

THE SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

HEARING BEFORE THE COMMITTEE ON FINANCIAL SERVICES U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS

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THE SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Thursday, June 13, 2024

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

The committee met, pursuant to notice, at 10:45 a.m., in room 2128, Rayburn House Office Building, Hon. Patrick T. McHenry [chairman of the committee] presiding.

Present: Representatives McHenry, Lucas, Sessions, Posey, Luetkemeyer, Huizenga, Wagner, Barr, Williams of Texas, Hill, Loudermilk, Davidson, Rose, Steil, Timmons, Meuser, Fitzgerald, Garbarino, Kim, Donalds, Flood, Lawler, Nunn, De La Cruz, Ogles, Waters, Velázquez, Sherman, Meeks, Scott, Lynch, Green, Cleaver, Himes, Foster, Beatty, Vargas, Gottheimer, Gonzalez, Casten, Pressley, Torres, Horsford, Tlaib, Garcia, and Pettersen.

Chairman MCHENRY. The committee will come to order.

Without objection, the chair is authorized to declare recess of the committee at any time.

This hearing is titled “The Semi-Annual Report of the Bureau of Consumer Financial Protection.”

Without objection, all members will have 5 legislative days within which to submit extraneous material to the chair for inclusion in the record.

I will now recognize myself for 4 minutes to give an opening statement.

OPENING STATEMENT OF HON. PATRICK T. MCHENRY, CHAIRMAN OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM NORTH CAROLINA

Last month, the Supreme Court upheld the funding structure of the Consumer Financial Protection Bureau created by Congress in the Dodd-Frank Act. My Democratic colleagues quickly called it a victory. Mr. Chopra, you say the Bureau will now be “firing on all cylinders.” Unfortunately, for my friends across the aisle, I am not sure if they fully understand what the Court’s ruling means, and this may not be the one that they think it is.

The opinion stated Congress has the power to determine or create novel funding mechanisms for Federal agencies, referring to Congress’ power of the purse. I think that is a good thing. This also solidifies that Congress has the power to change a funding stream. Republicans have a legislative solution to make the Bureau more transparent and accountable to the American people. This is something we should all be in favor of, so I encourage my Democratic

colleagues to hold off on their victory lap. Instead, they should work with Republicans, with the Consumer Financial Protection Bureau (CFPB) on the appropriation cycle and enact commonsense reforms to rein in the Agency. I can guarantee you, if the political shoe is on the other foot in the future, you will wish you had worked with us now. I think civility here would be a welcome and good thing.

We are already seeing the harm a radicalized CFPB can inflict. Director Chopra, under your leadership, the so-called independent Agency has become, in my view, an arm of President Biden's political operation. Data facts, economics, and sound analysis take a backseat to politically favorable talking points. Even the Washington Post has called the numbers "fuzzy" surrounding how much consumers would actually save in so-called junk fees, if they were cut. You are taking your eye off the ball on consumer financial protection and are instead chasing a shiny political object in an election year. We see how this ends. It is never a good outcome for our financial system or the American people.

While shirking your responsibility to consumer protection, you have also painted entire swaths of the financial services sector as bad actors. I want to remind you, Director Chopra, these are not all nameless, faceless institutions. They are made up of hard-working employees, many of whom are neighbors and members of the communities we represent. The Biden Administration's inflammatory rhetoric does nothing to root out actual fraudsters and bad actors, but it does sow distrust and fear among the very people who rely on the services provided by these financial institutions.

Speaking of bad actors, yesterday, the committee held a hearing to better understand the toxic workplace culture at the Federal Deposit Insurance Corporation, the failed leadership of Chairman Gruenberg. Director Chopra, you are a member of the Federal Deposit Insurance Corporation (FDIC) Board of Directors. You also played a role in forcing out Mr. Gruenberg's predecessor, who, by all accounts was working to address the abusive behavior within the FDIC and trying to address and help employees. It is also alarming that you have not directly commented on Chairman Gruenberg's mistreatment of his staff and the failure to address the misconduct at all levels of the Agency. It is safe to assume that if this were a private sector financial institution, you would have quickly called for the removal of its leadership. Instead, we see partisanship on full display. Once again, I urge you to stop putting politics ahead of people and work with and help improve the financial services marketplace.

I will now recognize the ranking member of the full committee, the gentlewoman from California, for 4 minutes for an opening statement.

OPENING STATEMENT OF HON. MAXINE WATERS, RANKING MEMBER OF THE COMMITTEE ON FINANCIAL SERVICES, A U.S. REPRESENTATIVE FROM CALIFORNIA

Ms. WATERS. Thank you very much, Mr. Chairman. First, let me say to Director Rohit Chopra, thank you for your patience this morning. I know that you have been waiting for about 45 minutes. I am very pleased that you took the time to not only recognize

many of the members that you work with, but I also want to thank Mr. McHenry. Despite the fact that he waited, he decided to go ahead and get the meeting started, and I am very pleased about that, and I hope that the other members will show up. They are being held up by Mr. Trump, who decided to come over and hold a meeting, and that is what is happening this morning.

So I am pleased to welcome you back, Mr. Chopra. After 14 years of attacks from congressional Republicans and the industry, last month the Supreme Court sided with consumers and affirmed what I and committee Democrats have been saying all along: the CFPB is constitutional and here to stay. Now, never in a million years did I think I would be thanking Justice Clarence Thomas or applauding his ultra-conservative court, but they made the right decision to put consumers first by upholding the constitutionality of the CFPB and rejecting the baseless attacks led by greedy payday lenders, extreme Make America Great Again (MAGA) Republicans, and a convicted felon and former President. Even a conservative Supreme Court was able to see right through the privilege challenges to the CFPB's funding structure.

While my colleagues on the other side of the aisle still choose to remain willfully ignorant about this, the Constitution is clear that Congress can fund the executive grant, including the CFPB, the Federal Reserve, and other agencies, however it likes and has done so since the Nation's founding. Now, I am pleased that the Agency can continue its work as the only Federal watchdog for our Nation's consumers in the financial marketplace.

Under the leadership of Director Chopra, the CFPB is combating excessive and illegal junk fees, fighting against housing discrimination and redlining, and holding mega banks accountable for breaking the law and harming consumers. In addition, this week, the CFPB released a proposal that would ban medical debt from credit reports. If finalized, this rule will relieve medical debt for more than 15 million Americans with medical bills and ensure that health issues no longer mean families have to endure financial hardship due to lower credit scores. I applaud the CFPB for this proposal and for its work to cut access to credit card late fees and reduce the typical fee from \$32 to \$8. Additionally, the CFPB has returned an astounding \$20.7 billion to 205 million consumers harmed by financial institutions since we created Dodd-Frank. Given the successful track record, it is no surprise that 82 percent of Americans, including 77 percent of Republicans, support the Agency.

However, despite all of this great work and the recent Supreme Court ruling, Republicans have made clear that their effort to undermine and eliminate the Agency will continue. There is a long-term strategy by radical extremists to not just challenge and undermine the CFPB, but also critical Federal regulators like the Federal Reserve, which are also funded outside of the annual appropriations, as well as the independent funding of Social Security and Medicare. The very first financial services resolution Republicans brought to the House floor demonizes Social Security, Medicare, and it has been so-called socialist programs that are destroying America. The assiduous Project 2025 similarly calls for eliminating CFPB and ending the Federal Reserve (Fed), Social Secu-

rity, and Medicare as we know it. Rest assured, committed Democrats will never ever stop fighting to block these harmful and misguided attacks, and when it comes to consumers, we will continue to craft legislation to build on the historic efforts of the CFPB.

I thank you very much for the time, and I yield back.

Chairman MCHENRY. Well, thank you. I would note for the record that the announcement of this morning schedule had almost every Democratic member of the committee here before 10 a.m., which I would mark is a record for this Congress, and so there is a legislative benefit to apparently the former President's schedule. Unfortunately I could not take advantage of it because, well, I was the only Republican, so anyway.

Ms. WATERS. Thank you for recognizing that we were here.

[Laughter.]

Chairman MCHENRY. If only this would be a regular occurrence with us being on time.

I will now recognize the chairman of the Subcommittee on Financial Institutions and Monetary Policy for 1 minute, Mr. Barr.

STATEMENT OF HON. ANDY BARR, CHAIRMAN OF THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND MONETARY POLICY, A U.S. REPRESENTATIVE FROM KENTUCKY

Mr. BARR. Thank you, Mr. Chairman. Director Chopra, good to see you again. You continue to inject uncertainty into markets, take partisan actions that harm consumers, and show disdain to Congress and industry. You unfairly mislead and propagandize to vilify businesses and their employees through charged rhetoric accompanied by enforcement threats without adjudication. You act unilaterally and arbitrarily, often outside any statutory mandate routinely, without engaging in notice-and-comment rulemaking in violation of the Administrative Procedures Act, and engage in extortionary civil investigative demands devoid of any due process where you act as judge, jury, and executioner.

CFPB's analytical work under your tenure has lost credibility and increasingly amounts to junk economics. The CFPB is opaque under your tenure. Recently, you even refused to provide a witness for a hearing in the subcommittee that I chaired. Your current goal is to supply talking points for the President and his reelection campaign, all while denying Americans access to the credit they desperately need at a time of inflation.

Chairman MCHENRY. The gentleman's time has expired. I will now recognize the ranking member of the Financial Institutions Subcommittee, Mr. Foster, for 1 minute.

STATEMENT OF HON. BILL FOSTER, RANKING MEMBER OF THE SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND MONETARY POLICY, A U.S. REPRESENTATIVE FROM ILLINOIS

Mr. FOSTER. Thank you, Mr. Chairman and Director Chopra, and I have to say I concur with the chairman that Congress does, in fact, work far better when Democrats show up and Republicans take a walk.

Since this committee has helped create the CFPB in 2010, the Bureau has effectively fulfilled its mission to protect consumers from unfair, deceptive, and abusive practices in financial markets, and despite being supported by 82 percent of Americans, the Bureau has come under continual attack from those wishing to undermine its mission. Just last month, the Supreme Court rightly sided with the CFPB against a misguided attack on its funding structure. In fact, the hyper partisan, poison-filled appropriations process that we are seeing in Congress this week is a perfect example of why the CFPB is appropriately shielded from the appropriations process, and this decision by the Supreme Court prevents harmful disruptions to the Bureau's work and preserves countless protections that it provides for everyday Americans.

The Bureau's work is felt across the country, including in my State of Illinois. as technology progresses, time and again, the CFPB has responded to new and emerging challenges stemming from new scams, new financial products, and rapid changes to the financial system. So thank you again for joining us, and I yield back.

Chairman McHENRY. Today we welcome the testimony of Hon. Rohit Chopra, director of the Consumer Financial Protection Bureau. Director Chopra, thank you for being here. You will have 5 minutes to give an oral presentation.

Without objection, your written statement will be made part of the record.

You are now recognized for 5 minutes.

STATEMENT OF HON. ROHIT CHOPRA, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CHOPRA. Thank you, Chairman McHenry, Ranking Member Waters, and members of the committee, thank you for holding this hearing.

Since its creation, the CFPB has returned \$20.7 billion to consumers through our law enforcement and supervision, and we have created unquantifiable returns for the over 205 million Americans and honest businesses harmed by the illegal practices that we have stopped. We are currently on track to save people \$20 billion in junk fees every year, and we also expect to process over 2 million complaints from Americans this year. Since my last report, we have advanced a number of key initiatives on credit cards, on medical debt, artificial intelligence, open banking, and more. My written testimony and the CFPB's semiannual report details much of this work.

Today, though, I want to highlight the pressing need for the Financial Services Committee and the CFPB to address the protection of personal data and financial privacy in an increasingly digital and algorithmic marketplace. The U.S. has to lead when it comes to a competitive and innovative market of the future, and at the same time this cannot be at the expense of unchecked surveillance like we have seen in China and other markets. I see this as a critical issue with high stakes for our economy, our national security, and our liberty.

For over 50 years, the House Financial Services Committee has played a major role to protect data in our society. The Fair Credit

Reporting Act is one of America's only data protection laws that covers all background reports assembled about Americans for use and sale by third parties. The Fair Credit Reporting Act (FCRA) includes meaningful restrictions to prevent abuse and misuse of data. Section 1033 of the Dodd-Frank Act provides consumers with the right to access and control their personal data, and the CFPB takes very seriously our mandate when it comes to these laws on privacy and data protection. We are progressing toward finalizing open banking rules to develop data-sharing standards that are secure and have privacy protections when people transfer their personal financial data to competing companies.

We finalized a key part of the framework last week, which will set the stage for finalizing the rest of the rule this fall. We are also moving forward to propose a rule under the Fair Credit Reporting Act to restrict uses of certain sensitive data by so-called data brokers, who are assembling dossiers about each of us without our consent or permission. We are pursuing this as part of a broader government effort, a bipartisan effort to protect our national security and our servicemembers from countries of concern that might seek to purchase and exploit sensitive data on Americans. We see how this is not just for fraud, but this is also to undermine our country.

While the CFPB is taking important steps on protecting data, it is critical that House Financial Services acts, too. In my discussions with members on both sides of the aisle here, there is clear interest in doing more to protect privacy, ranging from the intrusive communications related to trigger leads when applying for mortgages or addressing concerns about the privacy of our sensitive payment transaction data. Big Tech giants are increasingly entering financial services and harvesting personal data, and since my last appearance, there has been public reports that large financial firms, ranging from PayPal to JPMorgan Chase, are developing plans to fuel more targeting and advertising using their data. These plans to potentially monetize sensitive financial transaction data are a reminder that the U.S. is slowly lurching toward more financial surveillance and even financial censorship.

We are eager to work with this committee and all of you to do more to protect against abuse and misuse of data, including by enshrining more protections into law. We also believe there are more opportunities to advance legislation to accelerate open and decentralized banking in our country that also further protects people's most sensitive data. So I do think there is so much more we can do together to tackle this problem. I am really encouraged by all of the efforts that we have been doing together, and I would like to continue to work on that with you. Thank you. I look forward to your questions.

[Prepared statement of Mr. Chopra follows:]

**PREPARED STATEMENT OF
ROHIT CHOPRA
DIRECTOR
CONSUMER FINANCIAL PROTECTION BUREAU**

**BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES**

JUNE 13, 2024

Statement Required by 12 U.S.C. §5492

The views expressed herein are those of the Director and do not necessarily reflect the views of the Board of Governors of the Federal Reserve System or the President.

Chairman McHenry, Ranking Member Waters, and Members of the Committee, thank you for inviting me to this hearing to present the Consumer Financial Protection Bureau's (CFPB) submission of its Semiannual Report to Congress.

Since the creation of the CFPB, the agency has returned \$20.7 billion to consumers through law enforcement activity and created unquantifiable returns for the over 205 million Americans harmed by the illegal practices that we have stopped. We are currently on track to save customers \$20 billion in junk fees every year. The CFPB created a consumer complaint function that is on track to process over 2 million consumer complaints about banks or financial companies this year. And since I last reported to you, our victims relief fund returned our billionth dollar to consumers harmed by frauds and scams.

But our work is far from over. Since my last report to Congress six months ago, we have advanced several key initiatives on financial data, medical debt, and credit cards.

First, we are making major progress when it comes to financial privacy in an increasingly digital marketplace. I hope we can all agree that the United States must lead when it comes to a competitive and innovative market for consumer financial services. At the same time, this cannot be at the expense of unchecked surveillance and intrusion of privacy, as we have seen in China and other markets.

The CFPB has continued to make progress towards finalizing open banking rules to develop data sharing standards and privacy protections when customers transfer their financial transaction data to third parties. We finalized the first part of the open banking framework last week – governing standard setting bodies – which will set the stage for finalizing the rest of the rule this fall.

We are also moving forward to propose a rule under the Fair Credit Reporting Act to restrict uses of certain sensitive data by data brokers. Around the world, digital data brokers have proliferated. Right now, data brokers compile dossiers on Americans that can be easily purchased by scammers and stalkers, as well as by state and non-state actors in countries of concern. This proposal is part of the broader government effort to protect our national security and servicemembers from countries of concern that might seek to purchase and exploit sensitive data on Americans.

While the CFPB is taking important steps on protecting financial data, it is critical that Congress must act too. Since my last appearance, there have been reports that large financial firms like PayPal and JPMorgan Chase are planning to use sensitive data about people's income and spending to fuel surveillance-based targeting. These plans to monetize sensitive financial transaction data are a reminder that the United States is slowly lurching toward more financial surveillance and even financial censorship.

For decades this Committee has played a critical role when it comes to protecting financial data, while also promoting competition and new offerings. The CFPB is actively monitoring developments in the market, and we are eager to work with all of you to put into place stronger protections against abuse and misuse of data. We also believe there are opportunities to advance legislation to accelerate open and decentralized banking in our country.

Second, we recently announced a proposal to prohibit the inclusion of medical bills in credit scores and credit reports. This rule will prevent debt collectors from using the credit reporting system to coerce patients to pay inflated or erroneous bills. In addition, our research showed medical bills on credit reports make loan underwriting less accurate. The probative value of medical bills is so low that it is causing lenders to deny safe and profitable loan applications with low credit risk, including as many as 22,000 mortgage applications every year.

We are also looking more broadly at emerging medical financial products, including ones offered in health care facilities. We welcome further discussions with all of you on how to address potential harms before they become widespread.

Lastly, I would like to highlight our work in the credit card market. In March we narrowed an exemption from Congress's prohibition on unreasonable and disproportionate credit card penalties. We revisited a regulatory exemption for fees up to \$41. Since the exemption was originally created, we have obtained access to better cost and fee volume data. We looked at that data and found the exemption was about five times too high, so we lowered it to \$8 for the largest card issuers. Credit card companies will still be able to penalize customers, and they will be able to charge a fee exceeding \$8 if they can show that it's reasonable. We estimate that American families will save more than \$10 billion in late fees annually once that rule goes into effect.

More broadly, we all need to pay close attention to this market. For the first time ever, last year credit card balances exceeded \$1 trillion. And in the last two years we have seen delinquencies rising to levels we have not seen in years—over 10 percent of credit card balances are now more than ninety days delinquent.

The CFPB recently looked at credit card pricing over time and discovered that the banks are charging 400 basis points more in interest spread than they did 10 years ago. The difference is \$25 billion to American families every year.

We have also found that most of this excess is coming from large banks. For all credit tiers, large banks are charging 800 basis points more than smaller banks and credit unions.

Late fees are also higher now than they have been since passage of the CARD Act. Late fees reached \$4 billion per quarter at the end of 2022, nearly doubling since 2015.

And we've seen major issues in credit card rewards programs as well, which often drive credit card spending. Our complaint database is full of stories of disappearing points, points that can't be redeemed, or rewards that are retroactively devalued. Last month we held a joint hearing with the Department of Transportation, where we heard first-hand from people who have experienced bait-and-switch tactics, or who simply can't navigate the labyrinthine obstacles card companies create to make it hard to redeem points.

Since credit cards are the most common lending product in our country with over 750 million cards in circulation, it's critical that we have a market where small financial institutions can compete to offer consumers the best possible rates and fees.

These are just some of the many initiatives the CFPB is pursuing to ensure that our financial system is helping American families and businesses get ahead. Thank you for the opportunity to appear before you. I look forward to taking your questions.

Chairman MCHENRY. Well, thank you, Director Chopra. I will now recognize myself for 5 minutes for questions.

I want to begin with data privacy. This is something that you spent time on as director of the Bureau. It is something that we in Congress have spent some time on, the last few Congresses, on trying to update our data privacy standards for financial services, so let us start there. When we discussed our data privacy bill at the beginning of this Congress and passed it out of committee, we focused on Gramm-Leach-Bliley. Speak to the portfolio of data privacy laws that you enforce and how you do that.

Mr. CHOPRA. Yes. So I would think about the range of privacy laws that are not just financial in nature. The Fair Credit Reporting Act is not just about the credit reports we think about. It is also about all the other data that is collected about us and sold. You also put into law Section 1033. That is about how consumers have control over their data and how they can permission it and protect it. There are also key data security standards that the laws that you oversee have important roles to play.

So, Mr. Chairman, the CFPB is very, very eager to make sure we are enforcing this properly and that we are developing the rules that are fit for the times of artificial intelligence and more intrusive data collection.

Chairman MCHENRY. Okay. So you spoke specifically in your opener about bad actors internationally harvesting Americans' financial data through unregulated or loosely regulated means. Explain.

Mr. CHOPRA. Well, when this committee 50 years ago was involved in putting into place protections, they were worried about these companies collecting data and sometimes rumors about us for sale, so the answer was the Fair Credit Reporting Act, but we see there are new types of data brokers that may not see themselves as having to comply with that. I think we all need to do work together to make sure that they know they have to respect those data protection.

Chairman MCHENRY. There are a lot of controversial things that the Bureau does. It is uncontroversial that you are the repository of data, financial data protection, and there is no controversy around your enforcement of existing laws. So let us drill down on FCRA, Gramm-Leach-Bliley, and 1033. Gramm-Leach-Bliley standard from the 1990s, it was much more about the financial use of data among affiliates within a corporate structure. We have a bill to update those data privacy standards modeled in large part out of California, and we have had a set of questions in exchange about secondary use of that data, but how would you in a measured way update the Gramm-Leach-Bliley data standards?

Mr. CHOPRA. I think we should accept that notice that we get all the time is not really effective when it comes to having meaningful control. I would urge you all to think about some commonsense permissible purposes or restrictions that really draw the line of how that data can be in some way shared or reused or monetized. In some ways, it is similar to what was put into place in the Fair Credit Reporting Act as well.

Chairman MCHENRY. Okay. You mentioned trigger leads. Why do you mention trigger leads as it relates to data protection?

Mr. CHOPRA. Well, it is a privacy issue. I think that when you apply for a mortgage loan, sometimes you then get inundated with calls sometimes from sketchy players. I do not think most people think that when they apply for something there is going to be a deluge that everybody knows about it, and mortgage lenders feel that their customers say to them did you tell everyone. This is a privacy issue, too, in addition to one about fairness.

Chairman MCHENRY. Okay. Now, 1033. I have a concern that if your regs are put in place, your proposed regs, that this really entrenches incumbents and the value of incumbents with financial data. How do you address that?

Mr. CHOPRA. I think what we want to do is make sure that you cannot have a bait-and-switch. You cannot say I am offering you an auto loan, really to harvest it and sell for other purpose. So what we are trying to do, Mr. Chairman, is find out with respect to secondary uses, product optimizations, how do we get that line right so that it does not really entrench anyone, but still respects people's privacy. The bait-and-switches that we see, we should have no tolerance.

Chairman MCHENRY. Okay. Do you have a timeline for this rule?

Mr. CHOPRA. We are going to finalize it this fall. My goal is October.

Chairman MCHENRY. Okay. With that, thank you. I know there are other specific questions members have, but thank you for addressing data privacy in particular. I will now recognize the ranking member, the gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I would like to, again, thank Director Chopra for the fantastic job that you are doing and the leadership that you are providing, and the way the consumers now have a real voice with your leadership. I want to talk about one more issue that I think is so important to all of the people of this country, and that is what you are moving to do on medical debt. I understand that you have moved to get started with a rule on medical debt. Will you explain to us what you are doing?

Mr. CHOPRA. Yes. So under the Fair Credit Reporting Act, Congress put into place a prohibition when it comes to medical information, but there has been a tweak in the rule from many years ago that has really allowed, in many cases, unverified medical bills to be permeating people's credit reports. What we have seen, Congresswoman Waters, is that the accuracy issues are so serious on those medical bills. We have a situation where people are facing a total surprise that something is on their credit report, they cannot rapidly fix it, and it really can jeopardize their ability to get that loan or to pass some background check. So we have looked at this issue for years. There is not even much predictive power of these medical bills. We have not proposed getting rid of medical credit cards or other medical loans, just these bills that are often stuck in an insurance company doom loop. We are going to be looking for feedback on this, but I think this will be a positive step in direct line with what Congress wanted of prohibiting this medical information on credit reports.

Ms. WATERS. Let me just go back to another concern that I have, and this is about late fees and junk fee. Well, I can tell you how

concerned I am about it. Why do you not just tell us exactly what you are doing about junk fees?

Mr. CHOPRA. Well, there is an all-of-government effort to combat this creep of fees that has really permeated throughout the economy. This is not something that is really a negotiated price. It is often not upfront. So we have taken a series of steps to make sure that existing congressional prohibitions, like in credit cards and in truth in lending, are being adhered to. At the end of the day, we think markets work best when people can see the prices upfront, compare it, and people offering the best service and price can win out. The more we shift this upfront, the better. I know there has been legislation passed by the House when it comes to things like hotels and tickets. We do need to do more to make our markets work free of these junk fees.

Ms. WATERS. Thank you very much. You have made it a priority also to hold large financial institutions accountable for their repeated violations of the law. In a speech, you said, "Corporate recidivism has become normalized and calculated as the cost of doing business," and I cannot agree with you more. I appreciate the approach you decided to take to rein in repeated misbehavior by nonbank firms that callously violate the law and harm consumers. Can you, again, further help us out by discussing the rule you issued to implement a public registry for nonbank repeated offenders and how it will help CFPB rein in bad practices in the marketplace?

Mr. CHOPRA. Well, I think it is a problem that when a small business or small company gets in trouble, they face being totally wiped out, but for the same exact conduct, a very large player really can just pay a fine and move on. There has to be some equal justice. When you have the same misconduct, there should be a similar sanction. You cannot have a situation where small businesses just get the hammer and everyone else is sort of getting a light touch. We have put into place a rule that will allow law enforcement to coordinate and stop repeat offenses before they go on. We have seen scammers set up shop in one State, get caught, move to another State. I think this is a needed effort to make sure we do end this practice of constant rinse/repeat offenses.

Ms. WATERS. Thank you so much. Of course we have seen banks like Wells Fargo repeatedly break the law, and then with regional bank failures last year, we saw how repeated supervisory warnings were ignored by Silicon Valley Bank, and more and more and more. Thank you for your work.

Chairman MCHENRY. I will now recognize the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Director, I am looking at a survey right now. Seven out of 10 consumers rank good fraud protection as their top consideration when choosing a financial service provider, and it stands to reason because in 2023, total global fraud costs reached almost a half a trillion dollars, including payments, check, and credit card fraud. This is clearly a major risk to our financial system institutions and American consumers. Unfortunately, your regulatory efforts will actually decrease financial institutions' ability to provide meaningful fraud protection by making it more costly to provide these services. For example, your flawed credit card late fee over-

draft and the credit card reporting rules or guidance on remittance transfers, impeding a financial institution's ability to charge consumers for a service they provide, is your attempt to make financial institutions public utilities and not free market businesses.

Do you recognize, Director Chopra, that fraud detection and prevention is very, very important, number one. Number two, and I know you care about consumers, do you recognize that the "junk fee agenda" will actually hurt consumers by reducing fraud prevention?

Mr. CHOPRA. So let me be very clear. What you are saying is not accurate in my view, respectfully. We have done so much to make sure that we can do more to detect and deter fraud. I think fraud, when it comes to identity theft, when it comes to the use of generative AI, is going to be an increasing issue, and even old school check fraud is increasing.

Mr. BARR. I agree. Director, reclaiming my time. I agree that AI and all of these other technological innovations can help with fraud prevention, but do you actually talk to the financial service providers that you oversee about the junk fee agenda and how that is going to reduce their ability to invest in fraud protection? Do you actually talk to them about this, the regulated entities that you oversee?

Mr. CHOPRA. Very, very frequently.

Mr. BARR. Well, they tell us that you do not listen because what they are telling us is that your junk fee agenda is going to limit their ability to prevent fraud, and I want you to take a look at that. I think you need to take a look at that because if you do not, it is all junk economics.

Mr. CHOPRA. Well, we are doing a lot more. I am sorry.

Mr. BARR. Second question. Let me move on because I want to talk about data that is supposed to undergird your administrative decision making. Under your leadership, the data collection efforts and cost-benefit analysis have simply lost credibility. The Bureau has played fast and loose with the data you rely on, ultimately leading to harmful rulemakings that rely on junk economics. For example, the Bureau's so-called analysis of the deterrence effects of late fees is largely unjustified speculation that favors political results you seek. The overdraft rule ignores market trends and innovation and instead cites data that is more than decades old.

In the credit card late fee rule, your calculation of the impact to annual percentage rates changed significantly between the release of the proposed and final rules, relying on a mere assumption from a previous academic paper rather than any credible quantitative analysis. The mortgage closing costs, request for information (RFI), cites only two data points. Shockingly, for the credit header provision of the FCRA rulemaking outline, you are not even appealing to data at all. So Mr. Chopra, with so many examples of misuse or complete avoidance of data and increasing use of unjustified conclusions from what can only be loosely called analysis, how can the public or Congress trust the rulemakings or the administrative decisions that you promulgate?

Mr. CHOPRA. Well, some of it is really a balance. We try and make sure that we are using existing data that is already there because we often get feedback, including from you, about doing too

many collections. So we will rely and look at old studies as well as new studies to see changes in the market. I would say empiricism is a foundational part of the CFPB's work because that is a lens in how we can make the best possible decisions. I agree, sometimes we will not always have the newest and freshest in fast-moving markets, but it is also a balance about making sure we are not engaging in too much burden as well.

Mr. BARR. You have to do a lot better job because you just do not have credibility. The data is not there to support any of what you are doing.

Mr. CHOPRA. I would respectfully disagree.

Mr. BARR. I know you disagree with that. I disagree with you about that. The Bureau should want rigorous cost-benefit analysis to defend the Bureau's decisions. This is in the interest of the director's office. It is in the interest of the Bureau to have defensible data, and you do not have it. Final question, Director Chopra. Who decides if a civil investigative demand appeal is approved or denied?

Mr. CHOPRA. With Criminal Investigation Divisions (CIDs), sometimes they go to a district court. Sometimes they can go to appeal to the director. Oftentimes, it is negotiated before it goes through that appeal process.

Mr. BARR. Yes. So my time has expired, but this is the problem. You are the judge, jury, and executioner, and that is why people do not see the process as due process.

Chairman MCHENRY. The gentleman's time has expired.

Mr. BARR. I yield.

Chairman MCHENRY. The gentlewoman from New York, Ms. Velázquez, now recognized for 5 minutes.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Director Chopra, welcome, and thank you for being here.

Earlier this week, the World Bank upgraded its outlook for the global economy, estimating that it will expand by 2.6 percent this year on the strength of sustained growth in the United States; not Russia, in the United States. The Agency expects the U.S. economy to expand by 2.5 percent in 2024. All this is happening thanks to the economic policies President Biden and agencies like the CFPB are taking. Director Chopra, I am grateful for your work of putting over \$20 billion back in the pockets of working families. As the ranking member of the Small Business Committee, I am particularly grateful for consistently communicating the importance of spurring competition and making opportunities available to small businesses and new entrants.

I also appreciate that you have committed the CFPB to ensuring we have the data to make sure all Americans have the opportunity to access credit. For too long, we have marginalized huge numbers of our country because we lack clear data on lending. These policies will keep the U.S. a country where all small businesses can succeed. When you are creating rules, do you ever tailor them with smaller institutions in mind?

Mr. CHOPRA. Yes, and under my leadership, we have routinely, in many ways, proposed exemptions for them.

Ms. VELÁZQUEZ. Is it not true that over the last couple of years, you actually exempted smaller institutions from some of your re-

quirements, like the Section 1071 rule, to make sure they had the flexibility to serve their communities and grow?

Mr. CHOPRA. Yes. We exempted thousands of institutions in some of our rules.

Ms. VELÁZQUEZ. Have you not also provided smaller institutions with more time to comply with a new rule than their larger counterparts?

Mr. CHOPRA. Yes, substantially more time.

Ms. VELÁZQUEZ. Is it not also a fact that you have intentionally focused the Bureau's enforcement activities on larger repeat offenders and avoided going after smaller, less-resourced businesses?

Mr. CHOPRA. Yes. I inherited an enforcement docket that I think was too heavily focused on small players, and we have instead shifted to players engaged in nationwide market-wide harm.

Ms. VELÁZQUEZ. Thank you. From what I have seen of your work, the CFPB has incorporated the concerns of small businesses and their unique needs throughout its work, specifically when it comes to the final rule on credit card late fees. I understand that it only applies to the top 30 or 35 issuers. Is that not correct?

Mr. CHOPRA. That is correct.

Ms. VELÁZQUEZ. And that financial institutions under \$10 billion in assets are completely exempt, which includes small banks and virtually, all credit unions. Is that not also correct?

Mr. CHOPRA. That is right, and we see small banks and credit unions wanting to provide them tools to gain more share as they are offering lower rates on average and they are not building business models on back-end fees.

Ms. VELÁZQUEZ. I thank you for your thoughtful work on behalf of consumers and smaller institutions. Director Chopra, you and I have talked extensively about the need to enhance Federal disclosure requirements for small business financing. Increasingly, we have seen States becoming more active on commercial financial disclosures. Seven States have already passed laws requiring disclosures for small business borrowers, and seven additional States are debating similar measures. However, not all disclosures are created equal with some enacted laws requiring Annual Percentage Rate (APR) disclosures and others do not. What is the practical impact of this patchwork of requirements, both on commercial lenders and small business borrowers?

Mr. CHOPRA. One of the things that is important for the committee to recognize is many small businesses actually use both consumer credit, especially the smallest businesses, in addition to small business loans. I think comparability and standardization of how one can compare apples to apples is key, and I do encourage you to continue pushing for clear small business loan disclosures.

Ms. VELÁZQUEZ. Thank you. Mr. Chairman, I yield back.

Chairman MCHENRY. The gentlelady yields back. I will now recognize the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. Good morning, Mr. Chopra. You made a lot of comments a minute ago about data protection, and I think it is one of the most serious issues we have facing us today. My comment would be, if you are really serious about data protection, I hope that you work with us with regards

to us being able to rein in beneficial ownership and the rulemaking that goes with it. Originally, it was only four data points. Now it is 52 data points that we are looking at. That really endangers a lot of information on our citizens and businesses unnecessarily. This is where you can help us. If we can rein this in and get it back to where the rule originally was, we would sure appreciate your help on that.

Mr. CHOPRA. Some financial institutions and others have raised this with me. It is part of a Financial Crimes Enforcement Network (FinCEN) rulemaking, and I am actually happy to talk about that with you.

Mr. LUETKEMEYER. I look forward to it. One of the things that we talk about here is junk fees. That word really riles me up because it is not a legally enforceable term. It is something you guys have made up, but one of the things that is included in junk fees, in your definition anyway, is late fees. I have here a Cato Institute letter from Nicholas Anthony, 101 late fees charged by the government. Have you looked into any government late fees at all?

Mr. CHOPRA. Yes. Actually, I think there is a need to do a wholesale review of some of the fees that are being charged, even by government. There has been ongoing discussions about how to make sure that they are in line with what Congress wanted, that they are sensible, that we have a good policy around that, so I would really support looking at a lot of those fees.

Mr. LUETKEMEYER. Mr. Chairman, I would like to introduce for the record, without objection, the letter.

Chairman MCHENRY. Without objection.

[The information referred to was not submitted prior to printing.]

Mr. LUETKEMEYER. Thank you, also title insurance. Director Chopra, Congress explicitly omitted the business of insurance from CFPB statutory authority under Dodd-Frank. In fact, the business of insurance was explicitly excluded from the jurisdiction of CFPB because it is effectively regulated at State level. You have confirmed under oath and on the record before this committee that CFPB has no authority to regulate the business of insurance. Do you stand by that?

Mr. CHOPRA. Correct. The business of insurance is in the Federal Trade Commission (FTC) Act, the Consumer Financial Protection Act (CFPA). It is in the McCarran-Ferguson Act. It describes a certain set of activities related to it.

Mr. LUETKEMEYER. So why are you asking for information with regards to title insurance fees and trying to get in that business?

Mr. CHOPRA. Well, just so you know, we do regulate aspects of insurance. Certainly, the Real Estate Settlement Procedures Act, the CFPB, I think, for years has taken enforcement actions related to title. We have important roles when it comes to mortgage insurance. We also have a role in homeowner's insurance. So I think the business of insurance really relates to some capital and liquidity issues, but do know I am very aware about the restrictions we have, and we are trying to be very mindful about where we do have explicit authority.

Mr. LUETKEMEYER. Well, it would appear to me that there is a severe encroachment there on the insurance folks when you are

looking at this, at title insurance. I do not see any reason for the CFPB to involve itself.

Mr. CHOPRA. Well, the Real Estate Settlement Procedures Act specifically goes through how things are disclosed, including title insurance. It also talks about kickbacks.

Mr. LUETKEMEYER. If it is correctly disclosed, where is your authority?

Mr. CHOPRA. Well, I am happy to share with you, we have a range of authority as it relates to insurance in the mortgage market. Again, as it relates to the business insurance that the State regulators oversee, we respect their role completely.

Mr. LUETKEMEYER. Okay, very good. You talked a minute ago about credit cards for medical payments, and I wrote a letter to you some time ago. In fact, it was almost a year ago, actually, back in October 2023, and I got a letter back that did not answer my questions with regards to that. I am very concerned. It is a good way for some people to pay their bills. It is a regulated product, and yet you are trying to restrict that, from what I understand, and the questions in my letter were not answered. So let us try and go through them very quickly. Please indicate where the term “medical payment product” is used anywhere in statutory law.

Mr. CHOPRA. Let me just clarify. The rule we have proposed as it relates to credit reporting and medical debt does not include medical credit cards. So medical credit cards are a fairly more advanced innovation of recent years where there is point-of-sale loans or credit card brokering at the healthcare facility. We have been studying this market because it has been growing quite quickly, and it has been a source of some significant consumer complaints. We have not taken any sort of specific action on it, but I think we do want to understand when a patient is——

Mr. LUETKEMEYER. What is your authority to do that?

Mr. CHOPRA. Under the Truth in Lending Act.

Mr. LUETKEMEYER. Okay. To regulate medical product, medical payment product?

Mr. CHOPRA. No. So Congress in 1968 set the parameters for extensions of credit in the Truth in Lending Act and did assign authority to enforce that to the CFPB. So even if you are getting a third-party medical loan, regardless of where it is offered——

Mr. LUETKEMEYER. Thank you. My time has expired. I yield back, Mr. Chairman.

Chairman MCHENRY. The gentleman from California, Mr. Sherman, is recognized for 5 minutes.

Mr. SHERMAN. Mr. Chopra, thank you for all your Agency does. They do not give me enough time to go through the whole list of everything you have accomplished. I do hope that you are successful with limiting late fees on credit cards, and I know that is held up in the Court, but this is a chance to save \$10 billion annually for American consumers. Of course, with today’s computers, the cost that the bank incurs dealing with the issue, I mean, I remember in the 60s, the 70s, people, a human being would have to look at your late fee and then decide what to do. Human beings are not involved in determining what to do if my credit card payment comes in late.

Second, I want to thank you for your prompt response and look forward to working with you on the issue of getting your payment in by a particular hour because we in California are told your bill is due June 30. So if at 2:30 p.m. on June 30, you try to pay, you get a late fee. In fact, today, especially with automated systems, people think if it is due June 30th, they can watch the 11:00 news and still get their payment in on time, and then instead, they get a late fee.

I want to pick up on what the ranking member of the Small Business Committee pointed out. How important it is that you craft your regulations for small and community-based financial institutions, and I do want to say you are quoted as calling title insurance a junk fee, and you are shaking your head. You would not call that a junk fee, neither would I. Now, Senator Kennedy, with whom I have worked with well on a few things, has asserted that the CFPB is not following the law because this year, most recent year, the Federal Reserve has revenue but does not have earnings, and I think the senator may have it all wrong. It is true that due to higher interest rates, a smaller Fed portfolio, the Fed has not had extra money to transfer to the U.S. Treasury in a particular year, but Congress certainly did not expect that your operation would shut down or repopulate based on whether the Fed is making money in a particular year. That is why we use the word "earnings," but Senator Kennedy thinks that we use the word "net earnings."

No, net earnings is found elsewhere in the Federal Reserve Act, meaning that anyone looking at that act knows that there is a difference between net earnings, which is net profits and earnings, which is revenue. Of course, the senator seems to lose track of the fact that the Fed has made a lot of money in prior years, and there is nothing in the bill that says that your budget has to come from earnings in a particular year.

I do want to focus on manufactured identities. You hosted an academic research meeting on auto lending research in the first half of 2023. Manufactured identities cost the auto lending industry almost \$2 billion. That is up substantially. Will you consider studying different ways to prevent the fraud from manufacturer-synthetic identities?

Mr. CHOPRA. Yes. Industry and the regulators need to be thinking with Congress about future ways of doing identity verification. I think our way of doing it now is expensive, and it also does not deter fraud.

Mr. SHERMAN. I will also point out that our colleague, Mr. Foster, has the concept of digital identity for all Americans. That makes an awful lot of sense. Credit header data is used to combat fraud and to comply with the Know Your Customer requirements. People on this committee know how important those requirements are to our society and to me personally, but if we called a credit header data report a "consumer report," that would interfere with the process. Can we provide that credit header data is not a consumer report when used to comply with the Know Your Customer?

Mr. CHOPRA. Well, compared to others, it is sort of a short-form consumer report, but I take the point. It is important for financial institutions to be able to use certain information to combat fraud, and we are going to make sure we can keep that going.

Mr. SHERMAN. Thank you.

Chairman MCHENRY. The gentleman time has expired. The gentleman from Michigan, Mr. Huizenga, is now recognized for 5 minutes.

Mr. HUIZENGA. Thank you, Mr. Chairman. I would like to just start with submitting an article for the record from Law and Liberty, "Can the Fed Fund the CFPB?"

Chairman MCHENRY. Without objection.

[The information referred to can be found in the appendix.]

Mr. HUIZENGA. So the analysis from my Certified Public Accountant (CPA) friend from California, let us just say that is not a universal view of how the CFPB can or cannot be funded through those Federal funds.

Mr. Chopra, I want to talk a little bit about the complaint data base. I am assuming it would not surprise you if I told you that the complaint data base has increased nearly fivefold since 2022. I mean, earlier you just said, I think—I am sorry—I think it was 2 million complaints that you have. You are aware of that, correct?

Mr. CHOPRA. I do not know if it is exactly fivefold, but we have seen quite an increase.

Mr. HUIZENGA. Okay. Our data indicates fivefold or thereabouts. Would you be surprised, however, to hear that the duplicative narratives, when it comes to those complaints, are somewhat of a regular occurrence in the data base?

Mr. CHOPRA. Yes. We do have this issue, for example, when someone has a mortgage servicing issue. They may file it against the lender or the servicer or when there is multiple parties involved, but we also want to make sure that we are seeing how different users are using the system so that we can better control it.

Mr. HUIZENGA. Okay. So what I am hearing, I think you are trying to parse to say, well, it might be really the same complaint there or the same person, so that is why they are using the same language. According to third party and then you were, I think, acknowledging at the end there that, well, you are trying to figure it out.

Mr. CHOPRA. Yes. We are trying to see if there are some parties that are filing multiple. We are always policing.

Mr. HUIZENGA. Well, let us explore that a little bit. According to third-party analysis that we have received, it appears that some are using the CFPB's data base to discharge legitimate debt that they owe. That would be a concern. In fact, there are videos online that promise results if they follow certain steps, including using your data base, that there is going to be debt relief. For example, you have some narratives that are literally word for word, character for character being repeated thousands of times. In fact, the top narrative in the complaints this past year was repeated over 8,000 times. So I am assuming you cannot view this as a coincidence.

Mr. CHOPRA. Yes. Yes. We have to figure out to the extent that there are algorithms being used or AI being used or providers who are seeking to dispute that relief.

Mr. HUIZENGA. Yes. I think that trail of breadcrumbs is pretty clear.

Mr. CHOPRA. Yes. Yes, and this has been an issue for many years that we have to be always attuned to, and that is why when we forward it for——

Mr. HUIZENGA. I am so sorry. I have 2 minutes. I need to move on because I also need to touch on the FDIC. I know the chairman had done this. The independent report that had gone out, you did not mention that in your written opening, but do you agree with the findings?

Mr. CHOPRA. Yes. I think it is very important that the recommendations be effectuated quickly.

Mr. HUIZENGA. All right. So as the head of an Agency yourself, you agree, as the report said, culture starts at the top?

Mr. CHOPRA. Well, certainly I think leadership, the board is——

Mr. HUIZENGA. Okay. That is all right. I am looking for short answers. As a director of the FDIC, do you believe that you have a responsibility to ensure that there is a working environment that is free from discrimination, sexual misconduct, and harassment?

Mr. CHOPRA. Yes. The law delegates to the board the responsibility.

Mr. HUIZENGA. Okay. Let us explore that a little bit. Yesterday, Director McKernan indicated that although the FDIC is “run by a board, most of the decision making is actually done by the chair.” I assume that has been your experience, but I am curious. How much of the day-to-day operations are you involved in?

Mr. CHOPRA. I am not, but I try to make sure I understand all of the things that are appropriate for the board and certainly this issue.

Mr. HUIZENGA. Sorry. I have 50 seconds left. Based on the report and the widely acknowledged problems outlined by the Cleary Gottlieb report, are you prepared to play a more active role in making sure the culture is fixed at the FDIC?

Mr. CHOPRA. Yes, and since the report, I have been increasingly engaged in making sure that we are——

Mr. HUIZENGA. Great. Now, yesterday, some of my colleagues on the other side of the aisle stated that, “Female leadership was needed at the FDIC.” Now, we have talked about this before in committee and private, your active role in forcing out the last female chair of the FDIC.

Mr. CHOPRA. She actually resigned.

Mr. HUIZENGA. She resigned under a tremendous amount of pressure, sir, a tremendous amount of pressure. You talked to her privately. You talked to her publicly. It is a tremendous amount of pressure that you helped apply.

Mr. CHOPRA. I do not agree.

Mr. HUIZENGA. How would you respond to my colleagues who suggest—how would you suggest—my time. How would you respond to my colleagues who suggest female leadership is needed?

Mr. CHOPRA. Well, at the end of the day, we want diverse leadership so everyone feels included and valued.

Chairman MCHENRY. The gentleman’s time has expired.

Mr. CHOPRA. That is very important.

Mr. HUIZENGA. I yield back.

Chairman MCHENRY. I will now recognize the gentleman from New York, Mr. Meeks, for 5 minutes.

Mr. MEEKS. Thank you, Mr. Chairman. I want to start by saying, Mr. Director, how pleased I am by the Supreme Court's recent decision to uphold the funding structure of the CFPB. The CFPB has a long track record of success, helping hundreds of millions of people, constituents in both red and blue States, you know, and it causes them to be made whole. I hope that these types of funding challenges are now behind us so that the CFPB and you, Mr. Director, can remain focused on doing the good work of delivering consumer relief for the people, and that is why we created this Bureau, for the consumer, the only one that did not have a voice here in Congress.

Now, the CFPB has a wide variety of rulemakings underway, and I want to try to touch on two—hopefully, I have the time to do that—one, the proposals under consideration related to the Fair Credit Reporting Act. I appreciate your engagement on the issue of protecting consumers from identity theft. The impacts of this can be devastating, and I know we all want to make sure our constituents and loved ones are strongly protected from bad actors.

In a recent response letter to me and several of my colleagues, you stressed that “The Bureau takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering,” and that you will not issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. So I thought this was very good, so let me just make sure. I want to confirm that when you issue the proposed rule, it will not include restrictions that make it more difficult for banks to use their state-of-the-art tools to combat identity fraud and comply with anti-money laundering laws. That is correct?

Mr. CHOPRA. Yes. We are still going through the process of developing a proposed rule, but certainly fraud detection, verifying identity is just so critical to how the banking system works, and I know you know this well. We are seeing all sorts of entities trying to harvest data about people for illegitimate uses, stalkerware, national security issues, but when it comes to reasonable fraud detection, we want to make sure they can continue.

Mr. MEEKS. That is correct, and I thank you for that. Let me just follow up on that one real quick. How does the CFPB plan to tailor the rulemaking to distinguish between companies that only collect consumer data versus those that sell consumer data?

Mr. CHOPRA. Yes. So we are working on this in the scope of the Fair Credit Reporting Act, and I just want to raise, as Chairman McHenry and I were discussing, there is a need to update a lot of our data protection laws. I understand, the CFPB, we are going to administer our rules, but we are dealing with a statute that is old. I think it is time to constantly be thinking about ways that you all can be updating it as well, especially for the digital age and where we have fundamentally different threats.

Mr. MEEKS. Thank you for that. The second area is that the Bureau has said its proposed rule under Section 1033 would grant consumers more control over their financial data and protect it from misuse, discourage junk fees, and give consumers power to walk away from bad service. Now, I am very excited, actually, about that prospect because I hear that even at my own home, so this is good.

Under the proposed rule, data accessed from banks through data aggregators for primary use would be allowed, and because incumbent banks already have the consumer's data being considered in the rulemaking, they would not be subject to the limitations for assessing data that newer and smaller firms would be subject to. Given the fact that incumbent banks and other institutions already hold years of accumulated consumer data considered in the rulemaking, I am concerned that the limitations introduced by the proposed rule could mean that larger, more traditional incumbents will have a large competitive advantage compared to innovative fintechs, credit unions, and smaller banks. How would a rule issue ensure that newcomers and smaller players can compete on a level playing field?

Mr. CHOPRA. Well, that is exactly the goal. You will be able to take all of your data with that incumbent bank, permission it securely and safely to any bank, fintech, whatever it may be of your choice. This is a huge way of unlocking the hold that sometimes an incumbent has over you, and it is a slow way to ultimately get to faster switching. Consumers are going to be better off if they can quickly switch without going through lots and lots of paperwork and bureaucracy, and that is exactly what we are trying to achieve.

Mr. MEEKS. Thank you for that.

Chairman MCHENRY. I will recognize the gentleman from Georgia, Mr. Loudermilk, for 5 minutes.

Mr. LOUDERMILK. Well, thank you, Mr. Chairman. Director Chopra, thank you for being here.

In October of last year, 2023, the CFPB and the Department of Justice jointly warned lenders that denying lines of credit to borrowers based on the borrower's immigration status may be a violation of the Equal Credit Opportunity Act. Specifically, you warned that immigration status could be used as a proxy for protected characteristics and lead to civil rights violations. Now, I am concerned with this overall guidance. Others are concerned that it is just vague. I think it could have a chilling effect on certain sound risk-based lending practices, which could leave institutions with little choice but to lend to borrowers who are unlawfully present in the United States.

Does the Bureau still stand by this October 12 joint guidance on immigration status in lending?

Mr. CHOPRA. Well, I am happy to clarify. This guidance is very clear that you absolutely can use immigration status when you are thinking about—

Mr. LOUDERMILK. You cannot?

Mr. CHOPRA. You can.

Mr. LOUDERMILK. You can?

Mr. CHOPRA. It is very clear that you can. I think what we are trying to also warn about, you may have seen the enforcement action against Citigroup for discriminating against Armenian Americans. So national origin discrimination is illegal, so the guidance—

Mr. LOUDERMILK. That is different than immigration status.

Mr. CHOPRA. Oh yes. You cannot use national origin, but you can use immigration status, and what we are trying to say is almost exactly what you are saying. If it is a part of a risk determination,

that is fine. By the way, it did not have anything to do with unlawful immigration. It had to do with even immigration status green card versus naturalized citizen. It is much broader. So I hope we can do more to clarify that and make sure it is clear. The guidance does say you may use immigration status.

Mr. LOUDERMILK. So based on what you are telling me here, it definitely needs to be clarified because lenders out there are looking at is the CFPB trying to force lenders to lend to illegals.

Mr. CHOPRA. No, we are not trying to force lending to anyone, and I think we have gotten some questions about this, and we are going to try and continue to work with institutions who have questions, but overall, we have actually received some positive feedback from institutions about this.

Mr. LOUDERMILK. Can you clarify this to ensure that lenders can use whether or not somebody is here legally—

Mr. CHOPRA. Well, it is written in the guidance, so we will figure out—

Mr. LOUDERMILK. Right.

Mr. CHOPRA. I am happy to talk to you further, and especially, if you hear an institution that has specific concerns, we would be happy to meet with them at that—

Mr. LOUDERMILK. Let me just make sure we clarify because a lot of times things are said in committee, but by the time those who are here testifying get back to their organizations, things change. Is it unreasonable to assume that if someone because they are not clear on this regulation and we have seen—are we in an era to where there is not a perceived partnership between regulators and lenders or financial institutions. They see you guys as opponents because of the way that things have been operating. Taking that approach and with vagueness of a rule, they feel like that they have to make loans to those who are not here legally. You do not have to be a naturalized citizen to buy property, but if you are not here illegally, you are subjected to deportation. Do you agree that adds additional risk to a lender if they lend to someone who could be deported, and if they are, how do they recoup that?

Mr. CHOPRA. Yes. We never tell institutions who they have to lend to or that they have to lend to someone. What is prohibited under Federal law and where we have found issues is discrimination based on religion or discrimination based on national origin. That is codified in statute. So there is immigration status. What the guidance tried to articulate is just be wary that you are not engaging in certain types of prohibited discrimination, but you can use immigration status in your risk determination. What you said upfront, I think that is what the guidance is getting at.

Mr. LOUDERMILK. Well, I think it definitely needs to be clear and I will argue the point that you may not say that you are forcing a business to loan or act in a way, but through rules and through enforcement actions, indeed, not just you, but many regulators actually do.

Mr. CHOPRA. Well, respectfully, I think the issue you are concerned about, many of those individuals cannot even be authenticated under Bank Secrecy Act. So I think I am happy to talk with you further.

Mr. LOUDERMILK. All right. Thank you. I yield back.

Chairman MCHENRY. The gentleman yields back. The gentleman from Georgia, Mr. Scott, is now recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Excuse my cold. I have been on this committee 22 years, and no one has greater respect for my Republican colleagues than I do, to tell you the truth, but as the good Lord told David in the book of Psalms, the man I was named after in the Bible, he said this to him, "Ye shall know the truth, and the truth shall set you free." Here is the truth. In 2023 alone, the CFPB resolved lawsuits that required law breakers to pay consumers over \$3 billion in compensation and \$500 million in civil penalties. Under your leadership, Director Chopra, your leadership, the CFPB bill has held financial institutions responsible for engaging in predatory practices, ensuring fair treatment of consumers when they open accounts. Listen to this one very carefully: just in this past year as of May 2024 and also in 2023 alone, the CFPB resolved lawsuits that required law breakers to pay consumers \$3 billion in compensation and \$500 million in civil penalties.

You have an outstanding record, and not only your record, but the record of President Biden and your staff, and please tell them that we respect that. The truth is here, and that is what I wanted to get clear in the very beginning. No ill feelings to my Republicans. They have to do what they have to do, but I wanted to make sure that we spoke the truth for the American people.

Here is what I am concerned about, this repeatism. I want you to talk about that and let us know what you are doing with that because thanks to this little deal right here, these scam artists are doing a job on our American people and they are repeating it, and they look at it as a cost of doing business, and they will go in another part of the country and repeat the same thing. This is the issue before you today. Take a few moments and share with the American people how you are protecting them from these scam artists who do it repeatedly.

Mr. CHOPRA. I think it is a huge problem when someone can defraud people in one part of the country, get caught, and then set up shop elsewhere and almost do the same thing just with different names. We are going to do our part. We are looking more beyond fines, individual liability, more restrictions. We are setting up a registry to deter repeat offenders to have better law enforcement coordination. I think I would also urge all of you, and Senator Shelby, when he was on the Banking Committee, also raised concerns about the unfairness of the system when some people are held to account and others get off scot-free. I do want to urge you all to rethink on whether we should enhance some of the criminal liability provisions for some of these outright frauds.

Mr. SCOTT. Also I was here, as I mentioned, when Congress gave the CFPB the authority to establish a registry of nonbank offenders in the Consumer Financial Protection Act. Tell us why it is very important to include nonbank financial companies in any repeat offender rule.

Mr. CHOPRA. Well, we already have a list of insured banks and credit unions. It is a finite list where we know a lot, but when it comes to the tens of thousands or more of others, we have much less visibility.

Mr. SCOTT. Thank you, Director.

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

Mrs. WAGNER. Thank you, Mr. Chairman. Good morning, Director Chopra. Yes, let us talk some truth, and let us do it quickly with brief answers because I have a lot of questions here.

Do you believe, sir, financial institutions should engage in risk-based pricing when making loans to their customers?

Mr. CHOPRA. I do not think we should force it, but I think they often do because it is appropriate—

Mrs. WAGNER. Should they or should they not risk-based pricing when making loans? A simple “yes” or “no.”

Mr. CHOPRA. Again, I am trying to answer. It is not to order them, but it is appropriate for them to be able to measure risk.

Mrs. WAGNER. Yes, they have to measure risk in order to give a loan. Good. The credit card late fees and overdraft rules will make it harder for lenders to price loans according to the risk involved. Why is the CFPB writing rules that erode the fundamental principle of risk-based pricing?

Mr. CHOPRA. Actually, will not it encourage better risk-based pricing? I am not sure why making late fees in line with the congressional prohibition would undermine risk-based pricing. In fact, risk-based pricing, they have the data they need to price it more effectively, so I actually do not follow at all—

Mrs. WAGNER. Then answer this “yes” or “no.” Yes or no, is there a strong likelihood that by drastically reducing the fee for paying late, this rule will actually encourage more consumers to pay their credit card bill late?

Mr. CHOPRA. Well, I hope you are aware that—

Mrs. WAGNER. The answer is “yes” or “no.”

Mr. CHOPRA. No because credit card—

Mrs. WAGNER. Okay. Really?

Mr. CHOPRA [continuing]. companies have the ability to raise your interest rates if you are late. They have the ability to—

Mrs. WAGNER. It will not encourage more consumers to pay their credit card late? Really?

Mr. CHOPRA. No, no, no. You are forcing me to say “yes” or “no” and not allowing me to clarify, so I would like to get—

Mrs. WAGNER. I am going to clarify.

Mr. CHOPRA. Feel free.

Mrs. WAGNER. Really? If the point of the late fee rule is to reduce the penalty from \$32 to \$8, will it not be cheaper for the consumer to pay late?

Mr. CHOPRA. No. So you are allowed to charge a late fee in excess of \$8. The financial institution needs to show their math. The CARD Act bans unreasonable late fees. We are using an old formula to help them do that. They will still be able, do not worry, to punish their customers for paying late.

Mrs. WAGNER. All right. Let us talk about CFPB’s most recent CARD Act Report. It defines the term “persistent debt” as a consumer paying more for interest and fees on a loan than they are paying toward the principal in a given calendar year. Given that the credit card late fees rule will undoubtedly result in more consumers paying late—we are dropping it from 32 bucks to 8 bucks—

and, therefore, getting deeper into debt, is it not true that your late fee rulemaking will cause persistent debt to increase?

Mr. CHOPRA. Well, I guess I would say this. Would you not think that if a financial institution then raised the minimum payment, that person would then pay more, but they would be less likely to be in persistent debt? So the response is different—

Mrs. WAGNER. Director, your own rule indicates that more card holders will pay late. Your rule indicates that more card payers will be late.

Mr. CHOPRA. I think you are taking that out of context, but certainly, we want to make sure that the congressional prohibition, respectfully, that bans unreasonable fees has fidelity.

Mrs. WAGNER. Will you commit to measure the impact of the proposed rule on persistent debt and then require that the rule be rescinded if it does?

Mr. CHOPRA. Well, it would be illegal for us to require a rescission in that way, but certainly in our biannual CARD Act Reports, we will always seek to study all of these things that—

Mrs. WAGNER. You are encouraging persistent debt—

Mr. CHOPRA. We are not. We are actually encouraging common sense.

Mrs. WAGNER [continuing]. and encouraging people to pay late, Director Chopra.

Mr. CHOPRA. We are encouraging common sense.

Mrs. WAGNER. Well, let us go further. As part of the fee schedule charged by the CFPB for a Freedom of Information Act (FOIA) request, the CFPB charges \$23 per 15 minutes or \$92 per hour. A professional staff conducts a search for information, which may be a rate set by the Office of Management and Budget. Ninety-two dollars per hour to search for documents seems pretty darn high and very similar in concept to your definition of junk fee, which, again, you define as one in which the fee exceeds the CFPB's cost of searching and therefore leads to profit for the CFPB. Will the CFPB take action to examine this junk fee and reduce the amount charged for FOIA requests instead of profiting off of hardworking Americans who are simply seeking to learn about how government decisions are made within the opaque CFPB?

Mr. CHOPRA. Yes, I actually think those have only been charged 2 or 3 times in the past few years. It is very rare, but I will look at that.

Mrs. WAGNER. It is not very rare, sir.

Mrs. KIM [presiding]. The gentlewoman's time is up.

Mr. CHOPRA. I do not think actually—

Mrs. KIM. Director Chopra, you can respond to Mrs. Wagner's questions in writing.

Mrs. WAGNER. I yield back.

Mr. CHOPRA. I think it goes to the Treasury.

Mrs. KIM. Time is up.

Mrs. KIM. I would like to now recognize the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chair. Mr. Director, thank you very much for being here today and for your accessibility. I appreciate it very much. I do realize that the Agency you head is not a regulatory Agency, but I and a few others have been involved with

this American company, Credit Union, Navy Federal. I know that you also are aware of what I think should be an embarrassment to the Federal Government and to them, for that matter.

They approved, as you may recall, 75 percent of all white borrowers and 50 percent of black and brown borrowers, and the minorities had the same income as the majority, and the disparity is just embarrassing. I know that this is not a period in our history when we like to talk about bigotry, but here, even in 2024, bigotry is still around, and it poisons our past and it terrorizes our future. So, I am still very concerned about what is happening.

A number of us have met with the Navy Federal Credit Union, which, by the way, is the largest credit union on planet Earth, and they are larger than probably almost any bank that we are doing business with, except probably the top 10. It bothers me a lot because I wish that you could be involved based on the statements you issued. It is my strong and irreversible belief that you were right in the statement you gave to the final rule implementing the Community Reinvestment Act. You said it is time for State legislators to accelerate efforts to ensure certain nonbank entities have community reinvestment-like requirements, particularly in sectors where there are significant public subsidies or support for business activities. Credit unions are exempt. Bankers have been demanding that they be included since I have been here, which is 20 years.

What say you on the whole issue about coming up with some kind of similar process to Community Reinvestment Act (CRA) that would be used in credit unions like Navy Federal?

Mr. CHOPRA. Well, let me just say I want to be careful. We do have enforcement authority over large credit unions, so I want to be mindful. More generally, it is very hurtful to people when they think that even in serving in the military, working hard, serving their country that they still may face discrimination. So we take this very seriously.

With respect to CRA, we have seen many States enact CRA for certain nonbanks. Banks are required to do it, but many of those institutions that are not banks are getting a lot of direct or indirect benefits. The majority of mortgage lending is now outside of banks, and so we should really look hard, whether by Congress or continued by the States. The banking lobby is no fan of the CFPB, but I think they would also agree that we should have stronger CRA requirements for other mortgage lenders that enjoy those benefits.

Mr. CLEAVER. I am 100 percent certain that they would agree with what you just said based on my history with them. I just want to make sure that everyone understands that this is not a theory. We have the proof. Fifty percent of the black and brown borrowers who apply for loans were turned down with the same income and debt-to-income ratios as the whites, who had 75 percent more. Thank you very much, Madam Chair. I yield back.

Mrs. KIM. Thank you. I now recognize the gentleman from Tennessee, Mr. Rose, for 5 minutes.

Mr. ROSE. Thank you, and thanks to Chair McHenry and Ranking Member Waters for holding this hearing, and, Director Chopra, thank you for your time and for being here with us today.

Director Chopra, one of my top priorities this Congress, as I think you are aware, is dealing with the issue of abusive mortgage

trigger leads. I am curious, both from consumers and industry, how much have you heard and how much has the CFPB heard about this issue and what are their concerns?

Mr. CHOPRA. It is one of the top three or four issues I hear from mortgage lenders. They feel that they are working with a borrower to close a mortgage, but then all of a sudden that borrower gets dozens or hundreds of communications. The borrower thinks that the mortgage lender outed them in some way, and it creates a lot of friction, and many of the offers they are getting are sketchy at best.

Mr. ROSE. Thank you. Director Chopra, as you might be aware, Representative Torres and I have introduced the Homebuyers Privacy Protection Act. This bipartisan bill would limit the sale of mortgage trigger leads to financial institutions and financial technology companies that have a preexisting relationship with customers. The bill would also give consumers the option to opt-in for trigger leads if they choose to. Would you agree that based on the complaints that you have just characterized from industry and consumers, is it time for Congress to legislate protection for homebuyers on this issue?

Mr. CHOPRA. Yes, I really support the goal of this, and, in fact, this is another example of what I talked about in my opening remarks about even these trigger leads feel like privacy intrusions. This is a financial privacy issue. It directly relates to the Fair Credit Reporting Act, and we are really happy to work on both sides with you to figure out how we get some solutions. We are also working to see if there is any solution we can help to advance this issue, but it is always better when Congress can act.

Mr. ROSE. Well, thank you. I agree with that perspective, and thank you for your insights there, and hopefully, we can on a bipartisan basis move that issue along.

I want to shift gears a little, Director Chopra. Two days ago, you proposed a ban that would remove medical debt information from credit reports. In your statement on the proposed rule, you highlighted that medical debt is “taken on unexpectedly in a time of crisis.” It is my understanding that the structure of this proposed rule would mean that medical debt information is defined as including elective procedures. To be clear, Director Chopra, if someone, for example, had an elective tattoo removal procedure and had failed to make their payments for that procedure, it would not show up on their credit report under this proposed rule?

Mr. CHOPRA. So actually, we really talked to a lot of people in the healthcare industry about this, so I want to make sure we are using precise language. “Elective” can still be medically necessary. It just means that it is scheduled as opposed to an emergency surgery. I think you are sort of referring to non-medically necessary or discretionary cosmetic. We actually looked at how that industry is structured, and we do not find that medical bills on credit reports really exist there because they are not insured and paid by insurance, and they tend to be paid upfront or financed separately. So we are not really sure that is something that would occur. I appreciate the point, though, and I think if you want to submit a comment to make sure that we think about that differently, I am

very open to that, but we do not really see that as an issue right now.

Mr. ROSE. Okay. Well, thank you for the clarification, and we may take you up on that because I guess I would have a concern for non-emergency elective procedures in that—

Mr. CHOPRA. Yes. It is many ways in which we see medical financing or people being paid upfront in a way that is not sent to insurance because those types of things are not covered by insurance.

Mr. ROSE. So your view is that if it is not medically necessary and, therefore, not probably covered by insurance—

Mr. CHOPRA. Well, I guess I would put it this way. You know, when you use a credit card or other type of loan, the FCRA actually prohibits medical information on credit reports, so I think we are trying to adhere to that with some degree of fidelity.

Mr. ROSE. Okay. Thank you for that. Well, pardon me. In the remaining time, I would like to shift gears now and talk about the Civil Penalties Fund. Between 2012 and 2022, the Consumer Protection Financial Bureau collected \$1.3 billion, last year alone 1.9 billion. Can you explain how in 1 year the CFPB has collected more fines than in the past 10 in 5 seconds?

Mr. CHOPRA. I do not think that is true. Well, I think we have allocated quite a bit. In my tenure, we have collected several billion in fines, but we have allocated it to victims pursuant to the statute.

Mr. ROSE. Thank you, and I yield back.

Mrs. KIM. The gentleman's time is up. I would like to recognize the gentlewoman from Ohio, Mrs. Beatty, for 5 minutes.

Mrs. BEATTY. Thank you, Madam Chair. To Chair McHenry and Ranking Member Waters, thank you for holding this hearing. Let me first say thank you, Director Chopra, for being here, and it is always good to see you here and to listen to you as you explain all of the issues that we are addressing.

Let me just make this comment first in light, Madam Chair, of how this hearing opened. It opened with saying, "If this were a private sector meeting, what would happen?" Well, let me also say this. If this were a private sector board meeting with board members on this side and board members here, we would not have had a director who has, over the time of his Agency, delivered \$20.7 billion, to have waited. Certainly, in a private sector meeting, since the chairman opened with "if this were a private sector, what would happen," we would not have been sitting here as board members in a private sector meeting waiting while other board members, Republicans, were meeting with Mr. Trump, someone who has been indicted with over some 88 charges.

Then, Madam Chairman, it even got worse, and I am only bringing this up because I think words matter. When we have another chair of the subcommittee of jurisdiction here to use words like "extortionist" and to say that this director was the judge and jury and accused him of things that are not actually factual, that kind of grits at me, and to also question the credibility and to say that this director had no credibility. Now, that came from a member. I do not know what it was based on. I was always taught when you do scholarly work or you say scholarly things, you have to have some citation.

Well, let me just say what the U.S. Government Accountability Office said after doing their review, and this is a review of April 19, 2024. In their review, they said a lot of things that are direct opposite of credibility. They felt that their work was done well. It was fair. They gave recommendations. Most of the recommendations had been adhered to. So I think if we are going to talk about someone's credibility, we should have citations for that.

So I just wanted to say that for the record because we have a lot of people who watch these hearings that have not watched previously, have no history of the great work that this organization does. I also want to applaud you, Director Chopra, for how you have dismantled the attacks on you with intellect and with character, and I think you set the example of when witnesses come in that you do not buy into the attacks, but you simply told the truth. When you agreed with Republican statements, you said it.

So I think that is worth being noted because it was also said that you were only here to do speech writing for the President and try to imply that. I know all of his speech writers, I know his communications directors, and let me just say I think you are amazing, but that is not something that I know you do. So I just needed to say that more to the people who are watching because sometimes you watch and you only see one segment, so I wanted to bring some fairness and balance.

Now, with that, let me just say that I echo many of my colleagues in saying how thrilled we were with the Supreme Court decision, and now you can get back to the work of protecting the American consumers from harmful financial practices and putting money back into their pockets. Again, thank you, and thank you for continuing the work because I do not think \$20.7 billion is anything to sneeze at.

I would also like to thank you for your opening remarks on 1033, so let me start with that 1033 open banking rule. I want to commend you for advancing 1033 to ensure that personal financial data rights are protected so that consumers can shop and switch to better or more affordable financial solutions. I also want to thank our ranking member because she has to put this at the forefront.

Mrs. KIM. With all due respect—

Mrs. BEATTY. So my time is up.

Mrs. KIM [continuing]. the gentlewoman's time is up. Mr. Chopra, would you please respond to Mrs. Beatty's question in writing?

Mr. CHOPRA. Yes.

Mrs. KIM. Okay. Thank you.

Mrs. KIM. I now recognize myself for 5 minutes of questioning, and Mr. Chopra, it is really good to see you again here before our committee.

I know in your written testimony you tout the tens of billions of dollars that CFPB has returned to consumers, but, again, you fail to mention how persistent inflation has caused harm to consumers, especially for those lower-income families that are having trouble meeting ends meet. I am going to refer to New York Fed report recently. According to that report, about a third of balances associated with maxed-out borrowers have hit a delinquency in the last

year, and these are the borrowers using 90 percent or more of their credit limit. So can you point to any enforcement actions that are actually helping maxed-out borrowers that are at risk of default?

Mr. CHOPRA. Yes. Actually, many of those borrowers have low credit balances and are getting up to it, and they are often some of the people who are the lowest income people in our society. They are the ones where just a little bit of extra unfair fees or a little bit of a scam really can send them into a financial panic. So I closely monitor this data, and I really appreciate all the work being done to focus on them. I know you were a big part in fighting junk fees and leading legislation on that, so I want to thank you, Congresswoman Kim, for that. Really, we have to be focused on how those low-income people are getting by, so I really appreciate the question.

Mrs. KIM. Sure. Are you saying that some of the maxed-out borrowers are actually getting some money back to consumers in that way?

Mr. CHOPRA. Most of the redress that is administered is done by the companies themselves. So we typically order redress, and we do know that the types of cases we have been pursuing, they are not ones that are really focused on the highest income. They are the ones who are often the most vulnerable consumers. So we have looked at things in the automobile area, in the credit card area. Often, those are the ones that I think are the consumers you are asking about, but we do not really do a matching in that way because there are some privacy issues around—

Mrs. KIM. I am just pointing it out because I want the CFPB to really focus on addressing the root causes of indebtedness and the high cost of living, but let us switch gears to another matter.

It is our understanding that your subject matter experts are collaborating on issues that includes Big Tech in finance, artificial intelligence, and more with the EU through the informal dialog. You know that I sent you a letter regarding that informal dialog, and our committee staff have told me that they finally had a briefing after about 8 months of requesting it. I am glad you did it, but can you commit to providing minutes of the meetings that you and your staff are having with the European Commission officials as well as the list of subject matter experts involved in your foreign policy dialog?

Mr. CHOPRA. I apologize for the delay. I think it is because those meetings did not really occur until much later. There was one or two meetings with me and European Commission officials. I participated in something related to financial literacy. I think, Congresswoman Kim—

Mrs. KIM. Okay. Then let me reclaim my time.

Mr. CHOPRA. Well, I just want to say I think we have posted—

Mrs. KIM. Yes.

Mr. CHOPRA [continuing]. the information publicly, but I will go ahead and check to see what we have posted, but I think we want to—

Mrs. KIM. I just want to get your commitment that you will not export or embrace the EU laws in the form of U.S. financial consumer regulations. Can I get your commitment on that?

Mr. CHOPRA. That we will not export U.S.—

Mrs. KIM. Yes, I—

Mr. CHOPRA. I mean I actually think the way the U.S. does things, we should not be cutting and paste China, we should not be cutting and paste Europe. If anything, I think we should be—

Mrs. KIM. I will take that as your commitment that you are not going to export any—

Mr. CHOPRA [continuing]. promoting a lot of the way that the U.S. promotes competition and privacy.

Mrs. KIM. Okay. Thank you. The CFPB also released interpretive guidance related to buy now, pay later loans on May 23 of this year, but I am deeply concerned that this is another example of the Bureau exerting its authority by effectuating a substantial policy change through interpretation or enforcement. So do you agree that a substantive policy change in how the Bureau regulates an entire class of financial products requires a formal Administrative Procedure Act (APA) rulemaking, and can you commit to using formal rulemaking for any change in the Bureau's approach to buy now, pay later?

Mr. CHOPRA. So my predecessor, Director Kraninger, started the Advisory Opinion Program to provide interpretations. I think a lot of companies want to know how does the existing law apply and what should they expect. So we went through a process to do that, and I think it was welcomed by many, but I am happy to talk to you further about it, and it is also up for comment.

Mrs. KIM. I want to be respectful. My time is up, too. So let me now recognize the gentleman from California, Mr. Vargas, for your 5 minutes of questioning.

Mr. VARGAS. Thank you very much, Madam Chair. I appreciate the opportunity. I want to thank the ranking member also. Director Chopra, it is a pleasure to see you again here.

When I first got on this committee, it was Dodd-Frank that was the problem according to my colleagues on this side, and they said how illegal it was, how terrible it was. Now, of course, I listen to them, and it is the gold standard, you know. They say, we do not need anything beyond Dodd-Frank. It is the gold standard. Then they started picking on you. In fact, I was going to ask you a couple of tough questions here. One, do you remember all the insults that you received because of the funding aspect of CFPB? That is a question, sir. Do you remember some of them?

Mr. CHOPRA. I certainly remember some of the harsh things said to me, yes.

Mr. VARGAS. In fact, I found it interesting because it seemed to me, as the Court said clearly, that the funding is well within the appropriations clause of the Constitution, in fact, fits clearly within it. They had to go forum shopping to the Fifth Circuit to find a circuit that would say it was illegal because this was so right down the middle. In fact, it is interesting. Seven of the justices in a very conservative court decided this was right down the middle. This was not even a hard decision for them.

Mr. CHOPRA. Yes. Justice Thomas' opinion really spells out how this is completely consistent with the Constitution. Those pauses, though, had a real harm to consumers, though. Many of our litigations, many of our work just stopped, and justice delayed is often

justice denied, but we are going to keep going to make sure those consumers get their redress.

Mr. VARGAS. Well, in fact, since you mentioned it, let me ask you this. It was claimed by the other side that you have no credibility. The CFPB, what is your approval rating?

Mr. CHOPRA. I do not know, but I think we serve consumers in every single neck of the woods of this country.

Mr. VARGAS. Well, I can tell you because I have looked it up. It hovers around 78 or 80 percent, sometimes even higher. Do you know what our approval rate is? Again, you are not under oath, but you have to tell the truth.

Mr. CHOPRA. I do not.

Mr. VARGAS. Do you think it is higher or lower than that?

Mr. CHOPRA. I do believe it is higher because our—

Mr. VARGAS. You think that ours is higher? Our approval rating is higher? What have you been smoking today? Ours is not higher. That is the only time I have ever disagreed with you. You know, ours is very low. It is about 13 percent, about 13 percent. So when we question your credibility or the credibility of the Bureau, it is ridiculous. It really is utterly ridiculous. I mean, it reminds me of 1994 when they brought the tobacco people up, and they said, hey, nicotine, is it addictive? Oh no, it is great stuff, you know. You got to give it to your kids. It is the same thing with these junk fees, with these late fees, and I hear my friends, oh, that is good for consumers. They love the late fees. They love all these junk fees. Do consumers love the late fees? Do they love the junk fees?

Mr. CHOPRA. I think consumers are sick and tired of surprise or unfair fees that are creeping across the economy, and it really hurts those who can least afford it.

Mr. VARGAS. Of course, and, in fact, we get complaints about that all the time, and we give praise all the time for your work now, but I do want to talk about one thing specifically now that I got that off my chest because I listened to all the BS all these years about the funding, it is illegal. It this hair on fire, and, of course, the Supreme Court did not even break a sweat and said, hey, guys, it is right down the middle. This thing is easy. This is not a tough one.

I do want to ask about remittances. I do think that there is problems with remittances. I do think there are a lot of hidden fees there. People work very hard to send that money oftentimes to families that are impoverished, and this is a way out of poverty for them, and I think it is very unfair the way the system is set up. Could you speak to that? I know we have been working a little bit, but we need to do more.

Mr. CHOPRA. I agree we need much more cheaper and faster and safer remittances. We have taken a number of enforcement actions against those who have violated the law. There is often marketing that says it is free, but, in fact, the exchange rate is being manipulated. It is very hard. I would like to see more and the banking industry participate in some of the Fed's programs to help people send money. This is also an important national security issue as well.

Mr. VARGAS. I agree. My time is almost up, but again, I wanted to thank you. I think you have done a hell of a job. I think you

have done a really good job now that you have the ability to go forward without all the nonsense about the illegality of the things that we passed. By the way, it is not you. You do not set up the funding mechanism. We did. You know, we were attacking you when we were the ones that did it, but I do hope you go forward quickly because we have delayed justice. Thank you. With that, I yield back.

Mrs. KIM. Thank you. I now recognize the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much, Chairwoman. I thank our coach of the Republican baseball team for his graciousness in letting me jump him in line today.

Mr. WILLIAMS of Texas. Winning coach.

Mr. STEIL. I am supporting your win. Mr. Chopra, I have significant concerns as it relates to data privacy at the CFPB, and last year, the CFPB had a major data breach of 250,000 consumers. I have an article from The Wall Street Journal dated April 19, 2023 that describes a CFPB employee taking consumers' confidential information and emailing it to a personal account. The headline is, "CFPB Says Staffer Sent 250,000 Consumers' Data to Personal Account."

I ask unanimous consent to insert that into the record.

Mrs. KIM. Without objection.

[The information referred to was not submitted prior to printing.]

Mr. STEIL. This individual also stole confidential supervisory information on 45 banks, which could be market moving. The CFPB has a pilot program as it relates to auto loans, and the CFPB, under this proposal that you are moving forward with, is looking to collect over 120 data points from around 4,000 auto lenders. Some of the data points include borrower's income, credit score, zip codes, how much they paid for their car, and their interest rate. If implemented in full, as you are potentially proposing to do, it will cause significant data collection efforts with major compliance costs, but importantly, with privacy concerns. There are about 100 million car loans in the United States, so that means your project threatens the privacy of millions of families, and the Bureau does not have a good track record on protecting our data.

You claim that the data you are using is anonymized. You claim that, but as recently as last month, you admitted that anonymized data can be re-identified. Can you give the American public 100-percent confidence that in the collection efforts that you are making, when that data comes to the CFPB, that their personal and private information will be protected?

Mr. CHOPRA. Yes. Well, we solicited comment on this. I think we got a question from Congressman Barr about——

Mr. STEIL. I got you. We can come back to the broader issue, but what I am asking you writ large is, and this question, I think, is really important and why we should have this dialog is, can you guarantee the American people that if you collect this information, that their information, including their income, their zip code, the car they purchase will be secure? You do not have a good track record of this.

Mr. CHOPRA. Well, we take very serious——

Mr. STEIL. I understand you take it seriously, but can you tell the American people with 100-percent confidence that you will protect it?

Mr. CHOPRA. I would love to answer the question. We want to make sure that when we collect any data, we are doing so in ways that eliminates or dramatically reduces, wherever possible, any chance of any data protection issue. We are heightening our ability to assess that because it is true with more algorithms, more AI, those consumers'—

Mr. STEIL. I got you. So in other words, you are heightening it, but you cannot guarantee the American people that there is not going to be a breach.

Mr. CHOPRA. We have not done the data. We have not done it, so—

Mr. STEIL. Right, but we have incidents where 250,000 data points were sent—

Mr. CHOPRA. We have not done the auto data collection you have mentioned, so—

Mr. STEIL. Yes, but I hope you see the concern the American public should have and then let us look at the auto dealer side of this equation. So you would agree that the CFPB requests dealers' zip codes. Say an individual goes and buys a car in Delavan, Wisconsin, zip code 53115. There is only one Ford dealer, there is only one Chevy dealer, and so you can unanonymize that data, but if you go back and we look at U.S. Code 12.5519, you do not have the authority to regulate auto dealers. In effect, you are really operating in this proposed rule as a backdoor mechanism to actually regulate auto dealers because in any given zip code, you can actually identify where the auto loan is made, correct?

Mr. CHOPRA. This is not a proposed rule. We are trying to survey the market of a \$1.6 trillion market. I do not know if we will proceed with it. We do not have authority to bring enforcement actions against auto dealers. So I want to do everything I can to assuage your concern about this, but we have not done this auto data collection. It is the biggest market for which there is not much information about trends other than some credit reporting data, so we are happy to take your concerns. We do not even know if we are doing it, but that is why—

Mr. STEIL. I hope you understand the concern, I think the concern that millions of Americans would have because the track record of the CFPB along with a number of Federal Government agencies is abysmal as it relates to data privacy. If you are in the—

Mr. CHOPRA. Well, I take that very seriously.

Mr. STEIL. I hope you do because you cannot guarantee that this information will not go public, and it holds 100 million Americans' information.

Mr. CHOPRA. We do not collect personally identifiable information in these things, but I take your concern very seriously.

Mr. STEIL. I appreciate your time, Director.

Mr. CHOPRA. Thank you.

Mr. STEIL. Madam Chair, I yield back.

Mrs. KIM. Thank you. Wow. Thank you, Director Chopra, for sitting with us for almost 2-and-a-half hours. I think it is time that we take about 5-minute break.

Mr. CHOPRA. Five minutes?

Mrs. KIM. Yes. Hopefully, that will be enough for you to take a bathroom break. For the members, we will resume with the hearing in about 5 minutes.

[Recess.]

Mr. HILL [presiding.] The committee is back in session, and I call on the gentleman from Illinois, Mr. Casten, for 5 minutes.

Mr. CASTEN. Thank you, Mr. Hill. Director Chopra, always lovely to see you here. Several of us are upset, but I do just want to apologize for the delay. We had a 40-minute delay and did not start the official business of the House because my colleagues were all at a political event off the Hill. It is disrespectful, but you deserve better. I do not know what they spoke about there, but I strongly suspect it was not about endorsing and celebrating and effectuating the rule of law that was passed by an independent judiciary. I say that because while I think we are all happy about the recent ruling by the Supreme Court protecting your funding.

I do not want to rest on my laurels. I want to read you a quote. The Heritage Foundation's Project 2025, that aims to be the blueprint for the next government should the Republicans take over, says, "Provided the Supreme Court affirms the Fifth Circuit holding in *Community Financial Services of America*, the next conservative President should order the immediate dissolution of the CFPB. Until this can be accomplished, however"—obviously it did not happen—"Congress should require that no CFPB funds are spent on enforcement actions that are not based on a rulemaking that complies with the Administrative Procedures Act." Can you speak to what would happen to consumer protection in this country if Congress were to carry that out?

Mr. CHOPRA. Well, I think eliminating the CFPB would be chaos. I think the mortgage market would suffer. I think all of the innovative companies that rely on a sound marketplace and, most importantly, the consumers in every part of the country would then be greeted with more unlawful practices. That does not just harm them; That harms the whole marketplace.

Mr. CASTEN. We are always grateful for your consumer protection, and I wish it was not so partisan.

I want to shift to a separate issue, hopefully, not partisan. In October 2023, at a Brookings Institution speech, you talked about tech firms blurring the lines between payments and commerce, engaging in bank-like activities while not actually being regulated as banks, and the sort of broader sort of need to maintain a separation between commerce and banking. There has recently been a number of large brokerage firms, one in particular, that are talking about entering the credit card space where they are both issuing brokerage accounts. You have a brokerage account, they issue a credit card space. I guess I am wondering, are you paying attention to this, and do you have any concerns that we should be vigilant against it?

Mr. CHOPRA. Well, certainly they are not exempt from the consumer financial protection laws, but you are right. There are a lot

of issues now with firms that are entering consumer products. Right now, there is a very chaotic and disturbing situation where people cannot access their funds. It needs to be clear whether you have an insured account or not, and often the blurring between Big Tech firms and banking, I think, is actually really causing some confusion and issues that Congress and the CFPB really need to address.

Mr. CASTEN. Okay. So I want to get a little bit specific. Robinhood Financial. You know, we have talked about this before. Alex Kearns was a constituent who took his life after being falsely told that he was upside down on an options trade, and I think his note said that he does not know why he was allowed to trade options when he only had \$5,000 to his name. Robinhood is now talking about issuing these credit cards to their gold members who can trade on margin. I think the obvious concern that raises is if you are getting the data that you would have as a credit card firm that can identify people who are prone to risky behaviors and you are selling something that is attractive to people with risky behaviors, do you have the tools to protect that in advance, or do you have to wait for some violation that you can pursue a compliance action against—

Mr. CHOPRA. Yes, I do not think we can. I think that for broker-dealers or brokerages securities, they have to follow securities laws and inasmuch that they are doing consumer lending, given our current status of privacy and protection of financial data. It is pretty weak when it comes to that type of sharing. So I do not think we would have the tools to really stop it in advance.

Mr. CASTEN. So you are saying that wall between commerce and banking can be breached?

Mr. CHOPRA. Has eroded.

Mr. CASTEN. And it is not until you are violating the spirit of those laws that you can deter—

Mr. CHOPRA. Yes. I think I would need to check under the securities laws about whether there could be some limitations, but my understanding is that data if it is disclosed in that notice, it can be transferred back and forth.

Mr. CASTEN. Maybe we have some work to do legislatively because—

Mr. CHOPRA. We do, yes.

Mr. CASTEN [continuing]. it troubles me given some of the past behaviors if we are chasing on the back end. Well, thank you for your time. We will follow up offline, and I yield back.

Mr. HILL. The gentleman yields back. It is a pleasure to call on the winning coach for the House baseball contest between Republicans and Democrats in continuous play since 1909. Roger Williams is recognized for 5 minutes.

Mr. WILLIAMS of Texas. Thank you, Chairman, and thank you, Director, for being here today. You and I have reminded each other I am a car dealer, so I have a lot of interest in this today. So good to see you.

I have concerns regarding your plans to establish a nonbank registry for so-called repeat offenders, and I am concerned how you plan to use the information obtained and put it in this registry. The registry appears to be a misguided effort designed to increase

the CFPB's supervisory and enforcement powers by leveraging State laws and orders over which the CFPB, frankly, has no authority. Additional supervision by the CFPB is unnecessary. It harms consumer protection efforts and wastes the Agency's resources. So the proposed registry is a solution in search of a problem.

Now, my question would be, Director, how do you justify the need for additional CFPB supervision when State agencies already have robust enforcement mechanisms and why are you trying to do the States' jobs for them when your Agency has no such authority?

Mr. CHOPRA. Yes. So we are not doing additional supervision. Consumer financial protection asks us to register nonbank companies. So I think that was originally contemplated as registering auto or payday or whatever it may be in the nonbank sector. We have taken a much more humble approach and focused on the frauds and scams and repeat offenders. So all we are saying is that if there is a public enforcement order, that has to be reported to the CFPB. This is going to allow law enforcement to really cooperate together to be able to see if there is misconduct, criminal behavior moving from State to State, and I think it will help us stop that. We are not really creating new supervision. We do not enforce State law. States enforce State law, but I do think this is important law enforcement cooperation, and we have seen this in many other contexts.

Mr. WILLIAMS of Texas. In January, the CFPB proposed a price cap on overdraft fees. Overdraft services are very popular, as we all know. A recent survey found that more than two-thirds of consumers find that their bank's overdraft services are valuable. In that same study, 8 out of 10 consumers who have paid an overdraft fee were glad that their bank covered their overdraft instead of rejecting the payment. So overdraft is a tool that allows consumers, and has for a long time, flexibility during times of emergencies or tough financial situations. Should you move forward with these regulations, however, many banks will be forced to stop overdraft fee services to their consumers.

So a question, Director. Why is the Bureau trying to regulate this product to death, disproportionately impacting those who have limited access to alternative liquidity options? Furthermore, what are the sources of short-term liquidity do you expect consumers to use if they do not have this overdraft fee?

Mr. CHOPRA. Respectfully, and you know I like you on this, but it is not right that there is a price cap. What we have proposed is that if large banks—we have exempted all the small ones—if the large banks want to make money on overdraft loans, they should disclose it just like they would disclose a credit card or another loan. That will allow consumers to compare. We have essentially created an exemption if they are charging a reasonable amount below an industry average. That will allow them to make choices: Are they going to offer it as a convenience, or are they going to offer it as a loan? We revisited a 1969 interpretation on this, and I think we think this brings more competition, more choice, and the ability for people to really look at a credit card, or a line of credit, or an overdraft loan to be able to compare what is best for them.

Mr. WILLIAMS of Texas. Okay. In the time I have left, there are nearly 900 pages in the final rule on Dodd-Frank. Section 1071 is inherently overwhelming. Small businesses lending is already a complex environment with many different channels and types of credit. The rule that is finalized creates confusion for lenders across the board who are critical lifeline for our Nation's small businesses, much like mine. In addition to creating confusion with respect to the collection and reporting of the data, the rule itself lacks substantial information about how the data will be used once it is reported and what safeguards will be put in place by the Bureau.

Director, under your leadership, you have gone after Big Tech for their data practices. What about the Bureau's data practices? How will the Bureau ensure transparency for small businesses regarding the use and protection of their data?

Mr. CHOPRA. This is much delayed. We are not going to see reporting for a while, but certainly, with respect to how that data is handled, I am actually really happy to talk to you more about how we are thinking of making sure that we can protect it. We know that small business is totally different than mortgages, and we are going to have to pay real close attention to how we handle this.

Mr. WILLIAMS of Texas. Yes. Small business is very stressed right now. I yield my time back. Thank you.

Mr. CHOPRA. Thank you, sir.

Mr. HILL. The gentleman yields back. The gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA. Thank you, Mr. Chairman, and thank you, Director Chopra, for joining us today. I just want to make it clear that we Democrats were here because we believe in your Agency, we applaud the Supreme Court decision, and we love the work that you are doing. So thank you so much for being there to stand up for consumers. For me, I want to just particularly thank you for the work that you have done with the Think Finance, the Texas online lender. You returned back \$384 million. Even for Texas that is not chump change.

Think Finance has illegally collected loans that were void under Texas State laws that govern interest rate caps and lender licensing requirements. The company misrepresented to consumers that they were owed money on these loans, made electronic withdrawals from their bank accounts, and even sent them demanding letters. I think more people need to understand you are the only Federal Agency created with a sole purpose of protecting consumers and for the record, I googled it. You have a 79 percent approval rating, and yes, Congress has a dismal 13 percent. So your credibility is high, the public does love you, and you are doing the work that your mission statement has demanded.

I have a few other questions, but I will submit them in writing because I was concerned with you not having enough time to clarify the question from one of my colleagues about whether or not immigration status can be considered when reviewing an application for credit. You said something about national origin. You said something about immigration status, and for everyone that is listening, can we just be clear on what the guidance did say and did not say?

Mr. CHOPRA. Yes. Immigration status cannot be used as some sort of pretext to discriminate against people illegally. We are really worried when someone uses a type of characteristic to discriminate against a whole protected class as a ruse. So what the guidance made clear is that national origin discrimination is one of many protected classes that is illegal to discriminate against under Federal law. While the guidance does not say you have to lend to a certain person or not, when you use immigration status in a way that is pretextual to discriminate against a certain group of people that is protected under law, that is illegal. I think we want to make sure that lenders are doing it in a careful risk-based way and not just a way to exclude a whole category of people that are protected under Federal law.

Ms. GARCIA. So their application should be reviewed just like any other consumer?

Mr. CHOPRA. Correct. You should not be——

Ms. GARCIA. They cannot simply look at it and say, oh no, they are not U.S. citizens, we are not even going to look at it?

Mr. CHOPRA. Yes. It is one of many factors, and it should be done with care so as to not be so broad that it just automatically disqualifies a whole group of people who have protections under Federal discrimination——

Ms. GARCIA. Right. I think the words that you all use in the guidance is the creditors rights regarding repayment, unnecessary or overbroad reliance.

Mr. CHOPRA. That is exactly right.

Ms. GARCIA. All right. So if anyone were to suggest that you said that it was okay to consider immigration status, would they be correct?

Mr. CHOPRA. Well, you can use immigration status. You cannot use it in a way that is so overbroad that it ends up discriminating against people based on a protected characteristic under the Equal Credit Opportunity Act. That is what the Justice Department and the CFPB tried to articulate, and it is true that there are some cases where people will use or look or assess different characteristics. It cannot be done in a discriminatory way against a protected class.

Ms. GARCIA. Well, thank you for that. Now, I will just ask you another quick one. The rule related to remittances, or was it a guidance? I forget.

Mr. CHOPRA. Yes.

Ms. GARCIA. Could you just briefly tell us what that says?

Mr. CHOPRA. Well, we are really worried when remittance companies claim that they are offering something that is free, but in reality, it has real costs, including through how they deal with the currency exchange rate spread. So it is really important that consumers be able to know the costs of how they are going to pay a remittance. We need to do more to offer a competitive, cheap way, especially using digital technology.

Ms. GARCIA. Right. Well, the other item that I have on my list is when you talk about the fraud toward seniors. We need to go——

Mr. HILL. The gentlewoman's time has expired.

Ms. GARCIA [continuing]. Federal home insurance. Thank you.

Mr. HILL. The gentlewoman yields back. Please be responsive to her question in writing, Director.

Mr. HILL. Director, I am yielding myself 5 minutes for questions. Thank you for being here before us to answer the committee's questions. We always are grateful for your visits annually, or more frequently as needed.

Can you provide for the record to me in writing, not try to rattle it off, under your statutes that you are responsible for as delegated to you by Dodd-Frank, which ones go through Office of Management and Budget (OMB) review, or can you testify today that all regulatory rulemaking proposals issued by the CFPB do not go through the OMB—

Mr. CHOPRA. There are aspects—

Mr. HILL. It is a mix, is it not?

Mr. CHOPRA. Yes, there is a mix. There are aspects of our rules that do go through, I believe, the Office of Information and Regulatory Affairs within OMB. I cannot say exactly—

Mr. HILL. Would you just submit for the record—

Mr. CHOPRA. Yes, sure.

Mr. HILL [continuing]. educate me on—

Mr. CHOPRA. Sure.

Mr. HILL [continuing]. what does and what does not as it relates specifically to your Agency?

Mr. CHOPRA. Sure. Sure.

Mr. HILL. Because that is I think important for our work. It allows us to be a better judge of APA compliance by the agencies under our—

Mr. CHOPRA. Of course.

Mr. HILL [continuing]. oversight jurisdiction.

Mr. HILL. CFPB, you would consider an independent Agency?

Mr. CHOPRA. Yes. Our enforcement supervision is really totally independent. We go through a process to make sure that there is not any unnecessary interference in our enforcement.

Mr. HILL. Yes. So that is why I wonder if it has been appropriate for you to associate yourself by coordinating 4 or 5 months out from an election with the White House for a press rollout of a new proposal on medical debt. You think that is in keeping with your role as an independent regulatory Agency?

Mr. CHOPRA. Well, it is certainly consistent with my predecessors. One of the things that has been a better part of what we have been doing is coordinating broadly with other agencies. For example, some of the work we are doing on data protection is not just going to impact consumers. There is some real national security equities there, so a lot of what we do is in coordination, and actually, we are required under our statute to be in coordination. Let me just say, Congressman Hill, I will stand with any of you who wants to join me in celebrating the successes of the CFPB and what we are doing for consumers.

Mr. HILL. Thank you, Director. Always smooth in your answers. One of the ways that the CFPB was insulated in a big picture way, of course, has been debated here recently and gone before the Court about the way the Agency is funded. Can you state for the record how Dodd-Frank directs that the CFPB should be funded on an annual basis?

Mr. CHOPRA. The CFPB is a unit of the Federal Reserve System, so we are funded a very similar way that the Federal Reserve Board of Governors, except we are not able to set our budget. I can request to the Federal Reserve Board transfers from the Federal Reserve System in the same way they transfer moneys from the Federal Reserve banks to fund their operations.

Mr. HILL. But you do set that amount. They do not set the amount, right?

Mr. CHOPRA. Actually, Congress sets the cap on that, and we have stayed below that cap.

Mr. HILL. What is that cap?

Mr. CHOPRA. We have been going through budgeting for the future, but I believe that it is set in statute and then there is an index called the Employment Cost Index, ECI. Maybe that is the wrong acronym.

Mr. HILL. But is it a cap of a percentage of what, the Federal Reserve's earnings?

Mr. CHOPRA. It is basically a hard number that is adjusted by that index year by year, so it does not vary based on other performance. It is sort of a set number with a cost inflator.

Mr. HILL. When was the last time the Fed showed a net profit? Do you know that number?

Mr. CHOPRA. Yes. So the nonprofits and government agencies, they do not report profit and loss in the way a private sector company would.

Mr. HILL. No, but they report positive or negative cash-flow. So when was the last time that—

Mr. CHOPRA. Actually, cash-flow is a totally different indicator.

Mr. HILL. Okay. When was the last time there was a net positive result from the Federal Reserve, the last time they generated positive earnings?

Mr. CHOPRA. So I think the Federal Reserve Act would call it excess earnings.

Mr. HILL. Okay. When was the last time they had excess earnings?

Mr. CHOPRA. I believe that in early 2023 or late 2022. I cannot remember the exact one.

Mr. HILL. Yes.

Mr. CHOPRA. Again, that uses different terminology.

Mr. HILL. That is true. That is true. September 2022. So good analysis on your part, but since then, the Fed has actually had a deficit in earnings of \$172 billion.

Mr. CHOPRA. No, that is not true. If you look at their audited financial statements, again, just like in the private sector, nonprofits use different accounting terminology.

Mr. HILL. Yes, but we are not debating that today.

Mr. CHOPRA. I am happy to supply you their audited financial—

Mr. HILL. I get it. I read it. I know what it says, and I know it is running a deficit, and, therefore, instead of sending money to the Treasury, they are crediting a contra account at the Treasury. My point is that when you ask for funding, you are asking for that on top of their losses.

I yield back. Mr. Davidson, I recognize you—from Ohio—for 5 minutes.

Mr. CHOPRA. Thank you, sir.

Mr. DAVIDSON. I thank the chairman. Director, I thank you for your work, especially on privacy. We have had clear disagreements on all sorts of policy matters, not to be unexpected given the nature of the appointments and all that. I have really been encouraged by your commitment to privacy, and I hope that we can make that truly bipartisan.

We have had important wins on the Fourth Amendment's Not For Sale. We got very much the spirit of what you are talking about with data brokers and their abuse of the Fair Credit Reporting Act with that, and it was 123 Republicans and 96 Democrats. It was one of the things that broke differently than pure partisan lines, and so I hope you continue to be a voice for that. As you know, we are working on the Payment Privacy Act. We highlighted it at your last appearance. It is very complementary to the 1033 process that you have been undertaking, and I appreciate your collaboration and feedback on that. I just thought I would offer you a chance to offer anything else about the concept of the Payment Privacy Act and appreciated your dialog with Chairman McHenry at the start of the hearing.

Mr. CHOPRA. I think that being able to know all of our individual payments and transactions without our permission or really just happening in the background, I do not think this is just sort of a question about fairness in the economy. I think this has some very real questions about individual liberty and freedom. I am very worried about the potential for financial censorship and the ability for others to have more control over us, including by manipulating us in some ways. I think this is a big concern, particularly when countries of concern can get this information, and they do that through data brokers.

Mr. DAVIDSON. Yes. Thank you for that. In the financial services realm, we are used to things that maybe in energy and commerce they are not used to because apparently in the FTC, if you put it in the terms and conditions anywhere, you can do pretty much whatever you want. They do not really even have the wherewithal to understand what is being put in the terms and conditions, let alone hold companies accountable for delivering on those and not breaching them.

Here in the financial services space, on the other hand, even if you really want to put in the terms and conditions, there is certain things you cannot do, and I think one of those has to be sharing someone's private information, their data without their consent, and I think that is the spirit of what I think you are trying to do there. I hope we can continue to collaborate that.

You know, Director Chopra, the CFPB's recent larger participant rule proposal covering general use digital wallets is kind of an expansion of the space in a sense, but I do believe one of the most important consumer protections we could have is self-custody. Really, it is a protection of private property. They should have no fear that the government would take that, except the government continues to try to take that under both Republican and Democrat Ad-

ministrations. FinCEN targeted that. What is your thinking on this, and why do you believe CFPB should be able to focus on this?

Mr. CHOPRA. Yes. One of the reasons we proposed this is that we are seeing a lot more big tech companies, other tech firms entering into payments. Our jurisdiction is really consumer payments, the Electronic Fund Transfer Act, other consumer protections. We are not expanding. We just want to make sure that where there is already our enforcement jurisdiction, we have some ability to make sure that when it comes to fraud, privacy, and other issues there is some consistency between bank and nonbank. I will share with you that the Fair Credit Reporting Act is one of the most important privacy laws in the country which has real restrictions on use, and I hope that both sides can figure out how to do something as it relates to these payments.

Mr. DAVIDSON. Well, I share your concern and really enjoyed Mr. Vargas' commitment and Casten talking about remittances and protecting consumers in that way. When you look at digital assets, self-custody is really the epitome of it. It is permissionless peer-to-peer payments that are being protected in that sense. They are private, they are secure, and they are protected from third parties doing anything with them, and so I hope that we can stake that out as a common ground that we defend. It would be great to see bipartisan support for the Keep Your Coins Act as an example that would protect that.

One area that I am concerned with, especially given the protection for privacy that you have espoused, is this auto loan data collection. I mean, you say that you are not yet committed to go with that when you were talking to Mr. Steil, and I appreciate that. Nevertheless, the pilot is underway. It is collecting lots of stuff. I do not know why if you buy a car someone needs to know not only the income things that he is talking about or zip code you live in, but race, gender, ethnicity, sexual preference, all kinds of things like that. It seems kind of creepy and spying. How do you reconcile that?

Mr. CHOPRA. Yes. So none of the work we have been doing has sought to collect additional information from borrowers. It is already what is in the system. But—

Mr. MEUSER [presiding]. The gentleman's time has expired.

Mr. CHOPRA [continuing]. you and I should talk about it because I think that we are not committed to proceeding with this, but we do want to make sure that we have some data on the auto loan market, which is now \$1.6 trillion—

Mr. MEUSER. You can answer in writing, Director.

Mr. DAVIDSON. My time is expired, and I yield back.

Mr. MEUSER. The gentleman yields back. I now recognize myself for 5 minutes. Director Chopra, nice to see you.

I do want to focus on some things that we have talked about in the past, some of the ideology, I believe, out of the CFPB and some examples of some overreach, and even some unwillingness to listen to industry feedback, which I think is extremely important. I continue to hear from banks, large and small, super regionals, community banks, that some of the activities and regulations that are coming out of your Agency are burdensome and not helpful, in fact,

very duplicative at times, what they are already doing, just it being done differently.

I want to just start with on cost-benefit analysis, which we have talked about in the past. It is an important part of a rulemaking process. It is important to understand how your rules hurt businesses or help and, subsequently, their customers. So can you walk us through a little bit about your rulemaking and how you take a cost-benefit analysis into consideration and the sort of outreach and information that you take in order to make the best rules possible?

Mr. CHOPRA. Yes. We try, obviously, to make sure that we are looking analytically at any type of potential rule or intervention we are taking. I mean, it is not good if there are not more benefits.

Now, I will share this. Sometimes we also get feedback just like the last question I got from Congressman Davidson do not collect this data because of burden. So sometimes we like to rely on existing data that we have or third-party data that has been published. So we always subject that to public comment and where we do get additional submissions of data, we look at that very carefully to see the methodology and how we would factor it in, but we absolutely do comply with all the requirements and go beyond that.

Mr. MEUSER. You must get some feedback, as I do, that your comment periods are not always adequate. You kind of made a remark regarding the timeframe for the auto industry requirements to be very minimal. You said 20 minutes, and I know you did not mean that cumulatively, but that did not seem like an understood response, that most of the industry disagreed with your figure in that case.

Mr. CHOPRA. Yes, and we have made no decision on that one and we are going to look at what we said. What I think is different about auto compared to, say, what companies have to do under Federal law for mortgage, there is no new data collection requirement. I think we are trying to find a representative sample to get insight—

Mr. MEUSER. Again, taking feedback from—

Mr. CHOPRA. We are, and we certainly subjected it to that.

Mr. MEUSER. All right. Okay. So you know, I am going to ask you about this. You have had some press release and tweets—I cannot say exactly when, but they exist—that came across as very kind of mean-spirited perhaps, malicious phrases, such as you referring to industries or sectors as cartels, as liars, as deceitful, sometimes in reference to entire industries, or at least that is how it was interpreted. Do you believe entire industries in the financial services marketplace should be tainted in this way?

Mr. CHOPRA. No, we have not done that. In fact, I will say, though, the London Interbank Offered Rate (LIBOR) rigging and cartel cost all of us billions and billions of dollars. That was a serious offense that also had raised criminal issues. So yes, that was cartel-like behavior, and it was totally inappropriate.

Mr. MEUSER. That is not really how it came across.

Mr. CHOPRA. Well, I welcome you to share that with me because that is what I remember.

Mr. MEUSER. Is there an industry that you think does treat its customers well?

Mr. CHOPRA. That is what we want. We want people to compete on treating people well, giving them a good product at a great price.

Mr. MEUSER. You and your staff have referred to banks as being similar to a utility. Do you believe in the competitive marketplace of tens of thousands of banks and credit unions, or do you see them more as a utility that needs to be run by the heavy hand and high regulations, which the banks already have, such as utilities?

Mr. CHOPRA. No, I think what we have said is it is critical infrastructure for the economy. So I do not think people fully appreciate, if the banking system is not working, nothing works. It is as important as the electric grid or the transportation network. So it is so important, which is why we need to make sure it is always working, always on, and when there are risks to the financial system, we have to safeguard against that.

Mr. MEUSER. My time has expired. I appreciate the clarification. I now recognize from New Jersey, Mr. Gottheimer, for 5 minutes.

Mr. GOTTHEIMER. Thank you, Mr. Chairman. Director, thank you for being here. I want to start off with some great news. When you were here last in front of this committee in November 2023, you committed to investigating the revenue that financial institutions were making off of the outrageous congestion tax in New York. I am glad to let you know that the Metropolitan Transportation Authority (MTA) has in a flash of common sense put an end to the congestion tax cash grab. That is one investigation off your list. Thank you for your partnership in that effort. You can celebrate if you want, or we can do it later if you would like over a beer.

Switching gears. Like you, I share the objective of protecting consumers from harmful practices. Are you familiar with crisis pregnancy centers, or CPCs?

Mr. CHOPRA. Yes. I do not have deep knowledge, but I am aware.

Mr. GOTTHEIMER. CPCs offer a master class in deceptive anti-choice marketing, often misleading women and attempt to block their access to reproductive healthcare. That is why watchdog groups have called on our Federal Government to investigate these centers for deceptive marketing practices. Director, you understand consumer fairness perhaps better than anyone else in this room. Will you commit to using CFPB resources to look into this issue and protect consumers who come into contact with these centers, especially women?

Mr. CHOPRA. Well, certainly, they are not a financial provider, so it would be out of our jurisdiction. In as much that there are deceptive or unlawful claims, there are agencies in the Federal Government who do have jurisdiction. Of course, we always want a marketplace where advertising claims are truthful.

Mr. GOTTHEIMER. I think in this case, I will follow up with you. There are some financial crossovers, and I encourage you—

Mr. CHOPRA. I see.

Mr. GOTTHEIMER [continuing]. to look at this issue and hold these centers accountable for deceptive practices and disinformation, and I will follow up with you, if that is okay.

Mr. CHOPRA. Of course.

Mr. GOTTHEIMER. Thank you. Director, I would like to talk to you about coerced debt, which occurs when the abuser in a violent rela-

tionship obtains credit in a survivor's name through threat, force, or fraud. Far too often, women survivors are the ones targeted in these situations. Right now, a card holder cannot be removed from a joint credit card account unless both parties agree to terminate the account. Has the CFPB looked into solutions that help survivors take their name off joint accounts without penalties?

Mr. CHOPRA. Yes. So we have actually completed a rulemaking under the Fair Credit Reporting Act regarding survivors of human trafficking. That is one of the best examples of coerced debt. We really do see this also for those who have suffered from domestic violence or other types of relationships, where they might incur debt that they did not even seek.

One way that a bad actor can really keep control over someone is when they are financially paralyzed, and destroying their credit report with unpaid debts is another way that they can maintain that control. So I would really urge us all to think about ways the Fair Credit Reporting Act can also be used to stop not just abusers or protect survivors of human trafficking, but also those who have been subject to domestic violence.

Mr. GOTTHEIMER. That is a big issue on the domestic violence side. I hear often from men and women who have told me that they are scared to leave a relationship or they cannot because financially they just cannot get out from the financial abuse—

Mr. CHOPRA. We would really like to work on this with you. There was a bill that came out of this committee about survivors of human trafficking. The CFPB implemented that rule pursuant to the deadline. I think we can consider more work on this.

Mr. GOTTHEIMER. I really would like to work together with you on this issue. We need to ensure survivors have the support they need to rebuild their lives, and I would be honored to work with you on that. According to the Federal Bureau of Investigation's (FBI's) 2023 Elder Fraud Report, seniors had more than \$3.4 billion stolen from senior scammers last year. What is the CFPB, if I can ask, doing to crack down on this staggering fraud?

Mr. CHOPRA. Well, elder financial exploitation has always been something that I have been worried about. We are looking to find ways to partner with industry and others to detect some of these scams. I am actually really worried about the use of generative AI here, where someone's voice can be cloned and they can make a call to an older adult. There is really no way for that older adult to distinguish it, and it can often lead to very serious harms. I would like to see the banking industry also step up when it comes to older adults who are suspiciously sending major wire transfers to scammers.

Mr. GOTTHEIMER. I agree. In fact, I am leading a bipartisan Empowering States to Protect Seniors from Bad Actors Act with my friend Representative Nunn to equip States with the support they need to address scams. It is a critical issue, and I believe this legislation will be a valuable tool in the scam response toolkit. Thank you so much, and I yield back.

Mr. MEUSER. The gentleman yields back. The gentlewoman from Texas, Ms. De La Cruz, is now recognized for 5 minutes.

Ms. DE LA CRUZ. Thank you, Mr. Chairman, for holding the hearing today, and thank you, Director Chopra, for appearing before us.

The CFPB was created with a special mandate to guard against consumer harm. However, it seems that many of your rules written are specifically penalizing our small financial institutions that serve local communities like mine. My community is largely Hispanic and a rural area as well. Small banks and community banks are key contributors to places like mine. They help with economic growth and development, and like I said, my district stems from the border in Deep South Texas all the way up north to San Antonio. So our banks, of course, have a unique community which they serve. I am concerned about many of the regulations that the CFPB has written over the last 3 years.

Many organizations and associations have shared with you that Section 1071 Rule are going to hurt our small businesses, the small businesses that have been leading efforts in our community. Many people in the community are seeking capital to grow their businesses and do not want their racial or other demographic information to be part of the loan process. My biggest concern is that the rules that the CFPB and the other Federal financial regulators have drafted over the last 3 years were all written in a vacuum. Yet, the totality of all the regulation has drastically increased the compliance burden on the financial institutions.

Director Chopra, is anyone at the CFPB looking at the cumulative impact of all of these new regulations and the ability of smaller financial institutions to digest them properly to comply?

Mr. CHOPRA. Yes, we have actually received feedback on this, and one of the places I have been working with our staff on is to really look at what is the roadmap for which institutions, including the smallest banks are making changes. For example, we tried to make sure that any of the rules that we were required to promulgate by Congress, they are working in concert with others, such as the required Section 1071 Rule that we had to promulgate is working with any Community Reinvestment Act one. We are also looking at the systems and vendors that they are using. Often these smaller institutions do not have much choice when it comes to software vendors, so we tend to work closely with them to understand what are some of the things they are prioritizing and implementing.

I take your point. We really need community financial institutions, small banks, small institutions all over the country serving people. I do not want to see a world where people only have three or four choices.

Ms. DE LA CRUZ. Director Chopra, as you just said, you are looking at these, having discussions. Would you commit to having some type of research investigation, a report to actually analyze how this affects the community banks before implementing the 1071 Rule? Can you commit with that?

Mr. CHOPRA. Well, one of the things we did was we actually exempted a large number of institutions from it based on some of the concerns that you are raising. We wanted to see that it becomes something that we implement what Congress mandated with fidelity, while also growing the balance—

Ms. DE LA CRUZ. I am reclaiming my time here. As I speak to regional banks in Texas, the regional banks that are growing in Texas, one of the fastest-growing States, they are saying that they want to scale back their loan process because of how this is going to implement. Then my smaller banks that you have actually exempted are saying they do not want to grow. Why? Because they do not want to have to comply to this rule and all the mandates. They feel that it will actually hurt them.

So what you are actually doing is you are pushing against the small banks and their desire to grow in communities who are Hispanic like mine, and you are also affecting regional banks to want to scale back loans to small businesses, mortgage lenders, real estate agents, those type of people because they do not want to grow anymore. So I think that this is something that needs to be reported on before it is actually implemented.

Thank you, Mr. Chairman. I yield back.

Mr. MEUSER. The gentlewoman yields back. The gentlewoman from Massachusetts, Mrs. Pressley, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Mr. Chair. Thank you for joining us, Director Chopra, and thank you for leading the Consumer Financial Protection Bureau in its mission to save consumers billions of their hard earned dollars by cracking down on junk fees, helping wipe out 70 percent of medical debt from consumer reports, and ensuring that our data is accurate and secure.

Before I go further, I just want to take a moment for the record. You know, after many attacks on the CFPB, could you just for the record say what the Supreme Court of the United States (SCOTUS) ruling was?

Mr. CHOPRA. In an opinion that was 7 to 2, authored by Justice Clarence Thomas, the Supreme Court made crystal clear that the CFPB's funding mechanism complies with all aspects of the appropriations clause. While we prevailed in this, it was a very costly delay. So many of our lawsuits against bad actors were stalled, paused, and in other cases, companies were not complying in the way we would expect them to.

Ms. PRESSLEY. Well, yes or no, for the record, is the CFPB constitutional according to the Supreme Court?

Mr. CHOPRA. Yes.

Ms. PRESSLEY. Louder for the far-right folks in the back.

Mr. CHOPRA. Yes.

Ms. PRESSLEY. Very good. All right. In a few months, millions of students will be returning to their college campuses to continue their education and start their freshman year, including in my district, the MA 7th, which is home to one of the largest concentrations of higher learning institutions in the country. This is an exciting time for a new generation of young people—two of my incredible interns join us today, in fact—for whom this is often their first time living alone, managing a budget, exploring their potential academic and career futures. However, many of these students have little or no financial experience, zero income, and a lack of sufficient savings cushions for emergencies. In other words, they are vulnerable to financial exploitation.

The CFPB has documented numerous cases of financial abuse in the student loan and credit card markets. It is increasingly clear that students are being driven toward more expensive products in the student prepaid and debit account markets as well.

I would like to enter for the record the College Banking and Credit Card Agreements Annual Report to Congress.

Mr. LAWLER [presiding.]. Without objection.

[The information referred to was not submitted prior to printing.]

Ms. PRESSLEY. Director Chopra, the report raises concerns about transparency and compliance of banking products marketed to college students. What actions has the CFPB taken to ensure appropriate disclosure requirements are being met by the universities?

Mr. CHOPRA. Well, I think this is a very, very significant problem that in some ways represents problems of the past. We saw how student lenders were giving kickbacks to colleges, steering them into a specific loan. We saw how credit card issuers were targeting on-campus in college. Congress banned those student loan kickbacks. They banned that on-campus giveaways by credit card companies. I do think we need to continue to make sure that not just the banks are providing the right disclosures, but we are really looking with the Department of Education about the relationships between colleges and banks.

Ms. PRESSLEY. Thank you. The report further highlights that the products marketed to students are often more expensive. For example, the debit cards marketed to students often consist of high overdraft fees, inactivity fees, and monthly service fees even though cheaper options are available, resulting in some students saying that they had to fast for days, use candles to reduce electricity costs, and even forego textbooks. This is unacceptable and frankly shameful, and it is all because of predatory and unnecessary fees charged to their accounts.

Director Chopra, these stories are horrifying and they are just a small snapshot of how students are being impacted. What steps is the CFPB taking to protect students from being directed to these expensive banking products which exploit their financial situation and inexperience?

Mr. CHOPRA. Well, we are going to continue with the Department of Education's rules and our rules to make sure that there is not predatory and exploitative practices. We want to make sure that every college student that is starting this summer knows they should also look for an account maybe before they come to campus. They do not have to accept what the college may be pushing on them and there needs to be some real look about whether colleges should be getting kickbacks for any of this.

Ms. PRESSLEY. Finally, Director Chopra, I am concerned by the report's finding that financial inducements to institutions of higher education from financial service providers may compromise the institution's ability to prioritize their student's financial well-being. I think we can agree that it poses a conflict of interest. So how is the CFPB monitoring these agreements and what steps are being taken to mitigate any conflict of interest?

Mr. CHOPRA. Well, what is fortunate is many of these agreements are now public. The credit card agreements are public, we make them public, but we will also take further enforcement action

if there is violations of law. I also think Congress should be thinking about reasonable limitations when it comes to these colleges profiting from it.

Ms. PRESSLEY. Thank you for your incredible work that you and your staff at the CFPB are doing. We appreciate your sweat equity and hard work immensely on behalf of consumers. I yield back.

Mr. LAWLER. The gentlelady yields back. The gentleman from Nebraska, Mr. Flood, is now recognized for 5 minutes.

Mr. FLOOD. Thank you, Mr. Chairman. Scams and fraud in the financial system are an ever-growing threat to consumers and businesses with the cost reaching tens of billions. According to the FTC, consumers reported losing more than \$10 billion to fraud in 2023, and that is a new benchmark. Victims of cybercrime registered 880,418 complaints to the FBI in 2023, with potential losses exceeding \$12.5 billion, representing a 22-percent increase in losses from the previous year. Mr. Chopra, will you commit to issuing a final rule on 1033 that does not discourage industry efforts to build critical tools to detect and prevent fraud?

Mr. CHOPRA. Yes, I am totally aligned with that goal, and we are working to make sure that we can implement the rules to promote competition, protect data, but also to make sure that we are deterring, detecting, and stopping fraud.

Mr. FLOOD. Right. Are you considering the development of these tools as it relates to restrictions on the secondary use of data?

Mr. CHOPRA. This is a tough one. Secondary uses of data are often really difficult to police. It is hard to know what people are using the data for. So we know that there will be some who want to say they are offering a loan but really are just saying that and they want to use it to sell or otherwise share. So we are looking about all the ways in which we can craft the rule to make sure that there is not bait and switches and that there is really reasonable uses of the data that are not intrusive or engaging in surveillance.

Mr. FLOOD. Thank you. I would like to switch gears to a different issue. Last year, your general counsel gave a speech, where he argued that the merchant exclusion within Dodd-Frank only applies to “mom and pop” merchants. Is it your view that the CFPB has jurisdiction over retail stores, airlines, electric utilities, and anyone else who sells things as long as they are a bigger company than a mom and pop?

Mr. CHOPRA. It is not the full context. First of all, we absolutely do have jurisdiction over retailers, others when it comes to things like the Fair Credit Reporting Act, other—

Mr. FLOOD. Any retailer, even a mom and pop store?

Mr. CHOPRA. I think under the Fair Credit Reporting Act if they are a furnisher, that has not been a focus of ours in any way, but I would say the merchant exclusion is in the law. We have always adhered to that, and certainly we are not looking at mom and pops when it comes to our work.

Mr. FLOOD. So we are having trouble understanding because I would like to remind you that the congressional intent was absolutely crystal clear as it related to this merchant exclusion. Senator Dodd of the Dodd-Frank fame said on the Senate floor, “It was certainly always our intent not to include retailers and merchants under the auspices of the Consumer Financial Product Safety Com-

mission. That language they have now offered and on which they work so hard makes that abundantly clear.”

Do you take the position that Senator Dodd was mistaken about the clear meaning of the Dodd-Frank Act, a bill that he wrote with then Financial Services Committee Chair Barney Frank?

Mr. CHOPRA. No. I think that merchant exclusion relates to who is an offeror of a loan or a financial provider in the meaning of the Consumer Financial Protection Act. I am sorry to get technical on it. We absolutely adhere to that. I think that was supposed to address a store that was offering the ability for someone to pay later for something to exclude it. That is not a loan.

Mr. FLOOD. Finally, I like to close by highlighting an exchange I had with Acting Comptroller Hsu last month. Hsu said, “Banking consists of three services that are bundled together: facilitating payments, making loans, and taking deposits. When payments becomes unbundled from that on its own, that is commerce, that is not banking.” Director, do you agree with that description of the line between banking and commerce, and more so and more importantly, are payments alone commerce?

Mr. CHOPRA. I need to think about that a bit more, but generally speaking, we think about banking as collecting deposits, making loans, and movement of money. I think that banks are really the critical component for doing all of it. I need to think about what that says. I think it sounds right roughly, but I need to put more thought on that.

Mr. FLOOD. I would ask that you in your extended comments to this committee answer that question——

Mr. CHOPRA. Sure.

Mr. FLOOD [continuing]. before the deadline——

Mr. CHOPRA. Of course.

Mr. FLOOD [continuing]. proposed by the chair.

Mr. FLOOD. With that, Mr. Chair, I yield back.

Mr. CHOPRA. I am happy to discuss that with you, too.

Mr. FLOOD. Thank you.

Mr. LAWLER. The gentleman yields back. The gentleman from Texas, Mr. Green, is now recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the ranking member, and of course I am always honored to have our director here with us. Thank you so much for what you are doing to protect consumers, and if I may, I would like to thank your staff, too. You have some very good staff members. They are always available to us to assist us.

Let me start with this. The Supreme Court seems to have indicated that the CFPB is being properly funded, and I am pleased to know that you can now take a breath. I am not sure that the battle is over because I have an article from Politico styled, “Regulating Through Blog Posts: ‘Republicans Poised to Attack CFPB Director.’” So the battle is not over. Apparently, the new challenge will emanate from the Agency’s funding, and it depends on the definition of the term “earnings,” Federal Reserve earnings. My hope is that people will understand that definition is one that allows for the earnings to mean total net income, not net profits, but that is a battle that you will have to continue to fight. You fight to protect the consumer, and then you have to fight to protect the Agency

from my colleagues, who would like to end the Agency. You have quite a battle on your hands.

Let us talk about the absence of the CFPB and what veterans would have to contend with because currently, you are serving 1.3 million active duty servicemembers, 1.5 family members of active duty servicemembers, 770,000 members of the National Guard, 980,000 National Guard and Reserve family members, and 18 million veterans. What is it that these persons in the absence of CFPB would have to contend with? We know that there are people who target them, who would take advantage of them when it comes to lending practices. Tell us if you would.

Mr. CHOPRA. Well, one of my former colleagues, Holly Petraeus, used to describe some companies looking at servicemembers as nothing more than a dollar sign in a uniform. We see in the data that they are much more likely to be targeted for identity theft, including their money and their data. We enforce the Military Lending Act. Since I have taken office, we have brought in a number of enforcement actions to vindicate those servicemembers' rights. When it comes to veterans, many of them are subjected to frauds and scams. We have a dedicated Office of Servicemember Affairs that focuses on military connected families, and we are very proud of that work, and it would be a mistake to simply shut that work down.

Mr. GREEN. Permit me to ask this. In the efforts to shut down the CFPB, have you seen or have you had presented to you any proposal as to what would replace it? Any legislation been presented to you in terms of a proposal to replace the CFPB?

Mr. CHOPRA. I have heard about just elimination and defunding.

Mr. GREEN. Elimination and defund. Sort of like with Obamacare, as it is called. Elimination is fairly easy, so they thought, but have not been able to perfect that, but never saw the plan to replace. Would you think that before we decide that we are going to eliminate this Agency that is protecting these millions of veterans and their family members, that we would have something that we would offer as a replacement?

Mr. CHOPRA. It also would create chaos for mortgage lenders and many others who depend on the rules to make sure that they are lawfully originating mortgages.

Mr. GREEN. I am pleased that you brought this up because, unfortunately, I was here when we had the downturn in 2008 and we discovered all of these many things that were being done to take advantage of persons who were seeking a mortgage. Some of the various instruments were just dastardly imposed upon consumers, so thank you for bringing that up. My belief is that the CFPB is necessary, and if we did not have it, we would try to create it, although in this climate I am confident that it would be impossible to create. So thank you for your service, and please continue to soldier on. Thank you.

Mr. LAWLER. The gentleman's time has expired. I now recognize myself for 5 minutes. I would just note that this committee did pass Mr. Barr's bill that would appropriate funds for the CFPB and create a commission. So the idea that somehow we are defunding and disbanding is false.

Director Chopra, some of my colleagues have already raised concerns about the CFPB's directive to eliminate fees that institutions can charge, will limit access to credit for certain riskier individuals, and raise the costs of credit and services for all consumers. As of just this week, the CFPB initiated a rulemaking process to remove medical debt from credit reports. If a medical debt is owed by the consumer, how do you expect it to be collected?

Mr. CHOPRA. Well, there are many, many medical providers that do not report and they do collect. I would say this. We have done years and years of analysis on it, and there is also a prohibition in the Fair Credit Reporting Act for having medical-related information on credit reports and we saw really people seizing on that exemption to often use a credit report to coerce people into paying debts they already paid or do not owe. So we have proposed and are accepting comment on how we might restrict some of that abuse and put it more in line with what Congress intended.

Mr. LAWLER. Okay. If I decided to apply for a mortgage, let us say, under your rule, and a lender would have no idea that I skipped out on my medical bills because I do not need to include it on my credit application, and the lender would not be allowed to consider the debt that I owe when determining how much of a mortgage I can afford, correct?

Mr. CHOPRA. No, that would not be correct.

Mr. LAWLER. Why?

Mr. CHOPRA. Well, it does not really prohibit any lender from asking about what are people's income, debts, other things. So again, this is really about looking at the accuracy—

Mr. LAWLER. So you are supposed to self-report?

Mr. CHOPRA. Well, there are lots of things that are not on a credit report, including your food expenses, other things that lenders often do ask. So when it comes to a credit report, it was meant for a lender to see for the loans that you have taken out like a mortgage, credit card, auto loan, or a student loan how are you doing on them.

Mr. LAWLER. Right. How are you doing paying your debts, right?

Mr. CHOPRA. Yes. So we have not—

Mr. LAWLER. So if the objective of a credit report is to show somebody who is going to provide you—

Mr. CHOPRA. Yes, your loans.

Mr. LAWLER [continuing]. with funding—

Mr. CHOPRA. Your loans.

Mr. LAWLER. Right. But if you are—

Mr. CHOPRA. So we have not been opposed to excluding—

Mr. LAWLER. Right. But if you are—

Mr. CHOPRA [continuing]. medical loans or medical credit cards.

Mr. LAWLER. Excuse me. The whole purpose of a credit report, right, is so that somebody knows whether or not somebody potentially could be a risky person to lend money to. So if that is the objective and you are saying, well, you do not need to include this, you do not need to report it, is it not going to create a situation where they do not have an accurate financial picture of a prospective borrower, and will that not have an impact on our credit markets?

Mr. CHOPRA. Well, I guess I would ask you this. Let us say I just made up the fact that you owed me \$10,000 and I put that on your credit report. When there are inaccuracies in your credit report, that has a huge impact on you when it is false, when it is already paid. What we see is compared to other types of loans like mortgages, or credit cards, or auto loans, where you actually signed up for the loan, where there is documentation around it, there is a lot more information to assure that it is accurate. On top of that, medical bills also go through the insurance system, so you are often left with a situation where things are still pending but often parked on your credit report and that is why many lenders actually do not even look at it because they know that it is not necessarily predictive of your performance on other loans, and that is what a lot of the research has shown.

We have proposed the rule. We are eager to get feedback on it, if there are places we should adjust it, but we did a lot of work over the years to make sure that there is a strong empirical base for this. At the end of the day, the Fair Credit Reporting Act really does not permit medical information or your health data to be there.

Mr. LAWLER. In your example, you talk about inaccuracies on a credit report, but cannot consumers dispute those inaccuracies?

Mr. CHOPRA. Yes, but how long is that going to take right when you are in the middle of applying for a loan? You know, it will take so much time to file the dispute, wait, and then you are in some rope-a-dope between the credit reporting agency and the furnisher. This is why this has systemic problems, and I really want to encourage you. I know people feel they have to oppose this, but this is pretty reasonable what we are proposing.

Mr. LAWLER. Yes, but as you acknowledge, there is a process to dispute for inaccuracies, and ultimately—

Mr. CHOPRA. Yes, but there is not a process where medical billers—

Mr. LAWLER. Yes, sir. Reclaiming my time. Thank you. My time has now expired.

The gentleman from New York, Mr. Torres, is recognized for 5 minutes.

Mr. TORRES. Thank you. Director Chopra, I commend you for your decision to propose the exclusion of medical debt from credit reporting. Medical debt is often the consequence of the unforeseeable, and, therefore, it reveals next to nothing about the underlying credit worthiness of an individual borrower.

America's conventional credit scoring methodology to me is fundamentally obsolete. Not only does it include factors that have no informative value like medical, it often excludes factors that have informative value like rental payments. If credit reporting were to factor in alternative data, like rent payments, most of the population, if not almost all of it, would become credit scorable. If Government-Sponsored Enterprises (GSEs), like the Federal Home Loan Bank of New York, Fannie Mae, and Freddie Mac, were to use credit scores that include rent payments and exclude medical debt, as required by law, millions of more Americans would have access to homeownership. Twenty thousand of my constituents in the Bronx in New York 15 would have access to homeownership.

So for me, the single greatest solution to systemic racism in America is the creation of black and brown wealth through expanded access to credit and expanded access to homeownership.

For the lowest income communities of color, there is nothing comparable to homeownership as a tool for broad-based wealth creation. I appreciate your mentioned earlier of trigger leads. I have serious concerns that unregulated trigger leads fundamentally undermine consumer protection and data privacy. When consumers apply for a mortgage, a credit reporting agency will often sell their private information without their knowledge and consent. Within hours of applying for a mortgage, consumers are often blindsided by a bombardment of telemarketing calls. Some of the lenders behind these calls are often bottom feeders, engaging in unfair and deceptive business practices. So, I worry that poorly regulated trigger leads are often an open invitation to predatory lending against unsuspecting borrowers.

I am curious, would you support legislation that would regulate trigger leads?

Mr. CHOPRA. Yes, I really have concerns about the big credit reporting conglomerates making money off of this, especially when we do not even know if these offers are really competitive or legitimate. You mentioned, Congressman Torres, that they might be bottom feeders. We do not even hear that much that these leads are leading to more competition, but I really do. I have talked to you and Congressman Rose about it. I think this is a key privacy issue we should work on.

Mr. TORRES. Look, I mean, I feel deregulated trigger leads, leads to predatory lending under the guise of choice and competition. Maybe the theory is that it will lead to more choice and competition, but the reality is that it has led to more exploitation.

As you know, June is Pride Month, and so I have a few questions in the spirit of pride month. The Urban Institute released a report finding a 20-percent homeownership gap based on sexual orientation and gender identity. Five percent of the 20-percent homeownership gap cannot be explained by existing data. As the administrator of the Home Mortgage Disclosure Act, CFPB is in a position to mandate the disclosure of more data so that researchers like the Urban Institute can ascertain the causes of the unexplained 5 percent homeownership gap.

Is the CFPB willing to take action to expand the scope of the Home Mortgage Disclosure Act to include data relating to sexual orientation and gender identity?

Mr. CHOPRA. Yes. We are thinking of looking more deeply in general at the homeownership gap and older homeowners, and there are certainly issues when it comes to sexual orientation and other factors. With respect to the Home Mortgage Disclosure Act, there are a number of issues that we are looking at for modernization of that, and that is certainly one of them. I think it is not slated in the very near term, but when we do an assessment, and we look at it, I think that is going to be something that we will also have to comply with Supreme Court precedent on this.

Mr. TORRES. The CFPB administers, not only the Home Mortgage Disclosure Act, but also the consumer complaints data base, which is an abundant source of data. Is the CFPB willing to ex-

pand the scope of the consumer complaint data base intake form to include sexual orientation and gender identity?

Mr. CHOPRA. We may have done some consumer testing on different identification factors. I think there is always the balance of how to get people through and file, but I am happy to ask the staff about whether that has been done before.

Mr. TORRES. Just a final question on medical debt: Even if there is a process for disputing, do you not think we should get it right the first time?

Mr. CHOPRA. Yes, and often when people dispute, the immediate answer is that it is correct without showing any receipts.

Mr. TORRES. But we should try for maximum accuracy at the very beginning of the process.

Mr. CHOPRA. Actually, it is the law for those credit reporting conglomerates to have reasonable procedures to quote assure maximum possible accuracy.

Mr. TORRES. Thank you. My time has expired.

Mr. NUNN [presiding]. Thank you. The gentleman from Florida, Mr. Donalds, is now recognized for 5 minutes.

Mr. DONALDS. Thank you, Chairman. Director Chopra, welcome back.

Question. So the CFPB refers to Buy Now Pay Later products as the pay in four—number four product in which consumers split a retail purchase, typically \$50 to \$1,000, into four equal interest-free installments, with the first installment, the downpayment, due at checkout and the remaining installments due in 2-week intervals. Would you agree with that?

Mr. CHOPRA. Yes. Generally, that is how the market is today.

Mr. DONALDS. Okay. So you would agree that buy now pay later products have a separate and distinct characteristics from traditional credit cards?

Mr. CHOPRA. Yes. They actually are, in many ways, substitutes for it, but they have a different way people borrow and repay.

Mr. DONALDS. All right. So then why is CFPB starting to interpret credit card regulations to include Buy Now Pay Later plans?

Mr. CHOPRA. It is actually how Congress wrote it. So Congress, when they amended the Truth in Lending Act, they talked about the different devices and accounts that could be used to draw and create loans, so what we did was we got actually a lot of questions. What are the existing provisions that apply? So a lot of the things that apply to credit cards do not apply to them right now, but there were some pieces of it as it relates to billing statements, disputes and errors, that did apply, and we wanted to make sure that there was some consistency around that.

Mr. DONALDS. Would you not agree that the primary thing that makes a credit card, a credit carder is interest, and a Buy Now Pay Later agreements are interest free?

Mr. CHOPRA. Yes. So the way the Credit Card Accountability Responsibility and Disclosure (CARD) Act and the Truth in Lending Act, there is a separate part about finance charges. So finance charges is what often triggers, you have to show an annual percentage rate and other pieces. So it is true that not all aspects of the credit card framework do apply, but some do.

Mr. DONALDS. I would argue that without interest, none of the aspects of the credit card framework would apply.

Mr. CHOPRA. Well, I think they do not have to disclose, for example, an interest rate. That is one part of it, but as it relates to bills and disputes, that is really common for lots of types of loans.

Mr. DONALDS. All right. A couple of other things. For over 50 years, Congress under both Democrats and Republicans have determined that the best way to promote competition and consumer choice while also ensuring robust consumer protection is through disclosure-based laws and regulation. The CFPB has been initiating a series of blogs, circulars, advisory opinions, and rulemakings that appear designed to upend that disclosure-based approach to consumer protection, often by labeling lawful and fully disclosed bank fees as unfair or abusive. If consumers cannot be trusted to make their own decisions after receiving disclosures, do you favor government mandates about product features and fees?

Mr. CHOPRA. Well, respectfully disclosures are not the only things that are required. There are some things that have to be disclosed, but there are other prohibitions. So like I mentioned in my opening testimony, in some cases, there are restrictions when it comes to data and permissible purposes, and you cannot disclose that away. We have tried our best to say, here is how existing law applies. Disclosures have their role, but I would argue, in privacy notices disclosures are not enough, and you have passed a number of laws over the past 50 years that touch on disclosure and non-disclosure.

Mr. DONALDS. Yes, but we are not talking about privacy aspects. We are talking about fees and fee structure, and CFPB has—hold on, Director Chopra. CFPB has been labeling different fees and fee structures as misleading, abusive, et cetera. In that vein, is the CFPB outside of the framework that has existed on Capitol Hill for 50 years around disclosure being the way that consumers are provided information?

Mr. CHOPRA. Not at all. For example, Congress banned certain types of fees, all technical—

Mr. DONALDS. Well, but real quick to that before you go. That is Congress banning the situation, not an agency making a promotional view of a situation that is lawful, correct?

Mr. CHOPRA. It is consistent what we have done with congressional prohibition, so what we have done on credit cards is exactly in line with the congressional prohibition on excessive or disproportionate fees.

Mr. DONALDS. Yes, but you cannot take a congressional prohibition on something else.

Mr. CHOPRA. No, no, no, but it is consistent—

Mr. DONALDS. Hold on, Director Chopra, and then label it as abusive on something that is allowed under Federal law. Now you are picking and choosing.

Mr. CHOPRA. No, I am not. Everything we have done has been exactly and squarely with what the prohibitions that currently exist. Now, if there is a loophole that in the regulations we inherited, and when we do a look back to determine whether it made sense, that is part of the process.

Mr. DONALDS. Okay. Fair enough. Thank you, Director Chopra, for coming in. I yield back.

Mr. NUNN. The gentleman yields back. The gentleman from Nevada, Mr. Horsford, is now recognized for 5 minutes.

Mr. HORSFORD. Thank you to the chairman, to the ranking member, for holding this necessary hearing.

We continue to see alarming increases in the frequency, sophistication, and reach of scams. Meanwhile, the complexities of our financial system allow many good hardworking people to be inadvertently harmed by incorrect or incomplete information being distributed. As evidenced by the stunning 1.5 million complaints that the CFPB received, there is a massive need for your Agency to continue to stand up for everyday working families as they attempt to navigate our financial sector. With an impressive 99 percent response rate from the offending parties, the CFPB is regularly delivering results. I want to thank you on behalf of my constituents and the American people.

When it comes to financial scams or fraud, unfortunately, our brave servicemembers are among those who are targeted regularly. As we continue to debate the National Defense Authorization Act on the floor, I want to stay focused on the servicemembers at the heart of all of this and follow up with you on our previous discussions about your initiatives to protect those who are at risk, so we can keep them safe. Unfortunately, for my home State, the volume of complaints from servicemembers ranks third in the country on a per capita basis. Thanks to your efforts, relief is on the horizon for many as the CFPB has delivered an astounding \$183 million in redress to servicemembers and to veterans.

Director, your report pointed to increased attention toward innovative solutions that will make it easier for our servicemembers to take advantage of these programs. Can you please discuss some of the areas where you see more opportunities to streamline current methods for getting servicemembers the support that they have earned?

Mr. CHOPRA. Well, certainly the National Defense Authorization Act has been able to provide lots of different enhancements from servicemembers on their cars, their mortgages, their student loans, and more. The Servicemembers Civil Relief Act, the Military Lending Act, which we enforce, have real important roles in this. Really, our Office of Servicemember Affairs has encouraged financial companies to really streamline the process so that they can automatically give benefits to servicemembers. We found that a lot of reservists and National Guard in many cases have left money on the table because of the bureaucracy around it.

We also see, when it comes to repossessions of an automobile or foreclosure, those Servicemembers Civil Relief Act protections are absolutely critical, and of course the Fair Credit Reporting Act has special provisions for servicemembers when it comes to protecting against identity theft.

Mr. HORSFORD. Thank you. Let me turn to the private identity verification process. Director, there has been a lot of discussion around the use of credit header data recently. It would be helpful if you could clarify what exactly is included in credit header data and what is not?

Mr. CHOPRA. Yes. So credit headers are the short form of credit report, so it typically has your name, other names being used, past addresses. It will typically not include what is called a trade line, which is what you have been borrowing and whether you have been paying back. That short form credit report does have some sensitive data, so we are looking at its uses, but of course we are going to be thinking hard about how it is different from the rest of the credit report.

Mr. HORSFORD. Thank you. Whether it be fraud protection services or vital public safety initiatives, it is crucial that you continue to examine ways that the rulemaking surrounding the Fair Credit Reporting Act could hinder legitimate businesses and I encourage you to work to mitigate unintended consequence.

Mr. CHOPRA. Absolutely.

Mr. HORSFORD. Thank you. Director, the last time we spoke a bit about enforcement actions to curtail the unscrupulous actors in the credit repair marketplace. I wanted to give you the remainder of the time to discuss any meaningful developments that you have since last November, particularly—

Mr. CHOPRA. Well, we were able to reach a very significant multibillion dollar judgment against a ring of credit repair scammers, Lexington Law, that has been a major step forward that is going to do a lot for so many people. I do really worry that when people have inaccuracies on their credit report, they go to many different ways to try and fix it and often they can be subject to some very unscrupulous practices, and we are going to continue to look and work with others to crack down on this.

Mr. HORSFORD. Thank you for your work, and I agree with the exclusion of medical debt from credit reporting, and look forward to working with you on that as well. I yield back.

Mr. NUNN. The gentleman yields his time. The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Mr. Chairman. I am going to start out with just the disparity in the view of the role of government between Republicans and Democrats. Most Republicans want the Federal Government and every government to do as little as possible to maintain the rules of the road, to have a military, to invest in infrastructure, to manage interstate commerce, and really not much else. My colleagues across the aisle, Democrats, they want to use the government at every level to reshape society in their perfect utopian image. It has not worked. It has been tried before, and I always tell people, I have one mother, I do not need another one.

I am bringing this up because I think the wild swings in policies coming out of the CFPB after elections does not facilitate competitiveness in the global economy, it does not make the U.S. economy strong, and it impedes business' abilities to invest because they do not have clear expectations long term of what policies are coming out of the CFPB. I mean, can we agree that between 2016 and 2017, and then between 2020 and 2021, the role of the CFPB was very different?

Mr. CHOPRA. Well, under the law, it should not have been that different, but, yes, there has been different approaches by various directors.

Mr. TIMMONS. You would disagree with a lot of the things that Mick Mulvaney did as CFPB Director. His approach is dissimilar.

Mr. CHOPRA. Yes. I would say we have a more focused rule of law approach when it comes to our enforcement work. We try and enforce the law as you write it.

Mr. TIMMONS. He would probably take a very different position than you would as it relates to that. He would probably say that you are exceeding the scope of your authority, and you are regulated by enforcement, and you are really impeding customer's ability to get access to credit because every time that a business is impacted by something from your office, those costs are passed on. Either customers are abandoned and denied opportunities because of the challenges they face, or they have increased costs because compliance has costs and those costs are passed on. Anyways, I only bring this up, and I think we can simply agree that with the Republican Administration, the CFPB has a different role than a Democrat Administration. I think we can agree on that.

Mr. CHOPRA. Well, I think the way to address your concern is often to legislate more.

Mr. TIMMONS. You are exactly right, and that is what I was going to bring up. Andy Barr has a bill that would create a commission that would appoint the CFPB Director and have additional accountability.

Mr. CHOPRA. Why not legislate substantively on consumer protection? Why not actually put in—

Mr. TIMMONS. We have passed, like, 45 bills this year, so I am trying to put small points on the board. We are not going to solve the problems that you seek, but I think if we found a way to give the director increased accountability and really bipartisan appointment, I mean, I think that would give the CFPB additional credibility. More importantly, it would stop these wild swings in policies that are impeding the U.S. businesses from competing in the global economy because while they are competing in the U.S. economy, they are also competing in the global economy. So do you agree that wild swings in policies between administrations impede business' ability to make investments and predict the future?

Mr. CHOPRA. I would say that having a multi-member commission and I have heard criticisms of multi-member commission swinging as well because of their odd number. I believe elections have consequences, and our democratic system is the way things work. If you want to change consumer law, that is the role of Congress to pass laws and do that in the law of the land.

Mr. TIMMONS. I hear you, but we have 6 months into an election and all the polls show that there is going to be a change in administration. If there is a change in administration, I would imagine that whomever is in your position in January is going to have a very, very different view of the role of the CFPB. I probably agree with that position more, his or her view more of the role of the CFPB, but I think we can all agree that the wild swings in how the CFPB performs its function is not conducive to U.S. competitiveness.

I just really think that we have 6 months to take up Andy Barr's bill and to make this problem go away or we can talk about it in 4 years and 6 months, and we are going to have the same issue

again. We are going to have election coming up, and I just think that the sooner we can stop these wild swings in policies, the better off we are going to be. With that, Mr. Chairman, I yield back. Thank you.

Mr. NUNN. The gentleman yields back. The gentlewoman from Michigan, Ms. Tlaib, is now recognized for 5 minutes.

Ms. TLAIB. Thank you so much. You enforce the law, what is it, \$183 million you got for our veterans?

Mr. CHOPRA. Yes.

Ms. TLAIB. I mean, come on corporations, businesses, follow the law. Let us follow the law and it will not cost you any money. Now, I know you are not going to be able to say that to my colleague, but it is true. I mean, look at this, 39 public enforcement actions involved harm to servicemembers and veterans, including six enforcement actions of violations of the Military Lending Act. My God, corporate greed is all the rage here in our country. It is. I mean, it is not like, poof, the money, it is going to our residents, it is going to our constituents and our families. I mean, I am just looking at all of this, like even, which is crazy, the amount of money our banks were just banking off our residents, that \$6.1 billion, you were able to literally go after these large, Big Banks, that some of them have business plans that over 50 percent. I do not know what it was like, maybe that is the credit card companies, over 50 percent of their business plan was overdrafts and fees. That is what it was. They were making money off of charging our residents these fees.

I mean, it is not like you can take this money away from them, if they applied it under the law, correct? They were violating consumer law. It is not that is what you are doing. So if we have a new administration, this is what is going to happen. Nothing. Do you know how many times I sent various cases, Ranking Member Waters? You know how many cases I sent around service loan, folks with student loan issues? Oh my God, the loan servicers are out of whack. I mean, give me a break.

I want to talk about bye-bye medical debt on credit reports. I am so incredibly happy to see that. One of the things that I think, Director, what really was just mind boggling is hearing my residents talk about the fact that they would have to file bankruptcy, all of these things because it was weighing down on them being able to access housing, employment, and so forth. I know this from the study that you all showed. When you did the study, it showed the significant impact on our American families across the country to have medical debt on their credit report, but it was really an inaccurate picture of someone's risk profile. It really was.

If somebody gets sick and it gets on their credit report, having that weigh down as if they bought something—I am not very good at the car stuff—but something expensive, a luxury item. So Director, let us talk about that burden, and what this is going to do. How is it going to transform the families around the country, their lives?

Mr. CHOPRA. Well, I think it is going to reduce so much of the harms, especially from inaccurate credit reporting of medical bills, which really, debt collectors are not able to really see—

Ms. TLAIB. You got to explain that because you are really good at this. Explain that because people do not get it. It gets on their credit report, and it was incorrect.

Mr. CHOPRA. Yes. I think this is the difference. There are so many problems when you park this medical bills there. It may still be being adjudicated by an insurance company, and on top of that, no one is seeking out to have medical debt. You borrow money for a car because you want to get the car to get to work. You borrow money to get a home. You borrow money for an education. You are not just sort of eager to get medical debt, and I think that there are so many different facets of this.

We studied carefully the differences, and we have proposed, also being more in line with what Congress wanted was to restrict medical information on people's credit reports, and I think this is a reasonable intervention to stop a lot of the inaccuracies. I think one of your colleagues said, well, can they not dispute it? How long will it take to deal with that, and what will the harm be when you are applying for that loan?

Ms. TLAIB. I mean, I think our chairman of our committee was talking about having to dispute it because, I guess, he actually paid his bill, and it still somehow ended up—

Mr. CHOPRA. So many people pay it, just because they want the abuse to stop.

Ms. TLAIB. Yes. Director, what are some of the coercive practices that debt collectors currently engage in, such as debt parking? Explain that to the American public.

Mr. CHOPRA. Debt parking is where you put a debt on someone's credit report in the hopes that you can coerce them into paying to remove.

Ms. TLAIB. You are too nice. You mean bully them.

Mr. CHOPRA. Even if you do not even owe it or you have never even heard of it. By the way, so much of the public has also paid one of those debts, even if they did not owe it.

Ms. TLAIB. It is unbelievable. Another concerning practice, of course, is increasing use of medical credit cards in financing plans. I mean, corporate greed is just coming up with all kinds of various inventions. Just to be clear, Director, this week's proposed rule does not affect debts paid to medical credit card issuers, does it?

Mr. CHOPRA. Yes. If you pay a medical expense with a credit card, any type of credit card, that will be classified separately and is not covered.

Ms. TLAIB. I think that is something we should actually look at together, but I really appreciate this. I just do not want my families, it is not their fault they got sick. They are just seeking help, and medical debt, again, should not be weighing down our families. Thank you so much, I yield.

Mr. NUNN. The gentlewoman's time has expired. The gentleman from Texas, Mr. Sessions, is now recognized.

Mr. SESSIONS. Chairman, thank you very much. Mr. Chopra, you are almost at the end of this visit that you have with us, and thank you for taking time, not just informationally to be with us, but I think your attitude I appreciate very, very much. I admit, I was here when we started, and have been gone for a while, so you may

have received this question or have covered this subject. I appreciate you indulging me to try that again, if that is true.

Much of business today is concerned about hacking, malware, a lot of fraud, theft of consumer data, theft of money, putting companies in the lurch as they try and work with law enforcement, as they try and figure out the payment of these things. What does your Agency, what is its role in this regard? What is your viewpoint and interaction, and what do you see?

Mr. CHOPRA. I am really disturbed by the increase in ransomware that we are seeing throughout the U.S. economy. You do see actors overseas being able to take information that can then be used to access systems, and then often there is an extortion payment. I think it is a very challenging issue that we work with the Treasury and others, particularly to protect our financial institutions. Some of them have data on half of America, like the credit reporting agencies. For me, the Equifax data breach was a huge wake-up call because the hacking is not just about trying to defraud a consumer, it was used for statecraft purposes. So it is really protecting data, it is not just protecting consumers, it is really protecting our country too.

Mr. SESSIONS. Is that in your mission or is your mission only to go protect consumers, not to protect what might be financial institutions?

Mr. CHOPRA. Yes. We have certain authorities that our focus is on protecting consumers, but often when it comes to safeguarding data, and in the financial space, the Gramm-Leach-Bliley Act governs some of this. So we have been working more when it comes to understanding where the risks are, but that is not really our core mission, that we try and stay abreast of everything that is going on because it also impacts the broad array of fraud that is happening everywhere, and especially with artificial intelligence, generative AI, we expect that to go up. I do think we have to take some action as a Congress, or you all should, to make sure our defenses are there.

Mr. SESSIONS. Okay. Well, what are those ideas that you have that we have not perhaps reached yet, because as you know, we are trying our very best to make it easier for companies that do find themselves in these circumstances to report, to acknowledge things. Several years back, they were soundly attacked for allowing these breaches to happen, and I think now there has been a more recognition that it may be happening to everybody. Oh, by the way, it happens to government also—

Mr. CHOPRA. Yes.

Mr. SESSIONS [continuing]. despite their best efforts to perhaps criticize others who have these same things. What are those activities that you think you see from your perspective that Congress should do a better job at?

Mr. CHOPRA. I think when it comes to data protection, data security and data privacy are just two sides of the same coin. Right now, under the Gramm-Leach-Bliley Act, there is provisions for safeguarding of information, and then there is separately privacy disclosures. I think more limitations on what companies can monetize, I think that will also increase data security because there will be less thirst for that information.

Mr. SESSIONS. Are you saying gather less information that they would have available? Go back about 15 seconds.

Mr. CHOPRA. Yes. I think there are places where companies are engaging, and I see this in the technology sector of collect every single thing possible and keep it and monetize it.

Mr. SESSIONS. But is not that what you are asking banks to do in some respect with some of your rulemaking?

Mr. CHOPRA. No, we are actually—

Mr. SESSIONS. Gather more data and information?

Mr. CHOPRA. Well, there are places where Congress has asked us to request more, but when it respects other issues, there are actually laws on the books to dispose of it and make sure that it is deleted rather than permanently retained.

Mr. SESSIONS. Thank you very much. I am going to take to heart what you have said and go look at it, and I will get with you offline then. Thank you very much, Mr. Chairman.

Mr. CHOPRA. Yes. Let us meet again.

Mr. SESSIONS. Thank you.

Mr. NUNN. I thank the gentlemen from Texas. I now recognize myself for 5 minutes.

Director Chopra, thank you for joining us here again today, and I appreciate you taking the time to come and speak to us in our office. During that time, I shared with you many concerns we had from my fellow citizens in Iowa. I shared with you that I have seen since the beginning of your tenure, things that are frustrating, including an office that seems highly politically motivated in both its decisions and what I see as the Agency's overreach and significantly having a negative impact on my small and community banks in States like Iowa.

In fact, just a few weeks back, we discussed ways to strengthen Iowa's financial system and the overall tiered system. As I shared with you, what I heard before and what I heard as recently as yesterday is that this is not happening, and they are not getting the answers and responses that your team pledged that they would make. I find this frustrating. I ask again, please listen to the folks that you are dealing with, particularly those further down, regional and small banks. Your regulations are causing real injury to Iowans and certainly they come at a cost. So to clarify, listen, learn, execute. Please do not just regulate.

Specifically, I remain concerned about Section 701 rule, which requires banks, particularly the smallest ones, to meet your 81 data field. Now, it was just discussed here we are very concerned about the amount of information that the financial institutions are collecting. Ultimately, your institution as well is taking more and more information and putting it into what I consider a treasure trove for a cyber actor to exploit. We will get to that in a moment.

I would first like to talk about the 81 data fields. Director Chopra, do you believe each one of these data fields is absolutely essential if you were able to pick which 81 were being required from our lenders?

Mr. CHOPRA. I appreciate what you are saying. I do have to respectfully disagree with the 81 data points point. We were under a court order to complete this rule by March 2023, there were certain data points that were required.

Mr. NUNN. I understand, Director. My question for you is, do you believe each one of those 81 are critical and essential?

Mr. CHOPRA. We believe that the points that are being collected are exactly what was in line with the congressional statute.

Mr. NUNN. So they could not be scaled back in any fashion?

Mr. CHOPRA. Well, they could be, but there was a provision in the statute that where we collected comment on, and many lenders—

Mr. NUNN. Have you provided any guidance to this body on which ones you would like to see removed?

Mr. CHOPRA. Well, the rule has been finalized.

Mr. NUNN. Have you provided any guidance to this committee if any should be removed?

Mr. CHOPRA. It is statute, and so Congress is the one—

Mr. NUNN. Congress is the one in charge of statute. You are in charge of the implementation.

Mr. CHOPRA. That is exactly what I am saying.

Mr. NUNN. But have you provided any feedback on any of the 81 that should be removed? I have not seen any.

Mr. CHOPRA. There are not 81.

Mr. NUNN. I am going to move to my next point. I heard directly from a small business owner who has written to you. I will use the 1071 small business rule leading specifically that they are a small and rural community bank with 17 full-time employees. The amount of training required for your 81 points is not without cost. Software that they do not have must be implemented.

Additionally, the time involved as being part of an ineligible burden as a requirement of this regulation. Note to quote we do not have enough manpower or staff dedicated, required, would mean one full-time person. Even with that because of the regulation of Home Mortgage Disclosure Act (HMDA), reportable transactions not be reported, even if you are a non-HDMA reporter. As well, this being fully trained would not only be enough to be able to compile and track the 81 data points, but also to correctly report them. There are penalties within the regulation for doing this incorrectly. So it also require a specialist or a quality control officer, neither of which we have within our small staff. Plus, the loan officers are not supposed to collect or review these 81 points because they might be accused of a Fair Lending Act violation. Costs and direct impact to folks back home.

I want to ask specifically, how did you come up with a reporting threshold of 100 small business loans?

Mr. CHOPRA. We actually in the final rule, compared to the proposal, tailored this and exempted a substantial number of more banks. We tried our best to create thresholds in a tiered way of implementation as well.

Mr. NUNN. Director Chopra, do you believe a bank with 17 people would be considered a lower-tiered threshold?

Mr. CHOPRA. Yes. So we came up with different sizes, not—

Mr. NUNN. I appreciate that, but the reality is that your sizes are a one size fits all because of my 250 small banks in Iowa, not a single one is exempted.

Mr. CHOPRA. I think we quadrupled the loan threshold for the exemption.

Mr. NUNN. The impact has happened to every small bank in Main Street, Iowa right now, and I am concerned that between this rule and the beneficial ownership rule and small businesses are on the hook for 133 additional data points. That is a cost and a tax on every Iowan. With that, I hope you listen, Director Chopra.

With that, I yield my time to the gentleman from Wisconsin. Mr. Fitzgerald is now recognized for 5 minutes.

Mr. FITZGERALD. Thank you, Director. I know you have been sitting here for a while. I recently sent a letter to you related to the potential effect of your Fair Credit Reporting Act rulemaking activity related to data broker's impact on identity verification and Know Your Customer, KYC, requirements. In the reply that you guys sent back to us, CFPB will not issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. As you consult with FinCEN and others on the rule-making, will you be exploring use-related exemptions if financial institutions are using data to comply with the Bank Secrecy Act (BSA) and other identity verification requirements?

Mr. CHOPRA. Yes. We have not proposed a rule yet, but the answer to your question is yes. To offer a little bit more color, I think the concern we have is not when financial institutions are using that data because they are using it for financial purposes. It is really when others are using it for unknown reasons, potentially for nefarious reasons.

Data brokers, they are assembling background reports about people, and under the Fair Credit Reporting Act, there are certain limitations that the law provides and we are just trying to make sure it is keeping up with the times, but the answer to your question is yes.

Mr. FITZGERALD. Okay. So brief outline of the FCRA rulemaking stated that CFPB is considering a proposal to "clarify the extent to which credit header data constitutes a consumer report, which the CFPB notes would likely reduce, perhaps significantly, consumer reporting agencies' ability to sell or otherwise disclose credit header data from their consumer reporting data bases without a permissible purpose." So do you have any idea, like you could give me a percentage on enforcement actions carried out by FTC or CFPB, dealt with based on improper use of credit header data? I mean, is this a big issue or not?

Mr. CHOPRA. Well, I think it is more, the credit header is really the short form report. It does have a lot of sensitive information, not as sensitive as the rest. So I think what we are trying to do here is to make sure that the FCRA, which really was restricting how background reports are created, and I have taken a look at how this works in health, education, others. There is different frameworks for each.

We are trying to determine what is the right way to make sure there is adequate protection of that, but again, as it relates to detecting fraud, we are hyper-attuned to that issue. When financial institutions are trying to authenticate identity, we want to make sure we are really cognizant of that.

Mr. FITZGERALD. In May, you spoke at Mortgage Industry Conference and strongly criticized the business practices of companies that are providing services to help originate and close mortgages.

It feels as if you guys have reached some conclusions about closing costs before you even opened up the request for information. Where exactly in the Federal statutes is CFPB given the authority to set prices for fees in the mortgage closing process? I guess that would be the first question.

Mr. CHOPRA. We have a number of laws, including the Real Estate Settlement Procedures Act that governs some of this, but mortgage lenders around the country have been consistently complaining to the CFPB about getting ripped off when it comes to credit scores and credit reports. The price increases they are facing have been extraordinary, and I think that it is limiting their ability to evaluate all potential applicants.

So we are working with them on ways that they can actually obtain this information in a more competitive, cost-efficient way because ultimately, many consumers will bear this or the mortgage lenders themselves will bear those costs.

Mr. FITZGERALD. Okay. Let me sneak in one more. In the CFPB 2017 arbitration rule, which was repealed by Congress, the Bureau would have required financial institutions to submit arbitration records to the Bureau to publish. Now the Bureau is proposing a rule that is substantially similar. I guess the question would be, why can the Bureau not follow Congress' very clear directive in this area?

Mr. CHOPRA. We have not proposed a rule that is substantially similar. It is nothing like what was overturned, nothing at all like it. The original one restricted the use of those clauses. This is broadly about understanding contract clauses that waive rights. It is nothing alike.

Mr. FITZGERALD. Okay. Thank you. I yield back.

Mr. CHOPRA. Thank you, sir.

Mr. GARBARINO [presiding]. The gentleman yields back. I now recognize myself for 5 minutes of questions.

Director, I think I am the last one to go. I am going to follow up a little bit on what my colleague was just talking about with the outline for potential FCRA rule, which included a rough definition of "data broker." That term, for the purpose of the outline, included any firm that collects, aggregates, sells, resells, licenses, or otherwise shares personal information about consumers with other parties.

Casting such a wide net runs the risk of disrupting innovation in financial services and classifying many entities as data brokers whose business does not include the selling of consumer data. Since consumer data protection starts with the preservation of consumers' rights and choices, is the Bureau currently considering any limitations or exceptions to the outline's broad definition of data broker?

Mr. CHOPRA. Yes.

Mr. GARBARINO. What are they?

Mr. CHOPRA. We have not proposed a rule yet. I think we have been trying to track really broadly how do we make sure that the FCRA, which protects consumer reports, and consumer report is somewhat broadly defined as the aggregation of consumer information by a third party. We are trying to see and look where is the data broker industry doing some of the same things that the con-

sumer reporting industry, or when are they assembling consumer reports, so that is our approach. It is trying to make sure that there are not just rules for those who agree their consumer reporting agencies and those of which to sidestep.

So I know that Congress is thinking about more privacy legislation. As my opening comment said, if you all want to weigh in on this definition, that would be better and faster.

Mr. GARBARINO. Thank you, and I just also want to follow up. My colleague before asked about this. I think your answer was yes, when dealing with the Bank Secrecy Act and know your client rules. To ensure the alignment with your commitment to members of this committee and what you said in your letter, you are going to consider exemptions or other safe harbors if financial institutions and their service providers in good faith, use the data for purposes of compliance with BSA obligations?

Mr. CHOPRA. Yes. I think the concerns that we are trying to address are really about data brokers who are abusing or misusing data. I think the financial services industry has already accepted for decades that they have to undertake certain limitations when furnishing or processing data, so we are just trying to create a level playing field. The answer is yes.

Mr. GARBARINO. Yes. Your goal is not to mess with the things complying with Bank Secrecy Act.

Mr. CHOPRA. Correct. I do not know why we would want to mess with that.

Mr. GARBARINO. You were being asked about medical debt before. You had said a lot of people do not actively choose to have medical debt, but the rule seems to include elective surgeries in its broader definitions of medical debt. Could you explain why elective surgery debt should not be reported under the rule and what about cosmetic procedures, strictly cosmetic procedures?

Mr. CHOPRA. Yes. Just respectfully, I think our understanding of the term elective, they may be medically necessary, but it is just scheduled. I think you are referring to sort of discretionary cosmetic.

Mr. GARBARINO. Yes. I am not talking about a knee replacement.

Mr. CHOPRA. Yes. Yes. Yes. Knee replacement could be elective, but when you are saying things that are truly that, we have actually looked at that marketplace. That is not actually where the issues in medical bills on credit reports are. Many of those types of procedures, those are not covered by insurance.

Mr. GARBARINO. I understand that.

Mr. CHOPRA. They often require payment upfront, so we do not really see that as an issue. If that is something you want us to explore, to look specifically at cosmetic, we do not see that as an issue right now, but we are accepting comments on that.

Mr. GARBARINO. All right. I believe it is in the definition, so we are just—

Mr. CHOPRA. Well, elective can be medically necessary.

Mr. GARBARINO. "Cosmetic," I believe, is in the definition.

Mr. CHOPRA. So we will take comment on it and make sure we are dealing with it.

Mr. GARBARINO. Okay. I just want to get a clarification on the 1071 final rule. There was a grace period policy statement that I

believe gave a grace period of 12 months during which the CFPB would not penalize bona fide errors. With the new compliance dates, now that the injunction is up, does the CFPB intend to keep that grace period as previously promised or does it take a different position now that the injunction is up?

Mr. CHOPRA. Yes. So we have to comply with certain aspects of the court. I do not want to misstate it, but I do believe, oh yes, we have definitely published updated compliance dates in accordance with the court. I need to check and get back to you about if there is other aspects that we have not yet issued. As a general matter, we are trying to make sure everything is consistent.

Mr. GARBARINO. Wonderful. Thank you very much. I am out of time.

I would like to thank Director Chopra for his testimony today.

Without objection, all members will have 5 legislative days to submit additional written questions for the witness to the chair. The questions will be forwarded to the witness for his response. I ask Director Chopra to respond no later than August 1, 2024.

[The information referred to can be found in the appendix.]

Mr. GARBARINO. This hearing is adjourned.

[Whereupon, at 2:31 p.m., the committee was adjourned.]

A P P E N D I X

March 6, 2024

Statement from Navy Federal Credit Union on Conclusion of External Review

Navy Federal Credit Union is committed to expanding economic opportunity and access to credit for our diverse community of members. That is why we hired a leading civil rights lawyer and former Commissioner of the U.S. Commission on Civil Rights, Debo Adegbile of WilmerHale, to review our mortgage lending. That external review confirmed what we at Navy Federal know to be true – we treat our members fairly, regardless of their race or background.

Mr. Adegbile has now completed his review, and found no race-based decision making in our mortgage underwriting. His analysis showed that when all non-public underwriting factors are accounted for – including credit score, income verification, debt-to-income ratio, and incomplete credit applications – any suggestion of discrimination by the CNN article is completely unsupported.

As the largest home lender to Black Americans by percentage of loans successfully made, we continue to work to make home ownership accessible to all.

Navy Federal values each and every one of our members. Black members make up one in four of our members, and we rank first among large lenders in the percentage of mortgage loans made to Black borrowers. We are proud to serve as an industry leader in expanding economic opportunity for our 13 million members, and we are committed to identifying opportunities to further drive homeownership. Working with our internal stakeholders and external partners, we are currently examining initiatives to build on our mission of expanding access to credit for our diverse community of members and continue our efforts to address systemic barriers to homeownership. This is a challenge that requires action across the industry, and we are working to make sure we do our part.

These initiatives will include Navy Federal's newly created Office of Financial Opportunity, led by Executive Vice President of Real Estate Lending Brittani Ivey. These steps are in addition to the many programs Navy Federal has in place as part of our continued work to help members achieve their financial and home-ownership goals, such as free financial counseling and credit-modeling products to help our 13 million members around the world learn how to build and maintain credit, unique support for first-time homebuyers of modest means, educational seminars for members, and more.

Statement from WilmerHale Partner Debo Adegbile

“CNN’s analysis was incomplete, and the article’s suggestion that Navy Federal discriminates against its members is unsupported. In fact, our review found that when all relevant factors are controlled for, which CNN did not do, the difference in approval rates between Black and White borrowers falls to less than 1%. The remaining difference in approval rates is explained by legitimate, non-race factors like income verification and incomplete credit applications. Navy Federal is exploring opportunities to enhance its mortgage lending practices and drive further access to home ownership.”



1700 G Street NW, Washington, D.C. 20552

April 15, 2024

The Honorable Bryan Steil
United States House of Representatives
1526 Longworth House Office Building
Washington, D.C. 20515

The Honorable French Hill
United States House of Representatives
1533 Longworth House Office Building
Washington, D.C. 20515

Dear Representatives Steil and Hill,

Thank you for your letter, dated February 29, 2024, regarding “earned wage” products.

One of my key priorities is promoting competition and innovation in consumer financial products and services, so I appreciate your letter. Indeed, one of the most important parts of our work is to listen and learn from those offering new financial products to meet consumer demand. To ensure that innovative businesses are providing products in a fair and transparent way, the Consumer Financial Protection Bureau (CFPB) seeks to stay abreast of market developments. A critical part of this work is ensuring that consumer financial laws are enforced consistently to ensure a race to the top, instead of a race to the bottom.

Federal consumer financial laws administered and enforced by the CFPB are also enforced by more than 100 other state and federal government entities, as well as by private litigants in some instances. As part of our commitment to promote consistency in the treatment of consumer financial products and services and our statutory obligation to coordinate with other regulators to promote consistent regulatory treatment of consumer financial products and services,¹ the CFPB issues various forms of guidance, including advisory opinions, circulars, compliance bulletins, and formal or informal comments to state and federal agencies.

The CFPB issued an advisory opinion in November 2020 that concluded that one particular type of “earned wage” product did not involve the offering or extension of “credit,” as that term is defined in Regulation Z and the Truth in Lending Act (TILA). The 2020 advisory opinion did

¹ 12 U.S.C. §§ 5511b(4), 5495; *see also* CFPB, Consumer Financial Protection Circular 2022-01: *System of Consumer Financial Protection Circulars* to agencies enforcing federal consumer financial law (May 16, 2022), https://files.consumerfinance.gov/f/documents/cfpb_2022-01_circular_2022-05.pdf.

not reach any conclusions about other “earned wage” products that do not have all of the conditions identified in the opinion for that one particular product, including providing the consumer with no more than the amount of accrued wages they have earned; provision by a third party fully integrated with the employer; no consumer payment, voluntary or otherwise, beyond recovery of paid amounts via a payroll deduction from the next paycheck, and no other recourse or collection activity of any kind; and no underwriting or credit reporting.

The 2020 advisory opinion appears to have caused considerable confusion,² and we have concerns that entities with business models inconsistent with the 2020 advisory opinion are pointing to this issuance to evade longstanding federal law. We are aware, for example, that the 2020 advisory opinion has been erroneously cited in support of legal conclusions that it did not in fact reach, such as the general proposition that no-fee “earned wage” products are not credit and that employer-integrated “earned wage” products are also not credit. The CFPB has received requests for clarification regarding this advisory opinion, and we plan to issue further guidance to provide greater clarity concerning the application of the definition of “credit” under Regulation Z and TILA.

The CFPB submitted a formal comment letter to the California Department of Financial Protection and Innovation regarding its proposal related to “income-based advances” (its terminology for both “earned wage” products and “income share agreements”) to help promote consistent regulatory treatment of consumer financial products and services. During my tenure as Director, this is the only submission we have made regarding a rulemaking on this topic. As described in that letter, the CFPB supports efforts by states to provide critical oversight of non-depository providers of consumer financial products and services, including those offering “earned wage” products, to ensure that firms are meeting their legal obligations.

If you have any questions, I would be happy to meet with you. Please feel free to reach out to me or have your staff contact Ted Lovett in the Office of Legislative Affairs. Mr. Lovett can be reached at (202) 435-9699.

Sincerely,



Rohit Chopra
Director

² See, e.g., Gov’t Accountability Off., *Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity is Needed*, GAO-23-105536, at 36 (Mar. 2023), <https://www.gao.gov/assets/gao-23-105536.pdf> (citing industry requests for clarification). The CFPB has previously acknowledged the extent of this confusion. See, e.g., Letter from CFPB Acting General Counsel, at 2 (Jan. 18, 2022).

cc: The Honorable Dan Meuser, Member of Congress
The Honorable Byron Donalds, Member of Congress
The Honorable Andy Ogles, Member of Congress
The Honorable Tom Emmer, Member of Congress
The Honorable Scott Fitzgerald, Member of Congress
The Honorable Bill Huizenga, Member of Congress
The Honorable Pete Sessions, Member of Congress
The Honorable Alex Mooney, Member of Congress
The Honorable Andy Barr, Member of Congress
The Honorable William Timmons, Member of Congress
The Honorable Young Kim, Member of Congress
The Honorable Erin Houchin, Member of Congress
The Honorable Michael V. Lawler, Member of Congress

6/20/24, 11:35 AM

Can the Fed Fund the CFPB? – Paul H. Kupiec & Alex J. Pollock



ESSAY JUNE 5, 2024

Can the Fed Fund the CFPB?

PAUL H. KUPIEC & ALEX J. POLLOCK

The Supreme Court sided with the CFPB, but the agency's funding structure may violate the Federal Reserve Act.

THE CONSUMER FINANCIAL PROTECTION BUREAU (CFPB) has been a source of controversy since its creation. Critics of the agency have long argued that its independent status is unconstitutional. In a recent decision, however, the Supreme Court affirmed the constitutionality of the CFPB's funding scheme, even though it circumvents the normal Congressional appropriation process by "allowing the Bureau to draw money from the earnings of the Federal Reserve System."

This decision belies the Fed's current financial condition and conflicts with provisions in the Federal Reserve Act. The fact of the matter is that

the Fed no longer has any earnings. It currently has huge cash operating losses and must borrow to fund both the Fed's and the CFPB's operations. When it is not literally printing dollars to pay these bills, the Fed is borrowing on behalf of the system's 12 privately owned Federal Reserve district banks—not the federal government. These borrowings are not federally guaranteed. More problematic still is that nine of the 12 Federal Reserve district banks (FRBs) are technically insolvent, as is the Fed System as a whole.

The CFPB's unique funding structure comes from provisions in the 2010 Dodd-Frank Act. Essentially, it requires that the Fed transfers funds to the CFPB without oversight from the congressional Appropriations Committees. In its 7-2 decision, the Supreme Court upheld these provisions and found that the funding apparatus "constitutes an 'Appropriatio[n] made by Law'" because it is "drawn from the Treasury."

One unfortunate bug in the Court's opinion is that, since the Federal Reserve is currently making losses, there are no Federal Reserve System earnings for the CFPB to draw upon. The system has lost a staggering sum of \$170 billion since September 2022, and continues to accumulate more than \$1 billion in operating losses each week. Under standard accounting rules, it has negative capital and is technically insolvent. The Fed stopped sending distributions of its earnings to the US Treasury in September 2022 because there were no earnings to distribute. It should have stopped sending payments to the CFPB at the same time for the same reason.

The second problem with the Court's decision is that, unless the CFPB draws all its expenses from the Federal Reserve in the form of Federal Reserve Notes, the transferred monies are neither "public money" nor "drawn from the Treasury." This is the law of the land as codified in the Federal Reserve Act.

When the Federal Reserve posts an operating loss, it must rebalance its accounts. It can do this by (1) selling assets or using the proceeds from maturing assets to cover the loss; (2) reducing its retained earnings, or if there are no retained earnings, reducing its paid in equity capital; or (3) issuing new liabilities. Regardless of how it chooses to rebalance its books, each new dollar of Fed operating loss or dollar spent funding the CFPB

causes the Fed's liabilities to increase relative to its assets, and, under standard accounting rules, the Fed's liabilities are already greater than its assets.

Because of interest rate increases, the true market value of the Fed's assets is far less than their book value—a shortfall of about \$1 trillion. The Fed has stated that it will hold these assets to maturity to avoid realizing these mark-value losses. Meanwhile, the Fed's \$170 billion in accumulated cash operating losses have already fully exhausted the Fed's retained earnings and paid in equity capital, so now the Fed must borrow to balance its accounts.

The Fed has three ways it can borrow to pay for the CFPB or new Fed operating losses. It can: (1) issue new Federal Reserve Notes; (2) borrow by increasing deposits at Federal Reserve district banks; or, (3) borrow from financial markets using reverse repurchase agreements. Of these three ways the Fed borrows, only Federal Reserve Notes are explicitly guaranteed by the full faith and credit of the US government and can be considered “public money drawn from the Treasury.”

According to the Federal Reserve system's 2023 audited financial statements:

Federal Reserve notes are the circulating currency of the United States. These notes, which are identified as issued to a specific Reserve Bank, must be fully collateralized. ...The Board of Governors may, at any time, call upon a Reserve Bank for additional security to adequately collateralize outstanding Federal Reserve notes. ... In the event that this collateral is insufficient, the FRA provides that Federal Reserve notes become a first and paramount lien on all the assets of the Reserve Banks. Finally, Federal Reserve notes are obligations of the United States government.

The Federal Reserve Act does not grant the Fed unlimited authority to print new paper currency to cover its losses or fund CFPB operations. As of May 22, the Fed's H.4.1 report shows that it owned less than \$7.3 trillion in assets but had more than \$7.4 trillion in liabilities issued to external creditors, including \$2.3 trillion in Federal Reserve Notes. After collateralizing its outstanding currency, the system has \$5 trillion in

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Can the Fed Fund the CFPB? — Paul H. Kupiec & Alex J. Pollock

remaining assets, but more than \$5.1 trillion in outstanding liabilities other than Federal Reserve Notes. The system as a whole has more than \$127 billion in external liabilities that cannot be legally turned into Federal Reserve Notes.

To the extent that the CFPB is not being fully funded with newly issued Federal Reserve Notes, the CFPB is not being funded by “public money drawn from the Treasury.”

Under the Federal Reserve Act, about \$5 trillion of Federal Reserve System's current external liabilities are not backed by the federal government but only by the creditworthiness of the 12 FRBs. But nine, including all of the largest FRBs, have negative capital when measured using generally accepted accounting standards. With about \$1 trillion in unrecognized market value losses on their securities, the true financial condition of the 12 FRBs is far weaker than their accounting capital suggests. And to make matters worse, only three of the 12 FRBs have enough collateral to redeem all of their external liabilities by printing new paper currency, which is the only federally guaranteed liability FRBs issue.

In addition, the largest funding source for the Fed, deposits in FRBs, are not explicitly collateralized or guaranteed by the federal government. FRB deposits are only protected by the value of FRB assets that are not otherwise pledged. Although the Fed's depositors may believe they have an “implicit Treasury guarantee” in the same way that Freddie Mac and Fannie Mae bondholders believed that their bonds were guaranteed by the US Treasury, the Federal Reserve Act does not include a federal government guarantee for FRB deposits.

Fed deposits are meant to be protected by FRB paid-in capital and surplus, but that has been fully consumed by the operating losses in nine of 12 FRBs; and also protected in law (but not in practice) by a callable capital commitment and a “double liability” call on member bank resources that is an explicit FRB shareholder responsibility under the Federal Reserve Act. In other words, member banks as FRB shareholders, are legally responsible for some part of any loss incurred by the FRB's unsecured liability holders, most importantly FRB depositors.

But notwithstanding large operating losses that have completely consumed the capital of most FRBs, the Federal Reserve Board has never utilized its powers under the Federal Reserve Act to increase the capital

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contributions of member banks or invoke member bank loss-sharing obligations. Indeed, all FRBs, even the most technically insolvent FRB, New York, continue to pay member banks dividends on their FRB shares, as well as make payments to the CFPB from nonexistent earnings.

If, in the highly unlikely event that FRB member banks were called upon to inject additional capital into their FRB to cover Fed operating losses and CFPB expenses, these monies would clearly not be public monies drawn from the Treasury. Yet, under the Supreme Court's ruling, the cash proceeds of the call on FRB member banks would be shipped over to pay the expenses of the CFPB. This fact alone seems to contradict the logic of the Supreme Court's majority decision.

In sum, the Supreme Court's recent ruling notwithstanding, the CFPB's funding mechanism currently conflicts with the clear language of both the Dodd-Frank Act and Federal Reserve Act. As long as the Fed continues to suffer operating losses, the CFPB is not being funded with Federal Reserve earnings, and to the extent that the CFPB is not being fully funded with newly issued Federal Reserve Notes—and it is not—the CFPB is not being funded by “public money drawn from the Treasury.”

Paul H. Kupiec is a senior fellow at the American Enterprise Institute.

Alex J. Pollock is a Senior Fellow at the Mises Institute and author of *Finance and Philosophy—Why We're Always Surprised* and co-author of *Surprised Again!—The COVID Crisis and the New Market Bubble*.

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Statement for the Record

On Behalf of

Americans For Financial Reform

to the

**House Financial Services Committee Hearing On
"The Semi-Annual Report of the Bureau of Consumer Financial Protection"**

Thursday, June 13, 2024

Statement for the Record
On Behalf of
Americans For Financial Reform
Before the
House Financial Services Committee Hearing
Thursday, June 13, 2024

Americans for Financial Reform appreciates the opportunity to provide a Statement for the Record for the House Financial Services Committee Hearing on "The Semi-Annual Report of the Bureau of Consumer Financial Protection." AFR is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole. We are committed to eliminating the inequity and systemic racism in the financial system and fighting for a just and sustainable economy.

In the thirteen years since its creation, the Consumer Financial Protection Bureau has and continues to vigorously protect consumers, increase marketplace transparency, and end unfair business practices through impactful rulemakings and enforcement actions. In May, the Supreme Court resoundingly reaffirmed the constitutionality of the Bureau's funding mechanism in *CFPB v. Community Financial Services Association*, removing a major barrier to the agency's critical work protecting consumers, ending predatory and abusive practices in the financial sector, and holding companies and individuals accountable when federal financial laws are broken.

The Bureau's enforcement and supervisory work has helped more than 205 million consumers access justice through \$20.7 billion in monetary compensation, principal reductions, and canceled debts.¹ In 2023 alone, the Bureau held lawbreaking institutions accountable, helping customers get restitution when they were hurt or defrauded, including:

- **\$3.07 billion returned back to consumers**, across 29 enforcement actions, and \$498 million collected in civil money penalties.²
- **\$100 million returned back to Bank of America customers** for charging illegal fees, withholding credit card rewards, and opening fake accounts.³

¹ <https://www.consumerfinance.gov/>

² Consumer Financial Protection Bureau, "The CFPB's Enforcement Work in 2023 and What Lies Ahead", <https://www.consumerfinance.gov/about-us/blog/the-cfpbs-enforcement-work-in-2023-and-what-lies-ahead/#:~:text=In%202023%2C%20the%20CFPB%20filed,million%20in%20civil%20money%20penalties/>.

³ Consumer Financial Protection Bureau, "CFPB Takes Action Against Bank of America for Illegally Charging Junk Fees, Withholding Credit Card Rewards, and Opening Fake Accounts", <https://www.consumerfinance.gov/about-us/newsroom/bank-of-america-for-illegally-charging-junk-fees-withholding-credit-card-rewards-opening-fake-accounts/>.

- **\$5 million returned back to servicemembers** for Military Lending Act violations and illegal activities committed by TitleMax.⁴
- **\$1.4 million returned back to Citibank customers** for illegal discrimination. Citi was also ordered to pay \$24.5 million in fines for illegally discriminating against credit card applications the bank had identified as Armenian American.⁵

To aid future enforcement efforts, the Bureau recently finalized rulemaking to create a repeat offender registry for nonbanks,⁶ helping local, state, and federal regulators, as well as the public, more easily track repeat offenders subject to law enforcement orders across multiple jurisdictions and agencies in one centralized location.

In addition to helping millions of consumers access justice when institutions break the law, the Bureau is working to end junk fees that currently gouge billions of dollars a year from U.S. households. The CFPB finalized a rulemaking to close a legal loophole that cost consumers nearly \$20 billion annually in credit card late fees, and proposed a rulemaking on overdraft fees.⁷ The credit card late fees rule, finalized in March, is expected to save families \$10 billion annually, including \$220 annually for more than 45 million consumers.⁸ The proposed overdraft fee rule is estimated to save 23 million households \$150 yearly in overdraft fees.⁹ Already, the Bureau's focus on overdraft fee abuses has resulted in dozens of banks

⁴ Consumer Financial Protection Bureau, "CFPB Orders TitleMax to Pay a \$10 Million Penalty for Unlawful Title Loans and Overcharging Military Families", <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-titlemax-to-pay-a-10-million-penalty-for-unlawful-title-loans-and-overcharging-military-families/>.

⁵ Consumer Financial Protection Bureau, "CFPB Orders Citi to Pay \$25.9 Million for Intentional Illegal Discrimination Against Armenian Americans", <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-to-pay-25-9-million-for-intentional-illegal-discrimination-against-armenian-americans/>.

⁶ Consumer Financial Protection Bureau, "CFPB Creates Registry to Detect Corporate Repeat Offenders", <https://www.consumerfinance.gov/about-us/newsroom/cfpb-creates-registry-to-detect-corporate-repeat-offenders/>.

⁷ "Statement from President Joe Biden on the Supreme Court Ruling on Consumer Financial Protection Bureau," White House Briefing Room Statements & Releases, <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/16/statement-from-president-joe-biden-on-the-supreme-court-ruling-on-consumer-financial-protection-bureau/#:~:text=Under%20my%20Administration%2C%20the%20CFPB,fees%2C%20and%20other%20junk%20fees>

⁸ Overdraft Credit: Very Large Financial Institutions, 89 Fed. Reg. 13852, <https://www.govinfo.gov/content/pkg/FR-2024-02-23/pdf/2024-01095.pdf>.

⁹ *Id.* at 13868. Overdraft junk fees are regulated by the Truth in Lending Act's Reg DD and Reg E and exempt from Reg Z's disclosure requirements and consumer protections. The proposed overdraft junk fees rule would update the definition of "finance charges" under Reg Z to include overdraft charges imposed by a financial institution. Overdraft accessible by card would also be subject to the CARD Act provisions of Reg Z.

voluntarily lowering their overdraft fees, including Bank of America, Wells Fargo, and, most recently, PNC Bank, saving consumers at least \$3.5 billion annually.¹⁰

The Bureau continues to work towards improving the fairness and accuracy of the credit reporting industry, recently proposing a rule to eliminate medical debts from credit reports. Medical debts are not a good predictor of general creditworthiness, are often inaccurate, and their inclusion on credit reports effectively punishes people for health problems, lack of wealth, and adequate insurance. Medical debts on credit reports can also be a tool in abusive collection practices around disputed debts.

While the big three credit reporting agencies (Equifax, Transunion, Experian) voluntarily removed some medical collections information starting in 2022 following attention to the problem from the CFPB, a 2024 CFPB study revealed that 15 million Americans still did not benefit from these industry-initiated efforts, likely due to their medical collections amounts exceeding the \$500 threshold set by the industry. Many of the left-behind individuals are residents of Southern states or lower-income people. For these populations, the negative impacts of leaving medical collections on credit reports continued, along with abusive collection tactics on disputed medical bills.

Medical debt can surface suddenly and unexpectedly, impacting even fully insured individuals who may struggle to pay off tens of thousands of dollars' worth of surprise medical debt for unplanned life events such as cancer or a heart attack. The inclusion of these debts on an individual's credit report can lead to an elevated cost of credit for borrowers, limit access to needed credit, or even limit an individual's ability to rent an apartment or get a job. These harmful downstream impacts are further compounded for Black, Latine, indigenous, and other people of color, who were already disadvantaged from opportunities to access capital and competitive loans due to years of systemic racism built into the credit reporting framework. Eliminating medical collections data from *all* credit reports, while not the complete solution to addressing these systemic injustices, remains a critical step towards remediating some of these negative impacts and will help curb abusive collection practices.

As technologies evolve and expand, the Bureau is working hard to protect consumers' sensitive financial data. Last September, the Bureau released an outline of possible Fair Credit Reporting Act (FCRA) proposals that would update the regulatory framework to align with modern day data broker practices and how consumer data is tracked and collected. Data brokers collect, aggregate, sell, and/or analyze consumer data, but while these activities threaten consumer privacy and pose risks of price gouging and price discrimination, there is currently no specific set of federal protections governing them. These proposals would update Regulation V, expanding the coverage of consumer protection measures to also encompass data brokers¹¹ so that certain consumer information cannot be sold for advertising or marketing purposes.

¹⁰ CFPB Proposes Rule to Close Bank Overdraft Loophole that Costs Americans Billions Each Year in Junk Fees (Jan. 17, 2024), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-close-bank-overdraft-loophole-that-costs-americans-billions-each-year-in-junk-fees/>.

¹¹ CFPB, Small Business Advisory Review Panel for Consumer Reporting Rulemaking, Outline of Proposals and Alternatives under Consideration ("SBREFA Outline") (Sept. 15, 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.

The Bureau continues empowering consumers to take more control of their own financial data, helping consumers more easily move between financial service providers.

Proposed Rule 1033, the Personal Data Financial Rights Rule¹² is an open-banking proposal that will allow consumers to more easily switch financial service providers by ensuring they can easily access and move their personal financial data at no extra charge. Importantly, covered data¹³ would also need to be standardized, with a consistent presentation of bill-payer information, rewards, and other important consumer information, also making it easier for customers to comparison shop between financial service providers.

As congressionally mandated, the Bureau's proposed Rule 1071 facilitates the enforcement of fair lending laws, generating much needed data on how lenders are serving businesses, especially those owned by people of color, women, and the LGBTQI+ community. This final rule issued last March¹⁴ would implement Section 1071 of the Dodd-Frank Act¹⁵ and require financial institutions to compile, maintain, and submit certain data on applications for credit for women-owned, minority-owned, and small businesses – a key step towards eliminating discrimination in small business lending.

The Bureau continues working to create a fairer and more stable financial services marketplace by issuing regulations over products and services that have had less regulatory oversight.

Last November, the CFPB proposed a rule to supervise larger nonbank companies that offer services such as digital payment apps and wallets.¹⁶ Despite handling more than 5 million in financial transactions annually, many of these Big Tech-owned financial institutions have left their customers particularly vulnerable to product abuses and to fraud. This rule simply makes sure that the same rules and protections that apply to large banks, credit unions, and other financial institutions also apply to digital payment apps and wallets.

In late May, the Bureau issued an interpretive rulemaking clarifying that buy now pay later ("BNPL") service providers must comply with some traditional credit card protections under

¹² Required Rulemaking on Personal Financial Data Rights, 88 Fed. Reg. 74796 (Oct. 31, 2023), <https://www.federalregister.gov/documents/2023/10/31/2023-23576/required-rulemaking-on-personal-financial-data-rights>.

¹³

Id. at 74809. Covered data includes transaction information, account balances, payment initiation to or from a Reg E account, terms and conditions, upcoming bill information, and basic account verification information.

¹⁴

Small Business Lending Under the Equal Credit Opportunity Act (Regulation B), 88 Fed. Reg. 35150 (May 31, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-05-31/pdf/2023-07230.pdf>.

¹⁵ Section 1071 of 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 applications for credit for women-owned, minority-owned, and small businesses.

¹⁶ Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 88 Fed. Reg. 80197 (Nov. 17, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-11-17/pdf/2023-24978.pdf>.

federal law, as these products are a form of credit card.¹⁷ BNPL customers must be allowed to dispute charges, obtain refunds, and receive regular statements. These protections are critical as BNPL loans have swiftly become the second most used form of credit payment by US consumers.¹⁸

While the industry has repeatedly attempted to delay and even stop the implementation of many of these consumer protection measures, the Bureau continues helping protect the public, holding institutions accountable when they break the law, and working to implement measures that would make the economy work more fairly for all people and households and promote the continued stability, competitiveness, and transparency of the financial marketplace. For the reasons above, Americans for Financial Reform urges members of the Committee to continue supporting the important and critical work of the Bureau

¹⁷ Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans, 89 Fed. Reg. 47068 (May 31, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-05-31/pdf/2024-11800.pdf>.

¹⁸ CNBC, "Buy now, pay later loans are second only to credit cards in popularity" (May 28, 2024), <https://www.cnbc.com/2024/05/28/buy-now-pay-later-loans-are-second-only-to-credit-cards-in-popularity.html>.

Representative Blaine Luetkemeyer:

- 1) The Dodd Frank Act requires that any funding the CFPB receives must be paid from the Federal Reserve's "earnings." Clearly "earnings" must mean "net profit." The Federal Reserve has been losing money since 2022, but the CFPB has continued to receive hundreds of millions of dollars in funding. How is this funding consistent with the statute?

Response:

Congress created the CFPB as an independent bureau within the Federal Reserve system, and Section 1017 of the Consumer Financial Protection Act provides that the CFPB draws its funding from the "combined earnings of the Federal Reserve system." By its plain language and consistent with the broader statutory context, this provision refers to the income earned by the Federal Reserve system – not from whatever money is left over after accounting for all other expenses. The Federal Reserve system has earnings every year; in 2023, for example, it reported earnings of more than \$160 billion in interest on securities. The statute does not require that the Federal Reserve system record a "net profit" in any particular year in order to transfer funds to the CFPB.

- 2) The Supreme Court's decision on the constitutionality of the CFPB's funding statute depended on the idea that the Fed was sending surplus earnings to the Treasury. When the case was brought, that was still true, but now that the Fed is losing money those remittances have ceased. How then can the continued funding of the CFPB be constitutional?

Response:

The Supreme Court's decision in CFPB v. Community Financial Services Association of America confirmed that the way Congress chose to fund the CFPB is constitutional. That case did not address the question of whether the "earnings" provision of Section 1017 of the Consumer Financial Protection Act actually means "surplus earnings," and the Court's decision did not endorse or depend on that cramped and implausible interpretation.

3) Medical Debt:

The CFPB has proposed prohibiting lenders from considering any medical debt information (regardless of the size of the debt) when assessing a consumer's credit eligibility and prohibiting Credit Reporting Agencies from reporting medical debt on consumer reports. This would prohibit banks from considering unpaid medical debt in underwriting and ability-to-repay assessments – or even seeing that the consumer had medical debts on their credit report. Congress has already established the scope of the contents of consumer credit reports and the CFPB lacks authority to declare medical collection debt as information that may not be included in consumer credit reports. In addition, credit reporting agencies have already

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voluntarily taken steps to modify what medical debt is included on consumer credit reports given delays in the insurance process, so a vast majority of medical debt has been removed from credit reports. However, none of this initiative had to do with the predictiveness of the information.

- Director Chopra, why is the CFPB looking to remove all medical debt when it helps financial institutions predict consumers ability to take on debt?

Response:

There's been over a decade of empirical evidence to show the higher rates of inaccuracy and the relative lack of predictive power of medical bills in determining repayment of other loans. We should not allow the credit reporting system to coerce people into paying medical debt they may not owe. Medical credit reporting places patients at risk of downgraded credit, costs them money, and can cause consumers to fall victim to predatory debt collection practices.

- Won't this action ultimately hurt consumers by making underwriting more difficult and the extension of credit riskier, thus raising the costs of credit for consumers?

Response:

In 2003, Congress gave financial regulators authority to create regulatory exemptions to the restriction on creditors' use of medical information, and in 2005, those regulators created an exception to allow creditors to rely on medical data if it could be characterized as "financial information." The Dodd-Frank Act transferred authority for those regulatory exemptions to the CFPB. The CFPB's proposed rulemaking on removing medical debt from credit reporting would close this regulatory loophole. The CFPB is carefully considering all comments received in response to the proposal.

- How can a lender determine the debt to income ratio (DTI) for a consumer which is required under the CFPB's qualified mortgage rule?

Response:

CFPB research has shown that this proposed rulemaking will benefit from improved underwriting and increased volume of loan approvals that will also increase lenders' profits. The CFPB expects the proposed rule could lead to the approval of approximately 22,000 additional mortgages every year.

Most tradelines appear on credit reports when the account is assigned to a third party, and then disappear or "fall-off" the report at the end of the assignment period. However, medical debt has a lower fall-off rate and stays on credit reports longer than other collections. This gives medical debt amplified weight on a consumer's credit narrative.

The changes proposed to Reg. V., the rules for the American credit reporting system, could blind lenders and creditors to certain debts owed by consumers. For now, you are proposing to ban medical debt. If you are removing valid, legitimate debt from credit reports, lenders may be blind

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from seeing whether debts are so high that they might not be repaid. This could risk safety and soundness.

- Director Chopra, have you sought and received input from prudential regulators, like the Fed and the OCC about additional risk among lenders and creditors?

Response:

The CFPB has long been engaged in outreach and research related to medical debt information in the consumer reporting ecosystem. Prior to issuing the proposed rule and in accordance with Section 1022 of the Consumer Financial Protection Act, the CFPB consulted with staff from various Federal agencies to discuss aspects of its proposal. Specifically, the CFPB met with staff from the Board of Governors of the Federal Reserve System, the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration (NCUA), the Federal Trade Commission, the Department of Health and Human Services, Department of Housing and Urban Development, the FHFA, the Small Business Administration, the VA, and the Department of Agriculture.

- This also appears to have no limiting principle. What is to stop some future administrations from excluding student loan debt or mortgage debt from credit reporting?

Response:

Medical debt and its impact on a credit report is very different than the impact and origin of student loan debt and mortgage debt. For example, medical debt tradelines have a high level of inaccuracy and very low predictive value in determining credit usage behavior. Medical debt also usually remains on credit reports longer and doesn't always reflect which medical bills have been paid and those that are outstanding.

Medical payment products are not used more broadly and advertised for their ease of use. However, they have problematic lending terms and much higher rates of interest, leading to lower credit scores. Most medical debt tradelines are under \$500.

Black and Hispanic people, young adults, older adults, and veterans are all more likely to have medical debt than the national average. These populations are more adversely affected by outdated and inaccurate medical debt on their credit reports.

Finally, medical bills can be unpredictable and often vary widely based on a patient, a provider and a patient's insurance. Markups are especially high for emergency care and profit-investor-owned hospitals.

4) Credit Headers:

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In September, the CFPB published an outline of regulatory changes it is considering including in a proposed rulemaking under the Fair Credit Reporting Act. Among these unprecedented policies, which go far beyond the scope of the statute, the CFPB is considering clarifying “the extent to which credit header data constitutes a consumer report,” which the CFPB notes “would likely reduce, perhaps significantly, consumer reporting agencies’ ability to sell or otherwise disclose credit header data from their consumer reporting databases without a permissible purpose.” This would be contrary to regulatory and judicial precedent as well as unnecessary and duplicative as the disclosure of this information is already regulated under GLBA. Credit headers allow for prompt verification and authentication of identities, fraud prevention, and compliance with laws and rules, such as Know Your Customer guidelines.

- Has the CFPB analyzed how much more fraud could potentially occur if financial institutions cannot make use of credit header data to protect their customers?

Response:

The CFPB is aware that the sale of credit header data by the big three credit reporting companies enables data brokers to build and sell individual dossiers on nearly every consumer in America. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance. For example, information in a credit report about a servicemember’s level of indebtedness could easily be exploited by bad actors to pressure those who may have classified information in ways that put our national security at risk.

The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors.

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is carefully considering this and all other issues and determining how best to proceed.

- Has the CFPB reached out to federal, state, and local law enforcement regarding how the CFPB proposals will interfere with their ability to detect and deter crime?

Response:

Data on Americans is bought and sold around the clock, often through what we sometimes refer to as “data brokers.”

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us. In addition to enforcement actions by the

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CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People's Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

And as I noted earlier this year, not only are these brokers potentially violating the laws already on the books, but their noncompliance may be putting our national security at risk. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance. For example, information in a credit report about a servicemember's level of indebtedness could easily be exploited by bad actors to pressure those who may have classified information in ways that put our national security at risk.

In crafting the FCRA, Congress recognized that it is important that government agencies, including law enforcement, have access to certain data and specifically allowed for that access, including for criminal investigations. Any proposal the CFPB issues would preserve the access the Congress provided in the statute. The CFPB is committed to working with law enforcement agencies and other relevant stakeholders as any regulatory proposals related to credit header data are developed.

- If you restrict the use of credit header data to only FCRA permissible purposes, how do you propose that businesses fill the gap to effectively prevent fraud?

Response:

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There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us. In addition to enforcement actions by the CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People's Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

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- How will cutting off access to this information help consumers when fraud is at an all-time high, especially for certain vulnerable populations like older Americans and servicemembers?

Response:

The data broker industry surveils the private lives of millions of Americans, collecting sensitive data to build profiles on people. This trove of data threatens national security and enables financial scams, identity theft, stalking, harassing, and doxing.

When sensitive data is freely transmitted to people who don't need it, it often ends up in the hands of criminals and fraudsters who prey on people – like older Americans and servicemembers.

Researchers at Duke University published a report last year demonstrating how easy it is to purchase individually identifiable financial information like income, net worth, and credit rating, about active duty members of the military and veterans from data brokers, which can be used to identify and compromise or blackmail them in order to obtain sensitive military information, threatening national security. The Intelligence Community has also warned about how our sensitive data can get into the hands of adversaries who are working against U.S. interests. Data brokers also facilitate the scamming of seniors. The Department of Justice has prosecuted numerous data brokers for facilitating egregious elder fraud. In one case, the data broker, Macromark, provided lists of people to fraudsters who tricked consumers into paying fees for falsely promised cash prizes and purportedly personalized “psychic” services, causing victims to lose almost \$10 million.

Credit header information is widely used by nonprofits, charities, and religious institutions. This information is critical to bring in volunteers, funders, members, and more. This data flow could slow or stop if headers are defined as consumer report information.

- How does the Bureau propose to respond to nonprofits, charities, and religious institutions that use this information to keep their doors open, the lights on, and serve their communities?

Response:

Data on Americans is bought and sold around the clock, often through what we sometimes refer to as “data brokers.”

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us.

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The CFPB will soon propose a rule that will give consumers more control of their own sensitive data. By ensuring that the Fair Credit Reporting Act's longstanding privacy protections apply to these so-called data brokers, it will limit the unfettered flow of sensitive data that fuels the targeting of servicemembers and puts our national security at risk, while also combating financial scams, identity theft, stalking, harassing, and doxing. However, no proposal has been issued and the CFPB is carefully considering this and all other issues and determining how best to proceed.

5) Mortgage Closing RFI:

On May 30, 2024, the CFPB issued a new [request for information](#) (RFI) from the public regarding “why closing costs are increasing, who is benefiting, and how costs for borrowers and lenders could be lowered.” The CFPB mentioned “higher prices for credit reports” in its press release. However, according to a CFPB webpage (<https://www.consumerfinance.gov/owning-a-home/loan-estimate/>), the cost of a credit report in a mortgage closing is \$30. This is out of a total of \$5,762 in closing costs, thereby representing 0.5% ---- less than half of 1% --- of total closing costs. Even on the list of items classified as “non shoppable”, the cost of a credit report is the lowest cost on that list, amounting to 4.4%.

- Do you think that – per the CFPB’s own numbers --- the biggest concern to consumers is one-half of 1% of closing costs? It’s worth noting that the recording fees and taxes charged by local governments are usually the biggest cost.

Response:

As part of our effort to reduce anticompetitive fees that drive up costs for both homebuyers and lenders, the CFPB recently launched an inquiry to help understand why closing costs have risen so much in recent years. We are looking at all aspects of closing costs, including fees for credit reports, lender’s title insurance, and the recent rise in discount points. These efforts help inform our critical work toward a mortgage market that is fair, transparent, and competitive.

6) Medical Credit RFI

Following up on my questions during the hearing and the letter I sent to Director Chopra last October:

- Can you please cite where Congress defined “medical credit card” and where Congress envisioned different types of regulations for such payment products?

Response:

Medical payment products, including special-purpose credit cards and installment loans used to cover the cost of medical treatment, have grown more prevalent as the cost of healthcare continues to rise and many Americans struggle to pay for essential medical care. The CFPB receives hundreds of thousands of complaints each year from consumers having trouble with

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medical credit cards, medical installment loans, medical debt collections, and medical debt credit reporting. CFPB's research has found that patients often obtain medical payment products without adequate understanding of the related costs, and that these products often have less favorable terms than general purpose credit cards. Unlike general-purpose credit cards, patients enrolling in medical payment products often do not have the opportunity to shop around for other credit products. The CFPB is carefully considering all of its authorities to be proactive in this space and to faithfully carry out the laws Congress charged the CFPB to administer.

- Please provide research that describes the impact on the availability of health care—positive or negative—if consumers have reduced access to payment products, including any type of credit card?

Response:

The CFPB has published a number of reports and data spotlights highlighting our research on medical debt, medical payment products and credit reporting, including for example a data spotlight entitled Early impacts of removing low-balance medical collections¹ and a report entitled Medical Credit Cards and Financial Plans.²

- Please provide research that describes how consumers would pay for out-of-pocket medical expenses if consumers have reduced access to payment products, including any type of credit card?

Response:

Medical payment products can actually put consumers in more debt, making it even more difficult for them to pay for out-of-pocket medical expenses. This was addressed in the NPR article How banks and hospitals are cashing in when patients can't pay for health care, which we cited in our May 2023 report concerning Medical Credit Cards and Financing Plans.

Representative Gregory Meeks

1. In December of 2023, the CFPB published a report on Overdraft fees, https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-report_2023-12.pdf, and one aspect of it struck me - there is some segment of subprime consumers that cannot access credit who are *intentionally* bouncing checks to enable them to help make ends meet. To quote from the report: "With restricted access to traditional credit, some consumers may be intentionally using overdrafts as a form of credit."

Can you describe the profile of these consumers and what credit access challenges they

¹ <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-early-impacts-of-removing-low-balance-medical-collections/>

² <https://www.consumerfinance.gov/data-research/research-reports/medical-credit-cards-and-financing-plans/>

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experience to force them to incur these high fees? Are they located in particular states or are there policies that states have implemented that may limit these consumers' ability to obtain credit by other means?

Response:

As described in the report, our findings show that consumers charged overdraft and NSF fees are more likely to be economically disadvantaged. About 18 percent of consumers with an annual household income between \$100,001 and \$175,000 were in households charged an overdraft or NSF fee in the past year, while the share is nearly twice as high (35 percent) for consumers with incomes between \$35,001 and \$65,000. Consistent with differences by household income, we also find meaningful differences in overdraft and NSF fees across consumers' credit and debt profiles. Consumers who are more frequently charged overdraft and NSF fees have lower average credit scores, are more likely to have no available credit, use alternative credit (e.g., payday or auto title loan) and have delinquent debt. We also find that consumers charged these fees have more difficulty paying bills, are less prepared to weather an income shock, and have lower financial well-being. The report did not analyze state-by-state differences.

2. The CFPB's proposed rule to implement Section 1033 of the Dodd-Frank Act would limit third-party data use to what is "reasonably necessary" to provide a consumer's requested product or service. As nonprofits, financial services companies, and members of Congress pointed out in their responses to the proposal, companies' ability to improve their offerings based on data-driven insights is essential to maintaining a competitive landscape that benefits consumers. Could you please describe how the CFPB has modified third-party data use limitations in the upcoming final rule to address concerns related to unreasonable restrictions on secondary data use, to align with the CFPB's mandate to ensure the efficient operation of financial markets, and promote competition & financial health?

Response:

I appreciate the opportunity to provide background on this important and timely topic.

To strengthen protection for consumers' data, the CFPB's final rule on Personal Financial Data Rights requires that third parties can only collect, use, or retain data to deliver the product the consumer requested. They cannot secretly collect, use, or retain consumers' data for their own unrelated business reasons—for example, by offering consumers a loan using consumer data that they also use for targeted advertising. The rule does not prohibit any particular uses of data, but it requires that all use be driven by what is necessary to deliver the product sought by the consumer.

The CFPB also provided an additional example of permitted uses of covered data in the final rule—uses that are reasonably necessary to allow for improvement of the consumer's requested product or service. This will assist third parties in providing products and services that consumers request.

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3. Regarding CFPB's proposed rule to implement Section 1033 of the Dodd-Frank Act, I appreciate that the Bureau intends to promulgate a technologically agnostic rule that improves competition in the financial sector and ensures that all communities, including those that are unbanked and underbanked, have the ability to realize the important benefits and consumer protections the rule will provide. I have received concerns that as currently written the proposed rule would allow a data provider to deny access to its interface for various reasons, including when it does not receive "information sufficient to authenticate the consumer's identity." By deferring decisions to a recognized qualified industry standard, there are concerns that the CFPB's proposed rule effectively allows entrenched industry players to determine what information is "sufficient" to authenticate a consumer. As the Bureau continues to work towards finalization of the rule, are you considering whether to mandate that any qualified industry standard recognized by the CFPB allow for authorized third parties, or their data aggregators, to authenticate consumers in a variety of ways, for example by using personally identifiable information (PII)? This could ensure that those who may not have online account credentials, or those who are not in the banking system, are able to reap the benefits that the rule intends.

Response:

I share your commitment to ensuring that our financial system works well for all communities and that we take action to address the needs of unbanked/underbanked consumers. This critical work will benefit not just individual consumers, but the economy as a whole. On June 5, 2024, the CFPB finalized in part the proposed rule on personal financial data rights. This final rule establishes minimum attributes a standard-setting body must possess to receive CFPB recognition and to issue consensus standards when the full rule is finalized. These attributes include openness, transparency, balanced decision-making, consensus, due process and appeals. The CFPB also released its step-by-step guide for how to apply to be a recognized standard-setting body.³ The CFPB began accepting applications from standard-setting bodies seeking recognition in the summer of 2024.

Fair, open, and inclusive industry standard-setting play a critical role in ensuring the open banking system reaches its full potential to benefit consumers and competition. Broad use of such standards enhances the safety and security of products, reduces consumer costs, and expands consumers' options in the marketplace. Additionally, voluntary consensus standards ensure that no faction of industry can use its market power to impose its preferences on the entire market.

Representative William Timmons

Consumer Financial Protection Circular 2024-03

³ https://files.consumerfinance.gov/f/documents/cfpb_personal-financial-data-rights_standard-setter-guide_2024-06.pdf

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Question 1

The Bureau has in place a memorandum of understanding with State Banking Regulators. It is my understanding that under previous Directors, Native American Governments and Regulators have sought out similar MOUs to no avail, with the exception of an MOU with Navajo Nation, will you commit to re-engage tribal regulators and proceed with an MOU before the end of this Congress?

Response:

The CFPB respects the unique relationship between the federal government and tribal nations, and endeavors diligently to ensure we meet the needs of consumers in Indian Country, including through extensive engagement with tribal governments. We are always seeking to improve and welcome further outreach and collaboration with our tribal government partners.

Question 2

For arms of States or Tribes in your recent registry rule, what specific information is the Bureau contemplating to require from these exempt government entities for purposes of filing a notice of nonregistration? How far in advance of the implementation of the Registry does the Bureau intend to publish this information.

Response:

The final rule makes clear that States, including federally recognized Indian tribes, are not subject to the rule's requirements. The final rule also provides that if entities have a good-faith basis to believe they are not covered nonbanks (or that their orders are not covered orders), they may submit a notice to the nonbank registry.

The option to file notifications of nonregistration is voluntary and does not impose any mandatory process or other obligation on tribes or any other persons.

The final rule indicates that the CFPB will also treat as administrative information the notifications of nonregistration submitted under §§ 1092.202(g) and 1092.204(f). Publishing such information would not be in the public interest because it is unclear what use the public would have for such information. In addition, publishing such information likely would be counterproductive to the goals of ensuring compliance with the proposal.

Further, how will you ensure that the information sought for the purposes of the registry is as limited as possible so as not to intrude on the respective State or Tribal Government's sovereignty?

Response:

The option to file notifications of nonregistration is voluntary and does not impose any mandatory process or other obligation on tribes or any other persons.

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Representative Monica De La Cruz

Director Chopra, in crafting the late fees rule, it is important to be mindful of the financial implications for minority owned businesses and consumers. For example, the CFPB itself acknowledged in proposing this rule, restrictions on the ability to charge late fees on credit cards will mean higher charges for the vast majority of consumers who make their payments on time. And, if the CFPB late fees policy serves as a disincentive to making on time payments, it could create dire consequences for the very people the CFPB's rule is purported to help.

Given these concerns, can you share with the Committee the degree of confidence that the Bureau assigns to the notion that the incidence of late payments will not increase if the late fees rule were to go into effect? Additionally, can you share this research broken down by income and other demographic groups so that the Committee can understand the potential impacts across all groups of Americans. And, if the Bureau's assumptions prove incorrect, can you share a cost-benefit analysis with the Committee describing the potential tradeoff for individual Americans who may be trading lower late fees for more frequent late payments and lower credit scores? And, the impact that failed assumptions would have on the vast majority of consumers who make their payments on time?

Response:

Thank you for your interest in this important issue. I agree that we need to consider the financial implications for minority owned businesses and consumers. Ensuring we have a robust, transparent and fair market that serves all American consumers is vitally important. I respectfully disagree with the assertion that these assumptions are flawed and must correct your reading of our impact analysis. We never said that the rule "will" have a negative impact on the "vast" majority of consumers. Only some cardholders pay any charges any given month – they carry a balance and do so without a promotional (zero) interest rate. Only a subset paid at least the minimum amount by the due date. Even among them, only some might face a higher interest rate because of lower late fee revenue – and pay higher charges only if they do not carry lower balances in response. This was our assessment in both the proposal and the final rule. Profit maximizing issuers would have charged as high interest as the market would bear even before the rule, and as their viability is not in doubt, they need not change anything after the rule.

The largest credit card issuers are already significantly increasing prices for consumers, building a profit model around fee harvesting practices.

Although the rule is now stayed as a result of pending litigation, when the Late Fee Rule goes into effect, credit card companies will still be able to cover their costs. Based on CFPB analysis, an \$8 late fee would be sufficient for large card issuers, on average, to cover costs incurred as a result of late payments. Large issuers also will still be able to charge higher fees if they can prove it is necessary to cover their actual costs.

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Similar concerns were raised about access to credit and cardholder benefits prior to the passage of the CARD Act, which Congress passed to rein in the worst abuses in the credit card market. However, careful analysis shows that in the first few years following the first CARD Act rule, the law saved consumers more than \$16 billion in fees, lowered the overall cost of credit, and credit availability remained widespread.

I would welcome the opportunity to have a conversation with you about late fees and our work to promote a competitive and fair market for all Americans.

Representative Scott Fitzgerald

1) I recently sent a bipartisan letter to you related to the potential effect of your FCRA rulemaking activity related to data brokers impact on identity verification and Know Your Customer (KYC) requirements. In your reply, you stated that “*the CFPB will not issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act.*” How are you consulting your prudential regulatory colleagues and FinCEN to understand how the FCRA rulemaking may impact KYC requirements, law enforcement activity, and other identity verification efforts? Will you be exploring use-related exemptions if financial institutions are using data to comply with the BSA and other identity verification requirements?

Response:

The CFPB is aware that the sale of credit header data by the big three credit reporting companies enables data brokers to build and sell individual dossiers on nearly every consumer in America. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance. For example, information in a credit report about a servicemember's level of indebtedness could easily be exploited by bad actors to pressure those who may have classified information in ways that put our national security at risk. In addition to enforcement actions by the CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People's Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors.

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is carefully considering this and all other issues and determining how best to proceed.

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As this rulemaking proceeds, the CFPB will consult with other regulators as appropriate, and required by law to consult with the appropriate prudential regulators or other federal agencies prior to proposing a rule, and during the comment process, regarding consistency with prudential, market, or systemic objectives administered by such agencies.

2) The SBREFA outline of the FCRA rulemaking stated the CFPB is considering a proposal to “to clarify the extent to which credit header data constitutes a consumer report,” which the CFPB notes “would likely reduce, perhaps significantly, consumer reporting agencies’ ability to sell or otherwise disclose credit header data from their consumer reporting databases without a permissible purpose.” What percentage of enforcement actions carried out by the FTC and/or CFPB dealt with the improper use of credit header data? Of the millions of consumer complaints lodged with the CFPB every year, how many mention credit header data as the source of the consumer’s problems?

Response:

Data on Americans is bought and sold around the clock, often through what we sometimes refer to as “data brokers.”

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us. In addition to enforcement actions by the CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People’s Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

And as I noted earlier this year, not only are these brokers potentially violating the laws already on the books, but their noncompliance may be putting our national security at risk. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance.

The CFPB will soon propose a rule that will give consumers more control of their own sensitive data. By ensuring that the Fair Credit Reporting Act’s longstanding privacy protections apply to these so-called data brokers, it will limit the unfettered flow of sensitive data that fuels the targeting of servicemembers and puts our national security at risk, while also combating financial scams, identity theft, stalking, harassing, and doxing.

3) In May, you spoke at a mortgage industry conference and strongly criticized the business practices of companies providing services to help originate and close mortgages. It feels as if you reached conclusions about closing costs before you even opened up the Request for Information. Where exactly in federal statute is the CFPB given the authority to set prices for fees in the mortgage closing process?

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Response:

The Request for Information was launched as a way for the CFPB to gather information from consumers and the general public. We have not proposed any regulation or otherwise taken action to set prices in the mortgage closing process. But of course, the CFPB has authority to enforce the enumerated consumer laws and to regulate entities engaged in offering or providing consumer financial products or services, which includes many businesses involved in the mortgage lending transaction.

Has the bureau studied the role that fiscal deficits and excessive monetary and fiscal stimulus have played in inflation and risking on mortgage interest rates?

Response:

The CFPB pays close attention to market conditions that impact mortgage lending and other areas we regulate, and regularly publishes reports and analysis to contribute to the understanding of these issues. For example, on September 17, 2024 we published a data spotlight examining the impact of higher interest rates on housing affordability and on June 28, 2024 we published a report on borrower experience with mortgage servicing during the Covid-19 pandemic.

4) In the CFPB's 2017 arbitration rule, which was repealed by Congress, the Bureau would have required financial institutions to submit arbitration records to the Bureau to publish. Now, the Bureau is proposing a rule that is "substantially similar." Please explain how you feel the new proposal differs from the 2017 arbitration rule.

Response:

I hope that you will agree that consumers should receive clear and accurate information on which to make decisions.

We continue to have significant concerns about "gotcha" fine print clauses in contracts that may be unenforceable or may undermine consumers' legal protections. We have taken actions to protect consumers from these harmful contract terms, including: the CFPB's proposed rule released in January of 2023 to establish public registry of terms and conditions in form contracts that claim to waive or limit consumer rights and protections and Consumer Financial Protection Circular 2024-03 on unlawful and unenforceable contract terms and conditions.

The CFPB has not, however, proposed a rule that is substantially similar to the 2017 Arbitration Rule.

5) The FDIC proposed overly prescriptive bank governance guidelines at the end of last year, which you supported as a board member. The FDIC asserted that the guidelines would reduce "the likelihood and magnitude of losses and the likelihood of failure," but the proposal provides no evidence or analysis supporting that statement. What specific shortcomings is the proposal trying to remedy and what is the basis for concluding that this guidance will address them?

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Response:

The FDIC observed during the 2008 financial crisis and the more recent failures of Silicon Valley Bank, Signature Bank, and First Republic Bank in 2023 that financial institutions with poor corporate governance and risk management practices were more likely to fail, putting the economy and Deposit Insurance Fund at risk. Insufficient attention and responsiveness to internal controls and governance processes can also result in repeated lawbreaking and consumer harm. The FDIC's corporate governance framework is outdated and needs to be strengthened.

6) The CFPB has a "complaint portal," which seems to presume wrongdoing. How does the CFPB differentiate between a complaint, a dispute, and an inquiry?

Response:

I disagree with your assessment of the CFPB's complaint portal.

The CFPB receives complaints directly from consumers or forwarded via Congressional offices from their constituents about consumer financial products and services.

The purpose of the public complaint database is to provide consumers with timely and understandable information about consumer financial products and services and to improve the functioning of the consumer financial markets for such products and services. By enabling more informed decisions about the use of consumer financial products and services, the CFPB's complaint data disclosures help improve the transparency and efficiency of such consumer financial markets.

The CFPB publishes certain information about these consumer complaints in a public database and in our own periodic reports. Only complaints sent to companies for response are eligible to be published and are only published after the company responds, confirming a commercial relationship, or after 15 days, whichever comes first.

7) During your tenure you have consistently highlighted the fact that the greatest number of consumer complaints that the CFPB receives are those directed at Consumer Reporting Agencies, with little or no context given on the accuracy of these complaints. Do you have an estimate on how many of these complaints actually reflect consumers with errors on their credit reports? Given the CFPB's focus on the FCRA and Consumer Reporting Agencies why has the bureau not conducted its own accuracy study of CRAs? Do you not believe this would be useful information for the bureau as it makes the most substantial regulatory revision to the FCRA in years?

Response:

Thank you for your interest in promoting the accuracy of the data the credit reporting companies report on Americans.

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The CFPB receives complaints directly from consumers or forwarded via Congressional offices from their constituents about consumer financial products and services—the vast majority of complaints relate to credit reporting.

A variety of sources report that inaccuracy in consumer credit reports is a serious problem. Not only have people complained to the CFPB about inaccurate information in consumer credit reports more than any other issue, but third-party research underscores the ongoing issue of inaccurate information.

For example, a 2012 FTC study found that one in five consumers who participated in the study had an error on at least one of their credit reports from the three nationwide consumer reporting companies. And a 2021 study by Consumer Reports found that more than one third of consumers surveyed were able to identify an error in their credit reports.

I would welcome a more robust conversation about how we can work together to address this issue and bring relief to Americans that are struggling with the consequences of inaccurate credit reporting.

8) The SBREFA panel's report for the FCRA proposal indicated that the proposed rules may be in conflict with Reg Z and TILA's need to understand a consumer's ability to repay, if medical debt is suppressed. How does the final rule reconcile these conflicts?

Response:

The CFPB issued a proposed rule, which includes analysis of the impacts of removing medical debt from credit reports. We sought public comment on this proposal and we are carefully considering all of the comments we received. The CFPB has not issued a final rule on medical debt.

9) Industry trade organizations often require their members to go beyond what is required by state and federal law. Are there ways the CFPB might enhance a public-private partnership with these groups that hold their members to a higher standard?

Response:

The CFPB works with consumer groups, regulators, the financial industry, and other stakeholders to promote competition, innovation, and consumer access in the financial marketplace.

The CFPB has announced it would be working with the Independent Community Bankers of America (the ICBA) to test adjustments to mortgage disclosures in the unique context of construction loans. This has potential benefits across the U.S. housing market - and in particular to bring tremendous benefit to Americans living in rural areas, where existing housing stock is often in scarce supply and new homes are seldom built on "spec" (speculation), but rather require upfront capital from the borrower. Construction loan disclosures have historically been

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more oriented toward the purchase of existing homes that do not require significant funds advanced for renovations. The CFPB's Office of Competition and Innovation reviewed and approved a proposal from the ICBA that will allow lenders to apply to do in-market testing of these new disclosures. This is the first application approved under the trial disclosure policy and a great illustration of how we can work collaboratively with industry to identify and address real market needs - in this case, improving transparency related to a complicated, but important, financial transaction that ultimately supports American families and communities.

10) Banks are not able to parse out medical charges from regular charges on credit cards. Under the FCRA rule, they would either not report medical credit card debt, or parse through each charge made to the credit card to determine what is medical debt and what is not medical debt. Is it appropriate for banks and credit card companies to be digging into consumers' personal medical information, which is often protected by HIPPA?

Response:

The proposed rule would not require banks and credit card companies to dig into consumers' personal medical information. Instead, it defines "medical debt information" as medical information that pertains to a debt owed by a consumer to a person whose primary business is providing medical services, products, or devices (e.g., a medical or health care provider), or to the person's agent or assignee, for the provision of such medical services, products, or devices. Furnishers of information about these types of debt obligations are required to notify consumer reporting agencies of their status as medical information furnishers and thus debts are likely to be clearly marked as medical debts in consumer reports and in consumer reporting agency databases.

Representative John Rose

1. Is the underlying intent of the CFPB Circular 2024-03 (published on June 4, 2024) to provide an opportunity for states to redefine established contract law and engage in jurisdictional erosion of interstate commerce without legislation or legal rulemaking?

Response:

No. The underlying intent of the Circular is to help ensure freedom and fairness in people's interactions with financial institution, by warning companies against the use of unlawful or unenforceable terms and conditions in contracts for consumer financial products or services. Some companies have used this fine print tactic to try to trick consumers into believing they have given up certain legal rights or protections. When financial institutions take these types of actions, they risk violating the Consumer Financial Protection Act. These tactics also put competitors at an unfair disadvantage.

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2. Does the Bureau intend to advance arguments that consumer credit transactions are to be governed by the laws of the consumer's home state irrespective of whether the transaction is online or occurs physically outside the consumer's home state?

Response:

The CFPB issued Circular 2024-03 to emphasize that covered persons who include unlawful or unenforceable terms in their consumer contracts may violate the Consumer Financial Protection Act's prohibition on deceptive acts or practices.

Covered persons may violate the CFPB's prohibition on deceptive acts or practices if they include terms, including waiver provisions, in their consumer contracts that are rendered unlawful or unenforceable by federal or state law.

The intent of this Circular is to protect all American consumers no matter where they reside by advising companies to conduct their business in an ethical manner.

3. In the recent CFPB Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders Rule, you state "as required by CFPA sections 1022(c)(7) and 1024(b)(7), 124 the Bureau consulted with State agencies and tribal governments, including agencies involved in supervision of nonbanks and agencies charged with law enforcement, in crafting the proposed registration requirements and registry. Among other meetings, the Bureau's consultation efforts included presentations to State and tribal governments on October 13, October 20, October 27, November 3, November 10, November 17, and November 21, 2022, explaining proposals then under consideration and requesting feedback." Please provide a specific list of the State agencies and tribal governments, including agencies involved in supervision of nonbanks and agencies charged with law enforcement that were 1.) Invited to consult and that 2.) Provided feedback.

Response:

When developing the proposal and final rule, the CFPB conducted extensive outreach and consultations with prudential regulators, other Federal agencies, state agencies, and tribal governments and considered the input it received. This process included outreach to state financial regulators nationwide as well as all 574 federally recognized tribes.

The CFPB also received written comment letters from a number of federally-recognized tribes, including the Otoe-Missouria Tribe of Indians, the Big Valley Band of Pomo Indians, the Chippewa Cree Tribe, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Modoc Nation. Section V of the Final Rule summarizes the feedback received during these consultations.

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4. In the case of *PHH Corp v. Consumer Financial Protection Bureau*, Director Cordray created a new interpretation, did not announce that interpretation, and brought an enforcement action against PHH Corporation. He then sought to impose retroactive liability on the company. The case went up to the D.C. Circuit, where then-judge Kavanaugh wrote a scathing opinion concluding that by retroactively applying that Director's RESPA (Res-pah, rhymes with Vespa) interpretation to PHH's conduct that occurred before the date of the new interpretation, the CFPB violated, and I quote, "bedrock principles of due process." Director Chopra, do you commit to this committee that you will not seek to apply retroactive liability against any company based on the CFPB's new or different interpretation of the law?

Response:

The CFPB carefully reviews all its actions, including enforcement activities and guidance documents, to ensure that they comply with all applicable laws, including due process.

5. What policies and procedures will the CFPB put in place to ensure that this does not occur again?

Response:

The CFPB carefully reviews all of its actions, including enforcement activities and guidance documents, to ensure that they comply with all applicable laws, including due process.

6. I would like to shift gears now and talk about the Civil Penalties Fund. According to the CFPB Financial Report for FY 2023 (Page 23), between fiscal years 2012 and 2022, the Consumer Protection Financial Bureau collected over \$1.3 billion. In fiscal year 2023 alone, you collected over \$1.9 billion alone. How did the CFPB collect more fines in one year than it did in 10 years?

Response:

Under my leadership, the CFPB has prioritized enforcement efforts and helping obtain relief for as many harmed consumers as we can. In the last two years alone, our enforcement actions have returned almost \$8 billion in consumer redress and penalties for more than 20 million Americans. This includes over \$2 billion collected for the Civil Penalty Fund. To date, the CFPB, through the Civil Penalty Fund, has distributed over \$28.5 million to 45,000 Tennessee consumers.

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An accounting of all Civil Penalty Fund collections can be found in the CFPB's annual financial reports, which is available on our website. As you note, the most recent annual report provides details regarding the total of \$1.92 billion in civil penalties collected in fiscal year 2023 pursuant to 23 orders. This includes a penalty of \$1.7 billion paid by Wells Fargo for legal violations across several of its largest product lines.

7. In that same report, the CFPB states that in Fiscal Year 2023, they allocated \$195 million in 8 cases. Can you explain how these payments are distributed to consumers?

Response:

Civil Penalty Fund collections are pooled and allocated to eligible cases every 6 months, in accordance with CFPB's Civil Penalty Fund Rule, which implements Section 1017(d)(2) of the Consumer Financial Protection Act. Once funds are allocated to a class of harmed consumers, the CFPB begins the process to distribute payments to the people in that class. We usually work with payments administrators to identify and locate the harmed consumers in the class and distribute payments. Distribution processing time varies from case to case.

Representative Nydia M. Velázquez

1) Director Chopra, I'm supportive of the Bureau's effort to amend the FCRA. But I wanted to flag a potential unintended consequence of the rule, which relates to the use of credit header data. I understand the concerns about data brokers, but my understanding is that banks and others use this data to protect consumers from identity theft. It would be concerning if the rule had the unintended consequence of leaving consumers *more* exposed to identity theft. Have you heard this concern? Is this something you're planning to address in the proposed rule?

Response:

Data on Americans is bought and sold around the clock, often through what we sometimes refer to as "data brokers."

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us. In addition to enforcement actions by the CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People's Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

Not only are these brokers potentially violating the laws already on the books, but their noncompliance may be putting our national security at risk. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to

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blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance.

The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors. The CFPB is carefully considering this and all other issues and determining how best to proceed.

2) Director Chopra, earlier this month, the CFPB published its final rule for its Public Order Registry. The rule requires certain non-bank entities to register information about their company and certain orders with the Bureau. As you know, states already run a similar type of registry—the Nationwide Multistate Licensing System and Registry. What new information will the Bureau’s registry provide and how is the CFPB working to not to duplicate efforts of the NMLS?

Response:

During the rulemaking process, we received feedback regarding the intersection between NMLS and our registry; we modified the rule so that if an entity’s order is published on the NMLS Consumer Access website, the entity may elect to comply with a one-time registration option in lieu of complying with the rule’s other requirements with respect to that order. The final rule provides that with respect to any such NMLS-published covered order that was not issued or obtained by the CFPB, a covered nonbank that is identified by name as a party subject to the order may elect to comply with the one-time registration option. We view this as a complement to the state systems.

3) Director Chopra, access to capital remains one of the top pain points for small business owners. Without access to affordable financing, small business owners cannot grow and often turn to leveraging personal credit and/or savings. In fact, we know through the Intuit QuickBooks Small Business Index’s Annual Report that credit cards are the number one source of financing for young small businesses and that monthly small business credit card spending is 20% higher, on average, than before the pandemic. Moreover, access to capital is even harder for women owned businesses and underrepresented racial groups. According to the report, small businesses owned by underrepresented racial groups are twice as likely to say “getting funding” is their number one challenge. 72% of male small business owners believe they can get the funding they need over the next 12 months. This drops to 64% among female small business owners. Yet, small business owners are often faced with limited offers that can be costly and contain misleading pricing information. This is why small business owners deserve parity in disclosure requirements for both consumer and commercial loans. Under your leadership, how can the Bureau work with commercial lenders – both traditional and non-traditional lenders like fintechs– to help incentivize this type of disclosure in the absence of Congress passing my Small Business Financing Disclosure Act? How can the Bureau highlight those within the industry that already do this on a voluntary basis to lift up positive practices in order to encourage their peers to adopt similar measures on behalf of small businesses?

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Response:

Small business borrowers are not covered by the same protections that exist for household borrowers. Many small business owners, especially very small enterprises, use a combination of personal credit and small business credit. As such some small business owners are unable to make a fair comparison of the terms and conditions of credit products. If small businesses and entrepreneurs can't get fair access to credit, they cannot innovate and challenge incumbents. Some states have started addressing this issue, but it continues to be a problem for many entrepreneurs.

The CFPB will continue to work toward the goal of creating a level playing field in the financial services marketplace. That is good for all Americans and will foster economic growth.

Representative Ann Wagner

- 1) Director Chopra, your misdirected focus on a product with high satisfaction and incredibly low complaints is concerning. In the CFPB Issue Spotlight titled, "Credit Card Rewards" published in May, the Bureau indicated that it received more than 1,200 complaints involving rewards cards in 2023. While this might sound like a lot of complaints in isolation, CFPB reported last year that there are more than 190 million Americans who own a credit card. Moreover, according to a subsequent ABA article titled, "Don't reward misleading data" the CFPB received nearly 1.3 million complaints in 2023, but only around 4% were about credit cards, and only one tenth of one percent involved rewards cards. Even though complaints about rewards credit cards are rare, credit card issuers take these complaints seriously, as evidenced by the industry's 99.2 percent timely response rate to complaints in the database. Meanwhile, the survey research suggests that 88 percent say they value the rewards programs on their credit cards.

The CFPB always says that it is guided by its complaint portal and focuses its resources on trends. Can you explain why you would expend valuable resources on such a low complaint, high satisfaction product in light of your own guiding principle?

Response:

I share your commitment to ensure American consumers get a fair shake. Consumer concerns should not be ignored or written off as a nuisance. In 2023, the CFPB received over 1,200 complaints involving credit card rewards, a more than 70 percent increase over pre-pandemic levels.

Credit card rewards programs have become increasingly complex in recent years. Especially for credit cards with high annual fees, a key part of attracting consumer interest comes from benefits like getting airline miles or hotel points and access to exclusive lounges and loyalty status that affords premium service or additional perks. Introductory offers have existed since the first

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rewards cards, but their amount and prevalence has dramatically climbed. Nearly 1-in-10 dollars earned by consumers in rewards are linked to sign-up bonuses.

Consumers have encountered numerous issues in using these programs. Consumers tell the CFPB that rewards are often devalued or denied even after program terms are met. Credit card companies focus marketing efforts on rewards, like cash back and travel, instead of on low interest rates and fees. Consumers who carry revolving balances often pay far more in interest and fees than they get back on rewards. Credit card companies often use rewards programs as a “bait and switch” by burying terms in vague language or fine print and changing the value of rewards after people sign up and earn them. New problems have been created by the growth of co-brand credit cards and rewards programs where consumers can transfer miles or points to merchants. Consumers tell the CFPB that they have encountered customer service issues and technical glitches that block or delay redemption, which prevent an easy transfer of rewards to third-party merchants. Consumers also indicate their points, cash back, and miles vanish when an account closes.

Federal consumer protection laws apply to rewards programs offered in connection with consumer financial products or services. The CFPB has taken action against credit card issuers such as American Express and Bank of America for engaging in unfair, deceptive, or abusive acts or practices related to rewards programs. CFPB will continue to monitor credit card rewards programs and will take necessary action on these issues as appropriate.

I would welcome the opportunity to meet with you and discuss the CFPB's work.

- 2) Director Chopra, on May 22, the CFPB issued an “interpretive rule,” subjecting “Buy Now, Pay Later” (BNPL) transactions to provisions of Regulation Z applicable to “credit cards.” The CFPB issued the rule as an interpretive rule, meaning it did *not* conduct a notice and comment rulemaking in which the agency is required to ask for and consider public comments before finalizing a rule. It did announce it would accept comments, but only after the rule became effective, and it did not commit to consider or address those comments. Setting aside whether the rule itself is good or bad policy, the Committee is concerned that there are some serious process violations based on the way in which the CFPB rolled this out.

The BNPL rule goes effective on July 30, 2024, but the comment period doesn't close until August 1, 2024. So, an entity could theoretically be the subject of an enforcement action before the comments come back and policy would be changed. Under the APA, agencies can do this in limited circumstances by issuing an ‘interim final rule.’ But, that requires a ‘good cause’ justification. Can you please provide the committee with your rationale for choosing to issue an interpretive rule rather than the traditional NPR process?

Response:

Thank you for providing the opportunity to provide more context on this issue.

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The CFPB issued an interpretive rule on Buy Now, Pay Later loans to clarify uncertainty under existing regulations. The interpretive rule does not alter any existing requirements or impose new obligations. That makes it an interpretive rule, as opposed to a legislative rule, which would involve a different process. This interpretive rule is final as issued.

On Sept. 18, 2024, the CFPB issued FAQs that provide guidance on applying Regulation Z requirements to Pay-in-Four BNPL products that are accessed through a digital user account. As with all of the CFPB's rules and guidance, CFPB will continue to monitor whether additional clarification is needed.

What's more, the "interpretive rule" uses imprecise terms that are unclear—especially the key term "digital user account," which is not defined and is described inconsistently throughout—and does not provide any specific guidance on what provisions apply to digital user accounts and how. How is it fair to ask banks to comply with a policy that is not clear, and where lenders have not yet had a chance to ask for clarification through their comments? Can you provide the committee with your rationale on this point?

Response:

The CFPB's interpretive rule explains that when borrowers use Buy Now, Pay Later loans, they are entitled to some of the same rights and protections of the Truth in Lending Act that apply to traditional credit cards.

When Congress defined "credit card" under the Truth in Lending Act, it deliberately defined the term to include devices both known and unknown. While we typically think of a credit card as a piece of plastic with an embossed number, the term encompasses a wide range of devices, including those no longer commonly used. Similarly, the term has come to include digital forms of credit payment. In fact, many credit card companies issue virtual account numbers to be used for online shopping. Essentially, any mechanism, tool, or procedure that consumers can use from time to time to buy goods or services on credit gets the protections that consumers have come to know and expect with credit cards.

This interpretive rule was final as issued, but we did invite comments because we want to ensure that we are taking all feedback into consideration. On Sept. 18, 2024, the CFPB issued FAQs that provide guidance on applying Regulation Z requirements to Pay-in-Four BNPL products that are accessed through a digital user account.⁴

I appreciate your input and I would welcome the opportunity to meet with you to learn more about your perspective on this matter.

Representative Mike Flood

⁴ <https://www.consumerfinance.gov/compliance/compliance-resources/consumer-cards-resources/buy-now-pay-later-bnpl-products/buy-now-pay-later-product-faqs/>

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Acting OCC Director Michael Hsu said, “banking consists of three services that are bundled together, facilitating payments, making loans and taking deposits. ... When payments becomes unbundled from that on its own, that is commerce. That’s not banking.”

Director Chopra, do you agree with that description of the line between banking and commerce? Are payments alone commerce?

Response:

The blurring of digital commerce, lending, and payments raises fundamental questions around the separation of banking and commerce. In recent years, the payment space has moved from an ecosystem with clear constraints and established players to a rapidly evolving environment. This new market has disrupted the traditional payments model in many ways including, for example, embedded commerce that incorporates payment capabilities directly into a website or social media feed, and super apps that seek to aggregate all of a customer’s financial activity into a single app. The CFPB is carefully monitoring this changing payments ecosystem as part of a multifaceted effort to promote fair, transparent, and competitive markets for consumer financial services.

Representative Andy Ogles

Accountability

1) The Consumer Financial Protection Bureau has, since its inception, operated without accountability—taking funds from the Federal Reserve rather than through the congressional appropriations process. This insulates the CFPB from any real Congressional oversight. In FY2023, the CFPB requested \$721 million from the Federal Reserve for operating expenses—a record high. Yet, the CFPB’s unobligated funds have only increased over the past several years, nearly quadrupling from 2018, now at \$203 million. Director Chopra, Rep. Mooney sent you a letter, which I cosigned, asking you questions about this subject. However, your response lacked any real detail to several specific questions about the CFPB’s finances.

- a. Can you explain why the CFPB keeps requesting record transfers from the Federal Reserve while the amount of unobligated funds continues to grow?

Response:

In accordance with the process established by Congress in the Consumer Financial Protection Act, the CFPB is principally funded through transfers from the Federal Reserve System. Like other financial regulators and independent government agencies, the CFPB maintains an operating reserve to ensure its ability to carry out its authority and protect the stability of its mission, programs, and ongoing operations in the event of unanticipated and unbudgeted one-time funding needs. To determine the transfer amount that is reasonably necessary to carry out its authorities, the CFPB takes into account a number of factors, including planned expenditures identified through the annual budget process; the operating reserve target, which is periodically

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reviewed and adjusted to ensure a balance sufficient to mitigate emerging and unanticipated risks; and any amounts available from the preceding year.

2) Unobligated balances and transfers requests combined have now exceeded the CFPB's funding cap for two years in a row (FY 2022 and FY 2023). Isn't this the CFPB bypassing the funding cap set out by Congress?

Response:

I appreciate the opportunity to provide clarity on this process. In accordance with the process established by Congress, each fiscal quarter the Federal Reserve Board of Governors transfers funds to the CFPB, not to exceed a statutorily set limit. For fiscal year 2022, the amount transferred from the Federal Reserve to the CFPB was \$641.5 million, which was \$92.5 million less than the FY22 funding cap of \$734.0 million. For fiscal year 2023, the amount transferred from the Board of Governors to the CFPB was \$721.2 million, which was \$29.7 million less than the FY23 funding cap of \$750.9 million.

3) Is there any limit on the amount of unobligated balances at the CFPB?

Response:

The CFPB manages the operating reserve consistent with best practices across government agencies, including periodic review and adjustment of an operating reserve target to ensure the reserve is sufficient.

4) Currently, the CFPB's annual financial report does not go into any detail regarding what its unobligated funds are used for. Can you commit to including more information about the CFPB's unobligated balances in future financial reports?

Response:

The CFPB identifies and budgets for planned expenditures during its annual budget process, thus limiting the need to use the operating reserve. CFPB does not use the operating reserve for long-term budget shortfalls or anticipated budgetary expenses.

CFPB Nonbank Registry

1) I want to start with the CFPB's recently finalized nonbank registry rule. While the Bureau under your leadership has never allowed Congress to restrain your regulatory actions, it should be noted that the CFPB brazenly exceeded its authority when promulgating this registry rulemaking. Section 1022 of the Consumer Financial Protection Act (CFPA) does not grant the Bureau authority to establish such a robust set of registration requirements, nor a database for a particular category of information. When Congress intends to create a database, it explicitly and clearly does so. Last May, I sent a letter expressing strong opposition to the CFPB's proposal to establish a nonbank registry, as such an initiative is a "name and shame" scheme.

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- a. Have you considered what impact your rule may have on the ability for consumers to receive remediation and redress when a firm actually violates a law?

Response:

This is not a name and shame exercise. All of these orders are already public – we are consolidating the information into one registry to make the information more useful to the public, whether it be other government officials, consumers, or industry.

The information that must be entered is factual information – it is not subjective. The information informs the CFPB's work to monitor for risks to consumers.

- 2) Could such a registry result in costly and complex compliance measures for covered nonbank entities, many of which are small businesses?

Response:

The CFPB believes the information required to be submitted under the rule should be readily available to affected firms. Therefore, the cost of complying with the Registration Provisions for most affected firms should be on the order of a few hours of an employee's time. The cost would likely be even lower for firms that have and exercise the option to register NMLS-published covered orders. The cost may be higher for firms with several covered orders, or with covered orders that are frequently modified and are not registered under the one-time-registration provisions.

- 3) How do you know this is going to be a minimum burden especially in light of the fact that senior executives are attesting to compliance and thus will have significant incentives to ensure complete accuracy?

Response:

The CFPB took a number of steps to limit the cost of compliance with this rule. For instance, during the rulemaking process, we received feedback regarding the intersection between NMLS and our registry; we modified the rule so that if an entity's order is published on the NMLS Consumer Access website, the entity may elect to comply with a one-time registration option in lieu of complying with the rule's other requirements with respect to that order (unless the order was issued or obtained by the CFPB). This will significantly reduce the number of entities that are required to submit attestations regarding order compliance under the rule.

- 4) The SBA's Office of Advocacy warned that "parties enter into settlement agreements for various reasons. It does not necessarily mean that a person or company acknowledges

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fault.”⁵ Why did the CFPB ignore the Office of Advocacy’s view not to include consent orders?

Response:

This is addressed in the final rule, which explains that excluding consent orders or orders that do not contain an admission of liability from the rule would unduly restrict the information that would be collected regarding many orders that are highly probative of risk to consumers. The final rule further explains that collecting information about consent orders also will assist the CFPB in identifying and evaluating patterns of risks associated with orders across companies, industries, products, and regions.

CFPB’s expansion

1) Under our Constitution, to which branch of government did the people delegate all legislative powers?

Response:

Article I vests all legislative powers in Congress.

2) How often do you communicate with the executive branch?

Response:

Congress established the CFPB as an independent agency within the Federal Reserve System. As a part of the Executive branch, CFPB routinely communicates with other executive branch agencies in order to carry out our work under the law.

Coordination and consultation across the government is required by statute in many instances, and has myriad benefits for the public and the industries that we regulate. The CFPB regularly consults with experts and stakeholders throughout the Executive branch, and incorporates the input and expertise gleaned from these consultations into our decision-making.

3) Do you execute all of the administration’s suggestions?
a. How do you handle disagreements on policy?
b. Please name an example of a disagreement.

Response:

Coordination and consultation across the government is required by statute in many instances, and has myriad benefits for the public and the industries that we regulate. The CFPB regularly consults with experts and stakeholders throughout the Executive branch, and incorporates the

⁵ ¹<https://advocacy.sba.gov/2023/03/29/advocacy-submits-comments-on-cfpbs-registry-of-nonbank-covered-persons-subject-to-certain-agency-and-court-orders-nprm/>

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input and expertise gleaned from these consultations into our decision-making.

4) Your agency continues to set out on a regulatory crusade, increasing uncertainty for both consumers and lenders by calling some lending practices 'abusive' without any defined standards or rules in place.

a. How can lenders operate in this environment in which the CFPB subjectively picks winners and losers?

Response:

The CFPB is committed to protecting consumers and to fostering an economy that works for all Americans. Part of that commitment is to create a level playing field for all stakeholders. Businesses that want to act in a responsible manner also benefit from our regulatory efforts.

Many industry stakeholders have urged the CFPB to produce guidance that helps institutions understand the obligations of the laws that Congress enacts. In fact, the CFPB has dramatically increased the amount of guidance it issues. The CFPB's public materials provide transparency and clarity to the broader public.

The CFPB has continued the program created by my predecessor, Director Kraninger, of issuing advisory opinions that provide timely guidance to help institutions understand the obligations of the laws that Congress enacts.

The CFPB also issues consumer financial protection circulars, which promote consistency among federal and state agencies that enforce federal consumer financial laws. These forms of guidance provide greater certainty and predictability to the market.

The CFPB periodically publishes Supervisory Highlights to share key examination findings. Supervisory Highlights do not refer to any specific institution in order to maintain the confidentiality of supervised entities, but share key findings in order to help industry limit risks to consumers and comply with federal consumer financial law.

5) Has your enforcement division staff grown since you became the leader of the agency?

Response:

Yes, as detailed in our annual performance plans, staff has increased across many CFPB programs and divisions, including enforcement. Expanding the CFPB's enforcement capacity by increasing staff will allow the CFPB to timely investigate and take actions to address potential violations of Federal consumer financial laws; oversee, manage, and prioritize the CFPB's enforcement work; and effectively support ongoing investigatory and litigation work.

6) It was reported in September 2023 that the CFPB added 75 new full-time employees, which increased the number of full-time employees in the Enforcement Division by 50%. Mr. Chopra, are you expecting an increase in enforcement actions through the rest of 2024?

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Response:

Yes, expanding the CFPB's enforcement capacity by increasing staff will allow the CFPB to timely investigate and take actions to address potential violations of Federal consumer financial laws; oversee, manage, and prioritize the CFPB's enforcement work; and effectively support ongoing investigatory and litigation work. The CFPB's annual performance plan provides details regarding the actual and projected number of full time employees for each division.

7) How much of the increased funding requests since 2021 can be attributed to the runaway inflation we have seen since the beginning of the Biden administration, since at the very least, your recently negotiated labor contracts call for raises and bonuses partly to offset the purchasing power losses that your employees have faced?

Response:

Annual transfers to the CFPB may not exceed an amount equal to 12 percent of the Federal Reserve System's total 2009 operating expenses, adjusted annually based on the percentage increase in the employment cost index for total compensation for state and local government workers as specified in the Consumer Financial Protection Act. The amount transferred from the Board of Governors to the CFPB was \$29.7 million less than the funding cap of \$750.9 million for fiscal year 2023. Since its inception through fiscal year 2017, the CFPB experienced continuous growth in its number of employees and funding levels. In fiscal year 2018 staffing and funding levels began to decline, rising again in fiscal year 2020. In fiscal year 2023 CFPB staffing levels increased from 1,632 to 1,677 or 2.7 percent. Additionally, the CFPB anticipates increased net outlays due to payments to harmed consumers, and essential contract and support services, such as IT, cybersecurity and enterprise platform tools.

Representative Wiley Nickel

In response to the Consumer Finance Protection Bureau's recent Request for Information on "junk fees" in mortgage closing costs. Title insurance is certainly not a "junk fee." While I commend the Bureau for looking for ways to reduce costs for potential homebuyers, targeting a state-regulated insurance product that provides critical protections for consumers misses the mark.

I do, however, have concerns about certain unregulated alternatives to title insurance, such as attorney opinion letters, that are being marketed to consumers as equally as protective as title insurance and possibly less expensive when neither of those is often the truth.

1. Given the CFPB's interest in examining closing costs, has the Bureau examined these attorney opinion letter products that are being marketed to consumers as equally protective as title insurance, even though they lack important protections against issues like fraud and forgery that are on the rise?

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Response:

The CFPB received a number of comments regarding the use of attorney opinion letters in response to our Request for Information on mortgage closing costs. We are also paying close attention to the FHFA pilot program to allow the use of attorney opinion letters as an alternative to traditional lenders title insurance for certain mortgage refinances.

2. Has the CFPB examined the marketing of these products as a cheaper alternative to title insurance? Often, given market-driven discounts, like those available when simultaneously buying an owner's and lender's title insurance policy and seller pay customs in most states, purchasing comprehensive title insurance coverage can be less expensive than these products. I am concerned that consumers may be swayed by marketing tactics to utilize these products without receiving the necessary education about all the options available to them, including the cost and coverage differences between these products and title insurance.

Response:

The CFPB received a number of comments regarding the use of attorney opinion letters in response to our Request for Information on mortgage closing costs. We are also paying close attention to the FHFA pilot program to allow the use of attorney opinion letters as an alternative to traditional lenders title insurance for certain mortgage refinances.

Representative French Hill

- 1) Please provide a list of the statutes under your agency for which you are responsible as delegated by Dodd-Frank. Additionally, note which ones are subject to OMB review.

Response:

Section 1002(12) of the Consumer Financial Protection Act, defines the enumerated consumer laws that come under the purview of the Consumer Financial Protection Bureau. Those laws are:

- (A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);*
- (B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);*
- (C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), except with respect to section 920 of that Act [15 U.S.C. 1693o-2];*
- (D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);*
- (E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);*
- (F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);*
- (G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);*

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(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);
(I) subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)[(b)]–(f));
(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809) except for section 505 [15 U.S.C. 6805] as it applies to section 501(b) [15 U.S.C. 6801(b)];
(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);
(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);
(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);
(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);
(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.);
(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.);
(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8) [12 U.S.C. 5538];
and
(R) the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701).

EWA

- 1) Is the Bureau planning to issue guidance or take other action on Earned Wage Access in 2024?

Response:

Yes. On July 18, 2024 the CFPB proposed an interpretive rule that clarifies how the Truth in Lending Act applies to paycheck advance products, including those marketed as ‘earned wage access.’ The CFPB requested public comment on this proposal and is reviewing all comments received.

Mortgage Cost RFI

Director Chopra, two weeks ago the CFPB released an RFI on fees associated with mortgage closing costs in which, I believe, you mischaracterized many of the fees associated with a mortgage closing as “Junk Fees.”

1. Under what statutory authority is the CFPB proposing to implement price controls on business-to-business transactions?

Response:

The Request for Information (RFI) was launched as a way for the CFPB to gather information from consumers and the general public and all fees discussed in the RFI are paid by consumers at closing. We have not proposed any regulation or otherwise taken action to implement price controls. The CFPB has authority to enforce the enumerated consumer laws and to regulate entities engaged in offering or providing consumer financial products or services, which includes many businesses involved in the mortgage lending transaction.

2. Under which federal statute is this authority given to the CFPB?

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Response:

We have not proposed any regulation or otherwise taken action to implement price controls. The CFPB administers many laws and regulations related to mortgage lending and real estate settlement, including the Truth in Lending Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act and the Consumer Financial Protection Act.

Representative Joyce Beatty

Question #1: 1033 EBT Data

Section 1033 of the Dodd-Frank Act provides that a “covered person” includes any entity that engages in “providing payments or other financial data processing products or services to a consumer by any technological means,” including through any payments systems used by processing payments data. In the EBT marketplace, providers of these accounts operate similarly to traditional financial service providers in that they offer a financial product or service, in this case a payment mechanism and associated account to low-income Americans.

Do you have any updates on the possibility of including EBT account providers within the scope of the final rule?

Response:

Thank you for your question and for your steadfast work to promote economic inclusion in financial services and in the broader economy.

The CFPB requested and received a number of comments during this rulemaking regarding the most appropriate way to solve issues related to electronic benefit card (EBT) data. As explained in the final rule, the CFPB considered the impacts of covering EBT accounts, but found that several factors weighed against covering EBT accounts at this time.

Though EBT cards do have significant similarities with covered products and services, they also differ in some important respects. Importantly, when distributed electronically via EBT card, state and local administered needs-tested benefits are exempt from Electronic Fund Transfer Act (EFTA) coverage by statute. We understand that the Department of Agriculture is developing an interim final rule (RIN 0584-AE98)⁶ on replacement of stolen SNAP benefits, as well as a proposed rule, “Enhancing Electronic Benefit Transfer (EBT) Card Security Measures” (RIN 0584-AE99)⁷, which will both make EBT payments more secure.

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=0584-AE98>

⁷ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0584-AE99>

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As detailed in the final rule, the CFPB determined to not expand the scope of covered data and consumer financial products and services in this final rule. The CFPB intends to implement CFPB section 1033 with respect to other covered persons and consumer financial products or services through future rulemaking. We are continuing to consider the best way to address this issue and I would welcome the opportunity to work with your office to ensure EBT cards users are afforded all of the benefits available under the law.

Question #2: 1033 Secondary Use

I want to commend you for advancing 1033 to ensure personal financial data rights are protected so that consumers can shop and switch to better, more affordable financial solutions. However, it has been brought to my attention by consumer advocates and others that the rule as drafted may prevent researchers from being able to look at actual usage data to identify certain trends in the consumer financial market. This research might be helpful, for example, to improve consumers' financial health or combat discriminatory practices with access to credit.

Would the proposed rule eliminate the ability of academia and non-profit organizations to engage in research using de-identified or anonymous consumer data, such as through partnerships with financial service providers? If so, is the CFPB considering making changes to the final rule that would protect researchers' access to this data while ensuring consumer privacy is not undermined?

Response:

The CFPB evaluated the appropriate standard for retention and use of deidentified data in this rulemaking. The CFPB sought and received a number of comments on whether there should be an exception to the general limitation standard for deidentified data, and if so, how deidentification should be defined to limit risks to consumers. The final rule includes a general limitation on third party data use, which requires that covered data can only be used as reasonably necessary to provide the product or service requested by the consumer. There is no exception from this limitation for third party use of de-identified data. As discussed in the final rule, an exception to the secondary use prohibition for de-identified data would be inconsistent with the kind of meaningful consumer control that the final rule seeks to achieve, and might enable third parties to offer products and services that are primarily designed to accumulate large amounts of de-identified consumer data.

The CFPB recognizes that there are many beneficial reasons for third parties to use de-identified consumer financial data. Many of these beneficial purposes typically would not be considered secondary uses under the general limitation in the rule. For example, as explained in the rule, covered data –whether identified or de-identified – could be used as reasonably necessary to prevent fraud, or to service or improve the consumer's requested product or service. In addition, nothing prohibits a third party from seeking the consumer's separate authorization to use de-identified data for research purposes if that purpose is properly presented as an authorization for data access for a standalone product or service. We believe these provisions strike the right

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balance to ensure consumers retain control of their data while allowing third parties to access de-identified data for beneficial purposes. The CFPB also recognizes that public interest research may present unique considerations not developed in the current rulemaking record. Accordingly, the CFPB will consider whether a follow-on rulemaking would be appropriate to allow for public interest research uses of de-identified data outside of the general standard finalized in this rule.

Question #3: BNPL

Americans continue to be plagued by rising credit card debt, and I applaud the Bureau for taking steps to try and address some of the underlying issues with credit cards and fees. That said, I was interested to see the recent interpretive rule you issued related to Buy Now Pay Later products. These products have expanded rapidly in recent years and appeal to a wide range of consumers across age, race, and income level.

Can you explain the reasoning behind the Bureau modeling the regulation of BNPL products after credit cards? What is your response to suggestions that separate regulation is needed that can more directly address the unique aspects of these products to ensure we're providing a full spectrum of consumer protection?

Response:

I appreciate the opportunity to provide this clarity. Buy Now, Pay Later is often used as a close substitute for conventional credit cards to purchase goods and services. When people go to check out online or in person at a store, Buy Now, Pay Later is frequently offered as an option alongside the option to pay with a credit card.

Like conventional credit cards, Buy Now, Pay Later combines payment processing and credit services, while charging transaction fees to merchants. Just as credit cards can be used in a variety of situations, and not just in-person with a swipe or tap, Buy Now, Pay Later products are used via digital user accounts linked to websites, mobile apps, browser extensions, or integrations with merchant websites or mobile apps.

Because Buy Now, Pay Later lenders will typically meet criteria under existing law and regulation as traditional credit card providers, they need to extend many of the same rights and protections as classic credit card providers.

One clarification question: The interpretive rule at times suggests that all of Subpart B applies (e.g. p. 10), but at other times suggests only parts of Subpart B apply (e.g. fn 31). As an interpretive rule, can the Bureau provide more clarity on which provisions of Subpart B do and do not apply?

Response:

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The Consumer Financial Protection Bureau (CFPB) issued the interpretive rule to address the applicability of subpart B of Regulation Z to lenders that issue digital user accounts used to access credit, including to those lenders that market loans as “Buy Now, Pay Later.” This interpretive rule describes how these lenders meet the criteria for being “card issuers” for purposes of Regulation Z. Such lenders that extend credit are also “creditors” subject to subpart B of Regulation Z, including those provisions governing periodic statements and billing disputes.

The interpretive rule noted that traditional Buy Now, Pay Later products are closed-end loans payable in four or fewer installments without a finance charge, used to make purchases on credit. Consequently, Buy Now, Pay Later loans are generally subject to some, but not all, of Regulation Z’s credit card regulations. The CFPB accepted public comments on the interpretive rule. On Sept. 18, 2024, the CFPB issued FAQs that provide guidance on applying Regulation Z requirements to Pay-in-Four BNPL products that are accessed through a digital user account.⁸ As with all of the CFPB’s rules and guidance, CFPB will continue to monitor whether additional clarification is needed.

Representative Brad Sherman

1. Director Chopra, during the hearing you mentioned that you were working on another rulemaking to revise the regulations surrounding the Fair Credit Reporting Act (FCRA), beyond the recently announced changes to how medical debt can be reported to the credit agencies. In the SBREFA report the CFPB released last year, you indicated multiple potential changes that the Bureau was considering implementing.

As the CFPB considers these rulemakings, do you anticipate including changes that would impact the way that individuals are able to access public records

Response:

The CFPB is concerned that modern-day data companies are assembling and selling profiles of American consumers containing sensitive data that can be used or exploited for a range of malicious purposes, including identity theft, harassment, and fraud. The CFPB is seeking to ensure that the Fair Credit Reporting Act (FCRA) keeps pace with these market developments by examining, among other issues, the extent to which modern-day data brokers are consumer reporting agencies covered under the FCRA. Addressing these issues should not alter the ability of individuals to request and access public records from the government.

As you know California, and a whole host of states have exempted public records from privacy laws (including the CCPA) under the theory that there is no right to privacy for public records.

⁸ <https://www.consumerfinance.gov/compliance/compliance-resources/consumer-cards-resources/buy-now-pay-later-bnpl-products/buy-now-pay-later-product-faqs/>

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While I understand the need to balance the equities of certain public records – including criminal records – to ensure that they are not being used perniciously to deprive individuals of employment or housing, these types of permitted usages are already covered under the FCRA. At the same time, I am also concerned about the ability of individuals to access these records for individual safety concerns – for example going to meet someone you met online for a date or to conduct a sale of a personal item.

Can you please indicate whether you are considering changes to the FCRA’s treatment of public records?

Response:

Earlier this year, President Biden issued an Executive Order on Preventing Access to Americans’ Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern. Data on Americans is bought and sold around the clock, often through what we sometimes refer to as “data brokers.”

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us.

The risks of a growing surveillance industry are only heightened by AI and other forms of predictive decision making, which are fueled by the vast datasets that data brokers compile. As artificial intelligence increasingly becomes embedded into how companies and foreign governments surveil Americans, the Executive Order sets out a roadmap for action.

The Order specifically asks the CFPB to explore how we can use existing law to better guard against abuse and misuse of Americans’ personal data.

One key problem is that not all companies are complying with the law. Consistent with the Executive Order, the CFPB is pursuing a rulemaking to ensure that data brokers are respecting longstanding rights under existing law.

2. The Bureau’s proposed rule under Section 1033 provides meaningful protections over misuse of consumers’ financial data, banning targeted advertising, cross-selling of other products or services, and sale of covered data. In April 2024, America’s biggest bank, Chase, launched Chase Media Solutions, touting the way it “combines the scale and audience of a retail media network with the exclusive advantages of Chase’s first-party financial data” and “with Chase’s transaction data, brands and agencies can precisely target customers at scale based on purchase history...”
 - a. **Are you concerned that the 1033 rule’s tight limits on use of data shared by consumers with the alternative providers of their choice – which would not apply to incumbents like Chase – could cement an advantage for the biggest banks?**

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Response:

I appreciate this question. As you know, one of my goals is to foster competition in the American banking industry. It is vital for competition and innovation that financial institutions maintain the access that their customers want—quite bluntly, it is terrible customer service to block access.

The Personal Financial Data Rights rule was recently finalized to help ensure consumers have straightforward access to their financial information. Among other things, the final rule will protect consumers from bait-and-switch data harvesting by limiting third party collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service. The final rule does allow third parties to access covered data for certain purposes, including targeted advertising, cross-selling of other products or services, and data sales, so long as data access for these purposes are separately authorized by the consumer as a standalone product or service.

The CFPB expects that the rule will generally increase third party access relative to the status quo and thus diminish data providers' informational advantages from first party data. This may enable third parties to more effectively compete with products or services offered by data providers.

- b. Can you assure us that the final rule you issue will give a fair shot to community banks, credit unions and fintechs competing for America's consumers?**

Response:

Thank you for the question. It is critical that we enable small community banks and nascent competitors to compete for customers through better products and services with more favorable rates. The CFPB tailored most of its recent rules, keeping in mind the special needs of smaller institutions. The CFPB paid special attention to small entities during the development of the rule, and the final rule on Personal Financial Data Rights will help level the playing field for these companies to compete. For instance, it will help competitors tee up better deals for consumers by breaking up the data monopoly. It will also make it easier to switch banks by allowing consumers to move money more easily between accounts, alleviating liquidity obstacles and related challenges for providers hoping to woo new depository customers.

- 3. With your focus on establishing fair and competitive markets, how are you working to level the playing field for small community-based financial institutions to compete with fintechs and Big Tech companies getting into the financial services space?**

Response:

Thank you for this question. One of my priorities is to promote and foster a competitive and transparent market for financial services. Maintaining a robust place for small and community

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banking is exceptionally important to fostering a competitive economy. I have consistently affirmed my commitment to supporting this sector by tailoring regulation and enforcement to be mindful of the unique importance small and community banks play in our economy. In particular, we've refocused CFPB's work from going after smaller entities to focusing on large, repeat offenders, and giving the smallest institutions extra time to comply with new regulations, or exempting them altogether.

Congress has charged the CFPB with ensuring that markets for consumer financial products are fair, transparent, and competitive. As part of our work to fulfill that mandate the CFPB is participating in this whole-of-government effort, along with other independent agencies, to promote competition in our markets. The CFPB has taken a number of steps toward that goal, including:

First, the CFPB is working to identify the obstacles for consumers to refinance or switch providers more easily. The CFPB is also accelerating its work to implement a required rulemaking on personal financial data rights, which we hope will spur competition by giving consumers more control of their data.

Second, CFPB launched an initiative to save families billions of dollars in junk fees. Many of these back-end fees undermine fair competition by obscuring the all-in cost of a product or service.

Third, the CFPB is looking to identify the roadblocks that small financial institutions and new entrants face when challenging dominant players. With the arrival of Big Tech into payments and banking, CFPB has ordered many of these companies to turn over information about their practices and plans on their payment systems. This information will help the CFPB shed light on how companies decide who they kick off their platform and how they will use the data of individual consumers and any competing businesses. In addition, CFPB is working with community banks to understand the impacts of the highly concentrated core service provider market. These platforms can limit flexibility and raise costs for many small financial institutions seeking to fairly compete.

Representative Dan Meuser

On Mortgage Closing Costs

Recently, the CFPB released an RFI on fees associated with mortgage closing costs in which, I believe, you mischaracterized many of the fees associated with a mortgage closing as "Junk Fees." It is especially concerning to me that many of the fees cited in this RFI are purely business to business transactions.

1. Does the CFPB have the authority to implement price controls on business to business transactions?

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Response:

The Request for Information (RFI) was launched as a way for the CFPB to gather information from consumers and the general public, and all of the fees discussed in the RFI are paid by consumers at closing. We have not proposed any regulation or otherwise taken action to implement price controls. The CFPB has authority to enforce the enumerated consumer laws and to regulate entities engaged in offering or providing consumer financial products or services, which includes many businesses involved in the mortgage lending transaction.

2. Where exactly in federal statute is this authority given to the CFPB?

Response:

We have not proposed any regulation or otherwise taken action to implement price controls. The CFPB administers many laws and regulations related to mortgage lending and real estate settlement, including the Truth in Lending Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act and the Consumer Financial Protection Act.

On Consumer Reporting Agencies

During your tenure as the Director of the CFPB you have consistently highlighted the fact that the greatest number of consumer complaints that the CFPB receives are those directed at Consumer Reporting Agencies, with little or no context given on whether or not these complaints are even accurate.

1. Do you have a general estimate on how many of these complaints actually reflect consumers with errors on their credit reports?

Response:

Thank you for your question and the opportunity to share more context and detail regarding the problems Americans encounter in the inaccurate reporting of data by the credit reporting companies. A variety of sources report that inaccuracy in consumer credit reports is a serious problem.

The CFPB receives complaints directly from consumers or forwarded via Congressional offices from their constituents about consumer financial products and services.

Not only have people complained to the CFPB about inaccurate information in consumer credit reports more than any other issue, but third-party research underscores the ongoing issue of inaccurate information.

For example, a 2012 FTC study found that one in five consumers who participated in the study had an error on at least one of their credit reports from the three nationwide consumer reporting

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companies. And a 2021 study by consumer reports found that more than one third of consumers surveyed were able to identify an error in their credit reports.

I would welcome a more robust conversation about how we can work together to address this issue and bring relief to Americans that are struggling with the consequences of inaccurate credit reporting.

2. Given the CFPB's focus on the FCRA and Consumer Reporting Agencies why has the bureau not conducted its own accuracy study of CRAs?

Response:

A variety of sources report that inaccuracy in consumer credit reports is a serious problem. Not only have people complained to the CFPB about inaccurate information in consumer credit reports more than any other issue, but third-party research underscores the ongoing issue of inaccurate information.⁹

A 2012 FTC study found that one in five consumers who participated in the study had an error on at least one of their credit reports from the three nationwide consumer reporting companies (NCRC).¹⁰

A 2021 study found that more than one third of consumers surveyed were able to identify an error in their credit reports.¹¹

3. Do you not believe this would be useful information for the bureau as it makes the most substantial regulatory revision to the FCRA in years?

Response:

See answer to question above.

Representative Zach Nunn

- 1) “Director Chopra, the CFPB recently sought to hold fifteen student loan securitization trusts responsible for the actions of their servicer. Your agency asked for almost \$5 million from the servicer and the trusts to redress inappropriate actions of the servicer. While the CFPB obviously has a responsibility to hold a servicer to account to follow consumer protection laws, I

⁹ https://files.consumerfinance.gov/f/documents/cfpb_cr-annual-report_2023-03.pdf

¹⁰ See Fed. Trade Comm'n, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, at 64 (Dec. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>

¹¹ Syed Ejaz, Consumer Reports, A Broken System: How the Credit Reporting System Fails Consumers and What to Do About It (June 10, 2021), <https://advocacy.consumerreports.org/research/a-broken-system-how-the-credit-reporting-system-fails-consumers-and-what-to-do-about-it/>

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am concerned about your decision to go after investors of the underlying trusts as it is now them who are paying the fine for the mistakes of a servicer. Do you believe that it is appropriate for 401k investors, retirees, and other savers in Iowa to have to bear this cost?"

Response:

Trusts have a legal obligation to comply with the law; that applies to their duty to protect investors and also the entities to which they have placed investments.

Securities backed by student loans have seen significant growth. In 2007, about half-a-trillion dollars of student loans were owned and securitized. At the end of last year, that figure stood at more than \$1.7 trillion.

In September 2017, the CFPB took action against a group of 15 securitization trusts known as the National Collegiate Student Loan Trusts and their debt collection servicer, Transworld Systems, for unfair and deceptive practices in debt collection lawsuits against defaulted student loan borrowers.

The CFPB's complaint in May 2024 alleges that from 2015 until 2021, thousands of borrower requests—often seeking forms of payment relief—went unanswered. These included requests for co-signer release, extension of forbearance or deferment, loan settlement or forgiveness, Servicemember Civil Relief Act benefits, or other forms of payment or interest rate reduction. The defendants failed to properly respond to borrower requests for years, including during the COVID-19 pandemic. Thousands of borrowers sent requests during the pandemic seeking forbearance on loans held by the National Collegiate Student Loan Trusts. However, many of those requests were mishandled. The CFPB filed proposed stipulated final judgments, which, if entered by the court, would require nearly \$3 million in redress to harmed borrowers.

2) Regarding the upcoming credit header rule, If you restrict the use of credit header data, how do you propose that businesses fill the gap to effectively prevent fraud?

Response:

Data on Americans is bought and sold around the clock, often through what we sometimes refer to as "data brokers."

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us. In addition to enforcement actions by the CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People's Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

And as I noted earlier this year, not only are these brokers potentially violating the laws already on the books, but their noncompliance may be putting our national security at risk.

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The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is carefully considering this and all other issues and determining how best to proceed.

3) How will cutting off access to this information help consumer when fraud is at an all-time high?

Response:

The data broker industry surveils the private lives of millions of Americans, collecting sensitive data to build profiles on people. This trove of data threatens national security and enables financial scams, identity theft, stalking, harassing, and doxing.

When sensitive data is freely transmitted to people who don't need it, it often ends up in the hands of criminals and fraudsters who prey on people – creating lists of vulnerable people to target for scams.

Researchers at Duke University published a report last year demonstrating how easy it is to purchase individually identifiable financial information like income, net worth, and credit rating, about active duty members of the military and veterans from data brokers, which can be used to identify and compromise or blackmail them in order to obtain sensitive military information, threatening national security. The Intelligence Community has also warned about how our sensitive data can get into the hands of adversaries who are working against U.S. interests.

Data brokers also facilitate the scamming of seniors. The Department of Justice has prosecuted numerous data brokers for facilitating egregious elder fraud. In one case, the data broker, Macromark, provided lists of people to fraudsters who tricked consumers into paying fees for falsely promised cash prizes and purportedly personalized “psychic” services, causing victims to lose almost \$10 million.

Data brokers enable fraud, like identity theft. Purchasers of sensitive data can open new financial accounts in consumers' names, drain people's retirement savings, take out hefty loans, and send “phishing” emails to family and friends. According to the Department of Justice, in 2021 nearly 24 million U.S. residents over 16 had experienced identity theft in the past 12 months, with financial losses of over \$16 billion. The FTC received more than 1 million reports of identity theft last year. The CFPB remains committed to permitting companies to continue to prevent fraud.

4) Of the millions of consumer complaints lodged with the CFPB every year, how many mention credit header data as the source of the consumer's problems?

Response:

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Thank you for this question. Approximately, 70% of the complaints received by CFPB from consumers related to credit or consumer reporting. We share your concern regarding how this data is used. Data on Americans is bought and sold around the clock, often through what we sometimes refer to as "data brokers."

There is serious concern about the acquisition of highly sensitive data about each of us by countries of concern. Indeed, many of the most high-profile data breaches have not been perpetrated by hackers and scammers at home, but by state and non-state actors overseas seeking to develop detailed dossiers about each of us. In addition to enforcement actions by the CFPB and the FTC against the credit reporting conglomerate Equifax for sloppy security, the Department of Justice charged four members of the Chinese People's Liberation Army with orchestrating the operation at Equifax to obtain personal data on nearly 150 million Americans.

Not only are these brokers potentially violating the laws already on the books, but their noncompliance may be putting our national security at risk. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance.

Representative Young Kim

Question 1: CFPB's Misleading Report on APRs

The CFPB's Data Spotlight from February on differences in APRs has received a lot of heat in recent months, primarily because it seems as though your agency seemingly cherry-picked data to make the assertion that small banks and credit unions offer lower rates than the largest credit card companies. For example, the CFPB included in their data credit union APRs, but those are actually statutorily capped at 18%. And on the topic of availability and competition, not all consumers can even be served by a credit union because credit unions have specific membership requirements, unlike the other banks.

1) When one of your agency's mandates is to enhance financial education, why did your agency choose to provide misleading data and include credit unions while being fully aware that the regulatory regimes are completely different?

Response:

The CFPB analyzed the data using the demarcation specified by Congress in the statute: the top 25 credit card issuers and everyone else. The top 25 issuers do include two credit unions. However, even excluding credit unions, the largest issuers had higher rates.

Question 2: Concentration in Various Industries as a Benchmark

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Director Chopra, while you assert the credit card industry is “among the more consolidated markets for consumer financial products” both the Federal Reserve and the OCC have consistently characterized the credit card market as “highly competitive.” The DOJ has also acknowledged that “no one disputes that the issuer market is unconcentrated.” Courts have also characterized competition among credit card issuers as “robust” where “no single issuer dominates the industry, the largest credit and charge card issuers have only small shares of total industry output.” In fact, using HHI, a commonly accepted measure of market concentration, the credit card industry is far from concentrated at an HHI of 1,010 while breakfast cereal for example, is at a whopping 2,210, and department stores are at 1,601.

1) Based on that information, can you elaborate on your prior statements regarding consolidation in the credit card industry and specify what data you have to support those assertions?

Response:

As detailed in the CFPB’s most recent biennial report to Congress, the credit card market includes about 4,000 credit card issuers, but the top 10 issuers represent more than 80 percent of consumer credit card loans as of 2022. The next 20 issuers represent 12 percent of the market, and the remaining ~3,800 issuers represent just 5 to 6 percent of the market. No single issuer outside the top 15 represented more than one percent of total credit card loans.

Compared to thirty years ago, fewer banks now issue credit cards, and the biggest banks represent a significantly larger share of the market. In 1994, about 6,000 depository institutions issued credit cards and the ten largest credit card issuers held about 57 percent of loans.

One of my priorities is to promote and foster a competitive and transparent market for financial services. Maintaining a robust place for small and community banking is exceptionally important to fostering a competitive economy.

Question 3: CFPB Research

A number of critics and studies have revealed significant flaws and omissions in your recent research efforts, which seem to indicate that the Bureau is moving away from objective analysis and into 'soundbite' generation designed to drive headlines and justify poor policy initiatives like the late fee rule. How do you respond?

Response:

This assertion is simply not accurate. The CFPB has a statutory mandate to promote fair, transparent, and competitive markets. As part of this mandate, the CFPB conducts extensive, thorough, and transparent research and analyses which informs our commitment to making consumer financial markets work for consumers, providers, and the economy as a whole.