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THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMI-ANNUAL REPORT TO CONGRESS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

ON

RECEIVING AND DISCUSSING THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMI-ANNUAL REPORT TO THE COMMITTEE ON RECENT RULEMAKINGS, AND SUPERVISORY AND REGULATORY ACTIVITIES, AS WELL AS FUTURE PLANS

MARCH 10, 2020

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C O N T E N T S

TUESDAY, MARCH 10, 2020

WITNESS

Additional Material Supplied for the Record

THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMI-ANNUAL REPORT TO CONGRESS

TUESDAY, MARCH 10, 2020

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

The Committee met at 10:01 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. This hearing will come to order.

Today we will receive testimony from CFPB Director Kathy Kraninger on the CFPB's semi-annual report.

On February 3, the CFPB issued its fall 2019 semi-annual report, which outlines the CFPB's significant work between April 2019 and September 2019, including rulemakings and supervisory and regulatory activities.

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

Consumer protection is vital for a properly functioning financial market and is best determined by a robust, quantitative analysis.

Under Director Kraninger's leadership, the CFPB has demonstrated a commitment to ensuring that its regulations are data driven, appropriately tailored to satisfy statutory obligations, and based on sound evidence and legal support.

There have been promising changes at the CFPB under Director Kraninger's leadership.

But it remains abundantly clear that the fundamental structure of the CFPB must be reconsidered to make it more transparent and accountable.

Last week, the Supreme Court heard arguments for *Seila Law v. CFPB,* a case that examines the constitutionality of the CFPB's leadership structure.

On March 2, 2020, the Wall Street Journal editorial board referred to *Seila Law v. CFPB* as the "constitutional case of the year" and stated that the question presented by this case "goes to the heart of the separation of powers and whether the administrative state is accountable to the people."

It has long been my position that the CFPB's current single Director structure lacks sufficient accountability, and I look forward to the Supreme Court ruling on this case later this summer.

With that in mind, I continue to advocate for establishing a bipartisan board of directors to oversee the CFPB; subjecting the CFPB to the annual appropriations process, similar to other Federal regulators; and establishing a safety-and-soundness check for the prudential regulators.

The Banking Committee has spent significant time this Congress evaluating the collection, protection, and use of consumer data by Government agencies and private companies.

I have repeatedly voiced concerns about the wide-scale collection of personally identifiable information by the CFPB, especially with respect to credit card and mortgage data.

On February 26, the CFPB hosted a symposium on the access and use of consumer-permissioned financial data to determine if agency action is necessary to promote consumer access to their financial data.

I find it concerning that when consumers choose to share their financial data with a third party, they often unknowingly involve a data aggregator to facilitate the transmission of this data.

The CFPB and Congress should explore ways to ensure that consumer data remains protected when it is shared.

We need a fundamental foundational change to our data privacy laws that applies broadly, across industries, and ensures domestic and international cohesion via preemption and interoperability, respectively.

During this hearing, I look forward to hearing more about key initiatives undertaken by the CFPB in the last year; Director Kraninger's priorities for the CFPB in the upcoming work period; and additional legislative or regulatory opportunities to encourage financial innovation and widen access to financial products and services.

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

Senator Brown.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Welcome, Director Kraninger.

I want to say a few words first about the coronavirus and the toll it is taking on our communities, on our healthcare system, and on our entire economy. Our first concern has to be for Americans' safety. We also cannot ignore the millions of Americans who are losing paychecks and the small businesses that are losing customers. When times get tough, we come together as Americans; we rise to the challenge. I am confident we can do that again, and that means support for everyone who makes this country work, not just Wall Street.

Moments like this are a reminder of why we created the CFPB after the last financial crisis—to make sure hardworking Americans have a voice in the room, especially at times like this.

We know that in times of crisis, Wall Street has armies of lobbyists who will fight to make sure we do what we need to do to stabilize financial markets. But most people do not have lobbyists; most people do not have that kind of power. We have to fight for them, too. The CFPB is their voice.

During its first 6 years, the Bureau delivered results. The CFPB made new, strong rules that protected consumers from abusive practices. It sent Bureau employees into banks and other corporations to make sure they were following the law. It returned more than $12 billion to 29 million Americans. Think of that: $12 billion to 29 million Americans.

Unfortunately, President Trump has tried to turn the Consumer Protection Bureau into another agency that helps his wealthy friends at the expense of the people that the agency is supposed to serve.

Under President Trump's first appointed Director, Mick Mulvaney, the CFPB saw a shift away from protecting servicemembers and rooting out discrimination to doing favors for private corporations at the behest of political hires.

Director Kraninger has continued down the same path—corporate protection instead of consumer protection.

Under her leadership, we see a clear pattern: sabotaging the agency's work to hold corporations accountable.

She sided with companies, including a company the CFPB sued for scamming 9/11 survivors, to argue that the Bureau is unconstitutional in the Supreme Court.

It would be quite a coup for big banks and other corporations if the Supreme Court gutted the agency that is supposed to keep an eye on them.

Director Kraninger has also allowed Education Secretary Betsy DeVos to block the Bureau from protecting the 43 million Americans with Federal student debt.

If you do not think that Director Kraninger's failure to stand up to Secretary DeVos has consequences—and we know of Secretary DeVos' power in the Republican Party and in the Cabinet room and with the President. But if you do not think that Director Kraninger's failure to stand up to Secretary DeVos has consequences, talk to the tens and tens of thousands of teachers and nurses and firefighters and servicemembers who are paying more money in student loans every single month because Betsy DeVos denied them the loan forgiveness that they earned.

Like other Trump appointees, Director Kraninger has dutifully carried out the Administration's assault on civil rights protections:

She weakened rules that identify discriminatory lending.

She dismantled the CFPB office that used to ferret out discriminatory lending practices.

And she left Eric Blankenstein, a Mulvaney-era political appointee with a history of racist and sexist writings, she left Eric Blankenstein in charge of enforcing civil rights laws.

And look at the result: Under Mulvaney and Kraninger, the Consumer Protection Bureau has not brought a single case of illegal discrimination. Not one.

They have not returned a single dollar to victims of discrimination.

Last October we learned that, in exchange for contributions to the Trump campaign, payday lenders were bragging about being able to "pick up the phone and get the President's attention" to fend off regulation. They were bragging about their access to the President because of that.

Director Kraninger has given them exactly what they paid for:

She gutted rules that would protect borrowers from predatory payday loans that trap them in cycles of debt.

She hasn't filed any new lawsuits against payday lenders.

She even let a payday lender keep $1.3 million it had volunteered to pay back to consumers it had ripped off.

And it is not just payday lenders. Director Kraninger has gone out of her way to let debt collectors and other corporations keep the money they scammed from consumers.

Just last week we learned that, as he was on his way out the door, Eric Blankenstein promised the CEO of Wells Fargo that he would hide the bank's bad conduct and let them off without a fine.

Let us be clear about what is happening here in this Trump-Mulvaney-Kraninger America, in this Trump-Mulvaney-Kraninger world: A CEO asks for a special favor, and he gets it. Never mind the cost to everyone else.

If a worker gets laid off in Ohio or her car breaks down, she cannot afford to pay her credit card bill that month, Wells Fargo is still going to charge them interest. They cannot call in any special favors to let them off the hook.

But we have seen over and over again that in President Trump's Washington, Wall Street plays by different rules.

Director Kraninger continues to surround herself with appointees with a history of bigotry and hostility to consumers.

She retained Paul Watkins, a Mulvaney appointee, who worked as senior legal counsel for a hate group—for a hate group—that wants to criminalize LGBTQ people.

She recently hired Leonard Chanin to serve as her number two. This is someone who failed at protecting consumers at the Fed in the years leading up to the financial crisis.

More recently, Mr. Chanin worked at a bank—I believe he was an Ohioan at that point—worked at the bank that the Bureau just sued for the same type of fake account fraud that we saw at Wells Fargo.

What we see from Director Kraninger is the same thing we see across the Administration: protect corporations from accountability at all costs.

It comes back to one question, Ms. Kraninger: Whose side are you on?

Wall Street megabanks, payday lenders, and other corporations all have allies looking out for them in the White House and down the hall in Mitch McConnell's office.

The CFPB is supposed to be an independent advocate on the side of everyone else.

Director Kraninger should return the CFPB to its core mission: Put consumers first. Anything less is a neglect of duty.

Thank you.

Chairman CRAPO. Director Kraninger, we appreciate again your attendance and look forward to our discussions with you today. I want to remind you to honor and remember the 5-minute rule for your oral testimony so that we have time for questions and remind our Senators of the 5-minute rule for the questioning period.

With that, Director, please begin with your statement.

STATEMENT OF KATHLEEN L. KRANINGER, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Ms. KRANINGER. Chairman Crapo, Ranking Member Brown, Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's most recent Semi-Annual Report to Congress.

A year ago, following my listening tour, I established the Bureau's top priority in carrying out our important mission: prevention of harm to consumers. Ultimately, we prevent harm by supporting dynamic and competitive markets that provide for consumer choice. On a day-to-day basis, we prevent harm by educating consumers to protect themselves in the moment, by having clear rules of the road for regulated entities, and by using supervision and enforcement to promote compliance with the law. While prevention is not always possible, it is the right goal, saving consumers from financial headaches, setbacks, and devastation.

Last week, I announced three actions furthering our strategy to prevent consumer harm. I will briefly outline those actions and close with the agency's response to coronavirus.

First, the Bureau will launch an advisory opinion program as another means to provide clear, transparent rules of the road. Today if a regulated entity has a question about how particular regulations apply to particular circumstances or seeks an interpretation of a regulation, that entity cannot ask the Bureau for clarification. In fact, we have a robust guidance mechanism to provide such clarification and do so in a fairly responsive way. However, responses to individual regulatory inquiries are generally available only to the individual requester. Under the advisory opinion program, the Bureau will provide that response to such requests in the Federal Register and on its website so that all companies, consumer groups, and the public generally will benefit from that interpretation.

Second, the Bureau updated its Responsible Business Conduct bulletin to emphasize the importance of such conduct and to strengthen the Bureau's approach for encouraging it. The bulletin identifies four categories of responsible conduct: self-assessing, self-reporting, remediating, and cooperating. If an entity meaningfully engages in these activities, the Bureau will favorably consider it along with other relevant factors in addressing violations of Federal consumer financial law and supervisory and enforcement matters.

Responsible conduct by businesses facilitates timely detection of issues and potential violations of Federal consumer financial laws, increases the effectiveness of the Bureau's supervisory and enforcement work, and ensures more consumers in more matters promptly receive financial redress or other meaningful remedy for the harm they may have experienced. But let me be clear: Responsible conduct by businesses does not preclude the Bureau from bringing an enforcement action or seeking a remedy if it believes such a course is necessary and appropriate.

Finally, we want to incentivize whistleblowers to report unlawful conduct to the Bureau. To that end, last week the Bureau submitted its second legislative proposal to Congress, which seeks to establish a whistleblower award program. The Bureau envisions a program similar to those of other regulators whereby whistleblowers who bring original information forward that prompts the Bureau to launch an investigation which culminates in monetary sanctions through settlement or litigation would receive payment. Such a program would significantly assist our enforcement actions, especially against bad actors who are not engaged in responsible business conduct, and especially as it relates to fair lending violations. I urge your consideration of this proposal and stand ready to assist in the legislative process.

In short, these three steps will advance the Bureau's efforts to promote a fair, competitive, and transparent consumer financial marketplace and prevent consumer harm and help build a culture of compliance across the industries we regulate.

Let me provide a few words on the Bureau's preparedness and response efforts related to coronavirus.

First and foremost, we are focused on the health and safety of our employees and our ability to perform our important mission. In order to make the best decisions possible in a timely manner, we have established several mechanisms to ensure that we have the best possible information from public health and emergency management officials and from our staff. Our internal working group is led by my Director of Security and Emergency Management, who reports through the Chief Operating Officer to me. It is compromised of representatives from every division in the Bureau in coordination with the NTEU, with a two-way information flow of questions and answers coming in and responses going out. My Director of Security is also our conduit in routine calls with fellow independent regulators, so we are able to align with our peers accordingly.

We are also in communication with Treasury, which serves as our touch point for coordination with the Vice President's taskforce, OPM, CDC, and FEMA to coordinate our operations.

Collectively, the financial regulators are in routine contact with the institutions we regulate and have been ensuring prompt response to their inquiries as well. This is a fluid situation that requires clear lines of communication and constant assessment to determine appropriate actions based on up-to-the-minute information. In this changing dynamic, we are working to ensure the health and safety of our workforce while continuing to protect consumers in the marketplace.

Thank you for your time today, and I look forward to your questions.

Chairman Crapo. Thank you.

My first question is on the coronavirus, and yesterday, as you indicated, the CFPB, the CSBS, FDIC, the Federal Reserve, the NCUA, and the OCC issued a jointly developed statement that mirrors the guidance that is generally issued after natural disasters. The statement calls on financial institutions to work with affected borrowers and notes that prudent efforts will not be subject to examiner criticism so long as they are consistent with safe and sound lending practices. The agencies are also offering operational support in affected communities and will be flexible in scheduling examinations and inspections.

I know you have already discussed this, but I just want to say this joint statement was appropriate and to ask you to be sure you keep the Committee updated on these efforts.

Ms. KRANINGER. I am happy to do so, Mr. Chairman. Thank you.

Chairman CRAPO. Thank you.

Last September, you informed Congress that the CFPB would no longer defend the constitutionality of its structure and directed the CFPB to join a Department of Justice petition requesting the Supreme Court to review the Ninth Circuit Court of Appeals ruling in *Seila v. CFPB* that upheld the constitutionality of the Bureau. Now, the Supreme Court, as you know, accepted the position and last week held oral arguments on the case.

Could you please explain your position and how you view the CFPB's structure in the context of our constitutional system?

Ms. KRANINGER. Yes, Mr. Chairman. After heavy consideration of the cases that were pending with the CFPB, the history of those cases, the position of the Department of Justice, the rulings by courts at many levels, I came to the position that the Department of Justice recommended, recognizing that the directorship and the removal clause only for neglect of duty, malfeasance, and inefficiency was a limitation on the President's powers under the Constitution. And the overriding concern that I am looking to remedy and why I was incredibly encouraged by the Supreme Court accepting the Seila Law case is to get certainty and clarity. Only the Supreme Court and Congress can provide that certainty. The oral arguments were heard last week, as you mentioned. I was there, as were many others, and we are paying very close attention to this.

It has thwarted many of our enforcement actions in the history of the Bureau. It is an issue that is raised regularly in litigation, and it is one that that clarity will provide great help to the important delivery of our mission going forward.

Chairman CRAPO. Well, thank you. I agree with your position, and we look forward to a clear resolution of this issue by the Supreme Court.

Last year, the CFPB issued a proposal to amend its 2017 small-dollar lending rule by rescinding the mandatory underwriting provisions. The proposal stated that the CFPB made the determination there is a lack of evidence and legal support for the provisions. In a recent speech, you indicated that the CFPB intends to issue a final rule on this proposal no later than April of this year.

Could you please discuss why the CFPB determined it was necessary to update the 2017 small-dollar lending final rule and how the revised proposal would improve consumer outcomes and access to credit?

Ms. KRANINGER. As you noted, Mr. Chairman. the rationale of the proposed rule is around the rigor of the underlying evidence in that particular rulemaking, and so it is something that we are considering carefully. We have received 190,000 comments in response to that proposal to rescind the underwriting provisions, and we are working through those comments and our final position to issue a rulemaking or at least some decision with respect to that rulemaking in April.

I think there are a number of issues that you raised, too, that are related to this that we can do. It is evident that there is continued demand for small-dollar short-term products in the marketplace. This is something that consumers have indicated they need. There are steps that the prudential regulators can take to make sure that institutions understand that they cannot offer such products and responsible products to consumers who need them.

And the other thing that we are looking at very carefully is research into disclosures. There are consumer protection actions that we could take potentially short of the rulemaking that the CFPB originally offered. So I think that is something that we are very much looking at, a holistic approach to this. Making sure that consumers understand the products that they are engaging with in the marketplace is a priority.

Chairman CRAPO. Well, thank you very much. My time is up. I did have another question on consumer data protection, but let me just say I appreciate the approach you are taking to try to assure greater protection of consumer data.

With that, Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Director Kraninger, yesterday I spoke at some length with Treasury Secretary Mnuchin. In addition to telling me—incredulously, I thought—that there is nothing we could have done to prepare for the financial turmoil we have seen in the last couple days, he said he has no plans to meet immediately, to convene FSOC immediately in the midst of the financial and the public health crisis that our country and our financial institutions and our customers and employees face.

Director Kraninger, you serve on the Board of FSOC—I am sorry—on the Board of FDIC and on the Board of FSOC. Is that right?

Ms. KRANINGER. Yes.

Senator BROWN. FSOC has not met since November. The statutes says they should meet quarterly. As I said, the President does not plan on calling for a meeting in the immediate future. Do you think that is a good idea?

Ms. KRANINGER. Senator, I believe there is actually a meeting scheduled later in March already. And, in addition, there is extensive communication amongst the FSOC members and through the interagency process.

Senator BROWN. I hear that, and that is what he said, too. But he has nothing to—considering what is happening in the financial markets, considering what is happening in public health around the country, and considering the law says quarterly, you wonder what they are doing. Would you stand up now and demand that Secretary Mnuchin call a meeting immediately of the Council and explain publicly what this Administration's plan is to make sure regular Americans do not end up paying the price? Would you speak out on that today?

Ms. KRANINGER. Senator, we have one scheduled, and I believe, too, there are conversations even happening today with the Senate and the House leadership on economic responses to——

Senator BROWN. None of the conversations are public. The FSOC, the purpose of FSOC was to preempt and—to predict, to preempt, to understand, to put plans together so things were not happening with such chaos as they are now in the financial markets, and also the statute says that these meetings would be public. And you can talk about discussions, and you can talk about meetings of deputies, but the principals have not done what they should be doing.

Let me shift to something else. Last year, I raised concerns about Eric Blankenstein, the person you put in charge of enforcing fair lending laws. I was critical of him because of his history of racist statements. Last week, we found out that Blankenstein also promised Wells Fargo's CEO that the Bureau would settle any unresolved matters in private—there we go back to private, not public—without fines. Blankenstein knew his time at the CFPB was coming to an end, and he promised that another one of your political appointees would take care of Wells Fargo.

Did you know he promised the CEO of Wells Fargo that the Bureau would settle any matter in private without fines?

Ms. KRANINGER. Senator, I can tell you with respect to the ongoing oversight of Wells Fargo, the buck stops with me, and I can also tell you——

Senator BROWN. Did you know that——

Ms. KRANINGER.——that that is an alleged statement that is complete hearsay in a staff report that the Committee has not even actually voted on or in any way pushed forward.

Senator BROWN. You have a reputation of being a little easy on Wells Fargo and perhaps on Eric Blankenstein, too. Has the Bureau brought any public enforcement action against Wells Fargo since last May?

Ms. KRANINGER. We have ongoing oversight of them, the ongoing consent orders. We also have, as the Committee knows, tolling agreements with respect to other areas that we continue to work with them on.

Senator BROWN. The answer is no. The answer is you have not brought an action against Wells Fargo.

Ms. KRANINGER. Well, we levied a $1 billion fine on them, which is the largest fine in the agency's history.

Senator BROWN. Which did not seem to affect much of their behavior.

Just yesterday, CFPB sued Fifth Third Bank for the same type of fake account scandal as at Wells Fargo. FDIC Chair Jelena McWilliams would have known about the fake accounts. She was legal officer at Fifth Third for a couple-year period. Leonard Chanin was also her deputy at Fifth Third before he became deputy at the FDIC. He would have known about the Bureau's fake account investigation of Fifth Third. Even with this background, you recently named Mr. Chanin to serve as Deputy Director. Did you know about his role in the fake account scandal at Fifth Third when you hired him?

Ms. KRANINGER. I can assure you that Mr. Chanin is a longstanding public servant who served at the Fed, who was the head of regulations at the CFPB when it was established——

Senator BROWN. Is the answer yes? It is a pretty easy question. Did you know about—you brought the action, you as head of the CFPB brought the action.

Ms. KRANINGER. Yes.

Senator BROWN. Did you know about his role in that when you hired him?

Ms. KRANINGER. I knew that he worked at Fifth Third, yes.

Senator BROWN. So did you not know about his role or you did know about his role? Your people were investigating Fifth Third at the time, and you hired him. Did you know of his role in this. Of course, you knew he worked there. But did you know of his role in it? Yes or no.

Ms. KRANINGER. Senator, these are all—as you know, it is confidential investigative information with respect to, you know, what—and there is a privacy right here as well. So I am happy to follow up with you with any information that we can provide from that ongoing——

Senator BROWN. It is not a—Director Kraninger, it is not a privacy right on whether or not you knew of his involvement in something when you hired him to be your number two. I do not know what to make of the fact that you just do not want to answer that question.

Chairman CRAPO. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Director Kraninger, thank you for your service. Thank you for what you do and your leadership over there. It is a difficult job, a challenging job.

In past hearings before this Committee, we have discussed the importance of utilizing cost-benefit analysis in order for agencies—not just yours but others—to effectively achieve intended policy outcomes. Ultimately consumers—all of us are consumers—bear the costs of regulation. As such, we must ensure that the benefits of any proposed agency action justify the cost, I believe.

How does the CFPB currently utilize cost-benefit analysis? How do you work it? And do you believe such analysis is essential to achieve effective, tailored regulation?

Ms. KRANINGER. I absolutely agree, Senator, that we need to consider cost-benefit, whether that is qualitative in some cases or quantitative to the extent that we can. And we do it pretty rigorously in our rulemaking efforts with a view to improve it.

Senator SHELBY. How important is it and why is it important?

Ms. KRANINGER. Essential, Senator, because, again, we need to understand the impacts of what we are doing and make sure that it will be beneficial to the marketplace and to consumers in that marketplace.

Senator SHELBY. Give us an example of something you could bring forth and explain how you did—a reg that you would evaluate, what it would do for the consumers, what the cost-benefit would be, and all this.

Ms. KRANINGER. It is a legitimate question, Senator, so one of the things that we are moving through is the debt collection Notice of Proposed Rulemaking.

Senator SHELBY. OK.

Ms. KRANINGER. And so, again, understanding that consumers to want to pay their debts and it is good for society for consumers to pay their debts and pay what they owe, but understanding the way that that collection can take place, what the communication mechanisms are, what the limitation is in terms of, frankly, the law requires the limit——

Senator SHELBY. Stay within the laws and the regulations.

Ms. KRANINGER. Absolutely. Absolutely.

Senator SHELBY. So that is very, very important. Under your leadership, I believe that the agency has made significant strides in becoming more efficient and transparent. What accomplishments or improvements to the CFPB are you most proud of? And what areas do you believe that you are challenged and will need to be addressed? I know there are many things that pop up.

Ms. KRANINGER. Yes. Increased transparency and communication has really been a huge focus of mine. It is something that I believe we are trying to do in terms of forecasting, the kinds of issues we are thinking about, seeking public input on it, and the best example I have are some of the most challenging issues we are facing, having public symposiums on those issues and really bringing experts together, live-streaming those symposiums——

Senator SHELBY. Is this kind of like focus groups?

Ms. KRANINGER. Yes, and experts, bringing experts together and making that public.

Senator SHELBY. How does that work? How would you work it? Do you appoint them? Do people appoint them? Or do you look for a strata of society that could be effective here?

Ms. KRANINGER. Yes, we look at, again, who are the experts out in the field. For example, on cost-benefit analysis, we are having a symposium at the end of April on that topic, really bring people in to look at the way we do this, the way other agencies do it, to see what we can incorporate into our processes and what we can learn from others in that area.

Senator SHELBY. Thank you for the job you are doing.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. I want to thank you and the Ranking Member for having this hearing. I want to thank you for being here, Director Kraninger.

In your opinion, are we in an economic emergency at this moment in time?

Ms. KRANINGER. Senator, we are certainly responding to a public health emergency.

Senator TESTER. I got you. Economically, though, do you classify this as being an emergency or just a downturn in the market?

Ms. KRANINGER. We are certainly watching the response and taking calibrated action——

Senator TESTER. I got you.

Ms. KRANINGER.——and I take my lead——

Senator TESTER. I got you.

Ms. KRANINGER. I take my lead, Senator, from the Secretary of the Treasury in terms of the way that this is being framed in——

Senator TESTER. I got you, but you do have some stroke in this. Do not downplay your belief as the Director of the CFPB. I mean, do you feel that we are in an economic emergency? No? Yes?

Ms. KRANINGER. We are absolutely looking at how the emergency——

Senator TESTER. OK. So I am going to classify that as a no because you did not say yes. OK? The market has dropped 5,500 points. It is down 11 in the last 13 days. Yesterday we saw the biggest drop since 2008. And you did say there is an FSOC meeting for the end of March that we do not even have a date for yet.

I was here in 2008, and I was very disturbed with the folks at that moment in time, who are all smart people, too, that kind of surprised us. I do not think there is any surprise here. We have got a problem, and let us hope it is not a problem. But why wouldn't it be important for the principals to get together and talk? The deputies have. The principals have not. Is that too much to ask for when you have got people that are put out on a limb?

And, by the way, if Mnuchin is the person who makes the call, then why do we have directors for everything else?

Ms. KRANINGER. So, Senator, there is a scheduled meeting. I do not——

Senator TESTER. But it is not set up. It is not set up. There is not a certain date.

Ms. KRANINGER. There is. I just do not remember off the top of my head what it is.

Senator TESTER. It is not public if there is. I certainly do not know. I just had my staff look, and they could not tell me.

Ms. KRANINGER. Yes.

Senator TESTER. OK. So I appreciate your testimony. You talked about prevention to harm consumers was the first thing that you talked about. And then you talked about regulated entities, if they need information, you have got it, you clarify it, you put it on the website. You talked about responsible business conduct, what that meant, self-assessment, self-reporting. You talked incentives for whistleblowers, which I think is great, although I do not know what whistleblower would ever come forward after they witnessed what the President did to the last one, calling him a "traitor" and basically treated like a traitor.

Have you done anything as far as educating consumers? Because the name of the agency is the "Consumer Financial Protection Bureau." Have you done anything in that regard?

Ms. KRANINGER. Yes, Senator. I am happy to talk further about it.

Senator TESTER. Let us get more specific.

Ms. KRANINGER. OK.

Senator TESTER. Have you done anything as it relates to educating veterans or college students?

Ms. KRANINGER. Yes, both, extensively. We have offices that focus on precisely the needs and concerns of those two populations.

Senator TESTER. So in December, I sent you a letter asking what the CFPB was doing to educate, coordinate, and monitor servicemembers and college kids. In your response, you pointed out to me—and, by the way, folks who use predatory tactics against veterans or college kids, as far as that goes, are the lowest form of life, in my opinion. But in your response, you pointed out to me an education resource from March of 2015. In fact, most of the educational material was from 2014 and 2015. Is that the material you use to educate now? Or do you have newer material?

Ms. KRANINGER. We absolutely have newer and updated material. I thought one——

Senator TESTER. So why wasn't that referenced in the letter?

Ms. KRANINGER. I believe—Senator, I apologize. I do not have it in front of me. I remember the letter, but I do not remember the detail. I thought we did have updated information specifically on the issue you raised, which was information for veterans and their pensions, advancing their pensions.

Senator TESTER. The truth is you do not have to look very far, at least not in my position, to find veterans who have been scammed. We had a veteran in Montana that was homeless that served in our military that was taken to the cleaners.

Can I ask you another question? Somebody just passed you a note. Maybe that helps you with the answer to that question that I just asked you.

Ms. KRANINGER. Yes, it does. It is not a public date, but it is definitely happening in the next 10 days.

Senator TESTER. That is going to be published?

Ms. KRANINGER. When it happens, it will be, yes. The Secretary is to announce, but it is scheduled.

Senator TESTER. OK. So let us just be honest. 2014 and 2015 is quite a while ago; 5, 6 years in the financial business is a lifetime. The number of complaints, I am told, increased from 2015 to 2018 from 19,000 to 33,000. That is a pretty significant increase. Enforcement actions have decreased. Can you explain that?

Ms. KRANINGER. Senator, with respect to complaints, I believe it is the job we keep doing to make the database known and make sure that actually complaints——

Senator TESTER. Yeah, but that is not the problem here. The problem here is the complaints were known, they came in, enforcement actions have decreased. Can you explain that?

Ms. KRANINGER. We continue to take appropriate action on all the complaints that come in.

Senator TESTER. Well, I will tell you that the Chairman talked about data driven in his opening remarks, and I agree, but I am not sure that you are doing things that are driven by data.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Cotton.

Senator COTTON. Thank you, Ms. Kraninger, for appearing before us. I would say I am struck by the contrast between Senator Crapo's line of questioning on the one hand and Senator Brown and Senator Tester's line of questioning on the other hand. And the contrast does not reflect on you. It reflects on us.

Senator Crapo talked about the constitutionality of your office and your Bureau. Senator Brown and Senator Tester are obviously dissatisfied with some of the Bureau's policies. I would say you exercised commendable restraint in the way you responded to them when you really have no reason to be restrained. What can any of us do to you or your Bureau? The answer is nothing. You have got a 5-year term. You are barely a year into that term. You do not come to us for your budget. You go to the Federal Reserve. And you tell the Federal Reserve how much money you want. You do not ask them for it; you tell them.

Senator Brown wanted you to talk about whether the FSOC should have convened, presumably a great tension between you and Secretary Mnuchin, and maybe President Trump would be dissatisfied. Well, guess what? President Trump does not have much say over what you do either. You can only be removed for cause. You may be the single most powerful person in the entire executive branch of the Government because we created your office in that fashion.

If the EPA Director were in front the Environmental Committee, I bet that they would be more deferential because they have to come to this body every year for a budget. Or if the SEC Commissioner were in front of this Committee, he would be deferential, because not only does he have to come every year for a budget, but he also has to come almost every year to get one of his five Commissioners confirmed.

So nobody in Congress, whether they are talking about you or whether we are talking about your predecessor or even the facts or the programs you are doing right now that we do not care for as Republicans, has much recourse because the body was designed in this way, and it is totally antithetical to our founding principles. Men are not angels. If they were, no Government would be necessary. If angels were to govern men, neither elections nor the separation of powers would be necessary to keep them in check. That is James Madison describing the foundational principles of our Constitution. And the CFPB turns all those things on its head.

Again, I commend you for your restraint and the way you responded to Senator Brown and Senator Tester's questions when there is no real reason from an incentive standpoint for you to be restrained.

I would just say that all the complaints that we have about your Bureau, the Democrats have, it does not reflect the fact that the people working in the CFPB are necessarily bad people, but they are people. They are people. They are not angels. Just like we are certainly not angels up here on this dais or no one else is either; and, therefore, they should not be given the kind of unfettered power that this Bureau has been given.

That is why I say, with Senator Crapo, I hope the Supreme Court corrects the errors in the Dodd-Frank law and makes this Bureau more accountable to the American people through its elected representatives. But until then, I want to raise the question about how you are making sure that your people are accountable.

My office has been in touch with yours in the past, as you know, to encourage transparency and feedback around exams. Too often what we hear is that examiners are doing things they should not be doing. They have an attitude they should not have. They treat guidance as law. But these institutions are understandably reluctant to speak up.

Has the Bureau yet created any formal feedback mechanisms outside of the ombudsman channel?

Ms. KRANINGER. Senator, I had hoped that I would have an answer for you on this. We do believe that we should do surveys of institutions after an exam. The ombudsman's office is the one that will run that, just to keep some independence from the Supervision and Enforcement Division that oversees this, just so that institutions feel better about the anonymous nature of the feedback that they will provide. But I want that feedback, and so we should have a process in the next couple months to launch that.

Senator COTTON. Good. I am glad to hear that it will be in the next couple months. It has been 8 years now. I understand that you have only been there for a little over a year. But we need that in place, some simple, confidential post-exam survey that examined institutions can provide feedback, so you understand what is happening on your front lines in some kind of systematic fashion.

I thank you for your effort on that. That is maybe the best next step we can take. Hopefully the Supreme Court, though, will take the step we should have taken long ago in making this Bureau more accountable to the American people through our elected representatives.

I am glad you are there to hold your examiners to account. But as Madison also said, "Enlightened statesmen will not always be at the helm." And, again, we certainly know that that is the case. Both Democrats and Republicans alike know that is the case. So let us do what we should have done and make the Bureau more accountable.

Chairman CRAPO. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Director, the Federal Reserve estimates that 40 percent of Americans cannot afford a $400 emergency expense. That leaves over 130 million Americans vulnerable to predatory financial practices in the event that a case of coronavirus leads to a loss of income or an unexpected medical bill. And, furthermore, financial hardship brought on by coronavirus could affect a person's credit report and impact their ability to access credit in the future.

In 2018, the CFPB performed research and issued educational material on the financial aspects of preparing and recovering from a natural disaster. What we are facing now may be a public health emergency that is more geographically dispersed but just as financially dangerous for American families.

Early last month, the SEC and FTC issued warnings to Americans about coronavirus investment in product scams. But even though yesterday the CFPB and other regulators encouraged financial institutions to meet the needs of customers affected by the virus, the CFPB's website still does not have any advice for Americans on how to financially prepare or avoid scams and fraud that may come as a result of the coronavirus spread.

So I am asking you a very simple question: Director, will you commit to immediately develop and publish such advice so that Americans whose health and lives are disrupted by the virus are not also exploited by scam artists and fraudsters?

Ms. KRANINGER. Senator, I appreciate the question you are asking. I will look to update the things that we do have that generally help consumers and make sure that we reference coronavirus appropriately. It is an excellent point, so thank you.

Senator MENENDEZ. All right. So I hope you will not only take that to heart but take it into action, because while general scams and frauds and advice on that may be worthwhile, the specific elements of fraud that we are beginning to see already and scams we are beginning to see already as a result of this I think merit the Bureau's attention.

Now, I would like to follow up on an important issue raised by Ranking Member Brown. Can you commit to the Committee that any unresolved matters still pending with Wells Fargo will be handled in public?

Ms. KRANINGER. Senator, we have a current understanding with Wells Fargo with respect to this going through a lot of requirements that we will remain in the supervisory tool, if we can. And that merits cooperation and progress with respect to their compliance plans and actually providing the remediation and taking the right actions that were placed there——

Senator MENENDEZ. So you cannot make that commitment, is what you are telling me?

Ms. KRANINGER. I can say that we will continue to pursue our own responsibilities, and we are watching this incredibly closely.

Senator MENENDEZ. Well, the responsibilities, Mr. Blankenstein assured Wells Fargo that matters pending would be resolved in private—in private—through the Office of Supervision. So if we cannot have these actions speak in public, it seems that the CFPB does intend to keep Mr. Blankenstein's promise to Wells Fargo after all, because doing this in public would, in fact, be preferable obviously to secrecy. It may not lessen the gravity of Mr. Blankenstein's actions under your leadership, but to suggest that I am going to take care of you politically through supervision, that does not create any sense of confidence for consumers, especially those who have banked at Wells Fargo and have a long history—Wells Fargo has a long history of perversing the interests of those consumers.

I would just say to you that, you know, we need assurances that you can provide the Committee that the CFPB's political appointees are not promising these companies that they will handle any violations of law it uncovers at these companies in private. You know, public scrutiny is far better. And if you are saying we will do it in private without public scrutiny and potentially without fines, that is a problem. That is a problem.

Has the CFPB at this point in time resumed supervisory examinations and oversight of companies that service the $1.2 trillion of loans owned by the Federal Government?

Ms. KRANINGER. Senator, yes, we have an agreement with the Department of Education and are moving forward with a joint exam, in fact, this month.

Senator MENENDEZ. So you are doing supervisory examinations?

Ms. KRANINGER. Yes, Senator, starting this month.

Senator MENENDEZ. And when you say you are—let me just understand. You said a joint effort here. It is your responsibility to do these supervisory examinations. So is the CFPB—I want to make sure I have got this for the record straight so we do not end up having a different consequence. Is it the CFPB who is doing the supervisory examination of these loans?

Ms. KRANINGER. Yes, with respect to consumer financial laws, and the Department of Education has the contract oversight of their contractors.

Senator MENENDEZ. Well, I will close just simply by saying, as you know, I have raised this with you several times that you have been here. We need to make sure that you use the full scope of your authority, including if you are not getting the direct access to audits going to court as your predecessor did, to ensure that student borrowers are protected. So I will look forward to following up with you on this issue.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

I listened with interest to Senator Cotton's message today, and I had been thinking prior to his discussion with you that I feel the same way that Senator Cotton had expressed. I think he did a very nice job of sharing the concern that we have about the leadership structure within your organization. And I think today's discussion, particularly that of our Ranking Member and several other Members and their dissatisfaction that they have expressed, and the fact that it lends credibility to the argument that there should be direct oversight by Congress of your organization.

I also recognize that you have clearly laid out before the Supreme Court your position that the existing structure is not appropriate. Would you agree with me on that analysis?

Ms. KRANINGER. Yes, Senator. With respect to the removal provision, certainly yes.

Senator ROUNDS. Thank you. I think today's hearing has gone a long ways in pointing out the reason why many of us feel that way. At the same time, I most certainly appreciate your being here before us today.

You may remember that late last year I joined a number of my colleagues in sending a letter to you regarding reforms to the definition of qualified mortgage (QM) under the CFPB's ability-to-repay rule. In your response, you mentioned that the Bureau is considering a revision that was move away from the DTI, or debt-to-income, and include an alternative such as a pricing threshold.

My question is: Since your response, have you come to a more defined position about how the Bureau will proceed? And are there any misconceptions about your approach that you would like to take the opportunity to correct?

Ms. KRANINGER. Thank you for that question, Senator. I would say that the timeline for the Notice of Proposed Rulemaking that I issued publicly is May, so we will have a full rulemaking there outlining the details of the proposal.

The statute absolutely requires consideration of debt-to-income ratio as part of the underwriting decision and ability-to-repay decision that an institution formulates in the loan process.

So what we are moving away from or going to propose to move away from is the DTI 43 percent threshold that was established as what makes a QM, what provides safe harbor. So that is the issue that is, I think, a little bit misunderstood. Debt-to-income ratio still is part of the consideration, but we will not have at least in this proposal—we will see what comments come in. We will not have a hard limit on 43 percent.

Senator ROUNDS. Thank you. You may be aware that previously I have cosponsored legislation called the "Business of Insurance Regulatory Reform Act" that would affirm or reaffirm the CFPB's relationship with respect to the insurance industry. Does the CFPB in your opinion have the legal authority to regulate insurance?

Ms. KRANINGER. Definitely not. The Dodd-Frank Act provides that the States continue to regulate State-regulated insurance.

Senator ROUNDS. Thank you. I think Senator Tester was looking for the opportunity or providing you with an opportunity to respond to the concerns that many people have expressed about what is going on right now with the coronavirus, the impact that it has had on our economy and so forth. The question, as I believe he phrased it, was: Is this an emergency? I would like to give you an opportunity to respond with regard to perhaps the way that you see the response from your department back to the ongoing issues before the economy right, recognizing the market has fallen, there are issues with regard to supply chain competencies or capabilities in the future.

Can you give us in your words the direction that you see your organization participating or responding with regard to the current financial situations in this country and throughout the world?

Ms. KRANINGER. Thank you, Senator. It clearly is a public health emergency that has significant economic impact. It is something that the Administration is, again, looking at day to day, that, frankly, your security and emergency management staff are looking at day to day here at the Capitol and on the Hill. So it is something every organization needs to have, having a business continuity plan, which is a regular part of business these days. And, in fact, the Bureau has a pandemic plan. We have reminded institutions we regulate that they should have pandemic plans. So there is, again, an ongoing business continuity concern.

There is a mission concern in terms of how this is affecting consumers and making sure that we are getting the best possible information out, and certainly my own staff as part of that business continuity effort, to make sure that we are safe and healthy as we look to continue to perform the mission.

So it is a constant balance. It is something that every organization is looking at and should be looking at and involves up-to-date information, so there is a lot of information sharing happening at the interagency level, and guidance is being regularly updated as to what appropriate responses are, what responses people are taking.

I have taken action with respect to larger events at the CFPB. We have several things that were scheduled for this week. We have now said the public can join via live stream rather than coming to the building. So that is something that we are working through and thinking about again as we go forward every day.

Senator ROUNDS. My time has expired. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

Director Kraninger, it is great to see you. I will start with what my colleagues have said, and particularly Senator Cotton called you maybe the most powerful person in the executive branch. I think you do have power. I was disappointed, gravely disappointed, by your last response. I think this will be an economic crisis. I am gravely concerned that some of the solution sets that we are talking about right now, the general tools, interest rate cuts, broad-based stimulus, X amount of money for every family in America, targeted tax cuts by industries, or the more recent suggestions of a payroll tax cut miss the mark. A payroll tax cut is going to do nothing if you have been furloughed. It is going to do nothing if you are a waiter or waitress at a restaurant that is shut down.

I think we desperately need to look at those affected by the health restrictions, quarantine and otherwise. People should not be losing their jobs, should not be losing their pay, should have flexibility if their kids' school is shut down.

I think we should be looking at those industries especially around travel, hospitality, food and beverage that, through no fault of their own, people are not out because they are taking the healthcare recommendations, will be put in dire straits. My hope would be we can find some common ground on this on a bipartisan basis and make sure that we target our relief.

But as a very powerful person, as indicated by our colleagues, you have a remarkable ability to influence how this economic crisis will affect consumers. As you know, a number of members sent you a letter recently—just yesterday, I believe—to take action. I think there is precedent again here. In the case of natural disasters, we have seen the circumstance where the short-term financial hardships on a family or a small business will last well beyond the effects of the national disaster, affect credit card scores, affect the ability to maintain credit if you are a small business.

My feeling is we are going to see that. We are going to see that soon. We are already seeing it in an area that I have looked at for a long time and have been urging colleagues on both sides of the aisle to look at—independent contractors, gig workers—who have no social insurance to fall back on. So we are seeing the lack of that social insurance, any kind of paid leave. I am actually happy to see some platform companies, even the old bad boy of the industry, Uber doing a little bit in terms of talking about some benefits or potentially some shared healthcare activity for workers that may be constrained due to the coronavirus.

But I do think there is going to be more. Every one of these workers in terms of what will be immediately needed from their employer is one set-up, but they are also going to have financial obligations to deal with. They have got student loans due. They have got car payments to make. They have got mortgage and rent payments to make.

So I want to hear what specific steps you will take in the immediate coming days. For example, have you gone to the auto lenders or credit card lenders yet and talked about forbearance as these kind of notes come due?

Ms. KRANINGER. Senator, we did issue yesterday—in fact, I think your letter crossed our action with respect to notifying financial institutions that they are going to have supervisory flexibility for any accommodation decisions they make. You referenced disasters. This is, again, the typical step that we take that is similar to a disaster context or a national disaster context.

With respect to going forward, we are looking day to day, and there are conversations even happening on the Hill today——

Senator WARNER. Respectfully, I do not think your response—and I know this is a quick turnaround—had any level of detail to it, it seemed to me. And, again, if you are the most powerful person in the executive branch, you ought to take that power and use it now. I would like to see specifically what kind of guidance you are giving or urging auto and credit card lenders to give.

You mentioned disasters, so let us talk for a moment about that. When you have disasters, credit card guidance, particularly in terms of credit reporting relief, can be granted so that a credit reporting enterprise can identify with what is called "trade lines" that they were affected by a natural disaster that would give the credit bureaus some ability to note that the person's credit may have slipped a little bit, but that it was affected by that natural disaster. So have you been willing to reach out to the rating agencies, the credit card reporting agencies, to use these trade lines? And if not, why not?

Ms. KRANINGER. Senator, we are monitoring this day to day. We are in communication with industry and going back and forth on this, and I definitely will take your recommendation under advisement going forward and how we should deal with this.

Senator WARNER. Mr. Chairman, I know my time has expired, but if we do not jointly get ahead of this, this is not going to be an event that ends on a single day. And I think the American people are looking for bipartisan creative action. This is not going to be business as usual, and the traditional tools that we have used will not be effective this time. We need to target these, and you have a remarkable amount of power to urge that kind of forbearance from the lender community, from the credit rating agencies. And for those of us who have questioned your commitment to these issues with this enormous power, I hope you will prove us wrong and act forthright.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Cramer.

Senator CRAMER. Thank you, Mr. Chairman. Thank you, Director, for being here.

I want to explore a little bit something that Senator Tester started on, and at least he referenced it. I have never been a financial regulator, but I have been a regulator, and the use of self-reporting can be a wonderful tool. It can be a wonderful incentive for companies to self-report. Or it can be quite a disincentive, depending on how the agency responds to that.

I would be interested in how it is going for you under your leadership, you know, now after a year, what is your sense of it, and maybe just even a little bit of how it has gone and your philosophy with regard to self-reporting. And what is the right level of response, I guess, from the agency? I realize that is a broad question, and maybe it has a broad answer, but I would be interested. And then I might explore just a little deeper on a follow-up.

Ms. KRANINGER. Understood. Thank you, Senator.

Last Friday, I reissued and really strengthened our Responsible Business Conduct bulletin, so it is something that outlines for institutions what this means, what it means to self-identify and report, assess—I should say self-assess and self-report, and then remediate and cooperate. And it is fundamental, frankly, to our ability to target out resources. There are absolutely predatory lenders out there. There are bad actors who have no intent of complying with the law, some who are even ignorant of the law. And we have a broad mandate with respect to both, you know, financial institutions, nonbank entities. So making sure that we are focused on where we need to be focused on, we need those who are truly engaged, who have compliance management systems, who have a glitch or make a mistake or have a bad actor inside the institution, when they identify that and they report that to us, we are saying we will favorably consider that in our actions and supervision and enforcement around that, and true cooperation, even just identifying an issue, it may not be a violation. The institution does not have to concede it is a violation. It is really letting us know about the issue, having the dialogue, bringing that forward in a constructive way so that any harmed consumers can be helped and that this can be addressed quickly.

So that is the kind of behavior we are trying to encourage. My examination force is a very dedicated team of people. We are adding to those ranks, too, and so making sure that they understand that and they are conveying that to institutions, it is an ongoing training effort. But I have heard very positive things from institutions as I interact with them and go around and talk to them about this.

Senator CRAMER. Well, what sort of prompted me to ask the question that way was that Senator Tester and you had an interesting dialogue with relation to enforcement action versus complaints. And he was drawing, I think, a distinction or at least thought there should be a correlation where the more complaints there are, the more enforcement action there ought to be. And if we played "gotcha" regulation with every complaint, guess what? You do not get a lot of—you might not get a lot of complaints, at least from within an organization.

So I would be interested maybe in just a little bit to wrap up your thoughts or your philosophy about the role of a regulator with regard to enforcement action versus helping the lenders be compliant. And I know sometimes it can be a tricky line, but how you treat, for example, self-reporting will mean more than the training in terms of whether you continue to have that type of cooperation.

Ms. KRANINGER. Absolutely, Senator, I agree. And the way I have outlined our mission is really a continuum. It does start with consumers, and we do need to educate them so they know when they are engaging in the marketplace what they should expect. It is getting clear rules in place and guidance mechanisms for institutions that are trying to comply, the ability to have back-and-forth on their questions and interpretation issues. That is also engaged in through the supervisory process. So what does compliance mean? How do we get the right rigorous systems in place? And then enforcement, it is a blunt tool but a very important one, and we need to use it effectively to make sure we are incentivizing the right behavior in the marketplace and going after those who are bad actors in the system. That hurts everyone in a competitive marketplace.

Senator CRAMER. That was very well said, and I commend you on it, considering that we are having this interesting debate on the creation of a completely unaccountable, blank-check, self-funded regulatory agency. It is nice to see somebody exercising that type of balance in that role until such time as it can be changed.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Director, thank you for being here.

Let me follow up on the conversation and let us talk a little bit about payday lenders. Do you think there is any payday lender companies or agencies that are predatory?

Ms. KRANINGER. I would say there are entities in every single market that are probably operating in that kind of fashion.

Senator CORTEZ MASTO. So let us talk about payday lenders. If you identify one that is predatory, what action would you take?

Ms. KRANINGER. So we do have enforcement tools, and, in fact, we do have ongoing investigations in most corners of our market, including in that space.

Senator CORTEZ MASTO. Sure, so let me ask you, what enforcement would you take? Would you take action against a predatory lender? And what would you specifically do?

Ms. KRANINGER. So, Senator, we have had this conversation back and forth. Every case really is fact-specific and circumstance-specific. We look at the law. We look at the potential violations. We look at the evidence that we have been able to build, and first priority is really remediation of consumers who may have been harmed. That does take different forms in different cases, and we have the full panoply from injunctive relief to the consumer penalty—sorry, the civil penalty that we can assess and remediation for consumers.

Senator CORTEZ MASTO. So let me ask you this, because there has been this line of questioning, and I agree with it. I think many of us are worried that predatory online lenders will step up their efforts to target vulnerable and financially vulnerable struggling families with expensive loans during this coronavirus crisis. And critics of your decision to weaken the Consumer Bureau's 2017 small-dollar lending rule say that lenders no longer have to verify a borrower's income, debt, and spending habits to assess their borrowing threshold before underwriting their loan. Do you agree with that?

Ms. KRANINGER. Senator, the rule that is in question stipulated very specific means by which that underwriting would be conducted. That rule never went into effect also because it is actually pending litigation as well. So what currently happens——

Senator CORTEZ MASTO. Do you intend to put it into effect if successfully through the litigation the ability to pay is found legitimate by the court? And you are putting——

Ms. KRANINGER. We are assessing all of the comments that we have received back on the proposal to rescind the——

Senator CORTEZ MASTO. No, I appreciate that. But at some point in time, you have got to make a decision.

Ms. KRANINGER. Yes.

Senator CORTEZ MASTO. And so my question to you is: If the lawsuit goes in favor of keeping that rule and the ability to repay, would the CFPB still continue that as well, or would you look to change the rule?

Ms. KRANINGER. All of this is a pending decision before me. I am not trying to avoid the question directly. In April, we will have some more information about all of this as we look at all the comments we have received.

Senator CORTEZ MASTO. So you are still waiting to go through the comments to determine whether the ability to repay should be a variable that predatory—or lenders look at in general?

Ms. KRANINGER. Not waiting. Ongoing. And that decision then will be——

Senator CORTEZ MASTO. So you have not made a decision one way or the other?

Ms. KRANINGER. Correct.

Senator CORTEZ MASTO. OK. Let me ask you this: You sit as a member of the FDIC in your current position. Is that correct?

Ms. KRANINGER. Yes, it is.

Senator CORTEZ MASTO. So is this true, that as an FDIC Board member, you voted in November 2019 for a proposed rule that would eviscerate State laws' caps on the interest rates on loans and allow unregulated predatory payday lending across the Nation? Is that true?

Ms. KRANINGER. Senator, I certainly would not characterize it that way.

Senator CORTEZ MASTO. So please characterize it how you would. What was your vote to allow the removal of those caps?

Ms. KRANINGER. It is about the valid-when-made rule in terms of the way this is characterized, you know, I think factually, such that when a loan is made, it is valid. If that loan is then sold or otherwise transitioned, the terms of that loan would carry forward.

Senator CORTEZ MASTO. OK. So the State laws do not have any effect at that point in time based on what your analysis of——

Ms. KRANINGER. That is—again, there are limited circumstances, and there are other cases where that would be the case. This gets more complicated, but in its simplest terms, yes.

Senator CORTEZ MASTO. So there has been a lot of talk about lack of enforcement. You probably have had this conversation as well. I understand that the Consumer Financial Protection Bureau has not examined Federal student loan servicers for compliance with the law for more than 2 years. Is that correct?

Ms. KRANINGER. I think we are—yes, we are probably at 2 years on that point, but I can tell you——

Senator CORTEZ MASTO. Let me just ask further, because I understand that Betsy DeVos, the Secretary of the Department of Education, has refused to allow Federal student loan servicers to provide the Bureau with access to borrower information. Is that correct?

Ms. KRANINGER. I have sent letters back to Congress on this, so, yes, that is correct. But I did tell Senator Menendez a little earlier that we have an agreement, and we are going to move forward with a joint exam this month with respect to the Federal portfolio of the student loan servicer.

Senator CORTEZ MASTO. Thank you. I have further questions. I will submit those for the records.

Thank you again for being here.

Ms. KRANINGER. Thank you, Senator.

Chairman CRAPO. Thank you.

Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Director Kraninger, thank you for being here. And also, as Senator Rounds said about

Senator Cotton's comments, I want to associate myself with them. I remember telling then-Director Mick Mulvaney I bet his heart rate was about four or five. Many people come before these committees. I am sure that they are more concerned. But the fact of the matter is you just have to come to this Committee and then go back and do whatever you want to do.

Now, I for one think you are doing a good job, but I think there are fundamental problems with having a regulatory entity that is absolutely unchecked by any congressional oversight and action. So thank you for your patience. I am not quite so sure in response to some of the questions and some of the cutoff back and forth that I have seen here that I would have been quite as patient with.

I have a question about the QM patch that is set to expire, Freddie, Fannie. You are very familiar with it. You sent us a letter back in January, and I think in one of the passages you were talking about moving away from the DTI toward a pricing approach as well as a seasoning mechanism. Can you tell me—I know that you are receiving comments right now, but can you give me an idea or expand a little bit more on conceptually what that means?

Ms. KRANINGER. Yes, Senator. So we will issue a proposed rule in May with respect to the first part of that. With respect to the seasoning proposal, looking at something a little bit later than that because we are still working through it.

Of course, all of this starts with the law, and Title 14 of the Dodd-Frank Act outlines what this all means with respect to ability to repay. There are things that a lender must consider, including debt-to-income ratio, in that underwriting decision. But what the Bureau did several years ago when it issued its rulemaking and there were subsequent changes and we assessed this rule 5 years after to understand its impact better, there are comments and concerns that we have gotten with respect to how specific those things were, particularly as it applied to the safe harbor of the QM.

So what we are looking at is what was in that QM in terms of specific underwriting actions and how you determine ability to repay that went beyond the statute, how limiting that was. And then also with respect to the QM, the debt-to-income ratio threshold set at 43 percent, as you know, the patch allowed Fannie and Freddie to set their own rules, and there are many, really hundreds of thousands of borrowers who otherwise would not have a home whose debt-to-income ratio is higher than 43 percent and, in fact, some that were given loans, given the mitigating factors, of more than 50 percent DTI.

So that in and of itself did not seem to be the right QM threshold. It is still very much a back-and-forth in terms of taking comments, as you noted, so there is no final decision. But the proposal we are looking to finalize here and then put out in May will rely instead on a pricing threshold, and so the difference there.

So that is the part that we are very much looking at comments on. What should that pricing threshold be? But DTI still is very much a part of the process.

Senator TILLIS. And at the end of the day, allowing the QM patch to expire and moving to this new mechanism is one that would be basically the rule for anybody underwriting a mortgage? That seems to be the appropriate——

Ms. KRANINGER. Yes, really having an equal playing field.

Senator TILLIS. Is there any rational basis for why you would come back and reconsider the QM patch if you are moving toward this mechanism?

Ms. KRANINGER. No. With respect to the patch, no. I made very clear that that is ending as intended.

Senator TILLIS. Good. Thank you.

I have one question here about balancing access to credit with consumer protections, the balance, I should say. And I was wondering, are you guys engaging with the MBS investor community as it seeks to strike a balance here?

Ms. KRANINGER. With respect to, I am sorry?

Senator TILLIS. I am sorry. Actually, we are talking about balancing access to credit with consumer protections. I know that you are dealing with that. But it seems that the crisis—I am doing a bad job of gluing together my thought, but what I am trying to do is figure out how do you allow access to credit but protecting consumer—having appropriate consumer protections in there. This is basically the discussion we had over here with Senator Cortez Masto. I am worried, on the one hand, if we do not strike a balance, that there is an entire segment of the people that will be underbanked and unbanked.

Ms. KRANINGER. Yes.

Senator TILLIS. And I think if we overreach on some of these things that I know get the headlines and make everybody feel like they are being protectors of the consumers, at the end of the day—I have seen this in North Carolina—there are going to be people who are unbanked, underbanked, or going toward funding mechanisms that are far worse than a well-regulated regimen or execution under your control.

Ms. KRANINGER. Thank you, Senator. You have articulated it well, and it is a balance that we constantly need to look at. And disclosure is, again, a typical means of consumer protection. It is something that we look at as a first action, making sure consumers have the information they need to make the best decision for themselves. That is something we look at regularly.

Senator TILLIS. I just think it is important to—we want to target one segment of lenders as bad actors and eliminating them, and if we do that with a broad brush, without looking at bad actors across the spectrum of the financial services industry, then we run the risk of taking a segment of our population out of any sort of financial network that provides some ability to give them the capital they need. As a kid that grew up on 90-day notes with my dad, I understand if you do not get cash to a certain segment of society, they are either not going to be able to do their job, not be able to pay their bills, or not be able to have the opportunities that I had when we were living on 90-day notes.

Chairman CRAPO. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. Welcome, Director Kraninger. And thank you for the statement you made at the outset about your plans to address whatever needs arise with your own employees with respect to responding to the coronavirus.

Do you have a telework plan that have you put in place?

Ms. KRANINGER. We do have telework policies for literally just about every single employee. We are actually trying to get the last 50 holdouts, get them done so that we have that. It includes situational telework and a weather provision that we can work through to meet the current circumstances as well.

Senator VAN HOLLEN. Good. I am glad you are taking those steps.

I also want to associate myself with Senator Warner's comments about the need to use both your persuasive abilities but also your authorities with respect to forbearance by credit card companies and others with respect to consumers who are now going to see their debts go up and maybe not be able to pay on those debts and credit cards because they are out of work because of the coronavirus.

I did see the statement that was issued. I hope in the coming days you will take even more aggressive action, because that could obviously turn a lot of households upside down. We know that 40 percent of households are literally $400 away from essentially going underwater and are not going to be able to make the payments on car payments, mortgage payments, those kinds of things. So I really hope we will have a comprehensive response there.

Let me turn to student debt. In the next couple days, we may have a vote here with respect to the Administration's overturning of what was the borrower's defense rule, which is designed to protect students who were effectively defrauded by student loan agencies and some mostly private colleges in the process. I hope that this body will have a majority vote to overturn that.

In the meantime, I was glad to hear that finally—it is long overdue—you have entered into this MOU with the Department of Education, and I hope you will keep us posted on what actions you are actually taking. As you know, it has been a source of great frustration to many of us that this has taken so long, that you got rid of the old MOU that had been in place during the previous Administration, finally reinstated this new one. I think you are going to see a lot of Members of this Committee actively watching to see how that is implemented.

Another area of student debt is in the area of credit cards and debit cards. And as you know, years ago Congress passed the CARD Act that essentially prohibited colleges from teaming up with credit card companies and co-marketing credit cards at really usurious rates to students. We limited that. But debit cards were not included, and there was a study done by the CFPB during the previous Administration. It got kind of deep-sixed early in this Administration, but it surfaced through what I believe was a FOIA request. And it pointed out that Wells Fargo, which has been in the news a lot lately, had been charging excessive amounts for debit cards.

So my question is: Are you using your authorities today to address that issue of potentially abusive practices in the debit card space aimed at students on campuses?

Ms. KRANINGER. Senator, I am aware of the report that you are referencing. As you noted, the CARD Act did not address any debit card issues associated with this area. But I can assure you that we absolutely are using our enforcement power to take any action that we deem necessary really in any area of predatory lending. And so I am happy to take any particular circumstances you might be aware of. We take it from every source of information we can. We are continually looking at CARD Act compliance and making sure that that is happening as well. So it is an ongoing effort.

Senator VAN HOLLEN. So you agree that it is within the sort of scope of work and jurisdiction of CFPB to look at these? If there were fraudulent or predatory debit card practices going on on campuses, you agree that that is within your jurisdiction, right?

Ms. KRANINGER. Yes.

Senator VAN HOLLEN. OK. Thank you, Mr. Chairman.

Chairman CRAPO. Senator McSally.

Senator MCSALLY. Thank you, Mr. Chairman.

Director Kraninger, I am a veteran. I served 26 years. I have always said there is a special place in Hell for people who prey upon our military and our veterans. The last time that the Office of Servicemember Affairs at CFPB published an annual report was January of 2019. Can you tell me what major themes and trends you are seeing related to our military and veterans since then? And when can we see the next report?

Ms. KRANINGER. Absolutely, and we are working actually internally to finalize that next report, as you know, outlining the complaints that we have received from servicemembers and some of the outreach activities that we have done, including with the Department of Defense, to make sure we are constantly assessing what information servicemembers are facing and veterans are facing in the marketplace and looking at what actions we can take to help them arm themselves, certainly including any enforcement actions that we should take. So we have ongoing efforts in many of those areas.

In terms of the complaints that we have received, there are some with respect to student loan servicing and understanding different processes, and so in that respect, servicemembers are similar to the student population generally. So there are things we are working through on that front, some things, too, with respect to add-on products in the auto loan context. And that is not going to be highlighted in this current report because we think there has been some clarification on that particular issue that has happened in the last year.

I know there was a third highlight in that last year's report, but I am not recollecting what that is.

Senator MCSALLY. OK.

Ms. KRANINGER. But we very much look at those complaints that come in, highlight the ones that are most prevalent, and what we are doing about them.

Senator MCSALLY. Great. I appreciate that. I want to ensure that there are appropriate financial protections for our veterans and our military families as they are serving. The last thing they need to worry about, especially when they are deployed, is being preyed upon in the financial marketplace, them and their families.

I believe that Congress should very clearly codify into law that the Bureau clearly has supervisory authority over the Military Lending Act, something many Republicans and Democrats agree upon. If we were to pass this legislation, how would that impact your posture specifically for your supervisory authority?

Ms. KRANINGER. Thank you, Senator. It is something that I am seeking. It is the first legislative proposal that I sent to the Congress, explicitly calling for that authority. The Military Lending Act is not one of the enumerated Federal consumer financial laws, and for that reason, given our supervisory authority is different in the statute from our enforcement authority, that is something I have determined we do not have the ability to do, is supervise in that context.

Senator MCSALLY. So if you had that authority, how would that better protect veterans and military?

Ms. KRANINGER. It would really enable us to make that a pointed effort of our exams, and it gets back to my push to prevent harm. That supervisory tool that we have helps institutions comply with the law, understand what compliance means, is a faster ability to engage with an entity than the enforcement tool, which, you know, does take time to bear out an investigation.

Senator MCSALLY. Great. Thanks. And you believe, I assume, that the CFPB is the best agency for MLA supervision and enforcement?

Ms. KRANINGER. Yes, with respect to nonbank entities, because the prudential regulators can do this with respect to banks and credit unions. It is really the nonbank space where that is in question.

Senator MCSALLY. OK. Great. And if you had that authority, that would also allow the Bureau to work with other agencies to promulgate rules and regulations to protect active-duty members and veterans?

Ms. KRANINGER. We have the ability to do rulemaking separate from, so I will say that at least, in some respects. A lot of the Military Lending Act rules come from the Department of Defense, though. But we have other areas where we can certainly declare—address issues of rulemaking as needed.

Senator MCSALLY. OK. Great. Is there any downside, in your view, from us just passing this and making it very clear that you have the authority for that supervisory——

Ms. KRANINGER. That is an interesting question. I certainly do not see a downside to Congress providing clarity, particularly where it is clear that everyone would like us to act, I would like to act, and I do not have the authority today.

Senator MCSALLY. Great, nor do I, and I plan on leading on that legislation in order to give that clear authority so we can protect my fellow servicemen and -women and veterans and give you the authorities you need in order to protect them. Thank you.

Ms. KRANINGER. Thank you.

Senator MCSALLY. Thank you, Mr. Chairman.

Chairman CRAPO. Senator Jones.

Senator JONES. Thank you, Mr. Chairman. Thank you, Director Kraninger, for being here.

I want to return to the payday lending questions that Senator Cortez Masto asked, and you and I have talked about this. It is a huge problem in Alabama where, you know, the average payday borrower in Alabama takes out eight loans a year. And I have got a concern like Senator Tillis does. I do not want to just—I want to make sure that people that need the ability to get cash and access to credit have that. And like him, my dad, and me to some extent, had these 90-day notes. But my guess is—and this is just a hunch, but my guess is neither Senator Tillis' dad or mine had to pay 300 to 400 percent interest on those 90-day notes. And my guess is they also either had to put up some collateral or there was some indication that they would ultimately have the ability to repay that 90-day note, either continuing just to pay interest on it or do whatever.

So I am concerned, frankly, that the updated payday lending rule does not require lenders to determine whether borrowers can pay back a loan. And Senator Cortez Masto asked you that. To me, that just seems like a no-brainer, that looking at the ability to pay a loan is integral to whether or not to give that loan in the first place. There could be other factors, but explain to me why this is even under discussion that that would not be something that every payday lender should be looking at.

Ms. KRANINGER. Senator, I can tell you that the rule stipulated specifically how that underwriting would be done and had an impact on the availability of credit in general to consumers that was dramatic and substantial. And that is——

Senator JONES. In what way—I mean, I am trying to understand, and I have not seen all of it, but I am trying to understand how dramatic and how substantial, because it seems to me if they cannot pay it back, they are going to get caught in this circle of debt. So how do these new rules have a dramatic impact on those folks so that they can ultimately stroke a check and pay this back without having to take out another loan from another lender?

Ms. KRANINGER. So the rule took one tack, Senator, and it really was a complete turning-over of the industry as it operates and reducing—the numbers should be at my head, but we are talking roughly 70 percent of the availability out there with respect to branches. That was the CFPB's assessment of the impact on the reduction in access to small-dollar loans.

I would say, too, several years ago the prudential regulators issued guidance that was taken to heart by banks that they should not provide small-dollar products. And so that is in my estimation another part of the problem because we want responsible institutions to provide the kind of credit that consumers are seeking.

There is a product that credit unions can offer under the NCUA's rules, and it is called "PAL." I forget what it stands for, but they have been looking to update that, too. And so what I would like to see is encouraging competition with responsible products by responsible service providers, to look at the opportunity potentially for disclosures in this space, because the bottom line is making sure that consumers understand and are informed about what products they are actually seeking in the marketplace to meet their own needs, and enforcement. It is our backstop. Predatory lending is absolutely not appropriate in any market.

Senator JONES. But if you do not have any rule or regulation that requires them to look at whether or not you can ever pay this back, ever pay it back, how are you going to enforce something that you are not even beginning to regulate in the first place? I am sorry, but I am just having a real hard time with everything you are saying only because it just seems like we are just getting this payday lending spiraling people into debt. Eight loans a year from folks in Alabama. They need help, but they also need the help paying it back as well.

You know, I am just having a hard time with this and understanding why that is not even a consideration. And I am not sure you have really answered why it is not a consideration.

Ms. KRANINGER. Well, Senator, in fairness, too, this is a proposed rescinding of that underwriting provision that is in front of me now, so I cannot give you a fulsome articulation of a decision on that because it is an ongoing rulemaking process.

Senator JONES. And that has been ongoing ever since I have been in the Senate just about, since January of 2018. When will that be final so that you can give me that information?

Ms. KRANINGER. We are going to assess this and make the decision, whether that be a final rule or otherwise, in April. So it is very soon.

Senator JONES. All right. Thank you. I will have some other questions because I really want to ask about housing since there seems to be no housing discrimination in America anymore, which I think is great, because there is no enforcement actions. I do have some questions about that for the record, but I will save those since I am 14 seconds over, Mr. Chairman.

Senator JONES. Thank you very much.

Chairman CRAPO. Thank you.

Senator Reed.

Senator REED. Well, thank you, Mr. Chairman. And, Director, I was paying attention as you spoke with Senator McSally. I am very disappointed that you do not exercise supervisory responsibility over payday lenders. I think you do have the authority. It is under your leadership that change took place. I believe your predecessor made it clear that he felt he had that authority.

As you know, the Department of Defense has stated in writing that, "The Department believes that the full spectrum of tools, including supervisory examinations, contribute to effective industry education about, and compliance with, the MLA." And those are the people who have very strong vested interest in protecting soldiers, sailors, airmen, and marines.

Even your own legal analysis states, and I quote again, "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, *i.e.,* supervision." So your own agency has concluded that there is a reading of the statute that would allow you to do this, yet you ignore that. Instead, you would ask for different legislation, which I think in the context is not really a plea for supervisory authority. It is an excuse and a diversion so that you do not have to supervise for the benefit of the payday industry, which I find very disappointing.

If we are going to pursue legislation, then we should, I believe, extend the benefits of the MLA, the chief benefit, which is a 36 percent interest cap, to all Americans. That is why many of us on a bipartisan basis support the Veterans and Consumers Fair Credit Act. This would, I think, be strong legislation. In fact, it is supported by a significant coalition including the Iraq and Afghanistan War Veterans, Military Officers Association of America, the United States Conference of Catholic Bishops, and the Committee on Domestic Justice and Human Development.

So I do think you have the authority, and I think you are reneging on that authority, and it is a great disappointment. Do I make myself clear?

Ms. KRANINGER. Yes, Senator, and I respectfully disagree. I know we have had this conversation. I very much do want the authority to do this. I do not believe that I have it.

Senator REED. Well, your own analysis by your own legal department in the material they have submitted says there is an interpretation that will give you that authority. Has this authority ever been challenged in court when it was exercised by your predecessor?

Ms. KRANINGER. Senator, it has not, and we——

Senator REED. Well, isn't that a good indication that even the people who are subject do not object, at least do not have—feel the legal footing to object?

Ms. KRANINGER. I believe that is a very slippery slope, and I do believe I have the responsibility to determine where our authority lies. And, certainly, as I noted to you, the possible reading would lead to many other interpretations that would be, I think, problematic and detrimental.

Senator REED. I think this reading would lead to the interpretation that you are going to protect men and women who are protecting us from being abused by lenders, and I would hope you would reconsider. Thank you.

Chairman CRAPO. Thank you. That concludes all of the Senators. Senator Brown has asked for an additional 5 minutes, and so, Senator Brown, please proceed.

Senator BROWN. Thank you, Mr. Chairman. Thank you always for your—and thank you for staying around a little bit longer, Director Kraninger.

I want to follow up on something you had said earlier when I asked you whether the CFPB had taken any public action against Wells Fargo since Eric Blankenstein private promises last May. I think you used the word "hearsay" when we actually have emails, which decidedly are not hearsay. But, more importantly, you referenced a $1 billion fine. I just want to make clear that was in—you had said that CFPB did that, which was a true statement, but it was in 2018, before you were Director. And so we have not—the implication was that you had been tough on them when you decidedly have not been. So we hope that you will reconsider that.

Let me ask a couple of questions on a couple of subjects. We created the CFPB because we knew that too many other agencies were not protecting consumers. There may be no better example of that than what a few people have asked about, the Department of Education under Secretary DeVos. She has gutted rules to protect student borrowers. She has shut down investigations of abuse and fraud by for-profit colleges. She was recently held in contempt by a Federal court. For the past 2 years, she blocked the CFPB from doing its job to protect more than 43 million student borrowers.

Why would you hand over the Consumer Financial Protection Bureau's responsibility to protect student borrowers to Secretary DeVos? Why would you do such a thing?

Ms. KRANINGER. Senator, I have not done that. As we have talked about very clearly, I believe it is in the interest of the Federal Government to speak with one voice and to have agreement with respect to how the CFPB carries out its responsibilities for ensuring compliance with Federal consumer financial law, and the Department of Education has a very real role. These are their contractors, their servicers. They have contract provisions that they need to oversee. Doing those two things in concert is what is in the Government interest and in the consumers' interests.

Senator BROWN. I would like to think that is true. I would like to think that you are genuine about doing something. I have sat here and you have sat there before over the last year, and we have asked you many times why you have not examined Federal student loan servicers. You have said for a year you will take action. Now you are saying—I would like to ask you, whatever you are going to do on joint exams, that you would disclose to us what the specific plans are. But I just do not understand the question as Americans—I mean, another year is wasted, and more students are overwhelmed by their debt. And they do not want to hear excuses. Your job is to fight for student borrowers, and I do not understand why you think you need permission from Betsy DeVos.

So my request of you is to publicly tell us that you will be public about this entire process with the timetable with Secretary DeVos on this joint exam that you talk about.

Ms. KRANINGER. Senator, I pledge that we will share what we can publicly as I am doing today. As you know, the supervisory process is confidential inherently, and it should be to be effective. So we have to balance those interests. But I was very clear in wanting to make sure you knew that we are carrying out our responsibilities.

Senator BROWN. I just am discouraged—that disappoints me because I think a year from now we might be having this same conversation. So prove me wrong.

Last question, or series of questions. You formed a taskforce that is supposed to provide recommendations on how to update Federal consumer financial laws. You select the members of the taskforce, correct?

Ms. KRANINGER. Yes. It was through a public competitive process.

Senator BROWN. OK. You selected a gentleman named Howard Beales, correct?

Ms. KRANINGER. Yes.

Senator BROWN. He was described by the Wall Street Journal, not a liberal publication, as an academic whose studies have been used by a tobacco company to fight Federal regulators. He actually argued that Joe Camel and other big tobacco campaigns were not trying to get kids to smoke. He argued that payday loans with a 448 percent interest rate are beneficial to consumers.

You also selected Todd Zywicki for the taskforce, correct?

Ms. KRANINGER. Yes.

Senator BROWN. In addition to his career trying to influence the Bureau on behalf of Wall Street, Mr. Zywicki helped defend a debt relief company that the Bureau sued that a court later found cheated consumers out of well in excess of $100 million. These are the people that you selected, competitive bidding or not, competitive process or not. So is it true that two of the taskforce members have such close ties to industry they needed a waiver of Federal ethics laws to participate in the taskforce?

Ms. KRANINGER. Senator, we wanted the foremost experts on consumer financial law and economics, and I believe that we have found that. These are five individuals who have extensive public service careers——

Senator BROWN. You gave two of them——

Ms. KRANINGER.——and who have represented industry because, again, they are individuals who have experience with how the laws——

Senator BROWN. But they needed——

Ms. KRANINGER.——and regulations actually apply in practical circumstances. So that is hugely beneficial. There will also be an extensive public engagement. In fact, we are starting that today. We have our first roundtable where the taskforce members are engaging with leaders in trade associations, consumer advocacy groups, as well as business trades, and engaging with our Advisory Committee members this week. So this is going to be an ongoing process to really bring in the best information that we can to think about the way to move forward.

Senator BROWN. The best information from sort of Wall Street's viewpoint. You asked for the waiver. The waivers were granted. You personally gave them the waivers, your office did. I mean, there is already—the criticism of you, the dissatisfaction with the work you do, is that it is always too slanted toward the most privileged, wealthy interest groups in this Government and in this country. This just plays more to that perception. This is where the advice comes from. You have made it clear to me and to a lot of us that you are not here to carry out the CFPB's mission of protecting consumers. You are here to carry out President Trump's agenda of protecting Wall Street mega banks and the richest interest groups in this swamp.

Thank you.

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 17th.

Director Kraninger, we ask that you respond to those questions as promptly as you can. Again, thank you for your service and for being here with us today.

This hearing is adjourned.

[Whereupon, at 11:42 a.m., the hearing was adjourned.]

[Prepared statements, additional material, and responses to written questions 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 semiannual report.

On February 3, the CFPB issued its Fall 2019 Semiannual Report, which outlines the CFPB's significant work between April 2019 and September 2019, including rulemakings and supervisory and regulatory activities.

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

Consumer protection is vital for a properly functioning financial market place and is best determined by a robust, quantitative analysis.

Under Director Kraninger's leadership, the CFPB has demonstrated a commitment to ensuring that its regulations are data driven, appropriately tailored to satisfy statutory obligations, and based on sound evidence and legal support.

There have been promising changes at the CFPB under Director Kraninger's leadership.

But, it remains abundantly clear that the fundamental structure of the CFPB must be reconsidered to make it more transparent and accountable.

Last week, the Supreme Court heard arguments for *Seila Law LLC v. CFPB,* a case that examines the constitutionality of the CFPB's leadership structure.

On March 2, 2020, the Wall Street Journal Editorial Board referred to *Seila Law v. CFPB* as the "constitutional case of the year," and stated that the question presented by this case "goes to the heart of the separation of powers and whether the administrative state is accountable to the people."

It has long been my position that the CFPB's current single director structure lacks sufficient accountability, and I look forward to the Supreme Court ruling on this case later this summer.

With this in mind, I continue to advocate for establishing a bipartisan board of directors to oversee the CFPB; subjecting the CFPB to the annual appropriations process, similar to other Federal regulators; and establishing a safety-and-soundness check for the prudential regulators.

The Banking Committee has spent significant time this Congress evaluating the collection, protection and use of consumer data by government agencies and private companies.

I have repeatedly voiced concerns about wide-scale collection of personally identifiable information by the CFPB, especially with respect to credit card and mortgage data.

On February 26, the CFPB hosted a symposium on the access and use of consumer-permissioned financial data to determine if agency action is necessary to promote consumer access to their financial data.

I find it concerning that when consumers choose to share their financial data with a third party, they often unknowingly involve a data aggregator to facilitate the transmission of this data.

The CFPB and Congress should explore ways to ensure that consumer data remains protected when it is shared.

We need a foundational change to our data privacy laws that applies broadly, across industries, and ensures domestic and international cohesion via preemption and interoperability, respectively.

During this hearing, I look forward to hearing more about key initiatives undertaken by the CFPB in the last year; Director Kraninger's priorities for the CFPB in the upcoming work period; and additional legislative or regulatory opportunities to encourage financial innovation and widen access to financial products and services.

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

Thank you, Mr. Chairman.

First I want to say a few words about the coronavirus, and the toll it's taking on our communities, on our healthcare system, and on our entire economy.

Our first concern has to be for Americans' safety. We also can't ignore the millions of Americans who are losing paychecks and the small businesses that are losing customers.

When times get tough, we come together as Americans and we rise to the challenge. I'm confident we can do that again—and it has to mean support for *everyone* who makes this country work, not just Wall Street.

Moments like this are a reminder of why we created the CFPB after the last financial crisis—to make sure hardworking Americans have a voice in the room, especially at times like this.

We know that in times of crisis, Wall Street has armies of lobbyists who will fight to make sure we do what we need to do to stabilize financial markets. But most people don't have lobbyists and don't have that kind of power. We have to fight for them too. And the CFPB is their voice.

During its first 6 years, the Bureau delivered results: the CFPB made new, strong rules that protected consumers from abusive practices. It sent Bureau employees into banks and other corporations to make sure they were following the law. And it returned more than $12 billion to 29 million Americans.

Unfortunately, President Trump has tried to turn the Consumer Protection Bureau into another agency that helps his wealthy friends at the expense of the people it's supposed to serve.

Under President Trump's first appointed director, Mick Mulvaney, the CFPB saw a shift away from protecting servicemembers and rooting out discrimination to doing favors for private corporations at the behest of political hires.

Director Kraninger has continued down the same path-corporate protection instead of consumer protection.

Under her leadership, we see a clear pattern: sabotaging the agency's work to hold corporations accountable.

She sided with corporations—including a company the CFPB sued for scamming 9/11 survivors—to argue that the Bureau is unconstitutional in the Supreme Court.

It would be quite a coup for big banks and other corporations if the Supreme Court gutted the agency that's supposed to keep an eye on them.

Director Kraninger has also allowed Education Secretary Betsy DeVos to block the Bureau from protecting the 43 million Americans with Federal student debt.

If you don't think that Director Kraninger's failure to stand up to Secretary DeVos has consequences, talk to the tens of thousands of teachers, nurses, firefighters, and servicemembers who are paying more money in student loans every single month because Betsy DeVos denied them the loan forgiveness that they earned.

Like other Trump appointees, Director Kraninger has dutifully carried out the Administration's assault on civil rights protections:

- She weakened rules that identify discriminatory lending.
- She dismantled the CFPB office that used to ferret out discriminatory lending practices.
- And she left Eric Blankenstein, a Mulvaney-era political appointee with a history of racist and sexist writings, in charge of enforcing civil rights laws.

And look at the result—under Mulvaney and Kraninger, the Consumer Protection Bureau has not brought a single case of illegal discrimination.

They have not returned a single dollar to victims of discrimination.

Last October we also learned that, in exchange for contributions to the Trump campaign, payday lenders were bragging about being able to "pick up the phone and get the President's attention" to fend off regulation.

Director Kraninger has given them exactly what they paid for:

- She gutted rules that would protect borrowers from predatory payday loans that trap them in cycles of debt.
- She hasn't filed any new lawsuits against payday lenders.
- And she even let a payday lender keep $1.3 million it had volunteered to pay back to consumers it had ripped off.

It's not just payday lenders. Director Kraninger has gone out of her way to let debt collectors and other corporations keep the money they scammed from consumers.

Just last week we learned that—as he was on his way out the door—Eric Blankenstein promised the CEO of Wells Fargo that he would hide the bank's bad conduct and let them off without a fine.

Let's be clear about what's happening here—a CEO asks for a special favor, and he gets it. Never mind the cost to everyone else.

If a worker in Ohio gets laid off, or their car breaks down, and they can't afford to pay their credit card bill that month, Wells Fargo is still going to charge them interest—they can't call in any special favors to let them off the hook.

But we have seen over and over again that in President Trump's Washington, Wall Street gets to play by different rules.

Director Kraninger also continues to surround herself with appointees with a history of bigotry and hostility to consumers.

She retained Paul Watkins, a Mulvaney appointee, who worked as senior legal counsel for a hate group that wants to criminalize LGBTQ people.

She also recently hired Leonard Chanin to serve as her number two.

This is someone who failed at protecting consumers at the Fed in the years leading up to the financial crisis.

More recently, he worked at the bank that the Bureau just sued for the same type of fake account fraud that we saw at Wells Fargo.

What we see from Director Kraninger is the same thing we see across the Trump administration: protect corporations from accountability at all costs.

It comes back to one question—whose side are you on?

Wall Street megabanks, payday lenders, and other corporations all have enough allies looking out for them in the White House and in Mitch McConnell's office.

The CFPB is supposed to be an independent advocate on the side of everyone else.

Director Kraninger should return the Consumer Protection Bureau to its core mission: put consumers first.

Anything less is a neglect of duty.

Thank you, Chairman Crapo.

Written Testimony
Kathleen L. Kraninger, Director, Consumer Financial Protection Bureau
Before the Senate Committee on Banking, Housing, and Urban Affairs
March 10, 2020

Chairman Crapo, Ranking Member Brown, and distinguished Members of the Committee, thank you for the opportunity to present the Consumer Financial Protection Bureau's (Bureau's) most recent Semi-Annual Report to Congress.

Today, I am happy to present the Bureau's Fall 2019 Semi-Annual Report (April 1, 2019, to September 30, 2019) to Congress and the American people in fulfillment of our statutory responsibility and commitment to accountability and transparency. My testimony is intended to highlight the contents of this Semi-Annual Report (Report).

Since I last appeared before the Committee, I had the pleasure of marking my first year at the Bureau. It is an honor and privilege to serve and protect American consumers. In this last year, the Bureau greatly enhanced consumer protection by more effectively and comprehensively utilizing the agency's resources to meet our mission. I remain committed to strengthening the Bureau's ability to use all of the tools provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and I have established and communicated clear priorities to Bureau staff for our work using the authorities provided by the Dodd-Frank Act to protect consumers.

Through continued, robust engagement with all stakeholders, I remain resolved that the most productive use of Bureau resources is the prevention of harm to consumers in concert with our many partners. Empowering consumers to protect and further their own interests is where our efforts begin. The Bureau's mission, as you are aware, is to ensure access to fair, transparent, and competitive markets for consumers, and we are committed to executing the mission through:

- Empowering Consumers and Turning Financial Education into Action,
- Ensuring Clear Rules of the Road,
- Ensuring a Culture of Compliance, and
- Holding Bad Actors to Account and Deterrence through Enforcement.

Preventing harm to consumers, I believe, is the most effective, efficient way to carry out our mission of ensuring consumer access to a fair, transparent and competitive market. To me, prevention of harm comes through helping consumers gather financial know-how, fostering a culture of industry compliance where consumers know their rights and industry knows their responsibilities and limitations, and maintaining a back stop of enforcement.

Empowering Consumers and Turning Financial Education into Action

As I have said before, the Bureau cannot be everywhere, with everyone, at every transaction – nor should it try to be. Therefore, empowering consumers to help themselves, protect their own interests, and choose the financial products and services that best fit their needs is essential to preventing consumer harm and building financial well-being.

During the previous year, the Bureau has put thought into action and made strides in consumer education. The Bureau launched the *Start Small, Save Up* initiative to encourage consumers to build emergency savings and increase opportunities for more consumers to save; published two *Your Money, Your Goals* booklets on strategies to increase savings and ways to build and manage credit; launched the *CFPB Savings Boot Camp*, a multi-week email course that provides the foundation consumers need to start saving; distributed more than 6 million financial education publications and provided answers to common questions on money topics to more than 5.5 million web users of *AskCFPB* and other on-line educational tools; launched ready-to-use classroom activities for middle and high school teachers; distributed more than 2 million educational materials to help consumers and caregivers make informed financial decisions, and to better identify and prevent elder financial exploitation; provided over 200,000 financial education brochures to military consumers; educated more than 17,500 military consumers on financial products and services; expanded the financial education tool *Misadventures in Money Management* to active-duty servicemembers; and continued scholarship and research on how financial education can contribute to financial well-being.

The Bureau also published a number of reports, including an annual report on the Bureau's tax time savings initiative; four reports to share promising and prudent practices to help child savings programs increase opportunities for more low-income and low-wealth families to save for their children's post-secondary education; a state-by-state report on financial well-being using the data collected in a 2018 national survey by the FINRA Investor Education Foundation; elder financial exploitation reports, such as Issues and Trends Based on Suspicious Activity Reports (from financial institutions); an annual Private Education Loan Ombudsman report, covering two years of data including approximately 20,600 complaints related to private or federal student loans; and a report on mortgage issues specifically related to servicemembers and veterans. The Bureau also published nearly 80 consumer facing blogs to help consumers gain knowledge and better understand a wide spectrum of financial subjects, including mortgage closing scams, debt collection (including tips for resolution), a list of specialty credit reporting companies, and new protections for servicemembers.

In addition, the Bureau offered training to assist librarians at more than 2,700 libraries registered to receive information that can help make their libraries a "go-to" financial education resource in the community. The Bureau facilitated the training of more than 4,000 frontline staff in social services organizations working directly with lower-income consumers, providing information and action steps in money management that can be shared with the people they serve through the *Your Money, Your Goals* program. The Bureau also facilitated five convenings to establish and enhance Elder Fraud Prevention and Response Networks supporting nearly 1.6 million older Americans.

Looking forward, the Bureau continues to refresh content and create new educational materials for use by students and those who help them, including creating *Paying for College: Your financial path to graduation*, a new web tool to help students evaluate financial aid offers, which I will discuss in more detail later in my testimony.

In addition to our educational work, the Bureau also directly engages with consumers through our consumer complaint program. During the period October 1, 2018, through September 30, 2019, the Bureau received approximately 342,500 consumer complaints.[1] This is approximately a seven percent increase from the prior reporting period.[2] When consumers submit complaints, the Bureau's complaint form prompts them to select the consumer financial product or service with which they have a problem as well as the type of problem they 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. Credit or consumer reporting, debt collection, credit card, mortgage, and checking or savings accounts are the most-complained-about consumer financial products and services.

Complaints, along with other inputs, give us insight into people's experiences in the marketplace that we analyze and use to improve our mission execution. The analysis helps us regulate consumer financial products and services under existing Federal consumer financial laws, enforce those laws judiciously, and educate and empower consumers to make informed financial decisions. The Bureau also publishes complaint data and reports on complaint trends annually in Consumer Response's Annual Report to Congress.[3]

Ensuring Clear Rules of the Road

Another tool for preventing consumer harm is rulemaking and guidance – articulating clear rules of the road for those we regulate. Rules that promote competition, increase transparency, and preserve fair markets for financial products and services. The Fall 2019 Semi-Annual Report includes information on significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year. In addition, the Fall 2019 Semi-Annual Report includes a plan for rules, orders, and other initiatives we expect to undertake during the upcoming period. I would like to highlight just a few of our activities in this space.

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[1] All data are current through September 30, 2019. This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. The Bureau does not verify all the facts alleged in complaints, but takes steps to confirm a commercial relationship between the consumer and the company. For more information on our complaint process refer to the Bureau's website at https://www.consumerfinance.gov/complaint/process.

[2] The prior reporting period, April 1, 2018, to March 31, 2019, reported 321,200 consumer complaints. See Consumer Fin. Prot. Bureau, Semi-Annual Report Spring 2019 (Oct. 2019), available at https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_spring-2019.pdf.

[3] From October 1, 2018, to September 30, 2019, the Bureau published complaint snapshot reports about servicemembers and mortgages, and the Office of Servicemember Affairs' Annual Report. The Bureau also publishes the Consumer Response Annual Report, which provides a more detailed analysis of complaints. These reports can be viewed at https://www.consumerfinance.gov/data-research/research-reports.

Proposed and Final Rules: Payday, Vehicle Title, and Certain High-Cost Installment Loans. In February 2019, the Bureau released Notices of Proposed Rulemaking (NPRM) on the 2017 Payday, Vehicle Title, and Certain High-Cost Installment Loans Final Rule (2017 Final Rule) to delay the compliance date and to rescind requirements that lenders make certain underwriting determinations before issuing payday, single-payment vehicle title, and longer-term balloon payment loans.[4] In June 2019, the Bureau released a final rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date; Correcting Amendments,[5] to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the regulation promulgated by the 2017 Final Rule. Compliance with these provisions of the 2017 Final Rule is delayed by 15 months, to November 19, 2020. The comment period on the reconsideration proposal closed on May 15, 2019. The Bureau is evaluating the comments, weighing the evidence, and will make its decision on the remaining proposal in accordance with applicable legal requirements, including the Administrative Procedure Act (APA).

Advance Notice of Proposed Rulemaking: Residential Property Assessed Clean Energy.[6] Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. In March 2019, the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) on PACE financing to facilitate the Bureau's rulemaking process. As defined in EGRRCPA Section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing. The comment period on the ANPR closed on May 7, 2019. As we continue policy development for the NPRM, the Bureau is evaluating the ANPR comments, continuing to engage stakeholders, and collecting quantitative data on the effect of PACE financing on consumers' financial outcomes.

Request for Information: Remittances.[7] In April 2019, the Bureau issued a Request for Information seeking input on two aspects of the Bureau's Remittance Rule (Rule). First, the Bureau asked for information to determine whether to propose changes to the impending expiration this July of a temporary exception in the Electronic Fund Transfer Act (EFTA), which permits insured depository institutions and credit unions to estimate the amount of currency that will be received by the designated recipient of a remittance transfer under certain circumstances.

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[4] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/payday-vehicle-title-and-certain-high-cost-installment-loans/ *and* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date/.

[5] *See* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/.

[6] *See* https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/advance-notice-proposed-rulemaking-residential-property-assessed-clean-energy-financing/.

[7] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/request-room/cfpb-issues-request-information-remittance-rule/.

Second, the Bureau asked for information on a safe harbor threshold in the Rule that helps to determine whether a person is providing remittances in the normal course of its business. Although outside of the reporting period, it is worth noting that in December 2019, the Bureau issued a NPRM which, if finalized, would allow insured depository institutions and credit unions to continue to provide estimates for certain fees and exchange rate information included on disclosures under certain conditions.[8] In addition, the Bureau proposed to increase the safe harbor threshold that helps to determine whether a company makes remittance transfers in the normal course of its business and is subject to the Rule. If finalized, the increased safe harbor threshold would reduce burden on additional providers that send a relatively small number of remittances. The comment period on this NPRM closed on January 21, 2020. The Bureau is evaluating the approximately 100 comments received and is weighing the evidence.

Proposed Rule: Debt Collection Practices (Regulation F).[9] In May 2019, the Bureau issued the first NPRM to implement the requirements and prohibitions applicable to debt collectors under the Fair Debt Collection Practices Act (FDCPA) since it was passed in 1977. The proposal is intended to 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 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 comment period on this proposal closed on September 18, 2019. The Bureau is evaluating the comments, weighing the evidence, and will make its decision in accordance with applicable legal requirements, including the APA.

Advance Notice of Proposed Rulemaking: Home Mortgage Disclosure Act (HMDA).[10] In May 2019, the Bureau issued an ANPR seeking information to determine whether to propose changes to the data points that the Bureau's 2015 HMDA rule added to Regulation C or revised to require additional information. Additionally, the Bureau solicited comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C. The ANPR sought information regarding the costs and benefits of these data points and reporting requirements. The comment period on the ANPR closed on October 15, 2019. The Bureau is evaluating the comments, weighing the evidence, and developing a NPRM.

Notice of Proposed Rulemaking: Home Mortgage Disclosure Act (HMDA). In May 2019, the Bureau issued an NPRM proposing to amend Regulation C to increase the threshold for reporting data about closed-end mortgage loans to either 50 or 100 closed-end mortgage loans. The NPRM would also extend for two years the temporary threshold of 500 open-end lines of credit for reporting data about open-end lines of credit and then set the threshold at 200 open-end lines of credit on January 1, 2022. The NPRM would also incorporate into Regulation C the

[8] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/remittance-transfers-under-electronic-fund-transfer-act-regulation-e/.

[9] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/debt-collection-practices-regulation-f/.

[10] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/home-mortgage-disclosure-regulation-c-data-points-and-coverage-extension-comment-period/.

interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and implement further Section 104(a) of the EGRRCPA. As noted below, the Bureau finalized certain aspects of this NPRM in a final rule in October 2019 and indicated that it anticipates issuing a separate final rule in 2020 addressing the NPRM's proposed changes to the permanent thresholds.

Advance Notice of Proposed Rulemaking: Ability-to-Repay and Qualified Mortgages.[11] In July 2019, the Bureau issued an ANPR asking for information relating to the expiration of a provision of the temporary Government-Sponsored Entities (GSE) provision of the Bureau's Ability-to-Repay and Qualified Mortgage Rule. Under that provision, mortgages which are eligible for purchase or guarantee by one of the GSEs and which satisfy certain statutory criteria relating primarily to features of the mortgage are generally deemed to be Qualified Mortgages (QMs). This provision is scheduled to expire in January 2021 and the Bureau's ANPR sought information to determine whether to propose changes in the general definition of QM considering that expiration. After reviewing comments submitted in response to the Bureau's ANPR, the Bureau has decided to propose an amendment to the Rule which would move away from adopting a Debt-to-Income threshold for such loans and instead include an alternative, such as a pricing threshold (i.e., the difference between the loan's annual percentage rate and the average prime offer rate for a comparable transaction). The Bureau also expects to propose to extend the expiration of the GSE Patch for a short period until the effective date of the proposed alternative or until one or more of the GSEs exits conservatorship, whichever comes first. To this end, the Bureau is working diligently to issue, no later than May 2020, a NPRM seeking comment on these possible amendments.

Although also outside of the reporting period, the Bureau recently took several notable steps in our ongoing rulemaking activity.

Final Rule: Home Mortgage Disclosure (Regulation C) – 2019 Final Rule.[12] In October 2019, the Bureau issued a final rule amending Regulation C to adjust the threshold for reporting data about open-end lines of credit by extending to January 1, 2022, the current temporary threshold of 500 open-end lines of credit. The October 2019 final rule also incorporates into Regulation C the interpretations and procedures from the interpretive and procedural rule that the Bureau issued on August 31, 2018, and implements further Section 104(a) of the EGRRCPA.

TILA-RESPA Integration Disclosure Rule (TRID) Assessment.[13] In November 2019, the Bureau issued a Request for Information seeking public input to inform the Bureau's assessment of the TRID Rule, including the effectiveness of the rule in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals stated by the Bureau. The Bureau will conduct industry surveys as part of the assessment. The assessment, which is being conducted pursuant to Section 1022(d) of the Dodd-Frank Act, will be completed in Fall 2020.

[11] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/qualified-mortgage-definition-under-truth-lending-act-regulation-z/.

[12] *See* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/home-mortgage-disclosure-regulation-c-2019-final-rule/.

[13] *See* https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/request-for-information-regarding-tila-respa-integrated-disclosures-rule-assessment/.

Ensuring a Culture of Compliance

Another tool for the prevention of harm is the Bureau's supervision authority, which can keep violations of laws and regulations from happening in the first place. Supervision is the heart of this agency – something underscored by the percentage of our personnel and resources dedicated to conducting exams. I am focused on ensuring we use this tool as effectively and efficiently as possible, and that we apply it in a consistent way. Heading trouble off at the pass may not grab big headlines, but it will prevent a lot of headaches for consumers and industry.

During the period covered by the Fall 2019 Semi-Annual Report, the Bureau published two issues of *Supervisory Highlights: Winter 2019*, covering supervisory findings in the areas of automobile loan servicing, deposits, mortgage servicing, and remittances,[14] and *Summer 2019*, covering supervisory findings in the areas of automobile loan origination, credit card account management, debt collection, furnishing, and mortgage origination.[15] Although outside the reporting period, the Bureau recently released a special edition of *Supervisory Highlights* covering supervisory findings in the consumer reporting area.[16] The Bureau has also issued numerous supervisory guidance documents and bulletins as described in the Semi-Annual Report.

In addition, the Bureau's Fair Lending Supervision program assesses compliance with Federal fair lending consumer financial laws and regulations at banks and nonbanks over which the Bureau has supervisory authority. As a result of the Bureau's efforts to fulfill its fair lending mission in this reporting period, the Bureau's Fair Lending Supervision program initiated 16 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 HMDA. In the current reporting period, the Bureau initiated 16 supervisory events, which is six more than the 10 fair lending supervisory events initiated during the prior reporting period. In the current reporting period, the Bureau issued more matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period. MRAs and MOUs direct entities to take corrective actions and are monitored by the Bureau through follow-up supervisory events.

Holding Bad Actors to Account and Deterrence through Enforcement

Education, rulemaking, and supervision alone won't prevent every violation. A purposeful enforcement regime can foster compliance, deter unlawful conduct, help prevent consumer harm, and right wrongs. Public, decisive action against wrongdoers sends a clear message to the marketplace – one that should deter unlawful behavior and support a level playing field – all while reaching a just outcome for harmed consumers. However, I am also committed to ensuring that we move as expeditiously as possible to resolve enforcement matters, whether through public action or a determination that a particular investigation should be closed.

[14] Winter 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf.
[15] Summer 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf.
[16] Fall 2019, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.

During the period covered by the Fall 2019 Semi-Annual Report, the Bureau brought numerous public enforcement actions for violations of Federal consumer financial law.

These activities included proceedings against a debt collection company and its owner for violations of the Consumer Financial Protection Act (CFPA), Fair Credit Reporting Act (FCRA), Regulation V, and Fair Debt Collection Practices Act (FDCPA);[17] proceedings against a foreclosure relief services company, its CEO, and its auditor, for engaging in deceptive and abusive acts and practices and charging unlawful advance fees in connection with the marketing and sale of financial advisory and mortgage assistance relief services to consumers;[18] an action against a debt-collection company for violating the FDCPA and CFPA;[19] an action against a remittance transfer services provider for violating the Remittance Transfer Rule under EFTA and the CFPA;[20] two actions against brokers of high-interest credit offers for misrepresentations to veterans and other consumers in violation of the CFPA;[21] an action against a credit reporting agency for engaging in unfair and deceptive practices in connection with a data breach that impacted approximately 147 million consumers;[22] an action against a company set up to hold and manage private student loans for providing substantial assistance to unfair acts and practices;[23] an action against a mortgage lender for violating HMDA and Regulation C by submitting mortgage-loan data for 2014 to 2017 that contained errors;[24] an action against a mortgage servicer for violating the CFPA, RESPA, and TILA;[25] proceedings against a debt collection law firm for violating the FDCPA and CFPA;[26] proceedings against a company for violating the Telemarketing Sales Rule (TSR) by requesting and receiving payment of prohibited upfront fees for their credit repair services and for violating the TSR and CFPA by making deceptive representations or substantially assisting others in doing so;[27] an action against a student loan servicing company for engaging in unfair practices in violation of the CFPA by failing to adjust in a timely manner principal balances of student loans made under the Federal Family Education Loan Program;[28] an action against a payday retail lender for violations of the

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[17] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-fair-collections-outsourcing-and-michael-e-sobota/.

[18] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-files-suit-andrew-lehman-michael-carrigan-proposed-settlement/.

[19] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-asset-recovery-associates/.

[20] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-maxitransfers-corporation/.

[21] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-arkansas-state-ag-settle-brokers-high-interest-credit-offers/, https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-broker-high-interest-credit-offers/.

[22] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-ftc-states-announce-settlement-with-equifax-over-2017-data-breach/.

[23] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-student-cu-connect-cuso-over-itt-private-loan-program/.

[24] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-freedom-mortgage-corporation/.

[25] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-bsi-financial-services/.

[26] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-forster-garbus-llp/.

[27] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-files-suit-against-lexington-law-pgx-holdings-and-related-entities/.

[28] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-conduent-education-services/.

CFPA, the Gramm-Leach-Bliley Act and Regulation P, and TILA and Regulation Z;[29] an action against an online lender for debiting consumers' bank accounts without authorization and for failing to honor loan extensions granted to consumers in violation of the CFPA;[30] a proceeding against a retail company offering store credit card accounts for violating the CFPA, TILA, and Regulation Z;[31] an action against a federally chartered savings association for violating the CFPA, EFTA, and Regulation E;[32] an action against a federally chartered savings association for violating the CFPA, FCRA, and Regulation V;[33] an action against a mortgage company for misleading veterans regarding its Interest Rate Reduction Refinancing Loans—loans that allow veterans to refinance their mortgages at lower interest rates with a loan guaranteed by the Department of Veterans Affairs;[34] an action against a consumer financial services company for engaging in deceptive acts and practices in violation of the CFPA;[35] an action against a small-dollar lender for violating the CFPA by making deceptive statements, and by withholding funds during check-cashing transactions to satisfy outstanding amounts on prior loans;[36] and an action against companies for violating the CFPA by unfairly delaying the transfer of payments that the companies received on accounts that the companies had previously sold to third-party debt buyers.[37]

In addition to the actions taken above, the Bureau referred one matter to the U.S. Department of Justice (DOJ) about discrimination pursuant to Section 706(g) of the ECOA. Like other federal bank regulators, the Bureau is required to refer matters to the DOJ when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.

During the reporting period, the Bureau continued to work on ongoing litigation, as well as implementation and oversight of compliance with the pending public enforcement orders that were entered by federal courts or issued by the Bureau's Director in prior years.

The mission of the Bureau is to protect consumers, which, as I have discussed today, we carry out through education, regulation, supervision, and enforcement. These tools are all provided in the Dodd-Frank Act, and I am determined to use the Bureau's capabilities to carry out our mission. The Bureau is also tasked with the mission of facilitating innovation and access to

[29] *See* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-cash-tyme/.

[30] *See* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-reaches-settlement-enova-international-inc/.

[31] *See* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-claims-against-sterling-jewelers-inc/.

[32] *See* https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-usaa-federal-savings-bank/.

[33] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-state-farm-bank/.

[34] See https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-files-complaint-and-proposed-settlement-village-capital-investment-llc/.

[35] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-santander-consumer-usa-inc/.

[36] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-cash-express/.

[37] *See* https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-bluestem/.

financial products and services for consumers. To achieve this portion of our mission to protect consumers, the Bureau has been updating our innovation policies and engaging with a variety of stakeholders, as well as collaborating with other federal, state, and global regulators on these issues.

In September 2019, the Bureau issued three innovation policies on Trial Disclosure Programs,[38] No-Action Letters,[39] and the Compliance Assistance Sandbox.[40] Our hope is that these three policies will improve how the Bureau exercises its authority to facilitate innovation and reduce regulatory uncertainty. These efforts can contribute to an environment where innovation can flourish, giving consumers more options and better choices.

Innovation provides an opportunity for us to reduce regulatory uncertainty by identifying and addressing outdated, unnecessary, or unduly burdensome regulations that impede the development of new financial products and services and drive increasing costs to consumers. Innovation can benefit consumers by increasing competition and generating better and less expensive products and services for consumers. New products and services can expand access, especially to unbanked and underbanked households, giving more consumers access to the benefits of the financial system. Innovations that reduce the cost of providing financial products and services can also reduce consumer prices, especially in a market where innovation supports vigorous competition. Finally, innovation can vastly improve the functionality of existing products and services. For example, the development of online and mobile banking means that consumers can manage their financial lives any time of day from their own homes. The Bureau cannot predict the particular innovations that will develop in the coming years, but by engaging, we can help ensure that consumer protection includes having access to a vibrant, competitive consumer financial market.

Bureau Initiatives

Finally, I would like to close today by highlighting a few of the Bureau's most recent initiatives.

Taskforce on Federal Consumer Financial Law

In January, I announced the membership of the Bureau's Taskforce on Federal Consumer Financial Law.[41] The Taskforce will examine the existing legal and regulatory environment facing consumers and financial services providers and report to me its recommendations for ways to improve and strengthen consumer financial laws and regulations. The Taskforce will produce new research and legal analysis of consumer financial laws in the United States, focusing specifically on harmonizing, modernizing, and updating the Federal consumer financial laws—and their implementing regulations—and identifying gaps in knowledge that should be

[38] *See* https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf.
[39] *See* https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf.
[40] *See* https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf.
[41] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-membership-taskforce-federal-consumer-financial-law/; *and see* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-additional-member-to-taskforce/.

addressed through research, ways to improve consumer understanding of markets and products, and potential conflicts or inconsistencies in existing regulations and guidance.

Memoranda of Understanding (MOU) with the U.S. Department of Education (Department).

On February 3, 2020, the Bureau and the Department reestablished our MOU regarding complaints that includes greater coordination to better serve student loan borrowers. Under the newly signed MOU, the agencies will share complaint information from borrowers and meet quarterly to discuss observations about the nature of complaints received, characteristics of borrowers, and available information about resolution of complaints. The MOU also provides for the sharing of complaint data analysis, recommendations, and analytical tools. In addition, the Bureau and the Department have initiated the interagency process to reestablish the MOU regarding oversight of compliance obligations. The agreement will be designed to coordinate efforts to oversee regulated entities and protect consumers.

Abusiveness

In January, the Bureau published a Policy Statement with respect to the manner in which the Bureau intends to apply the abusiveness prohibition of the Dodd-Frank Act in its supervisory and enforcement work.[42] This Policy Statement provides much needed guidance to the market with respect to the Bureau's approach to this novel provision of the Dodd-Frank Act.

Assessing Diversity at Regulated Entities

The Fall 2019 Semi-Annual Report also reports on the Bureau's efforts to increase workforce and contractor diversity, consistent with the procedures established by the Office of Minority and Women Inclusion (OMWI). I want to take a moment to highlight one initiative in particular, spearheaded by our OMWI, regarding the Bureau's efforts to assess diversity at regulated entities.

Pursuant to Section 342 (b)(2)(c) of the Dodd-Frank Act, the Bureau developed a process to assess the diversity policies and practices of the entities the Bureau regulates. The Bureau, along with other regulators, developed a voluntary diversity self-assessment form that aligns with the Joint Standards for Assessing Diversity Practices of Regulated Entities. The intent of the self-assessment is to allow the Bureau to gain an understanding of Diversity and Inclusion (D&I) practices within the industry. We will share best practices across the industry to help financial institutions improve their D&I practices. These financial institutions provide services to a broad range of consumers with diverse financial norms and backgrounds. It is important that their workforces are diverse so they can provide consumers with an equally diverse range of products and services that are fair, transparent, and competitive.

The Bureau conducted outreach to mortgage finance organizations for the past several years to assess the diversity and inclusion practices of the entities the Bureau regulates and published the findings from that outreach. The Bureau conducted a multi-pronged outreach strategy including

[42] *See* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/.

direct entity contact, meetings with trade organizations, and joint outreach with other federal regulators to engage entities to participate in the voluntary self-assessment process in the Fall 2019. The Bureau has developed an online data collection tool to collect and manage the submitted assessment data and the tool is available on the Bureau's website. In 2020, the Bureau will continue to conduct direct outreach to entities and work with trade organizations to encourage entities to assess their diversity and inclusion policies and practices and to submit their assessments to the Bureau. A critical piece of this effort is assuring entities that their information will be protected.

Paying for College: Your Financial Path to Graduation

One important consumer segment for the Bureau is students and parents who are seeking ways to finance higher education. The Bureau would like to be a partner in helping postsecondary institutions implement financial education on campus. Financial education can improve students' and families' financial well-being by providing resources on budgeting, repaying debt, managing credit, and saving money. The Bureau stands ready to work with colleges, universities, and vocational schools to help students improve their financial well-being.

In fact, the Bureau is currently developing our newest resource for students, a web-tool *Paying for College: Your financial path to graduation.* Prospective students with financial aid offers can use this tool to better understand the terms of their offers and then put together a financing plan to cover the remaining cost of attendance. Once the student has drafted a plan, the tool can project the student's total debt and help the student estimate its affordability by comparing it to the median salary of others who have attended that school. Students can use the tool on their own, or colleges can work with the Bureau to make it part of their financial aid communications. The Bureau will continue to seek feedback and partnership as we refine this new tool.

Legislative Reform

Last year, the Bureau requested that Congress provide us with clear legal authority to supervise financial institutions for Military Lending Act compliance. As part of that request, the Bureau transmitted proposed legislative language that would achieve this goal. I stand ready to work with members of this Committee to provide us with this authority to assist the Bureau's ongoing efforts to prevent harm to our servicemembers and their families. The Bureau continues to use its education and enforcement tools in this space, but the authority to supervise would make these efforts even more effective.

Conclusion

My testimony today does not attempt to cover all of the things the Bureau does to meet our mission. The full Report, which is enclosed with my testimony, covers more than I can highlight in the time I have today. While I have not discussed the work of every employee, I want to say that every employee is valued and a critical part of our team. Let me commend the Bureau employees who work tirelessly to achieve our mission. We stand together to use all of our tools to go after bad actors that break the law, but also to prevent harm in the first place. We are building a culture of compliance based on smart and clear rules of the road, built by smart and devoted staff of the Bureau in partnership with fellow regulators and furthered by institutions that share our interest. And lest I forget, the work of this Committee helps all of us at CFPB meet our mission. I look forward to our continued work in the next year on behalf of American consumers.

Thank you again for the opportunity to present this Semi-Annual Report of the Bureau's work in support of American consumers.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM KATHLEEN L. KRANINGER

Debt collection

Q.1. The interaction between the debt collection notice of proposed rulemaking (NPRM) and the supplemental time-barred disclosure rule the CFPB recently released allows debt collectors to send required notices by electronic means. The NPRM does not require compliance with the E–Sign Act or consumer consent to receive communications from the debt collector before attempting electronic communications with consumers, making it even more likely that many consumers may not even receive the disclosure.

Q.1.a. What is the CFPB's plan to address?

A.1.a. The May 2019 notice of proposed rulemaking (May 2019 NPRM) described how a debt collector can provide three required disclosures—the validation notice, the original-creditor disclosure, and the validation-information disclosure—electronically. These disclosures are subject to the E–SIGN Act. The NPRM proposes to require compliance with the E–SIGN Act plus additional requirements. The NPRM also proposes an alternative under which the Bureau would create an exception to the E–SIGN Act but impose alternative consumer protections, including providing the consumer notice and an opportunity to opt out of receiving hyperlinked delivery of these notices. The NPRM also proposes special consumer protections where the validation notice is the collector's initial communication with the consumer. In all cases, under the proposed rule, the debt collector would also be required to take other steps—including, for example, monitoring for notices of undeliverability and providing validation notices in a responsive format—to increase the likelihood that consumers receive and access required disclosures delivered electronically.

In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed electronic delivery of required disclosures. The Bureau is analyzing those comments as part of the process of taking final action on the May 2019 NPRM.

Q.1.b. Will the CFPB amend the proposed rule to require consumer consent before sending electronic communications?

A.1.b. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed electronic communications. The Bureau is analyzing those comments as part of the process of taking final action on the May 2019 NPRM.

Q.2. The CFPB's disclosure testing report shows that almost half (45.76 percent) of people in the study are not willing to receive a required notice by email (45.76 percent). Problems with hyperlinks are well established—they often contain viruses and interfere with data security and privacy. To no surprise, the number of people who are unwilling to click on any notices received through hyperlinks are much higher in the CFPB's disclosure testing—70.12 percent are not at all willing to click on a link delivered in an email, and 82.21 percent are not at all willing to click on a link delivered by text message. Hyperlinks by text and email are expressly permitted, without any limits, in the current NPRM. Given these results, will the CFPB amend the proposed rule to not allow hyperlinks?

A.2. As noted in the previous response, a number of provisions in the May 2019 NPRM address required disclosures delivered electronically. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed electronic communications and, specifically, the use of hyperlinks or text messages. The Bureau is analyzing those comments as part of the process of determining the provisions the Bureau may decide to include in a final rule. As noted, the Bureau also completed testing subsequent to the release of the May 2019 NPRM and is considering the results of that testing as part of its current work.

Q.3. The FTC filed comments on the CFPB's proposed debt collection rule stating that the FTC and courts have said that "it is a violation of the FDCPA for a debt collector . . . to file an action in court to collect on a time-barred debt" and also that it is "likewise a clear violation of the FDCPA to threaten to file such an action." The debt collection proposals outlined by Director Cordray for the small business review panel in 2016 would have codified these clear rules. The CFPB has instead proposed to inject a state of mind element that would bar lawsuits or threats only if the collector "knows or should know" that the legal deadline has passed. How does the CFPB square this proposal with the FTC's position that "requiring a showing that the debt collector knew or should have known the debt was time-barred places unnecessary additional burdens on law enforcement agencies?"

A.3. The Bureau's May 2019 NPRM proposed to prohibit a debt collector from bringing or threatening to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt. In proposing the "know or should know" standard, the Bureau noted that, in many cases, a debt collector will know, or can readily determine, whether the statute of limitations has expired. In some instances, however, a debt collector may be genuinely uncertain even after undertaking a reasonable investigation; this could occur, for example, when the case law in a State is unclear as to which statute of limitations applies to a particular type of debt. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed time-barred debt, including the proposed "know or should know" standard. The Bureau is analyzing those comments as part of the process of taking final action on the May 2019 NPRM.

Q.4. Under what types of circumstances would the CFPB find that a debt collector "should" have known that a debt was so old it could not be pursued in court?

A.4. Please see the response to question 3.

Q.5. What is the justification for not requiring debt collectors to be responsible for knowing if the legal deadline has passed before they sue or threaten a lawsuit on an old debt? Why should courts have to figure out the debt collector's state of mind?

A.5. Please see the response to question 3.

Q.6. In 2016, when the CFPB first released its outline of proposals for debt collection rulemaking, it discussed the serious problem of collectors pursuing the wrong person or wrong amount, and identified "substantial deficiencies in the quality and quantity of information collectors receive at placement or sale of the debt." But the current proposal, without providing any guidance on what documentation collectors must have, protects debt collection attorneys who make false, deceptive or misleading representations in court pleadings as long as they review unspecified "information." Why shouldn't a debt collector be required to review original account documents and admissible evidence, and otherwise be held responsible for filing a lawsuit with false accusations?

A.6. Debt collection attorneys who make false, deceptive, or misleading representations in debt collection court pleadings would, in general, violate Federal laws (including the Fair Debt Collection Practices Act (FDCPA)) or State laws or professional ethical standards for attorneys. The May 2019 NPRM addressed the specific potentially deceptive claim that consumers may take away from an attorney's name on a court pleading that the attorney has been meaningfully involved in the preparation of that pleading. To reduce uncertainty as to when an attorney has been meaningfully involved in the preparation of such a pleading, the May 2019 NPRM provides that an attorney has been meaningfully involved in the preparation of debt collection litigation submissions if the attorney: (1) drafts or reviews the pleading, written motion, or other paper; and (2) personally reviews information supporting the submission and determines, to the best of the attorney's knowledge, information, and belief, that, as applicable: the claims, defenses, and other legal contentions are warranted by existing law; the factual contentions have evidentiary support; and the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information. The factors in the May 2019 NPRM are similar to some of the nationally recognized standards for attorneys making submissions in civil litigation.

In response to the May 2019 NPRM, the Bureau received over 14,000 comments, including a number of comments on the safe harbor for meaningful attorney involvement in debt collection litigation. The Bureau is analyzing those comments in deciding what provisions to include in a final rule.

Q.7. The CFPB has proposed to allow debt collectors to deliver legally required information about the debt and people's rights through hyperlinks in emails or texts sent to people who have not agreed to receive emails or texts from the debt collector. How does the DFPB reconcile this proposals with CFPB, FCC, and FTC warnings that consumers should not click on links from unknown parties and encourage phishing scams that impersonate debt collectors?

A.7. The Bureau is aware of concerns about consumers accessing disclosures through hyperlinks; the May 2019 NPRM states that "[f]ederal agencies have advised consumers against clicking on hyperlinks provided by unfamiliar senders" and cites to two Federal Trade Commission (FTC) articles and a Federal Deposit Insurance Corporation (FDIC) publication on this topic. Because of these concerns, proposed § 1006.42(c)(2)(ii) and 1006.42(d) describe consumer notice-and-opt-out processes meant to ensure that, before a debt collector sends a required disclosure by hyperlink, the consumer expects to receive it and does not object to such receipt. By helping the consumer identify the sender in advance, a notice-and-opt-out process may also reduce the risk that the consumer will treat an email containing a hyperlink as spam. The Bureau requested comment on the use of hyperlinks to deliver disclosures and is reviewing those comments now. The Bureau will continue to consider feedback and other information in reviewing the proposed rule's interventions as it moves forward toward a final rule.

Q.8. The CFPB surveyed a large number of consumers as part of the recent supplemental debt collection rulemaking. Results of that survey indicated that fewer than 15 percent of consumers are very willing to receive information from a debt collector by email, not even 6 percent are very willing to receive information by clicking a link delivered in an email, and under 3 percent are very willing to receive information by clicking a link delivered in a text message. In light of these results, will the CFPB amend the NPRM to prohibit debt collectors from using these methods to contact consumers without their consent?

A.8. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed electronic communications and, specifically, the use of hyperlinks or text messages. The Bureau is analyzing those comments in deciding the provisions to include in a final rule. The Bureau also completed disclosure testing subsequent to the release of the May 2019 NPRM and is considering the results of that testing as part of its current work.

Taskforce Qs

Q.9. In the Bureau's February 19, 2020, letter, the Bureau indicated that two members of the Taskforce on Federal Consumer Law had received ethics waivers. Please provide the following information:

Q.9.a. Identify the Taskforce members who received the waivers:

A.9.a. Pursuant to 18 U.S.C. § 208(d)(1), a copy of a determination to grant an exemption under Section 208(b)(1) may be made available upon request pursuant to the procedures set forth in Section 105 of the Ethics in Government Act. Those procedures require a requester to make attestations acknowledging the legal prohibitions on certain uses of the information, which can be done by completing OGE Form 201. See 5 CFR § 2634.603(c).

Q.9.b. Identify the Bureau employee who signed the waivers.

A.9.b. Pursuant to 18 U.S.C. § 208(b)(1), the waivers are issued by the Government official responsible for appointing the employee to his (or her) position. Both waivers were signed by the Bureau's Chief Human Capital Officer, Mr. Jeffrey Sumberg.

Restitution

Q.10. The Bureau has claimed that it obtained $777 million in relief for consumers in FY 2019. Please identify the name of each such action and, for each action, provide the following:

Q.10.a. The type(s) of consumer relief (*e.g.,* restitution, damages);

A.10.a. See the table below.

Name	Relief	Type of Relief	Suspended	Civil Penalty Fund Allocation
In the Matter of Financial Credit Service, Inc., d/b/a Asset Recovery Associates (File No. 2019-BCFP-0009).	$36,878.81	Restitution	No	None
Bureau of Consumer Financial Protection v. Andrew Gamber, Voyager Financial Group, LLC, BAIC, Inc., SoBell Corp (E.D. Ark. No. 4:19-cv-00565-BSM).	$2,700,000	Redress	Suspended upon payment of, inter alia, $200,000 in redress	$2,700,000
Bureau of Consumer Financial Protection v. Equifax, Inc. (N.D. Ga. No. 1:19-cv-03300-TWT).	$425,000,000	Redress / restitution	No	None
Bureau of Consumer Financial Protection v. Student CU Connect CUSO, LLC (S.D. Ind. No. 1:19-cv-02397-JRS-DLP).	$168,000,000	Loan forgiveness	No	None
In the Matter of Servis One, Inc., d/b/a BSI Financial Services (File No. 2019-BCFP-0006).	$36,500	Restitution	No	None
In the Matter of Mark Corbett (File No. 2019-BCFP-0002).	$0		No	$44,234,170
In the cog Matter of USAA Federal Savings Bank (File No. 2019-BCFP-0001).	$12,299,043	Restitution	No	None
Bureau of Consumer Financial Protection v. Village Capital and Investment, LLC (D. Nev. No. 2:18-cv-02304).	$268,869	Redress	No	None
In the Matter of Santander Consumer USA Inc. (File No. 2018-BCFP-0008).	$9,293,826	Restitution	No	None
In the Matter of Cash Express, LLC (File No. 2018-CFPB-0007).	$32,012.33	Redress	No	None
Consumer Financial Protection Bureau v. Freedom Debt Relief, LLC and Andrew Housser (N.D. Cal. No. 17-cv-6484).	$20,000,000	Restitution	No	None
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).	$35,256,275	Redress	Suspended upon payment, inter alia, of $50,000 in redress	$35,206,275
Consumer Financial Protection Bureau v. Northern Resolution Group (W.D.N.Y. No. 16-cv-0880).	$44,000,000	Redress	Suspended as to one defendant upon payment to plaintiffs, inter alia, of $10,000	None
Consumer Financial Protection Bureau v. D and 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 a/k/a David Gasparyan (C.D. Cal. No. 16-cv-2725).	$1,000,000	Damages	No	None
Consumer Financial Protection Bureau v. ITT Educational Services, Inc. (S.D. Ind. No. 14-cv-0292).	$60,000,000	Equitable monetary relief	No	None
Consumer Financial Protection Bureau v. Universal Debt Payment Solution, LLC, et al. (N.D. Ga. No. 15-cv-0859) (settlement as to Sumant Khan and S Payment Processing & Solutions, LLC).	$633,710	Redress	Suspended upon, inter alia, payment of certain accounts	$558,674

Q.10.b. For each type of consumer identified in (a), the amount of consumer relief;

A.10.b. Please see the response to question 10.a.

Q.10.c. Whether the entity provided the entire amount of the consumer relief or whether any amount was suspended based on the entity's financial condition; and

A.10.c. Please see the response to question 10.a.

Q.10.d. Any relief provided to consumers through the Bureau's civil penalty funds.

A.10.d. The $777 million in relief does not include amounts distributed or allocated to consumers from the Civil Penalty Fund. In fiscal year (FY) 2019, $120 million was allocated to harmed consumers in five cases. Also during FY 2019, the Bureau had seven active and ongoing Civil Penalty Fund case distributions. Funds related to those cases were initially distributed in FY 2017 and FY 2018 and totaled approximately $350 million. During FY 2019, the Bureau released funds in one new case totaling approximately $1 million.

Advisory Opinions

Q.11. On March 6, 2020, the CFPB announced an advisory opinion program. The current guidance mechanism advises inquirers that the interpretations offered by staff are not binding. Will the advisory opinions under the new program also be nonbinding?

A.11. Advisory opinions under the new program will be interpretive rules under the Administrative Procedure Act that respond to a specific request for clarity on an interpretive question. The Bureau summarized the manner in which interpretive rules can be binding in its Request for Information Regarding Bureau Guidance and Implementation Support, 83 Fed. Reg. 13959, 13960 (Apr. 8, 2018), *https://www.federalregister.gov/d/2018-06674.*

Q.12. When will procedures for the new advisory opinion program be announced?

A.12. The announcement date for further program details is still under internal consideration at this time. Full details of the program will be announced at a later date, at which time the Bureau will also notify the Committee and relevant Member offices.

Q.13. Will the public be given an opportunity for notice and comment on advisory program procedures?

A.13. Program procedures are still under internal consideration at this time. Full details of the program, including any requests for public comment on program procedures, will be released at a later date.

Q.14. How will the CFPB ensure that the advisory opinions comply with APA standards, executive orders on guidance, and all existing statutory interpretations?

A.14. In formulating advisory opinions, the Bureau will review their compliance with any applicable law and their consistency with existing statutory interpretations through its internal review processes.

Q.15. How will the CFPB make sure that consumer interests are adequately represented in issuing advisory opinions? Will the CFPB consult with consumer advocates or other organizations before issuing advisory opinions or will it rely entirely on the requester for information?

A.15. Program procedures are still under internal consideration at this time. Full details of the program will be announced at a later date.

Q.16. Which office at the CFPB will have responsibility for the advisory opinion program?

A.16. Program procedures are still under internal consideration at this time. Full details of the program will be announced at a later date.

Q.17. Does the CFPB plan to include TILA in the advisory opinion program? If so:

A.17. Program parameters are still under internal consideration at this time. Full details of the program will be announced at a later date.

Q.17.a. Will the CFPB update the introduction to the TILA Official Interpretations which provides that the commentary is the vehicle by which the CFPB issues official interpretations on TILA and that no official interpretations are issued other than through the commentary?

A.17.a. Please see the response to question 17.

Q.17.b. Will the CFPB afford an opportunity for notice and comment on any proposed changes to that language?

A.17.b. Please see the response to question 17.

Q.17.c. How does the CFPB reconcile TILA Simplification process with an advisory opinion program?

A.17.c. The Bureau does not see any conflict between an advisory opinion program and the Truth in Lending Simplification and Reform Act of 1980, commonly referred to as TILA simplification.

Q.17.d. Does the CFPB believe that advisory opinions would afford creditors the good faith reliance defense under Section 130(f) of TILA?

A.17.d. Generally, if the Bureau were to issue an advisory opinion under TILA, acts done or omitted in good faith in conformity with it would qualify for the safe harbor from liability in Section 130(f) of TILA.

Coronavirus

Q.18. When will the CFPB issue more detailed guidance to its regulated entities on forbearance and loss mitigation?

A.18. The Bureau, along with other regulators, released guidance[1] publicly over the past few weeks to financial institutions, lenders, and creditors encouraging them to work constructively with borrowers and customers affected by COVID–19. In addition, the Bu-

[1] See *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-information-encourage-financial-institutions-work-borrowers-affected-covid-19/*, *https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/*, and *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/*.

reau, along with other regulators, released guidance on forbearance and loss mitigation.[2]

Q.19. Will the CFPB impose any affirmative obligations on its regulated entities to assist borrowers during and in the wake of the crisis? If so, please explain. If not, why not?

A.19. The Bureau, along with other regulators, released guidance[3] publicly over the past few weeks to financial institutions, lenders, and creditors encouraging them to work constructively with borrowers and customers affected by COVID–19. The Bureau is considering issuing more guidance to assist borrowers.

Q.20. What steps is the CFPB taking to minimize predatory lending during the pandemic?

A.20. The Bureau continues to employ its tools of education, regulation (including guidance), supervision, and enforcement aggressively to address the impacts of the pandemic on consumers in the consumer finance marketplace. As U.S. consumers confront the spread of the COVID–19 pandemic, many are struggling with its economic impact. The virus, and the necessary actions to combat it, have affected the U.S. economy, and therefore U.S. consumers, profoundly. Using market monitoring, stakeholder engagement, law enforcement partnerships, our complaint system, and our aforementioned tools, we are seeking to prevent consumer harm and acting on issues of concern as they arise, including any instances of predatory lending. The Bureau does not comment on nonpublic supervisory or enforcement matters.

Q.21. Is the CFPB taking any steps to assess the adequacy and appropriateness of its loss mitigation rules under RESPA during the pandemic? Has the CFPB, for example, evaluated whether the timeframes for borrowers to submit documents are reasonable during a pandemic?

A.21. The Bureau has received questions about the loss mitigation provisions and has taken steps already to provide guidance on these issues.

On March 9, 2020, the Bureau, with its interagency partners, issued a press release encouraging financial institutions to work constructively with borrowers and other customers affected by COVID–19. The Bureau has existing regulatory flexibilities on our mortgage servicing rules that should make it easier for mortgage servicers to quickly offer short-term help (such as forbearance) to homeowners who may start to have trouble making their mortgage payments.[4] We know consumers' first stop in the face of hardship is with their creditors and their financial institutions, so our message was important for regulated entities to hear. We also know

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[2] See *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-mortgage-servicers-work-struggling-homeowners-affected-covid-19/.*

[3] See *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-infor-mation-encourage-financial-institutions-work-borrowers-affected-covid-19/, https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/, https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/,* and *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-mortgage-servicers-work-struggling-homeowners-affected-covid-19/*

[4] See *https://files.consumerfinance.gov/f/documents/bcfp__statement-on-supervisory-practices__disaster-emergency.pdf.*

many financial institutions want to help customers navigate this situation. We will continue to work with our Federal and State partners, and seek feedback from stakeholders, to ensure we are providing appropriate flexibilities to benefit consumers during this time.

On March 18, 2020, I issued a statement after the U.S. Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA) announced a moratorium on foreclosures and evictions.[5] In the statement, I noted that actions taken by HUD and FHFA are timely and an important step in providing assurance to consumers.

On March 22, 2020, the Bureau, the Federal financial institution regulatory agencies, and the State banking regulators issued an interagency statement encouraging financial institutions to work constructively with borrowers affected by COVID–19 and providing additional information regarding loan modifications.[6]

Finally, on April 3, 2020, the Bureau, the Federal financial institution regulatory agencies and the State financial regulators issued a joint policy statement providing needed regulatory flexibility to enable mortgage servicers to work with struggling consumers affected by the COVID–19 emergency.[7]

The Bureau is continuing to monitor the impact of COVID–19 and will issue additional information and guidance, as warranted. Regularly checking our website: *www.consumerfinance.gov/coronavirus* will ensure that you have the most recent information that the Bureau has posted.

Q.22. How is the CFPB planning to conduct examinations given limitations on examiners being able to go onsite to examined institutions?

A.22. Despite the unprecedented nationwide disruptions being caused by COVID–19, the Bureau is continuing to perform examinations and other supervisory work, but we are doing that important work remotely for the time being. Our examiners are conducting supervisory activities from their home-duty stations by leveraging technology and adjusting work as necessary. We also remain in close contact with our sister Federal and State regulatory agencies as we continue to ensure consumers are protected, coordinating across regulatory jurisdictions.

Q.23. What are the CFPB's plans to examine financial institutions if the Coronavirus pandemic restricts examiners for going onsite for more than 2 months, 6 months, 12 months?

A.23. While we have adjusted our work in the short term to accommodate offsite examinations, we are planning for multiple contingencies in the event that health and safety concerns dictate that we continue to conduct examination work from alternate locations for a longer term. We will continue to be in close contact with other Federal and State regulatory agencies, as well as with our super-

[5] See *https://www.consumerfinance.gov/about-us/newsroom/cfpb-director-kraninger-statement-joint-hud-fhfa-announcement-foreclosure-and-eviction-moratorium/.*

[6] See *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-information-encourage-financial-institutions-work-borrowers-affected-covid-19/.*

[7] See *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-mortgage-servicers-work-struggling-homeowners-affected-covid-19/.*

vised entities, to ensure that we continue to protect consumers through our supervisory work while working to ensure the health and safety of our remote examination staff and employees of our supervised institutions. As we conduct our supervisory work, we will consider the circumstances that supervised entities are facing and will be sensitive to ensuring those entities focus good-faith efforts to assist consumers, particularly those in need during the pandemic.

Chanin

On March 3, 2020, the Bureau announced that Director Kraninger had selected Leonard Chanin to serve as Acting Deputy Director. Mr. Chanin will serve part time in this position while he remains Deputy to FDIC Director McWilliams. Prior to joining the FDIC in March 2019, Mr. Chanin was the Deputy General Counsel and Senior Vice President at Fifth Third Bank since March 2017.

The Bureau filed suit against Fifth Third Bank on March 9, 2020, alleging that it had opened unauthorized bank and credit card accounts for consumers from 2008 through "at least 2016." The lawsuit does not foreclose that the alleged illegal activity occurred in 2017.

As Deputy General Counsel and Senior Vice President at Fifth Third Bank beginning in March 2017, Mr. Chanin either worked at the bank while it was still engaged in alleged illegal activity or would have known about the prior alleged illegal activity and participated in defending Fifth Third Bank from the Bureau's investigation.

Q.24. Did the Bureau provide a waiver of Federal ethics law to Mr. Chanin. If so, please state whether the waivers are under:

- 18 U.S.C. § 280(b)(1);
- 18 U.S.C. § 208(b)(3);
- Executive Order 13770;
- An authorization under 5 C.F.R. § 2635.502(d); or
- Other.

A.24. No. The Bureau has not issued any waivers of Federal ethics law to Mr. Chanin. Currently, Mr. Chanin is recusing himself from participating in particular matters involving specific parties in which Fifth Third Bank is a party at the Bureau.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED FROM KATHLEEN L. KRANINGER

The Memorandum of Understanding (MOU) the Consumer Financial Protection Bureau (CFPB) recently signed with the Department of Education regarding student loan borrower complaints includes the following provision:

For complaints regarding private loans with Federal consumer financial law issues, the Bureau is responsible for attempting to resolve informally such complaints, in accordance with 12 U.S.C. § S535(c)(l), and as appropriate, will discuss issues with ED regarding products offered by, or on the premises of, Institutions of Higher Education or other issues that may impact Federal programs overseen by ED.

Q.1.a. Will CFPB be working with the Department of Education to review and analyze the Tier 1 and Tier 2 financial agreements between institutions of higher education and financial service providers and identify those having higher than average fees, such as the previous finding for Wells Fargo, for violating the requirement that they be "not inconsistent with the best financial interests of students"?

A.1.a. The complaints MOU provides a mechanism for the Bureau and the Department of Education to discuss and collaborate on a variety of issues related to complaints, and the attempted resolution of complaints, within their respective roles and responsibilities. The MOU contemplates discussion and collaboration regarding products offered on college campuses which includes those products offered under Tier 1 and Tier 2 agreements.

Tier 1 agreements are between colleges and a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of Title IV funds on behalf of the college, and offers one or more financial accounts under the arrangement, or where the college or third-party servicer directly communicates information about the account to students. Tier 2 agreements are 1) between a college and a vendor that offers financial accounts through a financial institution and 2) under which financial accounts are offered and marketed directly to students.

The Credit Card Accountability Responsibility and Disclosure Act (CARD Act) mandates annual reporting on college credit card agreements. The Bureau's reports have complied with the requirements of the CARD Act regarding reporting on college credit card agreements and will continue to do so. Additionally, the Bureau is committed to vigorously monitoring financial markets which impact students. Whenever the Bureau's market monitoring efforts uncover harm or risk of harm, the Bureau employs its most effective tool or tools, including education, regulation, supervision, and enforcement, to mitigate or remediate those harms and risks.

Q.1.b. Will CFPB make such analysis available to the public?

A.1.b. In meeting its mission, the Bureau is committed to transparency and public discourse. In the abstract, it is challenging to commit to making analysis available. However, through mechanisms such as the CARD Act reporting referenced in the response to question 1.a., the Private Education Loan Ombudsman's annual report, our research efforts, our Supervisory Highlights, and my testimony, the Bureau provides extensive information to the public and will continue to do so.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TOOMEY FROM KATHLEEN L. KRANINGER

Q.1. Director Kranginger, I appreciate that the CFPB signed a joint statement on the coronavirus with other banking regulators that promised to "provide appropriate regulatory assistance to affected institutions subject to their supervision." The statement also noted that "[p]rudent efforts [to help borrowers impacted by the coronavirus] that are consistent with safe and sound lending practices should not be subject to examiner criticism." How does the CFPB intend to implement this regulatory and supervisory flexibility? Does the CFPB intend to provide any more concrete details about these flexibilities to regulated entitites?

A.1. The Bureau, along with other regulators, released guidance[1] publicly over the past few weeks to financial institutions, lenders, and creditors encouraging them to work constructively with borrowers and customers affected by COVID–19. This guidance emphasizes that prudent efforts to modify the terms on existing loans for affected customers will not be subject to examiner criticism. For example, when appropriate, a financial institution may restructure a borrower's debt obligations due to temporary hardships resulting from COVID–19 related issues. Such cooperative efforts can ease cash-flow pressures on affected borrowers, improve their capacity to service debt, and facilitate the financial institution's ability to collect on its loans. The Bureau's guidance also provides temporary and targeted flexibility for financial institutions to apply their resources to consumers' most urgent needs by deferring less urgent regulatory obligations. The Bureau continues to consider what guidance it can issue to regulated entities that will help consumers through this time and has issued guidance on myriad topics, including compliance with the assistance provided under the CARES Act.

The Bureau has also provided flexibility with respect to certain reporting requirements, comment submissions, and data collections, preferring that institutions focus their resources on accommodating consumers in need. Specifically, the Bureau extended the comment period on its Supplemental Notice of Proposed Rulemaking implementing the FDCPA to June 5, 2020. The Bureau also announced on March 26, 2020, that:

a. Until further notice the Bureau does not intend to cite in an examination or initiate an enforcement action against any institution for failure to report its HMDA data quarterly;
b. Until further notice the Bureau does not intend to cite in an examination or initiate an enforcement action against any entity for failure to submit to the Bureau certain information relating to credit card and prepaid accounts; and
c. The Bureau will work with affected financial institutions in scheduling examinations and other supervisory activities to minimize disruption and burden.

Furthermore, the Bureau continues to work closely with other financial regulators and has issued additional joint statements with them, including the Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID–19 on March 26,

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[1] See *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-information-encourage-financial-institutions-work-borrowers-affected-covid-19/*, *https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/*, *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/* and *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-mortgage-servicers-work-struggling-homeowners-affected-covid-19/*.

2020.[2] The Bureau anticipates making additional statements and taking further action as appropriate in the coming days and weeks.

The Bureau also provided concrete details about regulatory and supervisory flexibility in its September 2018 Statement on Supervisory Practices Regarding Financial Institutions and Consumers Affected by a Major Disaster or Emergency.[3] In that statement, the Bureau noted a few examples from Regulation B, Regulation X, and Regulation Z where supervised entities can make use of existing regulatory flexibility where doing so will benefit consumers affected by a major emergency. For example, the Bureau noted regulatory flexibility in Regulation X that permits servicers to offer relief to borrowers affected by a major disaster or emergency without first having to collect a complete loss mitigation application. The Bureau also noted in that statement that "when conducting examinations and other supervisory activities, the Bureau will consider the circumstances that supervised entities may face following a major disaster or emergency and will be sensitive to good-faith efforts to assist consumers." The Bureau's 2018 statement remains applicable to the current pandemic.

At the same time, the Bureau has focused its efforts on being a resource to consumers with accurate, timely information regarding their rights and expectations in the consumer financial marketplace during this challenging time. We have made resources available in multiple formats and languages, including emphasizing the continued availability of the complaint database for consumers who encounter issues. The Bureau also continues to employ its supervision and enforcement tools to enforce compliance.

Q.2. Director Kraninger, I'd like to continue our discussion about the definition of abusive practices under Section 1031 of Dodd-Frank, which we discussed when you were in front of this Committee last October. I appreciate your leadership in directing the CFPB to release clarifying guidance on the definition of "abusive" under Section 1031. This guidance does not and should not impose a legally binding requirement on the public.

Q.2.a. Does the CFPB intend for the guidance to be a standard for all new lawsuits filed after the guidance's January 24, 2020, issuance?

A.2.a. The Policy Statement describes certain aspects of how the Bureau intends to approach its use of the abusiveness standard in its supervision and enforcement matters going forward. In issuing this Policy Statement, however, the Bureau does not foreclose the possibility of engaging in a future rulemaking to further define the abusiveness standard.

Q.2.b. Last month you told the House Financial Services Committee that the CFPB would not amend any court filings where the CFPB is prosecuting under Section 1031's abusive practices prong, despite this new guidance. I'm confused by this because it seems to contradict footnote 21 of the new guidance, which clarifies that

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[2] *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/.*

[3] *https://files.consumerfinance.gov/f/documents/bcfp__statement-on-supervisory-practices__disaster-emergency.pdf.*

the CFPB may re-evaluate currently pending cases in light of this guidance and that the CFPB generally intends to "take this Policy Statement into account when seeking monetary relief in pending cases asserting abusiveness claims." How can the CFPB prosecute cases that do not conform to the CFPB's current definition of abusive?

A.2.b. The Bureau does not intend to amend any Bureau filings that pre-dated the Policy Statement based on the Policy Statement. In general, however, the Bureau intends to take this Policy Statement into account when seeking monetary relief—specifically civil money penalties and disgorgement—in pending cases asserting abusiveness claims. This is consistent with the approach set forth in the Policy Statement.

Q.2.c. Regarding enforcement actions, you said in an April 2019 speech that you were reviewing the CFPB's enforcement process to reduce rulemaking by enforcement and ensure a more fair and effective process. Have you completed this review and particularly reevaluated pending enforcement cases given that review?

A.2.c. The decision to bring an enforcement action or to settle an enforcement action is one I make as the Director of the Bureau. I take this responsibility seriously and have thoroughly reviewed the recommendations brought to me. Given relatively new leadership within the Supervision, Enforcement and Fair Lending Division and the Office of Enforcement, we continue to refine our processes to ensure we are moving expeditiously to bring bad actors to justice and applying the appropriate tool choice to address a market issue we identify—whether that is education, regulation, supervision, or enforcement. To your point, because rules are general standards, they are not best articulated on a case-by-case basis through enforcement actions. To the extent the Bureau engaged in that practice in the past, that does not occur today.

Q.3. I have long advocated for the regulatory agencies to use guidance documents properly. I led the effort to invalidate the CFPB's Indirect Auto Lending Guidance using the Congressional Review Act. This effort was necessitated because the CFPB violated requirements under this Act when it issued its guidance. More broadly, agencies should never sidestep the APA's notice and comment rulemaking process by issuing guidance that imposes legally binding requirements on the public. Unfortunately, Director Cordray seemed to be inclined to follow this approach. The CFPB still has many guidance documents from Director Cordray's tenure in effect, including those that cover credit cards, debt collection practices, and compliance under the Real Estate Settlement Practices Act. Has the CFPB reviewed all of this previously issued guidance to ensure that they do not impose any legally binding obligations to the public and are consistent with your philosophy on consumer financial protection? If so, what was the result of that review? If not, does the CFPB plan to do so?

A.3. Unlike a law or regulation, a guidance document does not have the force and effect of law and the Bureau agrees that guidance should not impose legally binding requirements on the public. The Bureau has reviewed and will continue to review its guidance documents to ensure that the documents do not purport to impose legally binding requirements on the public. Through a recently issued Policy Statement on Compliance Aids, the Bureau has tried to publicly clarify its approach to certain guidance documents, including through explaining the legal status and role of such documents. The Bureau is currently considering a number of issues related to its guidance documents, including the review of past guidance to determine, among other things, which documents might fall under the Bureau's new Compliance Aids policy.

Q.4. Director Kraninger, my understanding is that the CFPB intends to issue a rulemaking to implement Section 1071 of Dodd-Frank, which generally requires financial institutions to collect and compile demographic data and other information on small business lending.

I'm very concerned about this requirement. The CFPB should be a consumer bureau, not a business bureau, and this requirement could prove to be unwieldy for small financial institutions.

Q.4.a. At your confirmation hearing, you promised me that you would explore invoking your authority under Section 1071 of Dodd-Frank to exempt certain financial institutions from this requirement. Is the CFPB seriously exploring invoking this authority in the rulemaking? For example, while I am skeptical of arbitrary asset thresholds, exempting all small financial institutions with less than $1 billion in assets from this requirement would help 85 percent of banks and thrifts. The exemption would, however, only impact 10 percent of the number of small business loans.

A.4.a. As part of its rulemaking process, the Bureau is exploring potential ways to implement section 1071 in a balanced manner with a goal of obtaining and publishing small business lending data that achieves the statutory objectives without unnecessarily affecting the cost or availability of credit to small businesses and while minimizing burden and unintended consequences on financial institutions and small businesses.

Section 1071 authorizes the Bureau to adopt exceptions to any requirement in 1071, and to "conditionally or unconditionally [. . .] exempt any financial institution or class of financial institutions from the requirements" of 1071, as the Bureau deems "necessary or appropriate to carry out the purposes of this section." The Bureau continues to explore what it should consider in making this determination. For example, one of the topics the Bureau explored in the symposium it held in November 2019 regarding section 1071 is whether exempting certain financial institutions, such as smaller lenders, would further or diminish the statutory purposes of 1071.

The Bureau's November 2019 symposium also explored how to efficiently collect appropriate data without imposing unnecessary or undue costs that could limit access to credit from existing market participants or discourage new entrants into the market for small business credit.

The next step in the Bureau's rulemaking process will be the release of materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act, in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. These materials will describe how the Bureau is considering implementing section 1071, discuss other alternatives the Bureau has considered, and identify the potential impact that the proposals under consideration might have on small entities. The information and feedback obtained during the Small Business Regulatory Enforcement Fairness Act process will help inform the Bureau's policymaking leading to a notice of proposed rulemaking.

Q.4.b. Section 1071 permits but does not require the CFPB to collect "any additional data the Bureau deems appropriate," beyond the statutorily required data points. Given that collecting additional data could be costly for small financial institutions and could introduce new privacy concerns, can you promise to me that the CFPB will not use this authority to require the collection of any additional data points?

A.4.b. The Bureau is not prejudging the outcome of its rulemaking. As part of its rulemaking process, the Bureau is exploring potential ways to implement section 1071 in a balanced manner with a goal of obtaining and publishing small business lending data that achieves the statutory objectives without unnecessarily affecting the cost or availability of credit to small businesses and while minimizing burden and unintended consequences on financial institutions and small businesses.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM KATHLEEN L. KRANINGER

Q.1. In 2015, under Director Cordray's leadership, the Bureau issued guidance (Compliance Bulletin 2015–05) related to marketing service agreements (MSAs). MSAs are currently subject to statutory restrictions already in place under the Real Estate Settlements Procedures Act (RESPA) and additional regulatory restrictions under Regulation X. The Bureau's 2015 MSA guidance presented a new interpretation of RESPA to caution against MSAs altogether. Under Director Cordray, the Bureau then brought enforcement actions utilizing this new guidance. In 2018, the U.S. Court of Appeals for the D.C. Circuit unanimously overturned then-Director Cordray's new interpretation of RESPA. In PHH Corp. v. CFPB, the DC Circuit ruled that the Bureau's new interpretation "is a facially nonsensical reading of Regulation X."

Q.1.a. Director Kraninger, how does the Bureau intend to move forward with the MSA guidance?

A.1.a. In its 2015–05 Compliance Bulletin, the Bureau noted that it appeared, based on the Bureau's investigative efforts, that many mortgage service agreements (MSAs) "are designed to evade RESPA's prohibition on the payment and acceptance of kickbacks and referral fees." The Bureau is open to hearing concerns about the Bulletin and will consider whether any action should be taken to better clarify existing RESPA obligations.

Q.1.b. Is the Bureau using the guidance in any supervisory or enforcement programs at present time?

A.1.b. The Bureau considers the guidance in a manner consistent with the Policy Statement on Supervisory Guidance issued in 2018.

Q.2. Third-party litigation financing (TPLF) is private investment in civil litigation in exchange for a portion of a settlement or judgment or some agreed value above the amount loaned to a claimant. Despite growth in recent years, this industry has largely operated in the shadows as Federal and State officials have largely declined to regulate or investigate TPLF.

Q.2.a. Is the Bureau currently working to identify and investigate other investors and law firms that may be exploiting vulnerable consumers through litigation financing?

A.2.a. The Bureau cannot comment on any specific matter because the Bureau does not comment publicly on confidential enforcement investigations or litigation. The Bureau's purpose is to ensure all consumers have access to markets for consumer financial products and services and that such markets are fair, transparent, and competitive.

Q.3. The Bureau has explored changes to the collecting and reporting of data pursuant to the Home Mortgage Disclosure Act (HMDA) Rule—including amendments to the reporting thresholds and decreasing the total HMDA data set.

How is the Bureau ensuring this relief for small financial institutions reaches those entities?

A.3. The Bureau's recent final rule that permanently increases the thresholds for collecting and reporting data on closed-end mortgage loans and open-end lines of credit, respectively, will relieve a large number of smaller financial institutions of their obligations under HMDA. The Bureau issued an Advance Notice of Proposed Rulemaking in May 2019 seeking information on data collection and reporting requirements to ensure that the data requirements established in the 2015 HMDA Rule appropriately balance the benefits and burdens associated with data reporting. The Bureau is carefully considering the public's input as it determines whether to formulate a proposed rule relating to changing any of the data collection and reporting requirements. This consideration will also take into account the relief from collecting most of the new data points that some institutions received through the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The Bureau intends to release a proposed rule late this summer to follow up on the May 2019 Advanced Notice of Proposed Rulemaking related to certain data points that are reported under the 2015 HMDA Rule and coverage of certain business- or commercial-purpose loans.

Q.4. The Bureau's debt collection proposal would create the first substantive rule implementing the FDCPA in the law's 40-plus years in existence.

Q.4.a. Is the Bureau aware of the impact the rule may have on collectors?

A.4.a. As part of the May 2019 NPRM, the Bureau considered the proposal's potential benefits, costs, and impacts. The proposal would further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from such practices are not competitively disadvantaged. The proposed rule would also benefit both consumers and debt collectors by increasing clarity and certainty about what the FDCPA prohibits and requires. As noted in the preamble, to better understand potential effects of the proposed rule on industry, the Bureau engaged in significant outreach to industry, including a survey of debt collection operations (*https://www.consumerfinance.gov/documents/755/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf*). In July 2016, the Bureau consulted with small entities as part of the Small Business Enforcement and Regulatory Fairness Act process and obtained important information on the potential impacts of proposals that the Bureau was considering at the time, many of which are included in the proposed rule.

As discussed in the preamble, the proposed rule would affect many aspects of debt collector operations, including the way debt collectors communicate with consumers, and the potential impacts of the proposed provisions are likely to interact with each other. The Bureau received many comments from the public, including from debt collectors, about likely impacts on debt collectors and it is carefully considering these comments as it moves forward with the rulemaking process.

Q.4.b. I appreciate that the Bureau is reviewing regulations and analyzing ways it can relieve regulatory burden for smaller and less complex financial institutions such as credit unions. What efforts is the Bureau taking in the next year to review regulations for these less complex institutions?

A.4.b. In March 2018, the Bureau released two requests for information (RFIs) requesting comments on the Bureau's inherited and adopted rules, which included, among other things, our plans for reviewing our regulations. The comments, including comments from associations representing community banks and credit unions, has informed how the Bureau has set priorities for rulemakings.

Moreover, the Bureau has taken steps to identify and address outdated, unnecessary, or unduly burdensome regulations on industry, including on small and less complex financial institutions such as credit unions:

- In FY 2019, the Bureau published reports of assessments of the Remittance Rule, the ATR–QM Rule, and the 2013 RESPA Servicing Rules. The reports discussed our findings on the effects of the rules on community banks and credit unions.
- In FY 2020, the Bureau conducted a review of its overdraft rule under RFA section 610, which requires agencies to consider the effects of the rule on small entities. The Bureau will announce the outcome of the review in the Spring 2020 Unified Agenda.
- In FY 2021, the Bureau plans to complete a review of its credit card rules' effects on small credit card issuers under RFA section 610.
- The Bureau has also taken actions to implement provisions of EGRRCPA that provide regulatory relief to community banks and credit unions.

The Bureau has also engaged in rulemaking with the objective of reducing unwarranted regulatory burdens:

- In October 2019, the Bureau issued a final rule to adjust the thresholds for reporting HMDA that provides temporary relief to small lenders. The Bureau also announced plans in the Fall 2019 Unified Agenda to issue a final rule to address proposed increases to the permanent thresholds for collecting and reporting data on open-end lines of credit and closed-end mortgage loans in 2020.
- In December 2019, the Bureau issued a Notice of Proposed Rulemaking to amend the Bureau's Remittance Rule. One of the amendments would in effect exempt 400 more community banks and almost 200 more credit unions from the rule.

Q.5. Congress contemplated the need for exemptions to certain Bureau rules and crafted the Dodd-Frank Act to authorize the Bureau to tailor its rules so those acting responsibly—like credit unions and other community-based financial institutions—are not negatively impacted by rules addressing the behavior of others.

Q.5.a. What is the Bureau's current perspective on its exemption authority under the Dodd-Frank Act?

A.5.a. The Bureau will use its exemption authority when doing so advances the Bureau's overall objectives as expressed in section 1021 of the Consumer Financial Protection Act.

Q.5.b. Has there been a productive dialogue between NCUA and the Bureau on issues like small dollar lending and consumer protection examinations?

A.5.b. Yes, the Bureau and NCUA coordinate frequently on our priorities and activities. In a recent example on small dollar lending, on Thursday, March 26, 2020, the Bureau joined the NCUA and other Federal financial regulatory agencies in a joint statement to encourage banks, savings institutions, and credit unions to offer small-dollar loans to consumers and small businesses affected by the COVID–19 coronavirus.[1] In addition, given the Bureau's supervisory authority over insured credit unions (as defined in 12 U.S.C. 1752) with more than $10 billion in total assets and any affiliate thereof, supervision staff and management coordinate regularly with their counterparts at NCUA to share information about these credit unions.

Q.6. The Bureau seems to pride itself on being a modern, data-driven Government agency. It's clear that a critical part of that effort is ensuring rulemakings are always grounded in sufficient evidence and research—including cost-benefit analysis. The Bureau has recently established an office for this very purpose.

How does the Bureau plan to integrate meaningful cost and benefit analysis into its rulemakings going forward?

A.6. I am committed to ensuring that the Bureau's cost benefit analyses are rigorous and robust and that the Bureau carefully considers the regulatory burden of any proposed or final rule. Before issuing any legislative rule, the Bureau is required by section 1022(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to consider the benefits and costs

[1] See *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/*.

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. The Bureau's Office of Research continues to conduct cost-benefit analysis for rulemakings. Furthermore, section 1022(d) of the Dodd-Frank Act uniquely requires the Bureau to assess the effectiveness of its significant rules, reflecting available evidence and data, within 5 years of such rule's effective date. The Bureau is committed to robust assessment of its rules and is considering the necessary data collection in the rule development process to support later assessments.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM KATHLEEN L. KRANINGER

Q.1. Director Kraninger, in response to a question I asked you regarding the CFPB's oversight of Federal student loan servicers, you stated that the CFPB would conduct a joint examination this month with the Department of Education.

Q.1.a. Will these examinations be conducted by the CFPB staff reporting up the chain of command at the CFPB, or will they be conducted by detailees reporting to the Department of Education?

A.1.a. The Bureau is currently conducting an examination at a student loan servicer that includes review of Federal Direct Loans and federally held Federal Family Education Loan Program (FFELP) loans. This examination is being conducted in coordination with the Department of Education's own examinations of these servicers for compliance with their programmatic requirements. The Bureau examiners are conducting this work under the supervision and direction of managers and executives of the Bureau. In addition, to further development of a coordinated examination process, the Bureau has offered to detail two staff members to the Department of Education. The detailee(s) will be working on a coordinated examination process and supporting the Department in building out its contract management oversight capabilities to the extent that they want to use Bureau examination techniques as a model. As in any detail, the detailee(s) will be working under the day-to-day supervision and direction of managers at the Department of Education. However, the detailee(s) will also report to the Bureau through the Office of Supervision Policy to ensure that the Bureau's mission needs are met. This is separate from the ongoing supervisory event which is being conducted. Due to the pandemic crisis, the details have not yet been executed.

Q.1.b. Will the CFPB have full discretion over which loan servicers to examine and the scope of these examinations?

A.1.b. The Bureau recognizes the public interest in the conduct of the current examination. However, the level of information provided in response to this question does not set a precedent regarding what may be determined in the future as confidential supervisory information.

In the examination that is ongoing, the Bureau coordinated with the Department of Education on the requests for information. Information from the subject servicer is being transmitted directly to the Bureau as well as to the Department of Education. However, this examination may not be the model for future events.

Q.1.c. Will the CFPB have unrestricted access to all data and loan information while conducting examinations?

A.1.c. Please see the response to question 1.b.

Q.1.d. Will the CFPB have sole authority over the findings and content of examination reports based on these examinations?

A.1.d. The Bureau will maintain the integrity of the supervisory process and will issue the findings it determines appropriate.

Q.2. You have previously testified that the CFPB is working with the Department of Education to reestablish the Memorandum of Understanding rescinded by Secretary DeVos over 2 years ago that allowed for CFPB to conduct its own supervisory examinations and fulfill its statutory oversight obligations.

Q.2.a. What is the current status of this Memorandum of Understanding?

A.2.a. Please see the response to question 1.a. At this time, the Bureau and the Department of Education have not determined whether establishing the process will require an MOU.

Q.2.b. Does reestablishing the MOU remain a priority for the CFPB, despite your statement that you would be resuming supervisory examinations of Federal student loan servicers this month?

A.2.b. The Bureau is committed to carrying out its supervisory authorities consistent with its risk prioritization and will take appropriate action to do so.

Q.3. Debt collector abuses consistently rank as a top issue reported to the CFPB's public Consumer Complaint Database. Yet, the proposed rule the CFPB issued in 2019 contains no requirement that a debt collector have original documentation or other information to substantiate that the debt they are attempting to collect is legitimately owed by the consumer they are contacting. The rule also weakens protections for consumers whose debts are no longer enforceable under State or Federal law.

Q.3.a. The FTC filed comments on your proposed debt collection rule stating that the FTC and courts have said that "it is a violation of the FDCPA for a debt collector . . . to file an action in court to collect on a time-barred debt" and also that it is "likewise a clear violation of the FDCPA to threaten to file such an action." You instead have proposed to inject a state of mind element that would bar lawsuits or threats only if the collector "knows or should know" that the legal deadline has passed. What is your response to the FTC's question whether "requiring a showing that the debt collector knew or should have known the debt was time-barred places unnecessary additional burdens on law enforcement agencies?"

A.3.a. The Bureau's May 2019 NPRM proposed to prohibit a debt collector from bringing or threatening to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt. In proposing the "know or should know" standard, the Bureau noted that, in many cases, a debt collector will know, or can readily determine, whether the statute of limitations has expired. In some instances, however, a debt collector may be genuinely uncertain even after undertaking a reasonable investigation; this could occur, for example, when the case law in a State is unclear as to which statute of limitations applies to a particular type of debt. In response to the May 2019 NPRM, the Bureau received over 14,000 comments, a significant number of which addressed time-barred debt, including the proposed "know or should know" standard. The Bureau is analyzing those comments as part of the process of taking final action on the May 2019 NPRM.

Q.3.b. Under what types of circumstances would the CFPB find that a debt collector "should" have known that a debt was so old it could not be pursued in court?

A.3.b. Please see the response to question 3.a.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM KATHLEEN L. KRANINGER

Supervision and Enforcement

Q.1. In January 2020, the CFPB issued a statement of policy regarding its use of the standard for "abusiveness" in its supervision and enforcement matters.[1] Among the changes announced, the Bureau stated that it "intends to focus on citing conduct as abusive in supervision and challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers." This policy substantially narrowed the statutory language the Bureau previously cited in its enforcement actions, which defined a practice as abusive "if it takes unreasonable advantage of consumers' lack of understanding of the material risks, costs, or conditions of a financial product or service."

Q.1.a. Will the Bureau only consider quantitative costs and benefits to consumers when applying the new policy?

A.1.a. As stated in the Policy Statement, the Bureau's consideration of the harms and benefits of the potentially abusive conduct (*i.e.,* its effects) on consumers can be qualitative as well as quantitative. That is, a quantitative analysis is not necessary for every citation or challenge to conduct as being a violation of the abusiveness standard.

Q.1.b. If the Bureau will consider qualitative costs, how will it evaluate whether or not the costs outweigh the benefits?

A.1.b. The Bureau intends to focus on citing conduct as abusive in supervision or challenging conduct as abusive in enforcement if the Bureau concludes that the harms to consumers from the conduct outweigh its benefits to consumers. The Bureau will evaluate

[1] Consumer Financial Protection Bureau, "Statement of Policy Regarding Prohibition on Abusive Acts or Practices," January 24, 2020, *https://files.consumerfinance.gov/f/documents/cfpb_abusiveness-enforcement-policy_statement.pdf.*

whether the harms to consumers outweigh the benefits consistent with similar considerations in the application of unfairness.

Q.1.c. The following are two previous enforcement actions for which the Bureau has applied the abusiveness standard but did not explicitly evaluate the costs and benefits to consumers. Please explain how each of these acts would be considered with respect to the abusiveness standard under the Bureau's new policy.

I. On June 17, 2015, the CFPB brought an enforcement action against Security National Automotive Acceptance Company, LLC.[2] The complaint alleged that, through their threatened and actual contacts with servicemembers' command, SNAAC engaged in abusive acts or practices by taking "unreasonable advantage of consumers' inability to protect their interests, leveraging consumers' military status in collection of debt."

II. On November 21, 2016, the Bureau cited the abusiveness standard in an enforcement action against Maryland Attorney Charles Smith for his relationship with Access Funding, a limited liability company that "provided advances to consumers that were to be repaid through a deduction from the proceeds of structured-settlement transfers once those transactions were completed."[3] Many of the consumers from whom Access Funding purchased settlements "were lead-poisoning victims with cognitive impairments." Smith was paid by Access Funding despite claiming to be an independent financial advisor. The Bureau's complaint alleged that Smith did not consider information about the consumers' best interests and instead advised them "without having any information about the consumers' financial situations" and "took unreasonable advantage of consumers' reliance on him to act in their best interests.

A.1.c. The Bureau has not conducted a backward-looking analysis of enforcement actions to determine whether conduct addressed as abusive in any of those actions would potentially not be the basis of an abusiveness claim under the policy statement. There are several examples of conduct previously addressed as abusive, however, that likely would not be affected by the policy statement.

Q.1.d. The new policy also provides that "the Bureau generally does not intend to seek monetary remedies for abusive acts or practices if the covered person made a good-faith effort to comply with the law based on a reasonable—albeit mistaken—interpretation of the abusiveness standard." How will the CFPB determine whether a covered person made a "good-faith effort" to comply with the law? How will the Bureau determine whether a mistaken interpretation of the abusiveness standard is reasonable?

A.1.d. As stated in the Policy Statement, in determining whether a covered person made a good-faith effort to comply with the abu-

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[2] United States District Court, Southern District of Ohio, Western Division, *"Consumer Financial Protection Bureau v. Security National Automotive Acceptance Company, LLC,"* June, 17, 2015, *https://files.consumerfinance.gov/f/201506_cfpb_complaint-security-national-automotive-acceptance-company.pdf.*

[3] United States District Court for the District of Maryland, Baltimore Division, *"Consumer Financial Protection Bureau v. Access Funding, LLC, et al."* November 21, 2016, *https://files.consumerfinance.gov/f/documents/201611_cfpb_Access_Funding_Complaint_filed.pdf.*

siveness standard, the Bureau intends to consider all relevant factors, including but not limited to the considerations outlined in the Bureau's Bulletin 2013–06 regarding Responsible Business Conduct,[4] which was referenced in the Policy Statement. The Policy Statement indicates that a "reasonable" interpretation for purposes of the policy statement is one based on the text of the abusiveness standard set forth in the Dodd-Frank Act, as well as prior precedent and guidance, including judicial precedent, the Bureau's administrative decisions, rulemakings, supervisory guidance, and past allegations of abusive acts or practices in public enforcement actions.

Q.1.e. Which political appointees assisted with developing this policy? For each individual, please include exactly what part of the policy they worked on, including their specific input in the process.

A.1.e. Similar to other Bureau guidance, a number of staff across the Bureau supported the development and review of this Policy Statement, including appropriate line staff and senior executives in relevant divisions. The decision to issue is mine as Director.

Q.2. The CFPB has issued a statement on the use of alternative data in credit underwriting with the Federal Reserve, Federal Deposit Insurance Corporation, National Credit Union Administration and Office of the Comptroller of the Currency.[5] The statement acknowledged, "data that present greater consumer protection risks warrant more robust compliance management," including "appropriate testing, monitoring and controls to ensure consumer protection risks are understood and addressed."

Q.2.a. Describe how the process and procedures under which the Bureau, in its supervision and enforcement activities, evaluates the use of alternative data with respect to consumer protection and fair lending laws:

I. Traditional lending models

II. Algorithmic lending models

A.2.a. Fair lending examinations and investigations assess whether there is discrimination in policies and practices governing a creditor's underwriting or pricing decisions. The Bureau cannot comment on or confirm any supervisory activity or investigations that may have involved these assessments. Examination teams use the Bureau's Equal Credit Opportunity Act (ECOA) Baseline Review examination procedures to evaluate how supervised firms identify and manage fair lending risks under ECOA, including fair lending risks related to models.[6] Generally, reviews also include evaluating whether underwriting, pricing, or other policies or procedures contain factors (including the use of alternative data factors, if applica-

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[4] See *https://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.* See also 12 U.S.C. 5565(c)(3)(A).

[5] Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, "Interagency Statement on the Use of Alternative Data in Credit Underwriting," December 3, 2019, *https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_alternative-data.pdf.*

[6] *https://www.consumerfinance.gov/documents/4676/cfpb_supervision-and-examination-manual_ecoa-baseline-exam-procedures_2019-04.pdf.*

ble) that result in disparate treatment or could have a disproportionately negative, unjustified impact on a prohibited basis.

Q.2.b. When evaluating the use of alternative data in an algorithmic lending model, against what baselines does the Bureau compare the outcomes of that model?

A.2.b. In its supervision and enforcement activities, the Bureau evaluates compliance with ECOA and its implementing regulation, Regulation B. The Bureau enforces fair lending laws as they apply to all lenders, whether they use traditional or nontraditional lending models. As noted above, the Bureau cannot comment on or confirm any supervisory activity or investigations that may have involved these assessments. In its outreach, innovation and market monitoring activities, the Bureau is focused on understanding the benefits and risks associated with alternative data or modeling techniques that may be used in the market, including whether they produce incremental benefit or risk relative to the status quo. Such techniques may expand access to credit for consumers who are credit invisible or who lack enough credit history to obtain a credit score.

Q.2.c. When evaluating the use of alternative data in a traditional lending model, against what baselines does the Bureau compare the outcomes of that model?

A.2.c. Please see the response to question 2.b.

Q.3. On March 6, 2020, the Bureau released additional details regarding its proposed advisory opinion program.[7] "Under the advisory opinion program, parties will submit requests for an advisory opinion to the Bureau via its website. The Bureau will issue additional procedures for how requests will be addressed, including how the Bureau will prioritize requests. To increase transparency and to provide regulatory certainty to all regulated entities and other stakeholders, the Bureau will publish the responding advisory opinion in the Federal Register and on its website. The opinion will include an interpretation of the Bureau's existing rules."

Q.3.a. Will the advisory opinion program itself, including all relevant policies and procedures under which opinions be submitted, be published in the Federal Register subject to a notice and comment period?

A.3.a. Program procedures are still under internal consideration at this time. Full details of the program, including any requests for public comment on program procedures, will be released at a later date.

Q.3.b. Will the individual advisory opinions published in the Federal Register be subject to a notice and comment period?

A.3.b. Program procedures are still under internal consideration at this time. Full details of the program will be announced at a later date.

[7] Consumer Financial Protection Bureau, "CFPB Takes Key Steps to Prevent Consumer Harm; Proposes Whistleblower Award Program, Other Measures," March 6, 2020, *https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-key-steps-prevent-consumer-harm-proposes-whistleblower-award-program/*.

Q.3.c. Will the opinions be binding on the entire industry or exclusive to the particular entity that requests them?

A.3.c. Recognizing that program procedures are still under internal consideration at this time, advisory opinions are intended to cover the factual situation presented by the requesting entity in its request and all entities in situations with relevantly similar facts and circumstances. To increase transparency and to provide regulatory certainty to all regulated entities and other stakeholders, the Bureau will publish advisory opinions in the Federal Register and on its website.

Q.3.d. Will political appointees be involved at any stage of the advisory opinion process? If so, please describe which appointees and their specific role in selecting which opinions to respond to; drafting, reviewing and approving the opinions, and any subsequent publication of the opinions.

A.3.d. While program procedures are still under internal consideration at this time, the appropriate staff will be involved in the advisory opinion process at the senior and line levels. Full details of the program will be announced at a later date.

Q.4. Please describe the CFPB's jurisdiction over the auto lending market, including auto dealers, nonbank lenders, and bank lenders and the relationships between these different parties.

Q.4.a. As stated in the Bureau's Auto Finance Examination Procedures, when a loan is issued via indirect financing, "the dealer, rather than the consumer, typically selects the lender that will provide financing," and the dealer "may have incentives to select a particular lender over another."[8]

Q.4.a.i. Does the Bureau believe that this incentive structure can create risks to consumers?

A.4.a.i. As a general matter, the Bureau has observed through its market monitoring, supervision, and enforcement work that the unintended effects of incentives can be complex and bear careful attention by supervised entities' institutional leadership and compliance officers.[9] As stated in the Bureau's Risk Assessment template, incentives may "encourage the sale of high-cost products regardless of [the] consumer's request or situation."[10] Accordingly, the Bureau expects supervised entities that choose to use incentives to institute effective controls for the risks these programs may pose to consumers, including oversight of both employees and service providers involved in these programs. As the Bureau has emphasized repeatedly, a robust compliance management system (CMS) is necessary to detect and prevent violations of Federal consumer financial law. An entity's CMS should reflect the risk, nature, and significance of the incentive programs to which it applies, and be tai-

[8] Consumer Financial Protection Bureau, "CFPB Examination Procedures: Auto Finance," June 2015, *https://files.consumerfinance.gov/f/201506_cfpb_automobile-finance-examination-procedures.pdf.*

[9] CFPB Compliance Bulletin 0016–03, Detecting and Preventing Consumer Harm for Production Incentives, available at *https://files.consumerfinance.gov/f/documents/201611_cfpb_Production_Incentives_Bulletin.pdf.*

[10] Consumer Fin. Prot. Bureau, "Consumer Risk Assessment," October 2012. *https://files.consumerfinance.gov/f/documents/102012_cfpb_risk-assessment_template.pdf.*

lored to the specific incentives being offered, considering both intended and unintended outcomes for consumers.

Q.4.a.ii. Does the Bureau consider whether lenders are intentionally charging rates higher than the normal market rate because of their arrangements with auto dealers?

A.4.a.ii. As a general matter, during its supervisory and enforcement work, the Bureau will evaluate risks to consumers and whether the entity has complied with applicable Federal consumer financial laws and regulations. In conducting reviews of auto lenders, the Bureau evaluates all aspects of a lender's compliance management program, which usually includes a review of arrangements with any affiliated entities. The reviews may also include a review of fees and costs paid for by the consumer, to ensure that they are in compliance with Federal consumer financial laws and regulations.

Q.4.a.iii. The CFPB's Examination Procedures include instructions to "obtain records of and evaluate the communications between the entity and the dealers regarding sales incentives and production goals."[11] Does the Bureau follow these procedures for each examination of an auto lending company? If not, under what circumstances would the CFPB not follow these examination procedures?

A.4.a.iii. Examiners use the examination procedures as a guide to ensure that companies that engage in automobile financing are complying with the requirements of Federal consumer financial law. Typically, Bureau examiners scope their exams on a risk-basis, with the goal of ensuring appropriate consistency across examinations. The scope of each examination varies by product market, and to some extent, by entity within a product market, depending on the Bureau's assessment of the risks presented by an entity. During an auto finance examination, Bureau examiners typically complete the Automobile Finance Examination Procedures modules, as scoped and as applicable, enabling them to develop a thorough understanding of a regulated entity's practices and operations.

Q.4.a.iv. What type of actions does the Bureau take when it identifies a problematic relationship between a lender and dealer? Has the Bureau ever barred a lender from associating with a problematic dealer?

A.4.a.iv. The Dodd-Frank Act excludes from the Bureau's authority auto dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[12] Thus, on our examinations Bureau examiners will focus on the activities of the auto lender and its compliance with Federal consumer financial laws. If examiners found information indicating violations of law by the dealer, and thus not within the Bureau's authority, the Bureau would pass that information on to the appropriate Federal or State regulator. To date, through the Bureau's

[11] *Id.*

[12] The Bureau does have authority, however, over some auto dealers that extend retail credit or leases without routinely assigning them to unaffiliated third parties. The Bureau's Larger Participant Rule for the automobile financing market however excludes these dealers from the rule. 12 CFR 1090.108(c)(2).

supervisory work, we have not barred a lender from associating with a problematic dealer. In several public enforcement actions,[13] the Bureau found and the DOJ alleged that indirect auto lenders who allowed auto dealers to charge a higher interest rate when they finalize the deal with the consumer may have discriminated against loan applicants in credit transactions on the basis of characteristics such as race and national origin. In those matters, the injunctive relief the Bureau obtained included such things as: remediation; a requirement for the lender to implement compliance programs that include prompt corrective action against dealers' rate disparities; and requirements to reduce the level of discretion afforded dealers is setting rates.

Q.4.a.v. When was the last time the Bureau took an enforcement action against a lender for incentivizing a dealer to offer a consumer a larger loan than the market value of the vehicle? Please provide a list of all such actions.

A.4.a.v. The Bureau has exercised its authority over lenders, including Buy Here Pay Here dealers and auto finance companies, in 14 public enforcement actions. It has not brought any actions against a lender for incentivizing a dealer to offer a consumer a larger loan than the market value of the vehicle.

Q.4.a.vi. When was the last time the Bureau issued such an action against a lender that incentivized a dealer to offer a buyer a loan at a greater interest rate than what is typical for the market? Please provide a list of all such actions.

A.4.a.vi. In the public enforcement actions against Ally Bank and Ally Financial, Inc.,[14] Toyota Mortgage Credit Corporation;[15] American Honda Finance Corporation;[16] and Fifth Third Bank,[17] the Bureau found and the DOJ alleged that indirect auto lenders who allowed auto dealers to charge a higher interest rate when they finalize the deal with the consumer discriminated against loan applicants on the basis of characteristics such as race and national origin.

Q.4.b. The CFPB's Examination Procedures instruct examiners to "evaluate the underwriting practices of the entity, including the average loan-to-value ratios, lengths of terms, and whether the entity originates loans or leases with a high risk of default (*e.g.,* determine if there is evidence of false or undocumented income."[18]

[13] See *https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing/; https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-toyota-motor-credit-to-address-loan-pricing-policies-with-discriminatory-effects/; https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-honda-to-address-discriminatory-auto-loan-pricing/; and https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/.*

[14] See *https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing/.*

[15] See *https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-toyota-motor-credit-to-address-loan-pricing-policies-with-discriminatory-effects/.*

[16] See *https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-reach-resolution-with-honda-to-address-discriminatory-auto-loan-pricing/.*

[17] See *https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/.*

[18] *Id.*

Q.4.b.i. How does the Bureau determine whether an underwriting practice presents a risk to the consumer? Are quantitative thresholds used, and if so, can you describe?

A.4.b.i. During an auto finance examination, Bureau examiners typically complete the Automobile Finance Examination Procedures modules, as scoped and as applicable, enabling them to develop a thorough understanding of a regulated entity's practices and operations.[19] In doing so, examiners obtain and review each entity's loan and lease applications; loan and lease underwriting guidelines; and loan and lease account documentation, notes, disclosures, and all other contents of underwriting.[20] As part of the examination process, typically examiners:

- Evaluate the underwriting practices of the entity, including the average loan-to-value ratios, lengths of terms, and whether the entity originates loans or leases with a high risk of default (*e.g.,* determine if there is evidence of false or undocumented income);
- Evaluate the entity's early payment default rate; and
- Evaluate the loan agreement and identify potential risks of consumer harm.[21]

After its review, the examination staff, in consultation with Headquarters, will determine whether the entity's underwriting practices comply with Federal consumer financial laws and regulations.

Q.4.b.ii. Does the Bureau maintain a database with information, such as the average Loan-to-Value ratios, length of the loan term, and the default rate, for each lender? If so, how does the Bureau use this database?

A.4.b.ii. The Bureau has purchased an off-the-shelf product, Experian AutoCount, to produce reports including, but not limited to, the following: (1) market share analysis for auto lenders based on loan originations; (2) average credit tier characteristics by a specific auto lender or a specific lender type; (3) comparison analysis of average loan attributes (for example, loan term, interest rates, or loan-to-value ratios) across the credit spectrum; and (4) market trends based on a geographic region. One way in which the Bureau uses this database is to inform its risk-based prioritization process for determining the institutions, product lines, and scopes of examinations being scheduled.

Rulemaking

Q.5. Earlier this month, the CFPB issued a supplemental proposal on the collection of time-barred debt.[22]

[19] See *https://files.consumerfinance.gov/f/documents/201908_cfpb_automobile-finance-examination-procedures.pdf.*
[20] *Id.*
[21] See *https://files.consumerfinance.gov/f/documents/201908_cfpb_automobile-finance-examination-procedures.pdf.*
[22] Consumer Financial Protection Bureau, "Debt Collection Practices (Regulation F)," 85 Fed. Reg. 12672 (March 3, 2020), *https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/debt-collection-practices-regulation-f-supplemental-proposal-time-barred-debt/.*

Q.5.a. Time-barred debts are debts for which the statute of limitations has expired. Why did the Bureau not ban time-barred debt from being collected at all?

A.5.a. The Bureau has carefully considered the consumer protection concerns surrounding the collection of time-barred debt. Consumers unfamiliar with statutes of limitations may take away from a debt collector's attempt to collect a time-barred debt the misleading impression that the debt is legally enforceable—even if the debt collector does not explicitly threaten litigation. A consumer with the mis-impression that a time-barred debt is enforceable in court may pay or prioritize that debt over another debt or expense, in the mistaken belief that doing so is necessary to avoid litigation.

The Bureau tested time-barred debt disclosures on approximately 8,000 consumers. The Bureau's quantitative testing results suggest that disclosures can be effective in preventing the deception associated with the collection of time-barred debts and that, therefore, prohibiting the collection of time-barred debt and banning revival may not be necessary to prevent deception. So, the Bureau's proposed disclosure would address the consumer protection problem or potential deception in the collection of time-barred debt. In addition, banning the collection of time-barred may not be necessary and could have unintended consequences for consumers, such as increased litigation before expiration of the statute of limitations. The Bureau published research reports on the testing method and results with the supplemental NPRM and welcomes public comment.

Q.5.b. Who will be responsible for disclosing to the consumer that the consumer can no longer be sued for old debt?

A.5.b. The Bureau's February 2020 supplemental notice of proposed rulemaking (February 2020 SNPRM) proposes to require a debt collector to provide certain disclosures to a consumer when collecting a debt the debt collector knows or should know is time barred. Specifically, the February 2020 SNPRM proposes to require such a debt collector to provide, in the debt collector's initial communication with the consumer and on any required validation notice provided to the consumer: (1) a time-barred debt disclosure; and (2) if applicable law permits revival of the debt collector's right to sue, a revival disclosure. The time-barred debt disclosure would inform the consumer that the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it. The revival disclosure, if applicable, would inform the consumer that the debt collector's right to bring a legal action against the consumer can be revived and the circumstances in which revival can occur. The February 2020 SNPRM also includes model disclosures, developed by the Bureau after consumer testing, that debt collectors can use to comply with the proposed rule.

Q.5.c. What tools does the Bureau have to verify that debt collectors are complying with these new disclosure requirements? How will be Bureau enforce violations?

A.5.c. The Bureau leverages all the tools granted by Congress to protect consumers in the debt collection context. The Bureau's toolkit includes supervision and enforcement authority. The Bureau will utilize these tools to verify that debt collectors are complying with new disclosure requirements if they are finalized and put into effect. The Bureau has enforced debt collection violations by applying the law to particular facts and circumstances of its debt collection investigations and examinations. In 2019, the Bureau's debt collection enforcement actions resulted in judgments for nearly $50 million in consumer redress and $11.2 million in civil money penalties. The Bureau also banned eight individuals who engaged in serious and repeated violations of law from ever working in debt collection again. The Bureau will continue vigorous enforcement of violations arising out of any new debt collection requirements.

Q.5.c.i. Will the Bureau reserve the right to pursue collectors that do not make these disclosures under its authority to go after Unfair, Deceptive, and Abusive Acts of Practices (UDAAP), even if the collector does not violate the new rule?

A.5.c.i. Rigorous enforcement is part of the Bureau's mission. When the Bureau discovers violations of Federal consumer financial law, enforcement is essential to hold wrongdoers to account, make things right for consumers, and deter future violations. The Bureau is committed to enforcing debt collection violations and seeking all appropriate relief for consumers as may be appropriate in each case on the facts presented and considering all applicable law.

Q.5.d. Which political appointees assisted with developing this proposal? For each individual, please include exactly what part of the proposal they worked on, including their specific input in the process.

A.5.d. As has been true throughout the Bureau's history, the Director authorizes the publication of proposed rules developed by appropriate Bureau staff at the Director's direction and after considering recommendations from appropriate Bureau staff.

Operations

Q.6. Please provide a list of political appointees currently employed, including as detailees from other agencies, at the CFPB, their titles, the date they were hired, and their salaries.

A.6. Please see table below.

Last Name	First Name	Title	Pay Band	EOD Date	Total Salary
Kraninger	Kathleen	Director Consumer Financial Protection Bureau	EX02	12/11/2018	$183,100.00
Czwartacki	John	Chief Communications Officer	82	04/29/2018	$239,595.00
Duke	Andrew	Policy Associate Director (EA)	90	02/03/2019	$259,500.00
Edwards	Olivia	Executive Assistant	41	12/17/2018	$75,800.00
Garibay	Marisol	Deputy Assistant Director Communications	81	01/17/2019	$219,042.00
Kireilis	Althea	Associate Director Office of Equal Opportunity and Fairness	90	05/21/2018	$259,500.00
Sutton	Kirsten	Chief of Staff and Special Assistant	90	02/04/2018	$259,500.00
Pahl	Thomas	Policy Associate Director (RMR)	90	04/23/2018	$259,500.00
Watkins	Paul	Assistant Director Office of Innovation	81	07/16/2018	$219,042.00
Carnemark	Karla	Deputy Chief of Staff	82	05/26/2019	$239,595.00
Stalzar	Jennifer	Administrative Specialist	52	01/05/2020	$112,904.00

Q.7. Does the CFPB have plans to hire additional political appointees? If so, please provide position descriptions and salary ranges for their jobs.

A.7. The Bureau does not currently have any pending requests with OPM for additional Schedule C appointments.

Q.8. The Partnership for Public Service produces an annual ranking of the best place to work using data from the Office of Personnel Management's Annual Employee Survey about job satisfaction. From 2017 to 2019, CFPB's ranking dropped 20 points, from 79.9 to 58.4, putting it in the lower quartile of all Midsize Agencies.

Q.8.a. One manifestation of employees' dissatisfaction is attrition. Please provide quarterly staffing levels for the Bureau, broken up by Division and if possible, by office from 2017Q1 to present.

A.8.a. Please see the table of quarterly staffing levels at the Bureau broken up by Division and Office from FY 2017 Q1 to present. Note the transition of several offices from one division to another in the course of this time period.

CFPB Division and Office	FY17 Q1	FY17 Q2	FY17 Q3	FY17 Q4	FY18 Q1	FY18 Q2	FY18 Q3	FY18 Q4	FY19 Q1	FY19 Q2	FY19 Q3	FY19 Q4	FY20 Q1	FY20 Q1
CONSUMER EDUCATION & ENGAGEMENT DIVISION	**80**	**83**	**81**	**83**	**84**	**81**	**218**	**210**	**209**	**206**	**205**	**204**	**198**	**193**
CONSUMER ED & ENGAGEMENT DIVISION FRONT OFFICE	15	15	15	17	17	17	18	17	16	18	15	15	14	13
CONSUMER ENGAGEMENT	12	14	13	13	14	14	13	14	13	13	14	14	14	12
CONSUMER RESPONSE							136	136	136	132	129	127	124	122
FINANCIAL EDUCATION	17	16	16	16	16	15	15	13	14	15	17	17	17	17
FINANCIAL EMPOWERMENT	11	10	10	11	11	11	11							
OFFICE OF COMMUNITY AFFAIRS								10	10	9	9	11	10	10
OLDER AMERICANS	8	12	11	11	11	10	11	11	11	10	10	10	8	8
SERVICE MEMBER AFFAIRS	12	11	11	10	10	9	10	9	9	9	9	7	7	7
STUDENT, CONSUMER OFFICE											2	2	4	4
STUDENTS	6	5	5	5	5	5	4							
OFFICE OF THE DIRECTOR	**34**	**35**	**35**	**34**	**31**	**37**	**38**	**35**	**37**	**51**	**52**	**54**	**54**	**62**
OFFICE OF THE DIRECTOR FRONT OFFICE	18	14	14	13	10	15	16	11	15	13	12	15	14	19
COMMUNICATIONS										4	4			
OFF OF LEGISLATIVE AFFAIRS												2	3	3
OFFICE OF INNOVATION									1	1	3	4	4	6
STRATEGY OFFICE	4	6	6	6	6	7	7	8	6	6	4	4	3	3
OFFICE OF EQUAL OPPORTUNITY & FAIRNESS	*12*	*15*	*15*	*15*	*15*	*15*	*15*	*16*	*15*	*27*	*29*	*29*	*30*	*31*
OFF OF EQU OPP & FAIRNESS	2	3	3	3	3	3	3	5	4	6	6	6	6	6
OFF OF FAIR LENDING AND EO										9	9	8	9	10
OFF OF MIN & WOM INCLUS	3	5	5	5	5	5	5	5	5	6	7	6	7	7
OFFICE OF CIVIL RIGHTS	7	7	7	7	7	7	7	6	6	6	7	9	8	8
EXTERNAL AFFAIRS DIVISION	**40**	**42**	**43**	**44**	**42**	**46**	**41**	**37**	**33**	**30**	**31**	**35**	**35**	**37**
EXTERNAL AFFAIRS DIVISION FRONT OFFICE	13	14	8	10	9	12	10	11	8	9	9	10	9	9
ADVISORY BOARDS (ABC)			5	5	5	5	6	5	5	4	4	5	5	5
COMMUNICATIONS	7	7	7	6	6	6	4	3	2					
COMMUNITY AFFAIRS	6	6	6	6	5	6	6							
FINANCIAL INSTITUTIONS	5	6	6	6	6	6	6	6	6	6	5	5	5	6
INTERGOVERNMENTAL AFFAIRS	2	2	3	4	4	5	4	2	2	2	4	4	4	3
LEGISLATIVE AFFAIRS	7	7	8	7	7	6	5	4	4	3	3			
OFF OF COMMUNICATIONS												5	6	7
PUB ENGAGEMT & CMUNTY LIAISON								6	6	6	6	6	6	7
LEGAL DIVISION	**76**	**81**	**79**	**78**	**79**	**78**	**76**	**71**	**71**	**70**	**66**	**66**	**67**	**68**
LEGAL DIVISION FRONT OFFICE	11	11	11	11	11	11	11	11	11	11	9	9	8	9
GENERAL LAW & ETHICS	23	25	25	25	25	25	24	22	22	22	21	22	22	22
LAW AND POLICY	25	27	27	26	26	24	24	21	22	22	21	21	21	21
LITIGATION & OVERSIGHT	17	18	16	16	17	18	17	17	16	15	15	14	16	16

OPERATIONS DIVISION	453	463	457	459	454	448	298	288	285	275	275	278	282	280
OPERATIONS DIVISION FRONT OFFICE	5	6	7	7	8	7	6	5	6	11	12	12	14	7
CHIEF DATA OFFICER													15	14
CHIEF FINANCIAL OFFICER	35	35	34	35	35	35	35	35	35	35	35	36	36	36
CONSUMER RESPONSE	144	144	143	141	143	143								
HUMAN CAPITAL	58	58	58	59	55	54	54	55	54	53	54	56	56	57
PROCUREMENT	22	23	23	23	23	23	23	23	22	21	21	20	21	21
PROJECT MANAGEMENT	10	9	8	8	6	6	5	5	5					
CHIEF EXPERIENCE OFFICER														8
ADMINISTRATIVE OPERATIONS	*28*	*28*	*29*	*28*	*29*	*28*	*27*	*27*	*27*	*26*	*24*	*25*	*18*	*17*
ADMINISTRATIVE OPERATIONS	7	6	7	7	8	8	7	6	6	5	4	5	7	7
ADMIN OPERATION-RECORDS & FOIA	6	7	7	7	7	6	7	8	8	8	7	9		
ADMIN OPERATIONS-FACILITIES	7	7	7	7	7	7	7	7	7	7	7	7	7	6
ADMIN OPERATIONS-SECURITY	8	8	8	7	7	7	6	6	6	6	6	4	4	4
TECHNOLOGY & INNOVATION	*151*	*160*	*155*	*158*	*155*	*152*	*148*	*138*	*136*	*129*	*129*	*129*	*122*	*120*
TECHNOLOGY & INNOVATION	111	125	121	131	144	142	141	133	131	127	128	128	122	120
TECHN & INNOVATION-FELLOWS	35	32	31	24	8	7	4	3	3	2	1	1		
TECHN & INNOVATION-PRIVACY	5	3	3	3	3	3	3	2	2					
OTHER PROGRAMS	29	30	27	25	27	26	20	17	17	17	17	18	18	19
ADMINISTRATIVE ADJUDICATION	3	3	3	3	3	3	3	2	2	2	2	2	2	2
DIRECTOR'S FINANCIAL ANALYSTS	22	23	20	18	19	18	12	10	10	10	10	11	11	12
OMBUDSMAN	4	4	4	4	5	5	5	5	5	5	5	5	5	5
RESEARCH, MARKETS, & REGULATIONS DIVISION	166	167	168	167	166	163	159	148	143	138	137	140	140	138
RESEARCH, MARKETS, & REG DIV FRONT OFFICE	12	11	11	9	9	10	10	9	9	9	10	10	8	7
CARDS, PAYMT & DEP MKTS	8	8	8	10	10	10	10	8	8	8	7	7		
CONS CRED, PYMTS, & DEP MKTS												11	18	18
LEND, COLLECT & REPORT MKT	11	11	11	11	12	12	12	11	12	10	11			
MORTGAGE MARKETS	8	7	8	8	8	8	8	6	6	5	5	6	6	6
REGULATIONS	75	74	76	74	72	69	68	65	61	60	59	58	60	60
RESEARCH	48	50	48	49	49	50	46	44	43	42	41	44	44	43
SMALL BUSINESS LEND MKTS	4	6	6	6	6	4	5	5	4	4	4	4	4	4
SUPERVISION, ENFORCEMENTT, & FAIR LENDING DIVISION	741	770	761	751	750	738	716	698	687	661	644	630	624	620
SUPERVSN, ENFRCMT, & FAIR LEND DIVISION FRONT OFFICE	8	7	8	6	9	10	10	9	9	10	10	9	9	10
ENFORCEMENT	146	153	152	152	151	148	145	141	140	139	138	138	140	143
FAIR LENDING AND EQUAL OPPORT	36	37	37	35	35	34	31	30	26					
SUPERVISION POLICY	47	48	45	45	44	48	47	47	48	51	49	46	49	47
SUPERVISION EXAMINATIONS	*504*	*525*	*519*	*513*	*511*	*498*	*483*	*471*	*464*	*461*	*447*	*437*	*426*	*420*
SUPERVISION EXAMINATIONS	41	51	53	53	53	46	43	41	39	42	41	40	39	38

SUPERVISION MIDWEST REGION	106	110	107	105	105	106	103	102	99	98	94	88	84	82
SUPERVISION NORTHEAST REGION	111	121	118	117	116	114	113	110	109	107	99	99	98	97
SUPERVISION SOUTHEAST REGION	122	121	119	119	120	117	116	114	113	113	111	111	109	109
SUPERVISION WEST REGION	124	122	122	119	117	115	108	104	104	101	102	99	96	94
Bureau Total	**1619**	**1671**	**1651**	**1641**	**1633**	**1617**	**1566**	**1504**	**1482**	**1448**	**1428**	**1424**	**1418**	**1417**

Q.8.b. What is CFPB's plan to improve morale among staff?

A.8.b. The staff of the Bureau are highly committed to the Bureau's mission and care deeply about the organization. I respect them, I take their views and opinions seriously, and their input is integral to my decisionmaking. Further, I am committed to leading a diverse, productive, effective workforce.

I engage regularly with employees through Bureau-wide all-hands sessions; regular meetings with Division and Office teams; visits to Bureau regional staff; and weekly "office hours" to provide updates on Bureau priorities, recognize individual and team efforts and achievements, and continue to gather staff feedback. The Annual Employee Survey (AES) is an important source of that feedback.

The Bureau's overall engagement composite score from the 2019 AES increased by 6.7 points over 2018. This increase led the Partnership for Public Service to designate the Bureau as the most improved agency among mid-sized agencies for 2019. This progress is noteworthy, but fostering an engaged workforce is an ongoing responsibility.

Below are several steps I am taking to build and maintain an engaged workforce:

- I established a Workforce Effectiveness Committee (WEC) shortly after I became Director to ensure that the Bureau takes a holistic, consistent approach to considering workforce-related issues. Since then, I have charged the WEC to focus on engagement as its highest priority. Issues and programs that the WEC has advised on include: the use of Employee Resources Groups and the Bureau's Mentoring for Success Program; review and consultation on the Bureau's Barrier Analysis results and compensation review; and the implementation of IdeaBox for capturing staff ideas and providing feedback.
- I created a Customer Experience Office to focus on improving our internal staff experience through enhanced operational services enabling the workforce to be more effective and efficient in meeting the Bureau's mission.
- I have continued to strongly promote diversity and inclusion by refreshing the Bureau's Diversity and Inclusion Strategic Plan, enhancing the focus on strong engagement with employees, and utilizing an integrated approach to education, training, and engagement programs that incorporate diversity and inclusion concepts into the learning curriculum and work environment. Employee Resource Groups, which are networks of Bureau employees with similar interests, backgrounds, or experiences, cultural education programs, and diversity and inclusion training are key components of this effort.

- I presented the Director's Mission Achievement Award to recognize staff leadership and team contributions toward the Bureau's mission. The award is the Bureau's highest honor. In accordance with my priorities, this year I recognized both leadership excellence and outstanding team contributions. Twenty leaders and over 200 team members across 29 teams were nominated by a joint committee of representatives from the union and Bureau management.
- I approved a succession planning process that will aid Bureau leaders to: optimize our current workforce; invest in workforce development to meet long-term needs; build a healthy management pipeline; and attract and retain a diverse and inclusive workforce responsive to the needs of our varied stakeholders.
- I approved the launch of Mentoring for Success, a three-part program that includes: 1) leadership speaker series; 2) small group discussions, and 3) mentor/protege pairs. The program is open to all Bureau employees.
- The Bureau completed the consolidation of all Washington, DC-based staff from two office buildings into one to increase the effectiveness of the organization and to significantly improve collaboration across all teams and divisions.
- I have directed our Office of Human Capital and Office of Equal Opportunity and Fairness to develop new and better tools to assist managers in exercising their workforce responsibilities. Recent examples include:
  - An Organization Improvement Action Guide which offers practical tips and tools for gathering, assessing, and responding to employee feedback, including linkages to AES categories and items and an action planning template and sample.
  - A three-part series for managers on how to manage employees remotely as the Bureau contends with COVID–19, including how to promote self-care for themselves and employees, and tips on how to effectively work virtually.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM KATHLEEN L. KRANINGER

Q.1. In the wake of devastating events, we have seen mortgage servicers and banks stepped up to provide assistance such as payment deferrals and mortgage modifications to help those who were impacted. As health officials work to get the novel coronavirus contained, we cannot stress enough that people prioritize their health and quarantine themselves if they have been exposed. In some cases, they can't go to work.

Q.1.a. Has the Consumer Financial Protection Bureau provided guidance to financial firms on how to serve customers who might miss a payday because they could not go to work because they were sick?

A.1.a. The Bureau, along with other regulators, released guidance[1] publicly over the past few weeks to financial institutions, lenders, and creditors encouraging them to work constructively with borrowers and customers affected by COVID–19. This guidance emphasizes that prudent efforts to modify the terms on existing loans for affected customers will not be subject to examiner criticism. For example, when appropriate, a financial institution may restructure a borrower's debt obligations due to temporary hardships resulting from COVID–19 related issues. Such cooperative efforts can ease cash-flow pressures on affected borrowers, improve their capacity to service debt, and facilitate the financial institution's ability to collect on its loans. The Bureau's guidance also provides temporary and targeted flexibility for financial institutions to apply their resources to consumers' most urgent needs by deferring less urgent regulatory obligations. The Bureau continues to consider what guidance it can issue to regulated entities that will help consumers through this time and has issued guidance on myriad topics, including compliance with the assistance provided under the CARES Act.

At the same time, the Bureau has focused its efforts on being a resource to consumers with accurate, timely information regarding their rights and expectations in the consumer financial marketplace during this challenging time. We have made resources available in multiple formats and languages, including emphasizing the continued availability of the complaint portal for consumers who encounter issues. The Bureau also continues to employ its supervision and enforcement tools to reinforce compliance.

Q.1.b. What steps does the Consumer Financial Protection Bureau recommend financial firms do to serve customers who had to stay home to take care of their children because their school or childcare provider closed?

A.1.b. Please see response to question 1.a.

Q.1.c. What specifically can credit card companies do to help families who have a temporary financial setback because of the pandemic?

A.1.c. Please see the response to question 1.a.

Q.1.d. What can student loan companies do to help people who have a temporary financial setback because of the pandemic?

A.1.d. Please see the response to question 1.a. In addition, specific to student loans, the activities outlined in question 1.a. are being utilized, as applicable, to ensure awareness and compliance with the CARES Act.

Q.1.e. What can lenders do to help people who might not be able to pay a car note, mortgage or small business loan because of a temporary financial setback due to the outbreak?

A.1.e. Please see the response to question 1.a.

[1] See *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-information-encourage-financial-institutions-work-borrowers-affected-covid-19/*, *https://www.consumer-finance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/*, and *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/*.

Q.1.f. How can financial institutions offer affordable small-dollar loans to help families survive through the outbreak?

A.1.f. Please see the response to question 1.a. The Bureau, along with other regulators, released a joint statement on March 26, 2020, encouraging responsible small-dollar lending in response to COVID–19.[2]

Q.2. I am very worried that predatory online lenders will target families struggling with coronavirus with expensive loans. For example, workers quarantined at home, those laid off, or working reduced hours could take out high-cost loans over the internet that will leave them in a dangerous debt trap.

Q.2.a. Will you commit the supervision and enforcement staff of the Consumer Financial Protection Bureau to the prevention of abusive loans using schemes that target those impacted by the coronavirus?

A.2.a. The Bureau continues to employ its tools of education, regulation (including guidance), supervision, and enforcement aggressively to address the impacts of the pandemic on consumers in the consumer finance marketplace. As U.S. consumers confront the spread of the COVID–19 pandemic, many are struggling with its economic impact. The virus, and the necessary actions to combat it, have affected the U.S. economy, and therefore U.S. consumers, profoundly. Using market monitoring, stakeholder engagement, law enforcement partnerships, our complaint system, and our aforementioned tools, we are seeking to prevent consumer harm and acting on issues of concern as they arise, including any instances of predatory lending or fraud and scams. As your question specifically seeks assurance regarding supervision and enforcement, the Bureau continues to conduct examinations across markets consistent with our risk prioritization process and our statutory mandate, which includes persons who offer or provide payday loans, and to investigate violations of consumer financial law within our purview. Generally, the Bureau does not comment on nonpublic supervisory or enforcement matters.

Q.2.b. If your supervision staff learns of abusive loans using schemes that target those impacted by the coronavirus, will you prioritize full restitution for harmed consumers in any consent order or judgment?

A.2.b. Yes, restitution for affected consumers has always been and remains a Bureau priority in any examination, consent order, or judgment. In cases where a civil money penalty is imposed, the Bureau may also rely on the Civil Penalty Fund to compensate victims.

Q.3. Last year, the CFPB announced a consent order with Enova International, an online payday lender. Enova illegally withdrew funds from consumers' accounts without their authorization.

Why wasn't Enova required to repay the funds they had unlawfully withdrawn from consumers' bank accounts?

[2] See *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/*.

A.3. The Bureau is committed to seeking all appropriate relief for consumers, and considers whether redress or restitution may be appropriate in each case on the facts presented and in light of applicable law. In the Enova matter, the Bureau determined that the appropriate resolution in light of the company's conduct included imposition of a $3.2 million civil money penalty and injunctive relief to benefit consumers.

Q.4. Last year, the CFPB announced a stipulated final judgment with NDG Financial Corporation and other defendants for running a payday lending enterprise that engaged in unfair, deceptive, and abusive acts or practices in violation of the law.

Q.4.a. Why was restitution not required for victimized consumers?

A.4.a. The Bureau is committed to seeking all appropriate relief for consumers and considers whether redress or restitution may be appropriate in each case on the facts presented and in light of applicable law. In the NDG matter, the Bureau engaged in a protracted legal battle with the company and individual defendants, some of whom were ultimately sanctioned by the district court for refusal to comply with a court order requiring them to cooperate with the Bureau's discovery requests. At the Defendants' request, the matter was referred to a magistrate judge in October 2018 to facilitate a settlement. The Bureau encountered substantial hurdles in trying to enforce its discovery demands, in part because the Defendants' companies and individuals are based overseas, and Defendants refused to cooperate with Bureau discovery requests. The Defendants withheld consumer-level information required to establish the identities of consumers harmed by the alleged violations, as well as the full amount of that harm. Without these critical facts, the Bureau was not able to determine the amount of redress that might be owed to consumers, or the consumers to whom that redress could be paid. In addition, because the foreign Defendants did not have assets in the United States, the Bureau anticipated potential challenges in collecting on any penalties or remediation.

Q.4.b. Whose decision was it to withhold restitution?

A.4.b. Please see response to question 4.a.

Q.5. The CFPB should not require an affirmative complaint from someone to provide restitution to victims. Some of the most vulnerable victims may not know what it does or its role. Others may not know how to submit a complaint to the CFPB. Last year, the CFPB took action against Asset Recovery Associates (ARA). ARA was a debt collection firm that illegally threatened and lied to people for years. Yet, the CFPB only provided restitution to consumers who complained about the false threats. By limiting restitution to only people who complained to the Bureau or State regulators, ARA was able to keep all but $36,800 it illegally collected from consumers over a 4-year period.

Will you make sure your enforcement staff does not require affirmative complaints for future cases of abusive and deceptive practices by financial firms?

A.5. The Bureau is committed to seeking all appropriate relief for consumers and considers whether redress or restitution may be appropriate in each case on the facts presented and in light of applicable law. The Consumer Financial Protection Act authorizes the Bureau to seek redress for consumers in appropriate cases as a matter of discretion. While the Bureau is committed to seeking all appropriate relief for consumers, not every case lends itself to restitution for all potentially affected consumers, particularly in the context of a negotiated settlement. Particularly in the context of a negotiated settlement, the Bureau may choose to pursue the relief it determines best serves the public interest. Settlements allow the Bureau to avoid expending significant resources proving claims in court, mitigate trial risk, achieve speedier results for consumers, and provide certainty for companies.

Q.6. When President Obama appointed Richard Cordray to run the Consumer Financial Protection Bureau, he was the only political staff member.

Q.6.a. How many political appointments are at the Bureau?

A.6.a. Section 1013 of the Dodd-Frank Act states, "The Director may fix the number of, and appoint and direct, all employees of the Bureau in accordance with the applicable provisions of title 5, United States Code." This authority includes the appointment of employees under Schedule C hiring authority.

As of March 26, 2020, the Bureau had 11 political appointees, including the Director.

Q.6.b. What is the role of your political appointees?

A.6.b. Schedule C appointees are commonly used throughout the Federal Government, including at other financial regulatory agencies. The decision to classify a job as a Schedule C position is made by the U.S. Office of Personnel Management (OPM) at the request of an agency head. For all Schedule C positions at the Bureau, we followed the process established by OPM, which reviewed and approved all of the Bureau's Schedule C hires.

The Bureau's political appointees serve in one of the following capacities:

- Policy determining position by acting for the Director and Deputy Director in executing on policy priorities, resolving major program issues, and in the integration of the various programs in their area.
- Confidential administrative support position to either the Director or high-level Schedule C appointee.

Q.6.c. What do you say in response to the House Financial Services Committee report that reported that Eric Blankenstein obstructed and weakened enforcement actions against banks and financial institutions that engaged in unfair and deceptive practices and break the law?

A.6.c. I take full responsibility for the Bureau's actions under my leadership and again reaffirm my commitment to carrying out the Bureau's mission, including enforcement of consumer financial law. In FY 2019, the Bureau announced 22 public enforcement actions and settled six previous lawsuits. The final orders and judgments obtained by the Bureau during this period required a total of more than $750 million in total consumer relief (more than $600 million in consumer redress and more than $150 million in other relief) and over $150 million in civil money penalties, before adjusting for suspended amounts.

Q.6.d. What are the CFPB political appointees roles in determining penalties?

A.6.d. The Director authorizes Enforcement staff to take public enforcement actions, including authorizing settlement parameters and determining appropriate penalties, based on recommendations from Bureau staff. A number of internal stakeholders, including the Deputy Director and heads of Divisions, review and weigh in on recommendations seeking authority to take public enforcement actions before those recommendations are submitted to the Director.

Q.6.e. Has there been a conflict between career staff's recommendations for penalties and political appointees' recommendations?

A.6.e. I am not going to comment publicly on the Bureau's internal deliberations regarding confidential law enforcement matters. It is critical that internal deliberations be kept confidential to protect the free flow of ideas and ensure decisionmakers receive candid advice.

Q.6.f. How are penalties decided if there is a disparity between career staff and appointees' recommendations?

A.6.f. Please see the response to question 6.d.

Q.6.g. In which cases has there been a difference between recommendations, and which recommendation was chosen?

A.6.g. Please see the response to question 6.e.

Q.7. Have officials at the White House ever contacted you or a member of the Consumer Financial Protection Bureau staff to recommend an action related to supervision or enforcement?

A.7. I am not aware of any instance in which officials at the White House have contacted myself or other Bureau staff to recommend an action related to supervision or enforcement.

Q.8. In reviewing your response to my written questions, there are a number of fines that were imposed but not collected. For example, the Williamson Law Firm was assessed a fine of $40 million for an illegal debt collection scam but only $1 was collected. The National Credit Union Adjusters was fined $6 million for unlawful debt collection acts and practices that harmed consumers, including representing that consumers owed more than they were legally required to pay, or threatening consumers and their family members with lawsuits, visits from process servers, and arrest. According to your response to my written questions from last fall, only $250,000 was collected.

Q.8.a. Why isn't the Consumer Bureau collecting all the fines assessed?

A.8.a. The Bureau is committed to seeking appropriate civil money penalties in each case on the facts presented and in light of applicable law. Among the mitigating factors that the Consumer Financial Protection Act requires the Bureau and courts to consider when determining the appropriate penalty amount is the size of the institution's financial resources. 12 U.S.C. § 5565(c)(3). Consistent with this statutory factor, the Bureau has suspended the collection of the full civil money penalties imposed based on the financial condition of the entity. This was the case as to both the matters referenced. Moreover, given the imposition of a civil money penalty, harmed consumers may be eligible for additional relief from the Bureau's Civil Penalty Fund. Furthermore, instances of a difference between the fine imposed and the amount collected have consistently occurred throughout the Bureau's history and is not the result of any changed policy.

Q.8.b. Why isn't the Civil Penalty Fund being used to compensate consumers?

A.8.b. The Civil Penalty Fund is being used to compensate consumers. In FY 2019, $120 million was allocated to harmed consumers in five cases. Also, during FY 2019, the Bureau had seven active and ongoing Civil Penalty Fund case distributions. Funds related to those cases were initially distributed in FY 2017 and FY 2018 and totaled approximately $350 million. During FY 2019, the Bureau released funds in one new case totaling approximately $1 million.

Q.8.c. Why weren't funds allocated from the Civil Penalty Fund for financial education in 2019?

A.8.c. While the Bureau has the authority to allocate funds (under certain circumstances) for consumer education and financial literacy purposes, the Bureau considers the Civil Penalty Fund to primarily serve as a victim fund. In FY 2019, $120 million was allocated to harmed consumers in five cases. Furthermore, financial education activity is robustly funded through the Bureau's budget.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM KATHLEEN L. KRANINGER

Q.1. If Americans are involuntarily quarantined due to potential exposure to the coronavirus, it is possible this could cause them to become delinquent on student loans, mortgage payments, rent payments, and other forms of debt. What assurances can the CFPB offer that will protect the credit and financial well-being of Americans subject to involuntary quarantine? What directives will the CFPB provide to lenders to ensure Americans are not indebted or penalized due to a public health outbreak largely beyond their control?

A.1. The Bureau, along with other regulators, released guidance[1] publicly over the past few weeks to financial institutions, lenders, and creditors encouraging them to work constructively with borrowers and customers affected by COVID–19. This guidance emphasizes that prudent efforts to modify the terms on existing loans for affected customers will not be subject to examiner criticism. For

[1] See *https://www.consumerfinance.gov/about-us/newsroom/agencies-provide-additional-information-encourage-financial-institutions-work-borrowers-affected-covid-19/*, *https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/*, *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-banks-savings-associations-credit-unions-to-offer-responsible-small-dollar-loans-consumers-small-businesses-affected-covid-19/* and *https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-mortgage-servicers-work-struggling-homeowners-affected-covid-19/*.

example, when appropriate, a financial institution may restructure a borrower's debt obligations due to temporary hardships resulting from COVID–19 related issues. Such cooperative efforts can ease cash-flow pressures on affected borrowers, improve their capacity to service debt, and facilitate the financial institution's ability to collect on its loans. The Bureau's guidance also provides temporary and targeted flexibility for financial institutions to apply their resources to consumers' most urgent needs by deferring less urgent regulatory obligations. The Bureau continues to consider what guidance it can issue to regulated entities that will help consumers through this time and has issued guidance on myriad topics, including compliance with the assistance provided under the CARES Act.

At the same time, the Bureau has focused its efforts on being a resource to consumers with accurate, timely information regarding their rights and expectations in the consumer financial marketplace during this challenging time. We have made resources available in multiple formats and languages, including emphasizing the continued availability of the complaint database for consumers who encounter issues. The Bureau also continues to employ its supervision and enforcement tools to enforce compliance.

Q.2. According to the Department of Education, in January 2020 the Public Service Loan Forgiveness (PSLF) program had an acceptance rate of just 1.6 percent of applications. What is the reason for such a staggeringly high rate of rejection? How can the CFPB educate student loan borrowers about the PSLF application process to improve this acceptance rate?

A.2. The Public Service Loan Forgiveness (PSLF) Program is complex. PSLF was established under the College Cost Reduction and Access Act of 2007 and provides for loan forgiveness when the program's requirements are met. The 4 requirements borrowers must meet are as follows: (1) the loans must be Direct Loans (starting in 2010, all Federal student loans are direct loans); (2) there must be 120 qualifying monthly payments; (3) the borrower must be making payments under a qualifying repayment plan; and (4) the borrower must be working full-time for a qualifying employer. In 2012, the Department of Education introduced the voluntary Employment Certification Form (ECF), which borrowers can submit to verify that their employment qualifies for the PSLF Program and which, if submitted annually or whenever borrowers change jobs, can help track their progress. In the fall of 2017, borrowers began submitting applications seeking loan forgiveness under PSLF.

As February 29, 2020, the Department of Education[2] has determined the most common reasons for ECF rejections are: (1) missing information—77 percent, (2) no eligible loans—10 percent, and (3) employer not eligible—5 percent. The most common reasons for rejections for loan forgiveness are: (1) insufficient qualifying payments—59 percent, (2) missing information—23 percent, and (3) no eligible loans—14 percent.

Based on the foregoing, the Bureau believes that it can engage in effective borrower education and empowerment focused on encouraging borrowers to submit ECFs annually, encouraging bor-

[2] *https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data.*

rowers to complete the ECF, and ensuring that they understand the type of loan they have and whether their employer is eligible.

Also, this an opportunity for collaboration with the Department of Education's office of Federal Student Aid (FSA) to educate and empower borrowers. For example, FSA now provides borrowers with a count of their qualifying payments when they submit an ECF which addresses, in part, the top reason for rejection of PSLF applications.[3]

[3] As of February 29, 2020, the Department of Education has determined the most common reasons for rejecting PSLF applications are as follows: (1) insufficient qualifying payments—59 percent, (2) missing information—23 percent, and (3) no eligible loans—14 percent. See, *https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data.*

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Semi-Annual Report of the Bureau of Consumer Financial Protection

Message from the Director

February 3, 2020

I am pleased to present the Consumer Financial Protection Bureau's (CFPB or Bureau) Semi-Annual Report to Congress for the period April 1, 2019–September 30, 2019.

Consumers are at the heart of everything we do at the CFPB, just as Congress intended, and we are driven by one goal:

We protect, promote, and preserve the financial well-being of the American consumer.

We tackle this goal through promoting compliance by responsible entities, tirelessly enforcing the law and deterring unscrupulous financial predators, advancing the public's overall financial skills, and encouraging appropriate and innovative choice in the marketplace.

In addition to building upon the hard work outlined in the rest of this report, I am also focusing on two areas of importance: **encouraging saving** and **unleashing innovation** wherever appropriate and possible.

Encouraging saving:

We all know that savings are important. Too many of our most vulnerable consumers do not see that saving even a small amount can be important to their long-term financial well-being. That's why I have launched the "Start Small, Save Up" initiative.

Encouraging saving is part of an effort that endeavors to create an American financial landscape that sees people able to fully meet current and ongoing financial obligations, feel secure in their own financial futures, and be empowered with the ability to make choices that allow them to enjoy life.

If we are able to get more people to put aside just a few dollars per paycheck:

1. It puts greater control of day-to-day finances back in consumers' hands;
2. It creates and increases consumer capacity to absorb and recover from an unexpected financial shock;
3. It puts people on track to meet their own personal financial goals; and
4. It provides people financial freedom to make choices that improve their quality of life.

When it comes to saving, starting small can be a huge first step, and one that can help relieve anxiety and foster financial independence.

Unleashing innovation:

I've also taken renewed steps to advance one of the Bureau's statutorily required goals: encouraging innovation in the financial marketplace.

We will do this by removing unnecessary, onerous, and redundant regulatory obstacles that inhibit consumer choices, including by reducing regulatory uncertainty through three new or revised innovation policies that we issued in 2019. At the same time, we will be fostering streamlined connectivity between federal and state regulators and the innovators we regulate. This allows the marketplace to deliver safe and effective benefits to American consumers without them being unnecessarily stymied.

By working with state partners, we can create more streamlined processes to facilitate innovators in bringing safe and effective choices to consumers.

One thing is for sure: neither Washington nor the states can predict what will evolve in the minds of entrepreneurs. What we can do is ensure that their revolutionary ideas do not "die on the vine" because of bureaucratic red tape and overzealous regulation.

Last year, I launched the American Consumer Financial Innovation Network (ACFIN), a network to enhance coordination among federal and state regulators to facilitate financial innovation. This effort began with eight members and has now grown to 17. These bipartisan members include both the state attorneys general and state financial regulators. My hope is that this effort brings innovators and regulators together to discuss regulatory uncertainty and ensures innovators understand what regulators require of them.

I look forward to sharing more about these two initiatives, saving and innovation, in the coming months. In the meantime, I am proud of the work that is highlighted in this report and thank the Bureau staff who have been instrumental in leading these efforts. We will continue to build on our efforts going forward to prevent consumer harm and ensure that consumers are protected.

Sincerely,

Kathleen L. Kraninger

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1. Significant problems faced by consumers in shopping for or obtaining consumer financial products or services

During the reporting period, the Bureau released two Quarterly Consumer Credit Trends (qCCT) reports and one Market Snapshot that address aspects of credit reporting and credit scoring, which may cause consumers to experience significant problems in obtaining consumer financial products or services. These reports use a longitudinal, nationally representative sample of approximately five million de-identified credit records from one of the three nationwide consumer reporting agencies. In addition, the Bureau issued its biennial report on the credit card market that includes findings on problems consumers may experience in shopping for or obtaining credit and on the choices consumers make in this market.

1.1 Credit scores and credit reporting

Credit scores are generally derived from credit file data furnished to and maintained by the national credit reporting agencies (NCRAs). Many creditors use credit scores to determine to whom they will offer credit and on what terms. Creditors may also obtain credit reports, generally compiled by the NCRAs from the credit file data furnished to them and use those reports for underwriting and pricing. As a result, credit reports and credit scores have a significant effect on consumers' ability to shop for and obtain credit.

Credit reports can contain information from third-party debt collectors who collect delinquent or defaulted debt on behalf of creditors and from debt buyers who purchase charged-off accounts and collect on those accounts in their own names. A collections "tradeline" can negatively affect the consumer's credit score or otherwise negatively affect the consumer's ability to obtain credit. In *Market Snapshot: Third-Party Debt Collections Tradeline, Reporting,* [1] the Bureau examined the reporting of collections tradelines.

Key findings include:

[1] https://files.consumerfinance.gov/f/documents/201907_cfpb_third-party-debt-collections_report.pdf.

- As of Q2 2018, over one in four consumers had a third-party collections tradeline in their credit files at the NCRAs. Of the reported collections tradelines, 87.5 percent were reported by non-buyer third-party collectors and the remaining 12.5 percent were reported by debt buyers.

- Fifty-eight percent of all collections tradelines—and about two-thirds of the non-buyer tradelines—were for medical debt, and another 20 percent were for telecommunications or utilities debt. These are all non-financial debts where positive payment information is generally not reported to consumer reporting agencies. Non-buyer collectors are primarily responsible for reporting these tradelines; buyer tradelines primarily were for banking, retail, and financial debt with only one percent of buyer tradelines for medical debt.

Credit reports also may contain information on bankruptcy filings, which also can negatively affect credit scores or otherwise negatively affect the consumer's ability to obtain credit. In a qCCT report entitled *Consumer Bankruptcy, BAPCPA, and the Great Recession*,[2] the Bureau examined trends regarding bankruptcy filings and their relationship to credit scores.

Key findings include:

- Each year approximately 750,000 consumers petition for bankruptcy. In recent years, around 63 percent have invoked Chapter 7, which allows debt that cannot be repaid out of certain assets to be discharged, while the remainder have invoked Chapter 13, which generally provides a three- or five-year repayment plan for repaying at least a portion of the debt.

- The median credit score for filers one year before filing is quite low—for 2018 Chapter 7 filers, the median score was below 580, and for Chapter 13 filers 600. Median credit scores for Chapter 7 filers rise steeply in the first few years after filing, although the median score remains within the subprime range. For Chapter 13 filers, median scores increase more slowly than for Chapter 7 filers.

As the bankruptcy data indicate, credit scores are not static, but do fluctuate for any given consumer. In a second qCCT report, *Timing of Applications for Consumer Credit*,[3] the Bureau

[2] https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_consumer-bankruptcy_2019-08.pdf.

[3] https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-trends_timing-applications-consumer-credit_2019-05.pdf.

examined fluctuations in credit scores and their relationship with when consumers apply for credit (specifically credit cards).

Key findings include:

- For consumers whose credit scores could be observed for at least 29 quarters over a nine-year period, almost two-thirds experienced at least a 100-point swing in their credit score. Two-thirds of those consumers experienced their maximum score first, and the remainder experienced a minimum score before reaching a maximum. It took more than five years for consumers to go from minimum to maximum, but less than three years to move from maximum to minimum. Younger consumers and consumers with lower average scores were more likely to experience these large swings in their credit scores.

- Consumers' rate of applying for a credit card appears to increase as they approach their maximum credit score, with a spike approximately four quarters before reaching the maximum. After reaching the maximum score, the rate of applications declines quickly. However, consumers in relatively high credit score bands have generally stable application rates as they approach their maximum score and experience small declines thereafter.

- Consumers' application rate also gradually increases as they approach their minimum credit score, but with a sharp decline in the application rate around the time that consumers reach their minimum. After reaching the minimum, the application rate rises steadily.

1.2 The consumer credit card market

Every two years, the Bureau issues a report to Congress on the consumer credit card market as required by the Credit Card Accountability, Responsibility and Disclosure Act (CARD Act).[4] As with prior reports, the Bureau's 2019 report,[5] which was issued during the reporting period, examines the availability of credit in this market and the means by which consumers seek and obtain credit.

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[4] *15 U.S.C. 1616(a).*

[5] *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf. The Bureau has placed in its Reading Room Excel tables containing the data reflected in the graphs and charts that appear in the report. https://www.consumerfinance.gov/foia-requests/foia-electronic-reading-room/2019-consumer-credit-card-market-report-figure-data/.*

Key findings relating to consumers shopping for and obtaining credit cards include:

- In 2018, credit card issuers collectively sent, on average, 341 million direct mail solicitations per month for credit cards, of which 51.6 percent were pre-screened. Direct mail solicitation volume remains less than one half of its pre-recession level, and the share of pre-screened offers was its lowest mark since at least 2013. Spending on digital marketing remains small compared to physical mail, but it has grown significantly.

- In 2018, consumers submitted more than 165 million credit card applications to mass market issuers. A slight majority were for retail accounts (i.e., credit cards that can be used only at a single merchant or a small group of related merchants) as opposed to general purpose accounts (i.e., accounts with cards that can transact over a network accepted by a wide variety of merchants, including the Visa, Mastercard, American Express, and Discover networks). Over 75 percent of general-purpose applications were submitted digitally with one half of those coming via a mobile device. In contrast, over 60 percent of retail card applications were submitted in person with digital channels accounting for 36 percent.

- Third-party comparison sites (TPC sites) offer information intended to make it easier for consumers to compare credit cards. More than one in four applications for general purpose cards that were submitted to mass market issuers came through TPC sites. Consumers with lower credit scores were more likely to apply via TPC sites than consumers with higher credit scores. TPC sites are not owned or operated by issuers but many are funded primarily by issuer payments for sourcing new accounts.

- Approval rates vary widely by credit tier. This is true both for general purpose credit cards and for retail cards. For example, the approval rate for superprime consumers was 83 percent for general purpose cards and 91 percent for retail cards, while the approval rate for subprime and deep subprime consumers was 17 percent for general purpose cards and under seven percent for retail cards.

- Even within a credit tier, approval rates vary significantly by channel of application. For example, for superprime consumers applying for a general purpose card, the approval rate for those applying by mail was 85 percent, whereas it was 73 percent for those applying via mobile device. For subprime and deep subprime consumers, the comparable figures were 70 percent and 16 percent.

- Overall, consumers obtained roughly 106 million new credit card accounts in 2018, of which roughly 65 million were for general purpose cards. Among general purpose card originations, 61 percent were for products with a reward feature such as cash rewards or travel rewards. This rate varies substantially by credit tier: for example, for superprime consumers, 71 percent of new general purpose cards offered rewards, whereas for subprime and deep subprime consumers, only 21 percent did.

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.

2.1 Fiscal year (FY) 2019 spending through the end of the second quarter of FY 2019

2.1.1 Bureau fund

As of September 30, 2019, the end of the fourth quarter of FY 2019, the Bureau had spent approximately $510.1 million[6] in FY 2019 funds to carry out the authorities of the Bureau under Federal financial consumer law, including approximately $300.5 million for employee compensation and benefits. There were 1,430 Bureau employees on board at the end of the quarter.[7]

TABLE 1: FY 2019 SPENDING BY EXPENSE CATEGORY

Expense Category	Fiscal Year 2019
Personnel Compensation	218,684,000
Benefit Compensation	81,324,000
Benefit Compensation – former employees	512,000
Travel	14,660,000
Transportation of Things	164,000

[6] *This 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*

[7] *This figure reflects the employees on board during pay-period 19, calendar year 2019.*

Expense Category	Fiscal Year 2019
Rents, Communications, Utilities & Misc.	14,525,000
Printing and Reproduction	4,115,000
Other Contractual Services	145,059,000
Supplies & Materials	4,233,000
Equipment	21,736,000
Land and Structures	5,136,000
Interest & Dividends	1,000
Total (as of September 30, 2019)	$510,149,000

2.1.2 FY 2019 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 Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). As of September 30, 2019, the Bureau had received the following transfers for FY 2019. The amounts and dates of the transfers are shown below.[8]

TABLE 2: FUND TRANSFERS

Funds Transferred	Date
$172.9M	October 01, 2018
$122.8M	January 02, 2019
$120.5M	April 02, 2019
$52.0M	July 01, 2019
$468.2M	**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

[8] *Current year spending in excess of funds received is funded from the prior year's unobligated balance.*

financial reports and the Chief Financial Officer (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-us/budget-strategy/funds-transfer-requests/.

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[9]

3.1 Significant rules[10]

The Bureau issued two significant notices of proposed rulemaking during the preceding year:

[9] *Separate 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(c)(3), the Bureau is required to "conduct an assessment of each significant rule or order adopted by the Bureau" under Federal consumer financial law and issue a report of such assessment "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.*

[10] *The statutory requirement under 1016(c)(3) calls for the Bureau to report a list of the significant rules and orders adopted by the Bureau. This list includes significant notices of proposed rulemakings.*

- Proposed Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans.[11]
- Proposed Rule: Debt Collection Practices (Regulation F).[12]

The Bureau plans to finalize the two proposed rules in FY 2020. For more information, see the Bureau's plan for upcoming rules in Section 3.4 below.

The Bureau issued one significant final rule:

- Final Rule: Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date; Correcting Amendments.[13] The Bureau issued this final rule to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-Cost Installment Loans. Compliance with the provisions finalized in 2017 was delayed by 15 months to November 19, 2020. The Bureau also made certain corrections to address several clerical and non-substantive errors it identified in other aspects of the rule.

3.2 Less significant rules[14]

- Final Rule: Technical Specifications for Submissions to the Prepaid Account Agreements Database.[15]
- Final Rule: Availability of Funds and Collection of Checks (Regulation CC).[16]

[11] https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans/.

[12] https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/debt-collection-practices-regulation-f/.

[13] https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/.

[14] *This list includes less significant rules, and it is not comprehensive. This list may exclude certain non-major rules, proposed rules, procedural 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 https://www.reginfo.gov/public/, and on the Bureau's public website at https://www.consumerfinance.gov/policy-compliance/rulemaking/.*

[15] https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/technical-specifications-submissions-prepaid-account-agreements-database/.

[16] https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/availability-funds-and-collection-checks-regulation-cc/.

- Final Rule: Home Mortgage Disclosure (Regulation C)–2019 Final Rule.[17]
- Proposed Rule: Home Mortgage Disclosure (Regulation C).[18]

3.3 Significant initiatives

- *Home Mortgage Disclosure Act Data Release.* In August 2019, on behalf of the Federal Financial Institutions Examination Council (FFIEC), the Bureau released data on mortgage lending transactions at U.S. financial institutions covered by the Home Mortgage Disclosure Act (HMDA). Covered institutions include banks, savings associations, credit unions, and mortgage companies. The loan-level HMDA data covering 2018 lending activity includes lending activity submitted to the Bureau through August 2019. Many of the data points are available for the first time in the 2018 HMDA data. Certain smaller-volume financial institutions are not required to report all these data, pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The Bureau released with these data two reports. The first Data Point article is the second in an annual series of Bureau articles describing mortgage market activity over time. It summarizes the historical data points in the 2018 HMDA data, as well as recent trends in mortgage and housing markets.[19] The second Data Point article introduces the new and revised data points in the 2018 HMDA data and provides some initial observations about the nation's mortgage market in 2018 based on those new or revised data points.[20]

- *Credit Card Market Report.* Every two years, the Bureau reports on the state of the consumer credit card market.[21] The report for 2019 covered how consumers use cards, the price they pay for using them, the availability of credit cards, the practices used by

[17] https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/home-mortgage-disclosure-regulation-c-2019-final-rule/.

[18] https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/home-mortgage-disclosure-regulation-c/.

[19] https://www.consumerfinance.gov/data-research/research-reports/data-point-2018-mortgage-market-activity-and-trends/.

[20] https://www.consumerfinance.gov/data-research/research-reports/introducing-new-revised-data-points-hmda/.

[21] *In 2009, the CARD Act made substantial changes to the legal requirements applicable to the credit card market, with Section 502 of the CARD Act also requiring that a report be issued every two years with respect to the market.*

credit card companies and debt collectors, academic literature on the possible effects of the CARD Act, and innovation in the credit card market.[22]

- *Research Reports.* During the reporting period, in addition to the HMDA data reports and the Credit Card Market Report, the Bureau released the following research reports:
  - *Quarterly Consumer Credit Trends: Timing of Applications for Consumer Credit.* This report explores the relationship between fluctuations in consumers' credit scores and the timing of consumers' applications for credit.[23]
  - *Data point: Credit card revolvers.* This report studies patterns of revolving and repayment of credit card accounts in the United States and examines how often balances are revolved on an account, or borrowed, how long balances are revolved, and how regularly they are paid down.[24]
  - *Market Snapshot: Third-Party Debt Collections Tradeline Reporting.* This report provides a basic overview of third-party debt collections credit reporting tradelines.[25]
  - *Planning for tax-time savings.* This report presents the results of a large-scale field experiment that the tax preparation company H&R Block conducted in collaboration with the Bureau. The field experiment investigated whether customers could be encouraged, through consumer communications with and without the offer of a small financial incentive, to use a savings feature on a prepaid card to save a portion of their tax refunds from all sources, including state and federal refunds.[26]
  - *Credit Characteristics, Credit Engagement Tools, and Financial Well-Being.* This report presents results from a joint research study between the Bureau and Credit Karma. The purpose of the study is to examine how consumers' subjective financial well-being relates to objective measures of consumers' financial health, specifically, consumers' credit report characteristics. The study also seeks to relate consumers'

[22] https://www.consumerfinance.gov/data-research/research-reports/the-consumer-credit-market-2019/.

[23] https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-timing-applications-consumer-credit/.

[24] https://www.consumerfinance.gov/data-research/research-reports/data-point-credit-card-revolvers/.

[25] https://www.consumerfinance.gov/data-research/research-reports/market-snapshot-third-party-debt-collections-tradeline-reporting/.

[26] https://www.consumerfinance.gov/data-research/research-reports/planning-tax-time-savings/.

subjective financial well-being to consumers' engagement with financial information through educational tools.[27]

- *Quarterly Consumer Credit Trends: Consumer Bankruptcy, BAPCPA, and the Great Recession.* This report explores how the volume and types of bankruptcy filings have changed throughout the period 2001–2018, which includes the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) and the Great Recession. The report considers changes in the attributes of bankruptcy filers by analyzing credit scores and the amount of debt consumers hold prior to bankruptcy.[28]

- *Bureau Symposia Series.* Director Kraninger announced a symposia series to explore consumer protection in today's dynamic financial services marketplace. The series is aimed at stimulating a proactive and transparent dialogue to assist the Bureau in its policy development process. Two symposia were held during the reporting period, the first addressing abusive acts and practices in Section 1031 of the Dodd-Frank Act, and the second addressing behavioral law and economics.

- *Request for Information: Remittances.* In April 2019, the Bureau issued a Request for Information (RFI) seeking information on two aspects of the Bureau's Remittance Rule. First, the Bureau asked for information to determine whether to propose changes to the Rule given the impending expiration of a temporary exception, which permits depository institutions under certain circumstances to estimate certain fees and other costs when providing disclosures. Second, the Bureau asked for information to determine whether to propose changes to the Rule's safe harbor for determining whether a provider is engaged in providing remittances in the normal course of business.[29]

- *Advance Notice of Proposed Rulemaking: Home Mortgage Disclosure Act.* In May 2019 the Bureau issued an Advance Notice of Proposed Rulemaking (ANPR) seeking information to determine whether to propose changes to the data points that the Bureau's 2015 HMDA rule added to Regulation C or revised to require additional information. Additionally, the Bureau solicited comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under

[27] https://www.consumerfinance.gov/data-research/research-reports/credit-characteristics-credit-engagement-tools-financial-well-being/.

[28] https://www.consumerfinance.gov/data-research/research-reports/quarterly-consumer-credit-trends-consumer-bankruptcy-bapcpa-great-recession/.

[29] https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-request-information-remittance-rule/.

Regulation C. The ANPR seeks information regarding the costs and benefits of these data points. [30]

- *Advance Notice of Proposed Rulemaking: Ability-to-Repay and Qualified Mortgages.* In July 2019 the Bureau issued an ANPR asking for information relating to the expiration of the temporary GSE provision of the Bureau's Ability-to-Repay and Qualified Mortgage Rule. Under that provision, mortgages which are eligible for purchase or guarantee by one of the Government-Sponsored Entities and which satisfy certain statutory criteria relating primarily to features of the mortgage are generally deemed to be Qualified Mortgages (QMs). This provision is scheduled to expire in January 2021, and the Bureau's ANPR sought information to determine whether to propose changes in the general definition of QM considering that expiration. [31]

- *Section 610 Review of Significant Rules.* In May 2019 the Bureau published a plan for the review of rules which have a significant economic impact on a substantial number of small entities. [32] These reviews are required by Section 610 of the Regulatory Flexibility Act. The Bureau invited public comment on its plan. Concurrently with the publication of this plan, the Bureau launched a Section 610 review of a rule regulating overdraft services which the Federal Reserve Board adopted in 2009 and invited public comment with respect to the review of that rule. [33]

- *Final Policy Guidance: Disclosure of Loan-Level HMDA Data.* [34] In December 2018, the Bureau issued final policy guidance describing modifications that the Bureau intends to apply to the loan-level data that financial institutions report under HMDA and Regulation C before the data are disclosed to the public. These modifications are made if the Bureau's disclosure of the unmodified data would create risks to applicant and borrower privacy that are not justified by the benefits of such disclosure to the public.

- *Advance Notice of Proposed Rulemaking: Residential Property Assessed Clean Energy.* [35] Section 307 of the EGRRCPA amends the Truth in Lending Act (TILA) to

[30] https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/home-mortgage-disclosure-regulation-c-data-points-and-coverage-extension-comment-period/.

[31] https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/qualified-mortgage-definition-under-truth-lending-act-regulation-z/.

[32] https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/plan-review-bureau-rules-purposes-regulatory-flexibility-act/.

[33] https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/overdraft-rule-review-pursuant-regulatory-flexibility-act/.

[34] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-announces-policy-guidance-disclosure-home-mortgage-data/.

[35] https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/advance-notice-proposed-rulemaking-residential-property-assessed-clean-energy-financing/.

mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. In March 2019, the Bureau issued an ANPR on PACE financing to facilitate the Bureau's rulemaking process. As defined in EGRRCPA Section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ability-to-repay (ATR) requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing.

- *Assessments of Significant Rules*. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law.
  - *Remittance Rule assessment report*.[36] In October 2018, the Bureau published the findings of the assessment of the Remittance Rule, which took effect on October 28, 2013. In general, the Remittance Rule gives certain protections to consumers that send remittance transfers from the United States to another country.
  - *Ability to Repay and Qualified Mortgage Rule assessment report*.[37] The Bureau issued the Ability to Repay and Qualified Mortgage Rule in January 2013 to implement provisions of the Dodd-Frank Act that require lenders, before making a residential mortgage loan, to make a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan. The rule took effect in January 2014. The assessment, issued in January 2019, used a range of data sources, including a unique data set the Bureau assembled for purposes of this assessment, to comprehensively examine the extent to which the rule has affected consumers' access to credit and the cost of credit.
  - *2013 Real Estate Settlement Procedures Act (RESPA) Mortgage Servicing Rule assessment report*.[38] The Bureau issued the RESPA Mortgage Servicing Rule in January 2013 to implement certain provisions of the Dodd-Frank Act imposing new obligations on mortgage servicers who are generally responsible for billing borrowers for amounts due, collecting payments, disbursing funds, and providing customer

[36] https://www.consumerfinance.gov/data-research/research-reports/remittance-rule-assessment-report/.

[37] https://www.consumerfinance.gov/data-research/research-reports/2013-ability-repay-and-qualified-mortgage-assessment-report/.

[38] https://www.consumerfinance.gov/data-research/research-reports/2013-respa-servicing-rule-assessment-report/.

service. The rule also added new protections which the Bureau deemed appropriate or necessary to carry out the consumer protection purposes of RESPA. This rule took effect in January 2014. The assessment, issued in January 2019, used a range of data, including a unique data set the Bureau assembled, to examine how the rule has affected the experiences and outcomes for consumers, with a particular focus on those who fall behind on their mortgage payments.

- *Trial Disclosure Programs.*[39] In September 2019, the Bureau issued its revised Policy to Encourage Trial Disclosure Programs (Policy). Because the Bureau had not permitted a single trial disclosure program under the original 2013 version of the Policy, the Bureau determined revisions were necessary. The Bureau voluntarily sought public comment on the revised Policy proposal in September 2018 during a 30-day comment period and received approximately 30 distinct comment letters from a broad array of stakeholders, including consumer advocacy groups and civil rights organizations, industry trade associations and individual financial service providers, and state attorneys general and associations of state regulatory agencies. The Bureau gave each comment careful consideration and adopted several of the suggested changes designed to improve the Policy. The Bureau is now accepting applications under the revised Policy.

- *No-Action Letters.*[40] In September 2019, the Bureau issued its revised Policy on No-Action Letters. The Bureau determined that revisions to the original 2016 Policy were necessary because the Bureau had issued only one no-action letter under the 2016 Policy. The revised Policy brings the Bureau's program more in line with certain features of no-action letter programs successfully operated by other Federal agencies. The Bureau voluntarily sought comment during a 60-day comment period on a two-part proposal to (i) revise the 2016 Policy on No-Action Letters and (ii) create a Product Sandbox and received approximately 30 distinct comment letters from a broad array of stakeholders; including consumer advocacy groups and civil rights organizations, industry trade associations and individual financial service providers, and state attorneys general and associations of state regulatory agencies. Upon careful consideration of comments received, the Bureau elected to separate the two-part proposal into distinct final policies—the revised Policy on No-Action Letters and the Policy on the Compliance Assistance Sandbox (discussed below). The Bureau is now accepting applications for No-

[39] https://files.consumerfinance.gov/f/documents/cfpb_final-policy-to-encourage-tdp.pdf.

[40] https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-no-action-letters.pdf.

Action Letters (NALs) under the revised Policy and has granted two NALs and a NAL template under the revised Policy to date.

- *Compliance Assistance Sandbox.*[41] In September 2019, the Bureau issued its Policy on the Compliance Assistance Sandbox (CAS Policy). The Bureau proposed the CAS Policy to address stakeholder demand for forms of compliance assistance that provide greater protection from liability than is provided by no-action letters. Under the final CAS Policy, innovators can apply for an approval that provides a safe harbor from liability for conduct compliant with the law under certain statutes within the Bureau's jurisdiction. The Bureau is now accepting applications for approvals under the CAS Policy.

- *ACFIN.* The American Consumer Financial Innovation Network (ACFIN) is a network of federal and state officials and regulators seeking to facilitate consumer-beneficial innovation. Launched in September 2019 by the Bureau and state partners, ACFIN benefits consumers by enabling federal and state officials to coordinate efforts to facilitate innovation and further shared objectives such as competition, consumer access, and financial inclusion. ACFIN members hold joint Office Hours programs and share information on innovation-related matters, as appropriate. ACFIN members may also coordinate on No-Action Letters or Sandbox trials.

- *GFIN.* The Bureau is also a coordinating member of the Global Financial Innovation Network (GFIN), an organization of over 50 regulatory agencies worldwide working together to support financial innovation in the interest of consumers. Formally launched in January 2019, GFIN seeks to: (a) act as a network of regulators to collaborate and share experiences on innovation in respective markets, including emerging technologies and business models; (b) provide a forum for joint policy work and discussions; and (c) give firms an environment that allows for trials of cross-border solutions.

- *Tech Sprints Request for Information.*[42] In September 2019, the Bureau issued an RFI seeking comments and information to help the Bureau identify opportunities to utilize Tech Sprints to encourage regulatory innovation and collaborate with stakeholders in developing viable solutions to regulatory compliance challenges.[43] The information provided will help the Bureau identify how stakeholders can work together to create a regulatory environment (1) that allows innovation to flourish, is flexible, efficient, and

[41] https://files.consumerfinance.gov/f/documents/cfpb_final-policy-on-cas.pdf.

[42] https://files.consumerfinance.gov/f/documents/cfpb_rfi_tech-sprints.pdf. *For additional information, see infra Section 8.3.1.*

[43] https://files.consumerfinance.gov/f/documents/cfpb_rfi_tech-sprints.pdf. *The deadline for submission of comments and information closed on November 9, 2019, and the Bureau is currently considering the responses received.*

effective; (2) where new and/or emerging risks can be identified and managed effectively; and (3) where consumers have the appropriate level of protection and suitable access to the benefits of technological advancement. The information may also help identify responsible innovations that can be implemented in a consumer-friendly way to help serve populations currently underserved by the mainstream credit system.

- *Start Small, Save Up Initiative*.[44] In the previous reporting period, the Bureau launched the Start Small, Save Up campaign. The initiative aims to increase people's opportunities to save and empower them to achieve their savings goals as a step to improved financial well-being. Through Start Small, Save Up, the Bureau is making a commitment to helping consumers build emergency savings over the next few years by working with employers to prioritize emergency savings and automated solutions in the workplace; engaging with partners to highlight emergency savings products that work and make more accessible products available; and partnering with trusted community institutions to tailor savings solutions to unique audiences. The Start Small, Save Up initiative includes a robust research and evaluation component to ensure the Bureau is learning about its own efforts, as well as the efforts of others who are also working toward a similar goal of helping consumers save. The initiative is also advancing the Start Small, Save Up message in the national and local dialogue through several partners and directly to consumers through various channels. For example, the Start Small, Save Up website has tools and resources to help people get started with saving. Additionally, the Bureau launched the CFPB Savings Boot Camp, a multi-week email course to guide people through the fundamentals of saving. The Bureau also released the fourth in a series of booklets for social services providers to talk with people about money topics that are important to them: Building your Savings? Start with Small Goals. The booklet contains colorful, engaging tools to support people in setting savings goals, preparing for the unexpected, finding a place to save, and making the most of tax services providers, financial coaches, and financial educators.

- *Reporting of Suspected Elder Financial Exploitation by Financial Institutions*.[45] In 2016, the Bureau released an Advisory for Financial Institutions, which includes a comprehensive set of voluntary recommendations for preventing and responding to elder financial exploitation. In July 2019, the Bureau updated the advisory, building on earlier recommendations and its recent research on Suspicious Activity Reports (SARs) on Elder Financial Exploitation (EFE). The update provides new information about

[44] https://www.consumerfinance.gov/start-small-save-up/.

[45] https://www.consumerfinance.gov/data-research/research-reports/reporting-suspected-elder-financial-exploitation-financial-institutions-update-2016-advisory-and-recommendations/.

reporting EFE based on federal and state law changes. The new analysis of current laws aims to help financial institutions in their efforts to combat elder fraud.

- *Misadventures in Money Management for Active Duty Servicemembers*. The Bureau made Misadventures in Money Management (MiMM) available for active duty servicemembers reporting to their first service station. MiMM is an online training that engages servicemembers with real life financial choices in a fun and interactive manner and provides a just-in-time financial curriculum. MiMM is also available to future servicemembers in the Delayed Entry Program (DEP), as well as future leaders in the Junior Reserve Officers' Training Corps (JROTC) and Reserve Officer Training Corps (ROTC).

- *Managing Someone Else's Money guides*.[46] The Bureau made its Managing Someone Else's Money guides available for co-branding so that banks, credit unions, legal services programs, area agencies on aging, and other service providers can add a logo to the covers of the booklets by following a few steps listed on the Bureau's website. These guides provide practical guidance to the millions of Americans who manage money and property for someone unable to do so independently.

- *Classroom Activities for Teaching the Building Blocks of Financial Capability*.[47] The Bureau launched a set of activities for middle school teachers to incorporate lessons into the classroom that support the development of financial skills. The middle school activities are available alongside the activities for high school teachers that were launched in late 2018. These activities are based on the building blocks for youth to develop financial capability in adulthood. Children and youth need to develop all three of the interconnected building blocks to support financial capability in adulthood. The building blocks are executive function; financial habits and norms; and financial knowledge and decision-making skills. The searchable teacher platform on consumerfinance.gov includes 105 specific classroom activities for high school teachers to use with their students.

- *Your Money, Your Goals*.[48] In FY 2019, the Bureau's financial empowerment program for front-line staff and volunteers entered its seventh year. Your Money, Your Goals provides a suite of financial empowerment tools and resources that frontline staff and volunteers can use to build their own financial skills and confidence and to start money conversations with the people they serve. The Bureau uses a train-the-trainer model to provide training and technical assistance to help an annual cohort of organizations build

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[46] https://www.consumerfinance.gov/cobrandMSEM.

[47] https://www.consumerfinance.gov/practitioner-resources/youth-financial-education/teach/activities/.

[48] https://www.consumerfinance.gov/practitioner-resources/your-money-your-goals/.

capacity to integrate Your Money, Your Goals tools and information into their work. From 2013 through September 2019, nearly 30,000 front line staff and volunteers have been trained to use Your Money, Your Goals, and conservative estimates indicate that the program has been used with more than one million consumers. The suite of materials now includes the core toolkit and training materials; companion guides that focus on money topics specific to Native communities, people with criminal records, and people with disabilities; and four issue-focused booklets, "Behind on bills?", "Debt getting in your way," "Want credit to work for you?" and "Building Your Savings?"

- *Financial Well-Being of Veterans report*.[49] The Bureau's review of the data about veterans in the financial well-being survey found that veterans reported higher levels of financial well-being than the average U.S. adult. However, the analysis also found that veterans, like other U.S. adults, have financial experiences that are negatively associated with financial well-being, including having student loan debt; using non-bank, short-term credit products; and being contacted by a debt collector. The analysis suggests that for veterans, as for the general population, there is a pathway from financial skill to financial well-being.
- *Convening Community to Build Elder Fraud Prevention and Response Networks report*.[50] This report describes the Bureau-facilitated convenings in Florida, Oklahoma, Tennessee, Montana, and Oregon, which have sparked the creation of new elder fraud prevention and response networks or have enhanced existing networks. The lessons learned from these pilot convenings can help other communities develop networks that improve coordination and collaboration between responders and service providers to protect older people from financial harm.
- *A Review of Youth Financial Education: Effects and Evidence*.[51] This literature review was issued to help education policymakers, program leaders, financial educators, and academic researchers make evidence-informed policy, programming, and resourcing decisions about school-based financial education.
- *Youth Financial Education Research Priorities report*.[52] This report lays out key unanswered research questions in youth financial education identified by a range of stakeholders. The goal is to encourage investigation into these questions to point the

[49] https://www.consumerfinance.gov/data-research/research-reports/financial-well-being-veterans/.

[50] https://www.consumerfinance.gov/data-research/research-reports/convening-communities-build-elder-fraud-prevention-and-response-networks/.

[51] https://www.consumerfinance.gov/data-research/research-reports/review-youth-financial-education-effects-and-evidence/.

[52] https://www.consumerfinance.gov/data-research/research-reports/youth-financial-education-research-priorities/.

way towards evidence-based solutions that are effective, scalable, and invite implementation.

- *Consumer Complaint Database.* In September 2019, the CFPB announced that it will continue the publication of consumer complaints, data fields and narrative descriptions through the Bureau's Consumer Complaint Database while making several enhancements to the information available to users of the database. The Bureau already made changes to its website to:
  - More prominently display disclosures making it clear that the Consumer Complaint Database is not a statistical sample of consumers' experiences in the marketplace;
  - Highlight the availability of answers to common financial questions for consumers to help inform them before they submit a complaint; and
  - Encourage consumers to contact the financial company directly to get answers to their specific questions.

  To further enhance the database in 2020, the Bureau will:
  - Build and launch dynamic visualization tools including geospatial and trend views based on recent complaint data to help users of the database understand current and recent marketplace conditions; and
  - Emphasize features for aggregation and analysis while continuing to make all the underlying data available for analysis. [53]
- *Private Education Loan Ombudsman.* The position of the Private Education Loan Ombudsman was filled.
- *Memorandum of Understanding (MOU) with the Department of Education (Department).* The CFPB and the Department initiated the interagency process to reestablish the MOU regarding complaints. The agreement will reflect the coordination between the two agencies under the terms of the Consumer Financial Protection Act and the Higher Education Act and is designed to coordinate efforts to informally resolve complaints regarding Federal and private education loans.
- *MOU with the Federal Trade Commission (FTC).* [54] The CFPB and the FTC have reauthorized their MOU. The agreement reflects the ongoing coordination between the

[53] *More information can be found here:* https://www.consumerfinance.gov/about-us/newsroom/director-kraningers-speech-national-consumer-empowerment-conference/

[54] https://files.consumerfinance.gov/f/documents/cfpb_ftc_memo-of-understanding_2019-02.pdf

two agencies under the terms of the Consumer Financial Protection Act and is designed to coordinate efforts to protect consumers and avoid duplication of federal law enforcement and regulatory efforts.

- *Outreach*. From April to September, the Director engaged with a broad range of the Bureau's stakeholders. In April, she delivered her inaugural speech at the Bipartisan Policy Center in Washington, DC, at which she announced a symposia series over the coming year. The Director's inaugural speech was followed by speaking engagements in Los Angeles, CA; Denver, CO; San Antonio, TX; New Orleans, LA; and Chicago, IL. She also participated in a wide array of events and meetings with Bureau stakeholders in these cities as well as in Austin, TX; St. Louis, MO; Asheville, NC; Bristol, TN; and Milwaukee, WI. In May, the Bureau held a field hearing on debt collection in Philadelphia, PA, that was open to the public and featured testimony from experts, practitioners, and advocates. In September, the Bureau issued revised innovation policies at an event in Atlanta, GA. Additionally, at CFPB Headquarters in Washington, DC, the Bureau held two Hill Day events, one with Members of Congress in May followed by another with Congressional Staffers in September. In June, the Bureau hosted the members of the Consumer Advisory Board (CAB), the Community Bank Advisory Council (CBAC), and the Credit Union Advisory Council (CUAC) for their in-person meetings. In May, the Bureau held a conference call with the members of the Academic Research Council (ARC).

- *Enhancements to the Bureau's Advisory Committees*:

  - The CAB, CBAC, and CUAC will continue their joint public meetings. The ARC will meet separately, in-person and twice a year. Additionally, the ARC was elevated to a Director-level advisory committee. The membership terms for the committees were extended from a one-year term to two-year terms, and the terms were staggered.

  - In addition to a Chair, each committee will be assigned a Vice-Chair. Both the Chair and the Vice-Chair will serve a one-year term in their respective positions, with the Vice-Chair assuming the Chair the following year. The Bureau also announced the opening of the application window for new advisory committee members.

- *Other Guidance Documents*. The Bureau also issued the following guidance documents over the past year: [55]

[55] *The Bureau posts many documents relating to compliance and guidance on its website at https://www.consumerfinance.gov/policy-compliance/guidance/. For the purpose of this Semi-Annual Report,*

- Winter 2019 *Supervisory Highlights* [56]
- Summer 2019 *Supervisory Highlights* [57]
- Statement on Collection of Demographic Information by Community Development Financial Institutions [58]
- Automobile Finance Examination Procedures [59]
- Equal Credit Opportunity (ECOA) Baseline Review Examination Procedures [60]
- HMDA Examination Procedures [61]
- Prepaid Account Examination Procedures [62]
- Short-Term, Small-Dollar Lending Examination Procedures [63]
- TILA Examination Procedures [64]
- Electronic Fund Transfer Act (EFTA) Examination Procedures [65]
- CFPB Supervision and Examination Process [66]

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the term "guidance" is used informally to refer broadly to documents that could serve to inform and advise regulated entities.

[56] https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf.

[57] https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf.

[58] https://files.consumerfinance.gov/f/documents/20190627_cfpb_statement-on-collection-demographic-information.pdf.

[59] https://files.consumerfinance.gov/f/documents/201908_cfpb_automobile-finance-examination-procedures.pdf.

[60] https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_ecoa-baseline-exam-procedures_2019-04.pdf.

[61] https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_hmda-exam-procedures_2019-04.pdf.

[62] https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_prepaid-account-exam-procedures.pdf.

[63] https://files.consumerfinance.gov/f/documents/cfpb_payday_manual_revisions.pdf.

[64] https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_tila-exam-procedures_2019-03.pdf.

[65] https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_efta-exam-procedures-incl-remittances_2019-03.pdf.

[66] https://files.consumerfinance.gov/f/documents/cfpb_examination-process-section.pdf.

- Examination Report Template[67]
- Supervisory Letter Template[68]

3.4 Plan for upcoming initiatives

- *Symposia Series*. The Bureau will hold two more symposia in its symposia series during the first six months of FY 2020. The first will address the topic of small business lending and Section 1071 of the Dodd-Frank Act[69] and the second will address consumer access to financial data and Section 1033 of the Act.[70] Future symposia will address cost-benefit analysis and the disparate impact doctrine under the ECOA. The symposia series will be open to the public and webcast on the Bureau's website.[71]
- *CFPB-FTC Workshop*. The Bureau and the FTC will hold a workshop on credit reporting accuracy.[72]
- *Research Reports*. The Bureau will release several research reports in the first six months of FY 2020. These will include a report on the experience of student loan borrowers using income-driven repayment plans; a report on public records, credit reports and credit performance; and a report on small business lending before, during and after the Great Recession; and a report on applications for mortgages.[73]

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[67] https://files.consumerfinance.gov/f/documents/cfpb_examination-report_template.pdf.

[68] https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_supervisory-letter_template.pdf.

[69] *15 U.S.C. 1691o-2.*

[70] *12 U.S.C. 5533. Additional activity has occurred with this matter since the end of this reporting period. On November 13, 2019, the Bureau held a symposium with respect to Section 1071. A video of that symposium is available at* https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-symposium-section-1071-dodd-frank-act/.

[71] *Additional activity has occurred with this matter since the end of this reporting period. More information can be found here:* https://www.consumerfinance.gov/about-us/newsroom/bureau-announces-symposia-series/.

[72] *Additional activity has occurred with this matter since the end of this reporting period. On December 10, 2019, the Bureau and FTC convened this workshop on credit reporting accuracy. The agenda for that workshop is available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-panels-for-cfpb-ftc-accuracy-in-consumer-reporting-workshop/. *The video and transcript from that workshop are available at* https://www.ftc.gov/news-events/events-calendar/accuracy-consumer-reporting-workshop/.

[73] *Additional activity has occurred with this matter since the end of this reporting period. In November 2019 the Bureau released a report on income driven repayment,* https://www.consumerfinance.gov/data-research/research-reports/data-point-borrower-experiences-income-driven-repayment/, *and in December the Bureau issued a report on public records and credit reporting,* https://www.consumerfinance.gov/data-

- *Research Conference.* The Bureau will host its fourth research conference. The conference will include six sessions at which leading researchers will present research papers as well as a poster session and a keynote address.[74]

- *Section 610 Review.* The Bureau will complete a review, under Section 610 of the Regulatory Flexibility Act,[75] of an overdraft regulation promulgated by the Board of Governors of the Federal Reserve System in 2009. The review will consider whether the rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rule upon a substantial number of small entities. The Bureau will announce the outcome of the review in the Spring 2020 Unified Agenda.[76]

- *TRID Assessment.* The Bureau will issue an RFI seeking public input to inform the Bureau's assessment of the effectiveness of the TILA-RESPA Integration Disclosure Rule (TRID) in, among other factors, meeting the purposes and objectives of Title X of the Dodd-Frank Act and the specific goals stated by the Bureau, and, subject to receiving approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act, the Bureau will conduct an industry survey as part of the assessment. That assessment, which is being conducted pursuant to Section 1022(d) of the Dodd-Frank Act, will be completed in Fall 2020.[77]

- *Abusiveness.* The Bureau will publish a Policy Statement with respect to the manner in which the Bureau will apply the abusiveness provision of the Dodd-Frank Act in its supervisory and enforcement work. This Policy Statement will provide much needed

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research/research-reports/quarterly-consumer-credit-trends-public-records-credit-scores-and-credit-performance/.

[74] *Additional activity has occurred with this matter since the end of this reporting period. On December 12-13, 2019 the Bureau hosted the research conference. The agenda for that conference is available at* https://www.consumerfinance.gov/data-research/cfpb-research-conference/2019-cfpb-research-conference/.

[75] *5 U.S.C. 610.*

[76] *Additional activity has occurred with this matter since the end of this reporting period. The review was completed in November 2019.*

[77] *Additional activity has occurred with this matter since the end of this reporting period. In November 2019 the Bureau released the TRID RFI, which is available at* https://www.federalregister.gov/documents/2019/11/22/2019-25260/request-for-information-regarding-the-integrated-mortgage-disclosures-under-the-real-estate. *In October 2019, the Bureau published in the Federal Register the request for approval of the TRID survey:* https://www.federalregister.gov/documents/2019/10/18/2019-22771/agency-information-collection-activities-submission-for-omb-review-comment-request.

guidance to the market with respect to the Bureau's approach to this novel provision of the Dodd-Frank Act.[78]

- *MOU with the Department of Education (Department).* The CFPB and the Department initiated the interagency process to reestablish the MOU regarding oversight of compliance obligations. The agreement will be designed to coordinate efforts to oversee regulated entities and protect consumers.

- *Start Small, Save Up.* The Bureau plans to host a convening with several financial institutions to engage them in a dialogue about helping consumers and their workforce build emergency savings, exploring new research opportunities, understanding successful ways to market savings solutions to consumers, and seeking opportunities to collaborate with the Bureau on these efforts. The convening will be a first step in a series of discussions with financial institutions about how they can participate in Start Small, Save Up.[79] A major goal of the Start Small, Save Up initiative is to encourage emergency saving in the workplace by engaging partner employers as well as the Bureau's own workforce. To make the Bureau a model workforce, beginning in early 2020, it will encourage the CFPB workforce to save for the unexpected through the allotments program or other automated tools. By implementing such a program at the Bureau, staff working on Start Small, Save Up can better understand the inherent challenges and be able to offer lessons-learned to partner employers as the Bureau engages them in pilot efforts.

- *Office of the Chief Experience Officer.* The Bureau plans to establish the Office of the Chief Experience Officer. This office will focus on improving our internal staff experience through enhanced operational services enabling the workforce to be more effective and efficient in meeting the Bureau's mission.

- *Consolidation of Bureau Headquarters.* The Bureau is finalizing the consolidation of all Washington, DC-based staff from two office buildings into one to increase effectiveness of the organization and to significantly improve the collaboration across all teams and divisions. Moves are planned to be completed in January 2020.

- *Outreach.* In October, the Bureau will welcome the new members of the Advisory Committees, hosting an orientation and in-person meetings in Washington, DC. Regarding upcoming engagements, the Director plans to travel to Las Vegas, NV in

[78] *Additional activity has occurred with respect to this mater since the end of the reporting period. In January 2020 the Bureau released the statement, which is available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/.

[79] *Additional activity has occurred with this matter since the end of this reporting period. More information can be found here:* https://www.consumerfinance.gov/about-us/blog/cfpb-hosts-savings-summit-to-help-people-save/.

October to participate in the Money 20/20 Conference followed by a trip to New York, NY in November to deliver remarks before The Clearing House and Bank Policy Institute. In December, she plans to speak at the Winter Meeting of The American Association of Credit Union Leagues in Florida followed by delivering keynote remarks at the National Association of Attorneys General's Capital Forum in Washington, DC.

- *Guidance Documents*:
  - Annual Report to Congress on the TILA, EFTA, and CARD Act [80]
  - Fall 2019 Supervisory Highlights Consumer Reporting Special Edition [81]
  - October 2019 Annual Report of the CFPB Private Education Loan Ombudsman [82]

3.5 Plan for upcoming rules

The Bureau published its Fall 2019 Rulemaking Agenda as part of the Fall 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget. [83] As an independent regulatory agency, the Bureau voluntarily participates in the Unified Agenda. Among other things, the Unified Agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from October 1, 2019, to September 30, 2020. [84]

During the reporting period, the Bureau was engaged in several rulemakings to implement directives mandated in the EGRRCPA, the Dodd-Frank Act, and other statutes. As part of these rulemakings, the Bureau is working to achieve the consumer protection objectives of the statutes while minimizing regulatory burden on financial services providers, including through facilitating industry compliance with rules.

Pre-rulemaking initiatives, as reflected in the Bureau's Fall 2019 Unified Agenda:

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[80] *Additional activity has occurred with this matter since the end of this reporting period. More information can be found here: https://files.consumerfinance.gov/f/documents/cfpb_tila-efta-card-act-annual-report_2019.pdf. The TILA, EFTA, CARD Act Report containing 2018 calendar year information is included in this Fall 2019 Semi-Annual Report at Appendix A: Addendum.*

[81] *Additional activity has occurred with this matter since the end of the reporting period. More information can be found here: https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-20_122019.pdf.*

[82] *Additional activity has occurred with this matter since the end of the reporting period. More information can be found here: https://files.consumerfinance.gov/f/documents/cfpb_annual-report_private-education-loan-ombudsman_2019.pdf.*

[83] https://www.consumerfinance.gov/about-us/blog/fall-2019-rulemaking-agenda/.

[84] https://www.consumerfinance.gov/policy-compliance/rulemaking/regulatory-agenda/.

- *Business Lending Data (Regulation B).* The Bureau is working to develop rules to implement Section 1071 of the Dodd-Frank Act. Section 1071 amended the ECOA to require financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. The Bureau resumed pre-rulemaking activities on Section 1071. In November 2019, the Bureau conducted a symposium on small business loan data collection.

- *Higher-Priced Mortgage Loan Escrow Exemption.* Prior to the enactment of the Dodd-Frank Act, the Board of Governors of the Federal Reserve System (Board) issued a rule requiring the establishment of escrow accounts for payment of property taxes and insurance payments for certain "higher-priced mortgage loans," a category which the Board defined to include what it deemed to be subprime loans. Pursuant to the Dodd-Frank Act, the Bureau in 2013 issued a rule creating an exemption from the escrow requirement for creditors with under $2 billion in assets and meeting other criteria. Section 108 of the EGRRCPA amended 15 U.S.C. 1639d to direct the Bureau to conduct a rulemaking to exempt from the escrow requirement loans made by certain creditors with assets of $10 billion or less and meeting other criteria. The Bureau plans to publish a notice of proposed rulemaking during FY 2020 concerning this exemption.

- *Property Assessed Clean Energy (PACE) Financing.* Section 307 of the EGRRCPA amends the TILA to mandate that the Bureau prescribe certain regulations relating to PACE financing. As defined in EGRRCPA Section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. The required regulations must carry out the purposes of TILA's ATR requirements, currently in place for residential mortgage loans, with respect to PACE financing, and apply TILA's general civil liability provision for violations of the ATR requirements the Bureau will prescribe for PACE financing. The EGRRCPA directs that such requirements account for the unique nature of PACE financing. In March 2019, the Bureau issued an ANPR on PACE financing to facilitate the Bureau's rulemaking process. The Bureau is reviewing comments it received in response to the ANPR as it considers next steps to facilitate the development of a Notice of Proposed Rulemaking.[85] The Bureau will publish a notice seeking public comment with respect to a proposed information collection relating to PACE financing to further inform the Bureau's rulemaking.

- *Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z).* In July 2019, the CFPB issued an ANPR to solicit information about possible amendments to the qualified mortgage provisions of Regulation Z. With certain exceptions, Regulation Z

[85] https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/advance-notice-proposed-rulemaking-residential-property-assessed-clean-energy-financing/.

requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for "qualified mortgages" obtain certain protections from liability. One category of qualified mortgages (QMs) covers certain loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), known collectively as the government sponsored enterprises (GSEs). Under Regulation Z, this category of QMs (Temporary GSE QM loans) is scheduled to expire no later than January 10, 2021. The Bureau currently plans to allow the Temporary GSE QM loan category to expire and will issue a Notice of Proposed Rulemaking to revise Regulation Z's general qualified mortgage definition considering this planned expiration. The Bureau also will propose a limited extension of the expiration date only as necessary to provide for a smooth and orderly transition away from the Temporary GSE QM loan category. In July 2019, the Bureau issued the ANPR to request information about issues related to the scheduled expiration of the Temporary GSE QM loan category.[86]

Proposed rules for the upcoming period, as reflected in the Fall 2019 Unified Agenda:

- *Remittance Transfers.* Section 1073 of the Dodd-Frank Act contains an exception to disclosure requirements for international remittance transfers that permits insured depository institutions and insured credit unions in certain circumstances to estimate certain pricing information. As mandated by statute, this exception will expire on July 21, 2020. The Bureau will issue a Notice of Proposed Rulemaking, which will propose changes to the Remittance Rule to mitigate the effects of the expiration of this exception and will also propose an increase in the safe harbor threshold for defining remittance providers who are not covered by the Rule.[87]

- *Home Mortgage Disclosure Act (Regulation C) Data Collection and Reporting Requirements.* The Bureau announced in December 2017, that it intends to open a rulemaking to reconsider various aspects of a 2015 final rule that amended regulations implementing HMDA. In May 2019, the Bureau issued an ANPR that solicited comments about the costs and benefits of collecting and reporting the data points the 2015 HMDA Rule added to Regulation C and certain preexisting data points that the

[86] https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/qualified-mortgage-definition-under-truth-lending-act-regulation-z/.

[87] *In December, the Bureau issued a Notice of Proposed Rulemaking. More information can be found here:* https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/remittance-transfers-under-electronic-fund-transfer-act-regulation-e/.

2015 HMDA Rule revised.[88] The Bureau expects to issue a Notice of Proposed Rulemaking in July 2020.

- *Public Release of Home Mortgage Disclosure Act Data.* In December 2018 the Bureau issued final policy guidance which sets forth the modifications the Bureau intends to apply to the loan-level HMDA data before releasing those data publicly. The Bureau plans to engage in a legislative rulemaking to allow the Bureau to further consider this issue after receiving further public comment. The Bureau expects to issue a Notice of Proposed Rulemaking in July 2020.

Final rules for the upcoming period as reflected in the Bureau's Fall 2019 Unified Agenda:

- *Payday, Vehicle Title, and Certain High-Cost Installment Loans.* The Bureau announced in 2018 that it intended to open a rulemaking to reconsider its 2017 rule titled Payday, Vehicle Title, and Certain High-Cost Installment Loans. The rule has a compliance date in August 2019. The Bureau issued a Notice of Proposed Rulemaking in February 2019 reconsidering provisions of the rule concerning the underwriting of covered short-term and longer-term balloon payment loans.[89]

- *Home Mortgage Disclosure Act (Regulation C).* The Bureau issued a Notice of Proposed Rulemaking in spring 2019 to follow up on a previous temporary adjustment to the thresholds for collecting and reporting data with respect to open-end lines of credit and to seek comment on adjustments to these thresholds as well as to the thresholds for collecting and reporting data with respect to closed-end mortgage loans, and to incorporate an interpretive and procedural rule that it issued in August 2018 to clarify partial HMDA exemptions created by the EGRRCPA.[90] In the Fall 2019 Unified Agenda, the Bureau announced its plans to issue two separate final rules to address different aspects of the proposed rule. The first rule would address the proposed two-year extension of the temporary threshold for collecting and reporting data on open-end lines of credit and the EGRRCPA partial exemption provisions and the second rule would

[88] https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/home-mortgage-disclosure-regulation-c-data-points-and-coverage/.

[89] https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans/.

[90] *More information can be found here:* https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/home-mortgage-disclosure-regulation-c/; https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/home-mortgage-disclosure-regulation-c-data-points-and-coverage-extension-comment-period/.

address the proposed changes to the permanent thresholds for collecting and reporting data on open-end lines of credit and closed-end mortgage loans. [91]

[91] *Additional activity has occurred with this matter since the end of the reporting period. In October 2019 the Bureau issued a final rule extending for two-years the temporary threshold with respect to the reporting of data with respect to open-end lines of credit.* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/home-mortgage-disclosure-regulation-c-2019-final-rule/.

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, 2018, through September 30, 2019, the Bureau received approximately 342,500 consumer complaints.[92] This is an approximately seven percent increase from the prior reporting period.[93] Consumers submitted approximately 83 percent of these complaints through the Bureau's website and six percent via telephone calls. Referrals from other state and federal agencies accounted for seven percent of complaints. Consumers submitted the remainder of complaints by mail, email, and fax. The Bureau sent approximately 275,600 (80 percent) of complaints received to companies for review and response.[94] Companies responded to approximately 95 percent of complaints that the Bureau sent to them for response during the period. The remaining complaints were either pending response from the company at the end of the period or did not receive a response. Company responses typically include descriptions of steps taken or that will be taken in response to the consumer's complaint, communications received from the consumer, any follow-up actions or planned follow-up actions, and a categorization of the response. Companies' responses describe a range

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[92] *This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. The Bureau does not verify all the facts alleged in complaints but takes steps to confirm a commercial relationship between the consumer and the company. For more information on our complaint process refer to the Bureau's website at https://www.consumerfinance.gov/complaint/process.*

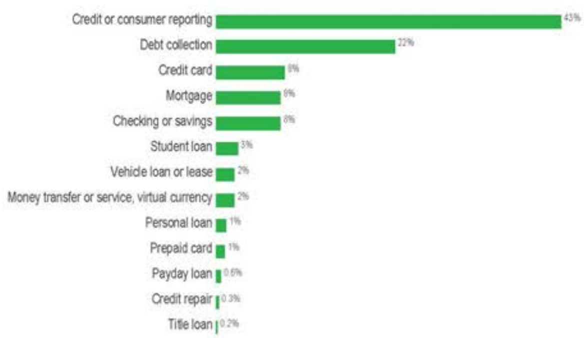
[93] *The prior reporting period, April 1, 2018, to March 31, 2019, reported 321,200 consumer complaints. See Consumer Fin. Prot. Bureau, Semi-Annual Report Spring 2019 (Oct. 2019), available https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_spring-2019.pdf.*

[94] *The Bureau referred 14 percent of the complaints it received to other regulatory agencies and found four percent to be incomplete. At the end of this period, 0.6 percent of complaints were pending with the consumer and 0.3 percent were pending with the Bureau. Percentages in this section of the report may not sum to 100 percent due to rounding.*

of relief. Examples of relief include stopping unwanted calls from debt collectors; mortgage foreclosure alternatives that help consumers keep their home; correcting consumers' credit reports; correcting account information; and addressing formerly unmet customer service issues. Ninety-nine percent of companies' responses to complaints were timely.

When consumers submit complaints, the Bureau's complaint form prompts them to select the consumer financial product or service with which they have a problem as well as the type of problem they 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 Figure 1, credit or consumer reporting, debt collection, credit card, mortgage, and checking or savings accounts are the most-complained-about consumer financial products and services.

FIGURE 1: CONSUMER COMPLAINTS BY PRODUCT



Consumer Response analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses so that the Bureau, other regulators, consumers, and the marketplace have relevant information about consumers' challenges with financial products and services. Consumer Response uses a variety of approaches to analyze consumer complaints, including cohort and text analytics to identify trends and possible consumer harm. These analyses support the Bureau's work to supervise companies, enforce Federal consumer financial laws, propose rules, and develop tools that help empower consumers to make informed financial decisions.

The Bureau also shares consumer complaint information with prudential regulators, the FTC, other federal agencies, and state agencies.

Complaints give us insights into problems people are experiencing in the marketplace and help us regulate consumer financial products and services under existing Federal consumer financial laws, enforce those laws judiciously, and educate and empower consumers to make informed financial decisions. The Bureau also publishes complaint data and reports on complaint trends annually in Consumer Response's Annual Report to Congress.[95]

[95] *From October 1, 2018, to September 30, 2019, the Bureau published complaint snapshot reports about servicemembers and mortgages, and the Office of Servicemember Affairs' Annual Report. The Bureau also publishes the Consumer Response Annual Report, which provides a more detailed analysis of complaints. These reports can be viewed at https://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 activities[96]

The Bureau was a party in the following public enforcement actions from October 1, 2018, through September 30, 2019, detailed as follows and listed in descending chronological order by filing or issue date. 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.

Bureau of Consumer Financial Protection v. FCO Holding, Inc., Fair Collections & Outsourcing, Inc., Fair Collections & Outsourcing of New England, Inc., FCO Worldwide, Inc., and Michael E. Sobota (D. Md. No. 8:19-cv-02817-GJH). On September 25, 2019, the Bureau filed a complaint in federal court in the District of Maryland against Maryland-based debt collectors FCO Holding, Inc. and its subsidiaries, Fair Collections & Outsourcing, Inc., Fair Collections &

[96] *Enforcement activity summaries are current as of September 30, 2019, and do not include activities that occurred after the reporting period.*

Outsourcing of New England, Inc., and FCO Worldwide, Inc. The Bureau also named Michael E. Sobota, the chief executive officer, president, director, and owner of FCO Holding, Inc. as a defendant. The Bureau alleges that FCO violated the Fair Credit Reporting Act (FCRA) and Regulation V by failing to maintain reasonable policies and procedures regarding the accuracy and integrity of the information it furnishes, including the handling of consumer disputes, failing to conduct reasonable investigations of certain consumer disputes, and furnishing information that was alleged to have been the result of identity theft before it made any determination of whether the information was accurate. The Bureau also alleges that FCO and Michael Sobota violated the Fair Debt Collection Practices Act (FDCPA) when FCO represented that consumers owed certain debts when, in fact, FCO did not have a reasonable basis to assert that the consumers owed those debts. The Bureau seeks an injunction, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. The case remains pending.

Bureau of Consumer Financial Protection v. Certified Forensic Loan Auditors, LLC, Andrew Lehman, and Michael Carrigan (C.D. Cal. No. 2:19-cv-07722). On September 6, 2019, the Bureau filed a complaint in federal court in the Central District of California against Certified Forensic Loan Auditors, LLC (CFLA), Andrew Lehman (Lehman), and Michael Carrigan (Carrigan). The Bureau alleges that CFLA and Lehman have engaged in deceptive and abusive acts and practices and have charged unlawful advance fees in connection with the marketing and sale of financial advisory and mortgage assistance relief services to consumers. CFLA is a foreclosure relief services company, and Lehman is CFLA's president and CEO. The Bureau alleges that Carrigan, who was the Company's sole auditor, provided substantial assistance to CFLA and Lehman. Concurrent with the complaint, the Bureau and Carrigan filed a proposed stipulated final judgment and order to resolve the substantial assistance claims against Carrigan; it bans him from providing mortgage assistance relief services or consumer financial products and services and imposes a $493,000 civil money penalty, all but $5,000 of which is suspended based on his limited ability to pay more based on sworn financial statements.

In the Matter of Financial Credit Service, Inc., d/b/a Asset Recovery Associates (File No. 2019-BCFP-0009) (not a credit union or depository institution). On August 28, 2019, the Bureau issued a consent order against Asset Recovery Associates (ARA), a debt-collection company headquartered in Illinois. ARA, also known as Financial Credit Service, Inc., collects debts from consumers throughout the United States. The Bureau found that ARA violated the FDCPA by threatening to sue or arrest consumers even though it did not intend to take such action, falsely representing to consumers that company employees were attorneys, threatening to garnish consumers' wages or place liens on their homes even though it did not intend to so do, and representing that consumers' credit reports would be negatively affected if they did not pay, even though ARA does not report consumer debts to credit-reporting agencies. The Bureau found that these false statements were also deceptive, in violation of the Consumer Financial

Protection Act of 2010 (CFPA). Under the terms of the consent order, ARA will pay at least $36,800 in restitution to affected consumers and a $200,000 civil money penalty to the Bureau. The consent order also prohibits ARA from continuing to engage in this conduct and requires ARA to record calls with consumers to help ensure collectors do not make false statements in the future.

In the Matter of Maxitransfers Corporation (File No. 2019-BCFP-0008) (not a credit union or depository institution). On August 27, 2019, the Bureau issued a consent order against Maxitransfers Corporation (Maxi), which provides remittance transfer services that allow consumers to send money overseas electronically. From October 2013 until May 2017, Maxi sent approximately 14.5 million remittance transfers for consumers in the U.S. The Bureau found that Maxi violated the EFTA and the Remittance Rule by using inaccurate language in certain required disclosures, failing to provide other required disclosures altogether, and not maintaining all the required error-resolution policies and procedures. The Bureau also found that Maxi violated the CFPA by stating to consumers that it was not responsible for errors made by its third-party payment agents when in fact under the Remittance Transfer Rule a provider is liable for any violation by an agent when such agent acts for the provider. The consent order requires Maxi to pay a civil money penalty of $500,000 and prohibits Maxi from stating that it is not responsible for the acts of its agents. The consent order also requires Maxi to take steps to improve its compliance management to prevent future violations of the CFPA, EFTA, and the Remittance Transfer Rule.

Bureau of Consumer Financial Protection v. Andrew Gamber, Voyager Financial Group, LLC, BAIC, Inc., SoBell Corp (E.D. Ark. No. 4:19-cv-00565-BSM). On August 14, 2019, the Bureau filed a proposed stipulated judgment with Andrew Gamber, Voyager Financial Group, LLC, BAIC, Inc., and SoBell Corp., which the court entered on September 4, 2019. The companies were brokers of contracts offering high-interest credit to veterans and other consumers and were owned and operated by Gamber. The Bureau alleged that Gamber and his companies misrepresented to consumers that the contracts the companies facilitate are valid and enforceable when, in fact, they are void under federal and state law; misrepresented to consumers that the product is a sale of payments and not a high-interest credit offer; misrepresented to consumers when they will receive their funds; and failed to inform consumers of the applicable interest rate on the credit offer. The order bans the defendants from the industry and imposes a judgment for $2.7 million in redress. Under the order, full payment of the redress judgment will be suspended upon paying $200,000 towards redress, and upon paying $1 for a civil money penalty to the Bureau, and $75,000 to the State of Arkansas. The Bureau filed this complaint in coordination with the Office of the Arkansas Attorney General.

Bureau of Consumer Financial Protection v. Equifax, Inc. (N.D. Ga. No. 1:19-cv-03300-TWT). On July 22, 2019, the Bureau, the Federal Trade Commission (FTC), and 48 states, the District of Columbia, and Puerto Rico entered into a global settlement with Equifax that provides up to $700 million in monetary relief and penalties. The Bureau filed a stipulated judgment in federal district court in the Northern District of Georgia, which the court entered on July 23, 2019. The Bureau alleged that Equifax engaged in unfair and deceptive practices in connection with the 2017 data breach of Equifax's systems, which impacted approximately 147 million consumers. The settlement with the Bureau provides up to $425 million in monetary relief to consumers, a $100 million civil money penalty, and other relief.

Bureau of Consumer Financial Protection v. Student CU Connect CUSO, LLC (S.D. Ind. No. 1:19-cv-02397-JRS-DLP). On June 14, 2019, the Bureau filed a complaint against Student CU Connect CUSO, LLC (CUSO) along with a proposed stipulated judgment, which the court entered on June 20, 2019. CUSO was set up to hold and manage private loans for students at ITT Technical Institute. The Bureau alleged that CUSO provided substantial assistance to ITT Educational Services, Inc. (ITT) in engaging in unfair acts and practices. Under the terms of the stipulated judgment, CUSO must stop collecting on all outstanding CUSO loans, discharge all outstanding CUSO loans, and ask all consumer reporting agencies to which CUSO furnished information to delete tradelines relating to CUSO loans. The order also requires CUSO to provide notice to all consumers with outstanding CUSO loans that their debt has been discharged and is no longer owed and that CUSO is seeking to have the relevant tradelines deleted. The total amount of loan forgiveness is estimated to be $168 million. Forty-four states plus the District of Columbia have also settled with CUSO on the same terms.

In the Matter of Freedom Mortgage Corporation (File No. 2019-BCFP-0007) (not a credit union or depository institution). On June 5, 2019, the Bureau issued a consent order against Freedom Mortgage Corporation (Freedom), which has its principal place of business in Mount Laurel, New Jersey. The Bureau found that Freedom violated the HMDA and Regulation C by submitting mortgage-loan data for 2014 to 2017 that contained errors. The Bureau found that Freedom reported inaccurate race, ethnicity, and sex information and that much of Freedom's loan officers' recording of this incorrect information was intentional. The consent order requires Freedom to pay a civil money penalty of $1.75 million and take steps to improve its compliance management to prevent future violations.

In the Matter of Servis One, Inc., d/b/a BSI Financial Services (File No. 2019-BCFP-0006) (not a credit union or depository institution). On May 29, 2019, the Bureau issued a consent order against BSI Financial Services (BSI), a mortgage servicer headquartered in Irving, Texas. The Bureau found that BSI violated the CFPA, RESPA, and TILA by handling mortgage servicing transfers with incomplete or inaccurate loss mitigation and escrow information; inadequately overseeing service providers; failing to promptly enter interest rate adjustment loan data for adjustable rate mortgage loans into its servicing system; and maintaining an inadequate document management system. The consent order requires BSI to pay a civil money penalty of

$200,000 and restitution estimated to be at least $36,500. BSI must also establish and maintain a comprehensive data integrity program to ensure the accuracy, integrity, and completeness of the data for loans that it services and implement an information technology plan to ensure its systems comply with Federal consumer financial laws.

Bureau of Consumer Financial Protection v. Forster & Garbus, LLP (E.D.N.Y. No. 2:19-cv-02928). On May 17, 2019, the Bureau filed a complaint in the federal district court in the Eastern District of New York against Forster & Garbus, LLP, a New York debt-collection law firm. The Bureau alleges that Forster & Garbus violated the FDCPA by representing to consumers that attorneys were behind its lawsuits when, in fact, attorneys were not meaningfully involved in preparing or filing them. The Bureau also alleges that Forster & Garbus violated the CFPA's prohibition against deceptive acts and practices by making such representations to consumers through its lawsuits. The Bureau seeks an injunction against Forster & Garbus, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. After holding an initial status conference on September 23, 2019, the court stayed discovery. The case remains pending.

Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc.; PGX Holdings, Inc.; Progrexion Teleservices, Inc.; eFolks, LLC; CreditRepair.com, Inc.; John C. Heath, Attorney at Law, PLLC, d/b/a/ Lexington Law (D. Utah No. 2:19-cv-00298-DBP). On May 2, 2019, the Bureau filed a complaint against PGX Holdings, Inc. and its subsidiaries (collectively, Progrexion) and against John C. Heath, Attorney at Law PLLC, which does business as Lexington Law, in the federal district court in the District of Utah. The Bureau alleges the defendants violated the Telemarketing Sales Rule (TSR) by requesting and receiving payment of prohibited upfront fees for their credit repair services. The Bureau also alleges that Progrexion and its subsidiaries violated the TSR and the CFPA by making deceptive representations in its marketing, or by substantially assisting others in doing so. The Bureau seeks an injunction, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. Defendants filed a motion to dismiss on July 19, 2019. The Bureau filed its opposition to the motion to dismiss on August 30, 2019, and the Defendants filed their reply on September 24, 2019. The case remains pending.

In the Matter of Conduent Education Services, LLC (File No. 2019-BCFP-0005) (not a credit union or depository institution). On May 1, 2019 the Bureau issued a consent order against Conduent Education Services, LLC (CES), a student loan servicing company that formerly operated under the name of ACS Education Services. CES is in the process of winding down its business. The Bureau found that CES engaged in unfair practices in violation of the CFPA by failing to adjust in a timely manner principal balances of student loans made under the Federal Family Education Loan Program. The consent order requires that CES, if it has not already done so, make proper adjustments to the principal balances of the relevant loans or otherwise make restitution to borrowers or any third parties who paid off such loans. The order also requires CES to pay a $3.9 million civil money penalty.

In the Matter of CMM, LLC, et al. (collectively d/b/a Cash Tyme) (File No. 2019-BCFP-0004) (not a credit union or depository institution). On February 5, 2019, the Bureau issued a consent order against CMM, LLC, and its wholly owned subsidiaries, which operate under the name of Cash Tyme, a payday retail lender with outlets in seven states. The Bureau found that Cash Tyme violated the CFPA by failing to take adequate steps to prevent unauthorized charges to consumers; failing to promptly monitor, identify, correct and refund overpayments; making collection calls to third parties that disclosed or risked disclosing debts to third parties; misrepresenting that it collected third-party references from borrowers for verification purposes when it was using such information for marketing purposes; and displaying signage advertising unavailable services. The Bureau also found that Cash Tyme violated the Gramm-Leach-Bliley Act and Regulation P by failing to provide initial privacy notices to consumers. Finally, the Bureau found that Cash Tyme violated the TILA and Regulation Z by failing to include a payday loan fee charged to Kentucky consumers in the annual percentage rate (APR) in loan contracts and advertisements; rounding APRs to whole numbers in advertisements; and by publishing advertisements that included example APR and payment amounts based on example terms of repayment without disclosing the corresponding repayment terms used to calculate the APR. The Bureau's order requires Cash Tyme to ensure that all consumers who made overpayments would receive refunds and imposes a civil money penalty of $100,000. The requirements of the order also include prohibitions on Cash Tyme using reference information collected in connection with loan applications for any reason other than underwriting, and on transferring or selling any such reference information to third parties.

In the Matter of Enova International, Inc. (File No. 2019-CFPB-0003) (not a credit union or depository institution). On January 25, 2019, the Bureau issued a consent order against Enova International, Inc. The Bureau found that Enova violated the CFPA by debiting consumers' bank accounts without authorization. The Bureau also found that Enova failed to honor loan extensions it granted to consumers. Under the terms of the consent order, Enova is barred from making or initiating electronic fund transfers without valid authorization. The order also imposes a civil money penalty of $3.2 million.

In the Matter of Mark Corbett (File No. 2019-BCFP-0002) (not a credit union or depository institution). On January 23, 2019, the Bureau issued a consent order against Mark Corbett. The Bureau found that Corbett violated the CFPA by misrepresenting to consumers that the contracts he facilitated were valid and enforceable when, in fact, the contracts were void because veterans' pension payments are unassignable under federal law; misrepresenting to consumers that the offered product was a purchase of payments and not a high-interest credit offer; misrepresenting to consumers when they would receive their funds; and failing to disclose to consumers the applicable interest rate on the credit offer. The Bureau's order permanently bans Corbett from brokering, offering, or arranging agreements between veterans and third parties under which the veteran purports to sell a future right to an income stream from the veteran's pension. The order also required Corbett to pay a civil money penalty of $1 because of his demonstrated inability to pay.

Bureau of Consumer Financial Protection v. Sterling Jewelers, Inc. (S.D.N.Y No. 19-cv-0448 LGS). On January 16, 2019, the Bureau and the People of the State of New York filed a joint complaint and proposed stipulated final judgment and order against Sterling Jewelers, Inc., which the district court entered on February 7, 2019. The Bureau's and the State's joint complaint alleged that Sterling violated the CFPA by opening store credit-card accounts without customer consent; enrolling customers in payment-protection insurance without their consent; and misrepresenting to consumers the financing terms associated with the credit-card accounts. The Bureau also alleged that Sterling violated the TILA by signing customers up for credit-card accounts without having received an oral or written request or application from them. Under the settlement, Sterling is required to pay a $10 million civil money penalty to the Bureau and a $1 million civil money penalty to the State of New York. The settlement also includes injunctive relief designed to prevent the continuation of the claimed illegal conduct.

In the Matter of USAA Federal Savings Bank (File No. 2019-BCFP-0001). On January 3, 2019, the Bureau issued a consent order against USAA. The Bureau found that USAA violated the CFPA and the EFTA. The Bureau found that USAA violated the EFTA by failing to honor consumers' requests to stop preauthorized electronic fund transfers and failing to initiate and complete reasonable error resolution investigations. The Bureau found that USAA violated the CFPA by unfairly reopening bank accounts that previously had been closed by consumers. The order requires USAA to comply with the EFTA and the CFPA, and orders USAA to pay $12.2 million in restitution to certain consumers who were denied a reasonable error resolution investigation and to pay a $3.5 million civil money penalty.

In the Matter of State Farm Bank, FSB (File No. 2018-BCFP-0009). On December 6, 2018, the Bureau issued a consent order against State Farm Bank, FSB. The Bureau found that State Farm Bank violated the FCRA, Regulation V, and the CFPA by obtaining consumer reports without a permissible purpose; furnishing to consumer reporting agencies (CRAs) information about consumers' credit that the bank knew or had reasonable cause to believe was inaccurate; failing to promptly update or correct information furnished to CRAs; furnishing information to CRAs without providing notice that the information was disputed by the consumer; and failing to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information provided to CRAs. The Bureau's order requires State Farm Bank to not violate the FCRA or Regulation V and to implement and maintain reasonable written policies, procedures, and processes to address the practices at issue in the consent order and prevent future violations.

Bureau of Consumer Financial Protection v. Village Capital and Investment, LLC (D. Nev. No. 2:18-cv-02304). On December 4, 2018, the Bureau filed a complaint and proposed stipulated final judgment and order against Village Capital and Investment, LLC, which the district court entered on December 21, 2018. The Bureau alleged that Village Capital violated the CFPA by misleading veterans regarding its Interest Rate Reduction Refinancing Loans—loans that allow veterans to refinance their mortgages at lower interest rates with a loan guaranteed by the Department of Veterans Affairs. Specifically, the Bureau alleged that Village Capital misled veterans by overstating the benefits of refinancing. The order requires Village Capital to pay $268,869 in redress to consumers and a civil money penalty of $260,000. The order also prohibits Village Capital from misrepresenting the terms or benefits of mortgage refinancing.

In the Matter of Santander Consumer USA Inc. (File No. 2018-BCFP-0008) (not a credit union or depository institution). On November 19, 2018, the Bureau issued a consent order against Santander Consumer USA Inc. The Bureau found that Santander engaged in deceptive acts and practices in violation of the CFPA by (1) not properly describing the benefits and limitations of its S-GUARD GAP product, an optional add-on product offered in connection with auto loans; and (2) failing to properly disclose the impact on consumers of obtaining a loan extension. Under the terms of the consent order, Santander must provide approximately $9.29 million in restitution to certain consumers, pay a $2.5 million civil money penalty, and clearly and prominently disclose the terms of its loan extensions and add-on product, among other provisions.

In the Matter of Cash Express, LLC (File No. 2018-CFPB-0007) (not a credit union or depository institution). On October 24, 2018, the Bureau issued a consent order against Cash Express LLC. The Bureau found that Cash Express violated the CFPA by deceptively threatening in collection letters that it would take legal action against consumers, even though the debts were past the date for suing on legal claims, and it was not Cash Express's practice to file lawsuits against these consumers. The Bureau also found that Cash Express violated the CFPA by misrepresenting that it might report negative credit information to consumer reporting agencies for late or missed payments, when the company did not actually report this information. The Bureau also found that Cash Express violated the CFPA by abusively withholding funds during check-cashing transactions to satisfy outstanding amounts on prior loans, without disclosing this practice to the consumer during the initiation of the transaction. Under the terms of the consent order, Cash Express and its subsidiaries are barred from taking check cashing proceeds to pay off previous debts unless consumers consent in writing. Cash Express is further barred from making misrepresentations about its consumer reporting activities and its intention or likelihood of filing suit to collect a debt. The order requires Cash

Express to pay approximately $32,000 in restitution to consumers and imposes a civil money penalty of $200,000.

In the Matter of Bluestem Brands, Inc.; Bluestem Enterprises, Inc.; and Bluestem Sales, Inc., d/b/a Fingerhut and Gettington.com (File No. 2018-BCFP-0006) (not a credit union or depository institution). On October 4, 2018, the Bureau issued a consent order against Bluestem Brands, Inc., and its subsidiaries. The Bureau found that Bluestem violated the CFPA by unfairly delaying the transfer of payments that customers had made to the Bluestem companies on charged-off accounts to the third-party debt buyers that had purchased those accounts. These delays were likely to subject customers to misleading collection activity, including collection activity on accounts that they had completely paid off. The Bureau's order requires Bluestem to improve its processes to timely identify and forward customer payments on accounts that are sold to third-party debt buyers. Bluestem is also required to improve its process to prevent consumers from making payments by phone or on the companies' websites on sold accounts, and to notify customers who make payments to Bluestem on sold accounts that their accounts have been sold. The order also requires Bluestem to pay a civil money penalty of $200,000.

Bureau of Consumer Financial Protection v. Future Income Payments, LLC, et al. (C.D. Cal. No. 8:18-cv-01654). On September 13, 2018, the Bureau filed a complaint against Future Income Payments, LLC, Scott Kohn, and several related entities. The Bureau alleged that defendants represented to consumers that their pension-advance products were not loans, were not subject to interest rates, and were comparable in cost to, or cheaper than, credit-card debt when, in actuality, the pension-advance products were loans, and were subject to interest rates that were substantially higher than credit-card interest rates. The Bureau also alleged that the defendants failed to disclose a measure of the cost of credit, expressed as a yearly rate, for its loans. Among other relief, the Bureau sought compensation for harmed consumers, civil money penalties, and injunctive relief. The defendants waived service of the Bureau's complaint but failed to answer or otherwise respond to it. The Bureau obtained a clerk's entry of default in December 2018, and in August 2019, the Bureau moved for entry of default judgment against all defendants, appointment of a receiver, and to transfer the action to the District of South Carolina.

Consumer Financial Protection Bureau v. Think Finance, LLC f/k/a 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). On November 15, 2017, the Bureau filed a complaint against Think Finance and its wholly owned subsidiaries. The Bureau alleges that they collect debts that were not legally owed. Specifically, 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. The Bureau's enforcement action is currently stayed pending resolution of bankruptcy-court proceedings that could result in a consent order resolving the Bureau's action.

Consumer Financial Protection Bureau v. Freedom Debt Relief, LLC and Andrew Housser (N.D. Cal. No. 17-cv-6484). On November 8, 2017, the Bureau filed a complaint against Freedom Debt Relief, the nation's largest debt-settlement services provider, and its co-CEO Andrew Housser. The Bureau alleged that Freedom Debt Relief violated the TSR by charging advance fees and failing to inform consumers of their rights to funds they deposited with the company. The Bureau also alleged that Freedom Debt Relief violated the CFPA by charging consumers without settling their debts as promised, charging consumers after having them negotiate their own settlements with creditors, and misleading consumers about the company's fees and its ability to negotiate directly with all a consumer's creditors. On July 9, 2019, the Bureau filed a stipulated final judgment, which the court entered on the same day. The judgment requires Freedom Debt Relief to pay $20 million in restitution to affected consumers and a $5 million civil money penalty and enjoins it from engaging in this conduct in the future. The company also agreed to a consent order with the Federal Deposit Insurance Corporation (FDIC). The Bureau will remit $493,500 of the $5 million civil penalty it assessed considering the penalty that the company was ordered to pay the FDIC.

Consumer Financial Protection Bureau v. The National Collegiate Master Student Loan Trust, et al. (D. Del. No. 17-cv-1323). On September 18, 2017, the Bureau filed a complaint and proposed consent judgment against several National Collegiate Student Loan Trusts (collectively, "NCSLT"). The Bureau alleges that NCSLT brought debt collection lawsuits for private student loan debt that the companies could not 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 judge granted the intervention motions, and the parties are currently engaged in discovery. 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. The Bureau alleges that 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 CFPA, TILA, FDCPA, RESPA, and Homeowners Protection Act (HPA). On June 23, 2017, Ocwen moved to dismiss. On September 5, 2019 the Court ruled on the motion to dismiss, rejecting the majority of Ocwen's arguments but requiring the Bureau to re-plead its allegations. The Bureau filed an amended complaint, and the case remains pending.

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. The Bureau alleges 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 parties' appeals are now pending before the United States Court of Appeals for the Second Circuit.

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 several law firms and attorneys. The Bureau alleged 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 also alleged 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 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. On March 27, 2019, the court entered a consent judgment resolving the Bureau's claims. Under the consent judgment, the defendants are permanently banned from telemarketing any consumer financial product or service or otherwise offering or providing debt relief services. The judgment imposes a $40 million civil money penalty and orders the defendants to pay redress in the amount of $35,256,275. The money judgment and civil money penalty are suspended, provided that certain conditions are met.

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. 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. The Bureau alleges 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 filed a motion for partial summary judgment, which the court denied on January 18, 2019. On May 24, 2019, the Bureau moved to modify the scheduling order and for leave to file a second amended complaint. 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 against debt collectors Northern Resolution Group, LLC, Douglas MacKinnon, Mark Gray, Enhanced Acquisitions, LLC, and Delray Capital, LLC. The Bureau alleged that Douglas MacKinnon and Mark Gray operated a network of companies that harass, threaten, and deceive consumers across the nation into paying inflated debts or amounts they may not owe. The defendants asserted counterclaims against the Bureau and New York, which the court dismissed on January 8, 2018. On July 25, 2019, the Bureau and New York Attorney General filed proposed settlements, which the court approved on August 22, 2019. The final judgment and order against MacKinnon, Northern Resolution Group, and Enhanced Acquisitions bans them from the industry and requires that they pay $40 million in redress to consumers and a $10 million civil money penalty to each of the Bureau and New York. The final judgment and order against Delray Capital and Gray bans them from the industry and imposes a judgment for redress of $4 million, a judgment for civil money penalties of $1 million to the Bureau, and a judgment for civil money penalties of $1 million to the New York Attorney General; full payment of those amounts are suspended subject to those defendants paying a $1 civil money penalty to the Bureau and $10,000 for consumer redress.

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, and 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. The United States Court of Appeals for the Fifth Circuit heard oral arguments in the appeal on March 12, 2019 and has not yet issued a decision.

Consumer Financial Protection Bureau v. D and 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 a/k/a David Gasparyan (C.D. Cal. No. 16-cv-2725). On December 17, 2015, the Bureau filed a complaint against T3Leads and its then current executives, Grigor Demirchyan and Marina Demirchyan. The Bureau alleged 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. On April 21, 2016, the Bureau filed two separate but related complaints against the company's past executives—Dmitry Fomichev and Davit Gasparyan—that alleged that they substantially assisted T3's violations. The complaints sought 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. On September 8, 2017, the district court entered a stipulated final judgment and order against one of the defendants, Davit Gasparyan. The order imposes injunctive relief and requires Gasparyan to pay a $250,000 penalty. On September 29, 2017, the Ninth Circuit dismissed Gasparyan's interlocutory appeal. On March 7, 2019, after stipulation of the parties, the district court dismissed with prejudice the action against Fomichev, and on the same day, the Ninth Circuit dismissed Fomichev's pending interlocutory appeal. On March 28, 2019, the district court entered a stipulated final judgment and order against T3 and former T3 officers, Grigor and Marina Demirchyan, imposing injunctive relief, $1 million in damages jointly and severally against the defendants, a $3 million civil money penalty against T3, and a $1 penalty against each of the Demirchyans. The Ninth Circuit dismissed T3's and the Demirchyans' pending interlocutory appeals on April 1, 2019.

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. The Bureau alleges that they deceived consumers about the cost of short-term loans and 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* that suggested that the Administrative Law Judge that presided over the proceedings in this case may have been improperly appointed, the Director remanded the case for a new hearing and recommended decision by the Bureau's Administrative Law Judge. 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 against Global Financial Support, Inc., which operates under the names Student Financial Resource Center and College Financial Advisory, and Armond Aria. The Bureau alleges that Global Financial Support, Inc., 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 also 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. A stay was entered by the court on May 17, 2016, pending an ongoing criminal proceeding involving one of the defendants. The court lifted the stay on May 27, 2019, and the case remains pending.

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. The Bureau and NYDFS allege that they deceived consumers about the costs and risks of their pension-advance loans. Specifically, the Bureau and NYDFS allege 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 allege 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 allege that all the defendants violated the CFPA'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.

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. The Bureau alleged that they engaged in unfair, deceptive, and abusive practices relating to its payday lending enterprise. Specifically, the Bureau alleged 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 CFPA. 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 was resolved through a stipulated judgment, entered by the court on February 4, 2019, which permanently barred the remaining defendants from any consumer lending in the United States, from collecting on any of the existing loans to United States consumers, and from disclosing, using, or benefiting from consumer information associated with loans made to consumers in the United States.

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. The Bureau alleged that they engaged in abusive and deceptive acts and practices in violation of the CFPA and the 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 CFPA 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 a permanent injunction forbidding 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. 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 CFPA'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. On 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. 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, which the court has not ruled on. On March 21, 2019, the court granted the Bureau's motion for summary judgment on all its claims against five of the debt collector defendants, and one of its claims against two other debt collector defendants. The court denied the Bureau's motion for summary judgment on its other claims against the latter two debt collector defendants and denied those two defendants' motion for summary judgment against the Bureau. The court has not ruled on the Bureau's requested relief. On August 21, 2019, the court entered a stipulated final judgment and order as to two debt collector defendants. Among other things, the stipulated judgment ordered the settling defendants to transfer all of the funds in their various bank accounts in partial satisfaction of a judgment of equitable monetary relief and damages in the amount of $633,710, which was partially suspended based on inability to pay, permanently banned the settling them from engaging in debt collection activities, and prohibited them from making certain misrepresentations. The case remains pending.

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 complaint 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 brought suit alleging 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 in April 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. On November 15, 2018, the court issued an opinion and order ruling that certain defendants violated Regulation O by taking upfront fees, by failing to make required disclosures, by directing consumers not to contact their lenders, and by making deceptive statements. The court directed that the parties submit briefs addressing what damages, injunctive relief, and civil money penalties, if any, should be awarded. Briefing on those issues was completed on February 19, 2019. 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 complaint 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 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. On August 12, 2019, the Bureau filed a stipulated final judgment and order, which the court entered on August 16, 2019, to resolve the matter. The judgment and order, among other things, includes a judgment against ITT for $60 million and an injunction prohibiting ITT from offering or providing student loans in the future.

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. The Bureau alleged 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 alleges 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 borrowers' states 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 money penalty but denying the Bureau's request for restitution and an injunction. The parties' appeals remain pending before the United States Court of Appeals for the Ninth Circuit; oral argument was heard on September 9, 2019.

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 two issues of *Supervisory Highlights* between October 1, 2018, and September 30, 2019.[97]

All public enforcement actions are listed in Section 5.2 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.

[97] *Winter 2019*, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-18_032019.pdf; *Summer 2019*, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-19_092019.pdf.

7. Assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law[98]

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 actions asserting Dodd-Frank Act claims that were initiated during the October 1, 2018, through September 30, 2019, reporting period.

Commonwealth of Puerto Rico v. Equifax, Inc., No. 3:18-cv-01424 (D.P.R. Apr. 2, 2019). On April 2, 2019, the Attorney General of Puerto Rico filed an amended complaint against Equifax, Inc. The complaint alleged that Equifax, Inc. engaged in deceptive acts or practices in violation of the CFPA, 12 U.S.C. 5531(a). The complaint also asserted that Equifax, Inc. acted negligently, in violation of common law and state law, and violated Puerto Rico's state consumer protection law. Puerto Rico voluntarily dismissed its complaint with prejudice on July 25, 2019.

People of the State of New York v. Vision Property Management, LLC; KAJA Holdings 2, LLC; RVFM 11 Series, LLC; DSV SPV 1, LLC; DSV SPV 2, LLC; DSV SPV3, LLC; Alan Investments III, LLC; Alex Szkaradek; and John Dows 1-50, No. 19-CV-7191 (S.D.N.Y. Aug. 1, 2019). On August 1, 2019, the New York Attorney General and New York Superintendent of Financial Services filed a complaint against Vision Property Management, LLC (Vision), various affiliated companies, and Alex Szkaradek, Vision's Chief Executive Officer and Managing Member. The complaint alleges that the parties engaged in illegal practices in the course of entering into seller-financed purchase transactions with consumers in upstate New York. These practices allegedly violated the CFPA, 12 U.S.C. 5531(a), TILA, 12 U.S.C. 1638, TILA's implementing regulation, Regulation Z, 12 C.F.R. 1026 *et seq.*, and New York state law.

[98] *State action summaries are current as of September 30, 2019, and do not include activities that occurred after the reporting period.*

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 enforcement[99] and rulemaking[100] activities from October 1, 2018, through September 30, 2019, and continued efforts to fulfill the fair lending mission of the Bureau through supervision, interagency coordination, and outreach, from April 1, 2019, through September 30, 2019.[101]

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 16 supervisory events at financial services institutions under the Bureau's jurisdiction to determine compliance with federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities, including the ECOA and HMDA.

For exam reports issued by Supervision during the reporting period, the most frequently cited violations 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;

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[99] *Dodd-Frank Act §1016(c)(5).*

[100] *Dodd-Frank Act §1016(c)(3). The Bureau's fair lending rulemaking activity pertaining to HMDA and Regulation C is discussed above in Section 3.*

[101] *Dodd-Frank Act §1016(c)(8).*

- Section 1002.12.9(a)(1)(i), (b)(2), (c): 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 sufficient information in an adverse action notification, including the specific reasons the application was denied; failure to timely and/or appropriately notify an applicant of either action taken or of incompleteness after receiving an application that is incomplete;
- Section 1002.4(a): Discrimination on a prohibited basis in a credit transaction;
- Section 1002.6(b): Improperly considering receipt of public assistance in a system of evaluating applicant creditworthiness.

In the current reporting period, the Bureau initiated 16 supervisory events, which is six more than the 10 fair lending supervisory events initiated during the prior reporting period. In the current reporting period, the Bureau issued more matters requiring attention (MRAs) or memoranda of understanding (MOUs) than in the prior period. MRAs and MOUs direct entities to take corrective actions and are monitored by the Bureau through follow-up supervisory events.

Consistent with BCFP Bulletin 2018-01, [102] the Bureau issues Supervisory Recommendations (SRs) to address the Bureau's supervisory concerns related to financial institutions' compliance management systems. SRs do not include provisions for periodic reporting nor expected timelines for implementation. During the current reporting period, the Bureau provided SRs relating to supervisory concerns related to weak or nonexistent fair lending policies and procedures, risk assessments, fair lending testing, and/or fair lending training.

8.2 Fair lending enforcement[103]

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

[102] https://files.consumerfinance.gov/f/documents/bcfp_bulletin-2018-01_changes-to-supervisory-communications.pdf

[103] *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 2018, through September 30, 2019, for this report.*

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.[104]

During the reporting period, the Bureau filed one fair lending public enforcement action: In the Matter of Freedom Mortgage Corporation (File No. 2019-BCFP-0007).[105] In addition, during this reporting period,[106] the Bureau referred one matter to the DOJ about discrimination pursuant to Section 706(g) of the ECOA.

During the reporting period, the Bureau continued to implement and oversee compliance with the pending public enforcement orders that were entered by federal courts or issued by the Bureau's Director in prior years.

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 neighborhoods[107] 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.[108] On June 25, 2018, the Bureau announced that participation materials were mailed to potentially eligible African-American borrowers identified as harmed by BancorpSouth's alleged discrimination in mortgage lending between 2011 and 2015, notifying them how to receive redress. Starting on March 15, 2019, checks were mailed to African-American borrowers who were confirmed as eligible to receive a payment.

On February 2, 2016, working with the DOJ, the Bureau ordered[109] Toyota Motor Credit Corporation (Toyota Motor Credit) to pay up to $21.9 million in damages to harmed African-

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[104] *See* 15 U.S.C. §1691e(h).

[105] *See supra* Section 5.2.

[106] October 1, 2018, through September 30, 2019.

[107] Majority-minority neighborhoods or minority neighborhoods refers to census tracts with a minority population greater than 50 percent.

[108] Consent Order, *United States v. BancorpSouth Bank*, No. 1:16-cv-00118-GHD-DAS (N.D. Miss. July 25, 2016), ECF No. 8, https://files.consumerfinance.gov/f/documents/201606_cfpb_bancorpSouth-consent-order.pdf.

[109] Consent Order *in re Toyota Motor Credit Corporation*, CFPB No. 2016-CFPB-0002 (Feb. 2, 2016), https://files.consumerfinance.gov/f/201602_cfpb_consent-order-toyota-motor-credit-corporation.pdf.

American and Asian and/or Pacific Islander borrowers for unlawful discrimination.[110] 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 February 1, 2019, checks were mailed to eligible, participating consumers.

On September 28, 2015, working in coordination with the DOJ, the Bureau ordered[111] Fifth Third Bank (Fifth Third) to pay $18 million in damages to harmed African-American and Hispanic borrowers for unlawful discrimination in auto lending.[112] On December 17, 2018, participating African-American and Hispanic borrowers, whom Fifth Third overcharged for their auto loans, were mailed checks totaling $12 million, plus accrued interest.

8.3 Fair lending outreach

The Bureau is committed to hearing from and communicating directly with stakeholders in a variety of ways. The Bureau regularly engages in outreach through consumerfinance.gov, internal stakeholders, private industry, fair lending, civil rights and consumer and community advocates, academia, and other government agencies and regulators to: (1) educate them about fair lending compliance and access to credit issues and (2) hear their views on the Bureau's work to inform policy decisions.

Outreach is accomplished through numerous channels, such as issuing compliance bulletins and statements targeted to industry; publishing blog posts, brochures and reports regarding fair lending issues; delivering speeches, webinars, and presentations addressing fair lending and access to credit issues; and participating in smaller meetings and discussions with external stakeholders, including Federal and State regulators and agencies. During the reporting period, Bureau staff participated in 42 outreach events for fair lending and access to credit issues. In these events, staff worked directly with stakeholders and shared information on fair lending priorities and emerging issues. The Bureau also heard feedback on fair lending issues and how

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[110] *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.*

[111] *Consent Order, In re Fifth Third Bank, CFPB No. 2015-CFPB-0024 (Sept. 28, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-fifth-third-bank-for-auto-lending-discrimination-and-illegal-credit-card-practices/.*

[112] *See supra note 110.*

innovation can promote fair, equitable, and nondiscriminatory access to credit. Some examples of the topics covered include fair lending priorities, innovations in lending, HMDA, small business lending, the Bureau's Tech Sprints Request for Information and the use of alternative data.

8.3.1 Tech Sprints Request for Information

In September 2019, the Bureau, through a collaboration between the Offices of Innovation, Technology and Innovation, and Fair Lending and Equal Opportunity, issued an RFI [113] seeking comments and information to identify opportunities to utilize Tech Sprints to encourage regulatory innovation.[114]

Used successfully by the Financial Conduct Authority in the United Kingdom, Tech Sprints gather regulators, technologists, financial institutions, and subject matter experts from key stakeholders for several days to work together to develop innovative solutions to clearly identified challenges. Small teams include participants from both the regulator and a diversity of entities to ensure the inclusion of regulatory, industry, and technology perspectives. The regulator assigns a specific regulatory compliance or market problem to each team and challenges the teams to solve or mitigate the problem using modern technologies and approaches. The most promising ideas can then be further developed either in collaboration with the regulator or by external parties.

Specifically, the Bureau is interested in using Tech Sprints to:

- Leverage cloud solutions, machine automated compliance checks that allow for independent validation by regulators, and other developments that may reduce or modify the need for regulated entities to transfer data to the Bureau.
- Continue to innovate HMDA data submission, processing, and publication to help ease burden, increase flexibility, and resolve compliance challenges, while satisfying all legal requirements.
- Identify new technologies and approaches that can be used by the Bureau to provide more cost-effective oversight of supervised entities, effective evaluation of compliance

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[113] https://files.consumerfinance.gov/f/documents/cfpb_rfi_tech-sprints.pdf.

[114] *Additional activity has occurred with this matter since the end of this reporting period. The deadline for submission of comments and information closed on November 9, 2019. The Bureau is currently considering the responses received.*

and risk, and closer interface with financial industry systems and technology that may include the use, for example, of analytical tools in the review of mortgage origination data.

- Explore other technological approaches to robust and secure data access or exchange between regulated entities and the Bureau.

- Reduce unwarranted regulatory compliance burdens.

In the RFI, the Bureau sought responses to questions, including:

- What regulatory compliance issues, problems, procedures, or requirements could benefit from innovation through a Bureau Tech Sprint?

- What financial technology or other advances hold the most promise for helping modernize regulatory compliance?

- Other than organizing Tech Sprints, what else might the Bureau do to encourage innovation in financial products and services? For example, could advances be encouraged by changes to certain Bureau rules or policies?

8.4 Fair lending coordination

The Bureau's fair lending activity involves regular coordination with other federal and state regulatory and enforcement partners. During the reporting period, the Bureau coordinated its fair lending regulatory, supervisory, and enforcement activities with those of other federal agencies and state regulators to promote consistent, efficient, and effective enforcement of federal fair lending laws. This interagency engagement seeks to address current and emerging fair lending risks. The Bureau, along with the FTC, Department of Housing and Urban Development (HUD), FDIC, Federal Reserve Board (FRB), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), DOJ, and the Federal Housing Finance Agency (FHFA), comprise the Interagency Task Force on Fair Lending. The Bureau chairs the Task Force, which meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

The Bureau also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of federal agencies—with the DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts. In addition to these interagency working groups, the Bureau meets periodically and on an ad hoc basis with DOJ, HUD, and prudential regulators to coordinate the Bureau's fair lending work.

During the reporting period, the Bureau also chaired the FFIEC.[115] HMDA.[116]/Community Reinvestment Act Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance (Task Force), that oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by the Task Force.

[115] *Federal Financial Institutions Examination Council.*

[116] *Home Mortgage Disclosure Act.*

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).

During the reporting period, the Bureau published its Annual Report of OMWI activities. The 2018 Annual Report was issued on April 3, 2019.[117]

In July 2019, the Bureau developed and published the Diversity and Inclusion Strategic Plan Update, FY 2019–FY 2022.[118] The Bureau continued executing on objectives and strategies outlined in the Bureau's Strategic Plan FY 2018–2022,[119] which complements and reinforces the Diversity and Inclusion Strategic Plan FY 2019–2022.

Specifically, 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.

[117] https://www.consumerfinance.gov/data-research/research-reports/fy-2018-office-minority-and-women-inclusion-annual-report-congress/.

[118] https://www.consumerfinance.gov/data-research/research-reports/cfpb-diversity-and-inclusion-strategic-plan-update-2019-2022/.

[119] https://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 compliance and diversity and inclusion programs, including those focused on minority and women inclusion.

9.1 Increasing workforce diversity

As of September 2019, an analysis of the Bureau's current workforce reveals the following key points:

- Women represent 50 percent of the Bureau's workforce in FY 2019[120] with a one percent increase from FY 2018.[121]
- Minorities (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, and employees of Two or More races) represent 41 percent of the Bureau workforce in FY 2019 with a one percent increase from FY 2018.
- As of September 30, 2019, 12.9 percent of Bureau employees on permanent appointments identified as individuals with a disability. Of the permanent workforce, 3.4 percent of employees identified as individuals with a targeted disability. As a result, the Bureau continues to exceed the 12 percent workforce goals for employees with disabilities and two percent for employees with targeted disabilities–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 continues to enhance diversity by recruiting, hiring, and retaining highly qualified individuals from diverse backgrounds to fill positions at the Bureau.
  - During the reporting period, the Bureau conducted a comprehensive Staffing Planning initiative which resulted in new headcount allocations for each Division.

[120] *October 1, 2018–September 30, 2019.*

[121] *October 1, 2017–September 30, 2018.*

- The Bureau had 59 new hires which included 32 (54.2 percent) women and 20 (33.9 percent) minorities.
- The Bureau utilized the student volunteer internship program for the summer of 2019 to host 33 students in positions across the Bureau.
- The Bureau also utilized the student volunteer internship program, other professional development programs, and recruitment efforts directed to reach veterans and applicants with disabilities to assist in the Bureau's workforce needs.

- Workforce engagement:
  - To promote an inclusive work environment, the Bureau focuses on strong engagement with employees and utilizes an integrated approach of education, training, and engagement programs that ensures diversity and inclusion and non-discrimination concepts are part of the learning curriculum and work environment. Employee resource groups, cultural education programs, and diversity and inclusion training are key components of this effort.

9.2 Increasing contracting diversity

In accordance with the mandates in Section 342(b)(2)(B) of the Dodd-Frank Act, Section 2.4 of the Bureau's Diversity and Inclusion Strategic Plan describes the efforts the Bureau takes to increase contracting opportunities for diverse businesses including Minority-owned and Women-owned Businesses (MWOBs). The Bureau's OMWI and Procurement offices collectively work to increase procurement opportunities for participation by MWOBs.

9.2.1 Outreach to contractors

The Bureau promotes opportunities for the participation of small and large Minority-owned and Women-owned Businesses by:

- Actively engaging Bureau business units with MWOB contractors throughout the acquisition cycle.
- Developing a quarterly "How to Do Business with the CFPB" forum series that includes technical assistance outreach and other resources—such as procurement forecasts of

upcoming contract opportunities—digitally on the Bureau's website..[122] OMWI conducted the forum pilot in July 2019 and launched the series in November 2019.[123]

- Participating in three national supplier diversity conferences that help to foster business partnerships between the federal government, its U.S. prime contractors, minority-owned businesses, and advocacy for women business owners and entrepreneurs.

As a result of these efforts, 31.3 percent of the $60 million in contracts that the Bureau awarded or obligated during the reporting period went to MWOBs. The Bureau's spend with MWOBs in each MWOB category increased since the last report. The following table represents the total amount of dollars spent/disbursed to MWOBs as a result of contract billing.

TABLE 3: DOLLARS SPENT TOWARD MINORITY-OWNED AND WOMEN-OWNED BUSINESSES [124]

Dollars Spent	Percent of Total	MWOB Category
$9,000,110	14.9%	Women Owned
$1,059,632	1.8%	Black/African American
$1,912,289	3.2%	American Indian/Alaskan Native
$10,080,536	16.7%	Asian/Pacific Islander American
$874,697	1.5%	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, OMWI has developed Good Faith Effort (GFE) standards for the collection and assessment of documentation of its contractor's workforce and subcontractor diversity practices. The Bureau

[122] https://www.consumerfinance.gov/about-us/doing-business-with-us/

[123] *Doing Business with the CFPB series launched November 2019.*

[124] *Data in this table is for FY 2019 through September 30. A single Contractor may qualify for more than one socioeconomic category; total numbers count each Contractor only once.*

continues to include a GFE clause in all CFPB contracts that notifies Contractors of their responsibilities under Dodd-Frank.

9.4 Assessing diversity of regulated entities

Pursuant to Section 342 (b) (2) (c) of the Dodd-Frank Act, CFPB developed a process to assess the diversity policies and practices of the entities the Bureau regulates. The Bureau conducted a multi-pronged outreach strategy including direct entity contact, meetings with trade organizations, and joint outreach with other federal regulators to engage entities to participate in the voluntary self-assessment process in the Fall 2019. The Bureau developed an online data collection tool to collect and manage submitted assessment data. The tool is available on the Bureau's website. The Bureau will continue to conduct direct outreach to encourage entities to assess their diversity and inclusion policies and practices and submit their self-assessment to the Bureau.

APPENDIX A: ADDENDUM

Annual Report on the Truth in Lending Act, the Electronic Fund Transfer Act, and the Credit Card Accountability Responsibility and Disclosure Act

The Truth in Lending Act (TILA)[125] and the Electronic Fund Transfer Act (EFTA)[126] require the Consumer Financial Protection Bureau (CFPB or Bureau) to make an annual report to Congress that includes a description of the administration of functions under TILA and EFTA, and an assessment of the extent to which compliance with TILA and EFTA has been achieved. In addition, the Credit Card Accountability Responsibility and Disclosure Act (CARD Act)[127] requires reporting on supervisory and enforcement activities with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations.[128]

This Report provides the information required by TILA, EFTA, and the CARD Act for the period January 1, 2018–December 31, 2018.[129] This Report describes the Bureau's and other agencies'

[125] *15 U.S.C. §1613.*

[126] *15 U.S.C. §1693p.*

[127] *15 U.S.C. §1616(e).*

[128] *In 2012, the Federal Reserve Board (FRB) and the Bureau agreed that responsibility for the reporting required by the CARD Act passed to the Bureau under the terms of the Consumer Financial Protection Act of 2010.*

[129] *In order to facilitate reporting on an interagency basis, this TILA, EFTA, and CARD Act Report is based on the full calendar year of 2018. The TILA, EFTA, and CARD Act Report containing 2016 and 2017 calendar year*

enforcement efforts and required reimbursements to consumers by supervised institutions as they relate to TILA, EFTA, the CARD Act, and their respective implementing regulations, Regulation Z (for TILA and the CARD Act),[130] and Regulation E (for EFTA). It also provides an assessment of the extent of compliance with the provisions of TILA, EFTA, and their implementing regulations.

information can be found on the Bureau's public website at https://www.consumerfinance.gov/data-research/research-reports/annual-report-to-congress-on-tila-efta-and-card-act/. Prior reports can be found in the Bureau's 2013–2016 Fall Semi-Annual Reports to Congress, and as with this 2018 report, future reports will be included as an addendum in the Bureau's Fall Semi-Annual Report.

[130] *The Federal Trade Commission's (FTC) enforcement action summaries in this Report also include references to violations of the Consumer Leasing Act (CLA) and Regulation M. The CLA is an amendment to TILA. See 15 U.S.C. §1667-1667f.*

Public enforcement actions and reimbursements – TILA, EFTA, CARD Act

TILA: Public enforcement actions and reimbursements

The purposes of TILA include: (1) to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, and (2) to protect the consumer against inaccurate and unfair credit billing and credit card practices. 15 U.S.C. § 1601(a).

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under TILA are discussed in this section.

The agencies charged with enforcement of TILA under 15 U.S.C. § 1607 include:

- the Bureau,
- the Federal Deposit Insurance Corporation (FDIC),
- the Federal Reserve Board (FRB),
- the National Credit Union Administration (NCUA),
- the Office of the Comptroller of the Currency (OCC),
- the Federal Trade Commission (FTC),
- the Department of Transportation (DOT),
- the Farm Credit Administration (FCA), and

- the Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA).[131]

During the reporting period of January 1, 2018, through December 31, 2018, the following agencies reported public enforcement actions under TILA, including:

TABLE 1: 2018 PUBLIC ENFORCEMENT ACTIONS RELATED TO TILA

Agency	Summary
CFPB	Issued a consent order against a bank for failing to reevaluate and reduce the annual percentage rates (APRs) for certain consumer credit card accounts and for failing to have reasonable written policies and procedures in place to conduct APR reevaluations, in violation of TILA and Regulation Z. Issued a consent order against a small-dollar lender for, among other violations, failing to disclose properly the finance charges associated with its auto title loans and for using advertisements that failed to disclose the APR and other information, in violation of TILA and Regulation Z. Filed a complaint against a company for, among other violations, allegedly failing to disclose for its loans a measure of the cost of credit, expressed as a yearly rate, in violation of TILA and Regulation Z.
FDIC	Issued three public enforcement actions related to violations of Regulation Z.
DOT	Issued a consent order against an airline for, among other violations, failing to issue timely refunds with respect to purchases of certain tickets for children under the age of two, in violation of TILA and Regulation Z.
FTC	Filed a complaint against a group of four auto dealers for, among other violations, allegedly failing to disclose required terms in social media advertisements in violation of TILA and Regulation Z (credit) and CLA and Regulation M (leases).

No other agencies with TILA enforcement authority reported taking any public enforcement actions related to TILA during the January 1, 2018, through December 31, 2018, time period.

[131] *The Grain Inspection, Packers, and Stockyards Administration (GIPSA) was eliminated as a standalone agency within the U.S. Department of Agriculture (USDA) in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and TILA and EFTA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.*

For TILA and Regulation Z violations found during the same time period, the CFPB, FDIC, FRB, and NCUA required 46 institutions to reimburse an estimated 1.8 million consumers approximately $337.4 million. This amount includes reimbursements required by the enforcement actions noted in Table 1, as well as non-public supervisory or enforcement actions, and includes violations for other Federal consumer financial laws.

EFTA: Public enforcement actions and reimbursements

The purpose of EFTA is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of EFTA is the provision of individual consumer rights. 15 U.S.C. § 1693(b).

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under EFTA are discussed in this section.

As required by EFTA, the Bureau monitors what effects the act has on compliance costs for financial institutions, as well as the benefits of the act to consumers.

Consumers use electronic payments more than any other type, and consumer reliance upon electronic payments relative to that of non-electronic payments is increasing. According to the 2018 Survey of Consumer Payment Choice, the average consumer makes 72 payments a month. For the average consumer, 60.0 percent of payments use a debit, credit, or prepaid card; 28.8 percent use cash, paper checks, or some other paper payment instrument; and 10.4 percent use some other form.[132] Consumer use of cash has been steady since 2010; however, check use has declined steadily and now makes up five percent of all payments.[133] Check use is diminishing even among consumers that use checking accounts: while 90 percent of consumers had a checking account, only 78 percent had paper checks, down from 90 percent in 2008.[134] Debit (and credit) card payments have generally increased to replace the declining check and cash

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[132] *The remaining 0.8 percent of payments are direct deductions from income. See Kevin Foster, Claire Green, and Joanna Stavins, "The 2018 Surveys of Consumer Payment Choice: Summary Results." Available at: https://www.frbatlanta.org/-/media/documents/banking/consumer-payments/survey-of-consumer-payment-choice/2018/2018-survey-of-consumer-payment-choice.pdf, pp. T-6.*

[133] *Id.*

[134] *Id.*

share.[135] In addition, more than one third of all consumers had made a mobile payment, regardless of the underlying electronic method.[136]

Within the universe of electronic payments, consumers conduct an array of electronic fund transfers (EFTs), including debit card, electronic benefit transfer (EBT) card, prepaid card (including gift card), automated clearinghouse (ACH), and mobile phone-enabled person-to-person (P2P) payments. In addition, EFTs include consumer automated teller machine (ATM) transactions and certain remittance transfers.

Consumers conduct over 85 billion debit, EBT, and prepaid card payments and transact over $3 trillion across transaction (non-credit) card accounts annually. According to the most recent Federal Reserve Payments Study, debit card volume totaled $2.75 trillion and 72.7 billion transactions in 2018.[137] That same year, EBT payments totaled approximately $60 billion and 2.2 billion transactions.[138] Further, prepaid card payments totaled $290 billion and 11.6 billion transactions in 2018.[139] According to the 2018 Survey of Consumer Payment Choice, slightly over 80 percent of consumers owned a debit card and approximately half of consumers owned a prepaid card.[140]

Although consumers tend to conduct fewer ACH transactions relative to card transactions, the consumer dollar volume over ACH is higher. ACH volume totaled approximately 23 billion transactions and $51.2 trillion in 2018.[141] These totals increased approximately 7.0 percent and 9.4 percent, respectively, from 2017.[142] The Bureau estimates consumer account debits represent slightly more than half of all ACH transaction volume and over 40 percent of ACH dollar volume.[143]

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135 *Id.*

136 *Id.*

137 *Available at:* https://www.federalreserve.gov/newsevents/pressreleases/files/2019-payments-study-20191219.pdf.

138 *Id. Note, however, that many of the requirements of EFTA and Regulation E do not apply to EBT systems that are established under State or local law or administered by a State or local government.*

139 *Id.*

140 *Supra note 132.*

141 *NACHA press release. Available at* https://www.nacha.org/news/ach-network-moves-23-billion-payments-and-51-trillion-2018.

142 *NACHA press release. Available at* https://www.nacha.org/news/ach-network-volume-and-value-hit-new-highs-2017.

143 *For reference, in 2015, consumer ACH debit volume totaled approximately 12.5 billion transactions and $18.3 trillion, while the ACH Network processed a total of 24B transactions totaling $41.6T volume. See NACHA press*

P2P represents an emerging and fast-growing category of EFTs. The P2P EFT marketplace is challenging to size for several reasons. First, a number of firms facilitate P2P EFTs over a variety of proprietary platforms. In addition, many P2P services utilize legacy EFT platforms to transmit payment messages and settle transactions. As a result, P2P transaction volume is often conflated with that of the legacy payment systems upon which the P2P services rely. Further, the Bureau's Prepaid Account Rule, which became effective on April 1, 2019, established a definition for prepaid accounts (which includes certain mobile wallets) and explicitly brought prepaid accounts within the scope of Regulation E. Going forward, this rule could expand the universe of payments that are subject to Regulation E.[144] An industry analyst reported, based on survey results and estimates, that 144 million, or 57 percent of U.S. consumers made a P2P payment in 2017.[145]

ATM transaction volume has decreased slightly in recent years. According to the most recent Federal Reserve Payments Study, ATM cash withdrawals totaled 5.1 billion 2018, down from 5.2 billion in 2015. The total value of ATM withdrawals, however, increased from $0.77 trillion to $0.80 trillion over the same span. The average value of ATM cash withdrawals increased from $146 in 2015 to $156 in 2018.[146]

The Bureau published the Remittance Rule assessment report on October 26, 2018, which includes data on remittances transfers by financial institutions, including volume of transfers, dollar volume, and information about the structure of the remittance market.[147] In 2017, consumers in the U.S. transferred over 325 million remittances worth more than $175 billion. Money services businesses (MSBs) conducted 95.6 percent of all remittance transfers and accounted for 54.6 percent of the dollar volume.[148]

The incremental costs associated with the EFTA are difficult to quantify because it is difficult to determine how industry practices would have evolved in the absence of statutory requirements. The benefits of the EFTA are also difficult to measure, as they cannot be isolated from consumer protections that would have been provided in the absence of regulation. The Bureau will continue to consider the potential benefits and costs to consumers and financial institutions in

release. Available at https://www.nacha.org/news/ach-volume-grows-56-percent-adding-13-billion-payments-2015-0.

[144] *See 12 CFR 1005.3(b)(1) for the general definition of an EFT within Regulation E. The Prepaid Rule expands the definition of an account within Regulation E at 12 CFR 1005.2(b)(3)(i). Comment 12 CFR 1005.2(b)(3)(i)-10 addresses accounts with a primary function of conducting P2P transfers.*

[145] *Talie Baker and Judy Fishman, Person-to-person Payments in the U.S.: The Case for Real Time, Aité Group (Feb. 2019), available at https://aitegroup.com/report/person-person-payments-us-case-real-time.*

[146] *Supra note 137.*

[147] *Available at https://files.consumerfinance.gov/f/documents/bcfp_remittance-rule-assessment_report.pdf.*

[148] *Id.*

evaluating new rules under EFTA. The Bureau will also continue to monitor the market and evaluate the adequacy of consumer protection under EFTA.

The agencies charged with enforcement of EFTA under 15 U.S.C. § 1693 include:

- the Bureau,
- the FDIC,
- the FRB,
- the NCUA,
- the OCC,
- the FTC,
- the DOT, and
- the Securities and Exchange Commission.

During the reporting period of January 1, 2018, through December 31, 2018, the following agencies reported public enforcement actions under EFTA, including:

TABLE 2: 2018 PUBLIC ENFORCEMENT ACTIONS RELATED TO EFTA

Agency	Summary
FDIC	Issued three public enforcement actions related to violations of Regulation E.
FTC	Filed a complaint and obtained a temporary restraining order and asset freeze against a group of Internet marketers and sellers of products including skin creams and electronic cigarettes for violating EFTA and Regulation E by allegedly failing to obtain from consumers a signed or similarly authenticated written authorization for preauthorized electronic fund transfers from their accounts, and for failing to provide them a copy of the authorization. Filed a complaint and obtained a temporary restraining order against a group of Internet marketers of personal care products and dietary supplements for allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization from them or providing them a copy of the authorization in violation of EFTA and Regulation E. Filed a complaint and obtained a temporary restraining order against a

Agency	Summary
	company marketing products for smoking cessation and weight loss for violating EFTA and Regulation E by allegedly debiting consumers' bank accounts on a recurring basis without obtaining a written authorization or providing consumers with a copy of the authorization.
	Obtained a settlement against a health products company and its owner for, among other things, allegedly obtaining and charging consumers' debit card numbers without authorization in violation of EFTA.
	Obtained court orders against skincare marketers for violating EFTA and Regulation E by allegedly failing to obtain written authorizations in a manner that complies with EFTA.

No other agencies with EFTA enforcement authority reported taking any public enforcement actions related to EFTA during the January 1, 2018, through December 31, 2018, time period.

For EFTA and Regulation E violations found during the same time period, the CFPB and NCUA required 11 institutions to reimburse an estimated 124,855 consumers approximately $6.8 million. This amount includes reimbursements required by non-public supervisory or enforcement actions.

CARD Act: Public enforcement actions and reimbursements

The CARD Act amended TILA to establish fair and transparent practices for the extension of credit under an open-end consumer credit plan. Section 502(e) of the CARD Act requires reporting on supervision and enforcement activities undertaken by the Federal banking agencies (the FRB, FDIC, and OCC) and the FTC with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including the CARD Act and Section 5 of the FTC Act.

During the reporting period of January 1, 2018, through December 31, 2018, the following agencies reported public enforcement actions under the applicable Federal consumer financial protection laws:

TABLE 3: 2018 ENFORCEMENT ACTIONS RELATED TO THE CARD ACT OR SECTION 5 OF THE FTC ACT

Agency	Summary
OCC	Issued a consent order against a bank for, among other things, a discrepancy between the disclosed and actual activation dates of a credit-card backed overdraft protection product, in violation of Section 5 of the FTC Act.

No other agencies reported taking public enforcement actions related to the CARD Act or other applicable Federal consumer financial laws during the January 1, 2018, through December 31, 2018, time period.

Assessment of compliance and common violations – TILA and EFTA

The agencies that are members of the Federal Financial Institutions Examination Council (FFIEC) reported overall compliance by supervised entities with TILA, EFTA, and their respective implementing regulations.[149] The agencies did report, however, that more institutions were cited for violations of Regulation Z than Regulation E over the 2018 reporting period. Based on the information reported by the FFIEC agencies, this section outlines the most frequently cited violations of Regulation Z and Regulation E across the FFIEC agencies for each reporting period.[150]

For the reporting period of January 1, 2018, through December 31, 2018, the most frequently cited violations of Regulation Z across the FFIEC agencies were:

- 12 C.F.R. § 1026.19(e) – On closed-end credit, failure to disclose good faith estimates of the disclosures.
- 12 C.F.R § 1026.37(a) – For each transaction subject to 12 C.F.R. § 1026.19(e), failure to disclose the general information contained in this section.
- 12 C.F.R. § 1026.38(a) – Failure to disclose the title of the form, "Closing Disclosure," using that term for certain mortgage transactions.
- 12 C.F.R. § 1026.38(f) – Failure to provide consumers with specific information under the heading "Loan Costs" on the Closing Disclosure.

For the reporting period of January 1, 2018, through December 31, 2018, the most frequently cited violations of Regulation E across the FFIEC agencies were:

- 12 C.F.R. § 1005.11(c) – Failure to comply with the investigation and timeframe requirements for resolving errors in electronic fund transfers.

[149] *Other agencies either did not conduct compliance examinations for TILA, EFTA, and their respective implementing regulations, or reported general compliance for the laws under their jurisdiction.*

[150] *Because the FFIEC agencies use different methods to compile data, the information presented here supports only general conclusions.*

- 12 C.F.R. § 1005.11(d) – Failure to follow the required procedures when an investigation determines no error, or a different error occurred.

Outreach related to TILA and EFTA

The FFIEC agencies conducted training and issued guidance and examination procedures to assist supervised institutions in complying with the requirements of TILA, EFTA, and their respective implementing regulations. The agencies also provided guidance to consumers on these topics through various means, such as Federal Register Notices, workshops, blogs, and other outreach events.

In 2018, the FTC issued a staff perspective on its earlier military consumer financial workshop, which brought together military consumer advocates, government representatives, military legal clinics, all service branches, and industry representatives to examine financial issues and scams that can affect military consumers, including servicemembers and veterans. Among other things, the staff perspective discussed protections under the Federal consumer financial protection laws, including TILA, CLA, and EFTA. The FTC also issued several blog posts discussing the FTC's cases and other initiatives in the areas of automobiles, military consumer issues, and payday lending. The FTC released a blog post for businesses about pet leasing, a relatively new practice, and advised businesses about the need to comply with the CLA, by providing lease terms in writing, clearly and conspicuously to consumers before they sign lease agreements, and for retailers that advertise pet leases to include required lease terms in their promotions. The FTC issued blog posts for consumers and businesses providing guidance about negative option plans and "free" trial offers and recent cases on these issues, including addressing EFTA and Regulation E violations and offering tips to consumers to avoid incurring automatic debits to their accounts. The FTC also released a blog post on card skimmers at gas pumps and illegal card readers, with guidance about Federal law protections (e.g., TILA and EFTA) for consumers as to unauthorized credit card purchases and electronic fund transfers.

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The Association of Credit
and Collection Professionals

March 9, 2020

Chairman Michael D. Crapo
U.S. Senate Committee on Banking
Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20515

Ranking Member Sherrod C. Brown
U.S. Senate Committee on Banking
Housing and Urban Affairs
534 Dirksen House Office Building
Washington, DC 20515

Dear Chairman Crapo and Ranking Member Brown:

On behalf of ACA International (ACA), the Association of Credit and Collection Professionals, I am writing concerning tomorrow's hearing, "The Consumer Financial Protection Bureau's (CFPB) Semi-Annual Report to Congress." 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.

I. Background

The accounts receivable 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, as well as collaboration on financial literacy projects, among many other undertakings. This collaboration throughout both Democrat and Republican administrations stems from the fact that ACA members support the stated mission of the CFPB to protect consumers in the financial services marketplace. However, since its inception, we have been disappointed when in many instances the Bureau has failed to fulfill its statutory mission and obligations that require it to make markets for consumer financial products and services work in a fair, transparent, and competitive manner. Accordingly, ACA asks both Congress and the Bureau to consider the following points.

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 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

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higher-risk borrowers."[1] In short, consumer harm can result in several ways when unpaid debt is not addressed, and ACA members work to help consumers understand, address and improve their financial situations.

Consumers need the information that ACA members provide to maintain their financial health, and open communication can often lead to the most favorable outcome. It is greatly disappointing that over the past several months, the House Financial Services Committee has passed legislation that would impede these important communications with consumers. Accordingly, we urge the Senate to reject flawed House legislation, which ultimately harms both the economy and consumer's ability to access credit and services. Instead, we ask that the Senate work with the CFPB, consumers, and industry together to develop informed policies that protect small businesses and other consumers.

II. ACA Supports Providing Regulations for the Fair Debt Collection Practices Act

The accounts receivable management industry has been looking for clear regulatory guidance on the Fair Debt Collection Practices Act (FDCPA), since its enactment in 1977. Congress did not provide the Federal Trade Commission (FTC), the previous agency with jurisdiction over the debt collection industry, with any rulemaking authority under the FDCPA. However, the Dodd-Frank Wall Street Reform and Consumer Act (Dodd-Frank Act) provided the CFPB rulemaking authority for the debt collection industry. Thus, in May 2019 after more than seven years of research, the Bureau proposed the first ever rules for the FDCPA. Overall, ACA believes that the Bureau's efforts are necessary to resolve ambiguities in the FDCPA and help create uniform national standards.

Nonetheless, as outlined in ACA's extensive comments on the rule[2], in several parts of its proposal the Bureau attempts to add new requirements that impose significant burdens on the accounts receivable management industry without any quantitative evidence of consumer harm in those areas. Moreover, certain solutions in search of problem lack empirical data to support their proposals such as certain arbitrary limitations on communications. ACA cautions both Congress and the Bureau that creating overly complex requirements for the debt collection industry has proven in states like New York[3] to increase the likelihood that creditors file lawsuits, rather than encourage communications that can result in a more favorable outcome for consumers. The work of the accounts receivable management industry allows consumers and creditors to settle debts outside of litigation. Therefore, any regulation that makes this overly cumbersome and interferes with meaningful communication between collectors and consumers

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[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).

[2] Comments of ACA International on CFPB Debt Collection Rule, https://www.acainternational.org/assets/advocacy-resources/aca-comment-cfpb-reg-f-9.17.19.pdf (Sep. 17, 2019).

[3] Following the enactment of new debt collection regulations in 2015, in New York State, collections lawsuit filings rose 32% in 2018 and 61% in 2017 from pre-2015 levels. ACA believes that this is an overall bad outcome for consumers, and advises the Bureau to avoid tipping the trend toward litigation at a national level. The New York Department of Financial Services issued regulations that took effect on March 3, 2015, except for certain provisions relating to itemization of the debt to be provided in initial disclosures and relating to substantiation of consumer debts, which were effective Aug. 3, 2015. The New York DFS rules are similar in many respects to those proposed by the Bureau.

will likely increase litigation and take away options to work out payment plans or other consumer preferred outcomes.

III. The SNPRM for "Time-Barred Debt" Must be Improved Upon to Ensure Small Businesses and Creditors are Not Harmed

In late February, the CFPB released a 103-page Supplemental Notice of Proposed Rulemaking (SNPRM) concerning out-of-statute debt. In our initial review of the SNPRM, ACA has serious concerns that the Bureau has grossly under-estimated the impact it will have on small businesses and the larger economy. Of primary concern is that the question of whether a debt is out of statute is not always a simple question, and sometimes requires an analysis that goes far beyond any duty that Congress has imposed on the accounts receivable management industry under the FDCPA. Thus, ACA is very concerned about potential negative consequences resulting from essentially proposing to require collectors, who in many cases are not attorneys, to provide what is akin to legal advice. Furthermore, overly complex requirements in this area that conflict with or duplicate state laws may impede the ability to collect on rightfully owed debt, which will harm creditors, small businesses, and the economy as a whole. ACA will be providing comprehensive suggestions on improvements that should be made to the SNPRM during the comment period and we ask that Congress consider and support these suggestions made on behalf of your constituents.

IV. 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 a high number of complaints. However, in this reporting the Bureau continues to fail to contextualize the number of complaints as compared to the large 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] Particularly because of the outdated FDCPA that makes the use of modern communication such as email difficult, the debt collection industry is forced to rely on making phone calls as its primary method of contact resulting in a larger number of contacts than other industries. Providing better understanding of why this is the case would be important in truly understanding what any complaint data means. The Bureau should focus its resources on actual consumer harm rather than raw numbers of complaints provided without context. In doing so, it would be apparent that the debt collection complaints account for only 0.005% of all consumer contacts made in a given year by debt collectors.

The Bureau also has reported that the debt collection industry has one of the highest response rates of any industry that receives Bureau complaints.[5] What the Bureau fails to publicize is that the vast majority of debt collection complaints are closed "with explanation," meaning the

[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/.

consumer's issue was specifically addressed and/or resolved.[6] Last fall the CFPB made several changes to the complaint database, which ACA applauds. Nevertheless, despite these important improvements providing more transparency to consumers through the updates to the website, additional clarity for both consumers and the industry, that provide contextualization that better reflects the true nature of the accounts receivable management industry is still needed. ACA will continue to urge the Bureau to provide better contextualization of the number of complaints compared to the number of contacts, and to do more work to weed out mere inquiries compared to actual complaints or violations of law. Congress should support this increased transparency.

V. More Transparency and Due Process Should be Included in CFPB Enforcement and Supervision 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, the Bureau's actions have fallen short of these standards. Many who have been the subject of enforcement actions and the supervision process 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.

ACA appreciates that the CFPB recently listened to well founded and serious concerns about the Bureau's use of Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) in supervision and enforcement. Accordingly, it provided much needed guidance to consumers, the accounts receivable management industry, and others in the financial services marketplace concerning the use of the "abusiveness" prong. Businesses in the financial services industry can best contribute to a functioning credit-based economy and serve consumers when the CFPB is acting in a transparent way and not engaging in rulemaking by enforcement. ACA applauds the Bureau's recent policy statement as a step in the right direction for limiting rulemaking by enforcement which stalls innovation and creates unclear risks that are impossible to plan for from a compliance perspective. However, rulemaking by enforcement is still present today in cases like Consumer Financial Protection Bureau v. FCO[7] and the Bureau should continue to do more to stop it. To fulfill its statutory mission and obligations properly, the Bureau must first articulate rules, and then strictly adhere to fair, clear, and transparent enforcement practices.

VI. ACA Supports a Bipartisan Multimember Commission at the CFPB, as Opposed to the Single Director Structure

U.S. Representative Blaine Luetkemeyer (R-Mo.) recently introduced legislation to replace the single director position at the CFPB with a bipartisan commission. The regulatory certainty that stems from a Commission, rather than a single director removable only "for cause" benefits the entire financial services marketplace and consumers. ACA supports Representative Luetkemeyer's legislation and urges the Senate to take up similar legislation. ACA members

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[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] ACA International Letter to FTC and CFPB, https://www.acainternational.org/assets/comments/acaftccreditreportingcomments.pdf (Jan. 20, 2020).

benefit from certainty about the Bureau's leadership, which a commission provides. When there is greater certainty about leadership, there is more clarity about what the CFPB's priorities are, more precise timelines for rulemaking efforts, and a better understanding of compliance expectations. Consumers and those participating in the financial services marketplace benefit from this level of confidence, and small as well as larger businesses including ACA members can plan accordingly for potential rule changes and other new compliance expectations.

VII. Congressional Solutions Proposed by the Majority in the House Financial Services Committee have in Large Part been Woefully Flawed

We are hopeful that Congress can put partisan views aside and work together with the CFPB to make common-sense reforms to the outdated FDCPA. As noted, under President Obama's Administration the Dodd-Frank Act provided the CFPB with rulemaking authority for the debt collection industry. However, throughout the CFPB's rulemaking process, we have seen wildly partisan-driven swings from the House Financial Services Committee when seeking to address these issues. For example, former House Financial Services Committee Chairman Barney Frank (D- Mass.) introduced legislation directing the CFPB to solve the statutory problem for leaving voicemails through rulemaking.[8] The FDCPA was drafted before voicemail widely existed and is ambiguous about how one can simultaneously comply with its competing provisions when leaving a voice message.[9] However, more recently the House Financial Services Committee has taken issue with the Bureau's efforts to resolve this statutory Catch-22, despite this arguably being a prime example of why regulatory guidance is sometimes needed for outdated laws.

Unfortunately, in similarly misguided efforts, many debt collection bills introduced last year in the House seek to impede communications between consumers and collectors. This is concerning because significant research has proven that limiting communication is not a consumer benefit, because consumers then do not have the financial information they need to address and improve their situations. Several debt collection related bills proposed this year, including proposals such as instituting a two-year wait before communicating with consumers to collect medical debt, have no clear consumer benefit other than to delay debt obligations or create opaque requirements that enrich the plaintiffs' bar.

An exception to the aforementioned multiple flawed bills is The Fair Debt Collection Practices for Service Members Act (H.R. 5003), sponsored by U.S. Reps. Madeline Dean (D-Pa.), and Warren Davidson, (R-Ohio), which amends the FDCPA to state that debt collectors, "in connection with the collection of any debt of a covered member," are prohibited from representing to service members that failure to cooperate with a debt collector will result in a reduction of rank, a revocation of security clearance, or military prosecution; or communicating with a servicemember's superiors in the chain of command. ACA applauds the House for

[8] *See* H.R. 4101, "Fair Debt Collection Practices Clarification Act of 2012," available at https://www.govinfo.gov/content/pkg/BILLS-112hr4101ih/pdf/BILLS-112hr4101ih.pdf.

[9] As currently defined in the FDCPA, a communication "means the conveying of information regarding a debt directly or indirectly to any person through any medium." The FDCPA is clear in Section 805(b) that a debt collector may not communicate with a person other than the consumer in connection with the collection of any debt, with certain exceptions. Yet, in Section 807(11) the FDCPA requires that a debt collector identify itself as a debt collector, inform the consumer that the debt collector is attempting to collect a debt, and that any information obtained will be used for that purpose. Since the passage of the FDCPA there has been uncertainty surrounding the intersection of these two provisions in the FDCPA because if a debt collector leaves such disclosures on a voicemail or other message system, they risk violating the prohibition against revealing information about a debt owed by a consumer to a third party.

unanimously passing this bipartisan bill that will benefit our service members. ACA supports consumer protection laws designed to ensure that all service members – and all others– are treated with respect, professionalism and are not exposed to deceptive or unfair practices as part of their interaction with accounts receivable management industry professionals.

ACA encourages the Senate Banking Committee to review whether House bills related to debt collection are supported with evidence that the proposed solutions will improve a consumer's financial health or their ability to access credit and services.[10] Unfortunately, partisan rhetoric has led to multiple flawed pieces of legislation this Congress coming from the House Financial Services Committee and opposition to common-sense reforms proposed in the CFPB rule. We urge the Senate Banking Committee not to advance legislation lacking feedback and research from both consumers and industry, and to work with the CFPB to engage in informed policymaking that protects the interest of consumers, but also of small businesses and creditors throughout the country who are rightfully owed debts and provide goods and services.

Thank you for holding this hearing and your attention to these important matters. We look forward to continuing our engagement with the Senate Banking Committee.

Sincerely,

Mark Neeb
Chief Executive Officer

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[10] *See ie.* ACA International letter Concerning Medical Debt Credit Reporting Bill, available at https://www.acainternational.org/assets/comments/aca-international-letter-hr-3622-final.pdf (Jan. 29, 2020).

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HELPING FINANCE THE AMERICAN DREAM SINCE 1919.

March 6, 2020

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
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 Senate Committee on Banking, Housing and Urban Affairs' continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities to safeguard consumers. CBA is the voice of the retail banking industry whose products and services provide access to credit 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.

It has been ten years since the Dodd-Frank Act passed Congress and nine years since the CFPB opened its doors with "the purpose of providing a single point of accountability for enforcing federal consumer financial laws and protecting consumers in the financial marketplace." Today's banking industry is vibrant and strong, working diligently to meet the credit needs of the consumers and communities they serve. As financial markets evolve, regulation must be reviewed to ensure it is reflective of current market conditions that ensures consumers have continued access to safe and affordable financial services products. In this letter, we offer legislative and regulatory suggestions to lawmakers and the Bureau for the purpose of ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals.

Bipartisan Commission at the Consumer Financial Protection Bureau

Since its inception, the CFPB has been the center of political and legal debates about the legitimacy of its leadership structure. In fact, this hearing comes as the Supreme Court is preparing to hear arguments this March regarding a challenge to the structure of the CFPB and whether its single director leadership model is constitutional. We are concerned the Seila Law v. CFPB case[1] could result in a Supreme Court ruling that would create a governance structure where the director is removable at-will; inviting increased political turmoil at the Bureau, further undermining the mission and operations of the CFPB.

We share the concern stated in your October 4, 2019 Bipartisan Legal Advisory group motion before the Supreme Court that recommends safeguarding the CFPB from executive and political interference, and suggest that the appropriate and sensible remedy for the question at issue in the Seila case is for Congress to swiftly pass legislation to ensure the CFPB's independence and constitutionality by replacing the single director

[1] Seila Law v. Consumer Financial Protection Bureau, 923 F.3d 680 (9th Cir. 2019), *petition for cert. filed* (U.S. June 28, 2019) (No. 17-56324).

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structure with a five-person, bipartisan commission, as originally intended by the House when it first passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.[2] In total, 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.

The CFPB director is currently a single officer responsible for leading the CFPB and is the chief decisionmaker over all rulemakings, enforcement and supervisory actions that affect millions of Americans' everyday financial lives. This high level of authority is unparalleled when compared to other regulatory agencies. The potential of a court ruling that could install a removeable at-will director would bring increased confusion to financial services providers who have been asking that Congress inject stability and transparency into the Bureau. An at-will Director, removable every four years, or sooner, would leave financial instructions with few assurances that the rules they are complying with today would remain in place. When regulatory stability is eroded by changing political dynamics, the consumer suffers from financial institutions' inability to rely upon a consistent regulatory environment.

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. 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, ultimately stifling innovation and limiting access to credit.

It is crucial that appropriate checks and balances are in place given the scope and importance of the CFPB. It is also important to insulate the Bureau from political shifts with each new director that could reduce its ability to impartially ensure a fair and competitive marketplace. Congress should act before the Supreme Court decides the CFPB's fate by sending legislation to the President's desk that would create a bipartisan commission governance structure – bringing the bureau in line with other regulatory agencies.

Regulatory Actions

Enforcement and Supervision

Director Kraninger has emphasized the need to use all the CFPB's tools to prevent consumer harm. This includes properly educating consumers and establishing clear regulations in addition to ensuring compliance through supervision and holding bad actors accountable through enforcement. A directive to utilize all of the Bureau's facilities marks a departure from how the CFPB has historically emphasized the enforcement process as a regulatory tool and focused a large portion of industry interaction through enforcement actions. CBA appreciates Director Kraninger's charge to use all four of the Bureau's tools that allow the financial services industry to serve customers while ensuring consumers are protected. However, CBA members continue to raise concerns that the new directive has not worked its way throughout the Bureau, as many CFPB examiners continue to present new issues on previously settled matters of law, lookback periods, and issues remediated by other government agencies through their supervision processes.

Additionally, it has been brought to our attention that self-reported issues are receiving unbalanced and overly punitive penalties. As the Bureau has stated, regulators should encourage financial institutions to "self-report, self-examine and provide restitution where appropriate." The CFPB's response to self-reported issues needs to

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 4103 (2010).

be consistent with this belief, within the scope of previous regulatory actions. Anything to the contrary would be counterproductive to furthering a well-regulated, consumer-focused banking system.

Sound supervision should prevent consumer harm while still allowing financial institutions the flexibility to develop new products and services to better serve customers. Examiners need to streamline procedures and work with other regulators to create an efficient supervisory regime that protects consumer interests and establishes clear rules of the road for financial institutions. CBA members still find examiner communication lacking as there seems to be a persistent disconnect from CFPB leadership. The result is more arduous, duplicative and inefficient exams for financial institutions that leave less time and resources to improve policies, procedures and serve our customers.

To this end, we strongly encourage the CFPB to ensure that coordination with other regulatory agencies remains a high priority and do more to streamline exam processes. CBA member banks are often supervised by multiple federal regulators as well as 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, among others. 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 or substantially similar documents are often sought by multiple entities, and repetitive inquiries are often made to the same people inside supervised institutions, requiring additional time and effort to respond to each duplicative inquiry. Better interagency coordination is needed to minimize the cost and burden to financial institutions, allowing 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. The Treasury Department, in its 2017 report on financial services, recognized this as problematic and recommended a single entity act as a traffic cop or coordinator to minimize wasted effort by both public and private entities. CBA supports this approach to increased regulatory coordination.

Cost Benefit Analyses

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." Clear and rational regulations that are promulgated with an awareness of economic impact encourage better understanding for all stakeholders of the associated benefits and provide helpful data to ensure consumers' access to credit is not impeded with unnecessary and costly rulemakings. We believe these objectives are best met through a robust public comment process, firm adherence to formal rulemaking, and flexible implementation after a final rule is issued. 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 Dodd-Frank Act.

Remittance

In April 2019 the CFPB issued a Request for Information Regarding Potential Regulatory Changes to the Remittance Rule ("Remittance RFI"). In the Remittance RFI, the Bureau sought comment on two aspects of its Remittance Transfer Rule, subpart B of Regulation E (the "Remittance Rule"): (1) the pending July 2020 expiration of a temporary exception that, if certain conditions are met, allows insured depository institutions to estimate the exchange rate and certain fees on remittance transfers, 12 CFR 1005.32(a) ("Temporary Exception"); and (2) the Remittance Rule's 100-transfer safe harbor that provides an exemption from the

Remittance Rule for institutions that send 100 or fewer annual remittance transfers, 12 CFR 1005.30(f)(2). CBA appreciates the Bureau's willingness to work with industry participants to find a solution to this impending problem. Bank-provided remittance transfers are an important service for bank customers. Without action by the Bureau, the Temporary Exception expiration will have the perverse effect of reducing consumer choice, forcing bank customers to use less convenient or more expensive services, and leave some consumers without alternative means of sending transfers that they send today through their banks. Accordingly, CBA requests that the Bureau:

- Recognize the distinct segment of the remittance transfer market that is served by banks; and
- Utilize its existing authority to permit banks to provide estimated disclosures so that they can continue providing remittance transfer services to their customers with the same worldwide reach that their customers are accustomed to today.

The Remittance Rule implementing section 1073 of the Dodd-Frank Act (codified at section 919 of the Electronic Fund Transfer Act ("EFTA")) established a comprehensive consumer protection system for consumers sending remittance transfers from the United States to individuals and businesses in foreign countries. The Remittance Rule requires consumer disclosures that include the price of a remittance transfer (including most fees and the exchange rate), the amount of currency to be delivered to the recipient, and the date the funds will be available to the recipient.

Although disclosures are generally required to be exact, section 1073 of the Dodd-Frank Act provided a time-limited exception allowing insured depository institutions that satisfy specified conditions to estimate certain fees and the exchange rate. The Remittance Rule incorporated this exception. Congress initially set the exception to last for five years, until July 2015, and authorized the Bureau to extend the exception further, to July 2020, if the expiration "would negatively affect the ability of [insured institutions] . . . to send remittances." In 2014, the Bureau made such a determination and extended the exception to July 21, 2020. In doing so, the Bureau explained insured institutions were, for some transfers, unable to disclose exact exchange rates or fees and that the Bureau did not expect solutions to this problem to emerge before July 2020.

Recently, the Bureau assessed the Remittance Rule ("Assessment"). The Assessment found that, in 2017, bank and credit union-initiated remittance transfers made up less than 5 percent of the total volume of remittance transfers but accounted for 28.2 percent of the total value of remittance transfers. The Assessment also found that, although the percentage of banks using the Temporary Exception dropped since the Remittance Rule took effect 11.6 percent of banks reported using the Temporary Exception in 2017 for 10.2 percent of their transfers (or 6.4 percent of all bank remittance transfers).

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 has also finalized a delay of 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 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 have urged the Bureau to grant an immediate extension of the compliance date for the entire 2017 Rule. Without an immediate extension, banks will expend resources unnecessarily to achieve compliance with a rule the Bureau is reconsidering and may materially change.

The Bureau's small dollar rule has greater impact on products outside of the short-term lending space. The Bureau should strongly consider exempting 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 short-term, small dollar loans, including some wealth management products and bridge loans just to give two examples. To address this concern, the Bureau should also clarify 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.

Financial Innovation

Financial services innovation benefits consumers by promoting financial security, inclusion, and well-being. New and innovative financial products and services can greatly expand access to credit for all consumers, while providing improved access to important financial information, and increased customer safeguards. Congress recognized the great utility financial services innovation has for consumer protection in Title X of Dodd-Frank when it charged the CFPB with ensuring "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation".[3]

The Bureau's finalized innovation policies within the Office of Innovation are vital steps in ensuring that financial institutions are able to best serve their customers with innovative products and services that require a flexible and accessible regulatory environment. The recently finalized changes to the No-action letter (NAL) process has opened the door for more financial institutions to innovate to better serve and protect their customers, as well as bring new, financially underserved customers into the fold. For instance, in January 2020, the CFPB granted a NAL to Bank of America to facilitate the bank's funding arrangements with housing counseling agencies (HCAs)

[3] 12 U.S.C. § 5511(b)(5) (2012).

certified by the U.S. Department of Housing and Urban Development (HUD). There are more than 1,600 HUD-certified HCAs serving more than one million households annually. These agencies offer pre-purchase homeownership counseling to potential borrowers looking to purchase their first home.

CBA believes this NAL reflects well on the CFPB's recently revised NAL policy, which is intended to complement enforcement. Bank of America based its application on the template from the CFPB's previously issued NAL to HUD in September 2019. This NAL also reflects the CFPB's commitment to use the NAL as a safe-harbor tool. As a result, Bank of America has entered into a limited type of third-party relationship to facilitate consumer counseling and education without fear of counterproductive RESPA concerns.

However, CBA remains concerned about the data aggregators and the consumer data security. We recognize the importance of customers having the ability to choose which apps to share their financial information with to manage their financial health. CBA believes consumers should be able to use their apps in a safe and secure manner, and we urge the CFPB to take a more proactive role in making sure consumers are educated about how to manage their data security and privacy.

Debt Collection

CBA recognizes the important role debt collection plays in proper functioning consumer credit markets, reducing credit losses from non-repayment and promoting overall access to affordable consumer credit. We support the Bureau's goals of updating the Fair Debt Collection Practices Act (FDCPA), modernizing its communication standards, and generally enhancing consumer protections.

As the Bureau has acknowledged, the FDCPA is limited to third-party debt collectors and does not provide a valid legal basis for regulating creditors enforcing loan agreements. Congress enacted the FDCPA to establish ethical guidelines consumer debt collection by third-party debt collectors. As such, CBA strongly opposes placing FDCPA-like restrictions and requirements directly on creditors outside FDCPA authority. They are unwarranted and incongruent with the lender-borrower relationship, which is usually a long standing one motivated by strong business incentives on the part of creditors to help borrowers successfully repay their debt obligations.

One example of why revisions to the FDCPA should apply only to third-party debt collectors are contact frequency limits. "One size fits all" call frequency limits create significant consumer harms if applied to creditors collecting their own debts. Of chief concern, "one size fits all" call frequency limits do not recognize the differences between individual consumers and different portfolios and will negatively impact consumers that need financial assistance. "One size fits all" call frequency limits placed on creditors will result in more late fees, negative credit reporting, account closures, repossessions, foreclosures, litigation, and fewer consumer benefits from hardship programs, and as such, should not be applied to 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.

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."[4]

The Dodd-Frank Act mandated expanding the information collected under Regulation C, HMDA's governing regulation. In 2015, then-Director Cordray used the Bureau's discretionary authority to increase the number of loan-level HMDA data fields reported and publicly disclosed, further increasing the complexity and costs of HMDA reporting beyond those fields mandated by Dodd-Frank. This new data set, collected for the first time in 2018, was reported to the government on March 1, 2019.

Expanded data collection and reporting poses serious risk to consumer privacy by introducing even more sensitive loan data into the public domain.[5] Specifically, the expanded set of publicly available HMDA data provides ample data scraping opportunities for companies to piece together information related to the loan and borrower to "re-identify" the consumer and engage in unsolicited targeted marketing. There is no mechanism for consumers or lenders to opt-out or protect disclosure of this sensitive personal and financial information from entering the public domain.

CBA has long been concerned about the sensitive nature of HMDA data and believes the discretionary data fields added by the CFPB in 2015 pose privacy risks to consumers while also mandating extraordinarily high annual compliance costs. CBA applauds the CFPB's decision to revisit the 2015 Rule to closely review the data fields that will be collected, stored and ultimately made available to the public. CBA encourages the CFPB to eliminate those discretionary data fields that are not required by statute, that are unduly onerous to collect and report, that provide present marginal value in furthering HMDA's objectives, and that create or contribute risk of consumer re-identification.

Complaint Database

CBA supports recent initiatives to make the CFPB complaint database more usable for the public and industry. Efforts to clearly disclose unverified complaints are a helpful first step in level-setting data contained in the database. Further, encouraging consumers to work with their financial institution prior to submitting a complaint will lead to more consumer issues being resolved in a timely and efficient manner. Establishing tools to contextualize complaint data and recognizing the massive amount of inquiries that financial institutions ably and efficiently redress each day will leave consumers informed and better position financial institutions to combat consumer issues.

Banks and credit unions have strong incentives to maintain deep, well-informed, mutually satisfactory relationships with customers. Our members have robust complaint management procedures regardless of the CFPB's database to ensure that disputes are resolved as quickly and easily as possible to keep the customer happy with their financial services provider. Furthermore, federal regulatory agencies already regularly examine every depository institution to ensure their strong and effective complaint management systems are functioning properly.

CBA urges the Bureau to continue to review consumer complaint data for accuracy and validity before publication to protect consumer privacy and prevent dissemination of misleading information.

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[4] 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

[5] If a consumer wishes to purchase a home, he/she must provide confidential financial data that lenders in turn must report for HMDA purposes; most of which the CFPB releases to the public.

Section 1071 Small Business Rulemaking

CBA supports H.R. 5574, the "Preserving Small Business Lending Act of 2020" that would repeal Dodd Frank Act Section 1071 and ensure robust small business lending operations at depository institutions continue to main street businesses. Understanding the political realities of H.R. 5574, CBA strongly urges the Bureau to take 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 Section 1071 is not as simple as data collection for other lending products, such as residential mortgages. Business lending parallels is not comparable to residential mortgage lending. Home Mortgage Disclosure Act ("HMDA")-like reporting for business lending activity intended to reveal potential discrimination is a flawed premise because the two transactions are inherently different 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.

- HMDA-reported mortgage loan applicants 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 presents two serious challenges for Section 1071 rulemaking:

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 analyses 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 for qualified applicants, CBA and its member institutions cannot stress enough the importance of well-balanced rules under Section 1071. Overly burdensome data collection requirements will stifle small business lending, greatly increase compliance costs for small business lenders, and lead to costly litigation. Key to this rulemaking is lenders' ability to address 1071 reporting compliance with already existing reporting systems (e.g., Community Reinvestment Act, etc.) in order to ensure minimum market disruption. These systems will need to be automated and accurate. Adherence to systems already in place will allow lenders to streamline data collection.

TRID Assessment

The TRID Rule implemented the Dodd-Frank Act's directive to combine certain disclosures that consumers receive under TILA and RESPA in connection with applying for and closing on mortgages. As such, this rule advances a very important mortgage-related reform of the Dodd-Frank Act, laying out the key informational documents that consumers receive in the mortgage lending process.

Pursuant to section 1022(d) of the Dodd-Frank Act, the Rule's assessment that is currently underway must address, among other relevant factors, the Rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals of the TRID Rule as stated by the Bureau. Sections 1098 and 1100A of the Dodd-Frank Act set forth two goals for the TRID Rule: "to facilitate compliance with the disclosure requirements of [TILA and RESPA]" and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."

CBA supports clear and accurate disclosures and well-regulated markets where well-crafted rules provide effective information and consumer protections. We share the Bureau's goals of assuring that these disclosure regulations succeed in providing consumers with information needed to navigate the mortgage origination and settlement process. Consumer protection is only part of the focus, however, because the Bureau must also observe the dual responsibility of simplifying compliance, and ensuring that markets for consumer financial products and services operate "transparently and efficiently to facilitate access and innovation," and that "responsible, affordable mortgage credit remains available to consumers."[6] The assessment must be guided by these twin objectives: facilitating consumer protection *and* improving market operations.

Accordingly, CBA supports the Bureau's efforts to gather relevant cost data via structured interviews and surveys with industry participants in order to assess firms' implementation and other ongoing costs. However, consultation with our members suggests that that precise cost data attributable to implementation efforts will be very difficult to obtain. These discussions reveal that historical cost data from the TRID implementation period dating from 2013 to 2015 (and beyond) were not identified as TRID-specific implementation costs. At that time, mortgage lenders faced multiple compliance deadlines, including implementation of new Ability-to-Repay, Loan Officer Compensation, and Home Mortgage Disclosure Act (HMDA) regulations. Mortgage lenders did not attribute implementation expenses on a per-regulation basis; instead, they generally apportioned costs to overall "mortgage compliance." This is particularly true for the TRID Rule, which established a disclosure "grid" that affected other mortgage-related requirements. For instance, efforts to comply with new HMDA requirements regarding application outcomes or changes to the Uniform Residential Loan Application (URLA) and valuation disclosure forms under Equal Credit Opportunity Act would have been tightly intertwined with

[6] 15 U.S.C. 1639b(a)(1).

TRID's LE and CD implementation processes. Because all these requirements had to work in tandem in lenders' loan origination systems, dissecting only TRID-related costs was unfeasible, if not impossible.

We believe that the assessment must attempt to quantify the TRID Rule's benefits with rigor. The Bureau should have concrete metrics demonstrating the existence of, or degree of "improvement," that the TRID Rule achieved over the previous RESPA and TILA regimes. To that end, we believe the Bureau's consumer benefit analysis should not only seek to measure purported improvements in individual understanding of the new disclosure forms, but also must seek to identify consumer behavior changes. Consumer surveys should determine if more borrowers shop for mortgages after TRID. If so, what is the scale of the difference, and is it possible to isolate the impact of disclosure changes from the evolving access to online information and availability of digital consumer facing applications that have occurred over the past 10 years? Quite simply, the Bureau's consumer survey should measure whether TRID changed consumer understanding or behavior in a manner that justifies the tremendous costs of the rule.

Lastly, we urge the Bureau to make targeted TRID reforms to benefit all mortgage stakeholders, including consumers, by reducing compliance burden while also promoting simplicity and clarity in the mortgage process. The list of targeted reforms has been submitted to the Bureau via requested comments on January 21, 2020.

Consumer Advisory Boards

The Dodd Frank Act established various advisory boards at the Bureau to "provide information on emerging practices in the consumer financial products or services industry", and the Consumer Advisory Board (CAB) has often been the leader on many of these initiatives. However, despite its mission outlined in Dodd-Frank and under the CAB's charter, very few financial institutions serve on the CAB. Financial institutions are often the experts on emerging consumer financial practices, products and services, yet their voice is quite muted at these important CAB functions. More financial institution representation is necessary to give a more rounded and full opinion on the vital issues the CAB is statutorily mandated to address.

Similarly, CBA applauds the efforts of the Taskforce on Federal Consumer Financial Law. CBA believes the new Taskforce presents a good opportunity for the Bureau to conduct an objective, holistic review of consumer financial laws and eliminate outdated, redundant and wasteful red tape. The new Taskforce's efforts should allow the CFPB to focus its resources where consumer protections are most needed and remain alert for new and emerging threats. CBA looks forward to working with the Director on this promising initiative.

Qualified Mortgage

CBA applauds the Bureau's recent decision to propose an amendment to the Qualified Mortgage (QM) rule. The Bureau's position is consistent with a coalition representing the mortgage industry, relevant trades, including CBA, and consumer and civil rights groups. Together these groups advocated for leveraging and bolstering existing underwriting standards, eliminating the 43% debt-to-income ratio (DTI) cap and Appendix Q, and maintaining an explicit safe harbor. CBA supports the Bureau's temporary extension to the effective date of the proposed alternative, which will help to ensure a smooth transition for the home loan market.

The Bureau is well-positioned to improve the QM rule to better protect borrowers and the financial system from excessive risk, while responsibly preserving access to homeownership for credit-worthy borrowers. CBA differs from critics who over-inflate the importance of DTI in a borrower's ability to repay (ATR). Pursuant to the Dodd-Frank Act, DTI is a mandatory element of the ATR statutory requirement, which means lenders must document a borrower's income, assets, employment, credit history and monthly expenses. The Bureau's position simply retains the ATR requirements, while not making DTI the sole indicator of a borrower's ability to repay. Mortgage loans are evaluated using a wide range of factors which provide a multidimensional measurement of risk. Borrowers with a history of successfully managing larger debt burdens should not be precluded from the home loan market due to a single, simplistic measurement.

CBA looks forward to working with the Bureau on this issue to ensure a smooth transition and to create a safer and more inclusive mortgage market for all consumers. With the patch set to expire January 2021, CBA supports the Bureau's continued efforts to make appropriate adjustments to the QM rule and ensure a smooth introduction into the home loan market.

Conclusion

Improving the financial lives of consumers is a goal that unites lawmakers, regulators and industry. Achievement of this shared goal occurs when there is a stable and even-handed regulatory framework that produces clear and reasonable rules of the road to protect consumers and allow for a robust financial services market.

The Supreme Court decision on Seila Law v. CFPB could have dramatic and lasting ramifications on the future of the Bureau. Regulatory stability and transparency will not be realized until the Bureau's governance structure allows for the debate and deliberation of multiple stakeholders with diverse experiences and expertise. Congress should immediately pass legislation to create a bipartisan commission of five, Senate-confirmed commissioners that would provide a balanced and deliberative approach to supervision, regulation, and enforcement of rules and regulations that oversee the financial services sector and provide consumers needed safeguards.

CBA stands ready to work with Congress and the CFPB to implement the suggested legislative and regulatory improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

Rich L. Hunt

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March 10, 2020

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

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 Semi-Annual Report to Congress. The Credit Union National Association (CUNA) represents America's Credit Unions and their 115 million members. We request this letter be added to the record of the hearing, and we appreciate your consideration of our views.

Credit unions work every day to advance their communities and empower their members' financial well-being. It is critical that the regulatory structure to which credit unions are subject, as well as the regulations that they must follow, enable them to meet the diverse and evolving financial services needs of America's credit union members. There are several steps that Congress and the CFPB should take to ensure credit unions can continue to be consumers' best financial partner.

A Bipartisan Commission at the CFPB, as proposed by Elizabeth Warren and President Obama, Is Essential to Ensuring the Bureau's Independence

We urge Congress to consider changes to the CFPB's structure to align it with the legislation that then-Harvard Professor Elizabeth Warren and President Barack Obama proposed to Congress in 2009, and which Republicans in Congress supported in the early years of the Bureau's existence. Recently, Representative Blaine Luetkemeyer (R-Mo.) introduced the "Consumer Financial Protection Commission Act," which would establish a five-member bipartisan commission to lead the Bureau. CUNA has repeatedly called on Congress to bring stability and accountability to the CFPB and, as a result, we strongly support this latest effort.

The current structure—with a single director—gives too much authority to one person and does not provide meaningful oversight and accountability. It ultimately fails consumers. First, it disrupts consumer protection and functioning markets in an interest to achieve a political agenda that suits the party of the president; second, it produces frequent and severe changes in policy that increase costs of compliance that are generally passed on to consumers in the form of higher interest rates and fees, making credit and services more expensive and less available, particularly to vulnerable borrowers. While entities that must comply with the ever-changing regulatory perspective that the Bureau's structure produces may have a loud voice, be assured that the consumers the Bureau was intended to protect are the ones who pay the ultimate price of this misguided structure.

To ensure consumers benefit from both strong protections as well as regular access to products and services, Congress should enact legislation that changes the Bureau's leadership structure to a multimember, bipartisan commission. A multi-member commission, as envisioned by the original proponents of the Bureau, would enhance consumer protection by ensuring that diverse perspectives are considered prior to finalizing rules and prevent disruptions caused by leadership changes. Credit union members and other consumers would benefit from transparent 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 type of political approach is a disservice to the consumers Congress has entrusted the Bureau to protect.

Proponents of the CFPB often argue its present structure renders it politically independent; but in less than a decade, the CFPB has proven itself to be independent only from the minority political party. The Founders of the Republic understood that true political independence comes from having multiple voices at the decision-making table, as opposed to a single decision maker.

Finally, we find folly by the argument that a commission would not be a better structure because the Senate has shown itself unable to fill other boards and commissions. Americans expect their legislative leaders to work it out in the interest of all consumers, not in the interest of political posturing. They should not have to pay a price because Senators are unable or unwilling to exercise a basic function of Article II of the Constitution.

As we said when the CFPB was originally proposed,

> *Consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections, and CUNA agrees that a CFPB could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions.*[1]

A decade later, this remains our view. The Bureau could be an effective way to achieve important consumer protections, if Congress takes the steps to fix the Bureau by changing the structure to a bipartisan commission as originally envisioned by then-Harvard Professor Elizabeth Warren and President Obama and as previously supported by former House Financial Services Committee Chairman Jeb Hensarling and several current Republican members of this committee.

The CFPB's Execution of Its Regulatory Agenda Should Ensure Credit Unions and Other Providers Are Able to Provide Efficient, Safe and Affordable Products and Services

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 significantly 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 mistakes and irresponsible practices of other industry stakeholders.

Outlined below are high-level priorities and recommendations credit unions have provided to the CFPB regarding its regulatory approach and several specific rules:

Regulating America's Credit Unions

CUNA has strongly urged the Bureau to closely monitor the impact that 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. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders subject to federal prudential regulation, then it could spend more time focusing on entities that may be

[1] Letter from Credit Union National Association to House Financial Services Committee Chairman Barney Frank. July 14, 2009.

actively engaged in objectionable practices that exploit consumers. We believe this can be accomplished without sacrificing important consumer protections provided by credit unions.

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when supervised and examined by a regulatory agency that has familiarity with the characteristics that differentiate credit unions from other financial services providers. For that reason, the CFPB should aim to work more closely with the National Credit Union Administration (NCUA) throughout the rulemaking process and use its statutory authority to transfer consumer protection regulation supervision of the largest credit unions to NCUA. The NCUA understands the credit union model and operational issues and is best equipped to examine and supervise credit unions for regulatory compliance.

Effectively Using Statutory Authority

In the wake of the financial crisis, Congress contemplated the need for exceptions to certain rules and crafted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to authorize the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not needlessly hampered by those rules. Congress deliberately 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]

Congress' words are unambiguous and clearly grant the CFPB the authority to exempt any class of covered entities from its rules. CUNA has strongly urged the Bureau to use this authority to help protect credit union members from the many 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. However, it is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to consider, in the course of promulgating new rules or changes to existing rules, whether the regulations credit unions are presently following need to be changed. In short, if credit unions are not contributing to the problems that the Bureau is trying to address, then they should not be subject to the rules targeting those problems.

Debt Collection

The Bureau is in the process of promulgating the first set of rules under the 40-year old Fair Debt Collection Practices Act (FDCPA). As you know, this law was enacted to establish guidelines and limitations on the practices of third-party debt collectors. Many credit unions use third party collectors to assist with the collection of delinquent accounts, and when they do so, the collection practices are subject to the FDCPA.

In passing the FDCPA, Congress excluded lenders collecting their own debt (first-party collectors) from the law's coverage because it recognized, unlike third-party collectors whose relationship with the debtor exists solely to collect payments, first-party collectors have significant incentive to protect their good will and maintain an ongoing banking relationship with the borrower long after the collections process has been concluded. This relationship-based approach to first-party debt collection holds true today and, therefore, CUNA would strongly oppose any effort through legislation or regulation to expand the FDCPA to credit unions that collect their own debts.

[2] 12 U.S.C. § 5512(b)(3)(a).

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 targeted toward underregulated payday lenders should be crafted so as not to inhibit credit unions from offering affordable small dollar loan products to members in need. CUNA has called on the Bureau to revise its current payday rule to allow more credit unions to enter the short-term, small dollar lending space. Such revisions would include creating a broader, express exemption for credit union loan products and working with the National Credit Union Administration (NCUA) to expand the partial carve-out for the Payday Alternative Loan I (PAL) program to cover the recently established PAL II option.

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 better balance necessary consumer protections with a more tailored regulation that allows consumers access to desired products and services. In this instance, the Bureau should adopt several revisions to the pending proposed rule:

- Increase the "normal course of business" safe harbor threshold from 500, as proposed, to 1,000 remittance transfers;
- Increase the thresholds for both the proposed exchange rate exemption and third-party fees exemption to 2,000 or fewer transfers; and
- Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period.

Historically, remittances have been a significant and, depending on a credit union's field-of-membership, popular service offered to members. CUNA believes the Remittance Rule, as it currently stands, has made it increasingly difficult for the nation's credit union members to obtain a service that is important to the financial well-being of many individuals.

Home Mortgage Disclosure Act (HMDA)

The Bureau has consistently 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 CFPB chose to adopt a HMDA Rule in 2015 that disproportionately burdened credit unions with finite resources despite no evidence of past wrongful conduct. This overly broad treatment makes little sense especially when considering credit unions' field of membership requirements.

While some HMDA relief was provided to smaller institutions as a result of S. 2155 - Economic Growth, Regulatory Relief, and Consumer Protection Act, CUNA recommends the CFPB to consider additional modifications to Regulation C that would provide meaningful, reasonable accommodations to credit unions:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary;
- Reduce the HMDA data set for all credit unions to only those data points specifically required by statute; and
- Increase the open-end line of credit and closed end mortgage loan reporting thresholds to exempt credit unions with smaller mortgage lending portfolios from HMDA reporting.

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). Recently, the CFPB issued an advance notice of proposed rulemaking on whether to propose revisions to the definition of QM considering the planned expiration of the Temporary GSE QM "patch." This temporary category of QM is scheduled to expire in January 2021.

In response to the reconsideration of the GSE QM "patch," CUNA has recommended the Bureau explore the following amendments to the rule to preserve access to sustainable loans for creditworthy borrowers and avoid market disruption:

- Eliminate from the general QM category the debt-to-income (DTI) ratio requirement and the associated Appendix Q;
- Maintain and enhance the existing ATR regulatory language; and
- Maintain the existing QM statutory safe harbor restrictions that prohibit certain risky loan features (e.g., no terms over 30 years, no negative amortization, no interest-only payments, no balloon payments, documented and verified income, etc.) and clarify provisions related to documentation and verification of income.

Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

In the past, the Bureau engaged in the practice of "regulation by enforcement," especially in regard to the "abusiveness" standard. The Bureau's "I know it when I see it" approach has resulted in uncertainty to the financial services marketplace and presents due process concerns. CUNA is supportive of the Bureau's recent steps toward establishing clear standards for and transparency in what is considered "abusive" behavior. However, the recent policy statement on abusive should be merely the first step on the path toward greater clarity.[3]

Regarding the process for a future action, CUNA recommends the Bureau:

- Continue to solicit stakeholder feedback on the "abusiveness" standard to determine whether a future rulemaking is necessary;
- Clarify that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance; and
- Clarify and reaffirm the Bureau's narrow authority under the Dodd-Frank Act in regulating the business of insurance and that UDAAP is not a backdoor to regulate insurance activities.

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-mandated 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.

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[3] CFPB Announces Policy Regarding Prohibition on Abusive Acts or Practices (January 24, 2020) available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/

Industry Outreach

CUNA values the outreach the CFPB has engaged in with the credit union industry. We appreciate the meetings, discussions, and roundtables conducted throughout the country, and we encourage the CFPB to continue with this engagement. These efforts will assist in the agency's understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

In particular, the CFPB's Credit Union Advisory Council (CUAC) is a valuable asset, and we are pleased that the Council is actively utilized by the Bureau. We support a statutory requirement for this Council, as well as longer terms for CUAC members, such as three-year terms. CUNA also supports roundtable discussions with credit unions of all sizes throughout the country before rulemakings are conducted that could affect credit union operations. Roundtables can be conducted throughout the United States, in various locations, to ensure feedback is representative of all credit unions. We also encourage the Bureau to conduct discussions with Credit Union Service Organizations (CUSOs).

Furthermore, CUNA encourages the Bureau to provide frequent webinars and open communication through all channels with industry stakeholders about new rules and requirements. This outreach is critical for smaller financial institutions with fewer compliance resources.

Cost/Benefit Analysis to Rules for Credit Unions

The Bureau prides itself on being a data-driven agency. Unfortunately, there have been Bureau rulemakings that lacked or did not demonstrate sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking.

CUNA urges the Bureau to base its rulemakings on thorough data and research. The Bureau should also be wholly transparent in its reliance on data, ensuring the public has access to the same information that the Bureau relies on as a foundation for its rulemakings.

Guidance and Implementation Support

The past several years has seen a massive increase in consumer financial services regulations. This increase in regulations is particularly burdensome for credit unions which, unlike big banks, do not have dozens of legal experts in house to assist with compliance questions.

CUNA encourages the Bureau to provide compliance resources to the industry, such as Frequently Asked Questions (FAQs) with interpretations, to assist industry stakeholders on regulatory implementation. An example of helpful FAQs was the Department of Housing and Urban Development's Real Estate Settlement Procedures Act FAQs, which the industry regularly used as a resource.

We also encourage the Bureau to conduct webinars on final rulemakings, with opportunities for questions and answers from Bureau staff. The Bureau should house all of its compliance resources, including recorded webinars, final rule summaries, and FAQ documents in a central location on its website. The Bureau should also conduct annual outreach with industry stakeholders, especially credit unions, to receive feedback on its current compliance resources and what additional resources would help the industry.

Financial Health, Literacy, and Educational Outreach Efforts

The most effective way to protect consumers is through education. Credit unions are uniquely positioned to provide financial education resources to members and to focus on consumer financial well-being. Credit unions are instruments to bring cooperative credit to communities. Because their members have equal ownership stakes in the credit union, it has a direct interest in promoting the financial literacy and sound financial judgment of each member.

CUNA encourages the CFPB to work with our organization, credit unions, and the National Credit Union Foundation in its consumer education efforts. We are all effective partners because our priority is the financial health of consumers.

Furthermore, CUNA strongly recommends the Bureau utilize financial education efforts to guide consumer behavior. This approach, rather than additional rulemakings to guide consumer choices, provides the foundation for solid consumer financial health. Consumer education is proactive, not reactive, and should be the Bureau's default when addressing consumer financial services issues or industry practices. CUNA, credit unions, and the Foundation are able and willing partners in consumer education initiatives implemented by the Bureau.

Conclusion

As CUNA stated when the Dodd-Frank Act was enacted:

> *"Consumers of financial products, especially consumers of products and services provided by currently unregulated entities, need greater protections and a consumer financial protection agency could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions. In order for such an agency to work, consumer protection regulation must be consolidated and streamlined; it should not add to the regulatory burden of those who have been regulated and performed well, such as credit unions."*[4]

The need for consumer protection remains, but rulemakings must be targeted to address the problems in the industry and exclude credit unions from additional requirements when credit unions are not engaged in the problematic activity.

We look forward to collaborating with the CFPB and Congress 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

[4] Letter from Credit Union National Association to members of the House of Representatives regarding H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (June 20, 2010).

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NAFCU
National Association of Federally-Insured Credit Unions

March 9, 2020

The Honorable Michael Crapo
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Re: Tomorrow's Hearing on "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress"

Dear Chairman Crapo and Ranking Member Brown:

I write today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in regard to tomorrow's hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 120 million consumers with personal and small business financial service products. NAFCU appreciates the Committee's ongoing oversight of the Consumer Financial Protection Bureau (CFPB) and efforts to promote financial inclusion and consumer protection. We welcome this opportunity to share our thoughts on some issues pertinent to the CFPB.

First, NAFCU would like to highlight our position on the CFPB's ongoing rulemaking to revise the definition of qualified mortgage (QM) under the ability-to-repay/QM rule in light of the scheduled expiration of the Government-Sponsored Enterprise (GSE) Patch. In NAFCU's comments on the rulemaking, we emphasized that the GSE Patch has been a key factor in credit unions' ability to lend to members of their communities, especially those of low- and moderate-income, to help them achieve homeownership. We asked that the CFPB grant an extension of the GSE Patch until revisions to the QM definition are finalized to alleviate market disruptions. On that point, we are pleased that Director Kraninger indicated in her January 17th letter to lawmakers that the CFPB will at least extend the GSE Patch until a new rule is finalized.

However, we would discourage the CFPB from pursuing a QM definition that uses the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) as a proxy for underwriting requirements (the "APOR approach"), which Director Kraninger indicated in her letter is the likely direction in which the CFPB is headed with its proposed rule. As NAFCU noted in both our initial comments as well as a January 21st joint letter with a coalition of consumer groups and financial services trades, we support: (1) the continued use of a modified debt-to-income (DTI) ratio in conjunction with certain compensating factors, which could be used in the underwriting process and would provide guidance to creditors on their use; and (2) significant changes to Appendix Q to rely on more flexible and dynamic standards for calculating income and debt. We also have a concern that the APOR approach could ultimately not be the best option for consumers. Above all, we think maintaining access to affordable and sustainable mortgage credit

The Honorable Michael Crapo
The Honorable Sherrod Brown
March 9, 2020
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should be a key objective of this rulemaking, and we ask the Committee to help enforce this message to the CFPB.

NAFCU would also like to reiterate our support for Director Kraninger's efforts to provide financial institutions with regulatory certainty and targeted relief, while focusing the CFPB's efforts on bad actors. Credit unions have a long history of providing affordable and responsible financial services to their members and were not responsible for the predatory lending practices that led to the financial crisis. Nonetheless, the credit union industry has been greatly impacted from the onslaught of post-crisis financial regulation.

In the last decade, over 1,500 federally-insured credit unions have been forced to close their doors or merge with other credit unions, which amounts to more than 20 percent of the industry. A large majority of those credit unions that closed or merged were small in asset size, and as such, could not afford to comply with all the rules promulgated by the CFPB. NAFCU appreciates the CFPB undertaking a review of its rules and hopes to see more relief targeted at community institutions. Many credit unions cannot afford to comply with complex rules and would otherwise be forced to stop offering services to members. Although the CFPB already provides for some exemptions based on an entity's asset size, NAFCU strongly believes that the CFPB can do more, such as increasing the exemption threshold, or considering exemptions based on an institution's characteristics and activities. NAFCU asks that the Committee encourage the CFPB to utilize its authority in Section 1022 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to provide targeted exemptions for credit unions while still ensuring its rules regulate bad actors.

Lastly, NAFCU has long held the position that given the broad authority and awesome responsibility vested in the CFPB, a five-person commission leadership structure would provide consumers and regulated institutions alike with more continuity in policymaking over the course of time. Given the recent legal challenge to the CFPB in *Seila Law* before the U.S. Supreme Court, we believe it is an optimum time for Congress to consider moving the CFPB leadership structure to a bipartisan commission.

We appreciate your leadership and ongoing focus on issues important to credit unions, and we look forward to continuing to work with the Committee and the CFPB on these topics. Should you have any questions or require any additional information, please do not hesitate to contact me or Janelle Relfe, NAFCU's Associate Director of Legislative Affairs, at 703-842-2836.

Sincerely,

Brad Thaler

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Senate Banking Committee