

**THE CONSUMER FINANCIAL PROTECTION
BUREAU'S SEMIANNUAL REPORT TO CONGRESS**

HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION
ON
A REVIEW OF THE CONSUMER FINANCIAL PROTECTION BUREAU'S
SEMIANNUAL REPORT TO CONGRESS

—————
MARCH 12, 2019
—————

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



**THE CONSUMER FINANCIAL PROTECTION BUREAU'S
SEMIANNUAL REPORT TO CONGRESS**

**THE CONSUMER FINANCIAL PROTECTION
BUREAU'S SEMIANNUAL REPORT TO CONGRESS**

HEARING
BEFORE THE
**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS**
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION
ON
A REVIEW OF THE CONSUMER FINANCIAL PROTECTION BUREAU'S
SEMIANNUAL REPORT TO CONGRESS

—————
MARCH 12, 2019
—————

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



Available at: <https://www.govinfo.gov/>

—————
U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

MIKE CRAPO, Idaho, *Chairman*

RICHARD C. SHELBY, Alabama	SHERROD BROWN, Ohio
PATRICK J. TOOMEY, Pennsylvania	JACK REED, Rhode Island
TIM SCOTT, South Carolina	ROBERT MENENDEZ, New Jersey
BEN SASSE, Nebraska	JON TESTER, Montana
TOM COTTON, Arkansas	MARK R. WARNER, Virginia
MIKE ROUNDS, South Dakota	ELIZABETH WARREN, Massachusetts
DAVID PERDUE, Georgia	BRIAN SCHATZ, Hawaii
THOM TILLIS, North Carolina	CHRIS VAN HOLLEN, Maryland
JOHN KENNEDY, Louisiana	CATHERINE CORTEZ MASTO, Nevada
MARTHA MCSALLY, Arizona	DOUG JONES, Alabama
JERRY MORAN, Kansas	TINA SMITH, Minnesota
KEVIN CRAMER, North Dakota	KYRSTEN SINEMA, Arizona

GREGG RICHARD, *Staff Director*

JOE CARAPIET, *Chief Counsel*

BRANDON BEALL, *Professional Staff Member*

LAURA SWANSON, *Democratic Deputy Staff Director*

ELISHA TUKU, *Democratic Chief Counsel*

COREY FRAYER, *Democratic Professional Staff Member*

CAMERON RICKER, *Chief Clerk*

SHELVIN SIMMONS, *IT Director*

CHARLES J. MOFFAT, *Hearing Clerk*

JIM CROWELL, *Editor*

C O N T E N T S

TUESDAY, MARCH 12, 2019

	Page
Opening statement of Chairman Crapo	1
Prepared statement	33
Opening statements, comments, or prepared statements of:	
Senator Brown	3
Prepared statement	34

WITNESS

Kathy Kraninger, Director, Consumer Financial Protection Bureau	5
Prepared statement	35
Responses to written questions of:	
Senator Brown	40
Senator Cotton	45
Senator Perdue	46
Senator Tillis	48
Senator Moran	51
Senator Reed	54
Senator Menendez	55
Senator Warner	57
Senator Warren	61
Senator Cortez Masto	70
Senator Sinema	83

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Semiannual Report of the Bureau of Consumer Financial Protection—Fall 2018	86
Letter submitted by the Association of Credit and Collection Professionals	128
Letter submitted by the Credit Union National Association	138
Statement submitted by Scott S. Weltman, Managing Shareholder, Weltman, Weinberg, and Reis Co., LPA	143
Letter submitted by the Consumer Banker's Association	349

THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

TUESDAY, MARCH 12, 2019

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:08 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. The hearing will come to order, and, Ms. Kraninger, please take your seat.

Today we will receive testimony from CFPB Director Kathy Kraninger on the CFPB's most recent semiannual report.

On February 12, the CFPB issues its fall 2018 semiannual report which outlines the CFPB's significant work between April 2018 and September 2018, including rulemakings and supervisory and regulatory activities.

The report also provides insight into what the CFPB plans to undertake in the coming work period.

In the report, Director Kraninger said, "As I begin my stewardship of the CFPB, I will also be moving forward with the agency as a team to make sure the American people have access to the financial products and services that best suit their individual needs, the financial institutions that serve them are competing on a level playing field, and the marketplace is innovating in ways that enhance consumer choice."

Providing individuals and businesses with access to a wide array of financial products and services is foundational to robust economic growth and job creation.

Under Director Kraninger's leadership, the CFPB has already started to take action to ensure that regulations that could affect consumers' access to credit are based on solid evidence and legal support, rather than flawed analysis.

On February 6, the CFPB proposed to rescind the mandatory underwriting provisions of its payday lending rule and delay their compliance date.

The decision was made nearly 1 year after initially noticing its intention to revisit the rule and after conducting extensive due diligence.

The CFPB found insufficient evidence and legal support for the mandatory underwriting provisions and said that it is concerned that those provisions would reduce access to credit and competition in States that have determined it is in their residents' interest to be able to use such products, subject to State law.

The CFPB has also taken steps to implement provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act—Senate bill 2155—that increase protections for consumers.

On March 4, the CFPB issued an advance notice of proposed rulemaking to gather information on residential Property Assessed Clean Energy financing, or PACE loans, that will be used in its proposal to implement Section 307 of the bill.

In September, the CFPB announced as effective a provision of S. 2155 that provides consumers concerned about identity theft or data breaches the option to freeze and unfreeze their credit for free.

A *New York Times* article commenting on the provision noted that, “one helpful change . . . will allow consumers to ‘freeze’ their credit files at the three major credit reporting bureaus—without charge. Consumers can also ‘thaw’ their files, temporarily or permanently, without a fee.”

Susan Grant, director of consumer protection and privacy at the Consumer Federation of America expressed support for these measures, calling them “a good thing.”

In August, the CFPB issued an interpretive and procedural rule to implement Section 104 of S. 2155 to exempt qualifying community banks and credit unions partially from reporting certain data points under HMDA.

The CFPB took another positive step on HMDA reporting in December issuing policy guidance describing HMDA data that it intends to publicly disclose in a manner that protects consumers' privacy.

The Committee will continue to make implementation of S. 2155 a top priority this Congress, and I encourage the CFPB to take the necessary steps to provide meaningful relief that will ultimately benefit consumers.

Data privacy is another issue that the Committee will spend significant time on this Congress.

Americans are rightly concerned about how their data is collected and used and how their data is secured and protected by both Government agencies and private companies.

I have long raised concerns about big data collection by the CFPB, especially with respect to credit card and mortgage information.

Although there have been positive changes in recent years under new leadership, the CFPB must ensure that the collection of consumer information is limited, information is retained only as long as is absolutely necessary to fulfill the CFPB's obligations, and that appropriate safeguards are in place to protect it.

It is also worth examining how the Fair Credit Reporting Act, or FCRA, should work in a digital economy, and whether certain data brokers and other firms serve a function similar to the original consumer reporting agencies.

The FCRA establishes standards for the collection and permissible purposes for dissemination of information by consumer report-

ing agencies and gives consumers access to their files and the right to correct information.

The CFPB, through its supervision of larger participants it defines by rule, oversees a large segment of the consumer reporting marketplace.

I look forward to working with the CFPB to identify opportunities to update FCRA so that it works in a digital world.

During this hearing, I look forward to hearing more about Director Kraninger's priorities for the CFPB in the upcoming work period, additional legislative or regulatory opportunities to provide widespread access to financial products and services, and steps that could be taken to increase the protection of consumers' financial and other sensitive information.

Director Kraninger, again, thank you for joining the Committee this morning to discuss the CFPB's activities and its plans.

Senator Brown.

Senator BROWN. Still trying to get that quorum over here, Mr. Chairman.

Chairman CRAPO. I appreciate your help on that.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. And welcome, Director, to the Committee again.

We created the Consumer Financial Protection Bureau to crack down on Wall Street predators and shady lenders that prey on hardworking families. Wall Street, as we know, as we see here about every day, has armies of lobbyists fighting for every tax break, every exemption, every opportunity to be let off the hook for scamming customers and preying on families, and in some cases destroying communities.

Ordinary Americans do not have those lobbyists. They do not have that kind of power. The Consumer Protection Bureau is supposed to be their voice, it was created to be their voice, created to fight for them.

When a toxic mortgage robs a family of their home, it is not the CEO of Bank of America, it is not the top management at Wells Fargo who sits down with those kids and has the tough conversations around the table. It is those families explaining that to their children, explaining their house is being taken away, explaining they are going to have to change schools, explaining why they are going to have to get rid of their family pet. It is the parents who were ripped off by corporate greed, those are the people who have to look their children in the eye and explain things away.

We created the CFPB so there would be fewer of those conversations—to look out for danger before it crashes down on hardworking families, robs them of their homes, their jobs, their savings. Like food inspectors, the CFPB is supposed to hunt down scammers trying to sneak toxic products onto kitchen tables. But under new leadership, the Consumer Bureau has turned its back on that job.

CFPB inspectors used to show up at Wall Street banks and other lenders to make sure they were obeying the Military Lending Act. That is a law that protects active-duty servicemembers and their families from predatory loans. Under new leadership, CFPB inspec-

tors simply are not protecting servicemembers the way they used to.

The CFPB used to protect borrowers from shady lending practices that trapped hardworking families in that endless cycle of debt. Now the CFPB Director is giving payday lenders and car title lenders free rein. In fact, Director Kraninger wants us to believe that an endless cycle of debt is a benefit to hardworking families.

The CFPB used to make sure loans have clear explanations that regular Americans could understand. Now the CFPB has created the George Orwell-type named “Office of Innovation”, which as far as we can tell is dedicated to helping big banks and tech firms innovate new ways to trick customers into new loans and other complicated financial products.

The old CFPB prosecuted debt collectors who used shady tactics to harass borrowers and threaten them in their homes or at their jobs. Now the CFPB is considering a proposal to let debt collectors call borrowers as many times as they want. You thought telemarketers were bad? Try being harassed over your student loan debt.

If the Director of the Consumer Financial Protection Bureau wanted to help customers, she would not have to look very far to find people in need.

Student loan debts have reached record levels, record delinquency rates. Seven million Americans, as we read, are more than 3 months behind; 7 million Americans 3 months behind on their car payments—the highest level in 19 years, worse than during the Great Recession. Forty percent of Americans do not have enough savings to cover a \$400 emergency expense.

Instead, CFPB is siding with the rest of this Administration that looks like an executive retreat for Wall Street. It is clear whose side everyone in this Administration is on. They continue to create excuses for eliminating financial protections, saying they are “increasing access to credit.”

What they really mean is increasing access to bad credit that drains people’s savings and traps them in debt. Right now today, at this time, Tim Sloan, CEO of Wells Fargo, is testifying in the House Financial Services Committee about a laundry list of ways his bank abused its consumers.

Millions of Americans got hurt because this bank cared more about their profits than about their customers and about their employees. It was the CFPB, as we remember, the old CFPB, that helped uncover this scandal. It was the CFPB that got many Americans their money back. That is what Ms. Kraninger’s job should be about.

Chairman CRAPO. Thank you, Senator Brown. I will go first on the questions, and as I indicated in my opening statement—oh, excuse me. I do not want to get to my questions before I let the Director speak. Senator Brown has corrected me twice now in this hearing.

[Laughter.]

Chairman CRAPO. Director Kraninger, please make your opening statement, and then I will jump into questions.

**STATEMENT OF KATHY KRANINGER, DIRECTOR, CONSUMER
FINANCIAL PROTECTION BUREAU**

Ms. KRANINGER. Thank you, Mr. Chairman.

Chairman Crapo, Senator Brown, Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's most recent Semiannual Reports to Congress. While the reports describe actions undertaken before I arrived, they provide a touchstone as we create a fresh outlook at the agency under my leadership.

Since my confirmation, I have been engaged in a listening tour to meet as many of our stakeholders as possible, including many of you. I have visited our regional offices in San Francisco, Chicago, and New York, interacting first and foremost with Bureau staff. I have been impressed by the exceptionally talented staff and their commitment to our mission of protecting consumers.

In D.C. and in the field, I have held roundtables and met with consumer advocates, faith leaders, banks of all sizes, credit unions, nondepository institutions, innovators, and fellow regulators at the Federal and State level. I have spoken with current and former members of the Consumer Advisory Board and many individuals who care about the bureau, such as Senator Dodd, Congressman Frank, and former Director Cordray. Hearing all perspectives is critical to bringing the best thinking as we carry out our mission.

The following gives you a flavor for the discussions that I have been having.

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

Also, on examinations, financial institutions and nonbank lenders alike have noted the value of the exam process, as well as their interest in having clear rules of the road.

State Attorneys General and bank supervisors have cited the valuable work that we have done together, particularly on enforcement actions, and I have heard from legal aid providers about how they play whack-a-mole against bad actors until one of the Bureau's enforcement actions deters certain behaviors.

As I look to wrap up my listening tour this month, I have pledged that these engagements will continue on a regular basis. As one example, I have invited the Members of this Committee to visit our headquarters on Monday, May 20th. I hope that all of you are able to attend.

In the midst of the listening tour, I have ensured that the important work of the Bureau continues apace, and I will highlight a few of our recent activities.

First, I pledge to protect consumers from bad actors, and the Bureau's enforcement attorneys continue their work to that end. I have announced five enforcement actions since I started, including one against a payday lender that failed to prevent overcharges and made harassing collection calls, and a second against an online

lender that debited consumers' bank accounts without authorization and failed to honor loan extensions.

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

During America Saves Week, I announced the Start Small, Save Up Initiative to help promote the importance of savings among Americans—a simple message but an urgently needed one, given a study showing that 40 percent of adults lack enough liquid savings to cover a \$400 emergency expense, as Senator Brown noted. Savings in addition to manageable debt and good credit are cornerstones of financial well-being.

We have issued a number of important reports on topics including assessments of our significant rules, consumer credit trends related to first-time homebuying by servicemembers, and trends related to suspicious activity reports on elder financial fraud.

Lastly, I have spent significant time understanding the Bureau's operations and looking at ways to improve delivery of the Bureau's mission. With the incredible flexibility Congress provided this agency, I feel a deep sense of responsibility for ensuring that we become a model for efficient and effective use of our resources.

Looking forward, I will be setting priorities for the Bureau, including setting the tone for how we will operate as an agency. I expect to emphasize stability, consistency, and transparency as hallmarks as we mature the agency and institutionalize the many partnerships that are key to our success in protecting consumers.

I am also examining how we can best utilize all of the tools that Congress gave us, broadening our efforts to focus on prevention of harm as a primary goal of our actions.

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

Chairman CRAPO. Thank you, Director Kraninger, and now I will proceed with my questions.

My first question, as I indicated, is going to be on data privacy, and I want to focus on FCRA rather than the CFPB first. In today's digital economy, there appear to be companies that serve a very similar function to those that were historically regulated by FCRA in terms of the impact and function that they performed in access to credit and credit reporting in our economy.

It seems to me, though, that the scope of FCRA has not been able to keep up with the scope of activities in the marketplace in terms of our digital world and data collection to adequately provide us the necessary regulatory and statutory oversight that is necessary for these types of functions. And the CFPB plays an important role in the credit reporting marketplace overseeing consumer reporting

agencies that are larger participants and shares the FCRA enforcement responsibility.

First of all, can you commit to working with this Committee to find a balanced approach to making FCRA more effective in the digital economy? And, second, could you comment on this issue?

Ms. KRANINGER. Yes, Senator. I am committed to working with Congress on this. I recognize again that in a digital world there are a lot of things that are changing with respect to how financial products and services are interacting with consumers, and that is something that we need to spend some more time looking at.

Chairman CRAPO. All right. I appreciate that. And we will be looking very aggressively at that and, as I said, welcome your input and advice on where you see the need to fine-tune FCRA and other jurisdictional aspects of this Committee on the entire data collection arena today.

So let us move to the CFPB. As you are well aware, I have long been concerned about the ever-increasing amounts of big data collected by the Government in addition to that collected by the private sector. And when CFPB was established, it began a number of data collection undertakings that I felt were far excessive to what was necessary and which exposed Americans to ever-increasing collection of data about their private lives and the potential to violate that privacy that I believe Americans deserve.

In September of 2018, the CFPB issued a report on its sources and uses of data that detailed its major data bases as well as how this data is gathered, used, and protected. I appreciate those efforts of the CFPB—in fact, I should say finally the CFPB is starting to be responsive to these concerns—and I appreciate our new leadership being transparent about its data practices.

What I would like to know is what the CFPB's next steps are with respect to its data collection, its use, and its protection of that data.

Ms. KRANINGER. Mr. Chairman, I share your concerns, and we certainly discussed this last summer. I can say first and foremost that the first principle is to only collect the information that you absolutely need to carry out the mission. That is a conversation that we are having on a regular basis as we look at the data collections that the Bureau determines are necessary, limiting the personally identifiable information that is collected, because if it is not collected, it does not have to be protected.

Moving to the next iteration of this, we are looking at the comments that came back on the data uses and sources report that we put out. We are also looking at making sure that our internal processes are laid out properly. I had the honor of signing the Data Access Policy that governs the way the Bureau will utilize information internally, and there is also a group that is looking at data intake on a regular basis. So institutionalizing those processes to make sure that we are, again, limiting our collection and then protecting it is important.

Chairman CRAPO. Well, thank you. And I know that at the outset, one of the—well, the agency was collecting data on credit card transactions, on mortgages, and on car loans, I believe. Is that correct, on car loans?

Ms. KRANINGER. Yes, Senator. For a number of different reasons, supporting rulemakings, conducting research, yes.

Chairman CRAPO. And student loans? And just to look at credit cards, for example, I think one of the original goals of the CFPB was to collect data on something like 900 million credit card accounts. Is that accurate, or do you know?

Ms. KRANINGER. Senator, there is certainly a lot of information collected pursuant to the CARD Act and our responsibilities, but we do try to limit at least account level information and individualized information, and I can get back to you with the exact number.

Chairman CRAPO. All right. I would appreciate that because, frankly, I have had a hard time getting the CFPB to give me an exact number of all the credit card accounts that it is collecting data on and the number of data sets that it is collecting on each transaction. So I would appreciate you getting back to me on that.

Chairman CRAPO. My time has expired. Senator Brown.

Senator BROWN. Thank you. Thank you, Mr. Chairman.

Payday lender ACE Cash Express used this chart to train its employees. There is a copy that I believe Mr. Hardy just put on the table, a copy on the table for you. This is what the payday loan cycle of debt looks like without an ability-to-repay requirement, which you have proposed to repeal. Now lenders do not even have to consider if borrowers even have a shot at repaying their loans, and you can see this is the document that this company, one of the largest payday lenders, ACE Cash Express, put out, and this document is a training document for its employees.

Director, can you show me on this chart where in this cycle a family actually pays off their loans?

Ms. KRANINGER. Senator, I have seen this document. I know it was part of the rulemaking process that the Bureau went through and finalized in 2017. It certainly is going to be part of the record that we take forward as we are reconsidering the rule as well. All of the evidence that has been submitted in the past as well as any new evidence and data will be considered as part of the rulemaking going forward.

Senator BROWN. Well, but the question, where in this cycle—the customer applies for a loan around and around and around. This is the training provided. This is the training document to train payday lenders at one of the—to train the workers at payday lending firms, one of the biggest in the country, and there appears to be—this is just a circle where you get one loan and then another and then another.

So where on here, if you would again examine it and read each of those descriptions, where on here does this company or do you expect them to repay the loan? Where is that?

Ms. KRANINGER. Senator, again, with respect to the loan itself and the products that are out there, I would like to see a broad panoply of products available to consumers so that they can make the best decision possible for themselves looking at the product—

Senator BROWN. I am sorry to interrupt, but every time they go through the cycle, you know what happens. They know what happens. This is the reason they put out this training document. You know what happens; they know what happens. They get a loan. They spend the money. They had to have the loan. Their car

breaks down. They cannot pay it back right away. Then the customer does not make a payment. The account enters collections. The customer applies for another short-term loan, around and around. And you know four out of five people who get a payday loan either have to get another loan to pay off the first or they default. You know that happens. And when you eliminate the ability-to-repay requirement, we know what is going to happen again more and more and more. And this led to the—this was part of the finding, part of the rule, part of the reason they did the ability-to-repay requirement.

Let me move to another question. Eric Blankenstein, one of your top deputies in charge of enforcing antidiscrimination laws, his title I believe is “Chief of Supervision, Enforcement and,” I underscore, “Fair Lending”. You may remember reporters uncovered he has a history of writing racist statements on his blog. If Mr. Hardy would come forward and please present this to the Director, these are some of the statements that Mr. Blankenstein made, if you would take a look at those.

These are statements—the worst statements he made I did not print, some that are just really unspeakable in the halls of the Senate and unbelievable to me in the year 2018 when he said these. Would you be willing to read any of those aloud to us, his statements?

Ms. KRANINGER. Senator, the words here are not words that I would use.

Senator BROWN. I guess that means no, right? So if you are not willing to say those things aloud to the Committee, do you think someone who wrote them—remember, he did not write these in college. He wrote these last year. They were written in 2018. Do you think someone who wrote them, someone who feels that way about people of color should be in charge of enforcing antidiscrimination laws?

Ms. KRANINGER. Senator, I understand what you are getting at, and I can tell you that the matter in total that happened last fall when statements were covered by the press is a matter that was referred to the Inspector General by my predecessor. He made that public. There is an ongoing investigation, and so it is not appropriate for me to comment on—

Senator BROWN. Yet he still works there, correct?

Ms. KRANINGER. That is correct, and there is—

Senator BROWN. He was hired by your predecessor. When you took over, I asked you to remove him because if he has those attitudes—I mean, you know these numbers. Black homebuyers are still denied mortgages at more than twice the rate, twice as often as white homebuyers. You know that racism is still—I think you know that racism—I do not think your President may know, but you know—you are a smart, educated young woman—that racism is lending is still very real in this country.

So because you resisted my pleas and others’ to remove him, I assume that means you personally endorse having him, somebody who thinks like him, in charge of our antidiscrimination policy. Really?

Chairman CRAPO. And if you could keep your response brief, please.

Ms. KRANINGER. Senator, I believe in due process, and I certainly believe that the process should be followed in this case, as in the cases of any of the other employees who have worked for me if there are issues that are raised. And so the process is being followed.

Senator BROWN. This is not due process in terms of a court of law. This is someone who has proudly uttered racist statement after racist statement after racist statement, and you have chosen to keep him in a job to enforce laws on antidiscrimination in lending. Correct?

Ms. KRANINGER. The process is being followed, Senator, and we will certainly get back to you when that changes.

Chairman CRAPO. Senator Shelby.

Senator SHELBY. Thank you.

Director Kraninger, you launched the “listening tour,” we call it, which I thought was very good, to meet with your regional offices as well as with the regulators and other stakeholders last year. We have talked about that some. What did you learn from going out in the field, which I think was very important? What did you learn?

Ms. KRANINGER. Thank you for the question.

Senator SHELBY. Overall.

Ms. KRANINGER. Yes, overall, there are a number of stakeholders across the country who are truly committed to the mission of consumer protection. I have met with financial educators. I have met with reporters, even, financial reporters who want to further the education base across the country and really push literacy. I have talked to many of your colleagues about this issue. I think the Bureau has been given tremendous authorities, including a number of tools that, as we mature as an agency, we need to utilize all effectively, so certainly the education tool.

Having clear rules of the road is the other thing that I have heard from every entity out there, and that includes our partners at the State level who are also working with us to ensure that financial institutions understand what the rules are and are following them. Frankly, it makes much more clear those who are not seeking to actually comply with the law and provide their consumers with good financial services and products. So taking those enforcement actions continues to be a priority.

Senator SHELBY. I want to get into another area that we have talked about a long time. Cost-benefit analysis I think is very important for rulemaking and regulations. I was pleased that you announced the creation of the Office of Cost-Benefit Analysis in 2018 at the CFPB. I want to commend you for emphasizing that, increasing the use of cost-benefit analysis, because everything costs money.

There is no better consumer than an informed consumer. We know that. But how has the rulemaking process changed with the creation of this office?

Ms. KRANINGER. Senator, the issue of cost-benefit analysis is important across the Bureau, and I am looking at the best way to structure that. My predecessor announced the office, and we are actually going to bring someone in to look at the role of economists across the Bureau in general. Right now that responsibility is still

sitting in our Research, Markets, and Regulations Division, but we are going to look holistically at how we can utilize the economists and economic rigor and cost-benefit analysis across all of the activities at the Bureau. I look forward to getting back to you about the path I decide to take on that issue.

Senator SHELBY. Absolutely. Another issue is in the rulemaking process. I have some issues with that. It is the practice of regulation through enforcement rather than rulemaking. For many years, the Bureau overwhelmingly looked to enforcement actions to impose policies rather than going through the rulemaking process. We are talking about due process.

I am pleased to see the Bureau under your leadership has prioritized ensuring that future rulemaking is both fair and transparent. I think it has to be both.

Could you provide an update on where you are to increase transparency, which helps us all as consumers, in the rulemaking process?

Ms. KRANINGER. Thank you, Senator. I agree completely that we need to be transparent with stakeholders and those who are interested about what the rulemaking actions are that we can take. Last year, the Bureau issued a request for comment on all kinds of issues across the spectrum. With respect to regulation, we received 1,750 comments back about how to reduce regulatory burden and increase transparency. We are going through all of those ideas and looking at how we make a more rigorous process.

Senator SHELBY. Chairman Crapo got into this just a little bit—I have just got maybe a minute or less—and that is data protection, which is so important, privacy and so forth. A lot of privacy—data is everywhere. A lot of it is unnecessary. How are you trying to tailor that to only get the data you need rather than just sweeping everything that is extraneous and violates people's privacy?

Ms. KRANINGER. It is truly important, and I am committed to making sure that we have a very clear understanding of the information that we need. Rulemaking is a good example. We need to understand the effectiveness of the rules and whether we are getting the outcomes that we planned for, and that does require actually having data on the impacts and the process at every stage.

But there is a way to limit that, again, making sure that we are putting rigor to the process of identifying which types of data are going to be most important, figuring out if that data is already collected and by whom, and doing the due diligence to make that a robust but, again, limited process and limited collection.

Senator SHELBY. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chair.

Ms. Kraninger, thank you for being here. Thank you for the call regarding the PACE loans. I appreciated that.

There is another issue that I have concerns about, and I want to talk to you about it. It is the Military Lending Act. As you know, I joined with every Democrat in the Senate who sent you a letter opposing your decision to no longer require the Bureau to supervise financial institutions for compliance with the Military Lending Act.

Now, the Military Lending Act, as you well know, provides servicemembers and their immediate families against exploitive loans that charge more than 36 percent interest or include various predatory features. By choosing not to include the MLA as part of the CFPB's supervisory exams, particularly of payday lenders, you appear to be putting the burden on servicemembers and their families to complain about violations of the MLA before your agency can take action. That is a change in the position of the CFPB.

Can you explain why there is that change?

Ms. KRANINGER. Yes, Senator. I share the concern over the unique challenges that servicemembers face. That is certainly what motivated Congress to enact the Military Lending Act. It is what motivated Congress to create an Office of Servicemember Affairs in the Bureau. And so it is an issue we spend a lot of time on.

Senator CORTEZ MASTO. But you agree, the CFPB is required to enforce the MLA?

Ms. KRANINGER. Absolutely. We have clear authority to enforce the Military Lending Act—

Senator CORTEZ MASTO. So why have you changed your position in actually going out there and as part of your exams—because you do engage in examination of payday loan companies, right?

Ms. KRANINGER. Yes.

Senator CORTEZ MASTO. So why would you take out the MLA provision in there as part of ensuring they are complying with the MLA when you conduct that exam?

Ms. KRANINGER. So the examiners do have the ability if they actually—in the course of other exams, see a violation, to highlight that, and we can take action on it. But the Military Lending Act was not designated by Congress as one of the enumerated Federal consumer financial laws, and—

Senator CORTEZ MASTO. No, but it was designated right in the Military Lending Act that the CFPB would be the enforcer, and so I am curious as to why there is this semantics between enforcement and supervision. I do not understand it, and that is what—it is a change in the CFPB provision. That is why a number of Attorneys General, that is why many military organizations, including the Democrats here on the Committee and in the Senate, are challenging why you have made this change. I am trying to understand it.

Ms. KRANINGER. In Title X, the supervision authority and the enforcement authorities are laid out separately, so it really does get back to Section 1024 and the authorities that are given there. There has been an assertion that 1024(b)(1)(c) actually gives us broad authority to supervise for basically anything, the opportunity to assess risk to consumers broadly.

At the same time, though, in the other part of that section, there was a stipulation about the enumerated consumer laws that we are supervising for. So that is the tension in the issue. If—

Senator CORTEZ MASTO. It does not make sense to me. So you are basically saying—so, for instance, a police officer, literally what you are basically saying is that anytime a police officer can take action is if a complaint is filed. So those beat cops that are on the street every day, that are engaging in community policing, that are educating, that are talking in the community, they literally should

not be on the street under your analysis and should be waiting and sitting at a desk for a complaint to come in. That is what I am hearing, and I do not understand that.

So what made the CFPB—why did you change that position?

Ms. KRANINGER. If I could, Senator—

Senator CORTEZ MASTO. Was there something specific that changed that position in your mind?

Ms. KRANINGER. Yes, it really is the reading of the supervision authority that the Bureau has—

Senator CORTEZ MASTO. Your reading of it or somebody else's reading of it?

Ms. KRANINGER. Yes, it is my reading, and it is based on—

Senator CORTEZ MASTO. In your letter to us, you said that you relied on legal analysis. Who did the legal analysis?

Ms. KRANINGER. The Bureau lawyers have looked at this issue over a number of years, and we outlined the information and perspective that was—

Senator CORTEZ MASTO. Do you have a written legal analysis that changed your position?

Ms. KRANINGER. There is a legal analysis, yes, and we provided—

Senator CORTEZ MASTO. I saw an addendum of that. Can I see the full legal analysis that made that determination that changed your mind that you would no longer actively engage in supervision of the MLA when it comes to those examinations?

And here is the other thing. Let me ask you, under your statute—I noticed on your website that you actually go out and you engage in prevention, and you tell consumers how to prevent waste and fraud or consumer fraud, and you educate them. Where in the statute, based on your analysis, do you have the specific and explicit authority to educate people? Is there some specific language in there that says you can engage in education?

Ms. KRANINGER. Yes.

Senator CORTEZ MASTO. Where is the language?

Ms. KRANINGER. There are a number of provisions, actually, in Title X that do that. It is a responsibility and authority of the Bureau—actually, it is one of our primary mission objectives to educate consumers. There is an Office of Financial Education with enumerated responsibilities in the statute.

Senator CORTEZ MASTO. So then you actually educate military families about the MLA?

Ms. KRANINGER. We do that with the Department of Defense. I am not 100 percent sure, frankly, if we do that specifically, but—

Senator CORTEZ MASTO. Well, that would be part of your authority under the MLA—

Ms. KRANINGER. —it would certainly be part of—

Senator CORTEZ MASTO. —and what you are saying is to educate them on the MLA. So you would educate them on their rights under the MLA. You would enforce the MLA. But you would not actively go out as part of your examinations that you engage in already with payday lenders to ensure those payday lenders are not abusing the law when it comes to MLA. Is that what I am understanding?

Ms. KRANINGER. Yes, my reading—

Senator CORTEZ MASTO. And I notice my time is up, so can you send me that legal opinion? In your response to us, you explicitly stated that you changed your position based on a legal analysis that was given, and you gave us a summary of that. I would like to see a full copy of that analysis and who wrote that analysis for the CFPB. If you would provide that, that would be helpful.

Ms. KRANINGER. I understand, Senator, why you are asking. I would say there is a protection of the deliberative process within the executive branch—

Senator CORTEZ MASTO. So then why did you provide us with any of it?

Ms. KRANINGER. I provided you with a summary that we could argue was definitely not deliberative, and I want to work with you to get you the right information. But I would assert that I am asking Congress to explicitly give me the authority to—

Senator CORTEZ MASTO. But I am arguing you already have the authority.

Ms. KRANINGER. I understand, and my—

Senator CORTEZ MASTO. One final thing, and I know I am running out of time, but is your opinion based on a challenge to that authority in the courts? Did somebody challenge—

Ms. KRANINGER. No, Senator.

Senator CORTEZ MASTO. Did anybody come and challenge your legal authority the CFPB had to move forward already under the supervision and examination?

Ms. KRANINGER. Senator, I think it is appropriate—

Senator CORTEZ MASTO. That was a no?

Ms. KRANINGER. —for an agency to actually make sure that it is complying with the law and carrying out the responsibilities that Congress gave it under the law.

Senator CORTEZ MASTO. Thank you. I notice my time is up. Thank you for the indulgence.

Chairman CRAPO. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman. Good morning, Director. Thank you for being here this morning.

Ms. KRANINGER. Thank you.

Senator SCOTT. I am going to try a new concept. I am going to ask you questions, and I am going to actually give you time to answer the questions, so we will see if that works here.

You were kind enough to come by my office and talk about a few topics that are important to me and I think important to the Nation as well as to South Carolina specifically. We talked a little bit about indirect auto lending; we talked a little bit about insurance and some about credit unions—three issues that I think are incredibly important that we understand and appreciate the boundaries that the CFPB should have and I think from a legislative perspective should follow as it relates to under your leadership.

So I think it is clear that last year Congress and the President spoke definitively on this issue when the President signed S.J. Res. 57 repealing CFPB's 2013 regulations on indirect auto lending and compliance. CFPB overreached on a variety of levels as it relates to indirect auto lending.

Can you confirm to me that no one at the CFPB is trying to bring an enforcement matter under this theory of law?

Ms. KRANINGER. I will admit to you, Senator, that there are a number of open investigations, and the Bureau attorneys take that action without the Director's involvement. I can certainly assure you that they are following the law, and Congress spoke very clearly when it came to that CRA.

Senator SCOTT. OK. Thank you.

Let me move to the topic of insurance. As you know, I spent my professional career in the insurance arena, so it is important to me that we understand and appreciate the limitations the CFPB has. As you know, Dodd-Frank did not provide the CFPB authority to regulate insurance products. Given that the CFPB's actions in this area have caused confusion, let us set the record straight.

Do you view the CFPB as an insurance regulator?

Ms. KRANINGER. No, Senator, I do not. Dodd-Frank stipulated in Title X that we do not regulate State-regulated insurance.

Senator SCOTT. I do think that the best system of regulating insurance in the world is the State-based regulation system that has worked very well in every State in this Union as long as we have had it. I hope that we continue to see that as the direction that CFPB will continue. Thank you for that answer.

Credit unions have served a number of our fellow citizens very well for a very long time. About 115 million Americans are credit union members. About 1.5 million South Carolinians are members of credit unions. Credit unions provide sound resources, sound professional services to those credit union members.

The challenge has been that so often the one-size-fits-all approach has been detrimental to not only credit unions but to the credit union members. The 65 credit unions in South Carolina have had about a \$67 million regulatory burden placed on them. Given your position, how do you plan to address rules that hinder credit unions and their operations? Is there a way that you see of unwinding any unnecessary burdens placed on credit unions through the CFPB?

Ms. KRANINGER. Senator, it was certainly an objective of the Bureau in Title X to understand and reduce undue regulatory burden. As I noted to Senator Shelby, we received a number of comments in last year's call for evidence on this topic and are looking at ways that we can tailor and address opportunities to reduce burden.

I would also say—and I have said this in other contexts as well—that certainly is a mission that we have, and it is important, but it is also about how this impacts consumers in terms of access to credit and the cost of credit. So those are the things that we are looking at holistically as we approach any rulemaking action and ensure that we are looking at the impacts to these institutions.

Senator SCOTT. Thank you. I would close with saying that anytime we see an increased regulatory burden, that means an increased cost associated with those burdens, which means fewer dollars to be loaned out and more people focusing on the Government as opposed to the actual members where you can see lives improved by the access to credit. So every time we see an additional unnecessary burden placed on institutions, we see a reduction in the loan volume and a reduction for those who are creditworthy to be able to receive the credit that they need to improve the quality of lives that they are experiencing.

Thank you.

Chairman CRAPO. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

So before the 2008 crisis, it was open season on consumers. Giant financial institutions cheated people on mortgages, on credit cards, and a bunch of other financial products, and Government regulators did nothing.

After the crisis, the CFPB was created to be a cop on the beat to aggressively enforce laws that protect consumers, especially those who get regularly cheated.

So, Director Kraninger, during your confirmation hearing you testified, "Under my stewardship, the Bureau will take aggressive action against bad actors who break the rules." Is that still your plan?

Ms. KRANINGER. Yes, Senator, it is.

Senator WARREN. Good.

Ms. KRANINGER. I have actually signed—

Senator WARREN. You also said before you became Director that the Interim Director, Mick Mulvaney, never made a decision you disagreed with. So let us put that together and see how you and Director Mulvaney have been doing in your combined year and a half running the CFPB.

Let us start with student loans. The law that set up the CFPB established a student loan ombudsman at the Bureau because Congress believed that students needed a regulator who had their back when loan companies and for-profit colleges tried to cheat them.

Director Kraninger, in the past year-and-a-half, how many lawsuits has the CFPB filed against student loan companies?

Ms. KRANINGER. I do not know the specific answer to that question.

Senator WARREN. Well, I can tell you because it is a matter of public record.

Ms. KRANINGER. Yes, we do have active litigation.

Senator WARREN. How many have you filed?

Ms. KRANINGER. There are two active cases in this area.

Senator WARREN. Gee, what the public record seems to show is zero. Right, not one single action against lenders and servicers who scam students, not one dollar returned to students who get cheated.

In contrast, when he led the CFPB, Rich Cordray filed 15 cases, and he recovered \$712 million for those students who had been cheated.

In fact, you have done worse than nothing. You and Mulvaney disbanded the Office of Student Ombudsman. It was so bad that your student loan ombudsman resigned because the "leadership of the Bureau has abandoned its duty to fairly and robustly enforce the law." So that is student loans.

Now let us ask about discrimination. Before the financial crisis, banks targeted communities of color for the worst of the worst—cheating mortgages. So after the crash, Congress said there would be a special office at the CFPB to enforce laws to stop lending discrimination.

Director Kraninger, in the last year-and-a-half, how many lawsuits has the CFPB and the DOJ filed for fair lending violations?

Ms. KRANINGER. I can tell you, Senator, that we do have ongoing investigations in this area.

Senator WARREN. How many have you filed?

Ms. KRANINGER. I have been on the job for 3 months as of today. There are active—

Senator WARREN. That is right, and you have Mick Mulvaney, together you have said you agree with everything he has done. That is a year-and-a-half period. How many have been filed in a year-and-a-half? It is a matter of public record.

Ms. KRANINGER. I understand that—

Senator WARREN. And the answer is zero.

Ms. KRANINGER. —have been filed, but there is active investigation happening.

Senator WARREN. The answer is zero that you have filed. Not one single action against lenders who discriminate, not one dollar returned to borrowers who got turned down or charged more because of the color of their skin.

Rich Cordray filed 11 lending discrimination cases, recovered almost \$620 million for consumers who were targets of discrimination.

And, again, in this area you have done worse than nothing. You took enforcement powers away from the CFPB experts who were in charge of the Office of Fair Lending. And who did you put in charge of the office? A political appointee with a history of writing racist blogs.

OK. Student loans, lending discrimination. Now let us do credit reporting companies and debt collectors. Two-thirds of the complaints that come through the CFPB hotline are about credit reporting or debt collection. Under Rich Cordray, the CFPB brought 20 debt collection cases and 24 credit reporting cases, putting almost \$1.2 billion back into the pockets of consumers who were cheated.

Director Kraninger, in the last year-and-a-half, the CFPB has filed three cases alleging violations of credit reporting or debt collection laws. How much relief did the Bureau win for consumers in those cases?

Ms. KRANINGER. With respect to restitution and—

Senator WARREN. How many dollars—

Ms. KRANINGER. —remedies, there are a number—

Senator WARREN. —went back to the consumers?

Ms. KRANINGER. Senator, I am assuming that you have it in front of you—

Senator WARREN. I do have it in front of me because it is a matter of public record. I am a little surprised—

Ms. KRANINGER. I recognize that, yes.

Senator WARREN. —you do not know the answer, because the answer is the same in all three of the questions I have asked you. It is zero. You have put zero dollars back in the pockets of consumers who were cheated.

So student loans, lending discrimination, credit report companies, debt collectors. Much more we could talk about, but I see I am out of time. It seems pretty clear to me that you stopped enforcing the laws designed to protect consumers. Money returned to consumers as a result of the CFPB's lawsuits has slowed to a trickle.

And when you do bring a case, the settlements you have secured from the companies average about $\frac{1}{125}$ the size of the ones that Rich Cordray got. That is hundreds of millions of dollars that companies stole from consumers and that you are permitting them to keep.

Director Kraninger, you are supposed to be the cop on the beat, but you are only watching out for the crooks who are cheating American consumers. If you had any decency, you would either do your job or resign.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you. And before we move to Senator Menendez, Senator Brown asked for—

Senator BROWN. Yeah, thank you. On one of my questions, I misspoke. The press stories about Mr. Blankenstein were from 2018. The quotes were from 2016 and when he was in law school. The point still stands that he is not fit to be in charge of enforcing antidiscrimination laws and preventing discrimination when he has had these racist writings.

Chairman CRAPO. All right. Thank you.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Director, we are in the midst—I want to follow up on Senator Warren’s comments—of a full-blown student debt crisis. Forty-four million Americans owe \$1.56 trillion in student loan debt, more than credit card debt and auto loans combined. The amount of student loan debt has shaken the very foundation of the American middle class. And yet in the last 15 months, the CFPB has not taken a single new action—not a single one—to help these 44 million student loan borrowers.

On the contrary, the CFPB closed the only office in the Federal Government whose sole priority is to protect student borrowers, withdrew a planned student loan servicing rulemaking that would have provided enhanced student protections, and refused to publish findings about how big banks were charging students outrageous fees, among other examples.

So when I voted to create this agency, that certainly was not the type of action that I had envisioned the CFPB taking. And there are problems all over the student loan market.

Take, for example, the Public Service Loan Forgiveness Program. More than 99 out of every 100 public service workers who applied for loan forgiveness had been rejected since the Department of Education started accepting such applications. That is a major problem. What is the CFPB doing about it?

Ms. KRANINGER. Senator, I understand it is a significant issue, and we still have an office that is focused on student issues. They are engaged in regular education efforts expansively across the spectrum of dealing with students at every stage of the process.

I would also tell you that I take seriously that Congress created that private education loan ombudsman position. It has been vacant. Congress gave the authority to appoint the position to the Secretary of the Treasury for some reason, and so since I arrived, we have been working back and forth to get that position moved forward. The position posted last week, so I am very much looking forward to having someone in that place.

We also have some responsibilities under the statute working with the Department of Education on an MOU to do information sharing on complaints and other things, and all of that is work that we will take on as soon as I can get the person on board who is going to oversee that.

Senator MENENDEZ. Well, two things. Number one, the reason that you have a vacancy in the office is because in his resignation letter, Mr. Frotman, who had this position, said, "The Bureau has abandoned the very consumers it is tasked by Congress with protecting. The Bureau has undercut enforcement of the law, undermined the Bureau's independence, shielded bad actors from scrutiny." That is why you have a vacancy.

So you have an environment and the wrong mission, and you did not respond to my question about the Public Service Loan Forgiveness. Why is it that 99 percent of PSLF applicants are being denied? Are loan servicers at fault?

Ms. KRANINGER. Senator, that is a question for the Department of Education. Certainly it is their process and program when it comes to Federal student loans. As you know, 92 percent of the market is with the Federal side. That is why I do want to have a conversation with the Department of Education about their responsibilities and our responsibilities and how we can make sure we are working together to—

Senator MENENDEZ. Well, you know, it is your responsibility to oversee, whether it is the Department of Education, whether it is a private lender, whoever it is, to make sure that you are protecting consumers. Telling me that it is the Department of Education is just simply not acceptable. And the fact that you have not had that conversation as of yet when 99 percent are being denied, there is something desperately wrong.

In 2017, the CFPB updated its manual for student loan servicer supervision to include examining loan servicers' practices around the PSLF program. So pursuant to the examination manual that is currently on your website, have you examined why 99 percent of PSLF applicants have been rejected?

Ms. KRANINGER. Senator, again, I understand why you are asking the question, and it is an important one. With 3 months on the job, I do not have a specific answer to your question on this topic. It is one that is important, and we will look—

Senator MENENDEZ. Can you tell me whether it is no longer the CFPB's practice to review how loan servicers handle the PSLF program despite it being in your examination manual?

Ms. KRANINGER. Senator, I would have to get back to you to answer your question specifically, which I am happy to do.

Senator MENENDEZ. Well, let me just say on that, on following up, I think one of my colleagues raised the question of the Military Lending Act. You have authorities over the entities that you—supervisory authority over entities you regulate, do you not?

Ms. KRANINGER. With respect to enforcement, our authority is very clear, and we will continue to take action where we find violations of the Military Lending Act.

Senator MENENDEZ. Well, you need to use your authorities, and you are just not doing that. And 3 months on the job, that is not the answer. You know, you need to make this a priority. And if you

do not, you are not helping consumers. And the whole purpose of this entity is to stand up for the little guy against those who have enormous power and the ability to push back.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Smith.

Senator SMITH. Thank you, Chair Crapo. And thank you very much, Director, for being with us today, and I appreciated our conversation yesterday. And I indicated yesterday I was interested in also diving into this student loan question a little bit, so that is what I would like to focus on.

As my colleagues have said, we have \$1 trillion in student loan debt and 44 million Americans, a high number, trying to manage that debt. And so here is what I hear from my constituents: that there is just a deep frustration with the loan servicing organizations. It is hard to get a straight answer. You get different answers from different people at different times. And what they are trying to do is to figure out how to stay out of default and to work with the loan servicing organizations. But it is just not working, and it feels to the people in my State with these crushing student loans like all the power is with these big companies. And they do not have any real remedy.

And so I thought it was really a good thing when the CFPB published this proposal to get data from the student loan—from these big private loan servicing companies to try to figure out what is going on and to get some accountability and kind of rebalance the power a little bit.

So that was announced in February of 2017, and there was a comment period. And then when that was done, as is typical, that was submitted to OMB for its routine review. And there it sits—no approval to move forward, even when Mr. Mulvaney, you know, was running both agencies. And, meanwhile, since that happened, 1.5 million Americans have defaulted on their loans, and there is just so much frustration.

So can you help me understand this? You have worked at both agencies, right?

Ms. KRANINGER. Yes, Senator.

Senator SMITH. So has OMB told you why they are sitting on this proposal?

Ms. KRANINGER. Senator, I was unaware of this prior to last week. We have certainly had conversations about what is going on in the student lending space and the Bureau's responsibilities, and I talked with you a little bit, as I did earlier, about getting the private education loan ombudsman position filled and in place to work with the Department of Education on what their responsibilities are when it comes to student servicers because, in particular, they are contracted with the Department of Education.

But on this collection in particular, it was not an issue that had been raised to me before last week. It is something we will absolutely look at to figure out, again, why that was submitted, where it stands. I do not have all the answers on that at the moment, but it is something we will look at.

Senator SMITH. Well, I think it is really important, and I think you should be looking at it. I mean, are you aware of Secretary DeVos or anybody, any other political appointee, encouraging this

to move forward or not to move forward or to express their opinion one way or another on this?

Ms. KRANINGER. I am not aware of anything on that front, but, again, I am looking into this to understand what motivated the request, where it stands, and what we need to do going forward.

Senator SMITH. But wouldn't you agree that you would need to have some data in order to be able to assess, you know, what is happening with these student loan servicing organizations and why there is so much frustration and why sort of the consumer side of this has been so, you know, basically hung out to dry? Would you agree that having that data would be valuable?

Ms. KRANINGER. Senator, I do not know what was specifically laid out in that particular data request. That is why I hesitate to give you a very direct answer to that question. But I can tell you that we absolutely want the information necessary to assess the marketplace, as is our responsibility, and move from there.

Senator SMITH. Well, it has been described to me that this is a little bit of a black box, that nobody really knows. So I do not know how we can provide protection to those 44 million Americans who are living with student debt if we do not have some basic answers to the questions about what is going on with these loan servicing organizations. I think this is very—you know, it is very important, and our job is to sort of be on the side of people when they need to be—you know, that is why we have consumer protection, because sometimes the power is out of balance between these big companies and people. So I think this is a really core responsibility.

Mr. Chair, I want to just add my concern about the way in which the agency is, in my view, sort of choosing not to enforce a key part of the military lending—you know, standing up to our military against these predatory lenders. I do not understand how we can—if we cannot examine whether there has been an issue, how we can enforce that. That is what I just am struggling to understand here. And I understand that you think that you do not have the authority, but it strikes me that since there has not been any lawsuits complaining about a misuse of authority, I mean, that to me is very telling.

Mr. Chair, I am out of time. I just wanted to issue that concern as well. Thank you.

Chairman CRAPO. Thank you.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman, and thank you, Ms. Kraninger.

So I am very concerned about your decision to first delay and then rescind the mandatory underwriting provisions of the payday lending rule. It seems to me you are giving a total green light to predatory lenders around the country to take advantage of consumers.

Senator Merkley, myself, and 47 Senators sent you a letter on February 13 on this issue. Did you get it?

Ms. KRANINGER. Yes, Senator, I did.

Senator VAN HOLLEN. Have you responded as of today?

Ms. KRANINGER. I believe we did.

Senator VAN HOLLEN. I just checked with Senator Merkley's office about the letter.

Ms. KRANINGER. Oh, I am sorry, Senator. The response is due on Friday, and we are pulling the response—

Senator VAN HOLLEN. Is that due—I think it would have been useful, knowing that you were going to come in front of this Committee, to give us a response. It has been almost a month.

Ms. KRANINGER. I understand, Senator. I think the due date was actually in the letter, but I recognize that it is not—

Senator VAN HOLLEN. I think it was probably set before that date, and since we have got a hearing today, it would have been useful to have that information.

I am looking at both the notice you provided in the *Federal Register* on the delay rule and on the rescind proposal. Let me ask you this: Bank regulators for years have found that an aspect of predatory lending is deliberately lending to people who do not have the ability to repay their loans and relying instead on their ability to seize the collateral of those consumers, whether it is a house or a bank account.

So if you can tell me why payday lenders should be allowed to have a business model where they prey on people who cannot afford to repay their loans, why should we carve out that particular exception for payday lenders?

Ms. KRANINGER. Senator, the reason for the reconsideration of the rule is the underlying legal and factual basis around the Bureau's determination of unfairness and abusiveness without those underwriting rules, as you noted, and that is the issue at hand, and that is what we—

Senator VAN HOLLEN. So you are rescinding a rule that is designed to protect consumers, right?

Ms. KRANINGER. That was certainly the opinion of the agency at the time, and, again, we are looking at that. And I have an open mind—

Senator VAN HOLLEN. You are proposing—I am just reading your documents here. You are proposing to rescind it, are you not? Yes or no.

Ms. KRANINGER. Yes, Senator.

Senator VAN HOLLEN. OK. The CFPB, when they put that rule in, they did a lot of research. One of their findings was four out of five payday loans ends with the borrower unable to pay or having to take out another loan to pay off the first. Do you dispute that finding?

Ms. KRANINGER. No, Senator, but that was also a finding in the context of many other findings that—

Senator VAN HOLLEN. I am just asking you on that finding. They also found that over 60 percent of loans result in borrowers paying more in interest and fees than the amount they borrow. Do you dispute that finding?

Ms. KRANINGER. Senator, that was, again, one of the findings of—

Senator VAN HOLLEN. It was a finding. I am asking you whether you dispute the finding.

Ms. KRANINGER. No, Senator, I do not—

Senator VAN HOLLEN. OK. Thank you.

Ms. KRANINGER. —dispute the finding in the—

Senator VAN HOLLEN. Now, listen, so I am looking at your analysis here now. Are you familiar with the Dodd–Frank Act Section 1022(b)(3) analysis that accompanied the notices?

Ms. KRANINGER. Yes, Senator.

Senator VAN HOLLEN. OK. And are you familiar with the fact that you found that the payday lending industry on an annualized basis would save about \$7.3 to \$7.7 billion that they would not otherwise have under the previous rule?

Ms. KRANINGER. Senator, again, there were a number of things that were looked at, including what—

Senator VAN HOLLEN. I am just asking you about this provision, which is right here in the documents you submitted. Does it conclude that by rescinding the rule on an annualized basis, payday lenders will be able to pocket \$7.3 to \$7.7 billion more? Isn't that what it says right here?

Ms. KRANINGER. Yes, Senator, it does.

Senator VAN HOLLEN. That is what it says. And isn't that money coming from harming consumers? These are consumers that the previous analysis concluded could not pay these loans on time. Is that not true?

Ms. KRANINGER. Senator—

Senator VAN HOLLEN. Is that not true?

Ms. KRANINGER. Senator, yes, I understand where you are getting, and—

Senator VAN HOLLEN. It is not where I am getting. I am just looking at the facts. Is that not true?

Ms. KRANINGER. There are a number of facts here, and we had a responsibility to look at the full record of this rulemaking. We are in litigation actively on the issue, so the rule was already stayed, and the Bureau did pledge to the court that the reconsideration would be part of its process.

Senator VAN HOLLEN. You chose to move forward on this decision to rescind the rule, right? That was your decision?

Ms. KRANINGER. Absolutely, and it was very—

Senator VAN HOLLEN. Absolutely. And in your own documents, it says, does it not, that the payday lending industry will pocket over \$7.3 billion additional on an annualized basis? Isn't that what it says right here in your own analysis?

Ms. KRANINGER. Yes, Senator, and there are—

Senator VAN HOLLEN. And isn't it true that, based on the previous analysis, that \$7.3 billion is coming from harm done to consumers by payday lending? Isn't that true?

Ms. KRANINGER. Senator, there are 12 million consumers that take advantage of the payday loan—

Senator VAN HOLLEN. I am asking you—

Ms. KRANINGER. —products in the States where they are allowed to do so—

Senator VAN HOLLEN. The question is—

Ms. KRANINGER. —and the States have looked at—

Senator VAN HOLLEN. —not whether we should just pull off the reins off payday lending, which is what you are trying to do so. The question is whether we should be protecting consumers. I would like an answer to my question. Isn't it true that that \$7.3 billion that you say will now be in the pocket of the payday lending

industry is as a result of harm done to consumers according to the previous analysis by your Bureau?

Ms. KRANINGER. Senator, I would note that there are 12 million—

Senator VAN HOLLEN. I am just looking for a yes-no answer on that \$7.3 billion.

Ms. KRANINGER. But, again, individuals are accessing these products and making the best—

Senator VAN HOLLEN. I know they are accessing these products. And then we they cannot pay them back when the lenders should have known it, they are coming after their cars and other possessions. Isn't that true?

Ms. KRANINGER. Consistent with State law, but, again, there are places where that is not the case—

Senator VAN HOLLEN. But isn't your job to protect people from predatory lending where people are just scamming and taking advantage of people's situations? Isn't that your job?

Ms. KRANINGER. Senator—

Chairman CRAPO. And if you would answer briefly.

Ms. KRANINGER. Yes, taking action against bad actors who are engaged in what you would—

Senator VAN HOLLEN. You are opening the door—

Ms. KRANINGER. —predatory activity—

Senator VAN HOLLEN. —to bad actors. It is really outrageous what you have done here—outrageous—because there were protections in place based on a detailed analysis, and your own writings show that you are just going to give a big payday to payday lenders.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Reed.

Senator REED. Well, I think Senator Warner was here before me.

Chairman CRAPO. It was not on my list. Senator Warner, you—

Senator REED. Will that take him off the list?

[Laughter.]

Senator WARNER. The very generous support of Senator Reed, I appreciate it. Thank you, Mr. Chairman.

I actually want to follow up a little bit with my colleague from Maryland. I think you made a dreadful error in rescinding the payday lending rules. And what I am trying to also understand is that the agency spent 5 years doing research into this rule, and I can remember when the CFPB issued this rule back in 2017, and opponents of the rule at that moment in time said, "Oh, my God"—I think it was 1,690 pages—"this is way too much information, way too much data."

Now, when you rescind, you are basically throwing all that data and all that information out for this new approach. What has factually changed that undermined the 5 years of data and research that went into the original payday lending rule that has allowed you to make this determination?

Ms. KRANINGER. Senator, if I could, the full record from the prior rulemaking is absolutely part of the process going forward, so that is an important thing that I would note.

Senator WARNER. But that full rulemaking included conclusions that were indicated based upon the Senator from Maryland's cri-

teria that this was a rule that was well needed to protect a whole host of consumers. The fact that now all this work is kind of in a sense thrown out, what has factually changed in the underlying analysis that has allowed you to, I believe rather arbitrarily, throw out this rule?

Ms. KRANINGER. The Bureau is in active litigation over the very issue that the reconsideration is intended to address, and that is the legal and factual basis, whether it is robust and rigorous enough to warrant the determination of abusiveness and unfairness in this market without those mandatory underwriting requirements. And so that is the very issue that is being looked at in the reconsideration.

Senator WARNER. Respectfully, we remember how long this rule took to put in place. We remember how much research was done. I do not believe you have got a factual basis. I think this was a politically driven decision, and I am deeply concerned by your decision.

I want to move to another area around the GSE patch. As you know, the CFPB's QM rule created an exemption from the 43 percent DTI cap for mortgages under Fannie and Freddie, and this is a subject matter that the Chairman and I and a number of us on this Committee have spent an awful lot of time on. This exemption, as we all know, is commonly known as the "GSE patch," which is set to expire on January 10, 2021, or the day on which the GSEs would exit the conservatorship.

I am very concerned about what termination of the patch could mean for affordable housing, particularly in communities of color, because the number one reason, as we all know, that mortgage applications are rejected is because of the DTI requirement, and nearly 30 percent of the GSE mortgages are in that 43 to 50 percent DTI range.

So the question is: If, again, the role of your agency is to protect consumers, if the role of your agency is for folks to get a fair shake, how do you view the GSE patch? And how do you view CFPB's authority to act on this issue?

Ms. KRANINGER. Senator, I am well aware of the stats that you noted in terms of how large a role the GSE patch plays in the mortgage space today. When the rule was finalized on the ability to repay and stipulating what the qualified mortgage safe harbor would be, there was an intent at the time or an expectation at the time that a non-QM market would stem from that. And there was a determination that the patch was intended to be at least shorter term or nearer term at the time the Bureau stipulated that, so in place for 7 years.

We just completed our 5-year lookback assessment that was released in January on that rulemaking and the outcome of that rule, and it is evident that the non-QM market has really not materialized for a number of reasons. And so the Bureau is faced with responsibility in this area. Important to note, though, is that that 7-year QM patch could expire at the end of the conservatorship of Fannie and Freddie, so those two things were tied in the rulemaking. This is something that I am looking at very closely, and we are looking to make sure—there will not be any dramatic actions taken with respect to the mortgage market by me, and I can

tell you I do not want to make news on this topic here. It is a very market-moving issue, as you well know, and it is something that I will look at responsibly and in a timely manner, and I appreciate your interest in—

Senator WARNER. All I would say—and the Chairman and I and a number of us have worked on this issue, and affordability is extraordinarily important. I am still hopeful we can get a legislative solution, but I hope you will look at this data. And as you indicated, the non-QM market has not moved forward, and the extraordinarily detrimental effect that would have on affordability, if there were arbitrary and capricious actions, again, in terms of getting rid of that patch.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman. And thank you, Director Kraninger.

Like several Members of this Committee, I spent my youth in the military. I commanded paratroopers at Fort Bragg, and I saw on a daily basis soldiers being victimized by predatory lenders. Not surprising. They were not from around there. They were transients. Most of them were 18, 19, 20 years old, not a lot of financial sophistication. And they needed to be helped. I felt sort of useless, really, because all I could do was inform the lender that what they were doing was wrong or illegal, but I had no authority.

So when I got here, I was very active in trying to fix that problem because it was not theoretical to me. It was real. So I was active in passing the Military Lending Act along with my colleagues, particularly active in creating the Office of Servicemember Affairs in your organization. That was an amendment that former Senator Scott Brown of Massachusetts and I passed because we wanted to give, in your organization, special emphasis. In fact, I think it is the only subset that is dedicated to a specific group of individual Americans. And I am, frankly, appalled that you have decided that it is not within your supervisory responsibilities to cover the MLA.

You do have enforcement responsibilities, which you admit, but supervision is the key to preventing enforcement. We learned that in Dodd–Frank. If we had been supervising these financial institutions and these nonbank banks and all the other bad actors of 2008 and 2009, we would not have had the crisis and the corruption that we witnessed.

So did anyone from the Office of Servicemember Affairs comment about your decision to exclude the MLA? Did you seek comments and were there any objections raised?

Ms. KRANINGER. Senator, there was certainly a robust discussion at times in the history of the Bureau where this conversation was had. I can tell you that the determination is mine, and that is what Congress gave me, as Director, the authority and responsibility to do.

Senator REED. Well, thank you. I think you have made the wrong determination. In fact, I think your legal counsel feels you have made the wrong determination, but let me get to that later. When this decision was made, we asked the Department of Defense, who has a vested interest in protecting the men and women of the mili-

tary. Their comments to us on a letter of September 7, 2018: “The Department believes that the full spectrum of tools, including supervisory examinations, contribute to effective industry education about, and compliance with, the MLA.” I think that is right. And they certainly have a vested interest in this, and it is not a partisan, political interest. It is the protection of the men and women who protect us. Now every veterans organization of note has indicated the same feeling.

Now, your view is that you cannot do it, but your own legal analysis, that you submitted to us in your letter, states, “One possible reading of the statute would allow that the Bureau may seek to uncover and remedy violations of the MLA in the course of exercising its authorities.” So you do have the legal authority to do it. You have chosen to read the statute to protect payday lenders even though your own legal counsel said the statute can be read, as the Department of Defense and as many of my colleagues feel, to protect the men and women of the armed forces. Is that right?

Ms. KRANINGER. Senator, I agree with the Department of Defense that I would like the full panoply of authorities—

Senator REED. You have the full panoply. That is exactly what your counsel said. “One possible reading of the statute”—this is your legal counsel, not me—“would allow that the Bureau may seek to uncover and remedy violations of the MLA in the course of exercising its authorities.” That would be including your supervisory authorities. You chose not to read that section. You sort of omitted it.

Ms. KRANINGER. I have, Senator, and the reason for that is that then the Bureau could be engaged in examinations for safety and soundness. The Bureau could be engaged in examinations for tax law and other criminal law—

Senator REED. No.

Ms. KRANINGER. The all-encompassing provision—

Senator REED. No, no.

Ms. KRANINGER. —there is about any risk to consumers.

Senator REED. That is the fallacy: if you follow the law, you can make up things. That is not true. There is no one here asking you to examine, generally speaking, safety and soundness of payday lenders. What we are saying is we passed the Military Lending Act, we passed supplemental language giving you the clarity to do this in Dodd–Frank so that you would protect consumers, and you are not doing it. And particularly military consumers. And what is so frustrating to me is that if this is the policy of your Administration, I do not know how on Memorial Day and Veterans Day everyone stands up and says, “Oh, we have to do all we can for the service men and women in this country. They do so much for us,” and you have decided you should not supervise these companies. And we know supervision prevents the need for enforcement. That is one of the great lessons of Dodd–Frank. Had we been supervising these institutions, we would not have had the collapse we had.

So I cannot say how profoundly distressed I am with your rejection of the opportunity to protect the soldiers, sailors, Marines, and airmen and Coast Guardsmen of the United States.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Madam Director, welcome.

You believe in protecting consumers, do you not?

Ms. KRANINGER. Yes, Senator, I do.

Senator KENNEDY. Do you consider that your guiding mission as Director?

Ms. KRANINGER. Yes, I do.

Senator KENNEDY. You have a lot of experience in Government. What mistakes were made when the agency was established?

Ms. KRANINGER. Senator, as you noted, I have a lot of experience in Government, and that includes involvements in startups in Government, and I do believe that those who stood up the Bureau took the mission very seriously and tried to carry out the authorities that Congress gave them in the context they were operating in. A lot of things happen fast and furious in the early part of an agency.

Senator KENNEDY. What mistakes were made?

Ms. KRANINGER. Senator, I really make it a point of not looking back to criticize those who I did not have the opportunity to serve with who truly understand a lot of challenges during the time, as you well know.

Senator KENNEDY. Well, if you do not look back, then how do you fix the agency in the future?

Ms. KRANINGER. So one thing that my predecessor did extensively—and you are aware of it—is the call for evidence and a lot of requests for information from all the stakeholders that the Bureau has on ways to improve how the Bureau operates going forward, and that I absolutely believe in, and we are taking to heart all of those comments that we have gotten.

Senator KENNEDY. Let me ask you this, Madam Director: Do you think the agency would be better governed by a board?

Ms. KRANINGER. I believe that is an issue for Congress to determine and, Senator, I would—

Senator KENNEDY. I am in Congress. I am asking your opinion.

Ms. KRANINGER. I understand. I would welcome whatever changes Congress sees fit to make that will increase the transparency and accountability of the agency. I am absolutely dedicated and focused on that.

Senator KENNEDY. Would you support something like that?

Ms. KRANINGER. Senator, I am making it a point to not endorse legislation, but I appreciate why you are considering the issue.

Senator KENNEDY. All right. My copy of the Constitution says that Congress gets to appropriate the money, but that is not the case with your agency, is it?

Ms. KRANINGER. No, it is not.

Senator KENNEDY. Do you think we ought to fix that? Would you oppose legislation—let me put it this way: Would you oppose legislation if we decided to make your agency financially accountable to Government?

Ms. KRANINGER. If Congress put such legislation in front of the President and the President signed it, I would dutifully carry that out. I think that is—again, anything that increases transparency and accountability in Congress' estimation is something I would welcome.

Senator KENNEDY. When you took over, Madam Director, and had a chance to catch your breath and look around and assess things, what are the three biggest problems you see?

Ms. KRANINGER. I think with respect to the agency in general, there are some really dedicated people who are focused on the mission and the mission is our strength. It is really now——

Senator KENNEDY. I know, but they are not a problem. I am interested in——

Ms. KRANINGER. Understood.

Senator KENNEDY. ——the three problems, biggest problems that you see, if you could answer my question.

Ms. KRANINGER. One is continuing to mature the agency and its processes. There are a lot of stovepipes that were created in the divisions, and I think there is a lot of power that comes——

Senator KENNEDY. What does that mean?

Ms. KRANINGER. There are six different divisions in the Bureau, and they did kind of operate in a bit of an individualized way.

Senator KENNEDY. Do they have turf battles?

Ms. KRANINGER. I think it is, again, with the mission in mind and individuals being very proud of what they do, but, yes, there is a little bit of an understanding that there is an individual vantage point.

Senator KENNEDY. Is each one headed by somebody? There are supervisors who run the divisions?

Ms. KRANINGER. Yes.

Senator KENNEDY. Can you fire them?

Ms. KRANINGER. No.

Senator KENNEDY. Do you think that is a problem?

Ms. KRANINGER. There are a lot of challenges with civil service law, Senator, and that is probably another area where, again, should Congress take action——

Senator KENNEDY. Well, you can fire them, but they can sue you, right?

Ms. KRANINGER. There are a lot of challenges in terms of removing people, but I would say in this case I——

Senator KENNEDY. Well, let us suppose one of your directors of one of those little areas of turf, you fired them, and they said, "You cannot fire me." And you said, "I just did." And they said, "I am going to sue." And you say, "Good. I can draw you a map to the courthouse." And they said, "I am going to get a lawyer." You say, "Well, I am going to get a lawyer, and I can get more lawyers than you because my budget is bigger."

Why doesn't that ever happen?

Ms. KRANINGER. Following your hypothetical, Senator, is dangerous, but I would say that there are cases where——

Senator KENNEDY. Why is it dangerous?

Ms. KRANINGER. It is a——

Senator KENNEDY. You know that would happen in the real world.

Ms. KRANINGER. And in the Government, there are a lot of protections that are appropriate for civil servants.

Senator KENNEDY. I mean, you are sitting here as Director trying to run this thing, and you have got people under you you cannot

fire who are fighting among each other and presumably not following all of your directives. Is that right?

Ms. KRANINGER. Senator, I would not go that far with it. I think there is an intent to follow the direction and they really are welcoming the stability that I am bringing and the consistency that I am bringing.

Senator KENNEDY. You need to fire somebody. That is what is wrong with Government and what is wrong with the bureaucracy. Nobody is ever held accountable, and nobody ever gets fired. And they know that.

I am done. Thank you.

Chairman CRAPO. Senator Jones.

Senator JONES. Thank you, Mr. Chairman. Thank you for coming here today, and I apologize for being a little bit late.

Ms. Kraninger, I want to ask you about—I think it was Senator Kennedy who talked about the guiding missions of the Bureau, and one of those under the objectives under the statute is that consumers are protected from unfair, deceptive, and abusive acts and practices, and from discrimination. Discrimination in fair lending is also a guiding mission of the CFPB, and it seems to me that under the leadership of Acting Director Mulvaney, there was a total lack of commitment toward enforcing fair lending laws and that guiding mission of the agency. For millions, it is not just your income or your credit that determines how you receive financial services. The reality is that it can also be the color of your skin. That is why the Government has to be committed to enforcing laws prohibiting discrimination. For years, that discrimination has been direct and explicit, but today it is much more subtle and beneath the surface.

In your confirmation hearing, I asked you about that and asked you if you were committed to using disparate impact theory to enforce fair lending violations, which I think is a strong tool that you have in your toolbox to enforce fair lending laws. And I think your answer at that time was you would have a detailed conversation with staff, if confirmed, about the use of disparate impact.

Have you had that conversation? And what was the result?

Ms. KRANINGER. Senator, we have started that conversation. As you may be aware, the Bureau, in its unified regulatory agenda, stipulated that this is something that may be worth a prerulemaking activity so that we can have a conversation about whether disparate impact is cognizable and how under the Equal Credit Opportunity Act. And so that is an issue that I think does deserve some conversation in the public sphere, and we are looking at the best way to facilitate that and take the prerulemaking action.

Senator JONES. All right. What is your personal opinion about the use of disparate impact?

Ms. KRANINGER. Senator, we are still having conversations with staff on that issue. Given that it is in a pre-rulemaking stage, I do not think it is appropriate to talk about a personal opinion on this matter. I can tell you that I am committed to our fair lending mission, and we have taken a lot of steps to look at that and make sure that we are robustly both engaged in education on that issue and engaged in supervision and enforcement work on that issue.

Senator JONES. All right. So let me talk about payday lending as well. I know that that has been a subject of a number of questions, and it is obviously a huge concern in my State. And I have been just incredibly disappointed, and confused, quite frankly, as to why you rolled back critical parts of the rule after so many public comments on the issue. And when you did so recently, made the announcement to roll back those critical parts of this rule, particularly on ability to pay, the CFPB cited a decade-old study that used surveys from 2001 and 2007 that found consumers were generally satisfied with their short-term loans. Are you familiar with that?

Ms. KRANINGER. Senator, I do believe there were studies similar to that. I would tell you that we are looking at the full panoply of studies that have been available—

Senator JONES. Well, you cited the study that did surveys from 2001 and 2007, and that study itself said it accounted for differences between the 2001 and 2007 surveys by saying, “Economic conditions changed and affected survey results.”

I know you are aware that in 2008 and 2009 we had a major recession in this country, one of the worst since the Depression. So my question—and your change, you said that the results of that study “add to the Bureau’s preliminary conclusion that its interpretation in the 2017 Final Rule of limited data”—which I would disagree with it was limited data—“from the Mann Study provides an insufficiently robust and representative foundation for the findings on which the Bureau relied in concluding that its identified practice was unfair and abusive.”

How in the world can you justify using a survey from 2001 and 2007 when the economy was doing pretty well and not in today’s world and the reality after the 2008 and 2009 recession? How do you justify using that as a way to get rid of so many parts of the payday lending rule?

Ms. KRANINGER. Senator, we did not rely on any one survey or study from that time period or more recently. We are looking at both the full evidence base that underlies the 2017 rule and evidence that may come forward—

Senator JONES. Well, this was the only rule that I saw that was cited. This was the only study that I saw that was cited. I did not see anything about surveys of people today in today’s world or even 5 years ago when they were having trouble. So this study that I am talking about was relied on pretty heavily in this, and I am trying to figure out how that rule was even cited as representative of what is happening in 2019.

Ms. KRANINGER. It is a proposed rule that we welcome additional evidence and comments on. There are studies that I have seen in press reports that we have also looked at across the board. We definitely welcome the most robust and rigorous evidence we can for this reconsideration process.

Senator JONES. Well, Ms. Kraninger, you had millions of comments earlier, and you apparently chose to ignore them. So I candidly do not know how additional comments are going to change your mind.

Thank you, Mr. Chairman.
Chairman CRAPO. Thank you.

That concludes the questioning for today's hearing. For Senators who wish to submit questions for the record, those questions are due to the Committee by Tuesday, March 19. And, Director Kraninger, we ask that you respond to those questions as promptly as you can.

Unfortunately, we did not have a quorum present to vote on the three nominees that Senator Brown and I spoke about at the beginning of the hearing. We will vote off of the Senate floor this afternoon on the first vote that is called at 2:30.

Again, we thank you for being here, Director Kraninger. We appreciate your work at the CFPB. And with that, this hearing is adjourned.

[Whereupon, at 11:41 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

Today, we will receive testimony from Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger on the CFPB's most recent semiannual report.

On February 12, the CFPB issued its Fall 2018 Semiannual Report, which outlines the CFPB's significant work between April 2018 and September 2018, including rulemakings and supervisory and regulatory activities.

The report also provides insight into what the CFPB plans to undertake in the coming work period.

In the report, Director Kraninger said, "As I begin my stewardship of the CFPB, I will be moving forward with the agency to make sure the American people have access to the financial products and services that best suit their individual needs, the financial institutions that serve them are competing on a level playing field and the marketplace is innovating in ways that enhance consumer choice."

Providing individuals and businesses access to a wide array of financial products and services is foundational to robust economic growth and job creation.

Under Director Kraninger's leadership, the CFPB has already started to take action to ensure that regulations that could affect consumers' access to credit are based on solid evidence and legal support, rather than flawed analysis.

On February 6, the CFPB proposed to rescind the mandatory underwriting provisions of its Payday Lending rule and delay their compliance date.

This decision was made nearly 1 year after initially noticing its intention to revisit the rule and after conducting extensive due diligence.

The CFPB found insufficient evidence and legal support for the mandatory underwriting provisions, and said that those provisions would reduce access to credit and competition in States that have determined it is in their residents' interest to be able to use such products, subject to State law.

The CFPB has also taken steps to implement provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155) that increase protections for consumers.

On March 4, the CFPB issued an advance notice of proposed rulemaking to gather information on residential Property Assessed Clean Energy financing, or PACE loans, that will be used in its proposal to implement Section 307 of the bill.

In September, the CFPB announced as effective a provision of S. 2155 that provides consumers who are concerned about identity theft or data breaches the option to freeze and unfreeze their credit for free.

A *New York Times* article commenting on the provision noted that, "one helpful change . . . will allow consumers to 'freeze' their credit files at the three major credit reporting bureaus—without charge. Consumers can also 'thaw' their files, temporarily or permanently, without a fee."

Susan Grant, director of consumer protection and privacy at the Consumer Federation of America expressed support for these measures, calling them "a good thing."

In August, the CFPB issued an interpretive and procedural rule to implement Section 104 of S. 2155 to exempt qualifying community banks and credit unions partially from reporting certain data points under HMDA.

The CFPB took another positive step on HMDA reporting in December issuing policy guidance describing HMDA data that it intends to publicly disclose in a manner that protects consumers' privacy.

The Committee will continue to make implementation of S. 2155 a top priority this Congress, and I encourage the CFPB to take the necessary steps to provide meaningful relief that will ultimately benefit consumers.

Data privacy is another issue that the Committee will spend significant time on this Congress.

Americans are rightly concerned about how their data is collected and used, and how their data is secured and protected by both Government agencies and private companies.

I have long raised concerns about big data collection by the CFPB, especially with respect to credit card and mortgage information.

Although there have been positive changes in recent years under new leadership, the CFPB must ensure that the collection of consumer information is limited, information is retained only as long as is absolutely necessary to fulfill the CFPB's obligations and that appropriate safeguards are in place to protect it.

It is also worth examining how the Fair Credit Reporting Act, or FCRA, should work in a digital economy, and whether certain data brokers and other firms serve a function similar to the original consumer reporting agencies.

The FCRA establishes standards for collection and permissible purposes for disseminating information by consumer reporting agencies, and gives consumers access to their files and the right to correct information.

The CFPB, through its supervision of larger participants it defines by rule, oversees a large segment of the consumer reporting marketplace.

I look forward to working with the CFPB to identify opportunities to update the FCRA so that it works in a digital world.

During this hearing, I look forward to hearing more about Director Kraninger's priorities for the CFPB in the upcoming work period; additional legislative or regulatory opportunities to provide widespread access to financial products and services; and steps that could be taken to increase the protection of consumers' financial and other sensitive information.

Director Kraninger, thank you again for joining the Committee this morning to discuss the CFPB's activities and plans.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

We created the Consumer Financial Protection Bureau to crack down on Wall Street predators and shady lenders that prey on hardworking families. Wall Street has armies of lobbyists fighting for every tax break, every exemption, every opportunity to be let off the hook for scamming customers and preying on families.

Ordinary Americans don't have those lobbyists. They don't have that kind of power. The Consumer Protection Bureau is supposed to be their voice, to fight for them.

When a toxic mortgage robs a family of their home, it's not the CEO of Bank of America or Wells Fargo who has to sit down with those kids and have the tough conversations around the kitchen table—explaining that their house is being taken away, explaining they're going to have to change schools, explaining why they are going to have to get rid of the family dog.

It's the parents who were ripped off by corporate greed who have to look their children in the eyes.

We created the CFPB so there would be fewer of those conversations—to look out for danger before it crashes down on hardworking families and robs them of their homes and their jobs and their savings.

Like food inspectors, the Consumer Financial Protection Bureau is supposed to hunt down scammers trying to sneak toxic products onto our kitchen tables.

But under new leadership, the Consumer Bureau has turned its back on that job. CFPB inspectors used to show up at Wall Street banks and other lenders to make sure they were obeying the Military Lending Act—that's a law that protects active-duty servicemembers and their families from predatory loans.

Under new leadership, CFPB inspectors aren't protecting servicemembers anymore.

The CFPB used to protect borrowers from shady lending practices that trapped hardworking families in an endless cycle of debt.

Now, the CFPB Director is giving payday lenders and car title lenders free rein. In fact, Director Kraninger wants us to believe that an endless cycle of debt is a benefit to hardworking families.

The CFPB used to make sure loans have clear explanations that regular Americans could understand.

Now, the CFPB has created the Orwellian-ly named "Office of Innovation", which as far as we can tell is dedicated to helping big banks and tech firms innovate new ways to trick their customers into new loans and other complicated financial products.

The old CFPB prosecuted debt collectors who used shady tactics to harass borrowers and threaten them in their homes or at their jobs.

Now, the CFPB is considering a proposal to let debt collectors call borrowers as many times as they want. You thought telemarketers were bad? Try being harassed over your student loan debt.

If the Director of the Consumer Financial Protection Bureau wanted to help consumers, she wouldn't have to look very far to find people in need.

Student loan debts have reached record levels, and record delinquency rates. Seven million Americans are more than 3 months behind on their car payments—the highest level in 19 years, worse than during the Great Recession. Forty percent of Americans don't have enough savings to cover a \$400 emergency expense.

But instead, she's siding with the rest of this Administration that looks like an executive retreat for Goldman Sachs. It's clear whose side everyone in this Administration is on.

And they continue to create excuses for eliminating financial protections, saying they are—“increasing access to credit.”

What they really mean is, increasing access to bad credit that drains people’s savings and traps them in debt. Right now, Wells Fargo CEO Tim Sloan is testifying in the House Financial Services Committee about a laundry list of ways his bank abused its customers.

Millions of Americans got hurt because this bank cared more about profits than its customers. It was the CFPB that helped uncover this scandal and it was the CFPB that got many Americans their money back. That’s what Ms. Kraninger’s job should be about.

PREPARED STATEMENT OF KATHY KRANINGER

DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

MARCH 12, 2019

Chairman Crapo, Ranking Member Brown, and distinguished Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau’s most recent Semiannual Reports to Congress. While the reports describe actions undertaken before I arrived, they provide a touchstone as we create a fresh outlook at the agency under my leadership.

The Bureau presents these Semiannual Reports to Congress and the American people in fulfillment of its statutory responsibility and commitment to accountability and transparency. The Bureau’s Spring 2018 (October 1, 2017, to March 31, 2018) and Fall 2018 (April 1, 2018, to September 30, 2018) Semiannual Reports meet this mandate. My testimony highlights the contents of these reports.

Significant Problems Faced by Consumers in Shopping for or Obtaining Consumer Financial Products or Services

In each Semiannual Report, the Bureau identifies relevant trends affecting consumers shopping for or obtaining consumer financial products or services. In the two Reports submitted to Congress in 2018, the Bureau identified a total of four trends of relevance.

First are credit products marketed to “nonprime borrowers.” Given the higher late payment and default rates associated with “nonprime borrowers,” products issued to these consumers generally feature higher all-in costs than products issued to consumers with higher scores, but offer such consumers the dual possibility of access to the credit card market as well as an avenue for building or rehabilitating credit records when timely repayments are made.

Second are secured credit cards. Consumer awareness and demand for secured cards have increased in recent years, however, low product awareness remains a barrier to secured credit card adoption. Outside research has found that many “nonprime borrowers” may not be aware that secured credit cards are a potential option for them, or even that the product exists.

Third, the Bureau found that credit invisibility—i.e., lacking a credit record that is treated as “scorable” by widely used credit scoring models—among adults 25 and older is concentrated in rural and highly urban geographies. Lack of internet access appears to have a stronger relationship to credit invisibility than does the presence of a bank branch. Among consumers who successfully transition out of credit invisibility, the overall rate of using a credit card as an entry product is much lower for those living in rural areas and in lower-income neighborhoods.

Lastly, many homebuyers do not comparison shop for their mortgages even though mortgage interest rates and loan terms can vary considerably across lenders. Reasons may include that rates change regularly, getting an accurate rate quote generally requires sharing personal financial information, and most consumers believe comparison shopping doesn’t make a difference. A Bureau study found that consumers who were encouraged to comparison shop became more knowledgeable and confident regarding the mortgage market.

Justification of the Budget Request of the Previous Year

The Bureau is funded principally by transfers from the Federal Reserve System, up to the limits set forth in the Dodd–Frank Act. Funding from the Federal Reserve System for FY2018 is capped at \$663 million. As of September 30, 2018, the Bureau had received a total of \$381.3 million in transfers for FY2018, which was added to the \$177.1 million the Bureau had in unobligated balances at the end of FY2017.

As of September 30, 2018, the end of the fourth quarter of FY2018, the Bureau had spent approximately \$553 million in FY2018 funds to carry out the authorities of the Bureau under Federal financial consumer law. Approximately \$320.5 million

was spent on employee compensation and benefits for the 1,510 Bureau employees who were on-board by the end of the quarter.

Significant Rules and Orders Adopted by the Bureau, as Well as Other Significant Initiatives Conducted by the Bureau, During the Preceding Year and the Plan of the Bureau for Rules, Orders, or Other Initiatives To Be Undertaken During the Upcoming Period

In its Semiannual Reports, the Bureau set forth the rules it had produced during the year preceding each report and the initiatives it intends to take during the upcoming reporting period. Below is a selection of the most relevant such matters.

Significant Rules Adopted by the Bureau During the Preceding Year:

- Final Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans.
- Final Rule: Arbitration Agreements (note, however, that this rule will not go into effect because Congress subsequently adopted a joint resolution of disapproval which the President signed pursuant to the Congressional Review Act).¹

Less Significant Rules:

- Final Rule: Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z).²
- Final Rule: Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z).³
- Interim Final Rule: Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X).⁴
- Final Rule: Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection.⁵
- Final Rule: Home Mortgage Disclosure Act (Regulation C).⁶
- Final Rule: Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z).⁷

Significant Initiatives:

- Notice of Proposed Policy Guidance: Policy To Encourage Trial Disclosure Program.
- Symposium on Building a Bridge to Credit Visibility.
- Call for Evidence.

Plan for Upcoming Initiatives

- Policy Statement: Public Release of Home Mortgage Disclosure Act Data.
- Pre-Rule Activity: Threshold Adjustment to Escrow Provision for Higher Priced Mortgage Loans.

Plan for Upcoming Rules

- Payday, Vehicle Title, and Certain High-Cost Installment Loans: The Bureau announced in January 2018 that it intends to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The Notice of Proposed Rulemaking was issued by the Bureau on February 6, 2019.⁸
- Debt Collection Rule: The Bureau is working toward releasing a proposed rule regarding FDCPA collectors' communications practices and consumer disclosures.

¹ www.federalregister.gov/documents/2017/07/19/2017-14225/arbitration-agreements;
www.federalregister.gov/documents/2017/11/22/2017-25324/arbitration-agreements

² www.federalregister.gov/documents/2018/03/12/2018-04823/mortgage-servicing-rules-under-the-truth-in-lending-act-regulation-z

³ www.federalregister.gov/documents/2018/02/13/2018-01305/rules-concerning-prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth

⁴ www.federalregister.gov/documents/2017/10/16/2017-21912/mortgage-servicing-rules-under-the-real-estate-settlement-procedures-act-regulation-x

⁵ www.federalregister.gov/documents/2017/10/02/2017-20417/equal-credit-opportunity-act-regulation-b-ethnicity-and-race-information-collection

⁶ www.federalregister.gov/documents/2017/09/13/2017-18284/home-mortgage-disclosure-regulation-c

⁷ www.federalregister.gov/documents/2017/08/11/2017-15764/amendments-to-federal-mortgage-disclosure-requirements-under-the-truth-in-lending-act-regulation-z

⁸ www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-of-compliance-date/

- Home Mortgage Disclosure (Regulation C): The Bureau announced in December 2017 that it intends to engage in a rulemaking to reconsider various aspects of the Bureau's 2015 rule under the Home Mortgage Disclosure Act (Regulation C), which could involve issues such as the institutional and transactional coverage tests and the rule's discretionary data points.
- Partial Exemptions From the Requirements of the Home Mortgage Disclosure Act Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C):

The Bureau will incorporate into Regulation C interpretations and procedures set forth in an interpretive and procedural rule issued to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amended certain provisions of the Home Mortgage Disclosure Act.

Analysis of Complaints About Consumer Financial Products or Services That the Bureau Has Received and Collected in Its Central Database on Complaints During the Preceding Year

The Bureau's Office of Consumer Response analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses. The Bureau uses insights gathered from complaint data to scope and prioritize examinations and ask targeted questions when examining companies' records and practices, to help understand problems consumers are experiencing in the marketplace, to provide access to information about financial topics and opportunities to build skills in money management that can help them avoid future problems, and to inform enforcement investigations to help stop unfair, deceptive, or abusive acts or practices.

In the Spring 2018 Semiannual Report, the Bureau noted that it had received approximately 326,200 consumer complaints and sent approximately 260,200 (or 80 percent) to companies, and companies responded to approximately 94 percent of complaints that the Bureau sent to them. In the Fall 2018 Semiannual Report, the Bureau received approximately 329,000 consumer complaints and sent approximately 263,200 (or 80 percent) to companies, and companies responded to approximately 93 percent of complaints that the Bureau sent to them. The Bureau does not verify all the facts alleged in complaints, but takes steps to confirm a commercial relationship between the consumer and the company.

In both reports, the credit or consumer reporting categories received the most complaints, at 37 percent in the most recent report, and debt collection received the second highest number of complaints, at 25 percent in the most recent report. The remaining categories, from highest to lowest percentage of total complaints, are: mortgage (10 percent), credit card (9 percent), checking or savings (7 percent), student loan (3 percent), money transfer or service or virtual currency (3 percent), vehicle loan or lease (3 percent), personal loan (1 percent each period), payday loan (0.7 percent), prepaid card (0.7 percent), credit repair (0.3 percent), and title loan (0.2 percent).

Public Supervisory and Enforcement Actions to Which the Bureau Was a Party During the Preceding Year

The Bureau's supervisory activities with respect to individual institutions are non-public. The Bureau has, however, issued numerous supervisory guidance documents and bulletins described in the Spring and Fall Semiannual Reports.

The Reports note that the Bureau was a party in several public enforcement actions, as well as actions involving Office of Administrative Adjudication Orders with respect to covered persons which are not credit unions or depository institutions, between the two Reports. For a list of each case, along with brief descriptions, please refer to the Bureau's Semiannual Reports.

Actions Taken Regarding Rules, Orders, and Supervisory Actions With Respect to Covered Persons Which Are Not Credit Unions or Depository Institutions

The Bureau's Semiannual Reports list all its public enforcement actions, noting when the action was taken against a covered person that is not a credit union or depository institution. Additionally the Bureau's Supervisory Highlights publications provide general information about the Bureau's supervisory activities and key findings at banks and nonbanks without identifying specific companies.

Assessment of Significant Actions by State Attorneys General or State Regulators Relating to Federal Consumer Financial Law

For purposes of the section 1016(c)(7) reporting requirement, the Bureau determined that any actions asserting claims pursuant to section 1042 of the Dodd-

Frank Act are “significant.” The reporting period of the two most recent Semiannual Reports is October 1, 2017, through September 30, 2018. The Bureau is aware of three State Attorney General actions that were initiated during the reporting period(s) and that asserted Dodd–Frank Act claims: *State of Alabama et al. v. PHH Mortgage Corporation*, No. 18-cv-0009 (D.D.C. Jan. 3, 2018); *Navajo Nation v. Wells Fargo & Company, Wells Fargo Bank, N.A., and Does 1-10*, No. 17-cv-1219 (D.N.M. Dec. 12, 2017); and *Commonwealth of Pennsylvania v. Navient Corporation and Navient Solutions, L.L.C.*, No. 17-cv-1814 (M.D. Pa. Oct. 5, 2017).

Analysis of the Efforts of the Bureau To Fulfill the Fair Lending Mission of the Bureau

The Bureau’s Spring and Fall 2018 Semiannual Reports highlight the Bureau’s fair lending enforcement and rulemaking activities, along with its continued efforts to fulfill the Bureau’s fair lending mission through, for example, supervision, inter-agency coordination, and outreach.

For exam reports issued by Fair Lending Supervision during the reporting period, the most frequently cited violations of Regulation B and Regulation C were:

- Section 1002.5(d)(2): Improperly requesting information about an applicant’s source of income.
- Section 1002.6(b)(2): Improperly considering age or whether income is derived from any public assistance program.
- Section 1002.9(c)(2): Failure to adequately notify an applicant that additional information is needed for an application.
- Section 1002.14(a): Failure to routinely provide a copy of an appraisal report to an applicant for credit secured by a lien on a dwelling.
- Section 1003.4(a): Failure by a financial institution to collect data regarding applications for covered loans that it receives, originates, or purchases in a calendar year, or, failure to collect data regarding certain requests under a preapproval program in a calendar year.

In the Spring Report, the Bureau conducted fewer fair lending supervisory events, and issued fewer matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period, and cleared a substantially higher number of MRAs or MOU items from past supervisory events than in the prior period. In the Fall Report, the Bureau initiated a higher number of fair lending supervisory events, and issued a greater number of MRAs or MOUs than in the prior period, and found that entities satisfied a lower number of MRAs or MOU items from past supervisory events than in the prior period.

In addition to fair lending supervision, the Bureau has the statutory authority to bring enforcement actions pursuant to the Home Mortgage Disclosure Act (HMDA) and the Equal Credit Opportunity Act (ECOA). The Bureau announced a fair lending public enforcement action involving credit cards, as described in the Semiannual Reports.

The Bureau continues to administer prior fair lending enforcement actions, including consent orders requiring defendants to pay redress to affected consumers. These matters include ongoing orders pertaining to autolending that govern American Honda Finance Corporation and mortgage lending governing Provident Funding Associates and BancorpSouth Bank.

The Bureau also conducts fair lending outreach through issuance of Reports to Congress, Interagency Statements, Supervisory Highlights, Compliance Bulletins, letters and blog posts, as well as through the delivery of speeches, meetings, and presentations addressing fair lending and access to credit matters. As set forth in the two most recent Semiannual Reports, Fair Lending staff worked directly with stakeholders, and, on September 17, 2018, the Bureau held a day-long symposium titled *Building a Bridge to Credit Visibility*. The symposium explored challenges related to access to consumer and small business credit and potential innovations and strategies to expand credit access. On the day of the symposium, the Bureau also released a new research publication providing a closer look at the relationship between geography and credit invisibility.

The Spring and Fall 2018 Semiannual Reports also describe that Fair Lending staff coordinated with partners on the Interagency Task Force on Fair Lending, the Interagency Working Group on Fair Lending Enforcement, and the Federal Financial Institutions Examinations Council (FFIEC) HMDA Data Collection Subcommittee.

Analysis of the Efforts of the Bureau To Increase Workforce and Contracting Diversity Consistent With the Procedures Established by the Office of Minority and Women Inclusion (OMWI)

The Bureau developed its “Diversity and Inclusion Strategic Plan 2016–2020” to guide the Bureau’s efforts to manage its diversity and inclusion goals, and objectives. The Bureau also publishes an Annual OMWI report in the spring of each year; its 2017 report was issued on March 29, 2018.

As of September 2018, an analysis of the Bureau’s current workforce reveals the following key points:

- Women represent 49 percent of the Bureau’s workforce in 2018 with no change from 2017.
- Minorities represent 40 percent of the Bureau workforce in 2018 with a 1 percentage point increase of ethnic minority employees (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander (NH/OPI), American Indian/Alaska Native (AI/AN), and employees of Two or More races) from 2017.
- As of September 30, 2018, 12.4 percent of Bureau employees (excluding interns) identified as an individual with a disability. Out of the workforce, 3.2 percent of employees identified as an individual with a targeted disability. The Bureau has already exceeded the workforce goals of 12 percent for employees with disabilities and 2.0 percent for employees with targeted disabilities—exceeding in both salary categories as required in the EEOC’s Section 501 regulations.

The Bureau enhances diversity by recruiting, hiring, and retaining highly qualified individuals from diverse backgrounds to fill positions at the Bureau. To promote an inclusive work environment, the Bureau focuses on strong engagement with employees and utilizes an integrated approach to education, training, and engagement programs that ensures diversity and inclusion and nondiscrimination concepts are part of the learning curriculum and work environment. The Bureau also ensures that senior leaders are aware of demographic trends of the Bureau’s workforce. Planning is done to increase inclusion and retention of the diverse workforce.

Further, in accordance with the mandates in section 342(b)(2)(B) of the Dodd–Frank Act, the Bureau takes efforts to increase contracting opportunities for diverse businesses including Minority-owned and Women-owned Businesses (MWOBs), including: creating and publishing a procurement forecast; proactively making recommendations that promote the use of qualified MWOB contractors in Bureau contracts; updating, distributing, and publishing online technical assistance guides for businesses; publishing the Bureau’s supplier diversity policy on the Bureau website; participating in four national supplier diversity conferences aimed at MWOBs; and providing technical assistance meetings to businesses new to Government contracting or doing business with the Bureau. As a result of these efforts, 32.6 percent of the \$139 million in contracts that the Bureau awarded during this time went to MWOBs.

Finally, in accordance with the mandates in section 342(c)(2) of the Dodd–Frank Act, the Bureau’s Diversity and Inclusion Plan describes the Bureau’s efforts to determine that a contractor will ensure, to the maximum extent possible, the fair inclusion of women and minorities in the contractor and subcontractor workforce. The Bureau developed and inserted a contract clause, known as the Good Faith Effort, into all Bureau contracts, and as a result more than 200 Bureau contractors will submit documentation detailing their workforce diversity practices in FY2019.

Conclusion

The reports describe actions undertaken before my tenure as Director of the Bureau, yet they provide a touchstone as we create a fresh outlook at the agency under my leadership.

Since my confirmation, I have been engaged in a listening tour to meet as many of our stakeholders as possible, including many of you. Through listening, I am building relationships, both inside and outside of the Bureau. Hearing all perspectives is critical to bring the best thinking as we carry out our mission of protecting consumers.

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

Thank you again for the opportunity to present the CFPB’s work to you.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN
FROM KATHY KRANINGER**

Q.1. In November 2016, the CFPB issued “A snapshot of service-member complaints” noting that veterans had reported “being targeted with aggressive solicitations by lenders to refinance” their home loan using a Department of Veterans Affairs (VA) product.¹ Veterans also reported that solicitations were “potentially misleading.”² One year later, the CFPB and the Department of Veterans Affairs (VA) issued a joint Warning Order about aggressive and potentially misleading advertising of VA home loan refinances.³

Most recently, the VA published an Advanced Notice of Proposed Rulemaking (ANPR)⁴ and a subsequent interim final rule⁵ on cash-out refinances on VA loans, in compliance with Section 309 of P.L. 115-174, the Economic Growth, Regulatory Relief, and Consumer Protection Act. Both of these documents indicated that potential lender abuses remain a substantial problem. That ANPR stated that “perhaps more than 50 percent of [VA] cash-out refinances remain vulnerable to predatory terms and conditions” and that “some lenders are pressuring veterans to increase artificially their home loan amounts when refinancing, without regard to the long-term costs to the veteran and without adequately advising the veteran of the veteran’s loss of home equity.”⁶

Since November 2016, has the CFPB received referrals from the VA or Ginnie Mae to review potentially unfair, deceptive, or abusive actions and practices or other violations of consumer protection laws by VA mortgage lenders? If so, how have the volume and nature of those referrals changed over time? If not, why not?

A.1. Since November 2016, Consumer Financial Protection Bureau (Bureau) staff has met with the Veterans Affairs (VA) staff to discuss the VA’s concerns that veterans are the subjects of aggressive and potentially misleading advertising of VA home loan refinances. Periodically, the VA has provided the Bureau with samples of potentially misleading advertisements.

Q.2. Does the CFPB participate in the VA and Ginnie Mae’s Lender Abuse Task Force to address harmful practices in the VA loan refinance market? If so, what steps is each agency in the Task Force taking to address lender abuses in the VA loan refinance market? If not, why not?

A.2. Although the Bureau was not asked to be a member of the Task Force, certain Bureau offices have provided technical and market expertise on a limited basis when requested by Ginnie Mae

¹ <https://files.consumerfinance.gov/f/documents/112016-cfpb-OSA-VA-refinance-snapshot.pdf>

² *Id.*

³ “CFPB and VA WARNO: VA Refinancing Offers That Sound Too Good To Be True”, Patrick Campbell and Anthony Vail, November 20, 2017, available at <https://www.consumerfinance.gov/about-us/blog/cfpb-and-va-warno-va-refinancing-offers-sound-too-good-be-true/>.

⁴ “Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Home Loans”, 83 FR 61573, November 30, 2018, available at <https://www.federalregister.gov/documents/2018/11/30/2018-26021/loan-guaranty-revisions-to-va-guaranteed-or-insured-cash-out-home-loans>.

⁵ “Loan Guaranty: Revisions to VA-Guaranteed or Insured Cash-Out Refinance Loans”, 83 FR 64459, December 17, 2018, available at <https://www.federalregister.gov/documents/2018/12/17/2018-27263/loan-guaranty-revisions-to-va-guaranteed-or-insured-cash-out-home-refinance-loans>.

⁶ See 83 FR 61573.

and/or the VA. Such expertise has been limited to a review of specific advertisements and some product offerings.

Q.3. What additional steps has the CFPB taken or will the CFPB take to address complaints received from consumers or referrals from the VA or Ginnie Mae (if applicable) to communicate with consumers and address practices in the VA loan refinance market that may be abusive or misleading and ultimately harm servicemembers?

A.3. The Bureau does not generally comment publicly on confidential enforcement investigations. In a public action, the Bureau partnered with the Department of Veterans Affairs to issue a consumer advisory,⁷ *CFPB and VA WARNO: VA Refinancing Offers That Sound Too Good To Be True*, on November 20, 2017.

Q.4. Appraisals—In December 2018, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Fed), and the Federal Deposit Insurance Corporation (FDIC) jointly proposed to increase their agencies’ appraisal threshold on residential mortgage loans from \$250,000 to \$400,000.⁸ Lenders would instead be required to obtain an evaluation for any mortgage loan below \$400,000 not otherwise subject to requirements by the mortgage insurer or guarantor or the secondary market.⁹

This proposal comes less than 2 years after these same banking regulators and CFPB rejected an increase in the residential loan appraisal threshold based on “considerations of safety and soundness and consumer protection” in their Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) report.¹⁰

As you know, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended by the Dodd–Frank Wall Street Reform and Consumer Protection Act, requires the Federal banking regulators charged with setting appraisal exemption thresholds to receive concurrence from the CFPB to ensure that “such threshold level provides reasonable protection for consumers” before any amendment.¹¹ In the EGRPRA report, the banking regulators noted that “CFPB staff shared concerns about potential risks to consumers resulting from an expansion of the number of residential mortgage transactions that would be exempt from the Title XI appraisal requirement” if the loan threshold was raised.¹²

Did the Federal banking agencies confer with staff or leadership at the CFPB or seek concurrence before issuing the proposal to increase the appraisal exemption threshold? If not, at what point in the regulatory process do Federal banking agencies seek concurrence with the CFPB on appraisal threshold changes?

A.4. Staff of the Federal banking agencies conferred with Bureau staff before publication of the December 7, 2018, Notice of Proposed

⁷ <https://www.consumerfinance.gov/about-us/blog/cfpb-and-va-warno-va-refinancing-offers-sound-too-good-be-true>

⁸ “Real Estate Appraisals”, 83 FR 63110, December 7, 2018, available at <https://www.federalregister.gov/documents/2018/12/07/2018-26507/real-estate-appraisals>.

⁹ Id.

¹⁰ Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act, Federal Financial Institutions Examination Council, March 2017, p. 36, available at https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.

¹¹ 12 U.S.C. 3341(b).

¹² Id.

Rulemaking (NPRM). During the November 20, 2018, Federal Deposit Insurance Corporation (FDIC) Board meeting at which the FDIC Board voted in favor of the FDIC moving forward with issuing the NPRM, then Bureau Acting Director Mick Mulvaney indicated that his vote in favor of such action in his capacity as an FDIC Board member was not an exercise of the Bureau's concurrence authority under section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),¹³ and that the Bureau will make its determination of whether to concur at the final rule stage.

Q.5. Is the CFPB aware of any changes in the real estate market or in appraisal or evaluation services that would affect its consumer protection concerns, cited in the EGRPRA report, with increasing the residential mortgage appraisal threshold above \$250,000? If so, please detail these changes.

A.5. As reflected in the EGRPRA report, the Federal banking agencies were particularly interested at that time with addressing potential appraiser availability issues in rural areas, and, among other things, the Federal banking agencies planned to issue a statement regarding how section 1119(b) of FIRREA provides authority for temporary waivers of appraiser certification or licensing requirements where there is a scarcity of qualified appraisers,¹⁴ without proposing to raise the residential mortgage appraisal threshold pursuant to section 1112(b) of FIRREA.¹⁵ Bureau staffs conversations with staff of the Federal banking agencies about increasing the residential mortgage appraisal threshold pursuant to section 1112(b) of FIRREA occurred in the context of these discussions and do not constitute a Bureau concurrence determination regarding a proposed increase to the residential mortgage appraisal threshold. Now that the Federal banking agencies have issued the NPRM, Bureau staff are currently in the process of assessing the availability of information to enable me to make a determination of whether to concur.

Q.6. What factors does the CFPB consider when determining whether or not to grant concurrence on proposals to increase the residential mortgage appraisal threshold?

A.6. As noted above, section 1112(b) of FIRREA provides that the Federal banking agencies may establish a threshold level described therein only if the agency "receives concurrence from the [Bureau] that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences."¹⁶ As also noted above, the Federal banking agencies' NPRM includes a requirement that the lender must obtain an evaluation where a lender does not obtain an appraisal due to the proposed threshold (unless another exemption not carrying the evaluation requirement applies). As a result, among the information the Bureau is interested in is: (1) information regarding the presentation or content of

¹³Id.

¹⁴12 U.S.C. 3348(b).

¹⁵See Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act, Federal Financial Institutions Examination Council, March 2017, pp. 36–37, available at <https://www.ffiec.gov/pdf/2017-FFIEC-EGRPRA-Joint-Report-to-Congress.pdf>.

¹⁶12 U.S.C. 3341(b).

evaluations in practice, including what valuation information, if any, consumers would lose in practice if more evaluations are performed rather than appraisals; (2) the extent to which appraisals or evaluations provide benefits or protections for consumers that are purchasing 1–4 unit single-family residences (including the nature and magnitude of the differences between using evaluations rather than appraisals, if any, in consumer protection, such as with respect to credibility); and (3) information relating to current and potential future use of evaluations by lenders.

Q.7. Wells Fargo—In April 2018 consent orders with Wells Fargo, both the CFPB¹⁷ and the Office of the Comptroller of the Currency (OCC)¹⁸ required Wells to develop Remediation Plans or Programs and submit them to the Regional Director at the CFPB and Examiner-in-Charge at the OCC for nonobjection. These orders also allowed the Regional Director and Examiner-in-Charge to require Wells to submit future remediation programs for review and nonobjection while the consent orders remained effective.

Beginning in its August 2018 10-Q report¹⁹ and in subsequent materials,²⁰ Wells Fargo disclosed that an internal calculation error led the lender/servicer to improperly deny modifications to 870 homeowners, 545 of whom were subsequently foreclosed upon, between 2010 and 2018. To date, neither the CFPB nor the OCC has taken a public enforcement action with respect to these modification denials and foreclosures. Wells Fargo’s initial disclosure indicated that they have set aside just \$8 million to remediate harmed consumers.

Does the CFPB have the authority under existing consent orders or other law or policy to review Wells Fargo’s methods for determining how many borrowers were harmed by the bank’s modification errors? If so, has the CFPB reviewed those methods? If not, why not?

A.7. I am firmly committed to ensuring that Wells Fargo fully complies with the requirements of Federal consumer financial law. The Bureau has authority to examine certain institutions, including Wells Fargo, to assess compliance with the requirements of Federal consumer financial law. It also has the authority to bring enforcement actions for violations of Federal consumer financial law. As part of the April 2018 Consent Order, Wells Fargo was required to develop a Remediation Program, which would include, among other things, developing Consumer Remediation Plans when it identifies violations of Federal consumer financial law. The Bureau expects Wells Fargo to comply with this requirement and has the capability to examine for that compliance.

Q.8. Does the CFPB have the authority under existing consent orders or other law or policy to request to review Wells Fargo’s reme-

¹⁷ See https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-bank-na_consent-order_2018-04.pdf.

¹⁸ See <https://www.occ.gov/static/enforcement-actions/ea2018-025.pdf>.

¹⁹ Wells Fargo and Company Form 10-Q, August 3, 2018, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/second-quarter-10q.pdf>.

²⁰ Wells Fargo and Company Form 10-Q, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2018/third-quarter-10q.pdf>.

diation plan for the 870 borrowers that Wells has determined were harmed by the bank's calculation errors?

If the CFPB has this authority:

Has the CFPB reviewed or requested to review Wells Fargo's remediation plan?

If the plan has been reviewed, has the CFPB approved Wells Fargo's remediation plan? If so, why? If not, why not?

If the plan has not been reviewed, why not?

If the CFPB does not believe it has this authority, why not?

A.8. As noted in my previous response, I am firmly committed to ensuring that Wells Fargo fully complies with the requirements of Federal consumer financial law. The Bureau has authority to examine certain institutions, including Wells Fargo, to assess compliance with the requirements of Federal consumer financial law. It also has the authority to bring enforcement actions for violations of Federal consumer financial law. As part of the April 2018 Consent Order, Wells Fargo was required to develop a Remediation Program, which would include, among other things, developing Consumer Remediation Plans when it identifies violations of Federal consumer financial law. The Bureau expects Wells Fargo to comply with this requirement and has the capability to examine for that compliance.

The information you requested related to specific activities undertaken by the Bureau in the course of its supervisory relationship constitutes confidential supervisory information.

The Bureau has issued regulations governing the disclosure of confidential supervisory and investigative information. See 12 CFR 1070.41, 1070.45. These rules are designed to protect the integrity of the law enforcement process, including the confidentiality and due process interests of those subject to supervisory or investigatory activity.

Q.9. How does the CFPB determine whether remediation for consumers who were wrongfully denied a loan modification is adequate?

A.9. Many factors are weighed to determine the precise mix of restitution, penalties, and injunctive relief appropriate in each case. At the center of that effort is serving justice in the public interest. 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.

Q.10. How does the CFPB determine whether remediation to consumers who wrongfully lost their home to foreclosure is adequate?

A.10. As noted in my previous response, generally, when analyzing remediation, the Bureau considers all relevant facts and circumstances, including the extent of direct and indirect harm, and seeks to make consumers whole for losses caused by a party's illegal conduct.

Q.11. The President's Budget claims to save \$5 billion over the next 10 years by "restructuring the CFPB."²¹ That figure represents most of the agency's budget. In order to recognize a \$5 bil-

²¹Budget of the U.S. Government for Fiscal Year 2020, p. 127, March 11, 2019, available at <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.

lion reduction in CFPB spending, which programs, services, and staff would you cut at the Bureau?

What impact would this budget reduction have on the ability of the CFPB to investigate and enforce against consumer abuses?

A.11. The President's budget proposes a change in law regarding how the Bureau is funded for Congress' consideration. As Director, I have spent significant time understanding the Bureau's operations and looking at ways to improve delivery of the Bureau's mission. With the incredible flexibility Congress provided this agency, I feel a deep sense of responsibility for ensuring we become a model for efficient and effective use of resources. Should Congress change the way the Bureau is funded, I will take all appropriate steps consistent with those changes to support the Bureau's mission.

Q.12. During your service at the Office of Management and Budget, did you assist in the consideration or publication of budget proposals that reflected similar reductions in CFPB spending?

Did you object to those reductions and if not, why not?

A.12. The President's budget request is precisely that. As stated above, the President's budget proposes a change in law regarding how the Bureau is funded for Congress' consideration. Should Congress change the way the Bureau is funded, I will take all appropriate steps consistent with those changes to support the Bureau's mission.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR COTTON
FROM KATHY KRANINGER**

Q.1. Director, the concept of easing balloon-payment requirements and increasing payment affordability for consumers was clearly of interest to the CFPB when the original rule was published. Installment loan products offer alternatives to balloon-payment loans, but the payment section of the rule requiring reauthorization after two failed ACH or debit attempts increases the repayment risk for multipay products.

Do you believe the payment provisions create an incentive for lenders to offer single payment loans over longer term installment loan products?

A.1. No. The Bureau's 2017 Payday Rule's cap on making further attempts to debit a consumer's account after two consecutive attempts have failed due to nonsufficient funds applies to all loans covered by the Rule, including short-term loans with balloon payments and longer-term loans. The cap's provisions are based on the conclusions the Bureau reached in the 2017 Final Rule based on its analysis of internal and external data showing that when some covered lenders attempt to debit consumers' accounts after two consecutive failures, all subsequent attempts are far more likely than not to result in failure. In 2017, the Bureau concluded that two consecutive failed debit attempts are a strong indication that a consumer's account is in severe distress and is therefore no longer a reliable means of ensuring repayment. Thus, the Bureau determined in 2017 that the relatively small subset of consumers to whom the cap's protections apply have already demonstrated a high repayment risk at the time the cap is triggered. The 2017

Payday Rule’s cap is not intended to be an absolute prohibition on collecting payments from that subset of consumers. Rather, the Rule’s reauthorization and related provisions required lenders to obtain a new and specific authorization to obtain payment from consumers.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR PERDUE
FROM KATHY KRANINGER**

Q.1. Director Kraninger, similar to the prudential regulators, the CFPB has market monitoring powers under Section 1022(c) of Dodd–Frank. Unlike prudential regulators, who use these extraordinary powers to ensure safety and soundness of the financial system, the CFPB’s role is a consumer protection watchdog and its market monitoring powers are far more expansive than any of the prudential regulators. In the past, the CFPB has undertaken massive data collection of American consumers’ detailed financial information. Especially under your predecessor, some of these massive data collections were to help develop solutions for nonexistent problems.

What is your view on when the CFPB should use its market monitoring powers?

A.1. Section 1022(c) of the Dodd–Frank Wall Street Reform and Consumer Protection Act provides that “[i]n order to support its rulemaking and other functions, the Consumer Financial Protection Bureau (Bureau) shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.” The Bureau is also required to evaluate the costs, benefits, and impacts of rules it is considering and to conduct retroactive assessments of significant rules. Guidelines for exercising these authorities are described further in that section. I believe the Bureau should only collect that data that it needs to perform its statutory functions, including market monitoring, and the Bureau must be vigilant to keep data secure to protect the privacy of data about consumers the agency collects, maintains, or uses. In September 2018, the Bureau issued a report on the “Sources and Uses of Data at the Bureau of Consumer Financial Protection”¹ and a Request for Information (RFI) with respect to the Bureau’s data collection activities. The Bureau is reviewing the comments received in response to that RFI and considering whether modifications are appropriate with respect to data collection activities.

Q.2. Do you believe the CFPB needs to provide a specific cause for each time it uses its market monitoring powers?

A.2. As stated above, I believe the Bureau should only collect data that it needs to perform its statutory functions, including market monitoring, and the Bureau must be vigilant in protecting the privacy of consumers in any data the agency collects, maintains, or uses.

Q.3. Director Kraninger, the Paperwork Reduction Act was enacted to reduce the total amount of paperwork burden the Federal Gov-

¹ https://files.consumerfinance.gov/f/documents/bcfp_sources-uses-of-data.pdf

ernment imposes on individual businesses. However, the Paperwork Reduction Act did not require the OMB to approve the collection of data in situations where there were less than 10 parties involved. Under Director Cordray, the CFPB often took advantage of certain chokepoints within the financial industry, where 3 to 4 companies held the data of tens of millions of Americans because they comprised 95 percent of the market share of a certain industry.

From your experience at the OMB, do you believe that under 10 parties' exemption to the Paperwork Reduction Act was made for de minimis data collection efforts and the CFPB violated the spirit of the law when it undertook such massive data collection actions?

A.3. Under the Paperwork Reduction Act (PRA), any collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons and is not subject to exemption; therefore, the Bureau generally would not authorize a collection of information from nine or less companies that comprise 95 percent of the industry without first obtaining approval from OMB under the PRA.

Q.4. What actions have you undertaken at the CFPB to ensure that the Agency adheres to the Paperwork Reduction Act?

A.4. The Bureau maintains a PRA compliance program that is well integrated into the Bureau's overall information management program under the leadership of a Chief Data Officer, in compliance with Title II of the Foundations for Evidence-Based Policymaking Act of 2018—Open Government Data Act. The PRA program is integrated into the Bureau's data management processes to ensure that before the Bureau requests information from the public, the collection of that information is justified, has practical utility, and is not unduly burdensome, in keeping with the PRA.

The Bureau's PRA program facilitates the Office of Management and Budget (OMB) information collection process and provides guidance and assistance to program offices to ensure that data intakes meet OMB requirements and compliance with the PRA.

Q.5. Director Kraninger, under Section 1071 of the Dodd–Frank Act, the BCFP was instructed to create a HMDA like reporting process for business loans. I have very grave concerns about the chilling effect such a process will have on the small business community and the availability of capital.

What are your thoughts on the timing of future rulemaking mandated by Section 1071?

A.5. In connection with its Spring 2019 Rulemaking Agenda,² the Bureau announced it intends to recommence work within the next year to begin to develop rules to implement section 1071 of the Dodd–Frank Act. The Bureau also has announced that it intends to hold a symposium to hear from a diverse group of experts with respect to the issues implicated in developing a data collection regime for small business loans. Before issuing a rule that may have a significant impact on a substantial number of small entities, the Bureau is required to convene a panel under the Small Business

² Diane Thompson, "Spring 2019 Rulemaking Agenda" (May 22, 2019), <https://www.consumerfinance.gov/about-us/blog/spring-2019-rulemaking-agenda/>.

Regulatory Enforcement Fairness Act and confer with small entity representatives about the proposals the Bureau is considering putting forward. After completing that process, the Bureau is required by the Administrative Procedure Act to publish a proposal in the *Federal Register* and provide an opportunity for public comment on the proposal. Given those requirements, the Bureau will not be releasing a final rule under Section 1071 this year.

Q.6. In connection with both your comments on cost-benefit analysis and limiting the scope of data collections, would any rule coming out of Section 1071 run afoul of both concerns?

A.6. Considering costs and benefits is an important part of our Dodd–Frank Act statutory responsibility when issuing rules. There are costs associated with any data collection which have to be evaluated along with the benefits. The Bureau recognizes that certain financial institutions may not be collecting and reporting information regarding small business lending in connection with other regulatory requirements and that therefore a new data collection requirement could pose implementation and operational challenges. The Bureau is interested in exploring potential ways to implement section 1071 in a balanced manner with a goal of providing timely data with the highest potential for achieving the statutory objectives, while minimizing burden to both industry and the Bureau.

Q.7. Is it even possible to construct a rule that will not impede business lending and stifle of economic growth?

A.7. Small businesses are critical engines for economic growth and access to credit is a crucial component of their success. The Bureau is sensitive to concerns about costs imposed by regulations and would like to explore ways to implement Section 1071 in a balanced manner to fulfill its statutory objectives while minimizing burden on industry. The Bureau will also carefully consider the costs and benefits of regulations as part of its Dodd–Frank Act statutory responsibilities. As noted above, the Bureau will begin to develop rules to implement section 1071 with a symposium to hear from a diverse group of experts with respect to the issues implicated in developing a data collection regime for small business loans.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS
FROM KATHY KRANINGER**

Q.1. With respect to the CFPB’s enforcement actions related to the National Collegiate Student Loan Trusts (NCSLT), there have been allegations of potential conflicts of interest between the CFPB and one party of the securitization trust—Vantage Capital Group. To that end, a proposed consent order filed by the CFPB under the former Director Cordray in this matter would appoint Vantage Capital to become the special servicer of the trusts’ student loan assets even though they have no prior special servicing experience. Additionally, no other party to the securitization trust approved such change as required by the parties’ contractual agreements.

What is the Bureau’s rationale for endorsing and attempting to appoint, Vantage Capital, an unproven servicer to service the debt of student loan borrowers which are the assets of the NCSLT trusts?

And what is the Bureau's rationale for attempting to unilaterally appoint Vantage Capital in contradiction to the contractual terms agreed to by the securitization parties (where these specific terms also represent fundamentally important protections provided to investors across transactions in the securitization market)?

A.1. As a general matter, the Bureau does not comment on active litigation except through its public filings.

Q.2. One of the cited contributors to the failure of the private label RMBS market to rebound from its crisis-driven lows are market concerns around the inviolability of their contracts and a general lack of trust that securitization cash flows will be allocated as dictated by the transaction documents. Actions initiated under former CFPB Director Richard Cordray, that the CFPB continues to pursue today, appear to have aggravated those concerns among securitization participants. Specifically, the CFPB filed a case against the National Collegiate Student Loan Trusts while simultaneously filing a proposed consent judgment whereby the CFPB's proposed consent judgment is seeking to:

Penalize investors, including pension plans, retirement plans, and by extension the consumers that have entrusted their savings to them, for alleged violations of a third party service providers and rewrite the contractual provisions that the securitization parties had agreed to without the involvement of any of the key parties to the securitization transactions. Why has the CFPB chosen to not follow long-standing precedent of other regulatory bodies, and the CFPB's other enforcement actions, whereby the parties whose actions allegedly violated the law were pursued for wrongdoing?

Has the CFPB evaluated the impact of holding investors in the securitization market responsible for other parties' actions on the availability and cost of credit to consumers given the significant funding the securitization market provides to consumers?

A.2. Please see the response to Question 1.

Q.3. The richness and diversity of financial data available to lenders for accurately assessing a borrower's ability to repay have made the rigid guidance provided in Appendix Q outdated.

In order to expand access to high quality mortgages for all Americans, is the Bureau open to permitting other Government approved documentation standards, such as those used by GSEs, FHA, and VA, for determining a consumer's DTI instead of Appendix Q?

A.3. You raise an important question that the Bureau is currently considering recognizing the expiration of the "patch" described further below. A provision of the Ability to Repay/Qualified Mortgage rule (ATR/QM) currently allows creditors to obtain Qualified Mortgage (QM) status for a loan by establishing the loan's eligibility for purchase or guaranty by the GSEs. A creditor may establish this by, among other things, demonstrating that the loan satisfies GSE underwriting requirements, including GSE standards for the consideration and verification of a borrower's income and debt obligations. This regulatory provision, known as the "patch," is temporary and scheduled to expire no later than 2021. Currently Federal Housing Administration and Veterans Affairs verification standards can be used under those agencies' own QM definitions.

The Bureau's own General QM definition currently allows use of Appendix Q verification standards only. The Bureau's report¹ assessing the effectiveness of the ATR/QM rule identified concerns that Appendix Q is too limiting and rigid. The Bureau is open to improvements to it and to identifying alternative standards for consideration and verifying income and debt obligations.

Q.4. Entrepreneurs and self-employed Americans help drive economic growth and innovation in communities across the Nation. Yet the underwriting standards in Appendix Q have prevented self-employed individuals from qualifying for QM loans, thus hindering a potential area of growth in the market.

Because Appendix Q contains a set of underwriting standards that are written into regulations, these standards have not kept pace with changes in the market. Are you willing to work with industry and other market participants to find ways to make QM underwriting standards more dynamic?

A.4. The Bureau understands the concerns that Appendix Q is too limiting, especially when it comes to self-employed consumers. The Bureau recognizes the importance of regulatory standards keeping up with changes in the market. The Bureau is currently considering this issue, particularly recognizing the expiration of the "patch" as articulated in the prior response. We welcome suggestions on this topic from industry, consumer advocates, and other stakeholders.

Q.5. Ensuring high-quality and affordable mortgage access for underserved, creditworthy borrowers is an essential mission that helps drive economic growth. Currently, the QM patch is key to helping achieve that mission with the overall U.S. home ownership rate rising to the highest level (64.8 percent) since 2014.

If the GSEs remain in conservatorship beyond January 2021 and the QM patch were to expire without any sort of reliable substitute, approximately 30 percent of loans backed by the GSEs could face new liability which would negatively impact home values and create instability across the secondary market.

The June 2017 Department of Treasury report examining core principles for regulating the U.S. financial system outlined important areas for reform with respect to the Ability to Repay/Qualified Mortgage (ATR/QM) Rule and the QM Patch, which is currently set to expire on January 10, 2021, or when the GSEs exit conservatorship, whichever comes first.

As discussions around conservatorship status continue and the Patch expiration date quickly approaches, can you commit to working with market participants, including financial institutions and consumer advocates, to align QM requirements with GSE eligibility requirements in order to preserve a robust market?

A.5. I understand the importance of maintaining the smooth functioning of the mortgage market and avoiding any unnecessary or undue disruption that would interfere with consumers' access to credit. The potential expiration of the patch is a complex situation, and the Bureau is working diligently to formulate and implement

¹ <https://www.consumerfinance.gov/data-research/research-reports/2013-ability-repay-and-qualified-mortgage-assessment-report/>

appropriate strategies to handle it. Further, we have been discussing it with other appropriate regulators, given the interconnected nature of the decisions we are separately facing. In addition, we have been consulting with various market participants, including financial institutions and consumer advocates, to identify appropriate methods that will ensure that QM requirements impose as little burden on industry and consumers as possible and that access to credit is preserved.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN
FROM KATHY KRANINGER**

Q.1. As you know, the Dodd–Frank statute includes a requirement that the CFPB tailor its supervision of nonbanks based on factors which include a firm’s size and volume, product risk, and extent of State supervision. Under the last Administration, the CFPB provided a one-size-fits-all approach to regulating mortgage lenders.

When do you expect to apply Section 1024(b)(2) to regulating lenders based on more appropriate attributes, specifically the absence of any systemic risk to the mortgage lending market?

A.1. The Consumer Financial Protection Bureau (Bureau) uses a risk-based prioritization process, consistent with the requirements of, and applying the factors set forth in 12 U.S.C. §5514(b)(2) in determining where to focus supervision resources. The Bureau evaluates each institution product line based on potential for consumer harm related to a particular market; the size of the product market; the supervised entity’s market share; and risks inherent to the supervised entity’s operations and offering of financial consumer products within that market. Accordingly, the Bureau’s prioritization approach assesses risks to the consumer at two levels: the market level and then the institution level.

- At the marketwide level, we assess the risk to the consumer from the products and practices being followed in a particular market.
- At the institution level, we start with institution’s market share within an individual product line, which corresponds to the number of consumers affected.

Our prioritization approach augments this size consideration significantly with qualitative and quantitative factors for each institution product line, such as:

- the strength of compliance management systems;
- the existence of other regulatory actions;
- findings from our prior exams;
- metrics gathered from public reports;
- the number and severity of consumer complaints we receive; and
- Fair-lending-focused information.

Taken together, the information that we gather about each institution product line at the market level and at the institution-level allows us to focus our resources where consumers have the greatest potential to be harmed. We apply this disciplined risk assessment

process to each market in which the Bureau conducts supervisory authority, including the mortgage market.

Q.2. Community and smaller banks that fall outside of the CFPB's jurisdiction use service providers that are considered nonbank entities. These nonbank entities are almost always small businesses that like the banks they service are overseen by prudential banking regulators. In the past, the CFPB gave no deference to this prudential banking oversight.

Will you commit to reevaluating this policy to assist our Nation's small businesses minimize their regulatory burden and lessen the duplicative regulatory oversight?

A.2. The Bureau has authority to examine service providers to financial institutions that are otherwise subject to the Bureau's examination authority.¹ With respect to service providers to insured depository institutions with total assets of \$10,000,000,000 or less, the Bureau's supervisory authority is limited to service providers to "a substantial number" of such institutions.² If the Bureau conducts an examination or requires a report from such a service provider, the Bureau is required to coordinate with the appropriate prudential regulator.³

To date, the Bureau has focused its examinations of service providers on a targeted group of major service providers to both large depository institutions and nonbanks subject to its supervisory authority. As a general matter, absent significant indicia of risk of consumer harm, the Bureau likely will continue to focus on larger service providers to the large banks and nonbanks subject to the Bureau's supervisory authority. More broadly, I am engaged with the prudential regulators on ways to help minimize regulatory burden and duplication on all supervised institutions, while accomplishing our separate, distinct, and independent statutory mandate.

Q.3. In the past, the CFPB Enforcement Office propounded onerous Civil Investigative Demands on these small businesses. As you can imagine, responding to such Federal Government demands can be time consuming and impose an extraordinary cost on such businesses.

Will you commit to reviewing this practice to help protect small businesses that form the backbone of hardworking America?

A.3. A Civil Investigative Demand (CID) is an important tool that the Bureau uses to investigate possible law violations. In crafting CIDs and participating in meet and confer discussions with CID recipients, the Bureau considers the burden on the recipient and alternative, less burdensome means to obtain information required for the investigation. Under my leadership, this practice will continue.

On April 23, 2019, the Bureau announced changes to its policies regarding the notification of purpose included in Civil Investigative Demands (CIDs).⁴ Now CIDs will provide more information about the potentially applicable provisions of law that may have been vio-

¹ 12 U.S.C. §§5514(e), 5515(d).

² 12 U.S.C. §5516(e).

³ Id.; 12 U.S.C. §§5514(e), 5515(d).

⁴ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-change-regarding-bureau-civil-investigative-demands/>

lated. CIDs will also typically specify the business activities subject to the Bureau's authority. In investigations where determining the extent of the Bureau's authority over the relevant activity is one of the significant purposes of the investigation, staff may specifically include that issue in the CID in the interests of further transparency.

The new policy takes into account recent court decisions about notifications of purpose, and is consistent with a 2017 report by the Bureau's Office of Inspector General that emphasized the importance of updating Office of Enforcement policies to reflect such developments. The new policy is also consistent with comments the Bureau received in response to the Requests for Information it issued in 2018, seeking feedback about various aspects of its operations, including its use of CIDs in enforcement investigations.

Q.4. I've also heard from constituents that in the past, the CFPB has brought enforcement actions on small businesses that effectively terminate innovative offerings and their ability to provide certain products merely because it was politically convenient to do so. For example, prepaid cards have helped bring banking services to the underbanked and underserved. The CFPB's new Prepaid Card Regulation is about 1,800 pages of burden that hampers innovation and small business development. I understand that this regulation is set to go into effect next month.

Can you commit to undertaking a thorough cost-benefit analysis as it relates to this regulation and any additional regulatory burden of any industry or small business?

A.4. Before issuing any regulation, the Bureau is required by section 1022(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to consider the benefits and costs to consumers and to providers of consumer financial products or services, including the potential reduction of access by consumers, impacts on small depository institutions, and the effect on consumers in rural areas. In addition, if a proposed rule will have a significant impact on a substantial number of small entities, the Bureau is required under the Small Business, Enforcement and Regulatory Fairness Act to convene a panel to confer with a group of small entity representatives. I am committed to assuring that the Bureau's cost benefit analysis are rigorous and robust and that the Bureau carefully considers the regulatory burden of any proposed or final rule.

The Prepaid Rule, which took effect on April 1, 2019, contains a cost benefit analysis prepared pursuant to section 1022(b)(2)(A). In issuing the Rule, the Bureau determined that it would not have a significant impact on a substantial number of small entities based on the determination that there were not a substantial number of small entities which issued prepaid accounts or managed prepaid account programs, and not a substantial number of small entities that would experience a significant economic impact from the rule. Congress also required the Bureau to assess the effectiveness of each significant rule within 5 years of the effective date of such rules. The Bureau will continue to monitor the implementation of the Prepaid Rule and take comment from stakeholders regarding any issues.

Q.5. I've heard from many small businesses that have been under the thumb of the CFPB Enforcement Office—some rightfully so and others not. The commonality that I have heard is that no matter how cooperative the small business is with the CFPB Enforcement Office, the CFPB never discloses what it believes may be a violation of law until after its investigation with a “gotcha” phone call. A more transparent process would lead to more efficient and cost-effective investigation and be far less burdensome for the entity being investigated.

Will you commit to reevaluating this practice to provide businesses with more transparency regarding their alleged wrongdoing?

A.5. As I indicated in an earlier response, the Bureau announced changes to its policies regarding the notification of purpose included in Civil Investigative Demands (CIDs). Now CIDs will provide more information about the potentially applicable provisions of law that may have been violated. CIDs will also typically specify the business activities subject to the Bureau's authority. In investigations where determining the extent of the Bureau's authority over the relevant activity is one of the significant purposes of the investigation, staff may specifically include that issue in the CID in the interests of further transparency.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED
FROM KATHY KRANINGER**

Q.1. Why has the CFPB decided to use its discretion to establish an Office of Innovation and an Office of Cost Benefit Analysis, two offices not explicitly authorized in the statute, while at the same time failing to continue prior agency activities designed to protect student consumers by monitoring campus financial products?

A.1. Section 1012(a)(3) of Title X of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) authorizes the Director to establish the general policies of the Consumer Financial Protection Bureau (Bureau) with respect to all executive and administrative functions, including: “directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law” as well as “distribution of businesses among personnel appointed and supervised by the Director and among the administrative units of the Bureau.”¹ Consistent with those authorities and the objective in section 1021 of the Dodd–Frank Act to ensure that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, the Office of Innovation was established. While I have not made a decision to establish an Office of Cost Benefit Analysis, I have prioritized ensuring robust evidence and cost-benefit analysis undergird our efforts at the Bureau. Writ large, the Bureau's responsibility is consumer protection and we do that using all of the tools that Congress gave us. The Bureau has an office, the Section for Students and Young Consumers, focused on student issues, and the individuals in that section have made recommendations

¹ 12 U.S.C. 5493.

and set a strategic plan for Bureau activities going forward. These efforts include a robust focus on research and other market issues.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR MENENDEZ FROM KATHY KRANINGER**

Q.1. You have asserted that the CFPB lacks statutory authority to include the Military Lending Act (MLA) in its supervisory exams, despite the fact that the 2013 National Defense Authorization Act (NDAA) specifically states that the MLA “shall be enforced” by the CFPB “under any other applicable authorities available to such agencies by law.”¹

If the 2013 NDAA, which is now law, states that the CFPB shall enforce the MLA with all of its applicable authorities (including supervisory authority), why is the Bureau failing to use all of its authorities and conduct supervisory exams that include the MLA?

A.1. When Congress created the Consumer Financial Protection Bureau in 2010, it did not give it the authority to supervise for compliance with the Military Lending Act (MLA). In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority.

The Bureau remains committed to the financial well-being of America’s servicemembers, and that commitment includes ensuring that those lenders subject to our jurisdiction comply with the MLA. I submitted a legislative proposal to Congress on January 17, 2019, to explicitly grant the Bureau authority to supervise for compliance with the MLA by amending the Consumer Financial Protection Act. The requested authority would complement the work the Bureau currently does to enforce the MLA. Furthermore the Bureau has worked with members of Congress as well as military and veterans’ advocacy groups to develop legislative language to amend the MLA to give the Bureau explicit supervisory authority.

Q.2. On what date did the CFPB stop including the MLA as part of its supervisory exams?

A.2. By August 2018, the Bureau stopped including reviewing for MLA compliance as part of any new supervisory exams. By October, 2018, all ongoing supervisory work on MLA compliance issues concluded.

Q.3. You have stated that your focus at the CFPB is on “prevention of harm.” And yet, enforcement actions have dropped by about 75 percent and consumer complaints have risen to new highs. Moreover, the enforcement actions the CFPB does take are weaker than ever. For example, earlier this year the CFPB fined a pension advance company \$1 for scamming veterans out of their pension funds.²

As part of your role to prevent harm, shouldn’t the Bureau penalize companies for cheating consumers so they will not engage in these practices again, and also send a message to other would-be bad actors?

¹ 10 U.S.C. §987(f)(6).

² <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-broker-high-interest-credit-offers/>

When calculating how much to fine a company pursuant to an enforcement action, is it your practice to take the recommendations of career staff?

According to a report by the *Washington Post*, leadership at the Bureau has ignored or circumvented career staff recommendations. Notably, Eric Blankenstein—a political appointee with a history of despicable, racist writing—has been a part of this dynamic.³ According to the report, despite recommending that a debt collector return \$60 million dollars to consumers and pay a heavy fine, Mr. Blankenstein decided to scrap consumer restitution and levied only an \$800,000 penalty on the company.

Will you commit that you will not circumvent reasonable recommendations from career staff in favor of imposing lower penalties on companies pursuant to enforcement actions?

A.3. Many factors are weighed to determine the precise mix of restitution, penalties, and injunctive relief appropriate in each case. At the center of that effort is serving justice in the public interest. The Bureau determines whether a penalty is warranted, and, if so, in what amount, based on the facts and circumstances of a particular matter. The Consumer Financial Protection Act (CFPA) provides three tiers of penalties, escalating based on the degree of intent behind the conduct. To determine the appropriate penalty amount, the Bureau takes into account the policy goals of civil penalties to accomplish specific and general deterrence and the mitigating factors in 12 U.S.C. §5565(c)(3), including the size of financial resources and good faith of the person charged, the gravity of the violations, the severity of the risks to or losses of the consumers, and “such other matters as justice may require.” The Bureau is also authorized to modify or remit any penalty.

In authorizing the Office of Enforcement to settle or sue in a matter in which the Bureau seeks to impose a penalty, I apply the law to the facts and circumstances at issue, and consider any Bureau staff recommendation.

Q.4. The Consumer Advisory Board (CAB) is integral to the CFPB’s ability to successfully fulfill its mandate to protect consumers. The CAB not only advises and consults with the CFPB on how the Bureau can best implement consumer protection laws, but also informs the CFPB of potential emerging threats to consumers.

What role do you think the CAB should play in informing the Bureau’s work?

A.4. I have seen firsthand how the Bureau benefits from the valuable input provided by the Consumer Advisory Board (CAB) and the Bureau’s other advisory committees. The CAB is an important resource for providing market intelligence and feedback on the Bureau’s work. In the Dodd–Frank Wall Street Reform And Consumer Protection Act, section 1014(a) provides specific direction and requires the Director to establish the CAB “to advise and consult with the Bureau in exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, in-

³ https://www.washingtonpost.com/investigations/how-trump-appointees-curbed-a-consumer-protection-agency-loathed-by-the-gop/2018/12/04/3cb6ed56-de20-11e8-aa33-53bad9a881e8_story.html?utm_term=.08814a64a5d9

cluding regional trends, concerns, and other relevant information.” I intend to utilize the CAB for this important, statutorily mandated purpose.

Q.5. How does the current composition of the CAB comply with statutory requirements under the Dodd–Frank Wall Street Reform and Consumer Protection Act?⁴

A.5. The current composition of the CAB is reflective of the requirements of the Dodd–Frank Wall Street Reform and Consumer Protection Act, section 1014(b).

Q.6. When did the CAB meet last? When is the CAB’s next scheduled meeting?

A.6. The CAB last met on June 5–6, 2019. I am looking forward to having them return for their in person meetings in October 2019.

Q.7. As a result of Mr. Mulvaney’s actions to reduce the size of the CAB from 25 members to 9 members, there are fewer civil rights, consumer protection, and fair lending representatives than in the previous CAB.

Can I get your commitment to increase the numbers of civil rights, fair lending, and consumer protection representatives on the CAB?

A.7. On March 21, 2019, the Bureau announced a series of enhancements to the advisory committee program. The enhancements are a result of my engagements with current and former advisory committee members during a 3-month listening tour and feedback from the CAB, CUAC, and CBAC meetings earlier that same month. The listening tour and meetings demonstrated how the Bureau benefits from the valuable input provided by the CAB and the other advisory committees; these groups help to improve our work on behalf of consumers. With these enhancements the membership will increase and terms for the committees will be extended from 1 year to 2 years, and the terms will be staggered. The 1-year term of all existing members expires September 2019, however a 1-year term extension will be provided to the appropriate number of current members in order to transition to the staggered terms and ensure continuity. In addition to a Chair, each committee will be assigned a Vice-Chair. The number of meetings will be increased to three in-person gatherings per year. Bureau staff are in the process of reviewing applications for the next round of appointments. I will seek to ensure that the membership of the committees includes, a broad array of experts meeting statutory requirements, mission needs, and demographic diversity.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARNER
FROM KATHY KRANINGER**

Q.1. As you know the CFPB’s QM Rule created an exemption from the 43 percent DTI cap for mortgages eligible for purchase by Fannie Mae and Freddie Mac. This is known commonly as the “GSE patch.” There’s evidence from historical default rates that

⁴ 12 U.S.C. §5494.

show looking at mortgage rate is a better predictor of default than the DTI ratio alone.

Do you believe changing the current DTI-heavy framework with one that captures risk more holistically would strike better balance between expanding access while mitigating credit risk?

A.1. The Consumer Financial Protection Bureau (Bureau) has been considering the impact of the ATR/QM rule and the role of the GSE patch in the mortgage market, recognizing the expiration of the patch no later than 2021. The potential expiration of the patch is a complex situation, and the Bureau is working diligently to formulate and implement appropriate strategies to handle it. Further we have been discussing it with other appropriate regulators, given the interconnected nature of the decisions we are separately facing. Your specific question about the weight given to the debt to income ratio (DTI) is one that would require significant research, particularly in terms of developing an alternative that would strike the balance you suggest. However, we have been consulting with various market participants, including financial institutions and consumer advocates, to identify appropriate methods that will ensure QM requirements impose as little burden on industry and consumers as possible and that access to credit is preserved.

Q.2. Ensuring high-quality and affordable mortgage access for underserved, creditworthy borrowers is an essential mission that helps drive economic growth. Currently, the QM patch is key to helping achieve that mission with the overall U.S. home ownership rate rising to the highest level (64.8 percent) since 2014.

If the GSEs remain in conservatorship beyond January 2021 and the QM patch were to expire without any sort of reliable substitute, approximately 30 percent of loans backed by the GSEs could face new liability which would negatively impact home values and create instability across the secondary market.

The June 2017 Department of Treasury report examining core principles for regulating the U.S. financial system outlined important areas for reform with respect to the Ability to Repay/Qualified Mortgage (ATR/QM) Rule and the QM Patch, which is currently set to expire on January 10, 2021, or when the GSEs exit conservatorship, whichever comes first.

As discussions around conservatorship status continue and the Patch expiration date quickly approaches, can you commit to working with market participants, including financial institutions and consumer advocates, to align QM requirements with GSE eligibility requirements in order to preserve a robust market?

A.2. I understand the importance of maintaining the smooth functioning of the mortgage market and avoiding any unnecessary or undue disruption that would interfere with consumers' access to credit. The expiration of the patch is a complex situation, and the Bureau is working diligently to formulate and implement appropriate strategies to handle it. We have been consulting with various market participants, including financial institutions and consumer advocates, to identify appropriate methods that will ensure that Qualified Mortgage requirements impose as little burden on industry and consumers as possible and that access to credit is preserved.

Q.3. Data Security—In your written testimony, you mention that the number one consumer complaint in 2018 was about consumer credit reporting agencies. According to the CFPB’s data, the Bureau has handled well over 150K credit reporting complaints.

I have a bill with Senator Warren—the Data Breach Prevention and Compensation Act—that would impose strict liability for breaches involving consumer data at credit reporting agencies. It provides additional authority to the FTC to levy fines, but that’s certainly not the only workable approach. I’m interested to know more about how you view the CFPB’s authority to regulate these firms, both with respect to data reporting accuracy and cybersecurity.

How has the CFPB used its supervisory authority to address complaints over data accuracy at the credit reporting agencies?

A.3. In carrying out its supervisory function, the Bureau has focused on the accuracy of consumer reports provided by consumer reporting agencies (CRAs) as well as the accuracy of information supplied by furnishers. The Bureau also focuses on dispute handling. Complaints regarding data accuracy are reviewed and evaluated to assess the CRA’s compliance with the accuracy requirements of the Fair Credit Reporting Act (FCRA). Often consumer complaints focus on a dispute about the accuracy of information contained in a consumer report. Frequently, these complaints implicate those provisions of the FCRA that require CRAs and furnishers to take certain actions in response to a dispute. Thus, complaints about disputes receive particular attention from the Bureau and are one of many data points evaluated when deciding to conduct supervisory examinations of CRAs and furnishers.

The Bureau previously summarized the results of its consumer reporting Supervision program in its March 2017 edition of its *Supervisory Highlights* publication.¹ As discussed in the report, the Bureau has focused its supervisory work on the key elements underpinning accuracy. As a result of these reviews, the Bureau directed specific improvements in data accuracy and dispute resolution at one or more CRAs, including:

- improved oversight of incoming data from furnishers;
- institution of quality control programs of compiled consumer reports;
- monitoring of furnisher dispute metrics to identify and correct root causes;
- enhanced oversight of third-party public records service providers;
- adherence to the independent obligation to reinvestigate consumer disputes; including review of relevant information provided by consumers; and
- improved communication to consumers of dispute results.

In addition, the Bureau directed both bank and nonbank furnishers, consistent with the FCRA’s requirements, to develop reasonable written policies and procedures regarding accuracy of the

¹ https://www.consumerfinance.gov/documents/2774/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf

information they furnish and to take corrective action when they furnished information they determined to be inaccurate. The Bureau also found that furnishers failed to either conduct investigations or send results of dispute investigations to consumers and required that these furnishers bring their dispute handling practices into compliance with legal requirements.

In addition to supervisory work, the Bureau has brought enforcement actions and entered into settlements related to institutions' violation of the FCRA's accuracy and dispute investigation requirements.² The Bureau's work in this important area is ongoing, using the authority and tools provided by FCRA, the Dodd–Frank Wall Street Reform and Consumer Protection Act, and other statutes.

Q.4. Do you believe the CFPB has the authority to supervise financial institutions with respect to cybersecurity?

A.4. The Bureau has certain statutory authorities that may be used to examine supervised entities for data security issues, but it is important to note that the Bureau has been excluded from exercising authority over certain cybersecurity statutes and rules.

As a general matter, the Bureau may “require reports and conduct examinations” of financial institutions within its supervisory authority for the purposes of (1) assessing compliance with the requirements of Federal consumer financial law, (2) obtaining information about compliance systems or procedures, and (3) detecting and assessing for risks to consumers and to markets for consumer financial products or services.³ Federal consumer financial law includes most provisions of the Fair Credit Reporting Act (FCRA), certain provisions of sections 502 through 509 of the Gramm–Leach–Bliley Act (GLBA), and the Dodd–Frank Wall Street Reform and Consumer Protection Act's prohibition on unfair, deceptive, or abusive acts or practices.⁴ Aspects of an institution's data security may implicate these provisions depending on the facts and circumstances, particularly in the event of a breach. The Bureau can supervise financial institutions within its supervisory authority for compliance with these provisions and require those institutions to so comply.

Critically, however, Congress specifically excluded certain statutory provisions related to data security from the Bureau's purview. The Bureau does not have authority to supervise for, enforce compliance with, or write regulations implementing the GLBA's safeguards provision or the FCRA's red flags and records disposal provisions. The GLBA safeguards provision and implementing rules and guidelines require certain financial institutions to develop, implement, and maintain comprehensive information security programs that contain administrative, technical, and physical safeguards. The FCRA records disposal provision and implementing rules require certain financial institutions to take reasonable meas-

² See, e.g., <http://files.consumerfinance.gov/f/201510-cfpb-consent-order-general-information-service-inc.pdf>; <http://files.consumerfinance.gov/f/201512-cfpb-consent-order-clarity-services-inc-timothy-ranney.pdf>; <https://files.consumerfinance.gov/f/documents/bcjp-security-group-inc-consent-order-2018-06.pdf>; <https://files.consumerfinance.gov/f/documents/201701-cfpb-CitiFinancial-consent-order.pdf>.

³ 12 U.S.C. §5514(b)(1)(A); see also 12 U.S.C. §5515(b)(1)(A).

⁴ 12 U.S.C. §§5531, 5536.

ures to protect against unauthorized access to or use of consumer report information in connection with its disposal. Finally, the FCRA red flags provision and implementing rule and guidelines require certain financial institutions to implement written Identity Theft Prevention Programs designed to detect, prevent, and mitigate identity theft.

Q.5. Do you believe CFPB has the authority to levy fines against Equifax through its Unfair and Deceptive Acts and Practices authority for the exposure of over 146 million Americans' credit files?

A.5. If an entity violates Federal consumer financial law, the entity can be required to pay a civil penalty. The Bureau determines whether to seek a penalty, and, if so, in what amount, based on the facts and circumstances of a particular matter. The Consumer Financial Protection Act (CFPA) provides three tiers of penalties, allowing for higher penalties based on the degree of intent of the person who has been charged. To determine the appropriate penalty amount, the Bureau takes into account the mitigating factors in 12 U.S.C. §5565(c)(3), which include the financial resources and good faith of the person charged, the gravity of the violations, the severity of the risks to or losses of the consumers, and "such other matters as justice may require." The Bureau is also authorized to modify or remit any penalty. In general, the Bureau does not comment publicly on confidential enforcement investigations to protect the integrity of the law enforcement process, including the confidentiality and due process interests of those subject to supervisory or investigatory activity.

Q.6. Does this type of behavior warrant such a fine?

A.6. As noted in my previous response, in general, the Bureau does not comment on confidential enforcement investigations. Premature disclosure can interfere with investigations and create reputational harm. The Bureau determines whether it believes a penalty is warranted and, if so, in what amount based on the facts and circumstances of a particular matter and the statutory factors set forth in the CFPA.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN
FROM KATHY KRANINGER**

Q.1. Operations—Please provide staffing levels for each division (e.g., SEFL) and office (e.g., Enforcement, NE Region) at the Bureau at the end of the pay period closest to November 17, 2017, December 11, 2018, and today.

A.1.

The table below reflects the staffing levels for the pay periods closest to the dates requested:

- 2017: Pay period 22 ending on November 11, 2017
- 2018: Pay period 23 ending on November 24, 2018
- 2019: Pay period 11 ending on June 8, 2019

Division	Actual # of Employees (2017)	Actual # of Employees (2018)	Actual # of Employees (2019)
Office of the Director	35	32	53
Office of the Director	18	12	13
Strategy Office	5	6	4
Office of Equal Opportunity & Fairness	12	14	29
Office of Innovation	NA	NA	3
Communications	NA	NA	4
Operations Division	451	453	277
Front Office	5	8	11
Consumer Response	147	142	NA
Administrative Operations	28	28	26
Procurement	22	23	22
Technology & Innovation (T&I)	148	155	129
CFO	36	35	35
OHC	55	55	54
Project Management	10	7	NA

Consumer Education & Engagement	78	80	204
Front Office	14	16	15
Financial Education	17	16	16
Consumer Engagement	12	13	14
Older Americans	8	10	10
Service Members	11	10	9
Students	6	5	2
Community Affairs*	10	10	9
Consumer Response	NA	NA	129
Research, Markets & Regulations	156	161	137
Front Office	11	9	10
Research	42	46	41
Regulations	74	71	59
Cards, Payments & Deposits Markets	9	10	7
Mortgage Markets	7	8	5
Small Business Lending Markets	4	6	4
Consumer Lending, Collections & Rpt Mkts	9	11	11
Supervision, Enforcement & Fair Lending	725	745	645
Front Office	8	8	10
Fair Lending & Equal Opportunity**	34	35	NA
Supervision Examinations	36	50	41
Supervision Policy	47	45	49
Enforcement	142	149	138
Regions	458	458	407
Northeast	110	117	100
Southeast	119	119	111
Midwest	106	105	94
West	123	117	102
Legal Division	75	78	66
Front Office	11	11	9
General Law & Ethics	24	25	21
Litigation & Oversight	14	17	15
Law & Policy	26	25	21

External Affairs	40	41	31
Front Office	13	8	9
Communications	7	6	NA
Legislative Affairs	7	7	3
Financial Institutions	5	6	5
Intergovernmental Affairs	2	4	4
Advisory Board Councils	NA	5	4
Public Engagement & Community Liaison ***	6	5	6
Other Programs	28	26	17
Ombudsman	4	4	5
Office of Administrative Adjudication	2	3	2
Director's Financial Analysts	22	19	10
Total	1588	1616	1430

*Community Affairs in the Division of Consumer Education and Engagement was previously named Financial Empowerment.

** The reorganization of the Fair Lending & Equal Opportunity office occurred on January 20, 2019.

*** Public Engagement & Community Liaison in the Division of External Affairs) was previously named Community Affairs.

Please note that reorganizations throughout the Consumer Financial Protection Bureau (Bureau) over the years have resulted in Offices moving between Divisions.

Q.2. In her testimony, Director Kraninger mentioned that Director Mulvaney had asked to the CFPB Inspector General to investigate conduct by Policy Associate Director Eric Blankenstein. Please provide a copy of the referral. If you're unable to provide the referral, please describe in detail what the Inspector General was asked to investigate.

A.2. Pursuant to Section 6 of the Inspector General Act, the Inspector General may make such investigations and reports relating to the administration of programs and the operations of the Bureau as are, in the judgment of the Inspector General, necessary or desirable. To protect the privacy and due process interests of everyone involved, it would not be appropriate for me to comment further on this matter. I will consider carefully any findings or recommendations of our Inspector General.

Q.3. Rules—On February 6, 2019, the CFPB proposed rescinding the mandatory underwriting provisions of its rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans (payday rule).

Did the CFPB have any new facts or evidence to justify the new rule or was the change an interpretation of existing evidence?

A.3. As discussed in part V.B. of the Payday Reconsideration Proposal, the Bureau, in tentatively determining to reconsider the Bureau’s mandatory underwriting requirements, focused its analysis primarily on the weight to be accorded to the key evidence, including research, on which the Bureau relied for the 2017 Final Rule. Nevertheless, in developing the Payday Reconsideration Proposal, the Bureau also considered other potentially relevant evidence, including research which became available between the time the Bureau issued the 2017 Final Rule in October 2017 and the time the Bureau published its Payday Reconsideration Proposal in February 2019. Although there were relatively few new studies made available during this limited interval, the Payday Reconsideration Proposal describes and analyzes several of them. See Bureau of Consumer Financial Protection, *Payday, Vehicle, Title, and Certain High-Cost Installment Loans*, 84 FR 4252, 4292–94 (Feb. 14, 2017). The Bureau also sought public comment on the Payment Reconsideration Proposal, including the submission of any potentially relevant research.

Q.4. The text of the new rule suggests that the existing evidence “is not sufficiently robust and reliable to support that determination, in light of the impact those provisions will have on the market for covered . . . loans, and the ability of consumers to obtain such loans.” Does the Bureau plan to do additional research related to the short-term loan market, including into the ability of payday customers to anticipate whether they will be able to repay the loans in full and on time?

A.4. As the Bureau noted in its Payday Reconsideration Proposal, “[a]fter many years of rulemaking, outstanding questions that the Bureau and other stakeholders have on whether the identified practice is unlawful and whether the Bureau intervention (i.e., the Mandatory Underwriting Provisions) is appropriate remain; the Bureau therefore preliminarily concludes that significantly more time, money, and other resources would be needed from the Bureau, industry, consumers, and other stakeholders to engage in the research and analysis required to develop specific evidence that might support determining that the identified practice is unfair and abusive and that imposing an ability-to-repay regulatory scheme is a necessary and appropriate response to that practice.” That being said, the Bureau will consider relevant research that is available in deciding its future steps for its Payday Reconsideration Proposal.

Q.5. The CFPB has filed numerous enforcement actions against entities that would have been covered by the payday rule. Did CFPB consider evidence gathered in the investigations or contained in the record of any cases before rescinding the underwriting standards?

A.5. In short, yes. In developing the Payday Reconsideration Proposal, “the Bureau relied on its expertise and experience in supervisory matters and enforcement actions concerning covered lenders in making judgments about the covered short-term and longer-term balloon-payment loan markets.”¹

¹ 84 FR 4266.

Q.6. The CFPB is reportedly in the process of writing a rule to implement the Fair Debt Collection Practices Act. Debt collection is consistently one of the top sources of consumer complaints.

What do you think are the most important issues facing consumers with respect to debt collection and how do you propose to address these problems?

A.6. On May 7, 2019, the Bureau issued a Notice of Proposed Rulemaking (NPRM) to implement the Fair Debt Collection Practices Act (FDCPA). The proposal would provide consumers with clear protections against harassment by debt collectors and straightforward options to address or dispute debts. Among other things, the NPRM would set clear, bright-line limits on the number of calls debt collectors may place to reach consumers on a weekly basis; clarify how collectors may communicate lawfully using newer technologies, such as voicemails, emails, and text messages, that have developed since the FDCPA's passage in 1977; and require collectors to provide additional information to consumers to help them identify debts and respond to collection attempts. The Bureau will carefully consider feedback received in response to the NPRM before issuing a final rule.

As the Bureau summarized in its 2019 Fair Debt Collection Practices Act Annual Report,² written notifications about the debt were the second-most common debt collection issue consumers complained to the Bureau about in 2018, while complaints about communication tactics were the third-most common issue. Any final debt collection rule issued by the Bureau will aim to bring clarity for both consumers and collectors as to the application of this over 40-year-old statute.

Q.7. Is the CFPB considering exempting limited content communications that ask a consumer to call back, potentially paving the way for unlimited contacts from debt collectors?

A.7. The proposal would not exempt limited content communications from the FDCPA. The FDCPA prohibits collectors from harassing or abusing consumers or engaging in unfair practices. These standards apply today and under the proposed rule; they would continue to apply, including where limited content messages are used to harass or abuse consumers or subject them to unfair practices. A collector who emails or texts too frequently may face liability, even if the emails or texts are limited content messages.

The Bureau's proposed rule would define, and provide example language for, a "limited-content message" that a debt collector could send by, for example, voicemail or text and which would include a request that the consumer reply to the message. The proposal would further provide that a limited-content message is an attempt to communicate but is not a communication. The Bureau's proposed rule generally would limit debt collectors to no more than seven attempts by telephone per week to reach a consumer about a specific debt including telephone calls that are limited content messages. Once a telephone conversation between the debt collector and consumer takes place, the debt collector must wait at least a week before calling the consumer again. The Bureau will carefully

² <https://www.consumerfinance.gov/data-research/research-reports/fair-debt-collection-practices-act-annual-report-2019/>

consider feedback received in response to the NPRM before issuing a final rule.

Q.8. Data obtained by FOIA from the FTC indicate that, in 2017, more than 200,000 consumers complained about repeated calls from debt collectors.³ Do you think it is important to impose stringent limits on the number of times collectors can call?

A.8. FDCPA section 806 prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. FDCPA section 806(5) describes one example of debt collector conduct that section 806 prohibits: causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

As noted in the previous response, the Bureau's proposed rule generally would limit debt collectors to no more than seven attempts by telephone per week to reach a consumer about a specific debt. Once a telephone conversation between the debt collector and consumer takes place, the debt collector must wait at least a week before calling the consumer again. The proposed rule also would clarify how debt collectors may lawfully use newer communication technologies, such as voicemails, emails, and text messages, to communicate with consumers and would protect consumers who do not wish to receive such communications by, among other things, allowing them to unsubscribe to future communications through these methods. The Bureau will carefully consider feedback received in response to the proposed rule before issuing a final rule. In addition, the Bureau has taken law enforcement action against a debt collector whose calling practices violated FDCPA section 806 and 806(5).⁴

Q.9. Will the cost benefit analysis for the new rule count as a harm to a consumers the collections of debts that are beyond the statute of limitations?

A.9. Pursuant to section 1022(b)(2) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, the Bureau is considering the benefits and costs to consumers and covered persons of proposed regulation under the FDCPA. In conducting its analysis under section 1022(b)(2), the Bureau generally takes as a baseline the state of the world absent the proposed rule and evaluates potential benefits and costs of the proposal relative to that baseline. The Bureau is not considering proposed rules that it would expect to increase collection or attempted collection of debts that are beyond the statute of limitations, and therefore the Bureau does not expect that proposed rules would harm consumers in that way.

³National Consumer Law Center “Consumer Complaint About Debt Collection”, February 2019, <https://www.nclc.org/images/pdf/pr-reports/report-analysis-debt-coll-ftc-data.pdf>.

⁴<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/green-tree-servicing-llc/>

Q.10. You visited a debt collection agency last month while you were in Chicago.⁵ Have you visited any legal services programs that help people with alleged debts? Any credit counseling agencies? Any trial courts where consumers are being sued on debts?

A.10. Since becoming Director of the Bureau, I have made it a priority to hear from various community and consumer groups, including legal aid organizations that provide direct client services. I have hosted a series of listening sessions and met with consumer advocates including legal aid attorneys to learn more about consumer finance issues affecting their communities.

On January 18, 2019, I hosted a community listening session in San Francisco, CA, where I met with approximately 21 consumer advocacy, civil rights, community organizations as well as legal service providers including staff representing the following organizations: the East Bay Community Law Center, National Housing Law Project, and Western Center on Law and Poverty. Debt collection was one of several issues discussed during the meeting.

On January 22, 2019, I met with nearly 40 consumer advocacy, civil rights, and community organizations at the Bureau headquarters to discuss a variety of topics, including debt collection. The National Consumer Law Center (NCLC) and the National Association of Consumer Advocates (NACA), both of which represent legal aid and private consumer attorneys, participated as did representatives from the Atlanta Legal Aid Society and Texas Rio Grande Legal Aid.

On February 5, 2019, I hosted a community listening session in Chicago, IL, where I met with approximately 14 consumer advocacy, civil rights, community organizations as well as legal service providers including staff representing the following organizations: Legal Assistance Foundation, Northwest Side Housing Center, Shriver Center on Poverty Law, and Spanish Coalition for Housing. The legal aid attorneys and local advocates in attendance discussed debt collection alongside other issues affecting local consumers.

On March 28, 2019, I met with approximately five consumer advocacy, civil rights, and community organizations. Debt collection was the primary topic of my meeting with consumer groups in New York City. Representatives from legal aid organizations, including Legal Services NYC, Mobilization for Justice, and The Legal Aid Society relayed client stories and made policy recommendations.

On April 30, 2019, I hosted a community roundtable in Los Angeles with approximately 20 community groups. Debt collections was one of few topics discussed. Representatives from legal aid organizations, including Bet Tzedek Legal Services, Legal Aid Foundation of Los Angeles, Legal Aid Society of San Diego, Public Counsel, NACA, and the University of Berkeley Center for Consumer Law and Economic Justice. I also visited Bet Tzedek Legal Services during that trip.

On May 8, 2019, I hosted a community roundtable in Philadelphia following a public town hall on debt collection. NCLC, Clarifi, Community Legal Services of Philadelphia, National Consumer Bankruptcy Rights, Public Interest Law Center, Senior Law Cen-

⁵ AccountsRecovery.Net “Behind the Scenes of Kathy Kraninger’s First Visit to a Collection Agency”, <https://www.accountsrecovery.net/2019/02/20/behind-the-scenes-of-kathy-kraningers-first-visit-to-a-collection-agency/>.

ter, and members of NACA attended to discuss their views on the Bureau's proposed debt collection rule.

Most recently, I met with legal aid and private consumers attorneys in Austin on May 22, 2019, including Texas RioGrande Legal Aid and members of NACA to discuss a few policy issues, including debt collection.

Bureau staff continue to engage in discussions with these groups to maintain regular exchanges of information about how issues such as debt collection affect consumers. In addition, Bureau subject matter experts have met with credit counseling agencies, such as Money Management International, and legal advocacy organizations, such as NCLC and the National Association of Consumer Bankruptcy Attorneys (NACBA), to discuss debt collection and debt settlement issues.

Q.11. Enforcement—In the first 6 months of his tenure, former Interim Director Mick Mulvaney indicated⁶ that he had not initiated any new enforcement actions. How many investigations have been initiated since November 17, 2017? How many since December 11, 2018?

A.11. The Bureau does not generally comment publicly on confidential enforcement investigations.

Q.12. In March 2018, the CFPB acknowledged that it was investigating consumer abuses related to the massive security breach announced by Equifax on September 7, 2017, but a year later, no enforcement action has been announced.⁷ Is the enforcement action still ongoing?

A.12. On February 21, 2019, Equifax published its Form 10-K, which disclosed that the Bureau, among other Government entities, was investigating the 2017 data breach. Beyond sharing what is in the public record, the Bureau will not comment further publicly on the details or status of this investigation at this time.

Q.13. On March 12, 2019, an OCC spokesman said “[w]e continue to be disappointed with Wells Fargo Bank N.A.’s performance under our consent orders and its inability to execute effective corporate governance and a successful risk-management program. We expect national banks to treat their customers fairly, operate in a safe and sound manner, and follow the rules of law.” The OCC partnered with the CFPB on an enforcement action against Wells Fargo in April 2018, related to its auto and mortgage lending practices.⁸

Is the CFPB satisfied that Wells Fargo is satisfying the terms of its consent order in the April 2018 case?

A.13. I am firmly committed to ensuring that Wells Fargo fully complies with the consent order, including the requirements of remediation and restitution for harmed consumers. The current de-

⁶Politico, “Mick Mulvaney Isn’t Blowing Up the CFPB”, April 30, 2018, <https://www.politico.com/story/2018/04/30/mick-mulvaney-consumer-protection-507460>.

⁷American Banker “Equifax Cites ‘Ongoing Investigation’ by CFPB, Other Agencies”, March 2, 2018, <https://www.americanbanker.com/news/equifax-cites-ongoing-investigation-by-cfpb-other-agencies>.

⁸CFPB “Bureau of Consumer Financial Protection Announces Settlement With Wells Fargo for Auto-Loan Administration and Mortgage Practices”, April 20, 2018, <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-settlement-wells-fargo-auto-loan-administration-and-mortgage-practices/>.

tails and specific status of Wells Fargo's remediation plan is confidential supervisory information under the Bureau's regulations. I can tell you that while the Bureau is working with Wells Fargo to ensure its compliance with the consent order, I am not satisfied with the Bank's progress to date and I have made that clear.

Q.14. If not, what tools does the CFPB have to force Wells Fargo to comply?

A.14. The Bureau expects Wells Fargo to comply with the terms of the consent order, and has the capability to examine for that compliance as well as take further enforcement action. In dealing with complex issues involving large institutions such as Wells Fargo, it is important that the Bureau consult with our regulatory partners in determining appropriate next steps. More specific information regarding the Bureau's deliberations in this matter implicates long-standing Executive Branch confidentiality interests that protect the Government's deliberative process and law-enforcement proceedings.

Q.15. Has Wells Fargo fully complied with the terms of its September 2016 consent order with the Bureau related to fake accounts?

A.15. The Bureau continues to work with Wells Fargo to ensure it fully complies with the Bureau's September 2016 consent order related to fake accounts.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR CORTEZ MASTO FROM KATHY KRANINGER**

Q.1. *Budget*—Will you reverse the decisions to eliminate positions, freeze new hiring, and draft an adequate budget that ensures the CFPB is fulfilling its statutory mission?

A.1. I have been working with Bureau leadership since my confirmation to understand the immediate staffing needs of the Consumer Financial Protection Bureau (Bureau) and have already approved at least 100 exceptions to the hiring freeze to date, which has resulted in over 190 internal and external personnel actions and/or hires across different program areas to ensure the important work of the Bureau continues with minimal interruptions during this initial transition period.

As I said in my testimony, I have also spent significant time understanding the Bureau's operations and looking at ways to improve execution of the Bureau's mission. With the incredible flexibility Congress provided this agency, I feel a deep sense of responsibility for ensuring we become a model for efficient use of resources. I will continue to examine how we can best utilize all the tools that Congress has given us—broadening our efforts to focus on prevention of harm as a primary goal for our actions.

With that in mind, I have approved a number of initiatives designed to help determine optimal staffing for the long term to ensure the Bureau runs as effectively as possible in service of our mission and that we dedicate resources to those functions that are of the highest value to consumers. These initiatives include better aligning resources with top policy priorities and improving how mission, administrative, and operational functions are performed

across the Bureau. I am working with Division Leaders on a Staffing Planning exercise which will take the Bureau out of the hiring freeze. Senior Leadership is aligning staffing resources and requests to ensure we can accomplish our mission in the most efficient and effective way possible. I expect we will complete the Staffing Planning before the start of Fiscal Year 2020, October 1, 2019.

Q.2. *Staffing at the CFPB*—How many lawyers now work in the enforcement division?

A.2. As of June 28, 2019, 104 attorneys work within the Office of Enforcement in the Division of Supervision, Enforcement, and Fair Lending.

Q.3. How many lawyers work in enforcement now compared to when Richard Cordray left the agency?

A.3. As of June 28, 2019, 104 attorneys work within the Office of Enforcement. On the date Director Richard Cordray resigned, the Office of Enforcement had 111 attorneys.

Q.4. Are you hiring new lawyers for the enforcement division or does your hiring freeze include attorneys who investigate consumer complaints for fraud and deceptive practices?

A.4. The Office of Enforcement is subject to the agency-wide hiring freeze. However, the Office has been granted an exception to the freeze in order to hire new line attorneys.

Q.5. What is the status of the Pathways Program now?

A.5. The hiring freeze includes the Pathways Program. The Bureau is not currently hiring paid interns, recent graduates, or Presidential Management Fellows under the Pathways Program. The Director's Financial Analyst (DFA) program has continued. A new cohort of DFAs just began.

Q.6. How many Pathways Program participants still work at the Bureau?

A.6. There are not any Pathways Program participants who still work at the Bureau.

Q.7. Are you recruiting a new cohort of applicants for the Pathways Program?

A.7. The Bureau is not actively recruiting new applicants for any of the Pathways Programs. As provided in response to earlier questions, I am working with Division Leaders on a Staffing Planning to ensure we can accomplish our mission in the most efficient and effective way possible. In addition, I have asked for a proposal related to the Pathways Program.

Q.8. *Political Appointees at the CFPB*—How many political appointees have you hired at the Bureau?

A.8. The Bureau has hired four political appointees during my tenure at the Bureau.

Q.9. What are their positions?

A.9. The four positions are:

- Policy Associate Director for External Affairs (replacing a departing incumbent of this position)

- Deputy Assistant Director for Communications
- Deputy Chief of Staff, and
- Deputy Director.

Q.10. What are their salaries?

A.10. The salaries of the four political appointees are:

- Policy Associate Director for External Affairs: \$259,500
- Deputy Assistant Director for Communications: \$185,615
- Deputy Chief of Staff: \$239,595, and
- Deputy Director: \$259,500.

Q.11. Please explain why the Bureau has hired this many political appointees?

A.11. The Dodd–Frank Act vests significant authority in the Director, including with regard to fixing the number and means of appointment of all Bureau employees, in accordance with the provisions of title 5, United States Code. It is a priority for me to develop a diverse, capable, and motivated team at the Bureau to carry out our important mission. As such, I will use the authorities Congress provided to that end.

Q.12. Do you plan to hire more political appointees? If so, in what positions?

A.12. With the above response in mind, the Bureau does not have any requests pending with OPM for additional Schedule C appointments.

Q.13. *Data Collection on the Student Loan Market*—During your testimony before the House Financial Services, Representative Foster asked you about a proposal by the Consumer Financial Protection Bureau to collect and analyze data on the student loan market.

Do you have further information on the Bureau’s proposal to collect student loan debt?

Did you receive any feedback on the proposal from the Department of Education or the Office of Management and Budget?

Do you plan to continue with this proposal to analyze the student loan market?

A.13. In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau published two notices in the *Federal Register* soliciting comment on a new proposed information collection—the “Student Loan Servicing Market Monitoring” project. The collection was submitted to the Office of Management and Budget (OMB) and the second notice was published in the *Federal Register* on September 6, 2017. The comment period for this notice closed on October 6, 2017. As of July 1, 2019, the information and collection request is still pending at OMB. At the hearing, I noted the priority of hiring the statutorily required position of Private Education Loan Ombudsman, which is underway. Once this position is filled, we will review the data request, assess how the data may support ongoing market monitoring, and make a determination after that whether the information request appropriately supports our work. This evaluation will contribute to the work I am already doing in

assessing our market monitoring efforts relative to student loans. In the meantime, the Bureau continuously monitors this market.

Q.14. *Auto Lending*—A record 7 million Americans are 3 months or more behind on their car payments. Economists suggest that rising car loan delinquencies signify major distress for low-income families.

Are you monitoring the large delinquencies in auto lending?

A.14. Yes. The Bureau’s Markets Office includes a program dedicated to monitoring the auto finance industry. As part of that work, we review market data and information and we work to identify the causes of any trends we observe. The absolute number of outstanding auto loans has increased by 7 percent over the past 2 years which, all else being equal, would be expected to lead to some increase in the absolute number of delinquent loans. Measured as a percentage of loans, as of the end of the first quarter of 2019, 1.49 percent of auto loans were 60 days or more delinquent. That was slightly below the delinquency rate at the end of the first quarter of 2018 and slightly above the delinquency rate at the end of the first quarter of 2017. We intend to continue to monitor this issue.

Q.15. Do you know how many of those borrowers with delinquent loans got their loans from a car dealership?

A.15. Estimates as to the share of auto loans that are originated through car dealerships range from a low of 63 percent to a high of over 80 percent. The data available to the Bureau through its market monitoring does not indicate the delinquency rate for these loans. The Bureau does monitor delinquency rates by credit scores and by the type of institution holding the loan and the Bureau has issued a research report analyzing the performance of loans by loan size and credit score.

Q.16. The CFPB still has a responsibility to enforce fair lending laws in auto lending.

What are you doing to ensure that borrowers of color are not being charged more due to discretionary dealer markups?

A.16. On May 21, 2018, the President signed a joint resolution passed by Congress disapproving the Bureau’s Bulletin titled “Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act” (Bulletin), which had provided guidance about Equal Credit Opportunity Act (ECOA) and its implementing regulation, Regulation B. Consistent with the joint resolution, the Bulletin has no force or effect. The ECOA and Regulation B are unchanged and remain in force and effect, and the Bureau continues to work to ensure compliance with their requirements.

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.

Q.17. Is the CFPB going to limit or prevent auto lenders from installing “kill switches” in cars that prevent the owner from driving them?

A.17. The Bureau’s Markets Office includes a program dedicated to monitoring the auto finance industry. As part of that work, staff re-

view market data and information that suggests trends in the market, and then work to identify possible causes. The Bureau is aware of the trend by auto lenders to include “kill switches,” better known as starter interrupt devices, in cars. Bureau staff have been researching various market sources, including lenders who utilize the starter interrupt devices, and vendors who provide the devices, to better understand their use and their effects, including their potential risks to consumers.

Q.18. *Military Lending Act*—In your testimony before the Senate Banking Committee, I requested the CFPB’s legal analysis that led you to determine the CFPB could not use its supervisory authority to ensure compliance with the Military Lending Act (MLA). Your staff told me that the legal analysis is considered confidentially deliberative analysis and not available.

Please share whatever information you can regarding your MLA decision.

A.18. In July 2018, Acting Director Mulvaney determined that the Bureau lacks statutory authority to supervise for compliance with the MLA. I agree with his determination. In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority. This is why I submitted a legislative proposal to Congress on January 17, 2019, to explicitly grant the Bureau authority to supervise for compliance with the MLA. The requested authority would complement the work the Bureau currently does to enforce the MLA.

Q.19. Please provide a list of which stakeholders you spoke to in making your determinations.

A.19. Although there were robust discussions on this topic at the Bureau, this determination is mine, per my authority and responsibility as the Director of the Bureau. In both my confirmation process and since becoming Director, I have discussed this issue extensively with Bureau staff, Department of Defense officials, members of Congress, and many stakeholder representatives. I take seriously my responsibility to protect servicemembers and, for that reason, officially transmitted a legislative proposal to Congress seeking the authority to conduct examinations for MLA compliance.

Q.20. Please explain how you expect servicemembers to identify and report violations of the MLA.

A.20. There are several ways in which the Bureau could obtain information about potential noncompliance. First, the Bureau could learn of potential violations of the MLA through a lender examination. Examiners might encounter evidence of violation of the MLA even though the examination was not specifically intended to review for MLA compliance. Absent routine lender examinations, the Bureau could learn of potential violations of the MLA through means including: (1) Direct complaints to Bureau as noted in the question; (2) self-reporting by the financial institutions under Bureau jurisdiction; (3) in the course of an investigation; (4) complaints to commanding officers or The Judge Advocate General’s Corps; (5) whistleblower tips; (6) referrals or information provided from State or other Federal regulators; or (7) consumer advocates.

While the 2013 amendment to the MLA did not give the Bureau explicit supervisory authority, it gave the Bureau explicit enforcement authority, which I am firmly committed to utilizing. The Bureau works to ensure MLA compliance by using its enforcement tools, which include investigations, civil investigative demands, and litigation.

It is important to note that the Department of Defense provides a variety of resources to help servicemembers understand their legal and financial rights, including legal assistance attorneys provided through the Judge Advocate General, and Personal Financial Managers. The Bureau routinely speaks to these practitioners and highlights the rights of servicemembers under the MLA. For example, the Bureau has sent staff to provide instruction on the MLA to teach at the Army Legal Assistance Continuing Legal Education course. When speaking with these stakeholders, Bureau staff routinely indicate that if a practitioner or their client suspect the client's rights have been violated, or if they have a question about a financial product or service, the client can submit a complaint to the Bureau.

The Bureau's Office of Servicemember Affairs has also published literature to inform servicemembers directly about their rights under the MLA. This material also explains to servicemembers that they can submit a complaint to the Bureau if they have an issue with a financial product or service.

Q.21. Please share the impact you expect will occur due to the CFPB no longer supervising financial institutions for compliance with the MLA.

A.21. The Bureau is committed to the financial well-being of America's servicemembers. This commitment includes ensuring that lenders subject to our jurisdiction comply with the Military Lending Act, so our servicemembers and their families are provided with the protections of that law. One way the Bureau promotes MLA compliance is by using its enforcement tool, which include investigations, civil investigative demands, and litigation. While the Bureau does not have explicit supervisory authority, I submitted a legislative proposal to Congress on January 17, 2019, to grant the Bureau authority to supervise for compliance with the MLA by amending the Consumer Financial Protection Act. The requested authority would complement the work the Bureau currently does to enforce the MLA. Furthermore the Bureau has worked with members of Congress as well as military and veterans advocacy groups to develop legislative language to amend the MLA to give the Bureau explicit supervisory authority.

Q.22. *Enforcement*—When Director Cordray left, there were 100 investigations in the pipeline and 25 in litigation. Complaints from consumers to the Bureau are increasing but enforcement actions are falling. Under Director Cordray, there were about two to four enforcement actions every month. Banks, credit cards, credit reporting firms, and online lenders were held accountable for deceptive practices.

How many investigations are the CFPB staff working on now?

A.22. The Bureau does not generally comment publicly on confidential enforcement investigations. I can note that there are 18 cases

in litigation and that, during my tenure, nine consent agreements have been announced.

Q.23. During your testimony before the House Financial Services, Representative Clay asked about staffing plans for fair lending. How many attorneys or examiners will devote all of their time to enforcing fair lending laws? Please provide a number.

A.23. The Office of Enforcement is responsible for the enforcement of fair lending laws. As of June 28, 2019, Enforcement has 104 attorneys, including the 5 attorneys who transferred from the Office of Fair Lending, all of whom are generalists who can participate in the investigation of any potential violation of Federal consumer financial law, including those focused on fair lending. The resources the Office of Enforcement deploys on fair lending matters is dependent on a number of factors, including the facts and circumstances of particular investigations.

The Office of Supervision Examinations is responsible for supervising entities for compliance with fair lending laws. Every CFPB examiner is trained to conduct fair lending examinations. During the course of a fair lending examination, the assigned team of examiners reviews the institutions 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 develops fair lending training, 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 product team currently includes five attorneys and one analyst who are devoted to fair lending supervision matters.

Q.24. Credit—Has the CFPB produced, or in the process of producing any new research on Americans' credit scores in the last year?

A.24. During the last year, the Bureau has produced four reports on American's credit scores or factors that may be used in calculating credit scores. Three of the Bureau's Quarterly Consumer Credit Trends reports addressed this topic. The first examined the prevalence of telecommunications debt and its effect on credit scores.¹ The second examined the effect of natural disasters on credit scores, focusing on Hurricane Harvey in 2017.² The third explored the relationship between fluctuations in consumers' credit scores and the timing of consumers' applications for credit.³ The Bureau also produced a report that looked at the relationship between where Americans reside and the likelihood of remaining

¹ <https://files.consumerfinance.gov/f/documents/bcfp-consumer-credit-trends-collection-telecommunications-debt-082018.pdf>

² <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-natural-disasters-and-credit-reporting/>

³ <https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-timing-applications-consumer-credit/>

credit invisible.⁴ This report was the third in a series of reports addressing credit invisibles.

Q.25. Do you think that credit checks for job applicants are “racially blind?”

A.25. Subject to certain requirements, the Fair Credit Reporting Act (FCRA) permits the use of consumer reports for employment purposes, including reports that contain information about a job applicant’s use of credit. The FCRA generally requires that consumer reporting agencies may provide a consumer report for employment purposes only if the person who obtains the report certifies that “information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation.”⁵ The Bureau notes that the U.S. Equal Employment Opportunity Commission (EEOC) has provided guidance to employers on the use of consumer reports in compliance with Federal laws that protect applicants and employees from discrimination.⁶

Q.26. Do you think that allowing private employers to check the credit history of their job applicants can lead to racial and gender discrimination?

A.26. As noted in the previous response, subject to certain requirements, the FCRA permits the use of consumer reports for employment purposes, including reports that contain information about a job applicant’s use of credit. The FCRA generally requires consumer reporting agencies to provide a consumer report for employment purposes only if the person who obtains the report certifies that “information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation.”⁷ The EEOC has provided guidance to employers on the use of consumer reports in compliance with Federal laws that protect applicants and employees from discrimination.

Q.27. Are the free credit freezes operating as intended? Have there been any problems?

A.27. The Bureau has been working expeditiously to implement the new consumer protections Congress provided in the Economic Growth, Regulatory Relief, and Consumer Protection Act, which include the new right to free credit freezes. The Bureau issued an interim final rule last year to amend the Summary of Consumer Rights and the Summer of Consumer Identity Theft Rights to conform to the EGRRCPA, including its provisions on credit freezes. As part of its efforts, the Bureau is preparing to supervise for compliance with the new requirements under the FCRA, and we are actively monitoring the implementation of the new protections in effect so far. At this time, the Bureau is still evaluating the implementation of the right to free credit freezes, and has not yet determined whether there are any problems or concerns with implementation or with the operation of the freezes. For an overview of

⁴ <https://files.consumerfinance.gov/f/documents/help-data-point-the-geography-of-credit-invisibility.pdf>

⁵ 15 U.S.C. §1681b(b)(1)(A)(ii).

⁶ See <https://www.eeoc.gov/ccoc/publications/background-checks-employers.cfm>.

⁷ 15 U.S.C. §1681b(b)(1)(A)(ii).

issues from credit reporting complaints, please see our 2018 annual report to Congress,⁸ which was published on March 29, 2019. This report details complaint data and trends across products and services for the prior year.

Q.28. *Civil Penalty Fund*—What is the status of the Civil Penalty Fund?

A.28. The Civil Penalty Fund continues to operate according to the guidelines described in the Civil Penalty Fund rule. The most recent allocation period ended on March 31, 2019. The most recent allocation of funds to classes of eligible consumers with uncompensated harm occurred on May 29, 2019. The next allocation will be made within 60 days after September 30, 2019, the date that the next allocation period ends. As of July 1, 2019, the Civil Penalty Fund has an unallocated available balance of \$430,083,461.60.

Q.29. Has every consumer who was harmed during the Fund’s freeze received redress?

A.29. To date, all classes of eligible consumers with uncompensated harm as of March 31, 2019, which was the end of the previous allocation period, have received allocations of funds from the Civil Penalty Fund sufficient to fully compensate that uncompensated harm. The next allocation, which will address uncompensated harm as of September 30, 2019, will occur by November 29, 2019. Distributions to consumers in all cases where allocations have been made are in progress.

Q.30. Please provide information on how many consumers have received redress from institutions that engaged in harmful and deceptive practices for the following firms. Please note the median amount of redress per firm/action per consumer, the amount of redress derived from the CPF and what percentage of the civil penalty damages remains to be distributed for each of these firms:

Hydra and its affiliated firms?

A.30. Consumers harmed by Hydra and its affiliated firms received an allocation of \$69,623,528 from the Civil Penalty Fund to compensate their harm on November 29, 2018.⁹ Analysis of the data to determine the amount of compensation to each consumer is ongoing.

Q.31. Wells Fargo’s fake accounts scandal?

A.31. The Wells Fargo consent order provides \$5,000,000 in estimated remediation. Analysis of actual remediation is ongoing. The consent order requires Wells Fargo to provide redress to affected consumers. It also includes a civil money penalty of \$100,000,000.¹⁰ This penalty is independent of consumer redress required by the order. No money from the Civil Penalty Fund has been allocated to compensate victims of the violations identified in the order addressing Wells Fargo’s sales practices.

Q.32. Equifax, Transunion, and Experian’s “educational” credit scores settlement?

⁸ <https://www.consumerfinance.gov/data-research/research-reports/2018-consumer-response-annual-report/>

⁹ <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/ssmhydra-group/>

¹⁰ <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/wells-fargo-bank-2016/>

A.32. The Equifax consent order provides for \$3,795,643 in consumer redress to approximately 340,000 consumers.¹¹ It also includes a civil money penalty of \$2,500,000. This penalty is independent of consumer redress required by the order.

The Transunion consent order provides for \$13,930,000 in consumer redress to approximately 700,000 consumers.¹² It also includes a civil money penalty of \$3,000,000. This penalty is independent of consumer redress required by the order.

The Experian consent order provides for a civil money penalty of \$3,000,000.¹³ It did not provide for consumer redress.

Q.33. Woodbridge Gold & Pawn's deception of annual costs of loans?

A.33. The consent order provides for \$56,763.36 in consumer redress.¹⁴ This redress was administered by the Virginia Attorney General. The consent order does not include a civil money penalty.

Q.34. RushCard's service breakdown?

A.34. The consent order provides for \$10,000,000 in consumer redress to approximately 100,000 consumers.¹⁵ It also includes a civil money penalty of \$3,000,000. This penalty is independent of consumer redress required by the order.

Q.35. Planet Home Lending's illegal kickbacks for mortgage referrals?

A.35. The consent order provides for \$265,000 in remediation.¹⁶ It does not include a civil money penalty.

Q.36. Williamson Law Firm's illegal fee charges?

A.36. A consent order with the Williamson Law Firm defendants was entered on March 27, 2019.¹⁷ The affected consumers' received an allocation of \$35,206,275 from the Civil Penalty Fund to compensate their harm on May 29, 2019. Analysis of the data to determine the amount of compensation to each consumer is ongoing.

Q.37. Works and Lentz's provision of inaccurate credit information?

A.37. The consent order provides for \$577,135 in remediation.¹⁸ It also includes a civil money penalty of \$78,800. This penalty is independent of consumer redress required by the order.

Q.38. *Debt Collection*—Since Richard Cordray left, how many cases against debt collection firms have been dropped?

A.38. The Bureau does not generally comment publicly on confidential enforcement investigations.

¹¹<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/equifax-inc-and-equifax-consumerservices-llc/>

¹²<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/transunion-interactive-inc-transunion-llc-and-transunion>

¹³<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/experian-holdings-inc-experian-information-solutions-inc-and-consumerinfocom-inc-dba-experian-consumer-services/>

¹⁴<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/woodbridge-coins-and-jewelry-exchange-inc-db-woodbridge-gold-pawn/>

¹⁵<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/unirush-llc-and-mastercard-international-incorporated/>

¹⁶<https://www.consumerfinance.gov/policy-compliance/enforcement/action/planet-home-lending-llc/>

¹⁷<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/vincent-howard-lawrence-w-williamson-howard-law-pc-williamson-law-firm-llc-and-williamson-howard-llp/>

¹⁸<https://www.consumerfinance.gov/policy-compliance/enforcement/actions/work-lentz-inc/>

Q.39. Will you survey consumers about their experiences with debt collection? If so, when?

A.39. The Bureau published the results of a survey about consumers' experiences with debt collection in January 2017.¹⁹ In November 2017, the Bureau sought Office and Management and Budget (OMB) approval under the Paperwork Reduction Act to conduct a web survey for the purpose of quantitative testing of disclosures in connection with the Bureau's ongoing debt collection rulemaking. Then-Acting Director Mulvaney decided that, before proceeding with the survey, he wanted to review the proposals under consideration for the rulemaking so that any data collection could be tailored to the scope of the rulemaking. The Bureau withdrew its original submission to OMB to permit this review. On February 4, 2019, the Bureau republished a 30-day notice regarding this disclosure testing. The comment period closed on March 6, 2019, and the Bureau has begun the consumer testing.

Q.40. *Consumer Complaint Database*—Will you commit to keeping the Consumer Complaint database open to public view? Easily searchable? Without removing historic data?

A.40. I recognize the importance of this issue and have heard from consumer groups and researchers on the importance of keeping the database open to the public. I have also heard from financial institutions that have expressed concerns about reputational harm. My predecessor, Acting Director Mulvaney, issued a Request for Information on this topic through which the Bureau received a number of comments, and I am actively looking at this issue now.

Q.41. *Small Business Lending*—Will the Bureau release the rule for Section 1071 in 2019?

A.41. In connection with its Spring 2019 Rulemaking Agenda,²⁰ the Bureau announced it intends to recommence work within the next year to begin to develop rules to implement section 1071 of the Dodd-Frank Act. The Bureau also has announced that it intends to hold a symposium to hear from a diverse group of experts with respect to the issues implicated in developing a data collection regime for small business loans. Before issuing a rule that may have a significant impact on a substantial number of small entities, the Bureau is required to convene a panel under the Small Business Regulatory Enforcement Fairness Act and confer with small entity representatives about the proposals the Bureau is considering putting forward. After completing that process, the Bureau is required by the Administrative Procedure Act to publish a proposal in the *Federal Register* and provide an opportunity for public comment on the proposal. Given those requirements, the Bureau will not be releasing a final rule under Section 1071 this year.

Q.42. How can the Bureau undertake market monitoring activities as you describe them without the data collection contemplated by the requirement itself?

¹⁹<https://files.consumerfinance.gov/f/documents/201701-cfpb-Debt-Collection-Survey-Report.pdf>

²⁰Diane Thompson, "Spring 2019 Rulemaking Agenda" (May 22, 2019), <https://www.consumerfinance.gov/about-us/blog/spring-2019-rulemaking-agenda/>.

A.42. Within the Research, Markets, and Regulations (RMR) division, the Bureau maintains the Office of Small Business Lending Markets (SBLM). SBLM serves as the subject matter expert regarding small business lending and compiles, analyzes, and distributes information on such matters. It is staffed by industry experts with extensive small business lending experience at various financial institutions including commercial banks, Community Development Financial Institutions, and the Small Business Administration. The Office provides the Bureau with insights from monitoring the market, understanding of the operational dimensions associated with such financing, and the needs of small business borrowers. SBLM meets on a regular basis with key stakeholders including industry (banks, credit unions, and nonbank providers), business organizations and the community advocacy community. It also provides other parts of the Bureau with ongoing support on supervisory and regulatory matters related to small business lending.

Q.43. Is it possible to isolate discrimination in small business lending without data broken down by gender and ethnicity?

A.43. Since at least 2015, the Bureau has prioritized small business lending in its fair lending examination activity. Those examinations have focused on assessing possible redlining, discrimination in application, underwriting, and pricing processes, and potential weaknesses in fair lending related compliance management systems. Redlining assessments rely on information about the race and ethnicity that predominates in the census tract in which a business's lending activity is located. Lending discrimination assessments of application, underwriting, and pricing processes rely on race, gender, and ethnicity data pertaining to specific applications or loan files. The Bureau has utilized standard proxy methodologies to develop probabilities for such loan-level data.

Q.44. *Payday Lending*—Earlier this year, the Bureau proposed rescinding the 2017 rule to protect consumers from debt traps. The CFPB argued that if the 2017 rule were to take effect there would be a reduction in short-term loans under 45 days.

What are the issues with giving borrowers more time to repay? Please cite any data or empirical evidence that supports your answer.

A.44. Neither the 2017 Payday Rule nor the current proposals mandate length of loan terms. The 2017 Payday Rule identifies the impact of the Mandatory Underwriting Requirements of Subpart B on the volume of short-term (loans with terms of fewer than 45 days) and longer-term balloon-payment loans.²¹ The Payday Reconsideration Proposal identifies the likely impact of the proposed rescission of these requirements.²²

Q.45. What new information did the CFPB rely on before the 2019 rescission? Please provide a full list and copies of this information if possible.

A.45. The Bureau has not rescinded the Mandatory Underwriting Requirements in the Payday Rule, but rather has only proposed such a rescission. The information the Bureau relied on before its

²¹ See 82 FR 54824–54835.

²² See 84 FR 4287–4288.

current proposal is set forth in the *Federal Register* Notice for the 2017 Payday Rule. The information relied on by the Bureau for its current proposal (including any information in addition to that relied on in the 2017 Payday Rule) is set out in the *Federal Register* Notice for the Payday Reconsideration Proposal.

Specifically with regard to new information, as discussed in part V.B. of the Payday Reconsideration Proposal, the Bureau, in tentatively determining to reconsider the Bureau's mandatory underwriting requirements, focused its analysis primarily on the weight to be accorded to the key evidence, including research, on which the Bureau relied for the 2017 Final Rule. Nevertheless, in developing the Payday Reconsideration Proposal, the Bureau also considered other potentially relevant evidence, including research which became available between the time the Bureau issued the 2017 Final Rule in October 2017 and the time the Bureau published its Payday Reconsideration Proposal in February 2019. Although there were relatively few new studies made available during this limited interval, the Payday Reconsideration Proposal describes and analyzes several of them. See Bureau of Consumer Financial Protection, *Payday, Vehicle, Title, and Certain High-Cost Installment Loans*, 84 FR 4252, 4292–94 (Feb. 14, 2017). The Bureau also sought public comment on the Payment Reconsideration Proposal, including the submission of any potentially relevant research.

Q.46. Did the CFPB conduct any new research on payday lending after the release of the 2017 rule?

A.46. The Bureau did not conduct any new research focused on payday lending after the release of the 2017 Payday Rule. The information relied on by the Bureau is set out in the *Federal Register* Notice for the Payday Reconsideration Proposal. The Payday Reconsideration Proposal, 84 FR 4252, identifies the information the Bureau relied on in proposing to rescind the Mandatory Underwriting Provisions.

Q.47. Did the CFPB rely on research done by outside observers? If so, please provide a list of this information.

A.47. The Bureau relied on research by outside observers both in issuing the 2017 Payday Rule with its mandatory underwriting provisions and in recently proposing to rescind those provisions. The information relied on by the Bureau is set out in the *Federal Register* Notice for the Payday Reconsideration Proposal. The Payday Reconsideration Proposal, 84 FR 4252, identifies the information the Bureau relied on in proposing to rescind the Mandatory Underwriting Provisions.

Q.48. If the lender has direct access to the borrower's bank account, should the lender make sure the borrower has the ability to repay the loan?

A.48. Regardless of the 2017 Payday Rule, lenders are free to make sure the borrower has the ability to repay the loan. In the 2017 Payday Rule, the Bureau mandated, with certain exceptions, that lenders follow specific and detailed standards in assessing consumers' ability to pay. The Bureau has preliminarily concluded that the weaknesses in the legal rationales and the evidentiary

record on which the Bureau relied for these Mandatory Underwriting Provisions in the 2017 Payday Rule support reconsidering these provisions. The Bureau requested comment on this preliminary conclusion and on alternatives to the rescission of the Mandatory Underwriting Provisions. The comment period ended on May 15, 2019, and the Bureau is in the process of analyzing the roughly 190,000 comments it has received.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA
FROM KATHY KRANINGER**

Q.1. Without including Military Lending Act (MLA) compliance as part of the CFPB's routine lender examinations, it is difficult to imagine how the CFPB would learn of illegal predatory lending—short of military families themselves recognizing on an individual basis that a lending product or practice is illegal and reporting the lender directly to the CFPB. Please provide an exhaustive list of official means, absent routine lender examinations, by which the CFPB would learn of potential violations of the MLA.

A.1. Regardless of whether the Consumer Financial Protection Bureau (Bureau) conducts examinations specifically intended to review for compliance with the Military Lending Act (MLA), covered creditors are required to comply with the MLA and its implementing regulation. I have indicated that all parties would benefit from greater legal clarity from Congress regarding the Bureau's authority to conduct examinations specifically intended to review for MLA compliance. In the meantime, there are several ways in which the Bureau could obtain information about potential noncompliance. First, the Bureau could learn of potential violations of the MLA through a lender examination. Examiners might encounter evidence of violation of the MLA even though the examination was not specifically intended to review for MLA compliance. Absent routine lender examinations, the Bureau could learn of potential violations of the MLA through means including: (1) Direct complaints to Bureau as noted in the question; (2) self-reporting by financial institutions under Bureau jurisdiction; (3) in the course of an investigation; (4) complaints to commanding officers or The Judge Advocate General's Corps; (5) whistleblower tips; (6) referrals or information provided from State or other Federal regulators; or (7) consumer advocates.

As you know, when Congress created the Bureau in 2010, it did not give it the authority to supervise for compliance with the MLA. In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority. The Bureau remains committed to the financial well-being of America's servicemembers, and that commitment includes ensuring that those lenders subject to our jurisdiction comply with the MLA. This is why I submitted a legislative proposal to Congress on January 17, 2019, to explicitly grant the Bureau authority to supervise for compliance with the MLA by amending the Consumer Financial Protection Act. The requested authority would complement the work the Bureau currently does to enforce the MLA. Furthermore the Bureau has worked with members of Congress as well as military and veterans advocacy groups to develop legislative language

to amend the MLA to give the Bureau explicit supervisory authority.

Q.2. Prior to making this decision, did the CFPB conduct a cost-benefit analysis to determine whether or not this decision to remove MLA compliance from routine lender examinations is the most efficient and effective regulatory approach? If so, what did the CFPB conclude? If not, why not?

A.2. In July 2018, Acting Director Mulvaney determined that the Bureau lacks statutory authority to supervise for compliance with the MLA. I agree with his determination. In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority. This is why I submitted a legislative proposal to Congress on January 17, 2019, to explicitly grant the Bureau authority to supervise for compliance with the MLA. The requested authority would complement the work the Bureau currently does to enforce the MLA.

Q.3. Did the CFPB consult with the Department of Defense, the agency primarily tasked with MLA implementation, prior to making this decision?

A.3. This predates my arrival at the Bureau. I understand that on November, 21, 2018, the Bureau communicated to the Department of Defense that the Bureau believes it does not have clear legal authority to supervise for compliance with the Military Lending Act (MLA). In addition to Bureau staff, I have discussed this issue with Department of Defense officials, members of Congress, and many stakeholder representatives since becoming Director. I take seriously my responsibility to protect servicemembers and, for that reason, officially transmitted a legislative proposal to Congress seeking the authority to conduct examinations for MLA compliance.

Q.4. Regarding the proposed Small Dollar Rule, please provide any all research on small-dollar lending published between October 5, 2017, and February 6, 2019, that CFPB used to justify changes to the 2017 Rule.

A.4. The information relied on by the Bureau is set out in the *Federal Register* Notice for the Payday Reconsideration Proposal.

As discussed in part V.B. of the Payday Reconsideration Proposal, the Bureau, in tentatively determining to reconsider the Bureau's mandatory underwriting requirements, focused its analysis primarily on the weight to be accorded to the key evidence, including research, on which the Bureau relied for the 2017 Final Rule. Nevertheless, in developing the Payday Reconsideration Proposal, the Bureau also considered other potentially relevant evidence, including research which became available between the time the Bureau issued the 2017 Final Rule in October 2017 and the time the Bureau published its Payday Reconsideration Proposal in February 2019. Although there were relatively few new studies made available during this limited interval, the Payday Reconsideration Proposal describes and analyzes several of them. See Bureau of Consumer Financial Protection, *Payday, Vehicle, Title, and Certain High-Cost Installment Loans*, 84 FR 4252, 4292–94 (Feb. 14, 2017). The Bureau also sought public comment on the Payment Reconsid-

eration Proposal, including the submission of any potentially relevant research.

Q.5. In its proposed changes, the CFPB revised its definition of “unfair” and “abusive” for the Ability-to-Repay provisions while keeping the current definition of “unfair” and “abusive” for the payment provisions. What analysis justifies multiple definitions of these terms within the context of a single Rule?

A.5. In the 2017 Payday Rule, Section 1041.4 identified as “an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that the consumers will have the ability to repay the loans according to their terms.” Also in the 2017 Payday Rule, Section 1041.7 identified as “an unfair and abusive practice for a lender to make attempts to withdraw payment from consumers’ accounts in connection with a covered loan after the lender’s second consecutive attempts to withdraw payments from the accounts from which the prior attempts were made have failed due to a lack of sufficient funds, unless the lender obtains the consumers’ new and specific authorization to make further withdrawals from the accounts.”

The 2017 Payday Rule sets out factual and legal analyses identifying as unfair and abusive the practice described in Section 1041.4.¹ The 2017 Payday Rule set out separate factual and legal analyses identifying as unfair and abusive a separate practice related to payments under Section 1041.7.² These analyses supporting Section 1041.7 are independent from the grounds that support the identification of an unfair and abusive practice under Section 1041.4.

The Payday Reconsideration Proposal revisits only the identification of an unfair and abusive practice under Section 1041.4, on factual and legal grounds specific to that practice (i.e., originating and underwriting of short-term and longer-term balloon-payment loans). The Proposal does not revisit the distinct factual or legal grounds supporting the identification of unfairness and abusiveness in Section 1041.7.

Q.6. Additionally, has the CFPB analyzed which types of short-term, small-dollar lending products benefit and do not benefit from this bifurcated structure? In both instances, please provide the analysis in question.

A.6. The analyses of the predicted impacts of the 2017 Payday Rule, including the respective impacts of the mandatory underwriting provisions (Subpart B) and the payment provisions (Subpart C), are set out in that Rule’s Section 1022 analysis, found at 82 FR 54814–54853. The analysis pertaining to the predicted impact of the proposed rescission of only the mandatory underwriting provisions of the 2017 Payday Rule is set out in the Payday Reconsideration Proposal’s Section 1022 Analysis, at 84 FR 4281–4295.

¹ 82 FR 53533–54624.

² 82 FR 54720–54744.

FALL 2018

Semi-Annual Report of the Bureau of Consumer Financial Protection



Message from the Director



I am pleased to present the Consumer Financial Protection Bureau's Semi-Annual report to Congress for April 1, 2018 to September 30, 2018. This is the first Semi-Annual report published by the Bureau under my term as CFPB Director, which started in mid-December.

This report describes issues facing consumers, actions undertaken by the CFPB to protect them, and what the Bureau is doing internally to help it do its job better. While this reporting period took place before I started as Director, the activities described provide a backdrop and a launching pad for a fresh start at this agency.

Protecting consumers was a primary objective of the Dodd-Frank Act. Supervising financial entities to ensure they comply with the law in this area, and enforcing the law when they don't, are ways to meet that objective. While I am Director, the CFPB will vigorously and even-handedly enforce the law.

As I begin my stewardship of the CFPB, I will also be moving forward with the agency as a team to make sure the American people have access to the financial products and services that best suit their individual needs, the financial institutions that serve them are competing on a level playing field, and the marketplace is innovating in ways that enhance consumer choice.

In more than 20 years of public service, I have made it a point to view issues from as many facets as possible – especially by considering the perspective from outside the Beltway. To expand perspective, it is imperative to meet the Bureau's stakeholders, to experience the workforce's challenges in the field, and to truly listen. For that reason I have been engaged in a listening tour – meeting with consumer advocates, faith leaders, banks, credit unions, non-depository financial companies, Members of Congress, fellow regulators, state and local officials, and innovators. I am also reviewing the operations of the CFPB, and am in the process of visiting staff and seeing operations up close in regional offices in San Francisco, Chicago and New York, talking with Bureau examiners across the country, and meeting with and learning from those who work in the Washington D.C. headquarters.

The months ahead to be covered in the next report will be busy, as we take actions to protect all consumers, carefully examine the effects of our rules and regulations, promote financial education, monitor and encourage innovation in financial technologies, and remain watchful for financial scams targeting seniors and other consumers. I look forward to tackling these issues alongside the team at the CFPB in the days and years ahead.

Sincerely,

A handwritten signature in blue ink, reading "Kathleen L. Kraninger". The signature is written in a cursive style with a light blue background behind it.

Kathleen L. Kraninger

Table of contents

Message from the Director	2
Table of contents	4
1. Significant problems faced by consumers in shopping for or obtaining consumer financial products or services	6
1.1 Credit Invisibility	6
1.2 Mortgage Shopping.....	7
2. Justification of the budget request of the previous year	9
3. List of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period.....	11
3.1 Significant rules	11
3.2 Less significant rules	12
3.3 Significant initiatives	13
3.4 Plan for upcoming initiatives	15
3.5 Plan for upcoming rules	16
4. Analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year	18
5. List, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year	21
5.1 Supervisory activities.....	21
5.2 Enforcement activities.....	21

- 6. **Actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions32**
- 7. **Assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law34**
- 8. **Analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.....36**
 - 8.1 Fair lending supervision36
 - 8.2 Fair lending enforcement37
 - 8.3 Fair lending outreach38
 - 8.4 Interagency coordination39
- 9. **Analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion (OMWI).....40**
 - 9.1 Increasing workforce diversity..... 41
 - 9.2 Increasing contracting diversity42
 - 9.3 Diversity within the Bureau contractors’ workforces.....43

1. Significant problems faced by consumers in shopping for or obtaining consumer financial products or services

1.1 Credit Invisibility

Consumers can face difficulties accessing certain forms of credit if they lack a credit record that is treated as “scorable” by widely used credit scoring models. These consumers include those who are “credit invisible,” meaning that they do not have a credit record maintained by one of the three nationwide consumer reporting agencies (NCRAs). They also include those that have a credit record that contains either too little information (“insufficient unscorable”) or information that is deemed too old to be reliable (“stale unscorable”), though the exact definition of what makes a record insufficient or stale unscorable varies from one credit scoring model to another.

The Bureau published two previous Data Points about consumers with limited credit histories. The first, [Credit Invisibles](#), estimated the number and demographic characteristics of consumers who were credit invisible or had an unscorable credit record. The second, [Becoming Credit Visible](#), explored the ways in which consumers first establish a credit record and thus transition out of credit invisibility.

During the reporting period the Bureau released [The Geography of Credit Invisibility \(September 2018\)](#) which examined the relationship between geography and credit invisibility. The importance of geography in accessing credit has been a long-standing concern for policymakers, going at least as far back as early efforts to combat redlining. In recent years, additional interest has been paid to the problems faced by people in “credit deserts,” which generally are defined as areas with little access to traditional sources of credit. Because credit deserts have limited options for accessing credit, residing in those areas may inhibit the ability of consumers to establish an NCRA credit record. If so, the incidence of credit invisibility should be higher in credit deserts than in areas with better access to traditional credit. Key findings include:

- Focusing on the incidence of credit invisibility among adults 25 and older may better identify tracts where access to traditional sources of credit is more limited. The research

found that over 90 percent of consumers transition out of credit invisibility by their mid-to-late 20s. This observation may indicate that focusing on the population of consumers age 25 and older is most useful in identifying geographic areas where traditional sources of credit are scarce, sometimes referred to as “credit deserts.”

- Credit invisibility among adults 25 and older is concentrated in rural and highly urban geographies. The research found that, while credit invisibility is more common in rural areas as a percentage of the population, over two-thirds of adults 25 and older who are credit invisible reside in metropolitan areas because of the higher population within those areas. The Bureau also observed elevated likelihood of credit invisibility in rural areas regardless of the tract’s income level, in contrast to a strong relationship between neighborhood income and the likelihood of credit invisibility in highly urban areas.
- Consumers in rural and low-to-moderate income areas use credit cards as entry products less often than consumers residing in other geographies. Among consumers who successfully transition out of credit invisibility, the overall rate of using a credit card as an entry product is much lower for those living in rural areas. Additionally, among this same population, our research found that the rate of using a credit card as an entry product is also lower for consumers living in lower-income neighborhoods. This result is more pronounced in highly urban areas.
- Lack of internet access appears to have a stronger relationship to credit invisibility than does the presence of a bank branch. While younger adults residing near bank branches in highly urban areas used credit cards as entry products more often than those residing further away, overall we found little relationship between distance to the nearest branch and the incidence of credit invisibility. In contrast, our research did find that many credit products are originated through online means, causing credit invisibility to be more prevalent in areas with less internet access.

1.2 Mortgage Shopping

Mortgage interest rates and loan terms can vary considerably across lenders. Despite this fact, many homebuyers do not comparison shop for their mortgages. In recent studies, more than 30 percent of borrowers reported not comparison shopping for their mortgage, and more than 75 percent of borrowers reported applying for a mortgage with only one lender. Previous Bureau research suggests that even in the most competitive segment of the mortgage market, consumers who shop can save over \$700 per year on a \$200,000 mortgage and many thousands of dollars over the life of the loan.

There are a few possible reasons why consumers do not comparison shop. Rates change regularly, and it takes more than an online search to get reliable, up-to-date information. Also, getting an accurate rate quote generally requires sharing personal financial information, so homebuyers may be wary of sharing such information with several lenders. Another reason people don’t shop around for their mortgage is because most believe it doesn’t make a difference. According to the National Survey of Mortgage Originations (NSMO), a joint project by the Bureau and Federal Housing Finance Agency (FHFA), most consumers think that “prices are roughly the same” across lenders.

- To examine whether encouraging mortgage shopping benefits consumers, the Bureau published a [series of research briefs \(May 2018\)](#) on homebuying and mortgage shopping based on a study of prospective homebuyers in 2016. The study followed consumers who were in the market to purchase their home over a period of months and asked questions about their consideration of a mortgage. The questionnaires centered on basic understanding of mortgage loans, both in terms of actual knowledge and confidence in navigating the process. The study found, among other things, that relative to a control group, consumers who were encouraged to shop did in fact contact more lenders and receive more loan estimates. They also became more knowledgeable regarding the mortgage market and felt greater self-confidence in their ability to deal with mortgage-related issues. It also provided suggestive evidence that encouraging shopping may reduce the cost of consumers' mortgages.

2. Justification of the budget request of the previous year

The Bureau's Strategic Plan, Budget, and Performance Plan and Report, which is available online at www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/, includes estimates of the resources needed for the Bureau to carry out its mission. The document also describes the Bureau's performance goals and accomplishments, supporting the Bureau's long-term Strategic Plan.

Fiscal year 2018 spending through the end of the fourth quarter of FY 2018

BUREAU FUND

As of September 30, 2018, the end of the fourth quarter of FY 2018, the Bureau had spent¹ approximately \$553.0 million in FY 2018 funds to carry out the authorities of the Bureau under Federal financial consumer law. Approximately \$320.5 million was spent on employee compensation and benefits for the 1,510 Bureau employees who were on-board by the end of the quarter.

Table 1: FY 2018 SPENDING BY EXPENSE CATEGORY

Expense Category	Fiscal Year 2018
Personnel Compensation	232,228,000
Benefit Compensation	88,221,000
Travel	15,675,000
Transportation of Things	122,000
Rents, Communications, Utilities & Misc.	15,698,000
Printing and Reproduction	4,431,000

¹This amount includes new obligations and upward adjustments to previous year obligations. An obligation is a transaction or agreement that creates a legal liability and obligates the government to pay for goods and services ordered or received.

Expense Category	Fiscal Year 2018
Other Contractual Services	169,172,000
Supplies & Materials	5,195,000
Equipment	22,090,000
Land and Structures	149,000
Total (as of September 30, 2018)	\$ 552,981,000

FY 2018 Funds Transfers Received from the Federal Reserve

The Bureau is funded principally by transfers from the Federal Reserve System, up to the limits set forth in the Dodd-Frank Act. Funding from the Federal Reserve System for FY 2018 is capped at \$663 million. As of September 30, 2018, the Bureau had received the following transfers for FY 2018. The amounts and dates of the transfers are shown below.²

Table 2: Fund Transfers

Funds Transferred	Date
\$217.1M	October 18, 2017
\$0	January 18, 2018
\$98.5M	April 2, 2018
\$65.7M	July 2, 2018
\$381.3M	Total

Additional information about the Bureau's finances, including information about the Bureau's Civil Penalty Fund and Bureau-Administered Redress programs, is available in the annual financial reports and the CFO quarterly updates published online at www.consumerfinance.gov/about-us/budget-strategy/financial-reports/.

Copies of the Bureau's quarterly funds transfer requests are available online at www.consumerfinance.gov/about-s/budget-strategy/funds-transfer-requests/.

² Current year spending in excess of funds received is funded from the prior year unobligated balance.

3. List of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period³

3.1 Significant rules⁴

- Final Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans⁵

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

⁴This list includes significant final rules.

⁵www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans. The Bureau announced in January 2018 that it intends to open a rulemaking to reconsider its 2017 rule. www.consumerfinance.gov/about-us/newsroom/cfbp-statement-payday-rule/.

3.2 Less significant rules⁶

- Final Rule: Mortgage Servicing Rules under the Truth in Lending Act (Regulation Z)⁷
- Final Rule: Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)⁸
- Interim Final Rule: Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)⁹
- Final Rule: Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection¹⁰
- Final Rule: Amendment to the Annual Privacy Notice Requirement Under the Gramm-Leach-Bliley Act (Regulation P)¹¹
- Final Rule: Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)¹²

⁶ This list includes less significant rules, and it is not comprehensive. This list may exclude certain non-major rules, proposed rules, procedural rules, interpretive rules, and other miscellaneous routine rules such as annual threshold adjustments. More information about the Bureau's rulemaking activities is available in the Unified Agenda, at www.reginfo.gov, and on the Bureau's public website, at www.consumerfinance.gov/policy-compliance/rulemaking.

⁷ www.federalregister.gov/documents/2018/03/12/2018-04823/mortgage-servicing-rules-under-the-truth-in-lending-act-regulation-z.

⁸ www.federalregister.gov/documents/2018/02/13/2018-01305/rules-concerning-prepaid-accounts-under-the-electronic-fund-transfer-act-regulation-e-and-the-truth.

⁹ www.federalregister.gov/documents/2017/10/16/2017-21012/mortgage-servicing-rules-under-the-real-estate-settlement-procedures-act-regulation-x.

¹⁰ www.federalregister.gov/documents/2017/10/02/2017-20417/equal-credit-opportunity-act-regulation-b-ethnicity-and-race-information-collection.

¹¹ www.federalregister.gov/documents/2018/08/17/2018-17572/amendment-to-the-annual-privacy-notice-requirement-under-the-gramm-leach-bliley-act-regulation-p.

¹² www.federalregister.gov/documents/2018/05/02/2018-09243/federal-mortgage-disclosure-requirements-under-the-truth-in-lending-act-regulation-z.

3.3 Significant initiatives

- Notice of Proposed Policy Guidance: Policy to Encourage Trial Disclosure Programs¹³
- Symposium on Building a Bridge to Credit Visibility¹⁴
- Call for Evidence¹⁵
 - Request for Information Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes¹⁶
 - Request for Information Regarding Bureau Financial Education Programs¹⁷
 - Request for Information Regarding Bureau Guidance and Implementation Support¹⁸
 - Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities¹⁹
 - Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities²⁰
 - Request for Information Regarding Bureau Rulemaking Processes²¹
 - Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information²²

¹³ www.federalregister.gov/documents/2018/09/10/2018-19385/policy-to-encourage-trial-disclosure-programs.

¹⁴ <https://www.consumerfinance.gov/about-us/events/archive-past-events/building-bridge-credit-visibility>

¹⁵ <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence/>

¹⁶ www.federalregister.gov/documents/2018/04/17/2018-07943/request-for-information-regarding-the-bureau-consumer-complaint-and-consumer-inquiry-handling.

¹⁷ www.federalregister.gov/documents/2018/04/09/2018-07222/request-for-information-regarding-bureau-financial-education-programs.

¹⁸ www.federalregister.gov/documents/2018/04/02/2018-06674/request-for-information-regarding-bureau-guidance-and-implementation-support.

¹⁹ www.federalregister.gov/documents/2018/03/26/2018-06027/request-for-information-regarding-the-bureau-inherited-regulations-and-inherited-rulemaking.

²⁰ www.federalregister.gov/documents/2018/03/21/2018-05612/request-for-information-regarding-the-bureau-adopted-regulations-and-new-rulemaking-authorities.

²¹ www.federalregister.gov/documents/2018/03/09/2018-04824/request-for-information-regarding-bureau-rulemaking-processes.

²² www.federalregister.gov/documents/2018/03/06/2018-04544/request-for-information-regarding-bureau-public.

- Request for Information Regarding Bureau External Engagements²³
- Request for Information Regarding the Bureau's Supervision Program²⁴
- Request for Information Regarding Bureau Enforcement Processes²⁵
- Request for Information Regarding Bureau Rules of Practice for Adjudication Proceedings²⁶
- Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes²⁷
- Other Requests for Information:
 - Request for Information Regarding Consumers' Experience With Free Access to Credit Scores²⁸
 - Request for Information Regarding Bureau Data Collections²⁹
- Guidance Documents: The Bureau issued the following bulletins and other guidance documents over the past year:³⁰
 - Summer 2018 Supervisory Highlights³¹

[reporting-practices-of-consumer-complaint](#).

²³ www.federalregister.gov/documents/2018/02/26/2018-03788/request-for-information-regarding-bureau-external-engagements.

²⁴ www.federalregister.gov/documents/2018/02/20/2018-03358/request-for-information-regarding-the-bureau-supervision-program.

²⁵ www.federalregister.gov/documents/2018/02/12/2018-02710/request-for-information-regarding-bureau-enforcement-processes.

²⁶ www.federalregister.gov/documents/2018/02/05/2018-02208/request-for-information-regarding-bureau-rules-of-practice-for-adjudication-proceedings.

²⁷ www.federalregister.gov/documents/2018/01/26/2018-01435/request-for-information-regarding-bureau-civil-investigative-demands-and-associated-processes.

²⁸ www.federalregister.gov/documents/2017/11/3/2017-24555/request-for-information-regarding-consumers-experience-with-free-access-to-credit-scores.

²⁹ <https://www.federalregister.gov/documents/2018/09/28/2018-21162/request-for-information-regarding-bureau-data-collections>

³⁰ The Bureau posts many documents relating to compliance and guidance on its website at www.consumerfinance.gov/guidance.

³¹ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_supervisory-highlights_issue-17_2018-09.pdf.

- BCFP Bulletin 2018-01: Changes to Types of Supervisory Communications³²
- Statement on Supervisory Practices regarding Financial Institutions and Consumers Affected by a Major Disaster or Emergency³³
- Interagency Statement Clarifying the Role of Supervisory Guidance³⁴
- BCFP Supervision and Examination Process³⁵
- Exam Scope Summary Template³⁶
- Real Estate Settlement Procedures Act (RESPA) Examination Procedures³⁷
- Truth in Lending Act (TILA) Examination Procedures³⁸

3.4 Plan for upcoming initiatives

- Proposed upcoming initiatives, as reflected in the Bureau's Fall 2018 Unified Agenda:
 - Policy Statement: Public Release of Home Mortgage Disclosure Act Data³⁹
 - Pre-Rule Activity: Threshold Adjustment to Escrow Provision for Higher Priced Mortgage Loans

³² https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf

³³ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_statement-on-supervisory-practices-disaster-emergency.pdf

³⁴ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/interagency-statement_role-of-supervisory-guidance.pdf

³⁵ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/032017_cfpb_examination-process-supervision-and-examination-manual.pdf

³⁶ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201703_cfpb_Scope-Summary-Template.pdf

³⁷ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_respa-exam-procedures.pdf

³⁸ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_respa-exam-procedures.pdf

³⁹ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-announces-policy-guidance-disclosure-home-mortgage-data/>

- Pre-Rule Activity: Proposed Assessed Clean Energy Loans

3.5 Plan for upcoming rules

- Proposed rules for the upcoming period, as reflected in the Bureau's Fall 2018 Unified Agenda:
 - Payday, Vehicle title, and Certain High-Cost Installment Loans: the Bureau announced in January 2018 that it intends to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans.
 - Debt Collection Rule: The Bureau will work towards releasing a proposed rule concerning FDCPA collectors' communications practices and consumer disclosures.
 - The Expedited Funds Availability Act (Regulation CC): The Bureau will work with the Board of Governors of the Federal Reserve System to issue jointly a rule that includes provisions within the Bureau's authority.⁴⁰
 - Home Mortgage Disclosure (Regulation C): The Bureau announced in December 2017 that it intends to engage in a rulemaking to reconsider various aspects of the Bureau's 2015 rule under the Home Mortgage Disclosure Act (Regulation C), which could involve issues such as the institutional and transactional coverage tests and the rule's discretionary data points.
 - Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C): The Bureau will incorporate into Regulation C interpretations and procedures set forth in an interpretive and procedural rule issued to implement and clarify the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amended certain provisions of the Home Mortgage Disclosure Act.⁴¹

⁴⁰ <https://www.federalregister.gov/documents/2018/12/10/2018-25746/availability-of-funds-and-collection-of-checks-regulation-cc>

⁴¹ <https://www.federalregister.gov/documents/2018/09/07/2018-19244/partial-exemptions-from-the-requirements-of-the-home-mortgage-disclosure-act-under-the-economic>

- Final rules for the upcoming period as reflected in the Bureau's Spring 2018 Unified Agenda:
 - Amendments Relating to Disclosure of Records and Information: This rule will include procedures used by the public to obtain information from the Bureau under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings.⁴²
 - Summaries of Rights under the Fair Credit Reporting Act (Regulation V): The Bureau is seeking comment on an interim final rule that adjusts certain model forms under the Fair Credit Reporting Act in light of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amendments to strengthen consumers' ability to protect themselves from identity theft.⁴³
 - Technical Specifications for Submissions to the Prepaid Account Agreements Database: The Bureau will publish technical specifications prescribing the form and manner in which issuers are to submit prepaid agreements, any amendments or withdrawals thereof, and related information to the Bureau pursuant to the requirements in the prepaid accounts rule.

⁴² This rule has since become final and gone into effect.
<https://www.federalregister.gov/documents/2018/09/12/2018-19384/disclosure-of-records-and-information>.

⁴³ <https://www.federalregister.gov/documents/2018/09/18/2018-20184/summaries-of-rights-under-the-fair-credit-reporting-act-regulation-v>.

4. Analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year

During the period October 1, 2017, through September 30, 2018, the Bureau received approximately 329,000 consumer complaints.⁴⁴ Consumers submitted approximately 82% of these complaints through the Bureau's website and 5% via telephone calls. Referrals from other state and federal agencies accounted for 8% of complaints. Consumers submitted the remainder of complaints by mail, email, and fax. The Bureau does not verify all the facts alleged in complaints, but gives companies the opportunity to confirm a commercial relationship with the consumer before providing a substantive response. The Bureau sent approximately 263,200 (or 80%) of complaints received to companies for review and response.⁴⁵ Companies responded to approximately 93% of complaints that the Bureau sent to them for response during the period. Five percent of complaints were pending response from the company at the end of the period. Company responses 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: mortgage foreclosure alternatives that help consumers keep their home; stopping unwanted calls from debt collectors; ceasing collection activity on debts not owed; correcting consumers' credit reports; correcting account information; and addressing formerly unmet customer service issues. Companies did not provide timely responses to 2% of the complaints sent to them for response.

When consumers submit complaints by web or phone they are prompted to select the consumer financial product or service with which they have a problem as well as the type of problem they

⁴⁴ All data are current through October 1, 2018. This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. For more information on our complaint process refer to our website, www.consumerfinance.gov/complaint/process.

⁴⁵ The Bureau referred 15% of the complaints it received to other regulatory agencies and found 4% to be incomplete. At the end of this period, 0.3% of complaints were pending with the consumer and 0.6% were pending with the Bureau. Percentages in this section of the report may not sum to 100% due to rounding.

are having with that product or service. The Bureau uses these consumer selections to group the financial products and services about which consumers complain to the Bureau for public reports. As shown in Table 3, credit or consumer reporting, and debt collection, are the most-complained-about consumer financial products and services followed by mortgages, credit cards, and checking or savings accounts.

TABLE 3: CONSUMER COMPLAINTS BY PRODUCT

Consumer complaints by product	%
Credit or consumer reporting	37%
Debt collection	25%
Mortgage	10%
Credit card	9%
Checking or savings	7%
Student loan	3%
Money transfer or service, virtual currency	3%
Vehicle loan or lease	3%
Personal loan	1%
Payday loan	0.7%
Prepaid card	0.7%
Credit repair	0.3%
Title loan	0.2%
Total consumer complaints by product	100%

The Bureau's Office of Consumer Response analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses. Consumer Response uses a variety of approaches to analyze consumer complaints, including cohort and text analytics, to identify trends and possible consumer harm.

The Bureau uses insights gathered from complaint data and analyses to scope and prioritize examinations and ask targeted questions when examining companies' records and practices, to help understand problems consumers are experiencing in the marketplace, to provide access to

information about financial topics and opportunities to build skills in money management that can help them avoid future problems, and to inform enforcement investigations to help stop unfair, deceptive, or abusive acts or practices. The Bureau shares consumer complaint information with prudential regulators, the Federal Trade Commission, other federal agencies, and state agencies,⁴⁶ to ensure other regulators have the complaint information needed to regulate the functioning of the consumer financial markets for such products and services. The Bureau also publishes complaint data to provide transparency into its operations and remain accountable to consumers and the marketplace.⁴⁷

⁴⁶ Dodd-Frank Act § 1013(b)(3)(D).

⁴⁷ During the reporting period, the Bureau published complaint reports about student loans, complaints submitted by servicemembers, and debt collection. The Bureau also publishes the Consumer Response Annual Report, which provides a more detailed analysis of complaints. These reports can be viewed at www.consumerfinance.gov/data-research/research-reports.

5. List, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year

5.1 Supervisory activities

The Bureau's supervisory activities with respect to individual institutions are non-public. The Bureau has, however, issued numerous supervisory guidance documents and bulletins during the preceding year. These documents are listed under section 3.3 of this Report as issued guidance documents undertaken within the preceding year.

5.2 Enforcement activities⁴⁸

The Bureau was a party in the following public enforcement actions from October 1, 2017, through September 30, 2018, detailed as follows. This section also identifies those actions involving Office of Administrative Adjudication Orders with respect to covered persons that are not credit unions or depository institutions.

In the Matter of Triton Management Group, Inc., TMS Group, Inc. (File No. 2018-CFPB-0005) (not a credit union or depository institution). The Bureau entered a consent order against Triton and TMS Group on July 19, 2018, finding that Triton deceived Mississippi consumers in violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (CFPA), and violated the disclosure requirements of the Truth in Lending Act (TILA) by failing to disclose properly the finance charges associated with their auto title loans. The Bureau also found that Triton used advertisements that failed to disclose the annual percentage rate (APR) and other information required by TILA. Under the terms of the consent order, Triton and its subsidiaries are barred from misrepresenting the costs and other terms of their loans. The order enters a

⁴⁸ Enforcement activity summaries are current as of September 30, 2018, and do not include activities that occurred after the reporting period.

judgment of \$1,522,298 against Triton, which represents the undisclosed finance charges consumers paid on their Triton loans. Full payment of this amount is suspended subject to Triton's paying \$500,000 to affected consumers. The order also imposes a \$1 civil money penalty.

In the Matter of National Credit Adjusters, LLC and Bradley Hochstein (File No. 2018-BCFP-0004) (not a credit union or depository institution). On July 13, 2018, the Bureau entered into a consent order with National Credit Adjusters, LLC and its former CEO and part-owner, Bradley Hochstein. The Bureau found that National Credit Adjusters and Hochstein engaged in unfair and deceptive acts and practices in the collection and sale of consumer debt and provided substantial assistance to the unfair and deceptive acts and practices of others in violation of the CFPB. The Bureau also found that National Credit Adjusters engaged in unfair and deceptive acts and practices in violation of the Fair Debt Collection Practices Act (FDCPA). The Bureau's order imposes a judgment for civil money penalties of \$3 million against National Credit Adjusters and \$3 million against Hochstein. Full payment of those amounts is suspended subject to compliance with other requirements and National Credit Adjusters paying a \$500,000 civil money penalty and Hochstein paying a \$300,000 civil money penalty. The Bureau's order also imposes injunctive relief and prohibits Hochstein from working for, or providing certain services to, any individual or business that collects, buys, or sells consumer debt.

In the Matter of Citibank N.A. (Annual Percentage Rates) (File No. 2018-BCFP-0003). On June 29, 2018, the Bureau entered into a consent order with Citibank, N.A. The Bureau found that Citibank violated TILA, as implemented by Regulation Z, by failing to reevaluate and reduce the annual percentage rates for certain consumer credit card accounts consistent with the requirements of Regulation Z, and by failing to have reasonable written policies and procedures in place to conduct APR reevaluations consistent with the requirements of Regulation Z. The Bureau's order requires injunctive relief and for Citibank to pay \$335 million in restitution to consumers.

In the Matter of Security Group Inc. (File No. 2018-CFPB-0002) (not a credit union or depository institution). On June 13, 2018, the Bureau issued a consent order against installment lender Security Group Inc. (SGI). The Bureau found that SGI engaged in unfair debt collection acts and practices, including with respect to in-person collection visits and collection calls to consumers' workplaces and references. The Bureau also found that SGI's furnishing practices violated the Fair Credit Reporting Act (FCRA). The Bureau's order requires SGI to cease in-person collection visits, comply with the FCRA, and pay a civil penalty of \$5 million.

In the Matter of Wells Fargo Bank, N.A. (File No. 2018-BCFP-0001). On April 20, 2018, the Bureau entered into a consent order with Wells Fargo Bank, N.A. The Bureau found that Wells Fargo engaged in unfair acts and practices in the way it administered a mandatory insurance program related to its auto loans and in how it charged certain borrowers for mortgage interest rate-lock extensions, in violation of the CFPB. The Bureau's order required Wells Fargo to remediate harmed consumers and undertake certain activities related to its risk management and compliance management. The Bureau also assessed a \$1 billion civil money penalty against the bank and credited the \$500 million penalty collected by the Office of the Comptroller of the Currency (OCC) toward the satisfaction of its fine.

Citibank, N.A. (File No. 2017-CFPB-0021). On November 21, 2017, the Bureau entered into a consent order with Citibank, N.A. The Bureau found that Citibank engaged in deceptive acts or practices likely to mislead borrowers into believing they had not paid student loan

interest that was eligible for a tax deduction. The Bureau also found that Citibank engaged in unfair acts or practices by providing borrowers misleading information regarding the student loan interest the borrowers had paid. The Bureau found that Citibank also incorrectly terminated borrowers' in-school deferments, resulting in late fees and added interest. The Bureau also found that Citibank overstated the minimum amount the borrowers had to pay in their monthly bills and failed to disclose required information after denying borrowers' requests to release loan cosigners. The Bureau's order requires injunctive relief and for Citibank to pay \$3.75 million in redress to consumers and a \$2.75 million civil money penalty.

Consumer Financial Protection Bureau v. Federal Debt Assistance Association, LLC, Financial Document Assistance Administration, Inc., Clear Solutions, Inc., Robert Pantoulis, David Piccione, and Vincent Piccione (D. Md. No. 17-cv-2997). The Bureau filed suit in federal court against two companies operating under the name "FDAA," a service provider, and their owners for allegedly falsely presenting FDAA as being affiliated with the federal government. The Bureau also alleges that FDAA's so-called "debt validation" programs violated the law by falsely promising to eliminate consumers' debts and improve their credit scores in exchange for thousands of dollars in advance fees. The court entered default judgment against all of the defendants on May 22, 2018, after they failed to respond to the Bureau's lawsuit. The court's order bans the defendants from providing debt-relief or credit-repair services to consumers, requires them to pay \$4.9 million in redress to consumers, and imposes a civil penalty of \$16 million.

Consumer Financial Protection Bureau v. Tempo Venture, Inc., d/b/a Culpeper Pawnbroker (W.D. Va. No. 17-cv-0075). The Bureau filed a complaint in federal court against Tempo Venture, Inc., doing business as Culpeper Pawnbroker, alleging that the company misstated the APR associated with pawn loans, in violation of federal law. The Bureau also filed a consent order, which was entered by the court. The consent order imposes injunctive relief and requires Culpeper Pawnbroker to pay a \$2,500 penalty.

Consumer Financial Protection Bureau v. Freedom Debt Relief, LLC and Andrew Houser (N.D. Cal. No. 17-cv-6484). The Bureau filed a complaint against Freedom Debt Relief, the nation's largest debt-settlement services provider, and its co-CEO Andrew Houser for allegedly deceiving consumers and charging unlawful advance fees. The Bureau alleges that Freedom misleads consumers about its ability to negotiate settlements with all creditors, misleads consumers about the circumstances under which it charges fees and in some cases, charges fees in the absence of a settlement. The Bureau is seeking compensation for harmed consumers, civil penalties, and an injunction against Freedom and Houser to halt their unlawful conduct.

Consumer Financial Protection Bureau v. Think Finance, LLC formerly known as Think Finance, Inc., et al. (D. Mont. No. 17-cv-0127); In re Think Finance, LLC, et al., (Bankr. N.D. Tex. No. 17-33964). The Bureau filed a complaint against Think Finance and its wholly owned subsidiaries for allegedly collecting debts that were not legally owed. In a suit filed in federal court, the Bureau alleges that Think Finance collects on loans that are void ab initio under state laws governing interest rate caps or the licensing of lenders. The Bureau alleges that Think Finance made deceptive demands and took money from consumers' bank accounts for debts that were not legally owed, in violation of federal law. The Bureau seeks restitution, injunctive relief, and a civil money penalty. On April 24, 2018, the defendants filed a motion to dismiss, which the court denied on August 3, 2018. Defendants filed an answer on August 31, 2018. The Bureau also filed a proof of claim in the Think Finance bankruptcy case. Both matters remain pending.

Conduent Business Services, LLC (File No. 2017-CFPB-0020) (not a credit union or depository institution). The Bureau entered a consent order against Conduent Business Services, which previously conducted business as Xerox Business Services, LLC, for software errors that led to incorrect consumer information about more than one million borrowers being sent to credit reporting agencies. The company also failed to notify all of its auto lender clients about known flaws in its software that led to the errors. The consent order requires Xerox to pay a \$1.1 million civil penalty, explain its mistakes to its lender clients, and correct the errors in its software.

Consumer Financial Protection Bureau v. Nationwide Biweekly Administration, Inc., et al. (N.D. Cal. No. 3:15-cv-2106). On May 11, 2015, the Bureau filed a complaint against Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, and Daniel S. Lipsky alleging that they engaged in abusive and deceptive acts and practices in violation of the CFPB and the Telemarketing Sales Rule (TSR) regarding a mortgage payment product known as the "Interest Minimizer Program," or IM Program. The Bureau alleged that the defendants misrepresented their affiliation with consumers' mortgage lenders; the amount of interest savings consumers would realize, and when consumers would achieve savings on the IM Program, consumers' ability to attain the purported savings on their own or through a low- or no-cost option offered by the consumers' servicer; and fees for the program. The Bureau sought a permanent injunction, consumer redress, and civil money penalties. A trial was held beginning on April 24, 2017, and on September 8, 2017, the court issued an opinion and order finding that the defendants had engaged in deceptive and abusive conduct in violation of the CFPB and TSR. The court imposed a \$7.93 million civil money penalty, but denied the Bureau's request for restitution and disgorgement. On November 9, 2017, the court reduced the previous order to a judgment that included permanently enjoining defendants from engaging in specified acts or practices. The court denied defendants' post-trial motions on March 12, 2018, and both parties have filed a notice of appeal. The parties' appeals are currently pending before the United States Court of Appeals for the Ninth Circuit.

Consumer Financial Protection Bureau v. Navient Corporation, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc. (M.D. Pa. No. 17-cv-0101). On January 18, 2017, the Bureau filed a complaint against Navient Corporation and its subsidiaries, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc. The Bureau alleges that Navient Solutions and Navient Corporation steered borrowers toward repayment plans that resulted in borrowers paying more than other options; misreported to credit reporting agencies that severely and permanently disabled borrowers who had loans discharged under a federal program had defaulted on the loans when they had not; deceived private student loan borrowers about requirements to release their co-signer from the loan; and repeatedly incorrectly applied or misallocated borrower payments to their accounts. The Bureau also alleges that Pioneer and Navient Corporation misled borrowers about the effect of rehabilitation on their credit reports and the collection fees that would be forgiven in the federal loan rehabilitation program. The Bureau seeks consumer redress and injunctive relief. On March 24, 2017, Navient moved to dismiss the complaint. On August 4, 2017, the court denied Navient's motion. The case remains pending.

Consumer Financial Protection Bureau v. Ocwen Financial Corporation, Ocwen Mortgage Servicing, Inc., and Ocwen Loan Servicing, LLC (S.D. Fla. No. 17-cv-90495). On April 20, 2017, the Bureau filed a complaint against mortgage loan servicer Ocwen Financial Corporation and its subsidiaries alleging they used inaccurate and incomplete information to service loans, misrepresented to borrowers that their loans had certain amounts due, illegally foreclosed on homeowners that were performing on agreements on loss mitigation options, enrolled and charged consumers for add-on products without their consent, failed to adequately investigate and respond to borrower complaints, and engaged in other conduct in violation of the CFPB,

TLHA, FDCPA, Real Estate Settlement Procedures Act (RESPA), and Homeowners Protection Act (HPA). On June 23, 2017, Ocwen moved to dismiss. The court has not yet ruled on that motion. The case remains pending.

Consumer Financial Protection Bureau v. TCF National Bank (D. Minn. No. 17-cv-0166). On January 19, 2017, the Bureau filed a complaint against TCF National Bank alleging TCF misled consumers about overdraft services in violation of Regulation E and the CFPA. Specifically, the Bureau alleged that TCF designed its application process to obscure the overdraft fees on one-time debt purchases and ATM withdrawals and make overdraft services seem mandatory for new customers to open an account. On September 8, 2017, the court granted TCF's motion to dismiss the Bureau's Electronic Fund Transfer Act (EFTA) claims, but denied the motion to dismiss the Bureau's claims for deceptive and abusive acts or practices. On August 1, 2018, the court accepted a settlement between the Bureau and TCF. TCF agreed to pay \$25 million in restitution to customers who were charged overdraft fees and also agreed to an injunction to prevent future violations. The settlement also imposed a civil money penalty of \$5 million. The penalty was adjusted to account for a \$3 million penalty imposed by the OCC.

Consumer Financial Protection Bureau v. Top Notch Funding II, LLC, Rory Donadio, and John "Gene" Cavalli (S.D.N.Y. No. 17-cv-7114). On September 19, 2017, the Bureau filed a complaint alleging that Top Notch Funding and two individuals associated with the company made misrepresentations in loan offerings to consumers who were awaiting payment from settlements in legal cases or from victim-compensation funds. On January 30, 2018, the court entered a stipulated final judgment and order. The order prohibits the defendants from offering or providing such products in the future and requires them to pay \$75,000 in civil money penalties.

Consumer Financial Protection Bureau v. The National Collegiate Master Student Loan Trust, et al. (D. Del. No. 17-cv-1323) (not a credit union or depository institution). On September 18, 2017, the Bureau filed a complaint and proposed consent judgment against several National Collegiate Student Loan Trusts (collectively, "NCSLT"), alleging they brought debt collection lawsuits for private student loan debt that the companies couldn't prove was owed or was too old to sue over; that they filed false and misleading affidavits or provided false and misleading testimony; and that they falsely claimed that affidavits were sworn before a notary. The proposed consent judgment against the NCSLT would require an independent audit of all 800,000 student loans in the NCSLT portfolio. It would also prohibit the NCSLT, and any company it hires, from attempting to collect, reporting negative credit information, or filing lawsuits on any loan the audit shows is unverified or invalid. In addition, it would require the NCSLT to pay at least \$19.1 million, which would include redress to consumers, disgorgement, and a civil money penalty. Soon after the Bureau's filing, several entities moved to intervene to object to the proposed consent judgment. The case remains pending.

Consumer Financial Protection Bureau v. Weltman, Weinberg & Reis Co., L.P.A. (N.D. Ohio No. 1:17-cv-0817). On April 17, 2017, the Bureau filed a complaint against the debt collection law firm Weltman, Weinberg & Reis Co., L.P.A., alleging it sent collection letters that misrepresented that attorneys were meaningfully involved in collecting the debt. A trial with an advisory jury was held beginning May 1, 2018. The advisory jury found that the Bureau had proved by a preponderance of the evidence that the law firm's collection letter contained false, deceptive, or misleading representations in connection with the collection of a debt, but found that the Bureau had not proved that the law firm's lawyers were not meaningfully involved in the debt collection process. The court declined to adopt the advisory jury's first finding, accepted the advisory jury's second finding, and entered judgment in favor of the law firm on July 25, 2018.

Consumer Financial Protection Bureau v. RD Legal Funding, LLC, RD Legal Finance, LLC, and RD Legal Funding Partners, LP, and Roni Dersovitz S.D.N.Y. No. 1:17-cv-0890). On February 7, 2017, the Bureau and the New York Attorney General filed a complaint against RD Legal Funding, LLC, two related entities, and the companies' founder and owner, Roni Dersovitz, alleging that they made misrepresentations to potential borrowers, and engaged in abusive practices in connection with cash advances on settlement payouts from victim-compensation funds and lawsuit settlements. The lawsuit seeks monetary relief, disgorgement, and civil money penalties. On May 15, 2017, the defendants filed a motion to dismiss the Bureau's complaint, which the Bureau opposed. On June 21, 2018, the court issued an opinion concluding that the defendants are subject to the CFPA's prohibitions and that the complaint properly pleaded claims against all of them. The court held, however, that the for-cause removal provision that applies to the Bureau's Director violates the constitutional separation of powers and cannot be severed from the remainder of Title X of the Dodd-Frank Act. Based on that conclusion, the court ultimately dismissed the entire case. The case is now on appeal.

Consumer Financial Protection Bureau v. Vincent Howard, Lawrence W. Williamson, Howard Law, P.C., The Williamson Law Firm, LLC, and Williamson & Howard, LLP (C.D. Cal. No. 17-cv-0161). On January 30, 2017, the Bureau filed a complaint against a number of law firms and attorneys alleging that they violated the TSR by: (1) charging consumers upfront fees for debt relief services; (2) misrepresenting that consumers would not be charged upfront fees for debt relief services when, in fact, they were; and (3) providing substantial assistance to Morgan Drexen and Walter Ledda while knowing or consciously avoiding knowing that Morgan Drexen and Ledda were engaging in these violations. The Bureau alleges that Howard Law, P.C., the Williamson Law Firm, LLC, and Williamson & Howard, LLP, as well as attorneys Vincent Howard and Lawrence Williamson, ran this debt relief operation along with Morgan Drexen, Inc., which shut down in 2015 following the Bureau's lawsuit against that company. The complaint seeks injunctive relief, restitution, and the imposition of civil money penalties. The defendants filed a motion to dismiss, which the court denied on March 30, 2017. The defendants then asserted two counterclaims. The court dismissed those claims with prejudice on December 19, 2017. Since that time, the court has also denied two other substantive motions by the defendants: a motion for summary judgment on statute of limitations grounds and a motion for sanctions. The case remains pending.

Consumer Financial Protection Bureau v. Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, Lee Jundanian, Raffi Boghosian, Michael Borkowski, and Charles Smith (D. Md. No. 1:16-cv-3759). On November 21, 2016, the Bureau filed a complaint against Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, three of the companies' principals—Lee Jundanian, Raffi Boghosian, and Michael Borkowski—and a Maryland attorney, Charles Smith, alleging that they deceptively induced individuals to enter into settlement funding agreements, in which the individuals agreed to receive an immediate lump sum payment in exchange for significantly higher future settlement payments. The Bureau also alleges that the companies and their principals steered consumers to receive "independent advice" from Smith, who was paid directly by Access Funding and indicated to consumers that the transactions required very little scrutiny. The Bureau further alleges that Access Funding advanced money to some consumers and represented to those consumers that the advances obligated them to go forward with transactions even if they realized that the transactions were not in their best interests. On September 13, 2017, the court granted defendants' motions to dismiss counts I–IV, arising out of Smith's conduct, on the grounds that he had attorney-client relationships with the consumers in question. The court denied the defendants' motions to dismiss the Bureau's claim relating to the advances Access Funding offered consumers. The court granted the Bureau's motion to file an amended complaint alleging Smith did not have attorney-client relationships with the

consumers in question. Defendants again filed motions to dismiss, which the court denied. The defendants have filed a motion for partial summary judgment, which the Bureau has opposed, and on which the court has not yet ruled. The case remains pending.

Consumer Financial Protection Bureau v. Northern Resolution Group (W.D.N.Y. No. 16-cv-0880). On November 2, 2016, the Bureau, in partnership with the New York Attorney General, filed a complaint alleging that Douglas MacKinnon and Mark Gray operate a network of companies that harass, threaten, and deceive consumers across the nation into paying inflated debts or amounts they may not owe. The complaint seeks injunctive relief, restitution, and the imposition of penalties against the companies and partners. The defendants asserted counterclaims against the Bureau and New York, which the court dismissed on January 8, 2018. The case remains pending.

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

Consumer Financial Protection Bureau v. Dand D Marketing, Inc., d/b/a T3Leads, Grigor Demirchyan, and Marina Demirchyan (C.D. Cal. No. 15-cv-9692); Consumer Financial Protection Bureau v. Dmitry Fomichev (C.D. Cal. No. 16-cv-2724); and Consumer Financial Protection Bureau v. Davit Gasparyan aka David Gasparyan (C.D. Cal. No. 16-cv-2725). On December 17, 2015, the Bureau filed a complaint against T3Leads and its current executives, Grigor Demirchyan and Marina Demirchyan, alleging that T3 engaged in unfair and abusive acts and practices in the sale of consumer-loan applications to small-dollar lenders and others acting unlawfully, and in operating a loan-application network that prevented consumers from understanding the material risks, costs, or conditions of their loans, and further alleging that the Demirchyans substantially assisted those acts and practices. On April 21, 2016, the Bureau filed two separate but related complaints against the company's past executives—Dmitry Fomichev and Davit Gasparyan—alleging that they substantially assisted T3's violations. The complaints seek monetary relief, injunctive relief, and penalties. On November 17, 2016, the court denied the defendants' motions to dismiss but found the Bureau unconstitutionally structured. The Ninth Circuit granted interlocutory appeal on that issue. That issue has not been decided. On September 8, 2017, the district court entered a stipulated final judgment and order against one of the defendants, Davit Gasparyan. The order imposed injunctive relief and required Gasparyan

to pay a \$250,000 penalty. The case remains pending in the district court against the remaining defendants and the interlocutory appeal remains pending in the Court of Appeals.

Consumer Financial Protection Bureau and Anthony J. Albanese, Acting Superintendent of Financial Services of the State of New York v. Pension Funding, LLC; Pension Income, LLC; Steven Covey; Edwin Lichtig; and Rex Hofelter (C.D. Cal. No. 8:15-cv-1329). On August 20, 2015, the Bureau and the New York Department of Financial Services (NYDFS) filed a complaint against two companies, Pension Funding, LLC and Pension Income, LLC, and three of the companies' individual managers, alleging that they deceived consumers about the costs and risks of their pension-advance loans. The Bureau and NYDFS alleged that from 2011 until about December 2014, Pension Funding and Pension Income offered consumers lump-sum loan payments in exchange for the consumers agreeing to redirect all or part of their pension payments to the companies for eight years. The Bureau and NYDFS also alleged that the individual defendants, Steven Covey, Edwin Lichtig, and Rex Hofelter, designed and marketed these loans and were responsible for the companies' operations. The Bureau and NYDFS alleged that all of the defendants violated the CFPB's prohibitions against unfair, deceptive, and abusive acts or practices.

On January 8, 2016, the court appointed a receiver over defendants Pension Funding and Pension Income. The receiver's responsibilities include taking control of all funds and assets of the companies and completing an accounting of all pension-advance transactions that are the subject of the action. On February 10, 2016, the court entered a stipulated final judgment and order as to two of the individual defendants, Lichtig and Hofelter. The order imposes bans on these individuals' participation in pension-advance transactions and requires them to pay money to the receivership estate. On July 11, 2016, the court granted a default judgment against the final individual defendant, Covey, who did not appear in the case. The court's order imposes a ban and requires Covey to pay disgorgement of approximately \$580,000. The court-appointed receiver's work with respect to the companies is ongoing.

In the Matter of Integrity Advance, LLC and James R. Carnes (File No. 2015-CFPB-0029) (not a credit union or depository institution). On November 18, 2015, the Bureau filed a notice of charges against an online lender, Integrity Advance, LLC, and its CEO, James R. Carnes, alleging they deceived consumers about the cost of short-term loans. The Bureau alleges that the company's contracts did not disclose the costs consumers would pay under the default terms of the contracts. The Bureau also alleges that the company unfairly used remotely created checks to debit consumers' bank accounts even after the consumers revoked authorization for automatic withdrawals. The Bureau is seeking injunctive relief, restitution, and the imposition of a civil money penalty. On September 27, 2016, the Administrative Law Judge issued a Recommended Decision finding liability and recommending injunctive and monetary relief. The Recommended Decision was appealed to the Director, but further activity on that appeal was held in abeyance pending a decision in *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir.), and, subsequently, pending a decision in *Lucia v. SEC*, No. 17-0130 (S. Ct.). Subsequent to the Supreme Court's ruling in *Lucia*, the Acting Director ordered the parties to submit additional briefing regarding the implications of the Court's ruling. The case remains pending.

Consumer Financial Protection Bureau v. Global Financial Support, Inc., d/b/a Student Financial Resource Center, d/b/a College Financial Advisory; and Armond Aria a/k/a Armond Amir Aria, individually, and as owner and CEO of Global Financial Support, Inc. (S.D. Cal. No. 15-cv-2440). On October 29, 2015, the Bureau filed a complaint alleging that Global Financial Support, Inc., which operates under the names Student Financial Resource Center and College Financial Advisory, issued marketing letters instructing students to fill out a form and pay a fee

in exchange for the company conducting extensive searches to target or match them with individualized financial aid opportunities. The Bureau alleges that consumers who paid the fee received nothing or a generic booklet that failed to provide individualized advice. The Bureau also alleges that the defendants misrepresented their affiliation with government and university financial aid offices and pressured consumers to enroll through deceptive statements. The complaint seeks injunctive relief, restitution, and the imposition of a civil money penalty. This matter has been stayed since May 17, 2016, based on an ongoing criminal prosecution of one of the defendants. The case remains pending.

Consumer Financial Protection Bureau v. Borders & Borders, PLC, et al. (W.D. Ky. No. 13-cv-1047). On October 24, 2013, the Bureau filed a complaint alleging that Borders & Borders, a law firm specializing in real estate closings, violated RESPA by paying local real estate and mortgage brokers in exchange for referrals of settlement service business to the defendants. The Bureau sought injunctive and other equitable relief. On February 12, 2015, the court denied the defendants' motion for judgment on the pleading, but on July 13, 2017, granted defendants' motion for summary judgment, finding the arrangements qualified as affiliated business arrangements under section 8(c)(4) of RESPA. On March 21, 2018, the court denied a motion for reconsideration filed by the Bureau, holding that the arrangements did not violate section 8(a) of RESPA and, even if they did, were entitled to protection under section 8(c)(2) of RESPA. On June 18, 2018, the court denied the defendants' motion for costs. The Bureau did not file a Notice of Appeal, and the case is closed.

Consumer Financial Protection Bureau v. NDG Financial Corp., et al. (S.D.N.Y. No. 15-cv-5211). On July 6, 2015, the Bureau filed a complaint against the NDG Financial Corporation and nine of its affiliates alleging they engaged in unfair, deceptive, and abusive practices relating to its payday lending enterprise. The Bureau alleges that the enterprise, which has companies located in Canada and Malta, originated, serviced, and collected payday loans that were void under state law, represented that U.S. federal and state laws did not apply to the defendants or the payday loans, and used unfair and deceptive tactics to secure repayment, all in violation of the CFPB. On December 2, 2016, the court denied the defendants' motions to dismiss. On December 6, 2017, the clerk entered default against the Maltese defendants. On February 5, 2018, the court voluntarily dismissed the former owners and their holding corporations as defendants and relief defendants. The Bureau moved for the sanction of default judgment against the remaining defendants, which the court granted on March 29, 2018. The case remains pending.

Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions, LLC, et al. (N.D. Ga. No. 15-cv-0859). On March 26, 2015, the Bureau filed a complaint against a group of seven debt collection agencies, six individual debt collectors, four payment processors, and a telephone marketing service provider alleging unlawful conduct related to a phantom debt collection operation. Phantom debt is debt consumers do not actually owe or debt that is not payable to those attempting to collect it. The Bureau alleges that the individuals, acting through a network of corporate entities, used threats and harassment to collect "phantom" debt from consumers. The Bureau alleges the defendants violated the FDCPA and the CFPB's prohibition on unfair and deceptive acts and practices, and provided substantial assistance to unfair or deceptive conduct. The Bureau is seeking permanent injunctive relief, restitution, and the imposition of a civil money penalty. On April 7, 2015, the Bureau obtained a preliminary injunction against the debt collectors that froze their assets and enjoined their unlawful conduct. In September 1, 2015, the court denied the defendants' motion to dismiss. On August 25, 2017, the court dismissed the Bureau's claims against the payment processors as a discovery sanction against the Bureau. On November 15, 2017, the Bureau, and two remaining defendants moved for summary judgment. The court has not yet ruled on those motions. On January 29, 2018, the

court granted the Bureau's motion for contempt against one of the defendants for violating the court's preliminary injunction. The Bureau has filed additional motions for contempt against several defendants. The court has not ruled on those motions. The case remains pending.

Consumer Financial Protection Bureau v. Richard F. Moseley, Sr., et al. (W.D. Mo. No. 14-cv-0789). On September 8, 2014, the Bureau filed a complaint against a confederation of online payday lenders known as the Hydra Group, its principals, and affiliates, alleging that they used a maze of interrelated entities to make unauthorized and otherwise illegal loans to consumers. The Bureau alleged that the defendants' practices violated the CFPB, TILA, and EFTA. On September 9, 2014, the court issued an ex parte temporary restraining order against the defendants, ordering them to halt lending operations. The court also placed the companies in temporary receivership, appointed a receiver, granted the Bureau immediate access to the defendants' business premises, and froze their assets. On October 3, 2014, the court entered a stipulated preliminary injunction against the defendants pending final judgment in the case. On March 4, 2016, the court stayed the Bureau's case until criminal proceedings against Moseley, Sr. were resolved. In November 2017, Moseley was convicted on multiple counts after a jury trial in the Southern District of New York and in June 2018, sentenced to 120 months in prison. The court entered a stipulated final judgment against one individual defendant on July 23, 2018, and a stipulated final judgment against Moseley and the remaining defendants on August 10, 2018. Under the terms of the orders, one individual defendant Randazzo is banned from the industry and required to pay a \$1 civil penalty, and the remaining defendants are to be banned from the industry, and must forfeit approximately \$14 million in assets, and pay a \$1 civil money penalty. The civil penalty amount is based in part on the defendants' limited ability to pay. The August 10 order also imposes a judgment for \$69 million in consumer redress, but, in light of the defendants' limited ability to pay, the judgment will be suspended upon compliance with other requirements.

Consumer Financial Protection Bureau v. The Mortgage Law Group, LLP, d/b/a The Law Firm of Macey, Aleman & Searns; Consumer First Legal Group, LLC; Thomas G. Macey; Jeffrey J. Aleman; Jason E. Searns; and Harold E. Stafford (W.D. Wis. No. 3:14-cv-0513). On July 22, 2014, the Bureau filed a lawsuit in federal district court against The Mortgage Law Group, LLP (TMLG), the Consumer First Legal Group, LLC, and attorneys Thomas Macey, Jeffrey Aleman, Jason Searns, and Harold Stafford. The Bureau alleges that the defendants violated Regulation O, formerly known as the Mortgage Assistance Relief Services Rule, by taking payments from consumers for mortgage modifications before the consumers signed a mortgage modification agreement from their lender, by failing to make required disclosures, by directing consumers not to contact lenders, and by making deceptive statements to consumers when providing mortgage assistance relief services. A trial was held on April 24, 2017 through April 28, 2017. On June 21, 2017, the district court entered a stipulated judgment against the bankruptcy estate of TMLG, which sought Chapter 7 bankruptcy. The court enjoined TMLG from operating, and ordered TMLG to pay \$18,331,737 in redress and \$20,815,000 in civil money penalties. On May 29, 2018, the Bureau filed an unopposed motion to increase the redress amount ordered by the court to \$18,716,725.78, based on newly discovered information about additional advance fees paid by consumers. The case remains pending.

Consumer Financial Protection Bureau v. ITT Educational Services, Inc. (S.D. Ind. No. 14-cv-0292). On January 6, 2014, the Bureau filed a lawsuit in federal district court against for-profit college chain ITT Educational Services, Inc. The Bureau alleges that ITT encouraged new students to enroll by providing them funding for the tuition gap that was not covered by federal student loan programs with a zero-interest loan called "Temporary Credit." This loan typically had to be paid in full at the end of the student's first academic year. The Bureau alleges that ITT

knew from the outset that many students would not be able to repay their Temporary Credit balances or fund their second-year tuition gap and that ITT illegally pushed its students into repaying their Temporary Credit and funding their second-year tuition gaps through high-cost private student loan programs, on which ITT knew students were likely to default. In September of 2016, ITT closed all of its schools and filed for bankruptcy. On September 8, 2017, the court entered an order administratively closing the case without prejudice to the right of either party to move to reopen it within sixty days of the approval of a settlement by the bankruptcy court overseeing ITT's Chapter 7 case.

Consumer Financial Protection Bureau v. CashCall, Inc., et al. (C.D. Cal. No. 15-cv-7522). On December 16, 2013, the Bureau filed a complaint against online lender CashCall Inc., its owner, a subsidiary, and an affiliate, alleging that they violated the CFPA's prohibition against unfair, deceptive, and abusive acts and practices by collecting and attempting to collect consumer-installment loans that were void or partially nullified because they violated either state caps on interest rates or state licensing requirements for lenders. The Bureau alleged that CashCall serviced loans it made in the name of an entity, Western Sky, which was located on the Cheyenne River Sioux Tribe's land. On August 31, 2016, the court granted the Bureau's motion for partial summary judgment, concluding that CashCall was the true lender on the Western Sky loans. Based in part on that finding, the court concluded that the choice-of-law provision in the loan agreements was not enforceable, found that the law of the borrower's state applied, and that the loans were void. Because the loans were void, the court found that the defendants engaged in deceptive acts or practices by demanding and collecting payment on debts that consumers did not owe. A trial was held from October 17 to 18, 2017, on the issue of appropriate relief. On January 19, 2018, the court issued findings of fact and conclusions of law imposing a \$10.28 million civil penalty but denying the Bureau's request for restitution and an injunction. The Bureau filed a Notice of Appeal on March 27, 2018, and the defendants filed a Notice of Cross-Appeal two weeks later. The appeal remains pending.

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

The Bureau's *Supervisory Highlights* publications provide general information about the Bureau's supervisory activities at banks and nonbanks without identifying specific companies. The Bureau published one issue of *Supervisory Highlights* between October 1, 2017, and September 30, 2018.⁴⁹

All public enforcement actions are listed in section 5 of this Report. Those actions taken with respect to covered persons which are not credit unions or depository institutions are noted within the summary of the action.

⁴⁹ Summer 2018, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_supervisory-highlights_issue-17_2018-09.pdf.

7. Assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law⁵⁰

For purposes of the section 1016(c)(7) reporting requirement, the Bureau determined that any actions asserting claims pursuant to section 1042 of the Dodd-Frank Act are “significant.” The Bureau is aware of the following State Attorney General actions that were initiated during the reporting period and that asserted Dodd-Frank Act claims. The reporting period for this information is October 1, 2017, through September 30, 2018.

State of Alabama et al. v. PHH Mortgage Corporation, No. 18-cv-0009 (D.D.C. Jan. 3, 2018). On January 3, 2018, the Attorneys General for 49 states and the District of Columbia filed a complaint and agreed consent judgment against PHH Mortgage Corporation in the United States District Court for the District of Columbia. The complaint alleged that PHH engaged in mortgage servicing and foreclosure processing practices that were unfair and deceptive under state law. In addition, the states and the District of Columbia alleged that these mortgage servicing and foreclosure processing practices were unfair and deceptive under the Consumer Financial Protection Act (CFPA), 12 U.S.C. 5531(a)(1)(B). A consent judgment was approved by the court on May 10, 2018.

Navajo Nation v. Wells Fargo & Company, Wells Fargo Bank, N.A., and Does 1-10, No. 17-cv-1219 (D.N.M. Dec. 12, 2017). On December 12, 2017, the Navajo Nation filed a complaint against Wells Fargo & Company, Wells Fargo Bank, and Does 1-10 in the United States District Court for the District of New Mexico. The Navajo Nation alleged that Wells Fargo & Company and Does 1-10 engaged in, or provided substantial assistance to Wells Fargo Bank in, opening unauthorized accounts for consumers. This activity was alleged to violate the prohibition on unfair, deceptive, and abusive acts or practices in the CFPA, 12 U.S.C. 5536(a)(1)(B). The Navajo Nation also alleged that Wells Fargo & Company and Does 1-10 violated the CFPA, 12 U.S.C. 5536(a)(1)(A), by violating the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691(a), and its implementing regulation, 12 C.F.R. 1002.4, the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693i(b), and its implementing regulation, 12 C.F.R. 1005.5(a), the Truth in Lending Act (TILA), 15 U.S.C. 1642, and its implementing regulation, 12 C.F.R. 1026.12(a), the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681(b) and 16181q, and the implementing regulation for the Truth in Savings Act, 12 C.F.R. 1030.4(a)(1)(i). The Navajo Nation alleged that all defendants engaged in activity

⁵⁰ State Attorneys General action summaries are current as of September 30, 2018, and do not include activities that occurred after the reporting period.

that was a violation of the FCRA, ECOA, EFTA, TILA, and their respective implementing regulations, the New Mexico Unfair Practices Act, N.M. Stat. 57-12-1 *et seq.*, the Arizona Consumer Fraud Act, A.R.S. 44-1522 *et seq.*, and the Navajo Nation Consumer Practices Act, N.N.C. 1101 *et seq.* The Navajo Nation also alleged that the defendants' activity constituted fraud, conversion, or unjust enrichment.

Commonwealth of Pennsylvania v. Navient Corporation and Navient Solutions, L.L.C., No. 17-cv-1814 (M.D. Pa. Oct. 5, 2017). On October 5, 2017, the Commonwealth of Pennsylvania filed a complaint against Navient Corporation and Navient Solutions, L.L.C. in the United States District Court for the Middle District of Pennsylvania. Pennsylvania alleged that the companies engaged in unfair methods of competition and unfair acts or practices in the course of originating private student loans and servicing federal and private student loans, in violation of Pennsylvania Consumer Protection Law, 73, P.S. 201-3. Pennsylvania's complaint also included allegations that the companies' student loan servicing practices violated the prohibition on unfair and deceptive acts or practices under the CFPB, 12 U.S.C. 5531(a)(1)(B).

8. Analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau

This Semi-Annual Report update is focused on highlights from the Bureau's fair lending enforcement⁵¹ and rulemaking⁵² activities from October 1, 2017, through September 30, 2018, and continued efforts to fulfill the fair lending mission of the Bureau, through, supervision, interagency coordination, and outreach, from April 1, 2018, through September 30, 2018.⁵³

8.1 Fair lending supervision

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 13 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 Equal Credit Opportunity Act (ECOA) and Home Mortgage Disclosure Act (HMDA).

For exam reports issued by Fair Lending Supervision during the reporting period, the most frequently cited violations of Regulation B and Regulation C were:

- Section 1003.4(a): Failure by a financial institution to collect and accurately report data regarding applications for covered loans that it receives, originates, or purchases in a calendar year, or, failure to collect and accurately report data regarding certain requests under a preapproval program in a calendar year;
- Section 1002.5(d)(2): Improperly requesting information about an applicant's source of income;
- Section 1002.6(b)(2): Improperly considering age or whether income is derived from any public assistance program;
- Section 1002.9(a)(1), (a)(2), (b): Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide appropriate notice to the applicant

⁵¹ Dodd-Frank Act § 1016(c)(5).

⁵² Dodd-Frank Act § 1016(c)(3).

⁵³ Dodd-Frank Act § 1016(c)(8).

30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken; and

- Section 1002.12(b)(1): Failure to preserve records of actions taken on an application or of incompleteness.

In the current reporting period, the Bureau initiated a higher number of fair lending supervisory events, and issued a greater number of 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. In the current period, however, the Bureau reviewed and found that entities satisfied a lower number of MRAs or MOU items from past supervisory events than in the prior period.

8.2 Fair lending enforcement⁵⁴

The Bureau has the statutory authority to bring actions to enforce the requirements of HMDA and ECOA. In this regard, the Bureau has the authority to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the Bureau's administrative enforcement process. The Bureau also has independent litigating authority and can file cases in federal court alleging violations of fair lending laws under the Bureau's jurisdiction. Like other federal bank regulators, the Bureau is required to refer matters to the U.S. Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.⁵⁵

Over the past year, the Bureau did not initiate or complete any fair lending public enforcement actions. In addition, during this reporting period⁵⁶ and pursuant to section 706(g) of ECOA, the Bureau did not refer any matters to the DOJ with regard to discrimination.

The Bureau continues to administer prior fair lending enforcement actions. On September 28, 2015, working in coordination with the DOJ, the Bureau ordered Fifth Third Bank (Fifth Third) to pay \$18 million in damages to harmed African-American and Hispanic borrowers for unlawful discrimination in auto lending.⁵⁷ On January 4, 2018, participation materials were mailed to potentially eligible borrowers whom Fifth Third overcharged for their auto loans notifying them how to participate in the settlement fund.

⁵⁴ Section 1016(c)(5) of the Dodd-Frank Act requires the Bureau to include in the semi-annual report public enforcement actions the Bureau was a party to during the preceding year, which is October 1, 2017, through September 30, 2018, for this report.

⁵⁵ See 15 U.S.C. § 1691e(h).

⁵⁶ October 1, 2017, through September 30, 2018.

⁵⁷ On May 21, 2018, the President signed a joint resolution passed by Congress disapproving the Bureau's Bulletin titled "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act" (Bulletin), which had provided guidance about ECOA and its implementing regulation, Regulation B. Consistent with the joint resolution, the Bulletin has no force or effect. The ECOA and Regulation B are unchanged and remain in force and effect.

On February 2, 2016, working with the DOJ, the Bureau ordered Toyota Motor Credit Corporation (Toyota Motor Credit), to pay up to \$21.9 million in damages to harmed African-American and Asian and/or Pacific Islander borrowers for unlawful discrimination.⁵⁸ On December 29, 2017, participation materials were mailed to potentially eligible borrowers whom Toyota Motor Credit overcharged for their auto loans notifying them how to participate in the settlement fund.

On May 28, 2015, working jointly with the DOJ, the Bureau and the DOJ filed a joint consent order against Provident Funding Associates (Provident). The consent order requires Provident to pay \$9 million in damages to harmed African-American and Hispanic borrowers for unlawful discrimination in mortgage lending. On November 2, 2017, participating African-American and Hispanic borrowers who were unlawfully overcharged on their mortgage loans were mailed checks compensating them for their harm.

On July 14, 2015, working in close coordination with the DOJ, the Bureau ordered American Honda Finance Corporation (Honda Finance) to pay \$24 million in damages to harmed African-American, Hispanic, and Asian or Pacific Islander borrowers.⁵⁹ On October 2, 2017, participating African-American, Hispanic, and Asian or Pacific Islander borrowers, whom Honda Finance overcharged for their auto loans were mailed checks compensating them for their harm.

On June 29, 2016, the Bureau and the DOJ announced a joint action against BancorpSouth Bank (BancorpSouth) for discriminatory mortgage lending practices that harmed African Americans and other minorities. The consent order, which was entered by the court on July 25, 2016, requires BancorpSouth to pay \$4 million in direct loan subsidies in minority neighborhoods⁶⁰ in Memphis, at least \$800,000 for community programs, advertising, outreach, and credit repair, \$2.78 million to African-American consumers who were unlawfully denied or overcharged for loans, and a \$3 million penalty.⁶¹ The settlement administrator distributed participation packets to potentially eligible borrowers in June 2018.

8.3 Fair lending outreach

The Bureau is committed to hearing from and communicating directly with stakeholders on compliance and education relating to fair lending.⁶² Outreach is accomplished through issuance of Reports to Congress, Interagency Statements, *Supervisory Highlights*, Compliance Bulletins, letters and blog posts, as well as through the delivery of speeches, meetings, and presentations addressing fair lending and access to credit matters. During the reporting period, Fair Lending staff participated in eight events where they worked directly with stakeholders to educate them

⁵⁸ See *supra* note 57.

⁵⁹ See *supra* note 57.

⁶⁰ Majority-minority neighborhoods or minority neighborhoods refers to census tracts with a minority population greater than 50%.

⁶¹ Consent Order, *United States v. BancorpSouth Bank*, No. 1:16-cv-00118-GHD-DAS (N.D. Miss. July 25, 2016), ECF No. 8, http://files.consumerfinance.gov/f/documents/201606_cfbp_bancorpSouth-consent-order.pdf.

⁶² Dodd-Frank Act § 1013(c)(2)(C).

about fair lending compliance and access to credit issues, heard stakeholder views on Fair Lending's work to inform the Bureau, or provided speeches on fair lending topics. On Monday, September 17, 2018, the Bureau held a day-long symposium titled, [Building a Bridge to Credit Visibility](#). A diverse set of stakeholders—including those representing industry, academia, trade associations, government, community groups, research, and policy and think tank organizations—participated in the event, which explored challenges related to access to consumer and small business credit and potential innovations and strategies to expand credit access. The symposium dialogue covered innovations that assist consumers who have “invisible” credit profiles or live in geographies with limited access to mainstream credit; models of innovative “entry” credit products used to establish credit, such as secured credit cards, credit builder products, installment loans, and possibly retail credit; microenterprise credit products and services that promote the establishment and growth of small business enterprises; and the use of alternative data to establish a credit record. On the day of the symposium, the Bureau also released a [new research data point](#) on the geography of credit invisible consumers. This publication provides a closer look at the relationship between geography and credit invisibility.

8.4 Interagency coordination

The Bureau's fair lending activity involves regular coordination with other federal and state regulatory and enforcement partners.⁶³ During the reporting period, Fair Lending staff continued to lead the Bureau's fair lending interagency coordination and collaboration efforts by working with partners on the Interagency Task Force on Fair Lending, the Interagency Working Group on Fair Lending Enforcement, and chairing the FFIEC HMDA Data Collection Subcommittee.

⁶³Dodd-Frank Act § 1013(c)(2)(B).

9. Analysis of the efforts of the Bureau to increase workforce and contracting diversity consistent with the procedures established by the Office of Minority and Women Inclusion (OMWI).

The Bureau developed a Diversity and Inclusion Strategic Plan 2016-2020 to guide the Bureau's efforts to manage its diversity and inclusion goals, and objectives.⁶⁴ The Bureau also publishes an Annual OMWI report in the spring of each year; its 2017 report was issued on March 29, 2018.⁶⁵

During the reporting period, the Bureau began executing on objectives and strategies outlined in the Bureau of Consumer Financial Protection Strategic Plan FY 2018-2022⁶⁶ (Bureau Strategic Plan), which complements and reinforces the Diversity and Inclusion Strategic Plan.

Objective 3.2 of the Bureau's Strategic Plan commits the Bureau to "maintain a talented, diverse, inclusive and engaged workforce." The plan requires the Bureau to achieve this objective with specific strategies, which are:

- Establish and maintain human capital policies and programs to help the Agency effectively and efficiently manage a talented, diverse, and inclusive workforce.
- Offer learning and development opportunities that foster a climate of professional growth and continuous improvement.

⁶⁴ www.consumerfinance.gov/data-research/research-reports/cfpb-diversity-and-inclusion-strategic-plan-2016-2020/.

⁶⁵ www.consumerfinance.gov/data-research/research-reports/2017-office-minority-and-women-inclusion-annual-report-congress/.

⁶⁶ www.consumerfinance.gov/about-us/budget-strategy/strategic-plan.

- Develop human capital processes, tools, and technologies that continue to support the maturation of the Bureau and the effectiveness of human resource operations.
- Build a positive work environment that engages employees and enables them to continue doing their best work.
- Maintain comprehensive equal employment opportunity (EEO) compliance and diversity and inclusion programs, including those focused on minority and women inclusion.

9.1 Increasing workforce diversity

As of September 2018, an analysis of the Bureau's current workforce reveals the following key points:

- Women represent 49% of the Bureau's workforce in 2018 with no change from 2017.
- Minorities represent 40% of the Bureau workforce in 2018 with a one percent increase of ethnic minority employees (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander (NH/OPI), American Indian/Alaska Native (AI/AN) and employees of Two or More races) from 2017.
- As of September 30, 2018, 12.4% of Bureau employees (excluding interns) identified as an individual with a disability. Out of the workforce, 3.2% of employees (identified as an individual with a targeted disability). The Bureau has already exceeded the workforce goals of 12% for employees with disabilities and 2.0% for employees with targeted disabilities—exceeding in both salary categories as required in the EEOC's Section 501 regulations.

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

- Staffing
 - The Bureau enhances diversity by recruiting, hiring, and retaining highly qualified individuals from diverse backgrounds to fill positions at the Bureau. During the reporting period, the Bureau was under a hiring freeze. The Bureau continued to utilize the student volunteer internship program and other professional development programs to assist in the Agency's workforce needs.
- Workforce engagement
 - To promote an inclusive work environment, the Bureau focuses on strong engagement with employees and utilizes an integrated approach to education, training, and engagement programs that ensures diversity and inclusion and

non-discrimination concepts are part of the learning curriculum and work environment.

- Strategic planning
 - The Bureau ensures senior leaders are aware of demographic trends of the Bureau's workforce. Planning is done to increase inclusion and retention of the diverse workforce.

9.2 Increasing contracting diversity

In accordance with the mandates in section 342(b)(2)(B) of the Dodd-Frank Act, Goal Four in the Bureau's Diversity and Inclusion Plan describes the efforts the Bureau takes to increase contracting opportunities for diverse businesses including Minority-owned and Women-owned Businesses (MWOBs). The OMWI office and the Office of Procurement collectively work to increase opportunities for participation by MWOBs.

9.2.1 Outreach to contractors

The Bureau increases opportunities for participation of MWOBs by:

- Creating and publishing a procurement forecast to assist contractors in better understanding upcoming business opportunities.
- Proactively making recommendations that promote the use of qualified MWOB contractors in Bureau contracts.
- Updating and distributing technical assistance guides for businesses including A Guide to Doing Business with the Bureau, in order to assist businesses understand the procurement process. These resources are also made available digitally on the Bureau website.⁶⁷
- Publishing the Bureau's supplier diversity policy on the Bureau website.⁶⁸
- Participating in four national supplier diversity conferences aimed at MWOBs and providing technical assistance meetings to businesses new to government contracting or doing business with the Bureau.

⁶⁷ www.consumerfinance.gov/about-us/doing-business-with-us/

⁶⁸ www.consumerfinance.gov/about-us/doing-business-with-us/small-minority-businesses/

As a result of these efforts, 32.6% of the \$139 million in contracts that the Bureau awarded during this time went to MWOBs.

Table 4: AMOUNT OBLIGATED TO MINORITY-OWNED AND WOMEN-OWNED BUSINESSES

Dollars Obligated	Percent of Total	MWOB Category
\$ 13,432,759	9.7	Women
\$ 2,535,740	1.8	Black American
\$ 3,829,184	2.8	Native American
\$ 24,512,953	17.7	Asian American
\$ 1,582,335	1.1	Hispanic American

9.3 Diversity within the Bureau contractors' workforces

In accordance with the mandates in section 342(c)(2) of the Dodd-Frank Act, Goal Six of the Bureau's Diversity and Inclusion Plan describes the efforts the Bureau takes to determine that a contractor will ensure, to the maximum extent possible, the fair inclusion of women and minorities in the contractor workforce, and as applicable, subcontractors workforce. To provide notice to contractors of this responsibility, the Bureau developed and inserted a contract clause, Good Faith Effort, into all Bureau contracts. During the reporting period, more than 200 Bureau contractors accepted awards containing the Good Faith Effort Clause to include minorities and women in their workplaces. These contractors will submit documentation detailing their workforce diversity practices in FY 2019.

**LETTER SUBMITTED BY THE ASSOCIATION OF CREDIT AND
COLLECTION PROFESSIONALS**



March 11, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing, and Urban
Affairs
U.S. Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban
Affairs
U.S. Senate
Washington, DC 20510

Dear Chairwoman Crapo and Ranking Member Brown:

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing in regards to tomorrow's hearing, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress ("CFPB" or "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.

Notably, the accounts receivables management industry is one of the first industries to welcome new rules from the CFPB and has worked closely with the Bureau since its inception on our shared goal of serving consumers. This is evidenced in the extensive compliance resources ACA members have developed and studied in line with Bureau examination manuals and other materials, ongoing discussions and sharing of resources and data for Bureau policymaking, collaboration on financial literacy projects, among many other undertakings. This collaboration throughout both a Democrat and Republican Administration stems from the fact that ACA members support the stated mission of the CFPB to protect consumers in the financial services marketplace. Since its inception however, there have been many instances when the Bureau has failed to fulfill its statutory mission and obligations, which require it to make markets for consumer financial products and services work in a fair, transparent, and competitive manner.

ACA members play a critical role in ensuring that consumers can continue to access credit and services. As an academic study about the impact of debt collection noted, "In a competitive market, losses from uncollected debts are passed on to other consumers in the form of higher prices and restricted access to credit; thus, excessive forbearance from collecting debts is economically inefficient. Again, as noted, collection activity influences on both the supply and the demand of consumer credit. Although lax collection efforts will increase the demand for credit by consumers, the higher losses associated with lax collection efforts will increase the costs of lending and thus raise the price and reduce the supply of lending to all consumers, especially higher-risk borrowers."¹ In short, consumer harm can result in several ways when

¹ Zywicki, Todd, "The Law and Economics of Consumer Debt Collection and Its Regulation," available at <https://www.mercatus.org/system/files/Zywicki-Debt-Collection.pdf>. (Sep. 2015).

unpaid debt is not addressed, and ACA members work to help consumers understand their financial situation and what can be done to address it, and improve it.

Consumers often need the information that ACA members provide them to maintain their financial health, and open communication can often lead to the most favorable outcome for them. We appreciate the Committee's recent recognition of this concept during the federal government shutdown in a letter that acknowledged, "...once negative information is reported to consumer reporting agencies, affected employees are likely to see a reduction in their credit scores. This may limit their ability to access credit or result in higher interest rates and more costly terms on credit in the future. Prudent workout arrangements that are consistent with safe-and-sound lending practices are generally in the long-term best interest of the financial institution, the borrower, and the economy."²

Kevin Williamson recently observed in a *National Review* article that, "Third-party collectors are subject to much more stringent regulation than are original creditors. For instance, the Fair Debt Collection Practices Act applies only to third-party agents. Debt collectors and credit-card 8ui companies may be among the least sympathetic figures in all of business, but at the other end of those debts are doctors, dentists, apartment managers — and taxpayers, too."³ To this point, the work of ACA members serves large and small businesses, hospitals, medical providers, and those lending to consumers throughout every community in the country. Many of the businesses and employers in your states are still flourishing today because of ACA members.

As the Bureau moves forward under this new era of leadership, Congress should urge it to create transparent and workable policies for the financial services industry, which also impact the millions of financial services industry employees and those seeking access to credit in the United States. Outlined are areas we would like further consideration given to under Director Kraninger's leadership:

I. ACA Urges the Bureau to Take into Account the Feedback Provided During its Extensive Request for Information Process

Good policymaking does not result when those writing and enforcing the rules have pre-conceived notions, lack transparency, and are agenda driven. While the consumer perspective is critically important, it is also essential to consider diverse perspectives and real-world in house experience of those working to actually provide products and services to consumers. This benefits both consumers and those serving them when the Bureau can craft more informed rules and policies, which take into account the actual impact of new compliance and regulatory burdens, and the unique needs of different consumers throughout the country. We appreciate the steps the Bureau has recently taken in the ongoing robust effort to seek and compile feedback through Requests for Information (RFI). The comprehensive RFI responses should be used to improve upon previous practices.

ACA members take their obligations to consumers when collecting debts very seriously, and the input provided throughout the RFI process is a roadmap to how the CFPB can best work with industry in the shared pursuit of improving consumer outcomes.

² Letter from Chairwoman Maxine Waters about the federal government shutdown, available at https://financialservices.house.gov/uploadedfiles/shutdown_letter_to_industry_011819.pdf (January 18, 2019).

³ Williamson, Kevin, *Ode to a Bagman*, available at <https://www.nationalreview.com/magazine/2019/03/11/ode-to-a-bagman/> (February 21, 2019).

II. ACA Urges the Bureau to Continue to Host Industry Roundtable Discussions

The Bureau over the past year held roundtables to gather feedback about the RFIs and other matters. These have allowed industry and representatives of community and consumer groups to provide valuable feedback and input to the Bureau about what they are hearing from their constituencies throughout the country. In its early years, the Bureau solicited feedback only from certain consumer advocacy groups and did not take a holistic approach to working to understand the consumer financial services marketplace. ACA has been appreciative of more recent opportunities for open dialogue, and we would urge the Bureau to continue to hold industry and consumer group roundtables to facilitate transparent discussions with all stakeholders.

Also recently, all advisory board and council meetings have been made public. In general, we support the concept of advisory councils because we believe it is beneficial for Bureau staff to have more information about industries, particularly if they do not have any specific industry experience. However, ACA also recommends that the Bureau consider having a nonbank advisory board since the debt collection industry often only has one, or as is currently the case zero, seats on the Consumer Advisory Board (CAB). Meanwhile, other industries have significant representation on councils and on the CAB, even when the FDCA Notice of Proposed Rulemaking is one of the main items currently on the CFPB rulemaking agenda. Nonbank participants in the financial services industry should not be overlooked in their ability to provide important feedback and should be given the same opportunity to meet with Bureau leadership, as other consumer groups and financial services participants are.

III. ACA Supports Clarifying the Fair Debt Collection Practices Act

The accounts receivable management industry has been looking for clear regulatory guidance on the FDCA, 15 U.S.C. § 1682 et seq., since its enactment in 1977. Congress did not provide the Federal Trade Commission (FTC), who previously was the primary agency with jurisdiction over the debt collection industry, with any rulemaking authority under the FDCA, which is a strict liability statute. The failure of Congress to act has resulted in a patchwork of interpretations of the FDCA by the courts, as well as a cottage industry of plaintiffs' attorneys who have done little to protect consumers, while creating profit centers for lawyers. It is important for the CFPB to carefully consider its proposals from the perspectives of both the consumer and the debt collector and find the reasonable balance that ensures the full intent of the FDCA. Our suggested clarifications to the FDCA are attached to this letter.

IV. Pre-Rule Actions Surrounding Debt Collection Need to be Improved Upon

ACA member companies support fair, objective, and well-supported Bureau rulemaking that is focused on clarifying legal obligations for debt collectors and solving problems for consumers and regulated entities. Too often, however, the Bureau's rulemaking processes have been agenda-driven, lacking in objective evidentiary support, dismissive of both the Small Business Regulatory Enforcement Fairness Act (SBREFA) small entity representative (SER) input and the need for rigorous cost-benefit analysis, and poorly conceived to solve real problems. The following pre-rule actions by the Bureau need to be improved upon: a flawed and non-transparent consumer survey; failure to conduct effective consumer disclosure testing; and a misconceived SBREFA panel process that failed to include critical participants. With respect to SBREFA, many industries and small businesses have observed that the Bureau treats important process as an empty, formalistic exercise, obligatorily tacked on the end of the Bureau's pre-rulemaking schedule, well past the point when the Bureau's course was set.

V. The CFPB's Complaint Database Paints an Inaccurate Portrait of the Debt Collection Industry

The Bureau has on numerous occasions reported that the debt collection industry receives the highest number of complaints. However, in this reporting the Bureau fails to contextualize the number of complaints as compared to the number of contacts the debt collection industry makes to consumers over a given year, which the Philadelphia Federal Reserve estimates to be well over one billion.⁴ Providing better understanding of, and perspective, on the debt collection marketplace would better serve the Bureau – and consumers – in the Bureau's analysis of the debt collection industry. The Bureau should focus its resources on actual consumer harm rather than raw numbers of complaints provided without context. In doing so, the Bureau would realize that debt collection complaints account for only 0.005% of all consumer contacts made in a given year by debt collectors.

Ironically, the Bureau also reports that the debt collection industry has a response rate of 94.4% in 2017, one of the highest rates of any industry that receives Bureau complaints.⁵ What the Bureau fails to publicize is that 84% of debt collection complaints are closed “with explanation,” meaning the consumer's issue was specifically addressed and/or resolved.⁶

A. Complaints are Defined Too Broadly and Not Otherwise Verified.

The most troubling aspect of the complaint database for ACA members is the Bureau's treatment of complaints including: (1) the Bureau's broad definition of a complaint as “submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer's personal experience with a financial product or service,”⁷ and (2) the Bureau's failure to verify the accuracy of the complaints it receives. The Bureau's approach to consumer complaints in this fashion results in complaints being counted against debt collectors for conduct, which even if true, is not otherwise unlawful, but more importantly is often factually inaccurate. For example, a consumer may submit a complaint that his or her insurance company should have paid a medical bill. In this instance, the debt collector did not engage in any unlawful conduct, yet the complaint is counted against it even though the debt collector had the right to contact the consumer. In the same scenario, if the consumer makes the same complaint against the owner of the debt, the medical provider, the complaint is also counted against the debt collector, and thus two complaints are recorded for the one debt. The Bureau simply accumulates all complaints submitted by consumers without considering the nature of the complaint and without regard to its accuracy or legitimate characterization as a

⁴ Robert M. Hunt, PhD, Vice President and Director, Payment Cards Center Federal Reserve Bank of Philadelphia. Understanding the Model: The Life Cycle of a Debt. Presented at “Life of a Debt: Data Integrity in Debt Collection,” FTC-CFPB Roundtable (June 6, 2013) available at <https://www.ftc.gov/news-events/events-calendar/2013/06/life-debt-data-integrity-debt-collection>.

⁵ CFPB, Consumer Complaint Database, as of December 2017 available at <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

⁶ Josh Adams, PhD, Director of Research, ACA International, *A Review of Debt Collection Complaints Submitted to the Consumer Financial Protection Bureau's Complaint Database in 2017*, ACA International White Paper (January 2018), available at <https://www.acainternational.org/assets/research-statistics/aca-wp-complaints-review-2017.pdf>.

⁷ CFPB, *Consumer Response: A Snapshot of Complaints Received* (July 2014), available at https://files.consumerfinance.gov/f/201407_cfpb_report_consumer-complaint-snapshot.pdf.

complaint against a debt collector. The result is an artificially inflated amount of complaints against the debt collection industry.⁸

B. *The Lack of Statutory Authority to Publish Consumer Complaint Data*

Although two provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act require the Bureau to report annually to Congress about the number of consumer complaints in general,⁹ and to report semi-annually to the President and designated congressional committees, certain analyses of the complaints the Bureau has received and collected in its databases from the prior year.¹⁰ However, nothing in either section of the statute authorizes the Bureau to make the consumer complaint database public. The publishing of inaccurate and unverified information about any debt collector results in reputational harm that cannot otherwise be reversed. It also misleads consumers, which could lead to unfounded concerns about engaging with the collections industry, despite that this engagement is often essential to preserve credit options and avoid other problems that result from unpaid debt. One academic called the complaint database a “government sponsored Yelp.”¹¹

Analyzing complaint data on a broad scale and highlighting trends appears to fulfill the Bureau’s statutory mandate; public shaming does not. As the complaint database and its utility is reevaluated going forward, we ask that the Bureau focuses on ensuring that it is being used in way in which true concerns are collected and addressed, not as a public relations tool to punish disfavored industries. The credit and collection industry is deeply interested in identifying true complaints and problem actors to weed out any bad practices, but the current process and reporting for the complaint database is not effectively doing that.

VI. **More Transparency and Due Process Should be Included in CFPB Enforcement Processes**

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

⁸ Josh Adams, PhD, Director of Research, ACA International, *A Review of Debt Collection Complaints Submitted to the Consumer Financial Protection Bureau’s Complaint Database in 2017*, ACA International White Paper (January 2018), available at <https://www.acainternational.org/assets/research-statistics/aca-wp-complaints-review-2017.pdf>.

⁹ 12 U.S.C. 5493(b)(3)(C).

¹⁰ 12 U.S.C. 5496(c)(4).

¹¹ *Assessing the Effects of Consumer Financial Information, Before the S. Comm. On Banking, Housing, and Urban Affairs*, (April 5, 2016) (Statement of Todd Zywicki, George Mason University Foundation Professor of Law Antonin Scalia School of Law at George Mason University, Executive Director, Law and Economics Center), available at, <https://www.banking.senate.gov/imo/media/doc/Zywicki%20Testimony%204-5-16.pdf>.

An unsettling example of egregious enforcement activity was the action the CFPB took against Weltman, Weinberg & Reis Co., LPA (“Weltman law firm”) in April 2017 after it refused to be intimidated into a Consent Order based on liberal interpretations of the law and alleged violations of the FDCPA. This followed a Civil Investigative Demand (CID) process initiated by the CFPB. After a laborious and resource crippling challenge to the CFPB’s actions, the Weltman law firm prevailed in the Northern District of Ohio when it was found that the CFPB’s lawsuit lacked merit. Attached is Managing Shareholder Scott Weltman’s testimony from last week in the House Financial Services Committee. It outlines the irreparable damage the Bureau did to his law firm, the loss of jobs, and the wasted time and resources that resulted from the CFPB’s past mantra to “push the envelope” even with flimsy and unsubstantiated evidence of consumer harm. Sadly, for smaller law firms or agencies, the ability to fight back against fishing expeditions and meritless claims would not even be an option.

This type of past questionable activity has also led to serious concerns about the Bureau’s practice of characterizing conduct as an unfair, deceptive, or abusive act or practice (UDAAP) without prior notice, and then holding other businesses accountable under this retroactive interpretation of legally required or proscribed behavior. Moreover, it remains unclear how the Bureau defines UDAAP, with the “abusive” prong continuing to be a particularly subjective matter for individual enforcement attorneys and examiners. Objections on fairness grounds to an enforcement action that faults a business for conduct in the past that was legal at the time have fallen on deaf ears. An agenda-driven rulemaking through enforcement approach causes businesses to suffer from a lack of knowing what is expected and required of them and waste resources that could otherwise be put towards improving consumer outcomes.

VII. Congressional Solutions

As the CFPB moves into a new era with its second permanent director, we are hopeful that Congress can put partisan views aside and work together to make common-sense reforms. The Dodd-Frank Wall Street Reform and Consumer Act is a complex and lengthy law, and it only makes sense that there may be aspects of it that need reform as time moves on. Accordingly, we recommend that the following legislative reforms are considered.

- Congress should enact legislation to create a five-member, bipartisan commission at the Bureau rather than having a single director only removable “for cause.” This would ensure certainty and stability in financial services regulation for America’s consumers, small businesses, and the economy. In contrast, a sole director structure at the CFPB creates a whipsaw effect in financial services regulation, making it difficult for financial services organizations from being able to create long term business plans, invest in new products and services, and best serve their consumers. Having a multi-member commission will increase transparency at the Bureau and allows for input from multiple stakeholders. Robust debate with multiple viewpoints is more likely to strengthen consumer choice and the ability for consumers to access credit.
- Congress should also move legislation forward to change the source of funding for the CFPB from Federal Reserve System transfers to annual appropriations. This is appropriate because it adds checks and balances and allows consumers through their elected officials to have a voice in the direction of the Bureau. This is particularly important to add transparency and accountability to the single director structure, which currently answers to no one.

- Congress should also consider enacting right to cure legislation for the FDCPA. A right to cure would allow consumers to be protected by incentivizing swift correction of unintentional violations of the FDCPA, while limiting frivolous litigation over highly technical mistakes.

Thank you for your leadership in holding today's hearing and attention to these important matters. We look forward to continuing our engagement with the Senate Banking Committee.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Neeb', with a stylized flourish at the end.

Mark Neeb
Chief Executive Officer

Attachment

ACA recommends the following proposals for consideration by the CFPB for its FDCPA rulemaking:

- A clearly defined “date of default”;
- Defining a dispute and developing a formal dispute process;
- Standardization of information that is transferred between first and third parties;
- A clear and concise model Validation Notice;
- Clear guidance on the use of modern methods to communicate with consumers including email messages and text messages;
- A clear and concise safe harbor for leaving voicemail messages; and
- Avoidance of a “one size fits all approach” in developing rules.

I. Clearly Defined “date of default”

An acceptable definition must be applicable to all ACA members: third party debt collectors and also those members who provide first party business process outsourcing (BPO services). The definition must consider the various ways accounts are placed with agencies, as well as the contractual differences that may be present with different debt types. At the same time, it is critical that the definition is as straightforward as possible, so that FDCPA and statute of limitations triggers can be clearly identified.

Recommendation: If not defined by a contract which formed the basis of the debt, then the default date shall be the date the debt was placed or assigned to a third-party debt collector.

II. Defining a Dispute and Developing a Formal Dispute Process.

The FDCPA does not define the term “dispute.” The CFPB’s prior recommendation of sorting the definition of a dispute into specific categories was problematic, especially because it included a “generic” dispute option which would allow a dispute to be denominated without identifying a specific reason for the claim. As a result, any rule must include a clear definition of what constitutes a dispute so that a debt collector can: (1) easily know when the dispute process is triggered, and (2) adequately respond to the consumer. The goal of any dispute process must be resolution of the dispute and therefore any definition of the term must require the consumer to fully and completely articulate the issue being raised about the account being collected.

Recommendation: The CFPB should clearly define what constitutes a dispute. We recommend a challenge to the amount of the debt or the identity of the debtor to trigger the dispute process. Once a valid dispute is made, then a three-step process must commence: intake, investigation and resolution. For the intake phase, the CFPB should develop a standardized set of questions that a consumer must respond to regardless of whether a dispute is made orally or in writing. These questions must, at a minimum, require the consumer to identify which specific account he or she is disputing and to provide a specific reason in support of why the balance or identity is incorrect. A consumer may answer these questions by any appropriate means, (i.e. letter,

telephone call, email, or through a secure portal of the debt collector). However, if the consumer does not provide the required responses, then the dispute would not be considered valid and the debt collector would have no further obligations. For a valid dispute, during the investigation phase, the debt collector would be required to review and obtain as much information as possible in response to the dispute. During the resolution phase, the debt collector would relay the information to the consumer and take appropriate action.

III. Developing a Universal Standardization of Information that is Transferred between First and Third Parties

This proposal will require collaboration with first parties since no existing process exists. However, for small businesses that use debt collectors, broad requirements of information transfer may be problematic, including the challenge of costly technology requirements. Original creditors and lenders will need to come to a consensus on the particular information that should be transferred to a debt collector (whether in a first or third party capacity) as well as the universal method for transmission of the information. Just as important will be what information gets returned to the creditor.

Recommendation: The CFPB should require first parties to have the necessary information to ensure the debt is for the right amount and is owed by the right person before transferring an account to a third party debt collectors and/or a debt buyer if the account is sold. In addition, the CFPB should conduct one rulemaking relating to both first-and third-party debt collection issues simultaneously.

IV. A Clear and Concise Validation Notice

The CFPB put forth a sample Validation Notice in its Outline of Proposals for Debt Collection. Issues that ACA addressed in regard to that sample notice included the failure to take into account applicable state laws that govern disclosures collectors must provide, the failure to promote electronic alternatives to the “tear off” form, and the failure of the notice to invite consumers to state the nature of their dispute on a website or portal (or to request a mailed form). There were also objections that the notice did not promote a way for the consumer to resolve the debt.

Recommendation: ACA has provided the Bureau with suggestions for a validation notice.

V. Clear guidance on the use of modern methods to communicate with consumers

Two-way communication is the key to a resolution of debt. As a result, modern methods of communication must be: (1) encouraged and, (2) coupled with requisite safe harbors. Newer, alternative communication methods, not addressed in the FDCA, are typically the way consumers prefer to be contacted; they are less intrusive and provide consumers with more control.

Recommendation: The CFPB should provide much-needed clarity around how debt collectors can lawfully communicate with consumers using modern technology, including through email and text message by:

- Confirming that it is permissible to email and text required notices (as long as otherwise legally permissible).
- Clarifying 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).
- Providing that the consent to email or send text messages transfers from the creditor to the debt collector; and
- Affirming that a notice or disclosure is presumed to be received when the correspondence is sent, as long as there is no bounce-back.

VI. The Bureau should provide a clear and concise safe harbor for leaving voicemail messages

The Bureau should provide a clear and concise safe harbor for leaving voicemail messages. The limited-content message would not qualify as a “communication” under the FDCPA and thus not trigger debt collector disclosure requirements, like the mini-Miranda. Using this message, therefore, reduces or altogether eliminates the risk of a third-party disclosure because the message does not state that the call is regarding a debt, is from a debt collector, or is an attempt to collect a debt.

Recommendation: ACA suggests the following limited content message: “This is John Smith calling for David Jones. David, please contact me at 1-800-555-1212”.

VII. When considering rules, the Bureau must avoid a “one size fits all approach”

The CFPB must recognize the fact that a “one size fits all” regulatory approach does not address the diversity of businesses that use third party debt collectors, or the types of debts collected. The concept of a “default date” is not the same for a medical debt as it is for a credit card or an auto loans. Information for debt types varies, especially when it comes to verifying the debt. Finally, requirements for model validation notices must reflect the fact that different debt types have different fees associated with them and that the accrual of interest, if any, can vary.

Recommendation: For any proposed rule, the CFPB must take into consideration the various debt types and provide alternative methods of compliance, whether by using an alternative disclosure or process, in order to achieve the intent and purpose of the rule.

LETTER SUBMITTED BY THE CREDIT UNION NATIONAL ASSOCIATION



Jim Nussle
President & CEO

Phone: 202-508-6745
jnussle@cuno.coop

99 M Street SE
Suite 500
Washington, DC 20003-3799

March 11, 2019

The Honorable Mike Crapo
Chairwoman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, DC 20515

The Honorable Sherrrod Brown
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20515

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's credit unions, I am writing regarding Consumer Financial Protection Bureau (CFPB) Director Kathy Kraninger's testimony during the hearing on "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." The Credit Union National Association (CUNA) represents America's Credit Unions and their 115 million members.

General Comments

Credit unions are the original consumer financial protectors. Because of their not-for-profit, member-owned cooperative structure, credit unions are not subject to the same revenue-driven motives that are characteristic of for-profit financial services providers. Instead, credit unions' member-centric focus means they approach their members differently than other market participants approach their customers.

In fact, rather than outright rejecting the creation of the CFPB, credit unions acknowledged that consumers needed protection from the Wall Street banks and other bad actors when Congress was actively developing legislation that would ultimately become the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act). Unfortunately, the CFPB, in its first several years of existence, repeatedly missed opportunities to leverage credit unions' mission and history to the benefit of consumers, and instead finalized regulations that harmed credit unions and their members. The impact of these regulations, such as the remittance rule and others, has driven many credit unions to leave markets or reduce their product offerings. In addition, one-size-fits-all regulation directly hits credit union member-owners in the pocket book, costing them \$6.1 billion in 2016 alone based on a CUNA survey conducted in 2017.¹

Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activity the rules were designed to curtail. Credit unions and their members should not pay for the sins of bad actors.

¹ See Credit Union National Association, 2017 Regulatory Burden Financial Impact Study: An Elevated New Normal available at https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/FINAL_4-Page_Executive_Summary_Web.pdf.

Under Director Kraninger's leadership, the CFPB has an opportunity once again to examine and, where necessary, modify its approach to regulation in a manner that ensures the Bureau is fulfilling its consumer protection mission without impeding the availability of safe and affordable financial products and services.

CUNA Supports a CFPB Commission, Rather than a Single Director Structure

While there are many measures the Bureau must take to improve the regulatory landscape, Congress also has a responsibility to ensure the CFPB is an effective agent of consumer protection. The current structure—with a single, powerful director—gives too much authority to one person and does not provide enough oversight and accountability. Congress should enact legislation that changes the leadership structure to a multimember, bipartisan commission.

Over the years, significant questions and concerns regarding the Bureau's expansive power and the actions taken by both Directors have been raised by Members of Congress and other stakeholders. A multi-member commission, as envisioned by the original proponents of the Bureau, would enhance consumer protection by ensuring diverse perspectives are considered prior to finalizing rules, and would prevent disruptions caused by leadership changes. Credit union members and other consumers benefit from policymaking that includes more voices. This structure is consistent with the traditions of our democracy and would provide certainty that is essential for consumers and the financial services industry, regardless of which political party controls the White House.

Perhaps the best evidence of the virtues of a CFPB commission is the fact that leaders of both parties have supported a multi-member commission only to back off that support when it was politically convenient to do so. This political approach is a disservice to the consumers the Bureau is entrusted to protect.

Credit Union Recommendations for the CFPB's Rulemaking Agenda

America's credit unions value the CFPB's mission, "to make consumer financial markets work for consumers, responsible providers, and the economy as a whole." Unfortunately, credit unions' ability to provide their members with high-quality and consumer-friendly financial products and services has been impeded by several rules promulgated under past leadership. As mentioned above, the CFPB's overly broad approach to rulemaking resulted in burdensome regulatory requirements being imposed on credit unions based on the irresponsible practices of other industry stakeholders.

Outlined below are high-level priorities and recommendations credit unions have provided to the CFPB regarding its rulemaking approach and several specific rules:

Regulating America's Credit Unions

CUNA has strongly urged the Bureau to closely monitor the impact its rules have had on credit unions and their members and to appropriately tailor regulations to reduce burden or exempt credit unions entirely, as appropriate. The Bureau's rulemakings and supervisory efforts should be focused on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. If the Bureau spent fewer resources on regulating and supervising credit unions, then it could spend more time focusing on entities actively engaged in predatory practices that exploit consumers.

Credit unions, as a byproduct of their structure, history, and mission, are unlike any actor in the financial services space, and are best positioned to succeed when supervised and examined by a regulator especially familiar with their unique characteristics. For that reason, the Bureau should work more closely with the National Credit Union Administration (NCUA) in the rulemaking process and use its statutory authority to transfer consumer protection regulation supervision of the largest credit unions to NCUA.

Statutory Exemption Authority

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the Dodd-Frank Act to authorize the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not inadvertently impacted. Congress provided this authority expressly in Section 1022 of the Dodd-Frank Act.

*The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title . . . (Emphasis added)*²

The statutory language is unambiguous and grants the CFPB the authority to exempt any class of covered entities from its rules.

CUNA has urged the Bureau to use this authority to protect credit union members from the problems associated with creating one-size-fits-all rules that are inappropriate for the different not-for-profit structure of credit unions. Credit unions and credit union service organizations (CUSOs) should receive appropriate exemptions from the Bureau's regulatory requirements. Furthermore, it is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, the Bureau should consider how credit unions are vastly different from other financial service providers and tailor regulatory requirements accordingly.

Debt Collection

As not-for-profit financial cooperatives, credit unions treat their members-owners with respect throughout the debt collection process and they comply with relevant consumer protection regulations for first-party debt collectors. As a result, consumer complaints regarding credit unions and their debt collection practices are very low compared to other lenders.

For a variety of reasons, credit unions and other lenders may engage third party companies to assist in debt collection efforts. As the Bureau develops a rulemaking related to debt collection, CUNA has respectfully requested the focus remain strictly on the practices of third-party debt collectors. The Bureau's rulemaking in this area should be reasonable and tailored to mitigate any potential indirect impacts on credit unions and other lenders.

Short-term Small Dollar Lending

Credit unions often provide the safest and most affordable loan options for consumers in need of emergency credit. The Bureau's rules governing short-term, small dollar lending should be meaningfully tailored to address predatory practices in the small dollar, short-term lending space. However, any rule addressing predatory lending practices should not inhibit credit unions from offering reasonable small dollar loan products to members in need. CUNA has asked the Bureau to revise its current small dollar lending rule to allow more credit unions to enter the short-term, small dollar lending space. We have asked for revisions to include an express, broader exemption for credit union loan products. In addition, we urge the Bureau to collaborate with the NCUA as it develops additional small dollar loan programs to coincide with the Payday Alternative Loan (PAL) program, which currently benefits from a partial carve-out from the Bureau's rule.

Remittances

While CUNA is supportive of appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures, we have also recommended the CFPB propose and finalize substantive amendments to the Remittance Rule to balance necessary consumer protections with a more tailored regulation that

² 12 U.S.C. § 5512(b)(3)(a).

allows consumers access to desired products and services. In this instance, CUNA has recommended the Bureau make at least two key revisions to the current rule:

1. Raise the safe harbor threshold from 100 to 1,000 remittance transfers in both the prior and the current calendar years;
2. Eliminate or allow a consumer to opt out of the 30-minute cancellation requirement.

In addition, Congress can act to provide certainty to credit unions offering remittance services by making permanent the Dodd-Frank Act's temporary fee estimates safe harbor, which is set to expire in July 2020. The safe harbor allows credit unions to provide members with estimated fees and exchange rates instead of exact amounts under specific conditions. If the safe harbor expires, then the cost of compliance for offering remittance services will substantially increase and consumers will ultimately have fewer options in the market.

Historically, remittances are a significant and, depending on a credit union's field-of-membership, popular service offered to members. The current remittance rule has made it more difficult for the consumers to obtain this service from their local credit union.

Home Mortgage Disclosure Act (HMDA)

The Bureau has acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, the HMDA rule has disproportionately burdened credit unions, due to their finite resources, despite no evidence of past wrongful conduct. This makes little sense especially given that credit unions lend within their fields of membership which may skew their HMDA data.

Although recent developments provided some HMDA relief to small institutions, including the increase to the reporting thresholds and the S. 2155 partial exemption, CUNA has urged the CFPB to consider additional amendments to the 2015 HMDA final rule that would provide meaningful exemptions to credit unions, including:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary. HELOC reporting had always been voluntary under prior rules as these loans are distinct from first lien mortgages.
- Reduce the data set for all credit unions to data points specifically enumerated in the Dodd-Frank Act. The statutorily enumerated data points are sufficient for the purpose of identifying discriminatory practices and implementing the purpose of HMDA.
- Increase the mortgage thresholds to exempt as many credit unions as possible from HMDA reporting, particularly considering the fact credit unions may only lend within their fields of membership.

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

In the past, the Bureau engaged in the practice of "regulation by enforcement," especially regarding its UDAAP authority. Instead of proposing clear regulations pursuant to an appropriate Administrative Procedure Act (APA) process, the Bureau would use its enforcement authority against financial institutions and expect the subsequent consent order to serve as a means for others to determine what acts and practices it interprets to be in violation of the law. Under the leadership of Acting Director Mulvaney, this controversial practice ended as the Bureau announced an intent to consider a potential UDAAP rulemaking soon. CUNA supports this rulemaking effort and has urged the CFPB to clarify its overly-subjective approach to UDAAP through a rule or other method.

CUNA has recommended the Bureau consider the following actions:

1. Solicit feedback on whether to eliminate or clarify the overly-subjective “abusive” prong of UDAAP. It should also seek feedback on whether other aspects of its UDAAP authority should be changed.
2. Clarify that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance. This would provide more transparency and due process to credit unions and consumers.
3. Clarify and reaffirm the Bureau’s narrow authority under the Dodd-Frank Act in regulating the business of insurance—particularly as it applies to credit unions and banks selling insurance—and that UDAAP is not a backdoor to regulate insurance activities.

Ability-to-Repay/Qualified Mortgage

The Bureau completed and issued an assessment report on the impact of the 2013 Ability-to-Repay and Qualified Mortgage Rule (ATR/QM rule). Based on the report’s data, CUNA is supportive of the CFPB engaging in an initiative to determine how and to what extent the rule could be modified to improve upon the initial rule’s effects. Credit unions look forward to providing substantive feedback on necessary modifications to the ATR/QM rule in the wake of the report, including on the appropriateness of the 43% debt to income ratio, defining “residual income,” the future of the QM GSE “patch,” and possible amendments to Appendix Q.

As the Bureau considers potential revisions to the rule, CUNA has urged the Bureau to engage in a meaningful and prolonged feedback process to ensure amendments do not create new overly burdensome requirements on credit unions.

Small Business Data Collection

The Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications by women-owned, minority-owned, and small businesses.

Credit unions’ unique and distinct memberships, a consequence of legally-restricted fields of membership, would not correspond with the Bureau’s plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending. CUNA has recommended any rule issued under this authority expressly exclude credit unions from reporting requirements. The regulatory burden likely to be associated with this rule, particularly for smaller credit unions, could harm the ability of small business owners to obtain needed credit from their credit union.

Conclusion

We look forward to continuing to collaborate with Congress and the CFPB to improve upon the past work of the Bureau, while strongly supporting a continued focus on reigning in bad actors in the financial services marketplace. On behalf of America’s credit unions and their 115 million members, thank you for holding this important hearing.

Sincerely,



Jim Nussle
President & CEO

cuna.org

STATEMENT SUBMITTED BY SCOTT S. WELTMAN, MANAGING SHAREHOLDER, WELTMAN, WEINBERG, AND REIS CO., LPA



Scott S. Weltman
 Managing Shareholder
 323 W. Lakeside Ave., Suite 200
 Cleveland, OH 44113
 216-685-1032

Written Statement of Testimony From:

Scott S. Weltman
 Managing Shareholder, Weltman, Weinberg & Reis Co., LPA

Prepared For:

Chairwoman Maxine Waters
 The U.S. House Committee on Financial Services

Session:

March 7, 2019
 "Putting Consumers First? A Semi-Annual Review of the Consumer Financial Protection Bureau"

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee, thank you for inviting me today. My name is Scott Weltman. I am the Managing Shareholder of Weltman, Weinberg & Reis Co., LPA, a creditors' rights law firm headquartered in Cleveland, Ohio that has been in business since 1930. I am grateful for the opportunity to share our firm's experience with the Consumer Financial Protection Bureau ("CFPB").

Our case with the CFPB was the epitome of an effort to legislate through misguided enforcement instead of by rulemaking. We encountered overzealous enforcement attorneys with the power of the U.S. Government behind them. Our nearly four year ordeal included an extensive Civil Investigative Demand ("CID") process – with which we fully cooperated, albeit at great expense – followed by a lawsuit that we won. Our law firm incurred nearly \$2 million dollars in attorney's fees. And, as a direct result of being sued, numerous clients of the firm fired us, and over 100 employees (out of a total of 650) lost their jobs.

Our story with the CFPB, however, began before the Bureau was formed. In 2009, our law firm was hired by Ohio Attorney General Richard Cordray as Special Counsel, which meant that our law firm was directly responsible for collecting the State of Ohio's debts. Mr. Cordray not only significantly vetted our firm and condoned exactly how we did business, he also required that our letters be written precisely to his specifications. And after observing firsthand how we did business, he hired us a second time. My written testimony includes the Certificates verifying those appointments.

Once he became Director of the CFPB, however, Mr. Cordray then approved a lawsuit against us claiming that virtually identical letters violated the law. And he authorized a press release accusing us of this illegal behavior, which was subsequently reprinted by every major national, local and industry news agency. This makes Mr. Cordray's deposition testimony in our case all the more troubling, since he admits, "You know, I don't know what the state of the law was then. I'm not sure what the state of the law is now." He was a former State Attorney General, the Director of the CFPB, and had no clue what the law was or is? I have included the full transcript of his deposition in my written testimony, for those of you who would like to review it. I have also submitted, and encourage you to read, the final Opinion in our lawsuit from Judge Donald Nugent (who, I would like to point out, was a Democratic Presidential appointee). The Judge specifically wrote that, "Despite requiring similar indications and disclosures of attorney involvement in the debt collection letters used on behalf of the State of Ohio, Richard Cordray, when he became head of the CFPB, authorized this lawsuit against Weltman...."

weltman.com

► Bankruptcy ► Commercial Collections ► Consumer Collections ► Real Estate Default ► Litigation & Defense

The singularly most offensive part of the lawsuit against our firm was the aggressiveness with which we were pursued by the CFPB despite the complete absence of any consumer harm. The CFPB continually insisted that our firm provide consumer redress, but never once identified a single consumer harmed by any of our alleged illegal conduct. And in the Opinion, the Judge stated that the CFPB, "offered no evidence to show that any consumer was harmed...."

Our firm provided the CFPB with over 1 million call recordings for its review. How many did it play at trial? None. It claimed that our phone calls violated the law, but it dismissed that portion of the lawsuit – half of its original claims – on the first day of trial. It never had any evidence. In my written testimony, I have provided a letter from the CFPB enforcement attorneys threatening to pursue us for more than \$95 million dollars in "ill-gotten gains" and over \$13 million dollars in civil monetary penalties. This claim of "ill-gotten gains," called disgorgement, was also dismissed by the CFPB on the first day of trial. Again, it never had any evidence.

I implore the Committee to question the CFPB's goals when it made its allegations against us in a very public lawsuit and press release; allegations with no facts behind them, which damaged our firm's reputation and, ultimately, which cost 100 of our employees their jobs. Additionally, I hope the Committee will investigate just how much money was spent by the CFPB to pursue our firm's case; more than a year's worth of time and travel. The expenses also included the hiring of an expert, a marketing professor from Georgetown whose "discounted" rate was \$750 dollars per hour, and whose testimony the Judge deemed not credible.

And when the case was over, and our firm had won; when the CFPB decided not to appeal and was ordered to pay our firm about \$10,000 in out-of-pocket costs, what happened? The CFPB asked if we would take a credit card for the \$10,000.

Before I wrap up, I would be remiss if I did not touch on rulemaking. When the CFPB was established in 2011, its power to make rules in the debt collection area was welcomed. To this day, however – 7 ½ years after its formation – how many rules has it published? None. If it made rules, then it would lose its ability to regulate through enforcement.

On January 23, 2018, former Interim Director Mulvaney sent an email to every employee of the CFPB which stated, "It is not appropriate for any government entity to 'push the envelope' when it comes into conflict with our citizens. The damage that we can do to people could linger for years and cost them their jobs, their savings, and their homes. If the CFPB loses a court case because we 'pushed too hard,' we simply move on to the next matter. But where do those that we have charged go to get their time, their money, or their good names back? If a company closes its doors under the weight of a multi-year Civil Investigative Demand, you and I will still have jobs at CFPB. But what about the workers who are laid off as a result? Where do they go the next morning?"

I can tell you this. For our firm and for our employees who lost their jobs, those are empty words.

Thank you very much.

B-001

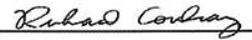

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

This certifies that
Alan H. Weinberg
Has been appointed as
Special Counsel

I take great pleasure in appointing you Special Counsel to the Attorney General of Ohio to provide legal services to the State as assigned by me and on my behalf through June 30, 2010.

This appointment reflects my highest confidence in your legal expertise, integrity, and ability. Therefore, I have affixed my name and the Seal of the Attorney General.




July 1, 2009
Date

145

DEFENDANT'S
TRIAL EXHIBIT
Civil Action No. 1:07-cv-00917
B-001

WWR02 000283



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

This certifies that

Alan H. Weinberg

Has been appointed as
Special Counsel

I take great pleasure in appointing you Special Counsel to the Attorney General of Ohio to provide legal services to the State as assigned by me and on my behalf through June 30, 2011.

This appointment reflects my highest confidence in your legal expertise, integrity, and ability. Therefore, I have affixed my name and the Seal of the Attorney General.



Richard Cordray

July 1, 2010
Date

D-001

WWW.R02_000319



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CONSUMER FINANCIAL
PROTECTION BUREAU,

Plaintiff

v.

Weltman, Weinberg & Reis Co.,
L.P.A.,

Defendant.

Civil Action No.

COMPLAINT

Electronically Filed

COMPLAINT

Plaintiff, the Consumer Financial Protection Bureau ("Bureau"), alleges the following against Weltman, Weinberg & Reis Co., L.P.A. ("Weltman").

INTRODUCTION

1. The Bureau brings this action under Sections 807(3), 807(10), and 814(b)(6) of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e(3), (10), and 1692(b)(6); and Sections 1031(a), 1036(a)(1), 1054, and 1055 of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§ 5531(a), 5536(a)(1), 5564, and 5565.

2. The Defendant engages in unlawful collection activities by misrepresenting the level of attorney involvement in demand letters and calls to consumers.

JURISDICTION AND LEGAL AUTHORITY

3. This Court has subject-matter jurisdiction over this action because it is “brought under Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

4. Venue is proper in this District because the Defendant does business here and a substantial part of events or omissions giving rise to the claims occurred here. 12 U.S.C. § 5564(f); 28 U.S.C. § 1391(b).

PARTIES

5. The Bureau is an independent agency of the United States that is authorized to take enforcement action to address violations of Federal consumer financial law, 12 U.S.C. §§ 5511(c)(4), 5512(a), 5563, 5564, including the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1).

6. Respondent Weltman, Weinberg & Reis Co., L.P.A. (“Weltman” or “the Firm”) is a law firm, organized under the laws of Ohio that has offices in this district.

7. Weltman regularly collects or attempts to collect, directly or indirectly, consumer debts, including debts from credit cards, installment loan contracts, mortgage loan deficiencies, and student loans. Weltman collects such debts on behalf of original creditors and debt buyers who purchase portfolios of defaulted consumer debt.

8. Weltman is therefore a “debt collector” under the FDCPA, 15 U.S.C. § 1692a(6), and it is a “covered person” under the CFPA, 12 U.S.C. § 5481(5), (6), (15)(A)(i), (15)(A)(x), because it collected debt related to credit extended to consumers.

STATEMENT OF FACTS

9. Since at least July 21, 2011, the Firm has regularly collected or attempted to collect debts on behalf of original creditors and debt buyers.

10. These alleged debts included the following types of debt: credit card; installment loan contract; mortgage loan deficiency; and student loan.

11. The alleged debts have been incurred by consumers primarily for personal, family, or household purposes.

12. When Weltman acquires the rights to collect on a new debt portfolio, the Firm's representatives (which may or may not include an attorney) discuss the portfolio's attributes with the creditor, including prior collection efforts and the age of the debts in the portfolio.

13. As part of the initial intake process, Weltman attorneys may review a sample of individual accounts within a portfolio of debts from the creditor for whom Weltman is collecting the debt. But non-attorneys may perform this review.

14. As part of its debt collection efforts, Weltman sends letters to consumers requesting payment ("demand letters").

15. If a consumer does not respond to an initial demand letter, then Weltman frequently sends a follow-up demand letter reiterating its request for payment or offering to settle the debt for a reduced amount.

16. The vast majority of the time, Weltman generates these demand letters through an automated process. Specifically, consumer account information provided by Weltman's clients is populated into a form letter template and printed by a third-party vendor.

17. Weltman's demand letters are printed on the Firm's letterhead, which states "WELTMAN, WEINBERG & REIS Co., LPA" at the top of the first page, and directly underneath the Firm's name, "ATTORNEYS AT LAW." In almost all versions of this template, the name of the Firm and the phrase "ATTORNEYS AT LAW" are in bold type.

18. "Weltman, Weinberg & Reis Co., L.P.A." appears in type-face in the signature line of nearly all of Weltman's demand letter templates.

19. Weltman's form letters typically include a detachable payment remission slip indicating that payments should be sent to Weltman, Weinberg & Reis Co., L.P.A., and provide a mailing address.

20. Since at least July 21, 2011, some of Weltman's form letters have included the following language: "Failure to resolve this matter may result in continued collection efforts against you or possible legal action by the current creditor to reduce this claim to judgment."

21. Since at least July 21, 2011, Weltman's form letters have also sometimes included the following language: "This law firm is a debt collector attempting to collect this debt for our client and any information obtained will be used for that purpose."

22. Since at least July 21, 2011, at times some form letters stated: "Please be advised that this law firm has been retained to collect the outstanding balance due and owing on this account."

23. When Weltman sends demand letters, Weltman attorneys generally have not reviewed a corresponding consumer's individual account file to reach a professional judgment that sending the letter is appropriate because, for example, the information in the letter is accurate and the debt is due and owing.

24. In most cases, Weltman attorneys do not review any individual account information or any other aspects of a consumer's file before Weltman sends a demand letter.

25. None of the subject demand letters include any disclaimer notifying consumers that an attorney has not reviewed the consumer's file or formed an independent professional judgment about the subject debt.

26. Weltman's demand letters misrepresent that attorneys at the firm have reviewed the consumer's file and determined that the consumer owes the amount demanded, when in fact no such review has occurred.

27. Rather, at the time a consumer receives a demand letter, Weltman is acting as a collection agency.

28. Weltman has sent millions of demand letters to consumers since July 21, 2011. Consumers have paid millions of dollars after Weltman sent a given demand letter but before Weltman filed any related collection lawsuit.

29. In addition to sending demand letters, Weltman also attempts to collect debts through outbound telephone calls to consumers.

30. These calls are generally handled by non-attorney collectors who are part of Weltman's "Pre-Legal" Department.

31. In addition, consumers sometimes call Weltman after receiving a demand letter from Weltman, and are routed to these collectors. During these inbound calls, the collectors similarly request payment on the consumer's alleged debt.

32. From at least July 21, 2011 through as late as July 2013, it was Weltman's practice and policy to identify Weltman as a law firm during these collection calls. Some training materials and collection scripts instructed Weltman collectors to tell

consumers: "This law firm is a debt collector attempting to collect this debt for our client and any information will be used for that purpose."

33. Even after July 2013, at times collectors continued to refer to Weltman as a law firm during calls with consumers. Sample statements made to consumers by collection agents that referred to Weltman's law firm status included that Weltman was the "largest collection law firm in the United States," an account was forwarded to "the collections branch of our law firm," and that the account has been "placed here with our law firm."

34. When such calls occurred, however, Weltman attorneys generally had not reviewed a corresponding consumer's individual account file to reach a professional judgment regarding whether the consumer owed the debt.

35. Consumers were typically not cautioned that an attorney had not reviewed their account information or formed an independent professional judgment about the subject debt.

36. Weltman's statements to consumers during collection calls implied that attorneys at the firm reviewed the consumer's file and determined that the consumer owed the amount demanded, when in fact no such review had occurred.

VIOLATIONS

Count I

(FDCPA) - Letters

37. The allegations in paragraphs 1-28 are incorporated by reference.

38. As described above, Weltman's demand letters were sent on its law firm letterhead, which prominently features the name of the firm and the phrase

“ATTORNEYS AT LAW” at the top. The law firm was also the signatory of the letters. Furthermore, many demand letters have explicitly referred to Weltman as a “law firm.”

39. The Firm thus misrepresented that the letters were from attorneys and that attorneys were meaningfully involved, when in most cases the attorneys were not meaningfully involved in preparing and sending the letters.

40. This practice was material because it had the potential to influence consumers to pay an alleged debt when they would not have otherwise.

41. The Firm’s acts and practices constituted violations of sections 807(3) and 807(10) of the FDCPA, 15 U.S.C. § 1692e(3), (10).

Count II

CFPA - Letters

42. The allegations in paragraphs 1-28 are incorporated by reference.

43. Defendant’s FDCPA violations, as described in Count I, constitute violations of section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Count III

CFPA (Deception) - Letters

44. The allegations in paragraphs 1-28 are incorporated by reference.

45. As described above, the demand letters sent to consumers by Weltman before a suit was filed represented, directly or indirectly, expressly or by implication, that attorneys were meaningfully involved in preparing and deciding to send the demand letters.

46. In fact, this was misleading to a reasonable consumer because demand letters sent by Weltman were prepared and sent without meaningful attorney involvement.

47. This practice was material because it had the potential to influence consumers to pay an alleged debt when they would have not otherwise.

48. The Firm's representations as set forth in paragraphs 17-22 therefore constituted deceptive acts and practices, in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a)(1), 5536(a)(1)(B).

Count IV

FDCPA – Telephone Communications

49. The allegations in paragraphs 1-13 and 29-36 are incorporated by reference.

50. Weltman routinely placed phone calls to consumers in an attempt to collect alleged debts from them, and also responded to phone inquiries from consumers regarding its debt collection efforts.

51. Weltman's collection agents frequently referred to Weltman as a law firm during these calls. But in most instances, attorneys had not actually reviewed the consumer's file and formed an independent professional judgment that making the collection call was warranted or about whether the consumer owed the amount requested.

52. The Firm thus misrepresented by implication that attorneys were meaningfully involved in the assessment of an alleged debt's validity before a collection call took place.

53. The Firm's acts and practices constituted violations of sections 807(3) and 807(10) of the FDCPA, 15 U.S.C. § 1692e(3), (10).

Count V

CFPA - Telephone Communications

54. The allegations in paragraphs 1-13 and 29-36 are incorporated by reference.

55. Defendant's FDCPA violations, as described in Count IV, constitute violations of section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A).

Count VI

CFPA (Deception) – Telephone Communications

56. The allegations in paragraphs 1-13 and 29-36 are incorporated by reference.

57. By referring to Weltman as a "law firm" during collection calls, Weltman collection agents implied that attorneys had formed an independent professional judgment that making the collection call was warranted or that the individual consumer owed the alleged debt.

58. This was misleading to a reasonable consumer because Weltman attorneys generally had not evaluated individual accounts at the time of the collection calls.

59. This practice was material because it had the potential to influence consumers to pay an alleged debt when they would have not otherwise.

60. The Firm's representations as set forth in paragraphs 29-36 constituted deceptive acts and practices, in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

PRAYER FOR RELIEF

Wherefore, as permitted by 12 U.S.C. § 5565 *et seq.*, the Bureau requests an Order granting:

- A. an injunction that permanently prohibits Weltman from committing future violations of the FDCA and CFPA;
- B. restitution against Weltman to compensate consumers harmed by Weltman's unlawful practices;
- C. disgorgement of ill-gotten revenue against Weltman, in an amount to be determined at trial;
- D. civil money penalties against Weltman;
- E. recovery of costs in connection with prosecuting the instant action; and
- F. any other legal or equitable relief deemed just and proper.

Dated: April 17, 2017

Respectfully submitted,

Attorneys for Plaintiff
Consumer Financial Protection Bureau

ANTHONY ALEXIS
Enforcement Director

DEBORAH MORRIS
Deputy Enforcement Director

MICHAEL G. SALEMI
Assistant Litigation Deputy

/s/ Sarah Preis

Sarah Preis
1700 G Street NW
Washington, DC 20552
Phone: (202) 435-9318
Facsimile: (202) 435-7722
Email: sarah.preis@cfpb.gov
Rebecca Watson
Phone: (202) 435-7895
Email: rebecca.watson@cfpb.gov

Enforcement Counsel



CFPB Files Suit Against Law Firm for Misrepresenting Attorney Involvement in Collection of Millions of Debts

CFPB Alleges Weltman, Weinberg & Reis Deceived Consumers with Misleading Calls and Letters

APR 17, 2017

WASHINGTON, D.C. - Today, the Consumer Financial Protection Bureau (CFPB) filed a lawsuit in a federal district court against the debt collection law firm Weltman, Weinberg & Reis for falsely representing in millions of collection letters sent to consumers that attorneys were involved in collecting the debt. The law firm made statements on collection calls and sent collection letters creating the false impression that attorneys had meaningfully reviewed the consumer's file, when no such review has occurred. The CFPB is seeking to stop the unlawful practices and recoup compensation for consumers who have been harmed.

"Debt collectors who misrepresent that a lawyer was involved in reviewing a consumer's account are implying a level of authority and professional judgement that is just not true," said CFPB Director Richard Cordray. "Weltman, Weinberg & Reis masked millions of debt collection letters and phone calls with the professional standards associated with attorneys when attorneys were, in fact, not involved. Such illegal behavior will not be allowed in the debt collection market."

Weltman, Weinberg & Reis, based in Cleveland, Ohio, regularly collects debt related to credit cards, installment loan contracts, mortgage loans, and student loans. It collects on debts nationwide but only files collection lawsuits in seven states: Illinois, Indiana, Kentucky, Michigan, New Jersey, Ohio, and Pennsylvania.

The CFPB alleges that the firm engaged in illegal debt collection practices. In form demand letters and during collection calls to consumers, the firm implied that lawyers had reviewed the veracity of a consumer's debt. But typically, no attorney

had reviewed any aspect of a consumer's individual debt or accounts. No attorney had assessed any consumer-specific information. And no attorney had made any individual determination that the consumer owed the debt, that a specific letter should be sent to the consumer, that a consumer should receive a call, or that the account was a candidate for litigation.

The CFPB alleges that the company is violating the Fair Debt Collection Practices Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. Since at least July 21, 2011, the law firm has sent millions of demand letters to consumers. Specifically, the CFPB alleges that the law firm:

- Sent collection letters falsely implying they were from a lawyer: Weltman, Weinberg & Reis sent letters on formal law firm letterhead with the phrase "Attorneys at Law" at the top of the letter and stated the law firm's name in the signature line. The letters also included a payment coupon indicating that payment should be sent to the firm. Some demand letters referred to possible "legal action" against consumers who did not make payments. Despite these representations, the vast majority of the time, no attorneys had reviewed consumer accounts or made any determination that the consumer owed the debt, that a specific letter should be sent to the consumer, or that the account was a candidate for litigation before these letters were sent.
- Called consumers and falsely implied a lawyer was involved: Weltman, Weinberg & Reis's debt collectors told consumers during collection calls that they were calling from a law firm. Specifically, sometimes they told consumers that it was the "largest collection law firm in the United States," or that the debt had been placed with "the collections branch of our law firm." This implied that attorneys participated in the decision to make collection calls, but no attorney had reviewed consumer accounts before debt collectors called consumers.

The Bureau is seeking to stop the alleged unlawful practices of Weltman, Weinberg & Reis. The Bureau has also requested that the court impose penalties on the company for its conduct and require that compensation be paid to consumers who have been harmed.

The Bureau's complaint is not a finding or ruling that the defendant has actually violated the law.

The full text of the complaint can be found at:

http://files.consumerfinance.gov/f/documents/201704_cfpb_Weltman-Weinberg-Reis_Complaint.pdf 

###

The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

Topics: • DEBT COLLECTION • ENFORCEMENT

PRESS INFORMATION

If you want to republish the article or have questions about the content, please contact the press office.

[Go to press resources page](#)

STAY INFORMED

Subscribe to our email newsletter. We will update you on new newsroom updates.

Email address

Sign up [See Privacy Act statement](#)

Subscribe to our RSS feed to get the latest content in your reader.

[Subscribe to RSS](#)

[Contact Us](#) [Newsroom](#) [Careers](#) [Industry Whistleblowers](#)
[CFPB Ombudsman](#)

FOIA	Administrative Adjudication	USA.gov
Plain Writing	Accessibility	Office of Inspector General
Privacy	Office of Civil Rights	
Website Privacy Policy & Legal Notices	No FEAR Act Data	
Open Government	Tribal	

An official website of the United States government

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

Consumer Financial :
Protection Bureau, :
 :
Plaintiff, :
 :
vs. Case No. 1:17-cv-817 :
 :
Weltman, Weinberg & :
Reis Co., L.P.A., :
 :
Defendant. :
 :
 :

- - - - -

DEPOSITION OF RICHARD CORDRAY, ESQ.

- - - - -

Taken at Jones Day
325 John H. McConnell Boulevard, Ste. 600
Columbus, OH 43215
December 19, 2017, 8:59 a.m.

- - - - -

Spectrum Reporting LLC
333 Stewart Avenue, Columbus, Ohio 43206
614-444-1000 or 800-635-9071
www.spectrumreporting.com

- - - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
By Thomas McCray-Worrall, Esq.
Michael G. Salemi, Esq.
Steven Bressler, Esq.

ON BEHALF OF DEFENDANT:

Jones Day
901 Lakeside Avenue
Cleveland, OH 44114
By James R. Wooley, Esq.
Ryan A. Doringo, Esq.

ON BEHALF OF THE WITNESS:

Crabbe, Brown & James, LLP
500 South Front Street, Ste. 1200
Columbus, OH 43215
By Andy Douglas, Esq.

ALSO PRESENT:

Scott Weltman, Esq.
Sue Douglas, Paralegal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Tuesday Morning Session

December 19, 2017, 8:59 a.m.

- - - - -

S T I P U L A T I O N S

- - - - -

It is stipulated by counsel in attendance that the deposition of Richard Cordray, a witness herein, called by the Defendant for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

- - - - -

		4
1	I N D E X	
2	Examination By	Page
3	Mr. Wooley - Cross	5
4	Exhibits	Page
5	Exhibit A - Prepared Remarks of CFPB Director	16
6	Richard Cordray at the National	
7	Association of Attorneys General	
8	Exhibit B - Certificate, 7-1-09	46
9	Exhibit C - Ohio Attorney General's Office	55
10	RFQ for Special Counsel, 5-18-09	
11	Exhibit D - Certificate, 7-1-10	79
12	Exhibit E - Ohio Attorney General's Office	81
13	RFQ for Special Counsel, 5-27-10	
14	Exhibit F - Fiscal Year 2010 Retention	85
15	Agreement Collections Special	
16	Counsel	
17	Exhibit G - Complaint	97
18	Exhibit H - CFPB Files Suite Against Law Firm	102
19	for Misrepresenting Attorney	
20	Involvement in Collection of	
21	Millions of Debts press release	
22	Exhibit I - Letter, 12-14-17	112
23	Exhibit J - Letter, 9-22-14	118
24	(Original exhibits returned to Mr. Woley.)	

1 RICHARD CORDRAY, ESQ.
2 being first duly sworn, testifies and says as
3 follows:
4 CROSS-EXAMINATION
5 BY MR. WOOLEY:
6 Q. Could you please state your full name
7 and spell your last name for the reporter, please.
8 A. Richard Adams, plural, Cordray,
9 C-O-R-D-R-A-Y.
10 Q. Mr. Cordray, thank you for making time
11 for us today for your deposition. Am I correct
12 that you're represented by counsel today?
13 A. I am.
14 Q. All right. And that is Mr. Douglas?
15 A. Justice Andrew Douglas, yes.
16 MR. WOOLEY: Okay. And, Justice, would
17 you prefer I referred to you as Justice Douglas?
18 MR. DOUGLAS: I'd be happy for you to
19 call me Andy and I can call you Jim.
20 MR. WOOLEY: That will be fine. I
21 don't have that history, so I have no title
22 associated with my history, unless you want to
23 call me assistant district attorney.
24 MR. DOUGLAS: I don't know. It says

1 lead counsel here, so I suspect --

2 MR. WOOLEY: Okay.

3 MR. DOUGLAS: Whatever you're
4 comfortable with is fine with me.

5 MR. WOOLEY: Okay. I just wanted to
6 make sure --

7 MR. DOUGLAS: I was raised in the
8 system, too, where I still call my friends judge.

9 MR. WOOLEY: All right. And do you
10 have the appearances for the CFPB on the record as
11 well?

12 THE REPORTER: Yes.

13 MR. WOOLEY: Okay. We won't bother
14 with that.

15 BY MR. WOOLEY:

16 Q. Okay. What did you do to prepare for
17 your deposition today, Mr. Cordray?

18 A. I reviewed the subpoena and spoke with
19 my counsel.

20 Q. Anything else?

21 A. No.

22 Q. Did you speak to anybody from the CFPB?

23 A. I don't believe that I did.

24 MR. DOUGLAS: Better speak up so

1 everybody can hear you.

2 A. I don't believe that I did. I received
3 an e-mail from them indicating that they were
4 aware that I had a subpoena and if I was
5 represented by counsel, that they would like to
6 talk with my counsel, and from there I think
7 counsel and they may have spoken. But I did not.

8 Q. All right. Did you review any
9 documents besides the subpoena?

10 A. I believe I reviewed the motion for
11 sanctions briefly --

12 Q. All right.

13 A. -- in the case.

14 Q. And did someone bring that to your
15 attention besides your lawyer? I have no interest
16 in your conversations with your lawyer. But did
17 someone bring that to your attention besides your
18 lawyer?

19 A. No.

20 Q. All right. Did you review the
21 complaint?

22 A. I did not.

23 Q. Okay. It's a complaint that you
24 approved to be filed in this case, correct?

1 A. Correct.

2 Q. You reviewed it back then, didn't you?

3 A. Correct.

4 Q. All right. And it was filed with your
5 approval of course?

6 A. Correct.

7 Q. All right. So other than perhaps
8 reviewing the motion for sanctions and speaking to
9 your lawyer -- which I won't get into -- and
10 looking at the subpoena, that's pretty much what
11 you did to prepare for your deposition?

12 A. Yes.

13 Q. All right. Thank you.

14 Briefly on your background, you were
15 the Attorney General from January 2009 to January
16 2011; is that correct?

17 A. Correct.

18 Q. Okay. And I know you were the director
19 of the CFPB. But I don't know, sir, the exact
20 tenure of your directorship.

21 A. I was first appointed by recess
22 appointment in January of 2012. I was confirmed
23 by the Senate thereafter and served until I
24 resigned November, I believe, 24th, 2017, a little

1 less than a month ago.

2 Q. Okay. And what did you do between -- I
3 see there's a gap that I was not aware of --
4 January 2011 and your appointment to the
5 directorship of the CFPB?

6 A. I was chief of the enforcement team for
7 the CFPB.

8 Q. All right. As the director of the
9 CFPB, what responsibility did you have with
10 respect to lawsuits that would be brought by the
11 CFPB?

12 A. I had ultimate responsibility but
13 delegated much of the actual work and could not
14 personally be involved in it. But I had decision
15 making authority --

16 Q. All right.

17 A. -- over major junctures in cases and
18 investigations.

19 Q. All right. So with respect to the
20 filing of the complaint, that's something that you
21 would have actually seen and signed off on; is
22 that correct?

23 A. Correct. It would have been a
24 recommendation memo that I would have signed,

1 perhaps modified.

2 Q. Okay.

3 A. But, yes, ultimately approved.

4 Q. And if a complaint referred to
5 documents such as demand letters from a collection
6 firm, would you have reviewed the supporting
7 document before approving the complaint as well?

8 MR. MCCRAY-WORRALL: Objection. To the
9 extent this calls for privileged information, I
10 would instruct Mr. Cordray not to respond.

11 MR. WOOLEY: You're instructing him not
12 to respond?

13 MR. MCCRAY-WORRALL: Well, we're
14 certainly asserting the Bureau's privilege.

15 MR. WOOLEY: I understand. But I
16 believe the only person that could probably
17 instruct him is him or his lawyer. But you're
18 asserting a privilege with respect to what he
19 reviews before he files a case?

20 MR. MCCRAY-WORRALL: To the
21 decision-making process by which he comes to
22 approve a matter, yes.

23 MR. WOOLEY: Okay.

24 A. I think I can answer the question

1 generally.

2 Q. All right.

3 A. Typically when a recommendation --

4 MR. DOUGLAS: Sir, would you restate
5 the question because I think he should answer it.
6 Go ahead.

7 MR. WOOLEY: Would you mind if you --
8 just digging it out for me?

9 A. Let me just answer the question. When
10 a recommendation memorandum would come to me there
11 would be a package of documents including the
12 complaint. The package of documents would vary
13 from case to case. I have no particular
14 recollection of what package of documents would
15 have come with the complaint in this matter.

16 Q. All right. Okay. When did you resign
17 from the CFPB?

18 A. So I believe it was -- it was the day
19 after Thanksgiving, so it was November 24th, 2017.

20 Q. And why did you resign?

21 A. You can check that date to make sure
22 it's correct, but I believe that's the correct
23 date.

24 Q. And why did you resign, sir?

1 MR. DOUGLAS: Objection. You may
2 answer.

3 A. I determined that it was time for me to
4 leave.

5 Q. Anything more to it than that?

6 MR. DOUGLAS: Objection.

7 A. I don't think that I can --

8 MR. DOUGLAS: A recollection of that
9 makes really no difference to this case. It's not
10 designed to -- to help your defense any. Under
11 401(b) I think it's not relevant.

12 MR. WOOLEY: Justice Douglas, every
13 witness that they've deposed they've asked them
14 detailed questions about their background, why
15 they move from this job to that job, what was the
16 reason for every career move. I'm just asking
17 some questions about career moves.

18 MR. DOUGLAS: Okay. Well, he has no
19 reason not to answer the question except that I'm
20 not going to let you explore about his resignation
21 because I don't think it's relevant to this case.

22 MR. WOOLEY: And you're instructing him
23 not to answer on the grounds of relevance?

24 MR. DOUGLAS: I am.

1 MR. WOOLEY: To not answer?

2 MR. DOUGLAS: I am.

3 MR. WOOLEY: As opposed to preserving
4 the record?

5 MR. DOUGLAS: I understand the record.
6 Now, if you are comfortable answering that and
7 want to answer it, you may.

8 A. I resigned because I determined that it
9 was time for me to leave.

10 Q. Okay. That's it?

11 A. I think that's why people resign from
12 any job.

13 Q. Okay. When did you inform the staff
14 that you were going to resign?

15 A. When did I inform the staff
16 specifically when I was going to resign, that it
17 was going to be on November 24th?

18 Q. Yeah.

19 A. I think I informed the staff that
20 afternoon.

21 Q. Did you tell anybody on the staff prior
22 to that time?

23 A. I had indicated and it had become known
24 publically that I was likely to step down by the

1 end of the month earlier in the month. I believe
2 that was in the press and can be verified.

3 Q. All right. I can certainly read the
4 press. I'm asking about things that maybe I can't
5 read in the press. Did you tell the staff earlier
6 to that report that you were going to resign?

7 MR. BRESSLER: Objection as to
8 relevance to this line of questioning.

9 A. I've already answered the question.

10 Q. Pardon me?

11 A. I already answered the question.

12 Q. Okay. That's the best answer to that
13 question?

14 A. Yeah. As I said, it was not until the
15 24th that I informed people that I was going to
16 resign on the 24th.

17 Q. All right.

18 A. I had generally indicated earlier in
19 the month that I would likely step down. It
20 wasn't specific, it wasn't a promise, but I would
21 likely step down by end of the month.

22 Q. Okay. And so that would have been
23 earlier in November? I'm just nailing the time
24 frame down.

1 A. I believe so, yes.

2 Q. Okay. Did you speak to Ms. Preis about
3 it?

4 A. Who?

5 MR. MCCRAY-WORRALL: Objection. Calls
6 for privileged information.

7 MR. WOOLEY: A conversation about his
8 resignation is privileged?

9 MR. MCCRAY-WORRALL: It may have.
10 Ms. Preis is an attorney on this case. It may
11 have been subject to attorney/client privilege.
12 To the extent that --

13 THE WITNESS: Okay. I'll answer it.

14 A. I did not speak to Ms. Preis about
15 that.

16 Q. All right. Mr. Watson?

17 A. Well --

18 Q. Ms. Watson. I apologize.

19 MR. MCCRAY-WORRALL: Same objection.

20 A. I didn't speak to any of the attorneys
21 in this case about that. I did generally a couple
22 days before I actually resigned made a tour of the
23 office to meet with as many people as I could just
24 to simply say good-bye to have pictures taken.

1 Again, I did not specify exactly when I would
2 resign.

3 Q. Okay. When you were the Attorney
4 General for Ohio, one of your responsibilities was
5 to collect debts owed to the State; is that
6 correct?

7 A. That is correct.

8 Q. All right. And what kind of debts?

9 A. A wide variety of debts.

10 Q. Like taxes? Student debt?

11 A. Yes. Yes.

12 Q. Overpayments from benefit plans like
13 Medicaid?

14 A. Yes.

15 Q. All right. On February 26th, 2014 --
16 Exhibit A. I'll tell you what, I will just need
17 two all the time -- off the record.

18 (A short recess is taken.)

19 - - - - -

20 Thereupon, Exhibit A is marked for
21 purposes of identification.

22 - - - - -

23 MR. DOUGLAS: Thank you.

24 Q. Mr. Cordray, do you recognize

1 Exhibit A? Take your time.

2 A. So I don't have a particular
3 recognition of Exhibit A, but I'm -- what I'm
4 reading here seems to be a copy of prepared
5 remarks that I would have delivered at the
6 National Association of Attorneys General in
7 February of 2014. And they seem familiar enough
8 to me that I could verify that I did deliver these
9 remarks in roughly this form.

10 Q. All right. If you could look at the
11 third page --

12 A. Uh-huh.

13 Q. -- of it. After the break --

14 A. Yep.

15 Q. -- there are paragraphs relating to
16 debt collection.

17 A. Yep.

18 Q. Do you see those?

19 A. I do.

20 Q. Okay. And I think I asked you what you
21 looked at before. But you didn't look at this
22 before you testified today, did you, to prepare
23 for your deposition?

24 A. I did not.

1 Q. All right. The first paragraph there
2 that starts with, "Debt collection is another
3 example that shows how your work reverberates."
4 Do you see that? I'd like you to tell me when
5 you're done reading that first paragraph because I
6 have a couple of follow-up questions, please.

7 A. Okay. I'm done reading the first
8 paragraph.

9 Q. All right. When you were the Attorney
10 General, the Weltman firm, Alan Weinberg and the
11 Weltman firm assisted you in collecting debts. Do
12 you recall that?

13 A. I believe that's so, yes.

14 Q. Yeah. They were your special counsel
15 collecting debts.

16 A. They were one of many --

17 Q. Do you recall that?

18 A. -- special counsel collecting debts,
19 yes.

20 Q. Who in this paragraph are you referring
21 to as an "unscrupulous debt collectors"?

22 A. Well, over my time as Attorney General,
23 we saw a number of people that we thought were
24 violating the law and we would take steps to

1 remedy that when we saw it occurring.

2 Q. Okay. Do you recall who any of those
3 firms or people were, sir?

4 A. I don't recall offhand. But there were
5 a number of such matters. At times they were even
6 collectors who had been collecting on behalf of
7 the State.

8 Q. Okay. Do you recall the names of any
9 collectors that you --

10 A. Not offhand, no.

11 Q. All right. If you took a minute, could
12 you perhaps think of one?

13 A. If I went back through the record and
14 read press reports --

15 Q. Okay.

16 A. -- I'm sure I could come up with a
17 number of them, yes.

18 Q. Do you recall thinking that Weltman,
19 Weinberg & Reis was an unscrupulous debt
20 collector?

21 A. I have no particular recollection of
22 that, no.

23 Q. Okay. Do you recall having any problem
24 at all with the way they collected debt for the

1 State?

2 A. I do not recall any particular
3 problems, no.

4 Q. All right. Read the next paragraph,
5 please. And tell me when you've finished it.

6 A. I don't know that my recollection is
7 complete or accurate. But that is what I recall
8 as I sit here.

9 Q. Well, when you approved the complaint
10 in this case, you saw the name of the firm,
11 correct?

12 A. I would have, yes.

13 Q. Right. And did any part of you then
14 say, ah, this is the firm that I had problems with
15 when I was at the State?

16 A. I would say no part of me said either
17 that I did or did not remember any problems that
18 would have occurred.

19 Q. Okay. If you had problems with a
20 special counsel when they were collecting debt for
21 you, would somebody have escalated that to you,
22 somebody who was directly dealing with them?

23 A. Probably. Not necessarily, but
24 probably.

1 Q. Do you recall --

2 A. There are many firms that collect debt
3 on behalf of the State.

4 Q. Do you recall anybody on your staff
5 escalating to you any concerns whatsoever with
6 respect to the way the Weltman, Weinberg & Reis
7 firm collected debt for the State?

8 A. Again I do not recall that that
9 happened, nor do I recall that that did not
10 happen. I do not recall, period.

11 Q. Okay. What sorts of records would we
12 need to subpoena to determine whether or not there
13 was some record of a complaint regarding Weltman,
14 Weinberg & Reis?

15 A. I wouldn't know the answer to that
16 question. That would be for you to determine.

17 Q. Well, who would know that worked on
18 your staff if there was such a problem?

19 A. People who worked there at the time.

20 Q. They have names. Who are their names?

21 A. You know, I don't know who would have
22 worked with Weltman and Weinberg. I honestly
23 don't know.

24 Q. You have no idea?

1 A. I don't have any particular
2 recollection of that, no.

3 Q. What lawyer in your office was involved
4 with the debt collection process?

5 A. There were a number of lawyers in my
6 office. There were a number of nonlawyers in my
7 office. And there were a number of debt
8 collection firms.

9 Q. Okay. Do you have any names?

10 A. Names? What do you mean "names"?

11 Q. People that would have dealt with
12 Weltman, Weinberg & Reis?

13 A. I would not know who had dealt Weltman,
14 Weinberg & Reis.

15 Q. Who were the people that could have
16 dealt with Weltman, Weinberg & Reis?

17 A. I believe you could go back through
18 personnel files of the Attorney General's Office
19 and determine that. I don't know offhand who
20 would have dealt with this firm.

21 Q. You're unable to recall anybody?

22 A. I'm not able to recall who dealt with
23 Weltman, Weinberg & Reis, that is correct.

24 Q. Okay. And you're not able to recall

1 even a list of people who may have? You just
2 can't come up with a name?

3 A. Look, I could throw out names. In
4 response to your question, I do not know whether
5 they would be the ones, so --

6 Q. Okay.

7 A. -- in specific response to your
8 question, I do not recall specifically.

9 Q. All right. I got sidetracked. I'm
10 sorry. Read this second paragraph, please.

11 A. Okay. Okay.

12 Q. Fast reader.

13 In that second paragraph it says,
14 quote, and tell me if I'm reading this correctly,
15 "this market is one that attorneys general know
16 backwards and forward..." Is that correct?

17 A. That's what it says.

18 Q. Yeah. Well, it's your statement. And
19 were you one of the attorneys general that knew
20 debt collection backward and forward?

21 A. I would say I think I knew it. I think
22 other attorneys general knew it. Who knew it
23 better than others, I would not know.

24 Q. Okay. And then in the middle it says,

1 "When you collect debts owed to the state
2 government, or to state universities, you learn as
3 I did that this work can and should be done the
4 right way." Do you see that?

5 A. I do.

6 Q. All right. And you certainly had an
7 understanding of what "the right way" is?

8 A. I had some understanding. Might not
9 have been a comprehensive understanding.

10 Q. Okay. What's the right --

11 A. Would have been -- would have been an
12 understanding based on the laws that stood as I
13 understood it, mostly state law but perhaps
14 federal law. Eight, nine years ago, yes.

15 Q. Well, the speech is in 2014.

16 A. Okay.

17 Q. So you certainly had some understanding
18 of the federal law, too, at that time?

19 A. Well, what I'm saying is "the right
20 way" as I would have understood it at the time I
21 was a state attorney general, which is what I was
22 understanding you to ask about is law that's eight
23 years now, yes.

24 Q. Okay. What's "the right way" to make

1 an initial demand?

2 MR. DOUGLAS: Objection. Draws a
3 conclusion. There's an issue in this case and I
4 really don't think it is relevant. And I've let
5 this go on for a long time, as I told you I would.
6 But in the end, even if the Attorney General's
7 Office did it wrong, that doesn't affect your
8 client. Your client might have done it wrong,
9 too, or may not have done it wrong. But I think
10 that's a conclusion that the judge has to draw in
11 this case. And I'm going to let him answer a few
12 more questions and then --

13 Q. What's the right --

14 MR. DOUGLAS: And then I will instruct
15 him not to answer.

16 Q. What's "the right way" to make an
17 initial demand?

18 MR. MCCRAY-WORRALL: Objection. Vague
19 and calls for speculation.

20 A. I don't know quite how to answer that
21 question. I don't know whether you're talking
22 about in writing, in person.

23 Q. An initial demand letter.

24 MR. DOUGLAS: If you know.

1 A. Well, I would say "the right way" to
2 make a demand is to present truthful, accurate
3 information, and that would be the way in which I
4 would assume is "the right way" to present a
5 demand.

6 Q. Does a law firm that's a debt collector
7 need to have a lawyer look at account level
8 detail?

9 MR. DOUGLAS: Objection. You're
10 instructed not to answer that. That's a
11 conclusion to be drawn in this case.

12 MR. WOOLEY: Well, I'm going to go
13 ahead and ask the question then, all right?

14 MR. MCCRAY-WORRALL: I'll make the same
15 objection. Calls for a legal conclusion.

16 Q. Okay. Does a law firm that's a debt
17 collector need to have a lawyer look at account
18 level detail before sending a demand letter?

19 A. I'm not sure what you mean when you say
20 need to do something. Do you mean because the law
21 requires it, because it's better practice, because
22 it would be --

23 Q. Oh, I --

24 A. You know, what -- what are you asking?

1 Q. This is --

2 A. I'm not clear.

3 Q. I'm unpacking your statement about you
4 learn as I did this can and should be done "the
5 right way." I'm not asking you about the law; I'm
6 asking about your statement about "the right way."
7 These are your words.

8 MR. WOOLEY: They're his words.

9 Q. So I'd like to know what do you mean --
10 what's "the right way" for someone to send an
11 initial demand?

12 A. So the speech that you're reading from
13 does not speak to initial demand letters. It
14 doesn't say anything about initial demand letters.
15 It talks about debt collection generally. You're
16 now wanting me to tell you what is "the right
17 way." I assume you mean the legal way. I'm not
18 sure what you mean by the right way to send a
19 demand letter. I'm not quite sure what you're
20 asking and therefore how to respond.

21 Q. All right. I'm asking what you meant
22 by "the right way." I'm asking do you know the
23 right way to send a demand letter?

24 A. The right way to collect debts was not

1 -- the speech was not about demand letters
2 specifically.

3 Q. Okay. Then --

4 A. Is there any mention of demand letters
5 in the speech that you are reading from?

6 Q. Then tell us what you meant by "the
7 right way." When you stand up in front of the
8 attorneys general and say I know this backwards
9 and forwards, "this can and should be done the
10 right way." What's "the right way"?

11 A. The right way is to proceed on truthful
12 and accurate information and be candid with those
13 you're dealing with and to also operate within the
14 parameters of federal law, such as calling
15 restrictions and other things that are meant to
16 prevent harassment.

17 Q. Okay.

18 A. There's a number of pieces to that.

19 Q. How many debts did the AG's office
20 attempt to collect each year? I mean how active
21 were you in this?

22 A. Many.

23 Q. Can you ball park it at all?

24 A. Not really. It would have been very,

1 very many.

2 Q. How many attorneys were in your office
3 that worked on debt collection matters?

4 A. In the Attorney General's Office?

5 Q. Yes, sir.

6 A. I don't know offhand. There were a
7 number.

8 Q. Was it handled through a particular
9 division? I know, you know, attorneys generals
10 have different divisions set up. Was it a
11 particular division?

12 A. I believe it was, yes.

13 Q. And did the division have a name?

14 A. I don't recall the name. But it
15 probably had something to do with revenue
16 collection or collection or debt collection or
17 something of the type.

18 Q. Okay. Was it a large division, a small
19 division?

20 A. Well, it's all relative I suppose.
21 There were 1,800 people in the Attorney General's
22 Office, so some pieces were larger, some pieces
23 were smaller, some pieces were completely internal
24 to the office, some pieces as this one was also

1 included people external to the office who were
2 working on our behalf such as this law firm.

3 Q. Headcount-wise, how many people in the
4 office worked on debt collection?

5 MR. DOUGLAS: Objection.

6 A. I don't recall.

7 MR. DOUGLAS: Asked and answered. He
8 told you he doesn't know.

9 Q. 10?

10 A. I don't recall. But you could
11 certainly look at the Attorney General's Office
12 organizational structure and find that out.

13 Q. 1,800? You knew that number. I'm
14 asking how many people worked on debt collection?

15 A. I'm not sure -- I'm not sure what your
16 point is. It was more than 10, less than 1,800.

17 Q. More than 10 and less than 1,800. And
18 there's no way you can narrow that for us? So
19 your sworn testimony is there's more than 10, less
20 than 1,800? I --

21 A. My sworn testimony is I don't recall
22 exactly how many people worked in that part of the
23 office.

24 Q. Okay.

1 A. And you're trying to ask me something
2 that I do not remember.

3 Q. How many of them were lawyers?

4 A. I do not know.

5 Q. No idea?

6 A. I don't recollect at this point.

7 That's correct. Do I need to say it many times
8 for you or just a few times?

9 Q. Would it have been five lawyers?

10 A. I don't recollect. You can ask it
11 again.

12 Q. Could it have been 200 lawyers?

13 A. I don't recollect.

14 Q. Okay. Were you personally involved in
15 trying to collect debt?

16 A. I'm not sure what you mean by
17 "personally involved." I was ultimately
18 responsible. I was not working files myself.

19 Q. All right. Who was working the files
20 then?

21 A. People in the office and people from
22 outside the office who are on contract with the
23 office.

24 Q. And within the office, that included

1 lawyers and nonlawyers, correct?

2 A. That is correct.

3 Q. All right. Did you review the
4 circumstance at the account level detail like down
5 to the individual debtor, the student that didn't
6 pay the fees at Ohio State? Did your office
7 review those details at the account level before
8 seeking to collect any debt?

9 MR. DOUGLAS: Are you asking if he
10 personally did it?

11 Q. Well, I'll -- thank you. I'll break it
12 down. You personally, I'm sure the answer is no,
13 right?

14 A. Well, it would depend. There might
15 have been accounts that were important enough that
16 I personally would have reviewed the details.
17 There may have been others where others did that
18 in a delegated basis.

19 Q. Okay. But you believe somebody in your
20 office would have reviewed the -- each account
21 before somebody would have been sent an initial
22 demand letter?

23 A. I believe that would be the case, yes.

24 Q. Okay. Somebody in your office would

1 have looked -- on a tax case, let's just -- and
2 said before we write this person a letter, we're
3 going to look at the W-2, we're going to look at
4 the checks, we're going to look at the tax return
5 and verify that it's a valid debt before we write
6 a letter; is that correct?

7 A. I don't believe I would know the
8 details of that, so I -- so I don't know is the
9 answer.

10 Q. Okay. Well, is it something that you
11 think lawyers did or nonlawyers did?

12 A. It would depend on the matter and it
13 would depend on the situation.

14 Q. Okay. Are there circumstances in which
15 you know lawyers did not look at the --

16 A. I don't have that kind of microscopic
17 knowledge of how delegated activity was handled in
18 my office.

19 Q. All right. Well, let me just ask some
20 general questions. The people that did this work
21 in your office who you -- can you recall one name?

22 A. Could I understand the relevance of
23 this?

24 Q. Can you recall one name?

1 A. Could I understand the relevance of
2 this to the -- to the case that we're here on?

3 Q. Well, one day maybe you'll take my
4 deposition, but now I'm asking you. Can you
5 recall the name of one person that worked on debt
6 collection in your office?

7 MR. DOUGLAS: And I'm going to object
8 to that again and a continuing objection. That's
9 not relevant to whether or not your client
10 violated the law. And I think it violates the
11 relevancy section. More than that, he's already
12 -- been asked that at least five times by my
13 notes, and I think he answered it every time.
14 He'll answer it one more time and then I'm going
15 to instruct him not to answer.

16 Q. Can you recall the name?

17 A. What name?

18 Q. Of anybody in your office that worked
19 on debt collection?

20 A. I don't recall anybody who would have
21 worked on debt collection with this firm. There
22 were people in the office who worked on debt
23 collection, and I could go and refresh my memory,
24 but I don't offhand recall who --

1 Q. Anybody?

2 A. -- the people were who were the players
3 on that. I'm sure you can find that out
4 separately.

5 Q. Okay. So no name. All right.

6 When you were --

7 MR. MCCRAY-WORRALL: I'm sorry. Could
8 you clarify? Was that a question, Counselor?

9 Q. When you --

10 MR. MCCRAY-WORRALL: Counsel, you said
11 "no name." Was that a question or was that a
12 statement for the record?

13 MR. WOOLEY: Here's what I'm not here
14 to do: Answer your questions.

15 Q. When you were --

16 MR. MCCRAY-WORRALL: Counsel, I'm
17 asking for a clear record.

18 Q. When you were in the AG's office, did
19 anybody ever complain to you, that escalated up to
20 you, about the way in which the AG was collecting
21 debt?

22 A. I believe so, yes.

23 Q. Okay. Tell me what you recall about
24 that, sir.

1 A. I recall at some point, and I don't
2 recall specifics or who was involved, that there
3 would have been complaints being made and we
4 needed to review whether certain collectors,
5 whether law firms or otherwise or both had
6 violated the law. And I believe at some point
7 along the way maybe multiple points along the way
8 one or another of those might have been people who
9 were currently collecting debts for the State of
10 Ohio as well, which I would consider and did
11 consider to be a problem.

12 Q. Okay. Well, do you recall any specific
13 instance?

14 A. I do not.

15 Q. All right. I'm just thinking if I can
16 unpack that to maybe trigger recollection.

17 Do you recall the names of any law
18 firms that might have been implicated or mentioned
19 in those conversations?

20 A. I do not.

21 Q. Okay.

22 A. If we brought action, they would have
23 been public and you could find those records.

24 Q. Right.

1 A. But I don't recall offhand.

2 Q. Yeah. Well, do you remember suing any
3 of your collection law firms?

4 A. I believe we may have, but I don't
5 recall offhand.

6 Q. All right.

7 A. We may also have terminated collection
8 agents.

9 Q. Yeah.

10 A. And I'm sure we did that at times, so.

11 Q. So, look, my request for the name is if
12 there's somebody who might recall these things
13 better than you --

14 A. I understand that.

15 Q. -- then that's maybe somebody I should
16 talk to.

17 A. Look, I'm not resisting you on this.
18 But if you're asking me for information and I
19 don't have it, then I can't provide it to you.

20 Q. Right.

21 A. You'll have to find it elsewhere.

22 Q. Appointment of special counsel. Okay.
23 Can you describe that process for us, please, when
24 you were in the AG, how did that work?

1 A. Well, we set up a fairly elaborate
2 process to ensure that special counsel were
3 qualified, had experience, had the ability to
4 collect debts on behalf of the State effectively.
5 And there was a process around that, of which I
6 don't recall the specific details but it was not
7 negligible.

8 Q. It was -- I'm sorry?

9 A. Not negligible.

10 Q. That's your description of the process,
11 it was not negligible?

12 A. It was substantial.

13 Q. Substantial. Okay.

14 Do you recall that it involved an RFQ
15 process?

16 A. Very likely, although I don't recall
17 the specifics.

18 Q. All right. What's the purpose of an
19 RFQ?

20 A. I believe it is to obtain qualified
21 services that will be effective to fulfill the
22 purpose for which the State is contracting.

23 Q. All right. And were you directly
24 involved in that process?

1 A. I would have been on a delegated basis.
2 I would have approved the process, made sure I
3 thought it was sufficient, and then ultimately
4 probably accepted the recommendations in terms of
5 appointments.

6 Q. Understood. I mean -- understood.

7 So the people to whom you delegated
8 this -- and I just need this on the record. But
9 I'm sure there's people whose judgment and
10 experience you trusted?

11 A. I would have thought so, yes.

12 Q. Okay.

13 A. I wouldn't have delegated to people
14 that I didn't trust.

15 Q. I understand.

16 A. Although I will say that I delegated
17 many matters in the Attorney General's Office to
18 many attorneys with whom I was not all that
19 familiar, especially retained attorneys who had
20 been hired before.

21 Q. So the process for hiring special
22 counsel to collect debt, did you have any direct
23 involvement with the counsel themselves perhaps
24 even as a final interview when it got down to a --

1 you know, a select few that were in the running?

2 A. I don't recall. I'm not sure that I
3 did.

4 Q. Do you think you might have?

5 A. I think I might have, but I don't
6 recall doing that. So I -- so I can't say for
7 sure.

8 Q. So nothing stands out?

9 A. Not particularly.

10 Q. You don't remember some particular
11 riveting interview with Scott Weltman?

12 A. If we had had one, I'm sure I would
13 have recalled it. No. I don't recall.

14 Q. How many special counsel were hired to
15 collect debt at any given time? How many were
16 working with the AG on a contract basis?

17 A. A considerable number. And I don't
18 have -- I know you want specifics. I don't have
19 specifics. I'm sure those records could be
20 obtained.

21 Q. Right. And I understand your
22 reluctance to try to give a number if you can't
23 recall it. Sometimes a ball park is helpful for
24 us so we understand how much more work we have to

1 do.

2 A. I understand. I've been on your side
3 of the table before.

4 Q. Yeah. But sometimes it's helpful
5 information. And we're in discovery.

6 Was it five, was it 500?

7 A. Firms?

8 Q. Yeah.

9 A. Law firms or nonlaw firms? We used
10 both I believe.

11 Q. All right.

12 A. I wouldn't know. I would certainly
13 think more than five, I would certainly think less
14 than 500. What the number was, I don't recall.

15 Q. All right. Did you understand though
16 that there was a process by which your office
17 would vet applicants to be special counsel,
18 perhaps do some background on them and --

19 A. Yes.

20 Q. Okay. And have them submit
21 applications?

22 A. Yes.

23 Q. And then somebody would go and contact
24 references and sort of verify the bonafides of the

1 applicants?

2 A. Yeah. That was my intention.

3 Q. That makes sense, yeah.

4 A. Yeah.

5 Q. Okay. Did you understand that once
6 special counsel were appointed that there was an
7 ongoing review of their performance as well?

8 A. I believe that's correct, yes. And
9 there was also a general period of which they
10 would be renewed, so there would have been a
11 review at that point.

12 Q. Do you know who conducted the review?

13 A. I don't recall names offhand. But it
14 would have been people who worked in that section,
15 yes.

16 Q. So I understand your answer is about
17 names, and I'm going to back off that for a
18 second.

19 A. Uh-huh.

20 Q. Is it the same people that were
21 involved in collecting the debt, were they the
22 same ones involved in assessing the special
23 counsel who would collect the debt and then also
24 reviewing their performance? Am I talking about

1 one bucket of people?

2 A. I believe so. There may have been
3 different relationships in the office. But
4 roughly yes.

5 Q. All right. Do you recall any -- were
6 you direct -- were you involved in any of the
7 ongoing reviews of special counsel once hired?

8 A. I may have been, but it wouldn't have
9 commanded a great deal of my time.

10 Q. All right. Do you recall any instance
11 in which somebody brought to your attention a
12 particularly alarming or disturbing report about
13 the performance of a special counsel?

14 A. That may well have been the case. I
15 don't recall any specific instances.

16 Q. Okay. Do you recall -- and I apologize
17 if I've already asked this. But I'm just putting
18 a bracket on this.

19 A. That's fine.

20 Q. Do you recall anybody ever coming to
21 you saying our special counsel is behaving in a
22 way that I think may violate the law?

23 A. I believe that may well have happened;
24 although, I can't recall any specific instances.

1 Q. All right. Had that happened, you
2 certainly would have been concerned about that?

3 A. I would have taken notice, yes, I would
4 have.

5 Q. And what sort of action would you have
6 taken if it was determined that they violated the
7 law?

8 A. It would have depended on the
9 circumstances. But, you know, there are very
10 minor, technical violations of the law, there are
11 very substantial violations of the law. You know,
12 it would have depended on the facts and
13 circumstances.

14 Q. Okay. If we were to -- through other
15 sources to sort of establish that no special
16 counsel were discharged while you were the AG,
17 would it be a fair conclusion for us to draw that
18 you didn't find any substantial violations of the
19 law by any of your special counsel?

20 A. I'm not sure what to tell you about
21 that. I think that if we had found that, and we
22 may have, I'm not recalling offhand whether we did
23 or didn't, I believe that appropriate steps would
24 have been taken. That would have certainly been

1 my intention.

2 Q. Do you ever recall an instance in which
3 your office either fired or reprimanded special
4 counsel for making false or misleading
5 communications with debtors?

6 A. I don't recall, but it's entirely
7 possible that it happened.

8 Q. Entirely possible. All right.

9 A. Uh-huh. I think that -- look, the
10 short story you're aiming at here is I have no
11 reason to think that my Attorney General's Office
12 was perfect in this regard. If I knew of
13 imperfections that I thought were more serious
14 problems, we would have dealt with them.

15 Q. Right.

16 A. I don't have any particular
17 recollection of instances.

18 Q. Yeah. And I appreciate your sort of
19 anticipating, and you're right. I am kind of
20 curious about that. At the same time it strikes
21 me, though, that someone as rigorous as you are in
22 your thinking would recall a particularly
23 problematic situation. If somebody says this law
24 firm is misleading debtors, it strikes me, sir,

1 that you'd remember that.

2 A. There were times when I would and
3 perhaps times I wouldn't. There are many, many
4 matters that cross my desk as Attorney General.
5 Many matters that cross my desk as head of the
6 CFPB. Some of them I recall, some of them I
7 don't. I don't have the same recollection now
8 that I did 30 years ago, unfortunately, or
9 fortunately perhaps, so.

10 Q. Yeah. Well, I appreciate -- nobody
11 does 30 years ago. I'm talking about 2010, 2011?

12 A. Uh-huh.

13 Q. Yeah.

14 THE WITNESS: You do. But I don't any
15 more.

16 Q. Yeah. All right.

17 MR. WOOLEY: Give me one second. I got
18 my loose leaf stuff out of order here.

19 Okay. I got it.

20 Q. You appointed Alan Weinberg of Weltman,
21 Weinberg & Reis -- well, we'll mark this as
22 Exhibit B.

23 - - - - -

24 Thereupon, Exhibit B is marked for

1 purposes of identification.

2 - - - - -

3 Q. Exhibit B I've handed you is a
4 certificate dated July 1, 2009. Do you recognize
5 that document?

6 A. Not in particular. Although I've seen
7 documents like it I believe.

8 Q. All right. And what is it?

9 A. Well, it appears to be a copy of a
10 certificate that the Attorney General's Office
11 would have issued in this instance to Alan H.
12 Weinberg who was appointed as special counsel
13 providing legal service to the State of Ohio. It
14 has a signature that appears to me to be my
15 signature. And it's dated July 1st, 2009, has the
16 seal of the Attorney General in the bottom left
17 corner.

18 Q. Okay. Do you recall how many of these
19 certificates you would have signed in a given
20 year?

21 A. I do not, although it would have been
22 many.

23 Q. All right. 10? 20? When you use the
24 word "many," I mean, I think a fair question is --

1 A. In this case --

2 Q. -- what do you mean by "many"?

3 A. In this case, certainly more than 20.

4 I don't know if it was hundreds. Could have been

5 hundreds even. I'm not sure.

6 Q. Okay. Looking at this, do you recall

7 any conversations at all about Mr. Weinberg and

8 his firm in connection with this particular

9 appointment?

10 A. Do I recall any conversations about

11 this appointment?

12 Q. Yeah. Somebody brought you this to

13 sign I assume; is that correct?

14 A. I do not. I do not. I do not recall

15 any specific conversations, no.

16 Q. Okay. And can you read for the record

17 the second paragraph -- the second sentence on

18 there, please.

19 A. "I take great pleasure...." Is that

20 the one you're looking for?

21 Q. No. No. I'm sorry. The narrative?

22 A. "This appointment...."

23 Q. Yeah. The narrative.

24 A. Okay. "This appointment...." Is that

1 where you want me to be?

2 Q. Yes, sir.

3 A. "This appointment reflects my highest
4 confidence in your legal expertise, integrity, and
5 ability. Therefore, I have affixed my name and
6 the Seal of the Attorney General." This is in
7 reference to Alan H. Weinberg being appointed as
8 special counsel for the Attorney General.

9 Q. Right. And when you signed it, you
10 certainly believed that was true, correct?

11 A. I did.

12 Q. Based on what?

13 A. Based on work that had been done by my
14 staff and perhaps myself to provide assurance that
15 Mr. Weinberg would be an effective special counsel
16 on behalf of the State and would deliver quality
17 service to the State.

18 Q. What part of the perhaps yourself --
19 you said perhaps yourself. What perhaps might
20 have you done?

21 A. Again, you asked earlier about the
22 process for vetting and approving special counsel.
23 I would have had some involvement in that process,
24 both in terms of approving the process generally,

1 perhaps had some involvement in -- in the
2 evaluations that were made. I don't recall in
3 particular whether that was true in this case, but
4 it might have been.

5 Q. Do you recall ever having met
6 Mr. Weinberg?

7 A. I do. But I don't recall it clearly.

8 Q. Would it have been in connection with
9 his role as special counsel or in some other
10 setting?

11 A. I don't know offhand. I might have met
12 him a number of times. I'm not sure.

13 Q. Okay. You say you do recall though.
14 So what do you recall about meeting him?

15 A. I believe I do. I mean, I certainly
16 don't mean to say that I was unaware of
17 Mr. Weinberg or any of my special counsel.

18 Q. My question is a little more specific.
19 And it's a follow-up to what you said, you said
20 you believed you met him?

21 A. I --

22 Q. Under what circumstances do you believe
23 you met him?

24 A. I don't know the circumstances.

1 Q. Okay. Did you know that he was the
2 Weinberg in Weltman, Weinberg & Reis?

3 A. I believe I would have understood that,
4 but I don't recall specifically.

5 Q. Okay. Had you heard of that firm at
6 the time that they were appointed special counsel?

7 A. Well, I would have heard of all the
8 firms that were appointed special counsel because
9 I would have approved and signed their
10 certificates and --

11 Q. So had you heard of Weltman, Weinberg &
12 Reis?

13 A. Here's a certificate that I signed
14 appointing them special counsel. Yes, I was
15 aware.

16 Q. Okay. And had you heard anything about
17 their reputation?

18 A. I don't recall specifics that I would
19 have heard. But what I would have heard I assume
20 would have been sufficient to determine that they
21 should be appointed as special counsel among many
22 applicants.

23 Q. All right. Do you recall ever meeting
24 Bob Weltman?

1 A. I don't recall specifically. I may
2 have.

3 Q. You may have.

4 A. I may have.

5 Q. Yeah. I mean, in what context?

6 A. I don't know.

7 Q. Okay. What was the process for placing
8 debts with Mr. Weinberg and his firm for
9 collection?

10 A. Well, there was a process in the office
11 for placing debts that were in need of collection,
12 and some of those would have gone to Mr. Weinberg,
13 others would have gone to others.

14 Q. What do you not understand about the
15 process?

16 A. Well, there was a process. There might
17 have been specific expertise that was appropriate
18 in certain types of collection matters such as
19 bankruptcy or student loans or other types of
20 matters. Apart from that, there would have been
21 simply a division of work because everybody could
22 only handle so much work probably effectively and
23 that would have all been part of the calculation I
24 suppose. Would have perhaps been regional in

1 nature, although I think that's less important in
2 this day and age where most of the collection is
3 not done in person.

4 Q. Well, what information would your
5 office provide to Mr. Weinberg and his firm to
6 collect debt on behalf of the State? How did that
7 happen? How did that work?

8 A. Well, there would have been a provision
9 of the debts at issue, the source of the debt,
10 information about the debt, amounts at issue, all
11 the usual particulars of a debt collection file.

12 Q. Okay.

13 A. I would hope, hope and expect as
14 complete as possible.

15 Q. Okay. Had lawyers in your office
16 reviewed account level detail for each debtor
17 before a debt would be placed with Mr. Weinberg's
18 firm for collection, lawyers?

19 A. I think very likely, although the
20 nature of "reviewed" covers a spectrum of possible
21 activities.

22 Q. What do you mean by that?

23 A. Well, I mean it -- I mean just what I
24 said.

1 Q. Well, you described a spectrum, and
2 that's your word. What's on one end of the
3 spectrum and what's on the other end of the
4 spectrum?

5 A. Well, reviewed can be faster or slower,
6 it can be word for word, or it can be reviewing
7 documents as I did with this document you handed
8 me. I mean, reviewed can be a lot of different
9 things. As I'm sure you're aware in your life,
10 you review lots of things, and that can mean a
11 variety of different approaches.

12 Q. Did lawyers review the actual sort of
13 source documents for each debtor's debt before it
14 was placed with Mr. Weinberg? And I'll just give
15 you a for instance and we can talk about this.

16 A. Okay.

17 Q. My son went to Ohio State. If he had
18 parking tickets, he didn't pay his books, there
19 will be invoices, there will be dates, there will
20 be documents that relate to that debt. Did a
21 lawyer review each of those documents before
22 sending it to Mr. Weinberg's firm for collection?

23 A. Let the record reflect that counsel's
24 comments about his son are hypothetical in nature,

1 so --

2 Q. No, they're not. No, they're not.

3 A. Okay. Look, that was a delegated
4 function. I don't know exactly what was done, so
5 I don't know that I can answer your question
6 particularly helpfully so --

7 - - - - -

8 Thereupon, Exhibit C is marked for
9 purposes of identification.

10 - - - - -

11 Q. All right. Exhibit C is -- it's a
12 multi-page document, and unfortunately the
13 paginating of it doesn't -- because it was
14 exhibits doesn't make sense, the page numbers.
15 But do you recognize what this is?

16 A. I see what it is. It was a Ohio
17 Attorney's General request for qualifications for
18 special counsel that I believe reflects a
19 submission made by the Weltman, Weinberg & Reis
20 law firm.

21 Q. Okay. And have you seen it before?

22 A. It's possible, but I couldn't recall
23 offhand whether I had or have not seen it before.

24 Q. Okay. Do you recall it being a

1 practice of yours to read these submissions or was
2 it something you delegated, sir?

3 A. I honestly do not recall. There were
4 probably many things I should have delegated
5 entirely that I didn't necessarily delegate
6 entirely. But it's possible that I read this and
7 a number of these. It's also possible I
8 delegated. It might have depended on what the
9 workload was at the time.

10 Q. Okay. With regard to -- and I know
11 what he's going to say. But with respect to this
12 function of looking at RFQ responses and
13 delegating it, who in your office -- do you recall
14 anybody that might have this function been
15 delegated to? Is there a name of someone?

16 A. I --

17 MR. DOUGLAS: You're allowing me to
18 object and say asked and answered. But he can try
19 again.

20 A. Okay. I would not recall who this
21 would have been delegated to. And it's also as I
22 said entirely possible that I looked at it myself.

23 Q. Right. And, sir, to be clear -- I'm
24 trying to be clear. I don't mean just this one in

1 particular, I mean the process. Was there
2 somebody below you that was in charge of the
3 process of reading through these RFQs and then
4 making recommendations to you?

5 A. Well, there were probably a number of
6 people, and it's not necessarily the same people
7 who would have reviewed every single one and --
8 and, you know, might have been a team. I don't
9 recall.

10 Q. Right. A team of folks whose names we
11 -- just for the record, you can't recall today?

12 A. But I'm sure you can find records that
13 would give you that indication.

14 Q. All right. I'd like to look -- let's
15 turn to page -- the fifth page in, it's not
16 numbered at the bottom of the page, but it's a
17 page that at the top says Alan Weinberg - Managing
18 Partner. Do you see that?

19 MR. DOUGLAS: I don't. On the fifth
20 page? Are you including the cover page,
21 Counselor?

22 MR. WOOLEY: It looks like this.

23 A. This one?

24 Q. Yeah. Yeah.

1 A. Okay. Yep. I'm on that page.

2 Q. Yeah. So this is in response to the
3 question for who's applying, the name of the firm.
4 Do you see the name Alan Weinberg - Managing
5 Partner Weltman, Weinberg & Reis? Do you see
6 that?

7 A. I do see it.

8 Q. Okay. So the applicant here as a
9 person is Mr. Weinberg, but it's clear from this
10 that his firm is actually who's applying; is that
11 correct?

12 A. It's not obvious to me from this
13 document if it was the case, but I see that he is
14 listed as specified and his bar number is given.
15 There's another partner whose bar number is given.
16 And then there's a number of partners and
17 associates who are listed but their bar numbers
18 are not given.

19 Q. Understood.

20 But is it a fair read of this -- if you
21 don't recall reading it then, is it a fair read of
22 it now that it's clear that they're saying that
23 this firm is who's going to do this work?
24 Mr. Weinberg's name is what ends on the

1 certificate, but it's the firm that's going to do
2 the work, correct?

3 MR. MCCRAY-WORRALL: Objection, calls
4 for speculation.

5 A. I don't know whether Mr. Weinberg was
6 going to do the work and have others work with him
7 on a delegated basis or whether it was the firm
8 that was going to do the work. It's not clear to
9 me. I'm not clear what the difference is in your
10 mind.

11 Q. But you didn't think Mr. Weinberg alone
12 was going to do the work; he was going to be
13 supported?

14 A. I just said that if he did the work
15 himself, it would be probably with others working
16 with him on a delegated basis.

17 Q. All right. Can you turn to the next
18 page, please.

19 A. And the certificate you showed me was
20 specific to him --

21 Q. Right.

22 A. -- not to the firm. So I'm honestly
23 not sure what this represents.

24 Q. Well, I'll represent to you this is the

1 RFQ that led to you giving the certificate.
2 A. I'm aware of that.
3 Q. Yeah.
4 A. And the certificate was to him, not to
5 the firm.
6 Q. Understood.
7 A. Correct. Okay.
8 Q. Yeah. Understood.
9 A. So you're now asking me whether this
10 somehow indicates it's the firm rather than him.
11 I'm not clear which it was.
12 Q. Okay. If you'd like, you can read the
13 whole thing. Because, in fact, it talks about --
14 A. I don't know that it matters so --
15 Q. It talks about everything the firm's
16 going to do --
17 A. That's fine.
18 Q. -- which is my point of this inquiry.
19 Look at the next -- it says, "Our
20 firm..." The next page, "Our firm provides
21 collection and bankruptcy representation..." Do
22 you see that?
23 A. I see that.
24 Q. Yeah.

1 A. I'm not sure what you're driving at.
2 If you want to give the testimony on it, you can.
3 But I'm not clear which it is.
4 Q. Can you just read the sentence out loud
5 for the record, please.
6 A. Which sentence?
7 Q. The first sentence on the top of that
8 page.
9 A. Which page?
10 Q. It's weird. It's says page 1 on the
11 bottom right, but it's not page 1, but it's the --
12 MR. DOUGLAS: Page 6.
13 A. It begins "Our firm provides..."
14 Q. Yeah. Yes.
15 A. What do you want me to read, that
16 sentence?
17 Q. I'm sorry.
18 A. "Our firm provides collection and
19 bankruptcy representations on a very large volume
20 of matters for the State of Ohio pursuant to a
21 Retention Agreement for this work."
22 Q. Okay. So this RFQ reflects that they
23 were already doing work for the State, correct?
24 A. Seems to so reflect that, yes.

1 Q. Do you recall that?

2 A. I don't recall offhand, no.

3 Q. You don't recall offhand. But looking
4 at it now, and if you read the rest of the
5 paragraph it will talk about the work that they've
6 been doing, the firm's been doing. I'd ask you to
7 take a look at that and see if it refreshes a
8 recollection of whether you had an understanding
9 that they were already doing work for the State.

10 A. Well, I think the document speaks for
11 itself. If you want me to speculate about it, I
12 can. But I think the document speaks for itself.

13 Q. Well, I'm asking you to, and it's --
14 it's up to you. If you read it and took a second
15 to read it, maybe -- whether it would refresh your
16 recollection.

17 A. It doesn't.

18 Q. Okay.

19 MR. DOUGLAS: Counselor, if I may for
20 just a moment, to shorten this so I don't have to
21 ask questions after you're finished, would you
22 mind if he read the next sentence that you've
23 asked him to read here on page 6?

24 MR. WOOLEY: Uh-huh.

1 MR. DOUGLAS: Have him read the second
2 sentence into the record now because I'm going to
3 ask him to do that if you don't.

4 MR. WOOLEY: Sure. Go ahead.

5 MR. DOUGLAS: Page 6. Read the second
6 sentence.

7 A. "All matters placed with Alan Weinberg
8 and Weltman, Weinberg & Reis Co., L.P.A. have
9 originated from the State of Ohio Office of the
10 Attorney General Collections Enforcement Unit."

11 MR. DOUGLAS: That's enough. Thank
12 you.

13 MR. WOOLEY: Yeah.

14 Q. All right. There you go. So now we
15 have a name of a division. Who --

16 MR. DOUGLAS: That's right.

17 Q. Who was in the Attorney General's
18 Collection Enforcement Unit?

19 A. Many people.

20 Q. Who ran it?

21 A. I don't recall.

22 Q. Would that have been someone who
23 directly reported to you or would there have been
24 an intermediate supervisor between you and that

1 person?

2 A. I don't recall. But I believe there
3 would have been some intermediate supervisor.

4 Q. Do you know who the intermediate
5 supervisor would have been between you and them?

6 A. I don't recall. It might have changed
7 during my time there as well.

8 Q. All right. Go to the next page,
9 please.

10 A. Okay.

11 Q. Look at under the paragraph that says
12 "State Representation," please.

13 A. Okay.

14 Q. Do you see there that it says "...we
15 have handled over 69,000 collection matters for
16 the State...."

17 A. I see that.

18 Q. Okay. Was it your understanding that
19 special counsel generally and in particular
20 Weltman, Weinberg & Reis were handling high volume
21 collection matters?

22 MR. MCCRAY-WORRALL: Objection, vague.

23 A. Well, that sentence certainly seems to
24 indicate that, yes.

1 Q. Well, it does indicate it. I'm asking
2 if that's your recollection as well.

3 A. What I read here is consistent with my
4 general recollection.

5 Q. If you go up three paragraphs above
6 that where it says, "Through the visionary
7 leadership and Partnership and Management
8 committee...." Do you see that paragraph?

9 A. I do.

10 Q. Do you see the reference to innovative
11 collection technologies, custom programmed
12 software applications, advanced dialers?

13 A. I do.

14 Q. Did you understand that in this
15 high-volume collection practice there would be
16 some automation involved?

17 MR. MCCRAY-WORRALL: Objection.
18 Foundation. Assumes facts not in -- that have not
19 yet been established.

20 MR. DOUGLAS: You can answer if you
21 know.

22 A. Yeah. I'm not entirely sure what you
23 mean by some automation involved. If you mean,
24 for example, the use of computers, certainly I

1 would assume that.

2 Q. Yeah. Thank you. That was a clumsy
3 question. Yeah. I mean that's what I mean.

4 Was there going to be technology
5 involved, electronic information would be
6 processed?

7 A. Certainly, yes.

8 Q. Okay. It wasn't as though there were
9 going to be boxes of actual documents that were
10 going to be looked at and scrubbed?

11 A. Well, I -- you know, I can't say for
12 sure that that wasn't the case. The government
13 was not always on the cutting edge of technology,
14 but there might have been both. But certainly
15 there would have been electronic methods
16 involved --

17 Q. Okay.

18 A. -- and everybody was moving in that
19 direction, perhaps had gotten there by this point
20 in time, yes.

21 Q. And look at the bottom of the page
22 where it says "Strengths."

23 A. Uh-huh.

24 Q. "We are a law firm that is structured

1 to offer in-house collection agency services." Do
2 you see that?

3 A. I do.

4 Q. Yeah. And then if you read that
5 paragraph all the way through you'll see that the
6 second-to-last sentence says, "Our collection and
7 legal representation seamlessly continues, even if
8 the debtor has filed bankruptcy or is deceased."
9 Do you see that?

10 A. I do.

11 Q. So did you understand or do you
12 understand from reading this that Weltman,
13 Weinberg & Reis is a collection firm that's housed
14 within a law firm?

15 A. I don't know that I would have known
16 that specifically. It's a fair inference perhaps,
17 but I don't know that I would have ever known what
18 the organization of the firm itself was or at
19 least certainly my own personal impressions.

20 Q. Okay. Well, in your unit, the -- here
21 we go. Attorney general collections enforcement
22 unit, that included lawyers and nonlawyers,
23 correct?

24 A. Where are we here?

1 Q. I'm just using -- we've identified your
2 unit was called the Attorney General Collections
3 Enforcement Unit. I'm not asking you about the
4 document, I'm just --

5 A. Okay.

6 Q. -- using that for my own purposes.

7 A. You seem to be pointing to the
8 document.

9 Q. No. The Attorney General Collection
10 Enforcement Unit, there were nonlawyers in that
11 unit?

12 A. Correct. Lawyers and nonlawyers,
13 correct.

14 Q. And did a nonlawyer -- did a nonlawyer
15 head it?

16 A. You know, I do not recall. And whether
17 that would have ever been the case during my time
18 there, I -- I don't recall offhand.

19 Q. Okay. But is it accurate to say that
20 -- that in this high volume collection work that
21 was being done both either within your -- your
22 office or by special counsel, lawyers and
23 nonlawyers were involved?

24 A. Correct.

1 Q. All right. Could you go to the next
2 page, please.

3 A. Next page suggests I know which page we
4 were on before.

5 Q. I'm sorry. It -- bottom of page 3.
6 It's got a 3 at the bottom.

7 MR. DOUGLAS: It's yellow.

8 A. Yes.

9 Q. Okay. The paragraph in the middle,
10 read that to yourself.

11 A. Which one?

12 Q. The one that says, "Due to our
13 scale...."

14 A. Okay. All right. Uh-huh. Okay.

15 Q. There's a sentence that says, "State
16 Clients will have access to all of our staff
17 members, including the collectors working files,
18 the clerical and administrative staff processing
19 executions and typing, the supervisory staff
20 managing the matters and the attorneys covering
21 hearings and handling legal aspects."

22 A. Uh-huh.

23 Q. Okay. So did your office understand
24 that what Weltman, Weinberg & Reis was bringing

1 was a staff of nonlawyers to handle the matters
2 described and then lawyers to cover the legal
3 aspects?

4 A. I don't know what to tell you about
5 that. What my office would have understood is as
6 we said earlier, we were placing matters with Alan
7 Weinberg. He was on the certificate. Weltman,
8 Weinberg & Reis was the law firm that he was
9 working with. And I guess the entire firm would
10 have worked on these matters in some manner or
11 another in the way in which a law firm has
12 nonlawyer staff as well as supporting lawyer
13 staff.

14 Q. Right. I understand. But this RFQ --
15 and you can take your time reading it -- says that
16 the law firm is a collection firm, too. It's got
17 a collection firm within the law firm. It's a
18 debt collector.

19 A. If you say so.

20 Q. Okay.

21 A. I haven't read through the whole
22 document.

23 Q. Okay. And I think the easiest way to
24 do that is just go to the back of the document

1 and, like, the fourth page from the back there's a
2 chart with a staff of the office.

3 MR. DOUGLAS: Do you mind if we stop
4 here again and have him read another sentence
5 there; otherwise, I'm going to have to ask him at
6 the end. I'd like him to read the third sentence
7 into the record.

8 THE WITNESS: The one that begins WWR?

9 MR. DOUGLAS: Let him -- no. Is that
10 the third sentence or the fourth? The one that
11 starts, "State Clients." No. Negative. The one
12 that starts "WWR." Yes.

13 THE WITNESS: So I --

14 MR. WOOLEY: Yeah. I don't -- go
15 ahead. Yeah.

16 MR. DOUGLAS: Okay.

17 THE WITNESS: So read this sentence
18 that begins "WWR"?

19 MR. DOUGLAS: Yes.

20 THE WITNESS: "WWR is capable of
21 providing reporting on request..."

22 MR. DOUGLAS: No. The one that says
23 "WWR also maintains..." Read that one.

24 THE WITNESS: Are we on the same

1 paragraph?

2 MR. DOUGLAS: I'm not sure we are.

3 THE WITNESS: "WWR also maintains both
4 a Compliance and Client Services Department as
5 well."

6 MR. DOUGLAS: That's fine. Thank you.

7 MR. WOOLEY: Okay.

8 Q. And then on that chart right below it
9 it has collections and supervisory staff. Do you
10 see the names of those folks?

11 A. I do.

12 Q. People ready to assist, right? And
13 there's a breakdown, some are lawyers and some are
14 not lawyers, correct?

15 A. I guess I can assume that the two legal
16 secretaries are not lawyers, legal secretary and
17 legal assistant. The others, I wouldn't know --

18 Q. All right.

19 A. -- for certain.

20 Q. And then if you find your way to the
21 back of the document, four -- there's an
22 attachment, the fourth page from the back that's
23 page No. 1. It looks like that.

24 A. Okay. Does it have Brooklyn Heights,

1 Chicago, Cincinnati, is that the one you're
2 talking about?

3 Q. The chart.

4 A. Yeah. Okay.

5 Q. He's got it.

6 A. Yep.

7 Q. And it says here that they had 100
8 attorneys. Do you see that?

9 A. I see that.

10 Q. And 227 debt collectors, collectors, do
11 you see that?

12 A. I see that.

13 Q. And everybody else at the firm is a
14 nonlawyer besides those 100 people, right?

15 A. If you say so. I wouldn't know that.

16 Q. Okay. Well, the grand total is 1,076
17 employees, 100 of whom are lawyers?

18 A. That's what it seems to say. Whether
19 any of the others are lawyers or not, I wouldn't
20 know.

21 Q. Okay.

22 A. But I assume that if you're calling out
23 the lawyers, then the others are not. But I
24 wouldn't know that for sure.

1 Q. Did you or your office have an
2 understanding -- and it -- well, I'll ask you.
3 Did you have an understanding that before an
4 initial demand letter would be sent out collecting
5 a debt, seeking to collect a debt on behalf of
6 your office, that a lawyer, one of these 100
7 people in this high-volume practice would have
8 looked at the account level detail before the
9 letter went out?

10 MR. DOUGLAS: Objection. That's going
11 to draw a conclusion that's at issue in this case,
12 and I'm going to let him answer if he chooses to.
13 If he chooses not to, I'm going to instruct him
14 not to.

15 Q. Did you have an understanding of that?

16 A. I don't know that I would have known
17 that one way or the other for sure, but it might
18 have depended on what the wording of the letter
19 was.

20 Q. Okay. Depends on the way the letter
21 went out?

22 A. It might have depended on the wording
23 of the letter in terms of what kind of demand was
24 made and what kind of representation was made

1 about what was going to happen to the person being
2 communicated with.

3 Q. Understood.

4 So if it were I'm going to sue you and
5 I'm going to bring an action against you, that
6 would be something you would expect perhaps a
7 lawyer to have looked at the underlying detail,
8 correct?

9 A. You know, I don't know what the state
10 of the law was then. I'm not sure what the state
11 of the law is now. So I don't know really how to
12 answer that question.

13 Q. Well, I want to make sure -- you don't
14 know the state of the law -- you didn't know the
15 state of the law in 2000 --

16 A. I don't know now what the state of the
17 law was in in 2009 or which courts had said which
18 things about that, exactly what law was being
19 followed. I don't know what the state of the law
20 is at this moment either, so I don't know quite
21 how to answer your question.

22 Q. All right. I'm trying to follow up on
23 you're saying that there are circumstances under
24 which depending on the wording of the letter you

1 would have expected a lawyer to have reviewed the
2 underlying detail. And that depends on the exact
3 state of the law at the time?

4 A. In terms of what could be said or could
5 not be said by a lawyer or nonlawyer, I would
6 imagine, yes.

7 Q. You would imagine or do you know?

8 A. I would -- I would imagine, yes.

9 Q. Well, who doesn't -- if you don't know,
10 who does? I mean you said you were an expert at
11 -- when you were the Attorney General and you ran
12 the agency. Who know that's? How clear is that
13 to the collection work --

14 A. What I'm saying is I don't recall now
15 what the state of the law would have been at that
16 time.

17 Q. How about now?

18 A. Well, again, I have views. But
19 ultimately these are cases that brought and judges
20 have to decide. So what the judges tell us is
21 what the law is, although if judges disagree there
22 might have to be appeals and other things.

23 Q. You approved the complaint in this case
24 which accused the firm of misleading consumers

1 regarding the amount of lawyer involvement with
2 respect to an initial demand. Do you recall that
3 that's what you approved in this case?

4 A. I recall that I would have approved a
5 complaint being filed in this case. I don't
6 recall all the particulars.

7 Q. You don't recall looking at the demand
8 letters that your staff brought to you and said
9 these are the ones that Weltman, Weinberg & Reis
10 are --

11 A. So you just --

12 Q. -- sending?

13 A. -- packed some things into that
14 question that are assumptions --

15 MR. MCCRAY-WORRALL: Objection. Calls
16 for a legal conclusion.

17 A. -- that I don't know that are
18 necessarily correct. I said earlier that the
19 package of materials that would have come to me on
20 a recommendation would have varied from case to
21 case. You just stated that the demand letters
22 were part of that, and I don't know offhand
23 whether that was so. Might have been so, might
24 not have been so.

1 Q. All right. Well, if a letter went out
2 from the State with your name on it to a consumer,
3 would you have expected a lawyer would have
4 reviewed the account level detail before it went
5 out?

6 A. I would have expected that what was
7 done would have been understood to be in
8 compliance with the law at that time.

9 Q. Yeah. So a specific question, would
10 you have expected that a lawyer in your office
11 would have looked at the account level detail
12 before sending a letter out on your letterhead?

13 A. I'm not sure what the answer is to that
14 question at that time.

15 Q. You're not sure?

16 A. I'm not sure what the law was in 2009
17 on that issue. I think the law has been evolving
18 across the country on this and continues to
19 evolve.

20 Q. Okay.

21 A. And may in this case for all I know.

22 Q. All right. Set the law aside for a
23 second, all right?

24 A. Uh-huh.

1 Q. On the issue of whether it's
2 appropriate, was it appropriate for someone to
3 send out letters on your letterhead with your name
4 on it without a lawyer having looked at the
5 account level detail?

6 MR. DOUGLAS: Objection. That's an
7 issue in this case and the judge is going to
8 decide. And it calls on him to give a legal
9 conclusion that I don't think he's competent to
10 give or should give. You're not to answer that.

11 MR. WOOLEY: He's not to answer that?

12 MR. DOUGLAS: Not to answer that.

13 Q. Okay. All right. Let's move to
14 Exhibit D.

15 - - - - -

16 Thereupon, Exhibit D is marked for
17 purposes of identification.

18 - - - - -

19 THE WITNESS: Thank you.

20 MR. DOUGLAS: Thank you.

21 Haven't we done this already?

22 THE WITNESS: Two years later.

23 MR. DOUGLAS: Oh, two years later.

24 Q. It's actually one year.

1 A. One year later.

2 MR. DOUGLAS: One year later.

3 A. Yeah. Sorry.

4 Q. Do you recognize Exhibit D?

5 A. I do not particularly recognize it, but

6 I see what it is. And it seems to be comparable

7 to Exhibit B that we dealt with a moment ago,

8 exactly the same in fact other than the date and

9 perhaps a more or less more legible signature by

10 me.

11 Q. Okay. So we had Exhibit C was the RFQ

12 that described the work they were going to do in

13 May of 2009, correct?

14 A. Right. Yes.

15 Q. All right. And so they got the job.

16 And then in 2010 you reupped them?

17 A. That appears to be the case, yes.

18 Q. Right. So they described how they were

19 going to do it and what they were going to do in

20 2009. And then they were reupped in 2010; is that

21 correct?

22 A. Well, I would say they described what

23 they were going to do in May of 2009 as Exhibit C.

24 Q. Yeah.

1 A. In July of 2009 they received the
2 appointment.

3 Q. Right.

4 A. And then in July of 2010 they were
5 renewed for appointment, yes.

6 Q. Right. So actually I should do that.
7 You're right. This is Exhibit -- the next one?

8 A. Uh-huh. I don't think there's really
9 any question at issue here. They applied and they
10 were approved both in 2009 and 2010.

11 Q. Yeah.

12 A. And that would have represented my
13 judgment at the time that they would be effective
14 in collecting debts on behalf of the State.

15 Q. Exhibit E.

16 A. Just wondering if we could telescope a
17 bit of this.

18 Q. I'm sorry?

19 A. I'm just wondering if we could
20 telescope this a bit if that's what you're trying
21 to establish.

22 - - - - -

23 Thereupon, Exhibit E is marked for
24 purposes of identification.

1 MR. DOUGLAS: So the sentences that you
2 had him read into the record and the ones that I
3 had him read into the record are probably the
4 same.

5 MR. WOOLEY: The firm didn't change.
6 The firm did the work the same way it did it all
7 the way --

8 MR. DOUGLAS: Not the firm, the RFQ
9 we're talking about.

10 MR. WOOLEY: Yeah. I mean I'll let you
11 make that conclusion if you want to look at it
12 during a break. But it -- I read it as being
13 largely -- largely the same. But I don't -- I
14 don't want to put that conclusion --

15 A. I have no reason to think it was
16 particularly different.

17 Q. Right.

18 A. So we can move on.

19 MR. BRESSLER: Jim, can I ask for
20 comfort purposes how long do you expect before a
21 break?

22 MR. WOOLEY: We can break right now.

23 THE WITNESS: Do you know a sense of
24 how long we will be here today?

1 MR. WOOLEY: No.

2 THE WITNESS: Okay.

3 MR. WOOLEY: But I -- people are going
4 -- they have afternoon flights, they'll make it.

5 THE WITNESS: Okay. I don't
6 particularly need a break. I'll need a break at
7 some point to feed my meter, but other than that,
8 I'm happy to proceed.

9 MR. WOOLEY: Okay. Well, I mean
10 somebody from your side of the table asked.

11 MR. BRESSLER: I was just curious when
12 you were planning to break.

13 MR. WOOLEY: I'm completely open to it
14 whenever you guys want.

15 MR. BRESSLER: If he's -- that's fine.

16 THE WITNESS: I'd rather not have a
17 break, Steven, thank you.

18 Q. Okay. So in 2010 your office approved
19 the Weinberg firm again?

20 A. We did.

21 Q. Okay. And you don't recall anybody
22 specifically bringing you any complaints about the
23 Weltman, Weinberg & Reis firm --

24 A. I don't recall --

1 Q. -- between?

2 A. -- either way. But we did reapprove
3 them in 2010.

4 Q. Okay. Based on their performance so
5 far and based on the information that they'd
6 provide in their updated RFQ?

7 A. That would be correct.

8 Q. Okay. Do you recall anybody ever
9 before you reupped them or at any point in time
10 saying to you we are going to make sure we have
11 lawyers look at account level detail before we
12 send initial demand letters?

13 A. I don't recall either way.

14 Q. Either way. All right.

15 Exhibit F.

16 - - - - -

17 Thereupon, Exhibit F is marked for
18 purposes of identification.

19 - - - - -

20 THE WITNESS: Thank you.

21 MR. DOUGLAS: Thank you.

22 BY MR. WOOLEY:

23 Q. Do you recognize Exhibit F?

24 A. Not particularly. But I see what the

1 document purports to be, yes.

2 Q. And it is the retention agreement
3 between your office and the collection's special
4 counsel, the Weinberg firm, correct?

5 A. That's what it appears to be, yes.

6 Q. Okay. Could you look at page 2,
7 please, of it?

8 A. Yes.

9 Q. Under the Attorney-Client Relationship?

10 A. Yes.

11 Q. And the middle paragraph, can you read
12 that for us, please.

13 A. Yes. "In all pleadings, notices and/or
14 correspondence created pursuant to the work being
15 performed hereunder, Special Counsel shall
16 indicate that such document is prepared by the
17 Special Counsel in its position as Special Counsel
18 for the Attorney General."

19 Q. All right. And do you know who would
20 have approved the form of particular covered
21 documents covered by that?

22 A. I do not know that offhand, no.

23 Q. So it says notices. Notices could be
24 fairly read to include demand letters?

1 A. I don't know. You're giving that
2 definition. I'm not sure.

3 Q. Actually, no, I'm -- that's a bad
4 question. The correspondence, when you're writing
5 correspondence as a debt collector, you'll be
6 writing to people about their debts, correct?

7 A. Not necessarily always, but I would
8 think often.

9 Q. Right. And it's mandated in the
10 retention agreement that "Special Counsel shall
11 indicate that such document is prepared by the
12 Special Counsel in its position as Special Counsel
13 for the Attorney General." That's mandated,
14 correct?

15 A. It says "shall."

16 Q. Right. And the exact form within that
17 mandate would have been something that would had
18 to have been approved by your office, correct?

19 A. I don't recall offhand. That may be
20 so. I don't recall offhand.

21 Q. You don't recall insisting that your
22 letterhead be used?

23 A. I don't recall whether and how much --
24 whether and how much we would have specified the

1 particular form to be used. I don't recall
2 offhand.

3 Q. Okay. Would that have been -- well,
4 strike that.

5 Page 3, the next page, please.
6 Specific Performance Measures talks about "On a
7 quarterly basis, a personal performance review
8 will be conducted..." Do you see that?

9 A. Yes, I see that.

10 Q. Can you take a second and read that
11 whole clause, please, it's only three short
12 paragraphs.

13 A. All right.

14 Q. Okay. What do you understand this
15 quarterly performance review to entail?

16 A. Well, it says that will be reviewed
17 based on the following areas, "collection ratios,
18 performance measures based on historical averages
19 and comparisons of new and old accounts and
20 various account types, customer service
21 complaints, reports, legal actions taken, status
22 updates, and interviews." And there may be
23 additional specific performance review
24 requirements as referenced here, but it doesn't

1 specify what those would be.

2 Q. Does it also specify that special
3 counsel will provide access to the attorney
4 general for all the documents, papers, records,
5 computer searches?

6 A. It does say that, yes.

7 Q. Right. So the quarterly review would
8 be by your office, and your office would have
9 access to all the paperwork that was being
10 maintained and/or transmitted by the Weltman firm,
11 correct?

12 MR. DOUGLAS: Objection. I don't think
13 that paragraph says that. But he may answer.

14 A. I think the paragraph speaks for
15 itself. It says what it says.

16 Q. So your office in the quarterly review
17 would have access to the documents, papers,
18 records, computer searches involving the
19 collection services performed by the Weltman,
20 Weinberg & Reis firm, correct?

21 A. Well, it says that the special counsel
22 agrees to provide that. It doesn't necessarily
23 say that we got it. But --

24 Q. Do you recall anybody ever telling you

1 in connection with a quarterly review that the
2 Weltman, Weinberg & Reis firm was not providing
3 documents required under the retention agreement?

4 A. I don't recall one way or the other.
5 But I would assume that that was not the case.

6 Q. Do you recall anybody ever saying to
7 you we're looking at their documents and we think
8 that they're sending correspondence or
9 communications with debtors that are problematic?

10 A. Again, I do not have a recollection one
11 way or the other. So I -- so I don't have a
12 recollection one way or the other.

13 Q. Okay. They're the largest collection
14 firm in the midwest. Would you have recalled if
15 someone would have said to you they're sending
16 correspondence to debtors that is misleading?

17 A. I don't know that I knew the size of
18 the collection firms.

19 Q. I'll make that representation to you.

20 A. Okay.

21 Q. Would you recall if someone had said to
22 you this collection firm is making misleading
23 representations to debtors, would you recall that?

24 A. So I do recall there were times when --

1 first of all, there were times when debt
2 collection firms, whether law firms or otherwise,
3 were viewed by people in our office as having
4 violated the law, potentially violated the law and
5 were investigated and actions were taken. And I
6 do recall that that happened I believe possibly
7 more than once involving firms that were
8 collecting on behalf of the State. I have no
9 particular recollection of that being true of this
10 firm. I do not one way or another have a
11 recollection of that.

12 Q. Okay. In fact, you had a zero
13 tolerance for such behavior; isn't that correct?

14 A. What are you referring to?

15 Q. I'm asking you. You had a zero
16 tolerance for such behavior?

17 A. Well, I don't know what "such behavior"
18 means. Again --

19 Q. Misleading debtors?

20 A. As we discussed earlier, if people were
21 committing violations, it might have depended on
22 how substantial the violation was, how frequent it
23 was, how objectionable it was. But I would say it
24 depends on the facts and circumstances.

1 Q. Okay. Can you go to --

2 A. We would have had a -- we would have
3 had a low threshold of tolerance for problems.
4 But we would have certainly tried to ascertain
5 whether any problems were substantial problems or
6 minor, insignificant problems.

7 Q. Okay. If you go to page 12, please.
8 Section 19, Constituent Complaints.

9 A. Yeah.

10 Q. Would you mind reading that paragraph
11 aloud, please.

12 A. "Special Counsel must conduct business
13 in a manner that supports the Ohio Attorney
14 General's Office's goal of fair and equitable
15 treatment for debtors during the collection of
16 debts. At a minimum, fair and equitable treatment
17 means debt collection without harassment --

18 MR. DOUGLAS: Slow down.

19 A. -- or verbal abuse of the debtor, or
20 compromising the debtor's rights. The Attorney
21 General's Office expects Special Counsel to
22 provide services to the public in a manner that
23 will preserve or enhance goodwill between the
24 public and the State of Ohio."

1 Q. Okay. If you can read the next -- the
2 next page, please.

3 A. The Attorney General's Office has zero
4 tolerance for collection actions or activities --
5 this is in bold print -- "that demonstrate
6 anything less than complete respect for the rights
7 and reasonable expectations of the public."

8 Q. Right. This is -- this is the only
9 part of the retention agreement that's in bold,
10 your zero tolerance policy. Do you see that?

11 A. I haven't looked through the entire
12 document, but it was certainly meant to stand out.
13 Yes. There's actually more bold on other pages I
14 see. But I would say that it's meant to stand
15 out, which was your point.

16 Q. What do you mean by "zero tolerance for
17 collection actions...that demonstrate anything
18 less than complete respect for the rights and
19 reasonable expectations of the public"?

20 A. I think it means that if we understood
21 that there were problems and we thought that they
22 were significant enough to affect the rights and
23 expectations of the public that we would take
24 action accordingly.

1 Q. Okay. Did anybody ever bring to your
2 attention actions or activities that they believe
3 were committed by the Weltman firm that would have
4 implicated this zero tolerance clause?

5 A. Again, you've asked me this several
6 ways over the course of the morning. I don't have
7 specific recollection one way or the other with
8 respect to this firm, which is to say I don't have
9 any particular recollection that they ever had any
10 problems nor do I have any particular recollection
11 that they never had any problems. I just wouldn't
12 know one way or the other. So I -- I don't know
13 what else to tell you.

14 Q. All right. Do you recall ever -- this
15 zero tolerance policy, this clause being
16 implicated in any setting with respect to any
17 collection agency that you dealt with? Because
18 zero tolerance --

19 A. So I mentioned to you earlier that I
20 was aware -- I was aware and perhaps was on more
21 than one occasion that there was an instance or
22 instances of firms who were working on behalf of
23 the State of Ohio who -- where issues had been
24 raised about whether their debt collection

1 processes were consistent with the law. So there
2 were at least an or maybe several such instances.

3 I don't recall who that was in particular.

4 Q. The next section paragraph 20,
5 Compliance with Law?

6 A. Uh-huh. Yep.

7 Q. It's a must "...Special Counsel must
8 comply..." Right?

9 A. It says "agrees to comply."

10 Q. No. No. The last paragraph -- the
11 last sentence in that paragraph. "...must comply
12 with the same standards of behavior as set
13 forth..." Do you see that?

14 MR. DOUGLAS: I don't. What paragraph?

15 MR. WOOLEY: Just read the whole
16 paragraph.

17 MR. DOUGLAS: I did.

18 A. Okay. Well, look, I mean I'm not sure
19 what point you're trying to make here. "Special
20 Counsel agrees to comply with all applicable
21 federal, state, and local laws," it says at the
22 beginning. Later it says, "Special Counsel must
23 comply with the same standards of behaviors as set
24 forth in..." some specific statutes.

1 Q. Right.

2 A. You know, those certainly were
3 expectations that the office had of all the firms
4 doing business with the State.

5 Q. Right. Your answer about how these
6 circumstances may have been brought to your
7 attention about this collection firm or that
8 collection firm that --

9 A. I believe they were as I said.

10 Q. Yeah.

11 A. But I don't recall exactly who that
12 would have been.

13 Q. Did your office ever take any action
14 against the Weltman, Weinberg & Reis firm?

15 A. Not that I'm aware of. They would know
16 perhaps better than I. I don't have a
17 recollection one way or the other, but again I
18 don't have any particular recollection that we
19 did.

20 Q. Okay. And in fact, you were there two
21 years, you approved them twice?

22 A. I approved them each year I was there,
23 correct.

24 Q. Okay. Is there a place as we continue

1 our discovery where we could go to find where
2 these complaints and these discussions about
3 possible problems with collection firms would be
4 documented? Is there a place where we could go to
5 find that?

6 A. I don't know offhand. You know,
7 perhaps there's someplace in the Attorney
8 General's Office, perhaps you could look at the
9 public record. If anything ever became a public
10 matter, it would have been I assume known, there
11 would be -- would have been some public evidence
12 of it, either complaints that were filed or -- I
13 don't know. You're asking me to sort of speculate
14 as to what documentation there may be. I don't
15 know.

16 Q. I'm asking if you know. If it's
17 speculation, it's speculation.

18 A. I don't know in particular.

19 Q. Yeah. Okay.

20 Exhibit G, the complaint.

21 - - - - -

22 Thereupon, Exhibit G is marked for
23 purposes of identification.

24 - - - - -

1 MR. WOOLEY: We actually do need a
2 break right now. Let's take a break for --

3 MR. DOUGLAS: At my age is a good idea.

4 MR. WOOLEY: All right.

5 (A short recess is taken.)

6 Q. Back on the record. The Complaint has
7 been marked as Exhibit G. Do you recognize that
8 as the complaint that you approved for filing
9 against Weltman, Weinberg & Reis in April of this
10 year?

11 A. Generally, yes.

12 Q. Okay. I'm going to ask you about some
13 specific paragraphs in it. If you want to take
14 some time to look through the whole thing now,
15 that's fine with me.

16 A. That's fine. We can proceed.

17 Q. Okay. You'll see the first paragraph
18 is an introduction, right, paragraph 1?

19 A. Two paragraphs, yes.

20 Q. Right. And then paragraph No. 2 -- I'm
21 going to use the numbers.

22 A. Uh-huh.

23 Q. Is --

24 A. I see. Okay.

1 Q. Yeah. "The Defendant engages in
2 unlawful collection activities by misrepresenting
3 the level of attorney involvement in demand
4 letters and calls to consumers." Do you see that?

5 A. I see that.

6 Q. And then if you turn to the next page,
7 we go right into Jurisdiction and Legal Authority?

8 A. Okay. Yes.

9 Q. So I mean paragraph 2 is sort of a
10 summary of the gravamen of the Bureau's complaint,
11 correct?

12 A. I would say that's fair, yes.

13 Q. Okay. And you do recall approving the
14 Complaint?

15 A. Generally, yes. Not specifically.

16 Q. Okay. Going on to page 4, please. And
17 there's some specific paragraphs I want to --

18 MR. DOUGLAS: Before you go further,
19 Counselor, we ought to establish, are you
20 interrogating him as a former director of the
21 Bureau or as an attorney? Because he's not going
22 to be answering questions with regard to being an
23 attorney.

24 MR. WOOLEY: I'm asking him

1 questions --

2 MR. DOUGLAS: And for instance about --

3 MR. WOOLEY: -- about a complaint he

4 approved.

5 MR. DOUGLAS: Pardon me?

6 MR. WOOLEY: I'm asking him questions
7 about a complaint he approved. And if people want
8 to object about a particular question, go ahead.
9 But I'm going to ask him questions about a
10 complaint he approved. He said he approved it.

11 MR. DOUGLAS: Yeah, I'm sure if he
12 hadn't have been an attorney and the head of the
13 Bureau, he would have approved it anyway in the
14 course of his duties.

15 Q. Okay. Paragraph 17, 18 and 19 refer to
16 "demand letters." Do you see those?

17 A. I see that. Yes.

18 Q. Yeah. Do you recall having seen the
19 demand letters that are referenced in these
20 paragraphs?

21 A. I do not recall that offhand, no.

22 Q. Okay. And then if you look at
23 paragraph 23, it talks about, "When Weltman sends
24 demands letters, Weltman attorneys generally have

1 not reviewed a corresponding consumer's individual
2 account file to reach a professional judgment that
3 sending a letter is appropriate." Do you see
4 that?

5 A. I see that.

6 Q. And then paragraph 26, the "...demand
7 letters misrepresent..."

8 A. I see that paragraph.

9 Q. Okay. I take it you stand by the
10 complaint?

11 A. Well, I'm no longer the director of the
12 Bureau, so I don't know that it matters one way or
13 another at this point.

14 Q. But do you have any reason to believe
15 that those allegations are not true?

16 A. What I will say is that this complaint
17 would not have been filed without my approval,
18 that would have been based on a recommendation
19 memo that would have laid out their understanding,
20 the attorney's understanding of the facts that
21 they had investigated in the matter and their
22 understanding of what they thought the law -- how
23 the law stands in terms of what the significance
24 of those facts are, and that would have been the

1 basis on which the complaint was filed.

2 Q. Okay. You made a public statement
3 about the complaint when it was filed, correct?

4 A. We often did. I don't recall whether
5 we did here or not. But I assume you're going to
6 show me a document and tell me that we did.

7 Q. Exhibit H.

8 MR. DOUGLAS: Are you finished with the
9 complaint?

10 MR. WOOLEY: I might go back to it.

11 MR. DOUGLAS: Okay.

12 - - - - -

13 Thereupon, Exhibit H is marked for
14 purposes of identification.

15 - - - - -

16 Q. Exhibit H is a press release that was
17 issued by your office. And you'll see the second
18 paragraph quotes you. Do you see that?

19 A. I do.

20 Q. Would you mind reading that for the
21 record, please?

22 A. No, I would not mind. "'Debt
23 collectors who misrepresent that a lawyer was
24 involved in reviewing a consumer's account are

1 implying a level of authority and professional
2 judgement that is just not true,' said CFPB
3 Director Richard Cordray. 'Weltman, Weinberg &
4 Reis masked millions of debt collection letters
5 and phone calls with the professional standards
6 associated with attorneys when attorneys were, in
7 fact, not involved. Such illegal behavior will
8 not be allowed in the debt collection market.'"

9 Q. So that's your quote. Did you write
10 that?

11 A. I would have edited a draft of a quote.

12 Q. All right. But somebody would have
13 prepared a draft for you?

14 A. I take responsibility for it.

15 MR. MCCRAY-WORRALL: Objection to the
16 extent this is getting into privilege information.

17 Q. But you stand by the quote?

18 A. I do.

19 Q. All right. And what was it based on?

20 A. So --

21 MR. MCCRAY-WORRALL: Objection, vague.

22 A. The quote would have been based on the
23 materials I saw recommending the filing of a
24 lawsuit that I approved. It would have laid out

1 the Bureau's investigation of the facts and what
2 they understood the facts to be. And it would
3 have been based on Bureau attorneys'
4 representations as to what they thought the law
5 was in the area as applied to those facts. And --
6 and that would have been the basis for this
7 characterization of what the lawsuit was about.

8 Q. Yeah. "Weltman, Weinberg & Reis masked
9 millions of debt collection letters...with
10 professional standards." What do you recall about
11 the letters that was -- that you found to be
12 illegal behavior?

13 MR. MCCRAY-WORRALL: Objection.

14 A. So I don't recall the specifics of what
15 was in my mind or what I found. I think the
16 specific allegations, factual and legal are in the
17 complaint and have been documented in documents
18 filed in the case and they probably speak for
19 themselves.

20 Q. You've said several times things speak
21 for themselves. I understand. I'm just trying to
22 in discovery to understand your understanding.

23 A. I understand. I understand.

24 Q. Sure. Yeah.

1 Is there anything that -- about the
2 sending of the letters that isn't set forth in the
3 complaint?

4 MR. MCCRAY-WORRALL: Objection.

5 A. Well, I can just speak generally. A
6 complaint lays out with sufficient particularity
7 to initiate a case as to what our understanding of
8 the facts were. And they are allegations, they
9 are not yet proven, and they have to be determined
10 ultimately by a court. And there is a
11 representation as to the legal claims that are
12 based on those facts. And then there will be
13 further documents filed in the case that will
14 flush that out with more particularity or perhaps
15 might migrate as discovery and other matters
16 evolve. And as you know well, the cases can go
17 beyond the mere allegations that were initially
18 contained in a complaint at the outset of the
19 case.

20 Q. And the complaint that you've just read
21 here lays out problems that the agency has or with
22 the demand letters appearing on the firm's
23 letterhead. Do you see that? I directed your
24 attention --

1 A. Where are you directing my attention at
2 this point?

3 Q. The same place I had you look before,
4 paragraph 17 through 19.

5 A. So we're back to the Complaint?

6 Q. Yeah.

7 A. I do see that.

8 Q. All right. And do you recall that that
9 was part of the problem that you had with them,
10 which is why you'd have to make a public statement
11 that this was illegal behavior in these millions
12 of debt collection letters because they used the
13 letterhead?

14 MR. DOUGLAS: Objection. If you could
15 rephrase that.

16 MR. WOOLEY: I think it was clear.

17 MR. DOUGLAS: Well, I don't think so.
18 You said that you had with him. Do you mean the
19 department?

20 MR. WOOLEY: Could you just read it
21 back, please.

22 MR. DOUGLAS: The agency --

23 A. Look, I would just simply say there's a
24 complaint here. It represents the Bureau's

1 position at that time that the facts that have
2 been investigated and are alleged in the complaint
3 give rise to legal violations as specified in the
4 complaint. Paragraph 17 through 19 state what the
5 Bureau understood to be the facts. They're
6 alleged; they're not yet proven. They would need
7 to be determined by a court but those are part of
8 the complaint, yes.

9 Q. I'm focusing on your statement because
10 it's your statement in the press release that they
11 masked millions of debt collection letters in an
12 improper way that you called "illegal behavior."
13 Is that based on anything other than what is in
14 this complaint?

15 MR. MCCRAY-WORRALL: Objection to the
16 extent that calls for privileged information.

17 A. I think I already answered that. I
18 mean, I can answer it again. It would be based on
19 what was specified in this complaint and on the
20 package of materials whatever it was that came to
21 me with the recommendation memo that I would have
22 reviewed. Some of which not, all of which, may
23 have been captured in the complaint.

24 Q. Before making this public statement,

1 did it occur to you at all that Weltman, Weinberg
2 & Reis had collected debt for you when you were
3 the Attorney General and that you had twice
4 appointed them to do so?

5 MR. MCCRAY-WORRALL: Objection to the
6 extent it calls for privileged information.

7 A. I don't know that I recalled that at
8 the time. I don't know that it would or should
9 have mattered had I recalled it. You know, they
10 were collecting debt on behalf of my office when I
11 was an Ohio Attorney General. My office did many
12 things during my time there. We always attempted
13 to do what we thought was right. We did not
14 always get things correct. Often courts corrected
15 us and told us otherwise. And if so, we would
16 adapt to that and adjust to it. I'm not quite
17 sure how your line of inquiry bears on the
18 bringing of this case.

19 Q. But did you have any -- did you have
20 any reason to believe that Weltman, Weinberg &
21 Reis had improperly collected debt on your behalf
22 when you were the Attorney General?

23 MR. DOUGLAS: Objection.

24 A. Well --

1 MR. DOUGLAS: Again, on your behalf.
2 You're talking about on behalf of the State of
3 Ohio, right? You need to make a distinction
4 between the State of Ohio, the Bureau and him
5 individually.

6 MR. WOOLEY: Well, I'm talking about
7 when he was the Attorney General.

8 A. So again what the state of the law may
9 have been in 2009, what it may now be in 2017, I'm
10 not clear what kind of gap or migration may have
11 occurred during that time. So I -- so I think
12 we've been over this question before and I think I
13 answered it before.

14 Q. Yeah. I've been -- I'm going to have
15 to unpack that a little bit.

16 A. Okay.

17 Q. Do you believe there was a change in
18 the state of the law that would have made the way
19 they collected debt for you when you were the
20 Attorney General somehow a violation of the law
21 fast-forward seven years?

22 A. I don't know.

23 MR. MCCRAY-WORRALL: Objection to the
24 extent it calls for a legal conclusion.

1 A. I don't know that for sure one way or
2 the other.

3 Q. One way or the other you don't know
4 that?

5 A. Yeah, not as I sit here.

6 Q. Okay. So you had hired them twice and
7 said twice that you had the highest confidence in
8 their legal expertise, integrity and ability.
9 You'd hired them twice. You had taken no action
10 to terminate their involvement when you were the
11 Attorney General, right?

12 A. Not -- not that I can recall.

13 Q. Okay.

14 A. Uh-huh.

15 Q. And now in April of 2017, they're being
16 sued for misleading consumers, correct?

17 A. That is correct.

18 Q. Okay. What did you understand that
19 they were doing differently in collecting debt?

20 MR. MCCRAY-WORRALL: Objection.

21 Q. Between the time they collected debt
22 for the State of Ohio and when they collected debt
23 during the period -- time period covered by this
24 complaint?

1 MR. MCCRAY-WORRALL: Objection to the
2 extent it calls for privileged information.

3 A. I didn't make that comparison. I don't
4 know what to tell you on that. What I know is
5 that in the spring of this year, a recommendation
6 came to me based on an investigation that had been
7 conducted by the Bureau to file this lawsuit. And
8 I approved the lawsuit, believing that the
9 allegations of fact and the laws apply to them
10 made out a good faith case for a violation of
11 federal law. As to what would have happened or
12 might have happened eight years before that, that
13 was not part of my consideration nor do I think it
14 was germane to that decision.

15 Q. Okay. And again the gravamen of the
16 complaint is what is summarized in paragraph 2,
17 "The Defendant engages in unlawful collection
18 activities by misrepresenting the level of
19 attorney involvement in demand letters and calls
20 to consumers." Correct?

21 A. That's what paragraph 2 says.

22 Q. Okay. Exhibit I.

23 - - - - -

24 Thereupon, Exhibit I is marked for

1 purposes of identification.

2 - - - - -

3 Q. I'll represent to you that Exhibit I is
4 the form template that was sent by Weltman,
5 Weinberg & Reis as an initial demand letter when
6 they collected debt for the State of Ohio. The
7 date is an artifact of when it gets printed
8 because it remains in the system as a macro. So
9 we printed December 14 because we were getting
10 ready to come see you.

11 A. Understood.

12 Q. Understood?

13 A. Uh-huh.

14 Q. Okay. Do you recognize this document?

15 A. Offhand, no. But I see what it is.

16 And I understand what it -- what it is.

17 Q. Okay. Do you recall, though, approving
18 and in fact insisting that this be the document
19 that be sent as an initial demand letter by
20 special counsel when collecting debt for the State
21 of Ohio?

22 A. I don't recall that specifically. But
23 I don't dispute that that was the case.

24 Q. All right. It certainly would have

1 been approved by you; is that correct?

2 A. Again, not this specific letter per se.

3 But the general template I assume was -- it

4 certainly went out under my authority.

5 Q. All right. And let's just look at some

6 of the characteristics of it. So the letterhead

7 says "Richard Cordray Ohio Attorney General,"

8 correct?

9 A. Correct.

10 Q. And on the right "Collections

11 Enforcement-Special Counsel," correct?

12 A. Correct.

13 Q. And it names Alan Weinberg as special

14 counsel, correct?

15 A. On the left side and also in the

16 closing, yes.

17 Q. And then in the body of the letter

18 there's a reference to "Special Counsel" and the

19 "Attorney General" and then signed by a particular

20 lawyer. Do you see that?

21 A. I see that. Yes.

22 Q. Okay. Do you believe this letter was

23 in any way misleading to the consumers that

24 received that letter?

1 MR. DOUGLAS: Objection.

2 MR. MCCRAY-WORRALL: Objection. Calls
3 for a legal conclusion.

4 MR. DOUGLAS: And I would renew that
5 objection. Again that's an ultimate issue in this
6 case and he's not qualified, nor should he be
7 representing that he is to answer that question
8 that a judge is required to answer.

9 Q. Do you believe the letter is misleading
10 to consumers regarding the level of attorney
11 involvement?

12 MR. MCCRAY-WORRALL: Same objection.

13 A. I think that would be a matter for a
14 judge to decide.

15 Q. A judge should decide whether your
16 letter -- this is your letter, it's on your
17 letterhead?

18 A. It's on my letterhead.

19 Q. Do you have any concerns that this
20 letter may have in fact misled consumers in the
21 state of Ohio? Do you have any concerns
22 personally?

23 A. Again, you're asking for me to make a
24 judgment about a legal conclusion, and I would

1 say --

2 Q. I'm not.

3 A. And I would say --

4 Q. I'm not. I'm using plain English.

5 A. That's how --

6 Q. Do you have any concerns --

7 A. That's how I'm --

8 Q. Do you have any concerns whatsoever
9 whether this letter was misleading to consumers,
10 sir?

11 MR. MCCRAY-WORRALL: Counsel, can I
12 interject for a second? You're interrupting the
13 witness. Could you please allow him to finish --

14 A. That's not --

15 MR. DOUGLAS: -- his answer before you
16 ask another question?

17 A. So that's how I'm understanding your
18 question. "Misleading" is a legal term. But what
19 I would say is this, and again it might short
20 circuit some of what you're doing here. What we
21 may have thought in the Attorney General's Office
22 in 2009 based on the state of the law as we
23 understood it at the time may or may not be what I
24 would have thought in 2017 at the Consumer Bureau

1 based on the state of the law as it appeared to me
2 at that time. So I might have had a judgment in
3 2009 that might no longer have been my judgment in
4 2017. But I can't really speak to exactly what I
5 would have thought in 2009.

6 Q. So how would Weltman, Weinberg & Reis
7 know that?

8 A. I assume that they would keep up with
9 changes in the law and Court decisions and --

10 Q. And what sort of --

11 A. -- adapt accordingly.

12 Q. What sort of guidance did the CFPB put
13 out to make sure that if somebody said, boy, this
14 is a problem you need to change, where would we
15 find that guidance?

16 A. I can't speak specifically to where
17 that would have been.

18 Q. I've been on your website. I can't
19 find it. Where would we find it?

20 A. Well, I'm not quite sure what you're
21 getting at here. There have been no rules or
22 regulations issued on debt collection, although
23 there -- there are matters pending at the Bureau.
24 The Bureau has brought enforcement actions and

1 given guidance through other enforcement actions
2 and orders and court decisions have been rendered,
3 you know, around the country. I assume that as
4 was true then and is true now, debt collectors
5 keep up with the Court decisions and adjust their
6 behavior accordingly. And, you know, sometimes
7 those court decisions may be clear, sometimes
8 they're not clear. But the law evolves and
9 changes and it happens all the time.

10 Q. Okay. To my specific question, did the
11 CFPB put out guidance that said a letter like this
12 is illegal? A letter like Exhibit I, did the CFPB
13 put out guidance that said that?

14 A. What do you mean "guidance"?

15 Q. Guidance.

16 A. Well, the CFPB put out a lot of
17 information in a continuing flow. There would
18 have been other enforcement actions that might
19 have been decided and there would be decisions and
20 consent decrees and Court decisions. There might
21 be supervisory highlights which were put out from
22 time to time about what happened in supervising
23 entities in terms of their debt collection
24 practices, there could be guidance documents

1 separate from those. I don't know offhand whether
2 there were or weren't. There could be rules and
3 regulations which have not yet been adopted by the
4 Bureau that are in process.

5 Q. Yeah.

6 A. There's a variety of different things.
7 As to whether there was some specific document
8 that said specifically what you're asking, I don't
9 know offhand.

10 Q. Okay. This is Exhibit J.

11 - - - - -

12 Thereupon, Exhibit J is marked for
13 purposes of identification.

14 - - - - -

15 Q. This is Exhibit J. This is the demand
16 letter that was used by Weltman, Weinberg & Reis
17 during the period of time that's the subject of
18 your -- the CFPB's complaint. Do you recall
19 having seen this before?

20 A. I don't recall offhand whether I could
21 have seen it before, but I may well have.

22 Q. All right.

23 MR. MCCRAY-WORRALL: Counsel, I just
24 want to step back for just -- I want to object to

1 the extent you're making characterizations about
2 these documents.

3 Q. Do you recall seeing something like
4 this, though, when you approved the complaint?

5 A. I may well have. I don't have a
6 particular recollection of exact documents --

7 Q. Okay.

8 A. -- that were part of that package of
9 materials.

10 Q. So here's the thing. A press release
11 says this letter is horrific illegal behavior.

12 A. I don't believe it said that.

13 Q. Okay.

14 A. That's not what the --

15 Q. Let's -- let's be precise.

16 A. I don't remember it.

17 Q. You're right. You're right. I'm --
18 you're right. I'm just getting a little --

19 A. Uh-huh. Yeah.

20 Q. And I apologize. That was -- I
21 apologize.

22 A. You don't need to apologize. I
23 understand that you're passionate in supporting
24 your client here. And --

1 Q. Well --

2 A. -- I think that there are -- reasonable
3 minds could disagree about this.

4 Q. Yeah. But my client is facing an
5 existential threat to its firm because of this
6 lawsuit.

7 MR. MCCRAY-WORRALL: Counsel, are you
8 asking a question?

9 Q. And I would like to understand --

10 A. I'm sorry. Is that -- is that --

11 MR. MCCRAY-WORRALL: Or is that a
12 statement of fact?

13 Q. What's the difference between that
14 letter?

15 A. Is that a statement of fact?

16 Q. What's the difference between this
17 letter and this letter? The letter that you
18 approved that has the names of your -- you're the
19 Attorney General, the names of special counsel in
20 it approved by you, then the one that caused your
21 agency to sue them?

22 A. I'm sorry. So what documents are we
23 referring to?

24 Q. We were looking at Exhibit I and J.

1 MR. DOUGLAS: Objection. I'm going to
2 let him answer it if he wants to answer it. But
3 my point again is that even if the Attorney
4 General was wrong in his application of this law,
5 it does not affect and it does not go to relevancy
6 under 401(b) and is not a fact in consequence in
7 determining this action. Even if they're wrong
8 and your client was wrong doesn't make your client
9 right because they were wrong.

10 MR. WOOLEY: Well --

11 MR. DOUGLAS: So I'm not going to let
12 him answer -- draw that conclusion unless he
13 chooses to do so.

14 MR. MCCRAY-WORRALL: I'll also object
15 that question is vague and appears to call for a
16 legal conclusion.

17 MR. WOOLEY: Andy, I'm going to say on
18 the record intent is an issue in the case. If
19 there -- no. No. We understand the underlying
20 violations. It's our case. You're representing a
21 third party witness.

22 MR. DOUGLAS: Yes.

23 MR. WOOLEY: If there's no intent,
24 there is zero damages. Intent is a defense. If

1 you do things exactly the way the Attorney General
2 said was fine and they never tell you to change
3 it, how in the world can they establish we engaged
4 in intentional misconduct?

5 MR. DOUGLAS: That's for you to defend
6 and somebody else to prove.

7 MR. WOOLEY: But it's also for --

8 MR. DOUGLAS: Not their --

9 MR. WOOLEY: But it's also for me to
10 develop facts in discovery on, Andy, and that's
11 what I'm doing.

12 MR. DOUGLAS: Would you let us answer
13 before you proceed? That's all. I'm just telling
14 you he is not in a position to answer the
15 comparison between those two documents as a lay
16 witness. He is a lay witness in this case.

17 Q. All right. Okay. I and J. I know
18 you're a lay witness. But your -- your name's on
19 the letterhead.

20 A. It is certainly on the letterhead,
21 yeah.

22 Q. And so a consumer receives this letter,
23 sees the name of an Attorney General, there are
24 seven different references to a specific lawyer,

1 either you or Mr. Weinberg in the letter, okay?
2 Had you reviewed the account level detail before
3 this letter was sent?

4 MR. DOUGLAS: Objection. It's been
5 asked and answered --

6 MR. WOOLEY: It has not.

7 MR. DOUGLAS: -- several times.

8 MR. WOOLEY: It has not.

9 MR. DOUGLAS: Answer it one more time
10 then.

11 Q. Had you reviewed the account level
12 detail for each letter before this letter was
13 sent?

14 A. Which letter are we referring to?

15 Q. I.

16 A. Exhibit I?

17 Q. I.

18 A. Had I -- had I reviewed the account
19 level detail before the letter was sent?

20 Q. Right. Back to my son with the parking
21 tickets and the books at Ohio State.

22 A. Yeah.

23 Q. Had you reviewed his account before
24 sending this letter?

1 MR. MCCRAY-WORRALL: Objection, vague.

2 A. I don't know that I would have. But I
3 would have a sense that someone would have and in
4 the Attorney General's Office --

5 MR. DOUGLAS: To be fair about the
6 question --

7 A. -- and I don't know who that would be.

8 MR. DOUGLAS: -- he didn't send the
9 letter.

10 Q. A lawyer? Would a lawyer have reviewed
11 it?

12 A. It would depend on the facts and
13 circumstances. I don't know offhand.

14 Q. Okay. You say you don't know that you
15 would have. Were you actually looking at account
16 level detail in this high volume collection debt
17 collection?

18 MR. MCCRAY-WORRALL: Objection.

19 Q. Were you doing that, sir?

20 A. At this point you're talking about a
21 letter that was sent from the Weinberg offices,
22 okay. I would not have reviewed that letter
23 before it was sent by Alan Weinberg.

24 Q. Would you have reviewed the underlying

1 account level detail?

2 MR. MCCRAY-WORRALL: Objection.

3 Q. Would you have done that?

4 A. I'm not quite sure what you are getting
5 at here. There are multiple lawyers' names on
6 that letter, okay? It's been sent by Alan
7 Weinberg, all right? My assumption is that Alan
8 Weinberg or someone on his behalf would have
9 reviewed that detail, okay?

10 Q. Exactly. Someone on his behalf. A
11 lawyer on his behalf?

12 A. You know, depending on the wording of
13 the letter, that might be appropriate.

14 Q. Well, you have the letter in front of
15 you.

16 A. It might not --

17 Q. You have the letter in front of you.

18 A. Look, you're asking me to make
19 judgments that the judge in this case will have to
20 make. And I think you've going to have to get
21 those judgments from the judge not from me.

22 Q. It's a factual question. You have the
23 letter in front of you. For that letter, would
24 you have expected that Mr. Weinberg would have

1 reviewed the account level detail?

2 A. Or a lawyer in his firm.

3 Q. A lawyer, a lawyer, prior to that
4 letter being sent?

5 A. I may well have, I may not have. It
6 would depend on what the state of the law was and
7 how we understood it at that time. That was eight
8 years ago. Been court decisions since then, may
9 be the law has changed. So I -- you know, I don't
10 know what to tell you. You've tried to ask me
11 this a number of times --

12 Q. All right.

13 A. -- and I only have what I can say in
14 response. And I've tried to give it to you
15 several times.

16 Q. All right. So Exhibit J, the Bureau's
17 complaint says, "demand letters misrepresents that
18 attorneys at the firm have reviewed the consumer's
19 file and determined that the consumer owes the
20 amount demanded, which in fact no such review has
21 occurred." That's what the allegation is about,
22 this letter.

23 MR. MCCRAY-WORRALL: Objection. You're
24 characterizing the complaint.

1 Q. That's the --

2 A. Well, the Complaint speaks for itself.

3 It says what it says.

4 Q. So look at the letter. What letter --

5 what lawyer is represented in this letter to have

6 reviewed the consumer's file in letter J?

7 A. Well, look, again, it's up for a judge

8 to decide, not me. But the question is whether

9 that would be a fair characterization based on the

10 entirety of what is presented on this page and

11 received by an average consumer.

12 Q. You know, I appreciate it, but I

13 understand what the judge's job is. I get that.

14 I don't need -- we don't need to be continually

15 reminded of that.

16 But you have made the public statement

17 that this is illegal behavior. That's your

18 statement in the press release and it's your

19 complaint.

20 MR. MCCRAY-WORRALL: Objection.

21 A. That's -- that is what the complaint

22 alleges.

23 Q. Right.

24 A. It's not a matter for the Bureau itself

1 to determine finally, it's a matter for a Court to
2 determine, and a Court will do that.

3 Q. But in fact before you made this
4 statement to the press and called it illegal
5 behavior, you made that conclusion yourself?

6 A. I -- I did believe based on what I had
7 understood.

8 Q. You did believe?

9 A. That was --

10 Q. Looking at this now and looking at what
11 you sent out, do you still believe it? Do you
12 still believe that the letter that was sent out by
13 Weltman, Weinberg & Reis during the period of time
14 at issue in the complaint is in fact a
15 misrepresentation and is illegal?

16 MR. MCCRAY-WORRALL: Objection, it
17 calls for a legal conclusion, also object on
18 relevance grounds.

19 A. I'm not sure -- you know, I'm no longer
20 the director of the Bureau. I'm not sure what --
21 what your point is here.

22 Q. On April 17th, you described this
23 collection letter as, "'Such illegal behavior will
24 not be allowed in the debt collection market.'"

1 MR. MCCRAY-WORRALL: Objection.

2 You're --

3 Q. And you said it misrepresented that a
4 lawyer was involved in reviewing a customer's
5 account. You can look at the Exhibit H yourself.
6 I think it's a fair paraphrase from your quote.

7 MR. MCCRAY-WORRALL: Objection to the
8 extent you're assuming that it's this letter
9 that's at issue in that statement. That has not
10 been established.

11 MR. WOOLEY: For the record, we should
12 say -- I -- the objections are being interposed by
13 somebody who has yet to appear in this case --

14 MR. MCCRAY-WORRALL: I have noted my
15 appearance.

16 MR. WOOLEY: -- in any substantive way.
17 He's not been in a deposition. He's not been in a
18 court conference. And I have no basis to believe
19 that he knows anything about the file.

20 MR. MCCRAY-WORRALL: Objection.

21 BY MR. WOOLEY:

22 Q. So you make the statement in the press
23 release that this letter is "illegal behavior"?

24 A. I think the press release speaks for

1 itself. You've quoted it several times now and I
2 think accurately enough, but it speaks for itself.

3 Q. Okay. All right. I'm asking you not
4 about -- I'm not asking you for a conclusion that
5 judge might make. Richard Cordray said, "Such
6 illegal behavior..." This is the letter, I'm
7 representing that to you. If I'm wrong, I'm
8 wrong; but I'm right. This is the letter. What's
9 illegal about this letter?

10 MR. MCCRAY-WORRALL: Objection.

11 A. The allegations in the complaint detail
12 that, and there's probably been further filings in
13 the case which I have not seen that further flesh
14 out the Bureau's theories on this. And they may
15 be right or they may be wrong, but that's the case
16 that was brought.

17 MR. DOUGLAS: I recognize you're in
18 discovery.

19 A. You're --

20 MR. DOUGLAS: You're in discovery.

21 Q. I want to repeat that.

22 MR. DOUGLAS: I want to make sure that
23 you understand that he's not speaking on behalf of
24 Richard Cordray. At that time the press release

1 is the Bureau issuing it. It happens to be under
2 his name.

3 MR. WOOLEY: It's his quote, though.

4 A. As the director of the Bureau.

5 MR. DOUGLAS: We all are quoted in the
6 press on behalf over our clients.

7 Q. Am I hearing you correctly, though,
8 that you just said this was complaint that you
9 approved to sue this law firm that you worked with
10 before, they may be right and they may be wrong?

11 A. Look --

12 Q. Did I accurate -- did I just hear you
13 say that?

14 MR. DOUGLAS: I didn't hear it.

15 A. There's really nothing at issue here
16 and you're trying to make something an issue. We
17 file complaints --

18 Q. Tell him that.

19 A. No. Listen to me.

20 Q. No. No. No. You tell him that.

21 MR. MCCRAY-WORRALL: No.

22 A. I'm answering. Let me answer. We file
23 complaints in cases, we know we're not going to
24 necessarily win every case. And if a court

1 decides otherwise, we will accept that and we will
2 adapt our approach accordingly. We filed this
3 case because we thought we had an appropriate case
4 to bring. We understand at the outset of every
5 case we may be right or we may be wrong and a
6 judge will ultimately tell us that. But we feel
7 we have sufficient grounds to bring the case based
8 on the facts as we know them and the law as we
9 understand it. And that's what we did here and
10 that's what we did in every case. Now having said
11 that, we do not win every case. And that's -- you
12 know, unfortunately, that's the case. But that is
13 the fact as well.

14 Q. Okay. Do you have any basis to believe
15 -- and if you do, explain it to me -- that
16 Weltman, Weinberg & Reis would have somehow been
17 told in any way, shape or form that this letter,
18 Exhibit I, was now considered to be problematic?

19 A. I don't know on what basis.

20 MR. MCCRAY-WORRALL: Objection.

21 A. Who would tell them that? The current
22 Attorney General or -- or --

23 Q. Or perhaps the agency --

24 A. -- their own lawyers or --

1 Q. -- that puts out guidance --

2 A. -- you?

3 MR. MCCRAY-WORRALL: Objection to the
4 extent that's calling for privileged information.

5 MR. WOOLEY: A conversation with
6 Weltman, Weinberg & Reis and him is privileged?

7 MR. MCCRAY-WORRALL: About knowledge
8 that he might have had about the communication
9 with Weltman, Weinberg.

10 A. What conversation?

11 Q. I'm asking you. I'm asking you.

12 A. Do you have a hypothetical conversation
13 in mind now.

14 Q. Well, I've said it to your lawyer and I
15 talked over him, and I'm sorry. I do apologize
16 for my pace getting a little ahead of me. But as
17 you can tell, it's -- I won't say anymore.

18 Okay. There is an element of intent in
19 the case. Did people know they were doing
20 something or believe they were --

21 A. Are you testifying now?

22 Q. No. Hear me out. Hear me out.

23 A. Are you asking a question? What are
24 you doing?

1 Q. There's an element of that. Did they
2 know that they were doing something inappropriate?
3 And I'm asking you because we have you on the
4 record. Do you have any basis to believe that
5 they were told in some way, shape or form that --
6 that they couldn't send letters like --

7 A. Look --

8 Q. -- either the one as Exhibit I --

9 A. I'm not sure what you're getting at.

10 Q. -- or J?

11 A. You seem to be suggesting that I should
12 somehow change my mind about something. I'm no
13 longer the director of the Bureau. I have no
14 influence or authority to address any further
15 conduct of this case. Nobody's asking my opinion
16 at the Bureau. They will -- they will proceed
17 themselves from here. What you might think you're
18 persuading me of or what the elements of the claim
19 are and so forth is not very relevant at this
20 point. I'm not in that position anymore, so --

21 Q. Right. Okay.

22 On are you aware of any differences
23 between the way in terms of the practices,
24 procedures that were employed by Weltman between

1 the way they collected debt for the State when you
2 were the AG and the way they collected debt during
3 the time period covered by the complaint?

4 A. Am I familiar --

5 Q. Are you personally?

6 A. Am I familiar with the differences?

7 Q. Yeah.

8 A. I am not particularly familiar with the
9 differences, no. But I could also -- a relevant
10 point here is whether the law itself might have
11 evolved during that period of time. So you know
12 what --

13 Q. I see.

14 A. -- might have been done in 2009 might
15 or might not be viewed in the same way in 2017 and
16 that's -- that's a difference that you're sort of
17 -- you're wishing away here that might well
18 matter. I don't -- I don't -- I haven't followed
19 the law in this -- as carefully as people who do
20 debt collection for a living.

21 Q. I'm going to resist now -- fail to
22 resist a temptation. You said I'm wishing away.
23 I don't -- because it's not for you to ask me
24 questions. I'm trying to understand. I'm not

1 wishing away. If there is a change that made
2 something that was appropriate in 2009 and 2010
3 and 2011 inappropriate between 2014 and 2017 --

4 A. Two things.

5 Q. -- I would like to know what that is.

6 A. Yeah.

7 Q. That's all. It's a matter of fact.

8 What is that?

9 A. That's fine.

10 MR. DOUGLAS: And you'll argue that to
11 a Judge. I'm sure.

12 MR. MCCRAY-WORRALL: Objection, to.

13 A. Two things. One is you're suggesting
14 that the two letters you're comparing I and J are
15 exactly the same in all particulars. I don't know
16 that that's so. I haven't done a minute
17 comparison of them. It's not something I would
18 have done in filing the lawsuit in this case.
19 You're also suggesting that the law applicable to
20 I and J, even if they were exactly the same which
21 they may or may not be is a factual matter, is the
22 same law in 2009 as it is in 2017, and I don't
23 know that to be the case either. But those are
24 matters that you'll end up arguing to a Judge and

1 a Judge will decide them or -- or maybe you'll
2 reach a resolution prior to that. I don't know
3 how this case will proceed, but I don't really see
4 how my opinions on this at this point are
5 particularly helpful to you or to anyone in
6 deciding this case.

7 MR. WOOLEY: Okay. We're going to take
8 a little break. We want to go over some notes and
9 we can figure out how much more of this we need to
10 do.

11 MR. DOUGLAS: Yeah.

12 (A short recess is taken.)

13 BY MR. WOOLEY:

14 Q. And just one question back to the era
15 when you were the Attorney General. There were
16 people to whom you had delegated responsibility
17 for this collection activity, I've asked you
18 questions about who those people were and you're
19 clear about who you don't remember. Do you have
20 any reason to believe that those people engaged in
21 any illegal behavior with respect to the
22 correction of debt?

23 A. I certainly would hope that they
24 didn't. I don't have any reason to think that

1 they did, but it's not impossible that someone
2 might have. But I thought we put processes in
3 place to try to prevent that from happening.

4 Q. All right. Back to Exhibit H briefly.
5 In your paragraph -- in the quote that's
6 attributed to you, you talk about "professional
7 standards associated with attorneys, when
8 attorneys...." What professional standards are
9 you referring to?

10 A. I assume that I was referring to the
11 kind of professional standards that you and your
12 colleagues operate under, standards of
13 professional conduct and the like.

14 Q. Okay. So that's your assumption. Do
15 you recall, though, a little more clearly? This
16 isn't that long ago. It's --

17 A. Well, look, I would say --

18 Q. Seven, eight months ago?

19 A. I assume three things. It would be
20 professional standards that apply specifically to
21 lawyers and how they conduct themselves. It would
22 be general professional standards in the
23 profession that may or may not be written down
24 somewhere in specific, but kinds of, you know,

1 better practices. And it would also be compliance
2 with the debt collection laws since we're talking
3 about debt collection here.

4 Q. Yeah. And so set aside the compliance
5 with debt collection laws, the professional
6 standards piece --

7 A. I don't know that you can set it aside,
8 I think they're all wrapped together --

9 Q. Okay. All right.

10 A. -- in this quote. This is a shorthand,
11 nonlegal quote here.

12 Q. All right. But it is a public
13 statement that the CFPB directors believe that
14 Weltman, Weinberg & Reis hasn't lived up to the
15 professional standards required of it as
16 attorneys?

17 A. It's a shorthand version, then a
18 complaint was filed alleging violations of the
19 law, correct.

20 Q. Okay. Is it part of the CFPB's purview
21 to be the arbitrator of whether lawyers comply
22 with their professional standards?

23 MR. MCCRAY-WORRALL: Objection.

24 A. I'm not really understanding -- I mean,

1 the CFPB's authority is specified in statute, it
2 includes enforcing the law and that's what the
3 purview is. We're not disciplinary counsel if
4 that's what you're getting at.

5 Q. And so that is for other people?

6 MR. MCCRAY-WORRALL: Objection.

7 A. I'm not sure what -- what are you
8 saying "for other people"?

9 Q. You said we're not disciplinary
10 counsel. So whether or not Weltman, Weinberg &
11 Reis violated professional standards associated
12 with the practice of law, that's for other people
13 to decide; is that what you're saying?

14 A. It doesn't say professional standards
15 associated with the practice of law.

16 Q. No. I'm saying -- you're right. It
17 says professional standards associated with
18 attorneys. I'm sorry.

19 A. Yeah. Well, you know, look, you're
20 taking a comment in a press release and trying to
21 give it precise legal particulars. I don't think
22 it was intended as such. This is a
23 characterization that a lawsuit was filed based on
24 allegations of fact and claims that have to be

1 proven, have to be determined only by a court that
2 the law was violated. That's what it -- that is
3 what it's about.

4 Q. Right. Have you seen press releases
5 issued by the Department of Justice in criminal
6 matters?

7 A. I --

8 MR. DOUGLAS: Objection. There's no
9 relevance.

10 A. Relevance.

11 MR. DOUGLAS: Objection. There's no
12 relevance to that.

13 MR. WOOLEY: Well, I just want to draw
14 a comparison. If he hasn't seen them, he hasn't
15 seen.

16 MR. DOUGLAS: Well, but there's no
17 relevance to it. And if we keep letting you go
18 on, on and on as I have with regard to relevant,
19 nonrelevant matters, who knows where it's going to
20 go. I'll let him answer that one, but stay to the
21 issues in this case. He wants to know.

22 A. I'm not that familiar with Justice
23 Department criminal press releases actually.

24 Q. I might be missing it. But I'm not

1 seeing in any -- any of this press release your
2 statements about how we might be right, we might
3 be wrong, it's up for a Judge to decide. Is that
4 anywhere in here?

5 A. Look, I think that's true of every case
6 that you bring. You bring a case in a court
7 knowing that a judge will decide it.

8 Q. Yeah. And the DOJ actually says that
9 in its press releases, this is not evidence of
10 guilt, the guilt is to be determined by a court if
11 it's proven beyond a reasonable doubt. Do you
12 understand --

13 MR. MCCRAY-WORRALL: Objection.

14 Q. But that's not finding its your way
15 into your press releases?

16 MR. MCCRAY-WORRALL: Objection.

17 A. I'm not sure what you're getting at and
18 whether you're asking a question or commenting for
19 the record.

20 MR. DOUGLAS: And beyond a reasonable
21 doubt is a criminal standard, not a civil
22 standard.

23 MR. WOOLEY: I understand. Yeah.

24 So since we have everybody on the

1 record, Mr. Douglas, is -- if the case goes to
2 trial in the spring, I assume that you'll still be
3 representing Mr. Cordray, and I wouldn't want to
4 send a process server to his house. But if you
5 agree to accept service of a trial subpoena --

6 THE WITNESS: You sent a process server
7 to my house before. I had no objection to that,
8 it's perfectly permissible.

9 MR. WOOLEY: I'm trying to extend a
10 courtesy.

11 THE WITNESS: It doesn't matter.

12 MR. DOUGLAS: Send the process server
13 to his house.

14 MR. WOOLEY: Okay. No. I just -- I
15 just don't want to be accused of having contact
16 with a represented party because --

17 MR. DOUGLAS: I understand.

18 MR. WOOLEY: -- we do intend to issue a
19 trial subpoena.

20 THE WITNESS: I don't have any problem
21 with that.

22 MR. DOUGLAS: Because I don't know
23 whether or not he's -- I'm going to be
24 representing him. That's going to be up to him.

1 But I can tell you I moved into a new neighborhood
2 and I don't want to be voted out of it because a
3 process server.

4 MR. WOOLEY: Well, I don't want to have
5 contact with a represented party.

6 MR. DOUGLAS: You wouldn't do anything
7 unethical, we know that.

8 MR. WOOLEY: Thank you.

9 THE WITNESS: No problem.

10 MR. WOOLEY: Anything else? We're
11 done.

12 (A short recess is taken.)

13 MR. DOUGLAS: I'm was going to ask some
14 questions, but I don't need to. That takes care
15 of it.

16 MR. MCCRAY-WORRALL: No questions.

17 (Signature not waived.)

18 - - - - -

19 Thereupon, the foregoing proceedings
20 concluded at 11:35 a.m.

21 - - - - -

22
23
24

1 State of Ohio : CERTIFICATE
County of Franklin: SS

2
3 I, Stacy M. Upp, a Notary Public in and for the
4 State of Ohio, certify that Richard Cordray was by
5 me duly sworn to testify to the whole truth in the
6 cause aforesaid; testimony then given was reduced
7 to stenotype in the presence of said witness,
8 afterwards transcribed by me; the foregoing is a
9 true record of the testimony so given; and this
10 deposition was taken at the time and place
11 specified on the title page.

12
13 Pursuant to Rule 30(e) of the Federal Rules of
14 Civil Procedure, the witness and/or the parties
15 have not waived review of the deposition
16 transcript.

17
18 I certify I am not a relative, employee,
19 attorney or counsel of any of the parties hereto,
20 and further I am not a relative or employee of any
21 attorney or counsel employed by the parties hereto,
22 or financially interested in the action.

23
24 IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office at Columbus, Ohio, on
December 21, 2017.



Stacy M. Upp, Notary Public - State of Ohio
My commission expires August 6, 2021.

Exhibits	1st 47:15	69,000 64:15	108:16 117.5	128:24
26625 Exhibit A 4:5 16:16, 20 17:1,3	2	A	administrativ e 69:18	allowing 56:17
26625 Exhibit B 4:8 48:22, 24 47:3 80:7	2 86:6 98:20 99:9 111:16, 21	a.m. 144:20	adopted 118:3	aloud 92:11
26625 Exhibit C 4:9 55:8, 11 80:11,23	20 47:23 48:3 95:4	ability 38:3 49:5 110:8	advanced 65:12	amount 77:1 126:20
26625 Exhibit D 4:10 79:14,16 80:4	200 31:12 2000 75:15	abuse 92:19	affect 25:7 93:22 121:5	amounts 53:10
26625 Exhibit E 4:11 81:15,23 82:2	2009 8:15 47:4,15 75:17 78:16 80:13,20,23	accept 132:1 143:5	affixed 49:5	and/or 86:13 89:10
26625 Exhibit F 4:13 85:15,17,23	2010 46:11 80:15,20 81:4,10	accepted 39:4	afternoon 13:20 84:4	Andrew 5:15
26625 Exhibit G 4:15 97:20,22 98:7	2011 8:16 9:4 46:11 136:3	access 69:16 69:3,9,17	AG 35:20 37:24 40:16 44:16 135:2	Andy 5:19 121:17 122:10
26625 Exhibit H 4:16 102:7,13,16 129:5 138:4	2012 8:22 2014 16:15 17:7 24:15 136:3	account 26:7,17 32:4,7,20 53:16 74:8 78:4,11 79:5 85:11 88:20 101:2 102:24 123:2,11,18, 81:4,10	AG's 28:19 35:18	answering 13:6 59:22 131:22
26625 Exhibit I 4:18 111:22,24 112:3 117:12 120:24 123:16 132:18 134:8	2011 8:16 9:4 46:11 136:3	accounts 32:15 88:19	age 53:2 98:3	anticipating 45:19
26625 Exhibit J 4:19 118:10,12, 15 126:16	2012 8:22 2014 16:15 17:7 24:15 136:3	accurate 20:7 26:2 28:12 68:19 131:12	agents 37:8	anymore 133:17 134:20
1	2017 8:24 11:19 109:9 110:15 115:24 116:4 135:15 136:3,22	accused 76:24 143:15	agree 143:5	apologize 15:18 43:16 119:20,21, 22 133:15
1,076 73:16	2018 16:15 17:7 24:15 136:3	action 36:22 44:5 75:5 93:24 96:13 110:9 121:7	Agreed 82:11	appeals 76:22
1,800 29:21 30:13,16,17, 20	2019 13:17 14:15,16	actions 88:21 91:5 93:4 94:2 116:24 117:1,18	agreement 61:21 86:2 67:10 90:3 93:9	appearance 129:15
10 30:9,16, 17,19 47:23	26 101:6	actions...that 93:17	agrees 89:22 95:9,20	appearances 6:10
100 73:7,14, 17 74:6	26th 16:15	active 28:20	ahead 11:6 26:13 63:4 71:15 100:8 133:16	appeared 116:1
11:35 144:20	3	activities 53:21 93:4 94:2 99:2 111:18	aiming 45:10	appearing 105:22
12 92:7	4	activity 33:17 137:17	Alan 18:10 46:20 47:11 49:7 57:17 58:4 63:7 70:6 113:13 124:23 125:6,7	appears 47:9,14 80:17 86:5 121:15
14 112:9	4 99:16	actual 9:13 54:12 66:9	alarming 43:12	applicable 95:20 136:19
17 100:15 106:4 107:4	401(b) 12:11 121:6	Adams 5:8	allegation 126:21	applicant 58:8
17th 128:22	5	adapt 108:16 116:11 132:2	allegations 101:15 104:16 105:8,17 111:9 130:11 140:24	applicants 41:17 42:1 51:22
18 100:15	6	address 134:14	alleges 127:22	application 121:4
19 92:8 100:15 106:4 107:4	6 61:12 62:23 63:5	adjust	alleging 139:18	applications 41:21 65:12
			allowed 103:8	applied 81:9 104:5
				apply 111:9 138:20
				applying 58:3,10
				appointed 8:21 42:6 46:20 47:12 49:7 51:6,8, 21 108:4
				appointing 51:14

Index: appointment..calls

appointment	102.5 113.3	128.18	39.1 40.16	breakdown
5.22 9.4	116.8 117.3	138.7.8	59.7.16 88.7	72.13 82.8
37.22 48.9,	138.10.19	139.16	102.1 104.6	BRESSLER
11.22.24	143.2	140.18	129.18	14.7 83.19
49.3 81.2.5	Assumes	attorneys'	132.14.19	84.11.15
appointments 39.5	65.18	104.3	134.4	briefly 7:11
approach	assuming	attributed	bears 108:17	8:14 138.4
132.2	129.8	138.6	beginning	bring 7:14,17
approaches	assumption	authority	95.22	75.5 94.1
54:11	125.7	9:15 99.7	begins 61:13	132.4.7
approval 8:5	138:14	103:1 113.4	71.8.18	142.6
82:13	assumptions	134.14	behalf 19:6	bringing
101:17	77:14	140.1	21:3 30.2	69.24 84.22
approve	assurance	automation	38.4 49:16	108:18
10:22	49:14	65:16,23	53.6 74.5	Brooklyn
approved	attachment	average	81:14 91.8	72.24
7.24 10.3	72.22	127:11	94.22	brought 9:10
20:9 39.2	attempt	averages	108.10.21	36.22 43:11
51:9 79.23	28.20	88.18	109:1.2	48.12 76:19
77:3.4 81:10	attempted	aware 7.4	125.8,10,11	77.9 96.6
84:18 86.20	108:12	9:3 51:15	130.23	116.24
87:18 96.21,	attention	54:9 60.2	131.6	130:16
22 98.8	7:15,17	94:20 96:15	behaving	bucket 43:1
100.4.7,10,	43:11 94.2	134.22	43.21	Bureau
13 103.24	96:7 105.24	B	behavior	99.21
111:8 113:1	106:1	back 8.2	91:13,16,17	100:13
119.4	attorney	19:13 22:17	95.12 103.7	101:12
120:18,20	5.23 8.15	42:17 70.24	104:12	104.3 107.5
131.9	15:10 16.3	71:1 72.21,	106:11	109.4 111.7
approving	18.9.22	22 98.6	107:12	115.24
10:7 49.22,	22:18 24.21	102:10	109:11	116:23,24
24 99:13	25:6 29.4,21	106:5.21	127:17	118.4
112:17	30:11 39:17	118:24	128:5,23	127:24
April 98.9	45:11 46.4	123:20	129:23	128.20
110:15	47:10,16	137:14	130.6	131:1.4
128.22	49:6.8	138.4	137:21	134:13,16
arbitrator	63:10,17	background	behaviors	Bureau's
138.21	67:21 68.2,9	8:14 12.14	95:23	10:14 99:10
area 104.5	75:11 88:18	41:18	believed	104:1
areas 88:17	87:13 89:3	backward	49:10 50.20	106.24
argue 136:10	92:13.20	23:20	believing	126:16
arguing	93:3 97.7	backwards	111.8	130:14
136.24	99:3,21,23	23:16 28.8	benefit 16:12	business
artifact 112.7	100:12	bad 87.3	bit 81:17.20	92:12 96.4
ascertain	108.3,11,22	ball 28.23	109:15	C
92.4	109.7.20	40:23	Bob 51:24	C-O-R-D-R-A-
aspects	110.11	bankruptcy	body 113:17	Y 5.9
69:21 70.3	111:19	52:19 60.21	bold 93.5,9,	calculation
asserting	113.7,19	61:19 67.8	13	52.23
10:14,18	114:10	bar 58:14,15,	bonafides	call 5:19,23
assessing	120:19	17	41.24	6:8 121:15
42:22	121:3 122.1,	based 24:12	books 54:18	called 68.2
assist 72:12	23 124.4	49:12,13	123.21	107:12
assistant	132.22	85:4,5	bother 6:13	128:4
5.23 72:17	137:15	88:17,18	bottom	calling 28:14
assisted	attorney's	101:18	47:16 57:16	73.22 133.4
18:11	55:17	103:19,22	61:11 66.21	calls 10.9
associates	101:20	104.3	69:5.6	15:5 25:19
58:17	Attorney-	105:12	boxes 66.9	28:15 59:3
Association	client 86:9	107:13,18	boy 116:13	77:15 79:8
17.6	attorney/	111.6	break 17:13	99.4 103.5
assume 26.4	client 15:11	115.22	32:11 83:12,	107:16
27:17 48:13	attorneys	116:1 127.9	21.22 84.6,	108.6
51:19 66:1	15:20 17.6	128.6 132.7	12.17 98.2	109.24
72:15 73.22	23:15,19,22	140.23	basic 82.7	111.2,19
90.5 97:10	28.8 29.2,9	basis 32:18	137.8	114.2
	39:18,19			128:17
	69:20 73.8			
	100.24			
	103.6			

Index: candid..consideration

candid 28:12	116:14	clumsy 66:2	36:4 69:17	139:18
capable	122:2	colleagues	73:10	complaints
71:20	134:12	138:12	102:23	36:3 84:22
captured	136:1	collect 16:5	117:4	88:21 92:8
107:23	changed	21:2 24:1	comfort	97:2,12
care 144:14	64:6 126:9	27:24 28:20	83:20	131:17,23
career 12:16,	characteristi	31:15 32:8	comfortable	complete
17	cs 113:6	38:4 39:22	6:4 13:6	20:7 53:14
carefully	characterizat	40:15 42:23	commanded	93:6,18
135:19	ion 104:7	53:6 74:5	43:9	completely
case 7:13,24	127:9	collected	comment	29:23 84:13
10:19 11:13	140:23	19:24 21:7	140:20	compliance
12:9,21	characterizat	108:2,21	commenting	72:4 78:8
15:10,21	ions 119:1	109:19	142:16	95:5 139:1,4
20:10 25:3,	characterizin	110:21,22	comments	comply 95:8,
11 26:11	g 126:24	112:6 135:1,	54:24	9,11,20,23
32:23 33:1	charge 57:2	2	committed	139:21
34:2 43:14	chart 71:2	collecting	94:3	comprehensi
48:1 3 50:3	72:8 73:3	18:11,15,18	committee	ve 24:9
58:13 66:12	check 11:21	19:6 20:20	65:8	compromisin
68:17 74:11	checks 33:4	35:20 36:9	committing	g 92:20
76:23 77:3,	Chicago	42:21 74:4	91:21	computer
5,20,21	73:1	81:14 91:8	communicat	89:5,18
78:21 79:7	chief 9:6	108:10	ed 75:2	computers
80:17 90:5	chooses	110:19	communicati	65:24
104:18	74:12,13	112:20	on 133:8	concerned
105:7,13,19	121:13	collection	communicati	44:2
108:18	Cincinnati	10:5 17:16	ons 45:5	concerns
111:10	73:1	18:2 22:4,8	90:9	21:5 114:19,
112:23	circuit	23:20 27:15	comparable	21 115:6,8
114:6	115:20	29:3,16	80:6	concluded
121:18,20	circumstanc	30:4,14	comparing	144:20
122:16	e 32:4	34:6,19,21,	136:14	conclusion
125:19	circumstanc	52:9,11,18	comparison	25:3,10
129:13	es 33:14	53:2,11,18	111:3	26:11,15
130:13,15	44:9,13	54:22 60:21	122:15	44:17 74:11
131:24	50:22,24	61:18 63:18	136:17	77:16 79:9
132:3,5,7,	75:23 91:24	64:15,21	141:14	83:11,14
10,11,12	96:6 124:13	65:11,15	comparisons	109:24
133:19	141:21	67:1,6,13	88:19	114:3,24
134:15	142:5,6	68:9,20	competent	121:12,16
136:18,23	143:1	70:16,17	79:9	126:5,17
137:3,6	claims	76:13 88:17	complain	130:4
141:21	105:11	89:19 90:13,	35:19	conduct
142:5,6	140:24	18,22 91:2	complaint	92:12
143:1	clarify 35:8	92:15,17	7:21,23 9:20	134:15
cases 9:17	clause 88:11	93:4,17	104:9	138:13,21
76:19	94:4,15	94:17,24	108:12	conducted
105:16	clear 27:2	96:7,8 97:3	107:11	42:12 88:8
131:23	35:17 56:23,	99:2 103:4,8	11:12,15	111:7
caused	24 58:9,22	104:9	20:9 21:13	conference
120:20	59:8,9 60:11	108:12	76:23 77:5	129:18
certificate	61:3 76:12	111:17	97:20 98:6,8	confidence
47:4,10	106:16	116:22	99:10,14	49:4 110:7
51:13 59:1,	109:10	117:23	100:3,7,10	confirmed
19 60:1,4	117:7,8	124:16,17	101:10,16	8:22
70:7 82:14	137:19	128:23,24	102:1,3,9	connection
certificates	117:13	135:20	104:17	48:8 50:8
47:19 51:10	clerk	137:17	105:3,6,18,	90:1
CFPB 6:10,	69:18	139:2,3,5	20 106:5,24	consent
22 8:19 9:5,	client 25:8	collection's	107:2,4,8,	117:20
7,9,11 11:17	34:9 72:4	86:3	14,19,23	consequence
46:6 103:2	119:24	collections	110:24	121:6
116:12	120:4 121:8	63:10 67:21	111:16	considerable
117:11,16	clients 69:16	68:2 72:9	118:18	40:17
139:13	71:11 131:6	113:10	119:4	consideratio
CFPB's	closing	collector	126:17,24	n 111:13
118:18	113:16	19:20 26:6,	127:2,19,21	
139:20		17 70:18	128:14	
140:1		87:5	130:11	
change 83:5		collectors	131:8 135:3	
109:17		18:21 19:6,9		

Index: considered..desk

considered 132:18	13,24 72:14 75:8 77:18 80:13,21	cover 57:20 70:2	70:18 73:10 74:5 87:5 91:1 92:17	definition 87:2
consistent 65:3 95:1	85:7 86:4 87:6,14,18	covered 86:20,21 110:23 135:3	94:24 102:22 103:4,8 104:9	delegate 56:5
Constituent 92:8	89:11,20 91:13 96:23	covering 69:20	106:12 107:11	delegated 9:13 32:18 33:17 39:1, 7,13,16 55:3 56:2,4,8,15, 21 59:7,16 137:16
consumer 78:2 115:24 122:22 126:19 127:11	108:14 110:16,17 111:20 113:1,8,9, 11,12,14 139:19	covers 53:20 CPPB 117:12	108:2,10,21 109:19 110:19,21, 22 112:6,20 116:22 117:4,23	delegating 56:13
consumer's 101:1 102:24 126:18 127:6	corrected 108:14	created 86:14	124:16 128:24 135:1,2,20 137:22 139:2,3,5	deliver 17:8 49:16
consumers 76:24 99:4 110:16 111:20 113:23 114:10,20 115:9	correction 137:22	cross 46:4,5		delivered 17:5
contact 41:23 143:15 144:5	correctly 23:14 131:7	CROSS- EXAMINATIO N 5:4	debtor 32:5 53:16 67:8 92:19	demand 10:5 25:1,17,23 26:2,5,18 27:11,13,14, 19,23 28:1,4 32:22 74:4, 23 77:2,7,21 85:12 86:24 99:3 100:16, 19 101:6 105:22 111:19 112:5,19 116:15 126:17
contained 105:18	corresponde nce 86:14 87:4,5 90:8, 16	curious 45:20 84:11	debtor's 54:13 92:20	19,23 28:1,4 32:22 74:4, 23 77:2,7,21 85:12 86:24 99:3 100:16, 19 101:6 105:22 111:19 112:5,19 116:15 126:17
context 52:5	counsel 5:12 6:1,19 7:5,6, 7 18:14,18 20:20 35:10, 16 37:22 38:2 39:22, 23 40:14 41:17 42:6, 23 43:7,13, 21 44:16,19 45:4 47:12 49:8,15,22 50:9,17 51:6,8,14,21 55:18 64:19 68:22 89:4, 15,17 87:10, 12 89:3,21 92:12,21 95:7,20,22 112:20 113:11,14, 18 115:11 118:23 120:7,19 140:3,10	current 132:21	debtors 45:5,24 90:9,16,23 91:19 92:15	demand 10:5 25:1,17,23 26:2,5,18 27:11,13,14, 19,23 28:1,4 32:22 74:4, 23 77:2,7,21 85:12 86:24 99:3 100:16, 19 101:6 105:22 111:19 112:5,19 116:15 126:17
continually 127:14	continue 96:24	customer 88:20	debts 16:5,8, 9 18:11,15, 18 24:1 27:24 28:19 30:9 38:4 52:8,11 53:9 81:14 87:6 92:16	demanded 126:20
continues 67:7 78:18	continues 67:7 78:18	customer's 129:4	deceased 67:8	demands 100:24
continuing 34:8 117:17	containing 34:8 117:17	cutting 66:13	December 112:9	demonstrate 93:5,17
contract 31:22 40:16	contract 31:22 40:16	D	decide 76:20 79:8 114:14, 15 127:8 137:1 140:13 142:3,7	department 72:4 106:19 141:5,23
contracting 38:22	contracting 38:22	dated 47:4, 15	decided 117:19	depend 32:14 33:12, 13 124:12 126:6
conversation 15:7 133:5, 10,12	conversation 15:7 133:5, 10,12	dates 54:19	decides 132:1	depended 44:8,12 56:8 74:18,22 91:21
conversation s 7:16 36:19 48:7,10,15	conversation s 7:16 36:19 48:7,10,15	day 11:18 34:3 53:2	deciding 137:6	depending 75:24 125:12
copy 17:4 47:9	copy 17:4 47:9	days 15:22	decision 9:14 111:14	depends 74:20 76:2 91:24
Cordray 5:1, 8,10 6:17 10:10 16:24 103:3 113:7 130:5,24 143:3	Cordray 5:1, 8,10 6:17 10:10 16:24 103:3 113:7 130:5,24 143:3	deal 43:9	decision- making 10:21	deposed 12:13
corner 47:17	corner 47:17	dealing 20:22 28:13	decisions 116:9 117:2, 5,7,19,20 126:8	deposition 5:11 6:17 8:11 17:23 34:4 129:17
correct 5:11 7:24 8:1,3,6, 16,17 9:22, 23 11:22 16:6,7 20:11 22:23 23:16 31:7 32:1,2 33:6 42:8 48:13 49:10 58:11 59:2 60:7 61:23 67:23 68:12,	correct 5:11 7:24 8:1,3,6, 16,17 9:22, 23 11:22 16:6,7 20:11 22:23 23:16 31:7 32:1,2 33:6 42:8 48:13 49:10 58:11 59:2 60:7 61:23 67:23 68:12,	dealt 22:11, 13,16,20,22 45:14 80:7 94:17	defend 122:5	describe 37:23
courtesy 143:10	courtesy 143:10	debt 16:10 17:16 18:2, 21 19:19,24 20:20 21:2,7 22:4,7 23:20 26:6,16 27:15 29:3, 16 30:4,14 31:15 32:8 33:5 34:5, 19,21,22 35:21 39:22 40:15 42:21, 23 53:6,9, 10,11,17 54:13,20	Defendant 99:1 111:17	description 38:10
courts 75:17 108:14	courts 75:17 108:14	defense 12:10 121:24	defend 122:5	designed 12:10
				desk 46:4,5

detail 26.8, 18 32.4 53:16 74.8 75:7 76.2 78:4,11 79:5 85:11 123.2, 12:19 124:16 125:1.9 126:1 130:11	disciplinatory 140:3,9 discovery 41.5 97:1 104.22 105:15 122:10 130:18,20 discussed 91:20 discussions 97.2 dispute 112.23 distinction 109.3 district 5:23 disturbing 43:12 determined 12:3 13.8 44:8 105:9 107:7 126:19 141:1 142:10 determining 121.7 develop 122:10 dialers 65:12 difference 12:9 59:9 120:13,16 135:16 differences 134:22 135:6.9 differently 110:19 digging 11:8 direct 39:22 43.6 directed 105:23 directing 106:1 direction 66:19 directly 20:22 38:23 63:23 director 8:18 9:8 99:20 101:11 103:3 128:20 131.4 134:13 directors 139:13 directorship 8:20 9.5 disagree 76:21 120:3 discharged 44:16	disciplinatory 140:3,9 discovery 41.5 97:1 104.22 105:15 122:10 130:18,20 discussed 91:20 discussions 97.2 dispute 112.23 distinction 109.3 district 5:23 disturbing 43:12 division 29.9,11,13, 18,19 52:21 63:15 divisions 29:10 document 10:7 47.5 54:7 55:12 58:13 62:10, 12 68:4.8 70:22,24 72:21 82:22 86:1,16 87:11 93:12 102.6 112:14,18 118:7 documentati on 97:14 documented 97.4 104:17 documents 7.9 10.5 11:11,12,14 47:7 54:7, 13,20,21 66:9 86:21 89:4,17 90:3,7 104:17 105:13 117:24 119:2.6 120:22 122:15 DOJ 142.8 doubt 142:11,21 Douglas 5,14,15,17, 18,24 6:3,7, 24 11.4 12:1.6,8,12, 18,24 13:2.5 16:23 25.2, 14,24 26:9 30:5.7 32.9 34:7 56:17 57:19 61:12 62:19 63:1, 5,11,16	65:20 69:7 71:3 9:16, 19,22 72:2,6 74:10 79:6, 12,20,23 80:2 82:18 83:1,8 85:21 89:12 92:18 95:14,17 98:3 99:18 100:2,5,11 102.8,11 106:14,17, 22 108:23 109:1 114:1, 4 115:15 121:1,11,22 122:5,8,12 123:4,7,9 124:5,8 130:17,20, 22 131:5,14 136:10 137:11 141:8,11,16 142:20 143:1,12,17, 22 144:8,13 draft 103:11, 13 draw 25:10 44:17 74:11 121:12 141:13 drawn 26:11 Draws 25:2 driving 61:1 Due 69:12 duly 5:2 duties 100:14 E e-mail 7:3 earlier 14:1, 5,18 23 49:21 70.6 77:18 91:20 94:19 easiest 70:23 edge 66:13 edited 103:11 effective 38:21 49:15 81:13 effectively 38:4 52:22 elaborate 38:1 electronic 66:5,15 element 133:18 134:1 elements 134:18	employed 134:24 employees 73:17 end 14:1,21 25:6 54:2,3 71:6 136:24 ends 58:24 enforcement 9:6 63:10,18 67:21 68:3, 10 116:24 117:1,18 Enforcement -special 113:11 enforcing 140:2 engaged 122:3 137:20 engages 99:1 111:17 English 115:4 enhance 92:23 ensure 38:2 entail 88:15 entire 70:9 93:11 entirety 127:10 entities 117:23 equitable 92:14,16 era 137:14 escalated 20:21 35:19 escalating 21:5 ESQ 5:1 establish 44:15 61:21 99:19 122:3 established 65:19 129:10 evaluations 50:2 evidence 97:11 142.9 evolve 78:19 105:16 evolved 135:11 evolves 117:8 evolving 78:17 exact 8:19 76:2 87:16 119:6	executions 69:19 Exhibit 16:16,20 17:1,3 46:22,24 47:3 55:8,11 76:14,16 80:4,7,11,23 81:7,15,23 82:2 85:15, 17,23 97:20, 22 98:7 102:7,13,16 111:22,24 112:3 117:12, 116,10,12, 15 120:24 123:16 126:16 129:5 132:18 134:8 138:4 exhibits 55:14 existential 120:5 expect 53:13 75:6 83:20 expectations 93:7,19,23 96:3 expected 76:1 78:3,6, 10 125:24 expects 92:21 experience 38:3 39:10 expert 76:10 expertise 49:4 52:17 110:8 explain 132:15 explore 12:20 extend 143.9 extent 10.9 15:12 103:16 107:16 108.6 109.24 111:2 119:1 129:8 133.4 external 30:1 F facing 120:4 fact 60:13 80:8 91:12 96:20 103.7 111:9 112:18 114:20 120:12,15 121:6
---	---	--	--	--	---

Index: facts..identification

126:20	filings	form 17.9	105:5	harassment
128:3,14	130:12	66:20 87:16	generals	28:16 92:17
132:13	final 39:24	88:1 112:4	29:9	He'll 34:14
136:7	finally 128:1	132:17	germane	head 46:5
140:24	find 30:12	134:5	111:14	68:15
facts 44:12	35:3 36:23	fortunately	give 40:22	100:12
65:18 91:24	37:21 44:18	46:9	46:17 54:14	Headcount-
101:20,24	57:12 72:20	forward	57:13 61:2	wise 30:3
104:1,2,5	97:1.5	23:16,20	79:8,10	hear 7:1
105:8,12	116:15,19	forwards	107:3	131:12,14
107:1.5	finding	28:9	126:14	133:22
122:10	142:14	found 44:21	140:21	heard 51:5,7,
124:12	fine 5:20 6:4	104:11,15	giving 60:1	11,16,19
132:8	43:19 60:17	Foundation	87:1	hearing
factual	72:6 84:15	65:18	goal 92:14	131:7
104:16	98:15,16	fourth 71:1,	good 98:3	hearings
125:22	122:2 136:9	10:72:22	111:10	69:21
136:21	finish 115:13	frame 14:24	good-bye	Heights
fail 135:21	finished 20:5	frequent	15:24	72:24
fair 44:17	62:21 102:8	91:22	goodwill	helpful 40:23
47:24 58:20,	fired 45:3	friends 6:8	92:23	41:4 137:5
21 67:16	firm 10:6	front 28:7	government	helpfully
92:14,16	18:10,11	125:14,17,	24:2 66:12	55:6
99:12 124:5	20:10,14	23	grand 73:16	hereunder
127:9 129:6	21:7 22:20	fulfill 38:21	gravamen	86:15
fairly 38:1	26:6,16 30:2	full 5:6	99:10	high 64:20
86:24	34:21 45:24	function	111:15	68:20
faith 111:10	48:8 51:5	55:4 56:12,	great 43:9	124:16
false 45:4	52:8 53:5,18	14	48:19	high-volume
familiar 17:7	54:22 55:20	G	grounds	65:15 74:7
38:19 135:4,	58:3,10,23	gap 9:3	12:23	highest 49:3
6,8 141:22	58:1,7,22	109:10	128:18	110:7
Fast 23:12	60:5,10,20	general 8:15	132:7	highlights
fast-forward	61:13,18	16:4 17:6	guess 70:9	117:21
109:21	66:24 67:13,	18:10,22	72:15	hired 39:20
faster 54:5	14,18 70:8,	23:15,19,22	116:12,15	40:14 43:7
February	9,11,16,17	24:21 28:8	117:1,11,13,	110:6,9
16:15 17:7	73:13 76:24	33:20 42:9	14,15,24	hiring 39:21
federal	82:8 83:5,6,	46:4 47:16	133:1	historical
24:14,18	84:19,23	49:6,8 55:17	guilt 142:10	88:18
28:14 95:21	86:4 89:10,	53:10 85:4	guys 84:14	history 5:21,
111:11	20 90:2,14,	67:21 88:2,9	H	22
feed 84:7	22 91:10	76:11 86:18	handed 47:3	honestly
feel 132:6	8,14 120:5	87:13 89:4	54:7	21:22 56:3
fees 32:6	126:2,16	108:3,11,22	handle 52:22	59:22
figure 137:9	131:9	109:7,20	70:1 82:10	137:23
file 53:11	firm's 60:15	110:11	handled 29:8	horrific
101:2 111:7	62:6 105:22	113:3,7,19	33:17 64:15	119:11
126:19	firms 19:3	120:19	handling	house 143:4,
127:6	21:2 22:8	121:4 122:1,	64:20 69:21	7,13
129:19	36:5,18 37:3	23 132:22	happen	housed
131:17,22	41:7,9 51:8	137:15	21:10 53:7	67:13
filed 7:24 8:4	90:18 91:2,7	138:22	75:1	hundreds
67:8 77:5	94:22 96:3	General's	happened	48:4,5
97:12	97:3	22:18 25:6	21:9 43:23	hypothetical
101:17	flesh 130:13	29:4,21	44:1 45:7	54:24
102:1,3	flights 84:4	30:11 39:17	91:6 111:11,	133:12
104:18	flow 117:17	45:11 47:10	12 117:22	I
105:13	flush 105:14	63:17 92:14,	happening	idea 21:24
132:2	focusing	21 93:3 97:8	138:3	31:5 98:3
139:18	107:9	115:21	happy 5:18	identification
140:23	folks 57:10	124:4	84:8	16:21 47:1
files 10:19	72:10	generally	harassment	
22:18 31:18,	follow 75:22	11:1 14:18		
19 69:17	follow-up	15:21 27:15		
filing 9:20	18:6 50:19	49:24 64:19		
98:8 103:23	foregoing	98:11 99:15		
136:18	144:19	100:24		

Index: identified..leaf

55:9 79:17	information	interposed	judge 6:8	55:20 66:24
81:24 85:18	10:9 15:6	129:12	25:10 79:7	67:14 70:8,
97:23	28:3 28:12	interrogating	114:8,14,15	11,16,17
102:14	37:18 41:5	99:20	125:19,21	75:10,11,14,
112:1	53:4,10 66:5	interrupting	127:7 130:5	15,17,18,19
118:13	82:8 85:5	115:12	132:6	76:3,15,21
identified	103:16	interview	136:11,24	78:8,16,17,
68:1	107:16	39:24 40:11	137:1 142:3,	22 91:2,4
illegal 103:7	108:6 111:2	interviews	7	95:1,5
104:12	117:17	88:22	judge's	101:22,23
105:11	133:4	introduction	127:13	104:4 109:8,
107:12	informed	98:18	judgement	18:20
117:12	13:19 14:15	investigated	103:2	111:11
119:11	initial 25:1,	91:5 101:21	judges	115:22
127:17	17,23 27:11,	107:2	76:19,20,21	116:1,9
128:4,15,23	13,14 32:21	investigation	judgment	117:8 121:4
129:23	74:4 77:2	104:1 111:6	39:9 81:13	126:6,9
130:6,9	85:12 112:5,	investigation	101:2	131:9 132:8
137:21	19	s 9:18	114:24	135:10,19
imagine	initially	invoices	116:2,3	136:19,22
76:6,7,8	105:17	54:19	judgments	139:19
imperfection	initiate 105:7	involved	125:19,21	140:2,12,15
s 45:13	innovative	9:14 22:3	July 47:4,15	141:2
implicated	65:10	31:14,17	81:1,4 82:14	laws 24:12
36:18 94:4,	inquiry 60:18	36:2 36:14,	jurctures	95:21 111:9
16	108:17	24 42:21,22	9:17	139:2,5
implying	insignificant	43:6 65:16,	Jurisdiction	lawsuit
103:1	92:6	23 66:5,16	99:7	103:24
important	insisting	68:23	Justice 5:15,	104:7 111:7,
32:15 53:1	87:21	102:24	16,17 12:12	8 120:6
impossible	112:18	103:7 129:4	141:5,22	136:18
138:1	instance	involvement		140:23
impressions	36:13 43:10	39:23 49:23	K	lawsuits
67:19	45:2 47:11	50:1 77:1		9:10
improper	54:15 94:21	99:3 110:10	kind 16:8	lawyer 7:15,
107:12	100:2	111:19	33:16 45:19	16,18 8:9
improperly	instances	114:11	74:23,24	10:17 22:3
108:21	43:15,24	involving	109:10	26:7,17
in-house	45:17 94:22	89:18 91:7	138:11	54:21 70:12
67:1	95:2	issue 25:3	kinds 138:24	74:6 75:7
inappropriate	instruct	53:9,10	knew 23:19	76:1,5 77:1
134:2 136:3	10:10,17	74:11 78:17	21 22 30:13	78:3,10 79:4
include	25:14 34:15	79:1,7 81:9	45:12 90:17	82:7 102:23
86:24	74:13	114:5	knowing	113:20
included	instructed	121:18	142:7	122:24
30:1 31:24	26:10	128:14	knowledge	124:10
67:22	instructing	129:9	33:17 133:7	125:11
includes	10,11 12:22	131:15,16		128:2,3
140:2	integrity	143:18	L	127:5 129:4
including	49:4 110:8	issued 47:11		133:14
11:11 57:20	intend	82:14	L.P.A. 63:8	lawyers 22:5
69:17 82:23	143:18	102:17	laid 101:19	31:3,9,12
indicating	intended	116:22	103:24	32:1 33:11,
7:3	140:22	141:5	large 29:18	15 53:15,18
indication	intent	issues 94:23	61:19	54:12 67:22
57:13	121:18,23,	141:21	largely 83:13	68:12,22
individual	24 133:18	issuing	larger 29:22	70:2 72:13,
32:5 101:1	intention	131:1	largest 90:13	14,16 73:17,
individually	42:2 45:1	J	law 18:24	19,23 82:9
109:5	intentional	January	24:13,14,18,	85:11
inference	122:4	8:15,22 9:4	22 26:6,16,	132:24
67:16	interest 7:15	Jim 5:19	20 27:5	136:21
influence	interject	83:19	26:14 30:2	139:21
134:14	115:12	job 12:15	34:10 36:5,	lawyers'
inform	intermediate	13:12 80:15	6:17 37:3	125:5
13:13,15	63:24 64:3,4	127:13	41:9 43:22	lay 122:15,
	internal		44:7,10,11,	16,18
	29:23		19 45:23	lays 105:6,21
				lead 6:1
				leadership
				65:7
				leaf 46:18

learn 24:2 27:4	136:14	75:13 83:11	70:1,6,10	66:15
leave 12:4 13:9	letters...with 104:9	84:4 85:10	101:12	microscopic 33:16
led 60:1 82:13	letting 141:17	90:19 95:19	105:15	middle 23:24 69:9 86:11
left 47:16 113:15	level 26:7,18 32:4,7 53:16 74:8 78:4,11	108:10	116:23	midwest 90:14
legal 26:15 27:17 47:13 49:4 67:7 69:21 70:2 72:15,16,17 77:16 79:8 88:21 99:7 104:16 105:11 107:3 109:24 110:8 114:3, 24 115:18 121:16 128:17 140:21	79:5 85:11 99:3 103:1 111:18 114:10 123:2,11,19 124:16 125:1 126:1	114:23 116:13 121:8 125:18,20 129:22 130:5,22 131:16	138:24 141:6,19	migrate 105:15
legible 80:9	life 54:9	makes 12:9 42:3	MCCRAY- WORRALL 10:8,13,20 15:5,9,19 25:18 26:14 35:7,10,16 59:3 64:22 65:17 77:15	migration 109:10
letter 25:23 26:18 27:19, 23 32:22 33:2,5 74:4, 9,16,20,23 75:24 78:1, 12 101:3 112:5,19 113:2,17,22, 24 114:9,16, 20 115:9 117:11,12 118:16 119:11 120:14,17 122:22 123:1,3,12, 14,19,24 124:9,21,22 125:6,13,14, 17,23 126:4, 22 127:4,5,6 128:12,23 129:8,23 130:6,8,9 132:17	list 23:1	making 5:10 9:15 45:4 57:4 90:22 107:24 119:1	103:15,21 104:13 105:4 107:15 108:5 109:23 110:20 111:1 114:2, 12 115:11 118:23 120:7,11 121:14 124:1,18 125:2 126:23 127:20 128:16 129:1,7,14, 20 130:10 131:21 132:20 133:7 136:12 139:23 140:6 142:13,16 144:16	mind 11:7 59:10 62:22 71:3 92:10 102:20,22 104:15 133:13 134:12
letterhead 78:12 79:3 87:22 105:23 106:13 113:6 114:17,18 122:19,20	listed 58:14, 17	Management 65:7	109:3 109:23 110:20 111:1 114:2, 12 115:11 118:23 120:7,11 121:14 124:1,18 125:2 126:23 127:20 128:16 129:1,7,14, 20 130:10 131:21 132:20 133:7 136:12 139:23 140:6 142:13,16 144:16	minds 120:3
letters 10:5 27:13,14 28:1,4 77:8, 21 79:3 85:12 86:24 99:4 100:16, 19,24 101:7 103:4 104:11 105:2,22 106:12 107:11 111:19 126:17 134:6	Listen 131:19	managing 57:17 58:4 69:20	means 91:18 92:17 93:20	minimum 92:16
maintained 89:10	lived 139:14	mandate 87:17	meant 27:21 28:6,15 93:12,14	minor 44:10 92:6
maintains 71:23 72:3	living 135:20	mandated 87:9,13	measures 91:18 92:17 93:20	minute 19:11 136:16
major 9:17	loans 52:19	marked 16:20 46:24 55:8 79:16 81:23 85:17 97:22 98:7 102:13 111:24 118:12	Medicaid 16:13	misconduct 122:4
make 6:6 11:21 24:24 25:16 26:2, 14 55:14	local 95:21	market 23:15 market. 103:8 128:24	meet 15:23	misleading 45:4,24 76:24 90:16, 22 91:19 110:16 113:23 114:9 115:9, 18
	long 25:5 83:20,24 138:16	manner 70:10 92:13, 22	meeting 50:14 51:23	misrepresent 101:7 102:23
	longer 101:11 116:3 128:19 134:13	mark 46:21	members 69:17	misrepresent ation 128:15
	looked 17:21 33:1 56:22 68:10 74:8 75:7 78:11 79:4 93:11	masked 103:4 104:8 107:11	memo 9:24 101:19 107:21	misrepresent ed 129:3
	loose 46:18	materials 77:19 103:23 107:20 119:9	memorandu m 11:10	missing 141:24
	lot 54:8 117:16	matters 19:5 29:3 39:17 46:4,5 52:16,20 60:14 61:20 63:7 64:15, 21 69:20	memory 34:23	modified 10:1
	lots 54:10		mention 28:4	moment 62:20 75:20 80:7
	loud 61:4		mentioned 36:18 94:19	month 9:1 14:1,19,21
	low 92:3		mere 105:17	months 138:18
	M		met 50:5,11, 20,23	morning 94:6
	macro 112:8		meter 84:7	
	made 15:22 36:3 39:2 50:2 55:19 74:24 102:2 109:18 111:10 127:16 128:3,5 136:1		methods	

Index: motion..performance

motion 7:10 8:8	notice 44:3	occasion 28:13 94:21	paraphrase 129:6
move 12:15, 16 79:13 83:18	notices 86:13,23	occur 108:1	Pardon 14:10 100:5
moved 144:1	November 8:24 11:19 13:17 14:23	occurred 20:18 109:11 126:21	park 28:23 40:23
moves 12:17	number 18:23 19:5, 17 22:5,6,7 28:18 29:7 30:13 40:17, 22 41:14 50:12 56:7 57:5 58:14, 15,16 126:11	occurring 19:1	parking 54:18 123:20
moving 66:18	offer 67:1	offer 67:1	part 20:13,16 30:22 49:18 52:23 77:22 93:9 106:9 107:7 111:13 119:8 139:20
multi-page 55:12	offhand 19:4,10 22:19 29:6 34:24 37:1,5 42:13 44:22 50:11 55:23 62:2,3 68:18 77:22 86:22 87:19,20 88:2 97:6 100:21 112:15 118:1,9,20 124:13	offhand 19:4,10 22:19 29:6 34:24 37:1,5 42:13 44:22 50:11 55:23 62:2,3 68:18 77:22 86:22 87:19,20 88:2 97:6 100:21 112:15 118:1,9,20 124:13	particularity 105:6,14
multiple 36:7 125:5	numbered 57:16	office 15:23 22:3,6,7,18 25:7 28:19 29:2,4,22,24 30:1,4,11,23 31:21,22,23, 24 32:6,20, 24 33:16,21 34:6,18,22 35:18 39:17 41:16 43:3 45:3,11 47:10 52:10 53:5,15 56:13 63:9 68:22 69:23 70:5 71:2 74:1,6 78:10 84:18 86:3 87:18 89:8, 16 91:3 92:21 93:3 96:3,13 97:8 102:17 108:10,11 115:21 124:4	particulars 53:11 77:6 136:15 140:21
N	numbers 55:14 58:17 98:21	Office's 92:14	partner 57:18 58:5, 15
nailing 14:23	O	offices 124:21	partners 58:16
name's 122:18	object 34:7 56:18 100:8 118:24 121:14 128:17	Ohio 16:4 32:6 36:10 47:13 54:17 55:16 61:20 63:9 92:13, 24 94:23 108:11 109:3,4 110:22 112:6,21 113:7 114:21 123:21	Partnership 65:7
names 19:8 21:20 22:9, 10 23:3 36:17 42:13, 17 57:10 72:10 113:13 120:18,19 125:5	objection 10:8 12:1,6 14:7 15:5,19 25:2,18 26:9,15 30:5 34:8 59:3 64:22 65:17 74:10 77:15 79:6 89:12 103:15,21 104:13 105:4 106:14 107:15 108:5,23 109:23 110:20 111:1 114:1, 2,5,12 121:1 123:4 124:1, 18 125:2 126:23 127:20 128:16 129:1,7,20 130:10 132:20 133:3 136:12 139:23 140:6 141:8, 11 142:13, 16 143:7	objectionabl e 91:23	party 121:21 143:16 144:5 passionate 119:23
narative 48:21,23	needed 36:4	objections 129:12	pay 32:6 54:18
narrow 30:18	Negative 71:11	obtain 38:20	pending 116:23
National 17:6	negligible 38:7,9,11	obtained 40:20	people 13:11 14:15 15:23 18:23 19:3 21:19 22:11, 15 23:1 29:21 30:1, 3 14:22 31:21 33:20 34:22 35:2 36:8 39:7,9 13 42:14,20 43:1 57:6 63:19 72:12 73:14 74:7 84:3 87:6 91:3,20 100:7 133:19 135:19 137:18,18, 20 140:5,8, 12
nature 53:1, 20 54:24	neighborhood 144:1	obvious 58:12	perfect 45:12
necessarily 20:23 56:5 57:6 77:18 87:7 89:22 131:24	Nobody's 134:15	operate	perfectly 143:8
needed 36:4	nonlaw 41:9	open 84:13	performance 42:7,24 43:13 85:4 88:6,7,15, 18,23
Negative 71:11	nonlawyer 68:14 70:12 73:14 76:5	operating 42:7 43:7	parameters 28:14
negligible 38:7,9,11	nonlawyers 22:6 32:1 33:11 67:22 68:10,12,23 70:1 82:9	open 84:13	
neighborhood 144:1	nonlegal 139:11	operate	
Nobody's 134:15	nonrelevant 141:19		
nonlaw 41:9	noted 129:14		
nonlawyer 68:14 70:12 73:14 76:5	notes 34:13 137:8		
nonlawyers 22:6 32:1 33:11 67:22 68:10,12,23 70:1 82:9			
nonlegal 139:11			
nonrelevant 141:19			
noted 129:14			
notes 34:13 137:8			

Index: performed..reasonable

performed	122:14	116:14	92:22,24	142:18
86:15 89:19	134:20	143:20	93:7,19,23	questioning
period 21:10	possibly	144:9	97:9,11	14:8
42:9 110:23	91:6	problematic	102:2	questions
118:17	potentially	45:23 90:9	106:10	12:14,17
128:13	91:4	132:18	107:24	18:6 25:12
135:3,11	practice	problems	127:16	33:20 35:14
permissible	26:21 56:1	20:3,14,17,	139:12	62:21 99:22
143:8	65:15 74:7	19 45:14	publically	100:1,6,9
person 10:16	140:12,15	92:3,5,6	13:24	135:24
25:22 33:2	practices	93:21 94:10,	purports	137:18
34:5 53:3	117:24	11 97:3	86:1	144:14,16
58:9 64:1	134:23	105:21	purpose	quote 23:14
75:1	139:1	procedures	38:16,22	103:9,11,17,
personal	precise	134:24	purposes	22 129:6
67:19 88:7	119:15	proceed	16:21 47:1	131:3 138:5
personally	140:21	28:11 84:8	55:9 68:6	139:10,11
9:14 31:14,	prefer 5:17	98:16	79:17 81:24	quoted 130:1
17 32:10,12,	Preis 15:2,	122:13	83:20 85:18	131:5
16 114:22	10,14	134:16	97:23	quotes
135:5	prepare 6:16	137:3	102:14	102:18
personnel	8:11 17:22	proceedings	112:1	
22:18	prepared	144:19	116:13	R
persuading	17:4 86:16	process	pursuant	61:20 86:14
134:18	87:11	10:21 22:4	61:20 86:14	raised 6:7
phone 103:5	103:13	37:23 38:2,	purview	94:24
pictures	present 26:2,	5,10,15,24	139:20	ran 63:20
15:24	4	39:2,21	140:3	76:11
piece 139:6	presented	41:16 49:22,	put 83:14	ratios 88:17
pieces 28:18	127:10	23,24 52:7,	116:12	reach 101:2
29:22,23,24	preserve	10,15,16	117:11,13,	137:2
place 96:24	92:23	57:1,3 118:4	16,21 138:2	
97:4 106:3	preserving	143:4,6,12	puts 133:1	read 14:3,5
138:3	13:3	144:3	putting	19:14 20:4
placing 52:7,	press 14:2,4,	processed	43:17	23:10 48:16
11 70:6	5 19:14	66:6		56:1,6
plain 115:4	102:16	processes	Q	58:20,21
planning	107:10	95:1 138:2	qualification	60:12 61:4,
84:12	119:10	processing	s 55:17	15 62:4,14,
plans 16:12	127:18	69:18	63:1,5 65:3	15,22,23
players 35:2	128:4	profession	67:4 69:10	63:1,5 65:3
pleadings	129:22,24	138:23	70:21 71:4,	6:17,23
86:13	130:24	professional	38:3,20	83:2,3,12
pleasure	131:6	101:2 103:1,	114:6	86:11,24
48:19	140:20	5 104:10	quality 49:16	88:10 93:1
plural 5:8	141:4,23	138:6,8,11,	quarterly	95:15
point 30:16	142:1,9,15	13:20,22	88:7,15	105:20
31:6 36:1,6	pretty 8:10	139:5,15,22	89:7,16 90:1	106:20
42:11 60:18	prevent	140:11,14,	question	reader 23:12
66:19 84:7	28:16 138:3	17	10:24 11:5,9	reading 17:4
85:9 93:15	print 93:5	programmed	12:19 14:9,	18:5,7 23:14
95:19	printed	65:11	11,13 21:16	27:12 28:5
101:13	112:7,9	promise	23:4,8 25:21	57:3 58:21
105:2 121:3	prior 13:21	14:20	26:13 35:8,	67:12 70:15
124:20	82:24 126:3	prove 122:6	11 47:24	92:10
128:21	137:2	14:20	50:18 55:5	102:20
134:20	privilege	proven 105:9	58:3 66:3	ready 72:12
137:4	10:14,18	107:6 141:1	75:12,21	112:10
pointing	15:11	142:11	77:14 78:9,	reapprove
68:7	103:16	provide	14 81:9 87:4	85:2
points 36:7	privileged	37:19 49:14	100:8	reason
policy 93:10	10:9 15:6,8	53:5 85:6	109:12	12:16,19
94:15	107:16	89:3,22	114:7	45:11 83:15
position	108:6 111:2	92:22	115:16,18	101:14
86:17 87:12	133:4,6	providing	117:10	106:20
107:1	problem	47:13 71:21	120:8	137:20,24
	19:23 21:18	90:2	121:15	reasonable
	36:11 106:9	provision	124:6	93:7,19
		53:8	125:22	120:2
		public 36:23	127:8	
			133:23	
			137:14	

Index: recall..reviewed

142:11,20	recollection	141:18	remember	14,16 14,6,
recall 18:12,	11:14 12:8	regional	20:17 31:2	16 16:2
17 19:2,4,8,	19:21 20:6	52:24	37:2 40:10	resignation
18,23 20:2,7	22:2 38:16	regulations	46:1 119:16	12:20 15:8
21:1,4,8,9,	45:17 46:7	116:22	137:19	resigned
10 22:21,22,	62:8,16	118:3	reminded	8:24 13:8
24 23:8	65:2,4	Reis 19:19	127:15	15:22
29:14 30:6,	90:10,12	21:6,14	rendered	resist
10,21 33:21,	91:9,11	22:12,14,16,	117:2	135:21,22
24 34:5,16,	94:7,9,10	23 46:21	renew 114:4	resisting
20,24 35:23	96:17,18	51:2,12	renewed	37:17
36:1,2,12,17	119:6	55:19 58:5	42:10 81:5	resolution
37:1,5,12	recommendation 9:24	63:8 64:20	repeat	137:2
38:6,14,16	11:3,10	67:13 69:24	130:21	respect 9:10,
40:2,6,13,23	77:20	70:8 77:9	rephrase	19:10,18
41:14 42:13	101:18	84:23 89:20	106:15	21:6 56:11
43:5,10,15,	16:20,24	90:2 96:14	report 14:6	77:2 93:6,18
16,20,24	45:2,6,22	98:9 103:4	43:12	94:8,16
46:5 47:18	48:6,10,14	104:8 108:2,	43:12	137:21
48:6,10,14	50:2,5,7,13,	21 112:5	reported	respond
14 51:4,18,	57:4	116:6	63:23	10:10,12
23 52:1	recommendation 103:23	118:16	reporter 5:7	27:20
55:22,24	record 6:10	128:13	6:12	response
56:3,13,20	13:4,5 16:17	132:16	reporting	23:4,7 58:2
57:9,11	19:13 21:13	133:6	71:21	82:2 126:14
58:21 62:1,	35:12,17	139:14	reports	responses
2,3 63:21	64:2,6	140:11	19:14 88:21	56:12
64:2,6	68:16,18	relate 54:20	represent	responsibilities 16:4
68:16,18	76:14 77:2,	relating	59:24 82:5	responsibility 9:9,12
76:14 77:2,	4,6 7 84:21,	17:15	112:3	103:14
4,6 7 84:21,	24 85:8,13	Relationship	86:9	137:16
24 85:8,13	87:19 20:21,	relationships	43:3	responsible
87:19 20:21,	23 88:1	relative	74:24 90:19	31:18
23 88:1	89:24 90:4,	release	105:11	rest 62:4
89:24 90:4,	6,21 23,24	102:16	representations 61:19	restate 11:4
6,21 23,24	91:6 94:14	107:10	90:23 104:4	restrictions
91:6 94:14	95:3 96:11	119:10	represented	28:15
95:3 96:11	99:13	127:18	5:12 7:5	retained
99:13	100:18,21	129:23,24	81:12 127:5	39:19
100:18,21	102:4	130:24	143:16	retention
102:4	104:10,14	140:20	144:5	61:21 86:2
104:10,14	108:8	142:1	representing	87:10 90:3
108:8	110:12	releases	114:7	93:9
110:12	112:17,22	141:4,23	121:20	return 33:4
112:17,22	118:18,20	142:9,15	130:7 143:3,	reupped
118:18,20	119:3	relevance	24	80:16,20
119:3	138:15	12:23 14:8	represents	85:9
138:15	recalled	33:22 34:1	59:23	revenue
recalled	40:13 90:14	128:18	106:24	29:15
40:13 90:14	108:7,9	141:9,10,12,	reprimanded	reverberates
108:7,9	recalling	17	45:3	18:3
recalling	44:22	relevancy	reputation	review 7:8,
44:22	received 7:2	34:11 121:5	51:17	20 32:3,7
received 7:2	81:1 113:24	relevant	request	36:4 42:7,
81:1 113:24	127:11	12:11,21	37:11 55:17	11,12 54:10,
127:11	receives	25:4 34:9	71:21	12:21 88:7,
receives	122:22	134:19	required	15:23 89:7,
122:22	recess 8:21	135:9	90:3 114:8	16 90:1
recess 8:21	16:18 98:5	141:18	139:15	126:20
16:18 98:5	137:12	reluctance	requirements	reviewed
137:12	144:12	40:22	88:24	6:18 7:10
144:12	recognition	remains	requires	8:2 10:6
recognition	17:3	112:8	26:21	32:16,20
17:3	reflects 49:3	remarks	resign 11:16,	53:16,20
reflects 49:3	55:18 61:22	17:5,9	20,24 13:11,	54:5,8 57:7
55:18 61:22	62:22	remedy 19:1		76:1 78:4
62:22	refresh 34:23 62:15			
refresh 34:23 62:15	refreshes 62:7			
refreshes 62:7	regard 45:12			
regard 45:12	56:10 99:22			
56:10 99:22				

Index: reviewing..story

88:16 101:1 107:22 123:2 11,18, 23 124:10, 22,24 125:9 126:1,18 127:6	Senate 8:23	sign 48:13	42:6,22 43:7,13,21 44:15,19 45:3 47:12 49:8,15,22 50:9,17 51:6,8,14,21 55:18 64:19 68:22 86:3, 15,17 87:10, 12 89:2,21 92:12,21 95:7,19,22 112:20 113:13,18 120:19	standard 142:21,22
reviewing 8:8 42:24 54:6 102:24 129:4	send 27:10, 18,23 79:3 85:12 124:8 134:6 143:4, 12	signature 47:14,15 80:9 144:17	59:9,17 51:6,8,14,21 55:18 64:19 68:22 86:3, 15,17 87:10, 12 89:2,21 92:12,21 95:7,19,22 112:20 113:13,18 120:19	standards 95:12,23 103:5 104:10 138:7,8,11, 12,20,22 139:6,15,22 140:11,14, 17
reviews 10:19 43:7	sending 26:18 54:22 77:12 78:12 90:8,15 101:3 105:2 123:24	signed 9:21, 24 47:19 49:9 51:9,13 113:19	significant 101:23	stands 40:8 101:23
RFQ 38:14, 19 56:12 60:1 61:22 70:14 80:11 82:2 83:8 85:6	sends 100:23	signifier 93:22	significantly 14:20 23:7 35:12 38:6 43:15,24 48:15 50:18 52:17 59:20 78:9 88:6,23 94:7 95:24 98:13 99:17 104:16 113:2 117:10 118:7 122:24 138:24	starts 18:2 71:11,12
RFQS 57:3	sense 42:3 55:14 83:23 124:3	simply 15:24 52:21 106:23	single 57:7	state 5:6 16:5 19:7 20:1,15 21:3,7 24:1, 2,13,21 32:6 36:9 38:4,22 47:13 49:16, 17 53:6 54:17 61:20, 23 62:9 63:9 64:12,16 69:15 71:11 75:9,10,14, 15,16,19 76:3,15 78:2 81:14 91:8 92:24 94:23 95:21 96:4 107:4 109:2, 4,8,18 110:22 112:6,20 114:21 115:22 116:1 123:21 126:6 135:1
Richard 5:1, 8 103:3 113:7 130:5, 24	sentence 48:17 61:4, 6,7,16 62:22 63:2,6 64:23 67:6 69:15 71:4,6,10,17 95:11	sir 8:19 11:4, 24 19:3 29:5 35:24 45:24 49:2 56:2,23 115:10 124:19	sit 20:8 110:5	stated 77:21
rights 92:20 93:6,18,22	sentences 83:1	situation 33:13 45:23	size 90:17	statement 23:18 27:3,6 35:12 102:2 106:10 107:9,10,24 120:12,15 127:16,18 128:4 129:9, 22 139:13
rigorous 45:21	separate 118:1	separate 33:13 45:23	slow 92:18	statements 142:2
rise 107:3	separately 35:4	separately 35:4	slower 54:5	status 82:22 88:21
riveting 40:11	served 8:23	server 143:4, 6,12 144:3	small 29:18	statute 140:1
role 50:9	service 47:13 49:17 88:20 143:5	server 143:4, 6,12 144:3	smaller 29:23	statutes 95:24
roughly 17:9 43:4	services 38:21 67:1 72:4 89:19 92:22	service 47:13 49:17 88:20 143:5	smaller 29:23 112:22 116:16 118:8 138:20	stay 141:20
rules 116:21 118:2	someplace 97:7	software 65:12	specific 14:20 23:7 35:12 38:6 43:15,24 48:15 50:18 52:17 59:20 78:9 88:6,23 94:7 95:24 98:13 99:17 104:16 113:2 117:10 118:7 122:24 138:24	step 13:24 14:19,21 118:24
running 40:1	son 54:17,24 123:20	software 65:12	specifically 13:16 23:8 28:2 51:4 52:1 67:16 84:22 99:15 112:22 116:16 118:8 138:20	steps 18:24 44:23
S	sort 41:24 44:5,15 45:18 54:12 97:13 99:9 116:10,12 135:16	someplace 97:7	specifics 35:2 38:17 40:18,19 51:18 104:14	Steven 84:17
sanctions 7:11 8:8	sort 41:24 44:5,15 45:18 54:12 97:13 99:9 116:10,12 135:16	son 54:17,24 123:20	spectrum 53:20 54:1, 3,4	stood 24:12
scale 69:13	sorts 21:11	son 54:17,24 123:20	speculate 62:11 97:13	stop 71:3
Scott 40:11	source 53:9 54:13	son 54:17,24 123:20	speculation 25:19 59:4 97:17	story 45:10
scrubbed 66:10	sources 44:15	son 54:17,24 123:20	speech 24:15 27:12 28:1,5	
seal 47:16 49:6	source 53:9 54:13	son 54:17,24 123:20	spell 5:7	
seamlessly 67:7	short 16:18 45:10 88:11 98:5 115:19 137:12 144:12	son 54:17,24 123:20	spoke 6:18	
searches 89:5,18	shorten 62:20	son 54:17,24 123:20	spoken 7:7	
second-to-last 67:6	shorthand 139:10,17	son 54:17,24 123:20	spring 111:5 143:2	
secretaries 72:16	show 102:6	son 54:17,24 123:20	staff 13:13, 15,19,21 14:5 21:4,18 49:14 69:16, 18,19 70:1, 12,13 71:2 72:9 77:8	
secretary 72:16	showed 59:19	son 54:17,24 123:20	stand 28:7 93:12,14 101:9 103:17	
section 34:11 42:14 92:8 95:4	shows 18:3	son 54:17,24 123:20		
seeking 32:8 74:5	side 41:2 84:10 113:15	son 54:17,24 123:20		
sees 122:23	sidetracked 23:9	son 54:17,24 123:20		
select 40:1		son 54:17,24 123:20		

Strengths 66:22	suspect 6:1	Thanksgivin g 11:19	17:22 57:11 83:24	121:19 124:24
strike 88:4	sworn 5:2 30:19,21	theories 130:14	told 25:5 30:8 108:15	understand 10:15 13:5 33:22 34:1
strikes 45:20,24	system 6:8 112:8	thing 60:13 98:14 119:10	132:17 134:5	37:14 39:15 40:21,24 41:2,15
structure 30:12	T	things 14:4 26:15 37:12 54:9,10 56:4 75:18 76:22 77:13 82:10 104:20 108:12,14 118:6 122:1 136:4,13 138:19	tolerance 91:13,16 92:3 93:4, 10,16 94:4, 15,18	40:21,24 42:5,16 52:14 65:14 67:11,12 69:23 70:14 88:14 104:21,22, 23 110:18 112:16 119:23 120:9
structured 66:24	table 41:3 84:10	taking 140:20	top 57:17 61:7	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
student 16:10 32:5 52:19	takes 144:14	talk 7:6 37:16 54:15 62:5 138:6	total 73:16	132:4,9 135:24 142:12,23 143:17
stuff 46:18	talking 25:21 42,24 48:11 73:2 83:9 109:2,6 124:20 139:2	talked 133:15	tour 15:22	understandin g 24:7,8,9 12,17,22 62:8 64:18 74:2,3,15 101:19,20, 22 104:22 105:7 115:17 139:24
subject 15:11 118:17	talks 27:15 60:13,15 88:6 100:23	thought 18:23 39:3, 11 45:13 93:21 101:22 104:4 108:13 115:21,24 116:5 132:3 138:2	transmitted 89:10	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
submission 55:19	tax 33:1,4	threat 120:5	treatment 92:15,16	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
submissions 56:1	taxes 16:10	threshold 92:3	trial 143:2,5, 19	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
submit 41:20	team 9:6 57:8,10	throw 23:3	trigger 36:16	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
subpoena 6:18 7:4,9 8:10 21:12 143:5,19	technical 44:10	tickets 54:18 123:21	true 49:10 50:3 91:9 101:15 117:4 142:5	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
substantial 38:12,13 44:11,18 91:22 92:5	technologies 65:11	time 5:10 12:3 13,9,22 14:23 16:17 17:1 18:22 21:19 24:18, 20 25:5 34:13,14 40:15 43:9 45:20 51:6 56:9 64:7 66:20 68:17 70:15 76:3, 16 78:8,14 81:13 85:9 98:14 107:1 108:8,12 109:11 110:21,23 115:23 116:2 117:9, 22 118:17, 123:9 126:7 128:13 130:24 135:3,11	trust 39:14	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
substantive 129:18	technology 66:4,13	throw 23:3	trusted 38:10	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
sue 75:4 120:21 131:9	telescope 81:16,20	throw 23:3	truthful 26:2 28:11	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
sued 110:16	telling 89:24 122:13	throw 23:3	turn 57:15 59:17 99:6	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
sufficient 39:3 51:20 105:6 132:7	template 112:4 113:3	throw 23:3	type 29:17	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
suggesting 134:11 136:13,19	temptation 135:22	throw 23:3	types 52:18, 19 88:20	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
suggests 68:3	tenure 8:20	throw 23:3	Typically 11:3	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
suing 37:2	term 115:18	throw 23:3	typing 69:19	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
summarized 111:16	terminate 110:10	throw 23:3	U	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
summary 99:10	terminated 37:7	throw 23:3	Uh-huh 17:12 42:19 45:9 46:12 62:24 66:23 69:14,22 78:24 81:8 82:4 95:6 98:22 110:14 112:13 119:19	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
supervising 117:22	terms 39:4 49:24 74:23 76:4 101:23 117:23	throw 23:3	ultimate 9:12 114:5	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
supervisor 63:24 64:3,5	testified 17:22	throw 23:3	ultimately 10:3 31:17 39:3 76:19 105:10 132:6	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
supervisory 69:19 72:9 117:21	testifies 5:2	throw 23:3	unable 22:21	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
supported 59:13	testifying 133:21	throw 23:3	unaware 50:16	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
supporting 10:6 70:12 119:23	testimony 30:19,21 61:2	throw 23:3	underlying 75:7 76:2	121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
supports 92:13	V	throw 23:3		121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17
suppose 29:20 52:24		throw 23:3		121:19 127:13 130:23 132:4,9 135:24 142:12,23 143:17

Index: valid..yellow

103:21	23 46:20,21	26:12 27:8	WWR 71:8,
121:15	47:12 48:7	35:13 46:17	12,18,20,23
124:1	49:7,15	57:22 62:24	72:3
valid 33:5	50:6,17	63:4,13	
varied 77:20	51:2,11	71:14 72:7	Y
variety 16:9	52:8,12 53:5	79:11 82:21	
54:11 118:6	54:14 55:19	83:5,10,22	year 28:20
vary 11:12	57:17 58:4,	84:1,3,9,13	47:20 79:24
verbal 92:19	59 59:5,11	85:22 95:15	80:1,2 82:3,
verified 14:2	63:7,8 64:20	98:1,4 99:24	24 95:22
verify 17:8	67:13 69:24	100:3,6	98:10 111:5
33:5 41:24	70:7,8 77:9	102:10	years 24:14,
version	84:19,23	105:16,20	23 46:8,11
139:17	85:4 89:20	109:6	79:22,23
vet 41:17	90:2 96:14	121:10,17,	96:21
vetting 49:22	98:9 103:3	23 122:7,9	109:21
vide 16:9	104:8 108:1,	123:6,8	111:12
viewed 91:3	139:17	129:11,16,	126:8
135:15	113:13	21 131:3	yellow 69:7
views 76:18	116:6	133:5 137:7,	
violate 43:22	118:16	13 141:13	
violated	123:1	142:23	
34:10 38:6	124:21,23	143:9,14,18	
44:6 91:4	125:7,8,24	144:4,8,10	
140:11	128:13	word 47:24	
141:2	132:16	54:2,6	
violates	133:8,9	wording	
34:10	139:14	74:18,22	
violating	140:10	75:24	
18:24	Weinberg's	125:12	
violation	53:17 54:22	words 27:7,8	
91:22	58:24	work 9:13	
109:20	weird 61:10	16:3 24:3	
111:10	Weltman	33:20 37:24	
violations	18:10,11	40:24 49:13	
44:10,11,18	19:18 21:6,	52:21,22	
91:21 107:3	13,22 22:12,	53:7 58:23	
121:20	13,16,23	59:2,6,8,12,	
139:18	40:11 46:20	14 61:21,23	
visionary	51:2,11,24	62:5,9 68:20	
65:6	55:19 58:5	76:13 80:12	
volume	63:8 84:20	82:23 83:6	
61:19 64:20	67:12 69:24	86:14	
68:20	70:7 77:9	worked	
124:16	84:23 89:10,	21:17,19,22	
voted 144:2	19 90:2 94:3	29:3 30:4,	
	96:14 98:9	14,22 34:5,	
W	100:23,24	18,21,22	
W-2 33:3	103:3 104:8	42:14 70:10	
waived	108:1,20	131:9	
144:17	112:4 116:6	working 30:2	
wanted 6:5	118:16	31:18,19	
wanting	128:13	40:16 59:15	
27:16	132:16	69:17 70:9	
Watson	133:8,9	94:22	
15:16,18	134:24	workload	
ways 94:6	139:14	56:9	
website	140:10	world 122:3	
116:18	whatsoever	wrapped	
Weinberg	21:5 115:8	139:8	
18:10 19:19	win 131:24	write 33:2,5	
21:6,14,22	132:11	103:9	
22:12,14,16,	wishing	writing 25:22	
	135:17,22	87:4,6	
	136:1	written	
	wondering	138:23	
	81:16,19	wrong 25:7,	
	WOOLEY	8,9 121:4,7,	
	5:5,16,20	8,9 130:7,8,	
	6:2,5,9,13,	15 131:10	
	15 10:11,15,	132:5 142:3	
	23 11:7,		
	12:12,22		
	13:1,3 15:7		



1700 G Street NW, Washington, DC 20552

**CONFIDENTIAL SETTLEMENT COMMUNICATION UNDER
FED. R. EVID. 408 AND LOCAL RULE 16.6(h)**

February 28, 2018

Via Email

James Wooley
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Re: Consumer Financial Protection Bureau v. Weltman, Weinberg & Reis
Co., L.P.A. (N.D. Ohio, Case No. 1:17-cv-00817-DCN)

Dear Mr. Wooley:

Pursuant to the Court's Order dated February 26, 2018, the Consumer Financial Protection Bureau ("Bureau") submits the following itemized damages and settlement demand to Defendant Weltman, Weinberg & Reis Co., L.P.A. ("Defendant").

Damages Itemization

If successful, by statute the Bureau can obtain, among other relief, costs, civil money penalties, disgorgement or compensation for unjust enrichment, and injunctive relief limiting the activities or functions of Defendant. *See* 12 U.S.C. § 5565(a)(2).

Civil Money Penalties

Any person that violates any provision of Federal consumer financial law (including the Consumer Financial Protection Act of 2010 and the Fair Debt Collection Practices Act) shall forfeit and pay a civil penalty. 12 U.S.C. § 5565(e)(1).

Civil money penalties at the first tier may not exceed \$5,639 for each day during which the violation continued. *See* 12 U.S.C. § 5565(c)(2)(A); 12 C.F.R. § 1083.1 (adjusting CFPB civil money penalties for inflation). Here, the violations continued from at least July 21, 2011 through December 31, 2017, and potentially longer if WWR continued the violative conduct at issue beyond the close of discovery. Accordingly, the maximum First Tier civil money penalties for that 2,356-day period is \$13,285,484.

Disgorgement or Compensation for Unjust Enrichment

The Bureau estimates that the approximate ill-gotten gross revenue of the Defendant for July 21, 2011 through December 31, 2017, is up to \$95,278,549. This amount includes the approximate gross revenue for Defendant's agency collections for the years 2016-2017 as well as an estimate of gross revenues attributable to Defendant's pre-legal collections activities for the years prior to that.

Settlement Demand

For the purposes of the mediation scheduled for March 8, 2018, and in an attempt to settle all of the claims in this action, the Bureau demands civil money penalties of \$600,000.

The Bureau also demands injunctive relief as follows:

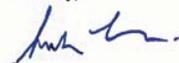
- (1) Defendant and its officers, agents, servants, employees, and attorneys who have actual notice of any stipulated judgment, whether acting directly or indirectly, may not violate sections 1031 and 1036 of the CFPB, 12 U.S.C. §§ 5531 and 5536, or sections 807(3) or 807(10) of the FDCPA, 15 U.S.C. § 1692e(3),(10); and
- (2) Defendant and its officers, agents, servants, employees, and attorneys who have actual notice of any stipulated judgment, whether acting directly or indirectly, in connection with the collection of any debt may not represent, or assist others in representing, expressly or impliedly that a communication is from an attorney, that an attorney was meaningfully involved in reviewing the consumer's account or had reached a professional judgment that making a collection attempt was warranted (including by sending demand letters or making collection calls identifying Defendant as a law firm) unless:
 - a. An attorney was meaningfully involved in reviewing the consumer's account and had reached a professional judgment that making a collection attempt was warranted; or
 - b. The representation clearly and prominently discloses that no attorney has reviewed the debt.

The Bureau believes this demand is appropriate because it addresses the conduct that violates the CFPB and the FDCPA, appropriately takes into account the mitigating factors under 12 U.S.C. § 5565(c)(3), and will enable the parties to avoid the expenditure of resources associated with trying this matter.

This demand is subject to the parties agreeing to a stipulated judgment that would be subject to approval by the Acting Director of the Bureau as well as the Court. See 12 U.S.C. § 5564(c).

Thank you for your attention to this matter and we look forward to WWR's response.

Sincerely,



Sarah Preis
Enforcement Attorney

CC: Rebecca G. Watson, CFPB (via email)
Zol D. Rainey, CFPB (via email)
Jehan Patterson (via email)
Tracy K. Stratford, Jones Day (via email)
Ryan Doringo, Jones Day (via email)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CONSUMER FINANCIAL)	
PROTECTION BUREAU,)	CASE NO. 1:17 CV 817
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
WELTMAN, WEINBERG & REIS CO.,)	
L.P.A.,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Defendant.)	

This matter is before the Court subsequent to a four-day trial to the Court, with an advisory jury duly empaneled and sworn pursuant to Fed. R. Civ. Pro. 39(c)(1). Following trial, the parties each submitted proposed findings of fact and conclusions of law. The issues have now been fully presented and are ready for the Court's consideration.

PROCEDURAL HISTORY

Plaintiff, the Consumer Financial Protection Bureau ("the Bureau"), filed this action on April 17, 2017, alleging that Defendant Weltman, Weinberg & Reis Co., L.P.A. ("Weltman")

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 2 of 23. PageID #: 3365

violated Sections 807(3), 807(10) and 814(b)(6) for the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e(3), (10), and 1692(b)(6); and, Sections 1031(a), 1036(a)(1), 1054, and 1055 of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. §§5531(a), 5536(a)(1), 5564, and 5565, by "misrepresenting the level of attorney involvement in demand letters and calls to consumers. (ECF #1, ¶ 1, 2). Following discovery both parties moved for summary judgment. (ECF # 44, 45). Both of these motions were denied. (ECF #61).

Trial of this matter commenced on May 1, 2018, before an advisory jury, pursuant to Fed. R. Civ. Pro. 39(c)(1). Prior to the jury's empanelment, the Plaintiff voluntarily dismissed Counts 4, 5 and 6, with prejudice, and withdrew its request for disgorgement. (ECF #79). This left Counts One through Three for trial. Count One alleged that Weltman's demand letters "misrepresented that the letters were from attorneys and that attorneys were meaningfully involved, when in most cases the attorneys were not meaningfully involved in preparing and sending the letters" in violation of Sections 807(3) and 807 (1) of the FDCPA, 15 U.S.C. § 1692e(3), (10). Count Two alleged that the same letters violated Section 1036(a)(1)(A) of the CFPA, 12 U.S.C. § 5536(a)(1)(A), for the same reason. Count Three alleges that this also constituted deceptive acts and practices in violation of Sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§5531(a)(1) and 5536(a)(1)(B).

At trial, the Plaintiff called three witnesses: (1) Ms. Eileen Bitterman; (2) Mr. David Tommer; and, (3) Dr. Ronald Goodstein, and submitted exhibits. Defendant called two additional witnesses: (1) Chuck Pona; and, (2) Scott Weltman. On May 4, 2018, after four days of trial, the jury submitted their answers to the following interrogatories:

1. Do you find that the Plaintiff proved by a preponderance of the evidence that the initial demand letter sent by Weltman contained any false, deceptive, or misleading representations or means in connection with the collection of a debt? YES (Enter "yes" or "no").

If your answer to Interrogatory Number 1 is yes, continue to Interrogatory Number 2. If your answer is no, your deliberations are finished and you should not answer any further questions.

2. Do you find that the Plaintiff proved by a preponderance of the evidence that Weltman's lawyers were not meaningfully involved in the debt collection process. NO (Enter "yes" or "no").

If your answer to Interrogatory Number 2 is yes, continue to Interrogatory 3. IF your answer is no, your deliberations are finished and you should not answer any further questions.

After the advisory jury returned these findings, the parties were given a final opportunity to present their proposed findings of fact and conclusions of law.

The Court is not bound by the advisory jury's determination, but finds that their answer to Interrogatory Number 2 comports fully with the weight of the evidence presented at trial. The jury's answer to Interrogatory Number 1, however, does not correctly reconcile the evidence presented with the Court's instructions or the standard of proof required of the Plaintiff in this case. Although there was some evidence presented in support of the idea that the letters could be misleading to certain consumers, that evidence came exclusively from an expert that the Court does not find credible. Further, the Complaint relies solely on the assertion that the demand letters were misleading because they were sent from a law firm, and lawyers were not meaningfully involved in the debt collection process. The jury's finding, adopted by this Court,

that lawyers were meaningfully involved disproves the Plaintiff's sole theory of liability, and precludes recovery under the Complaint.

ANALYSIS

1. Applicable law

Neither party disputes that Weltman is a debt collector to whom the FDCPA and the CFPA apply, or that Weltman's demand letters were sent in connection with the collection or attempt to collect debts. The question at issue in this case is whether Weltman's debt collection demand letters violated the FDCPA or the CFPA. The FDCPA and the CFPA were violated if the letters used "any false, deceptive, or misleading representation or means in connection with the collection of any debt," or if they falsely represent or imply that communication is "from an attorney." 15 U.S.C. §1692e and 1692e(3). A demand letter is not false or misleading for using letterhead that "accurately describes the relevant legal entities," had an accurate and truthful signature block, and includes a "conspicuous notation that the letter is sent by a debt collector." *Sheriff v. Gillie*, 136 S. Ct. 1594 (2016).

The letters are alleged to have violated the FDCPA and the CFPA not because they contain false statements, but because they allegedly falsely imply that an attorney was meaningfully involved in the collection of the debts to which the letters relate. According to case law from various circuits, a demand letter indicating that it comes "from an attorney" can be found to be deceptive even if literally true, if the letter is not the product of an attorney's professional judgment, or if the attorney was not sufficiently involved in the collection of the debt or the drafting of the letter. See, e.g., *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002);

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 5 of 23. PageID #: 3368

Leshner v. Law Offices of Mitchell N. Kay, P.C., 650 F.3d 993, 1003 (3d Cir. 2011); *Greco v. Trauner, Cohen & Thomas, LLP*, 412 F.3d 360, 364 (2d Cir. 2005); *Consumer Fin. Prot. Bureau v. Frederick J. Hanna & Assoc., P.C.*, 114 F. Supp. 3d 1342, 1363 (N.D. Ga. 2015). In order to establish any of the violations alleged in the Complaint, the Plaintiff must show, by a preponderance of the evidence, that:

1. The least sophisticated debtor would believe, based on the initial demand letter, that Weltman was acting as an attorney in the debt collection process;¹ and,
2. Weltman's lawyers were not meaningfully involved in the debt collection process; and,
3. The representation that Weltman was acting as an attorney in the debt collection process was material.

The least sophisticated debtor is to be considered uninformed, naive, and trusting, but also possessing reasonable intelligence, and capable of making basic logical deductions and inferences. *Sanford v. Portfolio Recovery Assocs., LLC*, NO. 12-11526, 2013 WL 3798285, at *12 (E.D. Mich. July 22, 2013)(citations omitted). It is not a requirement that the Defendant intended to mislead or deceive a consumer. This standard is "lower than simply examining whether particular language would deceive or mislead a reasonable debtor," *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1054 (6th Cir. 1999), but does not give credence to "frivolous

¹ A violation of CFPA's prohibition against using deceptive acts or practices uses a "reasonable person" standard rather than a "least sophisticated consumer" standard. The elements otherwise mirror those in the FDCPA. Therefore, if an act or omission does not violate the FDCPA's provisions, it will not violate the less stringent standard under the CFPA. *See, e.g., Consumer Fin. Prot. Bureau v. Gordon*, 819 F.3d 1179, 1192 (9th Cir. 2016); *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611 (6th Cir. 2014).

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 6 of 23. PageID #: 3369

misinterpretations or nonsensical interpretations. . . .” *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 592 (6th Cir. 2009).

There is no specific test for what constitutes “meaningfully involved.” Cases have held that an attorney has sufficient personal involvement in the process if one reviews the file of the individual consumer to whom the letter was sent and/or exercises some “professional judgment as to the delinquency and validity of any individual debt” before the letter is issued. *See, e.g. Consumer Financial Protection Bureau v. Frederick J. Hanna & Assoc., P.C.*, 114 F.Supp. 3d 1342, 1363 (N.D. Ga. 2015); *Avila v. Rubin*, 84 F.3d 222, 229 (7th Cir. 1996); *Leshner v. Law Offices of Mitchell N. Kay, P.C.*, 650 F.3d 993, 999 (3d Cir. 2011). This is not necessarily a set requirement for meaningful involvement, however, as this is a question that must be determined based on the individual facts and totality of the circumstances in each case. *See, Miller v. Wolpoff & Abramson, LLP*, 321 F.3d 292, 304 (2d cir. 2003).

In order for a representation to be material, it must be likely to influence the least sophisticated debtor’s decision on whether or not to pay a debt. *See, Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323, 326-27 (6th Cir. 2012). Creating a legitimate fear of the actual consequences of owing a valid debt is not misleading or deceptive under the act.

2. Stipulated Facts²

The parties stipulated to the following facts:

1. The Bureau (Plaintiff) is an independent agency of the United States that enforces and

² The stipulated facts were taken from the Parties’ Stipulation of Facts (ECF #66), and from stipulations agreed to by the parties at trial, which were communicated to the Jury through the Court’s jury instructions. (ECF #77 at 80-81).

issues regulations pursuant to federal consumer financial law, including the Fair Debt Collection Practices Act and the Consumer Financial Protection Act of 2010.

2. Weltman (Defendant) is an Ohio professional corporation organized under the laws of Ohio that operates as a law firm.

3. Weltman has maintained a website, www.weltman.com, from at least July 21st, 2011, to date.

4. Weltman is a debt collector under the Fair Debt Collection Practices Act and a covered person under the Consumer Financial Protection Act of 2010.

3. Evidence at Trial

Eileen Bitterman, the compliance officer and a shareholder of Weltman, is a lawyer licensed to practice law in Ohio. She is responsible for creating policies and overseeing training. (ECF #75 at 44). She testified as follows.

Weltman is owned by shareholders, all of whom are attorneys. (ECF #75 at 130). Weltman is hired by creditors to collect a variety of types of consumer debt. (ECF #75 at 44-45). During the relevant time period, Weltman had up to 7,000 creditor clients. (ECF #75 at 98). Weltman has a consumer collection unit that is staffed by non-attorneys but is overseen by an attorney who is the business unit leader, and collections support attorneys. (ECF #75 at 48). They are paid on a contingency fee basis, based on the amount of money they are able to collect from consumers. (ECF #76 at 94, 107).

In an attempt to collect on consumer debts, Weltman sends out letters that are generated from attorney-approved templates. (ECF #75 at 50-51). One of these templates is an initial

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 8 of 23. PageID #: 3371

demand letter that includes the name of Weltman, Weinberg & Reis Co., L.P.A. and the words "Attorneys at Law," at the top of the letter. (ECF #75 at 57, 86). These letters are signed by Weltman, and are on Weltman letterhead. (ECF #75 at 57-58, 80, 86). Ms. Bitterman testified that 4.2 million demand letters, from these templates, were sent to consumers between July 21, 2011 and October 31, 2017. (ECF #75 at 91). She also testified that some templates for follow-up letters also state that "this law firm is a debt collector attempting to collect this debt for our client," or other references indicating that Weltman is a law firm, which are a truthful statements. (ECF #75 at 64-66).

Weltman does not contend that they are practicing law when they send demand letters. (ECF #76 at 96). They do not require an attorney to review every individual consumer account before a demand letter is sent. (ECF #75 at 98-99). Weltman attorneys do not form a professional judgment about the validity of a debt or the appropriateness of sending a demand letter before the letters are sent. (ECF #75 at 99). Weltman receives information from creditor clients about consumer accounts and data is loaded into Weltman's computer system. (ECF #75 at 73-74). The data is then "scrubbed." Scrubbing is a process by which outside vendors use criteria established by Weltman's lawyers to flag consumers who should not be sent collection letters. (ECF #75 at 102-103).

Some of Weltman's training manuals indicate that "because WWR is a law firm, a consumer may have the incorrect assumption that a legal action will be automatically filed against them" and that "certain consumers may have prioritized paying the debt because the law firm is in a better position to file suit than a collection agency." (ECF #75 at 108, 112). If a client wants advice on whether to pursue litigation, Weltman has non-attorney audit employees

review the consumer's information to see if the account is eligible. These employees follow policies and procedures provided to them by Weltman attorneys. (ECF #75 at 114). If an account is flagged as not eligible for litigation, an attorney could then review the file, and before a lawsuit can be filed, an attorney must review the consumer's account. (ECF #75 at 114). Weltman has attorneys licensed in only seven states, but does nationwide debt collection. If an account is elevated to litigation in a state where no Weltman attorney is licensed, Weltman may refer the case to a different law firm, who would then have to send another demand letter informing the consumer that the firm is acting as a debt collector. (ECF #75 at 115-116).

Weltman has a formal compliance program that is developed and approved by attorneys, including the shareholders and the Board. (ECF #130-131). It has hundreds of policies and procedures for delegating, educating, and supervising staff, for auditing compliance across the business units and ensuring compliance with client processes and procedures as well as Weltman's processes and procedures. (ECF #75 at 127-129, 132-134, 180; ECF #76 at 10-36). These are drafted by attorney shareholders, go through several layers of attorney review, and are eventually approved by attorney Board members. (ECF #75 at 128-130, 132, 182-183; ECF #76 at 10-36). They are also enforced by attorneys. (ECF #76 at 11-35). Attorneys are involved in bringing clients to the firm, drafting client contracts, checking their reputation, interacting with the client, and discussing the available data and documentation, the history of their portfolio and types of accounts, which consumers are represented by attorneys, any asset reviews that have occurred, and arbitration or bankruptcy information, reviewing the clients procedures and policies, and evaluating whether the client is a trustworthy and legally compliant creditor. (ECF #75 at 149-150, 167-169; ECF #76 at 72-73). Attorneys assess issues that may arise with

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 10 of 23. PageID #: 3373

statutes of limitations, arbitration clauses, choice of law issues, how interest is calculated, last date of payment, deceased debtors and other legal questions. (ECF # 153-54; ECF #76 at 8-9). Many of these issues must be addressed by an attorney before a demand letter ever goes out. (ECF #75 at 157). Using their legal knowledge the attorneys create procedures for analysis that can be taught to non-attorney employees or programmed for automated implementation or programming of the "scrubbing" criteria. (ECF #75 at 157-159).

Ms. Bitterman also testified that these same procedures used in the processes complained of in this lawsuit, including electronic communication and automated scrubbing processes were previously approved by the Ohio Attorney General and used by the firm when working as special counsel for the collection of debts owed to the State of Ohio. (ECF #76 at 43-44, 58-59). The evidence showed that Richard Cordray, who was the head of Plaintiff, CFPB when this lawsuit was filed, was the Ohio Attorney General when Defendant Weltman was hired to collect those state debts. When collecting for the State of Ohio, Attorney General Cordray, the same person ultimately responsible for the filing of this lawsuit, directed Weltman to use the Ohio Attorney General's letterhead on Weltman's demand letters for the state. He also required Weltman to state in the letter that they were "special counsel," and to use the words "Attorney at Law" and "collections enforcement special counsel" on the demand letter. (ECF #76 at 52-54).

Ms. Bitterman testified that as a Weltman attorney, in charge of compliance, having talked to debtors and having access to the complaint log, she is not aware of any complaints given directly to the firm stating that their letters were confusing due to their identification as a law firm. (ECF #76 at 62-64). She also stated that she is not aware of any holding from any court finding that Weltman had misled a consumer. (ECF #76 at 89, 105). She acknowledged,

however, being aware of multiple lawsuits, in both state and federal courts, filed against the firm alleging that their demand letters were misleading for implying that there is meaningful attorney involvement in the demand letters. (ECF #76 at 86-89). She testified she is also unaware of any person who prioritized payment, or paid a debt not owed, because the demand letters came from a law firm, rather than identifying simply as a debt collector. (ECF #76 at 63-64). Weltman provided "over a million recorded consumer phone calls," none of which were cited by the Plaintiff as evidence of confusion, materiality, or harm stemming from the alleged misrepresentation in this case. (ECF #76 at 67-68).

Mr. Tommer, the director of consumer collections and a non-attorney, also testified at trial. He testified that he works with law firm attorneys to develop workflow strategies for the collection of consumer debts. (ECF #76 at 114-115). He testified that the supervisors in the "agency unit," which falls under the consumer collection business unit, are not attorneys. (ECF #76 at 117-119). He reports to Chuck Pona, who is an attorney, and who oversees the consumer collection unit. (ECF #76 at 139). He also testified that no attorneys work "directly under" the agency collections group. (ECF #76 at 120). When accounts are taken in by Weltman, Weltman load the data, scrub the electronic data, and then if the files survive the scrub, and there is a valid address, a demand letter is generated and sent within two to three days from intake. (ECF #76 at 129-130). This entire process is automated. (ECF #76 at 130). Attorneys develop the scrub process, but Mr. Tommer was unaware of any other role attorneys would have in the scrub process. (ECF #76 at 130).

When initial demand letters don't result in payment, clients may reclaim the files or the files may go to the audit department to be assessed for additional actions, including the filing of a

suit. (ECF #76 at 133). The suit audit department gathers information to give to the attorneys to make this determination. (ECF #76 at 133-134).

Mr. Tommer testified that attorneys are meaningfully involved in a debt collection before the consumer is mailed an initial demand letter. (ECF #76 at 141). They run the firm, and every day he and his team interact with or take direction from an attorney while doing their jobs. (ECF #76 at 141-142). The demand letters were written by Eileen Bitterman, an attorney, and her team. (ECF #76 at 142). Attorneys make the decision whether to take on a client, and perform the reviews of potential clients' documents, legal terms and conditions relating to the debt. (ECF #76 at 143-144). Attorneys are involved at the onset of the scrubbing process for the high volume clients. (ECF #76 at 144). Attorneys also look at and oversee any alterations and changes in internal processes, implementation of any new letter, and procedures and policies utilized on a day to day basis, scripting for collectors, and training materials. (ECF #76 at 146-147).

The Plaintiff also called Dr. Ronald Goldstein, an associate marketing professor at the McDonough School of Business at Georgetown University, who was asked to assess whether consumers believe a lawyer is involved in reviewing an account, and the decision to send demand letters. (ECF #76 at 154-155). He was offered and accepted as an expert witness. (ECF #76 at 162).

Dr. Goldstein testified that he gave a field study survey to 634 people from the "relevant population," defined as "people who had used their credit card in the last five years for personal or household reasons" or "had borrowed money in the last five years for personal, household reasons," but not from a friend or family. (ECF #76 at 177-180). He stated that he did not want

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 13 of 23. PageID #: 3376

to survey anyone who actually received Weltman's demand letter, any lawyers, or any marketing researchers because they would be biased, but he did not take any action to determine if anyone in the survey group had actually ever received a Weltman letter. (ECF #76 at 178-180, 195-196). He used three groups. One was shown the Weltman demand letter, and one was given a letter that purported to be from Weltman, Weinberg & Reis Ltd. , used the phrase "collection services" rather than "attorneys at law." The third group used the name WW&R, rather than "Weltman, Weinberg & Reis, Ltd. (ECF #76 at 182 -183). Dr. Goldstein then asked a series of questions which led him to the finding that 40% of the first group believed a lawyer reviewed the account, 20% of the second group believed a lawyer reviewed the account, and 13% of the third group believed that a lawyer reviewed the account. (ECF #76 at 191-192). No definition was provided for what it means to "review the account." (ECF #76 at 202). He also tested the question "who sent the letter" and found that 50% of the people with the original letter believed it was sent by a law firm or lawyer. He himself testified that simply the use of the name Weltman, Weinberg & Reis, without any reference to a legal indicator, such as L.P.A. or "attorney at law," was perceived as sounding like a law firm. (ECF #76 at 195).

Dr. Goldstein also testified that while he designed the survey, he did not conduct the initial interviews; did not recruit the people who were surveyed; did not design the technological programming; delegated work to a research team; and, hired graphic designers to make changes to the letters. Nonetheless he testified that he was "meaningfully involved" in conducting the survey because all of the other people were working under his guidance and supervision. (ECF #76 at 199).

Defendant called Charles Pona to testify. He is an attorney who is currently managing the

consumer collections department at Weltman, is a shareholder in the firm, and is on the management committee. (ECF #76 at 216-217). There are currently 20-25 attorneys in the consumer collections department. (ECF #76 at 222). The attorneys are continuously available to any non-attorney members of the unit to answer questions and give advice. They hold weekly meetings with the managers, and invite people from the client services area, human resources and IT staff to participate. (ECF #76 at 224). All attorneys are involved in compliance issues, but about 8-10 years ago a full time compliance department was started to focus on compliance with state and federal laws. (ECF #76 at 224). All written procedures and policies are sent to the attorneys on the management committee by a steering committee which includes compliance members. (ECF #76 at 225). Mr. Pona also testified that the firm has never been found to have violated any law related to debt collection practices, and that he is not aware of any ethical violations that have ever been found against the firm in any state. (ECF #76 at 227).

Mr. Pona testified that attorneys are involved in client acquisition and due diligence; IT requirements; contracting, including obtaining warranties as to the validity of the debts put forth for collection; sampling documentation and terms from collection accounts, including calculation of interest rates, analyzing default provisions, reviewing statutes of limitations, and determining when arbitration is required; reviewing for responsible parties; debtor asset review; permissible fees; develop criteria for scrubs that weed out non-collectible accounts; and, drafting the demand letters. (ECF #76 at 230-256).

Mr. Scott Weltman was also called by the defense. He is also an attorney who is currently the managing shareholder of the Weltman firm. (ECF #77 at 28). There are currently 25 attorney shareholders in the firm, and approximately 60 attorneys overall. (ECF #77 at 34).

At times the firm has had up to 120-140 attorneys at a time. (ECF #77 at 34). Mr. Weltman testified that the firm has never been found to have violated any law, and that none of the firm's lawyers have ever been found to have committed ethical violations. (ECF #77 at 39). When working for the Ohio Attorney General the firm was chosen and continuously audited and the state never had a complaint with how they managed their debt collection practices. (ECF #77 at 40). He also testified that Ms. Bitterman and Mr. Pona correctly testified as to the involvement that attorneys have in the debt collection processes at Weltman. (ECF #77 at 41-42). Mr. Weltman testified that everything in the demand letter is truthful. (ECF #77 at 62).

FINDINGS OF FACT/CONCLUSIONS OF LAW

The Court makes the following findings of fact and conclusions of law based upon the evidence presented at trial:

1. This Court has subject-matter jurisdiction over this matter under 12 U.S.C. §5565(a)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.
2. Weltman regularly collects or attempts to collect consumer debts and, therefore, is a "debt collector" as defined under the FDCPA.
3. Weltman collects debt related to consumer credit, and is, therefore, a "covered person" as defined under the CFPA.
4. Weltman is a legal professional association operating as a law firm, with a fully integrated collection agency. The firm is owned exclusively by attorney shareholders and the Board of Directors consists of five such shareholders.
5. Weltman also employs non-attorneys in the debt collection units.

6. Weltman sends out letters that are generated from attorney created and attorney approved templates. One of these templates is an initial demand letter printed on law firm letterhead, with the name of the firm appearing in all caps and in bold at the top with "ATTORNEYS AT LAW" printed directly beneath. "Weltman, Weinberg & Reis Co., L.P.A." is listed as the signatory on these letters.

7. The demand letters accurately describe the identity and legal description of the entity sending the letter. As such, it cannot be fairly described as false or misleading simply for correctly identifying Weltman as a law firm, and as the signatory.

8. The initial demand letter advises the putative debtor (1) that the debt has been placed with Weltman for collection and (2) that the consumer has specific rights under the FDCPA. These representations are both truthful.

9. The demand letter is sent on Weltman's letterhead, and accurately conveys the fact that Weltman is a law firm that has been retained to collect the putative debt. The letter does not state that an attorney has reviewed the particular circumstances of the account, does not mention any potential legal action, and is not signed by an attorney.

10. The demand letter template, used to generate the demand letters sent by Weltman reads as follows:

Please be advised that the above referenced account has been placed with us to collect the outstanding balance due and owing on this account to the current creditor referenced above. As of the date of this letter you owe the amount listed above. Therefore, it is important that you contact us at [phone number] to discuss an appropriate resolution for this matter.

This communication is from a debt collector attempting to collect this debt for the current creditor and any information obtained will be used for that purpose. Unless you dispute the validity of this debt, or any portion

thereof, within thirty (30) days after receipt of this letter, we will assume the debt is valid. If you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment and a copy of such verification or judgment will be mailed to you. If you request in writing within the thirty (30) day period, we will provide you with the name and address of the original creditor if different from the current creditor.

Thank you for your attention to this matter.

Sincerely,

Weltman, Weinberg & Reis Co., L.P.A.

11. Most of the content of the letter follows the language of the FDCPA. The first two sentences provide the information required by 15 U.S.C. §1692g(a)(1) and (2). The disclosure in the next paragraph that the communication is from a debt collector is nearly identical to the language of 15 U.S.C. §1692e(11), and the rest of that paragraph contains the exact language required by 15 U.S.C. §1692g(a)(3)-(5).

12. Weltman is not practicing law when they send demand letters.

13. Weltman's demand letters can be interpreted to imply that an attorney is "meaningfully involved" in the debt collection process.

14. Weltman does not require an attorney to review every individual consumer account before a demand letter is sent, and Weltman attorneys do not form a professional judgment about the validity of a debt or the appropriateness of sending a demand letter before the letters are sent.

15. Weltman obtains information from creditor clients about consumer accounts, and data is loaded into Weltman's computer system. Attorneys are involved in bringing clients to the firm, drafting client contracts, checking their reputation, interacting with the client, and

discussing the available data and documentation, the history of their portfolio and types accounts, which consumers are represented by attorneys, any asset reviews that have occurred, and arbitration or bankruptcy information, reviewing the clients procedures and policies, and evaluating whether the client is a trustworthy and legally compliant creditor. This takes place before demand letters are sent.

16. Attorneys obtain warranties as to the validity of the debts put forth for collection; sampling documentation and terms from collection accounts, including calculation of interest rates, analyzing default provisions, reviewing statutes of limitations, and determining when arbitration is required; reviewing for responsible parties; debtor asset review; and the validity of fees.

17. The data provided by Weltman's clients is "scrubbed." Scrubbing is a process by which outside vendors use criteria established by Weltman's lawyers to flag consumers who should not be sent collection letters. Attorneys, using their legal knowledge create procedures and criteria for analysis that can be taught to non-attorney employees or programmed for automated implementation or programming of the "scrubbing" criteria. This takes place before demand letters are sent.

18. Weltman has a formal compliance program that is developed and approved by attorneys, including the shareholders and the Board.

19. Weltman has hundreds of policies and procedures for collecting debts, as well as educating, and supervising staff.

20. Weltman's policies and procedures are drafted by attorney shareholders, go through several layers of attorney review, and are eventually approved by attorney Board members. They

are also enforced by attorneys.

21. Weltman conducts routine audits for compliance across the business units and ensures compliance with client's processes and procedures as well as Weltman's internal processes and procedures.

22. Attorneys assess issues that may arise with statutes of limitations, arbitration clauses, choice of law issues, how interest is calculated, last date of payment, deceased debtors and other legal questions. Many of these issues must be addressed by an attorney before a demand letter is sent.

23. Attorneys draft the demand letter templates, and they are approved by the attorneys in Weltman's Compliance Audit Department.

24. Attorneys and non-attorney staff work together on a daily basis, and interact in weekly meetings. Weltman attorneys oversee all departments and are responsible for the training and oversight of all non-attorney staff.

25. Weltman reviews cases for litigation and litigates collection actions in the states where its attorneys are licensed.

26. There has never been a finding in any jurisdiction that Weltman's letters or any other of its statements contain falsehoods or misrepresentations.

27. Weltman collected debts for the State of Ohio using substantially similar demand letters to the ones at issue in this case, and following the same processes and procedures it follows for all other debt collection clients. The Ohio Attorney General, Richard Cordray, approved of these letters and with full knowledge of their content approved the use of these letters for the State of Ohio's collection efforts.

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 20 of 23. PageID #: 3383

28. Despite requiring similar indications and disclosures of attorney involvement in the debt collection letters used on behalf of the State of Ohio, Richard Cordray, when he became head of the CFPB, authorized this lawsuit against Weltman for truthfully identifying themselves as a lawfirm and as attorneys, and for signing their demand letters with the firm name.

29. Plaintiff offered no evidence to show that any consumer was harmed by Weltman's practice of identifying itself as a law firm in their demand letters.

30. Plaintiff offered no evidence to show that any consumer did or would be inclined to prioritize payment for the debts referenced in Weltman's demand letters over any other debt they may have owed.

31. Plaintiff offered no evidence to show that any consumer did or would be inclined to pay the amount sought in Weltman's demand letters even if they did not owe the debt.

32. Plaintiff's expert witness did not present credible evidence from which the fact finder could infer that any consumer's were misled by Weltman's demand letter.

33. The expert testified that his research showed that 40% of the people who read the letter would think that a lawyer had "reviewed" the account.

34. His testimony also showed, however, that 20% of people thought a lawyer "reviewed" the account even when no mention of a law firm, or attorney was made in the letter.

35. His survey did not ask what a consumer meant when they said a lawyer "reviewed" the account; did not ask whether a consumer could have been biased based on collection actions they may have experienced or other criteria; did not ask whether consumers would have felt misled or confused if they knew an attorney was involved in the debt collection process to the same extent that Weltman attorneys were shown to have been involved; and, did not ask whether

a perceived attorney review would have influenced their decisions about whether and when to pay the debt reference in the letter.

36. The FDCPA prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. §1692e. This includes using any "false representation or deceptive means to collect or attempt to collect any debt," and making "false representation or implication that . . . any communication is from an attorney." 15 U.S.C. § 1692e(3), (10).

37. This determination must be made from the point of view of the "least sophisticated consumer." *Kistner v. Law Offices of Michael P. Margalefsky LLC*, 518 F.3d 433, 438 (6th Cir. 2008).

38. The CFPA prohibits any violation of the FDCPA, as well as "any unfair, deceptive, or abusive practice" in connection with consumer products or services. 12 U.S.C. §§ 5481(12)(H), (14); 5531(a); 5536(a)(1)(A), (B). The standard under the CFPA is the same as the standard under the FDCPA, but is viewed from the perspective of reasonable consumers.

39. If there is no violation under the FDCPA in this case, there can be no violation under the CFPA.

40. Courts have held that when an attorney signs a letter on law firm letterhead, the least sophisticated consumer may believe that the attorney was involved in the debt collection process. Thus, they have concluded that if the attorney is not meaningfully involved in that process, the letter may be deceptive or misleading under the FDCPA.

41. Weltman's demand letters were truthful on their face.

42. Weltman attorneys were meaningfully and substantially involved in the debt

collection process both before and after the issuance of the demand letters.

43. Plaintiff did not prove by a preponderance of the evidence that Weltman's letters were false, misleading, or deceptive.

44. A misleading representation is only actionable under the FDCPA if it is material. *See FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 630-31 (6th Cir. 2014).

45. A representation is material under the FDCPA if it would influence the least sophisticated consumer's decision on whether and when to pay a debt. *See, e.g., Boucher v. Fin. Sys. Of Green Bay, Inc.*, 880 F.3d 362, 366 (7th Cir. 2018). Under the CFPA, a false representation is material if it is likely to influence a reasonable consumer to pay a debt. *See Fanning v. F.T.C.*, 821 F.3d 164, 173 (1st Cir. 2016).

46. Even if Weltman's letters had misrepresented the level of attorney involvement, Plaintiff could not prevail because there is no evidence that any consumer's decision on when and whether to pay a debt was influenced by the inclusion of the attorney identifiers in Weltman's demand letters.

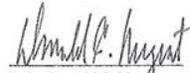
47. In light of the above factual findings and conclusions of law, the Court finds that Plaintiff has failed to prove its case by a preponderance of the evidence.

CONCLUSION

For the foregoing reasons this Court finds that Plaintiff failed to prove by a preponderance of the evidence its claims in Counts One, Two, and Three of the Complaint. Therefore, judgment is entered in favor of the Defendant, Weltman, Weinberg & Reis Co., L.P.A. and against Plaintiff, Consumer Financial Protection Bureau, on all of its remaining

Case: 1:17-cv-00817-DCN Doc #: 87 Filed: 07/25/18 23 of 23. PageID #: 3386

claims. All costs are assessed to the Plaintiff. This case is hereby terminated. IT IS SO ORDERED.


Judge Donald C. Nugent

DATED: July 25, 2018

From: Patterson, Jehan (CFPB) <Jehan.Patterson@cfpb.gov>
Sent: Monday, November 26, 2018 11:34 AM
To: Wooley, James R. <jrwooley@JonesDay.com>; Stratford, Tracy K. <tstratford@JonesDay.com>; Doringo, Ryan A. <radoringo@jonesday.com>
Cc: Preis, Sarah (CFPB) <Sarah.Preis@cfpb.gov>; Rainey, Zol (CFPB) <Zol.Rainey@cfpb.gov>; Watson, Rebecca (CFPB) <Rebecca.Watson@cfpb.gov>
Subject: CFPB v. WWR

Jim, Tracy, and Ryan,

So that we may comply with the Court's order granting in part and denying in part WWR's bill of costs (ECF 97), please provide the following information for your client:

Full name
Addressee (if applicable)
Address
Tax Identification Number

Please also advise whether WWR will accept payment of taxed costs by credit card.

Thank you.

Best,
Jehan

Jehan Patterson
Enforcement Attorney
Bureau of Consumer Financial Protection
Office: (202) 435-7264
Cell: (202) 578-1384
consumerfinance.gov

LETTER SUBMITTED BY THE CONSUMER BANKER'S ASSOCIATION



HELPING FINANCE THE AMERICAN DREAM SINCE 1919.

March 12, 2019

The Honorable Mike Crapo
 Chairman
 Committee on Banking, Housing and Urban
 Development
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

The Honorable Sherrod Brown
 Ranking Member
 Committee on Banking, Housing and Urban
 Development
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." We appreciate the Banking Committee's continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans and collectively hold two-thirds of the country's total depository assets.

In 2010, Congress passed the Dodd-Frank Act creating the CFPB and granting it rulemaking, supervisory, and enforcement authority over a \$3 trillion dollar financial services industry. In addition to supervisory authority over each depository institution with over \$10 billion in assets, the CFPB has supervisory authority over all those in the business of origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; private education loans; and short term liquidity products. In short, the director of the CFPB has the most discretionary authority of all the financial depository regulators combined.

In the years following the passage of the Dodd-Frank Act, the financial regulators – the CFPB included – spent considerable time and effort implementing the legislation and writing rules affecting a wide array of bank products and services. Now more than eight years after the Bureau was stood up and numerous final rules later, both Congress and the Bureau have the opportunity to evaluate the Bureau's operations and ensure its rules are working well for consumers.

The American financial markets are healthy and banks are well-capitalized. However, there remain examples of overly prescriptive rules, some hardwired into statute, that are impeding the availability of consumer credit. It is prudent for Congress to examine these provisions of Dodd-Frank and subsequent rules promulgated by the CFPB as well as their impact on consumer access to credit and the ability for lenders to innovate and develop products. The financial marketplace is considerably safer for consumers and investors since the depths of the financial crisis and is constantly evolving to meet consumer demand. Legislation and rules governing the marketplace need to be reviewed through this lens to ensure the current regulatory regime fosters a competitive marketplace that can provide consumers access to affordable products and services.

Legislative Recommendations to Improve the CFPB

Bipartisan Commission at the Consumer Financial Protection Bureau

The current director, who is removable only for cause, is responsible for the management of the Bureau and is the chief decision-maker on all rulemakings, enforcement and supervisory actions – leaving little room for alternative views to be considered. It is crucial that appropriate checks and balances are in place given the scope and importance of this agency. 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.

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. A lack of certainty and long-term consistency in leadership at the Bureau adversely affects consumers, our economy, and the financial services industry. As we saw after the departure of Director Cordray, the CFPB's current governance structure is subject to dramatic political shifts and strains with each change in presidential administration. Unpredictable political shifts make it difficult for the financial services industry to plan for the future, which ultimately stifles innovation, limits access to credit, and hurts consumers. As demonstrated by other government regulators, a bipartisan commission would bring more certainty and stability so banks can properly plan for the future and better serve consumers.

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

Furthermore, the concept of a commission has historically shared bipartisan support. Under President Obama, the Department of Treasury issued a report stating, "The CFPA [Consumer Financial Protection Agency] should be structured to promote its independence and accountability. The CFPA will have a Director and a Board. The Board should represent a diverse set of viewpoints and experiences."¹ Under the Trump Administration, Acting Director Mulvaney testified, "...A five person commission could help smooth out some of the variations from one director to another, Mr. Cordray and I are very different people and we plan to run the agency very differently, and a five person commission might bring some stability."² Treasury Secretary Steve Mnuchin testified he does "support the concept of a board to oversee [the Bureau]" in a recent House Appropriations Subcommittee hearing.³

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

Importantly, the American people are supportive of a bipartisan commission at the Bureau. A Morning Consult poll found that by a margin of three to one, registered voters support a bipartisan commission over a sole director, with only 14 percent of those polled stating they prefer to keep the Bureau's current leadership

¹ Department of Treasury, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation*, p. 58.

² Senate Banking Committee, *BCFP Semi-Annual Hearing*, April 12, 2018.

³ House Appropriations Subcommittee Hearing, *FY19 Budget Hearing*, Department of Treasury, March 6, 2018.

structure.⁴ Additionally, two dozen trade associations representing thousands of banks, credit unions, financial institutions, and businesses of all sizes support this needed change.

Independent Inspector General

CBA supports legislation that would establish an independent Inspector General at the CFPB, as opposed to sharing one with the Federal Reserve. This would be an appropriate step to provide independent oversight of the Bureau. The adoption of an independent Inspector General will ensure the operations of the agency are audited by an independent and impartial entity. Most financial services regulatory agencies, and more than 30 other federal agencies, have their own dedicated Inspector General. Having a third-party auditor will bring increased accountability to the Bureau and provide Congress with important information on the internal workings of the CFPB.

Clarifying Guidance

CBA supports previously introduced legislation known as the GUIDE Act, which would provide greater clarity to what constitutes guidance, improve compliance with consumer financial protection laws, and bring predictability to the Bureau's rulemaking.

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

Harmonizing UDAP Authority

The Federal Trade Commission Act prohibits Unfair and Deceptive Acts or Practices (UDAP) in commerce, and this concept has been developed and refined over many decades by regulation and case law. The FTC employs UDAP in its enforcement of consumer financial service providers. The bank regulatory agencies—including the Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and Federal Reserve Board, examine the banks under their authority for compliance with UDAP.

By granting the Bureau authority to regulate unfair, deceptive and "abusive" acts or practices (UDAAP), the Dodd-Frank Act created an anomaly within the existing and well-documented regulatory regime. In addition, Congress did not provide clarity as to why an additional and seemingly redundant "abusive" violation was created, which has placed all companies under the Bureau's jurisdiction at risk of inadvertent noncompliance because it is unclear how an "abusive" standard will be applied or how it is different from unfair or deceptive. Many depository institutions are supervised by the CFPB for UDAAP violations and by their prudential regulator for UDAP violations, creating an overlapping and potentially confusing supervisory regime. We encourage Congress to eliminate the term "abusive" to provide regulatory harmony between the CFPB and other Federal regulatory agencies.

⁴ Morning Consult Poll, May 3, 2017.

Regulatory Actions

Enforcement and Supervision

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

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

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

Small-Dollar Bank Lending

On February 6, 2019, the CFPB issued a proposed rule to revise its controversial November 2017 small-dollar loan rule (2017 Rule). The proposal would effectively rescind the 2017 Rule's requirement that lenders determine a borrower's ability to repay prior to extending small-dollar and certain other types of covered loans. The CFPB also proposed to delay the compliance date for the 2017 Rule's existing ability to repay provisions to November 19, 2020. According to the proposal, the CFPB believes that the 2017 Rule's ability to repay provisions would have the effect of eliminating lenders willing to participate in the market, thereby decreasing consumer's access to credit and competition in credit markets. We agree with the Bureau's assessment of the 2017 rule and applaud the proposal that will help depository institutions offer short term credit products.

The proposed rescissions would substantially decrease the significant burdens on lenders that would be imposed by the existing ability to repay requirement. The 2017 Rule would require lenders to obtain extensive information about a consumer's finances and use the information to project whether the consumer will be able to make payments for his or her existing payment obligations and the payments under the covered loan and still meet basic living expenses for a period of thirty days. The changes in the proposed rule may encourage lenders previously discouraged by the requirements under the 2017 Rule to engage in small-dollar, short-term loans.

Lenders would still be subject to the 2017 Rule's payment provisions, which require a lender to obtain a new customer authorization to attempt to withdraw funds from a consumer's account following two consecutive failed attempts to withdraw payments from that account. The provisions also require lenders to provide consumers with a written notice prior to a first attempt to withdraw payment from a checking, savings, or prepaid account and before subsequent attempts to withdraw payments if the payment amounts, dates, or payment channels differ from the first attempt.

We greatly appreciate the Bureau's interest in revisiting the rule to ensure consumers have options in the marketplace for small dollar credit needs. Because we expect the rulemaking will likely identify other problems with the Final Rule, we also urge the Bureau to grant an immediate extension of the Compliance Date for the entire Final Rule. Without an immediate extension, banks will expend resources unnecessarily to achieve compliance with a rule the Bureau is reconsidering and may materially change.

Further, the Bureau should exempt traditional consumer loan products, which do not raise consumer protection concerns, and which this rulemaking was not intended to address. In the 2017 Rule, the Bureau expansively defined "covered loans" — i.e., the loans subject to the Final Rule's restrictions — without regard to the loan's amount or duration. Consequently, the 2017 Rule captures many loans that are not, in fact, short-term, small dollar loans, including some wealth management products. To address this concern, the Bureau should also clarify that the financing of any product or service in connection with a purchase money loan is included in the Rule's exemption for these loans and thus avoid restricting access to open-end lines of credit.

Know Before You Owe Federal Student Loans

Absent Congressional action to improve federal student loan disclosures, CBA recommends the CFPB coordinate with the Department of Education (the Department) to implement a "Know Before You Owe" initiative for federal student loan borrowers. With \$1.4 trillion in federal student debt outstanding and more than one in five federal borrowers in repayment seriously delinquent or in default, there is clearly a federal student loan crisis. Financial education is at the core of the CFPB's mission, and we encourage the CFPB to work with the Department to make sense of the current opaque federal student loan disclosures by offering a clear, personalized, plain-language disclosure similar to those already provided to borrowers of all private consumer loans.

For many students and families, a college education will be one of the most important investments they ever make. Thus, access to information about the true cost of a loan is critical to making an informed decision about how much debt to take on. A recent CBA poll of 1,000 registered voters echoed the importance of borrower disclosures as 90 percent of those surveyed felt borrowers should receive disclosures detailing costs and terms before taking out an education loan. More than 90 percent felt such disclosures should always provide specific monthly payment amounts.

Unfortunately, federal borrowers must currently weed through more than a dozen pages of disclosures and squint to read fine print to unearth some of the key loan terms. These disbursement disclosures fail to provide terms specific to individual borrowers, instead offering broad categories of interest rates and fees and ranges of estimated monthly payments. The ironically named Plain Language Disclosure, for instance, provides users of federal student loan products six pages of legal jargon in fine print to show only generic loan costs and repayment terms.

Alternatively, private lenders are required by the Truth in Lending Act (TILA) to provide customers with clear and conspicuous disclosures of loan costs and terms three times before the loan is disbursed: at loan application,

approval, and closing. The interest rate, loan fees, annual percentage rate (APR), monthly payment amount, and total cost of the loan, among other important terms specific to the individual borrower, are boldly displayed.

CBA has long advocated for the best possible information to be provided to students and their families before they borrow large sums of money for higher education. While we recognize some improvements to current disclosures may require amendments to the Higher Education Act, we recommend the CFPB and the Department work together to develop, at the least, one overarching and meaningful disclosure of key loan terms so borrowers can more clearly understand their loan obligations before signing on the dotted line. An initiative similar to the CFPB's successful Know Before You Owe initiative on mortgage disclosures would improve transparency and help prevent over-borrowing. An improved federal student loan disclosure process should:

1. Include the key terms of the loan, such as the interest rate, fees, projected monthly payment and projected total cost of the loan, and provide a clear view of the true cost of the loan by displaying the APR (which accounts for the origination fees of 4.3 percent for PLUS and 1.1 percent for Direct Loans);
2. Provide these improved disclosures at application and in coordination with the financing letter; and
3. Specify that parents are responsible for Parent PLUS loan repayment regardless of whether the student completes their program of study.

Separation of Ombudsman and Office of Students Role

For several years, the CFPB Student Loan Ombudsman also led the Office of Students. These are incompatible roles as they create a conflict of interest. An ombudsman should be impartial and serve in a confidential capacity, while a division head at the agency is a policy maker, enacting rules or recommending enforcement by the agency. CBA strongly recommends the Bureau separate the positions.

No-Action Letters & the Office of Innovation's Project Sandbox

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 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".⁵

The Bureau's proposed reforms to its 2016 No-Action Letter (NAL) process, and establishment of a "Project Sandbox" within the Office of Innovation are vital steps in ensuring financial institutions are able to best serve and protect their customers with new and innovative financial services and programs. The development of these innovative services and programs require a flexible and accessible regulatory environment, of which the CFPB plays a key role in developing and regulating for adherence to consumer protection laws.

The proposed changes to the 2016 NAL will open 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. The CFPB's current NAL process, established in 2016, does little to alleviate regulatory concerns many financial institutions have when developing new financial services, hence why only one firm has applied for no-action relief under the program. The burdensome amount of information currently required under the NAL process leaves institutions vulnerable to increased scrutiny and litigation from regulators and private actors, ultimately barring them from establishing new services and products that can greatly benefit consumers. The Bureau's

⁵ 12 U.S.C. § 5511(b)(5) (2012).

proposed changes to the NAL, as well as its establishment of “Project Sandbox” will help more consumers attain financial security and stability by allowing financial institutions to develop new products and services that comply with well-established financial regulations.

CBA strongly supports the Bureau’s proposed changes to the 2016 NAL process and establishment of “Project Sandbox” and feels these programs are absolutely necessary to the Bureau’s commitment to increase innovation while better protecting consumers.

Debt Collection

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

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

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

We strongly urge Congress and the 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.

Privacy Implications of the Home Mortgage Disclosure Act

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

The Dodd-Frank Act mandated expanding the information collected under Regulation C, HMDA’s governing regulation. In 2015, then-Director Cordray used his authority to increase the number of loan-level HMDA data fields reported and publicly disclosed, further increasing the complexity of reporting. This new data set, collected for the first time in 2018, was reported to the government on March 1, 2019.

⁶ 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

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.⁷ 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. Re-identification provides a vehicle for unsolicited targeted marketing, and in some cases can distort access to credit.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 deserve closer scrutiny. CBA applauds Director Kraninger’s decision to revisit the rule in May 2019 to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to take all necessary measures to ensure the personal financial data consumers are required to provide to their lenders remains private and protected.

Complaint Database

CBA supports policy that would limit the public dissemination of unsubstantiated information submitted through the CFPB complaint database. There was no language in Dodd-Frank that explicitly called for the Bureau to publicly share complaints. In fact, plain reading of the statute demonstrates that Congress did not intend for it to be made public. Under previous leadership, the Bureau went far beyond its statutory authority to establish the database by publishing the data publicly, adding unverified narratives, and proposing a subjective consumer survey on resolution satisfaction that has no proven benefit.

The purpose of the complaint database was to provide the Bureau with information to allow them to target problem areas, which does not require the database to be made public. Additionally, a public, Government-sponsored, “YELP”-like database where comments are shared publicly has not been shown to be of any value and indeed can do more harm than good.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. This is why our members have robust complaint management procedures outside of the CFPB’s database to ensure they are resolving disputes as quickly as possible. Furthermore, every depository institution is examined regularly by the federal regulatory agencies to ensure a strong and effective complaint management system.

With the CFPB’s database exceeding one million complaints, CBA is strongly concerned about the potential for compromising consumer privacy. In addition, the database erodes consumer privacy by impairing the confidential nature of the exchange between customer and banker.

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

⁷ If a consumer wishes to purchase a home, he/she must provide confidential financial data that in turn must be reported for HMDA purposes and that most of which the CFPB releases to the public.

CBA urges the Bureau to continue its review of consumer complaint data and its publication. We believe this will help ensure consumer privacy and prevent the dissemination of misleading information. Congress too has an important role to ensure future releases of consumer data is safeguarded.

Section 1071 Small Business Rulemaking

CBA strongly supports a cautionary approach to rulemaking under Section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act ("ECOA") to require financial institutions to compile, maintain, and report information concerning credit applications made by women-owned, minority-owned, and small businesses. Under the section, every financial institution must inquire of any business applying for credit whether the business is a small business, or a women- or minority-owned business, maintain a record of the information separate from the application, and report the information along with related information about the application to the CFPB. The information must be made public on request in a manner to be established by regulation, and will be made public annually by the Bureau.

CBA and its member institutions strongly believe that the CFPB should keep top of mind that although Section 1071 mandates this rule, it is not as simple as data collection efforts undertaken on other lending products such as residential mortgages. The notion that business lending parallels residential mortgage lending is misplaced. The use of Home Mortgage Disclosure Act ("HMDA")-like reporting for business lending activity to ferret out potential discrimination is, in our opinion, a tremendously flawed premise because the two types of transactions differ inherently in many key aspects:

- Residential lending all shares the same type of collateral. Business lending may not be secured at all, and when secured, the type of collateral varies tremendously. Therefore, comparing terms between loans is problematic.
- Mortgage loan applicants reported under HMDA are all consumers. Business lending involves loans to all types of applicants, ranging from mom-and-pop businesses to sophisticated corporate structures; from sole-proprietors to corporations.
- Business loans are often renewals rather than new loans. These renewals are not akin to refinances in the residential world.
- Business loans often have much shorter and varied durations, where mortgages tend to be more uniform.
- The appropriate property address for a business loan to use for reporting and analysis can be debated with no easy or right answer.
- Capturing business loan applicants for reporting and analysis can be debated with no easy or right answer given the various ownership and structures.

We believe the CFPB must be keenly aware that the dissimilar nature of business lending when trying to construct this rule presents two-fold challenges:

- 1) Determining which data fields to require collection for, developing standard values to be reported, and proposing workable rules for collecting and reporting the data will be tremendously difficult, if the goal is to have a thoughtful, achievable rule that yields useful data.

- 2) Constructing fair lending analysis approaches that will yield meaningful and appropriate conclusions for business lending is even more challenging.

In light of these issues and the need to streamline the credit process in order to extend credit with greater speed to qualified applicants, CBA and its member institutions cannot stress enough the importance of well-balanced rules under Section 1071 in order to avoid overly burdensome data collection requirements that could stifle small business lending, greatly increase compliance costs for small business lenders, and open the door to costly litigation. Key to this rulemaking will be the ability for lenders to address 1071 reporting compliance with already existing reporting systems (e.g., Community Reinvestment Act, FinCEN Beneficial Ownership Rules, etc.) in order to ensure as little disruption in the market as possible. These systems will need to be automated and accurate. Adherence to systems already in place will allow lenders streamline the collection process.

Cost Benefit Analyses

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

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 provide consumer protections and allow for a robust financial services market.

Regulatory stability and transparency will not be realized until the Bureau's governance structure allows for the debate and deliberation of multiple leaders with diverse experiences and expertise. A bipartisan commission of five, Senate-confirmed commissioners would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress 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,



Richard Hunt
President and CEO
Consumer Bankers Association