is that in cases like this, we do have different views, and I think that plays out. I thank God that we have some people who have real tenacity, like our Chair, who made sure that Dodd-Frank was in place.

One of the things that would be disastrous right now is if the banks were failing. If we had all of what we have right now because of the pandemic, and if our banks were crumbling and failing at the same time, we would be falling into a deep depression. So, I thank God that we put these regulations in. I wasn't here at the time, but I am very thankful, and, of course, oftentimes that comes because of the rub of politics.

I wasn't going to state that, but I think I had to because of some of the comments that were made earlier about politics. But I did foreshadow what I was going to ask you about, and that is the issue of these networks and how to prevent fraud and capture fraud.

As you know, the agencies have shown an alarming increase in financial crime and exploitation during this pandemic. The Financial Crimes Enforcement Network (FinCEN) has issued two advisories since late May on the medical scams, imposter scams, and money-mule schemes targeted at consumers.

The FBI has also recently stated in a hearing before the Senate Judiciary Committee that the pandemic has also only served to increase the number of stimulus, healthcare, bank, elder and government fraud schemes.

The CFPB has ordered a solution to reduce the victimization of elderly individuals. I am sure you would agree this solution could also be used to prevent victimization of low-income minority groups that tend to be vulnerable to these schemes as well.

Could you comment on that? Because I do think that these networks could be something that could become very helpful.

Ms. KRANINGER. With respect to the elder fraud prevention and response networks, a really fantastic groundswell at the ground level between financial institutions, social service providers, and law enforcement, sharing information about what they are seeing, and absolutely I take your point.

I would say one of the things that we find, though, with respect to older Americans, is the isolation that is further compounded by the pandemic, which is why putting out additional resources at this time on how to build and sustain those networks has been a particularly valuable undertaking.

There are a lot of different fraud schemes, certainly, that we are keeping an eye on, but that is one population in particular that is further isolated by the pandemic.

Mr. VARGAS. I agree, it is a very vulnerable population. You also spoke, though, earlier, about having information in Spanish, too. Obviously, language can be a real issue as well in these fraud schemes.

In your opinion, have these networks been worthwhile? I know the coordination and everything costs money to do, but have they been effective?

Ms. KRANINGER. Yes. We actually have done a couple of reports around that, and we are certainly encouraging financial institutions to continue to do the Suspicious Activity Reports (SARs) to FinCEN, and to their partners, making sure partners have access to that information that is happening too, and so we are really rapidly increasing the—or I guess shortening the time, I should say, for people to be made aware of the different schemes and then be able to intervene.

Mr. VARGAS. And lastly, I guess I would ask about forbearance. I know a couple of my colleagues and friends have asked about this already. Under the CARES Act, forbearance is not supposed to be held against you. In fact, I know that now over at the FHFA, the Director there has stated—and I have language here from his note of 5/19/20—that they are going to attempt to not have this be a negative if you are going to refinance or buy another house, if you are in forbearance because of the great interest rates at the moment.

But again, I would ask you to take a look at this, because this is an extraordinary moment in our history, and a lot of people who could normally pay their mortgage are in trouble because of the pandemic, and hopefully we can get over this, and get back to normal.

But anyway, I would ask you, as my colleagues did, to follow up on that. And again, I thank you for being here.

Thank you, Madam Chairwoman. I yield back.

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

Mr. HUIZENGA. Thank you, Madam Chairwoman. I appreciate that. And it is good to have you here today, Director, and I appreciate your time.

I would remind my colleague and friend—and he is a friend—from California, that there are a number of us who have been amazingly consistent in our belief that the structure of the CFPB needs to be a commission. And whether it was the Duffy legislation in previous Congresses or the TABS Act, as my colleague, Mr. Barr, was talking about, I do believe that this is the right way to organize the CFPB.

And Director, I guess I will ask a question along the lines of what my colleague, Mr. Barr, was asking about—refinement. I understand you don't want to get into the, "what should Congress do" question, but let me ask this: Do you believe that somehow the ability to protect consumers would be diminished under a commission structure, and would consumer protections be lessened under such a commission approach?

Ms. KRANINGER. Congressman, I will certainly say there are other organizations that have commissions, and that is something that I am sure could be looked at or compared. I will say at this point, it is a similar answer to you—I know it's not fully satisfying—that I will allow you all to make that call yourselves, and I will certainly take any action that Congress directs us to take by law.

Mr. HUIZENGA. I fully understand that. I guess that is one of our jobs, is to ask those types of questions, to find out whether those involved and engaged believe that there would be a diminished ability for them to do their jobs. And the nature of my question is really more along those lines, trying to make sure that based on your professional experience and your opinion, whether you could effectively do your job with a different structure.

Let's say Congress decided to move away from the dictatorial structure that they currently have and decided to make it that every single decision you made would be subject to a vote of Congress. I don't think that would be a wise move. I would assume professionally, you would maybe discourage that.

I am reminded that, in the previous Administration, Director Cordray had no problem sharing his opinion on the idea of whether or not there should be a commission structure.

So, I will give you one last shot at that, if you care to expand. Do you think that you could make that type of structure work or—

Ms. KRANINGER. Congressman, how about I tackle it this way? Certainly, if I see legislation that I think would be detrimental to the agency in terms of a miss, and it is progressing, I will certainly let you know my views. And I welcome the action on structure by Congress, generally speaking, and I do believe that Congress would come to a good conclusion on that.

Mr. HUIZENGA. Great, okay. That is helpful. And unlike the Chair, I guess, I hope this isn't your last appearance before this committee.

Let's move on to credit reporting and debt collection here—and sorry, I don't see the clock right in front of me, so I will try to move quickly. We know, and I think there was [inaudible] In the CARES Act about [inaudible]. But we know that that may be a temporary fix, but what might [inaudible] Long-term [inaudible]. Could that adversely affect consumers?

Ms. KRANINGER. Congressman, I think you were asking about credit reporting, but you did cut in and out. So if there is a specific question, I know we don't have a lot of time left.

Mr. HUIZENGA. Okay. So, what type of negative effect might there be on credit for consumers if there is not accurate credit reporting that is allowed at all?

I believe that there is a proper time and is a proper time under the CARES Act to suspend that, but if this becomes a long-term solution, which I know some of my friends on the other side believe ought to happen, that there should never be any sort of actual, accurate credit report, and I am curious about the negative effects?

Ms. KRANINGER. Yes. Accuracy in the system is hugely important. I would at least agree with that, and I know—

Chairwoman WATERS. The gentleman's time has expired.

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

Mr. LAWSON. Thank you very much, Madam Chairwoman, and to you, Madam Chairwoman and Ranking Member McHenry, I appreciate you having this hearing. My question centers around student lons, because I have so many students in my area. As you know, the CARES Act provides student loan relief that includes suspending payments, interest, and collection of the government-held, Federal student loans from, I think March of 2019, through September 3, 2020.

I am especially concerned about how credit reporting bureaus are not complying with the Federal coronavirus relief requirements under the CARES Act. Some student loans servicers appear to be reporting the student loans and the language in nonpayment status to national credit bureaus.

On May 20th, students loan borrowers filed a class action lawsuit against Great Lakes and the major credit bureaus for their erroneous credit reporting.

Director, what are you doing to ensure that credit reporting bureaus and the lenders that furnish data are complying with the CARES Act, and holding accountable the companies that do not?

Ms. KRANINGER. Congressman, thank you. It is an important issue with respect to credit reporting agencies and the furnishers that, of course, provide the data to the credit reporting agencies. And so, we are actively engaged in ongoing oversight over FCRA compliance, with respect to accuracy and dispute resolution, and the CARES Act requirement is certainly an overlay of that.

One thing we are doing under the pandemic is a prioritized assessment, which is a kind of special exam, going in and looking at what is happening right now. So, we are going into furnishers, and looking at their compliance overall, in all product areas. We did an assessment of risk. We recognized that the student lending space, given CARES Act requirements, was an area that should be looked at, and so we are going in and looking at the furnishing side.

We are also talking to the credit reporting agencies about how they are engaging on their side as well to make sure that there is compliance happening.

With respect to, I think, Great Lakes, there were some mistakes made that were caught very quickly, both through complaints to the Bureau and things that consumer advocates and financial institutions noticed. And there was a very quick resolution, both in how scoring happened and the data that was provided by the furnishers. So, that was something that was addressed very quickly.

And I think it is a good example of how quickly we can act when we see mistakes are made.

Mr. LAWSON. That is great. What is the status of that lawsuit at this point? Or is it too early to make any comments on it?

Ms. KRANINGER. I'm sorry, Congressman. Was there a question there?

Mr. LAWSON. Yes. I was trying to see if you could elaborate on the status of the lawsuit at this time, or is it too early to comment on it?

Ms. KRANINGER. Oh, understood. The Bureau is not a party to that lawsuit, so I am aware of it, but I do not know the status of it.

Mr. LAWSON. Okay.

With that, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you very much.

The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Madam Chairwoman. And Director Kraninger, thanks for being here, and I hope you have an opportunity to do it 8 more times, if you so choose.

We recently had—and this is a little follow-up to Mr. Huizenga's questions—Secretary Mnuchin was here before the committee a few weeks ago, and he had noted that the credit reporting agencies, in order to be able to function properly, need to be able to maintain a complete profile of the consumers' credit history, especially during this pandemic.

Some proposed legislation that we have would suspend negative consumer credit reports during the COVID-19 pandemic and any other future disaster for a period of 120 days, or until the emergency ends. My view is, this would weaken, not increase, access to credit, as lenders would lose confidence in the accuracy of the information before them.

And I guess my question is, do you agree with Secretary Mnuchin, that it is important to be able to maintain complete credit profiles and not alter credit-related data during this pandemic?

Ms. KRANINGER. Let me answer it this way, Congressman, the Fair Credit Reporting Act actually holds accuracy in the system as a high priority, and the Bureau is tasked with compliance with those FCRA requirements around accuracy in the system. It is hugely important.

I appreciate why you are raising the question, because there is a concern with respect to the system itself. If those lenders who are seeking to do a creditworthiness assessment, can't actually access information, or trust the system to give them good information, then there is a problem.

But we also have a situation where we are looking for alternate data and other sources of information that is going to give a more robust credit picture of a creditworthy borrower. And so, there are a lot of discussions around what happens in the credit reporting system. I clearly recognize that as well.

And certainly with respect to making sure that those minority communities as well, that individuals actually have information in the credit reporting system that will enable them to get credit if they are creditworthy.

Mr. TIPTON. Great. Thank you.

As we previously discussed, responsible debt collection is an important part of maintaining access to credit for consumers, and ensuring good access to credit is more important now than ever, especially in rural places like the ones I represent.

But the technology has changed dramatically since the last time the debt collection rules were updated, and the CFPB has proposed common-sense reforms, allowing mandatory disclosures in the body of an email, to ensure that consumers have access to important information in a timely manner.

But communication is a two-way street, and both collectors and consumers should be able to communicate with one another electronically, especially during this pandemic.

My question is, would the Bureau consider allowing an exemption from the Electronic Signatures in Global and National Commerce Act (E-Sign Act) requirements for validation notices for companies who are otherwise complying with the Fair Debt Collection Practices Act (FDCPA) requirements and rules?

Ms. KRANINGER. Congressman, we have recognized some of the challenges with the E-Sign Act requirements, pursuant to the pandemic and did provide some flexibility. I am not aware of a concern or a conflict with FDCPA or other challenges with respect to that.

But I can tell you that our debt collection Notice of Proposed Rulemaking does address electronic communications, in addition to, obviously, continuing to preclude harassing communication, trying to facilitate that two-way communication that you talked about is important, setting some bright-line rules for it, and enabling individuals to communicate the way they want to communicate, whether that is receiving texts or receiving emails, rather than getting phone calls, for example.

So those things are all addressed in the rule, and we are poring through comments right now to think through the right approach going forward.

Mr. TIPTON. Okay. Thank you. And Mr. Stivers brought up some issues in regards to technology and fraud. Could you maybe expand a little bit on the financial technology and how it has changed during the pandemic, and how you are monitoring the regulatory environment around the technology to make sure that consumers can safely access the important tools?

Ms. KRANINGER. That is critically important. Clearly, we have a number of processes that contemplated in-person interactions or expect that, and we have done a lot to address it in terms of appraisal processes and other processes in terms of, particularly, mortgage loans and mortgage origination. So, it is something that we are looking at.

The Bureau also is engaged in technology sprints, to think about, again, how do we promote electronic disclosure? But the point that you raise is a real one, and that Congressman Stivers did, that you have to take into account fraud and other cybersecurity issues, privacy issues, with that data.

Mr. TIPTON. Thank you. I yield back.

Chairwoman WATERS. Thank you.

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

Mr. GONZALEZ OF TEXAS. Thank you.

And thank you, Director Kraninger, for being here before us.

Our nation has a patchwork of mortgage protections in place, and this fact is reflected on the Consumer Financial Protection Bureau website, which highlights that we have one system in place for at least the federally-backed mortgages. And up until now, we have relied on the tendency of non-federally-backed loans to simply follow along the path.

While many lenders have voluntarily given similar relief as the federally-backed programs, consumers are not protected in this lending space for COVID-induced foreclosures and financial problems.

First, how is the Consumer Financial Protection Bureau helping consumers with non-federally-backed mortgages, and do you have the tools and authority that you need to help these folks?

Ms. KRANINGER. Thank you, Congressman. There are obviously distinctions there with respect to CARES Act treatment. One thing that we did very early on in the pandemic was to provide clear direction to all of the entities subject to our responsibility, our regulated entities, that their first responsibility is accommodation of customers during this time, consistent with safety and soundness and compliance with consumer protection law.

So, that does send the strong signal to all those that are regulated, including those entities that are servicing non-federally-backed loans, about those requirements.

And I would say, generally speaking, the information that we have is that the right steps are being taken there, but we also have the backstop of our supervision and enforcement activities to ensure that that is the case and that they are complying with the law.

Mr. GONZALEZ OF TEXAS. Okay. Changing the subject just for a second to landlords, what can a landlord do who is not getting their rent but has eviction problems, and foreclosure is looming? How are they getting help, especially smaller landlords?

Ms. KRANINGER. I will say, Congressman, that the landlord-tenant issues are a little bit outside of our purview.

We took on the responsibility, recognizing the need for one Federal Government website to provide that avenue for landlords, tenants, borrowers, and everyone, to get information from one site.

So, we do have CFPB.gov/housing, but it is really HUD and a few other dynamics there in the States that have the avenues for and resources for folks to follow. But we were trying to be at least a conduit, as one place to go for that information, so we are housing that information.

Mr. GONZALEZ OF TEXAS. Yes. That is the concern, particularly for smaller landlords.

Do you feel like the Home Mortgage Disclosure Act, which requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages, is useful in detecting discrimination in the marketplace?

Ms. KRANINGER. That is one of the purposes of the Home Mortgage Disclosure Act. Certainly, the collection of that information does provide transparency to the marketplace and to the public and is useful to agencies. We do use that information on a regular basis to engage in fair lending analysis and to understand what is happening in the marketplace.

Mr. GONZALEZ OF TEXAS. Are there improvements that you believe could be made?

Ms. KRANINGER. We are continuing to improve the way that we make that data available. I have also looked to work with our partner agencies around how we do the fair lending analysis.

Each agency does it slightly differently, and frankly, I would like to better understand that. So, we have been trying to get the economists together from each of the agencies to see how they are doing that analysis, frankly to help also institutions, because many of them do the analysis themselves, to also ensure compliance with the law.

I think there is a real opportunity to look at how we analyze that data, thinking about it, sharing it, understanding what it means, and understanding what we are looking for. So, that is a dialogue that I have sought to further.

Mr. GONZALEZ OF TEXAS. Thank you, and we look forward to working with you on that.

And I yield back.

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

Mr. WILLIAMS. Thank you, Madam Chairwoman, and thank you, Director, for being here today. And before I begin my questions, I just want to echo what we have heard quite a bit today about the Supreme Court and their decision that said the current structure of the CFPB is unconstitutional.

I think you have been a 100 percent improvement over the first Director, but I still think it would benefit everyone if there was greater oversight and less power concentrated in one individual.

Now, Director, the economic recovery from the coronavirus is going to be driven by small businesses, Main Street America, opening the doors and hiring back workers. These businesses are going to need to adjust their storefronts and business models to make the necessary changes to make this happen, and to satisfy State and Federal safety guidelines.

The ability of a business to access capital will be critical during this time. The CFPB is under a settlement agreement to adhere to a predetermined timeline to issue a rule regarding small business data collection in the course of Dodd-Frank Section 1071. As I have mentioned to you before—you and I have talked about this—I have serious concerns with the effect that this rule will have on the cost of capital for small businesses.

So, could you please give us an update, a timeline, on the implementation of this rule, and tell us how you will ensure that these actions will not inhibit small businesses and Main Street from getting loans?

Ms. KRANINGER. Yes, Congressman, I absolutely understand your concerns and frankly share some of them as well. I will say that Section 1071, of course, is a mandatory rulemaking in the Dodd-Frank Act. Even in my confirmation process, I pledged to make that a priority because it is a required rulemaking.

So, we are engaged in that effort. We are issuing a Small Business Regulatory Enforcement Fairness Act (SBREFA) outline by September 15th. That is the small business regulatory relief process where we sit down with a panel of affected small businesses, with the Small Business Administration (SBA), and with the Office of Management and Budget (OMB), and go through that outline and get comments.

It is a kind of early stage in the rulemaking process. So, we will have a draft proposal out by September 15th, and this fall, we will really engage in that process of discussion of that draft.

And then, the next step after that would be a Notice of Proposed Rulemaking, but we have not come up with any firm timeline for that.

Mr. WILLIAMS. Thank you. On June 18th, the Bureau announced a Pilot Advisory Opinion Program that would allow businesses to try new products and services without fearing that the CFPB would come down with some enforcement actions for trying something new.

This is a welcome step towards providing more certainty to the private sector, as they are often fearful that they will be targeted by your agency.

So, Director, how have you been publicizing this pilot program to industry participants, and can you give us an update on how many people have submitted requests to be a part of this program?

Ms. KRANINGER. Congressman, I am sorry. Which pilot program?

Mr. WILLIAMS. It is called the Pilot Advisory Opinion Program.

Ms. KRANINGER. Oh, the advisory opinion—absolutely. I wanted to make sure I had the right pilot program.

Mr. WILLIAMS. Sorry.

Ms. KRANINGER. That's okay.

The Advisory Opinion Program is out for comment right now. So it will go final. We are just—when we collect data from an entity, we need to actually do the Paperwork Reduction Act.

So needless to say, we launched the pilot, but we expect it to be fully going soon. It is an interpreted rule that we would be issuing. We have not gotten any applications yet, but any entity that is seeking an interpretation or additional information about how to comply, because they have a particularly challenging issue.

What happened prior to this program is, they would send us an email through our site, and we would send them back an answer. Right now, though, I think that process should be transparent.

I think all of the entities that are equally situated should actually benefit from getting that information, and it should happen formally from the agency and not just informally through trade groups or otherwise when someone actually gets that useful piece of paper.

So, that is what we are hoping for with the Advisory Opinion Program.

Mr. WILLIAMS. Thank you.

I am in the credit business. And when this whole pandemic began, I said I did not want to see a person's credit score, like we saw in 2008, ruined as a result of the pandemic and the mandated government shutdown.

As you know, the CARES Act—and we have talked about this—included provisions for lenders to work with their customers who make changes to their credit accommodations, such as adjusting or delaying certain payment agreements, while at the same time ensuring the integrity of the credit reporting system is kept intact, which is very important.

Last week, TransUnion released a report that showed delinquencies decreased in June on a month-to-month basis, which makes it seem that people are still managing their finances and debt with responsibility throughout this pandemic and that the CARES Act provisions have been working.

So quickly, Director, does this data point released by TransUnion align with what your Bureau has seen?

Ms. KRANINGER. Yes, it does.

Mr. WILLIAMS. Thank you.

I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Michigan, Ms. Tlaib, is recognized for 5 minutes.

Ms. TLAIB. Thank you, Madam Chairwoman. And thank you, Director Kraninger, for being here. I appreciate your time. I am actually in the people's business. That is what I do, is help people. And I know during this pandemic, your Bureau received quite a number of complaints, I think 42,000, a little bit over 42,000 in April, and a little over 44,000 complaints in May.

I want to talk to you a little bit about this. I know it is about a 60-percent increase, Director. So I just want to know if my resident is calling and, of course, they qualify for a forbearance, they are calling over to the mortgage company, and they call you all, what is the process that they go through to get your help and your advocacy to make sure that this mortgage servicer is complying?

Ms. KRANINGER. That complaint is processed immediately, and sent to the relevant company, and we do a little bit of quality control on that in terms of making sure it is something that can be responded to, but that is sent to the company. And I did get a little bit of an update from a prior question about the average response time. Our average response time of the consumer getting an answer from the company is 9 days. So, that is what is generally happening in terms of the issue they are raising.

Ms. TLAIB. That is great in some cases. Do you know what the resolutions are? Are they just contacting via email, or are they resolving the issue? Because what I am hearing from residents is they qualify for forbearance, but the mortgage servicers are kind of giving them the runaround.

Ms. KRANINGER. It is a response. We do quality control and the responses back. We also, particularly with respect to mortgage servicers and the CARES Act forbearance and the issues that are happening right now, we are looking at all of those to see if there is an issue with a particular servicer.

Ms. TLAIB. —Give me an example of one that you all resolved, and it doesn't have to be a mortgage. I know the next number-one issue folks call about is credit cards, and then issues with their consumer report or credit report.

Ms. KRANINGER. The one that has gotten a lot of attention, and it certainly got my attention, was in late March and early April, we did get a significant number of complaints submitted about payment of mortgage payments, and around the forbearance option that was given to servicers, and when they would have to pay. Because the initial information from servicers was, we put you in 90-day forbearance, and you are going to have to pay that full 90-day deferral after the 90 days, because that is the way the process tends to work in normal times. So, that concern came through loud and clear. And people said, "If I can't pay now, I am sure not going to be able to pay in 90 days."

That is something that we took very seriously. I talked to FHFA, in particular, but HUD, all of us came together as Federal partners and said, that really doesn't make sense. That resulted in some guidance from them, but also an interim final rule adjusting our mortgage servicing rules to make clear that the option that can be offered is deferred to the end of the mortgage period.

So, that is to the end of the loan, a lump sum payment at the end. And that was, I think, a demonstration of how this can work and how it should work.

Ms. TLAIB. And, Director, in that case, that service, it was just that mortgage servicer, it wasn't any other companies, they just tried to find—so we have to actually school them and get the actual accurate guidance that that is not how they have to do it? What happens to them when they do that? What do you do? Smack them on the hand? What exactly happens? My worry is, what else are they doing that, if they can get away with it, or maybe we don't find out about it, some people don't even know to call you, your Bureau. I am just curious what happens in that case, do they get fined or something?

Ms. KRANINGER. Absolutely. If they are not complying with the law, they can have to pay restitution. And there are other outcomes.

Also, the example I gave you is a good example of where they were doing what they should do, but it was not the outcome that any of us would want.

Ms. TLAIB. Yes.

Ms. KRANINGER. I think there are a lot of examples across-the-board. But making sure we address servicers who are not taking compliant action with the law is important, too.

Ms. TLAIB. And my last question is, do you work with other departments? One of the things I have noticed is if there is a huge—do you all ask or see a pattern of complaints maybe from communities of color? And do you work with the civil rights division within the Department of Justice if you see a pattern of discrimination based on someone's ethnic background, faith, or things like that? But, primarily, I would say, there is a huge impact on the African-American community and people of color, and I am wondering what your Bureau is doing to work with other agencies to push back on that?

Ms. KRANINGER. Definitely, if we see a pattern or practice there, we have our own authority, obviously, to act under ECOA, but we also do make referrals to DOJ and work with them closely.

Ms. TLAIB. Thank you, Madam Chairwoman.

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

Mr. HILL. Thank you, Madam Chairwoman. I appreciate the opportunity to have this hearing.

Director Kraninger, I want to commend you for leading the Agency during this very difficult time of COVID-19. Given the current economy, many of us in Arkansas, many of our families have been really navigating a tough financial space. I want to thank you and the Agency for doing a number of good updates and adding helpful information to your website. We have been using these newsletters you send out several times a week on the COVID-19 crisis, and the materials have been very beneficial to consumers. So, please thank your team for the extra efforts to communicate.

I want to touch, Director, on the topic that Dr. Foster spent quite a bit of time on, which is your revisions for the qualified mortgage rule. You walked through, I think, the background quite clearly, and a lot of us are concerned about, will this rule approach that you are taking, that you put out for comment, lead us down a road towards weaker credit underwriting by the banks or by the Federal entities that insure or purchase those loans?

You did a good job answering these questions, so I won't belabor that point, but the DTI is just one of many considerations to be taken in underwriting. But since that is true, what is your philosophy—all bankers take into account a variety of compensating factors when underwriting a loan. Why is what you viewed that it is necessary to replace the DTI definition with something that appears pretty open-ended?

Ms. KRANINGER. I think, Congressman, and I appreciate your interest in this important marketplace, clearly, for mortgages for many Americans, the point that you just made is precisely why we are moving from DTI solely to a pricing approach, because it really does bring in the more holistic considerations of the borrower's creditworthiness. And, certainly, you would expect and want responsible lenders to be pricing in the risk that they see, and that is a different approach than a hard debt-to-income ratio that, frankly, at 43 percent, but, frankly, as we looked at, what would be an acceptable DTI threshold if you were going to stay at that? And we, in fact, asked that question in the rulemaking.

But clearly, at 43 percent, we know we are keeping a lot of creditworthy borrowers and, particularly, borrowers of color out of the qualified mortgage market.

Mr. HILL. Thank you for that. Do you have any concern that granting a safe harbor to underwriting standards of third-party guidelines could be too open-ended? Are you concerned about that?

Ms. KRANINGER. No, it isn't just third party—arbitrarily, it is third-party guidelines that we would have to actually recognize. So, there is that check in the process.

Mr. HILL. And you would approve those guidelines?

Ms. KRANINGER. Yes.

Mr. HILL. Okay.

Ms. KRANINGER. That is what is proposed.

Mr. HILL. Let me switch subjects and talk about the difference between the 150-basis points pricing range that you considered, and, yet, for the safe harbor, you think it should be 200 points for the QM. Don't you think that spread could do two things: One, create a potential for misunderstanding in lawsuits, and that it would actually deter private sector players from making the loan, and could they even be shifted more to a government-type loan, such as an FHA loan? Are you concerned about that spread?

Ms. KRANINGER. Ccertainly, it is a proposal, Congressman, so we absolutely won't comment on that to the extent that anyone in the public has data that would demonstrate a greater risk. We outlined why we chose that threshold, and that it is not too different from the thresholds that are already recognized in the current QM. Because there is a pricing threshold differential between the safe harbor and the rebuttal presumption now. So, the APR APOR spread is something that is in the current system. But, again, we looked closely at performance over the last many years. That data is in the rule, and we welcome comments on alternate concepts or risks that might be introduced here.

Mr. HILL. Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you. The gentlewoman from Iowa, Mrs. Axne, is recognized for 5 minutes.

Mrs. AXNE. Thank you, Madam Chairwoman. And thank you, Director Kraninger, for being here. I would love to start with some positive news by thanking you and your staff for taking some time to give us some feedback on a bill I introduced a couple of months ago to create a working group with the CFPB and the SEC to help protect consumers and investors from fraud. So, thank you for that. I do hope we can move forward to get your two agencies working together to prevent Americans from being taken advantage of.

And I also appreciate the website you set up with information on the prepaid debit cards that a lot Americans received. I wish that had been communicated earlier, and then my colleagues and I may not have had to push the Treasury to make those improvements. But thank you for those two pieces.

I want to go back to the last time you were here. You had just signed an information-sharing agreement with the Department of Education on student loan servicers, marking the first time in more than 2 years that that information was properly being shared. But 2 years is far too long to go without full compliance information that we need to understand how the $1.6 trillion of student loan debt is being handled. I am glad that part is resolved, but it should have been done much sooner. However, not only did the agreement not restore the supervisory memorandum of understanding (MOU), the last time you were here, you couldn't even tell me when that would be done.

In September, just a month from now, we will be at 3 years without the Consumer Financial Protection Bureau properly supervising student loan servicers for the 40 million Americans with these loans.

So, I am going to ask you again: When are regular exams of student loan servicers going to resume?

Ms. KRANINGER. Congresswoman, I am happy to be able to tell you that they have already resumed. We started in that—that was the lag time, frankly, between the February House hearing and the March Senate hearing. I managed to get that done in February, so that the supervisory exams commenced, and there are no barriers to us doing the supervision work that we need to do in the student loan space. We are working very closely with the Department of Education so they can continue to do their contractual oversight, but we are pursuing our own information requests, we are getting that information, and we are engaging in those exams.

Mrs. AXNE. Perfect. From what I have heard, though, I believe that there has been one exam done, and that was in March. Is that correct?

Ms. KRANINGER. Congresswoman, we do not stipulate what exams are happening and in what product areas. I made the exception by at least trying to show Congress, recognizing the great interest in this—

Mrs. AXNE. I appreciate that, but have you done any exams since that March exam?

Ms. KRANINGER. There are no barriers in our way. We are doing all of the exams that we would like to do. That is what I can say at this point in time. And I know that is not satisfactory to you, but we don't talk about the number of exams that we do in any given industry.

Mrs. AXNE. I am going to take that as a no, because if you can't tell me that you have more than one exam, and you won't answer the question, I am assuming that is a no. I would like the question answered, when will regular exams resume?

Ms. KRANINGER. Congresswoman, I don't want to parse words with you, but it is definitely not a no. We are engaged in every exam that we need to be in the student loan space.

Mrs. AXNE. How many exams have you had?

Ms. KRANINGER. Again, that is not a publicly disclosed number. It is not in any area except our total number of exams conducted. We don't issue exam numbers publicly in each industry.

Mrs. AXNE. So, you don't issue it for each industry? How then are we supposed to get the information that we need?

Ms. KRANINGER. And we never have. So again, I am—

Mrs. AXNE. That is certainly a problem that we are going to have to figure out, because how are we going to make sure that there is oversight of these 40 million loans that people in this country need to have oversight of, if we can't get that information, and you are not willing to tell me how many you have done within this industry? That was the specific question.

Ms. KRANINGER. I understand. It is not a publicly available number. It is something that I—I think is appropriate given the confidential nature of supervision. It's the same with the number of investigations that we have ongoing in any industry; we don't actually disclose that publicly, given the confidential nature. Certainly, when it is public, we do have a number of ways to do that, and I am absolutely looking at this. But I am trying to tell you that it is not any obfuscation, this is important, and we are engaged in every exam that we need to be.

Mrs. AXNE. Listen, from what I have been told, there has been one examination. And I believe there should be around—there are about 12 servicers, 10 to 12 that would need an examination. So, I think we are failing the people in this country right now. I yield back.

Ms. KRANINGER. You were told there was one exam, because I am the one who actually publicly released that there has been at least one exam.

Mrs. AXNE. We just went all through that, and now you just said that there has been one exam. I yield back.

Chairwoman WATERS. We will explore that a little bit further, Mrs. Axne.

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

Mr. EMMER. Thank you, Madam Chairwoman. I appreciate the opportunity. Thank you, Director Kraninger, for being here today and for the great work you are doing. Unfortunately, under the Obama Administration, Democrats created an agency which is completely unaccountable to the American people. Outcomes and oversight of the agency were, by no means, transparent. We have also, unfortunately, faced unnecessarily partisan attempts to reform the structure of the Bureau by putting it on a budget and creating a bipartisan forum.

On a brief personal note, Director Kraninger, I want to sincerely applaud you for being open and accessible to every Member. My staff and others constantly praise your efforts to be responsive to our requests for input and feedback. I know this willingness to meet and discuss policy occurs across the aisle as well, so I just wanted to take a moment to thank you for your service.

I also appreciate Paul Watkins, and the work you are doing to advance inclusion through Fintech innovations. This is one of our top priorities at the committee, and the FinTech Task Force. He didn't receive the most welcoming comments from the Majority when he came before us. But advancing Fintech innovation to help those in need should be a nonpartisan issue.

Now more than ever, families need to have access to options to cover unexpected costs. For many, short-term lending can be a lifeline in difficult times. Abuse cannot occur, but this must remain an option. Your work to ensure that borrowers have access to loans will increase competition and choice in the marketplace at a time when it is so desperately needed.

Turning for a moment to ongoing litigation started by the past Administration, Director Kraninger, I noticed that in your budget request, there is no mention of the funds the Bureau expends to continually pursue Cordray-era litigation. Can you please speak to the cost of that ongoing litigation?

Ms. KRANINGER. Certainly, the Bureau continues to engage in litigation, both before and under my term, and also litigation that Director Mulvaney approved at the time that he was Director. There is a cost, obviously, as you noted, and we do include in the budget lines for expert witnesses and document production, and things like that. But I don't think, Congressman, I can give you a specific delineation for which Director signed off on which enforcement action, and what the litigation costs have been. But, certainly, there are some complex litigation cases that we are still involved in that are costly, but I deem them necessary to continue,

Mr. EMMER. I would move to follow up with you outside of the hearing on that.

Listen, I share the concerns of my colleague, French Hill, and I also share the praise that Mr. Hill was giving you for your work to update the qualified mortgage rules. But I do share his concerns that he raised with you, and I am not going to go over those again.

I appreciate you being aware of them, and appreciating the concerns.

And now that we have a definitive answer that CFPB's leadership structure does violate the separation of powers, I am curious about your plans regarding transparency and accountability. Given these developments, and under your leadership, where do you plan to take the CFPB?

Ms. KRANINGER. Congressman, certainly since I was named and testified before you all for the first time, that has been something that is significantly important to me, given my public service career. We are endeavoring to engage in that transparent dialogue in every aspect of what we do. I would say the Advisory Opinion Program that was recently launched is a great example of that. Again, we are providing guidance or essentially, interpretations to one entity that asks. But through that advisory opinion process, we are making that public, and we are providing that interpretive rule to everyone, so that they can see what the rules of the road actually are, and it is not just benefiting one entity, or who that entity decides to share that with.

So that is one example. And certainly, our rulemaking efforts as well, and I am trying to ensure that we are fully transparent there.

Mr. EMMER. My colleague, Andy Barr, was asking about congressional oversight of the budget. And I know you didn't want to step into Congress' role. But could you answer the question: Would congressional oversight of your budget inhibit your ability to do the job as Director?

Ms. KRANINGER. Congressman, I have endeavored not to get into that. But I will certainly acknowledge that I was a long-time appropriations staffer on both sides of the Hill.

Mr. EMMER. I am sure we will talk more. Thank you for your time, Director. Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you. We have now reached the end of Group 1. The committee will stand in recess for 5 minutes while the room is cleaned.

[recess]

Chairwoman WATERS. The committee will come to order. The gentlewoman from California, Ms. Porter, is recognized for 5 minutes.

Ms. PORTER. Director Kraninger, would your proposal to implement the Fair Debt Collection Practices Act prohibit repeated calls from debt collectors?

Ms. KRANINGER. Congresswoman, it is a proposal, and it did, in fact, propose a limit on the number of calls that can be received in a week.

Ms. PORTER. Great. Good work. Would it prohibit some debt collectors from making calls harassing families and friends?

Ms. KRANINGER. Yes, harassment is already precluded by the law.

Ms. PORTER. So we can agree that harassing practices by debt collectors are something that you can probably pretty comfortably say falls within the jurisdiction of the Consumer Financial Protection Bureau?

Ms. KRANINGER. Yes.

Ms. PORTER. Great. In the last 4 years, has the Bureau taken any enforcement actions to punish medical debt collectors that break the law and harass consumers?

Ms. KRANINGER. We have taken public enforcement actions against debt collectors. I am not sure about what kind of debt, off the top of my head.

Ms. PORTER. I am specifically asking about medical debt collectors. Have you taken any enforcement actions against medical debt collectors that would—

Ms. KRANINGER. I understand the question, Congresswoman. I do not have an answer for you off the top of my head. Many of the debt collectors actually collect on behalf of multiple clients, so it is very possible.

Ms. PORTER. Okay. Let me answer that for you, the CFPB has taken zero actions against medical debt collectors. So, if you are just tuning into this hearing, here is what you have missed. Nothing. You have missed nothing, because that is what the CFPB has been doing to protect you against predatory medical debt collection, even in the midst of a terrible pandemic.

The CFPB, Ms. Kraninger, was created to protect consumers, that is its mission, that and nothing else. Would you consider it pro-consumer to not enforce the law to prevent consumers from being illegally abused by debt collectors?

Ms. KRANINGER. There were a lot of caveats to that statement, Congresswoman. Let me just tell you that we are committed to enforcing the law. I am committed to enforcing the law. And we have taken action against a number of practices in the debt collection space, including through our supervisory effort. So, it is not just the public enforcement action that you are citing, certainly, through supervision, we have issued supervisory highlights that articulate what we have done in the debt collection space, we provide information to consumers about their expectations from debt collectors.

Ms. PORTER. But, Ms. Kraninger, just to be clear, if I am a medical debt collector, I can break the law under your CFPB, and know that there is a zero percent—if the past predicts the future, and we are looking back at the past 4 years, there is a zero percent chance that I will get sued. How is that robustly enforcing the consumer mission of the agency? You are not—

Ms. KRANINGER. Congresswoman, I respectfully disagree with you. There is certainly no guarantee that that is the case. And I would endeavor to have you give us information on any debt collectors that you are concerned about their practices. We absolutely will follow up on them. It is a career decision to open an investigation for CFPB, and I welcome any information that you have on bad practices.

Ms. PORTER. Ms. Kraninger, in your own database, in the CFPB's own database, there are thousands of complaints about medical debt collectors. Each time you come before this committee, I appreciate that you welcome me to do your job for you, but my job is to make sure you are doing it. I wanted to ask you about something else. Are you familiar with Mike Hodges, H-o-d-g-e-s?

Ms. KRANINGER. No, I do not believe I am.

Ms. PORTER. You aren't?

Ms. KRANINGER. I don't believe so, no.

Ms. PORTER. He is the CEO of Advanced Financial, one of the country's largest retail lenders. Do you know how much he has donated to the Trump campaign?

Ms. KRANINGER. I have no idea, nor do I care.

Ms. PORTER. So, you don't know anything about him. Let me read you this quote. "I have gone to the RNC and said, 'Ronna, I need your help on something.' She has been able to call over to the White House and say, 'Hey, we have one of our large givers. They need an audience.' The White House has been helpful on this particular rule we are working on right now." That was Mike Hodges in October 2019. Do you know what rule he was talking about?

Chairwoman WATERS. The gentlelady's time has expired.

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

Mr. DAVIDSON. Thank you, Madam Chairwoman. Director Kraninger, I thank you and your team for all of the work you are doing to protect America's consumers. I appreciate having you on the job. And I want to say a special thanks to Paul Watkins and the attention he has given not just to Fintech, but to privacy.

In your proposed rulemaking on privacy—I guess I am looking at the scope of privacy. You think about the key things for consumer protections, their data and the use of it has really defined at lot of this age, whether it is data breaches or the way that any number of companies have monetized the access to data that consumers have.

So, what is the scope that you are looking at and how do you use that to protect consumers?

Ms. KRANINGER. Absolutely, Congressman. I believe you are referencing the Section 1033 policy discussion that we are having now about consumer-authorized access to their own financial data. It is a complex issue. Certainly, the Bureau issued principles, and privacy and data security are part of that consideration for how best to enable that data access to consumers.

We had a symposium a few months ago. We just issued the report out from that symposium and announced we would engage in an advance notice of proposed rulemaking.

It is a complex area. There are a lot of issues to consider that we are looking forward to getting more data on. But I would say that there has been progress made in moving away from screen scraping as the means by which many aggregators would get consumers' financial data using their bank credentials and having that be provided by the consumer.

That is something that is not a best practice certainly. And so moving in the direction of APIs so that there is an automated data transfer that can happen, and that there is more control on both sides. But that is something that we are really looking to having more extensive dialogue around, and that is what we announced last week.

Mr. DAVIDSON. When you think about the consumer protections with respect to data, the work you are doing there is critically important, in large measure because Congress has failed to act. We don't have a comprehensive data protection law for all consumer activities in the United States. We have a somewhat outdated

Gramm-Leach-Bliley Act that I think you proposed to update. But there are lots of data houses that make use of this, that aren't covered by Gramm-Leach-Bliley. So do you feel like you have the authority or scope to do everything that you would need to do to protect consumer data?

Ms. KRANINGER. Congressman, you are raising an interesting issue here with respect to not just 1033, but more globally. We do have, I think, a number of issues around privacy and data security with standards in California and Europe and what happens in the United States. And there are many parts of this that are outside the CFPB's purview. Specifically, the safeguards in the Gramm-Leach-Bliley Act are outside the authority of the CFPB, generally.

That is just to make you aware, but I am actually looking at privacy and data security broadly, and may have some requests of Congress or some suggestions around that. So, I am looking at that internally, particularly when it comes to credit reporting, because that is where we have at least a little more of an engagement and a responsibility there, particularly when it comes to our supervisory work.

But I will certainly get back to you on that and others; I know it is of great interest. But with Section 1033, we do have the ability to take this into account, as we think about how best to move forward in that.

Mr. DAVIDSON. Thank you very much for your attention to it. There is really no excuse for Congress' failure to provide the safeguard for all of America's consumers. And I hope that I can collaborate broadly for a good bipartisan solution on privacy, not just with respect to government, warrantless surveillance and things like that, but consumer financial data. Our seniors are especially vulnerable, and I appreciate the work you are doing to safeguard our seniors.

And I think the last thing I would say is, as you have conversations with the members of FSOC, with the Treasury and everything else, most of America has their assets in U.S. dollars. It is the store of value, it is the means of exchange. And this idea that we can, in an unlimited way, just continue to print money and not damage the value of all of the other dollars is foolish. We have printed an awful lot of money. We haven't truly borrowed it, because there is not a real lender.

And I just urge you to weigh in where you can on the importance of protecting the U.S. dollar, store value, and means of exchange. And for that purpose, my colleagues and I recently formed the Sound Money Caucus. Thanks again for what you do to protect America's consumers, and I yield back.

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

Mr. CASTEN. Thank you, Madam Chairwoman. I think I probably speak for all of us on this committee, saying that when I woke up this morning, I was going through the news headlines, and I was completely gobsmacked, for lack of a better word, to see that the GDP has collapsed by almost 33 percent in the last quarter. That is well outside the range of challenges that I anticipated that I was going to be grappling with when I was asked to serve on this committee. I suspect, Director Kraninger, it is probably outside the scope of yours, as well. The old Monty Python sketch says nobody plans for the Spanish Inquisition, right?

I think all of us knew it was going to be difficult. We did have leading indicators. Your own Bureau, in the case of leading indicators, is unfortunately the case. When the economy gets tight, unscrupulous actors emerge.

And as Congresswoman Tlaib was calling out, I think you saw an all-time record for consumer complaints at the Department in March, which was then topped in April. And a new record was set in May, and a new record was set in June.

During the Q2, you are basically running about 50 percent above historic complaints at the CFPB. In spite of that, you have had 13 public enforcement actions this calendar year, which basically puts you on track to finish about at the level of 24 that you did last year, which, as The Wall Street Journal had reported, is down 80 percent from the 2015 peak.

My question for you is, why has the CFPB decided against taking enforcement actions, despite the rising complaints that Americans are feeling during this economic downturn?

Ms. KRANINGER. Congressman, we are taking robust actions using all of our tools, and, certainly, that includes enforcement. So, I would ask you to reserve judgment until we actually get to the end of the year and see where we end up. I will not manufacture enforcement cases, but I will take the right action against bad actors. And we do have a number of actions in the pipeline that I have authorized that I expect to see move forward. So, I will at least note that.

Mr. CASTEN. I want to just—hang on. Because you said to Congresswoman Tlaib that you are averaging 9 days between when the complaint comes in and you respond. I just gave you data going back to March that is 50 percent up. You are saying you have gone through, and you have gotten back to people in 9 days, but you haven't decided what to do with that yet?

Ms. KRANINGER. Congressman, complaints are different from enforcement actions. The complaints do get resolved in 9 days—

Mr. CASTEN. I understand.

Ms. KRANINGER. —on their initial response.

Mr. CASTEN. Okay. On April 1st, your Bureau issued a statement which said, in part, "The Bureau specifically states that it does not intend to cite an examination or bring an enforcement action against firms who exceed the deadlines to investigate such disputes, as long as they make good-faith efforts to do so as quickly as possible."

It sounds like you are saying you are not taking enforcement actions, and the data would be consistent with that. What motivated you to issue that guidance?

Ms. KRANINGER. You are, specifically, talking about credit reporting dispute resolution. And the dispute cannot be resolved if the small business merchant, for example, is actually shuttered and cannot respond to the credit reporting agency. So, that is what the good faith effort is about.

Absolutely, the mandates to respond remain in place, and they need to be met. But there are extenuating circumstances, like the closure of a small business, for example, that is a merchant that is the subject of the dispute.

Mr. CASTEN. I am pretty sure your job is to protect consumers. What are you telling consumers who are sitting there saying, I need a response, you got a 50 percent surge in consumers, and what are you doing, you are calling them back and saying, I'm sorry, I just can't address this? Figure out how to pay your own rent? Figure out how to pay your medical bills? Figure out how to pay your car payments? The title of your agency is, "Consumer."

Ms. KRANINGER. Congressman, there are remedies that come after that particular example that I gave you, so it is not acceptable not to respond. And I noted to Congresswoman Tlaib, as you noted, that we do actually get initial responses, and for the vast majority of complaints, on average, it is a 9-day response. But there are responses that take a little longer.

Mr. CASTEN. Let me just close the way I started. All of us in this hearing, yourself included, are entrusted with looking after the public interest. When these circumstances arise that are way, way outside of the range of situations that we would encounter, we have an obligation to make sure that we are adjusting our tools. There is a reason why the captain goes down with the ship. Because the captain has to look over the safety of everyone on the ship.

I would hope that you are seriously looking at what your agency can do better. Because what you are doing right now is the status quo, which is 80 percent down from what it was when it was created. I think that you know you can do a better job. I yield back.

Chairwoman WATERS. The gentleman's time has expired. The gentleman from North Carolina, Mr. Budd, is recognized for 5 minutes.

Mr. BUDD. Thank you, Madam Chairwoman.

Director, thanks for being here today. I wanted to highlight a QFR response that I received from your team regarding a concern I had with the Bureau's marketing service agreement under Rezpo. Now, there is still some need for clarification between me and my team as far as what we received. But you did indicate that you are willing to receive some feedback on this. Is it okay if we follow up with you after this on that issue?

Ms. KRANINGER. Absolutely. Please do.

Mr. BUDD. Okay. I would also like to ask unanimous consent to submit for the record a recent article on this issue, and it was actually authored by your former Deputy Director, Brian Johnson. And I will be sure to share this with your team.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. BUDD. Thank you, Madam Chairwoman. I have a few questions, Director. In the notice of proposed rulemaking for the ability-to-repay rule, the CFPB encourages stakeholders to develop additional verification standards that the Bureau could incorporate into the QM safe harbor. Given the Bureau's important desire to move away from the static and data verification standards in the appendix Q to promote and foster innovation, how can industry and stakeholders help inform and define the Bureau's definition of qualified mortgages?

Ms. KRANINGER. I think I am very much looking forward to the conversation around the standards, because it is a critical part of the ability to repay. And considering verified debt and income is what the statute requires. We know that alternative data considerations, residual income as opposed to other means of assessing income. And we have a challenge of the current Appendix Q as well with respect to self-employed or gig economy workers. So understanding how industry has been looking at that, frankly, with input from all stakeholders, it is not just industry, but also consumer advocates and others who pay very close attention to what is happening in this space, how we can, again, bring forward creditworthy borrowers who are going to have successful loans, that is part of this.

So we are very much looking to promote that and are welcoming engagement with all stakeholders, frankly, on what standards they would propose.

Mr. BUDD. Thank you. I want to point to the CFPB's July 10th report on debt settlements and credit counseling. And in that, you looked at the critical issue of options for consumers. You just found out they have more debt than they can actually handle.

In this report, your agency found a rise in debt settlement since 2016, and an even more significant increase in settlements that are facilitated by companies that actually charge the consumers to settle those debts for less money than they owe.

In my home State, North Carolina, we have seen a rise in complaints about the practices of that industry, including misleading advertising and high fees, that particularly targets the military, which is very concerning to all of us.

So, I want to encourage you to continue to look into this industry and take all appropriate actions to protect our troops and all Americans who could be misled by false promises and high-pressure sales tactics from this industry. Any thoughts or follow-up on that?

Ms. KRANINGER. Congressman, I will tell you it is an important area. We have taken a number of enforcement actions, including with State attorneys general against bad actors in this space. There are clear rules about their ability to collect any fees prior to actually getting the outcome they promised to the consumer. So, that is generally where our actions have been taken, and we will continue to pursue that.

Mr. BUDD. Thank you. A priority of mine, and also of my committee Republican colleagues here, is to eliminate costly and confusing regulations that make it more difficult for businesses to thrive and innovate for the benefit of consumers and markets. Particularly during this pandemic, when we are striving to get our economy back on its feet, it is critical to only promulgate clear, well-founded regulations. That is why I believe that the failure to change the payment provisions in the small-dollar rule will create a patchwork of inconsistent standards for payment provisions based purely on the consumer of the product.

For example, some products will be judged by the standards of the National Automated Clearing House Association (NACHA), and others by the CFPB rules. And when the Federal Reserve announces the payment standard, that rule will judge yet other products. This is, particularly, the type of regulatory mess that the Administration has sought to eliminate.

Would it not be better to undertake an appropriate study of the payment provisions rather than to ratify and implement the flawed findings of the 2017 Cordray Rule?

Ms. KRANINGER. Congressman, we will undertake a review, of course, 5 years after the rule is in place, and take a look at how it is actually implemented. We did try to provide great clarity around which entities and which products are actually pulled into that rule. I know there were some questions about products that clearly were not actually even contemplated in the rule, so we did a lot with guidance on that,

Mr. BUDD. Thank you. I yield back.

Chairwoman WATERS. Thank you. The gentleman from Utah, Mr. McAdams, is recognized for 5 minutes.

Mr. MCADAMS. Thank you, Madam Chairwoman. Director Kraninger, when you first appeared before this committee last March, we had a discussion then about balancing access to credit, while at the same time, ensuring that consumers are protected from harmful products. Specifically, I asked about CFPB's planned actions on its payday rule, and I expressed my concern that payday products can quickly become debt traps, especially if a lender doesn't ensure that the borrower has the ability to pay. And you noted that it was a proposal at the time, and you would continue to review your consumer protection mission as you undertook the rulemaking.

Earlier this month, you issued a final rule that repeals the requirement that lenders determine a borrower's ability to repay those loans before making them. So I would like to ask you again, what role does consumer protection play as you undertook and finalized this rulemaking?

Ms. KRANINGER. Congressman, the mandatory underwriting provisions were very specific. I recognize that it is frequently referred to as an ability to repay, but there were specific stipulations there that would be particularly challenging. Again, by the Bureau's own estimation, it would have a significant reduction in the availability of credit there. So, that would be something that we looked at—

Mr. MCADAMS. I would just say from my perspective, it seems like you just made it much easier to have consumers get trapped in that cycle of debt, that they would be cycling through over and over again. And I worry there are rulemaking sacrifices of reasonable consumer protections, and I know it is a balance, but it seems like the balance is against the consumers.

And as I understand it, that part of your assertion for repealing the mandatory underwriting provisions is due to what you claim as insufficient research that went into the 2017 rule, is that correct?

Ms. KRANINGER. Yes, Congressman, as well as the legal reasoning that was in that rule.

Mr. MCADAMS. I would like to read you a footnote in your rulemaking from this month, footnote 343 buried on page 177 of the PDF, and it says, "Consumer protection issues have arisen, and will continue to arise in the payday market, as in other markets as a result of a given lender's specific practices. And the Bureau is prepared to address those issues, for example, through supervision and enforcement against deceptive claims in advertising or marketing for payday loans."

So, you acknowledged in your own rule that there are consumer protection problems in the payday industry. And I would ask, is your contention that supervision and enforcement are sufficient tools to keep consumers safe?

Ms. KRANINGER. Congressman, that is certainly part of the protections that are in this basis and others. I have vented that there are bad actors in every market space, including this one. So they are a key part of it. I would also say that we are doing work on disclosures, because I think there is great evidence in those rulemakings that there are consumers who understand the product, and there might be some who don't quite understand the product when they actually get them. And that is something we want to look into, and are doing disclosure testing on.

So, that is another example of another protection, in addition to the payments provisions and supervision and enforcement.

Mr. MCADAMS. Thank you. I think if we are putting a lot of stock in supervision and enforcement as our means in protecting consumers in this regard, I would like to see what your plans are for beefed-up supervision and enforcement plans. And if not, do you intend to study the issue to put together sufficient research and pursue regulations that actually do keep consumers safe, which is the mission of the CFPB?

Ms. KRANINGER. I am committed to constant review of the rules. We have 5-year lookback requirements by Congress that I think were incredibly—there is a lot of foresight in those, but we will definitely do that on this rule, as we do on others, for example. But any feedback based on what is happening in the marketplace needs to inform the way we operate.

Mr. MCADAMS. But as it stands right now, even though you acknowledge that there are consumer protection issues, you are not looking for any additional tools that would help to protect consumers in regards to this debt trapping in payday loans?

Ms. KRANINGER. Our disclosure testing would represent that. I would also note increased competition is part of what we are seeking, and we have been working through our innovation policies to get banks and credit unions to offer responsible products in this space, too.

Mr. MCADAMS. Okay. I would like to see what research was used to base that conclusion, that that would be adequate and sufficient for consumer protections.

Lastly—and we are about out of time, so maybe I will submit this in written form. But on Friday, the CFPB announced that it plans to release an advance notice of proposed rulemaking on consumer-authorized access to financial records. This is a topic that this committee has explored before, and it is of great interest to consumers, to financial institutions, and to Fintech companies.

So I would love for you to elaborate on the CFPB initiative and what the Bureau's goals are with the NPR and rulemaking process. And I do see that we are out of time, so we can take that outside of this forum. But thank you, and I yield back.

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

Mr. KUSTOFF. Thank you, Madam Chairwoman. Thank you for convening today's hearing. Director, thank you for appearing today.

I would like to follow up on Congressman Budd's question towards the end of his questioning. I know about 3 weeks ago, you did finalize the final rule as it relates to these payments to the small-dollar lenders. The rule that you promulgated 3 weeks ago or so kept in place the 2017 rule provision. It imposed, frankly, a restrictive requirement by allowing just one re-presentment of a returned ACH payment. And it also extended the re-presentment limit to transactions not covered by the NACHA rule.

So by my first question is, is there a disparity in that, that the NACHA rules shouldn't be applied to all lenders?

Ms. KRANINGER. Congressman, we were starting with the rulemaking we had in place. And so, the mandatory underwriting provisions were the ones that had the significant impact on the availability of credit, as well as the issues that we have been discussing here today. The insufficiency of the evidence and legal reasoning that underpin that part of the rule. So, that is where the reconsideration came into play. It was my judgment that the payments provisions, again, should, continue so that we can see how that is implemented. And as I said to Congressman McAdams, we can certainly look at what happens, and see if there are unintended effects to it.

We did also put out some very clear guidance to try to stipulate what products are affected and what products are not. And I appreciate the point you are raising, the rulemaking that was promulgated, and that is the process that we engaged in.

Mr. KUSTOFF. Let me ask it another way: Doesn't the final rule create more burdensome regulations for just some covered lenders?

Ms. KRANINGER. It does only affect certain lenders, that is very true. And that was certainly by design of the rule, and we will certainly take into account what impacts that has when that is able to be implemented.

Mr. KUSTOFF. Okay. Are there plans to revise the payment provisions in the future, or is it your position you have to wait for 5 years?

Ms. KRANINGER. Congressman, I certainly respond to things that we see in the market. If we get evidence sooner that there is an issue that needs to be dealt with, I would certainly be happy to consider that.

Mr. KUSTOFF. Thank you, Director. I was reading a report from Yahoo Money last week that talked about how 1 in 4 Americans with credit cards said that they had an account involuntarily shut down during the span of May to July. And, specifically, the article talked about those consumers with FICO scores between 550 and 700. I think that article said that that roughly covers about 60 million Americans.

I think we all know that the credit card, for so many Americans, is not just a lifeline; it is a necessity. Are there any steps that the CFPB is taking—and, again, I am talking about, specifically, for those consumers in the 550 to 700 credit score range, so that they don't lose their credit cards due to the pandemic?

Ms. KRANINGER. Congressman, you raised an important issue. I am certainly aware of credit limit changes, and certain cards that don't have activity on them. But I was not aware of the article you just cited, so I am happy to take a look at it and see precisely what happened there and what action we should take.

Mr. KUSTOFF. Thank you, Director. And with that, I yield back the remainder of my time.

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

Ms. WEXTON. Thank you. Thank you, Madam Chairwoman, and thank you, Director Kraninger, for joining us today. Director Kraninger, I did read your extended testimony, and in 14 pages, I saw just one reference to the Paycheck Protection Program, which I am sure is something that you all are very much involved in at this time. This is such a timely program and doing so much work here in our country. And you do have the role of supervising implementation of that program, do you not?

Ms. KRANINGER. Only a narrow slice of that, with respect to the Equal Credit Opportunity Act compliance by covered lenders.

Ms. WEXTON. Right. So you do have to manage and make sure that—you have to assess the compliance of lenders with fair lending laws, right?

Ms. KRANINGER. Yes. With ECOA, yes.

Ms. WEXTON. Are those assessments taking place, and what have you found out about Paycheck Protection Program loans?

Ms. KRANINGER. We are engaged in what we are calling prioritized assessments, so very targeted exams of entities with respect to what is happening right now, and we did include small business lending, ECOA compliance, as part of that effort, so we are engaged in that now.

Ms. WEXTON. Let me ask you, and if you need to, you can just ballpark it, what percentage of Paycheck Protection Program loans are to minority-owned small businesses?

Ms. KRANINGER. Congresswoman, off the top of my head, I don't know the answer to that question. I do know it is an area that, again, I am interested in generally, that the Administration has been interested in promoting, and we have done a lot of outreach to try to expand that availability.

Ms. WEXTON. So, I don't suppose you can ballpark what percentage of paycheck protection loans went to women-owned small businesses either?

Ms. KRANINGER. No, I cannot.

Ms. WEXTON. Okay. Well, an Inspector General report from May criticized the FDA for not requiring applicants to submit demographic data. I am sure you are aware of that. And my colleagues and I have repeatedly called on the SBA and Treasury to collect this information on loans or the loan forgiveness application and make it mandatory. But so far, it is only being collected on a voluntary basis.

And that is concerning, because in my district, we performed an assessment of our own of those applications put out there in Virginia 10. And in my district, 95 percent did not provide the race or ethnicity data, and 83 percent did not provide gender ownership.

So, Director Kraninger, it is probably a lot harder for you to do your job if you don't have the information, the demographic data to do your assessment with, is that correct?

Ms. KRANINGER. There were certainly other issues at play with trying to move quickly and get this program running, so I will say—

Ms. WEXTON. I understand. I get that. Reclaiming my time. I understand that time was of the essence and everything, but it is hard for to you do your job if you don't have the data to do your assessment. I know you don't work for the SBA or Treasury—well, I guess a little bit for Treasury. But have you communicated with them about their decision not to require demographic data for collection of the Paycheck Protection Program on either the application or the forgiveness application?

Ms. KRANINGER. We have talked about the data that is available in terms of what the reach of the program has been and the extent, the number of small businesses that it has helped. We are continuing to look at how we can promote, again, access, which is the core of your question, and, certainly, the core of my interest in understanding them better. And that is part of why we engaged in prioritized assessment.

Ms. WEXTON. How are you going to know what kind of access has been provided when 95 percent of the people, at least in my district, aren't even answering the questions, so that makes it very difficult. Now, you are responsible for implementing Section 1071 of Dodd-Frank, right?

Ms. KRANINGER. Yes.

Ms. WEXTON. And that does require that lenders collectively maintain information about a loan application by women-owned, and minority-owned small businesses, and that requires the CFPB to collect and publish that information. Is that correct?

Ms. KRANINGER. Yes, that is correct.

Ms. WEXTON. But the Bureau, under your leadership, has slow-walked the implementation of this section, and in February of this year, you settled a lawsuit seeking to compel you to implement the law. Is that correct?

Ms. KRANINGER. No, that is actually false. I committed during my confirmation process that that was a statutorily required regulation, and I was committed to implementing it. And I actually announced that in the regulatory agenda prior to the filing of the lawsuit.

Ms. WEXTON. But you entered into a settlement that had court-ordered implementation deadlocks. Is that correct?

Ms. KRANINGER. That is correct.

Ms. WEXTON. And have you started the rulemaking process?

Ms. KRANINGER. Yes. We will issue a brief outline, which is a small business regulatory relief process outline by September 15th, and engage in that part of the regulatory process this fall.

Ms. WEXTON. And you commit to meet your deadlines under this section? Thank you.

Ms. KRANINGER. Yes, that is the only deadline at this time. Thank you.

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

Mr. HOLLINGSWORTH. Good afternoon, Director Kraninger, thank you for being here, and thank you for your continued work at the

CFPB. I am sure at times today, a quarter of an inch of Plexiglass doesn't seem like enough protection.

I wanted to step back and talk more generally for a second about some of the larger dynamics at play in our economy and certainly, at the CFPB as well. You recently published a blog post—or I should say, the CFPB generally published a blog post about the use of artificial intelligence (AI) and machine learning (ML) on increasing the financial protection laws.

I wondered if you might venture into, do you intend to do more in this space? And if so, what might that look like? What are you trying to balance in terms of your next actions in that space?

Ms. KRANINGER. That is a great question. I think what we were seeking to do with the look that we have done at AI and ML and also, alternative data in underwriting is the recognition that there is a great opportunity there in terms of expansion of access, particularly for underbanked and unbanked individuals who have not been reached before, so taking that information into account.

There is also some risk introduced in that process, again, understanding it. So, we are continuing to look at how lenders are approaching that, looking at what innovations they are bringing. Our innovation policies are an opportunity for them to engage with us, and look at either a sandbox policy or a no-action letter policy, to have a more robust conversation about that, and then have data from actual operations, by an actual lender or a creditor, to base any additional action on.

We are certainly looking at it with respect to our supervisory activity, enforcement activity too, but I think, largely, it is making sure we have experts inside who understand how it works, understand how industry is seeking to apply it, and looking at how that is hopefully being beneficial to consumers and taking action where it is not.

Mr. HOLLINGSWORTH. Yes. Director Kraninger, I think that is extremely well-said. There are tremendous opportunities. There are also limitations in the technology certainly, but tremendous opportunities to increase inclusion in the financial sector and empower Americans in our district, and in many other districts across the country, to be able to live better lives and achieve the American Dream.

And I think you would agree with this, but to hear you say it, it sounded like you also said there are real costs to retarding innovation in this country, retarding financial inclusion in this country, to families, their lives, and their futures. Is that true?

Ms. KRANINGER. Yes. I do see that.

Mr. HOLLINGSWORTH. And that is something that you will weigh as you continue to think about what that sandbox might look like, and how we increase, perhaps, the pace of innovation while also recognizing the safety that needs to go into place as well?

Ms. KRANINGER. Yes.

Mr. HOLLINGSWORTH. Great. Second question, again generally, I know my friend across the aisle, Ms. Wexton, touched on prioritized assessments. I wondered if you might talk a little bit about what you have learned in some of that, about how our financial institutions have been able to serve their customers, help their customers, empower their customers, during the course of the last 4 months.

Ms. KRANINGER. Yes. That is certainly what I expect to find in the vast majority of the prioritized assessments, is precisely that, and understanding—getting, again, some more information about how that is going, what practices are successful for consumers, and what activities, or what challenges are those institutions facing in trying to help their customers.

Mr. HOLLINGSWORTH. But I am sure—

Ms. KRANINGER. We don't have much at the moment, but we are literally in the midst of it right now.

Mr. HOLLINGSWORTH. Right. I am sure not all of their challenges are policy-related, but some of them may be policy-related, regulatory-related, to ensure that they have the flexibility to be able to serve those customers, not just during more ordinary times perhaps, more ordinary circumstances, but also the flexibility to address their customers' needs during extraordinary circumstances as well. So providing some of that latitude and flexibility, I imagine, will be an important learning point going forward, right?

Ms. KRANINGER. Yes. Definitely.

Mr. HOLLINGSWORTH. Great. And then in addition to that, I wanted to ask about further coordination and some of these exams done by multiple agencies in making sure that a company or an institution is providing that information as few times as possible, and is disseminated as widely as possible, as needed—not overly disseminated by the way—within the reaches of the Federal Government.

Ms. KRANINGER. Yes. That is something that has been a focal point for me as the Chair of the Federal Financial Institutions Examination Council (FFIEC), where we are coming together and coordinating on exams. Despite the challenges of the pandemic and other priorities that do supersede this, we have a continued activity going on around common technology and common data collection and sharing. So that is still happening, and we are still looking to make some progress on that.

Mr. HOLLINGSWORTH. Right. Obviously, institutions are rightfully concerned about the proliferation of hours that are being used in submitting to exams, which they are ready and willing to do, but they also want to make sure it is coordinated and done as efficiently as expected so that they can spend their time serving, helping, and empowering those customers.

And with that, I will yield back.

Chairwoman WATERS. Thank you. The gentleman from Massachusetts, Mr. Lynch, is recognized for 5 minutes.

Mr. LYNCH. Thank you, Madam Chairwoman, for having this hearing, and thank you, Director Kraninger, for appearing and helping us with our work.

Director, last week, the CFPB announced an Advance Notice of Proposed Rulemaking around Section 1033 of Dodd-Frank, which obviously deals with the consumer authorization of access to financial data and records. We recently had a hearing on this issue, and I am following up on Mr. Davidson's concerns.

We recently had a hearing on this issue on the Financial Services FinTech Task Force, and the concerns were largely in two areas, and they were bipartisan. First of all, Members were concerned about the full spectrum gathering of data from consumers, and whether that happens from screen scraping, which you mentioned, or web scraping, content scraping, or whether it is telematics. Right now, through our cell phones and other technology, financial firms and others know everything about our lives, who we are with, where we travel, how fast we drive, and those tools can be used to discriminate.

We have seen, in some instances, where individuals who live in a certain census tract were discriminated against because they lived in a low-income area, or in public housing. So, that was one concern about the use of that data and the practice of screen scraping in particular.

The other issue was the consent form, the so-called consumer consent. And you have a 19-page consent form that basically, the application administrator requires you to sign off on this 19-page item that, even as an attorney, I had a difficult time understanding, and that is for regular consumers.

So, two questions: First, where are we on screen scraping? You mentioned we are moving away from screen scraping in your earlier comments, but we have been moving away for over a year. We are just not moving that fast.

And second, the issue of those consent forms, are you thinking in this rulemaking that you will address both of those aspects? And I would just love to get your insights and your thoughts on both of those issues. Thank you.

Ms. KRANINGER. Thank you, Congressman. I am glad you all had the opportunity to talk about that and take advantage of that ourselves. We had our symposium where these issues came up, and the purpose of the Advance Notice of Proposed Rulemaking is to really formalize that data-gathering and think about what might be needed in a rulemaking and what would make sense.

But the two issues you raise are important ones certainly, one with respect to what kinds of data is actually available and how it gets used, and then, certainly, what consumers know about the data that they have permissioned and how it is going to be used.

And the disclosure aspect of this, the consent process that you noted, is one that has been a concern to me since I have been in this position, and we are going to make some progress on trying to do better disclosures and give people the key information they need, rather than giving them legalese that they just end up checking the box on. So that is a huge, I think, concern on many fronts.

Mr. LYNCH. On screen scraping, you started to address that earlier, but you were cut off.

Ms. KRANINGER. Oh, yes. With respect to screen scraping, the "we," of course, is the marketplace at this point in time. The Bureau certainly would intervene in a UDAP circumstance, or other compliance issue, but the market really is moving away from that.

There have been a number of agreements on API means of sharing that are making progress, and some real deadlines from financial institutions in shifting on APIs, or shutting off access. I won't comment, frankly, on—there are issues with that, for sure, on both sides, but I do think there has been progress, actual progress, made to reduce the screen scraping, so that is in the marketplace generally.

Mr. LYNCH. And what about the length and complexity of these consent forms?

Ms. KRANINGER. That is a concern area. It is something that we will take feedback on and see what we can do about that, or what would require rulemaking, or what might be able to be addressed in other ways. But that is what the ANPR will do.

Mr. LYNCH. All right. Thank you, Madam Chairwoman. And thank you, Director Kraninger.

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

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman, and thank you, Director Kraninger, for being here today and for your continued service to the country. I applaud you and your staff for continuing to work on behalf of our country during the pandemic. It is not easy for anybody, and you all have performed well, so thank you for that.

As you know, there is growing evidence that one of the best things regulators could do to expand credit access is to make it clear that lenders are allowed to use new underwriting techniques that leverage alternative kinds of data. Mr. Hollingsworth referenced this as well.

Traditional credit scores are generally good predictors of risk for people who have high scores, but they don't work for people with little or no credit history, and don't work for many people who are creditworthy but have lower scores due to complex factors that the scoring process does not capture.

Fintechs and some banks have been innovating in the use of non-score factors now that it is easy to capture new kinds of data that can be analyzed with techniques like machine learning. Research by the nonprofit FinRegLab and others supports the argument that these methods are predictive of risk.

However, the industry, especially banks, has hesitated to adopt the methods because of concerns about regulatory criticism, and, especially, the potential to run afoul of the prohibition against unintentional discriminatory disparate impact.

You and other regulators have issued joint encouragement that lenders consider these new methods, but have not yet offered clarity on how to do so in ways that regulators consider inside a green zone on disparate impact.

First question, do you see this innovation as a high-impact way to expand credit access? I think the answer is yes. You sort of elaborated already, but just to say it again.

Ms. KRANINGER. Yes. Yes, I do.

Mr. GONZALEZ OF OHIO. Great. And then, what plans are you currently working on to clarify the rules of the road to encourage faster adoption here?

Ms. KRANINGER. Congressman, I would point particularly to our innovation policies, having that opportunity to have engagement with an entity, understand the product, they have to provide the benefits that they see of the product to consumers, the risks that they see, the way they are mitigating those risks, and what regulatory issue is a barrier or is a challenge.

And we can have that dialogue about that product and be very specific about the ability to move forward with that product with guardrails. So, that is certainly the top avenue.

We are looking at what additional guidance would be useful. We have issued guidance on alternative data, we did on AI and ML use in underwriting, and I think we are very open to that in terms of the conversation.

I did issue a request for information just 2 days ago on the Equal Credit Opportunity Act, and it did specifically ask about alternative data and other issues that might be posing challenges to entities, or where we think there might be opportunities. So, responses to that could lead to different action.

Mr. GONZALEZ OF OHIO. Thank you. And is there anything that we can provide at the congressional level that would empower you even more to sort of help set up the guardrails here? And other regulators generally, yes.

Ms. KRANINGER. Congressman, I don't have anything at the moment that I would seek or suggest, but I appreciate the question, and I will certainly let you know if we do find something that would be useful.

Mr. GONZALEZ OF OHIO. Okay, thank you. Because, I think, like a lot of my colleagues, one of my biggest fears coming out of this pandemic is—and you can just see this looking at what is happening in the markets—for very wealthy people or people in the upper-income scale, it is inconvenient but not financially devastating, certainly not. For people who are lower-income, especially minority communities, it's absolutely devastating, setting them back even further.

And so, I see alternative data sources and different ways of expanding access to credit as one of the most important things we can do, because people are going to have to rebuild their lives, and we have to provide them with all of the opportunities necessary to do that.

So I would encourage you to keep that work alive and to keep interacting with us if we can provide help, because people are going to need it.

With that, I yield back.

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

Ms. ADAMS. Thank you, Chairwoman Waters, for convening today's hearing. Thank you, Director Kraninger, for being here. I wanted to ask a few questions regarding predatory debt settlement companies and the harmful settlement activities that are happening in my State, that are likely also happening across the country.

In North Carolina, we have seen a rise in complaints about the practices of this industry, including misleading advertising, and high fees, particularly from the military and their families. I have gotten letters from high-ranking officials at Camp Lejeune and Fort Bragg in North Carolina, and from one of our largest credit unions, the State Employees Credit Union. So, yes or no, have you heard of a company called Freedom Debt Relief, or Freedom Financial Network?

Ms. KRANINGER. I have not heard of those companies specifically, Congresswoman.

Ms. ADAMS. Okay. So you are not aware, then, of their business model or predatory practices, if you are not familiar [inaudible]. It is one of the largest—

Ms. KRANINGER. I will say that the concerning practices by some debt settlement companies is definitely something that I am aware of, and we have engaged in enforcement actions, I believe, with the State of North Carolina, with the attorney general of North Carolina. I believe he was a party to that, to one of those cases. So there are concerning practices happening there, and we are taking enforcement action.

Ms. ADAMS. Thank you, but the CFPB, under Mr. Mulvaney, brought an action against Freedom Debt Relief, and secured about $20 million in restitution and $5 million in damages, for violating the law by charging customers or consumers without settling their debts as promised. But are you aware that the CFPB entered a consent order with Freedom Financial Service after the agency filed this complaint?

Ms. KRANINGER. Congresswoman, I do apologize that I don't remember that particular case, but I stipulate that you are probably right.

Ms. ADAMS. Okay. Let me ask you, do you believe that it helps consumers when debt settlement companies encourage customer borrowers to deliberately default on credit card debt? Do you think that helps consumers when they do that? Yes or no?

Ms. KRANINGER. No. There are many concerning practices in the debt settlement space, there is no doubt. We are certainly paying very close attention to that and taking action. They cannot accept fees when they have not actually provided the results, and there is a requirement to actually do that several months after the outcome they promised has been delivered.

Ms. ADAMS. Okay. In this time of COVID, with an economy that is hurting, it is very likely that our constituents will find themselves saddled with more debt. So I want to know what you and the CFPB will do to protect American consumers and our military from being misled by false promises and high-pressure sales tactics from the for-profit debt settlement industry, because they are really leaning hard on these folks?

Ms. KRANINGER. I agree with you, it is a concerning area. I can say we are also working with the Department of Defense. In addition to all of our enforcement actions, we are working to make sure we get information to those military personnel, and to consumers generally, about being cautious in the debt settlement space, and frankly pointing them also to nonprofit entities where they would get the support that they may need.

Ms. ADAMS. Let me ask you, in terms of smaller lenders, they are probably finding it more difficult to compete in this kind of environment. Several industry groups and consumer advocate organizations have also expressed concern that a pricing-based definition could result in a race to the bottom.

Based on the Bureau's own recognition that pricing can be manipulated, the proposed qualified mortgage standard does not appear to be an effective measure of a borrower's ability to repay. So how would you ensure that a pricing-based qualified mortgage does not incentivize irresponsible mortgage lending similar to what we witnessed in the lead-up to the 2008 financial crisis?

Ms. KRANINGER. Congresswoman, I appreciate the question. It is an important one. The statutory features that are precluded from being part of a qualified mortgage, that continues. In addition, a requirement to actually consider and verify debt and income is part of the law.

Ms. ADAMS. Okay. Thank you very much.

I yield back, Madam Chairwoman.

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

Mr. ROSE. Thank you, Chairwoman Waters and Ranking Member McHenry, for holding this hearing, and thank you, Director Kraninger, for appearing before us today.

I would like to jump right into the CFPB's recently finalized small-dollar lending rule. The Bureau has previously acknowledged the key role that small-dollar loans can play in helping consumers meet credit needs, usually resulting from unexpected expenses. At the beginning of this month, the Bureau took a step in the right direction by rescinding the mandatory underwriting provisions of the Obama-era small-dollar lending rule.

However, like several of my colleagues, I am very disappointed that the CFPB chose to leave the payment provisions of the original rule intact. Much like the ability-to-repay provisions, the Bureau's own evidence didn't support its payment practices provisions. They were flawed, and based on unsupported data.

It also imposes onerous requirements that could make it all but impossible for consumers to use recurring payments.

I want to get a real answer to this question, Director Kraninger. Please explain to me why you kept this particular provision in place, choosing to enforce an Obama-era rule requiring overly burdensome compliance?

Ms. KRANINGER. Congressman, I recognize that that is an important issue for you. It has been raised by many Members. First and foremost, it was the reconsideration of the mandatory underwriting provisions that really were the focal point, given the dramatic impact that that would have on the availability of credit in this space. So, that was the priority.

With respect to the payments provisions, it was also a recognition that there is some consumer protection in there with respect to certain products. I recognize there were also concerns about how broad this may be applying, and we did issue additional guidance when we issued the final rule that laid out the types of products that are covered, and are not covered under this rule, to try to address some of those issues.

And the last thing I would say, that I have not mentioned earlier, is that we are still in litigation over these provisions, so that is still ongoing.

Mr. ROSE. Since we last spoke about this, I know you were looking again at this provision. However, it remained in the final rule published on July 7th. How long will the lenders be given to comply with this payment provision?

Ms. KRANINGER. Because of the litigation, the rule is still stayed. The Bureau is seeking to propose to the court that it lift it after a reasonable period of time. Since we have not done that filing, I can't tell you here what the reasonable period of time is, but that would be my intention, and that filing should happen relatively soon. So, we can answer that question for you relatively soon.

Mr. ROSE. So once that filing occurs, would you expect it to be 60 days from that time?

Ms. KRANINGER. I am looking at a reasonable period of time, and I can't tell you right now precisely what that will be, but we will get back to you.

Mr. ROSE. Keeping this provision in place will cause, in my view, an undue compliance burden on financial institutions and payment processors. Ultimately, the end result will be that responsible lenders, unable to manage and mitigate the risk, will choose to de-risk and quit, or not form relationships with companies offering covered loans, increasing the cost of these products to the consumers who need them.

This will also drive the small-dollar lending market back to the storefront payday lenders, putting us in the position of picking winners and losers.

Moving forward, I believe it is crucial that we maintain consistent payment system rules, which are grounded in associated laws and regulations, and I urge you and the CFPB to revisit this finalized rule, and roll back the payment provisions created by the 2017 small-dollar lending rule.

In my remaining time, I want to just turn to another issue. Back in January 2017, under Director Cordray, the CFPB filed a suit in Federal court, alleging that hundreds of thousands of student loan borrowers have been harmed by steering borrowers away from income-driven repayment, and toward costlier options. In nearly 4 years, how many borrowers have been proven to have been steered?

Ms. KRANINGER. Congressman, that is ongoing litigation, and obviously in the midst of discovery and other parts of that process there, so I can't answer that question for you, but I understand why it is important.

Mr. ROSE. I am very concerned that this ongoing litigation that you describe, without discovering any evidence, is a bad use of taxpayers' dollars. And I am concerned that the CFPB is dragging out cases like this, in search of a problem, in order to justify the costs that have already been incurred. I hope this practice does not continue.

With that, Madam Chairwoman, I yield back.

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

Mr. GARCIA OF ILLINOIS. Thank you, Madam Chairwoman, and Ranking Member McHenry, for convening this hearing, and thank you, Director Kraninger, for joining us today.

Congress passed Dodd-Frank and authorized the Consumer Financial Protection Bureau 10 years ago this month. In 2010, our country faced high unemployment, and millions of people lost their homes to eviction and foreclosures. My community was hit hard by the last financial crisis, and many people never recovered.

And now, the COVID-19 crisis has left my constituents piled with housing debt, medical debt, and credit card debt, and who knows when they will get back on their feet to pay it off.

That is why the CFPB was established during the last crisis, to give ordinary people, like my neighbors in Chicago, their own voice against big banks, against mortgage lenders, and against debt collectors. But that is not what we see from watching the Bureau today.

During a nationwide pandemic, when we have no idea when jobs can come back, and consumers have no idea how they are going to pay off their debt, the CFPB has been working for industry instead of the public. Gutting the payday lending rule earlier this month is a scary example.

I represent a working-class immigrant district. There are a lot of payday lenders in my district, as lobbyists always like to point out. The CFPB's new rule eliminated the requirement that lenders ensure that the borrowers can pay the loan back. This means that a lender can now make a loan when they know that a borrower cannot pay it back. Director Kraninger, do you think that a lender should make a loan to a customer if they know that they cannot pay it back?

Ms. KRANINGER. Congressman, the mandatory underwriting provisions of the small-dollar rule have not—

Mr. GARCIA OF ILLINOIS. Can you give me a yes or no answer, Director?

Ms. KRANINGER. I will just say, the small-dollar space is a little bit different, and that ability to—

Mr. GARCIA OF ILLINOIS. Should they make such a loan if they know that it can't be paid back?

Ms. KRANINGER. Congressman, I appreciate the principle—

Mr. GARCIA OF ILLINOIS. Okay, you won't answer that. Are you worried about trapping customers in a cycle of debt that they aren't able to repay?

Ms. KRANINGER. Congressman, again, I appreciate the principle you are trying to establish. This is a complex area—

Mr. GARCIA OF ILLINOIS. Are you concerned about that?

Ms. KRANINGER. I absolutely want to make sure that consumers understand the products that they are engaged—

Mr. GARCIA OF ILLINOIS. Are you concerned about it?

Ms. KRANINGER. I want consumers to understand the products that they are—

Mr. GARCIA OF ILLINOIS. Maybe? Or not. Let's move on, if you don't want to answer those two questions.

The Military Lending Act protects our servicemembers from getting trapped in a cycle of debt by setting a 36 percent interest rate cap on their consumer finance products. I introduced the bipartisan Veterans and Consumers Fair Credit Act to extend the cap to all consumers, so that all of my constituents can enjoy that protection. Do you support the 36 percent interest rate cap currently in effect under the Military Lending Act?

Ms. KRANINGER. It is current law, Congressman, so that is—

Mr. GARCIA OF ILLINOIS. Do you support it?

Ms. KRANINGER. I don't have a role in examining that, but certainly, we enforce it.

Mr. GARCIA OF ILLINOIS. Do you think that the rate cap helps servicemembers avoid being trapped in a cycle of debt?

Ms. KRANINGER. Congressman, I believe that Congress put that in place for a reason that is outlined in the—

Mr. GARCIA OF ILLINOIS. Do you think it helps them? Your opinion, not Congress'?

Undecided.

Okay, my last one. Director, some of my colleagues across the aisle seem to be mistaken about the recent Supreme Court decision in *Seila Law* v. *CFPB*. I want to clarify that the Supreme Court did not rule that the CFPB itself was unconstitutional, but that only the requirements needed to remove the Director were unconstitutional.

So my question is, does this case, in any way, limit your authority or ability to protect consumers moving forward?

Ms. KRANINGER. I continue to carry out what the Dodd-Frank Act empowered me to carry out, which is protecting consumers. So I think at this point, I would say no.

Mr. GARCIA OF ILLINOIS. Okay, thank you.

I yield back the rest of my time, Madam Chairwoman.

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

Mr. MOONEY. Thank you, Madam Chairwoman. So for preface, I am not a lawyer myself, but a lot of businesses and individuals have needed good lawyers when they need to exercise their legal rights. And in many cases, that is when money is owed to them. They loaned money in a fair contract, it is owed back to them, and it is not getting paid back, which prevents the lender from paying their bills, employing more people, and putting food on their table.

So for hundreds of years, attorneys have been regulated and disciplined, primarily by State supreme courts that license them, and by the State court judges, not by the Federal agencies. I fear that the proposed rule change from the CFPB on debt collection could jeopardize this norm. The CFPB's safe harbor proposal to codify the meaningful attorney involvement doctrine is intended to clarify regulation for creditor attorneys, but I fear it would do exactly the opposite.

The meaningful attorney involvement doctrine appears nowhere in the Fair Debt Collection Practices Act or the Dodd-Frank Act. The concept has gone far beyond the statute, and creates uncertainty and confusion over the rules regulating attorneys. So Director Kraninger, I fear that the CFPB's proposed safe harbor rule, for meaningful attorney involvement in debt collection, could lead to a codification of meaningful attorney involvement doctrine, bringing further uncertainty.

The American Bar Association and the National Creditors Bar Association have both stated their opposition to the safe harbor provision in this rule. Would you be open to reconsidering the proposed safe harbor rule for meaningful attorney involvement?

Ms. KRANINGER. It is a proposed rule, Congressman. I actually had not heard of those organizations' opposition, but I imagine that I will hear it soon because we are going through all of the comments now. We did get thousands of comments on this rulemaking, and as it comes forward to me, in terms of recommendations and decisions, I absolutely will take those comments into account.

Mr. MOONEY. Thank you for that. Since the founding of our country, up until the CFPB was created, the legal process has worked well. People may not always get the results they want, but they have legal representation, and they have a fair hearing. And it is regulated by the courts, and if you do something wrong, you get disbarred. We have all heard of lawyers who have been unethical and gotten disbarred. They have a working process. If it ain't broke, don't fix it.

So, I am glad to hear that you want to do that. I had a bipartisan bill I introduced myself last Congress called the Practice of Law Technical Clarification Act, which would have amended the fair debt collection practice to exclude law firms and licensed attorneys engaged in litigation, from the definition of debt collectors.

Had it passed, it would have made absolutely clear that licensed attorneys are regulated by the courts, not Federal regulatory bodies. But thank you for your answers. And Madam Chairwoman, I yield back the balance of my time.

Chairwoman WATERS. Thank you. The gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Madam Chairwoman, and thank you for being with us today, Director. I know it has been a long day, but we are down to the final stretch. First, I want to thank you. I want to thank you because back in March of last year when you first came by, I mentioned to you my concerns about protecting those with limited English proficiency. That is a real concern in my district, which is predominantly Latino, about 77 percent, and I have seen your Spanish-language, COVID-related outreach, and I really do appreciate that, so thank you.

However, there is so much more work to be done, not just in outreach, but in enforcement. You mentioned this issue in your oral testimony, but it is not mentioned in your written testimony, and only once in the agency's Spring report. I would like the agency to devote additional resources in this area. How is your agency working to target unfair practices that target the limited English proficiency community?

Ms. KRANINGER. Thank you, Congresswoman, for that question, and we have a lot of sources for the enforcement actions that we take. Certainly, whistleblowers come forward. We use the complaints, so encouraging communities—and we have many communities we still need to continue to reach so they know about us, but when they do submit complaints, we take those seriously. We look for any patterns or practices. We go in and do examinations based on that or go straight to an enforcement action. So, there are a lot of ways—

Ms. GARCIA OF TEXAS. How many times have you gone to an enforcement action?

Ms. KRANINGER. We have hundreds of ongoing investigations and many other—

Ms. GARCIA OF TEXAS. No, but how many times have you taken an enforcement action?

Ms. KRANINGER. There are 40 public enforcement actions that I have taken in my term to date.

Ms. GARCIA OF TEXAS. And how many of those were based on any targeting of unfair practices against limited English proficiency (LEP) consumers?

Ms. KRANINGER. I will admit to you that I do not recall there being an LEP nexus to these cases, but that doesn't mean we don't have other work that we are doing in that area.

Ms. GARCIA OF TEXAS. Okay. Can I hear from you a commitment to be more vigilant about that?

Ms. KRANINGER. Yes, Congresswoman. I would pledge, too, if there are particular entities that your constituents are interacting with, where you have heard about issues, raise them to us, and we would be happy to take that into account, too.

Ms. GARCIA OF TEXAS. I am going to switch topics now. I am tremendously upset—tremendously upset—by your agency's recent action to allow payday lenders to continue to prey on those most in need. You have testified that the previous rule would have reduced access to credit by 70 percent, and that is why you changed this rule, correct?

Ms. KRANINGER. Yes. That is certainly one reason.

Ms. GARCIA OF TEXAS. Okay. But what I don't think you understand is that payday loans aren't credit. They are chains of debt. A cycle of debt entraps—as some of my colleagues have described, they are tools that extract wealth from the most vulnerable. This isn't just my opinion; this is something we all know to be true.

That is why Congress enacted the Military Lending Act nearly 15 years ago, to protect our servicemembers from being trapped in a cycle of debt. It was such a concern that the Department of Defense was beginning to see the impact to military readiness.

Mr. McHenry calls these products a lifeline, and that is what people are looking for when they seek out a payday loan. They are seeking a lifeline, but instead, they are being thrown an anchor by these predatory companies. If the military felt that these institutions were degrading the readiness of our military personnel, imagine what these predators are doing to the very fabric of our society.

Predatory payday lenders extract wealth from poor and minority communities. They perpetrate the racial wealth gap. They are part of a system that has let inequity grow and wealth accumulate to the very few, while leaving those in my community struggling just to maintain.

I have always said that payday lenders just make poor people poorer. I am afraid that your actions have made you an enabler, and I am just really distressed and concerned that you have taken that recent action.

Finally, one last topic, I want to talk about the stimulus checks. This spring, Treasury sent out about 159 million checks. That is a lot of people. There was a lot of concern about some of the calls our constituents were getting, people saying, "Hey, we can get you the check, but there is going to be a fee. We are going to take 10 percent."

Knowing that there has been some fraud and some issues with stimulus checks, and knowing that we are looking at another round through this relief package, what are you doing to help prevent some of these scams from recurring?

Ms. KRANINGER. Congresswoman, that is an important question. I know we are limited here. We are already talking to Treasury about that, and we were with them from day one, trying to figure out, as soon as they made a policy decision about how to distribute the funds, how do we communicate that and reach people?

Ms. GARCIA OF TEXAS. Thank you, and I yield back.

Chairwoman WATERS. The gentleman from Wisconsin, Mr. Steil, is recognized for 5 minutes.

Mr. STEIL. Thank you very much, Chairwoman, and thank you, Director, for being with us today. As several Members have mentioned, the Supreme Court finally confirmed what many of us have been arguing for years, that the leadership structure at the CFPB was unconstitutional, and to me, that is just one of the structural problems with the agency that was seemingly built to be unaccountable.

That is not a comment to you. That is a comment to us in the House of Representatives, and in the United States Senate, who structured it to be that way, to be unaccountable.

And one of my big frustrations is that the Bureau is set up to be regulated and to put forward regulation by enforcement, rather than allow the regulations to be developed here in this committee, in the House of Representatives, and the Senate, where I think it would be far better suited rather than an unaccountable agency, where I think there can often be disastrous consequences.

Neither Republicans nor Democrats can do anything about it if we feel that the Bureau is overstepping its bounds. I have made this offer before, and I am going to make it again, I am willing to work with anybody on this committee, regardless of party, to do meaningful reform to the structure of the CFPB.

I think the Bureau needs to have a leadership structure that respects the principles of our Constitution. I think it needs to be tied to the appropriations process and truly be accountable to the people and to Congress. Consumer protection is a vitally important issue, and we should be working together to make sure that the Bureau is lawful, built to protect consumers, and to respond to the concerns of the American people. And so, I call on our colleagues to get to work.

Now, I would like to chat with you. Director Kraninger. I spent some time reading through your budget. In trying to parse this out—and you were asked earlier by my colleague from Minnesota on your litigation cost, but I think—and I understand you are not—and I am not asking you to speak to any specific piece of litigation, but trying to just get some clarity into the structure of your budget. In going through it, you had about $112 million—in Fiscal Year 2020, about $112 million in what I viewed as salary: $47 million in benefits; and $107 million in what was labeled as other contractual services. I'm unclear if that might be additional litigation expenses.

I am wondering if you can provide some level of clarity to me and to my colleagues here on this committee as to what, broadly speaking, your litigation expenses may be across-the-board?

Ms. KRANINGER. We certainly can, and we can get back to you on that. There are contractual costs associated with litigation, as I was saying, with document production and sometimes data analysis efforts, in getting depositions and all of those kinds of things involved, generally speaking, some contract support. So off the top of my head, I don't have it, but we can get back to you on it.

Mr. STEIL. I think it is an important number, and as you go forward and put forward these documents, I think it is helpful to the committee to get a broader understanding of what the vast majority of the spending is inside the CFPB and what portion of that is in litigation.

The reason I am concerned is, I think it is a really poor way to go about policymaking, when it is done through litigation and enforcement. I think we are far better off at policymaking here at this committee through a deliberative process where the people are represented through their elected representatives, rather than an unelected agency through litigation. That's not a comment to you, but a comment really to how this agency was structured, I think, to set up potentially disastrous consequences in the future.

I appreciate you coming back with some additional details on the litigation costs.

Let me shift gears. I am also very concerned during the coronavirus, in particular, about bad actors. In the ongoing pandemic, there are criminals taking this as an opportunity to take advantage of American consumers, and so, I have introduced bills to increase penalties on these types of criminals.

Can you comment on what the CFPB has done to ensure that consumers of financial products are protected during some of the most challenging of times?

Ms. KRANINGER. Absolutely. We are in partnership with the Department of Justice, the FTC, and all of the prudential regulators, and State attorneys general, talking regularly about fraud schemes that we see, and who is handling them. There are certainly a lot of things happening in the healthcare space.

We have seen admittedly slightly less in the financial products space. And I will say that the financial institutions are a huge help in that as well because they are keeping their eyes open, consumers advocates are keeping their eyes open, but the minute we hear about anything, we are investigating and moving on it. So, that is an ongoing vigilance, as well as making sure that we get good information to consumers so they are aware of it, so that it is front and center for them.

Mr. STEIL. Thank you very much. I appreciate your leadership in this regard, and I yield back.

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

Mr. RIGGLEMAN. Thank you, Madam Chairwoman, and thank you, Director, for being here today. I would like to start by thanking you for your continued efforts to make the Consumer Financial Protection Bureau more accountable and transparent, and for many actions the Bureau has taken since your appearance in February.

I also, going near the end, get some advantages to being near the end of these, and I would like to know, the challenges that you had, one of my colleagues talked about the number of complaints that you have had and the increase in those complaints from March until now. And I know you have also had to work under the same structure of CDC guidelines and COVID issues also. Is that correct, ma'am?

Ms. KRANINGER. Yes. We take that seriously.

Mr. RIGGLEMAN. And obviously, the challenges have been pretty huge with your workforce, right, for either teleworking and things like that. You all have had to actually sort of navigate all the same challenges that other workforce people have done. Is that correct?

Ms. KRANINGER. Yes, it is.

Mr. RIGGLEMAN. So I think you understand your civic responsibility, and I want to thank you for all those challenges and the amazing number—I know data and I know volume, and the fact that you are getting back to people in 9 days, I think is commendable. And there is a difference between receiving the information and responding to it and doing an investigatory action, which I had to do when I had to process requests for information in intelligence analysis, so I appreciate that.

I also want to talk about Section 1033, and I know you announced an intent to issue an ANPR on consumer authorized access to financial records later in the year, and I know we have heard that. So again, the benefit of going later—I don't know if anybody knows how long Section 1033 is, and I know all of us have probably read it, but Section 1033 is only 335 words. I don't know if people have looked at Section 1033, and about 10 years ago, it would be the same with me.

And I don't know if people have seen 1033 and what it is dictating, and what you have to do in that rulemaking. There are some challenges I don't think people really realize, even like somebody handing me a piece of paper that is 335 words, and it pretty much says, "Hey, Denver, don't worry, you have a couple of years to make a missile to go between mach 5 and mach 25, it has to reentry from space, and it has to hit a target with 10 meters, go ahead, you can do this." And that is pretty much how many words you have in Section 1033.

Here are some of the challenges that I think the CFPB is going to have, and I have been writing these down. You are really talking about aggregated or interconnected banking. You are talking about a critical path checklist that is huge for 1033 on rulemaking.

You are talking about the legal issues people have to deal with—data transfer issues, universal API middle ware challenges, data translation, cloud utilization or not, policy on authorizations, interconnected banking like we talked about, and how people actually stress test interconnected banking with that volume of data.

You are talking about data-volume issues because of that, and then you are talking about access to consumers, or aggregators, or consumer agents. That is just part of the critical path checklist that you have to worry about during your critical path checklist bill and when you are making rulemaking. Is that correct?

Ms. KRANINGER. Yes, that is the case. And I would always say, the distinction, of course, is that you have an end user who actually is building that missile. This is a distributed system. I am not the builder of this system.

Mr. RIGGLEMAN. And that is why I found it so interesting, the challenges that you have not being the builder of the system, but somehow, being identified as the one responsible for that entire system, based on Dodd-Frank and the rulemaking that you worry about on 1033. And I have seen some of the talent that you sort of array around you, and I am really impressed with that.

But this is the question I want to get at. Do you see the CFPB, even with you not building something—and I would never ask that or never even infer that—do you see yourself almost as the lead system integrator for this, or do you see when you do this rulemaking that you are just going to have a threshold that these private entities have to actually answer to, or bill to, or do you see it actually putting out specific rule sets or specific ways of actually approaching this technology, and you are going to be the final arbiter on that?

Ms. KRANINGER. You have definitely laid out a lot of challenges of this. I would say that we are really just taking a tiptoe in this direction with that Advance Notice of Proposed Rulemaking. We are not necessarily committing to do a rulemaking, because there are some who would argue that Section 1033 and its 335 words is self-effectuating.

But trying to put some parameters around this, and at least have a conversation around these complicated issues is what we are looking to facilitate.

Mr. RIGGLEMAN. Even when you look at Dodd-Frank, when it came back over a decade ago, we have gone from things like relational databases to graph analytic databases, and the ability to parse data on a level we have never seen before, right, FinCEN, looking at different types of aggregators all across the financial sector?

I think that is why it is such a challenge, and why I wanted to just express to you that I appreciate what you have done during the COVID pandemic, but I also hope people understand the challenge of rulemaking at this level, with the amount of technology that sort of presented before the CFPB, but also for those certain banks to actually do this.

I think I would love to have seen, if I was here when that was made—I don't see where there is a technical solution for all of this embedded within Dodd-Frank. So, I appreciate the efforts that you have made.

The next question would take 17 minutes to answer, so I am not going to ask it. I appreciate your time, and Madam Chairwoman, I yield back.

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

Mr. TAYLOR. Thank you, Madam Chairwoman. I appreciate this hearing and this opportunity. And Director Kraninger, I appreciate you being here.

I grew up legislatively in the Texas Senate with my colleague from Texas, Ms. Garcia, and I am used to a, perhaps, more professional environment, where when you are asked a question, you allow the person to answer it, rather than cutting them off and then accusing them of refusing to answer.

Is there anything you wanted to add? I noticed you were cut off a couple of times since I have been here, and maybe there is some question you wanted to answer that—I will just yield you some time to answer a question.

Ms. KRANINGER. Thank you, Congressman, I do appreciate that. I would say we fulsomely have been able to cover some of these things along the way. I know there is a lot of interest certainly in the qualified mortgage effort that deserves some more conversation. Given that it is a proposed rule, though, we have time for that. We expect to get comments on it. But just noting that the Act requires debt and income to be considered and verified.

We believe that under a rulemaking, there has to be a standard for that, that the CFPB would allow to be used, and so that is what we are trying to promote that. That is where the core ability to repay comes into play. Linking that, then, to the pricing threshold that we are proposing, it really is about a more holistic view than just DTI itself as that ratio that is a hard cap right now under the current rule.

So at any rate, there is time on that particular topic to continue the conversation.

Mr. TAYLOR. Thank you for answering that, and it is, again, frustrating to watch people not have the respect and give you the time to answer the question they are asking.

Something that has come up repeatedly in this hearing is the recent Supreme Court ruling. I know you have had a chance to think about it, and I have had a chance to listen to some of my colleagues and some of your responses. But if you were to give us what we are supposed to do from here, it seems like we need to change some things in statute. Could you speak to that? What changes would you recommend, or what kind of direction should we start to go in hunting around to get the agency in constitutional compliance?

Ms. KRANINGER. I will tell you, Congressman, the decision with respect to, of course, the removal of the Director and the President's ability to do that, that is certainly the starting point for the conversation. I know that is, for some, the way the organization was created, and then there becomes some questions about other changes that Congress might want to contemplate.

And so, I have respectfully declined to opine about precisely what those structural changes or proposals should look like, but I certainly stand ready to provide anything, as a process goes forward on that, that we can provide, and should something be enacted, I also obviously stand ready to help implement that.

Mr. TAYLOR. Yes. I certainly hope, at a bare minimum, that Congress would take action to fix this. And I guess, one of my frustrations with this institution is its inability to act, and to see simple, straightforward legislative solutions go through, that I hope we could all agree that your agency should be constitutional, and that we would take some actions, and I hope that we could do that on a bipartisan basis. I don't think it is terribly difficult to say, Okay, let's let the President appoint and relieve the Director of the CFPB, which I think is—my understanding is that would basically bring you in constitutional compliance. Is that directionally correct?

Ms. KRANINGER. The decision essentially did that. The question then becomes if there are other changes that the Congress would want to see made.

Mr. TAYLOR. Okay. And so, I look forward to working to try to make this institution functional, to actually be able to issue legislation so that it doesn't have to feel like we are so impotent that we must create eight new agencies that are then non-accountable to the institution.

I know, again, in my time in the Texas legislature, we were powerful in that we could actually pass common-sense legislation. We could bring agencies to heel because we could actually wield legislation. That legislature would pass between 1,000 and 1,500 bills in a 20-week session. Here, we are passing about 50 or 100 bills a year. So, the volume of production is just so much lower, and, therefore, the power that it wields is consequently reduced. And enough of my pontificating on that. I yield back.

Chairwoman WATERS. Thank you. And I would like to thank Director Kraninger for her time today. This may be her last presentation before this committee.

Before we adjourn, I have statements for the record, and without objection, the statements will be made a part of the record.

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

This hearing is now adjourned.

[Whereupon, at 4:45 p.m., the hearing was adjourned.]

A P P E N D I X

July 30, 2020

Statement of Director Kathleen L. Kraninger
Consumer Financial Protection Bureau
Before the House Committee on Financial Services

July 30, 2020

Chairwoman Waters, Ranking Member McHenry, and distinguished Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's (Bureau's or CFPB's) most recent Semi-Annual Report to Congress.

Today, I am happy to present the Bureau's Spring 2020 Semi-Annual Report (October 1, 2019 – March 31, 2020) to Congress and the American people in fulfillment of our statutory responsibility and commitment to accountability and transparency. My testimony is intended to highlight the contents of this Semi-Annual Report (Report).

I remain committed to strengthening the Bureau's ability to use all of the tools provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and I remain resolved that the most productive use of Bureau resources is the prevention of harm to consumers in concert with our many partners. The Bureau's mission, as you are aware, is to ensure access to fair, transparent, and competitive markets for consumers, and we are committed to executing the mission through:

- Empowering Consumers and Turning Financial Education into Action,
- Ensuring Clear Rules of the Road,
- Ensuring a Culture of Compliance, and
- Holding Bad Actors to Account and Deterrence through Enforcement.

Preventing harm to consumers, I believe, is the most effective, efficient way to carry out our mission of ensuring consumer access to a fair, transparent and competitive market. To me, prevention of harm comes through helping consumers gather financial know-how, fostering a culture of industry compliance where consumers know their rights and industry knows their responsibilities and limitations, and maintaining a back stop of enforcement.

Clearly, the COVID-19 pandemic had a profound impact on the Bureau's work during the reporting period, one that will continue well into the future. These remain challenging times facing our Nation and the world. Yet the uncertainty and dramatic change underscore the importance of the Bureau's mission on behalf of American consumers. Further, this Report and my testimony today give me the opportunity to highlight the fantastic work of our incredibly talented and dedicated staff in facing this emergency.

Under the banner of "Safety First, Mission Always," the professionals at the CFPB tirelessly work ***to protect, promote, and preserve the financial well-being of the American consumer.***

To further our statutorily-driven objectives, we have teamed, and will continue to work, with our stakeholders, particularly our federal partners, to ensure consumers are armed with accurate facts and helpful warnings in this unprecedented time.

Since the first days of the pandemic, the Bureau has taken swift action to protect consumers and ensure financial institutions have the direction and flexibility to work with their customers in need. Those actions range from efforts to empower older Americans, to guidance offered about how to avoid potential scams related to the virus, to roadmaps of what relief is available to renters and mortgage holders under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) legislation. In April, the Bureau worked with Federal partners to launch a new mortgage and housing assistance website.[1] The Bureau also released timely information on new programs aimed at helping struggling consumers during this time. These programs include stimulus payments;[2] student loan payment suspension;[3] mortgage forbearance;[4] and the paycheck protection program.[5] Additionally, the Bureau has established a centralized webpage with information on how consumers can protect their finances during the pandemic.[6] Trusted, authoritative government sources are critical conduits for the distribution of information to the public. As such, I am proud to note that as of this month, over 3.1 million users have accessed our educational web content in response to COVID-19.

The Bureau also has taken a number of actions to provide guidance to the financial industry to ensure their resources are aimed at assisting consumers in need.[7] The Bureau has and will continue to actively engage with regulated entities, consumer advocates, State partners, and other stakeholders to ensure we are providing appropriate flexibilities to support consumers during this time.[8]

During this emergency, the mechanisms of rulemaking, our supervisory examinations, enforcement of Federal consumer financial law, and the handling of consumer complaints have continued. The Bureau also has developed "Prioritized Assessments," which consist of high-level inquiries designed to obtain information from entities to assess the impacts on consumer financial product markets due to pandemic-related issues. These Assessments will allow the Bureau to identify potential risk to consumers across a large number of entities, while continuing to reduce the burden on institutions and allowing examiners to continue to work safely from their home-duty stations. The Bureau is monitoring the marketplace in real time and coordinating on an ongoing basis with fellow Federal and State regulators in order to take swift action when we

[1] *See* https://www.cfpb.gov/housing.
[2] *See* https://www.consumerfinance.gov/about-us/blog/guide-covid-19-economic-stimulus-checks/.
[3] *See* https://www.consumerfinance.gov/about-us/blog/what-you-need-to-know-about-student-loans-and-coronavirus-pandemic/.
[4] *See* https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/.
[5] *See* https://www.consumerfinance.gov/about-us/blog/help-small-businesses-during-covid-19-pandemic/.
[6] *See* https://www.consumerfinance.gov/coronavirus/.
[7] *See* https://www.ffiec.gov/press/PDF/FFIEC%20Statement%20on%20Pandemic%20Planning.pdf; https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_small-dollar-lending-covid-19_2020-03.pdf; https://files.consumerfinance.gov/f/documents/cfpb_hmda-statement_covid-19_2020-03.pdf; https://files.consumerfinance.gov/f/documents/cfpb_data-collection-statement_covid-19_2020-03.pdf; and https://files.consumerfinance.gov/f/documents/cfpb_supervisory-enforcement-statement_covid-19_2020-03.pdf.
[8] *See* Section 3.4 of the Report for the items released in response to COVID-19 after the reporting period ending on March 31, 2020.

identify companies or individuals that violate the law to take advantage of the pandemic and resulting economic uncertainty. While so many aspects of our daily life were effectively shut down this Spring, the Bureau's efforts on behalf of impacted consumers never slowed.

I am uniquely proud to share with you our semiannual report and welcome your questions and thoughts about our efforts outlined here, and our mission overall.

Empowering Consumers and Turning Financial Education into Action

As I have said before, the Bureau cannot be everywhere, with everyone, at every transaction – nor should it try to be. Therefore, empowering consumers to help themselves, protect their own interests, and choose the financial products and services that best fit their needs is essential to preventing consumer harm and building financial well-being.

To carry out its financial education mandate, the Bureau seeks to enhance the financial knowledge and skills of all Americans, from childhood to later life, so that individuals can effectively use these skills to build their financial well-being. The Bureau is employing a three-part strategy to accomplish this task. The three elements of the strategy are:

- Providing financial education to the public, directly and by expanding and augmenting the local delivery of financial education;

- Sharing research on effective financial education and financial well-being with financial educators and others; and

- Addressing needs for inclusion and financial security of servicemembers and veterans, older Americans, traditionally underserved consumers and communities, and students.

During the previous year, the Bureau has continued to put thought into action and made strides in consumer education. A few key examples outlined in the Report are:

Start Small, Save Up Initiative.[9] The Start Small, Save Up initiative aims to increase opportunities for Americans to save and achieve their financial goals. Through Start Small, Save Up, the Bureau is working to help consumers build emergency savings over the next few years by working with employers to prioritize emergency savings and automated solutions in the workplace; engaging with partners to highlight emergency savings products that work and make more accessible products available; and partnering with trusted community institutions to tailor savings solutions to unique audiences. The Start Small, Save Up initiative includes a robust research and evaluation component to ensure the Bureau is learning about its own efforts, as well as the efforts of others who are also working toward a similar goal of helping consumers save. The Bureau launched a series of saving resources including the CFPB Savings Boot Camp, a multi-week email course to guide people through the fundamentals of saving. The Bureau also released the fourth in a series of booklets for social services providers to talk with people about

[9] *See* https://www.consumerfinance.gov/start-small-save-up/.

money topics that are important to them: "Building your Savings? Start with Small Goals." The booklet contains colorful, engaging tools to support people in setting savings goals, preparing for the unexpected, finding a place to save, and making the most of tax services providers, financial coaches, and financial educators. The Bureau also hosted a convening with several financial institutions to engage them in a dialogue about helping consumers and their workforce build emergency savings, exploring new research opportunities, understanding successful ways to market savings solutions to consumers, and seeking opportunities to collaborate with the Bureau on these efforts.

Convening Communities to Build Elder Fraud Prevention and Response Networks report.[10] This report describes the Bureau-facilitated convenings in Florida, Oklahoma, Tennessee, Montana, and Oregon, which informed our efforts during the reporting period and sparked the creation of new elder fraud prevention and response networks or the enhancement of existing networks. The lessons learned from these pilot convenings can help other communities develop networks that improve coordination and collaboration between responders and service providers to protect older people from financial harm. Although outside of the reporting period, in June 2020, the Bureau built upon this effort and released an online resource to help communities form networks to increase their capacity to prevent and respond to elder financial abuse.[11] The Elder Fraud Prevention and Response Networks Development Guide (Networks Development Guide) offers planning tools, templates, and exercises to help communities create a collaborative network to fight elder fraud or refresh or expand an existing network. We hope this resource will help launch networks in fighting elder financial exploitation in communities where networks do not currently exist. For those communities with an existing network, the Networks Development Guide can help to refresh or realign its priorities and activities or expand the diversity of its membership to include new stakeholders. We encourage the use of the guide by communities across the nation to build their capacity to prevent and respond to elder financial exploitation.

Misadventures in Money Management for Active Duty Servicemembers. The Bureau made Misadventures in Money Management (MiMM) available for active duty servicemembers reporting to their first service station. MiMM is an online training that engages servicemembers with real life financial choices in a fun and interactive manner and provides a just-in-time financial curriculum. MiMM is also available to future servicemembers in the Delayed Entry Program (DEP), as well as future leaders in the Junior Reserve Officers' Training Corps (JROTC) and Reserve Officer Training Corps (ROTC).

Ensuring Clear Rules of the Road

Another tool for preventing consumer harm is rulemaking and guidance – articulating clear rules of the road for those we regulate. Rules that promote competition, increase transparency, and preserve fair markets for financial products and services. The Spring 2020 Report includes information on significant rules and orders adopted by the Bureau, as well as other significant

[10] *See* https://www.consumerfinance.gov/data-research/research-reports/convening-communities-build-elder-fraud-prevention-and-response-networks/.
[11] *See* https://www.consumerfinance.gov/practitioner-resources/resources-for-older-adults/elder-protection-networks/.

initiatives conducted by the Bureau, during the preceding year. In addition, the Spring 2020 Report includes a plan for rules, orders, and other initiatives we expect to undertake during the upcoming period. I would like to highlight just a few of our activities in this space.

Request for Information, Proposed Rule, and Final Rule: Remittances.[12] In April 2019, and December 2019, respectively, the Bureau issued a Request for Information (RFI) and a Notice of Proposed Rulemaking (NPRM) on remittance transfers. Although outside of the reporting period, it is worth noting that in May 2020, the Bureau issued a final rule, which allows certain banks and credit unions to continue to provide estimates of the exchange rate and certain fees under certain conditions, where otherwise they generally would have had to provide exact amounts due to the expiration of a statutory exception on July 21, 2020. The final rule also increases the annual threshold that determines whether an entity makes remittance transfers in the normal course of its business and is subject to the Remittance Rule from 100 to 500 remittance transfers. Entities making 500 or fewer transfers annually in the current and prior calendar years will not need to comply with the Rule. This increase will reduce the burden on over 400 banks and almost 250 credit unions that send a relatively small number of remittances—less than .06 percent of all remittances.

Debt Collection Notices of Proposed Rulemaking. In May 2019, the Bureau issued an NPRM, which would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the Fair Debt Collection Practices Act (FDCPA).[13] The Bureau's proposal would, among other things, address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The proposal builds on the Bureau's research and pre-rulemaking activities regarding the debt collection market; the conduct of debt collectors remains a significant source of complaints to the Bureau. The Bureau expects to take final action in October 2020 with regard to the May 2019 NPRM. The Bureau has also engaged in testing of time-barred debt disclosures that were not addressed in the May 2019 proposal. In February 2020, after completing the testing, the Bureau issued a supplemental NPRM related to time-barred debt disclosures.[14]

Advance Notice of Proposed Rulemaking: Home Mortgage Disclosure Act.[15] In May 2019, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR), seeking information to determine whether to propose changes to the data points that the Bureau's 2015 Home Mortgage Disclosure Act (HMDA) rule added to Regulation C or revised to require additional information. The ANPR sought information regarding the costs and benefits of these data points. Additionally, the Bureau solicited comments relating to the requirement that institutions report

[12] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-request-information-remittance-rule/; https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-notice-proposed-rulemaking-remittance-rule/; *and* https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-final-remittance-rule/.
[13] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-regulations-implement-fair-debt-collection-practices-act/.
[14] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-supplemental-nprm-on-time-barred-debt-disclosures/.
[15] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-changes-hmda-rules/.

certain business- or commercial-purpose transactions under Regulation C. The Bureau expects to issue an NPRM following up on the ANPR later this year.

Final Rules: Home Mortgage Disclosure (Regulation C)–2019 Final Rule and 2020 Final Rule.[16] In May 2019, the Bureau issued an NPRM to reconsider the thresholds for reporting data about closed-end mortgage loans and open-end lines of credit under the Bureau's 2015 HMDA rule. In October 2019, the Bureau issued the first of two final rules amending these thresholds. The October 2019 final rule amended Regulation C to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit. The Bureau also incorporated into Regulation C the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and implemented further Section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Although just outside of the reporting period, it is worth noting that, in April 2020, the Bureau issued a second final rule adjusting Regulation C's institutional and transactional coverage thresholds for closed-end mortgage loans and open-end lines of credit. Effective July 1, 2020, the final rule permanently raises the closed-end coverage threshold from 25 to 100 closed-end mortgage loans in each of the two preceding calendar years. Effective January 1, 2022, when the temporary threshold of 500 open-end lines of credit expires, the final rule sets the permanent open-end threshold at 200 open-end lines of credit in each of the two preceding calendar years.

Final Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date; Correcting Amendments.[17] In June 2019, the Bureau issued this final rule to delay the August 19, 2019, compliance date for the mandatory underwriting provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-Cost Installment Loans. Compliance with the mandatory underwriting provisions was delayed by 15 months to November 19, 2020. The Bureau also made certain corrections to address several clerical and non-substantive errors it identified in other aspects of the rule.

Advance Notice of Proposed Rulemaking and Notices of Proposed Rulemaking: Ability-to-Repay and Qualified Mortgages.[18] In July 2019, the Bureau issued an ANPR asking for information relating to the expiration of the temporary Government-Sponsored Enterprise (GSE) provision (GSE Patch) of the Bureau's Ability-to-Repay and Qualified Mortgage Rule. Under the GSE Patch, while the GSEs operate under the conservatorship or receivership of the FHFA, mortgages that are eligible for purchase or guarantee by one of the GSEs and that satisfy certain statutory criteria relating primarily to features of the mortgage are generally deemed to be Qualified Mortgages (QMs). This provision is scheduled to expire in January 2021. The Bureau's ANPR sought information to determine whether to propose changes in the General QM loan definition considering that expiration. Although outside of the reporting period, it is worth noting that in June 2020 the Bureau issued an NPRM to propose amendments to the General QM

[16] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-issues-final-hmda-rule-provide-relief-smaller-institutions/; https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-final-rule-raising-data-reporting-thresholds-under-hmda/.

[17] *See* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/.

[18] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-releases-qualified-mortgage-anpr/; *see also* https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-steps-address-gse-patch/.

loan definition that would remove the General QM loan definition's 43 percent debt-to-income (DTI) limit and that would instead establish a pricing threshold (i.e., the difference between the loan's annual percentage rate and the average prime offer rate for a comparable transaction) for loans to qualify as General QM loans. General QM loans would still have to meet the statutory criteria for QM status, including restrictions related to loan features, up-front costs, and underwriting. The Bureau also issued a second NPRM that proposed to extend the GSE Patch until the effective date of the final amendments to the General QM loan definition to help ensure a smooth and orderly transition away from the GSE Patch by (among other things) allowing the Bureau to complete this rulemaking and to avoid any gap between the expiration of the GSE Patch and the effective date of the proposed alternative. The Bureau did not propose to amend the provision stating that the Temporary GSE QM loan category would expire if the GSEs exit conservatorship. Finally, the Bureau is considering adding a new "seasoning" definition of QM, which would be proposed in a separate NPRM. This definition would create an alternative pathway to QM safe-harbor status for certain mortgages when the borrower has consistently made timely payments for a specified period.

Assessment of Significant Rule: TRID Rule (the Truth in Lending Act and Real Estate Settlement Procedures Act).[19] In November 2019, the Bureau publicly initiated the assessment of the TRID rule by requesting public comment on its plans to conduct the assessment. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. Under Section 1022(d)(2), assessment reports must be published not later than five years of the effective date of the significant rule or order. As part of its assessment, the Bureau intends to address the TRID rule's effectiveness in meeting the purposes and objectives of Title X of the Dodd-Frank Act, the specific goals of the rule, and other relevant factors. The public was invited to comment on the feasibility and effectiveness of the assessment plan, recommendations to improve the assessment plan, and recommendations for modifying, expanding, or eliminating the TRID rule, among other questions.

Business Lending Data (Regulation B). The Bureau is working to develop rules to implement Section 1071 of the Dodd-Frank Act. Section 1071 amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau resumed pre-rulemaking activities on Section 1071. In November 2019, the Bureau conducted a symposium on small business loan data collection. In addition, the Bureau has developed, and earlier this month started conducting, a survey of lenders to obtain estimates of one-time costs lenders of varying sizes would incur to collect and report data pursuant to Section 1071. The Bureau's next step will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act, in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, to hear from representatives of small businesses on which Bureau rules to implement Section 1071 may impose costs.

Although also outside of the reporting period, the Bureau recently took several notable steps in our ongoing rulemaking activity.

[19] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-to-assess-integrated-mortgage-disclosure-rule/.

Notice of Proposed Rulemaking: Amendments to Regulation Z to Facilitate Transition From LIBOR.[20] In June 2020, the Bureau released a NPRM concerning the anticipated discontinuation of LIBOR, including proposing examples of replacement indices that meet Regulation Z standards for both open-end and closed-end credit products. Some consumer credit contracts use LIBOR as a reference rate. This proposed rule would facilitate creditors for home equity lines of credit (HELOCs) (including reverse mortgages) and card issuers for credit card accounts transitioning existing accounts away from LIBOR if certain conditions are met to an alternative index on or after March 15, 2021, well in advance of LIBOR's anticipated expiration at the end of 2021. The proposed rule also would address change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to the transition away from LIBOR, to ensure that consumers are informed of the replacement index and any adjusted margin. The Bureau's work is also designed to facilitate compliance by open-end and closed-end creditors and to lessen the financial impact to consumers by providing examples of replacement indices that meet Regulation Z standards. The proposed rule also would address how the rate reevaluation provisions applicable to credit card accounts apply following the transition from LIBOR to a replacement index, to facilitate compliance by card issuers. Commencing a notice-and-comment rulemaking will enable the Bureau to facilitate compliance by creditors with Regulation Z as they transition away from LIBOR.

Notice of Proposed Rulemaking: Higher-Priced Mortgage Loan Escrow Exemption.[21] In July 2020, the Bureau released a proposal to amend Regulation Z, which implements the Truth in Lending Act (TILA), as mandated by section 108 of the EGRRCPA. The amendments would exempt certain insured depository institutions and insured credit unions from the requirement to establish escrow accounts for certain higher-priced mortgage loans. Prior to the enactment of the Dodd-Frank Act, the Federal Reserve Board (Board) issued a rule requiring the establishment of escrow accounts for payment of property taxes and insurance for certain "higher-priced mortgage loans," a category which the Board defined to include what it deemed to be subprime loans. Pursuant to the Dodd-Frank Act, the Bureau in 2013 issued a rule creating an exemption from the escrow requirement for creditors with under $2 billion in assets and meeting other criteria. Section 108 of the EGRRCPA, codified at 15 U.S.C. 1639d, directs the Bureau to conduct a rulemaking to exempt from the escrow requirement loans made by certain creditors with assets of $10 billion or less and meeting other criteria. In anticipation of future rulemaking activity, the Bureau conducted a preliminary analysis of the number of lenders potentially impacted by implementation of Section 108 of EGRRCPA. The Bureau released the analysis in late summer 2019 and it showed that a limited number of additional lenders would be exempt under Section 108 of EGRRCPA once implemented by rule. The comment period for the July proposed rule is 60 days from its upcoming publication in the *Federal Register*, and the Bureau plans to consider the comments and move expeditiously to issue a final rule providing the new exemption.

Final Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans, Revocation.[22] Earlier this month, the Bureau issued a final rule concerning small-dollar lending in order to

[20] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-facilitates-libor-transition/.
[21] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-proposed-rule-escrow-exemptions-high-priced-mortgage-loans/.
[22] *See* https://www.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf.

maintain consumer access to credit and competition in the marketplace. The final rule rescinds the mandatory underwriting provisions of the 2017 rule after re-evaluating the legal and evidentiary bases for these provisions and finding them to be insufficient. The final rule does not rescind or alter the payments provisions of the 2017 rule. In addition, the Bureau denied a petition for rulemaking from a provider asking to exclude debit cards from the Payment Provisions of the 2017 rule and issued a statement on the Bureau's approach to the payment provisions for loans large enough to exceed the Regulation Z coverage threshold.

Ensuring a Culture of Compliance

Another tool for the prevention of harm is the Bureau's supervisory authority, which can keep violations of laws and regulations from happening in the first place. Supervision is the heart of this agency – something underscored by the percentage of our personnel and resources dedicated to conducting exams. I am focused on ensuring we use this tool as effectively and efficiently as possible and that we apply it in a consistent way. Heading trouble off at the pass may not grab big headlines, but it will prevent a lot of headaches for consumers and industry.

During the period covered by the Spring 2020 Report, the Bureau published three issues of *Supervisory Highlights*:[23] *Winter 2020*, covering supervisory findings in the areas of debt collection, mortgage servicing, small-dollar lending, and student loan servicing; *Consumer Reporting Special Edition*, covering supervisory findings in the consumer reporting area; and *Summer 2019*, covering supervisory findings in the areas of automobile loan origination, credit card account management, debt collection, furnishing, and mortgage origination.

In addition, the Bureau's Fair Lending Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. As a result of the Bureau's efforts to fulfill its fair lending mission in this reporting period, the Bureau's Fair Lending Supervision program initiated 14 supervisory events at financial services institutions under the Bureau's jurisdiction to determine compliance with federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities, including the ECOA and HMDA. In the current reporting period, the Bureau issued more matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period. MRAs and MOUs direct entities to take corrective actions and are monitored by the Bureau through follow-up supervisory events.

Holding Bad Actors to Account and Deterrence through Enforcement

Education, rulemaking, and supervision alone will not prevent every violation. A purposeful enforcement regime can foster compliance, deter unlawful conduct, help prevent consumer harm, and right wrongs. Public, decisive action against wrongdoers sends a clear message to the

[23] *See* Winter 2020, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-21_2020-02.pdf; Consumer Reporting Special Edition, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf; Summer 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf.

marketplace – one that should deter unlawful behavior and support a level playing field – all while reaching a just outcome for harmed consumers. However, I am also committed to ensuring that we move as expeditiously as possible to resolve enforcement matters, whether through public action or a determination that a particular investigation should be closed.

During the period covered by the Spring 2020 Report, the Bureau brought, or continued ongoing litigation in, numerous public enforcement actions for violations of Federal consumer financial law. These activities included: an action against a bank for violating the Consumer Financial Protection Act's (CFPA) prohibition against unfair and abusive acts or practices, as well as TILA and the Truth in Savings Act and their implementing regulations;[24] three actions against brokers of contracts offering high-interest credit to veterans, many of whom were disabled, and to other consumers for violating the CFPA's prohibition against deceptive and unfair acts or practices and against providing substantial assistance to deceptive and unfair acts or practices of others;[25] an action against a bank for violating TILA and its implementing Regulation Z, including TILA provisions passed under the Fair Credit Billing Act (FCBA) and the CARD Act;[26] an action against certain entities and individuals for violating the Fair Credit Reporting Act (FCRA), the CFPA, and the Telemarketing Sales Rule (TSR) by wrongfully obtaining consumer report information, charging unlawful advance fees, and engaging in deceptive acts and practices in connection with the marketing and sale of student loan debt relief products and services;[27] an action against a company and its owner for violating the CFPA by misrepresenting the true cost of credit for loans for airline tickets to servicemembers and their families, failing to provide certain required disclosures about the terms of credit in violation of TILA and Regulation Z, and failing to disclose the total costs of purchasing airline tickets through financing in the course of telemarketing the loans in violation of the TSR;[28] an action against a company for engaging in deceptive practices in violation of the CFPA by overcharging servicemembers and their families for a debt-cancellation product that was offered in connection with loans for airline tickets, and for violating Regulation V, which implements FCRA;[29] an action against an employment background screening company for violating FCRA;[30] an action against debt relief companies for engaging in deceptive practices and charging unlawful advance fees in connection with the marketing and sale of student loan debt relief services to consumers;[31] an action against a debt collection company and its owner for violating the CFPA, FCRA, Regulation V, and the

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[24] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-against-fifth-third-for-allegedly-opening-unauthorized-accounts-enrolling-consumers-in-unauthorized-products/.

[25] *See* https://www.consumerfinance.gov/policy-compliance/enforcement/actions/candy-kern-fuller-howard-sutter-iii-and-upstate-law-group-llc/; https://www.consumerfinance.gov/policy-compliance/enforcement/actions/snyder-et-al/; https://www.consumerfinance.gov/about-us/newsroom/cfpb-arkansas-state-ag-settle-brokers-high-interest-credit-offers/.

[26] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-action-against-citizens-bank/.

[27] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-monster-loans-thomas-chou-sean-cowell-and-related-compan*ies/*; *see also* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-action-against-monster-loans-lend-tech-loans-and-student-loan-debt-relief-companies/.

[28] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-military-travel-lender-and-servicer/.

[29] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-military-travel-lender-and-servicer/.

[30] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-employment-background-screening-company/.

[31] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-action-against-student-loan-debt-relief-operation/.

FDCPA;[32] an action against a foreclosure relief services company, its CEO, and its auditor, for engaging in deceptive and abusive acts and practices and charging unlawful advance fees in connection with the marketing and sale of financial advisory and mortgage assistance relief services to consumers;[33] an action against a debt-collection company for violating the FDCPA and CFPA;[34] an action against a remittance transfer services provider for violating the Remittance Transfer Rule under Electronic Fund Transfer Act (EFTA), and the CFPA;[35] an action against a credit reporting agency for engaging in unfair and deceptive practices in connection with a data breach that impacted approximately 147 million consumers;[36] an action against a company set up to hold and manage private student loans for providing substantial assistance to unfair acts and practices;[37] an action against a mortgage lender for violating HMDA and Regulation C by submitting mortgage-loan data for 2014 to 2017 that contained errors;[38] an action against a mortgage servicer for violating the CFPA, the Real Estate Settlement Procedures Act, and TILA;[39] an action against a debt collection law firm for violating the FDCPA and CFPA;[40] an action against a company for violating the TSR by requesting and receiving payment of prohibited upfront fees for their credit repair services and for violating the TSR and CFPA by making deceptive representations or substantially assisting others in doing so;[41] and an action against a student loan servicing company for engaging in unfair practices in violation of the CFPA by failing to adjust in a timely manner principal balances of student loans made under the Federal Family Education Loan Program.[42]

In addition to the actions taken above, the Bureau referred four matters to the U.S. Department of Justice (DOJ) about discrimination pursuant to Section 706(g) of the ECOA. The referrals involved redlining in mortgage origination based on race and/or national origin, discrimination in mortgage origination based on receipt of public assistance income, and discrimination in auto origination based on race and national origin. Like other federal bank regulators, the Bureau is required to refer matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.

During the reporting period, the Bureau continued to pursue ongoing litigation, as well as implementation and oversight of compliance with the pending public enforcement orders that were entered by federal courts or issued by the Bureau's Director in prior years.

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[32] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-fair-collections-outsourcing-and-michael-e-sobota/.
[33] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-andrew-lehman-michael-carrigan-proposed-settlement/.
[34] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-asset-recovery-associates/.
[35] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-maxitransfers-corporation/.
[36] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-states-announce-settlement-with-equifax-over-2017-data-breach/.
[37] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-student-cu-connect-cuso-over-itt-private-loan-program/.
[38] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/.
[39] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-bsi-financial-services/.
[40] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-forster-garbus-llp/.
[41] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-lexington-law-pgx-holdings-and-related-entities/.
[42] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-conduent-education-services/.

Activities and Data Supporting All of the Tools

The mission of the Bureau is to protect consumers, which, as I have discussed today, we carry out through education, regulation, supervision, and enforcement. These tools are all provided in the Dodd-Frank Act, and I am determined to use the Bureau's capabilities to achieve the best results for American consumers. That includes using research, market monitoring, stakeholder outreach, and the complaint process to inform the use of our tools. Complaints, along with other inputs, give us insight into consumer experiences in the marketplace that we analyze and use to improve our mission execution. Related to the pandemic, the Bureau has experienced record numbers of complaints that underscore this point. In March 2020, we saw a notable increase in inquiries related to trouble making mortgage payments. Those inquiries also highlighted concerns about when deferred payments would be due after the CARES Act forbearance period. The complaints, in addition to stakeholder feedback from the mortgage industry and consumer advocates among others, led the Bureau to work expeditiously with our interagency colleagues to address the lump sum payment issue and the concerns regarding consumer confusion around CARES Act forbearance options.

During the reporting period, we also continued to roll out enhancements to the complaint database announced in September 2019. Those enhancements included integration of financial information and resources into the complaint process to help address questions and better inform consumers before they submit a complaint, as well as modification of disclaimers to provide better context to the published data. Although outside of the reporting period, it is worth noting that in April 2020 and July 2020, respectively, the Bureau unveiled a geospatial and trends view. The new trends and map views build upon the existing capability to filter and search, and emphasize aggregation and analysis of information, while continuing to make all the underlying data available for closer examination. These new capabilities allow users to gain deeper insight into changes in the location, type, and volume of complaints over time, which provides valuable context into consumers' experiences in the financial marketplace.

While the Bureau publishes complaint data and reports on complaint trends annually in the Consumer Response Annual Report, here is the data for the period April 1, 2019, through March 31, 2020. The Bureau received approximately 372,700 consumer complaints.[43] This is an approximately nine percent increase from the prior reporting period.[44] Consumers submitted approximately 84 percent of these complaints through the Bureau's website and seven percent via telephone calls. Referrals from other state and federal agencies accounted for six percent of complaints. Consumers submitted the remainder of complaints by mail, email, and fax. The Bureau sent approximately 304,200 (82 percent) of complaints received to companies for review

[43] This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. The Bureau does not verify all the facts alleged in complaints and does not publish complaints in the Consumer Complaint Database until the company responds, confirming a commercial relationship with the consumer, or after it has had the complaint for 15 days, whichever comes first. For more information on our complaint process refer to the Bureau's website at https://www.consumerfinance.gov/complaint/process.

[44] The prior reporting period, October 1, 2018, to September 30, 2019, reported 342,500 consumer complaints. See Consumer Fin. Prot. Bureau, Semi-Annual Report Fall 2019 (Feb. 2020.), available at https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2019.pdf.

and response.[45] Companies responded to approximately 95 percent of complaints that the Bureau sent to them for response during the period. The remaining complaints were either pending response from the company at the end of the period or did not receive a response. Company responses typically include descriptions of steps taken or that will be taken in response to the consumer's complaint, communications received from the consumer, any follow-up actions or planned follow-up actions, and a categorization of the response. Companies' responses describe a range of relief. Examples of relief include correcting inaccurate data provided or reported in consumers' credit reports; stopping harassing calls from debt collectors; correcting account information; issuing corrected documents; restoring account access; and, addressing formerly unmet customer service issues. Ninety-nine percent of complaints sent to companies received timely responses.

Legislative Reforms

Earlier this year, the Bureau requested that Congress advance proposed legislation[46] that would authorize the Bureau to award whistleblowers who report violations of Federal consumer financial law.[47] The proposal would amend Title X of the Dodd-Frank Act and provide authority to establish a whistleblower award program. The incentive created for employees to report wrongdoing to the Bureau will assist in advancing enforcement cases, especially as it relates to fair lending violations. Under the proposed legislation, in cases where a whistleblower provides voluntary information that leads to a successful enforcement action, the Bureau will be able to pay an award based on a percentage of the monetary sanctions collected in the action. The legislative proposal was part of a suite of initiatives to advance one of my key priorities: prevention of consumer harm.

In addition, in 2019, the Bureau requested that Congress provide us with clear legal authority to supervise financial institutions for Military Lending Act compliance. As part of that request, the Bureau transmitted proposed legislative language that would achieve this goal. I continue to stand ready to work with members of this Committee to provide the Bureau with this authority to assist in our work to prevent harm to our servicemembers and their families. The Bureau continues to use its education and enforcement tools in this space, but the authority to supervise would make these efforts even more effective.

Conclusion

My testimony today does not attempt to cover all the things the Bureau does to meet our mission. The full Report, which is enclosed with my testimony, covers more than I can highlight in the time I have today. As reflected in my opening message in the Report, I want to close my

[45] The Bureau referred 13 percent of the complaints it received to other regulatory agencies and found five percent to be incomplete. At the end of this period, 0.4 percent of complaints were pending with the consumer and 0.4 percent were pending with the Bureau. Percentages in this section of the report may not sum to 100 percent due to rounding.
[46] *See* https://www.consumerfinance.gov/documents/8627/cfpb_whistleblower-proposed-statutory-text_2020-03.pdf.
[47] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-key-steps-prevent-consumer-harm-proposes-whistleblower-award-program/.

testimony today by commending the work of all Bureau employees. During this global health emergency, our team truly rose to the occasion as they grappled with challenges in their own lives, protecting their health and the health of their loved ones, and working from home. In the midst of COVID-19, the Bureau staff continue to be focused on protecting consumers in the financial marketplace. That effort entails ensuring consumers have information on their rights, protections, and options as well as ensuring financial institutions are in compliance with Federal consumer financial law. We will continue to monitor the evolving landscape across all the markets we regulate. And lest I forget, the work of this Committee helps all of us at CFPB meet our mission. I look forward to our continued work in the next year on behalf of American consumers.

Thank you again for the opportunity to present this Semi-Annual Report of the Bureau's work in support of American consumers.

CONSUMER FINANCIAL PROTECTION IN THE COVID-19 CRISIS: AN EMERGENCY AGENDA

Richard Cordray, Diane E. Thompson,** and Christopher L. Peterson****

ABSTRACT

The coronavirus pandemic is creating overwhelming needs, in three waves. First is the health crisis; second is the macroeconomic crisis created by the abrupt halt in much business activity; and now third is a consumer crisis, as households are faced with total or partial job loss, sharp income decline, and potential loss of health care. Millions of Americans are falling behind on their bills, including major obligations like mortgages, rent, car payments, and other forms of household debt. At the same time, they face a financial industry itself struggling to respond to the compounding crises and widespread confusion as to what the new rules of the road are as financial institutions, states, localities, and the federal government scramble to respond. The result is fertile ground for consumer scams. The authors call upon the Consumer Financial Protection Bureau to recognize and respond to this new consumer crisis, providing an action plan of more than a dozen practical steps that the CFPB can and must take immediately to prevent widespread consumer harm. The action plan starts with the most basic and essential step of collecting and disseminating timely and accurate information for both consumers and policymakers. The CFPB must address pressing consumer risks in four primary areas: foreclosure prevention, non-mortgage debt forbearance, oversight of debt collectors, and supervision of credit reporting companies. In each of these primary areas, and on all the issues discussed in this paper, the CFPB must use all of its authorities to ensure that crucial relief is delivered to distressed consumers.

I. INTRODUCTION

The coronavirus pandemic is creating overwhelming needs. First, above all else, are the dire health problems threatening the lives of so many Americans. Second is dealing with the fallout to the economy from the abrupt halt to

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much business activity throughout the country. But a third crucial need, which follows closely on the heels of the second, is to shield households and families from the direct economic harms they now face. We must provide people with the safeguards they will need to cope with their financial circumstances and to protect them against harm from scams, fraud, and predatory conduct.

The Consumer Financial Protection Bureau (CFPB) is the sole federal agency singularly focused on protecting consumers in the financial marketplace. Born out of the last financial crisis, it has an essential role to play right now in the emerging economic crisis. (State financial regulators and attorneys general can also be of considerable help.) Thus far, however, the CFPB has been proceeding as if it is oblivious of the new and urgent risks facing consumers. It is relaxing various duties for financial companies and continuing to push the industry to comment on regulatory initiatives at a time when the focus needs to be placed on the grave economic hardship now confronting millions of Americans.[1] The CFPB has the legal authority needed to take urgent steps to prevent many consumers from sliding off the financial cliff.[2] This brief essay highlights steps the CFPB, and those charged with congressional oversight of the agency, must take immediately to minimize harm to the American public.

II. A CFPB EMERGENCY AGENDA

We urge the CFPB, and those charged with congressional oversight of the agency, to lose no further time in ensuring that immediate action is taken on the following points:

A. Find Out from Consumers What Is Happening and Share the News Widely

Right now, the CFPB should be assembling a detailed picture of what is going on in the consumer marketplace, and, above all, what people need in this time of crisis, using all the means at its disposal. We can't expect our public health authorities to resolve the COVID-19 pandemic without adequate testing to see who has the disease. By the same token, the CFPB can hardly do its job without diagnosing the problems in its sphere of work. For example,

[1] Press Release, CFPB, CFPB Provides Flexibility During COVID-19 Pandemic (Mar. 26, 2020), https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/; Press Release, CFPB, Consumer Financial Protection Bureau Issues Request for Information to Assist Taskforce on Federal Consumer Financial Protection Law (Mar. 27, 2020), https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-rfi-to-assist-taskforce-on-federal-consumer-financial-protection-law/.

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111- 203, 124 Stat. 1 76 (2010) (codified as amended in scattered sections of 7, 12, 15, 22, 31, 42 U.S.C. (2012)).

the CFPB has a first-class consumer complaint response system that provides real-time information from consumers all over the country on what is happening in their lives.[3] The CFPB should use it to learn from consumers what exactly is happening and make the answers publicly available. The CFPB's offices focused on special populations (seniors, servicemembers, students, and the economically vulnerable) can also learn and share about the problems facing those groups of consumers.[4] This information can play an important role in guiding the CFPB's response to the crisis.

B. *Help People Avoid Foreclosure*

In the last financial crisis, millions of people who could not make their mortgage payments lost access to their housing. Sporadic and inconsistent efforts were made around the country seeking to negotiate with mortgage lenders and mortgage servicers to keep people in their homes through loan modifications and payment forbearance. In the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Congress has provided a much simpler mechanism for many consumers to seek and obtain relief from foreclosure if they miss mortgage payments during the crisis.[5] The CFPB must also use its supervision authority to monitor the banks and financial companies, making sure they follow through in making such relief available to consumers. For those mortgage loans that are not covered by the CARES Act, the CFPB should work with lenders and servicers to try to develop similar arrangements for payment forbearance and loan modifications.

C. *Help People Avoid Eviction*

More millions of Americans will lose access to their housing if they cannot make rent payments and are evicted. The CFPB should monitor closely the information being made available by public officials about restrictions on evictions in their jurisdictions and help direct consumers to where they can get any relief. Many states already have due process protections that constrain the eviction process, and since the crisis emerged, many governors have declared states of emergency allowing the use of extraordinary powers to modify

[3] CFPB, CONSUMER RESPONSE ANN. REP. (2020), https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.

[4] 12 U.S.C. §§ 5493(e), (g); 5535; Bureau Structure, CFPB, https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/ (last visited Apr. 4, 2020).

[5] The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4022 (2020).

business activity in the public interest, including restrictions on eviction.[6] More states likely will follow their lead in the coming weeks and months, and the CFPB needs to stay on top of these developments and inform the public accurately about what relief is available to them.

D. *Make Sure Mortgage Servicers Do Their Jobs*

The CFPB thus far has afforded relief to many financial companies by relaxing their reporting requirements.[7] In some areas, that may be acceptable or even desirable. But in other areas, allowing companies to throw up their hands and wriggle off the hook from fulfilling their legal obligations will be disastrous for consumers. We saw in the last crisis how their indifference and ineptitude led many mortgage servicers to push homeowners into needless foreclosures that undermined our communities.[8] Already, there are worrying signs that homeowners are getting the runaround as they seek forbearance or other relief.[9] New rules were put in place several years ago to address these problems, and the mortgage servicers cannot now be excused from complying with these requirements when consumers need them the most. Servicers also must live up to the letter and *spirit* of the CARES Act by helping consumers avoid foreclosures wherever possible, rather than using the money made available by Treasury and the Federal Reserve simply to pad their bottom lines. They should make all efforts to develop measures for call centers, including remote access, that will allow for reasonable response times. This is not an area where the CFPB can relax the standards; close supervision and enforcement are essential here to ensure maximum execution. If that does not happen,

[6] *See, e.g.*, State of New York Executive Chamber, Exec. Order No. 202.8, Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency (Mar. 20, 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf (suspending enforcement of evictions for ninety days).

[7] CFPB, Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act (Mar. 26, 2020), https://files.consumerfinance.gov/f/documents/cfpb_hmda-statement_covid-19_2020-03.pdf; CFPB, Statement on Supervisory and Enforcement Practices Regarding Bureau Information Collections for Credit Card and Prepaid Account Issuers (Mar. 26, 2020), https://files.consumerfinance.gov/f/documents/cfpb_data-collection-statement_covid-19_2020-03.pdf.

[8] *Problems In Mortgage Servicing From Modification To Foreclosure: Hearing Before the Comm. on Banking, Housing, and Urban Affairs*, S. Hrg. 111-987, 111 Cong., at 51 (Nov. 16 and Dec. 1, 2010) (Prepared Statement of Senator Sherrod Brown); FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT, at 402-410 (2011).

[9] Orla McCaffrey & Andrew Ackerman, *Struggling Borrowers Want to Pause their Mortgage Payments. It Hasn't Been Easy,* WALL ST. J., April 3, 2020, https://www.wsj.com/articles/mortgage-relief-from-coronavirus-crisis-is-off-to-rocky-start-11585906200.

millions of Americans will lose their homes needlessly because of poor servicer performance.

E. *Help Lenders and Public Officials Fashion Ways to Reduce Loan Delinquencies and Defaults*

Officials at the federal, state, and local level are championing new initiatives to help minimize loan delinquencies and defaults, not only with respect to housing but across the entire spectrum of consumer finance. The CFPB should be in the lead in pressing the companies to help, such as by waiving overdraft fees, NSF fees, or late fees and by providing forbearance on loan payments. These initiatives must be simple and, if not automatic, must be easy to access; complexity was the Achilles heel of many such programs a decade ago.[10] The CFPB can help identify and clear away obstacles to execution, as for example the recent controversy over whether Social Security recipients who did not file tax returns would receive stimulus checks.[11]

F. *Help Achieve Clear Communication Between Lenders and Consumers*

The CFPB can help lenders and other public officials provide reliable guidance to help people navigate these unfamiliar programs and initiatives to reduce loan delinquencies and defaults. This means getting the facts straight as well as ensuring that the communications are phrased in plain language that is accessible to most Americans (or translated where appropriate to reach more consumers). The more clearly people can understand their rights, the more likely they are to receive the intended assistance and support.

G. *Monitor Lenders Closely to Ensure that Promises Made Are Promises Kept*

Lenders will be making representations to their customers about how they are willing to handle payment shortfalls, including debt collection efforts and credit reporting. The CFPB should work with state and local officials to make sure that the promises lenders make—and consumers rely on—are being kept

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[10] FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT, at 410 (2011); Sumit Agarwal, et al., *Policy Intervention in Debt Renegotiation: Evidence from the Home Affordable Modification Program*, Fisher College of Business Working Paper No. 2012-03-020; Charles A. Dice Center Working Paper No. 2012-20, at 36-37 (February 15, 2016), https://ssrn.com/abstract=2138314.

[11] Kelly Phillips Erb, *After Backlash, Treasury Concedes Social Security Recipients Don't Need to File A Tax Return to Get Stimulus Check*, FORBES, Apr. 1, 2020, https://www.forbes.com/sites/kellyphillipserb/2020/04/01/after-controversy-treasury-confirms-social-security-recipients-dont-need-to-file-a-tax-return-to-get-a-stimulus-check/#2d01963266f3.

rather than becoming a frustrating game of bait and switch. Companies that deceive or mislead their customers are committing clear violations of both federal and state law.[12]

H. Provide Vigorous Oversight of Debt Collectors

As more indebted consumers begin to face delinquency and default, there will be more scope for harassment and abuses by some debt collectors. This is especially true as borrowers find it more difficult to repay their loans, and debt collectors find it harder to get compensated for debts they are unable to collect. The CFPB and state officials can issue guidance reminding debt collectors that the Fair Debt Collection Practices Act prohibits any conduct "the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt"[13] or any conduct that is "unfair or unconscionable."[14] The CFPB should issue guidance about what parameters debt collectors should observe in the current crisis to avoid engaging in conduct that is abusive or unconscionable, such as refraining from initiating new debt collection lawsuits, garnishing wages, or attaching bank accounts. The CFPB must also ensure that contracted debt collectors abide by all the terms newly set by the original lenders for loan modifications or payment forbearance to deal with the crisis.

I. Closely Monitor Efforts to Repossess Vehicles

There is an entire industry whose business is repossessing automobiles. Close efforts to police those companies are especially important for those consumers facing possible repossession of their vehicles. In much of the country, this is the only lifeline many families have: to get to work, to secure food, or to be able to access emergency medical care. The CFPB should lead an effort to work with Congress on putting in place a moratorium on auto repossessions for the duration of the crisis and its economic aftermath. It should also take steps to ensure that consumers facing possible repossession of their vehicles are informed, treated fairly, and have the remaining equity in their car or truck fully applied to the balance of their loan.[15]

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[12] 12 U.S.C. § 5536(a)(1)(B). *See, e.g.,* N.Y. GEN. BUS. LAW § 349(a) (2020) ("Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.").

[13] 15 U.S.C. § 1692d.

[14] *Id.* at § 1692f.

[15] *See* CFPB, CFPB EXAMINATION PROCEDURES: AUTO FINANCE at 45-50 (2015), https://files.consumerfinance.gov/f/201506_cfpb_automobile-finance-examination-procedures.pdf.

[Discussion working paper]

J. *Make Sure Credit Reporting Companies Are Getting Things Right for Consumers*

The CFPB has just issued guidance to credit reporting companies that they will not be expected to follow legal requirements in addressing and resolving disputes about credit reports for the duration of the economic crisis.[16] That guidance is harmful to consumers and should be rescinded *immediately*. On the contrary, as more consumers fall behind on their debts, it will become all the more crucial that the information in their credit files be kept accurately—and if they dispute errors, they can get them fixed on a timely basis. As creditors work with consumers on various forms of accommodation, there is a risk that accounts will be misreported as late when in fact the consumer is paying what is expected. Errors made in those notations would block people from getting the credit they deserve and hamper their economic opportunities far beyond the pandemic and its aftermath.

K. *Ensure Creditors Give Appropriate Latitude to Consumers in Reporting Credit Information*

The standards for furnishing information to the national consumer reporting companies specify that accounts affected by a "natural or declared disaster" are to be reported as such with a special code that preserves people's credit from being damaged.[17] Furthermore, if payment is deferred or the loan is in forbearance, that should be reported accurately as well, again bolstering people's access to credit. The CFPB needs to make clear that failure to furnish this information accurately to the credit reporting companies is a violation of the Fair Credit Reporting Act, as Congress recently has made explicit, and the CFPB should supervise both the companies that furnish information and the consumer reporting agencies to hold them accountable for following the law. The CFPB could also encourage furnishers and credit reporting agencies to be proactive in using the disaster code, thus alleviating the current burden on consumers to have to inform furnishers and creditors that the consumer's

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[16] CFPB, Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act at 2-3 (Apr. 1, 2020), https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

[17] Consumer Data Industry Association, Credit Reporting Resource Guide: FAQ 58—Reporting of Natural or Declared Disaster (2019), https://crrg.s3.amazonaws.com/2019+CRRG+FAQ+58.pdf. *See also* CFPB, NATURAL DISASTERS AND CREDIT REPORTING: QUARTERLY CONSUMER CREDIT TRENDS at 2 (2018), https://files.consumerfinance.gov/f/documents/bcfp_quarterly-consumer-credit-trends_report_2018-11_natural-disaster-reporting.pdf (discussing consumer reporting trends in natural disasters).

account should be covered by the special disaster code before they are entitled to such relief.

L. Work with Other Federal and State Officials to Police Scams and Frauds

Fraudsters and scam artists will proliferate with novel illegal schemes designed to take money out of people's pockets just when they need it to get by. The government must be aggressive in responding to fraudulent and predatory behavior. This kind of despicable conduct—taking advantage of the misfortunes of others—must be monitored closely and prosecuted harshly and publicly to deter imitators. Scams are already popping up around testing and treatment; financial scams will shortly follow, such as phishing scams demanding sensitive banking and financial information to get stimulus funds, or phony offers of loss mitigation or credit repair assistance. The CFPB is in a good position to help coordinate such work around the country and to keep consumers closely informed about the kinds of scams and frauds that are emerging.

M. Require Brief Summary Reports to Monitor Industry Performance

The CFPB's supervision program covers the largest financial companies that extend household credit in the United States.[18] It also has the authority to require financial companies that it may not supervise to provide information.[19] The CFPB should use these tools to find out from industry what exactly is happening in this fast-moving environment by requiring companies to provide brief summary reports, on a bi-weekly basis, on issues such as call volume, hold times, accounts placed in forbearance, accounts missing a payment, and whatever else may be useful to assess the status of the economic crisis affecting consumers. The anonymized data should also be made public. This will help identify the best practices the industry is developing to address the growing economic crisis. The CFPB's market-monitoring teams were designed for precisely this purpose.

N. Act as a Trusted Information Clearing House

Vulnerable consumers living at the margin will be badly hurt by any recession. Even before the current crisis, about 40% of Americans did not have savings to cover three months of expenses and millions of them could not even cover a $400 emergency.[20] People who lose their jobs, or are put on

[18] 12 U.S.C. §§ 5515(a), (b); 5514(a)(1)(b), (b).
[19] *Id.* at §§ 5512(c)(4); 5516(b).
[20] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, REPORT ON THE

restricted work hours, will suffer persistent shortfalls and need information on how to cope with their situations. For example, consumers have the right to stop automatic withdrawals from their bank accounts, and the CFPB should remind them that they can take this basic step to manage their finances more flexibly and protect themselves from overdraft fees during a period in which their income may be reduced or variable. To take another example, as consumers will be receiving stimulus payments, the CFPB can advise them about how to avoid check-cashing fees and should urge companies to waive check-cashing fees for government stimulus and benefits checks during the economic crisis. Some of these answers will be uniform across the country; others may vary from state to state. The CFPB should collect and distribute this kind of crucial information, keeping up to date with ongoing developments. The CFPB's excellent website—consumerfinance.gov—already deals with a large volume of consumers and now must establish itself as the go-to spot for trusted information about how people can get the right information to face these unfamiliar situations.

O. *Stop All Non-Essential Rulemaking Work*

All non-essential rulemaking work should be halted so that it does not divert the CFPB's limited human resources, including economists, from these critical efforts. For the next several months, it is also likely that neither industry nor consumers are likely to have the bandwidth to pay attention to requests for information or otherwise to participate in the rulemaking process in any event. This step should include the CFPB's latest request for information on its new task force charged with rewriting federal consumer financial law; nothing could possibly justify such a priority right now.[21]

P. *Make Sure the Temporary Use of Virtual Exams Can Still Be Effective*

The CFPB has appropriately announced that its examiners are largely working from home duty stations to cut down on unnecessary travel and protect both examiners and industry staff.[22] To carry out virtual exams

ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2018, at 21 (May 2019), https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf.

[21] Request for Information to Assist the Taskforce on Federal Consumer Financial Law, 85 FED. REG. 18214 (Apr. 1, 2020).

[22] Brendan Pedersen, Hannah Lang, & Kate Berry, *Bank Regulators Are Open for Business, But Not Business as Usual*, AM. BANKER, Mar. 16, 2020, https://www.americanbanker.com/news/bank-regulators-are-open-for-business-but-not-business-as-usual.

successfully, however, the CFPB needs to make sure that it can still identify trouble spots as effectively as it can with on-site exams. This will likely require greater cooperation with industry, including requiring companies to provide more information up front to help the CFPB appropriately scope the focus of the exam. When its resources are stretched thin, as they surely are now, it is more important than ever that the CFPB strategically target its supervisory activity to protect consumers in areas that pose special risks during the current crisis, such as mortgage servicing and debt collection.

III. CONCLUSION

There is much important work for the CFPB to do, and it demands an urgent focus. The economic crisis emerging in this country creates enormous and unavoidable problems and risks for many consumers. It is in difficult times that strong consumer protections are needed the most. The CFPB is well positioned to make a difference for large numbers of Americans, but it must confront the circumstances and act immediately to mitigate the harmful effects of this crisis. Those with oversight of the CFPB, including the American public, must make sure this happens.

National Association of Consumer Advocates

July 28, 2020

The Honorable Maxine Waters, Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Hon. Patrick McHenry, Ranking Member, Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Waters, Ranking Member McHenry, and Members of the Committee:

The National Association of Consumer Advocates (NACA), a nonprofit organization writes to share our views for the hearing on the Consumer Financial Protection Bureau's (CFPB or bureau) Semiannual Report to Congress. In short, the CFPB's lackluster performance over the past year, particularly in light of the extraordinary health and economic crisis this country now faces, puts the U.S. financial marketplace and the millions of consumers who participate in it at risk.

The bureau has shirked its responsibilities to American consumers during the ongoing COVID-19 pandemic despite having received record numbers of complaints from people devastated by the financial impact of the crisis. Since the presidential declaration of emergency in March, the bureau's substantive responses related to the crisis have mostly involved relieving industry players from regulatory requirements and issuing do-it-yourself advice to consumers. With liberal use of the term "regulatory flexibility" in its public announcements, the CFPB's actions have included restricting the flow of critical data reporting from financial entities and permitting them to delay their compliance with federal financial laws.[1]

In late April, 42 of NACA's member leaders representing 32 states who themselves have substantial experience in protecting the rights of consumers in the marketplace, wrote a letter to Director Kathleen Kraninger asking her to shield consumers from the worst outcomes in the ongoing economic fallout caused by the pandemic.[2] They urged her to properly oversee the regulated financial entities' responses to the pandemic, noting that the CFPB had already received reports in its consumer complaint database that mortgage servicers had misled or mistreated consumers, and potentially violated CARES Act provisions.

[1] Kate Berry, *5 ways the CFPB has eased industry's coronavirus burden*, AMERICAN BANKER, https://www.americanbanker.com/list/5-ways-the-cfpb-has-eased-industrys-coronavirus-burden
[2] Letter from NACA state chairs to Kathleen Kraninger, Director, Consumer Financial Protection Bureau, April 30, 2020, https://www.consumeradvocates.org/sites/default/files/NACA_statechairs_CFPB04302020.pdf.

In addition, during this time, the bureau insisted on proceeding with non-essential rulemaking, such as issuing a final rule on payday loans. The revamped rule, which gutted the crucial "ability to repay" protections that the original 2017 rule had provided, encourages further proliferation of high-cost loans that lure vulnerable consumers into debt traps.

Finally, the bureau has used its time and resources on far less important projects, such as continuing the work of the severely flawed Taskforce on Federal Consumer Financial Law (Taskforce). Over the last year, CFPB leadership deployed agency resources to form this Taskforce, including hiring outside parties who, based on their backgrounds, have a clear one-sided idealogy to achieve ends that may be contrary to the bureau's mission and the statutory mandates of Title X of the Dodd-Frank Act. In June, NACA, along with the U.S. Public Interest Research Group, consumer law expert Professor Kathleen Engel, and Democracy Forward, sued the CFPB and Director Kathy Kraninger alleging that they unlawfully created, and are operating, the Taskforce in violation of the Federal Advisory Committee Act (FACA).[3]

Since the CFPB's inception, NACA has strongly supported the bureau's mission to protect consumers and has commended the bureau's tremendous commitment to curbing predatory and illegal business practices in the consumer finance sector. But the evidence shows that its fundamental priority has changed from one of protecting consumers to arguably indulging regulated financial entities.

We urge this Committee to continue its vigorous oversight of the bureau and to press upon its leadership to redirect the bureau's focus to once again fulfilling the purpose for which it was created.

Thank you for considering our views. For more information, please contact me at Christine@consumeradvocates.org or (202) 452-1989.

Sincerely,

Christine Hines
Legislative Director

[3] Joint press release, June, 16, 2020, https://www.consumeradvocates.org/media/press-release/lawsuit-consumer-advocates-allege-cfpb-created-unlawful-taskforce

Consumer Complaints Break Records

CFPB Must Take Powerful Action To Protect Consumers In Pandemic

July 2020

Written by:
Ed Mierzwinski and Mike Litt, U.S. PIRG Education Fund
Gideon Weissman, Frontier Group

U.S. PIRG
Education Fund

Introduction

On the 10th anniversary of the Consumer Financial Protection Bureau's (CFPB) establishment as a centerpiece of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the law passed on 21 July 2010 and the Bureau opened its doors one year later), we look at the latest results from the CFPB's public Consumer Complaint Database.[1] The complaint database is a jewel of the CFPB's available tools to make financial markets work better.

Despite a long-running campaign by CFPB opponents to eliminate the public consumer complaint database, it has survived the change in administrations. In September 2019, CFPB Director Kathy Kraninger announced that the CFPB database would remain public.[2]

By law,[3] two primary missions of the CFPB are providing consumers with "timely and understandable information to make responsible decisions about financial transactions," and ensuring that "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation." The CFPB's public Consumer Complaint Database helps accomplish both missions.

This snapshot finds that, as the COVID-19 pandemic wreaks havoc on the financial situations of millions of Americans, consumer complaints to the CFPB have spiked to record levels. We note that the CFPB has reported similar results during this time of

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[1] Access the database at https://www.consumerfinance.gov/data-research/consumer-complaints/

[2] U.S. PIRG Release, "Good news for consumers: A big database of consumer complaints will stay public," 3 October 2019, available at https://uspirg.org/blogs/news-briefs/usp/good-news-consumers-big-database-consumer-complaints-will-stay-public

[3] CFPB's "Purpose, objectives and functions," available at https://uscode.house.gov/view.xhtml?req=(title:12%20section:5511%20edition:prelim)

unprecedented financial uncertainty; the CFPB must take powerful action to protect consumers in the financial marketplace.[4]

Yet, rather than expanding its consumer protection mission, the CFPB has weakened consumer protections since the start of the pandemic. On 7 July, it weakened protections against predatory payday lenders.[5] The CFPB also issued recent guidances to firms, including consumer reporting agencies, that it will not enforce certain consumer law violations during the pandemic.[6] Further, the CFPB rejected consumer organization requests to halt all regulatory actions not related to helping consumers during the pandemic, including to halt the work of a deregulatory "Task Force on Federal Consumer Law." In response, groups including our sister organization U.S. PIRG sued the CFPB over the illegal establishment and structure of that Task Force.[7]

[4] CFPB Presentation, "Joint Advisory Committee Meeting Presentations," 1 May 2020, available at https://files.consumerfinance.gov/f/documents/cfpb_presentations_combined-advisory-committee-meeting_2020-05.pdf

[5] U.S. PIRG Release, "CFPB Greenlights Predatory Payday Loans Amid COVID-19 Pandemic," 7 July 2020, available at https://uspirg.org/news/usp/cfpb-green-lights-predatory-payday-loans-amid-covid-19-pandemic; CFPB Release, "CFPB Issues Final Rule On Small Dollar Lending," 7 July 2020, available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-final-rule-small-dollar-lending/

[6] CFPB Release, "CFPB Issues Credit Reporting Guidance During COVID-19 Pandemic," 1 April 2020, available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-credit-reporting-guidance-during-covid-19-pandemic/

[7] U.S. PIRG Release, "Consumer Advocates Sue CFPB For Granting Financial Services Industry Illegal Influence Over Consumer Protection Policy," 16 June 2020, available at https://uspirg.org/news/usp/consumer-advocates-sue-cfpb-granting-financial-services-industry-illegal-influence-over

Complaint data suggest that the pandemic has created increasing problems for consumers in the financial marketplace

An analysis of the Consumer Complaint Database shows that complaints about financial products have risen dramatically over the last four months — with many complaints explicitly mentioning the COVID-19 pandemic.[8]

Complaints have seen a dramatic increase during the pandemic

Since the beginning of the pandemic in March 2020, public complaints have skyrocketed, each month setting a new record for monthly complaint volume since the launch of the database in 2011.

Table 1. Total complaints for March through June set a new record each month of the pandemic

Month (2020)	Complaints
March	**30,326**
April	**34,930**
May	**36,971**
June	**37,286**
Total	**139,513**

[8] Data analysis based on a July 14th download of consumer complaints from 1 January 2019 - 30 June 2020. Note: Downloads on later dates will yield slightly higher numbers as the Bureau may post additional complaints based on "date received," after more complained-about firms complete responses to the Bureau. Complaints available in the public database also differ from those assessed by CFPB-produced reports, including the CFPB's latest Complaint Bulletin report (16 July 2020).

Figure 1. Complaint levels during the pandemic are up 50% over complaint levels March-June 2019.

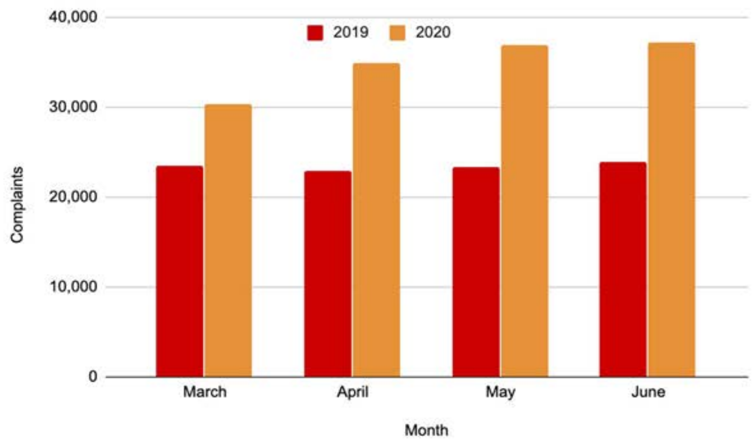
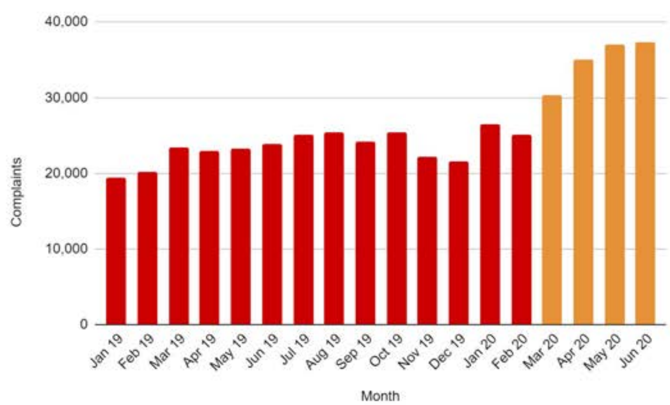


Figure 2. The CFPB received a record number of complaints in March, and complaint volume has increased each month since



Complaints have increased most dramatically compared to 2019 for certain financial products and services. Complaints about credit reporting, the most complained about financial product in the Consumer Complaint Database, increased by 86% from March-June 2019 to March-June 2020 (the pandemic period). The same time period in 2020 has also seen a dramatic increase over 2019 in complaints concerning money transfers and credit cards.

Table 2. Complaints by product for March through June, 2019 and 2020

	Complaints for March through June by product		
Product	**2019**	**2020**	**Change**
Credit reporting, credit repair services, or other personal consumer reports	45,722	85,185	86%
Money transfer, virtual currency, or money service	1,690	2,958	75%
Credit card or prepaid card	8,674	11,753	35%
Vehicle loan or lease	1,907	2,179	14%
Payday loan, title loan, or personal loan	1,396	1,567	12%
Checking or savings account	7,329	7,935	8%
Debt collection	16,396	17,391	6%
Mortgage	7,800	8,093	4%
Student loan	2,614	1,646	-37%

Consumers filing a complaint about a "product" can select the "issue" that best describes their problem with the company. Complaint volumes over the last four months for many issues have increased dramatically compared to March through June of 2019. Among issues with at least 500 complaints in March through June of 2020, five issues had increases of more than 70% compared to 2019, led dramatically by two credit card issues, "Problem getting a card or closing an account" at 608% and "Trouble using the card" at 367%.

Table 3. Top 10 issues by complaint increase over March-June 2019

Product	Issue	2019	2020	Change
Credit card or prepaid card	Problem getting a card or closing an account	98	694	608%
Credit card or prepaid card	Trouble using the card	118	551	367%
Credit reporting, credit repair services, or other personal consumer reports	Incorrect information on your report	28482	59883	110%
Money transfer, virtual currency, or money service	Other transaction problem	300	578	93%
Mortgage	Applying for a mortgage or refinancing an existing mortgage	703	1218	73%
Credit reporting, credit repair services, or other personal consumer reports	Problem with a credit reporting company's investigation into an existing problem	10569	17824	69%
Credit card or prepaid card	Problem with a purchase shown on your statement	2129	3022	42%
Credit reporting, credit repair services, or other personal consumer reports	Problem with fraud alerts or security freezes	809	1104	36%
Credit card or prepaid card	Fees or interest	1030	1352	31%
Credit card or prepaid card	Closing your account	634	803	27%

Complaints often mention the COVID-19 pandemic

Consumer complaint narratives - the story behind a complaint in a consumer's own words - often make explicit mention of the COVID-19 pandemic. Among all complaint narratives published since March, more than 7 percent mention a key word associated with the pandemic.[9] And more than one in five narratives concerning mortgages, student loans, and vehicle loans and leases mention the pandemic.

[9] Based on a text search of the Consumer Complaint Database for narratives containing the words COVID, coronavirus, pandemic, or CARES Act.

Table 4. Many consumer complaints make explicit mention of the COVID-19 pandemic[10]

Product	Published complaint narratives since 1 March 2020	Complaint narratives containing COVID term	% of narratives mentioning COVID
Mortgage	3276	738	23%
Student loan	695	152	22%
Vehicle loan or lease	865	179	21%
Payday loan, title loan, or personal loan	615	118	19%
Credit card or prepaid card	4537	759	17%
Checking or savings account	2260	308	14%
Money transfer, virtual currency, or money service	931	102	11%
Debt collection	6261	303	5%
Credit reporting, credit repair services, or other personal consumer reports	27819	731	3%
Total	47259	3390	7%

[10] Based on a text search of the Consumer Complaint Database for narratives containing the words COVID, coronavirus, pandemic, or CARES Act.

Results and Recommendations

The record increases in consumer complaints and the number of complaint narratives mentioning the pandemic are cries for help from families hit twice: first, with real fear of the pandemic's health hazards and, second, by its accompanying financial crisis causing massive job layoffs and income losses. These complaints suggest that, even as consumers face this double-punch, consumers continue to face tricks and traps in the financial marketplace and -- and badly need additional protection from unfair or abusive financial practices by companies.

The record number of complaints also indicates a need for the agency established after the last financial crisis to take more powerful actions to protect consumers from unfair financial practices.

We described the power of the database and the complaint tool in a report in April:

> "The Bureau's consumer complaints — a direct glimpse into consumers' most pressing issues with financial firms' practices — help inform the Bureau's supervisory, enforcement, and rulemaking functions. [...] The Bureau also shares complaint data publicly through a dashboard and regular reporting. Through its regular analysis of complaints reported to the CFPB, the Bureau studies the breakdowns that consumers submit to identify patterns that, in turn, directly influence the rest of the Bureau's work. [...] Consumers, advocates, and government officials can search through the public Consumer Complaint Database to get a better snapshot of problems consumers face as they are captured in the complaints."[11]

Recommendations to the CFPB and policymakers

A recent white paper and a recent report provide a roadmap to the CFPB for powerful actions it should take to respond to the pandemic.

[11] See report "Putting Consumers First: The Missing Voice in the CFPB's Coronavirus Response," U.S. PIRG Education Fund, Student Borrower Protection Center, and Consumer Action, 24 April 2020, available at https://uspirg.org/reports/usp/putting-consumers-first

A **white paper**[12] to CFPB director Kathy Kraninger from former director Rich Cordray and two former CFPB colleagues makes a series of policy recommendations to address the COVID-19 crisis.

A recent **joint report**[13] by U.S. PIRG Education Fund, Student Borrower Protection Center, and Consumer Action recommends changes to the CFPB's complaint process, including the public database, to improve its response to the pandemic.

Recommendation to consumers

File a complaint: Submit a complaint at consumerfinance.gov/complaint. Your public complaint will put pressure on the firm to help you; it will also help the CFPB determine patterns and practices of illegal behavior that require enforcement action. It will also help outside researchers determine marketplace trends requiring attention.

Conclusion

On April 6, the CFPB's original director Rich Cordray issued a white paper addressed to current CFPB Director Kathy Kraninger with recommendations for protecting consumers during this crisis.[14] He concluded:

> "It is in difficult times that strong consumer protections are needed the most. The CFPB is well positioned to make a difference for large numbers of Americans, but it must confront the circumstances and act immediately to mitigate the harmful effects of this crisis."

We concur. The record number of consumer complaints during the pandemic is more than a warning that families are suffering losses of income; it is a clarion call for the CFPB to take powerful action to protect consumers.

Rather than weakening protections, the CFPB must dramatically ramp up its efforts to enforce rules that keep consumers safe in the financial marketplace, and when appropriate create new rules for ensuring consumers are treated fairly. It should focus on consumers who are most at

[12] Rich Cordray, Diane Thompson and Christopher Peterson, "White Paper: Immediate Actions For CFPB To Address COVID-19 Crisis," 6 April 2020, available at https://medium.com/@RichCordray/cfpbwhitepaper-193a5aed0d75
[13] See footnote 11.
[14] See footnote 12.

risk: Including those at risk of losing their homes, apartments, or vehicles; those who are suffering credit damage that could harm their financial futures; and those who are turning to lenders or other sources of credit to get through difficult financial times. The CFPB was created in the wake of the 2008 financial crisis for times such as these. In this time of unprecedented financial risk for consumers, the CFPB must step up to provide consumers with the help they need.

Appendix: Consumer voices

Looking at consumer narratives tells a story that is different from what the financial industry wants you to hear about its response to the pandemic. The following (verbatim) narratives can also be viewed on the CFPB Consumer Complaint Database by clicking on each footnote.

Credit card customer (6/26):[15] "I called Citibank twice during this pandemic to describe my hardship. I answered 4 phone calls from them when they called to tell me my bill was past due. On each of the 6 conversations I had with them each representative told me it was nothing they could do. The interest is mounting. I dont have the income to pay the bill and its a horrible position to put me in. My credit score went from XXXX to XXXX because of Citibank credit cards reporting and Unwillingness to help me during this difficult time."

Small business credit card customer (6/10):[16] "We XXXX a XXXX and as of XX/XX/XXXX of this year we were forced to close down due to the COVID-19 pandemic. We had attempted to provide take out and delivery and it was no success at all. We have had no income for 3 months. We have two business credit cards with US Bank and have requested a deferral for the three months we have been closed down. We called and finally reached someone to speak to on XX/XX/XXXX. Before that time the hold times were beyond 45 minutes and we could not reach a live person. When we spoke on XX/XX/XXXX the operator stated she would defer until XX/XX/XXXX. When we called today to discuss the account, we were told it was 78 days in arrears and they would not work with us because the payments were late. They have no programs for deferment. We have a history of paying on time that lasted more than 8 years. All we are asking for is a three month deferment and to take back the negative report on the credit record. We are opening the XXXX on the XXXX of this month. After a couple of weeks we should be back on our feet."

Homeowner (6/29):[17] "Hello, I entered into a COVID-19 mortgage forbearance agreement with my XXXX XXXX XXXX XXXX, Select Portfolio Service (https : //www.spservicing.com/) and was told that they would likely add the missed payments to my existing principal. Now, they are requesting a balloon payment, which I am unable to make. I've been in my home for 16 years. I am a XXXX XXXX XXXX, so I know the game well, and understand all of the terms etc. that they are using. Is there something I can do to force them to add this outstanding balance, which represents the late payments, to the principal or can they do whatever they want to me?..."

Homeowner (6/29):[18] "Due to Covid 19 I was laid off by my employer. I contacted Specialized Loan Servicing (SLS) to start a forbearance, but was told that at the end of 90 days I would need to pay the full mortgage amount. (XX/XX/XXXX) I have a XXXX XXXX Loan and according to the CARES ACT this is not correct. I was able to scrape a couple of payments together with the government stimulus, but I am still without work. I called back (XX/XX/XXXX) and was told that a deferment would not be possible. When asked why this is so they said they

[15] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3717065
[16] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3692550
[17] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3721689
[18] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3721510

were following the mortgage owner guidelines. This is not what the XXXX XXXX site states or the CARES act. I asked to speak with a supervisor and I am awaiting a return call. I feel the SLS is being unreasonable and anything short of a deferment will cause a raise in my mortgage to a level were i wont be able to pay. Thanks,"

Homeowner (6/29):[19] "Wells Fargo offered a COVID-19 payment relief program to borrowers. However, it was deceptive in marketing and execution. I was under the impression that I could suspend my payments 3 months penalty free (but accept the continuation of interests to accrue), however once I learned that this program was a forbearance and came with additional costs such as limitations on the ability to refinance and apply for PMI to be canceled it was too late. As a result, I feel as though I have been financially injured and my future for getting a refinance and PMI removed early limited due to poor and deceptive advertising on the risks and costs of taking advantage of this special program. The records will show that I quickly caught my account up for 2 months and in fact, pre-paid 2 months ahead in advance on this mortgage. I demand Wells Fargo to make me whole as I am now subjected to have to wait an additional 12 months to take advantage of refinancing my home and/or apply for the remove of PMI to further demonstrate I can make my payments timely. Due to Wells Fargo poor marketing I can't lower my interest rate and take advantage of this unprecedented low rate environment."

Credit card customer (4/26):[20] "I would like the collection calls to stop. Ive been making payments towards the balance. I lost my job and became homeless. Thats why I fell behind on my payments. As soon as I got a job, I began to take care of the balance owed. However, Ive been furloughed due to COVID so I am unable to continue making anymore payments. I would like to settle for {$1500.00}. I have saved this amount and would like to pay it to take care of the account for less than the balance owed."

Medical debt collection (6/26):[21] "I had a payment plan worked out with the debt collector, the Law Offices of Edwin Perry. I was to pay {$75.00} a month for 10 months beginning XX/XX/XXXX. When I set up the arrangement I let the person who called know that my husband is in XXXX and at the time we had not yet been approved for SSI, so we did not have any income coming in because I couldnt find work due to Covid and we were waiting for our tax returns. He called today to let me know I missed my payment date and I told him I hadnt received my taxes yet but my husbands SSI check would be here on the XXXX XXXX so if we could change the payment date to the XXXX I could make that payment. He told me since the payment was missed he couldnt change the date and they would now have to proceed with legal means. I think its absurd they are not willing to work with people, especially during the pandemic. I didnt refuse to pay, I just simply told them the day I would be able to pay"

Payday loan customer (6/23):[22] "I have a current loan with cash express in XXXX off of XXXX XXXX and I have asked since covid pandemic for them to accept a payment agreement at a lower amount. I am wanting to negotiate a lower interest rate and a smaller payment per month than {$190.00}. I have been told repeatedly that if I do not make my payment that they will sue me. I have been affected by the pandemic and now testing positive

[19] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3721407
[20] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3624015
[21] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3717545
[22] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3711047

for covid recently and I can not afford to pay back on the current terms. I also asked for them to stop the ach withdrawals and I have not recieved any confirmation by way of mail regarding this."

Payday loan customer (6/3):[23] "On XX/XX/2020, I reached out to 24/7 advance financial to advise that I was currently furloughed from my employer due to COVID, I advised them that because I was furloughed and not laid off, I was not able to obtain unemployment. I also revoked all auto debits from my account and made a small good faith payment. I advised the agent that I was speaking with that I would not be back to work until XXXX at the earliest, but, I had not been given a date as of yet. On XXXX, I received notification from my bank that there was a debit of {$200.00} and because I have overdraft assistance it was paid. I did not authorize any payments from my account and the agent said that I agreed to a promise to pay that I did not agree too so they could not refund me my money."

Auto loan customer (6/17):[24] "Having trouble due to covid issues and company not working with me at all. Told company suspended repos, however they still call. Made XXXX arrangements for payments and was told the calls would stop, yet they havent. This is a horrible company that says they love and honor veterans, however only the ones who have no financial issues. They harass and dont care about those of us on hard times, and many will soon know."

Auto lease customer (6/15):[25] "Due to Covid-19 & the hardship of my income being depleted unexpectedly, I contacted Kia Finance toextension. payments extended. I was told I would have up to 3 months to extend, but would have to call in every month around the same date to do the extension. They approved me for XXXX & XXXX with little hesitation, but when I called in for the XXXX payment extension, they flat out denied my request. I reminded them that they initially told me I could utilize XXXX for disaster relief, but they said they were no longer offering it, & will not honor the XXXX month extension, even though not all businesses are up and running. I explained that I really needed this last extension, because I have budgeted everything I need too take care of for XXXX based on extending their XXXX payment. I will not have enough money this month to pay the car & insurance payment, because I had already extended the insurance to the limit. Kia is now acting heartless toward my situation. They don't consider I previously completed a 3 1/2 years lease at the beginning of this year with no problem, always paid on time or before the end of grace period & never missed a payment. I continue to have very good credit & do not want to destroy it by turning in the car over needing the one extra month granted they initially stated, but they are leaving me mo choice."

Mobile wallet customer (6/26):[26] "PayPal credit was not willing to work with me during this pandemic. When they called I was offered no cares act support. My income has decreased significantly directly from the pandemic. I was told I had to pay over {$600.00} to bring my account current. I dont have that now. I just saw they closed my account as well. How can you charge {$150.00} in interest when I dont have the resources to pay. This is ridiculous"

[23] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3681599
[24] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3703645
[25] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3700312
[26] https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3717264

U.S. PIRG | U.S. Public Interest Research Group

14 May 2020

Analysis of CFPB Consumer Complaints March-April 2020

Source: Analysis by U.S. PIRG of consumer complaints downloaded from: Consumer Financial Protection Bureau, Consumer Complaint Database, accessed on 13 May 2020 at https://www.consumerfinance.gov/data-research/consumer-complaints/.

As the House considers the next coronavirus funding bill, the Heroes Act, an analysis by U.S. PIRG of recent complaints to the U.S. Consumer Financial Protection Bureau (CFPB) shows an alarming need for Congressional action to protect consumers from the pandemic's repercussions. In April, more than 33,000 complaints were filed with CFPB, setting a new monthly record since the database went live in 2011.

Figure 1. March and April both set new records for complaint volume since 2011

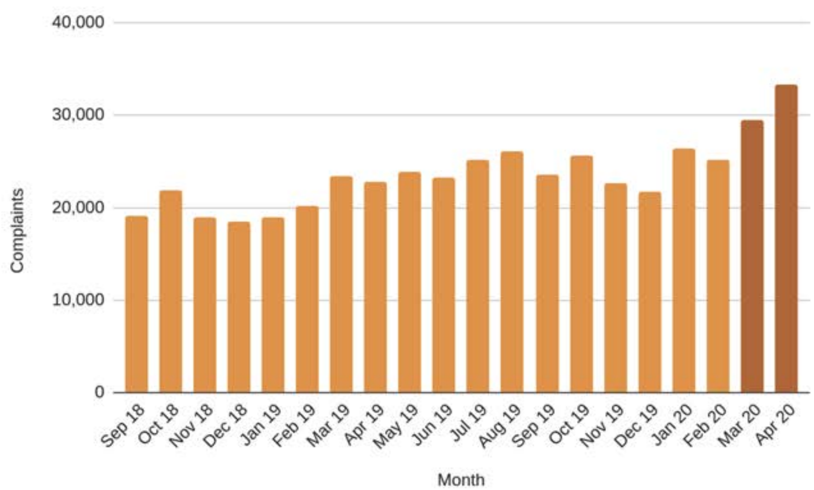


Figure 2. Credit reporting complaints accounted for nearly 60% of complaints in March and April

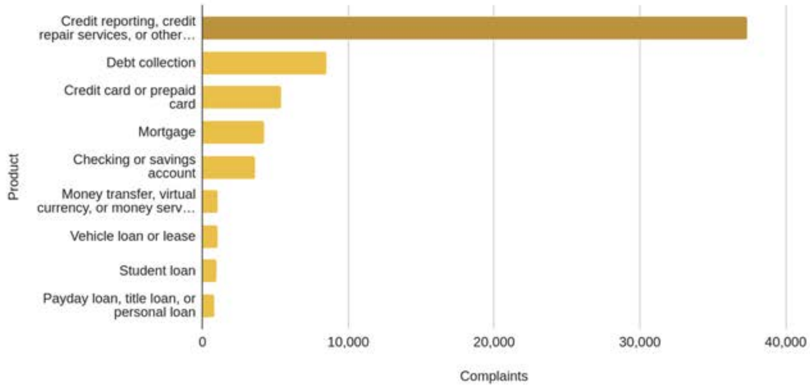


Figure 3. Among complaints that mention the coronavirus crisis, mortgages are the most complained-about product in March and April

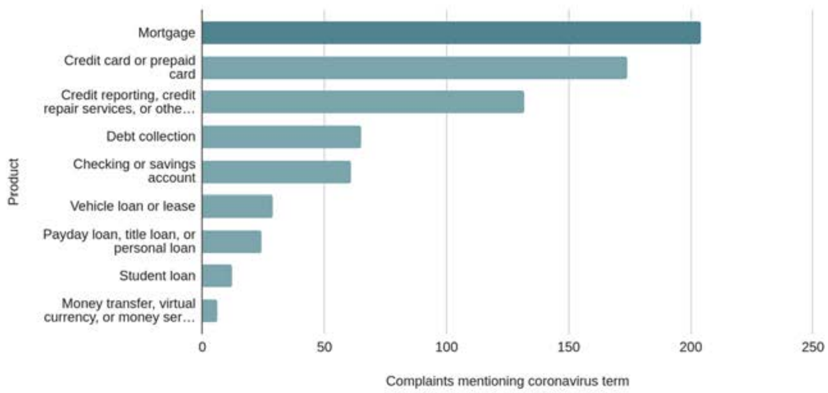


Figure 4. More than half of debt collection complaints in March and April alleged attempts to collect debt not owed

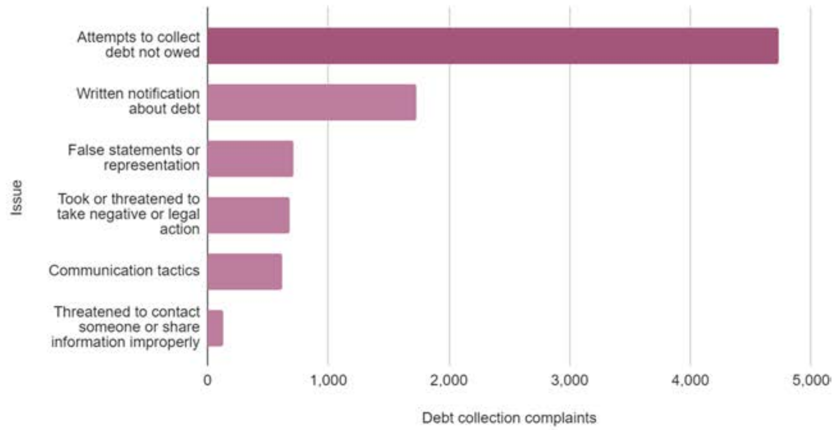
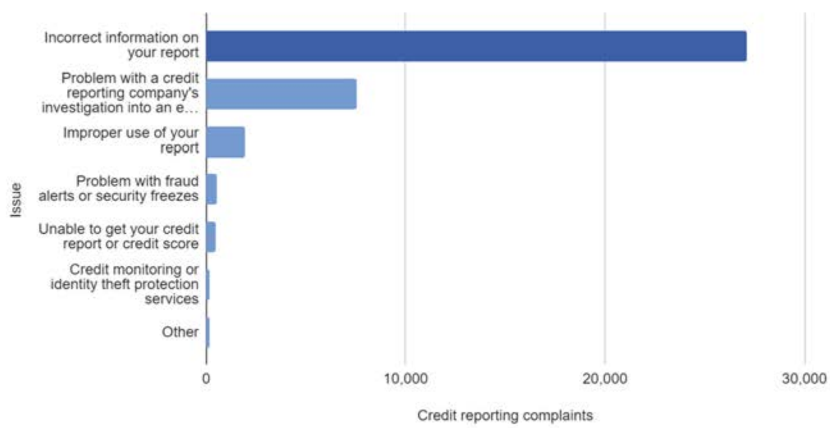


Figure 5. More than 70 percent of credit reporting complaints in March and April alleged incorrect information on credit reports



ACA® INTERNATIONAL
The Association of Credit and Collection Professionals

July 29, 2020

Chairwoman Maxine Waters
U.S. House Committee on Financial Services
Rayburn House Office Building
Washington, DC 20515

Ranking Member Patrick McHenry
U.S. House Committee on Financial Services
Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing concerning tomorrow's hearing, "Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau." ACA International is the leading trade association for credit and collection professionals representing approximately 2,500 members, including credit grantors, third-party collection agencies, asset buyers, attorneys, and vendor affiliates in an industry that employs more than 230,000 employees worldwide.

The role of the accounts receivable management (ARM) industry is more important than ever during these unprecedented and challenging times for our country because of COVID-19. ACA members' clients, consisting of medical providers, hospitals, community financial institutions, and a multitude of small and large businesses in both the public and private sectors throughout the country are providing valuable goods and services. They need the ARM industry to stay afloat. One thing is clear, part of our economy is functioning in a healthy way, and part is not. ACA members have the expertise to address issues that consumers have in both parts of the economy, which, in turn, helps creditors, consumers, and the economy as a whole. Every American family stands to lose $709 per year due to the increase in the cost of goods and services if ACA members cannot return the $90 billion back to creditors, according to a recent study.[1]

During the testimony of CFPB Director Kathy Kraninger, we ask that the House Financial Services Committee to consider that consumer welfare depends on open communication with creditors and collectors, and it is important to have policies that provide consumers with more options that will allow them to continue to access credit and services. This is critical due to the uncertainty about the length and severity of the economic impact related to COVID-19. Alternatively, unnecessarily stymieing communications at the state level has proven to lead to fewer choices for consumers and take the decision-making out of their hands.[2] This is not the time to abandon consumers and leave them in the dark about how they can address outstanding legal obligations thatwill not go away on their own.

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[1] 2020 State of The Industry Report, available at https://www.acainternational.org/kaulkin-ginsberg.

[2] Following the enactment of new debt collection regulations in 2015, in New York State, collections lawsuit filings rose 32% in 2018 and 61% in 2017 from pre-2015 levels.

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ACA members remain committed to all clients, including small businesses, that are facing extraordinary challenges and disruptions to their operations. This commitment has been further demonstrated since the COVID-19 outbreak through industry-wide calls to action for compassion and empathy. Additionally, most ACA members already have training and "hardship" programs in place to help consumers make arrangements tailored to their unique financial situations, including longer term payment plans, temporary suspension of collections for consumers directly impacted by COVID-19, and other accommodations.

The CFPB is currently working to finalize the first ever rules for the debt collection industry, which will in many ways impact the ability to communicate with consumers. To that end, we ask the House Financial Services Committee to to urge the CFPB to finalize key aspects of its Notice of Proposed Rulemaking (NPRM) to implement the Fair Debt Collection Practices Act (FDCPA), which will allow for more timely and efficient two-way communication with consumers:

The limited content message is important to provide clarity for leaving voicemails and should be finalized through rulemaking authority or regulatory guidance

- This is a common-sense solution for both consumers and industry to address a statutory catch-22, which has harmed the ability to leave voicemail messages, increased call volumes, and has warranted regulatory guidance for several decades.
- The Bureau has proposed some new definitions, including an "attempt to communicate" and a "limited-content message." In addition, the Bureau proposes to amend the definition of a "communication" subject to the FDCPA's purview by defining a "communication" to exclude a "limited-content message." ACA finds that many of these proposed definitions will resolve ambiguity and the Bureau should take action to finalize its proposal.

Consumers increasingly prefer modern electronic communications—like emails and text messages—to snail mail and phone calls. Consumers now more than ever are reliant on modern technologies, which are more efficient for communicating critical information from the accounts receivable management industry during these unsettling times when two-way communication is paramount.

- ACA agrees with the Bureau that providing a disclosure in the body of an email likely poses no more risk of third-party reception than delivery by mail. Therefore, ACA supports the ability to include mandatory disclosures in the body of emails. The Bureau should finalize this important aspect of its proposal.
- The Bureau should also clarify that those who otherwise are complying with FDCPA requirements and rules qualify for an exemption from the E-Sign Act requirements for validation notice, pursuant to 15 U.S.C. § 7004(d)(1).

Again, consumers need the information that ACA members provide to maintain their financial health, and open communication can often lead to the most favorable outcome. We look forward to continuing our engagement with the House Financial Services Committee on behalf of the ARM Industry.

Sincerely,

Mark Neeb
Chief Executive Officer

CBA | CONSUMER BANKERS ASSOCIATION

July 29, 2020

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
2129 Rayburn House Office Building
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The Honorable Patrick McHenry
Ranking Member
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Dear Chairwoman Waters and Ranking Member McHenry:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled, "Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau." We appreciate the House Committee on Financial Services' continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities to safeguard consumers. CBA is the voice of the retail banking industry whose products and services provide access to credit for millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

It has been ten years since the Dodd-Frank Act passed Congress and nine years since the CFPB opened its doors with "the purpose of providing a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace." Today's banking industry is vibrant and strong, working diligently to meet the credit needs of the consumers and communities they serve, especially during these trying times. In this letter, we offer legislative and regulatory suggestions for the purpose of ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals.

Bipartisan Commission at the Consumer Financial Protection Bureau

Since its inception, the CFPB has been the center of political and legal debates about the legitimacy of its leadership structure. In fact, this hearing comes just weeks after the Supreme Court ruled, that the single CFPB Director can be fired at the will of the President. This ruling ensures future political turmoil at the Bureau as the Director is now entirely accountable to the current occupant of the White House, and unavoidably undermines the mission and operations of the CFPB. Now is the time for Congress to act to ensure the CFPB's independence by replacing the single director structure with a five-person, bipartisan commission, as originally intended by the House when it first passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[1]

The CFPB director is responsible for leading the CFPB and is the chief decisionmaker over all rulemakings, enforcement and supervisory actions that affect millions of Americans' everyday financial lives. An at-will Director, removable every four years, or sooner, leaves financial instructions with few assurances that the rules they are complying with today would remain in place. When regulatory stability is constantly subjected to changing political dynamics, the consumer suffers from financial

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 4103 (2010).

institutions' inability to rely upon a consistent regulatory environment that is the basis for innovation and product development.

Replacing the sole director model with a bipartisan, Senate confirmed, five-person commission would depoliticize the CFPB while increasing stability, accountability and transparency for all consumers and industry stakeholders. Unpredictable political shifts make it difficult for the financial services industry to plan for the future, which will inevitably stifle innovation, limit access to credit, and raise prices for consumers, who likewise can no longer rely on a nonpartisan decisionmaker in control over the financial products that affect their everyday lives. It is crucial that appropriate checks and balances are in place given the scope and importance of the CFPB. It is also important to insulate the Bureau from political shifts with each new director that could reduce its ability to impartially ensure a fair and competitive marketplace.

Regulatory Actions

Prioritized Assessments

In response to the unprecedented COVID-19 pandemic, the Bureau developed a novel program to supervise financial institutions' response to the crisis, "Prioritized Assessments." These new supervisory tools are designed to allow the Bureau to collect data and insight quickly and efficiently on the expansive financial institution responses to COVID-19. CBA encourages the Bureau to continue to be reasonable in their requests, understanding the nation's financial institutions are currently doing much to help protect consumers during extremely challenging times.

Innovative Programs

Financial services innovation benefits consumers by promoting financial security, inclusion, and well-being. New and innovative financial products and services can greatly expand access to credit for all consumers, while providing improved access to important financial information, and increased customer safeguards. Congress recognized the great utility financial services innovation has for consumer protection in Title X of Dodd-Frank when it charged the CFPB with ensuring "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation".[2]

The Bureau's finalized innovation policies within the Office of Innovation are vital steps in ensuring that financial institutions can best serve their customers with innovative products and services that require a flexible and accessible regulatory environment. The Bureau's no-action letter (NAL) and compliance assistance sandbox (CAS) programs have opened the door for more financial institutions to innovate to better serve and protect their customers, as well as bring new, financially underserved customers into the fold. For instance, in July of this year, the Bureau approved a Compliance Assistance Statement of Terms Template to help employers create automatic savings programs for their employees to encourage emergency savings. Innovative initiatives like this are exactly what the Bureau's innovative policies were intended to do, and we are encouraged by their use throughout this pandemic to serve customers. CBA also encourages the Bureau to finalize the Advisory Opinion process. This will provide more certainty and clarity to certain rules.

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[2] 12 U.S.C. § 5511(b)(5) (2012).

Debt Collection

CBA recognizes the important role debt collection plays in proper functioning consumer credit markets, reducing credit losses from non-repayment and promoting overall access to affordable consumer credit. We support the Bureau's goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing loan agreements. Congress enacted the FDCPA to establish ethical guidelines consumer debt collection by third-party debt collectors. As such, CBA strongly opposes placing FDCPA-like restrictions and requirements directly on creditors outside FDCPA authority. They are unwarranted and incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

Given the challenges the debt market will continue to face as a result of COVID-19, we encourage the Bureau to think cautiously about the implementation period of any new rules surrounding the FDCPA to best protect consumers working with their debt during this time. We similarly encourage the Bureau to be wary of limiting borrower's communications with their creditors, as financial institutions need to communicate the various relief and recovery options available to their customers during this time. We strongly urge Congress and the CFPB to work with industry to establish debt collection regulations for third-party debt collectors that strike the right balance between consumer protection and consumer engagement.

Small Dollar Rule

CBA appreciates the Bureaus recent action to finalize the Small Dollar rule. As Banks evaluate potentially reentering this market, CBA encourages the CFPB to provide clarity into what products and offers would be appropriate to help all consumers have access to credit. During these turbulent economic times, consumers will need access to highly regulated short-term credit options. Certainty amongst all regulators will help eliminate obstacles to the development of helpful loan products.

Home Mortgage Disclosure Act

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

The Dodd-Frank Act mandated expanding the information collected under Regulation C, HMDA's governing regulation. In 2015, then-Director Cordray used the Bureau's discretionary authority to increase the number of loan-level HMDA data fields reported and publicly disclosed, further increasing

[3] CFPB Bulletin 2013-11 "Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement" (October 9, 2013) http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf

the complexity and costs of HMDA reporting beyond those fields mandated by Dodd-Frank. This new data set, collected for the first time in 2018, was reported to the government on March 1, 2019.

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.[4] Specifically, the expanded set of publicly available HMDA data provides ample data scraping opportunities for companies to piece together information related to the loan and borrower to "re-identify" the consumer and engage in unsolicited targeted marketing. There is no mechanism for consumers or lenders to opt-out or protect disclosure of this sensitive personal and financial information from entering the public domain.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 pose privacy risks to consumers while also mandating extraordinarily high annual compliance costs. CBA applauds the CFPB's decision to revisit the 2015 Rule to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to eliminate those discretionary data fields that are not required by statute, that are unduly onerous to collect and report, that provide present marginal value in furthering HMDA's objectives, and that create or contribute risk of consumer re-identification.

Complaint Database

CBA supports recent initiatives to make the CFPB complaint database more usable for the public and industry. Efforts to clearly disclose unverified complaints are a helpful first step in level-setting data contained in the database. Further, encouraging consumers to work with their financial institution prior to submitting a complaint will lead to more consumer issues being resolved in a timely and efficient manner. Establishing tools to contextualize complaint data and recognizing the massive amount of inquiries that financial institutions ably and efficiently redress each day will leave consumers informed and better position financial institutions to combat consumer issues.

All these issues are even more vital now that the Bureau reports record-high complaint volumes, largely as a result of COVID-19. Many of the complaints inflating the record numbers are not actually due to a financial institution's behavior, yet still are reported as such. However, financial institutions have maintained their response rates during this crisis and will continue to redress customer issues when they arise.

Financial institutions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. Our members have robust complaint management procedures regardless of the CFPB's database to ensure that disputes are resolved as quickly and easily as possible to keep the customer happy with their financial services provider. Furthermore, federal regulatory agencies already regularly examine every depository institution to ensure their strong and effective complaint management systems are functioning properly.

CBA urges the Bureau to continue to review consumer complaint data for accuracy and validity before publication to protect consumer privacy and prevent dissemination of misleading information.

[4] If a consumer wishes to purchase a home, he/she must provide confidential financial data that lenders in turn must report for HMDA purposes; most of which the CFPB releases to the public.

Conclusion

Improving the financial lives of consumers is a goal that unites lawmakers, regulators and industry. Achievement of this shared goal occurs when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road to protect consumers and allow for a robust financial services market.

The Supreme Court decision on Seila Law v. CFPB will have dramatic and lasting ramifications on the future of the Bureau. Regulatory stability and transparency will not be realized until the Bureau's governance structure allows for the debate and deliberation of multiple stakeholders with diverse experiences and expertise. Congress should immediately pass legislation to create a bipartisan commission of five, Senate-confirmed commissioners that would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress and the CFPB to implement the suggested legislative and regulatory improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

Rich C. Hunt

Richard Hunt
President and CEO
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NAFCU
National Association of Federally-Insured Credit Unions

July 29, 2020

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Tomorrow's Hearing: "Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau"

Dear Chairwoman Waters and Ranking Member McHenry:

I write today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing, "Protecting Consumers During the Pandemic? An Examination of the Consumer Financial Protection Bureau." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 121 million consumers with personal and small business financial service products. NAFCU appreciates the Committee's ongoing oversight of the Consumer Financial Protection Bureau (CFPB) and efforts to promote financial inclusion and consumer protection. We welcome this opportunity to share our thoughts on some issues pertinent to the CFPB.

QM

First, NAFCU would like to highlight our position on the CFPB's ongoing rulemaking to revise the definition of a qualified mortgage (QM) under the ability-to-repay/QM rule in light of the scheduled expiration of the Government-Sponsored Enterprise (GSE) Patch. While the CFPB issued a proposed rule to extend the patch until the effective date of their new QM rule, the timing remains uncertain. As NAFCU has shared with Congress and the CFPB, the GSE Patch has been a key factor in credit unions' ability to lend to members of their communities, especially those of low- and moderate-income.

We would urge you to discourage the CFPB from pursuing a QM definition that uses the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) as a proxy for underwriting requirements (the "APOR approach"), as proposed. As NAFCU noted in both our initial comments to the CFPB on this issue, as well as a January 21st joint letter with a coalition of consumer groups and financial services trades, we support: (1) the continued use of a modified debt-to-income (DTI) ratio in conjunction with certain compensating factors, which could be used in the underwriting process and would provide guidance to creditors on their use; and (2) significant changes to Appendix Q to rely on more flexible and dynamic standards for calculating income and debt. We also have a concern that the APOR approach could ultimately not be the best option for consumers. Above all, we think maintaining access to affordable and sustainable mortgage credit should be a key objective of this rulemaking, and we ask the Committee to help enforce this message to the CFPB.

CFPB Commission
NAFCU has long held the position that, given the broad authority and awesome responsibility vested in the CFPB, a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current leadership of the agency, a commission would allow multiple perspectives and robust discussion of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court highlighted this fact when earlier this year it released a decision in *Seila Law v. the Consumer Financial Protection Bureau* that found the firing of the single director only for "just cause" to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission, such as H.R. 6116, the *Consumer Financial Protection Commission Act,* which is pending before the Committee.

RESPA Flexibilities
As borrowers exit forbearance, credit unions are seeking to transition borrowers back into a paying status that the borrower can afford. The GSEs have created a deferral program to assist in this process, and the CFPB has issued a temporary exception to Regulation X which implements the *Real Estate Settlement Procedures Act* (RESPA). However, not all borrowers will be able to qualify for this deferral program and other options, such as disaster flex modifications, may be necessary. While the GSEs do not require complete paperwork to exercise these disaster options, current regulations require that extensive paperwork be obtained anyway. RESPA should contain an exception to unnecessary and burdensome regulations for disaster-related programs that move delinquent borrowers into current status. This will allow credit unions to work with their members quickly and without being encumbered by paperwork that the credit union and the GSEs do not require to offer these options. We ask the Committee to encourage the CFPB to insert an exception in Regulation X for the reasons mentioned above.

Modernization of the E-SIGN Act
As we have written to Congress previously, the *Electronic Signatures in Global and National Commerce Act* (E-SIGN Act) was passed nearly 20 years ago and generally allows electronic signatures and documents to carry the same legal weight as hard copy or paper documents. At a time when social distancing has become paramount to the health and safety of credit union members, employees, and their families, credit unions are discovering that some of the E-SIGN Act's outdated provisions have become a burden. Over 90 percent of NAFCU members responding to a survey noted challenges in getting documents signed in light of the pandemic. Congress needs to modernize provisions in the E-SIGN Act to help credit unions better meet the needs of members, while respecting social distancing requirements. To that end, we support legislation that has been introduced in the Senate, S. 4159, the *E-SIGN Modernization Act*, which aims to streamline how consumers consent to receiving electronic documents like bank statements, account information, and contracts.

We have also previously requested that the CFPB adopt a presumptive consent framework to facilitate electronic delivery of disclosures. We asked the CFPB to do this by amending all of its rules to allow financial institutions to deliver electronic disclosures without having to confirm the consumer's ability to receive documents electronically when the consumer initiates the transaction using an online service.

Additionally, we think the Bureau should clarify that a financial institution or a third party acting on its behalf that obtains this presumptive consent once may rely on it in the future for all subsequent related transactions. We encourage the Committee to ask the CFPB to explore the merits of this framework and to consider a House companion to S. 4159.

NAFCU would also like to reiterate our support for Director Kraninger's efforts to provide financial institutions with regulatory certainty and targeted relief, while focusing the CFPB's efforts on bad actors. Credit unions have a long history of providing affordable and responsible financial services to their members and were not responsible for the predatory lending practices that led to the financial crisis. Nonetheless, the credit union industry has been greatly impacted from the onslaught of post-crisis financial regulation.

In the last decade, over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions, which amounts to more than 20 percent of the industry. A large majority of those credit unions that closed or merged were small in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. NAFCU appreciates the CFPB undertaking a review of its rules and hopes to see more relief targeted at community institutions. Many credit unions cannot afford to comply with complex rules and would otherwise be forced to stop offering services to members. Although the CFPB already provides for some exemptions based on an entity's asset size, NAFCU strongly believes that the CFPB can do more, such as increasing transaction-based thresholds, or considering exemptions based on an institution's characteristics and activities. NAFCU asks that the Committee encourage the CFPB to utilize its authority in Section 1022 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to provide targeted relief for credit unions while still ensuring its rules regulate bad actors.

We appreciate your leadership and ongoing focus on issues important to credit unions, and we look forward to continuing to work with the Committee and the CFPB on these topics. Should you have any questions or require any additional information, please do not hesitate to contact me or Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at 703-842-2836.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Service Committee

The Heritage Foundation

BACKGROUNDER

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INSTITUTE FOR ECONOMIC FREEDOM

RESPA Section 8—the CFPB and the President Should Act Now to Restore the Rule of Law

Brian Johnson

KEY TAKEAWAYS

The CFPB's aggressive departure from settled law and long-standing agency guidance in RESPA enforcement actions violated due process and upended the rule of law.

The DC Circuit Court of Appeals repudiated the CFPB's misinterpretation of RESPA, but more must be done to restore the rule of law at the CFPB.

The CFPB Director and the President can take concrete steps to repair the damage done, such as issuing interpretive rules to clarify the meaning of RESPA Section 8.

In the wake of the financial crisis of 2007–2009, Congress enacted sweeping legislation creating a powerful new federal agency, the Consumer Financial Protection Bureau (CFPB), and granted it broad authority and discretion to regulate the U.S. financial system. By design, the agency was extraordinarily independent from the elected branches of government. For example, the agency was funded by the Federal Reserve rather than Congress, and the President could only remove its sole Director from office for inefficiency, neglect of duty, or malfeasance.

Proponents of the CFPB argued that such independence was necessary to keep it out of "politics" and prevent regulatory capture by special interests. Critics, to the contrary, argued that an agency lacking fundamental checks and balances on the exercise of its authority invited an abuse of power. To be sure, the CFPB has secured billions of dollars in fines and restitution through consent orders with financial firms. At the same time, it has displayed an alarming propensity to undermine the rule of law.

For instance, the DC Circuit Court of Appeals ruled that the CFPB violated fundamental principles of due process when, after ignoring years of established regulatory guidance for Section 8 of the Real Estate Settlement Practices Act (RESPA), the CFPB tried to retroactively enforce its own interpretation of the law. Current CFPB Director Kathleen Kraninger has committed the bureau to restoring the rule of law, but much unfinished work remains. This *Backgrounder* explains several concrete actions that the CFPB, Congress, and the President can take to restore the plain meaning of RESPA Section 8 and to restore the rule of law at the CFPB.

Background

Congress enacted the RESPA in 1974 to protect mortgage borrowers from unnecessarily high settlement charges.[1] One of RESPA's statutory purposes is to "eliminat[e]...kickbacks or referral fees that tend to increase unnecessarily the costs of settlement services."[2] To further this purpose, Section 8(a) of RESPA prohibits the giving and accepting of "any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person."[3] Similarly, Section 8(b) of RESPA prohibits giving or accepting "any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service...other than for services actually performed."[4] In other words, RESPA generally prohibits payments for referrals or unearned fees.

However, RESPA provides exceptions to these general prohibitions. For instance, Section 8(c)(2) states that "[n]othing in this section shall be construed as prohibiting...the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed."[5] Regulation X, RESPA's implementing regulation, affirms that "Section 8 of RESPA permits...payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed."[6]

In other words, even though payments for referrals, or receiving unearned fees, are forbidden, payments for services performed are permitted, so long as the payments reflect reasonable market value. This statutory scheme seems simple. Yet because RESPA provides for private right of action, hefty civil and criminal penalties, and treble damages (multiples of the awarded damage), business arrangements involving lenders, brokers, and other settlement services providers proved attractive targets to plaintiffs' attorneys, who brought scores of class actions challenging such arrangements as illegally disguised kickbacks.[7] Congress expressed alarm about the legal uncertainty created by the litigation, and reiterated that it "never intended payments by lenders to mortgage brokers for goods or facilities actually furnished or for services actually performed to be violations...of RESPA."[8]

Between 1992 and 2004, the U.S. Department of Housing and Urban Development (HUD) (which at the time was responsible for implementing RESPA and Regulation X) issued a series of guidance documents to clarify its position on the application of RESPA Section 8 to various types of business arrangements involving settlement services providers. For instance, with respect to lender payments to mortgage brokers, including yield-spread premiums, HUD advised that the legality of a payment to a mortgage broker does not depend on the name of the particular fee, but instead on whether the total compensation to a mortgage broker is reasonably related to the total value of the goods or facilities actually furnished or services actually performed.[9] Accordingly, HUD declared that it "does not consider such payments...to be illegal per se."[10]

Instead, HUD established a two-part test to determine the legality of lender payments to mortgage brokers under RESPA: first, whether goods or facilities were actually furnished or services were actually performed for the compensation paid; and second, whether the payments are reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.[11] In applying this test, HUD stated that total compensation should be scrutinized to ensure that it is reasonably related to goods, facilities, or services furnished or performed, in order to determine whether it is legal under RESPA.[12] As another example, in 1997, HUD also clarified the application of RESPA Section 8 to captive reinsurance arrangements (1997 RESPA Reinsurance Guidance).[13] HUD analyzed the relationship between Sections 8(a) and 8(c), and concluded that "the arrangements are permissible under RESPA if the payments to the reinsurer: (1) are for reinsurance services 'actually furnished or for services performed' and (2) are *bona fide* compensation that does not exceed the value of such services" (emphasis in original).[14]

CFPB Enforcement Actions Push the Envelope

HUD's consistent interpretation of RESPA Section 8 was widely known and relied on in the mortgage lending industry, and approved by reviewing courts.[15] However, a sea change occurred after the financial crisis. In 2010, Congress enacted the Dodd–Frank Wall Street Reform and Consumer Protection Act, which created the Consumer Financial Protection Bureau (CFPB) and transferred responsibility for administering RESPA and Reg X from HUD to the new agency.[16] Almost as soon as it opened its doors, the CFPB began aggressively investigating potential RESPA Section 8 violations, resulting in a dozen enforcement actions in 2013 and 2014 alone.[17]

Two of the CFPB's cases stand out in particular. First, in 2014, the CFPB entered into a consent order with Lighthouse Title, Inc. The CFPB alleged that the company's marketing service agreements (MSAs) with several real estate brokers violated RESPA Section 8.[18] At the time, MSAs were a common alternative to the more expensive direct advertising through media channels, wherein lenders or title companies paid a monthly fee to a service provider in exchange for advertising services. As alleged by the CFPB, the brokers actually were paid, in part, based on the number of referrals generated for Lighthouse.[19] The legal position asserted by the CFPB was that "[e]ntering a contract is a 'thing of value' within the meaning of Section 8, *even if the fees paid under that contract are fair market value for the goods or services provided*" (emphasis added).[20] In other words, the CFPB took the position that the 8(c)(2) exemption does not apply even if market rate compensation is paid for services actually performed if there is a referral in a transaction, because the payments could be a pretext to provide compensation for a referral. This novel position was an arresting departure from the plain language of RESPA, Reg X and HUD guidance, all of which made clear that making a payment at reasonable market value for services actually provided is, by definition, not a *payment for a referral*. However, the CFPB's legal position in the matter was not evaluated by a federal court, since Lighthouse Title elected to settle the action without admitting any fact or conclusion of law.

The fallout from the Lighthouse Title consent order was immediate and consequential, with many market participants abandoning the use of MSAs altogether. In 2015, the CFPB doubled down on its legal position by issuing a compliance bulletin titled *RESPA Compliance and Marketing Services Agreements*).[21] The bulletin declared that "any agreement that entails exchanging a thing of value for referrals of settlement service business involving a federally related mortgage loan likely violates RESPA, whether or not an MSA or some related arrangement is part of the transaction."[22] Accordingly, the CFPB asserted its view that "many MSAs are designed to evade RESPA's prohibition on the payment and acceptance of kickbacks and referral fees."[23] The bulletin also conspicuously noted the effect that Lighthouse Title had on market behavior, observing:

> In recent months, various mortgage industry participants have publicly announced their determination that the risks and complexity of designing and monitoring MSAs for RESPA compliance outweigh the benefits of entering the agreements. Accordingly, certain lenders have dissolved existing agreements and decided that they will no longer enter into MSAs.[24]

The CFPB expressed "grave concerns about the use of MSAs" and further warned that "MSAs *necessarily* involve substantial legal and regulatory risk for the parties to the agreement" (emphasis added).[25] Notably, the CFPB did not provide guidance for structuring compliant MSAs. Instead, it "encourage[d] all mortgage industry participants to consider carefully RESPA's requirements and restrictions and the adverse consequences that can follow from non-compliance."[26]

The second case that stands out is a 2014 administrative proceeding initiated by the CFPB against PHH Corporation and its affiliates alleging that PHH's captive mortgage reinsurance arrangements violated RESPA Section 8.[27] In particular, the CFPB's notice of charges alleged that between 1995 and 2013, PHH used its arrangements to solicit and collect illegal kickback payments and unearned fees, disguised as reinsurance premiums, through its affiliates, in exchange for the referral of private mortgage insurance business.[28] As a remedy, the CFPB sought a permanent injunction, disgorgement, restitution, and a civil penalty.[29] In its defense, PHH argued that its actions conformed to HUD's 1997 RESPA Reinsurance Guidance, that the CFPB's own position in prior enforcement actions was contrary to the position it was now taking, and that most of the CFPB's claim was barred by RESPA's three-year statute of limitations.[30]

Following an in-house trial, the Administrative Law Judge (ALJ) hired by the CFPB issued a recommended decision holding that PHH did not qualify for RESPA Section 8(c)(2)'s safe harbor since it had not satisfied its requirements.[31] The ALJ therefore held that PHH had violated RESPA Section 8(a).[32] Critically, the ALJ held that the statutes of limitations under RESPA and the Dodd–Frank Act did not apply to the CFPB's administrative enforcement action, essentially construing the word "action" to mean federal court actions, not administrative proceedings.[33] However, the ALJ held that the CFPB could not revive claims which had become time-barred prior to the creation of the CFPB, so he established July 21, 2008, as the applicable start date for the CFPB's RESPA claim accrual look-back period.[34] Accordingly, the ALJ ordered disgorgement in the amount of $6.4 million.[35]

Both PHH and the CFPB's Office of Enforcement appealed the ALJ's recommended decision.[36] According to the CFPB's rules of practice for administrative proceedings, appeals from ALJ decisions must be made to the CFPB Director, which meant that Director Richard Cordray effectively sat as both prosecutor and judge in the case.[37] The Office of Enforcement reiterated the legal position it took in Lighthouse Title (and would also take in its 2015 RESPA bulletin), asserting that "where the evidence shows that a thing of value was given or accepted for referrals, the Section 8(c)(2) safe harbor is unavailable as a matter of law," arguing that "[m]andating the purchase of ancillary, purported goods or services—at any price—as consideration for making referrals to a real estate settlement service provider is a violation of Section 8(a) that cannot be saved by Section 8(c)(2). Holding otherwise would restrict the scope of Section 8(a) defined by the plain language of the statute."[38] The CFPB claimed that the opportunity to engage in reinsurance transactions provided value to PHH regardless of whether the reinsurance was real or reasonably priced, and the fact that excessively priced services are not protected by Section 8(c)(2) "does not mean that the inverse—that reasonably priced services are automatically protected by Section 8(c)(2)—is true."[39] The Office of Enforcement thus urged Director Cordray to hold that Section 8(c)(2) does not protect payments at any price when the transaction is itself consideration for referrals of settlement service business.[40]

On appeal, Director Cordray reviewed *de novo* the enforcement action he had initially either authorized or condoned, and issued a decision and final order that, not surprisingly, sided almost entirely with the bureau that he ran. First, the Director agreed that no statute of limitations applies when the bureau challenges a RESPA violation.[41] The Director also interpreted RESPA 8(c)(2) as "clarify[ing] the application of section 8(a), not as a substantive exemption to liability," and stated that "[t]o the extent that the [1997 RESPA Reinsurance Guidance] is inconsistent with my textual and structural interpretation of section 8(c)(2), I reject it."[42] Then, for purposes of calculating the amount of disgorgement, the Director disagreed with the ALJ, finding that "PHH violated RESPA every time it accepted a reinsurance payment," not simply each time an individual loan transaction closed and mortgage insurance business was referred.[43] Additionally, the Director declined to offset the size of the disgorgement penalty by any amounts that PHH's affiliate paid on mortgage reinsurance claims. In other words, he based the disgorgement amount on gross revenue from premiums ceded, not profits.[44] The combination of these two changes to the disgorgement calculation resulted in a 17-fold increase in the amount of disgorgement ordered by Director Cordray, to $109.1 million.

The Reckoning

PHH appealed Director Cordray's order to the DC Circuit Court of Appeals, arguing that the CFPB was unconstitutionally structured, that the CFPB misinterpreted RESPA Section 8(c), and that the CFPB violated bedrock due-process principles by retroactively applying its new interpretation of the statute against it.[45] In a panel decision issued on October 11, 2016, the court considered each of PHH's arguments in turn.[46]

First, the court concluded that the CFPB is unconstitutionally structured because it is an independent agency headed by a single Director, and it remedied the constitutional violation by severing the for-cause removal provision from the statute.[47] As a result, in the court's view, the CFPB would operate as an executive agency answerable to the President.[48] However, the court reasoned that because its constitutional ruling would not halt the CFPB's ongoing operations or its ability to uphold Director Cordray's $109 million order against PHH, it must also consider PHH's statutory objections to the CFPB's enforcement action in this case.[49] There, the court stated:

> The basic statutory question in this case is not a close call.... Section 8(a) prohibits, in this context, payment by a mortgage insurer to a lender for the lender's referral of a customer to the mortgage insurer. But Section 8(a) and 8(c) do not prohibit bona fide payments by the mortgage insurer to the lender for other services that the lender (or the lender's subsidiary or affiliate) actually provides to the mortgage insurer.... Section 8(a) proscribes payments for referrals. Period. It does not proscribe other transactions between the lender and mortgage insurer. Nor does it proscribe a tying arrangement, so long as the only payments exchanged are bona fide payments for services and not payments for referral. The CFPB says, however, that the mortgage insurer's payment for the reinsurance is not "bona fide" if it was part of a tying arrangement. That makes little sense. Tying arrangements are ubiquitous in the U.S. economy.... A payment for a service pursuant to a tying arrangement does not make the payment any less bona fide, so long as the payment for the service reflects reasonable market value....
>
> Recognizing, however, that an aggressive government enforcement agency or court might interpret other transactions between businesses in the real estate market as connected to, conditioned on, or tied to referrals, and might try to sweep such transactions within the scope of Section 8(a)'s prohibition, Congress explicitly made clear in Section 8(c) that those other transactions were lawful so long as reasonable market value was paid and the services were

> actually performed. In other words, Section 8(c) specifically bars the aggressive interpretation of Section 8(a) advanced by the CFPB in this case. Section 8(c) was designed to provide certainty to businesses in the mortgage lending process. The CFPB's interpretation flouts that statutory goal and upends the entire system of unpaid referrals that has been part of the market for real estate settlement services....
>
> The CFPB obviously believes that captive reinsurance arrangements are harmful and should be illegal. But the decision whether to adopt a new prohibition on captive reinsurance arrangements is for Congress and the President when exercising the legislative authority. It is not a decision for the CFPB to make unilaterally.[50]

Second, the court further found that the CFPB's unilateral reinterpretation of RESPA "flouts not only the text of the statute but also decades of carefully and repeatedly considered official government interpretations."[51] The court stated that an agency's change in position "is not a fatal flaw in and of itself, so long as the change is reasonably explained and so long as the new interpretation is consistent with the statute."[52] However, the court warned that "change becomes a problem—a fatal one—when the Government decides to turn around and retroactively apply that new interpretation to proscribe conduct that occurred before the new interpretation was issued."[53] The court described this fundamental anti-retroactivity principle as "Rule of Law 101."[54] Concluding that the "Due Process Clause does not countenance the CFPB's gamesmanship," the court held that the CFPB's retroactive application of its new interpretation of RESPA Section 8 to PHH's conduct, which occurred before the date of the CFPB's new interpretation, violated due process.[55]

Finally, the court concluded that the CFPB's attempt to distinguish between administrative proceedings and court actions for purposes of applying RESPA's statute of limitations was "flatly wrong" and a "nonsensical dichotomy" that is directly contradicted by the Dodd–Frank Act itself.[56] The court found that "there is good reason Congress did not say that the CFPB need not comply with any statutes of limitations when enforcing the Real Estate Settlement Procedures Act administratively. That would be absurd.... The CFPB has articulated no remotely plausible reason why Congress would have done so."

The court found for PHH on the merits in all respects, vacated the CFPB's order against PHH, and remanded the case to the CFPB to determine among other things whether, within the applicable three-year statute of limitations, the relevant mortgage insurers paid more than reasonable market value to the PHH-affiliated reinsurer.[57]

The Aftermath

Following the court's decision, Director Cordray sought and was granted *en banc* review before the entire DC Circuit.[58] However, he resigned from office to run for governor of Ohio before the court rendered its decision. On January 31, 2018, the court reversed the decision of the panel with respect to the constitutionality of the CFPB, holding that the for-cause conditions shielding the CFPB Director from removal without cause are consistent with Article II.[59] However, on the merits, the court reinstated the panel opinion insofar as it related to the interpretation of RESPA and its application to PHH.[60] On remand to the CFPB, then-Acting CFPB Director Mick Mulvaney ordered the parties to file a joint statement addressing whether further proceedings in the matter were necessary.[61] PHH and the CFPB's Office of Enforcement jointly recommended dismissal.[62] Concluding that, in light of the *PHH* decision, "it is now the law of this case that PHH did not violate RESPA if it charged no more than the reasonable market value for the reinsurance it required the mortgage insurers to purchase, even if the reinsurance was a quid pro quo for referrals." Acting Director Mulvaney ordered the notice of charges against PHH dismissed and the matter terminated.[63]

Thus ended the PHH saga. It is hard to conceive of a more thorough repudiation of both the CFPB's interpretation of RESPA Section 8 and the way it sought to impose its misinterpretation retroactively. But what consequence did CFPB face for so egregiously violating due process and undermining the rule of law? To be sure, the CFPB lost its case against PHH, but only because PHH earned its victory at the cost of a half-decade of toil, reputational damage, and litigation expense. In a memo to CFPB staff dated January 23, 2018, Acting Director Mulvaney reflected upon this type of injustice, stating:

> 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?[64]

There is no just answer to these questions. However, the CFPB can atone for its actions by credibly dedicating itself to preventing such abuses in the future. Furthermore, due to a recent Supreme Court decision,[65] the President can also act to help restore the rule of law at the CFPB.

Restoring the Rule of Law

CFPB Director Kathleen Kraninger has admirably committed the agency to ensuring that there are "clear rules of the road" for financial institutions.[66] However, even two years after the end of *PHH* and nearly four years since the DC Circuit's decision, much unfinished work remains. To restore the rule of law, the CFPB should take seven concrete actions:

1. **Rescind** its 2015 RESPA Bulletin on MSAs and any other bulletin that is premised on the CFPB's repudiated misinterpretation of RESPA Section 8;

2. **Issue** an interpretive rule that officially restores its interpretation of law to one that is consistent with the plain text of RESPA Section 8, Regulation X, long-standing HUD guidance, and the *PHH* opinion;[67]

3. **Issue** an interpretive rule clarifying the statutes of limitations that are applicable to its administrative proceedings;

4. **Issue** an interpretive rule clarifying the way the CFPB will calculate disgorgement for purposes of seeking equitable relief in light of the Supreme Court's recent opinion in *Liu et al. v. SEC*;[68]

5. **Amend** its remaining guidance documents to conform to these interpretive rules;

6. **Issue** a policy statement repudiating the "regulation by enforcement" doctrine espoused by Director Cordray, of which the CFPB's RESPA Section 8 enforcement actions are a quintessential example;[69] and

7. **Refrain** from ratifying, and immediately **terminate**, any portion of an existing supervisory or enforcement matter (including any

> supervisory matter requiring attention, any supervisory memorandum of understanding, any civil investigative demand, and any enforcement action) that is premised on the CFPB's repudiated misinterpretation of RESPA Section 8.[70]

The CFPB can take each of these seven actions on its own. However, Congress can also help to restore the rule of law. The Congressional Review Act (CRA) establishes a process for congressional review of agency rules and establishes special expedited procedures under which Congress may pass a joint resolution of disapproval that, if enacted into law, overturns the rule.[71] The CRA defines an agency rule broadly to include a "statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."[72] This definition very likely encompasses the CFPB's 2015 RESPA bulletin. In fact, the Government Accountability Office (GAO) previously concluded that another CFPB enforcement bulletin (regarding indirect auto lending) was a rule under the CRA,[73] and Congress overturned it.[74] If necessary to prompt the CFPB to taking action regarding the 2015 RESPA bulletin, a Member of Congress could write to the GAO requesting an opinion on whether the bulletin is a rule for the purposes of the CRA. Such an opinion rendered by the GAO could prompt potential consideration of a joint resolution of disapproval to overturn the bulletin.

Congress can also require the CFPB to engage in a notice-and-comment process before issuing guidance documents.[75] Such a requirement, if enacted, could serve as an effective early warning signal whenever the CFPB seeks to change the requirements of the law through guidance rather than through a legislative rulemaking.[76]

President Donald Trump can also act to help restore the rule of law at the CFPB. Because of the Supreme Court's June 2020 decision in *Seila Law v. CFPB*, the President can now remove the CFPB Director from office for any reason, not just for cause. This means that President Trump can direct Director Kraninger to take affirmative actions to carry out his administrative priorities, including by ordering the CFPB to take each of the seven concrete actions enumerated above.

The fact that the President can now control the agency also means that the President can require the CFPB to comply with his executive orders. In October 2019, President Trump issued an "Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents," the purpose of which is to prevent executive departments and agencies from issuing non-binding guidance documents that unlawfully provide new interpretations of law outside the Administrative Procedures Act.[77] The requirements of this executive order would clearly address the CFPB's prior abuses of the guidance process, as represented by the 2015 RESPA bulletin. For that reason, the White House should specifically direct the CFPB to comply with this executive order.

Finally, the *Seila Law* decision also means that the President now effectively controls the CFPB's budget, since he can specify the amount of funds the Director may request from the Federal Reserve each fiscal quarter. This means that he can also affirmatively prohibit the CFPB from using funds for any particular purpose. For that reason, the Office of Management and Budget should actively manage the CFPB's budget in order to bring it into line with the Administration's budget priorities and should also forbid the CFPB from using funds in furtherance of its repudiated misinterpretation of RESPA.

Conclusion

Through these collective actions, the CFPB, Congress, and the President can continue the work started by the DC Circuit Court of Appeals in *PHH* to restore the plain meaning of RESPA Section 8. However, even if all of these actions are taken, it should not be forgotten that the CFPB's RESPA enforcement actions were just one of many manifestations of the "regulation by enforcement" doctrine espoused by former Director Cordray. Other examples exist, and the CFPB would be wise to identify them quickly and pull each of them out by the root.

But unless or until Congress enacts legislation ensuring that the CFPB is accountable to Congress through the appropriations process, the only guarantee that the "regulation by enforcement" doctrine does not return is the personal commitment and vigilance of the CFPB Director. One additional accountability mechanism that the Director could institute to help her police the CFPB's actions would be to require the Associate Director for Supervision, Enforcement, and Fair Lending to inform her any time that the CFPB proposes to send a Notice and Opportunity to Respond and Advise (NORA) letter or a Potential Action and Request for Response (PARR) letter to a company containing a preliminary conclusion of law that (in the Associate Director's judgment) is not clearly and unambiguously supported by controlling case law or a legislative rule, interpretive rule, or guidance document issued or adopted by the CFPB. Such a notification would be a red flag warning that the CFPB may be attempting once more to "push the envelope" in its interpretation and application of the law, and a sign that the CFPB should first pause and announce its new legal position publicly before taking any supervisory or enforcement action. Direct oversight by the Director at this stage of the CFPB's supervisory and enforcement process would help to reinforce the rule of law, prevent violations of due process, minimize the risk of losing another case like *PHH*, ensure that the CFPB provides clear rules of the road for market participants, and avoid the type of injustice observed by former Acting Director Mulvaney.

Brian Johnson is a Visiting Scholar in Financial Market Regulations in the Institute for Economic Freedom at The Heritage Foundation. He is the former Deputy Director of the Consumer Financial Protection Bureau. The views represented here are his own.

Endnotes

1. Public Law No. 93–533, § 2, December 22, 1974, 88 Stat. 1724, now codified at 12 U.S. Code 2601, et seq. Regulation X, which implements RESPA, is codified at 12 CFR Part 1024.
2. 12 U.S. Code 2601(b)(2).
3. 12 U.S. Code 2607(a); see also 12 CFR 1024.14(b). The Senate Report accompanying RESPA stated that Section 8 "is intended to prohibit all kickback or referral fee arrangements whereby any payment is made or 'thing of value' furnished *for the referral* of real estate settlement business." (Emphasis added.) See Senate Report No. 866, 93th Cong., 2nd Sess., 1974, 1974 U.S. Code, Congressional & Administrative News, pp. 6546 and 6551, 1974 WL 11646 (Leg.Hist.). RESPA defines the term "thing of value" to include "any payment, advance, funds, loan, service, or other consideration." 12 U.S. Code 2602(2). Reg X further defines "thing of value" broadly to include, without limitation, "monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation." 12 CFR 1024.14(d).
4. 12 U.S. Code 2607(b). The Senate Report accompanying RESPA stated that "[t]o the extent the payment is in excess of the reasonable value of the goods provided or services performed, the excess may be considered a kickback or referral fee proscribed by Section [8]." See Senate Report No. 866, 93th Cong., 2nd Sess. 1974.
5. 12 U.S. Code 2607(c)(2). The Senate Report accompanying RESPA stated that "reasonable payments in return for services actually performed or goods actually furnished are not intended to be prohibited." See Senate Rep. No. 866, 93th Cong., 2nd Sess. 1974.
6. 12 CFR 1024.14(g)(1)(iv).
7. In a 2002 proposed rule, HUD stated: "Over the last decade, there has been persistent litigation concerning the legality of indirect fees to mortgage brokers. More than 150 lawsuits have been brought since the mid-1990s seeking class action certification, based in whole or in part on the theory that the indirect fees paid by lenders to mortgage brokers are fees for the referral of business in violation of section 8 of RESPA." See U.S. Department of Housing and Urban Development," Proposed Rule: Real Estate Settlement Procedures Act (RESPA); Simplifying and Improving the Process of Obtaining Mortgages to Reduce Settlement Costs to Consumers," *Federal Register*, Vol. 67, No. 145 (July 29, 2002), pp. 49134 and 49141, https://www.govinfo.gov/content/pkg/FR-2002-07-29/pdf/02-18960.pdf (accessed July 23, 2020).
8. H.R. Conference Report No. 105-769, 105th Cong., 2nd Sess. 260 (1998), https://www.congress.gov/105/crpt/hrpt769/CRPT-105hrpt769.pdf (accessed July 23, 2020).
9. U.S Department of Housing and Urban Development, "Statement of Policy 1999-1: Regarding Lender Payments to Mortgage Brokers," 24 CFR Part 3500, February 22, 1999, https://archives.hud.gov/news/1999/rspntce.html (accessed July 23, 2020).
10. Ibid. According to the policy statement, "The fact that goods or facilities have been actually furnished or that services have been actually performed by the mortgage broker does not by itself make the payment legal."
11. Ibid. In 2001, HUD further clarified that "where compensable services are performed, the 1999 Statement of Policy requires application of both parts of the HUD test before a determination can be made regarding the legality of a lender payment to a mortgage broker." See U.S. Department of Housing and Urban Development, "Statement of Policy 2001-1: Clarification of Statement of Policy 1999-1 Regarding Lender Payments to Mortgage Brokers, and Guidance Concerning Unearned Fees Under Section 8(b)," October 18, 2001, https://archives.hud.gov/news/2001/respafinal.pdf (accessed July 23, 2020). This policy also specifically stated that "Section 8(c)(2) only allows 'the payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or services actually performed,' i.e., permitting only that compensation which is reasonably related to the goods or facilities provided or services performed. Compensation that is unreasonable is unearned under Section 8(b) and is not bona fide under Section 8(c)(2)."
12. Ibid.
13. Letter from Nicolas P. Retsinas, Assistant Secretary for Housing, Department of Housing and Urban Development, to Countrywide Funding Corporation 3, August 6, 1997, (Exhibit E), https://files.consumerfinance.gov/f/201506_cfpb_addendum_public_version_228_01.pdf (accessed July 23, 2020).
14. Ibid. HUD reiterated its interpretation in 2004, stating that captive reinsurance agreements are permissible if the payments made to the reinsurer (1) are "for reinsurance services actually furnished or for services performed" and (2) are "bona fide compensation that does not exceed the value of such services." See Letter from John P. Kennedy, Associate General Counsel for Finance and Regulatory Compliance, Department of Housing and Urban Development, to American Land Title Association 1, August 12, 2004.
15. See, for example, *Glover v. Standard Federal Bank*, 283 F.3d 953, 964 (8th Cir. 2002). The "permissive language of Section 8(c)...clearly states that reasonable payments for goods, facilities or services actually furnished are *not prohibited* by RESPA, even when done in connection with the referral of a particular loan to a particular lender." Compare to *Carter v. Welles-Bowen Realty, Inc.*, 736 F.3d 722, 728 (6th Cir. 2013) (RESPA "establishes other safe harbors from its ban on referral fees, distinct from the safe harbor for affiliated business arrangements," one of which is Section 8(c)(2)), and *Geraci v. Homestreet Bank*, 347 F.3d 749, 751 (9th Cir. 2003) (Stating that "Section 8(c) provides a safe harbor" and noting that HUD's two-part test established under Statement of Policy 1999-1 "has been adopted by the majority of courts in applying Section 8 to [yield spread premiums], including this court.").

16. Public Law No. 111–203, 124 Stat. 1376 (July 21, 2010). Once it inherited HUD's former authority, the CFPB codified HUD's Reg X provisions governing RESPA Section 8. See 12 CFR § 1024.14 (2012).
17. See, for example, *Consumer Fin. Prot. Bureau v. Borders & Borders*, Complaint, 3:13-MC-99999 (W.D. Ky. October 24, 2013); *Consumer Fin. Prot. Bureau v. Radian Guaranty Inc.*, Consent Judgment, 1:13-CV-21188 (S.D. Fl. April 4, 2013); *Consumer Fin. Prot. Bureau v. United Guaranty Corp.*, Complaint, 1:13-CV21189 (S.D. Fl. April 4, 2013); *Consumer Fin. Prot. Bureau v. Genworth Mortg. Ins. Corp.*, Consent Judgment, 1:13-CV-21183 (S.D. Fl. April 5, 2013); *Consumer Fin. Prot. Bureau v. Mortg. Guaranty Ins. Corp.*, Consent Judgment, 1:13-CV-21187 (S.D. Fl. April 5, 2013); In the Matter of: Paul Taylor, Paul Taylor Homes Limited, and Paul Taylor Corp., Consent Order, 2013-CFPB-0001 (May 17, 2013); *Consumer Fin. Prot. Bureau v. Republic Mortg. Ins. Co.*, 1:13-CV-24146 (S.D. Fl. November 15, 2013); In the Matter of: Fidelity Mortg. Corp. et al., Consent Order, 2014-CFPB-0001 (January 16, 2014); In the Matter of: 1st Alliance Lending, LLC, Consent Order, 2014-CFPB-0003 (February 24, 2014); In the Matter of: JRHBW Realty, Inc., d/b/a RealtySouth; TitleSouth, LLC, Consent Order, 2014-CFPB-0005 (May 28, 2014); In the Matter of: Stonebridge Title Serv., Inc., Consent Order, 2014-CFPB-0006 (June 12, 2014); In the Matter of: Amerisave Mortgage Corporation et al., Consent Order, 2014-CFPB-0010 (August 12, 2014); and In the Matter of: Lighthouse Title, Inc., Consent Order, 2014-CFPB-0015 (September 30, 2014).
18. In the Matter of: Lighthouse Title, Inc., Consent Order, 2014-CFPB-0015 (September 30, 2014), https://files.consumerfinance.gov/f/201409_cfpb_consent-order_lighthouse-title.pdf (accessed July 26, 2020).
19. Ibid., para. 16.
20. Ibid., para. 20. The CFPB also took this position in an amicus brief filed in a private action pending before the Ninth Circuit. See *Edwards v. First American Corp.*, 798 F.3d 1172 (9th Cir. 2015).
21. Consumer Financial Protection Bureau, *Compliance Bulletin* 2015-05, October 8, 2015, https://files.consumerfinance.gov/f/201510_cfpb_compliance-bulletin-2015-05-respa-compliance-and-marketing-services-agreements.pdf (accessed July 23, 2020).
22. Ibid., p. 2.
23. Ibid., p. 1.
24. Ibid., p. 4.
25. Ibid. pp. 4 and 5.
26. Ibid., p. 4.
27. PHH Corp., CFPB Notice of Charges, January 29, 2014, https://files.consumerfinance.gov/f/documents/201402_cfpb_0002_notice-of-charges.pdf (accessed July 23, 2020).
28. Ibid.
29. Ibid.
30. PHH Corp., PHH Brief in Support of Motion to Dismiss, January 31, 2014, https://files.consumerfinance.gov/f/documents/201402_cfpb_0002_support-of-motion-to-dismiss.pdf (accessed July 23, 2020).
31. PHH Corp., ALJ Recommended Decision, November 25, 2014, https://files.consumerfinance.gov/f/documents/201411_cfpb_recommend-decision-final_205.pdf (accessed July 23, 2020).
32. Ibid.
33. PHH Corp., ALJ Order on Dispositive Motions, May 22, 2014, https://files.consumerfinance.gov/f/documents/201405_cfpb_order_order-on-dispositive-motions_152.pdf (accessed July 23, 2020).
34. Ibid.
35. PHH Corp., ALJ Recommended Decision.
36. PHH Corp., PHH Notice of Appeal, December 4, 2014, https://files.consumerfinance.gov/f/documents/201412_cfpb_notice-of-appeal-by-phh_206.pdf (accessed July 23, 2020), and Consumer Financial Protection Bureau, Enforcement Council's Notice of Appeal, December 10, 2014, https://files.consumerfinance.gov/f/documents/201412_cfpb_ec-notice-of-appeal_208.pdf (accessed July 23, 2020).
37. 12 CFR 1081.405(a).
38. PHH Corp., Enforcement Counsel's Opening Appeal Brief, January 9, 2015, https://files.consumerfinance.gov/f/documents/201501_cfpb_ecs-opening-appeal-brief_212.pdf (accessed July 23, 2020).
39. Ibid.
40. Ibid.
41. PHH Corp., Final Decision, June 4, 2015, https://files.consumerfinance.gov/f/documents/201506_cfpb_decision_by_director_cordray_redacted_226.pdf (accessed July 23, 2020).
42. Ibid.
43. Ibid. Compare to *Snow v. First American Title*, 332 F.2d 356 (5th Cir. 2003).

44. The reasoning of the U.S. Supreme Court's recent opinion in *Liu et al. v. SEC*, 591 U.S. (2020), https://www.supremecourt.gov/opinions/19pdf/18-1501_8n5a.pdf (accessed July 23, 2020), suggests that the director's decision to base the CFPB's disgorgement calculation on gross revenue rather than net profits exceeded the CFPB's power to impose equitable remedies.
45. *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 7, 9, and 41 (DC Cir. 2016), https://www.cadc.uscourts.gov/internet/opinions.nsf/AAC6BFFC4C42614C852580490053C38B/$file/15-1177-1640101.pdf (accessed July 23, 2020).
46. Ibid., p. 1. Judge Kavanaugh filed the opinion for the court and was joined by Judge Randolph, who also filed a concurring opinion. Judge Henderson concurred with parts I, IV, and V of the opinion, but dissented with parts II and III.
47. Ibid., pp. 37 and 39.
48. Ibid., p. 39.
49. Ibid.
50. Ibid., pp. 41, 42, and 44.
51. Ibid., p. 42.
52. Ibid., p. 44.
53. Ibid.
54. Ibid., p. 48.
55. Ibid., p. 49.
56. Ibid., pp. 52 and 54.
57. Ibid., pp. 10 and 55.
58. *PHH Corp. v. CFPB*, 881 F.3d 75 (2018) (*en banc*), https://www.cadc.uscourts.gov/internet/opinions.nsf/B7623651686D60D585258226005405AC/$file/15-1177.pdf (accessed July 23, 2020).
59. Ibid., p. 77. On June 29, 2020, the U.S. Supreme Court in *Seila Law v. CFPB*, 591 U.S., https://www.supremecourt.gov/opinions/19pdf/19-7_n6io.pdf (accessed July 23, 2020), held that the CFPB is unconstitutionally structured, superseding the DC Circuit's *en banc* opinion in *PHH* with respect to the constitutionality of the CFPB.
60. Ibid., p. 83.
61. PHH Corp., Order Directing Parties to Respond, May 11, 2018, https://files.consumerfinance.gov/f/documents/2014-CFPB-0002_Document_234_05112018.pdf (accessed July 23, 2020).
62. PHH Corp., Joint Statement of the Parties, June 6, 2018, https://files.consumerfinance.gov/f/documents/2014-CFPB-0002_Document_235_06062018.pdf (accessed July 23, 2020).
63. PHH Corp., Order Dismissing the Notice of Charges, June 7, 2018, https://files.consumerfinance.gov/f/documents/2014-CFPB-0002_Document_236_06072018.pdf (accessed July 23, 2020).
64. Mick Mulvaney, "To Everybody from the Acting Director," January 23, 2018, https://assets.documentcloud.org/documents/4357880/Mulvaney-Memo.pdf (accessed July 23, 2020).
65. *Seila Law LLC v. Consumer Financial Protection Bureau*, 2020.
66. News release, "Speech at the Bipartisan Policy Center by Kathleen L. Kraninger, Director Consumer Financial Protection Bureau," Consumer Financial Protection Bureau, April 17, 2020, https://www.consumerfinance.gov/about-us/newsroom/kathleen-kraninger-director-consumer-financial-protection-bureau-bipartisan-policy-center-speech/ (accessed July 23, 2020). One manifestation of this commitment is the CFPB's recently announced Advisory Opinion Program. See Consumer Financial Protection Bureau, "Advisory Opinion Program," https://www.consumerfinance.gov/policy-compliance/guidance/advisory-opinion-program/ (accessed July 23, 2020).
67. Consideration of *Consumer Fin. Prot. Bureau v. Borders & Borders*, Case No. 13-cv-01047, 2018 U.S. Dist. LEXIS 46906 (W.D. Ky. March 21, 2018), another RESPA case that the CFPB lost, may also be relevant here.
68. 591 U.S. (2020), https://www.supremecourt.gov/opinions/19pdf/18-1501_8n5a.pdf (accessed July 23, 2020).
69. See, for example, Hannah Lutz, "CFPB's Corday Defends Regulation by Enforcement," *AutoNews*, April 7, 2016, https://www.autonews.com/article/20160407/RETAIL07/160409823/cfpb-s-cordray-defends-regulation-by-enforcement (accessed July 26, 2020).
70. Thereafter, if the bureau is able to resume any of these activities in whole or in part based on a legitimate theory of liability under RESPA or any other federal consumer financial law, it should make every effort to do so.
71. 5 U.S. Code 801 et seq.
72. Ibid.
73. See, for example, U.S Government Accountability Office, "Letter to Senator Toomey B-329129," December 5, 2017, https://www.gao.gov/assets/690/688763.pdf (accessed July 23, 2020).

74. Public Law No. 115–172, May 21, 2018.
75. An example of a bill that would implement such a policy is the Bureau Guidance Transparency Act, a bipartisan bill considered in the House of Representatives during prior Congresses. See, for example, H.R. 4811 (113th Congress) and H.R. 4684 (114th Congress).
76. Of course, some have argued that the CFPB's abuses are a natural and foreseeable consequence of its flawed structural design, with too much power, too much discretion in the exercise of that power, and too little accountability to the constitutional branches of government. Consequently, those who make those arguments have also argued in favor of additional statutory safeguards. See, for example, H.R. 10 (115th Congress).
77. The White House, "Executive Order on Promoting the Rule of Law Through Improved Agency Guideline Documents," October 9, 2019, https://www.whitehouse.gov/presidential-actions/executive-order-promoting-rule-law-improved-agency-guidance-documents/ (accessed July 23, 2020).

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September 18, 2019

Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Consumer Financial Protection Bureau (CFPB) Proposed Rule on Debt Collection Practices (Regulation F); Docket No. CFPB-2019-0022; RIN 3170-AA41, 84 Fed. Reg. 23274 (May 21, 2019)

Dear Sir/Madam:

On behalf of the American Bar Association (ABA), which is the largest voluntary association of attorneys and legal professionals in the world, I write to express our views regarding Section 1006.18(g) of the above-referenced proposed rule (the Proposed Rule) that would create a "safe harbor for meaningful attorney involvement in debt collection litigation submissions."

Although the ABA appreciates the CFPB's efforts to explain the steps it believes attorneys and law firms should take to comply with the so-called "meaningful attorney involvement" concept and thus avoid incurring liability under Section 807(3) and (10)[1] of the Fair Debt Collection Practices Act (FDCPA), the ABA is concerned that the Bureau's safe harbor proposal would improperly codify this flawed concept. Doing so would undermine the courts' primary and inherent authority to regulate and oversee attorneys engaged in litigation. It would also undermine the attorney-client privilege, the work product doctrine, the attorney's ethical obligations not to disclose confidential client information, and the confidential attorney-client relationship in general. Therefore, the ABA urges the CFPB to withdraw the safe harbor proposal, reject the meaningful attorney involvement concept, and recognize the long-standing authority of courts to oversee and address the conduct of all attorneys engaged in litigation before them.

The Bureau's Proposed Safe Harbor for Meaningful Attorney Involvement in Debt Collection Submissions

In the Proposed Rule, the Bureau contends that Section 807 of the FDCPA "contains certain provisions designed to protect consumers from false, deceptive, or misleading representations made by, or means employed by, attorneys in debt collection litigation," including Section 807(3) that "prohibits the false representation or implication that any individual is an attorney or that any communication is from an attorney."[2] The Bureau also claims that debt collection communications

[1] Section 807(3) and (10) of the FDCPA, which prohibit a "debt collector" from engaging in certain false or deceptive acts in connection with the collection of any debt, has been codified at 15 U.S.C. § 1692e(3) and (10).
[2] Proposed Rule, 18(g) Safe Harbor for Meaningful Attorney Involvement in Debt Collection Litigation Submissions, 84 Fed. Reg. at 23323.

that are sent under an attorney's name—including pleadings, written motions, or other papers submitted to the court in debt collection litigation—could violate Section 807(3) and (10) of the FDCPA if the attorney was not "meaningfully involved in the preparation of the communication."[3]

In an apparent effort to provide greater clarity to consumers, attorneys, and law firms engaged in debt collection litigation concerning the "meaningful attorney involvement" concept, the Bureau has proposed new "safe harbor" language in Section 1006.18(g), that states:

> (g) *Safe harbor for meaningful attorney involvement in debt collection litigation submissions.* A debt collector that is a law firm or who is an attorney complies with § 1006.18 when submitting a pleading, written motion, or other paper submitted to the court during debt collection litigation if an attorney personally:
> (1) Drafts or reviews the pleading, written motion, or other paper; and
> (2) Reviews information supporting such pleading, written motion, or other paper and determines, to the best of the attorney's knowledge, information, and belief, that, as applicable:
> (i) The claims, defenses, and other legal contentions are warranted by existing law;
> (ii) The factual contentions have evidentiary support; and
> (iii) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.[4]

The Bureau contends that the safe harbor factors in proposed Section 1006.18(g) are similar to the nationally recognized standards for attorneys making submissions in civil litigation outlined in Federal Rule of Civil Procedure 11(b)(2) through (4), except in the following two respects:

> First, that the claims, defenses, or other legal contentions are a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and second, that the factual contentions are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.[5]

The Bureau has requested comments on "whether the safe harbor proposed for meaningful attorney involvement in debt collection litigation submissions provides sufficient clarity for consumers, attorneys, and law firms."[6]

<u>The ABA's Concerns Regarding the CFPB's Proposed Safe Harbor</u>

The ABA recognizes and appreciates the CFPB's efforts to clarify the meaning of "meaningful attorney involvement" with respect to debt collection litigation submissions and to attempt to

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[3] *See id.*
[4] Proposed Rule, Section 1006.18(g), 84 Fed. Reg. at 23402-23403.
[5] *See* Proposed Rule at 23324, footnote 351.
[6] *Id.* at 23324.

provide attorneys and law firms with a safe harbor protecting them from potential liability when they meet the requirements outlined above. However, the ABA believes that the safe harbor proposal in the Proposed Rule falls short of that goal and therefore opposes it for several important reasons:

1. <u>The Safe Harbor Proposal Would Improperly Codify the Flawed "Meaningful Attorney Involvement" Concept, which is Not Referenced in the FDCPA or Any Other Statute</u>

The ABA respectfully disagrees with the entire premise of the "meaningful attorney involvement" concept, as neither that term nor the general concept appears anywhere in the FDCPA, the Dodd-Frank Act, or any other federal statute. Instead, the concept was developed in a series of federal court cases interpreting Section 807(3) of the FDCPA, which prohibits debt collectors from making a "false representation or implication that any individual is an attorney or that any communication is from an attorney," and Section 807(10), which generally prohibits the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." *See, e.g., Clomon v. Jackson,* 988 F.2d 1314 (2nd Cir. 1993) and *Avila v. Rubin,* 84 F.3d 222 (7th Cir. 1996).

Section 807(3) of the FDCPA is a straightforward rule that simply prohibits a collection agency or any other type of debt collector from falsely stating or implying that an individual is an attorney or that the debt collector's letters or other communications to a debtor are from an attorney when that is not the case. Because a letter or other communication from an attorney can seem more forceful or intimidating to a debtor than a communication from an ordinary collection agency, this prohibition is sensible and uncontroversial. But on its face, the rule is limited in scope and merely raises the question of whether the collection letter or communication was sent by an attorney—or not.[7]

Unfortunately, the courts in the *Clomon, Avila,* and several other similar cases went well beyond the plain language of the statute and interpreted the term "from" to mean much more than whether the person sending the demand letter or other communication to the debtor was in fact an attorney. Instead, the courts interpreted the term "from" to mean that the attorney not only sent the communication, but that the attorney also "directly controlled or supervised the process through which the letter was sent" and formed a professional judgment that the debtor is delinquent and is a candidate for legal action or an opinion about how to manage the debtor's case. *See Avila* at 229, *Clomon* at 1321, and *Nielsen v. Dickerson,* 307 F.3d 623, 625 (7th Cir. 2002). These requirements were later expanded by other federal courts to cover not just pre-suit demand letters, but also state

[7] When the FDCPA was enacted in 1977, it contained an express exemption for "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client." *Heintz v. Jenkins,* 514 U.S. 291, 294 (1995), citing FDCPA, Pub. L. No. 95-109, § 803(6)(F), 91 Stat. 874, 875 (1977). Attorneys remained exempt from the statute until the exemption was removed by Congress in 1986. *See Heinz* at 294-295, citing Pub. L. No. 99-361, 100 Stat. 768 (1986). Therefore, as originally enacted in 1977, Section 807(3) was merely intended to prohibit non-attorney debt collectors from falsely claiming that they or their representatives were attorneys or that correspondence on attorney letterhead was in fact from an attorney, not to require attorneys (who were not yet covered by the Act) to engage in any special due diligence before sending a letter or other communication to a debtor.

court pleadings filed by attorneys. *See, e.g., Bock v. Pressler & Pressler, LLP*, 30 F. Supp. 3d 283 (D.N.J. 2014).

Through these and other similar rulings, various federal courts have expanded the original meaning of Section 807(3) and developed the concept of "meaningful attorney involvement," thereby subjecting creditor attorneys to substantial new CFPB regulatory burdens and potential liability that go well beyond the actual wording of that statutory provision.

In the absence of clear statutory authority to the contrary, it is the proper role of the state courts that license and oversee attorneys and federal courts presiding over federal litigation—not federal agencies or private litigants—to regulate and establish professional standards for attorneys engaged in litigation.[8] Therefore, because neither the FDCPA nor any other federal statute refers to meaningful attorney involvement or grants the CFPB authority to adopt rules implementing such a requirement, it would be inappropriate for the Bureau to issue new rules codifying or granting a safe harbor from this flawed concept.

2. <u>The Meaningful Attorney Involvement Concept and the Safe Harbor Proposal in the Proposed Rule Would Undermine the Courts' Primary and Inherent Authority to Regulate and Oversee Attorneys Engaged in Litigation</u>

The ABA is concerned that by effectively codifying the meaningful attorney involvement concept, the safe harbor proposal in Section 1006.18(g) of the Proposed Rule would seriously undermine the state and federal courts' ability to regulate and oversee the litigation process and sanction attorneys that engage in litigation misconduct in a consistent manner.

For many decades, attorneys engaged in the practice of law have been regulated and disciplined for violations of applicable rules of professional conduct primarily by the highest court of the state in which the attorney is licensed or authorized to practice through attorney disciplinary agencies overseen by those courts. During that time, the state supreme courts have promulgated and enforced extensive and effective regulations governing all aspects of the practice of law, including admission requirements, strict attorney rules of professional conduct and disciplinary rules, and litigation procedural rules. An unbroken line of U.S. Supreme Court decisions recognizes the unique nature of the legal profession and the inherent power of the states to regulate the practice of law.[9] The Supreme Court has also noted that the states' interest in regulating the legal profession "is especially great since lawyers are essential to the primary governmental function of

[8] *See American Bar Ass'n v. FTC*, 430 F.3d 457, 471-472 (D.C. Cir. 2005) (FTC exceeded its authority by applying its Gramm-Leach-Bliley Act privacy regulations to attorneys when Congress had not made an intention to regulate the practice of law "unmistakably clear" in the language of the Act); *see also American Bar Ass'n v. FTC*, 671 F.Supp.2d 64, 87-88 (D.DC 2009), *vacated as moot* after Congress amended statute to exempt most attorneys and other professionals, 636 F.3d 641 (D.C. Cir. 2011) (FTC's attempt to apply its Red Flags Rule to attorneys engaged in the practice of law exceeded its authority and was plainly erroneous as "the Court will not infer that Congress transgressed into a traditional area of state regulation predicated on nothing more than silence and conjecture.")
[9] *See, e.g., Leis v. Flynt*, 439 U.S. 438, 442 (1979) (licensing and regulation of attorneys has been left exclusively to the states since the nation's founding); *Hoover v. Ronwin*, 466 U.S. 558 (1984) (precluding Sherman Act suit against development and grading of bar examinations); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977) (state prohibition against lawyer advertising does not violate the Sherman Act).

administering justice, and have historically been 'officers of the court.'"[10] As a result, the Supreme Court often has refused to permit the application of certain federal laws and regulations to attorneys engaged in the practice of law.

Although state supreme courts are primarily responsible for regulating the practice of law in general, both state and federal courts have the authority to address attorney misconduct that occurs during the course of litigation before them by sanctioning attorneys and the parties. The courts have the power to impose a wide range of sanctions under the applicable rules, including fines, reimbursement of the aggrieved party's attorney fees caused by the violation, striking the offending pleading or other paper, reprimands or censures, or referring the matter to disciplinary authorities.[11]

Consistent with this principle of judicial regulation and oversight of the legal profession, the FDCPA originally contained a complete exemption for attorneys engaged in the practice of law who collect debts on behalf of their clients.[12] Congress later amended the FDCPA in 1986 to remove the broad attorney exemption, based in part on the belief of the bill's sponsor, Rep. Frank Annunzio (D-IL), that the revised statute would only subject attorneys' non-litigation and other non-legal collection activities to the Act's regulations and that attorneys' litigation activities would continue to be overseen by the courts.[13] Although the Supreme Court later narrowly held in *Heintz v. Jenkins* that the amended Act "applies to attorneys who 'regularly' engage in consumer-debt-collection activity, even when that activity consists of litigation,"[14] the Court did not address "meaningful attorney involvement" nor did it state or infer that Section 807(3) or any other part of

[10] *Bates,* 433 U.S. at 362.
[11] *See, e.g.,* Fed. R. Civ. P. 11(c)(4), Notes of Advisory Committee on Rules—1993 Amendment, *Subdivisions (b) and (c),* available at https://www.law.cornell.edu/rules/frcp/rule_11.
[12] *See* footnote 7, *supra.*
[13] As Rep. Annunzio explained when Congress enacted the 1986 amendment to the FDCPA:

> The Fair Debt Collection Practices Act regulates debt collection, not the practice of law. Congress repealed the attorney exemption to the act, not because of attorneys' conduct in the courtroom, but because of their conduct in the backroom. Only collection activities, not legal activities, are covered by the act. . . . Actions which can only be taken by those possessing a license to practice law are outside the scope of the act. The filing of a complaint is not covered by the act.... Repeal of the attorney exemption does not infringe upon the practice of law by attorneys. [132 Cong. Rec. H10031 (daily ed. October 14, 1986) (statement of Rep. Annunzio).]

Similarly, the FTC staff noted in its Commentary on the 1986 amendment that "attorneys or law firms that engage in traditional debt collection activities (sending dunning letters, making collection calls to consumers) are covered by the FDCPA, but those whose practice is limited to legal activities are not covered." *See* Federal Trade Commission—Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50100 (December 13, 1988).
[14] *Heintz v. Jenkins,* 514 U.S. 291, 299 (1995). After the Supreme Court issued its decision, the FTC formally urged Congress in each of its annual reports on the FDCPA from 1998 through 2006 to amend the Act to "exempt from the FDCPA's provisions attorneys who pursue debtors solely through litigation (or similar 'legal' practices)." *See* Federal Trade Commission Annual Report 2006: Fair Debt Collection Practices Act, at pages 11-12, available at https://www.ftc.gov/sites/default/files/documents/reports/fair-debt-collection-practices-act-federal-trade-commission-annual-report-2006-types-consumer/p0648042006fdcpareport.pdf The ABA has also urged Congress to enact similar legislation. *See* the ABA's September 19, 2018 letter to the House supporting H.R. 5082 (115th Congress), available at https://www.americanbar.org/content/dam/aba/uncategorized/GAO/2018sept19abalettertohousesupportinghr5082.pdf.

the FDCPA should be interpreted to impose any additional due diligence standards on creditor attorneys beyond the well-established state and federal court rules governing all licensed attorneys.

Applicable state rules of professional conduct subject attorneys to stringent ethical duties of competency, diligence, and confidentiality and require them to assert only meritorious claims, display candor to the court and fairness to opposing parties and counsel.[15] Federal Rule of Civil Procedure 11(b) also requires attorneys presenting pleadings, motions, and other papers to the court to certify as officers of the court that the contentions contained in those materials are meritorious and have legal and evidentiary support.[16] These and other state and federal court rules impose legal and ethical obligations on litigation attorneys that extend well beyond the meaningful attorney involvement concept or the safe harbor provisions that the Proposed Rule would codify, and they are specifically designed to ensure that clients receive effective representation of counsel, protect the confidential attorney-client relationship, promote justice, and ensure that all litigants are treated fairly.

Unfortunately, by codifying the meaningful attorney involvement concept, creating a safe harbor, and applying these special due diligence standards only to creditor attorneys—but not other types of attorneys—engaged in litigation, the Proposed Rule would conflict with well-established state and federal court rules governing attorneys in several ways.

For example, the safe harbor proposal in Section 1006.18(g) of the Proposed Rule provides that an attorney has been meaningfully involved in the preparation of debt collection litigation submissions if the attorney drafts or reviews the item, personally reviews information supporting it, and determines that the claims, defenses, and legal and factual contentions are well-supported by law or evidence, which are factors similar to those outlined in Federal Rule of Civil Procedure 11(b)(2) through (4).[17] However, as the CFPB readily admits in the Proposed Rule, the safe harbor standard omits two aspects of Federal Rule 11(b), including: "First, that the claims, defenses, or other legal contentions are a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and second, that the factual contentions are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."[18]

The safe harbor also differs from Federal Rule 11 because the former places the burden on the creditor attorney to prove he or she fully complied with the requirements to avoid liability, while the latter requires the opposing party filing a motion for sanctions to allege and prove that the

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[15] *See, e.g.,* ABA Model Rules of Professional Conduct 1.1, 1.3, 1.6, 3.1, 3.3, and 3.4, available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/. Rules identical or substantially similar to the ABA Model Rules have been adopted as legal binding ethical rules in all fifty states and the District of Columbia and are binding on all attorneys licensed in each particular state. *See* Charts Comparing Individual Professional Conduct Rules as Adopted or Proposed by States to ABA Model Rules, available at https://www.americanbar.org/groups/professional_responsibility/policy/rule_charts/.

[16] *See* Federal Rule of Civil Procedure 11(b)(2)-(4), available at https://www.law.cornell.edu/rules/frcp/rule_11. *See also* Proposed Rule, 84 Fed. Reg. at 23324.

[17] *See* Proposed Rule, 84 Fed. Reg. at 23324; *see also* Fed. R. Civ. P. 11(b).

[18] Proposed Rule, 84 Fed. Reg. at 23324, footnote 351.

creditor attorney failed to meet the requirements before sanctions can be imposed.[19] In addition, the safe harbor proposal differs from Federal Rule 11 because although Rule 11 grants the attorney accused of filing an improper pleading, motion, or other paper 21 days to withdraw or correct the item before a sanctions motion can be filed or presented to the court, the safe harbor contains no such grace period for the creditor attorney to withdraw or correct the court filing.

By omitting two key elements of Federal Rule 11(b), requiring the creditor attorney to prove that the due diligence requirements were fully met to avoid liability, and denying the attorney a 21-day grace period in which to withdraw or correct the filing in question, the proposed safe harbor rule for creditor attorneys engaged in litigation clearly conflicts with the Federal Rule's general standard of conduct for all other types of litigation attorneys when filing documents with the court. This "double standard" for creditor attorneys vs. all other types of litigation attorneys is grossly unfair and undermines the courts' authority—and duty—to regulate conduct before them and sanction all litigation attorneys in a consistent, evenhanded manner.

3. The Meaningful Attorney Involvement Concept and the Safe Harbor Proposal in the Proposed Rule Would Also Undermine the Attorney-Client Privilege, the Work Product Doctrine, the Attorney's Ethical Obligations Not to Disclose Confidential Client Information, and the Confidential Attorney-Client Relationship in General

The ABA is also concerned that by codifying the meaningful attorney involvement concept, the safe harbor proposal in Section 1006.18(g) of the Proposed Rule would seriously undermine the confidential attorney-client relationship in general, as well as the attorney-client privilege, the work product doctrine, and the attorney's ethical obligations not to disclose confidential client information relating to the legal representation. As a result, the safe harbor would deny or weaken the client's right to effective counsel.

Under the Proposed Rule, a creditor attorney claiming the safe harbor would have to prove that the attorney drafted or reviewed the pleading, written motion, or other paper; personally reviewed information supporting the submission; and determined, to the best of the attorney's knowledge, that the claims, defenses, and legal and factual contentions were well-supported by law or evidence. But to prove that these requirements were met, the attorney would have to reveal all of the documents and legal authorities that the attorney reviewed for the client, the legal opinions and conclusions reached by the attorney, and the confidential communications between the attorney and the client regarding the merits and soundness of the case.

The attorney would be unable to disclose this extensive information without revealing client confidences or violating the attorney-client privilege. To establish the safe harbor, the attorney would also be forced to reveal a great deal of attorney work product by disclosing what the attorney reviewed and why the attorney reached certain legal opinions and conclusions for the client. The attorney is generally prohibited from revealing client confidences or disclosing work

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[19] *See, e.g., Rodick v. City of Schenectady,* 1 F.3d 1341, 1350 (2nd Cir. 1993) and *Anaqua, Inc. v. Schroeder,* 2014 WL 1795310 (D. Mass. May 5, 2014) (Second Circuit and other courts have held that burden of proof as to whether signer has violated Rule 11 is on the Rule 11 movant and district court should resolve all doubts in favor of the signer).

product or other privileged matters without consulting with and obtaining the consent of the client. But because the safe harbor would benefit only the attorney and not the client, requiring the attorney to make such revelations about the client creates a conflict of interest between the attorney and client.

The attorney-client privilege is a bedrock legal principle of our free society, and as the U.S. Supreme Court has noted, it is "the oldest of the privileges for confidential communications known to the common law."[20] It enables both individual and organizational clients to communicate with their attorneys in confidence, which is essential to preserving all clients' fundamental rights to effective counsel.[21] Importantly, the privilege encourages clients to seek out and obtain guidance to conform their conduct to the law, facilitates self-investigation into past conduct to identify shortcomings and remedy problems, and enables attorneys to fulfill their ethical duties to their clients, all of which benefit society at large. The work product doctrine underpins our adversarial justice system and allows attorneys to prepare for litigation without fear that their work product and mental impressions will be revealed to adversaries, to the detriment of their clients.

The ABA strongly supports attorneys' obligations of confidentiality under applicable rules of professional conduct, as well as the preservation of the attorney-client privilege and the work product doctrine. The ABA also opposes governmental policies, practices and procedures that will have the effect of eroding these protections.[22] By requiring creditor attorneys to reveal confidential information regarding the documents and legal authorities they reviewed, the legal opinions and conclusions they reached, and the communications they had with their clients before filing suit, the safe harbor proposal would undermine the attorney-client privilege, the work product doctrine, the attorney's ethical duty to preserve client confidentiality, and the overall confidential attorney-client relationship. Each of these fundamental legal principles is absolutely critical to encourage the open and frank communications needed for effective legal representation, compliance with law, and the administration of justice.

Conclusion

For all these reasons, the ABA respectfully requests that the CFPB withdraw the safe harbor proposal contained in Section 1006.18(g) of the Proposed Rule; interpret Section 807(3) of the FDCPA as plainly written and intended by Congress and thus reject the meaningful attorney involvement concept; and recognize the courts' primary and inherent authority to regulate,

[20] *See Upjohn Co. v. United States,* 449 U.S. 383, 389 (1981) (citing 8 J. Wigmore, Evidence § 2290).

[21] The primary purpose of the privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Upjohn Co.* at 389. *See also Fisher v. United States,* 425 U.S. 391, 403 (1975). This strong rationale for the privilege has been recognized by the Supreme Court for well over a century and "is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure." *Upjohn Co.* at 389, *citing Hunt v. Blackburn*, 128 U.S. 464, 470 (1888).

[22] *See* ABA Resolution 111, adopted by the ABA House of Delegates in August 2005, available at http://www.americanbar.org/content/dam/aba/directories/policy/2005_am_111.authcheckdam.pdf.

oversee, and sanction all attorneys engaged in litigation, regardless of the attorney's legal specialty or the types of cases the attorney files with the court.

Thank you for considering the views of the ABA on these important issues. If you have any questions regarding the ABA's position on the Proposed Rule, please contact ABA Associate Governmental Affairs Director Larson Frisby at (202) 662-1098 or larson.frisby@americanbar.org.

Sincerely,

Judy Perry Martinez
President, American Bar Association

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Questions for the Honorable Kathleen Kraninger, Director, Consumer Financial Protection Bureau, from Chairwoman Maxine Waters:

Consumer Complaints During COVID-19 Pandemic
During the COVID-19 pandemic, consumers are faced with a crisis of unprecedented proportions. The Consumer Bureau reported receiving a record number of complaints during the COVID-19 pandemic. The CFPB received 42,500, and 44,100 complaints respectively in April and May of 2020, as compared to a monthly average of 29,000 in 2019. Of particular note, the Bureau has received over 8,000 complaints related to COVID-19. Complaints related to mortgage represented the highest percentage of complaints where the consumer specifically mentions COVID-19, followed by credit card, and credit or consumer reporting complaints.

Question 1

Importantly, since debt collection was one of the top issues that consumers also submitted complaints about, Rep. Beatty's "Relief for Consumers During COVID-19 Act" and Rep. Perlmutter's "Relief for Small Businesses and Nonprofits Act" would create a moratorium on debt collection for consumers, small businesses and non-profits for that time-frame, with those provisions also included as part of the Heroes Act. Will you stand with struggling borrowers and support this legislation providing debt collection protections that are vital during this COVID-19 pandemic?

Response

In general, the Consumer Financial Protection Bureau (Bureau) does not comment on legislation. I respectfully defer to Congress on what, if any, legislative action to take.

The Bureau will continue to use all of its tools to address the acts and practices of debt collectors that violate the law and cause harm to consumers. On March 20, 2020, the Bureau posted a comprehensive guide for consumers who are concerned about dealing with debt and debt collectors during the pandemic. The guide was updated on June 17th.[1] *The guide describes for consumers the rights they have under the Fair Debt Collection Practices Act (FDCPA), outlines steps consumers can take to manage debt during the pandemic, provides links to the Bureau's preexisting sample letters that consumers can use to communicate with debt collectors, and warns consumers about protecting themselves against debt collection scams. The guide is one of a number of resources created for consumers to help them manage and protect their finances during the pandemic.*

In addition to the Bureau's education tools, we continue to monitor the market for law violations. Supervision and enforcement efforts are ongoing. As a specific example, the Bureau

[1] *See* https://www.consumerfinance.gov/about-us/blog/coronavirus-and-dealing-debt-tips-help-ease-impact/.

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recently announced public action through Operation Corrupt Collector in conjunction with interagency partners.

In addition, the Bureau is currently finishing a major update of consumer protections in debt collection. The Bureau issued a Notice of Proposed Rulemaking (NPRM) on May 7, 2019, and received over 14,000 comments in response. The proposal would provide consumers with specific protections against harassment by debt collectors and straightforward options to address or dispute debts. Among other things, the NPRM would establish 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 technologies, such as voicemails, emails and text messages, that have developed since the FDCPA passage in 1977; and require collectors to provide additional information to consumers to help them identify debts and respond to collection attempts.

The Bureau issued a Supplemental NPRM on February 21, 2020. The proposal would prohibit collectors from using non-litigation means (such as calls) to collect on time-barred debt unless collectors disclose to consumers during the initial contact and on any required validation notice that the debt is time-barred. Consumer research conducted by the Bureau found that a time-barred debt disclosure helps consumers understand that they cannot be sued if they do not pay. That can help consumers make better informed decisions whether to pay the debt or not.

In accordance with the Administrative Procedure Act, the Bureau has carefully considered comments received on the May 2019 proposed rule that would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA and expects to issue a final rule in October 2020. In December 2020, the Bureau also plans to issue a final rule on its supplemental proposal issued in February 2020, which addressed time-barred debt disclosures, and any remaining proposed issues. The Bureau extended the deadline for comments on that proposal to August 4, 2020, in light of the COVID-19 pandemic.

Question 2

A transparent consumer complaint database is a critical part of protecting consumers from predatory lending practices. Some have reached out[2] with concerns that the Bureau reorganized the consumer complaint database landing page in a way that makes it more difficult for those using the tool to find complaint narratives. Please describe why the Bureau is making it harder to find the narratives of some consumer complaints.

[2] https://uspirg.org/resources/usp/group-letter-cfpb-director-complaint-narratives.

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Response

The goals of recent enhancements to the public Consumer Complaint Database included expanding its functionality and putting complaint data into context. Because we recognize that complaints are not necessarily representative of all consumers' experiences with a financial product or company, the Bureau expanded and now more prominently displays disclosures to provide better context to the published data. It is important that we make it known that the Consumer Complaint Database is not a statistical sample of consumers' experiences in the marketplace. Doing so addresses concerns about misrepresentations and incomplete or misleading data.

The Bureau continues to publish all previously disclosed fields, including consumers' narrative descriptions of their complaints, with the consumer's consent. The public can also download the full dataset.

In developing these enhancements, Bureau staff met with representatives from various stakeholders, including consumer advocates. Their feedback informed the resulting enhancements, which provide the public with a clearer and more powerful user interface. For example, with the new Map and Trend views, added in April 2020 and July 2020, respectively, the public can now:

- *View aggregate complaints by various categories, such as issues and products;*
- *View complaints over time to gain insights into complaint trends;*
- *Apply word searches and filters to update the interactive map and trends;*
- *Refine visualizations based on user-selected criteria;*
- *Select from set of pre-defined time frames (e.g., three years) to help users understand more recent marketplace conditions or define their own time frames; and*
- *Map complaints per 1,000 population or total complaints by state.*

Recently, Bureau staff met with consumer advocacy groups, including Consumer Action and U.S. Public Interest Research Group (PIRG), to discuss the recent enhancements and their concerns. As part of its ordinary processes, the Bureau will continue to review and assess stakeholder feedback.

Question 3

The Bureau published a report on May 1st on the early effects of the pandemic on applications for credit but has not published any research since then on the effects of the crisis. Is the Bureau's Office of Research examining current data and, if so, when does the Bureau expect to publish findings?

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Response

As you note, on May 1, 2020, the Bureau published a report on the effects of the pandemic on credit applications, examining how the pandemic shaped the demand for credit in the early weeks of the crisis.[3] *The Bureau also released a report on August 31, 2020 on the pandemic's early effects on consumer credit. Both reports rely heavily on the Consumer Credit Panel.*[4] *As economic conditions evolve, we anticipate issuing additional research reports that track the impact of the pandemic on consumers and consumer financial markets using the Consumer Credit Panel. Also, the Bureau is fielding two waves of the Making Ends Meet survey during the pandemic, one wave in May, and the other wave this fall. This survey is linked to the Consumer Credit Panel and will provide additional insights into how the pandemic is affecting consumers.*

Challenges for minority consumers during COVID- 19 pandemic
According to the Center for American Progress, prior to this pandemic, "Black and Latinx households had net worths of just $17,100 and $20,765, compared with the $171,000 held by the typical white household."[5] Additionally, they cited that Black and Hispanic households also have far less liquidity than white households and more than 1 in 10 Asian American households and 1 in 4 American Indian and Alaska Native households live in poverty.

Question 4

As minorities are currently the hardest hit by unemployment due to the COVID-19 pandemic, what will CFPB do to ensure that these minority consumers are not disproportionally being targeted by predatory lenders when they are struggling to pay the rent and cover other expenses?

Response

Over the past few months, the Bureau has taken numerous steps to reach consumers with information and resources to help them protect their finances during the coronavirus pandemic. The Bureau has a centralized webpage with information on how consumers can make informed financial decisions during the pandemic, including spotting and avoiding scams, descriptions of scams that have emerged during the pandemic, and resources if consumers fall victim to a scam.[6] *The webpage also provides extensive information about consumers' protections under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and how they can seek assistance if they are struggling with mortgage, rent, student loans or other payments, or are dealing with debt. We have translated resources on avoiding coronavirus*

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[3] *See h*ttps://www.consumerfinance.gov/data-research/research-reports/covid-19-early-effects-credit-applications/.
[4] *See* https://www.consumerfinance.gov/data-research/research-reports/special-issue-brief-early-effects-covid-19-pandemic-on-consumer-credit/.
[5] https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/.
[6] *See* https://www.consumerfinance.gov/coronavirus/.

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scams into multiple languages including Spanish, Tagalog, Vietnamese, and Chinese. We have also issued videos in English and Spanish on avoiding scams during the pandemic.

In addition to consumer education, the Bureau also uses our supervisory tool to ensure companies are complying with the law. When we find that they are not, we use our enforcement tool to address the harm. For example, this summer the Bureau filed a lawsuit alleging a lender had violated the Equal Credit Opportunity Act (ECOA) by discouraging, through its advertising, African Americans from applying for loans. The Bureau also announced a settlement last year with a mortgage corporation that violated the Home Mortgage Disclosure Act (HMDA) and Regulation C by intentionally submitting years of mortgage-loan data that contained errors in the fields of race, ethnicity, and sex.

For the minority-owned businesses and communities of color we serve, the Bureau continues to meet with consumer advocates, civil rights organizations, financial institutions, fellow regulators, law enforcement partners (i.e., state attorneys general), and community groups to discuss consumer finance issues affecting people of color. For example, in April I held a call with a dozen civil rights groups to discuss how the pandemic was affecting minority and immigrant communities. Over the summer, I provided Bureau resources about mortgage and housing assistance at a National Diversity Coalition and National Asian American Coalition event, which was attended by over 200 housing counselors, financial educators, faith leaders, nonprofit leaders, small businesses owners, and representatives of local African American, Asian, and Hispanic chambers of commerce. The Bureau also works to reach as many consumers as possible, including those with limited English proficiency (LEP). In addition to translating our coronavirus resources into multiple languages, the Bureau has held numerous webinars specifically focused on our scam prevention resources for organizations who directly serve vulnerable consumers, including low-income consumers, seniors, communities of color, and LEP consumers.

The Bureau is also soliciting input from the public on how we can build a more inclusive financial system. In July, we issued a Request for Information (RFI) on the ECOA. The RFI asks the public for views on topics like the whether the Bureau should clarify the law so financial regulations can provide better protection for consumers with limited English proficiency, such as many Spanish speakers. The RFI also asks whether the Bureau should clarify the law so that lenders are not chilled from affirmatively advertising credit products to traditionally disadvantaged groups and communities, such as African Americans.

Question 5

What is the CFPB doing to ensure that the resources provided to consumers to handle financial challenges during the COVID-19 pandemic are reaching limited-English proficient communities who are especially vulnerable to scams because of language barriers?

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Response

As noted in the previous response, over the past few months, the Bureau has taken numerous steps to reach consumers with information and resources to help them protect their finances during the coronavirus pandemic. Through our various distribution channels, the Bureau works to reach as many consumers as possible, including those with limited English proficiency. The Bureau has held numerous webinars specifically focused on our scam prevention resources for organizations who directly serve vulnerable consumers, including low-income consumers, seniors, communities of color, and LEP consumers. The Bureau has held additional webinars highlighting our broader resources on protecting and managing finances during the coronavirus pandemic. For example, the Bureau's Financial Education Exchange (CFPB FinEx) program conducts monthly webinars targeted to financial education providers serving diverse audiences across the country, and on May 19, the Bureau conducted a webinar showcasing the Bureau's resources for LEP communities. During the webinar the Bureau demonstrated how to find these multilingual resources, and how they can be used by consumers, practitioners, and industry. The Bureau also highlighted its materials pertaining to the COVID-19 pandemic and disaster preparedness and recovery.

Mortgages
Mortgage complaints have sat at the top of the consumer complaint database since the beginning of the coronavirus, with many including mention of an inability to pay their monthly payment. In your opinion, do you feel homeowners need additional assistance to avoid a foreclosure crisis? Specifically, do you think additional funding for housing counseling would be helpful to these homeowners? The HUD Inspector General found that many FHA mortgage servicer websites had incomplete, inconsistent, and incorrect forbearance information. Has the Bureau taken any steps to penalize servicers that are not in compliance with the CARES Act forbearance requirements?

Oversight of non-bank servicing companies:

Question 6

What has the Bureau observed about the response of both bank and nonbank mortgage servicers to homeowner requests for assistance and forbearance during the COVID-19 pandemic?

Response

Supervision is working to assess the information servicers are providing to borrowers about forbearances during this crucial time period consistent with their responsibilities under the law. We do not comment on Enforcement investigations, and we have not announced any public actions to date on this topic.

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The Bureau is conducting Prioritized Assessments including of mortgage servicers. Through Prioritized Assessments, the Bureau is expanding its supervisory oversight to cover a greater number of institutions than our typical examination schedule allows, gaining a greater understanding of industry responses to pandemic-related challenges, and helping ensure that entities are attentive to practices that may result in violations of Federal consumer financial law or consumer harm. To better understand these risks and better ensure institutions comply with their obligations, the Bureau sent Prioritized Assessments to a range of mortgage loan servicers. Each of the mortgage servicers that we selected for a Prioritized Assessment received targeted information requests covering information necessary to help us better understand how servicers are communicating repayment options to consumers, to analyze operational risk at servicers in executing on forbearance programs, and to review servicers' furnishing activities.

Importantly, while we are willing to work with companies in a temporary and targeted manner to help them help their customers, we will not tolerate those who would exploit the current crisis at the expense of consumers. We are committed to vigorously enforcing consumer financial law in all markets under our jurisdiction and the pandemic does not change that. We are also working closely with fellow federal and state regulators in our oversight and market monitoring efforts. As a specific example, we launched the Borrower Protection Program with the Federal Housing Finance Agency (FHFA), a joint initiative which enables the Bureau and FHFA to share servicing information to protect borrowers during the coronavirus national emergency. The sharing of this information will allow both agencies to use the data to help monitor trends and servicer performance, as well as evaluate risks in the mortgage marketplace. That information sharing includes access to our complaint database, which the Bureau uses to inform its tools of education, regulation, supervision, and enforcement – both during the pandemic and at all times. As a demonstration of that point, our analysis of mortgage servicing complaints early in the pandemic led to responsive actions with FHFA and other federal partners in developing our CARES Act mortgage forbearance videos and scripts for mortgage servicers to use in clearly conveying CARES Act consumer rights and lender responsibilities.

Question 7

Non-bank lenders made up nearly ⅔ of new mortgages in 2019. However, the evidence is mounting that these servicers face a cash crunch when balancing priorities of providing forbearance and making their own advances to investors. In your opinion, are mortgage servicers, especially non-bank servicers, prepared to support continuing forbearance requests?

Response

The Bureau and its partner agencies, particularly through the work of the Financial Stability Oversight Council, have been closely monitoring the issue of non-bank mortgage liquidity. Non-

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banks are generally more reliant on short-term funding sources than are depository institutions and their servicing portfolios tend to be largely concentrated in government and Government-Sponsored Enterprise (GSE) mortgages, which require servicers to continue making servicing advances for many delinquent borrowers.

The recent surge in refinancing due to historically low interest rates has helped to bolster the liquidity of non-bank servicers that also have origination business lines. Federal efforts to address the impact of the pandemic on both mortgage markets as well as on consumer financial needs more broadly, has also provided some relief. The GSEs released guidance limiting the duration of required advances on delinquent borrowers and Ginnie Mae established a last-resort liquidity facility for servicers that are unable to meet their advance requirements. However, an increase in forbearance requests or a decrease in refinance volume could lead to additional liquidity pressure on non-bank servicers.

Question 8

If so, what has the Bureau been doing to ensure servicers are meeting the requests of borrowers?

Response

The Bureau uses its four tools in this effort – education, regulation, supervision, and enforcement, supported by our complaint database, market monitoring, and stakeholder engagement capabilities. As noted in response to question 6, the Bureau has engaged in Prioritized Assessments as well as ongoing supervision and enforcement work in the mortgage servicing market. We also analyze complaint submissions and company responses as well as engage stakeholders to gain insights into what is happening in the marketplace so that we can respond appropriately.

Question 9

If not, what else will be needed to ensure servicers are properly following the law?

Response

Please see responses to questions 6 and 8.

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Question 10

In early April the Bureau stated that in light of the crisis it would not hold mortgage servicers to compliance with the timelines in the Bureau's mortgage servicing rule, would not hold consumer reporting agencies to the timelines in the Credit Reporting Act, and would not hold mortgage lenders to the timelines for providing written appraisals in the Bureau's appraisal rule. For how long do these free passes last? When does the Bureau intend to resume enforcing the laws and regulations as they were written?

Response

As part of the Bureau's commitment to achieving clear rules of the road, the Bureau has taken a number of recent actions to prevent financial harm, help families who are struggling financially, and provide guidance to the financial industry to ensure their resources are aimed at assisting consumers in need. The Bureau's policy statements provide clarity regarding the Bureau's discretionary exercise of its supervision and enforcement authority. While the Bureau is mindful of challenges faced by institutions, we will not hesitate to take public enforcement action when appropriate against companies or individuals that engage in unfair, deceptive, or abusive acts or practices, discriminate, or otherwise violate Federal consumer financial protection laws. Furthermore, the Bureau continues to engage its supervision and enforcement tools to ensure compliance with and enforce Federal consumer financial law during the pandemic.

Data sharing between FHFA and CFPB:
In April of this year, the Federal Housing Finance Agency (FHFA) and the CFPB announced a new initiative called the Borrower Protection Program. This program will allow the CFPB and the FHFA to share information regarding mortgage servicing, including consumer complaint information loan modification data.

Question 11

What has the CFPB learned from this data sharing agreement with FHFA?

Response

While still in its early stages, through this agreement FHFA has shared with the Bureau servicer level data on forbearance which has been helpful in identifying market trends. FHFA has agreed to give us notification of major servicing transfers, which will help us identify potential risks and servicing market shifts.

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Question 12

Are there opportunities for future collaboration, which could expand to agreements with other federal regulatory agencies?

Response

The Bureau recognizes the value of collaboration with other agencies in furthering our mission and seeks opportunities for greater engagement. For example, the Bureau coordinates with Department of Housing and Urban Development (HUD) staff informally on a regular basis, and Bureau staff is working with HUD staff to finalize a Memorandum of Understanding that will enhance and formalize that information sharing. The Bureau has long-standing partnerships with other federal regulatory agencies as well, including through the Federal Financial Institutions Examination Council (FFIEC) and its committees.

Incorrect Credit Reporting under CARES Act
As you know, the CARES Act provides student loan relief that includes suspending payments, interest, and collections on government-held federal student loans from March 13, 2020 to September 30, 2020. I am especially concerned about how credit reporting bureaus and the lenders that furnish data are not complying with federal coronavirus relief requirements under CARES. Some student loan servicers appear to be reporting the student loans as delinquent or in a non-payment status to national credit bureaus. On May 20, student loan borrowers filed a class action lawsuit against Great Lakes and the major credit bureaus for their erroneous credit reporting.

Question 13

Director Kraninger, what are you doing to ensure that credit reporting bureaus and the lenders that furnish data are complying under CARES, and holding accountable the companies that do not?

Response

Similar to the response to question 8 related to mortgage servicing, the Bureau uses its four tools in its oversight of the credit reporting system – education, regulation, supervision, and enforcement, supported by our complaint database, market monitoring, and stakeholder engagement capabilities. Since the Bureau's inception, it has dedicated significant resources toward enforcing the Fair Credit Reporting (FCRA) and Regulation V, through robust supervisory and enforcement actions at both consumer reporting agencies and furnishers. This work has continued as the Bureau evaluates specific risks to consumers as a result of the COVID-19 pandemic. Supervision is also conducting Prioritized Assessments designed to obtain real-time information from entities that operate in markets that pose elevated risks of consumer harm due to pandemic-related issues. This includes risks related to violations of Federal

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consumer financial law, including the FCRA. If Supervision or Enforcement finds that a furnisher has not responded within statutory timeframes, we would then make a fact-based determination as to whether the furnisher is making good faith efforts to investigate disputes as quickly as possible. Supervision's Prioritized Assessment work is still in progress.

While the Bureau is mindful of challenges faced by institutions, we will not hesitate to take public enforcement action when appropriate against companies or individuals that engage in unfair, deceptive, or abusive acts or practices, discriminate, or otherwise violate Federal consumer financial protection laws.

Question 14

This Committee supports initiatives like Mr. Sherman's "Disaster Protection for Workers' Credit Act" that temporarily prohibits the reporting of adverse credit reporting during the COVID-19 period. This bill was also included in the Heroes COVID-19 House response package. Outside of education, what is the Consumer Bureau prepared to do for consumers who are unable to come to payment arrangements with creditors?

Response

Consumer reporting information is critical to consumers in determining whether they can obtain credit, insurance, and housing, and at what price, and whether they can obtain employment in many cases. Consumer reporting has always been an important Bureau priority, with a focus on accuracy of reports and dispute investigations. For this reason, the Bureau has dedicated significant resources toward enforcing the FCRA and other statutes through robust supervisory and enforcement actions at both consumer reporting agencies and furnishers—work that continues as we evaluate specific risks to consumers as a result of the COVID-19 pandemic.

Regulatory Activity

While relaxing standards and consumer protections for lending institutions and industry during the COVID-19 pandemic, the Bureau continued its business of dismantling regulations established under then-Director Richard Cordray.

Question 15

Why is the CFPB moving forward with rulemaking unrelated to the COVID-19 pandemic?

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Response

The Bureau's overarching goal is to prevent consumer harm and articulate clear rules of the road for regulated entities that promote compliance with the law, foster competition, increase transparency, and preserve fair markets for financial products and services. We believe continuing to strive toward this goal will be critical during the current public health crisis and resulting economic conditions. As you know, this is an evolving situation, and as such we are assessing ongoing rulemaking actions to calibrate appropriate comment periods and effective dates. We are also prioritizing regulatory activities that will protect the stability of the financial sector and enhance its recovery once the public health crisis has passed, as well as protecting consumer financial well-being during and after the COVID-19 pandemic.

Question 16

Why has the CFPB not provided any guidance or information specifically on best practices for financial companies and how they should interact with consumers during the pandemic?

Response

The Bureau has taken several actions that provide guidance and information to financial companies with respect to consumer interaction during the pandemic. On March 22, 2020, the Bureau, along with other federal financial institution regulatory agencies and the state banking regulators, issued an interagency statement encouraging financial institutions to work constructively with borrowers affected by COVID-19 and providing additional information regarding loan modifications. The agencies issued a revised statement on April 7, 2020 with additional views on consumer protection considerations. The agencies stated that they would not criticize financial institutions that mitigate credit risk through prudent actions consistent with safe and sound practices and that the agencies consider such proactive actions to be in the best interest of institutions, their borrowers, and the economy. The agencies have long used this approach of encouraging financial institutions to assist borrowers in times of natural disaster and other extreme events. In addition, the Bureau's existing mortgage servicing rules generally require servicers to communicate with delinquent borrowers orally and in writing at specified times in a borrower's delinquency, inform borrowers about the availability of loss mitigation options if appropriate, and provide information on how to contact personnel assigned to assist the borrower. The Bureau, along with our interagency partners, developed scripts for mortgage servicers so that when borrowers call, they are provided with accurate and clear information about their rights.[7] The forbearance servicer scripts have been translated into Spanish, Mandarin Chinese, Vietnamese, Korean, and Filipino.

[7] https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/.

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On March 26, 2020, the Bureau joined the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency in issuing a joint statement encouraging banks, savings associations, and credit unions to offer responsible small-dollar loans to consumers and small businesses in response to COVID-19.

On April 1, 2020, the Bureau issued a Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act, which reiterated its prior guidance encouraging financial institutions to work constructively with borrowers and other customers affected by COVID-19 to meet their financial needs.

More generally, the Bureau continues to provide regulatory clarity to industry. For example, while under development prior to the pandemic, in April 2020, the Bureau outlined practices to provide mortgage servicers clarity, facilitate compliance, and prevent harm to consumers during the transfer of residential mortgages.

Payday Rule
Earlier in July this year, the Consumer Bureau finalized its payday rule, stripping key consumer protections and provisions. Of particular concern under the misguided final rule, lenders and servicers will not have to check that borrowers have an ability to repay their loan, which will trap consumers in a debt cycle, borrowing again and again at usurious triple digit interest rates.

Question 17

Director Kraninger, consumer experts estimate that this rule will leave up to 12 million consumers vulnerable to predatory cycle of debt traps[8] – why did you undo the critical ability to repay protection? Can you explain how consumers will be protected without strict underwriting standards such as ability-to-repay? Can you also explain how your finalized rule increases access to *sustainable* credit?

Response

The Bureau is committed to ensuring that all consumers have access to consumer financial products and services and that the market for such products and services is fair, transparent, and competitive. As such, the Bureau continues to exercise supervisory and enforcement authority over payday lenders. The Bureau has brought a number of enforcement actions in the past year against payday lenders that the Bureau determined were engaged in deceptive practices or other unlawful conduct. But the Bureau does not expect to preclude participation in

[8] https://www.cnbc.com/2020/07/07/new-payday-loan-rules-could-leave-millions-of-americans-exposed-to-debt-trap.html.

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the market by those that are seeking to comply with the law and provide options to consumers. Consumer demand for small-dollar products, including responsible small-dollar products from banks and credit unions, is substantial. The Bureau continues to monitor this market for risks to consumers and to consider ways of assuring that consumers receive timely and understandable information to make responsible decisions regarding their use of these products.

In addition, the Bureau issued a no action letter template to encourage banks to offer responsible small-dollar products. The Bureau has expressed its support for the efforts of other regulators to encourage depository institutions to offer credit products for consumers struggling to make ends meet. The Bureau's Office of Innovation has been working with financial technology (fintech) firms seeking to enter the market for liquidity lending and enhance the competitiveness of the market.

Further, a major focus of the Bureau's consumer education efforts has been, and continues to be, encouraging savings among consumers. Although the Bureau recognizes the challenges facing many consumers in the current economic climate, the Bureau is examining alternative methods of promoting savings -- including its Start Small Save Up initiative -- and the specific events that can cause consumers to struggle to make ends meet and the choices consumers face in these circumstances. Finally, the Bureau is working on payday disclosure research that could lead to better ways to ensure current and likely payday borrowers receive information they want, understand and find useful when making decisions about payday loans. The current disclosure testing timeline anticipates a completion date for the qualitative testing phase of this research in 2021.

Question 18

Director Kraninger, payday industry leaders have bragged in the past that they were able to 'pick up the phone and... get the president's attention" in exchange for contributing to the Trump campaign. Did you or the Bureau meet with representatives of the payday industry due to the financial support that predatory lenders have given to the President?

Response

Bureau staff regularly meet with a wide variety of stakeholders, including representatives of consumer groups and industry, for the purpose of monitoring markets for consumer financial products and services and in connection with potential rulemakings. Neither I nor other representatives determine whether to meet with stakeholders based on their political contributions. While outreach meetings provided stakeholders with an opportunity to make requests of and recommendations to the Bureau, the Bureau does not share with stakeholders its internal deliberations with respect to a potential or ongoing rulemaking.

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Question 19

Although the CFPB does not have the authority to set interest rates on small dollar loans, do you support any limitations on interest rates? For example, should it be legal for a lender to charge 1,000% APRR? How is this access to credit?

Response

The Bureau notes that section 1027(o) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expressly precludes the Bureau from "establish[ing] a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law." In any event, the Bureau works hard to ensure that consumers have adequate, accurate information about consumer financial products and services to help consumers make informed decisions. To that end, the Bureau is working on payday disclosure research that could lead to better ways to ensure current and likely payday borrowers receive information they want, understand and find useful when making decisions about payday loans.

Question 20

Do you believe that payday lenders should receive relief money from the PPP program? Why or why not?

Response

Congress passed the CARES Act to minimize the impact of the COVID-19 pandemic. Included in the CARES Act is the Paycheck Protection Program (PPP), which is designed to provide small businesses with support to continue to keep their workers on the payroll. The Small Business Administration (SBA) implements the PPP. Recognizing the risks of consumer harm during the pandemic, the Bureau supported the Small Business Administration (SBA) and the Department of the Treasury (Treasury) in promoting awareness of the PPP and its benefits. Interpreting eligibility for PPP is the purview of the SBA.

Question 21

The CFPB joined in a policy statement with the prudential regulators encouraging depository institutions to engage in small dollar lending but did not join in the OCC, FDIC, and Federal Reserve guidance defining the elements of "responsible small dollar lending." That guidance makes clear that an element of responsible lending in "sound underwriting" to "minimize adverse customer outcomes, including cycles of debt due to rollover or reborrowing." Do you agree that sound underwriting is essential to responsible lending and, if so, why did the Bureau overturn the underwriting provisions of the payday rule?

Response

On March 26, 2020, the Bureau signed on to a "Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19," along with a number of other Federal agencies, recognizing the potential for the pandemic "to adversely affect the customers and operations of banks, savings associations and credit unions (referred to in the statement collectively as "financial institutions"). The statement specifically encouraged financial institutions to offer responsible small-dollar loans to both consumers and small businesses. In the statement, the agencies stated that they "recognize the important role that responsibly offered small-dollar loans can play in helping customers meet their needs for credit due to temporary cash-flow imbalances, unexpected expenses, or income short-falls during periods of economic stress or disaster recoveries." The focus of the March 26 joint statement, which is relatively brief, is on small-dollar lending by financial institutions.

The March 26 joint statement is broad enough to encompass a range of consumer and financial institution circumstances and a range of statutory authorities. Neither the Bureau nor the other financial regulators that issued the statement have defined what a "responsible" small-dollar loan would be pursuant to this statement. The joint statement provides, in part, that "The current regulatory framework allows financial institutions to make responsible small-dollar loans. Such loans can be offered through a variety of loan structures that may include, for example, open-end lines of credit, closed-end installment loans, or appropriately structured single payment loans."

Decline of Enforcement Actions

In 2020 so far, the Consumer Bureau announced 13 public enforcement actions including complaints filed, consent orders, and settlements. This compares to 24 public enforcement actions in 2019, 11 enforcement actions in 2018, 36 enforcement actions in 2017, and 42 enforcement actions in 2016. In its first six years, the Consumer Bureau brought 201 enforcement actions that provided nearly $12 billion in consumer relief.

Question 22

Please explain the reasoning behind the minimal civil penalties levied against acknowledged bad actors. Also, why aren't there specific remedies to benefit impacted consumers as part of these settlements?

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Response

In 2020 so far, the Bureau has already announced 29 public enforcement actions. During my tenure, the Bureau's public enforcement actions have resulted in approximately $1.35 billion in total ordered consumer relief (approximately $860 million in redress and $500 million in other relief) as well as over $250 million in civil money penalties.

The Bureau is committed to seeking all appropriate relief for consumers, and considers whether redress or restitution may be appropriate in each case on the facts presented and in light of applicable law. The Consumer Financial Protection Act (CFPA) authorizes the Bureau to seek redress for consumers in appropriate cases as a matter of discretion. Particularly in the context of a negotiated settlement, the Bureau may choose to pursue the relief it determines best serves the public interest. The Bureau weighs many factors to determine the precise mix of restitution, penalties, and injunctive relief appropriate in each case. Generally, when analyzing remediation, the Bureau considers all relevant facts and circumstances and seeks to make consumers whole for losses caused by a party's illegal conduct. While the Bureau is committed to seeking all appropriate relief for consumers, not every case lends itself to restitution for all potentially affected consumers, particularly in the context of a negotiated settlement. The evidence available may impact the Bureau's ability to identify harmed consumers and obtain all appropriate relief for those harmed customers.

The CFPA also provides a framework for determining the amount of civil money penalties. Under the CFPA, the Bureau must take into consideration a number of factors in determining the amount of civil money penalties, including the size of financial resources and the good faith of the institution, along with the gravity of the violation, the severity of the risks to or losses of consumers, any history of previous violations, and other matters as justice requires. The Bureau takes these factors into account in determining penalties in each of its public enforcement actions.

Question 23

In response to COVID-19, you used the term "regulatory flexibility" a few times announcing changes in rules to make it easier for the regulated industry to cope with the crisis. Can you name actions during this period where you've tightened and strengthened rules to ensure that wrongdoers don't fall through the cracks for harm they cause to consumers?

Response

The Bureau has taken several such actions. In mortgage servicing, the Bureau reiterated the responsibilities of the mortgage servicer to provide certain types of notification to consumers in forbearance. We also note the full protections of our mortgage rules still apply for those who go

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delinquent and do not enter forbearance. Furthermore, as noted above, the Bureau is conducting Prioritized Assessments, which are specifically designed to obtain real-time information from entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues.

In addition, the Bureau issued a statement informing lenders that they must comply with the credit reporting requirements of the CARES Act. The CARES Act provided critical emergency assistance to consumers and businesses affected by COVID-19 and includes provisions addressing consumer reporting requirements. Consumer reporting information is critical to consumers and industry in determining who obtains credit, insurance, and housing, and at what price, and who obtains employment in many cases. Consumer reporting has enormous reach, as evidenced by the over 200 million consumers in the United States who have credit files and trade lines furnished by over 10,000 providers. The Bureau thus issued a policy statement on April 1, 2020 to highlight furnishers' responsibilities under the CARES Act and inform consumer reporting agencies and furnishers of the Bureau's supervisory and enforcement approach during this pandemic regarding compliance with the FCRA and Regulation V.

Question 24

Director Kraninger, as you can see, there has been a dramatic and precipitous drop-in enforcement activity from the Bureau since you and your predecessor Mick Mulvaney took the reins of the Bureau. Now, faced with an unprecedented public health and financial crisis, will you pledge to use all your enforcement tools and prosecute bad financial actors exploiting struggling consumers to the utmost extent?

Response

As the Director of this agency, I have committed to, and am in fact, carrying out the mission of the Bureau which includes enforcing Federal consumer financial law. In 2019—my first full year as Director—the total amount of total consumer redress and total consumer relief was the third highest year in the Bureau's history. Moreover, the Bureau is on pace to have the second or third highest annual number of public enforcement actions filed—since the Bureau's inception—by the end of this year. While the Bureau is mindful of challenges faced by institutions, we will not hesitate to take public enforcement action when appropriate against companies or individuals that engage in unfair, deceptive, or abusive acts or practices, discriminate, or otherwise violate Federal consumer financial protection laws. The Bureau continues to engage its supervision and enforcement tools to ensure compliance with and enforce Federal consumer financial law during the pandemic.

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Question 25

Director Kraninger, we are also considering Mr. Green's "Financial Compensation of CFPB Whistleblowers Act" which would establish a whistleblower program incentivizing the reporting of consumer fraud and abuse to the Consumer Bureau, while protecting the confidentiality of the whistleblower's identity. What are you doing to stop consumer fraud and abuse by unscrupulous financial institutions?

Response

The Bureau engages all of the tools that Congress provided to prevent consumer harm in the marketplace for consumer financial products and services. With respect to bad actors, we do not hesitate to use our enforcement tool. Enforcement is actively surveying the market to identify potential law violators, COVID-19-related or otherwise. More specifically, that entails reviewing the complaint database, evaluating referrals, monitoring news reports and legal filings, and reviewing whistleblower tips to uncover potential COVID-19-related malfeasance. The Bureau also regularly engages and coordinates with fellow Federal and State regulators. These efforts have resulted in numerous new investigations in 2020, some of which directly concern COVID-19. The Bureau also works hard to keep the public informed of scams and illegal acts and practices to assist consumers in avoiding bad actors.

Question 26

Have any violations uncovered during the "prioritized exam" process have been handed off to the Office of Enforcement.

Response

As noted above, Supervision is conducting Prioritized Assessments designed to obtain real-time information from entities that operate in markets that pose elevated risks of consumer harm due to pandemic-related issues. Supervision's Prioritized Assessment work is still in progress. Furthermore, a specific answer to this question could constitute confidential information.

QM Rule Notice of Proposed Rulemaking
In June, the Consumer Bureau released two NPRMs for the Qualified (QM) rule definition and for the "QM GSE Patch." Your NPRM on QM definition proposes removing the 43 percent debt-to-income limit from the QM loan definition and using a priced-based approach instead that creates a new limit on the spread between a loan's annual percentage rate (APR) and the average prime offer rate (APOR).

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Question 27

Director Kraninger, your proposal advocates for a new threshold for QM products with the rebuttable presumption protections for originators, and problematically removes Appendix Q, which sets forth criteria for underwriting, and provides a safe harbor to creditors using specified verification standards. These are monumental changes to the mortgage underwriting process which will affect consumers for generations – are you concerned about disrupting the housing market that is already experiencing some turmoil in the midst of the pandemic? Considering the risk of market disruption, will you consider extending the comment period and holding off on finalizing the rule until after the COVID-19 pandemic passes?

Response

Please see response to question 15. As you note, in June 2020, the Bureau issued two Notices of Proposed Rulemaking (NPRMs) to address the impending expiration of the Qualified Mortgage (QM) Patch. It is important to note that without rulemaking action, the Qualified Mortgage (QM) Patch would expire in January 2021. Furthermore, in the proposal, the Bureau requested comment on an appropriate implementation period for changes to the General QM definition and will appropriately consider those comments in determining the implementation period for any final rule.

Question 28

The CFPB's proposed rule acknowledges that "the Bureau... anticipates that a price-based approach would incentivize some creditors to price some loans just below the threshold" in order to receive QM status. Smaller lenders in particular may find it more difficult to compete in this kind of environment. Several industry trade groups who don't want to see this kind of a race to the bottom have weighed in in opposition to such a price based approach, including the Community Home Lenders Association, the Independent Community Bankers of America, the National Association of Federally-Insured Credit Unions, the National Association of Realtors, and the U.S. Mortgage Insurers.

Director Kraninger, how will you ensure that this rule does not incentivize an irresponsible race to the bottom reminiscent of we saw in the lead up to the 2008 financial crisis? If the CFPB acknowledges that APR can be manipulated by lenders to "meet the mark" how can this serve as an effective measure of a borrower's ability to repay?

Response

The Bureau proposed a price-based General QM loan definition because it preliminarily concluded that a loan's price, as measured by comparing a loan's APR to APOR for a

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comparable transaction is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than debt-to-income ratio (DTI) alone.

Separate from the pricing requirement, the proposal also preserves the underwriting requirement in the General QM definition for creditors to consider income, debt, and DTI or residual income, and to verify how these factors were taken into account. The proposal also requested comment on whether and how the Bureau should incorporate examples of non-compliance with the consider requirement. Such an example could address circumstances where a very high DTI or low residual income may indicate that a consumer lacks ability to repay but the creditor disregards this information or relies on compensating factors that are not relevant to the ability to repay determination, such as loan-to-value ratio (LTV). The Bureau will appropriately consider these comments and include the necessary safeguards to ensure creditors appropriately consider a borrower's ability to repay.

Question 29

While the CFPB's proposed rule eliminates the 43 percent limit on debt-to-income (DTI), the lender would still be required to "consider" a borrower's DTI as part of its underwriting process. The proposed rule emphasizes that lenders would be given "great latitude" in how they considered a borrower's DTI, but the term "consider" nonetheless introduces a measure of uncertainty for lenders who are trying to ensure that they obtain QM status.

Director Kraninger, if a lender originates a loan with 75 percent DTI, even given "great latitude," would this lender be deemed to have "considered" DTI under your proposed rule? What about 100 percent? Is there any point at which you would say that a lender can't possibly have sufficiently "considered" DTI for the purposes of meeting QM requirements under your proposed rule? And if not, what is the purpose is the requirement to "consider" DTI really serving if there is no way to check a lender's compliance with the requirement?

Response

The proposed rule requires creditors to consider income, debt, and DTI or residual income in the ability to repay determination. A creditor would fail to satisfy this proposed requirement if it did not document how the required factors were taken into account in the consumer's ability-to-repay determination. While the proposed rule does not prescribe a specific DTI threshold, compliance examples demonstrate that a creditor can comply by establishing its own DTI threshold and can rely on compensating factors that are relevant to ability to repay.

The proposal requested comment on whether it sufficiently addressed the risk that loans with a DTI that is so high or residual income that is so low that a consumer that lacks the ability to

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repay may achieve QM status and whether and how the Bureau should incorporate examples of non-compliance with the consider requirement to address the risk.

Question 30

We just celebrated the 10th anniversary of Dodd-Frank, and one of the key responsibilities of the CFPB under that landmark law is to ensure that lenders make a reasonable, good faith determination of a consumer's ability to repay a mortgage. The vast majority of mortgages are underwritten to comply with CFPB's rules governing the ability to repay requirement via QM requirements. Arguably, the 43 percent DTI limit is the only part of current QM requirements that are specific to any individual borrower's ability to repay as the other requirements are only restricting certain mortgage product features. By replacing the DTI limit with an APR limit, you have effectively outsourced your responsibility to implement the ability to repay requirement under Dodd Frank to investors whose appetite for risk determines the APOR, and to the GSEs which establish loan level price adjustments that affect a borrower's APR, and to lenders who can manipulate loan pricing.

If you are choosing to punt your responsibility to implement this crucial aspect of Dodd-Frank to these other entities, is this an indication that you do not believe that CFPB is well positioned to implement this requirement effectively? Do you think another entity such as the FHFA is better positioned to implement this?

Response

As noted above, the Bureau proposed a price-based General QM loan definition because it preliminarily concluded that a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone. The comment period on that proposed rule closed on September 8, 2020.

As part of this rulemaking, the Bureau seeks to allow the expiration of the Temporary GSE QM definition (commonly known as the GSE or QM Patch), after a short extension, in part due to our concerns that the GSE Patch could stifle the development of competitive private sector approaches to underwriting. As noted, on October 20, 2020, the Bureau issued its final rule concerning the GSE Patch. The Bureau believes that the combined effect of these two proposals will be to level the playing field between the GSEs and private secondary market participants which will reduce market reliance on the GSEs for purposes of determining whether a creditor has complied with the ability to repay requirement.

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Constitutionality of CFPB Structure

To promote the independence for the agency similar to other federal regulators, Dodd-Frank provided that the Director of the Consumer Bureau may be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office."[9] The CFPB had previously defended this provision in prior litigation, with federal courts having ruled that the for-cause removal protection was constitutional.[10] On September 17, 2019, Director Kraninger notified the Speaker of the House Nancy Pelosi that the CFPB would no longer defend the constitutionality of its structure in *Seila Law LLC v. Consumer Financial Protection Bureau* (9th Cir. 2019).[11] On October 18, 2019, the Supreme Court agreed to hear the case. The U.S. House of Representatives and other parties have filed amicus briefs in the case.[12] On June 29, 2020 the Supreme Court held that the requirements needed to remove a Director of the CFPB are unconstitutional, and that a CFPB Director may now be removed at-will by the President.[13]

Question 31

Director Kraninger, under your leadership, you changed the CFPB's position in *Seila Law v. CFPB* to no longer defend the constitutionality of its structure. On June 29, 2020 the Supreme Court held that the requirements needed to remove a Director of the CFPB are unconstitutional, and that a CFPB Director may now be removed at-will by the President. After *Seila*, you believe that the CFPB structure is constitutional?

Response

Yes.

Question 32

Director Kraninger, in *Seila Law v. CFPB*, the Supreme Court held that a Director's removal protection is severable from the rest of the Dodd-Frank Act, which establishes the CFPB, and therefore the Consumer Bureau may therefore continue to operate. During your tenure you have consistently shown hostility to consumers and the agency's mission, but now that the Supreme Court has unequivocally ruled that the Consumer Bureau's work – including its important

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[9] See 12 U.S.C. § 5491(c)(3).
[10] See PHH Corp. v. CFPB, 881 F.3d 75, 77 (D.C. Cir. 2018) (en banc).
[11] See https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2019/09/Pelosi-letter.pdf. See also https://www.supremecourt.gov/DocketPDF/19/19-7/116040/20190917144324154_19-7%20Seila%20Law.pdf.
[12] See https://www.speaker.gov/newsroom/12220-2, https://www.supremecourt.gov/docket/docketfiles/html/public/19-7.html, and https://www.scotusblog.com/case-files/cases/seila-law-llc-v-consumer-financial-protection-bureau/.
13 See https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406729.

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investigations and rulemaking - is valid and legal, will you commit to taking your role more seriously and actually advocating on behalf of consumers?

Response

As I reiterated in my testimony before the Committee, I remain committed to strengthening the Bureau's ability to use all of the tools provided by the Dodd-Frank Act, and I remain resolved that the most productive use of Bureau resources is the prevention of harm to consumers in concert with our many partners. The Bureau's mission, as you are aware, is to ensure access to fair, transparent, and competitive markets for consumers, and we are committed to executing the mission through: empowering consumers and turning financial education into action, ensuring clear rules of the road, ensuring a culture of compliance, and holding bad actors to account and deterrence through enforcement.

Question 33

Director Kraninger, does the holding in *Seila* in any way limit your authority or ability to protect consumers moving forward?

Response

No.

Rulemaking on Section 1071 and HMDA
In February 2020, the Consumer Bureau agreed to court-ordered deadlines for the implementation of Section 1071 of the Dodd Frank Act, including rulemaking on how financial institutions must compile, maintain, and submit demographic data on credit applications submitted by women-, minority-owned, and small businesses.

Question 34

Director Kraninger, women and minority owned businesses as well as small businesses are suffering particularly under the COVID-19 pandemic, and yet under your leadership, you have stalled the collection of data on these critical sectors of our economy, which now impedes our ability to help these businesses and the communities they serve. How do you plan on not only meeting the court-ordered deadlines, but robustly implementing Section 1071 to do all you can to help women-, minority-owned, and small businesses? Can you explain how collecting this data disaggregated by race and ethnicity is crucial addressing disparity in lending to minority communities?

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Response

Section 1071 of the Dodd-Frank Act amends ECOA to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The purpose of this data collection, as stated in section 1071, is to "facilitate enforcement of fair lending laws" in addition to "enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses."

As part of its rulemaking process, the Bureau is exploring potential ways to implement section 1071 in a balanced manner with a goal of obtaining and publishing small business lending data that achieves the statutory objectives without unnecessarily affecting the cost or availability of credit to small businesses and while minimizing burden and unintended consequences on financial institutions and small businesses.

The next step in the Bureau's rulemaking process was the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. These materials describe how the Bureau is considering implementing section 1071, discuss other alternatives the Bureau has considered, and identify the potential impact that the proposals under consideration might have on small entities. The information and feedback obtained during the SBREFA process will help inform the Bureau's policymaking leading to a notice of proposed rulemaking.

As set forth in the settlement agreement entered in California Reinvestment Coalition v. Kraninger, *the Bureau agreed to release an outline of proposals under consideration as part of the small business review process by September 15, 2020 and met that deadline. The Bureau also agreed to convene a SBREFA panel no later than October 15, 2020 (or, if panel members are not available to convene, as soon as practicable thereafter). The Bureau met that deadline as well. Pursuant to 5 U.S.C. §609, the SBREFA panel is required to complete its report within 60 days of the panel's convening. The information and feedback obtained during the SBREFA process will help inform the Bureau's policymaking leading to a notice of proposed rulemaking.*

Question 35

Director Kraninger, the Consumer Bureau recently noticed a final rule regarding the Home Mortgage Disclosure Act (HMDA) that will raise the threshold for reporting closed-end mortgage loans. During this pandemic, we need more reporting and data to make sure there is no discrimination happening in our financial system. Will you commit to undoing these rollbacks? If not, please explain your rationale.

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Response

On April 16, 2020, the Bureau released a final rule to follow up on aspects of the May 2019 Proposal related to the permanent thresholds for reporting data about closed-end mortgage loans and open-end lines of credit. In developing a final rule relating to the loan-volume coverage thresholds, the Bureau carefully considered the public's input as well as the impact that raising the closed-end and open-end thresholds would have on achieving HMDA's purposes, which include assisting in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. We also considered the cost of HMDA reporting for lower-volume institutions. Our final rule includes our assessment of the rule's benefits and costs for consumers and lenders.

The Bureau estimates that approximately 98 percent or approximately 6.21 million total originations of closed-end mortgage loans in current market conditions reported by financial institutions under the current Regulation C coverage criteria will continue to be reported at the threshold of 100 closed-end mortgage loans. Under the permanent threshold of 200 open-end lines of credit, the Bureau estimates about 1.34 million lines of credit or approximately 84 percent of origination volume will be reported by all institutions providing open-end lines of credit.

Question 36

The 2015 HMDA Rule required large financial institutions to submit HMDA data to the Bureau on a quarterly basis so that the Bureau would have current information on what is happening in the mortgage market. The Bureau explained that the last crisis had demonstrated the importance of such current data. Yet at the start of this crisis, when financial institutions were all set to submit their quarterly reports, you told them they didn't have to do so. Why doesn't the Bureau think that it needs current data on the availability of credit in the mortgage market today?

Response

The Bureau's recent Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act (Statement), issued on March 26, 2020,[14] *relates to a requirement in the Bureau's 2015 HMDA rule that, starting in May 2020, financial institutions that report for the preceding calendar year at least 60,000 covered loans and applications (excluding purchased loans) must report their HMDA data quarterly (except for the fourth quarter) in addition to annually. In the Statement, the Bureau indicated that, as of March 26 and until further notice, it does not intend to cite in an examination or initiate an enforcement action against any institution for failure to report its HMDA data quarterly. In the Statement,*

[14] See https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/.

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the Bureau noted that entities should continue collecting and recording HMDA data in anticipation of making annual data submissions and that we will provide information later on when and how institutions will be expected to resume quarterly HMDA data submissions. The Statement also indicated, inter alia, that entities may continue making quarterly HMDA data submissions as required by the 2015 HMDA rule.[15]

The Statement is a temporary, non-binding statement articulating considerations relevant to how the Bureau intends to exercise its supervisory and enforcement authorities in light of COVID-19. The Bureau has discretion to determine how it wishes to allocate its supervisory and enforcement resources in the exercise of those authorities. The Statement does not amend the 2015 HMDA rule. The temporary and targeted regulatory flexibility provided by the Statement is to allow companies to focus on responding to consumers in need. We recognize that many institutions are facing operational challenges due to COVID-19, and the priority must be responding to consumers facing nearer term issues. As such, we will continue to provide relief as needed to ensure that resources can be focused on consumers.

Disparate Impact
In August 2019, HUD issued a proposed rule that would significantly increase the burden on plaintiffs seeking to bring disparate impact claims under the Fair Housing Act. The Supreme Court in 2015 upheld the use of disparate impact theory under the Fair Housing Act in in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project.* A July 13, 2020 Wall Street Journal Article detailed how major lenders such as Bank of America and Quicken Loans are now expressing their opposition to the proposed rule.[16] That same day the National Association of Realtors issued a statement urging HUD to withdraw its proposed rule on disparate impact including a statement from its President that "there is broad consensus across the country that now is not the time to issue a regulation that could hinder further progress toward addressing ongoing systemic racism."[17] Despite opposition from industry to the proposed rule, both HUD Secretary Carson and Deputy HUD Secretary Brian Montgomery have indicated the agency's intention to proceed with the harmful rulemaking that would raise the burden of proof for victims of housing discrimination, making it incredibly difficult for them to seek justice in the courts.[18]

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[15] Note that the 2015 HMDA rule established a safe harbor (see 12 CFR 1003.6(c)(2)) that applies to any data financial institutions report on a quarterly basis. If a financial institution that is required to report data quarterly makes a good faith effort to report such data fully and accurately within 60 calendar days after the end of each calendar quarter, inaccuracies or omissions in quarterly data reported do not need to be corrected or completed until the financial institution submits its annual loan/application register by March 1 of the following calendar year.
[16] https://www.wsj.com/articles/lenders-oppose-federal-effort-to-weaken-housing-discrimination-rule-11594667932.
[17] https://www.nar.realtor/newsroom/nar-calls-on-housing-urban-development-to-withdraw-disparate-impact-rule.
[18] https://www.politico.com/news/2020/07/14/hud-fair-housing-proposal-discrimination-362190.

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Question 37

When Congress overturned the CFPB's indirect auto lending guidance in 2018, former Director Mulvaney issued a statement that the Bureau "will be reexamining the requirements of the ECOA."[19] Director Kraninger, I'm asking you here today to state for the record whether you support the use of disparate impact theory in bringing enforcement actions under ECOA?

Response

The Bureau's mission is to ensure all consumers have access to consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. The Bureau will continue to fulfill that mission while exploring ways to increase access to credit for all. The Bureau is committed to fair lending and will continue to vigorously enforce fair lending laws within our jurisdiction.

The Bureau also continues to administer prior fair lending enforcement actions, monitor the market generally, and investigate, as appropriate, information and complaints that come to the Bureau. The Bureau continues to evaluate the use of disparate impact under ECOA on a case-by-case basis based on the specific facts and circumstances of each matter.

Question 38

The Equal Credit Opportunity Act applies to lending to small businesses and the Bureau has supervisory and enforcement authority under the ECOA. How many examinations has the Bureau conducted to date with respect to whether lenders complied with the ECOA in implementing the PPP? Will you commit to making this a priority for examinations for the remainder of this year?

Response

Information regarding specifics about the number of institutions the Bureau is assessing or plans to assess is confidential supervisory information (CSI), and the Bureau generally does not comment on such CSI. I can say that the Bureau is committed to using its supervisory authorities and resources to fulfill its mission on a risk-prioritized basis. The Bureau's supervision program reviewed and analyzed current pandemic-related market developments to determine where COVID 19-related issues are most likely to pose a risk to consumers. As a result of that review, the Bureau launched a new supervisory effort, called Prioritized Assessments, to focus on where it believes the risks are highest to consumers who have lost jobs or income and have trouble

[19] https://www.consumerfinance.gov/about-us/newsroom/statement-bureau-consumer-financial-protection-enactment-sj-res-57/.

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making loan payments that are due. The Bureau is also prioritizing markets where Congress provided special provisions to help consumers or small businesses in the CARES Act. Accordingly, the Bureau is deploying some of its resources – on a risk-assessed basis – to Prioritized Assessments of institutions participating in the PPP in order to evaluate fair lending compliance risks.

The Bureau takes seriously our responsibility for enforcement of ECOA and Regulation B, which includes fair lending in the small business lending market. Recognizing the risks of consumer harm during the pandemic, the Bureau is engaged in Prioritized Assessments across product lines and entities, including small business lending. It is notable that the Bureau also supported SBA and the Treasury in promoting awareness of the PPP and its benefits, particularly outreach to minority-owned small businesses and financial institutions. As part of that support, a senior executive with extensive knowledge of mission-focused small business lending and lenders was detailed to SBA soon after the launch of the program to help advise the agency on how to best use this channel to reach underserved small businesses. The advice provided helped inform Treasury and SBA on program enhancements they made which ultimately helped to lower the average PPP loan size and more actively engage Community Development Financial Institutions, Minority Depository Institutions and other mission lenders.

Consumer Advisory Committees
On January 9, 2020 the Consumer Bureau announced the members of its Taskforce on Federal Consumer Financial Law.[20] The Taskforce will advise the Director one existing consumer protection laws and regulations. You selected Todd J. Zywicki, Professor of Law at George Mason University (GMU) Antonin Scalia Law School, Senior Fellow of the Cato Institute, and former Executive Director of the GMU Law and Economics Center to chair the Taskforce.[21] In a 2013 law review article titled "The Consumer Financial Protection Bureau: Savior or Menace?" Professor Zywicki wrote "If one were to sit down and try to design a policy-making agency that essentially embodied all the pathologies that scholars of regulation have identified over the past several decades, one could hardly do better than that of the CFPB . . ."[22]

In addition to Mr. Zywicki, the Task Force consists of academics who have consistently taken anti-regulatory positions and that have represented payday lenders and other parties in CFPB enforcement actions against consumers.

[20] https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-membership-taskforce-federal-consumer-financial-law/.
[21] *Id.*
[22] https://www.mercatus.org/publications/financial-markets/consumer-financial-protection-bureau-savior-or-menace.

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Question 39

Not only does the Task Force lack the ideological diversity, it lacks demographic diversity as all of its members are white. What are your plans to diversify the demographic and ideological diversity of the Task Force so that it accurately represents the American consumer population?

Response

The Taskforce is composed of individuals of varying professional backgrounds and experiences, including past public service within the Federal government advocating for fair, competitive, and transparent markets that work for all consumers. It would not be appropriate for me to comment further as the Taskforce's creation is now the subject of active litigation.

Question 40

Although the Bureau has been quite accommodating to financial institutions during the pandemic because of the challenges of doing business in this environment, your Task Force on Consumer Financial Law issued a Request for Information seeking information on every consumer financial market and on every aspect of the administration of consumer finance laws yet gave the public only 60 days to respond. You have claimed that the Task Force is modeled after one that was created in the 1960's, yet that body took several years to prepare its report. Why are you racing to have this Task Force complete its work in less than a year?

Response

I established the Taskforce to objectively and independently evaluate the current regulatory framework. The Bureau will use the Taskforce's insight to, among other things, help inform the Bureau's discretionary research and rulemaking agendas. Consistent with those goals, the Taskforce Charter provides that the Taskforce is expected to deliver its findings to me no later than January 2021. Despite the impacts of the global health pandemic, the Taskforce has worked diligently to obtain information from the public that will help inform its report and recommendations while keeping with its original timeline. The Taskforce's independent status within the Bureau enables it to continue its analysis while the Bureau's other resources are devoted to addressing the COVID-19 pandemic's immediate effects on consumers and the market for consumer financial products and services. Thus, the Taskforce has been analyzing and will continue to analyze consumer financial law generally, while at the same time the Bureau is devoting substantial resources to addressing the pandemic's economic effects.

It is important to note that when I first met with selected members in January 2020, I directed them to engage in a robust dialogue with the Bureau's external stakeholders. In March 2020, the Taskforce held a listening session with representatives from various consumer advocacy and

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trade groups, which helped scope the Request for Information. On March 27, 2020, the Bureau issued a Request for Information to allow all interested parties to comment on the work of the Taskforce. The Bureau received 92 comments, one comment being signed by a coalition of 27 consumer advocacy organizations. On July 16, 2020, the Bureau held a public hearing during which the Taskforce engaged with a panel of external experts in federal consumer financial law. In September 2020, the Taskforce participated in public listening sessions with the Bureau's four advisory committees. In addition, the Taskforce's research includes reviewing and analyzing prior reports, public comments, and other analysis that stakeholders have released publicly while also undertaking a robust state and Federal engagement plan.

I am confident in the team's ability to complete its work within the established timeframe and anticipate receiving a report that will be of great value to the Bureau as we seek to carry out our mission of protecting consumers in the financial marketplace.

Question 41

During Director Cordray's tenure there was considerable controversy over the Bureau's advisory committees. Director Cordray chose to follow the Federal Advisory Committee Act even before Congress amended the Dodd-Frank Act to apply FACA to the Bureau. Yet when you created a Task Force on Consumer Financial Laws you made its members employees of the Bureau at considerable cost so that you could get around the Federal Advisory Committee Act. Why doesn't the Bureau want to follow the open meeting processes provided for in FACA?

Response

The Taskforce is an intragovernmental committee and not subject to the FACA. It would not be appropriate for me to comment further as the Taskforce's creation is now the subject of active litigation.

Debt Collection
It is disturbing that the new regulatory agenda shows that CFPB intends to rush to finalize the debt collection rule in October 2020, despite the pandemic. The CFPB should be devoting resources to focusing on helping consumers deal with debt collection problems during the pandemic, not with helping debt collectors expand their collection activities, escape liability, collect inaccurate time-barred debt, and expand abusive practices to electronic communications.

Question 42

For both the Supplemental NPRM on time-barred debt disclosures and the proposed validation notice testing, it is clear that the Bureau is not using or proposing to use a racially representative

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sample of consumers who actually experience debt collection. For example, the sample did not include sufficient representation of Black and Latinx consumers when, by the Bureau's own landmark Survey of Consumers Views on Debt found that 44% of Black people had experienced debt collection activity in the prior year, a rate 50% higher than among white individuals, and that the rate for Latinx people was 25% higher than for white people. Would the Bureau consider further testing on consumers of color who are disproportionately impacted by debt collection?

Response

The Bureau issued a Supplemental NPRM on February 21, 2020. The supplemental proposal would prohibit collectors from using non-litigation means (such as calls) to collect on time-barred debt unless collectors disclose to consumers during the initial contact and on any required validation notice that the debt is time-barred. Consumer research conducted by the Bureau found that a time-barred debt disclosure helps consumers understand that they cannot be sued if they do not pay. As described in the proposal, the Bureau's research included qualitative and quantitative testing of disclosures, including disclosures regarding time-barred debt and revival. In addition to several rounds of qualitative testing, consisting of focus groups and one-on-one interviews, the Bureau contracted with a third-party vendor to conduct a web survey of approximately 8,000 individuals possessing a broad range of demographic characteristics, where approximately two out of three consumers had prior debt collection experience. In December 2020, the Bureau plans to issue a final rule on its supplemental proposal issued in February 2020, and any remaining proposed issues.

Question 43

The CFPB has the authority under the FDCPA to prohibit debt collectors from engaging in any conduct "the natural consequence of which is to harass, oppress, or abuse." At a time when 50 million people have filed claims for unemployment, Congress has passed a $3 trillion stimulus package to try to save the economy and families and clearly more is needed, why hasn't the CFPB considered emergency relief to halt debt collection activities?

Response

The Bureau will continue to use all of its tools to address the acts and practices of debt collectors that violate the law and cause injury to consumers. On March 20, 2020 (and updated on June 17, 2020), the Bureau published information for consumers specific to debt collection and the potential economic impact of coronavirus.[23] *Much of the other substantial support the Bureau has given consumers is intended at least in part to help them take steps that would help them manage their credit and prevent their debts from going into collection.*

[23] https://www.consumerfinance.gov/about-us/blog/coronavirus-and-dealing-debt-tips-help-ease-impact/

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The Bureau is currently finishing a major update of consumer protections in debt collection. The Bureau issued an NPRM on May 7, 2019, and received over 14,000 comments in response. The proposal would provide consumers with specific protections against harassment by debt collectors and straightforward options to address or dispute debts. Among other things, the NPRM would establish 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 technologies, such as voicemails, emails and text messages, that have developed since the FDCPA passage in 1977; and require collectors to provide additional information to consumers to help them identify debts and respond to collection attempts.

The Bureau issued a Supplemental NPRM on February 21, 2020. The proposal would prohibit collectors from using non-litigation means (such as calls) to collect on time-barred debt unless collectors disclose to consumers during the initial contact and on any required validation notice that the debt is time-barred. Consumer research conducted by the Bureau found that a time-barred debt disclosure helps consumers understand that they cannot be sued if they do not pay. That can help consumers make better informed decisions whether to pay the debt or not.

In accordance with the Administrative Procedure Act, the Bureau has carefully considered comments received on the May 2019 proposed rule that would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA and expects to issue a final rule in October 2020. In December 2020, the Bureau also plans to issue a final rule on its supplemental proposal issued in February 2020, which addressed time-barred debt disclosures, and any remaining proposed issues. The Bureau extended the deadline for comments on that proposal to August 4, 2020, in light of the COVID-19 pandemic.

Question 44

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule banning debt collection during the pandemic?

Response

Please see response to question 43.

Question 45

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule banning debt collection that requires in person contact?

Response

Please see response to question 43.

Question 46

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule or guidance to debt collectors and financial institutions addressing certain abusive acts and practices during the pandemic?

Response

Please see response to question 43.

Question 47

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule or guidance regarding ceasing communications when a borrower indicates that they are experiencing a financial or health hardship related to COVID?

Response

Please see response to question 43.

Question 48

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule suspending bank account or wage garnishment during the pandemic to protect essential workers who are risking their lives by working?

Response

Please see response to question 43.

Question 49

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule prohibiting garnishment of stimulus checks?

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Response

Please see response to question 43.

Question 50

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule halting car repossession so that people can drive to doctors and do not need to risk their lives on public transportation?

Response

Please see response to question 43.

Question 51

Will the CFPB consider (and if not, please provide a rationale for why not) issuing an interim rule halting repossession of mobile homes and other personal property used as a dwelling, at least while stay-at-home orders are in effect?

Response

Please see response to question 43.

Question 52

The CFPB has been getting record-setting levels of complaints, especially involving debt collection. What are the top topics of these recent debt collection complaints?

Response

From March 1, 2020, through September 30, 2020, the Bureau received approximately 315,600 complaints, including approximately 48,300 about debt collection. (For the same period in 2019, the Bureau received approximately 214,100 complaints, including approximately 46,900 complaints about debt collection.)

For debt collection complaints submitted from March 1, 2020, through September 30, 2020, consumers submitted approximately 24,700 complaints about attempts to collect debt not owed

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and approximately 9,100 complaints about written notification of debt. These top issues are consistent with other complaints for the same period in 2019.

Question 53

In what way, if at all, does the proposed debt collection rule address the problems shown in those complaints?

Response

As noted in the response to question 52, the top issues raised in consumers' debt collection complaints since March 1, 2020, have been largely consistent with the complaints historically raised by consumers. The Bureau considered and incorporated concerns raised in consumer complaints when evaluating and issuing the proposed debt collection rule and continues to consider further feedback, including over 14,000 public comments, in its rulemaking activities.

Question 54

How has the CFPB reconsidered the debt collection rule in light of the problems people are facing today?

Response

The Bureau's proposed debt collection rule focuses on debt collection communications and disclosures, as well as addressing related practices by debt collectors. The Bureau closely follows issues raised in consumer complaints that relate to topics covered by the proposed debt collection rule. As noted above, the complaints to the Bureau concerning debt collection during the pandemic raise issues that are consistent with issues raised in pre-pandemic complaints, and the Bureau reviewed pre-pandemic complaints closely for information relevant to the rulemaking. As such, no reassessment in light of the pandemic complaints was necessary. The Bureau will continue to consider feedback and other information in reviewing the proposed rules as it moves forward towards final rules.

Question 55

Will the CFPB reopen the comment period on the debt collection rule in light of any lessons learned from the pandemic?

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Response

In accordance with the Administrative Procedure Act, the Bureau has carefully considered comments received on the May 2019 proposed rule that would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA and expects to issue a final rule in October 2020. In December 2020, the Bureau also plans to issue a final rule on its supplemental proposal issued in February 2020, which addressed time-barred debt disclosures, and any remaining proposed issues. The Bureau extended the deadline for comments on that proposal to August 4, 2020, in light of the COVID-19 pandemic.

Question 56

What other steps is the CFPB taking to address the top topics related to debt collection during the pandemic?

Response

In general, the Bureau routes consumers' complaints about financial products and services—and any documents they provide—directly to financial companies, and works to get consumers a timely response, generally within 15 days. Where appropriate, the Bureau refers consumer complaints to other Federal agencies including debt collection complaints submitted about depository institutions with $10 billion or less in assets and complaints submitted about telecommunications companies, homeowners' associations, and landlords.

In addition, as noted above, on March 20, 2020, the Bureau posted a comprehensive guide for consumers who are concerned about dealing with debt and debt collectors during the pandemic. The guide was updated on June 17th. The guide describes for consumers the rights they have under the FDCPA, outlines steps consumers can take to manage debt during the pandemic, provides links to the Bureau's preexisting sample letters that consumers can use to communicate with debt collectors, and warns consumers about protecting themselves against debt collection scams. The guide is one of a number of resources created for consumers to help them manage and protect their finances during the pandemic.

In addition to the Bureau's education tools, we continue to monitor the market for law violations. We also continue to process comments on our NPRM on time-barred debt as well as continue to work on our final rule on debt collection.

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Question 57

Will the CFPB provide any guidance to debt collectors warning them about risks to consumers made evident by the complaints?

Response

In accordance with the Administrative Procedure Act, the Bureau has carefully considered comments received on the May 2019 proposed rule that would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA and expects to issue a final rule in October 2020. The Bureau intends to continue its debt collection work through enforcement, supervision, and rulemaking. In addition, the Bureau's supervisory findings in examinations of larger participants in the consumer debt collection market are regularly reported to the public through Supervisory Highlights.

Question 58

How else does the CFPB plan to address the COVID-related debt collection complaints?

Response

Please see response to question 56.

Question 59

Has the CFPB analyzed the recent complaints to see if they shed light on the wisdom of the proposed rules?

Response

Please see response to question 54.

Question 60

Has the CFPB received complaints about collection activities involving various forms of electronic communications?

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Response

The Bureau's complaint submission process is designed to centralize the collection of, monitoring of, and response to complaints about consumer financial products and services.[24] *When submitting complaints to the Bureau, consumers identify the issue—and when applicable, the sub-issue—that best describes the problem they experienced and provide their description of what happened. Consumers also submit a narrative description of their complaint and have mentioned electronic communications in a very small percentage of debt collection complaints.*

The Bureau takes several actions in response to complaints. The Bureau routes complaints directly to financial companies and works to get consumers a timely response. The Bureau also analyzes and shares complaint data. These analyses support the Bureau's work to supervise companies, enforce Federal consumer financial laws, propose rules, spot and assess emerging issues, and develop tools that help empower consumers to make informed financial decisions.

Question 61

Has the CFPB received complaints about communications with employers?

Response

From March 1, 2020, through September 30, 2020, consumers submitted approximately 200 debt collection complaints to the Bureau in which they identified debt collectors contacting their employers as the sub-issue that best describes their problem with debt collectors. The Bureau takes the same actions described in the response to question 60 in response to these complaints.

Question 62

Has the CFPB received complaints about complaints involving collection of time-barred debt?

Response

From March 1, 2020, through September 30, 2020, consumers submitted approximately 1,000 debt collection complaints to the Bureau in which they identified debt collectors threatening to sue them for very old debt as the sub-issue that best describes their problem with debt collectors. The Bureau takes the same actions described in the response to question 60 in response to these complaints.

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

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Question 63

Has the CFPB received complaints about wage or bank garnishment involving time-barred debt?

Response

A keyword search of the Database for terms related to wage garnishment (e.g., garnishment) returns approximately 100 keyword matches for debt collection complaints where consumers described garnishment for very old debts for data from March 1, 2020, through September 30, 2020. The Bureau takes the same actions described in the response to question 60 in response to these complaints.

Question 64

Scammers have been exploiting the coronavirus crisis and payment scams are taking millions from people. Some scammers could impersonate debt collectors. What action will the CFPB take to warn consumers that a purported debt collector could be a scammer?

Response

Please see response to question 56. The Bureau has engaged in regular outreach with a variety of stakeholders to provide information to consumers regarding potential scams, including in the area of debt collection. In addition, the Bureau's supervisory findings in examinations of larger participants in the consumer debt collection market are regularly reported to the public through Supervisory Highlights.

Question 65

Will the CFPB issue guidance or otherwise warn scammers?

Response

It is clear that the Bureau will not hesitate to take public enforcement action against bad actors who seek to scam and exploit consumers in contravention of Federal consumer financial law. The Bureau continues its debt collection work through enforcement, supervision, rulemaking, and education.

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Question 66

Is the CFPB considering enforcement actions on coronavirus crisis and payment scams?

Response

The COVID-19 pandemic has not affected the Bureau's ability or resolve to use its enforcement tool to police the consumer financial marketplace. Our enforcement team is on the job and committed to vigorously enforcing consumer financial protection laws in all markets under our jurisdiction. In coordination with fellow Federal and State regulators, we are taking, and will continue to take, swift action when we identify companies or individuals that violate the law to profit from the current economic uncertainty.

The Bureau has already taken steps using its enforcement tool to ensure that federal COVID-19 financial relief efforts are not stymied by unlawful behavior, including investigating and securing injunctive relief against debt relief entities; monitoring the Bureau's complaint database; evaluating inputs from other agencies; reviewing whistleblower tips to uncover potential COVID-related malfeasance; and taking appropriate action either through opening investigations or referring the issue to supervision to address in the first instance.

Question 67

Has the CFPB considered whether it should revisit its proposal to allow collectors to send validation notices through links that people must click on in emails or texts from collectors they are not familiar with?

Response

Please see response to question 43.

Question 68

At a time when people's jobs are fragile and many are trying to work remotely while juggling family responsibilities, has the CFPB considered rescinding rulemaking that would allow a single collector to make 7 calls each and every day if the consumer has 7 debts?

Response

Please see response to question 43.

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Question 69

During this COVID-19 crisis, does the CFPB believe that it is good policy to ensure that information is not shared with third parties or consumers are not contacted while at work?

Response

Please see response to question 43.

Question 70

During this COVID-19 crisis, does the CFPB believe that it is good policy to make it easier for collectors to leave messages with employers, potentially jeopardizing their jobs?

Response

Please see response to question 43.

Question 71

Many courts are shut down, remote access is difficult for people without attorneys, and even when courts are open, people risk their health when they go outside. Has the CFPB considered if this is a good time to make it easier for debt collectors to file lawsuits by protecting them from liability for false, deceptive or misleading representations?

Response

Debt collection attorneys who make false, deceptive, or misleading representations in debt collection court pleadings would, in general, violate Federal laws (including the FDCPA) or state laws or professional ethical standards for attorneys. The Bureau issued an NPRM in May 2019, which, among other things, addressed the specific potentially deceptive claim that consumers may take away from an attorney's name on a court pleading that the attorney has been meaningfully involved in the preparation of that pleading. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, including a number of comments on the safe harbor for meaningful attorney involvement in debt collection litigation. In accordance with the Administrative Procedure Act, the Bureau has carefully considered those comments as part of the process of taking final action on the May 2019 NPRM. The Bureau expects to issue a final rule in October 2020.

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Question 72

The major telecommunications carriers refrained from cutting off internet and mobile access for the first few months of the crisis, but that pledge expired at the end of June,[25] and people who have not been able to pay their bills now face being on the wrong side of the digital divide. Has the CFPB considered how the crisis has exposed the fragility of internet and mobile service and lack of access for vulnerable consumers who are struggling with debts?

Response

The Bureau is currently finishing a major update of consumer protections in debt collection. The Bureau issued an NPRM in May 2019, which would, among other things, clarify how collectors may communicate lawfully using technologies, such as voicemails, emails and text messages, that have developed since the FDCPA passage in 1977. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed electronic communications. In accordance with the Administrative Procedure Act, the Bureau has carefully considered those comments as part of the process of taking final action on the May 2019 NPRM. The Bureau expects to issue a final rule in October 2020.

Question 73

Does the lack of access for vulnerable consumers to internet and mobile services cast doubt on the CFPB's proposal to allow debt collectors to send important notices electronically without consumer consent to the collector, based solely on past electronic communications consumers may have had with creditors?

Response

The May 2019 NPRM, among other things, described how a collector can provide three required disclosures – the validation notice, the original-creditor disclosure, and the validation information disclosure – electronically. These disclosures are subject to the E-SIGN Act. The NPRM proposed to require compliance with the E-SIGN Act plus additional requirements. The NPRM also proposed an alternative under which the Bureau would create an exception to the E-SIGN Act but impose alternative consumer protections. In accordance with the Administrative Procedure Act, the Bureau has carefully considered those comments as part of the process of taking final action on the May 2019 NPRM. The Bureau expects to issue a final rule in October 2020.

[25] https://www.fcc.gov/keep-americans-connected#:~:text=Keep%20Americans%20Connected%20Pledge,it%20to%20June%2030%2C%202020.

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Question 74

Will the CFPB issue a supervisory bulletin highlighting debt collection risks to consumers from the pandemic? If not, why not?

Response

In accordance with the Administrative Procedure Act, the Bureau has carefully considered comments received on the May 2019 proposed rule that would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA and expects to issue a final rule in October 2020. The Bureau intends to continue its debt collection work through enforcement, supervision, rulemaking, and education. In addition, the Bureau's supervisory findings in examinations of larger participants in the consumer debt collection market are regularly reported to the public through Supervisory Highlights.

As noted in the response to question 1, the Bureau will continue to use all of its tools to address the acts and practices of debt collectors that violate the law and cause harm to consumers. On March 20, 2020, the Bureau posted a comprehensive guide for consumers who are concerned about dealing with debt and debt collectors during the pandemic. The guide was updated on June 17th.[26] *The guide describes for consumers the rights they have under the FDCPA, outlines steps consumers can take to manage debt during the pandemic, provides links to the Bureau's preexisting sample letters that consumers can use to communicate with debt collectors, and warns consumers about protecting themselves against debt collection scams. The guide is one of a number of resources created for consumers to help them manage and protect their finances during the pandemic.*

In addition, Supervision is conducting Prioritized Assessments designed to obtain real-time information from entities that operate in markets that pose elevated risks of consumer harm due to pandemic-related issues. Supervision's Prioritized Assessment work is still in progress.

Student Loans

Question 75

When you last testified you said that the Bureau planned to launch joint examinations with the Education Department of servicers of federal student loans. How many such examinations have been conducted?

[26] *See* https://www.consumerfinance.gov/about-us/blog/coronavirus-and-dealing-debt-tips-help-ease-impact/.

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Response

The Bureau is coordinating with the Department of Education on supervisory work at student loan servicers covering Federal loans. The Bureau generally considers the number of supervisory engagements in a particular product line confidential supervisory information and has only provided the total number of supervisory events in a given fiscal year rather than any subset associated with a particular product line or law (with the exception of fair lending). This quarter, our supervisory work includes Prioritized Assessments to obtain information from student loan servicers and other entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues.

Through Prioritized Assessments, the Bureau is expanding its supervisory oversight to cover a greater number of institutions than our typical examination schedule allows, gain a greater understanding of industry responses to pandemic-related challenges, and help ensure that entities are attentive to practices that may result in violations of Federal consumer financial law or consumer harm. To better understand these risks and better ensure institutions comply with their obligations, the Bureau sent Prioritized Assessments to a number of student loan servicers.

Each of the student loan servicers that we selected for a Prioritized Assessment received targeted information requests covering information necessary to help us better understand how servicers are communicating repayment options to consumers, to analyze operational risk at servicers in executing on programs designed to help consumers manage financial difficulties, and to review student loan servicers' furnishing activities. We are coordinating with the Department of Education on this effort and look forward to evaluating the responses we receive related to both private and federally owned loans.

Question 76

Were the examiners acting under the direction of the Education Department?

Response

The Bureau determines when and whether to examine a student loan servicer through its risk prioritization process and then consults with the Department of Education to determine the specifics of the coordination. Bureau examiners conduct our supervisory work under the supervision and direction of managers and executives of the Bureau consistent with the Bureau's risk prioritization process and our authorities.

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Question 77

The Bureau published a report on May 1st on the early effects of the pandemic on applications for credit but has not published any research since then on the effects of the crisis. Is the Bureau's Office of Research examining current data and, if so, when can we expect to see reports on the Bureau's findings?

Response

Please see response to question 3.

Question 78

The last time you were before this committee, you informed us that you had restarted supervision over the largest student loan companies, after failing for more than two years to oversee the vast majority of the student loan serving market. This was welcome news. Can you give us an update on how this has been handled?

Response

Please see response to question 75.

Question 79

How many future examinations of student loan companies are planned?

Response

Please see response to question 75.

Question 80

Has the Department of Education resumed providing data and documents to the Bureau upon request?

Response

Please see response to question 75.

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Question 81

A statement released by Senate Labor-HHS Appropriations Subcommittee, submitted by Education Secretary Betsy DeVos said,: "FSA considered this first joint exam to be a pilot; it therefore does not currently have any associated monitoring agreements or memoranda [in place related to supervision]" Is Secretary DeVos wrong?

Response

The Bureau has not entered in to a new Supervisory Memorandum of Understanding with the Department of Education. For additional information on the Bureau's current activity with the Department of Education, please see response to question 75.

Question 82

Recent news reports found that a large student loan company allegedly furnished inaccurate credit information about 4.8 million of its customers and that all three major credit bureaus reported inaccurate information about these borrowers. The CARES Act provided credit protections specifically for student loan borrowers, and both the servicing and credit reporting industries allegedly botched this at a breathtaking scale. Would you agree that damaging the credit of 4.8 million people is evidence of practices that pose risks to consumers?

Response

The Bureau takes seriously its responsibility for oversight of credit reporting and furnishing. It has been and continues to be an active priority for the Bureau across its education, supervision, and enforcement tools. According to news reports, the issue you describe was corrected both by the servicer and by VantageScore to minimize the impact on consumers.[27] *Our Office of Markets has also been in communication with VantageScore to understand the issue.*

Question 83

Has the Bureau taken any steps to independently make sure that the student loan industry or the credit reporting industry is taking the steps necessary to fix this mess and protect borrowers from breakdowns like this in the future?

[27] *See* https://www.politico.com/news/2020/05/20/emergency-releif-student-loan-272334; *see also* https://www.vantagescore.com/news-story/340/vantagescore-credit-scores-and-covid-19-pandemic.

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Response

Information regarding specific supervised entities is confidential supervisory information (CSI) and the Bureau cannot comment on such CSI. Many of our findings from FCRA examinations are reported in Supervisory Highlights. The Bureau has released two special issues of Supervisory Highlights that describe key findings from consumer reporting examinations.[28]

[28] *See* https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf; *see also* https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.

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Questions for the Honorable Kathleen Kraninger, Director, Consumer Financial Protection Bureau, from Congressman Emanuel Cleaver:

Economic Inequality

Question 1

During the hearing you noted that you believe race-based discrimination exists. Do you think that consumers of color and women, who have experienced a disparate impact during this COVID-19 economic crisis, have been harmed because of systemic discrimination?

(a) If yes, what exactly have you done during your tenure as CFPB Director to address this crisis?
(b) If no, why not?

Response (a and b)

During the pandemic, the Consumer Financial Protection Bureau (Bureau) continues to be committed to enforcing fair lending laws in all markets under our jurisdiction. We are monitoring the marketplace in real-time and coordinating on an ongoing basis with Federal and state agencies and regulators. Specifically, the Bureau continues to enforce the Equal Credit Opportunity Act (ECOA). In doing so, we are monitoring the market for potential illegal activity in high-risk areas. Currently, the Bureau is conducting Prioritized Assessments. Implemented in response to COVID-19 pandemic, Prioritized Assessments are specifically designed to obtain real-time information from entities that operate in markets posing elevated risk of consumer harm due to pandemic-related issues.

Question 2

Would you be willing to restore the enforcement and supervisory authority of the Office of Fair Lending and Equal Opportunity in response to the disparate impact of these communities during this crisis? (This office was hobbled before your arrival by Mr. Mulvaney to the dismay of many civil rights advocates, but you have the authority to reverse this)

(a) Have you considered restoring the supervisory and enforcement authorities of this office? (why or why not?)

Response

The Bureau is committed to fair lending and will continue to vigorously enforce fair lending laws within our jurisdiction. By utilizing the tools of education, regulation, supervision and

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enforcement, the Bureau can focus on preventing harm to consumers, which includes protecting consumers from unfair, deceptive and abusive acts or practices as well as from discrimination. The Bureau's purpose is to ensure all consumers have access to consumer financial products and we will continue that purpose while exploring ways to increase access to credit for all.

Moreover, the Bureau has dedicated significant resources to the supervision and enforcement of fair lending laws. The Office of Enforcement is responsible for the enforcement of fair lending laws. As of September 2019, Enforcement has an allotted headcount of 151 full time employees. All Enforcement attorneys 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.

The Office of Supervision Examinations is responsible for supervising entities for compliance with fair lending laws. Every Bureau examiner is trained to conduct fair lending examinations. During the course of a fair lending examination, the assigned team of examiners reviews the institution's books and records for compliance with fair lending laws using the Bureau's fair lending examination procedures. In addition, the Office of Supervision Examinations operates a National Fair Lending Examination Team, which includes a representative from each of the four regions, in addition to a senior examination manager, who are fully dedicated to fair lending examination work. This national team creates fair lending job aids and serves as an expert resource on fair lending matters for examiners across the country as they engage in fair lending work. The Office of Supervision Policy's fair lending team currently includes five attorneys and two analysts who are devoted to fair lending supervision matters.

Question 3

In the Dodd-Frank law, which turned 10 years old this month, Congress mandated the establishment of an Office of Fair Lending and Equal Opportunity at the CFPB, reflecting the longstanding relationship between economic justice and civil rights.

It was intended to enforce the nation's fair lending laws, principally the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act, coordinate with other federal agencies, and report back to Congress on its work.

Part of its strength and utility was being an independent organ within the agency that worked on policy, supervision, enforcement, and education together.
ProPublica released a report two weeks ago highlighting that the OCC and other areas of the administration were not actively pursuing a number of discrimination investigations.

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The article stated that under Director Cordray the OCC and CFPB actively coordinated on discrimination investigations, but that has drastically changed.

It does not seem like you have taken any enforcement action based on discrimination during your tenure. Why is that?

Response

As noted in the previous response, the Bureau has dedicated significant resources to the supervision and enforcement of fair lending laws. Because credit discrimination is often hidden or even unintentional, it is difficult to identify. The Bureau's mission is to ensure all consumers have access to consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. The Bureau will continue to fulfill that mission while exploring ways to increase access to credit for all. The Bureau is committed to fair lending and will continue to vigorously enforce fair lending laws within our jurisdiction. To further strengthen our fair lending enforcement, the Bureau has asked Congress for the authority to compensate whistleblowers who can provide information allowing us to take swift action against companies for violating the law. While discriminatory policies can be challenging and time consuming to uncover in an examination or investigation, an employee with first-hand knowledge can be a key source of information to help the Bureau identify and address fair lending violations. Moreover, the Bureau has taken public enforcement action based on discrimination during my tenure, and we have a number of ongoing investigations involving potential discrimination. In recent years, one key area in which the Bureau is focusing its fair lending enforcement efforts has been addressing potential discrimination in mortgage lending, including the unlawful practice of redlining. For example, this summer the Bureau filed a lawsuit alleging a lender had violated the ECOA by discouraging, through its advertising, African Americans from applying for loans. The Bureau also announced a settlement last year with a mortgage corporation that violated the Home Mortgage Disclosure Act (HMDA) and Regulation C by intentionally submitting years of mortgage-loan data that contained errors in the fields of race, ethnicity, and sex.

Question 4

Ranking Member Brown noted yesterday that under your leadership you were unable to return any compensation to consumers in this area while Director Cordray returned $500 million.

(a) Do you think the CFPB reorganization and posture has caused this?

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(b) Do you think that you have best positioned the CFPB to detect and root out discrimination in the marketplace?

(c) Have you done anything to enhance the enforcement capabilities of your agency to protect these consumers during this crisis?

Response (a – c)

The Bureau brings public enforcement actions based on the law and facts of each particular case. As noted in my previous response, the Bureau has taken public enforcement action based on discrimination during my tenure, and we have a number of ongoing investigations involving potential discrimination.

The elevation of the Office of Fair Lending and Equal Opportunity to the Office of the Director and the related retention of fair lending supervision and enforcement within the Division of Supervision, Enforcement and Fair Lending was designed to and has strengthened the Bureau's fair lending work. Resources for fair lending enforcement are even more robust and fair lending remains a core priority for the division. Please see responses to questions 2 and 3.

<u>CFPB COVID-19 Response</u>

I think over the past two days your agency's response to the COVID-19 crisis has received some criticism.

I am sure you would agree your response has not been perfect, so I want to focus on what more you can do as we face the nearly 33% economic contraction announced today and help consumers.

As noted yesterday there has been a 50% spike in consumer complaints since the start of the crisis.

Question 5

Has CFPB considered using its various units to provide preemptive recommendations to prevent consumer harm based on the incoming data and complaints your agency is seeing?

Response

I have made clear that prevention of consumer harm is our overarching goal. The Bureau uses the four tools Congress gave us – education, regulation, supervision, and enforcement – as well as our supporting capabilities of consumer complaints, market monitoring, stakeholder

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engagement, and research to execute our mission in an effective, efficient manner – which certainly means timely and proactive. The example of consumer complaints is particularly relevant. Consumer complaints have always provided the Bureau with valuable insights into the challenges consumers are experiencing with financial products and services. We use those insights to inform all of the Bureau's work, including our supervisory and enforcement activities. As a demonstration of that point, our analysis of mortgage servicing complaints early in the pandemic led to responsive actions with the Federal Housing Finance Agency (FHFA) and other federal partners in developing our Coronavirus Aid, Relief, and Economic Security (CARES) Act mortgage forbearance videos and scripts for mortgage servicers to use in clearly conveying CARES Act consumer rights and lender responsibilities.

Question 6

I am concerned about a foreclosure crisis on the horizon, can you refocus CFPB efforts to help keep consumers in their homes?

Response

Over the past few months, the Bureau has taken numerous steps to protect and assist consumers, including informing consumers about mortgage relief options provided through the CARES Act. The Bureau has a dedicated COVID-19 webpage with information on how consumers can protect their finances. To date, more than 3.9 million users have accessed our educational web content in response to COVID-19. We created a joint dedicated portal with other Federal regulators to provide accurate, impartial information to let consumers know their options in order to make the best decision for their situation. The dedicated portal includes a guide for borrowers on the options available to them, including requesting forbearance, a video explanation of the mortgage programs in the CARES Act, questions consumers should ask their mortgage servicers, and other educational content on mortgage and housing assistance during COVID-19. More specifically, the dedicated portal provides consumers with a single source for information about options to manage the housing impacts of the pandemic.

In addition, the Bureau has actively engaged with a variety of stakeholders, including housing counselors, civil rights, consumer advocates, and local organizations to ensure we are providing appropriate information to consumers during this time. To reach those borrowers that may be unaware of mortgage relief options, we are continuing to work with our Federal partners and non-Federal stakeholders to expand outreach and dissemination of information to vulnerable consumers and communities across the country, which includes direct outreach and by working through housing counselors, community organizations, and financial institutions.

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Throughout the COVID-19 pandemic, the Bureau has been working to protect, promote, and preserve the financial well-being of consumers and we remain committed to carrying out the Bureau's statutory mission to protect consumers in the financial services marketplace.

Question 7

What are you doing to help address the leading consumer complaints of credit reporting (over 433,000 complaints) and debt collection (over 145,000 complaints)?

Response

As noted above, consumer complaints have always provided the Bureau with valuable insights into the challenges consumers are experiencing with financial products and services. We use those insights to inform all of the Bureau's work, including our supervisory and enforcement activities. The Bureau also shares consumer complaint information with federal and state agencies to ensure that the Bureau and other regulators have useful information to support consumers.

During this public health emergency, the Bureau has continued to handle consumers' complaints about financial products and services. We have set new volume records nearly every month since March 2020 and received more than 40,000 complaints a month since April 2020. In September 2020, consumers submitted nearly 50,000 complaints — the highest complaint volume in the Bureau's history. To put these volumes in context, consider that in 2019 we averaged 29,000 complaints submitted per month. As of October 1, 2020, the Bureau has received approximately 380,000 consumer complaints this year—more complaints than the Bureau received in all of 2019.

Complaint volume alone can only tell us so much. Analyzing the complaints and company responses provides us with near real-time information about the types of challenges consumers are experiencing. With respect to credit reporting, we are examining these complaints and are engaged in further market analysis and supervisory work on furnishing and credit reporting, looking for patterns and systemic issues that must be addressed. The Bureau continues to educate consumers on important issues during this time. In July 2020, the Bureau published information and a video for consumers about protecting their credit during the coronavirus pandemic.[29]

Also, on March 20, 2020, the Bureau posted a comprehensive guide for consumers who are concerned about dealing with debt and debt collectors during the pandemic. The guide was updated on June 17th. The guide describes for consumers the rights they have under the Fair

[29] *See* https://www.consumerfinance.gov/about-us/blog/protecting-your-credit-during-coronavirus-pandemic/.

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Debt Collection Practices Act (FDCPA), outlines steps consumers can take to manage debt during the pandemic, provides links to the Bureau's preexisting sample letters that consumers can use to communicate with debt collectors, and warns consumers about protecting themselves against debt collection scams. The guide is one of a number of resources created for consumers to help them manage and protect their finances during the pandemic. In addition to the Bureau's education tools, we continue to monitor the market for law violations.

Innovation in Technology

Last week the CFPB announced its intention to issue an advance notice of proposed rulemaking on Section 1033 of the Dodd-Frank Act. Section 1033 presents the potential for significant innovation because it may require financial institutions to make available their customer's data with that customer's permission. Ultimately, this offers the possibility of enabling consumers to have greater control over their data, their finances, and their choice of financial services. Across the globe, multiple governments – the UK, Europe, Australia – have created a legal consumer financial data right to ensure competition and access to financial services for all.

Question 8

Can you affirm that the CFPB understands the importance of promulgating a similar right in the U.S.?

Response

The Bureau recognizes the importance of ensuring consumer access to financial records and has been active in cultivating an effective data sharing ecosystem in the U.S. The Bureau has taken several steps with respect to section 1033, including extensive engagement with stakeholders from a range of perspectives. These include a request for information issued in 2016, a Bureau statement of principles in 2017, and a February 2020 symposium. The valuable information and comments the Bureau has received through its stakeholder engagement efforts informs the Bureau's Advanced Notice of Proposed Rulemaking (ANPR) which was issued on October 22, 2020. The ANPR includes a discussion of many of the complex issues raised with respect to effective implementation of section 1033 and solicits comment and information on these issues to assist Bureau decisions regarding future action.

Facebook

As you are aware, Facebook has engaged in a range of conduct that has been inconsistent with their terms of service and the protection of consumers.

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Question 9

Has your agency considered investigating Facebook's conduct and actions in the wake of consistent allegations of abuses?

Response

In general, the Bureau does not comment publicly on confidential enforcement investigations or litigation. The Bureau's mission is to ensure all consumers have access to consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

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Questions for the Honorable Kathleen Kraninger, Director, Consumer Financial Protection Bureau, from Congressman David Kustoff:

Question 1

The CFPB has recently alleged discrimination using the questionable comparative redlining theory under the Equal Credit Opportunity Act (ECOA) in CFPB v. Townstone Financial, Inc. There are numerous legal problems with this theory, which to date, has never been upheld by a court. The facts used by the CFPB in this case (similar facts have been used in past complaints) include that: (1) the lender did not have an African American loan officer during the time period; and (2) the lender did not conduct specific outreach to the African American community because it advertised primarily on conservative AM radio. The CFPB's lawsuit is appears to be saying that if lenders hire African American loan officers, or avoid advertising primarily on conservative-leaning media outlets (or essentially create an "equal time rule" for financial services advertising), it will prevent a fair lending violation.

Neither ECOA nor Regulation B expressly impose an affirmative obligation on lenders to hire loan officers of a particular racial or ethnic group, to prohibit primarily advertising on media outlets that have a certain political leaning, or to direct advertising to specific racial or ethnic groups. For example, there is no language in ECOA or Regulation B stating that creditors must adhere to a specific hiring quota for each MSA they operate in. ECOA simply states that it is "unlawful for any creditor to discriminate against any applicant." 15 U.S.C. § 1691(a). Further, ECOA does not have any express provision giving the Bureau authority to impose by regulation hiring quotas, prohibit lenders from advertising on media that has a certain political leaning, or a requirement to direct advertising to specific racial or ethnic groups.

For the Bureau to essentially impose such a new requirement on creditors in a lawsuit would amount to the much-maligned "regulation by enforcement" that was engaged in by former Director Richard Cordray. "Regulation by enforcement" deprives the public of "clear rules of the road' before the federal government uses its enforcement powers, and deprives the agency and the public of the "notice and comment" process under the APA, which results in bad policy. Why has the CFPB decided to use "regulation by enforcement" in this instance? Where is the CFPB's authority to create these affirmative obligations, such as a hiring quota, outside of the authority of ECOA, and outside of the CFPB's obligations for rulemaking under the APA?

Response

The Bureau generally does not comment publicly on pending litigation. The Bureau is committed to its responsibilities under the fair lending laws and uses the tools the Dodd-Frank Wall Street Reform and Consumer Protection Act has provided – education, regulation (including compliance guides), supervision, and enforcement – as necessary to carry out those responsibilities.

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Question 2

In the CFPB's Townstone Financial, Inc. lawsuit alleging discrimination under the Equal Credit Opportunity Act (ECOA), the CFPB alleged that five statements made by the company on a radio show on a conservative-leaning Chicago AM radio station and podcast were offensive to African Americans and therefore discriminated under ECOA. These statements were social commentary on the crime rate in Chicago and in support of the police, as well as on other societal issues. The statements in question did not specifically mention any race or ethnicity. While the viewpoints expressed may not be universally supported, they are clearly topics of great concern currently in the public discourse, and as such, amount to the most-protected firm of speech, "political speech." The First Amendment of the U.S. Constitution makes it clear that, "Congress shall make no law . . . abridging the freedom of speech . . . ." ECOA does not expressly limit political speech that may be deemed disagreeable by certain racial or ethnic groups.

The legal theory alleged by the CFPB is dangerous to society. Because ECOA not only applies to mortgage lending, but all forms of credit, including commercial and consumer credit, this theory could set a dangerous precedent for the entire finance industry. It would enable federal and state agencies that enforce ECOA to allege discrimination based on political speech they do not like. In addition, this theory could be extended to other anti-discrimination laws, as courts typically look to such laws as analogues of each other. This is exactly what the First Amendment is meant to prevent: government using its enforcement powers to stop speech it does not like.

How can the CFPB claim that seeking to enforce ECOA based on political speech that does not mention any particular race or ethnicity does not violate the First Amendment?

Response

As noted above, the Bureau generally does not comment publicly on pending litigation.

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Questions for the Honorable Kathleen Kraninger, Director, Consumer Financial Protection Bureau, from Congressman Scott Tipton:

Question 1

Background: Middle-income Americans are often unable to obtain credit cards from large financial institutions if their credit score is less than 700, so they frequently rely on community and regional banks who partner with specialized firms to obtain fairly-priced credit cards.

- However, I've read reports that as result of the economic disruption from the pandemic, some consumers are seeing their credit card accounts closed or limits reduced.
- I understand that some companies that facilitate credit to U.S. consumers with less than a 700 credit score are unable to access liquidity through the Federal Reserve facilities that have been established in conjunction with the Treasury Department using funding provided under the CARES.
- I'm concerned for the middle-income consumers, as well as the Main Street businesses they support that are the lifeblood of local economies.

Could you comment on this trend and on the effect it would have on Main Street businesses that rely on these consumers to do business?

Response

The Consumer Financial Protection Bureau (Bureau) recognizes the importance of access to credit card credit by consumers during times of financial hardship. The Bureau is monitoring actions by card issuers with respect to account closures and line decreases. In August, the Bureau published a Special Issue Brief on The Early Effects of the COVID-19 Pandemic on Consumer Credit, using data through June. We reported that there was a slight reduction in the availability of credit card debt between March and June 2020. Credit limits on existing credit cards declined slightly through June, where prior to March 2020 there was a general trend of increasing limits. There was also an uptick in the closure of accounts by credit card issuers. In absolute terms, we reported that borrowers with very high credit scores accounted for the majority of account closures. The Bureau continues to monitor these metrics.

The Bureau also monitors consumer complaints. The Bureau's Consumer Complaint Database shows complaints related to account closures ranked as the sixth most common issue in the first six months of 2020 and represented 8 percent of all credit card complaints. This is similar to the share of credit card complaints received last year on this topic. In the first six months of 2019, complaints related to account closures ranked as the sixth most common issue and made up approximately 8 percent of credit card complaints.

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The Bureau's mission is to ensure access to fair, transparent, and competitive markets for consumers. That mission is especially important during times of economic uncertainty. While I cannot comment on the liquidity facilities provided by the Federal Reserve and the Treasury Department, I can say, building on my previous testimony, that I remain committed to strengthening the Bureau's ability to use all of the tools provided by Congress to protect consumers.