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THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

HEARING

BEFORE THE

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

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

ON

THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

NOVEMBER 30, 2023

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THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CONGRESS

THURSDAY, NOVEMBER 30, 2023

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

The Committee met at 10:15 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chair of the Committee, presiding.

OPENING STATEMENT OF CHAIR SHERROD BROWN

Chair BROWN. The Banking, Housing, and Urban Affairs Committee will come to order. Welcome back, Director Chopra. Thank you for joining us again and making your case well, as you always do. Since CFPB first opened its doors, we have had more than a decade of progress toward rooting out abuses and injustices for consumers in all types of markets, from mortgages to credit cards to payday loans. It matters for consumers. It matters for the vast majority of businesses that do the right thing, because when an honest business follows the rules, it is forced to compete with a predatory business that does not follow the rules. We know who is going to win most of the time.

CFPB levels the playing field so that honest people do not get penalized for running a business the right way. When consumers interact with fair and transparent businesses, they can make decisions without worrying about scams or predatory practices. Since 2011, the CFPB has returned $20 billion to 200 million consumers. That is real money in real people's bank accounts, or it is real reductions in debt, money back in the hands of working families, where it should have stayed in the first place.

We have talked extensively about CFPB, how you stand up to special interests and scammers on behalf of servicemembers and veterans. The Director and I were just talking about that before we started. Protecting servicemembers, protecting veterans is one of the most important things that we have charged you to do and that CFPB does. When we created the CFPB, we made sure it included the Office of Servicemember Affairs. The first head of that office was Holly Petraeus, the spouse of a servicemember, someone from a family with generations of military service, who understood the challenges facing servicemembers and their families. These are families for whom service and sacrifice to our country are part of who they are. It is ingrained in them.

The CFPB, with its Office of Servicemember Affairs, takes on special interests to protect the bank accounts and the jobs of our servicemembers, our veterans, and their families. Due to their steady paychecks and constant moves, servicemembers are often targets for predatory financial companies and scammers. Every year, tens of thousands of servicemembers come to you, come to the CFPB, seeking assistance reporting a complaint. The CFPB goes to bat for them and works to get their money back or works to fix the problem.

You would think that people in Congress would be lining up to make sure the agency could effectively do this important job, but sadly that is not what we are seeing. Many of the same politicians who like to talk about supporting veterans and military families have spent more than a decade trying to tear down the agency that protects those workers', those servicemembers' finances, and helps them get their money back.

To be clear, financial literacy is not an alternative to the CFPB. Financial literacy is not an alternative to the CFPB. Some of my colleagues say, "If only our servicemembers could spend more time learning how not to be scammed." The men and women who serve our country, or any American, should not need special training to keep their own money. It should not be on our servicemembers to protect themselves from scammers; it should be on companies not to scam them. That is why we need the CFPB.

No other Federal agency with this level of responsiveness and efficiency, and the ability to take on greedy, big corporations and shady lenders. It is how CFPB has returned more than $175 million to servicemembers and veterans—$175 million. Earlier this year, CFPB took action against TitleMax for violating the Military Lending Act passed by Congress, by charging nearly three times what the statutory cap on interest rates calls for. CFPB ordered TitleMax, a repeat offender, to return millions to servicemembers and their families.

Whether you are a servicemember or you are a senior or you are a worker, the CFPB goes to bat for you. Last year, CFPB clarified that nursing homes cannot go after family members for debt. CFPB works toward removing all medical debt from credit reporting agencies, something I have called for repeatedly. Medical debt can happen to anyone. It is not an effective measure of creditworthiness, has no business being on a credit report, and consumers should not be harassed for falling sick.

Then there are the actions the CFPB takes to stop Wall Street abuses. Maybe that is the reason corporate interests and their lapdogs in this town hate the CFPB. The work CFPB is doing to stop junk fees is a top target for Wall Street. I think there will be several Members of the Committee asking about that. CFPB has proposed a rule that the agency estimates will reduce credit card late fees by as much as $9 billion a year. An additional $9 billion to American households every year would make quite a difference in their lives. If CFPB is successful, that means $9 billion less on Wall Street profit statements, so of course they are not going to give up without a major and well-funded lobbying fight.

That is always the biggest difference between most Americans and Wall Street—Wall Street has a well-funded army of lobbyists;

the rest of us do not. That is why too often, Wall Street gets its way and the American public does not. CFPB is their voice to take on the powerful special interests that cost them time and stress and money. It is why Wall Street and its allies have spent more than a decade trying to destroy the CFPB. So far, this is one fight that they have lost. I will never stop fighting to ensure consumers continue to have a strong CFPB in their corner. As long as I am Chair of this Committee, the Committee will continue to fight for the work that you do. Senator Scott.

OPENING STATEMENT OF SENATOR TIM SCOTT

Senator SCOTT. Thank you. Let me start off by saying it is certainly good to be back with the Committee. I want to thank my fellow Members for their support, and specifically, in particular Senator Rounds for all of this support during my absence. I would also like to welcome our newest Member, Senator Butler, to the Committee.

Now, turning back to business. Just 2 weeks ago, our financial regulators testified before this Committee and faced bipartisan concerns about the impact on everyday American families that these misguided and partisan regulatory proposals would have if implemented as proposed. While those independent regulators have become increasingly politicized under the Biden administration, the CFPB has a much longer history of skirting statutory mandates and avoiding congressional oversight.

Director Chopra, you know these concerns well, and you have heard from me about those concerns. You have heard from my fellow Members of the Committee, as well as House colleagues, and yet the CFPB is no more accountable today than it was at its inception. And I fear, under your leadership, the agency is straying even further from its mandated mission. I will wait until they finish.

[Discussion off the record.]

Senator SCOTT. The abuse of enforcement powers, rulemakings driven by politics instead of policy, and a lack of oversight, which only leads to less economic opportunity, have become hallmarks under your leadership. The law is clear—when it comes to consumer finance, the CFPB should consistently and fairly enforce Federal consumer finance law, safeguard access to markets for consumer financial products and services, and ensure that such markets are fair, transparent, and competitive. Sadly, the CFPB's actions do not match up with this mandate.

Under your leadership, the CFPB has operated in blind pursuit of additional power, and has become the hallmark of Government overreach to the point where I am concerned the Bureau is doing more harm to consumers than good. That is why in July, I led a bicameral group of 132 Members of Congress in filing an amicus brief to the Supreme Court, urging the Court to affirm the lower court's decision that the CFPB's funding structure is constitutionally defective.

When you last testified before us in June, we discussed your efforts to regulate, through speeches and blog posts, your public pressure campaign on fee income, and your attempts to stifle innovation. Instead of correcting course, it seems that you have only accelerated toward the exact opposite direction of your statutory mission. Recent reporting even suggests that your agency will be releasing an aggressive fee proposal very soon. I really hope the old saying that a tiger cannot change its stripes will not be true of the CFPB. And yet we have seen that the CFPB recently proposed regulating access to consumer data by consumers and authorized third parties. As with anything, the devil is always in the details, but as this proposal advances through finalization, I hope you weigh the new regulator costs against any benefits that this rulemaking may provide.

And on top of all of that, the CFPB is even proposing new supervisory authority over nonbank providers of consumer payment apps. However, the rationale supporting this proposal ignores the real costs of compliance likely to stifle innovation, costs that also will undoubtedly be paid for by hardworking American families. I wish I could stop there, but of course the list goes on. Your agency is even pushing for sweeping changes to regulation under the Fair Credit Reporting Act, ignoring the longstanding interpretation of clear legal authority by courts and other regulators. How do any of these costs and the costly actions actually protect consumers? I hope you help me understand your perspective on that, where we likely will disagree.

I meant it when I said at our last hearing, the best way to provide economic opportunity and protect consumers is to encourage competitive markets and set clear rules of the road for participants. These principles protect our system by fostering competition and innovation rather than vilifying it. I will stand by these principles, and I certainly have experienced the benefits of having a system where the rules of the road are fair and consistently applied. As a kid who grew up in poverty and understood that the American Dream was available, having access to that for the next generation of youngsters is so important from my perspective.

Unfortunately, we see a common theme from the left, that somehow lower-income families lack the wherewithal to manage their own affairs and determine what is best for their families without some sort of Government intervention. While the Federal Government ought to protect consumers from unscrupulous practices, bureaucrats in Washington should not dictate what families can and cannot have, simply by regulating products out of existence and pricing people out.

As I wrap up, I want to address one final important topic. A few weeks ago, several reports were published about the toxic work environment and the culture at the FDIC. A few weeks ago, we talked about the importance of making sure that employees at the FDIC, where you sit on the Board, have a safe, healthy work environment. I hope that you will have an opportunity to address some of the challenges that we have seen at the FDIC as well. Thank you.

Chair BROWN. Thank you, Senator Scott, and welcome back to the Committee.

Senator SCOTT. Thank you, sir.

Chair BROWN. The Honorable Rohit Chopra has served as a director of CFPB since October, 2021. He worked for CFPB in its early days, serving as assistant director and student loan ombudsman shortly after the agency opened its doors. He has also been an FTC commissioner. Welcome, Director. Thank you for being here.

STATEMENT OF ROHIT CHOPRA, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CHOPRA. Chairman Brown, Ranking Member Scott, and Members of the Committee, thank you for holding this hearing today. This is my tenth appearance before Congress since becoming Director in October of 2021. I am grateful to many of you on this Committee on both sides of the aisle who have taken time to meet with me, provide advice to the CFPB on the challenges and opportunities we must face. There are so many of them—protecting sensitive personal financial data, dealing with big tech companies and their entry into finance, reducing credit reporting errors, preserving relationship banking, and so much more.

Since I was here in June, I am pleased to share that the CFPB has reached many milestones, like accelerating open banking in the U.S., protecting financial privacy, and just as Senator Scott mentioned, continuing to enforce the law fairly and consistently, with clear rules of the road. These deliver results for consumers and law-abiding businesses, but I want to share a few observations about household financial stability and highlight some progress.

Americans now owe more than $17 trillion in household debt. Outstanding credit card debt has eclipsed a trillion dollars for the first time since the CFPB began tracking it. Auto loans have also grown quickly, to an estimated $1.6 trillion. Our analyses have found that rates and fees are contributing to persistent credit card debt for a growing number of consumers. Americans paid $130 billion in interest and fees on credit cards alone last year, with annual percentage rates rising far above the cost of offering credit. The CFPB is taking a number of steps to increase competition here. The return to repayment for Federal student loans continues to be an area we are looking at closely. Outstanding auto loan debt has also grown, given the higher cost of vehicles, especially during the pandemic, and the higher rate environment. And interestingly, auto loans are now eating up a bigger portion of monthly budgets than they used to do, before the pandemic. We are actively monitoring credit performance, repossession activity, and more. And of course, residential mortgage activity has declined precipitously due to the rate environment.

We do see that fees, discount points, and other costs have increased, and many people question how they will be able to refinance in the future. We are looking at ways to facilitate a lot more refinancing activity, if and when prevailing mortgage interest rates subside, to ensure that the borrowers who experience any financial distress can navigate alternatives to foreclosure with their mortgage servicer, by streamlining rules and procedures for servicers to offer loan modifications.

Since our last report, we have proposed a rule under Section 1033 to shift to open banking in the United States. We have initiated a process to improve accuracy and accountability in credit reporting, especially for data brokers. We are taking steps to address widespread inaccuracies on Americans' credit reports when it comes to medical bills. Our Supervision and Enforcement program is protecting both consumers and the honest financial firms who must compete against those who egregiously violate the law. In the last 2 years, we have obtained orders totaling $8 billion in redress and penalties. We are tackling junk fees that have been creeping across sectors of the economy that interfere with the competitive market. We have shifted our supervisory resources toward nonbanks to account for the growing role they play in financial services, including a proposed rule to ensure that the big tech companies and other payment providers adhere to the same rules that banks and credit unions are following.

In August, our complaint data base reached four million submissions, and I am proud of the CFPB's work in getting consumers the resolutions they deserve, often through referrals from your offices, local organizations, and much more. I want to thank you again for the opportunity to appear before you today, and I look forward to your questions.

Chair BROWN. Thank you, Director. Thank you for your ongoing work on protecting workers' hard-earned money. I want to discuss something that we have talked about privately and many in this Committee have asked about, and one of the real highlights of what CFPB does is the Servicemembers' Civil Relief Act. We passed it to provide active-duty servicemembers—just generally what you are doing with servicemembers, but specifically passed it to provide active-duty servicemembers with the financial relief, guarantee servicemembers and their families a reduction in interest rates on any pre-service loans.

My first question is, Director, would you say that all servicemembers are receiving the benefits that Congress intended for them to have?

Mr. CHOPRA. No, they are not, and in fact we saw the destructive impact of that years ago with the illegal foreclosures of active-duty military families, in violation of the Servicemembers' Civil Relief Act. You know, with a higher rate environment, they are entitled to a 6 percent cap on preservice obligations, and we do not see many of them always getting it. We estimate that fewer than 10 percent of eligible auto loans and 6 percent of personal loans to activated members of the Guard and Reserve were getting those rate reductions.

Chair BROWN. So what can financial institutions be doing to ensure that they get the financial benefits that Congress intended?

Mr. CHOPRA. Well, certainly many of them are starting to just give it automatically. They can often know if a servicemember is activated, and they can do it rather than making the servicemember go through an obstacle course of paperwork.

Chair BROWN. OK, thank you. I am going to work toward ensuring financial institutions proactively check for SCRA reductions. Our servicemembers and families should be able to keep their money, as you have continued to fight for. Thank you.

Mr. CHOPRA. And on the Military Lending Act, we have pursued more actions, and we are litigating there to go after the egregious repeat offenders. The Military Lending Act is one of the most important protections, not only to protect those families, but as the Department of Defense would share, our force readiness as well.

Chair BROWN. OK, thank you. This Committee, particularly with credit agencies, have talked a lot about medical debt and what we do. The complexity of medical billing, coupled with the vulnerability of consumers seeking to obtain and finance medical services, creates opportunities for abusive—maybe that is the wrong word—for abusive practices by predatory medical debt collectors. Discuss what actions CFPB will take to hold medical debt collectors accountable when they attempt to collect bills that are not owed, or engage in other unfair, deceptive, and abusive practices.

Mr. CHOPRA. Well, we have already been taking some actions on the enforcement front, but there is going to be more. We have conducted quite a bit of analysis about medical debt, and you know, this is not like a normal loan. You do not sign up like a credit card or a mortgage. It happens to you, and then often a bill is put on your credit report, even if you have paid it, even if the insurance company has covered it, and you are stuck in the middle. Many people end up just paying it to get rid of it, and we are exploring whether it is even appropriate, given the widespread inaccuracies with credit reporting, whether it should be on credit reports at all. Many financial institutions will tell you, that data is often not even predictive at all, and it should not be used to coerce people into paying something they do not owe.

Chair BROWN. So walk through—I mean we have, we have had the three major credit agencies in front of this Committee. We have done it 2 years in a row. It is a practice we started and will continue to do, talking especially—one of the main topics has been medical debt and what it does to consumers, as you just explained. Some 10 million Americans have had their credit histories harmed by medical debt. Talk more specifically—this is my last question—walk through what that rule, what you are working on to fix that. If we cannot get the credit agencies to do the right thing—they have taken steps, but not enough—tell me what you would do.

Mr. CHOPRA. So the three credit reporting conglomerates have already taken steps to remove certain amounts of the debt. We are proposing or exploring rules that would limit credit reporting of certain medical bills. We are collecting feedback from small businesses right now about it. We have been talking to the medical industry—hospitals, medical debt collection, providers—and we may, although we have not made any firm conclusions, propose a rulemaking to restrict the reporting of medical bills on credit reports.

Chair BROWN. OK. Thank you, Director. Senator Scott.

Senator SCOTT. Thank you, sir. Last month, the CFPB announced that it was proposing to expand its own authority to supervise technology companies, a move that should be called out for what it is—another attempt to stifle financial technology and financial innovation. I firmly believe innovation in finance has made it easier for lower-income families to access financial services, such as basic checking and savings accounts, as well as even more complicated products like mortgages. Private sector competition and new, innovative technologies can bring financial opportunity to all Americans.

While new technology needs appropriate supervision and guardrails, American innovation should be encouraged, not crushed by bureaucratic red tape, and yet the CFPB ended its Financial Innovation Sandbox, which offered safe harbors to firms attempting to further democratize finance in a safe manner.

While I understand the need to ensure consumers are not targeted or taken advantage of by bad actors, what rationale supports preventing responsible, well-regulated companies from releasing new products within the confines of a safe harbor program?

Mr. CHOPRA. So let me address everything you have said. So first of all, let me just share—you said something earlier that I totally agree with, that the competitive markets really deliver a lot, especially when there is clear rules of the road that are consistently enforced. I actually am a huge believer in the role of technology to really bring a lot of benefits. It is why we proposed our Open Banking Section 1033 rule. But you mentioned oversight of the large tech companies, payment apps. We are not expanding our authority. They are currently subject to our enforcement authority, and I think in our judgment, rather than resolving issues through litigation, we should look at those large firms serving tens of millions of people, and make sure that they are following the law just like small banks are doing. Supervision of nonbanks and banks is a key way that makes those laws consistently enforced. So I am trying to make sure that where we see fraud—and there is, on some of these payment apps, huge amounts of fraud—where we see collection and surveillance of data, we need to make sure that it is compliant with the law. But I totally agree with your question, that we want firms to be able to get products out to the market, if they are with the right guardrails. And you asked about the safe harbors—we conducted an analysis of these special no-action letters, and here is what we found. Some of the companies receiving them claimed that they were endorsed by the Government, or that they were the exclusive provider. So what we have done is we want some of those programs to be applicable to lots of organizations, not just crowning one member of the industry. That is really what competition is about. It is not about picking winners and losers, sir.

Senator SCOTT. Well, I certainly wish that were true for the Government, but certainly our Government, particularly the Biden administration and particularly the CFPB, seems to want to pick winners and losers. As a guy who was in business for several years and started several businesses from scratch, the one thing you need from your Government is not competition; it is certainty and predictability. When you set the rules of the road, step back and give the market time to actually absorb the changes. Innovate, be creative, take the calculated risk, and come to a conclusion whether it works for the business. If it does not work for the business, it is because the consumers are not benefiting from the products or the services in the marketplace. When that happens, the brilliance of a free market system works. When the oppressive nature of your agency and the Biden administration comes in and starts tweaking the rules of the road, as you would suggest, thousands of fintech firms working in the marketplace, and some—that could be 5; it could be 500—I would love to see what that looks like from your perspective. But the reality of it is that when you have an opportunity to engage in a free market system with the rules of the road, without the Government being oppressive and stifling innovation, then the consumer benefits.

If you want to have access to more opportunities for the poorest Americans, the way that you get there is by having a framework and a playing field that does not discriminate. Well, the beauty of the financial technology innovation engine is that you have more people accessing more products, more services with an app. That is what brilliance looks like. But when you have——

Mr. CHOPRA. And I agree with everything——

Senator SCOTT. Let me finish.

Mr. CHOPRA. ——that you have said.

Senator SCOTT. When you have the uncertainty brought into the marketplace by agencies, the challenge that we see is that the ROI goes down, the cost-benefit analysis goes up, and so players in the market space, they leave. And what that leaves poor families to do is to go into brick-and-mortar only and make decisions. There is just a better way, and hopefully we will have a second round to get some more questions.

Chair BROWN. Thank you, Senator Scott. Senator Reed of Rhode Island is recognized.

Senator REED. Well, thank you very much, Mr. Chairman, and Director, thank you, particularly for your support of the Servicemembers' Civil Relief Act. I think Senator Brown's questioning is right on target, and you are right—it does contribute to the readiness. As someone who served for 12 years in the Army and had to deal with these issues as an executive officer, you have to be on guard constantly against lenders who do not respect, except in their advertising and in the multiple flags they have on their property, but they do not respect the soldiers as much as they should. So thank you, and please keep it up.

By the way, when I was on active duty, it was called the Soldiers' and Sailors' Civil Relief Act, but then with the end of the Civil War, they changed it. I am joking now.

Mr. CHOPRA. Yes.

Senator REED. Sorry.

[Unknown.] I got it, Jack.

[Laughter.]

Senator REED. A little levity. Credit rating bureaus sell so-called trigger leads, which are essentially a tip that a consumer is shopping for a mortgage. The trigger lead can generate hundreds of contacts, and some of them more confusing than helpful. And you have a responsibility for both the mortgage lending process and also the credit reporting bureau. Is there anything you could do to help clear up the situation, under existing authority, to protect consumers from misinformation and just the deluge of——

Mr. CHOPRA. So one of the things that a prospective homeowner will talk to a mortgage lender, and then all of a sudden they will start getting a barrage of calls, and they actually think that the original mortgage lender told everyone, and they wonder what is going on. This is something that I think our authority is somewhat limited, but I think we are happy to look at different solutions to make it clear that that is not happening because the mortgage lender is really telling everyone; it is because the credit reporting company is really making that information available.

You know, you have raised the issue of SCRA and data on credit reports. We have a lot more of these companies collecting sensitive information, not just what loan you apply for—your geolocation, you know, where you go, and that data is increasingly being weaponized, and so we are looking at all of these data issues and figuring out how to make sure we are protecting the public.

Senator REED. Well, a simple approach might be to—and this would require our action—is to give the consumer the right to erase all the data, or only hold it for——

Mr. CHOPRA. A period of time.

Senator REED. ——a limited period of time, or prevent the sale of data, with some exceptions. We have to think about that as more of these situations take place. Buy now, pay later is becoming very popular, and we are now seeing that essentially the regulation is State-based. I think there really is a area of responsibility that your bureau could assume in order to make sure that this buy now, pay later situation does not really hurt the consumer, as it could. Any comments or thoughts on that?

Mr. CHOPRA. Yes, I agree. We issued a report with a number of actions. We have started acting on all that, including supervision of some of these firms. I have been checking day to day when it came to Black Friday, Cyber Monday, what is happening with the growth on buy now, pay later, and I hope to report more to you about that. The bottom line on this is, there is a lot more buy now, pay later providers. We cannot have a race to the bottom. We have to have some basic standards for which they will not try and use regulatory arbitrage to cheat people. They too are also harvesting quite a bit of data, and we are going to be looking at that. So I want to make sure that whether you use a buy now, pay later loan or a credit card, that you can have your Federal protections and it is not arbitrage.

Senator REED. And I think what would be helpful to us, if you could generate some information about the insidiousness of this data that is collected, because I am sure there are some very graphic examples. And what that would give us, I hope, is the motivation to give you the authority to take appropriate steps.

Mr. CHOPRA. Well, I worry that actually State and non-State actors are going after this data. We saw with the Equifax data breach that it ended up in indictments of members of, you know, the Chinese Army. So we have to look at this not just as consumer, but really our data and our security.

Senator REED. Thank you very much, Mr. Director.

Mr. CHOPRA. Thank you.

Chair BROWN. Thank you, Senator Reed. Senator Rounds of South Dakota is recognized.

Senator ROUNDS. Thank you, Mr. Chairman. Director Chopra, welcome. Let me just begin by talking a little bit about Regulation Z. Overdraft protection helps consumers in making ends meet when a deposit account balance is low, particularly for those consumers who are unable to qualify for traditional credit products. News broke this week that the CFPB would soon be releasing its much-anticipated rulemaking on overdraft protection. When the Federal Reserve constructed Regulation Z almost 50 years ago, it intentionally excluded overdraft, because it was clear that applying the Truth in Lending Act and Regulation Z to overdraft would be impractical. However, the Spring 2023 Unified Agenda indicates the CFPB intends to do just that. When will this rule be published?

Mr. CHOPRA. To be clear, that is not what the regulatory agenda says. We are looking at what the Federal Reserve did many years ago, in the era of paper checks and mailing checks. We have not made any conclusions, but I am hoping—we continue to get industry feedback that they would actually like some clear rules. I do not have an exact timing on it, but I will share this. I agree with you that people need to be able to access liquidity. You know, with respect to when they have a deposit account shortfall, there is lots of ways we are looking to address that. In fact, borrowing is really how families and businesses survive. So I do want to assure you, there is not an effort to eliminate, or make that need not able to be fulfilled, but again——

Senator ROUNDS. So it is——

Mr. CHOPRA. ——we have not proposed a rule yet.

Senator ROUNDS. ——there is not a rule that you are anticipating releasing with regard to——

Mr. CHOPRA. Well, we are, we are working on something, and I think what we are trying to address is a number of issues that if you look at some of our past work on this, there is certain data and enforcement work where we reached an enforcement action with Regions Bank and Wells Fargo where some of it involved moving around the payments in order to generate not one overdraft fee for the day, but sometimes four. So we have to address the harms, while still allowing consumers to be able to access the liquidity when they have a shortfall.

Senator ROUNDS. I guess the reason why I bring it up is, number one, you know, you have released data that indicates a major reduction of overdraft fees over the last several years. In fact, overdraft revenue in the 4th quarter of 2022 was 48 percent lower than overdraft revenue in the 4th quarter of 2019. It just seems to me that as a part of any study that you are doing, before you release a new rule, I would hope that you would look at whether or not—if you decided to do something on it, whether or not it would actually limit access to overdraft protection if it is subject to Regulation Z's requirements, and the impact that that would have on consumers. I hope that that would be included in any proposed rule that you may very well come up with.

Mr. CHOPRA. Well, let me share with you, we actually do see quite a bit of differences between the relationship banks and the non-relationship banks. I do want to commend a lot of the banks, the industry for really starting to compete now on overdraft. Many of them are showing their lower fees or the buffers that are provided. So I agree with the spirit of everything you said, and we are continuing to work on it.

Senator ROUNDS. You mentioned earlier the issue of medical bills and whether or not they should be included in a report, or at least if someone is identified as not making a payment on one. As part of your analysis, are you looking at how the health care industry is responding and what they are doing if the folks that normally would be the collection services for them——

Mr. CHOPRA. Yes.

Senator ROUNDS. ——if they cannot put that on the report, it seems to me that there is a possibility that some of those health care providers, who have to pay their bills, too, may very well look at cash only or payment up front on some of those services that these folks may not be able to afford. Will that be included as a part of the analysis that you do?

Mr. CHOPRA. Yes. So we have been talking to a lot of players in the market. There is a heterogeneity. We see a lot of places do not do reporting; we see some that do reporting. We do have very serious concerns about inaccuracy and coercion, and I think that is really a big problem, but I am pretty sensitive to the issue you said. For what it is worth, we do see a lot of the health care industry already shifting to a credit card up front, and I think that some of those are issues that are really outside the scope of the CFPB, but it is certainly something we are looking at very carefully to determine how we proceed with this.

Senator ROUNDS. If it makes it more difficult for them to collect on a bill, some of these folks who do not want to are looking at this, saying, look, if we cannot get our bills paid, chances are we are going to have to take a different approach, and that puts a bigger burden on some folks that probably can least afford it. And I would simply hope that if you do any rulemaking on this, that you take that into account and are able to share that with this Committee.

Mr. CHOPRA. And I am happy to discuss this with you further, because we want to get it right.

Chair BROWN. Thank you, Senator Rounds. Senator Tester of Montana is recognized.

Senator TESTER. Yes, thank you, Mr. Chairman. I want to welcome Senator Scott back to Committee. Even though Senator Rounds did an outstanding job, he is no Tim Scott. You know what I mean?

[Laughter.]

Senator TESTER. And I would also say that I am sad that you got out of the race, because I think you are fundamentally a good man, and——

Senator SCOTT. Thank you very much.

Senator TESTER. ——and we appreciate your efforts.

Senator SCOTT. Well, you will serve in one of my future Administrations.

Senator TESTER. Sure, absolutely. And I also want to apologize, because Senator Brown and I were talking about the China—and I—when you were giving your opening statement. We have got some issues. This is a bill that Senator Rounds and you are familiar with, as well as the Chairman—that comes out of this Committee. Exactly. And just to release a little frustration I have, there are some over in the House, a chairman in particular, that does not think the Chinese Communist Party is a threat to this country, and that bothers me a lot. And I have visited with the good senator from South Dakota on this already, and we will figure out a path forward. But the truth is is that it is better to deal with stuff before it happens than afterwards.

Senator SCOTT. Yes, I appreciate that. I appreciate your apologies. I hope that your Chairman is kind enough to you to extend a little extra time to you. I know how hard he is to deal with sometimes, so——

[Laughter.]

Senator TESTER. I just——

Chair BROWN. I will always give extra time when people say nice things about Tim Scott.

Senator TESTER. Exactly. He is a tough character.

Senator TESTER. Director Chopra, thank you for being here. I appreciate your work. I chair the Veterans' Affairs Committee. I have been working with Chairman Brown to protect the folks after they get done with their service to the country——

Mr. CHOPRA. Yes.

Senator TESTER. ——the veterans, and we have had an issue with Home Loan Guaranty Benefits and veterans losing their homes due to foreclosure. The VA took quick action—I applaud them for that—after we sent a letter off on the VA Home Loan issue, and hopefully they are able to work for a permanent solution moving forward. But I am concerned about how these folks got into the situations to begin with. We need to make sure that our veterans, the servicemembers, as Chairman Brown said, and their families are being served in the right way by the VA, by the lenders, and by the mortgage servicers. So do you know if this is something the CFPB has been hearing about from our veterans and our servicemembers?

Mr. CHOPRA. Yes, and in fact, if you will recall, we had some things that rhymed with this many years ago with the VA Home Loan churning, with refinancing. And I also want to agree with you; I am happy the Department of Veterans Affairs, the actions they are taking. The VA Home Loan program is enormous, it is critically important, but of course we do see bad actors targeting beneficiaries.

Senator TESTER. And what tools do you have to stop that?

Mr. CHOPRA. So our authority is really on the lenders and the servicers. So we have to police for our laws, but of course the Department of Veterans Affairs, we work with them on their program guidelines to make sure that the homeowner is protected. And I will tell you, a wrongful foreclosure of a veteran, especially an older one, it is a very, very devastating consequence to deal with, and we are looking at ways to prevent avoidable foreclosures like that.

Senator TESTER. Thank you for that. Last month in the VA Committee, we had a hearing on financial protection for our veterans and their families, and discussed ways that the folks in our military community, our veterans, have been taken advantage of, and the responsibility that the VA has, that the CFPB has, that the FTC has to protect them. Just for a little background, there are accredited Veteran Service Organizations out there that help veterans access or earn benefits, but there are also a growing number of organizations trying to take advantage of our veterans for money. This always tends to be the case when you have a steady flow of income into a community.

A lot of this I believe is in your bailiwick, like watching the companies trying to collect on debt related to unaccredited VA claims consultants. Number one, is this on your radar screen? Number two, what trends are you seeing?

Mr. CHOPRA. Yes. So in our regular sessions that I participate with our VSOs and military family advocates, the unaccredited consultants, I think a major way they are getting in is often through social media advertising, and I think we have to figure out how they are using, you know, TikTok, others to reach those veterans, make claims. I worry about how we will be able to detect perpetrators there, but it certainly is something of ongoing discussion in our Office of Servicemember Affairs and the VA, and I have to be honest with you—I think it is going to maybe also need to involve criminal law enforcement.

Senator TESTER. OK. One of the things that crossed my mind during the hearing is, are we seeing the cases of these folks being taken advantage of more prevalent in the veterans' community, or the active-duty community, or is this stuff happening regardless, that there is no difference between those two?

Mr. CHOPRA. Well, generally speaking, I think you will see more in the veterans' community, because there is often a target of a Government benefit, so that is a place that people, you know, will see dollar signs——

Senator TESTER. Yes.

Mr. CHOPRA. ——and immediately go after it. In many ways, it is pretty easy to identify a military family or veteran, often through social media and the data broker world that now exists.

Senator TESTER. And I think you have already touched on this, but I wanted to flesh it out a little more. What do you see as the biggest risk that the CFPB can help with as it applies to the financial solvency of our veterans?

Mr. CHOPRA. Well, certainly I think home ownership, and being kicked out of your home, and being able to get a loan modification. By sheer dollars, it is a huge amount of money, and that is why we are looking at streamlining some of our mortgage servicing rules to allow more people to more easily get loan modifications and be able to avoid foreclosure.

Senator TESTER. OK. Thank you.

Chair BROWN. Thank you, Senator Tester. Senator Vance from Ohio is recognized.

Senator VANCE. Thank you, Mr. Chair. Thanks, Mr. Chopra, for being here. So I want to talk about a couple of issues, one of which is the Department of Justice and CFPB's joint statement, effectively discouraging banks from asking about immigration status in loans. Here is what worries me about this. So first of all, of course we have a historic human- and drug-trafficking crisis on the Southern border. I worry about the Biden administration effectively signaling to banks that they should make it easier to lend to folks who have come into the country illegally, and I worry that could frankly exacerbate the crisis that we already have.

The second point that I make on this is just if I look at this from the perspective of a bank, it seems totally plausible and reasonable to me that if you are lending to an illegal alien, that is maybe a riskier loan than lending to a legal alien or a citizen of the country. So just to sort of strongly discourage you guys from going down that route, and I think we should try to make it easier, maybe, for the financial system to discourage the immigration crisis that we have before us.

I actually wanted to ask about a separate question, and I know, Mr. Chopra, you share some of the concerns that I have about the concentration in the financial system. And you know, I still do not think the American people have gotten a full accounting and understanding of what happened with the Silicon Valley and First Republic bank collapses. And I want to kind of lean in there and maybe just start with the very basic question of, when First Republic was acquired, we have heard a number of different arguments, or a number of different claims, publicly and privately, about what the spread was between the PNC offer and the JPM offer, which eventually was of course the successful offer to buy First Republic. Are you willing to tell me on the record, what was the spread between the JPM offer and the PNC offer?

Mr. CHOPRA. There were multiple bidders.

Senator VANCE. Of course.

Mr. CHOPRA. I do not know if I am permitted under law to say the specifics, but let me just say this, which is that JPMorgan Chase's purchase would have ordinarily been completely prohibited by law.

Senator VANCE. Yep.

Mr. CHOPRA. That was not a decision of the FDIC. The FDIC had to look at what the least cost was, and there was a determination that JPMorgan's bid was higher, and then that went through Bank Merger Review by the other agencies. But we will try our best to give you more information on the multiple bids.

Senator VANCE. Yes, I would appreciate that, because one claim that I have heard is $20 billion, right? A spread of $20 billion is significant, and obviously we want to minimize the risk to taxpayers and to the depository insurance program. I have also heard the claim of $1 billion, and if the difference between the bids was $1 billion, that seems like a small price to pay relative to the massive concentration problem raised by First Republic going to the largest bank as opposed to a significantly large but still fundamentally regional bank.

Let me sort of ask this question, Mr. Chopra. Let's say—understanding you cannot give me an answer right now, and I would appreciate you following up—if the spread was a billion dollars, do you think that raises some pretty significant concerns about how that bid and purchase process unfolded?

Mr. CHOPRA. Well, yes, although the statute as written does require the FDIC Board to accept the least cost, but of course the Federal Reserve Board, the other regulators, they have the ability to disqualify under the Bank Merger Act.

Senator VANCE. Right.

Mr. CHOPRA. So I think that is really the two pieces, and we would be happy to share with you how the statute could be tweaked to avoid this.

Senator VANCE. And I appreciate that, and just the last question here. So you mentioned this earlier, but FDIC Chair Gruenberg waived the requirement that would effectively cap any purchaser from putting the financial system at a situation where a single entity contained more than 10 percent of national deposits.

Mr. CHOPRA. No, the FDIC cannot waive that. That is the other regulators——

Senator VANCE. That is the other regulators, OK.

Mr. CHOPRA. Yes.

Senator VANCE. OK, OK, thank you. Did you have any concerns with waiving that requirement? Recognizing that was not your decision, do you have concerns with waiving that requirement?

Mr. CHOPRA. Well, certainly I think you have talked about the tradeoffs between the cost to the deposit insurance fund and how the increases in concentration should be weighed.

Senator VANCE. Yes.

Mr. CHOPRA. I personally have great worries that the largest institutions, if they are able to scoop up all the failed institutions, even when there is other bidders, it raises some real issues.

Senator VANCE. Great. Thanks, Mr. Chopra. Thank you, Mr. Chairman.

Chair BROWN. Thank you, Senator Vance. Senator Menendez of New Jersey is recognized.

Senator MENENDEZ. Good to see you, Mr. Chopra. While some banks have either decreased or eliminated overdraft fees altogether, in large part due to increased scrutiny and oversight, banks still collected an estimated $7.7 billion in 2022 in overdraft and nonsufficient fund fees. Furthermore, a recent report from California State regulators showed that 30 credit unions earned half or more of their net profit just from overdraft and NSF fees. Director, who typically pays for the expensive overdraft fees that banks and credit unions charge?

Mr. CHOPRA. It is typically families who live paycheck to paycheck, the lowest income.

Senator MENENDEZ. So from your perspective, what can be done at the CFPB to rein in these excessive fees?

Mr. CHOPRA. Well, we have taken a number of actions on the enforcement side, supervision. We are also looking at where there may be rules to rein in some of these abuses. At the end of the day, we know we want people to be able to access credit, but sometimes it is not subject to the normal competitive forces, and they can really be gouged. And so there has been many institutions that have shifted. The vast majority of institutions I think are doing a good job, but there are many bad actors that we have to deal with.

Senator MENENDEZ. So you are considering a rule.

Mr. CHOPRA. Yes.

Senator MENENDEZ. Well, overdraft fees are one major reason why so many Americans are still hesitant to enter the formal financial system, so I look forward to what you do in this regard. I was pleased to see the CFPB's proposed rule earlier this month establishing supervisory authority over large nonbanks with person-to-person payment apps such as Venmo, PayPal, Cash App, mobile peer-to-peer payment applications which are growing evermore popular and are expected to facilitate transactions worth over a trillion dollars this year.

You and I and several other Members of this Committee have spoken and written letters about the rampant scams and frauds on these apps, as well as the difficulty consumers can face in being made whole as a result of these activities. Can you explain how the proposed rule will make these apps more secure and protect users?

Mr. CHOPRA. Well, we have seen a number of issues with these big apps. You mentioned fraud, but there is also very significant data collection occurring on them. In many ways, it resembles what we see in China with WeChat Pay and Alipay. So we have proposed a rule to be able to supervise them for these existing Federal laws—no new one, there is no expansion—and we think that that will help level the playing field and make sure that these consumer payments companies operating outside of the banking system are protecting consumers the way they ought to be under Federal law.

Senator MENENDEZ. Well, I look at the rule as an important first step in creating a fair and more secure digital payment ecosystem, and I look forward to your continued work in this regard.

Mr. CHOPRA. Well, thank you so much. And as I have mentioned with many of you, we are also thinking about how these apps are trafficking remittances, and I think we will continue to look there to make sure that those sending remittances get a low, competitive cost, and they have the same consumer protections.

Senator MENENDEZ. Let me turn to student loan repayment, which has restarted. Borrowers have experienced a multitude of issues with their services. I have heard from constituents who have noted extremely long wait times to hear from a service or representative, and incomplete and unhelpful information from automated systems. On top of that, millions of borrowers have been moved to a different servicer. Earlier this year, I sent a letter to the Department of Education asking that they get answers from MOHELA, the servicer who manages the Public Service Loan Forgiveness Program, regarding the issue borrowers were confronting with a return to repayment.

Given these and many more issues, I am pleased to see the CFPB open an investigation into MOHELA, Nelnet, EDFinancial, and Aidvantage's customer service practices in October. Can you speak more to what the CFPB is doing to hold student loan servicers accountable and support borrowers?

Mr. CHOPRA. Well, we know that many of the servicers during the pandemic made a business decision to lay off, or to otherwise no longer employ a number of employees. They now are ramping up, and there has been issues where people are experiencing very long wait times or getting incorrect bills. I cannot comment too much further other than to say, we are certainly working with the Department of Education and the States to address any violations of law.

Senator MENENDEZ. Well, the repayment process has begun; it is hitting many heavily. Getting the right answers and being able to speak to a servicer that actually services you is critical. Thank you, Mr. Chairman.

Chair BROWN. Thank you, Senator Menendez. Senator Hagerty of Tennessee is recognized.

Senator HAGERTY. Thank you, Mr. Chairman. Welcome, Director. I have three quick things to cover with you. First is looking at the recent SBREFA outline that you have released on the FCRA rule. Some of the changes proposed strike me as particularly aggressive, and it is unclear how they can be justified as necessary or appropriate as the law requires. First, the outline uses a new term, data broker, that as proposed would significantly expand what constitutes a consumer report, and consumer reporting agency. But it does not reference or explain the specific FCRA authority for this expansion.

Second, the outline states that the CFPB is considering a proposal to, quote, "clarify the extent to which credit header data constitutes a consumer report." And given the longstanding recognition by both Congress and the FTC that this data does not constitute a consumer report—they have always been treated separately in legislation—it is puzzling to me how such a drastic change of course is necessitated, particularly when you think about how putting limits on credit header data would have serious impacts on community lenders' antifraud efforts, and it would seriously hamper law enforcement's ability. You may have seen the article in the *Wall Street Journal* yesterday from an FBI agent who used credit header data to block a terrorist attack. Can you explain to the Committee specifically what statutory language gives the CFPB the authority to make these changes to the——

Mr. CHOPRA. Sure. It is in the Fair Credit Reporting Act, and let me give you some more context. So data brokers, they are some of the same types of firms that Congress was concerned about when passing the Fair Credit Reporting Act, assembling very sensitive dossiers about each of us, for sale. And I think it is not just for sale to commercial companies, but to even foreign agents. So we want to make sure that the business models that exist today, we are providing the appropriate clarity rather than just doing law enforcement investigation.

Senator HAGERTY. I want to make sure that there is clear regulatory authority, too, and I want to make certain that you take into account these areas of concern as well.

Mr. CHOPRA. We will, and I am happy to discuss it with you. And we will share with you specifically, if we do propose a rule, the actual authority for which we would promulgate.

Senator HAGERTY. Yes. Let me turn to a different issue now, and this is deeply concerning to me in my home State. Prior to the release of the Basel Endgame Proposal, which as a member of the FDIC, you voted on, a letter was sent to the heads of the three regulators in charge of this proposal by a number of groups, including the NAACP. They were concerned about the impacts of this rule on credit availability, especially to less affluent Americans. In their letter, they say, and I am going to quote this, quote, "Such a significant increase in capital standards will lead to reduced credit availability for all types of lending, and undermine economic growth. If these standards are adopted, they will have a devastating impact on our efforts to increase Black home ownership, and disadvantage all first-time, and in particular, first-generation homebuyers, who do not have the benefit of multigenerational wealth or higher than average incomes." Do you agree with these concerns, Director Chopra, and what would you intend to do about it?

Mr. CHOPRA. Well, let me share with you long-term. One of the things that was so devastating to those underserved communities you mention was when there was a financial crisis because banks held inadequate capital. A financial crisis that——

Senator HAGERTY. So you are talking about raising capital, and making that capital available. We have been through the financial crisis. We have been through reregulating after the financial crisis. We have been through a stress test like we have never seen before with the pandemic. You are talking about taking capital away——

Mr. CHOPRA. Well, no——

Senator HAGERTY. ——from this group.

Mr. CHOPRA. ——what we are trying to do is avoid bailouts, avoid massive taxpayer——

Senator HAGERTY. And at the same time depriving first-time owners, Black American homeowners. My constituents——

Mr. CHOPRA. Well, what we are doing——

Senator HAGERTY. ——in Memphis, Nashville——

Mr. CHOPRA. Is we are collecting——

Senator HAGERTY. ——Chattanooga, Knoxville——

Mr. CHOPRA. ——we are collecting comment on that, the three bank regulatory agencies, and I can assure you I will personally look into that issue, because——

Senator HAGERTY. I appreciate that assurance.

Mr. CHOPRA. ——there is nothing I would want to see—I want our financial system working to serve everybody fairly.

Senator HAGERTY. As do I, and this cuts against that very clearly, in my mind. Last question for you, Director Chopra, and this is a grave concern to all of us in terms of the competence that is being demonstrated here, or not being demonstrated, and the lack of confidence that the American public has in our agencies. In April, the CFPB notified Congress of a data breach. From within the CFPB, this data breach occurred where over 250,000 consumers' personal data was sent to a staffer's personal account. That presents a massive security risk, and it also really endangers the public's confidence in your agency. So I would like to give you the opportunity to update us today on what has taken place there. Was that person compromised by any foreign authority? Was the data sold or transferred? Can you give us assurances that that has not happened?

Mr. CHOPRA. Yes. So the insider threat issue was extremely serious. That employee is no longer working at the CFPB. We have taken a whole host of steps to figure out how to—it should never recur. Consumers have been notified. But I can confirm that——

Senator HAGERTY. Was the data sold or transferred? Have you been able to get to——

Mr. CHOPRA. Well, we are working with all appropriate law enforcement, but I have no evidence to suggest in any way that it was related to a foreign agent or intelligence operation. We have some——

Senator HAGERTY. You can see the threat that I am concerned about.

Mr. CHOPRA. Oh, of course. I mean I worry so much about insider threats, because there is data across our ecosystem and online and others that can be misused and abused, and we take it very seriously.

Senator HAGERTY. I think you should. The confidence of the American public is critical here, and I think we continue to see it erode when we see mismanagement like that.

Mr. CHOPRA. Well, thank you for raising that.

Senator HAGERTY. Thank you. Thank you, Mr. Chairman.

Chair BROWN. Thank you, Senator Hagerty. Senator Warner of Virginia is recognized.

Senator WARNER. Thank you, Mr. Chairman. Director, it is good to see you again. I want to raise an issue I do not believe has been raised today, and that is how you are thinking about artificial intelligence. And let me acknowledge, as I have in this Committee before, I cannot think of a topic that is less linear, at least with me, in terms of the amount of time I spend does not mean I am getting any smarter on this. It obviously is changing everything around us. I particularly sit from my perch as Chairman on the Intelligence Committee looking at some of the national security risks. I think there are huge risks in terms of discrimination. I want to give a shout-out to Lisa Rice in the National Fair Housing Alliance, the good work they have been doing on making sure some of these AI tools do not——

Mr. CHOPRA. Agree.

Senator WARNER. ——add to discriminatory practices. Where I have talked with lots of Members on this Committee are two areas where AI, not in terms of next generation but in today's generation tools could have dramatic effect in undermining public confidence. One all of us as elected officials I think immediately get is potentially undermining faith in public elections. The other, though, is public trust in our markets. And candidly, I have been surprised that we have not seen more massive use of AI tools, beyond kind of the fake tools, to manipulate our markets. And this can happen at such scale and speed using AI that it could have dramatic, dramatic effects. I know you have been thinking about this a lot——

Mr. CHOPRA. Yes.

Senator WARNER. ——as well as you have kind of gone down your own self-learning path. How are you thinking about framing any sense of guardrails around AI as we think about public trust in the public markets?

Mr. CHOPRA. So I think of two vectors this could occur. One is where there is extremely opaque AI that magnifies disruptions in a market that turn tremors into earthquakes. We actually have seen some of this in the past with high-frequency trading in securities, but I could see it being dramatically magnified, particularly if many firms are depending on the same foundational model, which is likely, I think, potential to occur.

The second is a deliberate use of mimicry of human communication, or other ways of fakery and fraud to create a financial panic at a particular financial institution, or at a financial market utility, an exchange. There are many ways this could happen, even a credit reporting agency. I think we have to look very hard about the financial stability effects of this, because this may not be an accident; this may actually be a purposeful way to disrupt the U.S. financial system, and we should look at it with that mindset.

Senator WARNER. This is one of the things I have been wrestling with and talked to some of my Republican friends on this is, you know, a lot of times in terms of market manipulation, in our existing structure, you come back to intent. But I would argue that you could have some of these AI tools that someone could hide and say, I had no intent; I simply told the tool——

Mr. CHOPRA. Yes.

Senator WARNER. ——to make money, and if the process of making money led to——

Mr. CHOPRA. Blowing up the system.

Senator WARNER. ——blowing up the system, or creating fake accounts. So what level of liability, even if there is not proven intent? Have you thought about that?

Mr. CHOPRA. Yes. Well, it is one of the reasons why the U.S. has always had, for over a century, prohibitions on things like deception, unfairness, that have multiple prongs but do not necessarily require intent, because you can create a huge amount of harm. It is in some ways like data breaches. You have put some obligations on firms to make sure they are secure to stop the downstream harm. So I share your view that intent-based standards will be almost useless when it comes to certain uses of generative AI.

Senator WARNER. One thing that we have been working on, and again in a bipartisan way, is using one of the tools created by Dodd-Frank that I think has been—candidly, its record is a little bit mixed in terms of FSOC. The notion that, you know, how do you get the regulators looking beyond their individual area, to look across the whole system? And boy, oh boy, if there was ever something that seems tailor-made for an FSOC examination. I know we have shared some of our ideas with you guys. Got any thoughts on——

Mr. CHOPRA. Well, I agree with you. I do think that the entry of big tech companies into finance and other large pools of data, as well as the use of advanced computational models and generative AI, including in the cloud, I think that is very worthy of the FSOC to look at whether it needs to use any of its tools. I take seriously the concern from many of you that the FSOC has become over time a book report club, rather than using the tools that were passed into law to protect the system.

Senator WARNER. Thank you, Mr. Chairman.

Thank you, Senator Warner. Senator Britt from Alabama is recognized.

Senator BRITT. Thank you, Mr. Chairman. Thank you, Director Chopra, for being with us today. A number of questions that my colleagues have already hit on, but wanted to start with one that I asked some of the bank regulators before this Committee a few weeks ago. And I asked them whether they believed our banking system to be strong, and every one of them said yes. So my question to you is, do you agree with them, that in your opinion, the U.S. banking sector is strong?

Mr. CHOPRA. Yes, I think it is a strong system, and one where we occasionally see some places where there could be resilience issues. Senator Warner just mentioned one of them.

Senator BRITT. So——

Mr. CHOPRA. But certainly we always have to be looking to ensure that resilience.

Senator BRITT. Yes, and I do, I appreciate that all of you believe that. In my opinion, I look across the board, I look at some of the new rules, I look at some of the new implementations, and in my opinion, while everyone says it is strong, I feel like we are doing things simultaneously that are actually going to weaken the system overall, and particularly for the end user. Particularly for the small businesses, particularly for everyday, average Americans. And so I am concerned by what I have seen, both at the Fed, at the FDIC, which I hear you play a significant role in, and at the SEC.

So there are countless examples of regulators reaching beyond the mandates that we have given, and seem to be rushing into very complex rulemaking, not thinking about how these things work together and then what that impact overall is going to be. And I believe it will be detrimental to our economy, and more importantly, when I am looking at the people that I represent, I think small-town Alabama is going to pay the price.

So I want to start with the 1071 Rule. So community banks provide over 60 percent of small businesses' credit needs, and that is nearly two-thirds of all small business loans. And to give you an insight into me, both of my parents were small business owners, so to me, this stuff matters. These banks offer a reliable and available source of credit to all of our small business community, and I am sure that you agree that you want to see those people thrive as well. So Mr. Chopra, do you believe that this rule, as currently written, will help support small banks' ability to continue being the primary lender for small businesses?

Mr. CHOPRA. Well, I want to make sure—I share your view that we want local banks to be able to provide small business credit——

Senator BRITT. But do you think that this is going to——

Mr. CHOPRA. ——to everyone.

Senator BRITT. Continue to——

Mr. CHOPRA. Well, let me share more, which is that we do know that there has been a lot of questions about who is getting small business loans, who is not, and that really undermined PPP. So we were under a legal mandate, a court order to complete the rule. We exempted, I believe——

Senator BRITT. And you——

Mr. CHOPRA. ——an additional 2,000 banks from it. We reduced the number of data points——

Senator BRITT. ——and so court orders do matter to you. So what the Supreme Court says goes kind of thing.

Mr. CHOPRA. Well, of course, but we——

Senator BRITT. Of course.

Mr. CHOPRA. ——were also under——

Senator BRITT. That is good to know.

Mr. CHOPRA. We were sued because the rule was not——

Senator BRITT. Yes, and so——

Mr. CHOPRA. ——complete a few years ago.

Senator BRITT. ——but real quick, when you are talking about this rule, you have said that you are going to post these things online, if I understand correctly, some of the findings that you get from this expansive rule——

Mr. CHOPRA. So just like the Home Mortgage Disclosure Act, there is going to be analyses of the data——

Senator BRITT. So will it like show where we could tailor it down to who, in what community, how many people are asking for certain loans, who got them, who did not?

Mr. CHOPRA. Well, certainly we cannot allow it in any way to identify a small business owner.

Senator BRITT. Right, so that is my question. Like so will it be broad-brush, or will you say, in Franklin County, Alabama, this is who got it and this is who did not?

Mr. CHOPRA. Well, that sounds way like it could re-identify. So here is what——

Senator BRITT. Well, it——

Mr. CHOPRA. ——we have outlined in the rule. We will not be able to post things for probably years. We will look at the data, and we will go through the process of making sure that we are publishing analyses. Many of them may be aggregated at the State level, regional level——

Senator BRITT. So you are saying, though, that you will not—because you are from, is it Plainville? Is that right?

Mr. CHOPRA. No.

Senator BRITT. Where are you from?

Mr. CHOPRA. I am from outside Philadelphia.

Senator BRITT. Outside of Philadelphia.

Mr. CHOPRA. Yes.

Senator BRITT. And so how big of a community is that?

Mr. CHOPRA. It is a pretty large metropolitan area.

Senator BRITT. So I just think to this, and it is interesting to hear you say it will be years, because we have small community banks that are struggling with how they are going to do this, and they serve a community of 3,000 people—Red Bay, Alabama——

Mr. CHOPRA. Well, then that would not be published, just like the Home Mortgage Disclosure Act——

Senator BRITT. Right, so——

Mr. CHOPRA. ——does not publish that.

Senator BRITT. ——because there are certain things that you are asking for that—well, it goes from protecting a consumer to invading their privacy.

Mr. CHOPRA. Yes, I agree with that. You do not——

Senator BRITT. And then——

Mr. CHOPRA. ——you do not want especially demographic——

Senator BRITT. ——do you promise that——

Mr. CHOPRA. ——data to be——

Senator BRITT. Exactly.

Mr. CHOPRA. ——published that way.

Senator BRITT. So you are saying that you will request it, but you are not going to publish it. Is that right?

Mr. CHOPRA. Well, you know there is often data that is used by law enforcement in order to determine——

Senator BRITT. And I have——

Mr. CHOPRA. ——whether laws have been followed——

Senator BRITT. ——I only have 10 seconds. I am so sorry——

Mr. CHOPRA. So that is why—if you can let me finish—I do not want there to be any sense——

Senator BRITT. Please let me ask one more question.

Mr. CHOPRA. ——that we are going to publish, kind of, and identify individual borrowers.

Senator BRITT. Great, because in 3,000 people, it certainly——

Mr. CHOPRA. Agree.

Senator BRITT. ——100 percent would, and I think that that is a deterrent. The last question that I wanted to ask you was about community banks. Have you sat down with community banks to talk about the implementation of this rule and what they believe it means, or NFIB, small business owners? Have you done that?

Mr. CHOPRA. Yes, so I have actually met, I believe, with community bankers from every single State represented on this Committee. I think we have met with maybe over 1,000 in small group meetings to talk about all the issues.

Senator BRITT. OK.

Mr. CHOPRA. We are actually on a—most small banks, so you are aware, will have a much-delayed implementation date. The large banks will go first, and we have devoted some——

Senator BRITT. Yes, because the small banks——

Mr. CHOPRA. ——some more resources to that.

Senator BRITT. ——do not have the resources to do——

Mr. CHOPRA. I agree.

Senator BRITT. ——this kind of stuff. And if you have not met with Alabama community bankers, if we look at this and you have not, would you——

Mr. CHOPRA. Oh, of course.

Senator BRITT. Would you sit down with them for me?

Mr. CHOPRA. Of course. I think we may have met with Alabama credit unions, but we will check, and please help us organize——

Senator BRITT. And I would love for them to have a face-to-face with you. Would that be OK?

Mr. CHOPRA. Of course.

Senator BRITT. OK, thank you.

Chair BROWN. Thank you, Senator Britt. Senator Warren from Massachusetts is recognized.

Senator WARREN. Thank you, Mr. Chairman. So I want to talk about junk fees. You know, Americans are getting hit with junk fees over and over and over. Try to book a flight or rent an apartment or buy a home or pay a phone bill, even pay off a loan, and a consumer can get hit with junk fees. I am really glad that the Biden administration has made eliminating junk fees a central part of its agenda, to try to lower costs for working families. And the CFPB is on it. You have already forced big financial institutions to cough up $140 million in refunds on junk fees, mostly on overdraft charges. And now, the CFPB is taking on credit card late fees.

Now nobody picks a credit card because they know how much the company will charge if you are 2 hours late getting your payment in, but those junk fees can really add up. Credit card late fees run as much as $41 for being even 2 hours late, and it gives big payoffs to these credit card companies. Last year, the junk fees scooped up more than $14 billion in late fees. Now the CFPB says it is fine for credit card companies to make customers pay additional collection costs on late payments, but they cannot use late fees just to boost company profits. That is gouging.

CFPB says that if a credit card company is charging more than $8 in late fees, the company is actually going to have to show its work, that is, show that it costs the bank more than $8 to deal with these late fees. Otherwise, $8 is the most that they can charge. Now the banks have responded to this proposed rule with their usual approach, howling about regulation and unleashing an army of lobbyists to swarm Congress. And why not? After all, there is $14 billion in late fees at stake, fees that are either all going to go to the banks, or some of which might be saved by the families.

So Director Chopra, industry lobbyists claim that these sky-high late fees are necessary—and here is what they say—to punish and deter borrowers so they will pay on time. Does your analysis support the lobbyists' view, or does it show that this is just one more junk fee that is mostly used to boost bank profits?

Mr. CHOPRA. Our analysis shows that they have many ways to punish borrowers. They can jack up their rates. They can put a bad mark on their credit report. They can even sue them. So there is plenty of ways, and honestly, if it was not a major part of their profit model, our proposal allows them to collect back their costs. They should be supportive of that if it is not a core part of their profit model.

Senator WARREN. Thank you. So in fact, the data show that companies make five times more from late fees than it costs them to collect late payments, so I guess it is no surprise that the industry lobbyists are out there going hard against this rule—they want to keep that money. Now earlier this year, I wrote to ten of the largest credit card companies, and I asked why their late fees were so high. Not one single company provided any evidence that they needed to charge $41 to deter late payments. In fact, Wells Fargo provided data showing that the late fees it collected exceeded the cost of collections by tens of millions of dollars. Now meanwhile, we are also seeing record-high interest rates for credit cards. Director Chopra, how much did credit card companies make in interest last year? Do you know?

Mr. CHOPRA. It is roughly $105 billion.

Senator WARREN. Wow. And did credit card companies generally hike up their interest rates last year?

Mr. CHOPRA. So we found that credit card companies increased rates far beyond the increase in the Fed Funds Rate, even as charge-offs declined.

Senator WARREN. So the Fed raised its rates, but the credit card companies raised their rates far higher? Is that——

Mr. CHOPRA. Even as their performance was doing OK.

Senator WARREN. OK, so here we are. We have got credit card companies that are raking in record profits, and they are determined to keep junk fees as one more way to make money, more than $14 billion here. I support the CFPB's proposed rule on credit card late fees, and I urge the CFPB to finalize this as quickly as possible. You know, getting rid of junk fees is just one more example of the CFPB working for the American people. So thank you, Director Chopra, for your work protecting older Americans. Thank you for your work protecting our veterans. Thank you for your work protecting active-duty servicemembers, student borrowers, and families all across this country. Thank you.

Chair BROWN. Thank you, Senator Warren. Senator Daines from Montana is recognized.

Senator DAINES. Chairman Brown, thank you. Director Chopra, thanks for appearing before the Committee today. I continue to hear from folks across my State of Montana about the adverse impact your agency's actions are having, from increased compliance costs to one-size-fits-all mandates that just do not work in rural communities. And it appears to me the CFPB under your leadership has become a political arm in the Biden administration, rushing through progressive actions that in many cases have bipartisan opposition here in Congress. One example of this is the 1071 Rule, which I will get to momentarily, but first I want to start with credit card late fees. I saw Senator Warren was asking some of the same questions.

In February, CFPB proposed a rule to reduce late fees that credit card issuers can charge customers, but your own data at CFPB shows that 74 percent of customers make payments on time and will not see any positive impact from this proposal. They will, however, see potential impact on increased annual fees, reduced rewards, lower credit limits, because prudential regulators require banks to offset the credit risk so as to maintain safety and soundness.

Further, I have serious concerns that this rule will lead to more consumers paying bills late, which will in turn negatively impact their future creditworthiness. In other words, they are going to stop or lower the penalties paid for those who are not paying bills on time, in tradeoff for increasing costs or reducing rewards for those who do pay on time. So my question is, why would your agency proceed with a rule that would potentially cause hardship to those it actually seeks to help?

Mr. CHOPRA. So respectfully, that is actually not how the credit card business works. The way credit card underwriting works is it is an individualized interest rate. So it is underwritten based on your own individual data. They do not have one price or one rate that they give everyone and cross-subsidize amongst them. Our goal is to make sure that the CARD Act is being followed. The CARD Act prohibits unreasonable or disproportionate penalty fees. Our proposed rule, which we are still working through, allows a company, an issuer, to recoup, and as Senator Warren just mentioned, they just have to be able to show the math. And of course, it does not take away the ability of the card issuer to lower their credit limit if they are late, to increase their interest rate, or if they never pay, to sue them.

Senator DAINES. So let me ask you this. As you say, you are still in the deliberative phase, perhaps, on this rule. To what extent did your agency engage with the prudential regulators while crafting this proposal?

Mr. CHOPRA. Well, we certainly communicate and consult with the prudential regulators on these types of rules. In fact, I believe we may even be required to. There is many ways in which various banking regulations intersect with each other, so we——

Senator DAINES. Yes. What kind of feedback did you get from those regulators?

Mr. CHOPRA. I need to really check, because I am sure we talked to each individual one as well as in a group, but I would generally say——

Senator DAINES. Did they have any concerns about it generally?

Mr. CHOPRA. I would need to check. I am happy to answer for the record for you, but as I said before, because the credit card industry does not have one price, it does underwriting, I think the effect——

Senator DAINES. But——

Mr. CHOPRA. ——that you are mentioning——

Senator DAINES. But——

Mr. CHOPRA. ——is unlikely——

Senator DAINES. But do you have like a top-line summary? I mean you said you have to check. I mean that is pretty important feedback from the prudential regulators——

Mr. CHOPRA. Yes, I think that the overall feedback is that it would not have an impact on safety and soundness of financial institutions.

Senator DAINES. Have any adverse effect on some credit card holders?

Mr. CHOPRA. Well, I think again, our consultation with them I think is on safety and soundness, but I am happy to check and answer more for the record. And just so you know, I am with you. I do not want to create a situation where some people are incentivized to not pay, but we also need to make sure that this is reasonable. When I talk to smaller credit card issuers, they are not building a business model where they are rooting for their customers to be late.

Senator DAINES. Let me switch gears on the 1071—and thank you, Director Chopra. I have got serious concerns of the impact of your regulation on small businesses. In fact, it is something I hear pretty much across the board from folks back home, virtually unilaterally. I am not alone, because as you know, a bipartisan majority of both the House and the Senate voted recently to scrap the rule. The final rulemakes certain data reporting requirements optional, but you have also noted that low response rates could lead to supervisory problems for lenders. My question is this. I know that many small businesses are not going to want to report this data, so what will you do to ensure that lenders are not penalized solely due to a low response rate?

Mr. CHOPRA. Yes. That is not the intent, and in fact, no one is forced to complete this information. They have an absolute right to refuse it. But of course, if you think about it, we have to make sure that it is actually being provided and not saying, oh, you can just throw this out. So we are really trying to be reasonable about it.

Senator DAINES. OK. Mr. Chairman, thank you.

Mr. CHOPRA. Thank you, Senator.

Chair BROWN. Thank you, Senator Daines. I believe no one else is coming, so thank you, Senator Daines. I have one more question; then we will adjourn. About big tech, we know that people have major concerns about how much control over American lives and information. Big tech enjoys encroaching on our financial lives, too. We are seeing digital payment products serve as a substitute for traditional bank accounts, but we know that new tech does not have the same consumer protections and oversight that traditional banking does. What are you doing to ensure that big tech offers the same consumer protections as traditional banking services?

Mr. CHOPRA. Well, like I said to your colleagues, too, we do not want to see the market move just by exploiting loopholes or regulatory arbitrage. So if we have very, very large firms competing in the same market, we want to make sure that they are held to the same standards as the medium- and small-sized banks. We have seen issues with some of these apps, that the money may not be insured. We have seen other places where the data is being harvested. So I do think we all need to be careful and make sure that those large tech firms are playing by the same set of rules.

Chair BROWN. OK, thank you. And Senator Warnock is on his way, so I have one more question. I am concerned about the risks posed by AI, and in lending decisions, CFPB recently issued guidance reaffirming that current laws apply to credit denials, including those utilizing artificial intelligence. Specifically, you all reaffirmed that financial institutions are required to provide accurate explanations for adverse actions like credit denials. How is CFPB ensuring that these explanations faithfully reflect the actual reasons for the credit denial when AI is used?

Mr. CHOPRA. Yes. One of the things we have done is making sure that it is clear—there is no fancy technology exception to Federal law. Federal law requires you to inform a consumer about the reasons for an adverse action or denial. You cannot make up the reasons. You cannot just put it in a form if it is not true. So we will be making sure that when there is uses of AI or other technology, that it is not side-scaping existing law, and we will be using our authorities to make sure that people are complying.

Chair BROWN. OK, we will hold for a minute. Senator Warnock is close.

Mr. CHOPRA. Senator, may I address a previous question?

Chair BROWN. Sure, sure, of course.

Mr. CHOPRA. You know, I really respect, actually, Senator Vance's concerns. I do want to be clear that the Justice Department-CFPB statement actually affirmed that creditors can use immigration status when lending, but of course they have to avoid national origin discrimination. And of course, you know, all of the authorities under the Bank Secrecy Act, Anti-Money Laundering, to ensure that that they know who that person is, and for non-U.S. persons, the Bank Secrecy Act requires certain documents. You know, again, immigration status, according to the guidance, can be used, but just not with illegal discrimination against national origin.

We have seen in our recent enforcement action against Citibank a whole, and in some ways deliberate, attempt to discriminate against Armenian Americans. Citibank essentially denied people with the suffix of the last name of -yan and -ian, and then provided them notices essentially fabricating the reasons for denial. So all we are trying to do is make sure that we are in accordance with the law, and faithfully enforcing the prohibition on national origin discrimination.

Chair BROWN. Another comment, again awaiting—Senator Warnock is on the way. You had said in a response to Senator Britt that you would be willing to meet with Alabama community bankers. I would just like to put out there that there may be a number of people on this Committee who would make the same request, and that you honor it. For whatever State, large and small, that community bankers want to meet with you, that you would be willing to do that.

Mr. CHOPRA. Yes, and in fact, I may have beaten you to it. I believe that I have reached almost all 50 States when it comes to either their State banker association or credit union association. But if we have missed anyone, we would be happy to.

Chair BROWN. OK. And in Ohio, the community bankers, for as long as I have been on this Committee, 15 years, have come to meet, usually in this room. In Ohio, there are maybe 100 that come, and there are maybe 40 or 50 from credit unions, and you have always been open. I do not think you have come specifically to meet with them, but I may call on you for that later.

Mr. CHOPRA. Of course. My staff is sharing, we met with the Alabama Bankers Association in September of 2022, and also the Southeastern Credit Union League, which includes Alabama, Georgia, and Florida, also in 2022.

Chair BROWN. OK, one last question. I normally do not end the Committee this way, but by special request. Talk about your work with allotments and our servicemembers.

Mr. CHOPRA. Yes. So allotments, just so everyone is aware, this is where a consumer is really paying for an obligation through the DoD payroll system. So DoD's payroll system allows an active-duty servicemember to identify certain payees. This is really to assist them if they are away, or if they are unable to manage their finances, to not miss out on bills. Over the years, we have seen some lenders and others abuse that allotment system. We have been working with the DoD over time to make sure that the allotment policy is not an invitation for predatory actors and scammers.

I actually worry about this, Chairman Brown, too, because there is a lot of surveillance on servicemembers and their families. A lot of information is collected about them, targeted, and I think that is something that raises a lot of risks in how they might be manipulated or otherwise harmed.

Chair BROWN. Speaking of that, you may have heard my opening statement—I think you appeared to be listening—about TitleMax.

Mr. CHOPRA. Yes.

Chair BROWN. Any elaboration on that, the several-million-dollar fine and——

Mr. CHOPRA. Yes, so——

Chair BROWN. ——the size of the company and what they might be doing?

Mr. CHOPRA. ——and restitution. I do not have the exact statistics in front of me, but there has been several actions we have taken—FirstCash, TitleMax, others—specifically related to the Military Lending Act, or other perpetrations of fraud or misconduct against servicemembers.

Chair BROWN. OK. Senator Warnock of Georgia is recognized.

Senator WARNOCK. Thank you so very much, Mr. Chair. Under your leadership, the CFPB has done a lot to address the burden of medical debt that families fall into as a result of illness or unexpected trips to the emergency room. This issue matters because so many Americans are crushed under high health care costs, and they usually do not have a choice about whether or not they need that medical attention. Whether it is in the budget or not, sometimes you just need to go to the doctor. And this is particularly true for those who are living with diabetes, especially in a State like Georgia that sadly has not expanded Medicaid, and as a result, many of the counties in Georgia are a part of what I called in a recent report released by my office, insulin deserts.

We released this bipartisan report earlier this month. There are some 813 counties all across our country with high rates of Americans who are uninsured and they have diabetes, and thus they are left unprotected from high insulin costs, and particularly vulnerable to medical debt. In fact, in preparation for this hearing, my office found that 365 insulin deserts, nearly half, also have high rates of medical debt. So Director Chopra, what is the CFPB doing to address medical debt, particularly unfair medical debt collection and credit reporting practices? I know that we have already had some conversation about that today, but 813 insulin deserts, or counties across our country, a lot of them in Georgia, and all across the country. So these are folks who are dealing with a chronic disease, and we are seeing the impact of that on them, both in terms of their health, but also financially. And so as you think about a disease like that, if you would say a little bit more about your work addressing this issue.

Mr. CHOPRA. Well, I think we have all been able to see some of the individuals. I recall one teenager who overheard his parents struggling financially because of his insulin expenses. I think he was 13, and he decided to self-ration——

Senator WARNOCK. Yes.

Mr. CHOPRA. Because he was worried so much about his parents and their financial situation. You know, in my past work, I looked hard at the issue of potential price-fixing by insulin providers. I think when we talk about medical debt, we also have to remember that this might ultimately lead people to not get care that they need to live. When a teenager is self-rationing insulin and then hospitalized, we know we have a system that is not working. And then on top of it, Senator, when I went to Georgia and met with some of your constituents, one was Liz Coyle, talked about how medical debt is affecting people locally, and really, it is now the largest item of delinquency on credit reports. We have studied this exhaustively, and we are currently initiating the process to—and we may end up proposing that medical debt be ineligible for reporting on credit reports, given the unique dynamics and the widespread inaccuracies. I really hate to see that medical debt, especially when people are sick, being forced to pay even when they may not even owe, almost coerced to pay, and we want to really address that.

Senator WARNOCK. On the question of rationing that you raise with this particular 13-year-old, about 1 in 4 folks who are on insulin—1 in 4, in our country—have reported that they have rationed their insulin at some point or another. And so I am interested in exploring how Congress can work with CFPB to protect consumers, especially those with chronic illnesses, from medical debt. So thank you for your work. I think that as a start, we can pass my bipartisan bill that I put forward with Senator Kennedy and others, to cap the cost of insulin for everybody. That would help prevent people with diabetes from going into medical debt in the first place. And I look forward to continuing to work with you on this important issue, and exploring medical debt more in my subcommittee in Congress. Thank you very much.

Mr. CHOPRA. Thank you, Senator.

Chair BROWN. Thank you, Senator Warnock, and thanks for your comments about medical debt. We have had a number of conversations, privately and publicly, on this Committee. As you know from our hearing with—you had a really good term with the rating agencies. You used—what word did you use to describe the rating agencies?

Mr. CHOPRA. Well, they are the three conglomerates.

Chair BROWN. The conglomerates, yes.

Mr. CHOPRA. Yes.

Chair BROWN. Thank you for that, and we will continue to bring them in, and continue to work with Senator Warnock and others to get medical debt off of credit reports, so thank you for that.

Senators who wish to submit questions for the hearing record, they are due 1 week from today, Thursday, the 7th of December. To the witness, please submit your response to questions for the record 45 days from the day you receive them. The Committee is adjourned. Thank you.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]

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

PREPARED STATEMENT OF CHAIR SHERROD BROWN

Welcome back, Director Chopra.

Since the CFPB first opened its doors, we have had more than a decade of progress towards rooting out abuses and injustices for consumers in all types of markets, from mortgages to credit cards to payday loans.

It matters for consumers, and it matters for the vast majority of businesses that do the right thing—because when an honest business that follows the rules is forced to compete with a predatory business that doesn't follow the rules, we know who's going to win.

The CFPB levels the playing field so that honest people don't get penalized for running a good business the right way.

And when consumers interact with fair and transparent businesses, they can make decisions without worrying about scams or predatory practices.

Since 2011, the CFPB has returned over $20.2 billion to more than 205 million consumers.

That's real money in real people's bank accounts, or real reductions in debt—money back in the hands of working families, where it should have stayed in the first place.

We've also talked extensively about how the CFPB stands up to special interests and scammers on behalf of servicemembers and veterans.

Protecting servicemembers and veterans is one of the most important things the CFPB does.

When we created the CFPB we made sure it included the Office of Servicemembers Affairs.

The first head of that office was Holly Petraeus—the spouse of a servicemember, someone from a family with generations of military service, who understood the challenges facing servicemembers and their families.

These are families for whom service and sacrifice to our Country are part of who they are. It is ingrained in them.

The CFPB, with its Office of Servicemember Affairs, takes on special interests to protect the bank accounts and the jobs of our servicemembers, veterans, and their families.

Due to their steady paychecks and constant moves, servicemembers are often targets for predatory financial companies and scammers.

Every year, tens of thousands of servicemembers go to the CFPB seeking assistance or reporting a complaint—and the CFPB goes to bat for them, working to get their money back or fix the problem.

You would think that people in Congress would be lining up to make sure the agency could effectively do this important job.

But sadly, that's not what we are seeing.

Many of the same politicians who like to talk a lot about supporting veterans and military families have spent more than a decade trying to tear down the agency that gets them their money back.

And to be clear: financial literacy is not an alternative to the CFPB.

Some of my colleagues say, if only our servicemembers could spend more time learning how to not be scammed.

The men and women who serve our country—or any American—shouldn't need special training to keep their own money.

This shouldn't be on our servicemembers to protect themselves from scammers—it should be on companies not to scam them.

This is why we need the CFPB.

There is no other Federal agency with this level of responsiveness and efficiency and the ability to take on greedy big corporations and shady lenders.

It's how the CFPB has returned more than $175 million to servicemembers and veterans.

$175 million.

For example, earlier this year, the CFPB took action against TitleMax for violating the Military Lending Act by charging nearly three times more than the statutory cap on interest rates.

The CFPB ordered TitleMax—a repeat offender—to return millions to servicemembers and their families.

Whether you're a servicemember or you're a senior or you're a worker, the Consumer Financial Protection Bureau goes to bat for you.

Last year, the CFPB clarified that nursing homes cannot go after family members for debt.

And the CFPB is working towards removing all medical debt from credit reporting agencies—something I have called for repeatedly.

Medical debt can happen to anyone. It is not an effective measure of creditworthiness. It has no business being on a credit report and consumers should not be harassed for falling sick.

And then there are the actions the CFPB takes to stop Wall Street abuses. Maybe that's the reason corporate interests and their lapdogs in this town hate the CFPB.

The work the CFPB is doing to stop junk fees is a top target for Wall Street.

The CFPB has proposed a rule that the agency estimates will reduce credit card late fees by as much as $9 billion each year.

An additional $9 billion to American households every year would make a big difference.

But if the CFPB is successful, that means $9 billion less on Wall Street profit statements. So of course, they're not giving that up without a major—and well-funded—lobbying fight.

And that's always the biggest difference between most Americans and Wall Street. Wall Street has a well-funded army of lobbyists.

The rest of us don't.

That's why too often Wall Street gets its way, and the American public doesn't. The Consumer Financial Protection Bureau is their voice to take on the powerful special interests that cost them time and stress and money.

And it's why Wall Street and its allies have spent more than a decade trying to destroy the CFPB.

So far, this is one fight they've lost. And I will never stop fighting to ensure consumers continue to have a strong CFPB in their corner.

PREPARED STATEMENT OF SENATOR TIM SCOTT

Thank you, let me start off by saying, it's certainly good to be back with the Committee. I want to thank my Members, fellow Members, for their support, specifically in particular Senator Rounds for all of his support during my absence.

I would also like to welcome our newest Member, Senator Butler to the Committee.

Now turning back to business, just 2 weeks ago, our financial regulators testified before this Committee and faced bipartisan concerns about the impact on everyday American families that these misguided and partisan regulatory proposals would have if implemented as proposed.

While those "independent" regulators have become increasingly politicized under the Biden administration, the CFPB has a much longer history of skirting statutory mandates and avoiding congressional oversight.

Director Chopra, you know these concerns well and you've heard from me about those concerns, you've heard from my fellow Members of the Committee, as well as House colleagues.

And yet, the CFPB is no more accountable today than it was at its inception—and I fear under your leadership, the agency is straying even further from its mandated mission.

The abuse of enforcement powers, rulemakings driven by politics instead of policy, and a lack of oversight—which only leads to less economic opportunity—have become hallmarks under your leadership.

The law is clear. When it comes to consumer finance, the CFPB should consistently and fairly enforce Federal consumer finance law; safeguard access to markets for consumer financial products and services; and ensure that such markets are fair, transparent, and competitive.

Sadly, the CFPB's actions don't match up with its mandate.

Under your leadership, the CFPB has operated in blind pursuit of additional power and has become the hallmark of Government overreach—to the point where I am concerned the Bureau is doing more harm to consumers than good.

That is why in July, I led a bicameral group of 132 Members of Congress in filing an amicus brief to the Supreme Court, urging the Court to affirm the lower court's decision that the CFPB's funding structure is constitutionally defective.

When you last testified before us in June, we discussed your efforts to regulate through speeches and blog posts, your public pressure campaign on fee income, and your attempts to stifle innovation.

Instead of correcting course, it seems that you have only accelerated towards the exact opposite direction of your statutory mission.

Recent reporting even suggests that your agency will be releasing an aggressive fee proposal very soon.

I really hope the old saying that a tiger can't change its stripes won't be true for the CFPB.

And yet, we've seen that the CFPB recently proposed regulating access to consumer data by consumers and authorized third parties.

As with anything, the devil's always in the details, but as this proposal advances through finalization, I hope you weigh the new regulatory costs against any benefits that this rulemaking may provide.

And on top of all that, the CFPB is even proposing new supervisory authority over nonbank providers of consumer payment apps. However, the rationale supporting this proposal ignores the real costs of compliance likely to stifle innovation. Costs that also will undoubtedly be paid for by hardworking American families.

I wish I could stop there, but of course the list goes on. Your agency is even pushing for sweeping changes to regulation under the Fair Credit Reporting Act, ignoring the longstanding interpretation of clear legal authority by courts and other regulators.

How do any of these costs and the costly actions actually protect consumers? I hope you help me understand your perspective on that where we will likely disagree.

I meant it when I said at our last hearing—the best way to provide economic opportunity and protect consumers too is to encourage competitive markets and set clear rules of the road for participants. These principles protect our system by fostering competition and innovation rather than vilifying it.

I will stand by these principles, and I certainly have experienced the benefits of having a system where the rules of the road are fair, consistently applied, as a kid who grew up in poverty and understood the American Dream was available, having access to that for the next generation of youngsters is so important from my perspective.

Unfortunately, we see a common theme from the left, that somehow lower income families lack the wherewithal to manage their own affairs and determine what's best for their families without some sort of Government intervention.

While the Federal Government ought to protect consumers from unscrupulous practices, bureaucrats in Washington should not dictate what families can and cannot have simply by regulating products out of existence and pricing people out.

As I wrap up, I want to address one final, important topic.

A few weeks ago, several reports were published about the toxic work environment and the culture at the FDIC. A few weeks ago, we talked about the importance of making sure that employees at the FDIC, where you sit on the Board, have a safe, healthy work environment. I hope that you'll have the opportunity to address some of the challenges we've seen at the FDIC as well.

Thank you.

PREPARED STATEMENT OF ROHIT CHOPRA

DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

NOVEMBER 30, 2023

Chairman Brown, Ranking Member Scott, 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.

I am pleased to share that the CFPB has reached important milestones on critical priorities, including personal financial data rights and credit reporting, while continuing to enforce the law and deliver results for consumers and law-abiding businesses. Today, I will share some observations about household financial stability and highlight our progress on important areas of work.

As we enter the holiday season after a sustained period of high interest rates, the CFPB is sharpening its focus on the evolving patterns of household debt. Over the past few years, borrowing has accelerated across many key products, including credit cards and auto loans, and consumers are increasingly utilizing new ways to borrow, like buy now, pay later.

Americans now owe more than $17 trillion in household debt. Total outstanding credit card debt eclipsed $1 trillion last year for the first time since the CFPB began tracking it. Auto loans have grown quickly to an estimated $1.6 trillion.

The CFPB's analyses have found that rates and fees are contributing to persistent credit card debt for a growing number of consumers. Americans paid $130 billion in interest and fees on credit cards last year, while annual percentage rates rose

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.

far above the cost of offering credit. The CFPB is taking a number of steps to increase competition in this highly concentrated market.

The return to repayment for Federal student loans continues to be an area of concern for many borrowers, causing families to reallocate funds toward student loans after a 3-year pause. We are carefully monitoring the practices of loan servicers, given their influence on borrower outcomes. We will also be evaluating the effects of student loan repayment on consumers' other obligations to better understand the full impact of the return to repayment and the payment pause itself.

Outstanding auto loan debt has also grown, particularly given the higher cost of vehicles and higher interest rates. Auto loan payments are consuming a greater share of income for many consumers, and we are actively monitoring credit performance and repossession activity.

Residential mortgage activity has declined precipitously during the last few years, while interest rates, fees, discount points, and other costs have increased. The result is that homebuyers are paying much more: average monthly payments on 30-year fixed rate loans increased by more than 46 percent from 2021 to 2022. We believe these trends persisted during 2023 given the rate environment.

The CFPB is examining ways to facilitate more refinancing activity if and when prevailing mortgage interest rates subside to ensure that borrowers who experience financial distress can navigate alternatives to foreclosure and to streamline rules and procedures for servicers to offer loan modifications.

Since our last *Semiannual Report*, the CFPB has proposed a rule to accelerate the shift to "open banking" in the United States, giving consumers the ability to more easily switch to new providers, while taking care to safeguard their personal financial data. We have also initiated a process to improve accuracy and accountability in credit reporting, especially for data brokers. We are also taking steps to address widespread inaccuracies on Americans' credit reports when it comes to medical bills.

The CFPB's supervision and enforcement program is protecting both consumers and honest financial firms who must compete against those who egregiously violate the law. In the last 2 years, we have obtained orders totaling $8 billion in victim redress and penalties. We have focused on large, repeat offenders. Families across the entire country are benefiting from this work.

The CFPB has also tackled the scourge of junk fees that have been creeping across sectors of the economy and interfering with normal market forces. We have even uncovered a number of illegal junk fee practices across consumer financial products.

As Director, I have made it a priority to ensure that the CFPB continues to modernize its approach to keep pace with a fast-changing financial services industry. The CFPB has shifted supervisory resources toward nonbanks to account for the significant role they play in financial services today. For example, in payments, Big Tech companies and nonbank payment apps have become ubiquitous in the United States. The CFPB has taken steps this year, including a proposed rule, to ensure that these companies adhere to the same rules as large banks, credit unions, and other financial institutions.

In August, our complaint database reached four million submissions. Every week, we send more than 20,000 complaints to companies for responses. I am proud of the CFPB's work in getting consumers the resolutions they deserve, often through referrals from local organizations, Congressional offices, and many others.

Thank you for the opportunity to appear before you.

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Chairman Sherrod Brown:

1. I'm concerned about the risks posed by artificial intelligence in lending decisions. The CFPB recently issued guidance reaffirming that current laws apply to credit denials including those utilizing artificial intelligence. Specifically, the CFPB reaffirmed that financial institutions are required to provide accurate explanations for adverse actions like credit denials.

   Pursuant to these concerns, during the hearing, I asked how the CFPB is ensuring that these explanations faithfully reflect the actual reason for the credit denial when AI is used.

   Following up from my question in the hearing, how, specifically, is CFPB ensuring that adverse action notice explanations are true and accurate, particularly when the credit application was decided in part or in full with an AI system?

   Response:

   The Consumer Financial Protection Bureau (CFPB) is closely monitoring the use of artificial intelligence (AI) in consumer financial products and services. The CFPB has taken a number of actions to provide clarity to industry as they look at whether and how to adopt AI.

   For example, the CFPB issued a Consumer Financial Protection Circular confirming that companies relying on complex algorithms must provide specific and accurate explanations for denying applications, in compliance with the Equal Credit Opportunity Act (ECOA) and Regulation B.[1] *The circular stated that creditors may not rely on the checklist of reasons provided in the sample forms to satisfy their adverse action notice obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action. Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon.*[2]

[1] https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms/
[2] https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/.

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Ranking Member Tim Scott:

1. Under your leadership, the CFPB appears to be playing a game of regulatory cat and mouse, where the agency refuses to provide clear rules of the road or safe harbors where companies can develop products that benefit consumers, and then selectively and arbitrarily conducts enforcement actions. This approach picks clear winners and losers.

    a. In March of this year, GAO made a recommendation to the CFPB that it should clarify its regulations to ensure regulatory clarity for fintech products like earned wage access. Both payday advance and earned wage access cash advance are both short term cash advance products. Payday advances are regulated as credit products under the Truth in Lending Act (TILA), however, the CFPB has not clarified whether earned wage access cash advances constitute a credit product under TILA. Is the CFPB planning to provide regulatory clarity on this issue?

    Response: The Consumer Financial Protection Bureau (CFPB) anticipates releasing further guidance on earned wage products in 2024.

2. The CFPB's use of civil investigative demands (CIDs) against small businesses has an outsized impact, as smaller financial services providers are less able to shoulder the legal and regulatory costs of these actions. Please detail how the CFPB works with CID recipients, especially smaller institutions, to address their concerns and the constraints that come with being a small business. Further, please provide any analysis and data regarding the total cost of compliance regarding CIDs that have been issued during your tenure.

    a. Should businesses have an avenue to appeal such investigations to set them aside or otherwise modify their breadth and scope with an impartial judge outside of the CFPB? Please explain.

    Response: To fulfill its responsibilities under the law, effectively regulate markets, and establish effective deterrence, the CFPB must address potentially unlawful conduct by bank and nonbank entities of all sizes under its authority. I appreciate you sharing your concerns about targeting small businesses. I wholeheartedly agree that civil law enforcement agencies, like the CFPB, should not strong-arm small businesses into settlements. Of course, the CFPB has an obligation to investigate where evidence of wrongdoing is found. But as I have consistently noted in testimony

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and public statements, under my leadership the CFPB primarily focuses enforcement resources on repeat offenders and large players engaged in widespread harm.[3]

The issuance of CIDs is an essential tool for fulfilling the CFPB's statutory mission of enforcing federal consumer financial laws.[4] *The CFPB recognizes that responding to a CID can impose burdens on the recipients, especially small businesses. For that reason, the CFPB endeavors from the outset to tailor each CID to the needs of the particular investigation. In addition, the CFPB has effective processes in place for working with CID recipients to narrow requests. For example, CFPB staff offer to work with CID recipients to address any compliance concerns or barriers and seek to reach a collaborative resolution.*

In most cases, concerns regarding CID compliance can be successfully resolved through discussions between CFPB staff and CID recipients. If a CID recipient is unsatisfied with the results of those discussions, they can file an administrative petition to modify or set aside a CID. The process for petitioning to set aside a CID is detailed in section 1052(f) of the CFPA and in the CFPB's Rules Relating to Investigations.[5]

This flexibility to modify enables the CFPB to assess the cost of compliance with a civil investigative demand in a particular circumstance and take appropriate steps to mitigate any unreasonable compliance burden.

3. Concerns that the CFPB is abusing its statutory authority were underscored during a speech you gave on September 13 of this year, where you discussed your outlook for the agency and outlined five specific issues that still need to be addressed:

    - open banking and personal data rights,
    - concerns with bank mergers,
    - bank living wills/resolution planning,
    - "too-big-too-fail shadow banks", and;
    - uninsured short-term funding instruments outside the core banking system.

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[3] "Reining in Repeat Offenders": 2022 Distinguished Lecture on Regulation, University of Pennsylvania Law School, *available at* https://www.consumerfinance.gov/about-us/newsroom/reining-in-repeat-offenders-2022-distinguished-lecture-on-regulation-university-of-pennsylvania-law-school/
[4] The CFPB's statutory requirements and regulations for issuing and enforcing CIDs can be found in Section 1052 of the Consumer Financial Protection Act (CFPA) and in the Rules Relating to Investigations, 12 C.F.R. part 1080.
[5] 12 U.S.C. § 5562(f); *see also* 12 C.F.R. § 1080.6.

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a. Other than open banking, how are any of these items within the remit of the CFPB's mission or jurisdiction?

Response: The 2008 financial crisis had a devastating impact on consumers and homeowners that destroyed trillions of dollars in wealth. In response to the financial crisis, Congress created the CFPB and made the Director of the CFPB a member of the Board of Directors of the Federal Deposit Insurance Corporation. My remarks on September 13, 2023, were in connection with the 15th anniversary of the collapse of Lehman Brothers, which was a pivotal moment in the financial crisis, and demonstrated that additional oversight was critical for consumers as well as the nation's financial system.

Each of the topics you mention directly relate to consumer finance, and many are directly relevant to the CFPB's supervisory activities, particularly with respect to nonbank financial institutions.

b. Why does the CFPB believe that the agencies charged with the oversight of these matters are currently insufficient in carrying out their responsibilities to the point where the CFPB has to step in?

Response: My remarks on September 13, 2023, were in connection with the 15th anniversary of the collapse of Lehman Brothers, which was a pivotal moment in the financial crisis, and demonstrated that additional oversight was warranted.

4. The CFPB's proposed rule entitled, "Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications" greatly expands the CFPB's authority, and appears significantly broader than the Bureau's mandate. For example, the press release which accompanies this proposed rule states, "The rule proposed today would ensure that these nonbank financial companies… adhere to the same rules as large banks, credit unions, and other financial institutions already supervised by the CFPB."

   At a Brookings Institution event in October, you stated that the CFPB was also considering examining nonbanks offering consumer payment applications under the service provider provision of Section 1025(d). As you know, this would require coordination with the Prudential Regulators in accordance with the statute and Section IV(B)(3) of the 2012 Interagency MOU on Supervisory Coordination.

   a. Did the CFPB consult with the Prudential Regulators prior to issuing the "larger participants" rule proposal?

   b. If so, provide the Regulators consulted with and the inclusions or exclusions made at the behest of the regulators.

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c. If not, please explain why.

Response a-c: Yes. As described in Part III.B of the proposed rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications, in developing the proposed rule, the CFPB solicited input from the Federal Trade Commission, the Federal Reserve Board, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission. The consultations were focused on ensuring consistency with any prudential, market, or systemic objectives administered by such agencies.

5. Credit header information, or the consumer-specific identity information from a credit report, is one of the tools used by banks and other financial institutions to protect consumers against identity theft and fraud. The information in credit headers is kept current because it is regularly updated from financial institutions. Credit header data is protected and regulated under the Gramm-Leach-Bliley Act (GLBA) and Regulation P.

   In response to questions at the hearing about why the CFPB is considering regulating credit header data as a credit report, one of the reasons you identified is that credit header information is being used to steal people's identity.

   a. When you say "credit header" information, do you mean that bad actors are obtaining actual credit headers that are regulated pursuant to GLBA or do you mean that they are obtaining information elsewhere that is similar to credit header information, such as name, address, social security numbers and date of birth?

   Response: The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB is aware that some consumer reporting companies sell credit header data for purposes not authorized under the FCRA, and the CFPB is examining the risks and benefits to consumers of this data not currently being subject to the FCRA protections.

   b. Please describe the harms that the bureau has identified with credit header information being disclosed pursuant to GLBA without conflating it with identifying information that criminals use and may obtain from other sources.

   Response: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB is aware that some consumer reporting companies sell credit header data for purposes not authorized under the FCRA, and the CFPB is *examining the risks and benefits to consumers of this data not currently being subject to the FCRA protections.*

c. You claimed that data brokers were using credit header data to compile "sensitive dossiers" on Americans "for sale to foreign agents." Please provide specific instances of what you were referring to.

Response: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB issued a Request for Information in March 2023 to gain a better understanding about the business models and practices of the data broker market, including details about the types of data the brokers collect and sell and the sources they rely upon. The CFPB is aware that some consumer reporting companies sell credit header data for purposes not authorized under the FCRA, and the CFPB is examining the risks and benefits to consumers of this data not currently being subject to the FCRA protections.

d. How should creditors try to protect consumers from identity theft or verify identities if credit header information can only be disclosed as a credit report?

Response: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. 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 aware that some financial institutions use data from third parties, including credit header data from consumer reporting companies, for these purposes. The CFPB is also aware that some consumer reporting companies sell credit header data for purposes not authorized under the FCRA. 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.

e. Congress specifically excluded credit header data from the Fair Credit Reporting Act (FCRA) and federal courts have consistently held that credit header data, such as name, address, and social security number, is not a consumer report as this information does not impact credit worthiness. What authority in FCRA provides the CFPB with the authority to regulate credit header data as a consumer report?

Response: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. If the CFPB proceeds to issuing a Notice of Proposed Rulemaking, the proposal will cite the authority for any proposals and will provide opportunity for comment. The CFPB will carefully consider all relevant feedback and data.

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6. The CFPB consistently claims it is an independent agency, yet we continue to see unprecedented coordination and joint press events at the White House touting Biden Administration initiatives and priorities.

   a. Do you believe these events undermine public confidence in the independence of the CFPB?

   Response: No.

   b. If no, please explain.

   Response: Coordination and consultation across the government is required by statute in many instances, benefits the public and the industries that we regulate, and is consistent with past practice. The Consumer Financial Protection Act requires the CFPB to consult with state and/or federal agencies on a variety of policy matters, for example, when prescribing a rule under federal consumer financial law. Additionally, many agencies across the government have distinct, but complimentary authority and expertise to apply to the range of important issues before us, and coordination is critical to ensuring the efficient and effective discharge of our duties.

7. During the hearing, you claimed that "there is, on some of these payment apps, huge amounts of fraud." You also stated that the CFPB has seen instances "where the data is being harvested."

   a. What are the percentages of fraudulent transactions for each of the peer-to-peer payment apps? Please provide the data supporting your determinations.

   Response: The CFPB has received numerous complaints of peer-to-peer (P2P) payment fraud. For instance, in 2020, 50 percent of complaints to the CFPB regarding P2P were fraud related. Notably, in 2021, the Federal Trade Commission received nearly 70,000 complaints from consumers who sent money to fraudsters via payment apps or similar services totaling $130 million in losses.

   In 2022, of all the complaints submitted to the CFPB on payment apps sent to companies, the most common complaints were related to fraud. Other federal agencies have reported similar growth, particularly between 2018 and 2021. For example, complaints to the Federal Trade Commission about fraudulent payment apps increased by more than 460 percent (from 12,476 to 70,175), and associated financial losses increased by more than 360 percent from $28.4 million to $130.9

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million.[6] *In 2022, 62,137 payment apps-related fraud complaints were submitted to the FTC and total financial losses increased to $163.4 million.*[7]

b. Please provide specific examples of data being harvested by payment apps.

Response: The CFPB is concerned that companies may today or in the future be using payment data across their products, for purposes such as behavioral targeting or individualized marketing. Companies may also be finding other ways to monetize this data, such as by sharing detailed payments information with data brokers or other third parties. At the very least, these practices may fail to align with consumers' expectations, and may in certain circumstances violate the law.

8. In response to my question regarding the CFPB's action to end the financial innovation sandbox and safe harbors, you stated that some companies "claimed that they were endorsed by the government, or that they were the exclusive provider."

a. Please provide specific instances of companies making such claims.

Response: We have identified one or more instances where a company participating in these programs has made statements inconsistent with the content and effect of a Bureau No Action Letters or Sandbox Approval, such as by indicating that the CFPB has endorsed a product or service—or has concluded that a product or service complies with federal consumer financial law—when in fact the CFPB has not. More generally, we have concerns that No Action Letters (NAL) and Sandbox Approvals granted by the CFPB can be easily misperceived by the public as the equivalent of an endorsement by the CFPB of a specific company or product.

These concerns were reflected in the CFPB's June 30, 2022 order terminating a Sandbox Approval Order granted to Payactiv. [8] *As noted in the recission order, the CFPB had informed the company that it was considering terminating the approval order in light of public statements the company made falsely suggesting a CFPB endorsement of its products. These concerns were also reflected in the CFPB's June 8, 2022 order terminating the NAL granted to Upstart Network, Inc.,*[9] *which highlighted the risk that the public could misconstrue the NAL to suggest that the CFPB concluded Upstart's model complies with the Equal Credit Opportunity Act. As*

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[6] Federal Trade Commission. Based on the total number of reports and associated financial losses associated made to the FTC's Consumer Sentinel Network where a payment app or service was used to defraud. See https://www.ftc.gov/news-events/data-visualizations
[7] *Id.*
[8] https://www.consumerfinance.gov/about-us/newsroom/cfpb-rescinds-special-regulatory-treatment-for-payactiv/.
[9] https://files.consumerfinance.gov/f/documents/cfpb_upstart-no-action-letter-termination_order_2022-06.pdf.

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noted in that order, at least one published study assumed that the CFPB assisted in developing the counter-factual model used to test Upstart's model.

9. On multiple occasions during the hearing, you emphasized that credit card issuers have means other than late fees to deter customers from paying credit card balances late, such as lowering credit limits, increasing interest rates, putting bad marks on credit reports, and even suing.

    a. Are you suggesting that an increase in use of these other deterrence mechanisms would result in a better outcome for consumers?

    b. If no, please explain.

    Response a-b: The CFPB monitors credit card issuer practices for compliance with the law and to ensure that markets are fair, transparent, and competitive. Issuer practices to deter late payments must comply with the law. The CARD Act provides two exceptions to the limits on increasing consumers' APRs – including for underlying index increases and delinquency exceptions. The CARD Act report described the CFPB's findings that while the Federal Reserve rate increases triggered upward repricing on most general-purpose cards, issuers continued to price well above the prime rate. The CFPB monitors many aspects of the credit card market, including issuer practices related to late fee assessments, reliance on penalty repricing, debt collection practices, disclosures and other practices.

10. During the hearing, you noted that the CFPB has taken "a whole host of steps" to prevent a breach at the CFPB like the one that occurred this past February.

    a. Please provide a detailed list of these steps and updated protocols in response to this data breach.

    Response: The CFPB takes the incident you raise extremely seriously. The CFPB has in place safeguards that establish a strong culture of privacy and security to ensure that personally identifiable information and confidential supervisory information are effectively protected. The CFPB maintains a comprehensive cybersecurity program to safeguard CFPB systems and the data maintained on those systems, and annual audits by the Office of Inspector General have consistently found that the program meets an effective level of security. All CFPB employees are required to complete privacy and cybersecurity training annually. Access to the system is shut off for employees who do not complete training.

    In light of last year's data incident, the CFPB has been reviewing its information, privacy, and cybersecurity program to ensure that the CFPB can improve and strengthen safeguards as much as possible. Some of the projects underway to strengthen the CFPB's posture include:

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- *Implementing additional technical measures, such as new Data Loss Prevention controls, which have the capability of scanning outbound email for sensitive information; and adopting a federal shared service offered by the Department of Justice that will provide an IT network security capability that implements a zero-trust architecture through which people and devices are verified every time they attempt to access sensitive data, regardless as to whether they have pre-existing network access;*
- *Strengthening internal policies and procedures, and cybersecurity and privacy training, to reflect some of the lessons learned and ensure that the CFPB has the best technological controls available to detect any anomalous behavior or other issues; and*
- *Continuing to refine how the CFPB collects information from institutions during supervision, with a focus on narrowing the information collected to the minimum necessary to fulfill CFPB's supervisory responsibilities.*

b. During an exchange with Senator Reed, you seemingly agreed that credit reporting agencies should perhaps only be allowed to hold consumer data for a certain period of time. In light of the breach at the CFPB and the vast amount of consumer data the CFPB collects, should the CFPB also only be allowed to hold consumer or business data for a certain period of time? If no, please explain.

Response: The CFPB maintains all data in compliance with the Federal Records Act and other applicable requirements. Each category of records, including any consumer or business data maintained by the CFPB, is retained in accordance with the applicable records schedule. The records retention schedule is set in consultation with, and is approved by, the National Archives and Records Administration (NARA) under the Federal Records Act. This NARA process helps to ensure that the CFPB's retention schedule accords with Executive Branch standards and is consistent with similar data retained by other federal agencies.

11. Despite little supporting evidence, the CFPB has made many broad statements regarding medical debt not being predictive of credit worthiness. During the hearing, you also claimed that many financial institutions will tell you that medical debt "data is often not even predictive at all."

    a. Please cite all supporting evidence and data that says medical debt data is not predictive of credit worthiness.

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Response: Research by the CFPB and others has raised questions about the predictive value of medical debt information as compared to non-medical debt collection information with respect to credit underwriting.[10]

b. Please provide specific examples of financial institutions stating that medical debt data is not predictive of creditworthiness.

Response: Credit score company, VantageScore, announced that it will no longer factor medical debt information after finding that such data is not good at predicting a person's likelihood of repaying other debts, especially compared with other debts in collection.[11]

c. What criteria is the CFPB using for defining "medical debt"? For example, how do you plan to treat debt stemming from elective treatments versus medically necessary treatments?

Response: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB is carefully considering all relevant information and determining how to proceed.

12. In 2012, the CFPB implemented its Remittance Rule, requiring companies that offer remittances to provide consistent disclosure regarding the price of a transfer to increase transparency of the industry. Despite these regulations, consumers still face substantial costs due to exchange rate markups, amounting to approximately $8.7 billion annually.

Competition and transparency in the marketplace are the best ways to ensure consumers get a fair deal and can make informed choices. It is also vital for maintaining the integrity of remittance services, ensuring they are not misused for illicit activities, and conforming that remittance providers operate in a transparent and lawful manner. Given the ongoing expenses consumers incur, I believe we need a marketplace where consumers can easily compare options and save money.

a. How has the CFPB worked to encourage competition in the remittance marketplace, and what measures are being taken to ensure that providers are not being used by illicit actors looking to launder funds?

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[10] See e.g. www.consumerfinance.gov/data-research/research-reports/paid-and-low-balance-medical-collections-on-consumer-credit-reports/; https://files.consumerfinance.gov/f/201412_cfpb_reports_consumer-credit-medical-and-non-medical-collections.pdf.
[11] https://www.wsj.com/articles/major-credit-score-provider-to-exclude-medical-debts-11660102729 (credit score provider VantageScore to stop factoring medical debt as not necessarily reflective of consumer ability to repay).

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Response: Remittances are extremely important to world economic stability, particularly in the Western Hemisphere. Millions of people depend on them, and they are an important aspect of many national economies. Remittances are also an important element in our own economy as remittances help bring stability in other countries that directly impact our own security and economic well-being.

I share your concern about hidden fees, including where an entity engages in deceptive practices about the speed and cost of sending remittances. A lack of transparency about fees, exchange rates, and taxes obscures the true cost of sending money abroad from consumers. For remittance transfers, two key components of a remittance transfer's true cost are the up-front fees remittance transfer providers charge consumers when they send remittance transfers, and the exchange rate that is applied to the transfer, which determines how much money a consumer must pay for a recipient to receive a certain amount of local currency. With limited exceptions, the Remittance Rule generally requires remittance transfer providers to disclose to consumers the exact amounts of fees charged by the remittance transfer provider and the exchange rate that will apply to the transfer, and the amount of currency to be delivered to the recipient.

As Director, I have been actively promoting the need for competition and transparency in all aspects of consumer finance. I am interested in understanding how we can make remittances faster, cheaper, and more secure. I have asked my staff to look closely at these issues. It is complicated, in part because the market is actually comprised of a tremendous number of sub-markets, each having its own distinct needs, characteristics and challenges. The CFPB has received a significant level of input from a wide spectrum of stakeholders and wants to ensure maximum value and security to the consumers that depend on these products.

The CFPB is closely monitoring the market to see how remittance transfer providers are disclosing these costs as part of the CFPB's initiative, launched in 2022, to save households billions of dollars a year by reducing exploitative junk fees charged by banks and financial companies.

I would welcome an opportunity to discuss the CFPB's work on remittances with you and how CFPB can improve this process.

13. Consumer privacy is a top priority for me and should be an integral part of the 1033 rule. At the same time, I understand that your proposal bans secondary use of data permissioned by the consumer, without allowing for consumers to potentially opt into secondary use of data to improve existing products or develop new ones. This ban may hinder the sort of innovation that we all want to encourage. It may make it harder for companies to learn from their users' experiences and then to build better products. It could also handicap improvements that make digital finance safer and more dynamic, such as impacts to the development of anti-fraud

tools – which consumers do not directly opt into– but which the financial industry depends upon to keep us safe from bad actors.

a. How do you plan to protect consumer privacy while ensuring this rule does not lead to a less safe and less competitive marketplace?

b. Have you considered whether these well-intentioned privacy protections could slow down innovation by advantaging incumbents who already possess large troves of data generated or captured before the rule becomes effective?

c. Have you considered that restrictions on secondary uses may handicap new entrants to the marketplace?

d. Is there a way to allow companies to use consumer-permissioned data on an anonymized basis to research and develop novel products?

Response a-d: The Personal Financial Data Rights Proposed Rule's limitation on collection, use, and retention is designed to ensure that, consistent with carrying out the objectives of Consumer Financial Protection Act section 1033, third parties accessing covered data are acting on behalf of consumers, thereby ensuring that their collection, use, and retention of covered data proceeds in alignment with consumer control and consent. The covered data that third parties would collect, use, and retain pursuant to consumer authorization includes sensitive financial data that might expose consumers to fraud or identity theft if it were exposed. The CFPB has preliminarily concluded that the proposed limitations in section 1033.421(a) of the proposed rule, including the prohibition on secondary uses of covered data, would appropriately ensure that third parties accessing covered data are acting on behalf of consumers, while providing sufficient flexibility to third parties to provide consumers with their requested products or services. For clarity, the proposed rule included examples of uses that would be permitted as reasonably necessary, such as uses that are reasonably necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability. The CFPB has sought comment on this and all aspects of the proposal and will carefully consider all feedback received.

The CFPB is evaluating the appropriate standard for retention and use of deidentified data. The proposed rule describes various benefits and risks of allowing the continued use and retention of deidentified data. The CFPB sought comment 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.

14. The BNPL (Buy Now, Pay Later) model has been transformative, especially for lower and middle-income families. It has unlocked purchasing power and allowed customers to manage

their finances by accessing affordable, low-cost credit. Bain & Company's research highlights BNPL's advantages, including cost.[12] This model helps people spread out the cost of essential purchases, making life more affordable for many. However, the CFPB's current hostile stance has the potential to greatly stifle innovation in a sector that has proved beneficial for many Americans.

a. With the BNPL model showing significant benefits for lower and middle-income families, how does the CFPB plan to support its growth while ensuring responsible use?

b. Considering the low delinquency rates in BNPL use, as reported by the Financial Health Network, indicating responsible financial behavior among users, will the CFPB consider a more favorable regulatory approach towards BNPL?[13]

c. How can the CFPB balance consumer protection with the need to nurture innovative financial solutions that have proven beneficial, especially for those who may not have access to traditional credit sources?

Response a-c: Buy Now, Pay Later (BNPL) products have grown rapidly over the past few years and it is critical to understand what this product is and what it isn't. The CFPB is actively monitoring the market to understand consumer financial products and services like BNPL. In September 2022, the CFPB issued a report, "Buy Now, Pay Later: Market trends and consumer impacts," summarizing data that CFPB acquired through market monitoring orders.[14] This report identified several consumer risks associated with these products including, the lack of standardized disclosures and dispute resolution challenges. In March 2023, the CFPB issued a report, "Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey," which explored the consumer financial profiles of BNPL borrowers using the CFPB's Making Ends Meet survey.[15]

Competition, innovation and transparency are key to success for American consumers. It is important for regulators to support innovation to provide more options and more choices to consumers and that this is done in a transparent manner. Innovation that truly benefits consumers and is carried out in a transparent manner is a key objective that helps guide the CFPB's work. The CFPB has invited BNPL firms

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[12] *Assessing BNPL's Benefits and Challenges,* Bain & Company, October 19, 2021, available at: https://www.bain.com/insights/assessing-benefits-and-challenges-bnpl-report-2021/.

[13] *Buy Now, Pay Later: Implications for Financial Health*, Financial Health Network, March 2023, available at: https://finhealthnetwork.org/research/buy-now-pay-later-implications-for-financial-health/#:~:text=Overall%2C%20few%20consumers%20in%20our,%C2%B9%E2%81%B0.

[14] https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf

[15] https://www.consumerfinance.gov/data-research/research-reports/consumer-use-of-buy-now-pay-later-insights-from-the-cfpb-making-ends-meet-survey/

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to agree to CFPB oversight in order to allow for supervisory examinations. The goal is to identify potentially problematic business practices before they create widespread harm.

15. The CFPB certified that the credit card late fee rule proposal did not substantially impact community banks and credit unions or other small business entities. The Small Business Administration (SBA) Office of Advocacy sent a comment letter calling this certification into question and requesting that the proposal be amended to address concerns raised by small business entities.

    a. Has the CFPB reviewed the SBA Office of Advocacy's comment letter and does the CFPB address or plan to address the commentors' concerns in the final rule?

    Response: The CFPB certified that the Credit Card Penalty Fees proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The CFPB requested comment on the analysis that supported this certification and requested any relevant data. The CFPB also reviews all comments and submissions in response to the Notice of Proposed Rulemaking.

    b. Which members of the Board of Directors of the FDIC, Board of Governors of the Federal Reserve System, and National Credit Union Administration Board did the CFPB consult with on this proposal?

    Response: Consistent with the CARD Act, in developing the Credit Card Penalty Fees proposed rule, the CFPB consulted with the following agencies regarding rules that implement TILA section 149: (1) the Comptroller of the Currency; (2) the Board of Directors of the Federal Deposit Insurance Corporation; and (3) the National Credit Union Administration Board. The CFPB also consulted with the Federal Reserve Board of Governors.

16. You have repeatedly stated that guidance does not establish new obligations on regulated entities. However, it is my understanding that the CFPB has begun instructing banks to provide written compliance plans for the Advisory Opinion regarding section 1034(c) of the Consumer Financial Protection Act, which requires large banks and credit unions to comply in a timely manner with consumer requests for information concerning their accounts for consumer financial products and services, subject to limited exceptions, before February 1, 2024. If so, this appears to confirm that this advisory opinion does in fact establish new obligations on regulated entities.

    a. Can you confirm whether the CFPB is instructing banks to provide written compliance plans for this Advisory Opinion regarding section 1034(c)?

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Response: The Advisory Opinion regarding Consumer Information Requests to Large Banks and Credit Unions does not impose any new legal obligations.

17. During your testimony before the House Financial Services Committee on November 29, in response to a question about auto insurance underwriting, you stated that the CFPB could work with Treasury's Federal Insurance Office (FIO) or state insurance commissioners regarding regulation of underwriting factors that impact policyholder's rates.

    a. Do you believe the CFPB has statutory authorization to regulate insurance companies?

    b. If so, please provide the statutory authority you are relying on.

    c. If not, please the legal justification the CFPB would use to support such actions.

    Response a-c: The CFPB is not seeking to regulate the business of insurance.

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Katie Britt:

1. Community banks provide over 60 percent of small businesses' credit needs. These banks offer a reliable and available source of credit to our small business community. Can you quantify the impact you believe the CFPB 1071 Rule, as currently written, would have on community banks' ability to offer small business loans?

   Response: The Consumer Financial Protection Bureau (CFPB) conducted a One-Time Cost Survey to learn about the one-time implementation costs associated with implementing section 1071 and how creditors might react to increased compliance costs due to the rule. The results of this survey, in which community banks participated, as well as additional information regarding costs and benefits from the comment process including comments from a trade association for community banks which expressed support for the proposed rule and the congressional intent behind section 1071, were considered when the rule was finalized. As indicated in the final rule, the CFPB believes that institutions that are covered under the final rule are unlikely to find either the one-time costs of implementation or the ongoing costs of compliance a meaningful influence in their business decision regarding small business lending activity.

   a. What studies did the CFPB do to understand and quantify the paperwork burden on both community banks and the customers they serve?

      Response: The Small Business Lending final rule discusses the CFPB's analysis and data in detail, including the consideration of benefits and costs. The compliance cost estimates relied on data that the CFPB obtained from industry, other regulatory agencies, and publicly available sources. The final rule also incorporated feedback received from small business representatives during the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) process. Further, the CFPB conducted a One-Time Cost Survey to learn about the one-time implementation costs associated with implementing section 1071. Community banks participated in the SBREFA process, responded to the One-Time Cost Survey, and commented on the proposed rule.

   b. Can you provide an estimated dollar amount of the costs that community banks should anticipate to incur in order to fulfill the processing and compliance requirements included in the rule?

      Response: Yes, the Small Business Lending final rule discusses implementation costs, including estimated dollar amounts, in detail. Depending on the volume of applications and complexity of compliance operations for a given institution required to report small business lending data, the CFPB's estimates of one-time costs range from $50,000 to $100,000 and ongoing costs range from $46-$100 per application.

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2. I have heard from dozens of community banks in Alabama that the CFPB 1071 Rule would lead them to potentially leave, or in the least decrease their participation, in the small business lending market. What is your response to these banks?

   Response: The CFPB is a strong believer in the importance of supporting small businesses, as well as financial institutions that focus on relationship banking. The CFPB carefully considered feedback from impacted institutions and made several important changes from the Small Business Lending proposed rule in response to concerns from financial institutions, including from lenders with the lowest volume of small business loans. As indicated in the final rule, the CFPB believes that institutions that are covered under the final rule are unlikely to find either the one-time costs of implementation or the ongoing costs of compliance a meaningful influence in their business decision regarding small business lending activity.

3. You noted during the November 30th hearing that you had met with the Alabama Bankers Association and Southeastern Credit Union League in September 2022. Given that this was well before the CFPB's 1071 rule was issued, can you please provide a list of the financial institutions in Alabama that you spoke to directly since September 2022 as it relates specifically to the CFPB 1071 Rule?

   Response: The CFPB has met with a wide variety of industry groups and technology providers to help ensure that they understand the new Small Business Lending rule and that covered lenders will be ready to comply. These meetings are meant to hear directly from financial institutions and their representatives. In addition to the meetings you cite, in September 2023, CFPB staff met with the League of Southeastern Credit Unions and the Alabama Bankers Association. A range of topics were discussed in these meetings. The CFPB will continue to engage with industry and vendors to provide implementation support, including through the release of additional written materials.

4. Have you done an analysis to understand the combined impacts of the CFPB 1071 Rule and the recently issued Community Reinvestment Act rule to community banks? If so, can you provide this analysis to my office?

   Response: When developing regulatory proposals, the CFPB carefully considers the potential impacts for both consumers and financial institutions. As required by law, the CFPB consults with the appropriate prudential regulators and 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.

5. Given your position on the FDIC Board, you have played and will continue to play a significant role in the crafting and finalization of the the Basel III Rule.

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a. Do you believe the Basel III Endgame proposal, as currently written, will have any downstream indirect effects on financial institutions under the $100 billion asset threshold?

Response: The proposed rule generally applies to the roughly 40 banks that have at least $100 billion in assets and would not apply to the thousands of community and midsized banks in the U.S. Since large bank failures can cause broader economic disruptions that may harm smaller banks, as we saw in the 2008 financial crisis, enhancing the safety and soundness of large banks could have positive downstream effects on smaller banks.

b. Do you believe the joint agencies have conducted an adequate and complete quantitative analysis to fully understand the potential economic impacts of the rule if implemented? Do you believe any information is missing from the analyses provided in the proposal that you would like to see prior to a Final Rule?

Response: The proposed rule outlines some of this analysis, and the agencies have sought comment on all aspects of the proposal, including the quantitative analyses. I expect the final rule to carefully describe the public's comments and justify both deviations from the proposed rule and decisions to maintain provisions.

c. How much time before the Basel III proposal was issued, on July 27th, were you provided with to read, assess, and provide your perspectives on the text of the proposal?

Response: The FDIC Board received the draft documents on June 2, 2023. I became familiar with many of the details in the years prior, though, as the framework was agreed to in 2017.

d. Do you have any concerns – at all – with the current text as it stands? If so, please outline these concerns.

Response: The agencies have sought comment on the proposal, and I look forward to reviewing the comments to develop a view informed by input from stakeholders.

6. When you testified before the Senate Banking Committee in June 2023, you told me that the CFPB was not considering prohibiting the use of medical debt collection information from credit reporting. You specifically said your focus was solely on ensuring only accurate data is included. Since then, your agency announced its intention to move forward with a proposal to ban medical debt information entirely – both from credit reports and from banks' underwriting processes. What changed? Please provide the basis of the CFPB's authority to take this action.

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Response: The Fair Credit Reporting Act (FCRA) rulemaking is in the early stages and the CFPB has not yet proposed any changes. The CFPB is carefully considering all relevant information and determining how to proceed.

7. In the CFPB's recent SBREFA panel for the Fair Credit Reporting Act, the Bureau states that research denigrates the predictive value of medical debt information. However, this determination is based on just one, nearly decade-old, CFPB Report, and the CFPB has failed to cite any additional research conducted outside of its own agency to corroborate this claim. Did the CFPB conduct other research since May 2014 to corroborate this claim? If so, what other research has the CFPB used to conclude that this information is not predictive?

    a. Do you believe that eliminating medical debt collections information from a consumer's credit report and prohibiting banks from using this information for underwriting purposes would disincentivize individuals from paying these debts?

    b. Have you considered the impacts of this action to small and rural health care providers? Please provide my office with the study the CFPB performed to quantify this impact.

    Response a-b: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The SBREFA outline contains a discussion of the proposals and alternatives under consideration. The CFPB will continue to gather information as a part of the rulemaking process and will carefully consider all relevant information.

8. For most financial services providers, loans are the largest and most obvious source of credit risk. With this in mind, it is imperative that financial institutions providing credit to consumers continue to have the accurate information they rely upon to make underwriting decisions and properly manage their risk. The forced removal of accurate, legally owed debt information from this process will degrade the value of traditional credit reports and will have a negative impact on credit models. The result will be incomplete representations of an individuals credit worthiness.

    a. Could prohibiting the use of a consumer's accurate, legally owed debt information inadvertently inhibit a lender's ability to accurately assess a borrower's ability to repay?

    b. Could this result in the overextension of credit?

    c. Could this prevent lenders and financial service providers' ability to correctly assess their institution's credit risk portfolio?

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Response a-c: The FCRA rulemaking is in the early stages and the CFPB has not yet proposed any changes. The SBREFA outline contains a discussion of the proposals and alternatives under consideration. The CFPB will continue to gather information as a part of the rulemaking process and will carefully consider all relevant information.

9. The CFPB's Civil Penalty Fund allows for the Bureau to utilize the funds collected through an enforcement action for: 1) compensating victims; and 2) providing funding for consumer education and financial literacy programs.

   a. How much has the CFPB collected in the Civil Penalty Fund under your leadership, and what is the balance of the Fund as of December 1, 2023?

      Response: Between October 1, 2021 and September 30, 2023, the CFPB collected $2,091,440,129 in the Civil Penalty Fund. These amounts can be found in the Civil Penalty Fund section of the CFPB's annual financial report.[16]

      The CFPB makes allocations from the Civil Penalty Fund on a twice annual basis. The most recent allocation was completed on November 29, 2023 and included available funds as of September 30, 2023. The amount available for allocation to victims was $1,940,060,535. That full amount ($1,940,060,535) was allocated to eligible consumers on November 29, 2023.

      The most recent allocation was completed after the publication of the CFPB's annual financial report for FY23. It will be published in our future CFO update for FY24 Q1 and will be posted on our website. The allocation process is described in the annual financial report and on our Civil Penalty Fund webpage.[17] *Funds collected after October 1, 2023 will be available for allocation in late May.*

   b. Has the CFPB, under your leadership, applied any of the funds collected towards consumer education or financial literacy programs? If so, please provide a list of those education or financial literacy programs. If not, why?

      Response: The CFPB has prioritized disbursements of these funds for victim relief. The CFPB takes many law enforcement actions where illegally obtained funds are gone and difficult to obtain for redress. For example, earlier this year the CFPB announced one of its largest settlements against a credit-repair conglomerate for $2.7 billion in restitution. However, the firms have filed for bankruptcy protection, raising questions about whether their victims will be made whole.

[16] https://files.consumerfinance.gov/f/documents/cfpb_final-financial-report-fy_2023-11.pdf
[17] https://www.consumerfinance.gov/enforcement/payments-harmed-consumers/civil-penalty-fund/

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At the same time, the CFPB remains open to various uses of the fund. It is worth noting that Congress specifically charged the CFPB with conducting financial education programs and ensuring that consumers receive timely and understandable information to make informed decisions about financial transactions. The CFPB has developed, and continuously maintains, financial education programs and products using our general fund that support the ability of consumers to spot risks and warning signs.

10. The CFPB has pursued various attempts to eliminate, or substantially reduce, what you refer to as "junk fees." This includes, but is not limited to, overdraft fees and late fees charged by financial institutions. These fees allow institutions to offset the risks of making loans, and without them, you are opening the door to a number of unintended consequences.

    a. Can you provide a legal definition for the term, "junk fees"? Is that the definition used by the CFPB? If not, what is the definition used by the CFPB?

    Response: The term junk fees generally refers to fees that are unavoidable, unnecessary, or surprises that inflate the price of a product or service while providing little or no value. Some examples of junk fees include "pay-to-pay" fees or "convenience fees" in debt collection that collectors charge consumer simply for making payments over the phone,[18] credit card late fees that are not reasonable or proportional to the late payment, depositor fees charged every time consumers deposit a check that later bounces,[19] unanticipated overdraft fees,[20] double dipping on nonsufficient funds fees,[21] and fees for fake paper statements that aren't even sent to the consumer.[22] These types of fees—which are not factored into the upfront sticker price or not in exchange for any service—are not consistent with fair, competitive, and transparent markets.

    b. Do you, as Director of the CFPB, intend to eliminate banks' ability to charge overdraft and/or late fees?

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[18] Cons. Fin. Prot. Bureau, *Advisory Opinion 2022-06: Debt Collection Practices (Regulation F); Pay-to-Pay Fees* (June 2022), at https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf.
[19] Cons. Fin. Prot. Bureau, *Compliance Bulletin 2022-10: Unfair Returned Deposited Item Fee Assessment Practices* (Oct. 2022) at https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf
[20] Cons. Fin. Prot. Bureau, *Circular 2022-06: Unanticipated overdraft fee assessment practices* (June 2022), at https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/.
[21] Supervisory Highlights: Junk Fees Special Edition, Issue 29 (Winter 2023), at https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights-junk-fees-special-edition_2023-03.pdf
[22] Supervisory Highlights: Junk Fees Special Edition, Issue 31 (Fall 2023) at https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf

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Response: No.

c. Do you believe that limiting banks' ability to charge these fees would ultimately limit their ability to offer temporary credit coverage to consumers? Why or why not?

Response: As part of its emphasis on fair competition, the CFPB has launched an initiative, consistent with its legal authority, to scrutinize junk fees charged by banks and financial companies.[23] *Junk fees are typically not subjected to the normal forces of competition, leading to excessive costs for services that a consumer may not even want. For example, certain banks and financial companies might hide these unavoidable or surprise charges or disclose them only at a later stage in the consumer's purchasing process, if at all.*

In some circumstances, understanding how an overdraft program will work can be a nearly impossible task – the interplay of banks' fine print policies with the complex authorization and settlement timelines creates situations where consumers can't reasonably be expected to know whether they will incur a fee or not. The CFPB is committed to implementing federal consumer financial law in furtherance of a fair, transparent, competitive consumer finance market that creates more opportunities for consumers to access affordable credit, rather than the status quo, where consumers often face expensive, back-end fees.

d. Do you plan to provide a thorough economic analysis if you decide to move forward with a rulemaking that would eliminate, or substantially reduce, what you refer to as "junk fees"?

Response: Companies across the U.S. markets are increasingly charging inflated and back-end fees to households and families. This new "fee economy" distorts our free market system by concealing the true price of products from the competitive process. The CFPB has been a part of the effort to tackle junk fees, consistent with a whole-of-government approach to addressing this important issue.

The CFPB issued a proposal with respect to overdraft fees on January 17, 2024, and we are currently soliciting comment, including with respect to the impact analysis.

[23] Supervisory Highlights: Junk Fees Special Edition, Issue 31 (Fall 2023) at https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Laphonza Butler:

1. Mr. Chopra, I want to commend the CFPB for the decisive steps it took in punishing Citi for its blatant discrimination by denying credit to Armenian American card applicants in California, due to appalling stereotypes held about their national origin. Fair credit laws were written to ensure that all applicants are evaluated fairly so thank you for working to correct this injustice. I look forward to engaging with members of the community and the CFPB in the aftermath of this settlement. Mr. Chopra, what training and outreach is the CFPB conducting with financial institutions to make them aware of the severity of the consequences for such discrimination and to ensure this does not happen again?

   Response: The Consumer Financial Protection Bureau's (CFPB) Office of Supervision is in ongoing dialogue with supervised entities, like Citi, regarding compliance with federal consumer financial law. The CFPB has issued several rules and guidance documents reaffirming the importance and applicability of fair lending protections for prospective applicants, applicants for credit, and existing account holders.

   The CFPB periodically publishes Supervisory Highlights[24] *to share key examination findings, this includes the CFPB's fair lending supervision program, which assesses compliance with the Equal Credit Opportunity Act and its implementing regulation, Regulation B. 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.*

   The CFPB also uses blog posts, statements, press releases, guides, brochures, social media, and other tools to timely and effectively communicate with stakeholders. These tools are targeted to individuals, advocates, civil rights organizations, government agencies, tribal entities, small business owners, financial institutions, and other stakeholders to promote and broadcast news and information about emerging fair lending issues, areas of concern, CFPB initiatives, and more.

   Through CFPB's enforcement actions and examination activity, interpretive rules and advisory opinions, circulars, and other tools, the CFPB continues to make clear that fair lending must be a top priority for all financial institutions. The CFPB remains committed to protecting individuals, small businesses, and communities from discrimination, holding institutional and individual bad actors accountable, and ensuring robust and comprehensive remedies for violations of the laws under our jurisdiction.

2. As outlined in a November 5 New York Times article, there have been customers who have been engaging in lawful activity but had their accounts closed by various banks, due to algorithms that flagged their activity as suspicious. How is the CFPB monitoring the risk

[24] https://www.consumerfinance.gov/compliance/supervisory-highlights/

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management practices of banks and credit unions, to ensure they are not unintentionally de-banking customers engaging in lawful activities?

Response: The CFPB is closely monitoring this. With the increase in fraudulent activities, banks conduct "know your customer" checks and take action when customers are using accounts to engage in fraud. However, the CFPB is concerned that the increased use of artificial intelligence (AI) and data brokers who are not adhering to accuracy standards for these decisions is causing incorrect denials, while also missing bona fide fraudsters.

For example, the CFPB's Office of Supervision identified institutions engaged in unfair acts or practices by erroneously placing multiple holds on certain mobile check deposits that were deemed suspicious rather than placing the single holds that were intended. Through transaction testing, examiners identified accounts where the institutions had charged a consumer overdraft fees because the institutions failed to lift the initial automatic holds on the amounts of mobile check deposits after an additional suspicious deposit hold was placed on the account. This practice caused, or was likely to cause, substantial injury due to consumers incurring fees and losing access to funds that were unrelated to the suspicious mobile check deposit. Consumers could not reasonably avoid the injury, given that they could not have prevented the institutions from failing to comply with their own internal procedures. And the injury was not outweighed by countervailing benefits to consumers or to competition.[25]

The CFPB has heard from many consumers about being suddenly locked out of their accounts and the impact it can have on a family's financial life. The CFPB has taken repeated enforcement actions against companies that have illegally cut off consumers' access to their funds, and we will continue to hold companies accountable when they break the law. Consumer complaints are an extremely useful source of intelligence that we use to identify problems in the marketplace and help inform our law enforcement work.

3. Does the CFPB plan to work with financial institutions to issue or clarify existing guidance to promote consistent, uniform review of customers' accounts before closing them?

   Response: The CFPB is aware of growing concern around this issue and will be carefully reviewing to determine any appropriate actions.

4. Mr. Chopra, I am happy to see that the CFPB has taken steps to ensure that home appraisals conducted by algorithms are both fair and accurate. I recognize that while this is an important step, it should be the first of many to ensure that the home finance system is fair for all consumers. A study conducted by the The Markup found that applicants of color are 40-80% more likely to be denied a mortgage. What is CFPB doing to monitor these algorithms and ensure they are not contributing to digital redlining?

[25] https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-26_2022-04.pdf

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Cynthia Lummis:

I have several questions about proposed rule Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications. In your testimony, you cite that you have "have shifted our supervisory resources toward non-banks to account for the growing role they play in financial services including a proposed rule to ensure that the big tech companies and other payment providers adhere to the same rules that banks and credit unions are following." However, this rule is very complicated, conflates different markets, and fails to outline signs of consumer harm.

1. The CFPB has articulated theories that sending money between people and storing value is dangerous. How do you define consumer harm in this capacity?

   Response: The Consumer Financial Protection Bureau (CFPB) actively monitors consumer financial markets for risks to consumers. For example, the CFPB has alerted consumers that funds stored in certain digital payment apps may not have the same federal deposit insurance coverage as those deposited in banks and credit unions. The CFPB has also highlighted the financial harm that consumers, including servicemembers, have experienced from scams and fraud when using digital payment apps. I'm happy to discuss this further with you.

2. The proposed threshold within this rule is based on the aggregate annual volume of both consumer-to-consumer or consumer-to-business transactions facilitated by all general-use digital consumer payment applications provided by the company, but excludes any entity that is a "small business concern based on applicable SBA size standards." If this exclusion is necessary, does this mean the threshold is too low?

   Response: The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications sought comment on whether the threshold is appropriate and the CFPB is carefully considering all comments received.

3. Reuters has reported that "the proposal would cover about 17 companies that together send more than 13 billion payments annually,"[26] specifically mentioning GooglePay, ApplePay, PayPal, and CashApp. Would you please share the other 14 companies that would be covered by this rule, in order to allow them to prepare for compliance?

   Response: The CFPB's larger participant rules do not make determinations as to the status of individual companies as covered or excluded under the proposed rules. The CFPB makes those determinations based on the available data at the relevant time – when it initiates

[26] https://www.reuters.com/technology/us-consumer-watchdog-proposes-rules-big-tech-payments-digital-wallets-2023-11-07/

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examination activity after a larger participant rule has been finalized and takes effect. Rulemakings necessarily occur prior to that stage. As such, larger participant rules do not include a list of specific firms that may fall within the market definitions and satisfy the larger participant tests. In addition, firms that would be covered by the rule are already subject to federal consumer financial law administered by the CFPB. Regardless, the CFPB will be taking steps to ensure that entities understand how to prepare for any examination if they are subject to one.

5. Dodd-Frank Section 1022(b) requires an analysis of potential benefits, costs, and impacts of a rule. In the proposed rule, the CFPB "notes at the outset that limited data are available with which to quantify the potential benefits, costs, and impacts of the Proposed Rule". It goes on to describe what is referred to as "benefits and costs", but fails to include any actual numerical estimates. Is this a sufficient economic analysis in accordance with the APA?

   Response: The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications' impacts analyses include several numerical estimates, including for the cost of supervisory activities. The CFPB collected, and is analyzing comments on all aspects of the proposal including its impacts analyses, and will ensure that any final rule complies with all applicable requirements, including the APA.

6. The proposed rule mentions "digital assets" several times, including "digital assets that have monetary value and are readily useable for financial purposes," specifically "crypto-assets, sometimes referred to as virtual currency," within the CFPA's definition of funds. While not directly mentioned, it seems reasonable to assume that payment applications enabling consumers to purchase goods and services using cryptocurrency, including stablecoins, are covered by this rule. Can you please confirm or deny if this is the rule's intention?

   Response: It's critical that federal regulators appreciate the dynamic nature of our financial markets. Today's market for consumer payments is no exception. The CFPB is proposing to conduct supervisory examinations of larger participants in the market for general-use digital consumer payment applications. Some of these firms touch more consumers than the bulk of banks and credit unions currently subject to examinations.

   The Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications' seeks to ensure that the CFPB has supervisory authority over larger participants in a market that has large and increasing significance to the everyday financial lives of consumers. The notice of proposed rulemaking seeks to provide clarity and an even-handed approach for payments made for personal, family, or household purposes. The crypto digital asset market largely operates outside of consumer payments. However, no final rule has been issued and the CFPB is carefully considering all comments received in response to the proposal before finalizing the rule.

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7. The expanded definition of larger participants of a market for digital consumer payment applications appears to be more of an expansion of the CFPB's power over tech companies, rather than protecting consumers. How do you justify the targeting of this rule?

   Response: That is not accurate. Nonbank covered persons generally are already subject to the CFPB's regulatory and enforcement authority. In addition, some nonbank covered persons that would be subject to the CFPB's supervisory authority under the proposed rule also may be subject to other CFPB supervisory authorities under Consumer Financial Protection Act section 1024, including, for example, as a larger participant in another market defined by a previous CFPB larger participant rule. In establishing the CFPB's supervisory authority over such covered persons, the proposed rule would not impose new substantive consumer protection requirements or alter the scope of the CFPB's other authorities.

   The CFPB proposed this rule because this market has larger and increasing significance to the everyday lives of consumers, who are growing increasingly reliant on market participants for their financial transactions. In addition, supervision of larger participants in this market, who engage in a substantial portion of the overall market activity, would help ensure they are complying with applicable federal consumer financial laws and would better enable the CFPB to monitor for new risks to both consumers and the market. Finally, the proposed rule can help level the playing field between nonbanks and depository institutions, and further the CFPB's statutory objective of ensuring that federal consumer financial law is enforced consistently between nonbanks and depository institutions in order to promote fair competition.

8. Finally, due to the lack of clarity that has led me to all my questions on this rule, will you commit to extending the comment window of this proposed rule beyond January 8, 2024? Only 30 days – over the holiday season – is not enough time for those impacted by this rule to adequately respond. Would you consider postponing the end date to March 2024?

   Response: I appreciate the need for ample feedback. While the law requires at least 30 days, the CFPB publicly announced and issued the Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications on November 7, 2023, and provided for a comment period beyond this minimum requirement. The CFPB will continue to look for ways to ensure sufficient input before finalizing any rule.

9. Industry groups, including the Consumer Bankers Association, have found that under your leadership, the CFPB has sought minimal input from the industry it is responsible for overseeing, and that your directed action on banks has decreased consumer confidence and attrition. How do you ensure that through your directive to protect consumers, how do you ensure you can engage with the industry and include public comment as required by law?

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Response: The CFPB engages extensively with a variety of stakeholders including financial institutions, industry groups, consumer advocates, experts, and the public. These engagements include private meetings with individual firms and industry trade associations, roundtables and townhalls, as well as financial industry conference events.

As Director, I meet regularly with the major banking industry trade groups and have prioritized direct engagement with smaller institutions through state-based banker and credit union associations. For example, I met with the Wyoming Bankers Association in June 2022, and had the opportunity to discuss small business lending data collection, bank fees including nonsufficient funds, overdraft and junk fees, consumer data access, cryptocurrency, and fraud prevention. I have been actively meeting with state bankers and state credit unions nationwide. As of January 10, 2024, I have met with approximately 45 state bankers associations and approximately 45 state credit unions leagues and association.

10. The CFPB is statutorily required to have an Office of Financial Education to "educate and empower consumers to make better informed financial decisions." How is this office being used to inform and empower consumers about emerging financial technology applications, particularly around the broadening definition of non-bank financial actors?

Response: The CFPB has developed, and continuously maintains, financial education programs and products that support the ability of consumers to spot risks and warning signs. The CFPB works to integrate financial education into trusted and established community partners where people already go for other services, including workplaces, social service organizations, military recruiters, Army Reserve Officers' Training Corps, colleges and universities, government agencies, financial institutions, and financial educators.

11. What is the CFPB's Office of Financial Education doing to educate consumers about how to avoid scams and fraud, and how effective has it been in preventing fraud and scams? What data does the Office of Financial Education collect to ensure the efficacy of its programs?

Response: Some examples of CFPB's financial education programs and products on fraud and scams include the following:

- *Ask CFPB is an online educational tool that provides answers to common questions about consumer financial products and services. Since its launch in 2012, the Ask CFPB portal has provided answers to almost 48 million unique visitors. For example, the Fraud and scams portal includes key terms to know, basic questions, common issues, and how-to guides.*[27]
- *Consumer Advisories call important issues to the attention of consumers, those who work with consumers, the media, and industry. The CFPB publishes these advisories as a warning light about fraudulent practices and scams that are circulating.*[28]

[27] https://www.consumerfinance.gov/consumer-tools/fraud/
[28] https://www.consumerfinance.gov/about-us/newsroom/?categories=consumer-advisories

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- *Webinars feature CFPB staff and guest speakers and focus on a specific topic. Some examples include: Identity theft, scams, and older adults*[29] *and Spotting and avoiding financial fraud.*[30]
- *Limited English proficient (LEP) consumers often encounter significant barriers to participating in the consumer financial marketplace. This can make it difficult to conduct everyday financial affairs and can make LEP consumers more vulnerable to deceptive products or predatory actors. The CFPB offers financial education publications that help LEP consumers spot warning signs and risks, as well as assert their rights and get trusted help.*[31] *This information is provided in Arabic, Chinese, Haitian Créole, Korean, Russian, Spanish, Tagalog, and Vietnamese translated content on the CFPB website.*[32]
- *Free publications provide tools and resources, including a publication on How to spot frauds and scams,*[33] *to consumers and other stakeholders. In FY 2022, the CFPB reached 45.7 million publications delivered over the life of the program.*
- *The Money Smart for Older Adults program is a fraud prevention curriculum developed by the CFPB and the Federal Deposit Insurance Corporation. The program consists of an instructor guide and slides for volunteers to share the information with older adults and a resource guide for participants to refer back to after their lesson. The CFPB also offers plain language handouts designed to share simple lessons about common types of scams and fraud.*[34]
- *The Managing Someone Else's Money program includes four guides for financial caregivers operating in a formal lay fiduciary role. The guides for agents appointed under power of attorney and as trustees, conservators, and government fiduciaries help older adults and financial caregivers recognize and prevent elder financial exploitation.*[35]
- *Choosing a Trusted Contact includes a guide for consumers on selecting a trusted contact for the accounts they hold at a financial institution.*[36]
- *Preventing Elder Financial Abuse is a guide to assist staff of long-term care communities prevent, recognize, record, and report elder financial abuse.*[37]
- *Elder Fraud Prevention and Response Network Initiative (Initiative). The CFPB also has been influential in helping key stakeholders in communities across the country*

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[29] https://www.consumerfinance.gov/about-us/events/archive-past-events/cfpb-finex-webinar-identity-theft-scams-older-adults/
[30] https://www.youtube.com/watch?v=VSceDmt-Td0
[31] https://pueblo.gpo.gov/CFPBPubs/CFPBPubs.php
[32] https://www.consumerfinance.gov/language/cfpb-in-english/
[33] https://pueblo.gpo.gov/CFPBPubs/CFPBPubs.php?PubID=13129
[34] https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/money-smart-for-older-adults/
[35] https://www.consumerfinance.gov/consumer-tools/managing-someone-elses-money/
[36] https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/protecting-against-fraud/
[37] https://pueblo.gpo.gov/CFPBPubs/CFPBPubs.php?PubID=13102

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prevent, detect, and respond to elder financial exploitation through this Initiative. We conducted research to understand existing networks and how they can enhance collaborative efforts to fight elder financial exploitation.

12. In your recent statement on the Final Rule Implementing the Community Reinvestment Act, you said "[it's] time for state legislators to accelerate efforts to ensure certain nonbank entities have Community Reinvestment Act-like requirements, particularly in sectors where there is significant public subsidies or support for their business activities." The CFPB released a report the following week on state community reinvestment laws, which found that five states and the District of Columbia apply such laws to credit unions. As nonbank entities that receive a significant public subsidy in the form of a tax exemption, credit unions were historically exempt from federal CRA requirements given their limited membership and statutory mission to support those of modest means. With credit union membership having become more readily accessible, would you support legislation requiring credit unions to demonstrate the community benefit they provide?

    Response: As you note, the report summarizes the financial institutions covered by different state laws. It finds that five states (Connecticut, Illinois, Massachusetts, New York, and Rhode Island) and the District of Columbia include credit unions in the coverage of their CRA laws, though some exemptions for credit unions may apply. Deciding which institutions to include, whether it be banks, credit unions, or mortgage companies, or others, is one of the ways that state CRA laws respond to state reinvestment priorities and adapt to changes in the marketplace. A level playing field is critical and I would welcome the opportunity to discuss further with you.

13. The CFPB is using its authority to supervise financial institutions that it decides pose risk to consumers. Could you please tell us what you mean by "risk"?

    Response: In the Consumer Financial Protection Act of 2010, Congress authorized the CFPB to supervise a nonbank financial company where the CFPB has reasonable cause to determine, after giving the company notice and a reasonable opportunity to respond, that the company is engaging, or has engaged, in conduct posing risk to consumers.[38] *Such conduct may involve, for example, potentially unfair, deceptive, or abusive acts or practices, or other acts or practices that potentially violate federal consumer financial law. The CFPB may base such reasonable cause determinations on tips, complaints collected by the CFPB, or on information from other sources, such as judicial opinions and administrative decisions. The CFPB may also learn of such risks through whistleblower tips, state partners, federal partners, or news reports.*

[38] 12 U.S.C. 5514(a)(1)(C).

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14. Dodd-Frank Section 1022 requires the CFPB to consider the cost of its rules. Industry groups have come to me and complained that the credit card late fees proposed rules help only a small number of consumers while increasing costs for cardholders across the board. How would this rule survive a cost-benefit analysis? Will you commit to conducting a rigorous cost-benefit analysis of the proposed rule and how it would affect (1) the cost and availability of credit, particularly with respect to non-prime borrowers, (2) the safety and soundness of credit card issuers, and (3) the use of risk-based pricing– before the final rule is issued?

    Response: During the rulemaking process, the CFPB conducts the required costs, benefits, and impacts analysis, including an assessment on any effect on the availability and cost of credit.

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Raphael Warnock:

1. As the Consumer Financial Protection Bureau (CFPB) has discussed, credit history is an important factor for mortgage rates.[39] However, millions of Americans lack a credit history, with Black and Hispanic Americans being more likely to be "credit invisible."[40] As machine learning and artificial intelligence become more prevalent in credit underwriting, non-traditional data can be factored into the credit process, potentially providing increased mortgage access for many of these "credit invisible" Americans. Alternatively, historical disparities and discrimination in the housing market could also be coded into these processes.

    a. What is the CFPB doing to set guardrails around the use of new datasets and statistical techniques in credit underwriting, as it pertains to machine learning and artificial intelligence?

    Response: You raise an important question. Data harvesting on Americans has become voluminous and ubiquitous, giving firms the ability to know highly detailed information about their customers before they ever interact with them. Many firms across the economy rely on these detailed datasets to power their algorithmic decision-making, which is sometimes marketed as "artificial intelligence (AI)."

    The information gleaned from data analytics has a broad range of commercial uses by financial firms, including for targeted advertising and in credit decision-making. There is no exception for violating the law because a creditor is using technology that has not been adequately designed, tested, or understood.

    In April 2023, the Consumer Financial Protection Bureau (CFPB) and several federal agencies issued a joint statement to make one clear point: there is no exemption in our nation's civil rights laws for new technologies that engage in unlawful discrimination.[41] Companies must take responsibility for their use of these tools. The Interagency Statement affirms existing law and reins in unlawful discriminatory practices perpetrated by those who deploy these technologies. The statement highlights the all-of-government approach to enforce existing laws and work collaboratively on "AI" risks.

[39] *How Does My Credit Score Affect My Ability to Get a Mortgage Loan?*, Consumer Financial Protection Bureau (Sep. 9, 2020), https://www.consumerfinance.gov/ask-cfpb/how-does-my-credit-score-affect-my-ability-to-get-a-mortgage-loan-en-319.
[40] *CFPB Report Finds 26 Million Consumers Are Credit Invisible*, Consumer Financial Protection Bureau (May 5, 2015), https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-26-million-consumers-are-credit-invisible.
[41] https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.

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2. Credit underwriting is regulated by statutes like the Equal Credit Opportunity Act (ECOA), which makes it unlawful for creditors to discriminate against applicants.[42]

   a. Do existing statutes give the CFPB sufficient authorities to oversee new technologies, particularly machine learning and artificial intelligence, in the context of lending? If not, what additional authorities would be beneficial?

   b. Does CFPB have sufficient resources to oversee these technologies? If not, what additional resources would be helpful?

   c. What are the key lessons, both in terms of positives and failures, that should be drawn from the CFPB's experience with ECOA compliance?

   Response a-c: There is no "AI" exemption to the Equal Credit Opportunity Act (ECOA), the Consumer Financial Protection Act, and other federal consumer laws that the CFPB administers. Financial institutions are required to comply with existing laws and regulations, including ECOA and its implementing regulation, Regulation B, regardless of the technology being used.

   The CFPB has reiterated this point publicly through multiple communications, including in the Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems, published in April 2023 by the CFPB, Department of Justice Civil Rights Division, Equal Employment Opportunity Commission, and the Federal Trade Commission. The agencies jointly pledged to monitor the development and use of automated systems, promote responsible innovation, and to enforce our collective authorities to protect individuals' rights, regardless of whether legal violations occur through traditional means or advanced technologies, including those that are marketed as AI.

   To oversee these technologies, the CFPB has taken a wide range of steps, to include recruiting technologists and others with relevant skill sets, engaging with industry, and working with other agencies.

   One lesson the CFPB has learned is that whistleblowers can play a central role in uncovering information about companies using technologies, like black-box models, in ways that violate ECOA and other federal consumer financial protection laws. Having clear, actionable information is critical for the CFPB and other consumer protection enforcers. The CFPB encourages tech workers to provide the agency with information. They can visit the CFPB's whistleblower page to learn more.[43]

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[42] *Consumer Financial Protection Circular 2022-03: Adverse Action Notification Requirements in Connection With Credit Decisions Based on Complex Algorithms*, Consumer Financial Protection Bureau (May 26, 2022), https://www.consumerfinance.gov/compliance/circulars/circular-2022-03-adverse-action-notification-requirements-in-connection-with-credit-decisions-based-on-complex-algorithms.
[43] https://www.consumerfinance.gov/enforcement/information-industry-whistleblowers/

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3. This past summer, CFPB released a report that highlighted the fact that people of color are more likely to be denied credit when compared to similarly situated white borrowers, and that rural Southerners are denied credit at higher rates than their counterparts who are non-rural.[44]

    a. Based upon CFPB's initial investigation into this issue, what tools are needed, either administratively or legislatively, to address this and create more equitable conditions for accessing credit?

    b. Does the CFPB have any plans to further investigate this issue?

    Response a-b: Access to fair, competitive, and nondiscriminatory credit products is crucial to building wealth and realizing the American dream. The CFPB is seeking to address these issues using all of our statutory tools and the CFPB will continue to take steps to ensure that all consumers have equal access to credit opportunities.

    The CFPB continually monitors and gathers information to assess consumer financial markets. When appropriate, the CFPB takes action, including supervisory and enforcement action, to protect consumers from discrimination, unfair, deceptive, or abusive acts or practices or other unlawful acts or practices within the CFPB's jurisdiction.

4. Student loan debt in America has grown to almost $1.6 trillion, divided amongst over 43 million borrowers.[45] According to a report released by the CFPB, student loan balances, as a percentage of tract-level income, are higher in the rural south than the national average.[46] These borrowers, like all borrowers nationwide, must resume their student loan payments, now that the national pause on repayment has ended. This influx of borrowers entering repayment has the potential to cause significant issues for loan servicing companies.

    a. What has the CFPB observed with regard to student loan servicing thus far, now that payments have resumed?

    b. Do federal loan servicing companies need more support or additional funding to meet the demands caused by this influx of borrowers returning to repayment?

Response a-b: The CFPB has been closely monitoring the experience of more than 28 million borrowers with federally held student loans as they returned to repayment this past October.

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[44] *CFPB Releases Reports on Banking Access and Consumer Finance in Southern States*, Consumer Financial Protection Bureau (May 26, 2022), https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-reports-on-banking-access-and-consumer-finance-in-southern-states/#:~:text=People%20of%20color%20are%20more,region%20remain%20high%20despite%20gains.
[45] *Federal Student Aid Portfolio Summary*, Federal Student Aid (Accessed Dec. 5, 2023), https://studentaid.gov/data-center/student/portfolio.
[46] *Consumer Finances in Rural Areas of the Southern Region*, Consumer Financial Protection Bureau (Jun. 2023), https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf, at page 21.

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The CFPB recently issued a report detailing observations from its oversight of federal student loan servicers performance during this time.[47] *The report found that borrowers experienced average call wait times to speak to a live representative of over an hour in October, leading to almost half of callers to hang up before they spoke to someone. The CFPB also observed that servicers had significant delays in processing income-driven repayment plan applications. As of late October 2023, servicers reported more than 1.25 million pending income-driven repayment plan applications – with more than 450,000 of those applications pending for more than 30 days with no resolution. We also observed that servicers provided borrowers with inaccurate and untimely billing statements, including bills with premature due dates and inflated payment amounts. The CFPB will hold servicers accountable for compliance with federal consumer financial law and for servicing failures that adversely impact borrowers' ability to successfully return to repayment.*

5. Student loan borrowers have many rights under consumer protection laws, including protection from unfair, abusive, or deceptive acts or practices.[48]

   a. What is the CFPB doing to ensure that student loan servicing companies continue to meet their obligations to borrowers under consumer protection laws?

      Response: Close scrutiny of student loan servicers is especially vital now as repayments on federally-held student loans resume following the end of the pause put in place in March 2020 in response to the COVID-19 pandemic. As detailed in our recent report,[49] *the CFPB has undertaken a special initiative to closely monitor the return to repayment on federal student loans in near real time. This initiative uses requests to servicers for key operational and performance metrics, consumer complaints received by the CFPB, and collaboration with other state and federal partners to identify and address pressing consumer risks. The CFPB will continue its oversight of servicers' performance related to return to repayment in collaboration with our state and federal partners. We will hold servicers accountable for violations of federal consumer financial law that adversely impact borrowers' ability to successfully return to repayment.*

      The CFPB also continues to closely monitor private student loan servicers for violations of federal consumer financial laws. For example, in a 2023 bulletin, the CFPB described how it has held private student loan servicers accountable for an unfair act or practice, in violation of the Consumer Financial Protection Act, when

[47] https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-federal-student-loan-return-to-repayment/
[48] *Consumer Assistance Topics: Student Loans*, Federal Deposit Insurance Corporation (Aug. 1, 2023), https://www.fdic.gov/resources/consumers/consumer-assistance-topics/student-loans.html#:~:text=Consumer%20Protections%20for%20Student%20Loans&text=Debt%20collectors%20may%20not%20use,information%20to%20credit%20reporting%20agencies.
[49] https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-federal-student-loan-return-to-repayment/

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they resumed collection of private student loan debts that were discharged by bankruptcy courts.[50]

6. CFPB has recently taken action against Prehired, a job training company that was accused of making false promises to student borrowers, trapping them with illegal loans, and using abusive collection practices to recoup debts that students could not pay.[51] While this type of enforcement action is commendable, especially as it prevents an organization from harming future student borrowers, it is only retroactive relief for so many borrowers who were already taken advantage of.

   a. What steps is CFPB taking to proactively prevent businesses and organizations from engaging in deceitful or illegal practices against student borrowers?

      Response: The CFPB helps students and student loan borrowers by uncovering and addressing illegal practices in consumer financial products, particularly student loan servicing and lending. The CFPB's role has been particularly important as student loan borrowers have navigated changes to the federal student loan program.

      In January 2022, the CFPB announced it would begin examining post-secondary schools that engage in institutional lending to students.[52] *Specifically, examiners would review schools' practices related to placing enrollment restrictions on students due to late or unpaid payments, withholding transcripts, improperly accelerating payments, and failing to issue refunds to students who withdraw from their program.*

      In September 2022, the CFPB highlighted that examiners have found that certain schools with blanket policies to withhold transcripts to force students to pay an outstanding debt were engaging in an abusive practice under the Consumer Financial Protection Act.[53] *The CFPB directed these schools to cease this practice.*

      In March 2023, the CFPB released a bulletin warning servicers of their obligation to halt unlawful conduct with respect to private student loans that have been discharged by bankruptcy courts. The CFPB directed these servicers to return illegally collected payments to affected consumers and immediately cease these unlawful collection tactics. The bulletin also makes clear that the CFPB will continue to examine student

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[50] https://www.consumerfinance.gov/compliance/supervisory-guidance/cfpb-bulletin-2023-01-unfair-billing-and-collection-practices-after-bankruptcy-discharges-of-certain-student-loan-debts/
[51] *CFPB and 11 States Order Prehired to Provide Students More than $30 Million in Relief for Illegal Student Lending Practices*, Consumer Financial Protection Bureau (Nov. 20, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-11-states-order-prehired-to-provide-students-more-than-30-million-in-relief-for-illegal-student-lending-practices.
[52] https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-to-examine-colleges-in-house-lending-practices/
[53] https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervisory-examinations-find-violations-of-federal-law-by-student-loan-servicers-and-university-owned-lenders/

loan servicers' handling of these loans to detect whether these illegal practices persist at other companies.[54]

The CFPB will continue its work to ensure lenders and servicers comply with federal consumer financial law.

[54] https://www.consumerfinance.gov/about-us/newsroom/cfpb-heightens-scrutiny-of-unlawful-collection-of-payments-on-discharged-student-loans/

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Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Elizabeth Warren:

Enacted in the wake of the Great Recession, Section 1044 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* establishes the limited conditions under which federal law trumps state consumer protection laws.[55] By statute, the Consumer Financial Protection Bureau (CFPB) plays a critical role in this regime. For instance, the Office of the Comptroller of the Currency (OCC) must first consult with the CFPB and take the CFPB's views into account before determining whether another state law is substantively equivalent to a state law that the OCC is preempting.[56] Given the CFPB's responsibilities, I would like to better understand the Bureau's position on the purpose and operation of the federal preemption regime for state consumer protection laws.

1. What role did federal preemption of state consumer protection laws play in the financial crisis of 2007 and 2008?

Response: Federal preemption of state consumer protection laws helped cause the 2008 financial crisis.[57] As the Financial Crisis Inquiry Commission found, federal regulators failed to heed major warning signs at the state level associated with risky subprime lending and securitization and even contributed to the rise of these dangerous activities.[58] As specifically relevant here, the Commission noted:

For years, some states had tried to regulate the mortgage business, especially to clamp down on the predatory mortgages proliferating in the subprime market. The national thrifts and banks and their federal regulators—the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC), respectively—resisted the states' efforts to regulate those national banks and thrifts. The companies claimed that without one uniform set of rules, they could not easily do business across the country, and the regulators agreed…. Back in 1996[,] the OTS had issued rules saying federal law preempted state predatory lending laws for federally regulated thrifts…. The Comptroller of the Currency took the same line on the national banks that it regulated, offering preemption as an inducement to use a national bank charter.[59]

The legislative history of the Dodd-Frank Act makes very clear that Congress believed that federal preemption of state consumer protection laws, and the OCC's actions on preemption, contributed to the 2008 crisis. For example, the Dodd-Frank Act's Senate report states that

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[55] *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Sec. 1044, Public Law 111-203 (codified at 12 U.S.C. § 25b).
[56] *Id.*
[57] *See* National Commission on the Causes of the Financial and Economic Crisis, *The Financial Crisis Inquiry Report*, at xxiii (Jan. 2011).
[58] The Financial Crisis Inquiry Report, at xvii.
[59] The Financial Crisis Inquiry Report, at 111-13.

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"the OCC and the OTS actively created an environment where abusive mortgage lending could flourish without State controls."[60]

2. In your view, what are the conditions under which the OCC may preempt state consumer protection law pursuant to Section 1044 of the *Dodd-Frank Act*?

   Response: Section 1044 of the Dodd-Frank Act is clear that state consumer financial laws are preempted "only if" one of the three conditions is met:

   > *(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;*
   >
   > *(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law; or*
   >
   > *(C) the State consumer financial law is preempted by a provision of Federal law other than title 62 of the Revised Statutes.*[61]

   There is accordingly no other legal scenario in which state consumer financial laws are preempted or that the OCC can preempt state consumer financial laws.

3. Since *Dodd-Frank* became law, how many times has the OCC conducted a statutorily mandated consultation with the CFPB regarding the OCC's preemption determinations?

   Response: The OCC has never conducted the consultation with the Consumer Financial Protection Bureau (CFPB) that is required by section 1044 of the Dodd-Frank Act, 12 U.S.C. § 25b(b)(3)(B).

4. Should national banks comply with state requests for information regarding non-preempted state consumer protection laws? Please explain.

   Response: The CFPB believes that compliance with, and enforcement of, state consumer protection laws is critically important for avoiding consumer harm, preventing problematic practices from developing into severe safety and soundness issues for the firm, and limiting risks to the stability of the financial system more broadly. Furthermore, in the CFPB's

[60] S. Rep. 111-176, at 16-17 (2010).
[61] 12 U.S.C. § 25b(b)(1).

experience, financial institutions with strong risk management, compliance programs, and internal controls cooperate fully with law enforcement investigations to address issues before they fester. As noted above, in the run up to the 2008 financial crisis, federal regulators failed to heed major warning signs at the state level associated with risky subprime lending and securitization and even contributed to the rise of these dangerous activities.[62] *The rigorous enforcement of state laws by state regulators and law enforcement agencies is critically important to ensuring that these failures are not repeated. Accordingly, the CFPB believes that national banks' compliance with state requests for information regarding state consumer protection laws is in the best interest of consumers, financial institutions, and the financial system as a whole.*

[62] The Financial Crisis Inquiry Report, at xvii.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

CONSUMER FINANCIAL PROTECTION BUREAU | SPRING 2023

Semi-Annual Report of the Consumer Financial Protection Bureau

Consumer Financial Protection Bureau

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1. Rules and Orders

1.1 List of significant rules and orders adopted by the CFPB

During the reporting period of this Semi-Annual Report, the Consumer Financial Protection Bureau (CFPB) adopted the following significant rules and orders.[1]

Final rules:

- *Final Rule: Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)*. In June 2022, the CFPB finalized an amendment to Regulation V, which implements the Fair Credit Reporting Act (FCRA), as mandated by the National Defense Authorization Act for Fiscal Year 2022 to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.[2] The final rule established a method for a victim of trafficking to submit documentation to consumer reporting agencies, including information identifying any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibited the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information.

- *Final Rule: Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders*. In November 2022, the CFPB finalized changes to its procedures for establishing supervisory authority based on a risk determination.[3] The changes added a mechanism for the CFPB to make public final decisions and orders in these proceedings.

- *Final Rule: Small Business Lending Under the Equal Credit Opportunity Act (Regulation B)*. In March 2023, the CFPB finalized an amendment to Regulation B to

[1] A complete listing of the CFPB's rulemaking actions taken during this reporting period is available on the CFPB's website: https://www.consumerfinance.gov/rules-policy/.

[2] "Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)," Consumer Financial Protection Bureau, June 23, 2022, https://files.consumerfinance.gov/f/documents/cfpb_fcra-trafficking_final-rule_2022-06.pdf.

[3] "Supervisory Authority Over Certain Nonbank Covered Persons Based on Risk Determination; Public Release of Decisions and Orders," Consumer Financial Protection Bureau, Nov. 10, 2022, https://files.consumerfinance.gov/f/documents/cfpb_supervisory-risk-determinations-rule_2022-11.pdf.

implement changes to the Equal Credit Opportunity Act (ECOA), as mandated by section 1071 of the Consumer Financial Protection Act (CFPA).[4] Consistent with section 1071, covered financial institutions are required to collect and report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The final rule also addresses the CFPB's approach to shielding certain demographic data from underwriters and other persons; recordkeeping requirements; and enforcement provisions.

[4] "Small Business Lending under the Equal Credit Opportunity Act (Regulation B)," Consumer Financial Protection Bureau, Mar. 30, 2023, https://files.consumerfinance.gov/f/documents/cfpb_1071-final-rule.pdf.

The CFPB released the following significant proposed rules and pre-rule materials:

- *Proposed Rule: Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking.* In April 2022, the CFPB proposed to implement an amendment to the Fair Credit Reporting Act, which would establish a method for a victim of trafficking to submit documentation to consumer reporting agencies, including information identifying any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibit the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information.[5] The CFPB took this action as mandated by the National Defense Authorization Act for Fiscal Year 2022 and to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.

- *SBREFA Outline: Small Business Advisory Review Panel for the Required Rulemaking on Personal Financial Data Rights – Outline of Proposals and Alternatives Under Consideration.* In October 2022, the CFPB outlined options to strengthen consumers' access to, and control over, their financial data as a first step before issuing a proposed data rights rule that would implement section 1033 of the CFPA.[6]

- *Proposed Rule: Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders.* In December 2022, the CFPB proposed to require certain nonbank covered person entities (with exclusions for insured depository institutions, insured credit unions, related persons, States, certain other entities, and natural persons) that are under certain final public orders obtained or issued by a Federal, State, or local agency in connection with the offering or provision of a consumer financial product or service to report the existence of such orders to a CFPB registry.[7] Pursuant to its authority under the CFPA, the CFPB also proposed to require certain supervised nonbanks to submit annual written statements regarding compliance with each underlying order, signed by an attesting executive who has knowledge of the entity's

[5] "Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V)," Consumer Financial Protection Bureau, Apr. 7, 2022, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-cases-of-human-trafficking_nprm_2022-04.pdf.

[6] "Small Business Advisory Review Panel For Required Rulemaking on Personal Financial Data Rights: Outline of Proposals and Alternatives Under Consideration," Consumer Financial Protection Bureau, Oct. 27, 2022, https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf.

[7] "Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders," Consumer Financial Protection Bureau, Dec. 12, 2022, https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule__registry-of-nonbank-covered-persons_2022.pdf.

relevant systems and procedures for achieving compliance and control over the entity's compliance efforts.

- *Proposed Rule: Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections*. In January 2023, the CFPB proposed a rule to require that nonbanks subject to its supervisory authority, with limited exceptions, register each year in a nonbank registration system established by the CFPB and include information about their use of certain terms and conditions in form contracts for consumer financial products and services that pose risks to consumers.[8] In particular, these nonbanks would be required to register if they use specific terms and conditions defined in the proposed rule that attempt to waive consumers' legal protections, to limit how consumers enforce their rights, or to restrict consumers' ability to file complaints or post reviews. To facilitate public awareness and oversight by other regulators including the States, the CFPB proposed to publish information identifying registrants and their use of these terms and conditions.

- *Proposed Rule: Credit Card Penalty Fees.* In February 2023, the CFPB proposed to amend Regulation Z, which implements the Truth in Lending Act (TILA), to better ensure that the late fees charged on credit card accounts are "reasonable and proportional" to the late payment, as required under the TILA.[9] The CFPB proposed to adjust the safe harbor dollar amount for late fees to $8 and eliminate a higher safe harbor dollar amount for late fees for subsequent violations of the same type; provide that the current provision that provides for annual inflation adjustments for the safe harbor dollar amounts would not apply to the late fee safe harbor amount; and provide that late fee amounts must not exceed 25 percent of the required payment.

Orders:

- *Preemption Determination: Truth in Lending; Determination of Effect on State Laws (California, New York, Utah, and Virginia).* In March 2023, the CFPB, after considering

[8] "Registry of Supervised Nonbanks that Use Form Contracts to Impose Terms and Conditions that Seek to Waive or Limit Consumer Legal Protections," Consumer Financial Protection Bureau, Jan. 11, 2023, https://files.consumerfinance.gov/f/documents/cfpb_registry-of-supervised-nonbanks_2023-01.pdf.

[9] "Credit Card Penalty Fees (Regulation Z)," Consumer Financial Protection Bureau, Feb. 1, 2023, https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees-nprm_2023-02.pdf.

public comments, determined that commercial financing disclosure laws in California, New York, Utah, and Virginia are not preempted by TILA.[10]

1.2 List of significant initiatives conducted by the CFPB

1.2.1 Reports

- *Data Spotlight: Challenges in Rural Banking Access.* In April 2022, the CFPB issued a Data Spotlight on the challenges faced by Americans in rural communities.[11] The report highlights that many of these communities lack access to physical bank branches, are more likely to seek credit from nonbanks, and are heavily affected by medical bills.

- *Complaint Bulletin: Medical Billing and Collection Issues Described in Consumer Complaints.* In April 2022, the CFPB issued a Complaint Bulletin that analyzes consumer complaints submitted to the CFPB.[12] In 2021, the CFPB sent more than 750,000 complaints to approximately 3,400 companies for review and response. The topic of medical debt typically arose in complaints about debt collection and complaints about credit or consumer reporting. In 2021, approximately 15 percent of debt collection complaints were about attempts to collect a medical debt.

- *Fair Lending Annual Report to Congress:* In May 2022, the CFPB published its Annual Fair Lending Report to Congress describing the CFPB's fair lending activities in enforcement and supervision; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2021.[13]

[10] "Truth in Lending; Determination of Effect on State Laws (California, New York, Utah, and Virginia)," Consumer Financial Protection Bureau, Mar. 28, 2023, https://files.consumerfinance.gov/f/documents/cfpb_truth-in-lending-determination-of-effect-on-state-laws_2023-03.pdf.

[11] "Data Spotlight: Challenges in Rural Banking Access," Consumer Financial Protection Bureau, Apr. 19, 2022, https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf.

[12] "Complaint Bulletin: Medical Billing and Collection Issues Described in Consumer Complaints," Consumer Financial Protection Bureau, Apr. 20, 2022, https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin-medical-billing_report_2022-04.pdf.

[13] "Fair Lending Report of the Consumer Financial Protection Bureau," Consumer Financial Protection Bureau, May 6, 2022, https://files.consumerfinance.gov/f/documents/cfpb_2021-fair-lending_report_2022-05.pdf.

- *Report: Mortgage Servicing Metrics*. In May 2022, the CFPB published a report examining mortgage servicers' responses to the COVID-19 pandemic.[14] The data, collected across 16 large servicers from May through December 2021, reveal homeowners continue to face significant risks and challenges connected to working with their mortgage servicers. This problem is particularly acute for those borrowers struggling to make their mortgage payments after exiting COVID-19 hardship forbearances.

- *Report*: *Paid and Low-Balance Medical Collections on Consumer Credit Reports*. In July 2022, the CFPB released a report highlighting how changes announced by the three largest national consumer reporting companies – Experian, Equifax, and TransUnion – will affect people who have allegedly unpaid medical debt on their credit reports.[15] The report found that nearly half of consumers with medical collections appearing on their credit reports will likely continue to have medical collections reported after the changes fully go into effect in 2023.

- *Report: Buy Now, Pay Later: Market Trends and Consumer Impacts*. In September 2022, the CFPB released a report with insights on the Buy Now, Pay Later industry.[16] The report finds that industry grew rapidly during the pandemic, but borrowers may receive uneven disclosures and protections. The five firms surveyed in the report originated 180 million loans totaling over $24 billion in 2021, a near tenfold increase from 2019.

- *Report: Tenant Background Checks Market Report*. In November 2022, the CFPB released a report about the rental housing landscape and the tenant screening industry, the features of tenant screening reports, the regulatory landscape, and the participants in the tenant screening data ecosystem.[17] The report examines market challenges where longstanding issues have the potential to create or reinforce market distortions and harms for landlords and renters.

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[14] "Mortgage Servicing COVID-19 Pandemic Response Metrics: New Observations from Data Reported by Sixteen Servicers for May-December 2021," Consumer Financial Protection Bureau, May 16, 2022, https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-covid-19-pandemic-response-metrics_report_2022-05.pdf.

[15] "Paid and Low-Balance Medical Collections on Consumer Credit Reports," Consumer Financial Protection Bureau, July 27, 2022, https://www.consumerfinance.gov/data-research/research-reports/paid-and-low-balance-medical-collections-on-consumer-credit-reports/.

[16] "Buy Now, Pay Later: Market trends and consumer impacts," Consumer Financial Protection Bureau, Sept. 15, 2022, https://files.consumerfinance.gov/f/documents/cfpb_buy-now-pay-later-market-trends-consumer-impacts_report_2022-09.pdf.

[17] "Tenant Background Checks Market Report," Consumer Financial Protection Bureau, Nov. 1, 2022, https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf.

- *Report: Annual Report of Credit and Consumer Reporting Complaints*. In January 2023, the CFPB issued a report, released pursuant to Section 611(e)(5) of the FCRA, summarizing information gathered by the CFPB regarding certain consumer complaints transmitted by the CFPB to the three largest nationwide consumer reporting agencies (NCRAs)—Equifax, Experian, and TransUnion.[18] The CFPB concluded that, in most instances, the NCRAs did not satisfy their FCRA obligations to review certain complaints and to report outcomes to the CFPB. As a result, in 2021, the NCRAs closed complaints faster and with lower rates of reported relief. Reported relief, which typically consists of changes to a consumer's credit report, fell to less than 2 percent of complaints down from nearly 25 percent of complaints in 2019.

- *Market Snapshot: Trends in Third-Party Debt Collections Tradelines Reporting*. In February 2023, the CFPB released a report that provides an overview of the trends in third-party debt collections tradelines on consumer credit reports from the first quarter of 2018 to the first quarter of 2022.[19]

- *Report: Consumer Use of Buy Now, Pay Later – Insights from the CFPB Making Ends Meet Survey*. In March 2023, the CFPB released a report examining the consumer financial profiles of Buy Now, Pay Later (BNPL) borrowers using the CFPB's Making Ends Meet survey and its association with credit bureau data.[20] While many BNPL borrowers used the product without any noticeable indications of financial stress, BNPL borrowers were, on average, much more likely to be highly indebted, revolve on their credit cards, have delinquencies in traditional credit products, and use high-interest financial services such as payday, pawn, and overdraft compared to non-BNPL borrowers. BNPL borrowers also had higher credit card utilization rates and lower credit scores compared to non-BNPL borrowers.

1.2.2 Guidance

- *Advisory Opinion: Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements*. In May 2022, the CFPB issued an advisory opinion affirming ECOA—which bars creditors from discriminating on a prohibited basis against applicants in any aspect of a credit transaction—protects applicants who have received credit, not just

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[18] "Annual Report of Credit And Consumer Reporting Complaints," Consumer Financial Protection Bureau, Jan. 3, 2023, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2023-01.pdf.

[19] "Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting," Consumer Financial Protection Bureau, Feb. 14, 2023, https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-third-party-debt-collections-tradelines-reporting_2023-02.pdf.

[20] "Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey," Consumer Financial Protection Bureau, Mar. 2, 2023, https://files.consumerfinance.gov/f/documents/cfpb_consumer-use-of-buy-now-pay-later_2023-03.pdf.

those who are in the process of applying for credit.[21] This includes the requirement to provide "adverse action notices" to borrowers with existing credit.

- *Consumer Financial Protection Circular 2022-02: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance*. In May 2022, the CFPB released a *Consumer Financial Protection Circular* that addresses prohibited practices on claims about Federal Deposit Insurance Corporation (FDIC) insurance.[22] The *Circular* emphasizes that firms cannot misuse the name or logo of the FDIC or make deceptive representations about deposit insurance.

- *Consumer Financial Protection Circular 2022-03: Adverse Action Notice Requirements in Connection with Credit Decisions Based on Complex Algorithms*. In May 2022, the CFPB released a *Consumer Financial Protection Circular* to remind the public, including those responsible for enforcing federal consumer financial protection law, of creditors' adverse action notice requirements under ECOA.[23] The *Circular* affirmed that federal anti-discrimination law requires companies to explain to applicants the specific reasons for denying an application for credit or taking other adverse action, and that this remains true even if the creditor is relying on credit models that use complex algorithms.

- *Interpretive Rule: The Fair Credit Reporting Act's Limited Preemption of State Laws*. In June 2022, the CFPB issued an interpretive rule affirming states' abilities to protect their residents through their own fair credit reporting laws.[24] With limited preemption exceptions, states have the flexibility to preserve fair and competitive credit reporting markets by enacting state-level laws that are stricter than the federal protections in FCRA.

- *Advisory Opinion: Debt Collection Practices (Regulation F); Pay-to-Pay Fees*. In June 2022, the CFPB issued an advisory opinion affirming that the Fair Debt Collection Practices Act (FDCPA) and Regulation F prohibit debt collectors from charging

[21] "Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements," Consumer Financial Protection Bureau, May 5, 2022, https://files.consumerfinance.gov/f/documents/cfpb_revoking-terms-of-existing-credit-arrangement_advisoryopinion_2022-05.pdf.

[22] "Consumer Financial Protection Circular 2022-02: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance," Consumer Financial Protection Bureau, May 17, 2022, https://files.consumerfinance.gov/f/documents/cfpb_2022-02_circular_2022-05.pdf.

[23] Consumer Financial Protection Circular 2022-03: Adverse Action Notification Requirements in Connection with Credit Decisions Based on Complex Algorithms," Consumer Financial Protection Bureau, May 26, 2022, https://files.consumerfinance.gov/f/documents/cfpb_2022-03_circular_2022-05.pdf.

[24] "The Fair Credit Reporting Act's Limited Preemption of State Laws," Consumer Financial Protection Bureau, June 28, 2022, https://files.consumerfinance.gov/f/documents/cfpb_fcra-preemption_interpretive-rule_2022-06.pdf.

consumers pay-to-pay fees (also known as convenience fees) for making payment a particular way, such as by telephone or online, unless those fees are expressly authorized by the underlying agreement that created the debt or are affirmatively permitted by law.[25] The advisory opinion also states that a debt collector may violate the FDCPA and Regulation F when the debt collector collects pay-to-pay fees through a third-party payment processor.

- *Advisory Opinion: Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports*. In July 2022, the CFPB issued an advisory opinion outlining certain obligations of consumer reporting agencies and consumer report users under section 604 of FCRA.[26] The advisory opinion explains that the permissible purposes listed in FCRA section 604(a)(3) are consumer specific, and it affirms that a consumer reporting agency may not provide a consumer report to a user under the FCRA section 604(a)(3) unless it has reason to believe that all of the consumer report information it includes pertains to the consumer who is the subject of the user's request. The advisory opinion notes that disclaimers will not cure a failure to have a reason to believe that a user has a permissible purpose for a consumer report provided pursuant to the FCRA section 604(a)(3). The advisory opinion also reminds consumer report users that the FCRA section 604(f) strictly prohibits a person who uses or obtains a consumer report from doing so without a permissible purpose.

- *Interpretive Rule: Limited Applicability of the CFPA's "Time or Space" Exception with Respect to Digital Marketing Providers*. In August 2022, the CFPB issued an interpretive rule clarifying when digital marketing providers for financial firms must comply with federal consumer financial protection law.[27] As laid out in the interpretive rule, digital marketers that are involved in the identification or selection of prospective customers or the selection or placement of content to affect consumer behavior are typically service providers for purposes of the law. Digital marketers acting as service providers can be held liable by the CFPB or other law enforcers for committing unfair, deceptive, or abusive acts or practices as well as other consumer financial protection violations.

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[25] "Debt Collection Practices (Regulation F); Pay-to-Pay Fees," Consumer Financial Protection Bureau, June 29, 2022, https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf.

[26] "Fair Credit Reporting; Permissible Purposes for Furnishing, Using, and Obtaining Consumer Reports," Consumer Financial Protection Bureau, July 7, 2022, https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting_advisory-opinion_2022-07.pdf.

[27] "Interpretive rule on the Limited Applicability of Consumer Financial Protection Act's "Time or Space" Exception with Respect to Digital Marketing Providers," Consumer Financial Protection Bureau, Aug. 10, 2022, https://files.consumerfinance.gov/f/documents/cfpb_time-or-space_interpretive-rule_signed_2022-08.pdf.

- *Consumer Financial Protection Circular 2022-06: Unanticipated Overdraft Fee Assessment Practices*. In October 2022, the CFPB issued a *Circular* stating that overdraft fees assessed by financial institutions on transactions that a consumer would not reasonably anticipate are likely unfair.[28] These unanticipated overdraft fees are likely to impose substantial injury on consumers that they cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

- *Bulletin 2022-06: Unfair Returned Deposited Item Fee Assessment Practices*. In October 2022, the CFPB issued a Bulletin warning that blanket policies of charging Returned Deposited Item fees to consumers for all returned transactions regardless of the circumstances or patterns of behavior on the account are likely unfair.[29] The bulletin explained that as a matter of prosecutorial discretion, the CFPB would not intend to seek monetary relief for potential unfair practices regarding these fees assessed prior to November 1, 2023.

- *Advisory Opinion: Facially False Data in Consumer Reports*. In October 2022, the CFPB issued guidance to consumer reporting companies about their obligation to screen for and eliminate obviously false "junk data" from consumers' credit reports.[30]

- *Consumer Financial Protection Circular 2023-01: Unlawful Negative Option Marketing Practices*. In January 2023, the CFPB issued a *Circular* stating that negative option marketing practices may violate that prohibition where a seller (1) misrepresents or fails to clearly and conspicuously disclose the material terms of a negative option program; (2) fails to obtain consumers' informed consent; or (3) misleads consumers who want to cancel, erects unreasonable barriers to cancellation, or fails to honor cancellation requests that comply with its promised cancellation procedures.[31]

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[28] "Consumer Financial Protection Circular 2022-06: Unanticipated Overdraft Fee Assessment Practices," Consumer Financial Protection Bureau, Oct. 26, 2022, https://files.consumerfinance.gov/f/documents/cfpb_unanticipatedoverdraft-fee-assessment-practices_circular_2022-10.pdf.

[29] "Bulletin 2022-06: Unfair Returned Deposited item Fee Assessment Practices," Consumer Financial Protection Bureau, Oct. 26, 2022, https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf.

[30] "Fair Credit Reporting; Facially False Data," Consumer Financial Protection Bureau, Oct. 20, 2022, https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-facially-false-data_advisory-opinion_2022-10.pdf.

[31] "Consumer Financial Protection Circular 2023-1: Unlawful Negative Option Marketing Practices." Consumer Financial Protection Bureau, Jan. 19, 2023, https://files.consumerfinance.gov/f/documents/cfpb_unlawful-negative-option-marketing-practices-circular_2023-01.pdf.

- *Bulletin 2023-01: Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts.* In March 2023, the CFPB issued a bulletin warning student loan servicers of their obligation to halt unlawful conduct with respect to private student loans that have been discharged by bankruptcy courts, including attempting to collect on such discharged loans.[32] The CFPB directed these servicers to return illegally collected payments to affected consumers and cease these unlawful collection tactics.

1.3 Plan of the CFPB for rules, orders, or other initiatives conducted by the CFPB

1.3.1 Rules and orders

Upcoming Period:

- *Interim Final Rule: Facilitating the LIBOR Transition Consistent with the LIBOR Act (Regulation Z).* In April 2023, the CFPB issued an interim final rule amending Regulation Z to reflect the enactment of the Adjustable Interest Rate (LIBOR) Act (the LIBOR Act or Act) and its implementing regulation promulgated by the Board of Governors of the Federal Reserve System (Board).[33] The interim final rule further addresses the planned cessation of most U.S. Dollar (USD) LIBOR tenors after June 30, 2023, by incorporating the Board-selected benchmark replacement for consumer loans into Regulation Z. The interim final rule conforms the terminology from the LIBOR Act and the Board's implementing regulation into relevant Regulation Z open-end and closed-end credit provisions and also addresses treatment of the 12-month USD LIBOR index and its replacement index, including permitting creditors to use alternative language in change-in-terms notice content requirements for situations where the 12-month tenor of the LIBOR index is being replaced consistent with the LIBOR Act.

- *Proposed Rule: Residential Property Assessed Clean Energy Financing (Regulation Z).* In May 2023, the CFPB proposed rules to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of the

[32] "Bulletin 2023-01: Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts," Consumer Financial Protection Bureau, Mar. 16, 2023, https://files.consumerfinance.gov/f/documents/cfpb_unfair-billing-collection-bankruptcy-student-loan-debt_2023-01.pdf.

[33] "Facilitating the LIBOR Transition Consistent with the LIBOR Act (Regulation Z)," Consumer Financial Protection Bureau, Apr. 28, 2023, https://files.consumerfinance.gov/f/documents/cfpb_facilitating-libor-transition-libor-act-regulation-z_2023-04.pdf.

TILA for violations.[34] The rulemaking is required by section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). PACE financing is used to cover the costs of home improvements that results in a tax assessment on the real property of the consumer. The CFPB proposed to implement EGRRCPA section 307 and to amend Regulation Z to address how the TILA applies to PACE transactions to account for the unique nature of PACE.

- *Proposed Interagency Rule: Quality Control Standards for Automated Valuation Models.* In June 2023, the CFPB, the Board, FDIC, National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Federal Housing Finance Agency (FHFA) (collectively, the agencies) proposed a rule to implement the quality control standards mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for the use of automated valuation models (AVMs) by mortgage originators and secondary market issuers in determining the collateral worth of a mortgage secured by a consumer's principal dwelling.[35] Under the proposal, the agencies would require institutions that engage in certain credit decisions or securitization determinations to adopt policies, practices, procedures, and control systems to ensure that AVMs used in these transactions to determine the value of mortgage collateral adhere to quality control standards designed to ensure a high level of confidence in the estimates produced by AVMs; protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and comply with applicable nondiscrimination laws.

- *Proposed Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations.* In June 2023, the CFPB, along with the OCC, FDIC, FRB, and NCUA requested public comment on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions.[36] The proposed guidance advises on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal or if deficiencies are identified in the original appraisal.

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[34] "Residential Property Assessed Clean Energy Financing (Regulation Z)," Consumer Financial Protection Bureau, May 1, 2023, https://files.consumerfinance.gov/f/documents/cfpb_residential-property-assessed-clean-energy-financing-regulation-z_2023-05.pdf.

[35] "Quality Control Standards for Automated Valuation Models," Consumer Financial Protection Bureau, June 1, 2023, https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf.

[36] "Interagency Guidance on Reconsiderations of Value of Residential Real Estate Valuations," Consumer Financial Protection Bureau, et al., June 8, 2023, https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf.

- *SBREFA Outline: Small Business Advisory Review Panel for Consumer Reporting Rulemaking - Outline of Proposals and Alternatives Under Consideration.* In September 2023, the CFPB outlined proposals and alternatives under consideration for the CFPB's consumer reporting rulemaking.[37] The CFPB is considering, for example: (1) proposals to regulate many data broker activities as covered under the FCRA, which would prohibit the sale of covered data for purposes other than those authorized under the FCRA; (2) proposals to address the problem of unreliable or unnecessary medical collection tradelines appearing on consumer reports that creditors use in making underwriting decisions; and (3) proposals to address other issues that have arisen in the years since the FCRA's enactment, or that are areas of particular risk for consumer harm.

1.3.2 Other initiatives

Upcoming Period:

- *Policy Statement: Abusive Acts or Practices.* In April 2023, the CFPB issued a policy statement that discusses the legal prohibition on abusive conduct in consumer financial markets and summarizes over a decade of precedent.[38]

- *Notice of Availability: Notice of Availability of Revised Methodology for Determining Average Prime Offer Rates.* In April 2023, the CFPB announced the availability of a revised version of its "Methodology for Determining Average Prime Offer Rates," which describes the data and methodology used to calculate the average prime offer rate (APOR) for purposes of Regulation C and Regulation Z.[39] The methodology statement was revised to address the imminent unavailability of certain data the CFPB previously relied on to calculate APORs as a result of a recent decision by Freddie Mac to make changes to its Primary Mortgage Market Survey® (PMMS). The CFPB identified a suitable alternative source of the relevant data and began relying on those data to calculate APORs on or after April 21, 2023.

- *Advisory Opinion: "Fair Debt Collection Practices Act (Regulation F); Time-Barred Debt.* In April 2023, the CFPB issued an advisory opinion affirming that the Fair Debt Collection Practices Act (FDCPA) and its implementing regulation, Regulation F,

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[37] "Small Business Advisory Review Panel for Consumer Reporting Rulemaking: Outline of Proposals and Alternative Under Consideration," Consumer Financial Protection Bureau, Sept. 15, 2023, https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.

[38] "Policy Statement on Abusive Acts or Practices," Consumer Financial Protection Bureau, Apr. 3, 2023, https://files.consumerfinance.gov/f/documents/cfpb_policy-statement-of-abusiveness_2023-03.pdf.

[39] "Methodology for Determining Average Prime Offer Rates," Consumer Financial Protection Bureau, Apr. 14, 2023, https://files.consumerfinance.gov/f/documents/cfpb_methodology-for-determining-average-prime-offer-rates_2023-04.pdf.

prohibit a debt collector, as that term is defined in the statute and regulation, from suing or threatening to sue to collect a time-barred debt.[40] Accordingly, an FDCPA debt collector who brings or threatens to bring a State court foreclosure action to collect a time-barred mortgage debt may violate the FDCPA and Regulation F.

- *Report: Medical Credit Cards and Financing Plans*. In May 2023, the CFPB released a report that highlights some of the risks to consumers of using financing products such as medical credit cards and installment loans to pay for medical procedures and services.[41] The report provides a background on these products, highlights potential lack of transparency and financial risks to consumers, analyzes data on deferred interest healthcare credit cards, and offers a summary of the terms for a sample of medical financing products.

- *Joint Statement: CFPB and Federal Partners Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems*. In May 2023, the CFPB, in conjunction with the Civil Rights Division of the United States Department of Justice (DOJ), the Federal Trade Commission (FTC), and the U.S. Equal Employment Opportunity Commission, released a Joint Statement outlining a commitment to apply their respective laws and regulations to the use of automated systems and innovative new technologies just as they apply to other practices.[42]

- *Issue Spotlight: Medical Billing and Collections Among Older Americans*. In May 2023, the CFPB released an Issue Spotlight from the Office for Older Americans showing that older adults, most of whom have health insurance coverage, are among the millions of Americans who experience problems with reporting and collection of inaccurate medical bills.[43] The Issue Spotlight describes how medical billing practices can lead to inaccurate bills and attempts to collect amounts that are not owed from people 65 and older. It also describes the impact of inaccurate medical bills, including coercive credit reporting on older adults.

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[40] "Fair Debt Collection Practices Act (Regulation F); Time-Barred Debt," Consumer Financial Protection Bureau, Apr. 26, 2023, https://files.consumerfinance.gov/f/documents/cfpb_regulation-f-time-barred-debt_advisory-opinion_2023-04.pdf.

[41] "Medical Credit Cards and Financing Plans," Consumer Financial Protection Bureau, May 4, 2023, https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf.

[42] "Joint Statement on Enforcement Against Discrimination and Bias in Automated Systems," Consumer Financial Protection Bureau, et al., May 30, 2023, https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.

[43] "Issue Spotlight: Medical Billing and Collection Among Older Americans," Consumer Financial Protection Bureau, May 30, 2023, https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/.

- *Issue Spotlight: Analysis of Deposit Insurance Coverage on Funds Stored Through Payment Apps*. In June 2023, the CFPB released an Issue Spotlight from the Office of Competition & Innovation and the Office of Markets on digital payment apps heavily used by consumers and businesses.[44] The analysis found that funds stored on these apps may not be safe in the event of financial distress, since the funds may not be held in accounts with federal deposit insurance coverage. The CFPB also issued a related consumer advisory for customers holding funds in these apps, highlighting how consumers can make sure their funds remain safe.

- *Report: Office of Servicemember Affairs 2022 Annual Report.* In June 2023, the CFPB released the Office of Servicemember Affairs' Annual Report on the top financial concerns facing military families.[45] This report highlights the growth of digital payment app usage in the servicemember community, the unique risks to servicemembers from these services, and the potential for abuse by bad actors.

- *Data Spotlight: Banking and Credit Access in the Southern Region of the U.S.* In June 2023, the CFPB released a Data Spotlight analyzing banking and credit access in the southern region of the United States.[46] The Data Spotlight identifies gaps in credit access, as well as opportunities to increase financial access in the region, particularly branch presence and bank account access, and capital access such as mortgage lending and small business lending. The spotlight analyzes trends in the region as a whole, and differences between rural and non-rural areas.

- *Report: Consumer Finances in Rural Areas of the Southern Region*. In June 2023, the CFPB released a report that takes a broad look at consumer financial profiles in the southern region of the United States compared to other geographies, including credit scores, financial distress, medical debt, and other debt categories.[47] Covering the nearly 48 million people living in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, this report provides a starting point in better

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[44] "Issue Spotlight: Analysis of Deposit Insurance Coverage on Funds Stored Through Payment Apps," Consumer Financial Protection Bureau, June 1 2023, https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-analysis-of-deposit-insurance-coverage-on-funds-stored-through-payment-apps/full-report/.

[45] "Consumer Financial Protection Bureau Report: Office of Servicemember Affairs 2022 Annual Report," Consumer Financial Protection Bureau, June 20, 2023, https://files.consumerfinance.gov/f/documents/cfpb_osa-annual-report_2022.pdf.

[46] "Data Spotlight: Banking and Credit Access in the Southern Region of the U.S," Consumer Financial Protection Bureau, June 21, 2023, https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf.

[47] "Consumer Finances in Rural Areas of the Southern Region," Consumer Financial Protection Bureau, June 21, 2023, https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf.

understanding the financial situations, needs, and challenges of consumers in rural areas in the southern region.

- *Report: Fair Lending Annual Report to Congress.* In June 2023, the CFPB published its annual Fair Lending Report to Congress describing the CFPB's fair lending activities in enforcement and supervision; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2022.[48]

- *Issue Spotlight: Consumer Risks Posed by Employer-Driven Debt.* In July 2023, the CFPB released an Issue Spotlight highlighting the risks employer-driven debt poses to workers.[49] The report highlights the findings from a public inquiry the CFPB conducted in June 2022 seeking data about, and worker experiences with, employer-driven debt. It presents highlights derived from workers' individual experiences and examines findings based on market-level research on employer-driven debts.

- *Issue Spotlight: Big Tech's Role in Contactless Payments: Analysis of Mobile Device Operating Systems and Tap-to-Pay Practices.* In September 2023, the CFPB released an Issue Spotlight from the Office of Competition & Innovation and the Office of Markets highlighting the impacts of Big Tech companies' policies and practices that govern tap-to-pay on mobile devices like smartphones and watches.[50] The Issue spotlight highlights Apple's current policies that forbid banks and payment apps from accessing the tap-to-pay functionality on Apple iOS devices and impose fees on card issuers for transactions through Apple Pay. The Issue spotlight also examines how restrictions imposed by mobile operating systems can have a significant impact on innovation, consumer choice, and the growth of open and decentralized banking and payments in the U.S.

- *Report: Tuition Payment Plans in Higher Education.* In September 2023, the CFPB released a report finding that students face risk when entering into agreements with colleges to spread the upfront cost of tuition into several, interest-free loan payments.[51] The report looks at tuition payment plans offered by nearly 450 institutions, finding that

[48] "Fair Lending Report of the Consumer Financial Protection Bureau," Consumer Financial Protection Bureau, June 29, 2023, https://files.consumerfinance.gov/f/documents/cfpb_fair-lending-report_2023-06.pdf.

[49] "Issue Spotlight Consumer Risks Posed By Employer Driven Debt," Consumer Financial Protection Bureau, July 20, 2023, https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-consumer-risks-posed-by-employer-driven-debt/full-report/.

[50] "Big Tech's Role in Contactless Payments: Analysis of Mobile Device Operating Systems and Tap-to-Pay Practices," Consumer Financial Protection Bureau, Sept. 7, 2023, https://www.consumerfinance.gov/data-research/research-reports/big-techs-role-in-contactless-payments-analysis-of-mobile-device-operating-systems-and-tap-to-pay-practices/full-report/.

[51] "Tuition Payment Plans in Higher Education," Consumer Financial Protection Bureau, Sept. 14, 2023, https://files.consumerfinance.gov/f/documents/cfpb_tuition_payment_plan_report_2023-09.pdf.

many plans have inconsistent disclosures and confusing repayment terms, putting students at risk of missing payments, incurring late fees, and accumulating debt. The analysis also uncovered that many institutions withhold transcripts from students as a debt collection tool—a potentially illegal practice that can have severe consequences for students trying to begin their careers or finish their education.

- *Consumer Financial Protection Circular 2023-03: Adverse Action Notification Requirements and the Proper Use of the CFPB's Sample Forms Provided in Regulation B*. In September 2023, the CFPB issued a *Circular* affirming that lenders must use specific and accurate reasons when taking adverse actions against consumers, including when using artificial intelligence and other complex models.[52]

[52] "Consumer Financial Protection Circular 2023-03: Adverse Action Notification Requirements and the Proper Use of the CFPB's Sample Forms Provided in Regulation B," Consumer Financial Protection Bureau, Sept. 19, 2023, https://files.consumerfinance.gov/f/documents/cfpb_adverse_action_notice_circular_2023-09.pdf.

2. Complaints

The CFPB has a statutory obligation to collect and monitor consumer complaints.[53] Consumers' complaints and companies' responses provide the CFPB with important information about the types of challenges consumers are experiencing with financial products and services and how companies are responding to consumers' concerns. The CFPB uses this information to monitor risk in financial markets, assess compliance risk at companies, and prioritize agency action.

2.1 An analysis of complaints about consumer financial products or services that the CFPB has received and collected in its central database on complaints

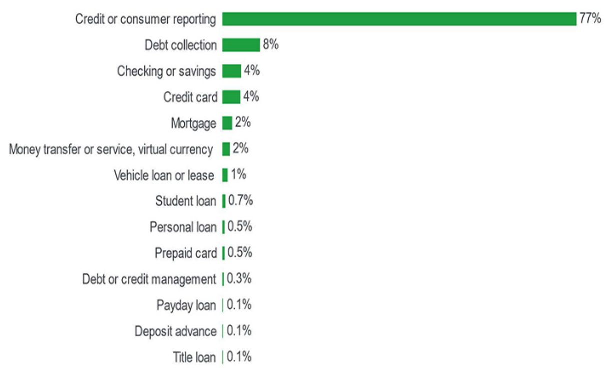
During the period of April 1, 2022, through March 31, 2023, the CFPB received approximately 1,346,800 consumer complaints.[54] Consumers submitted approximately 96 percent of these complaints through the CFPB's website and three percent via telephone calls. Referrals from other state and federal agencies accounted for one percent of complaints.

When consumers submit complaints, the CFPB's complaint form prompts them to select the consumer financial product or service with which they have a problem, as well as the type of problem they are having with that product or service. The CFPB uses these consumer selections to categorize the financial products and services about which consumers complain to the CFPB for public reports. As shown in Figure 1, credit or consumer reporting was the most complained about consumer financial product or service during the period, followed by debt collection.

[53] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Sections 1013(b)(3)(A) and 1021(b)(3)(A).

[54] Complaint data in this report are current as October 1, 2023. Percentages in this section of the report may not sum to 100 percent due to rounding. This analysis excludes multiple complaints submitted by a given consumer on the same issue and whistleblower tips. For more information on our complaint process, refer to the CFPB's website at: https://www.consumerfinance.gov/complaint/process.

FIGURE 1: COMPLAINT VOLUME BY FINANCIAL PRODUCT OR SERVICE



The CFPB sent approximately 944,300 of the complaints it received to companies for review and response.[55] Companies responded to approximately 99 percent of complaints referred by the CFPB during the period. Of these, more than 920,000 have been published in the CFPB's public-facing Consumer Complaint Database.[56] Company responses typically include: descriptions of steps that have been or will be taken in response to the consumer's complaint, communications received from the consumer, any follow-up actions or planned follow-up actions, and a categorization of the company's response. Companies' responses also describe a range of monetary and non-monetary relief. Examples of non-monetary relief include: correcting inaccurate data provided or reported in consumers' credit reports, stopping

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[55] The CFPB referred 5 percent of the complaints it received to other regulatory agencies and found 25 percent to be not actionable. Complaints that are not actionable include incomplete submissions, withdrawn complaints, and complaints the CFPB discontinued processing because it had reason to believe that a submitter did not disclose its involvement in the complaint process. At the end of this period, less than 0.01 percent of complaints were pending with the consumer and 0 percent were pending with the CFPB.

[56] *See* "Consumer Complaint Database," Consumer Financial Protection Bureau, https://www.consumerfinance.gov/data-research/consumer-complaints/. *See also* Disclosure of Consumer Complaint Narrative Data, 80 FR 15572, Mar. 24, 2015, https://www.federalregister.gov/documents/2015/03/24/2015-06722/disclosure-of-consumercomplaint-narrative-data.

unwanted calls from debt collectors, correcting account information, issuing corrected documents, restoring account access, and addressing formerly unmet customer service issues.

The CFPB analyzes consumer complaints, company responses, and consumer feedback to assess the accuracy, completeness, and timeliness of company responses so that the CFPB, other regulators, consumers, and the marketplace have relevant information about consumers' challenges with financial products and services. The CFPB uses a variety of approaches to identify trends and possible consumer harm. Examples include:

- Reviewing cohorts of complaints and company responses to assess the accuracy, timeliness, and completeness of an individual company's responses to complaints sent to them for response;
- Conducting text analytics to identify emerging trends and statistical anomalies; and
- Visualizing data to highlight geographic and temporal patterns.

The CFPB publishes periodic reports about its complaint analyses. For example, in January 2023, the CFPB published it's "Annual report of consumer and credit reporting complaints: An analysis of complaint responses by Equifax, Experian, TransUnion," which is required by Section 611(e) of the Fair Credit Reporting Act.[57] In March 2022, the CFPB also published the Consumer Response Annual Report, which is required by Section 1013(b)(3)(C) of the Dodd-Frank Act.[58] The CFPB also published complaint analyses in other mandatory and discretionary reports.

In addition to public reports, the CFPB makes complaint data available to the public in the Consumer Complaint Database (Database).[59] The Database contains certain de-identified, individual complaint level data as well as dynamic visualization tools, including geospatial and trend views based on recent complaint data, to help users of the database understand current and recent marketplace conditions. Finally, the CFPB also shares consumer complaint information with prudential regulators, the Federal Trade Commission (FTC), other federal agencies, and state and local agencies.

[57] "Annual Report of Consumer and Credit Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, TransUnion," Consumer Financial Protection Bureau, Jan. 5, 2023, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

[58] *See* "Consumer Response Annual Report," Consumer Financial Protection Bureau, Consumer Response Annual Mar. 31, 2022, https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf.

[59] *See* "Consumer Complaint Database," Consumer Financial Protection Bureau, https://www.consumerfinance.gov/data-research/consumer-complaints/.

3. Supervisory and Enforcement Actions

The CFPB's supervisory activities with respect to specific institutions are non-public. The CFPB has, however, issued numerous supervisory guidance documents and bulletins during the reporting period, which are described below. Public enforcement actions during the reporting period to which the CFPB was a party are also set forth in the following section. This section also identifies those actions involving Office of Administrative Adjudication Orders with respect to covered persons that are not credit unions or depository institutions.

3.1 List of public supervisory and enforcement actions

3.1.1 Statement of issues for public supervisory and enforcement actions

The CFPB was a party in the following public enforcement actions from April 1, 2022, through March 31, 2023, which are listed in descending chronological order by filing date.

- *Consumer Financial Protection Bureau v. Portfolio Recovery Associates, LLC* (E.D. Va. No. 2:23-cv-00110). On March 23, 2023, the CFPB filed a complaint and proposed stipulated final judgment and order to resolve the CFPB's claims against Portfolio Recovery Associates, LLC, one of the largest debt collectors in the United States. On September 9, 2015, the CFPB issued an order against Portfolio Recovery Associates (2015 Order) to address the CFPB's findings that Portfolio Recovery Associates violated the Consumer Financial Protection Act of 2010 (CFPA) and the Fair Debt Collection Practices Act (FDCPA) in connection with Portfolio Recovery Associates' debt collection practices. The CFPB alleges that Portfolio Recovery Associates violated the 2015 Order, the CFPA, the FDCPA, and the Fair Credit Reporting Act (FCRA) and its implementing Regulation V. Specifically, the CFPB alleges that Portfolio Recovery Associates violated the CFPA and, in some instances, the FDCPA, when it violated multiple conduct provisions from the 2015 Order, including prohibitions on (1) representing the amount or validity of unsubstantiated debt; (2) collecting on debt without offering to provide necessary documentation to consumers; (3) mispresenting that it would provide the offered documents within thirty days; (4) collecting on time-barred debt without making required disclosures; (5) initiating debt collection lawsuits without possessing required documentation; and (6) suing to collect time-barred debt. The CFPB also alleges that several of Portfolio Recovery Associates' practices for resolving disputes about information it furnished to consumer reporting agencies (CRAs) violated FCRA, Regulation V, and the CFPA. Specifically, the CFPB claims that Portfolio Recovery Associates failed to (1) timely resolve disputes submitted by consumers directly to Portfolio Recovery Associates; (2) properly respond to disputes that Portfolio Recovery Associates deemed frivolous; (3) conduct reasonable investigations of consumer's disputes; and (4) maintain reasonable policies and procedures regarding the accuracy and integrity of consumer information that it furnished to CRAs. The CFPB alleges that Portfolio Recovery Associates illegally collected millions of dollars through its unlawful conduct, and that its illegal dispute resolution practices impacted at least tens of thousands of consumers. The proposed order would require Portfolio Recovery Associates to pay at least $12.18 million in redress to harmed consumers and a $12 million civil money penalty. It would also impose broad injunctive relief designed to prevent Portfolio Recovery Associates from violating the law in the future. As of the end of the reporting period, the case remained pending.[60]

- *In the Matter of RMK Financial Corp. d/b/a Majestic Home Loan or MHL (2023-CFPB-0002) (not a credit union or depository institution).* On February 27, 2023, the CFPB issued an order against RMK Financial Corp. (RMK), a California-based mortgage lender that also does business under the name Majestic Home Loans. RMK, which is licensed as a mortgage broker or lender in at least 30 states, originates consumer mortgages, including mortgages guaranteed by the Department of Veterans Affairs (VA) and mortgages insured by the Federal Housing Administration (FHA). The CFPB previously issued an order against RMK on April 8, 2015 (2015 Order). The CFPB's 2015 Order was based on the CFPB's finding that RMK disseminated numerous advertisements for mortgages that contained deceptive representations in violation of the CFPA and the Mortgage Acts and Practices – Advertising Rule (Regulation N) or failed to include required disclosures in violation of the Truth in Lending Act (TILA) and its implementing regulation, Regulation Z. These included advertisements that RMK sent to U.S. military servicemembers and veterans that used the names and logos of the VA and FHA in a way that falsely implied that the advertisements were sent by the VA or FHA and advertisements that misrepresented the loan's terms. The 2015 Order required RMK to abide by a series of prohibitions against the types of misrepresentations and other violations the CFPB found in the 2015 Order. The CFPB found that, after the 2015 Consent Order went into effect, RMK disseminated millions of mortgage advertisements

[60] Additional activity has occurred with this matter since the end of the reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/portfolio-recovery-associates-llc/.

York Attorney General Letitia James filed a joint lawsuit against Credit Acceptance Corporation, an indirect auto lender that funds and services car loans for subprime and deep-subprime consumers. Credit Acceptance is one of the country's largest publicly traded auto lenders, doing business with a network of more than 12,000 affiliated used-car dealers. The joint complaint alleges that Credit Acceptance pushes dealers to sell cars with hidden interest costs and surreptitiously include expensive add-on products with vehicle sales. The complaint further alleges that Credit Acceptance applies complicated algorithms to predict how much it is likely to collect from borrowers to determine how much to offer dealers for each loan, resulting in high-cost loans – with annual percentage rates often exceeding state usury caps – made without regard for borrowers' ability to repay, while still yielding profits for Credit Acceptance. A significant number of Credit Acceptance's most credit-constrained borrowers become delinquent on their loans within the first year, and many also lose their cars to repossession and auction or suffer other negative effects from the loans. The joint complaint alleges that Credit Acceptance is engaging in deceptive acts or practices in violation of the CFPA by misrepresenting key loan terms, including the true principal, finance charge, and APR. The joint complaint further alleges that Credit Acceptance is engaging in abusive acts or practices by taking unreasonable advantage of consumers' lack of understanding of the risk of default and the severity of the consequences associated with its loans, and taking unreasonable advantage of consumers' inability to protect their interests in selecting or using Credit Acceptance's loans. The joint complaint also alleges that Credit Acceptance substantially assists dealers in the deceptive sale of add-on products. The complaint seeks permanent injunctive relief, damages, and civil money penalties. As of the end of the reporting period, the case remains pending.

- *In the Matter of Servicio UniTeller, Inc. (2022-CFPB-0012) (not a credit union or depository institution).* On December 22, 2022, the CFPB issued an order against Servicio UniTeller, Inc. (UniTeller), a nonbank remittance transfer provider headquartered in Rochelle Park, New Jersey. UniTeller offers and provides to consumers international money transfer services, known as remittance transfers, in 48 states and the District of Columbia and has more than 200,000 payment locations in more than 70 countries. The CFPB found that since 2013, UniTeller has engaged in wide-ranging failures to comply with the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E, including Subpart B, known as the Remittance Transfer Rule. These include failures to: (1) provide tax and fee refunds when required to remedy errors; (2) accurately inform senders of cancellation rights; (3) accurately disclose the date funds would be available; (4) accurately characterize key terms; (5) use required minimum font sizes; (6) develop and maintain compliant written error resolution policies and procedures; and (7) retain evidence showing its compliance with the

Remittance Transfer Rule and EFTA. These violations also constitute violations of the CFPA. The order requires UniTeller to provide approximately $30,000 in redress to consumers harmed by UniTeller's failures to provide timely remittance-transfer funds and to pay a civil money penalty of $700,000. UniTeller must also take measures to ensure future compliance.

- *In the Matter of Wells Fargo Bank, N.A. (2022-CFPB-0011).* On December 20, 2022, the CFPB issued an order against Wells Fargo Bank, N.A., which is a national bank headquartered in Sioux Falls, South Dakota. Wells Fargo is the third largest bank in the United States, with nearly $1.8 trillion in assets, and the largest provider of consumer financial products. The CFPB identified multiple violations across several of the bank's largest consumer product lines, which led to billions of dollars in financial harm and, in thousands of cases, the loss of customers' vehicles and homes. Specifically, with respect to auto loan servicing Wells Fargo engaged in unfair acts and practices in violation of the CFPA by incorrectly applying consumer payments; charging borrowers incorrect fees, interest, or other amounts; wrongly repossessing borrowers' vehicles; and failing to ensure consumers who had paid certain fees upfront to automobile dealers received refunds when the loan ended early. Wells Fargo also engaged in unfair practices by improperly denying mortgage loan modifications, miscalculating fees and other charges, and assessing unwarranted charges and fees. With respect to deposit accounts, Wells Fargo: unfairly froze consumer accounts in instances of suspected fraud based largely on an automated fraud filter when lesser restraints were available; made deceptive claims as to the availability of waivers of monthly service fees; and unfairly charged overdraft fees even if the consumer had enough funds available in their account to cover the amount of the transaction at the time they made it. The order requires Wells Fargo to come into compliance with federal consumer financial law, pay more than $2 billion in consumer redress, and to pay a $1.7 billion penalty.

- *In the Matter of Carrington Mortgage Services, LLC (2022-CFPB-0010) (not a credit union or depository institution).* On November 17, 2022, the CFPB issued an order against Carrington Mortgage Services, LLC, a California-based mortgage servicer operating in all fifty states. Carrington services a large number of federally backed mortgage loans, which are made or guaranteed by federal agencies or government-sponsored entities (GSEs). In 2020, Congress passed the CARES Act, which provided borrowers with federally backed mortgage loans who were experiencing financial hardship during the COVID-19 emergency with certain assistance, including forbearances of up to 180-days each upon request and protections for credit reporting. The federal agencies and GSEs also issued guidelines to their servicers relating to assistance to borrowers during the pandemic. The CFPB found that Carrington failed to implement a number of those protections through misrepresentations to consumers, including by: representing that borrowers could not have 180 days of forbearance on request or that certain borrowers could not have forbearance at all; representing that consumers had to make more detailed attestations than were actually required by law; representing that late fees for amounts in forbearance would be charged when they were not permitted; and providing incorrect or confusing information about forbearance and repayment options. The CFPB also found that Carrington did not accurately report the status of borrowers on forbearance to CRAs and failed to maintain and update its written policies and procedures relating to furnishing to CRAs in connection with the CARES Act. As a result, the CFPB determined that Carrington violated the CFPA's prohibition on deceptive conduct, as well as certain provisions of FCRA and its implementing regulation, Regulation V. The order requires Carrington to, among other things, conduct an audit to ensure any improperly charged late fees have been refunded to consumers, and if not, to refund them; to assess customer service staffing and provide training relating to applicable CARES Act and agency and GSE guidelines; to establish policies and procedures to prevent the issues from recurring; and to pay a civil money penalty of $5.25 million.

- *Consumer Financial Protection Bureau v. ACTIVE Network, LLC (E.D. Tex. No. 4:22-cv-00898).* On October 18, 2022, the CFPB filed a lawsuit against ACTIVE Network, LLC, a payment processor owned by Global Payments, Inc., with its headquarters in Plano, Texas. ACTIVE provides enrollment and payment processing services to organizers of charity races, youth camps, and other events. The CFPB alleges that ACTIVE engaged in deceptive and abusive acts and practices in violation of the CFPA by enrolling consumers in and charging them for discount club memberships without their knowledge, consent, or a full understanding of the material terms of the transaction. ACTIVE does this by inserting a webpage into the online event registration and payment process that provides an offer for a free trial enrollment in a discount club membership called "Active Advantage." Many consumers click on the highlighted call to action button – which is typically labeled "Accept" – because they believe that by doing so, they are accepting charges to participate in an event. Instead, consumers are enrolling in a trial membership in Active Advantage, which automatically converts to a paid subscription with an annual fee, unless consumers opt out by canceling their membership within 30 days. The CFPB also alleges that ACTIVE violated EFTA and Regulation E when it increased consumers' membership fees without sending the consumer written notice of the new amount and the date of the new payment at least 10 days before initiating the new payment. The violations of EFTA and Regulation E also constitute violations of the CFPA. The CFPB seeks redress to consumers, disgorgement, appropriate injunctive relief, and the imposition of civil money penalties. On November 29, 2022, the court stayed the case pending a decision from the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22448. As of the end of the reporting period, the case remains pending.

- *In the matter of Choice Money Transfer, Inc. d/b/a Small World Money Transfer (2022-CFPB-0009) (not a credit union or depository institution).* On October 4, 2022, the CFPB issued an order against Choice Money Transfer, Inc., which does business as Small World Money Transfer (Choice Money). Choice Money is a nonbank remittance transfer provider incorporated in New York and headquartered in New Jersey which offers remittances in at least 27 states and the District of Columbia. It provides remittances to over 90 countries worldwide through a nationwide network of over 2,000 agents and handles more than 500,000 transactions each month. The CFPB found that since the 2013 effective date of the Remittance Transfer Rule, Choice Money engaged in practices that violated numerous provisions of EFTA and its implementing Regulation E, including the Remittance Transfer Rule. Specifically, the CFPB found that Choice Money failed to comply with a wide range of disclosure requirements set out in EFTA and the Remittance Transfer Rule. Choice Money failed to disclose accurately certain required information, including when funds would be available to recipients, exchange rates, and transfer fees. Its disclosures also failed to use proper terms, to adequately disclose other key terms, to clearly and conspicuously disclose the exchange rate, and to provide disclosures in both English and Spanish as required by the Remittance Transfer Rule. Choice Money also failed to refund fees after senders properly submitted error resolution requests; failed to obtain consumer consent prior to providing receipts in electronic form on its mobile application and website platforms; failed to develop and maintain required policies and procedures for error resolution and to retain evidence demonstrating that it complied with error resolution requirements; and included in its disclosures an improper waiver of consumer rights under EFTA. These violations also constituted violations of the CFPA. The consent order requires Choice Money to come into compliance and to pay a civil money penalty of $950,000.

- *Consumer Financial Protection Bureau v. MoneyLion Technologies Inc.; ML Plus, LLC; MoneyLion of Alabama LLC; MoneyLion of Arizona LLC; MoneyLion of California LLC; MoneyLion of Colorado LLC; MoneyLion of Connecticut LLC; MoneyLion of Delaware LLC; MoneyLion of Florida LLC; MoneyLion of Georgia LLC; MoneyLion of Idaho LLC; MoneyLion of Illinois LLC; MoneyLion of Indiana LLC; MoneyLion of Kansas LLC; MoneyLion of Kentucky LLC; MoneyLion of Louisiana LLC; MoneyLion of Maryland LLC; MoneyLion of Michigan LLC; MoneyLion of Minnesota LLC; MoneyLion of Mississippi LLC; MoneyLion of Missouri LLC; MoneyLion of Nevada LLC; MoneyLion of New Jersey LLC; MoneyLion of New Mexico LLC; MoneyLion of*

New York LLC; MoneyLion of North Carolina LLC; MoneyLion of North Dakota LLC; MoneyLion of Ohio LLC; MoneyLion of Oklahoma LLC; MoneyLion of Oregon LLC; MoneyLion of South Carolina LLC; MoneyLion of South Dakota LLC; MoneyLion of Tennessee LLC; MoneyLion of Texas LLC; MoneyLion of Utah LLC; MoneyLion of Virginia LLC; MoneyLion of Washington LLC; MoneyLion of Wisconsin LLC; and MoneyLion of Wyoming LLC (S.D.N.Y. No. 1:22-cv-08308). On September 29, 2022, the CFPB filed a lawsuit against MoneyLion Technologies Inc. (MoneyLion), ML Plus, LLC, and 37 MoneyLion lending subsidiaries. MoneyLion is a fintech company (formerly known as MoneyLion Inc.) that offers online installment loans and other products to consumers through its lending subsidiaries and membership programs through its subsidiary ML Plus. The MLA contains a number of protections for active-duty servicemembers and their dependents, defined as "covered borrowers." The CFPB alleges that MoneyLion and its lending subsidiaries violated the MLA by imposing membership fees on covered borrowers that, when combined with loan-interest-rate charges, exceeded the MLA's annual percentage rate cap; inserting illegal arbitration provisions into contracts; and failing to make required disclosures to covered borrowers. The CFPB also alleges that MoneyLion, its lending subsidiaries, and ML Plus engaged in deceptive acts or practices in violation of the CFPA by misrepresenting that covered borrowers owed loan payments and associated fees that they did not in fact owe because loan contracts were void from their inception. The CFPB further alleges that MoneyLion and ML Plus engaged in unfair, deceptive, and abusive acts and practices by: not permitting consumers with unpaid loan balances to exit the membership program and stop monthly membership-fee charges; misrepresenting consumers' right to cancel their memberships for any reason and not clearly disclosing these restrictions on membership cancellation when consumers took out loans; and continuing to charge and collect monthly membership fees after consumers had asked to cancel their memberships or terminate ACH-fee withdrawals. The CFPB's complaint seeks redress for consumers, injunctive relief, and a civil money penalty. On January 10, 2023, the defendants moved to dismiss the complaint. As of the end of the reporting period, the case remains pending.

- *In the matter of Regions Bank* (2022-CFPB-0008). On September 28, 2022, the CFPB issued an order against Regions Bank (Regions), a bank headquartered in Birmingham, Alabama with consolidated assets over $163 billion. Previously, in 2015, the CFPB ordered Regions to cease certain unlawful conduct related to its charging overdraft fees to resolve the CFPB's findings that Regions: (1) violated the law when it charged overdraft fees on certain transactions without first obtaining the consumers' affirmative consent; and (2) deceived customers by charging them overdraft fees in connection with repaying deposit advances despite the bank's representations that it would not charge such fees. In this case, the CFPB found that, from August 2018 through July 2021, Regions charged overdraft fees on debit-card purchases and ATM withdrawals even though consumers had sufficient funds when they made the transaction ("Authorized-Positive Overdraft Fees"). There is a delay between the time a customer makes a purchase with a debit card and when Regions pays the merchant from the customer's account for the purchase. When a customer had sufficient funds in their account to make a debit-card purchase, Regions authorized the transaction. And yet, until July 2021, when it came time for Regions to pay the merchant for the initial purchase, Regions charged an overdraft fee on that purchase if the account's available funds were insufficient to cover the purchase at that time. Regions assessed these fees as a result of counter-intuitive, complex practices that it knew customers did not understand. The CFPB found that Regions acted unfairly and abusively in violation of the CFPA when it charged these Authorized-Positive Overdraft Fees. The CFPB also found that Regions could have discontinued the fee years ago but chose to wait while it pursued changes that would generate new overdraft fees to make up for the lost revenue from the illegal fee. The order prohibits Regions from charging Authorized-Positive Overdraft Fees and requires it to refund at least $141 million in unlawful overdraft fees and pay a $50 million civil money penalty.

- *In the matter of Hello Digit, LLC* (2022-CFPB-0007) (not a credit union or depository institution). On August 10, 2022, the CFPB issued an order against Hello Digit, LLC, a financial-technology company that offers consumers an automated-savings tool. When consumers sign up for the service, Hello Digit uses a proprietary algorithm to make automatic transfers from the consumer's checking account, called "auto-saves," to an account held in Hello Digit's name for the benefit of the consumers. Hello Digit represented that the tool "never transfers more than you can afford," provided a "no overdraft guarantee," and represented that, in the unlikely event of an overdraft, Hello Digit would reimburse all overdraft fees incurred by consumers. The CFPB found that Hello Digit engaged in deceptive acts or practices because, in fact, Hello Digit's automated-savings tool routinely caused consumers to incur overdraft fees charged by their banks, and Hello Digit did not always reimburse consumers for overdraft fees caused by the auto-save tool. The CFPB also found that as early as mid-2017, Hello Digit deceived consumers when it represented that it would not keep any interest earned on consumer funds that it was holding, when in fact Hello Digit kept a significant amount of the interest earned. The order prohibits Hello Digit from making any misrepresentations related to its auto-save tool and from requiring consumers to connect their third-party bank account to Hello Digit's account to obtain reimbursement for overdrafts. The order also requires that Hello Digit provide at least $68,145 in redress to all consumers who were denied reimbursement requests for overdraft fees caused by Hello Digit's auto-save tool. Hello Digit must also pay a $2.7 million penalty.

- *In the Matter of U.S. Bank National Association* (2022-CFPB-0006). On July 28, 2022, the CFPB issued an order against U.S. Bank National Association, a national bank headquartered in Minneapolis, Minnesota. To increase sales of certain consumer financial products or services, U.S. Bank imposed sales goals on bank employees as part of their job description and implemented an incentive-compensation program that financially rewarded employees for selling those products and services. The CFPB found that U.S. Bank issued credit cards and lines of credit and opened deposit accounts for certain consumers without their knowledge and consent and without required applications and disclosures in violation of TILA, the Truth in Savings Act (TISA), and their implementing regulations. The CFPB also found that the bank's opening of accounts without consumers' permission was abusive in violation of the CFPA. The CFPB further found that U.S. Bank violated FCRA by using or obtaining consumer reports without a permissible purpose in connection with unauthorized applications for credit cards. The bank's conduct harmed consumers in the form of fees; unwanted accounts; negative effects on consumer-credit profiles; the loss of control over personal identifying information; and the expenditure of consumer time and effort. The order requires U.S. Bank to stop its unlawful practices and to develop a plan to remediate all harmed consumers by returning all unlawfully charged fees and costs, plus interest. The order also requires U.S. Bank to pay a $37.5 million penalty to the CFPB.

- *Consumer Financial Protection Bureau and United States of America v. Trident Mortgage Company, LP* (E.D. Pa. No. 2:22-cv-02936). On July 27, 2022, the CFPB, together with the United States Department of Justice (DOJ), filed a complaint and proposed consent order to resolve their allegations against Trident Mortgage Company, LP (Trident). The court entered the order on September 14, 2022. Trident is incorporated in Delaware and had locations in Delaware, New Jersey, and Pennsylvania at the time of the alleged conduct. Before the complaint was filed, Trident ceased originating mortgages. The states of Delaware, New Jersey, and Pennsylvania entered into concurrent agreements with Trident. The CFPB's and DOJ's joint complaint alleged that Trident engaged in unlawful discrimination on the basis of race, color, or national origin against applicants and prospective applicants, including by redlining majority-minority neighborhoods in the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area (Philadelphia MSA) and engaged in acts and practices directed at prospective applicants that would discourage prospective applicants from applying for credit in violation of the Equal Credit Opportunity Act (ECOA), Regulation B, and the CFPA. DOJ also alleged that Trident's conduct violated the Fair Housing Act (FHA). The order requires Trident to invest $18.4 million in a loan subsidy program under which Trident will contract with a lender to increase the credit extended in majority-minority neighborhoods in the Philadelphia MSA and make the loans under the loan subsidy fund. That lender must also maintain at least four licensed branch locations in majority-minority neighborhoods in the Philadelphia MSA. Trident must also fund targeted advertising to generate applications for credit from qualified consumers in majority-minority neighborhoods in the Philadelphia MSA and take other remedial steps to serve the credit needs of majority-minority neighborhoods in the Philadelphia MSA. Trident must also pay a civil money penalty of $4 million.

- *In the Matter of Hyundai Capital America* (2022-CFPB-0005) (not a credit union or depository institution). On July 26, 2022, the CFPB issued an order against Hyundai Capital America (Hyundai), a nonbank automotive finance company based in Irvine, California. Hyundai purchases and services retail installment contracts and vehicle leases originated by Hyundai, Kia, and Genesis dealerships. Hyundai furnishes credit information on the auto loans it services by sending monthly data files to consumer reporting companies. The CFPB found that over several years Hyundai repeatedly furnished to CRAs information containing numerous systemic errors and that it knew of many of these inaccuracies for years before attempting to fix them. When Hyundai furnished inaccurate negative consumer information, it may have negatively affected consumers' access to credit. The CFPB found that Hyundai violated FCRA and Regulation V by failing to promptly update and correct information it furnished to consumer reporting companies that it determined was not complete or accurate, and continuing to furnish this inaccurate and incomplete information; failing to provide the FCRA-required date of first delinquency on certain delinquent or charged-off accounts; failing to modify or delete information disputed by consumers that it found to be inaccurate; failing to establish reasonable identity theft and related blocking procedures to respond to identity theft notifications from consumer reporting companies such that Hyundai continued to report such information that should have been blocked on a consumer's report; and failing to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information provided to consumer reporting companies. These FCRA violations also constituted violations of the CFPA. The CFPB also concluded that Hyundai's use of ineffective manual processes and systems to furnish consumer information was unfair in violation of the CFPA. The order requires Hyundai to take steps to prevent future violations and to pay $13,200,000 in redress to affected consumers and a $6,000,000 civil money penalty.

- *In the Matter of Bank of America, N.A.* (2022-CFPB-0004). On July 14, 2022, the CFPB issued an order against Bank of America, N.A., which is a national bank headquartered in Charlotte, North Carolina, with branches and ATMs located in 38 states and the District of Columbia. Since 2020, Bank of America had contracts with 12 states, including California, to deliver unemployment insurance and other government benefit payments to consumers through prepaid debit cards. The onset of the COVID-19 pandemic in March 2020 led to a surge in consumers seeking unemployment insurance benefits. In the fall of 2020, and continuing through mid-2021, Bank of America changed its practices for investigating prepaid debit cardholder notices of error to solely rely on an automated fraud filter, which it knew or should have known would incorrectly determine that no error had occurred and which led to its incorrectly freezing or blocking accounts. The CFPB found that Bank of America engaged in unfair acts or practices by denying prepaid debit cardholders' notices of error and freezing their prepaid debit card accounts based solely on the results of the bank's flawed fraud filter. Bank of America also engaged in abusive acts or practices by retroactively applying its fraud filter to deny notices of error submitted by prepaid debit cardholders that it had previously investigated and paid. Further, Bank of America engaged in unfair acts and practices by impeding unemployment insurance benefit prepaid debit cardholders' efforts to file notices of error concerning their prepaid debit card accounts. Bank of America's failure to conduct a reasonable investigation of prepaid debit cardholders' notices of error and failure to timely investigate and resolve prepaid debit cardholders' error claims also violated EFTA and its implementing Regulation E. The CFPB's Order requires Bank of America to redress harmed consumers who suffered hundreds of millions of dollars in direct and consequential financial harm; harmed consumers will also be eligible to receive additional remediation through an individualized review process. Bank of America must also review and reform its unemployment insurance benefit prepaid debit card program and pay a $100 million civil penalty to the CFPB. The Office of the Comptroller of the Currency (OCC) concurrently issued an order against the Bank separately fining it $125 million.

- *Consumer Financial Protection Bureau v. Populus Financial Group, Inc., d/b/a ACE Cash Express, Inc.* (N.D. Tex. No. 3:22-cv-01494). On July 12, 2022, the CFPB filed a lawsuit against Populus Financial Group, Inc., which does business as ACE Cash Express, Inc. (ACE). ACE is a payday lender headquartered in Irving, Texas and has approximately 979 stores in 22 states and the District of Columbia. The CFPB had previously found that ACE abusively induced borrowers with a demonstrated inability to repay their existing loan to take out a new ACE loan with accompanying fees, and on July 10, 2014, the CFPB ordered ACE to cease encouraging or suggesting that a delinquent borrower pay off their loan and then take out a new loan. ACE's loans come with a fee that is equivalent to a triple-digit interest rate, and consumers who cannot afford to pay back the loan and this fee often refinance their loans, incurring another fee to extend their loan for 14 or 30 days. Consumers in ten states, however, had the contractual right to one free repayment plan per year if they indicated they could not repay their loan, which is designed to help consumers get out of a debt trap. Under the free repayment plan, consumers would owe their outstanding balance in four equal installments over their next four paydays, rather than owing one lump sum, without paying any additional fees or interest. The CFPB alleges that ACE engaged in unfair, abusive, and deceptive acts or practices in violation of the CFPA by concealing this free repayment plan from consumers who were entitled to it, instead inducing them to refinance their loans for additional fees. As alleged in the complaint, since July 10, 2014, hundreds of thousands of consumers have paid ACE over $240 million in reborrowing fees while eligible for a free repayment plan. The CFPB also alleges that when ACE attempted to collect payment on its payday and title loans, it unfairly made electronic withdrawals of consumers' money without their authorization. The CFPB seeks permanent injunctive relief, redress for consumers, and civil money penalties. On September 23, 2022, ACE filed a motion to dismiss, which remains pending. On December 5, 2022, the court stayed the case pending a decision from the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22448. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. Frank Ronald Gebase, Jr.* (S.D. Cal. No. 3:22-cv-00844). On June 9, 2022, the CFPB filed a lawsuit against Frank R. Gebase Jr., along with a proposed stipulated final judgment and order, which the court entered that same day. On March 30, 2016, the CFPB ordered Student Aid Institute (SAI) to shut down its debt-relief operations and rescind all of its consumer agreements; that order resolved the CFPB's findings that SAI violated federal consumer law including by charging upfront fees for student loan debt-relief services and making false promises to consumers about possible savings through reduced payments and loan forgiveness. The CFPB alleged that Gebase founded, owned, and operated a student loan debt-relief company named Processingstudentloans, which obtained student loan account and billing information for hundreds of former SAI consumers without their knowledge or consent. The CFPB alleged that Processingstudentloans collected fees from consumers' bank accounts even though they had never signed any agreements with the company or otherwise consented to the withdrawals. The CFPB alleged that through his actions as Processingstudentloans' chief executive, Gebase engaged in and substantially assisted in unfair acts and practices in violation of the CFPA. The stipulated final judgment and order prevents Gebase from directly or indirectly providing debt-relief services and requires Gebase to pay a civil money penalty of $175,000.

- *In the Matter of RAM Payment, LLC, also d/b/a Reliant; Account Management Systems, LLC, f/k/a Reliant Account Management; Gregory Winters; and Stephen Chaya* (2022-CFPB-0003) (not a credit union or depository institution). On May 11, 2022, the CFPB issued an order against Tennessee-based RAM Payment, LLC; Account Management Systems, LLC (AMS); and AMS's co-founders, Gregory Winters and Stephen Chaya. Since January 4, 2019, RAM Payment has offered account maintenance and payment processing services to debt relief companies and to consumers. Until AMS sold its assets to RAM Payment on January 4, 2019, AMS operated as "Reliant Account Management" and offered account maintenance and payment processing services to debt relief companies and to consumers. The CFPB found that the respondents (1) substantially assisted student loan and traditional debt-relief service providers in requesting or accepting advance fees for debt-relief services in violation of the Telemarketing Sales Rule (TSR); (2) engaged in deceptive acts or practices in violation of the CFPA, including by misrepresenting itself as an independent third party and misrepresenting the companies' actions before disbursing fees to student loan debt relief service providers; and (3) engaged in unfair acts or practices in violation of the CFPA by disbursing unearned fees for student-loan debt-relief services after consumers had unenrolled from or canceled the services. The order requires respondents to pay $8,676,180 in redress to consumers, which reflects the amount of unrefunded fees charged by AMS or RAM Payment and, for consumers enrolled in student loan debt relief services financed by a company affiliated with the companies, any unrefunded consumer fee payments for student loan debt relief services that AMS or RAM Payment disbursed to the affiliated company. The order also bans AMS, Winters, and Chaya from the debt relief payment processing and account maintenance industry, and, among other things, RAM Payment must (1) stop providing services to both student loan debt relief service providers and debt relief service providers receiving funding from or owned by an affiliated company; (2) stop paying commission to third-party marketing companies for consumer referrals; and (3) consent to the CFPB's supervisory authority. Respondents also must pay a $3 million civil money penalty.

- *In the Matter of Bank of America, N.A.* (2022-CFPB-0002). On May 4, 2022, the CFPB issued an order against Bank of America, N.A., a very large national bank headquartered in Charlotte, to address Bank of America's processing of garnishment notices. A garnishment notice is a notice issued by a court or judgment creditor directing a financial institution to freeze and then turn over a consumer's funds to pay off a court-ordered debt. The CFPB found that Bank of America engaged in unfair and deceptive acts and practices in violation of the CFPA. Specifically, Bank of America unfairly required consumers to waive its liability as to consumers' garnishment-related protections in its deposit agreement and misrepresented to consumers that they could not go to court to attempt to prevent wrongful garnishments. The CFPB also found that Bank of America failed to disclose to courts in states that restricted the garnishment of out-of-state accounts that the garnishment notice pertained to bank accounts located out-of-state; and Bank of America froze accounts and sent funds to creditors even though it was prohibited by state law. Bank of America also, in some instances, applied the wrong state's exemption laws and represented to consumers that their rights to have certain funds exempted from garnishment were governed by the law of the issuing state when, in reality, the consumer's own state law applies. The order requires Bank of America to refund at least $592,000 in, or cancel, unlawful garnishment-related fees and pay a $10 million civil money penalty. The order also requires Bank of America to review and reform its system for processing garnishments, to notify courts or other garnishment issuers when consumer accounts are out-of-state, and to cease using language in its consumer contracts that unlawfully limit consumers' rights to challenge garnishments.

- *Consumer Financial Protection Bureau and the People of the State of New York by Letitia James, Attorney General for the State of New York v. MoneyGram International, Inc. and MoneyGram Payment Systems, Inc.* (S.D.N.Y. 1:22-cv-03256). On April 21, 2022, the CFPB filed a lawsuit jointly with the Attorney General of New York against MoneyGram International, Inc. and MoneyGram Payment Systems, Inc. (collectively, MoneyGram), nonbank remittance transfer providers. The CFPB and New York filed an amended complaint on July 5, 2022. The CFPB alleges that MoneyGram violated the Remittance Transfer Rule and Regulation E, which implements EFTA by failing to disclose accurate fund availability dates, failing to investigate error notices promptly, failing to timely report the results of its error investigations to consumers, failing to provide a written explanation of its findings to consumers, failing to notify senders of their right to request documents related to their investigation, failing to provide fee refunds when required to remedy errors, failing to develop and maintain sufficient error resolution and document retention policies and procedures, and failing to retain documents showing its compliance with the Remittance Transfer Rule and EFTA. The CFPB and New York additionally allege that violations of the Remittance Transfer Rule constituted violations of the CFPA. The CFPB and New York also allege that MoneyGram engaged in unfair acts and practices in violation of the CFPA by failing to timely make remittance transfer funds or refunds available. The CFPB and New York seek relief, including redress to consumers, disgorgement, appropriate injunctive relief, and the imposition of civil money penalties. On August 4, 2022, MoneyGram filed a motion to dismiss and to transfer venue, which remains undecided. On December 12, 2022, the court stayed the case pending a decision from the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22448. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. TransUnion, TransUnion, LLC, TransUnion Interactive, Inc., and John T. Danaher* (N.D. Ill. No. 1:22-cv-01880). On April 12, 2022, the CFPB filed a lawsuit against TransUnion, parent company of one of the three nationwide consumer reporting agencies, and two of its subsidiaries, TransUnion, LLC, and TransUnion Interactive, Inc. (collectively, the TransUnion Companies), which are headquartered in Chicago, Illinois, as well as former executive John Danaher. On January 3, 2017, the CFPB issued an order against the TransUnion Companies to address the CFPB's findings that they deceptively marketed credit scores and credit-related products, including credit monitoring, to consumers. In this action, the CFPB alleges that the TransUnion Companies and Danaher have violated multiple requirements of the CFPB's Order in violation of the CFPA, including enrolling consumers in negative option products without obtaining required consents; failing to offer a simple mechanism for cancelling products; and failing to provide required disclosures. The CFPB also alleges that the TransUnion Companies' marketing and sale of its credit-related products have, in several ways, been deceptive in violation of the CFPA, including by misrepresenting that products were free or $1; misrepresenting that credit card or other payment information provided by consumers would be used for identification purposes rather than payment; misrepresenting the central characteristics of its VantageScore credit score; and misrepresenting that cancellation of products would publicly expose the consumer's personal information and that re-enrolling in the product is the only way consumers can protect their information. The CFPB further alleges that the TransUnion Companies' advertisement of credit-related products on annualcreditreport.com, a website intended to provide consumers access to free credit reports, undermined the purpose of the website, in violation of Regulation V. Also, the CFPB alleges that the TransUnion Companies violated EFTA and its implementing regulation, Regulation E, by failing to obtain required written authorization for recurring charges to consumers' debit cards and for failing to provide consumers with copies of such authorizations. Finally, the complaint alleges that by violating EFTA, Regulation E, and Regulation V, the TransUnion Companies have violated the CFPA. The CFPB seeks redress to consumers, disgorgement, appropriate injunctive relief, and the imposition of civil money penalties. The defendants filed motions to dismiss on July 8, 2022, which the court denied on November 18, 2022. In addition, on December 19, 2022, defendant Danaher filed a motion for the court to certify for interlocutory appeal the question of whether an individual who was not named in a consent order can be liable for violating it; on January 24, 2023, the CFPB moved to amend the complaint to allege a substantial assistance claim against Danaher; and on February 28, 2023, the defendants filed a motion to stay the case. Decisions on these motions remained pending as of the end of the reporting period. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. Craig Manseth, Jacob Adamo, Darren Turco, United Debt Holding LLC, JTM Capital Management, LLC, UHG, LLC, UHG I LLC (also* *known as United Holding Group), and UHG II LLC (collectively holding themselves out as United Holding Group, United Holding Group, LLC, and United Holdings Group, LLC)* (W.D.N.Y. 1:22-cv-29). On January 10, 2022, the CFPB filed a lawsuit against several individual debt collectors and buyers, and their companies. As set forth in the February 23, 2022 amended complaint, the CFPB alleges that the defendants, located in Colorado and New York, purchased defaulted consumer debt worth tens of millions of dollars and then collected on those debts using third-party agents who engaged in illegal debt-collection tactics. Specifically, the CFPB alleges that since at least 2014, defendants have used collection agents to collect debts knowing that these agents were using false threats and misrepresentations to coerce immediate payment from consumers, in violation of the CFPA and the FDCPA. The CFPB's complaint seeks redress for consumers, injunctive relief, and a civil money penalty. The defendants filed motions to dismiss on March 21, 2022, which remained pending as of the end of the reporting period. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. FirstCash, Inc., and Cash America West, Inc.* (N.D. Tex. 4:21-cv-01251). On November 12, 2021, the CFPB filed a lawsuit against FirstCash, Inc. and Cash America West, Inc. On June 21, 2022, the CFPB filed an amended complaint to add defendants FCFS AL, Inc., Cash America East, Inc., Cash America Inc. of Alaska, Georgia Cash America, Inc., FCFS IN, Inc., FCFS TN, Inc., FCFS OH, Inc., FCFS KY, Inc., Cash America, Inc. of Louisiana, FCFS MO, Inc., Cash America of Missouri, Inc., Cash America, Inc. of North Carolina, FCFS NC, Inc., FCFS OK, Inc., FCFS SC, Inc., Pawn TX, Inc., Cash America Pawn L.P., and Cash America Advance, Inc. (with Cash America West, referred to as the FirstCash Subsidiaries). FirstCash owns and operates over 1,000 retail pawnshops in the United States, offering pawn loans through its wholly owned corporate subsidiaries. The FirstCash Subsidiaries operate pawn stores in Alabama, Alaska, Arizona, Florida, Georgia, Indiana, Kentucky, Louisiana, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, and Washington. The CFPB alleges that FirstCash and the FirstCash Subsidiaries made pawn loans to active-duty servicemembers and their dependents that violated the MLA. The MLA puts in place protections in connection with extensions of consumer credit for active-duty servicemembers and their dependents, who are defined as "covered borrowers." These protections include a maximum allowable annual percentage rate of 36 percent, a prohibition against required arbitration, and certain mandatory loan disclosures. The CFPB alleges that, between June 2017 and May 2021, FirstCash and the FirstCash Subsidiaries made thousands of pawn loans to more than 1,000 covered borrowers that violated prohibitions of the MLA by imposing a rate greater than the MLA's 36-percent cap; using loan agreements requiring arbitration in the case of a dispute; and without making required loan disclosures. In 2013, the CFPB ordered Cash

America International, Inc. to halt its misconduct against military families, prohibiting Cash America and its successors from violating the MLA. FirstCash is a successor to Cash America and therefore subject to the 2013 order. In this action, the CFPB alleges that FirstCash's violations of the MLA violated the prohibitions of the CFPB's 2013 order and consequently the CFPA. The CFPB's amended complaint seeks redress for consumers, injunctive relief, and civil money penalties. On March 28, 2022, the CFPB filed a motion to strike affirmative defenses, and on April 27, 2022, FirstCash and Cash America West filed a motion for partial summary judgment. On June 21, 2022, the CFPB filed an amended complaint naming additional FirstCash subsidiaries as defendants. On October 24, 2022, FirstCash and the FirstCash subsidiaries filed a motion for judgment on the pleadings. On November 4, 2022, the court stayed the case, pending a decision from the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22448. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. Daniel A. Rosen, Inc., d/b/a Credit Repair Cloud, and Daniel Rosen* (C.D. Cal. 2:21-cv-07492). On September 20, 2021, the CFPB filed a lawsuit against Credit Repair Cloud – a Los Angeles, California, company that since at least 2013 has provided an "all-in-one solution" for people to start their own credit-repair businesses – and its owner and CEO, Daniel Rosen. The CFPB alleges that Credit Repair Cloud and Daniel Rosen have violated the TSR by providing substantial assistance to credit-repair businesses that violate the TSR's advance-fee prohibition. The CFPB also alleges that by violating the TSR, Credit Repair Cloud and Daniel Rosen have violated the CFPA. On January 7, 2022, the CFPB filed an amended complaint. The amended complaint seeks redress to consumers, disgorgement, appropriate injunctive relief, and the imposition of civil money penalties against Credit Repair Cloud and Daniel Rosen. The defendants filed a motion to dismiss the amended complaint on January 28, 2022, which the court denied on April 5, 2022. On January 3, 2023, the court stayed the case pending the Ninth Circuit's decision in *CFPB v. Nationwide Biweekly Admin., Inc.*, Nos. 18-15431, 18-15887. On February 13, 2023 and March 29, 2023, the court continued the stay until the Supreme Court decides *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22448. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau and the People of the State of New York, by Letitia James, Attorney General for the State of New York v. Douglas MacKinnon, Amy MacKinnon, Mary-Kate MacKinnon, and Matthew MacKinnon* (W.D.N.Y. 1:21-cv-00537). On April 22, 2021, the CFPB filed a lawsuit jointly with the Attorney General of New York against Douglas MacKinnon, who operated a debt-collection enterprise, and Amy MacKinnon, Mary-Kate MacKinnon, and Matthew MacKinnon, relatives of Douglas

MacKinnon. The complaint alleges that defendants fraudulently conveyed a house with the intent to hinder collection efforts by creditors, including the CFPB and the State of New York, in violation of the Federal Debt Collection Procedures Act of 1990 and New York state law. The complaint specifically alleges that Douglas MacKinnon transferred ownership of his home, valued at approximately $1.6 million, to his wife and daughter for $1 shortly after he learned that the CFPB and the State of New York were investigating him for illegal debt-collection activities. That investigation resulted in a $60 million judgment against Douglas MacKinnon and the companies he operated and permanently banned him from the industry. The CFPB and New York seek a declaratory judgment that a fraudulent conveyance occurred and to recover the value of the property in partial satisfaction of the $60,000,000 judgment. On June 21, 2021, all defendants moved to dismiss the complaint, which the court denied on October 27, 2021. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. Judith Noh d/b/a Student Loan Pro, Judith Noh as an individual, Syed Faisal Gilani, and FNZA Marketing, LLC* (C.D. Cal. No. 8:21-cv-00488). On March 16, 2021, the CFPB filed a lawsuit against Student Loan Pro, a California sole proprietorship that telemarketed and provided debt-relief services focused on federal student-loan debt; Judith Noh, its owner; and Syed Gilani, its manager and owner-in-fact. The CFPB also named as a relief defendant FNZA Marketing, LLC (FNZA), a California company nominally owned by Noh and controlled by Gilani. The CFPB alleges that Student Loan Pro conducted a student-loan debt-relief business from 2015 through 2019 that charged about 3,300 consumers with federal student-loan debt approximately $3.5 million in illegal upfront fees in violation of the TSR to file paperwork on their behalf to apply for programs that were available to them for free from the Department of Education. The CFPB alleges that Noh and Gilani are individually liable for and substantially assisted Student Loan Pro's violations of the TSR. The CFPB also alleges that FNZA was the recipient of some portion of the unlawful advance fees obtained by Student Loan Pro without legitimate claim to the funds. The CFPB seeks redress to consumers, appropriate injunctive relief, and the imposition of civil money penalties against Student Loan Pro, Noh, and Gilani, and seeks to have FNZA disgorge the funds it received from Student Loan Pro. Defendants filed a motion to dismiss the complaint on July 2, 2021, which the court denied on January 18, 2022. The CFPB filed a motion to strike a number of defendants' affirmative defenses on March 21, 2022, most of which the court granted on July 24, 2022. Defendants filed a motion to dismiss and a motion to stay pending the Supreme Court's decision in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22448 (U.S. cert. granted Feb. 27, 2023); on March 6, 2023, the court continued the motion to dismiss and granted the motion to stay. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau; Commonwealth of Massachusetts; The People of the State of New York, by Letitia James, Attorney General of the State of New York; and Commonwealth of Virginia,* ex rel. *Mark R. Herring, Attorney General v. Nexus Services, Inc.; Libre by Nexus, Inc.; Michael Donovan; Richard Moore; and Evan Ajin (W.D. Va. 5:21-cv-00016)*. On February 22, 2021, the CFPB filed a lawsuit against Nexus Services, Inc. (Nexus Services), Libre by Nexus, Inc. (Libre), and their principals, Michael Donovan, Richard Moore, and Evan Ajin. Libre is a wholly owned subsidiary of Nexus Services, and both are non-banks with their principal places of business in Virginia. The CFPB alleges that Libre and its owners operated a scheme through which Libre offers to pay immigration bonds to secure the release of consumers held in federal detention centers in exchange for large upfront fees and hefty monthly payments, and that Libre creates the impression that it has paid cash for consumers' bonds, creating a debt that must be repaid to Libre through an upfront fee and subsequent monthly payments. The CFPB further alleges that Libre's efforts to collect monthly payments include making false threats and threatening to re-detain or deport consumers for non-payment and that Libre and its owners conceal or misrepresent the true costs of its services. Specifically, the CFPB alleges that Libre and its owners engaged in deceptive and abusive acts or practices in violation of the CFPA, and that Nexus Services and Libre's owners provided substantial assistance to Libre's violations. The CFPB filed its complaint jointly with the Attorneys General of Virginia, Massachusetts, and New York. The CFPB seeks an injunction, damages or restitution to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. On March 1, 2021, the defendants filed a motion to dismiss the complaint, which the court denied on March 22, 2022. On February 7, 2023, the magistrate judge ordered defendants to show cause why the district court should not sanction them—including through entrance of default judgment—for various violations of court orders. As of the end of the reporting period, the case remains pending.

- *Bureau of Consumer Financial Protection v. 1st Alliance Lending, LLC; John Christopher DiIorio; Kevin Robert St. Lawrence; and Socrates Aramburu* (D. Conn. 3:21-cv-00055). On January 15, 2021, the CFPB filed a lawsuit against 1st Alliance Lending, LLC, John Christopher DiIorio, Kevin Robert St. Lawrence, and Socrates Aramburu. 1st Alliance, based in Hartford, Connecticut, originated residential mortgages from 2004 to September 2019 and stopped operating in November 2019. DiIorio was its chief executive officer and he, St. Lawrence, and Aramburu were 1st Alliance's three managing executives. The CFPB's complaint alleges that 1st Alliance engaged in various unlawful mortgage lending practices in violation of TILA, FCRA, ECOA, and the Mortgage Acts and Practices Advertising Rule (MAP Rule); and that 1st Alliance, DiIorio, St. Lawrence, and Aramburu engaged in unfair and deceptive practices under the CFPA. The CFPB filed an amended complaint on April 1, 2021. The CFPB's amended complaint seeks injunctions against the defendants, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. 1st Alliance and the individual defendants filed motions to dismiss on May 11, 2021, which on March 31, 2022, the court denied as to all but one claim against the individual defendants, which it dismissed without prejudice. On March 13, 2023, the parties filed a joint stipulation dismissing certain counts and all claims against defendant Socrates Aramburu, which the court docketed on March 14, 2023. As of the end of the reporting period, the case remains pending against the remaining defendants.

- *Bureau of Consumer Financial Protection v. FDATR, Inc., Dean Tucci, and Kenneth Wayne Halverson* (N.D Ill. 1:20-cv-06879). On November 20, 2020, the CFPB filed a lawsuit against FDATR, Inc., and its owners, Dean Tucci and Kenneth Wayne Halverson. FDATR was a corporation headquartered in Wood Dale, Illinois, that promised to provide student-loan debt-relief and credit-repair services to consumers nationwide. FDATR involuntarily dissolved in September 2020. Tucci and Halverson both owned and managed FDATR. The CFPB alleges that FDATR, Tucci, and Halverson violated the TSR by engaging in deceptive and abusive telemarketing acts or practices as well as the CFPA by engaging in deceptive acts or practices. The CFPB seeks injunctions against FDATR, Tucci, and Halverson, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties. On February 25, 2021, the CFPB filed a notice of voluntary dismissal of Halverson, now deceased, and the court dismissed him from this action the next day. On February 7, 2022, the CFPB obtained a default judgment and order against FDATR imposing $2,117,133.28 in consumer redress, a $41,123,897 civil money penalty, and injunctive relief permanently banning it from offering or providing financial advisory, debt-relief, or credit-repair services and from telemarketing consumer financial products or services. As of the end of the reporting period, the case remains pending against Tucci.

- *Bureau of Consumer Financial Protection v. Performance SLC, LLC, Performance Settlement, LLC and Daniel Crenshaw* (C.D. Cal. 8:20-cv-02132). On November 5, 2020, the CFPB filed a lawsuit against Performance SLC, LLC (PSLC), a California debt-relief business focused on federal student loan debt; Performance Settlement, LLC (PSettlement), a California debt-settlement company; and Daniel Crenshaw, the owner and CEO of the two companies. The CFPB alleged that: PSLC and Crenshaw conducted a student-loan debt-relief business that charged thousands of consumers with federal student-loan debt approximately $9.2 million in illegal upfront fees in violation of the TSR, to file paperwork on their behalf to apply for programs that were available to them for free from the Department of Education; PSLC failed to provide disclosures mandated by the TSR to consumers it required to place funds in trust accounts; Crenshaw and PSettlement used deceptive sales tactics to sign consumers up for PSettlement's debt-relief services, in violation of the CFPA; and Crenshaw substantially assisted PSLC in requesting or receiving fees illegally and PSettlement in engaging in deceptive acts and practices. On July 6, 2021, the CFPB filed an amended complaint adding a claim against PSettlement alleging it violated the TSR and the CFPA when it asked consumers who enrolled in its program to sign a form that preauthorized PSettlement to agree to settlements on the consumer's behalf. On April 29, 2022, the CFPB filed a proposed stipulated judgment and order, which the court entered the same day. The order permanently bans PSLC from debt-relief services; bans Crenshaw from debt-relief services for five years; and permanently enjoins PSettlement from obtaining referrals from companies purporting to make or arrange loans. The order requires Crenshaw to pay a civil money penalty of $30,000, and the companies to pay $1 penalties each, based on their demonstrated inability to pay. It imposes a monetary judgment for redress of $10,448,467.90 for consumers harmed by PSLC and $704,350.30 for consumers harmed by PSettlement. This judgment will be suspended, conditioned on the defendants' payment of the civil money penalty, among other things, and based on the defendants' demonstrated inability to pay.

- *Bureau of Consumer Financial Protection and the People of the State of New York, by Letitia James, Attorney General for the State of New York v. JPL Recovery Solutions, LLC; Check Security Associates, LLC (dba Warner Location Services, Pinnacle Location Services, and Orchard Payment Processing Systems); ROC Asset Solutions LLC (dba API Recovery Solutions and Northern Information Services); Regency One Capital LLC; Keystone Recovery Group, LLC; Bluestreet Asset Partners, Inc.; Christopher L. Di Re; Scott A. Croce; Brian J. Koziel; Marc D. Gracie; and Susan A. Croce* (W.D.N.Y. 1:20-cv-01217). On September 8, 2020, the CFPB, in partnership with the New York Attorney General, filed suit against a network of five different companies based outside of Buffalo, New York, two of their owners, and two of their managers, for their participation in a debt-collection operation using illegal methods to collect debts. As set forth in the amended complaint filed on December 20, 2021, the company defendants are: JPL Recovery Solutions, LLC; Regency One Capital LLC; ROC Asset Solutions LLC, which does business as API Recovery Solutions; Check Security Associates LLC, which does business as Warner Location Services and Orchard Payment Processing Systems; Keystone Recovery Group; and Blue Street Asset Partners, Inc. The individual defendants are Christopher Di Re, Scott Croce, and Susan Croce, who have held ownership interests in some or all of the defendant companies, and Brian Koziel and Marc Gracie, who are members of Keystone Recovery Group, and have acted as managers of some or all of the defendant companies. Susan Croce is also a relief defendant. The complaint alleged that from at least 2015 through the present, the defendants have participated in a debt-collection operation that has used deceptive, harassing, and improper methods to induce consumers to make payments to them in violation of the FDCPA and the CFPA. On May 25, 2022, the court entered a stipulated judgment which requires the defendants to pay $4 million in civil money penalties split between the CFPB and New York, which would increase to $5 million upon a failure to make timely payment. The judgment also permanently bans them from being debt collectors and prohibits them from engaging in deceptive practices in connection with consumer financial products or services.

- *Bureau of Consumer Financial Protection v. Townstone Financial, Inc. and Barry Sturner* (N.D. Ill. 1:20-cv-04176). On July 15, 2020, the CFPB filed a lawsuit against Townstone Financial, Inc., a nonbank retail-mortgage creditor and broker based in Chicago. The CFPB alleges that Townstone violated ECOA; its implementing regulation, Regulation B; and the CFPA. The CFPB alleges that, for years, Townstone drew almost no applications for properties in majority African American neighborhoods located in the Chicago-Naperville-Elgin Metropolitan Statistical Area (Chicago MSA) and few applications from African Americans throughout the Chicago MSA. The CFPB alleges that Townstone engaged in discriminatory acts or practices, including making statements during its weekly radio shows and podcasts through which it marketed its services, that would discourage prospective African-American applicants from applying for mortgage loans; would discourage prospective applicants living in African-American neighborhoods in the Chicago MSA from applying for mortgage loans; and would discourage prospective applicants living in other areas from applying for mortgage loans for properties located in African-American neighborhoods in the Chicago MSA. On November 25, 2020, the CFPB filed an amended complaint, which added as a defendant Barry Sturner, Townstone's cofounder, sole owner, and sole director, as the fraudulent transferee of more than $2.4 million from Townstone. The CFPB's amended complaint seeks an injunction against Townstone, as well as damages, redress to consumers, the imposition of a civil money penalty, and other relief. The defendants filed a motion to dismiss the amended complaint on February 8, 2021, which the court granted on February 3, 2023. The CFPB filed a notice of appeal on April 3, 2023; oral argument is scheduled for December 8. As of the end of the reporting period, the appeal and case remain pending.

- *Bureau of Consumer Financial Protection v. My Loan Doctor LLC d/b/a Loan Doctor and Edgar Radjabli* (S.D.N.Y. 1:20-cv-05159). On July 6, 2020, the CFPB filed a lawsuit against My Loan Doctor LLC, a Delaware financial company operating in West Palm Beach, Florida and New York City and doing business as Loan Doctor (Loan Doctor), and its founder, Edgar Radjabli. The CFPB alleged that Loan Doctor and Radjabli made several false, misleading, and inaccurate marketing representations in advertising Loan Doctor's "Healthcare Finance (HCF) Savings CD Account," in violation of the CFPA's prohibition against deceptive acts or practices. The CFPB alleged that, starting in August 2019, Loan Doctor took more than $15 million from at least 400 consumers who opened and deposited money into Loan Doctor's deceptively advertised product. On December 9, 2022, the court entered a stipulated final judgment and order which requires defendants to pay a civil money penalty of $391,530, of which $241,530 will be remitted because of defendants' satisfaction of their obligation to pay that amount in penalties to the Securities and Exchange Commission for related conduct in *SEC v. Radjabli et al.*, 2:21-cv-01761. The order also requires redress to consumers in the form of a refund of all the deposits made with defendants, including all interest due to consumers under the advertised terms of the purchased financial products and services. Defendants have represented to the CFPB that they have already satisfied the obligation to provide redress because they already refunded the full amount received from consumers, plus all interest due to consumers under the terms advertised. The CFPB estimates the redress amount to be approximately $19 million, but an exact calculation has not yet been completed. The order also permanently bans the defendants from engaging or assisting others in any deposit-taking activities.

- *Bureau of Consumer Financial Protection and the Commonwealth of Massachusetts* ex rel. *Maura Healey, Attorney General v. Commonwealth Equity Group, LLC (d/b/a Key Credit Repair); Nikitas Tsoukales (a/k/a Nikitas Tsoukalis)* (D. Mass. 1:20-cv-10991). On May 22, 2020, the CFPB and Commonwealth of Massachusetts Attorney General Maura Healey jointly filed a lawsuit against Commonwealth Equity Group, LLC, which does business as Key Credit Repair, and Nikitas Tsoukales (also known as Nikitas Tsoukalis), Key Credit Repair's president and owner. An amended complaint was filed on September 16, 2020. As the amended complaint alleges, from 2016 through 2019 alone, Key Credit Repair enrolled nearly 40,000 consumers nationwide, and since 2011, it collected at least $23 million in fees from consumers. The CFPB alleges that in their telemarketing of credit-repair services, the defendants violated the CFPA's prohibition against deceptive acts or practices and the TSR's prohibitions against deceptive and abusive telemarketing acts or practices. Massachusetts also alleges violations of Massachusetts laws. The amended complaint seeks redress to consumers, an injunction, and the imposition of civil money penalties. The defendants filed a motion to dismiss the amended complaint on September 30, 2020, which the court denied on August 10, 2021. On September 9, 2021, the defendants moved for reconsideration of the order denying the motion to dismiss, which the court denied on October 13, 2021. On February 17, 2023, the defendants filed a motion for judgment on the pleadings, and on March 22, 2023, they filed a motion to stay the case. Those motions remained pending as of the end of the reporting period. As of the end of the reporting period, the case remains pending.

- *Bureau of Consumer Financial Protection v. Fifth Third Bank, National Association* (N.D. Ill. 1:20-cv-01683), transferred to (S.D. Ohio 1:21-cv-00262). On March 9, 2020, the CFPB filed a lawsuit against Fifth Third Bank, National Association (Fifth Third). On February 12, 2021, the court granted Fifth Third's motion to transfer the case to the Southern District of Ohio. The CFPB filed an amended complaint on June 16, 2021. The CFPB alleges that by misleading consumers about the bank's sales practices, opening products and services and engaging in consumer-account transactions without consumer consent, and failing to adequately address the misconduct, Fifth Third engaged in unfair and abusive acts or practices in violation of the CFPA and also violated FCRA, as well as TILA, the TISA, and their implementing regulations. The CFPB seeks an injunction to stop Fifth Third's unlawful conduct, redress for affected consumers, the imposition of a civil money penalty, and other legal and equitable relief. On January 25, 2023, Fifth Third filed a motion for judgment on the pleadings. The motion remained pending as of the end of the reporting period. As of the end of the reporting period, the case remains pending.

- *Bureau of Consumer Financial Protection v. Citizens Bank, N.A.* (D.R.I. No. 1:20-cv-00044). On January 30, 2020, the CFPB filed a lawsuit against Citizens Bank, N.A. (Citizens), alleging violations of TILA and its implementing Regulation Z, including TILA provisions passed under the Fair Credit Billing Act (FCBA) and CARD Act, as well as violations of the CFPA based on TILA violations. The CFPB alleges that Citizens systematically violated TILA and Regulation Z by failing to properly manage and respond to consumers' credit card disputes and fraud claims. The CFPB also alleges that Citizens violated TILA and Regulation Z by not providing credit counseling referrals to consumers as required by law. The CFPB seeks, among other remedies, an injunction against Citizens and the imposition of civil money penalties. As of the end of the reporting period, the case remained pending.[61]

[61] Additional activity has occurred with this matter since the end of the reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/citizens-bank/.

Bureau of Consumer Financial Protection v. Monster Loans, Lend Tech Loans, and Associated Student Loan Debt-Relief Companies (C.D. Cal. 8:20-cv-00043). On January 9, 2020, the CFPB filed a lawsuit against Chou Team Realty, LLC f/k/a Chou Team Realty, Inc., d/b/a MonsterLoans, d/b/a Monster Loans; Lend Tech Loans, Inc.; Docu Prep Center, Inc., d/b/a DocuPrep Center, d/b/a Certified Document Center; Document Preparation Services, LP, d/b/a DocuPrep Center, d/b/a Certified Document Center; Certified Doc Prep, Inc.; Certified Doc Prep Services, LP; Assure Direct Services, Inc.; Assure Direct Services, LP; Direct Document Solutions, Inc.; Direct Document Solutions, LP; Secure Preparation Services, Inc.; Secure Preparation Services, LP; Docs Done Right, Inc.; Docs Done Right, LP; Bilal Abdelfattah a/k/a Belal Abdelfattah a/k/a Bill Abdel; Robert Hoose; Eduardo "Ed" Martinez; Jawad Nesheiwat; Frank Anthony Sebreros; David Sklar; Thomas "Tom" Chou; Sean Cowell; Kenneth Lawson; Cre8labs, Inc.; XO Media, LLC; and TDK Enterprises, LLC. The CFPB alleges that many of the defendants violated FCRA by wrongfully obtaining consumer report information and that, in connection with the marketing and sale of student loan debt relief products and services, certain defendants charged unlawful advance fees and engaged in deceptive acts and practices. The CFPB also alleges that certain entities and individuals are liable as relief defendants because they received profits resulting from the illegal conduct. On May 14, 2020, the court entered a stipulated final judgment against Chou Team Realty, LLC, Thomas Chou, TDK Enterprises, LLC, Cre8labs, Inc., and Sean Cowell, which resolves the CFPB's claims against those defendants and relief defendants. The judgment imposes an $18 million redress judgment against Monster Loans; bans Monster Loans, Chou, and Cowell from the debt-relief industry; and imposes a total $450,001 civil money penalty against them. On July 7, 2020, the court entered a stipulated final judgment against Robert Hoose, which imposes a $7 million redress judgment against him, bans him from the debt-relief industry, and imposes a $1 civil money penalty. On July 10, 2020, and August 26, 2020, the CFPB filed a first and second amended complaint, respectively, adding factual allegations regarding certain defendants. On October 19, 2020, the court entered a stipulated final judgment against relief defendants Kenneth Lawson and XO Media, LLC, which imposes a $200,000 redress judgment against Lawson and XO Media, LLC. On May 4, 2021, the court entered stipulated final judgments against Lend Tech Loans, Inc. and David Sklar. The judgment as to Lend Tech Loans requires it to dissolve and cease to exist as a corporate entity, bans it from offering or providing any consumer financial product or service, and imposes a $1 civil money penalty against it based on its limited ability to pay. The judgment as to Sklar imposes a $7 million redress judgment against him, full payment of which is suspended based upon his limited ability to pay upon his payment of $3,000 to the CFPB; it also bans him from the debt-relief industry and from telemarketing consumer financial products or services and imposes a $1 civil money penalty against him. On May 7, 2021, the court entered a default judgment against the following student loan debt relief companies: Docu Prep Center, Inc., d/b/a DocuPrep Center, d/b/a Certified Document Center; Document Preparation Services, LP, d/b/a DocuPrep Center, d/b/a Certified Document Center; Certified Doc Prep, Inc.; Certified Doc Prep Services, LP; Assure Direct Services, Inc.; Assure Direct Services, LP; Direct Document Solutions, Inc.; Direct Document Solutions, LP; Secure Preparation Services, Inc.; and Secure Preparation Services, LP. The default judgment imposes redress judgments against the companies that collectively total $19,699,869 and civil penalties against the companies that collectively total $11,382,136. The default judgment also bans the companies from the debt relief industry. On May 7, 2021, the court also entered a default judgment against Bilal Abdelfattah a/k/a Belal Abdelfattah a/k/a Bill Abdel, which imposes a civil penalty of $3,262,244 against him and bans him from the debt-relief industry. On May 11, 2021, the court entered a stipulated final judgment against Docs Done Right, Inc., Docs Done Right, LP (collectively, "Docs Done Right"), and Eduardo Martinez. The judgment imposes an $18 million redress judgment against Martinez and Docs Done Right, full payment of which is suspended based on their limited ability to pay upon their payment of the ordered penalty, bans them from the debt-relief industry, and imposes a $125,000 civil money penalty against them. On May 11, 2021, the court also entered a stipulated final judgment against Frank Anthony Sebreros, which imposes a $3,404,455 redress judgment against him, full payment of which is suspended based on a limited ability to pay upon payment of $35,000; it also bans him from the debt relief industry and from telemarketing consumer financial products or services, and imposes a $1 civil money penalty against him. On August 10, 2021, the district court granted in full the CFPB's Motion for Summary Judgment against Jawad Nesheiwat, the sole remaining defendant. The court found Nesheiwat was liable for violating FCRA, the TSR advance fee ban, the TSR and CFPA prohibitions on deceptive practices and substantially assisting violations, and §1036(a)(1)(A). The court found the CFPB was entitled to injunctive relief, restitution, and civil money penalties. On September 23, 2021, the court entered a judgment and order against Nesheiwat imposing a judgment of nearly $20 million in consumer redress, a $20 million civil money penalty, and injunctive relief including permanent bans from the debt-relief and mortgage industries, from using consumer reports for business purposes, and from telemarketing consumer financial products and services. On September 25, 2021, Nesheiwat appealed the judgment against him. On December 27, 2022, the Ninth Circuit affirmed the district court's grant of summary judgment and award of restitution, civil penalties, and injunctive relief to the CFPB. Defendant Nesheiwat filed a petition for en banc review, which the Ninth Circuit denied on February 23, 2023.

- *Bureau of Consumer Financial Protection; State of Minnesota, by its Attorney General, Keith Ellison; State of North Carolina, ex rel. Joshua H. Stein, Attorney General; and*

The People of the State of California, Michael N .Feuer, Los Angeles City Attorney v. Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center; True Count Staffing Inc., d/b/a SL Account Management; Prime Consulting LLC, d/b/a Financial Preparation Services; Albert Kim, a/k/a Albert King; Kaine Wen, a/k/a Wenting Kaine Dai, Wen Ting Dai, and Kaine Wen Dai; and Tuong Nguyen, a/k/a Tom Nelson (C.D. Cal. 8:19-cv-01998). On October 21, 2019, the CFPB along with the states of Minnesota, North Carolina, and California filed a complaint and sought a temporary restraining order and preliminary injunction against Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center (Premier); True Count Staffing Inc., d/b/a SL Account Management (True Count); Prime Consulting LLC, d/b/a Financial Preparation Services (Prime); Albert Kim; Kaine Wen; and Tuong Nguyen. The CFPB alleges the debt relief companies operate as a common enterprise and have engaged in deceptive practices and charged unlawful advance fees in connection with the marketing and sale of student loan debt relief services to consumers. The CFPB also alleges the individuals substantially assisted the student loan debt relief companies. The complaint also names several relief defendants and seeks disgorgement of those relief defendants' ill-gotten gains. The court granted the request for the temporary restraining order on October 21, 2019. The court entered a stipulated preliminary injunction on November 15, 2019. The preliminary injunction order prohibited defendants from collecting illegal advance fees and engaging in deception, and extended a receivership and asset freeze that was imposed by the temporary restraining order. The CFPB filed a first amended complaint on February 24, 2020. The CFPB's amended complaint seeks an injunction against defendants, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of a civil money penalty. The amended complaint also names several additional defendants and relief defendants. On August 26, 2020, the court entered a corrected, amended stipulated final judgment as to defendants Prime and Horizon Consultants LLC (Horizon). The order imposes a judgment of $95,057,757 against Prime to provide redress to consumers. Horizon is jointly and severally liable for $12,942,045 of this amount. Full payment of these amounts is suspended based on Prime's and Horizon's demonstrated inability to pay following, among other things, their turnover of assets and their payment of a $1 civil money penalty to the CFPB. The order also bans Prime and Horizon from telemarketing or offering or providing debt relief services. On August 28, 2020, the court entered a stipulated final judgment and order as to defendant Tuong Nguyen and relief defendant TN Accounting Inc. The order imposes a judgment of $95,057,757 against Nguyen to provide redress to consumers. Relief defendant TN Accounting is jointly and severally liable for $444,563 of this amount. Full payment of these amounts is suspended based on their demonstrated inability to pay following, among other things, Nguyen and TN Accounting's turnover of assets and Nelson's payment of a $1 civil money penalty to the CFPB. The order also bans Nguyen from telemarketing or offering or providing debt relief services. On September 8, 2020, the court entered a stipulated final judgment as to relief defendants Hold the Door, Corp., and Mice and Men LLC. The order imposes a judgment of $1,638,687 against relief defendant Hold the Door and $5,041,069 against relief defendant Mice and Men to provide redress to consumers. Full payment of these amounts will be suspended based on their demonstrated inability to pay following their turnover of assets. On December 15, 2020, the court entered a default judgment against First Priority, LLC, and True Count Staffing, Inc. The order imposes a judgment of $55,360,817.14 and $165,848.05 against True Count and First Priority, respectively, to provide redress to consumers. The order also requires True Count to pay a $30 million penalty, of which $29,850,000 is payable to the CFPB. It also requires First Priority to pay $3.75 million in penalties, of which $2,470,000 is payable to the CFPB. The order also bans the defaulted defendants from telemarketing or offering or providing debt relief services. The CFPB filed a second amended complaint on April 20, 2021, adding additional claims and an additional relief defendant. On June 15, 2021, the court entered a stipulated final judgment and order as to relief defendant Judy Dai. The order imposes a judgment of $3,088,381.80 against Dai for the purpose of providing redress to consumers. On July 1, 2021, the court entered a stipulated final judgment and order as to relief defendant's 1st Generation Holdings, LLC (1st Generation) and Infinite Management Corp (Infinite Management). The order imposes a judgment of $3,984,779.28 and $2,049,189.07 against 1st Generation and Infinite Management, respectively, for the purpose of providing redress to consumers. Full payment of the amount imposed on Infinite Management will be suspended based on its demonstrated inability to pay following its turnover of assets. On July 14, 2021, the court entered a stipulated final judgment and order as to defendant Consumer Advocacy Center, Inc. (CAC). The order imposes a judgment of $35,105,017.93 against CAC for the purpose of providing consumer redress. The amount of redress to be collected will be based on the amount recovered by the bankruptcy trustee and the resolution of multiple claims against the CAC bankruptcy estate. The court also imposed a $1 civil money penalty in favor of the CFPB and against the CAC bankruptcy estate. The court permanently restrained CAC from participating in any debt-relief service or telemarketing any consumer financial product. The CFPB filed a third amended complaint on August 5, 2021, to remove remaining claims relating to a relief defendant against whom a stipulated final judgment was previously entered. On March 22, 2022, the court entered a stipulated final judgment and order as to defendant TAS 2019 LLC. The order imposes a judgment of $2,866,314.24 in consumer redress, a $1 civil money penalty, and injunctive relief permanently banning TAS 2019 LLC from participating in any debt relief service or telemarketing any consumer financial product. On May 24, 2022, the court entered a stipulated final judgment and order against relief defendant Sarah Kim imposing a judgment amount of $483,662.60, which was suspended upon her payment of $85,000 and turnover of certain assets for liquidation. On June 10, 2022, the court entered a stipulated final judgment and order as to defendant Albert Kim. The order imposes a judgment of $95,057,757 in consumer redress, a $1 civil money penalty, and injunctive relief including banning him from participating in any debt relief service or telemarketing any consumer financial product or service and making misrepresentations about certain aspects of any consumer financial products or services. Full payment of the judgment is suspended based on a demonstrated inability to pay following, among other things, Kim's turnover of assets and payment of a $1 civil money penalty. On January 30, 2023, the CFPB filed a motion for summary judgment as to its claims against Kaine Wen. As of the end of the reporting period, that motion remained pending against Wen.; additionally, claims against relief defendant Anan Enterprise, Inc. remained stayed pending the outcome of a bankruptcy adversary action filed in the Southern District of Florida.[62] As of the end of the reporting period, the case remains pending.

- *Bureau of Consumer Financial Protection v. Forster & Garbus, LLP* (E.D.N.Y. No. 2:19-cv-02928). On May 17, 2019, the CFPB filed suit against Forster & Garbus, LLP, a debt-collection law firm based in Commack, New York. The CFPB alleged that from 2014 through 2016, fewer than a dozen attorneys at Forster & Garbus filed more than 99,000 debt-collection lawsuits, while having documents to support only a fraction of those debts. The CFPB alleged that these lawsuits were filed without meaningful attorney involvement, and thus the signatures of attorneys on these lawsuits violated the FDCPA's prohibition against the use of false, deceptive, or misleading representations or means to collect a debt and the CFPA's prohibition against deceptive acts and practices. On January 18, 2023, the court entered a stipulated final judgment and order, which requires Forster & Garbus to possess specific documents supporting consumer debts and have an attorney review these documents before filing any new lawsuit, and to dismiss any pending lawsuit unless it certifies its compliance with these documentation and meaningful-attorney-involvement requirements. The order also requires Forster & Garbus to pay a civil money penalty of $100,000.

- *Bureau of Consumer Financial Protection v. Progrexion Marketing, Inc.; PGX Holdings, Inc.; Progrexion Teleservices, Inc.; eFolks, LLC; CreditRepair.com, Inc.; John C. Heath, Attorney at Law, P.C., d/b/a/ Lexington Law* (D. Utah No. 2:19-cv-00298). On May 2, 2019, the CFPB filed suit against PGX Holdings, Inc. and its subsidiaries, Progrexion Marketing, Inc., Progrexion Teleservices, Inc.,

[62] Additional activity has occurred with this matter since the end of the reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/premier-student-loan-center-et-al/.

CreditRepair.com, Inc., and eFolks, LLC (collectively, Progrexion) and against John C. Heath, Attorney at Law PC, which does business as Lexington Law. Progrexion and Lexington Law offer and provide credit repair services through the brands Lexington Law and CreditRepair.com, which are two of the largest credit repair companies in the country. The Telemarketing Sales Rule (TSR) requires that fees for telemarketed credit repair services may only be sought and received after the credit repair company provides the consumer with documentation in the form of a consumer report reflecting that the promised results were achieved, such report having been issued more than six months after the results were achieved. As alleged in the amended complaint filed on August 17, 2022, Progrexion and Lexington Law violated the TSR by requesting and receiving prohibited upfront fees for their credit repair services. The CFPB also alleged that Progrexion and its subsidiaries violated the TSR and the Consumer Financial Protection Act of 2010 by making deceptive representations, or by substantially assisting others in doing so, to entice consumers into purchasing credit repair services. On March 10, 2023, the district court ruled that defendants violated the TSR's prohibition on upfront fees and granted the CFPB partial summary judgment against the defendants. As of the end of the reporting period, the case remained pending.[63]

- *Bureau of Consumer Financial Protection v. Future Income Payments, LLC, et al.* (C.D. Cal. 8:18-cv-01654), transferred to (D.S.C. No. 6:19-cv-02950). On September 13, 2018, the CFPB filed a complaint against Future Income Payments, LLC, Scott Kohn, and several related entities. The CFPB alleged that defendants represented to consumers that their pension-advance products were not loans, were not subject to interest rates, and were comparable in cost to – or cheaper than – credit-card debt when, in actuality, the pension-advance products were loans, and were subject to interest rates that were substantially higher than credit-card interest rates. The CFPB also alleged that the defendants failed to disclose a measure of the cost of credit, expressed as a yearly rate, for its loans. On February 22, 2021, the court entered a default judgment against all defendants and appointed a receiver. The default judgment imposes a permanent injunction, including a permanent ban on advertising, marketing, promoting, offering for sale, or selling any pension-advance products, and requires defendants to pay over $436 million in consumer restitution and a $65,481,736 penalty. As of the end of the reporting period, the receiver's work is ongoing.

- *Consumer Financial Protection Bureau v. The National Collegiate Master Student Loan Trust, et al.* (D. Del. No. 17-cv-1323). On September 18, 2017, the CFPB filed a complaint

[63] Additional activity has occurred with this matter since the end of the reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/pgx-holdings-inc/.

and proposed consent judgment against several National Collegiate Student Loan Trusts (collectively, "NCSLT"). The CFPB alleges that NCSLT brought debt collection lawsuits for private student loan debt that the companies could not prove was owed or was too old to sue over; that they filed false and misleading affidavits or provided false and misleading testimony; and that they falsely claimed that affidavits were sworn before a notary. Soon after the CFPB's filing, several entities moved to intervene to object to the proposed consent judgment. The judge granted the intervention motions, and on May 31, 2020, the court denied the CFPB's motion to approve the proposed consent judgment filed with the original complaint. Several of the intervenors then filed motions to dismiss, one of which was granted in part, dismissing the complaint without prejudice. On April 30, 2021, the CFPB filed an amended complaint, adding clarifying allegations related to several issues raised in the motions to dismiss the original complaint. On May 21, 2021, defendants and certain intervenors filed a motion to dismiss the amended complaint, which the court denied on December 13, 2021. On February 11, 2022, the court certified two holdings in its opinion denying the motion to dismiss for interlocutory appeal to the Third Circuit and stayed the matter. On April 29, 2022, the Third Circuit granted the petition to appeal. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. Ocwen Financial Corporation, Ocwen Mortgage Servicing, Inc., Ocwen Loan Servicing, LLC, and PHH Mortgage Corporation* (S.D. Fla. No. 17-cv-80495). On April 20, 2017, the CFPB filed a complaint against mortgage loan servicer Ocwen Financial Corporation and its subsidiaries. The CFPB alleges that they used inaccurate and incomplete information to service loans, misrepresented to borrowers that their loans had certain amounts due, illegally foreclosed on homeowners that were performing on agreements on loss mitigation options, failed to adequately investigate and respond to borrower complaints, and engaged in other conduct in violation of the CFPA, TILA, FDCPA, Real Estate Settlement Procedures Act (RESPA), and Homeowners Protection Act (HPA). On September 5, 2019, the district court rejected the majority of Ocwen's arguments in its motion to dismiss but required the CFPB to re-plead its allegations, which the CFPB did on October 4, 2019. The case was partially consolidated with a related case against Ocwen brought by the Office of the Attorney General and Office of Financial Regulation for the State of Florida, and the Florida plaintiffs settled their claims against Ocwen. On March 4, 2021, the district court granted in part defendants' Motion for Summary Judgment as to Counts 1-9 of the CFPB's First Amended Complaint based on *res judicata*. On April 19, 2021, the CFPB filed a Second Amended Complaint that dropped Count 10 of its First Amended Complaint and limited the claims set forth in Counts 1 through 9 to allegations of violations for the time period of January 2014 through February 26, 2017. On April 21, 2021, in light of the CFPB's recently filed Second Amended Complaint, the district court entered a final judgment in favor of the defendants. The CFPB filed a notice of appeal the same day. On April 6, 2022, the Eleventh Circuit held that the parties intended to preclude new challenges to conduct covered by the parties' prior 2013 settlement agreement's servicing standard, monitoring, and enforcement regime. It vacated the district court's decision and remanded the case for further analysis of the CFPB's claims and the parties' prior 2013 settlement agreement. As of the end of the reporting period, the case remained pending.[64]

- *Consumer Financial Protection Bureau v. RD Legal Funding, LLC, RD Legal Finance, LLC, and RD Legal Funding Partners, LP, and Roni Dersovitz* (S.D.N.Y. No. 1:17-cv-0890). On February 7, 2017, the CFPB and the New York Attorney General filed a complaint against RD Legal Funding, LLC, two related entities, and the companies' founder and owner, Roni Dersovitz. As set forth in the July 14, 2022, amended complaint, the CFPB alleged that they made misrepresentations to potential borrowers and engaged in abusive practices in connection with cash advances on settlement payouts from victim-compensation funds. On May 15, 2017, the defendants filed a motion to dismiss the CFPB's complaint, which the CFPB opposed. On June 21, 2018, the court issued an opinion concluding that the defendants are subject to the CFPA's prohibitions and that the complaint properly pleaded claims against all of them. The court held, however, that the removal provision that applied to the CFPB's Director violated the constitutional separation of powers and could not be severed from the remainder of Title X of the Dodd-Frank Act. Based on that conclusion, the court ultimately dismissed the entire case. The United States Court of Appeals for the Second Circuit vacated the district court's judgment and remanded the case for further proceedings. On November 28, 2022, the district court entered a stipulated judgement, providing over $600,000 in debt relief for harmed consumers; injunctive relief barring the defendants from doing business with potential recipients of governmentally created 9/11 victim-compensation funds; and a civil money penalty of $1.

- *Consumer Financial Protection Bureau v. Navient Corporation, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc.* (M.D. Pa. No. 17-cv-0101). On January 18, 2017, the CFPB filed a complaint against Navient Corporation and its subsidiaries, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc. The CFPB alleges that Navient Solutions and Navient Corporation steered borrowers toward repayment plans that resulted in borrowers paying more than other options; misreported to credit reporting

[64] Additional activity has occurred with this matter since the end of the reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/ocwen-financial-corporation-ocwen-mortgage-servicing-inc-and-ocwen-loan-servicing-llc/.

agencies that severely and permanently disabled borrowers who had loans discharged under a federal program had defaulted on the loans when they had not; deceived private student loan borrowers about requirements to release their co-signer from the loan; and repeatedly incorrectly applied or misallocated borrower payments to their accounts. The CFPB also alleges that Pioneer and Navient Corporation misled borrowers about the effect of rehabilitation on their credit reports and the collection fees that would be forgiven in the federal loan rehabilitation program. The CFPB seeks consumer redress and injunctive relief. On March 24, 2017, Navient moved to dismiss the complaint. On August 4, 2017, the court denied Navient's motion. On May 19, 2020, the CFPB and all three defendants moved for summary judgment and these motions are pending. On July 10, 2020, Navient filed a motion for judgment on the pleadings, which the court denied on January 13, 2021. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, Lee Jundanian, Raffi Boghosian, Michael Borkowski, and Charles Smith* (D. Md. No. 1:16-cv-3759). On November 21, 2016, the CFPB filed a complaint against Access Funding, LLC, Access Holding, LLC, Reliance Funding, LLC, three of the companies' principals—Lee Jundanian, Raffi Boghosian, and Michael Borkowski—and a Maryland attorney, Charles Smith. The CFPB alleged that Access Funding was aware that the individuals from whom they purchased structured settlement payments were frequently in need of the funds the company could supply. The CFPB also alleged that the companies and their principals steered consumers to receive "independent advice" from Smith, who was paid directly by Access Funding and provided only cursory communications to consumers. The CFPB alleged that Smith's conduct was unfair, abusive, and deceptive in violation of the CFPA and that Access Funding and its leadership unlawfully aided Smith's illegal conduct. The CFPB further alleged that Access Funding engaged in abusive conduct by advancing money to some consumers and represented to those consumers that the advances obligated them to go forward with transactions even if they realized that the transactions were not in their best interests. On September 13, 2017, the court granted defendants' motions to dismiss counts I–IV, arising out of Smith's conduct, on the grounds that he had attorney-client relationships with the consumers in question. The court denied the defendants' motions to dismiss the CFPB's claim relating to the advances Access Funding offered consumers. The court granted the CFPB's motion to file an amended complaint alleging that Smith did not have attorney-client relationships with the consumers in question. Defendants again filed motions to dismiss, which the court denied. The defendants filed a motion for partial summary judgment, which the court denied on January 18, 2019. On December 26, 2019, the court stayed the case pending the Supreme Court's decision in *Seila Law LLC v. CFPB*, No. 19-7 (cert. granted Oct. 18, 2019). On October 23, 2020, based on the parties' stipulation, the court dismissed the claims against Reliance Funding, LLC. The parties moved for summary judgment, which the Court denied on July 12, 2021. On November 18, 2021, the court entered a stipulated judgment and order against Charles Smith, which requires him to pay $40,000 in disgorgement and a $10,000 civil money penalty. The order also permanently bans him from the structured-settlement industry. On December 17, 2021, the court entered a stipulated judgment and order against Access Funding, LLC, Access Holding, LLC, Lee Jundanian, and Raffi Boghosian, requiring the settling defendants to pay $40,000 in disgorgement and a $10,000 civil money penalty. On May 18, 2022, the court entered a consent order against Michael Borkowski requiring him to pay a $5,000 civil money penalty. The December 2021 and May 2022 orders also prohibit the settling defendants from referring consumers to a specific individual or for-profit entity for advice concerning any structured-settlement transaction or taking unreasonable advantage of consumers' lack of understanding of the material risks, costs, or conditions of any cash advance. The orders also prohibit the settling defendants from misrepresenting the relationship between themselves and providers of independent professional advice, and any other fact material to consumers –such as the material risks, total costs, or conditions of any advance – in connection with the transfer of payment streams from structured-settlement holders.

- *Consumer Financial Protection Bureau v. All American Check Cashing, Inc., Mid-State Finance, Inc., and Michael E. Gray* (S.D. Miss. No. 16-cv-0356). On May 11, 2016, the CFPB filed a complaint against two companies, All American Check Cashing, Inc. and Mid-State Finance, Inc., which offered check-cashing services and payday loans, and their president and sole owner, Michael Gray. The CFPB alleged that the defendants tried to keep consumers from learning how much they would be charged to cash a check and used deceptive tactics to stop consumers from backing out of transactions. The CFPB also alleged that the defendants made deceptive statements about the benefits of its high-cost payday loans and failed to provide refunds after consumers made overpayments on their loans. On November 10, 2022, the court entered a final settlement order, which requires Gray to pay a civil money penalty of $899,350, of which $889,350 was remitted due to a penalty of that amount being paid to the Mississippi Department of Banking and Consumer Finance. The settlement also prohibits Gray from reinstating the corporate defendants, which were dissolved on December 10, 2018.

- *In the Matter of Integrity Advance, LLC and James R. Carnes* (2015-CFPB-0029) (not a credit union or depository institution). On November 18, 2015, the CFPB filed a notice of charges against an online lender, Integrity Advance, LLC, and its CEO, James R. Carnes. The CFPB alleged that they deceived consumers about the cost of short-term loans and that the company's contracts did not disclose the costs consumers would pay under the default terms of the contracts. The CFPB also alleged that the company unfairly used remotely created checks to debit consumers' bank accounts even after the consumers revoked authorization for automatic withdrawals. On September 27, 2016, the Administrative Law Judge (ALJ) issued a Recommended Decision finding liability and recommending injunctive and monetary relief. The Recommended Decision was appealed to the Director, and the Director remanded the case for a new hearing and recommended decision by the CFPB's ALJ. In response to cross motions for summary disposition, on August 4, 2020, the ALJ issued a Recommended Decision finding in the CFPB's favor on all counts, which the respondents appealed. On January 11, 2021, the Director affirmed and reversed in part the Recommended Decision. She affirmed the ALJ's conclusion that Integrity Advance violated TILA and EFTA and that both respondents violated the CFPA. With respect to the appropriate remedy, she concluded that Integrity Advance and James Carnes were jointly and severally liable for more than $38 million in restitution and imposed a $7.5 million civil money penalty against Integrity Advance and $5 million penalty against Carnes. The Director did not order restitution for conduct that pre-dated July 21, 2011, which is the CFPB's designated transfer date. On September 15, 2022, the Tenth Circuit affirmed the Director's order, and on September 29, 2022, the defendants petitioned for rehearing *en banc*, which the Tenth Circuit denied on November 11, 2022. On March 6, 2023, defendant Integrity Advance petitioned the Supreme Court for writ of certiorari. As of the end of the reporting period, the petition remained pending.

- *Consumer Financial Protection Bureau v. Global Financial Support, Inc., d/b/a Student Financial Resource Center, d/b/a College Financial Advisory; and Armond Aria a/k/a Armond Amir Aria, individually, and as owner and CEO of Global Financial Support, Inc.* (S.D. Cal. No. 15-cv-2440). On October 29, 2015, the CFPB filed a complaint against Global Financial Support, Inc. (Global Financial), which operated under the names Student Financial Resource Center and College Financial Advisory, and its owner and CEO, Armond Aria. The CFPB alleged that the defendants issued marketing letters instructing students to fill out a form and pay a fee in exchange for the company providing a financial aid program or conducting extensive searches to target or match students with individualized financial aid opportunities. The CFPB also alleged that consumers who paid the fee received nothing or a generic booklet that failed to provide individualized advice. The CFPB also alleged that the defendants misrepresented that missing the deadline indicated in the marketing letter could jeopardize consumers' ability to obtain financial aid when the deadline actually had no consequences. On January 25, 2021, the court granted, in part, the CFPB's motion for partial summary judgment against Armond Aria and default judgment against Global Financial, finding that 76,000 consumers purchased Global Financial's "program" based on its misrepresentations. On February 16, 2021, the CFPB filed an amended complaint dismissing the remaining claims against Aria. On March 29, 2021, the court entered a final judgment and order against both defendants imposing injunctive relief, $4,738,028 in restitution to consumers, and a $10 million civil money penalty. Armond Aria filed an appeal of the final judgment to the Ninth Circuit on May 19, 2021. On December 13, 2022, the Ninth Circuit affirmed the district court's decision in its entirety. On February 27, 2023, Aria filed a petition for rehearing or rehearing *en banc*. As of the end of the reporting period, Aria's petition and the case remained pending.[65]

- *Consumer Financial Protection Bureau v. Nationwide Biweekly Administration, Inc., et al.* (N.D. Cal. No. 3:15-cv-2106). On May 11, 2015, the CFPB filed a complaint against Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, and Daniel S. Lipsky alleging that they engaged in abusive and deceptive acts and practices in violation of the CFPA and the TSR regarding a mortgage payment product known as the "Interest Minimizer Program," or IM Program. The CFPB alleges that the defendants misrepresented their affiliation with consumers' mortgage lenders; the amount of interest savings consumers would realize and when consumers would achieve savings on the IM Program; consumers' ability to attain the purported savings on their own or through a low- or no-cost option offered by the consumers' servicer; and fees for the program. The CFPB seeks a permanent injunction, consumer redress, and civil money penalties. A trial was held beginning on April 24, 2017, and on September 8, 2017, the court issued an opinion and order finding that the defendants had engaged in deceptive and abusive conduct in violation of the CFPA and TSR. The court imposed a $7.93 million civil money penalty but denied the CFPB's request for restitution and disgorgement. On November 9, 2017, the court reduced the previous order to a judgment that included a permanent injunction forbidding defendants from engaging in specified acts or practices. The court denied defendants' post-trial motions on March 12, 2018, and both parties filed notices of appeal. On January 27, 2023, the United States Court of Appeals for the Ninth Circuit issued a decision vacating the district court's September 8, 2017, order and remanding the case to the district court to consider several issues raised on appeal. The Ninth Circuit's decision did not include a ruling on the merits of the parties' respective appeals. As of the end of the reporting period, the case remains pending.

[65] Additional activity has occurred with this matter since the end of this reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/student-financial-resource-center-college-financial-advisory/.

- *Consumer Financial Protection Bureau v. Universal Debt & Payment Solutions, LLC, et al.* (N.D. Ga. No. 15-cv-0859). On March 26, 2015, the CFPB filed a lawsuit against a group of seven debt collection agencies and six individual debt collectors, four payment processors and individual sales organizations, and a telephone marketing service provider alleging unlawful conduct related to a phantom debt collection operation. Phantom debt is debt that consumers do not actually owe or debt that is not payable to those attempting to collect it. The CFPB alleges that the individuals, acting through a network of corporate entities, used threats and harassment to collect phantom debt from consumers. The CFPB alleges the defendants violated the FDCPA and the CFPA's prohibition on unfair and deceptive acts and practices and substantial assistance to unfair or deceptive conduct. On April 7, 2015, the CFPB obtained a preliminary injunction against the debt collectors that froze their assets and enjoined their unlawful conduct. On August 25, 2017, as a discovery sanction against the CFPB, the court dismissed the CFPB's claims against the payment processors and the telephone marketing service provider: Frontline Processing Corp., Global Payments, Inc., Pathfinder Payment Solutions, Inc., Francis David Corp. d/b/a/ Electronic Merchant Systems, and Global Connect, LLC. Five of the seven corporate debt collectors defaulted and the CFPB voluntarily dismissed one individual defendant, Varinderjit Bagga. On March 21, 2019, the court granted the CFPB's motion for summary judgment on all its claims against four individual debt collectors, Marcus Brown, Mohan Bagga, Sarita Brown, and Tasha Pratcher, and against the non-defaulted corporate debt collector WNY Account Solutions, LLC. The court further granted the CFPB's motion as to one of its claims against the other individual debt collector defendant, Sumant Khan, but denied summary judgment on the remaining claims. The court also denied the CFPB's motion for summary judgment against the other non-defaulted corporate debt collector Payment Processing Solutions, LLC. Lastly, the court denied the latter two defendants' motions for summary judgment against the CFPB. On August 21, 2019, the court entered a stipulated final judgment and order against Sumant Khan and S Payment Processing Solutions, LLC. Among other things, the stipulated judgment and order requires the settling defendants to transfer all the funds in their various bank accounts to the CFPB in partial satisfaction of a judgment of equitable monetary relief and damages in the amount of $633,710, which is partially suspended based on inability to pay. The stipulated judgment and order permanently bans the settling defendants from engaging in debt collection activities and prohibits them from making certain misrepresentations. On November 15, 2019, the court entered a stipulated final judgment and order against Mohan Bagga. Among other things, the stipulated judgment and order imposes a suspended judgment against Bagga of equitable monetary relief and damages in the amount of $5,261,484, orders him to pay a $1 civil money penalty, permanently bans him from engaging in debt collection activities, and prohibits him from making certain misrepresentations. The suspension of the judgment and the $1 civil money penalty are based on his inability to pay. On February 19, 2020, the court appointed a receiver to, among other things, identify and conserve frozen assets of certain defendants for future potential consumer redress. On December 15, 2020, the court entered a stipulated final judgment and order against Tasha Pratcher. Among other things, the stipulated judgment and order imposes a $300,000 judgment against Pratcher for monetary relief and damages, which amount is suspended upon her payment of $2,500 and turnover of assets, orders her to pay a $1 civil money penalty, permanently bans her from engaging in debt collection activities, and prohibits her from making certain misrepresentations. On October 20, 2021, the court entered a permanent injunction and final judgment against Marcus Brown, Sarita Brown, and WNY Account Solutions, LLC, and a default judgment against the five corporate debt collectors—Check & Credit Recovery, LLC, Credit Power, LLC, Universal Debt & Payment Solutions, LLC, Universal Debt Solutions, LLC, and WNY Solutions Group, LLC—which had previously defaulted. These orders impose judgments for monetary relief against Marcus Brown, Sarita Brown, WNY Account Solutions, LLC, and the defaulted defendants, joint and severally, in the amount of $5,183,947.71 and require them to pay civil money penalties totaling $2,016,000. The orders also permanently ban them from engaging in debt collection activities, prohibit them from making certain misrepresentations, and prohibit them from using consumer information they obtained during the course of the debt collection scheme. On December 17, 2021, the CFPB filed a notice of appeal of the court's August 25, 2017, order dismissing its claims against the payment processors and the telephone marketing services provider. As of the end of the reporting period, the CFPB's appeal and the case remained pending.[66]

- *Consumer Financial Protection Bureau v. The Mortgage Law Group, LLP, d/b/a The Law Firm of Macey, Aleman & Searns; Consumer First Legal Group, LLC; Thomas G. Macey; Jeffrey J. Aleman; Jason E. Searns; and Harold E. Stafford* (W.D. Wis. No. 3:14-cv-0513). On July 22, 2014, the CFPB filed a complaint against The Mortgage Law Group, LLP (TMLG), the Consumer First Legal Group, LLC (CFLG), and attorneys Thomas Macey, Jeffrey Aleman, Jason Searns, and Harold Stafford. The CFPB brought suit alleging that the defendants violated Regulation O, formerly known as the Mortgage Assistance Relief Services Rule, by taking payments from consumers for mortgage modifications before the consumers signed a mortgage modification agreement from their lender, by failing to make required disclosures, by directing consumers not to

[66] Additional activity has occurred with this matter since the end of the reporting period. More information can be found at: https://www.consumerfinance.gov/enforcement/actions/1st-alliance-lending-llc-et-al/https://www.consumerfinance.gov/enforcement/actions/lrs-litigation-services/.

contact lenders, and by making deceptive statements to consumers when providing mortgage assistance relief services. A trial was held in April 2017. On June 21, 2017, the district court entered a stipulated judgment against the bankruptcy estate of TMLG, which sought Chapter 7 bankruptcy. The court enjoined TMLG from operating and ordered TMLG to pay $18,331,737 in redress and $20,815,000 in civil money penalties. On May 29, 2018, the CFPB filed an unopposed motion to increase the redress amount ordered by the court to $18,716,725.78, based on newly discovered information about additional advance fees paid by consumers. The amended stipulated judgment against TMLG increasing redress to $18,716,725.78 was issued by the court on November 11, 2018. On November 15, 2018, the court issued an opinion and order ruling that defendants CFLG, Macey, Aleman, Searns, and Stafford violated Regulation O by taking upfront fees and by failing to make required disclosures, and that some of the defendants also violated Regulation O by directing consumers not to contact their lenders and by making deceptive statements. The court directed that the parties submit briefs addressing what damages, injunctive relief, and civil money penalties, if any, should be awarded. On November 4, 2019, the court issued an opinion and order against defendants CFLG, Macey, Aleman, Searns, and Stafford, imposing a total of $21,709,022 in restitution ($18.7 million of which TMLG is also jointly and severally liable for) and $37,294,250 in civil money penalties. CFLG, Macey, Aleman, and Searns were permanently enjoined from marketing, selling, providing, or assisting others in selling or providing any mortgage-assistance-relief or debt-relief products or services. Stafford was enjoined from marketing, selling, providing, or assisting others in selling or providing mortgage-assistance-relief services for five years. CFLG, Macey, Aleman, Searns, and Stafford filed an appeal with the Seventh Circuit on December 4, 2019. On July 23, 2021, the Seventh Circuit affirmed the district court's rulings that defendants violated Regulation O, vacated the remedial order, and remanded to the district court for further proceedings on remedies. On August 1, 2022, the district court awarded $10,854,510.85 in restitution and $18,410,500 in penalties against the defendants, and imposed an eight-year ban on all the defendants except Stafford, whose five-year ban remained in place, on mortgage-assistance relief services. On August 11, 2022, defendants filed a notice of appeal, and the CFPB filed a notice of cross-appeal on September 15, 2022. As of the end of the reporting period, the case remains pending.

- *Consumer Financial Protection Bureau v. CashCall, Inc.; WS Funding, LLC; Delbert Services Corporation; and J. Paul Reddam* (D. Mass. No. 1:13-cv-13167), transferred to (C.D. Cal. No. 2:15-cv-07522). On December 16, 2013, the CFPB filed a complaint against online lender CashCall Inc.; its owner J. Paul Reddam; WS Funding, LLC, a subsidiary; and Delbert Services Corporation, an affiliate, for collecting money consumers did not owe. The CFPB's amended complaint, filed on March 21, 2014, alleges that the defendants violated the CFPA's prohibition against unfair, deceptive, and abusive acts and practices by collecting and attempting to collect consumer-installment loans that were void or uncollectible because they violated either state caps on interest rates or state licensing requirements for lenders. The complaint alleges that CashCall serviced loans it made in the name of an entity, Western Sky, which was located on the Cheyenne River Sioux Tribe's land. The loan agreements included a choice-of-law provision saying that the Tribe's law applied to the loans. On August 31, 2016, the court granted the CFPB's motion for partial summary judgment, concluding that the choice-of-law provision in the loan agreements was not enforceable and that the law of the borrowers' states applied, resulting in the loans being void or uncollectable. Because the loans were void, the court found that the defendants engaged in deceptive acts or practices by demanding and collecting payment on debts that consumers did not owe. On January 19, 2018, the court issued findings of fact and conclusions of law imposing a $10.28 million civil money penalty but denying the CFPB's request for restitution and an injunction. The CFPB and the defendants appealed. On May 23, 2022, the Ninth Circuit affirmed the district court's finding of liability; vacated the district court's penalty, remanding for the district court to reassess the penalty taking into account defendants' reckless conduct; and vacated the district court's decision to award no restitution, remanding to the district court to determine whether and what restitution would be appropriate in consideration of the Ninth Circuit Court's opinion. On February 10, 2023, the district court issued an order awarding the CFPB a $33,276,264 civil money penalty and $134,058,600 in restitution. On March 16, 2023, CashCall appealed the district court's final judgment. As of the end of the reporting period, the case remains pending on appeal.

3.2 Actions taken regarding rules, orders, and supervisory and enforcement actions with respect to covered persons which are not credit unions or depository institutions

All public enforcement actions are listed in Section 3.1.1 of this Report. Those actions taken with respect to covered persons, which are not credit unions or depository institutions, are noted within the summary of the action.

4. State Consumer Financial Law

For purposes of the Section 1016(c)(7) reporting requirement, the CFPB has determined that any actions asserting claims pursuant to Section 1042 of the Dodd-Frank Act are "significant."

4.1 Assessment of significant actions by attorneys general and state regulators relating to federal consumer financial law

The CFPB is aware of the following developments in pending state attorney general and regulatory actions asserting claims under the Dodd-Frank Act during the October 1, 2022, through March 31, 2023 reporting period.

- *Consumer Financial Protection Bureau and the People of the State of New York, by Letitia James, the Attorney General of the State of New York v. Credit Acceptance Corporation* (S.D.N.Y. No. 1:23-cv-00038). On January 4, 2023, the CFPB and New York Attorney General Letitia James filed a joint lawsuit against Credit Acceptance Corporation, an indirect auto lender that funds and services car loans for subprime and deep-subprime consumers. *See supra* Section 3.1.1 for a full description.

- *State of Tennessee ex rel. Jonathan Skrmetti, et al. vs. Ideal Horizon Benefits, LLC d/b/a Solar Titan USA, LLC, Craig Kelley, Richard Atnip, and Sarah Kirkland, and Solar Mosaic, LLC, Defendants, and Solar Titan Charters, LLC d/b/a Titan Charters* (E.D. Tenn. 3:23-cv-46). On February 6, 2023, the attorneys general of Tennessee and Kentucky filed suit against Solar Titan, its principals and Solar Mosaic, the company that provided financing to consumers for the purchase and installation of solar systems. The states allege that defendants made numerous misrepresentations in connection with the sale and financing of solar systems and that these practices violated the CFPA's prohibitions against unfair, abusive, and deceptive practices, as well as the states' own consumer protection statutes. The attorneys general have also alleged that defendants' have violated TILA's disclosure and rescission requirements. As of the end of the reporting period, the case remains pending.

costs, or conditions of add-on products and by loan flipping in violation of the CFPA; (4) the disclosures Mariner provides to its customers fail to disclose accurate finance charges and annual percentage rates in violation of Regulation Z and the CFPA; and (5) Mariner fails to disclose to consumers the commission payments it retains and deducts from insurance premium payments paid to credit insurers in violation of TILA and the CFPA. The attorneys general of Pennsylvania, Washington, and New Jersey have also alleged that Mariner has violated their respective state consumer protection statutes. As of the end of the reporting period, the case remains pending.

- *Bureau of Consumer Financial Protection and the Commonwealth of Massachusetts ex rel. Maura Healey, Attorney General v. Commonwealth Equity Group, LLC (d/b/a Key Credit Repair); Nikitas Tsoukales (a/k/a Nikitas Tsoukalis)* (D. Mass. 1:20-cv-10991). On May 22, 2020, the CFPB and Commonwealth of Massachusetts Attorney General Maura Healey jointly filed a lawsuit against Commonwealth Equity Group, LLC, which does business as Key Credit Repair, and Nikitas Tsoukales (also known as Nikitas Tsoukalis), Key Credit Repair's president and owner. *See supra* Section 3.1.1 for a full description.

5. Fair Lending

5.1 An analysis of efforts to fulfill the Fair Lending mission of the CFPB

Fair lending supervision

The CFPB assesses compliance with federal fair lending consumer financial laws at banks and nonbanks over which the CFPB has supervisory authority. To fulfill its fair lending mission during this reporting period, the CFPB initiated 11 supervisory activities onsite at financial services institutions under the CFPB's jurisdiction to determine compliance with federal laws, including the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act.

With respect to supervisory communications issued by the Office of Supervision during the reporting period, the issues most frequently identified related to the CFPB's review of mortgage lenders discriminating when granting pricing exceptions across a range of ECOA-protected characteristics.

During this reporting period, the CFPB examiners issued fewer Matters Requiring Attention (MRAs) or memoranda of understanding (MOUs) than in the prior period. MRAs and MOUs direct entities to take corrective actions and are monitored by the CFPB through follow-up supervisory events. Among other things, examiners encouraged mortgage lenders to enhance oversight of fair lending risks with respect to granting of competitive pricing exceptions in mortgage lending.

Fair lending enforcement

The CFPB engages in research, conducts investigations, and—where appropriate—takes public enforcement actions for violations of fair lending laws under the CFPB's jurisdiction. Like other federal agencies responsible for enforcing ECOA, the CFPB is required to refer matters to the Department of Justice when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[67] During this reporting period, the CFPB referred seven matters regarding a pattern or practice of lending discrimination to the Department of Justice pursuant to Section 706(g) of ECOA.

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[67] *See* 15 U.S.C. § 1691e(g).

Fair lending rulemaking

On March 30, 2023, the CFPB finalized the Small Business Lending rule, as required by Section 1071 of the CFPA. This required data collection will increase transparency in small business lending, promote economic development, and combat unlawful discrimination. *See supra* Section 1.1 of this report for more information on this rule.

Interagency fair lending coordination

During the reporting period, the CFPB coordinated its fair lending regulatory, supervisory, and enforcement activities with other federal agencies and state regulators and enforcement agencies to promote consistent, efficient, and effective enforcement of federal fair lending laws.

The CFPB, along with the FTC, U.S. Department of Housing and Urban Development (HUD), FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies.

The CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of federal agencies—with the Department of Justice, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

The Federal Financial Institutions Examination Council's (FFIEC) Appraisal Subcommittee (ASC), comprising designees from the CFPB and certain other federal agencies, provides federal oversight of state appraiser and appraisal management company regulatory programs, and a monitoring framework for the Appraisal Foundation. CFPB Deputy Director Zixta Martinez currently serves as the chair of the ASC. Through the ASC, the CFPB addresses topics including discriminatory bias in home appraisals. In January 2023, the CFPB hosted the first-ever public hearing of the ASC. The hearing, which featured a panel of expert witnesses, focused on the scope and impact of appraisal bias.[68] Based on witness statements and public comments received following the hearing, the ASC will hold additional hearings to continue to its work to address appraisal bias.

In February 2023, senior officials from the CFPB, DOJ, and several other federal government agencies submitted a joint letter to The Appraisal Foundation (TAF)–the private,

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[68] *See* "Archive of Past Events: Appraisal Subcommittee Hearing on Appraisal Bias," Consumer Financial Protection Bureau, Jan. 24, 2023, https://www.consumerfinance.gov/about-us/events/archive-past-events/appraisal-subcommittee-hearing-on-appraisal-bias/.

nongovernmental organization that sets appraisal standards—expressing concerns about a draft Ethics Rule. The letter urged TAF to revise the rule to include a detailed statement of the federal prohibitions against discrimination.[69] Afterward, TAF announced that it would issue a revised draft in the months ahead.[70]

In March 2023, the CFPB and DOJ jointly filed a Statement of Interest in *Connolly & Mott v. Lanham et al.*, a lawsuit currently pending in the U.S. District Court for the District of Maryland alleging that an appraiser and a lender violated the FHA and ECOA by lowering the valuation of a home because the owners were Black and by denying a mortgage refinancing application based on that appraisal.[71]

The CFPB also continues to engage with other agencies on issues of bias in home appraisals through the Property Appraisal and Valuation Equity (PAVE) Task Force.

Fair lending outreach and education

The CFPB regularly engages in outreach with stakeholders, including consumer advocates, civil rights organizations, industry, academia, and other government regulators and agencies to educate or communicate about fair lending issues.

The CFPB achieves its educational objectives through publication of proposed rules, advisory opinions, and interpretive rules; issuance of compliance bulletins and CFPB Circulars; policy statements; requests for information; press releases, blog posts, podcasts, videos, brochures, social media, and website updates; and reports regarding fair lending issues. Additionally, CFPB staff deliver speeches, panel remarks, webinars, and presentations addressing fair lending issues; and participate in smaller meetings and discussions with external stakeholders, including international, federal, sovereign, and state regulators and agencies, industry, academia, and consumer and civil rights organizations.

During the reporting period, the CFPB also issued a range of content available to the public and to market participants related to fair lending.[72]

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[69] *See* Letter to Appraisal Standards Board, Consumer Financial Protection Bureau, Feb. 14, 2023, https://files.consumerfinance.gov/f/documents/cfpb_fourth-exposure-draft-letter_2023-02-14.pdf.

[70] *See* "Appraisal Standards Board Responds to Public Feedback," The Appraisal Foundation, Feb. 16, 2023, https://appraisalfoundation.sharefile.com/share/view/secd842a91aed487fa89f7bf61e2006d1.

[71] *See* Connolly and Mott vs. Lanham, Civil Action No. 1:22-cv-02048-SAG (D. Md., March 13, 2023), https://www.justice.gov/opa/press-release/file/1573696/download.

[72] The fair lending and access to credit related blogs, press releases, speeches, and reports are available at: https://www.consumerfinance.gov.

6. Workforce and Contracting Diversity

The Office of Minority and Women Inclusion (OMWI) is charged with overseeing all matters at CFPB relating to diversity in management, employment, and business activities. OWMI works to develop and foster a diverse and inclusive workforce at CFPB and a workplace that emphasizes a culture of belonging. OMWI's work is informed by best practices in diversity, equity and inclusion whereby employees have equitable access to opportunities and are valued for their expertise and authentic perspectives.

6.1 An analysis of CFPB efforts to increase workforce and contracting diversity consistent with procedures established by OMWI

During the reporting period, CFPB continued its work to advance diversity and inclusion under the mandates of Section 342 of the Dodd-Frank Act. CFPB's efforts in promoting diversity, equity, inclusion, and accessibility in its workforce is guided by the CFPB's Diversity, Equity, Inclusion and Accessibility Strategic Plan (DEIA Strategic Plan), FY 2022–2026. The DEIA Strategic Plan aligns with the CFPB's overall FY 2022–2026 Strategic Plan. The CFPB's approach of cascading workforce-related goals and objectives from the CFPB-wide strategic plan to the DEIA strategic plan and ultimately, to the divisional plans will enhance CFPB's work environment and culture and facilitate the CFPB's efforts to address the diverse needs of underserved consumers.

6.2 Office of Minority and Women Inclusion

6.2.1 Significant Initiatives

To incorporate the work of the Disability and Accessibility Program Section (DAPS) into OMWI, OMWI engaged in strategic planning to identify opportunities to elevate and promote the newly combined programs. The OMWI identified four focus areas for the new fiscal year. These areas are Infrastructure, Marketing/Brand Identity, Working Cohesively, and Engaging Stakeholders. OMWI has identified work streams that will support each of these goals to improve the way in which OMWI engages across the CFPB. The strategic planning also allows OMWI to identify areas to expand communication about the DAPS program and to merge training offerings.

During the reporting period, OMWI also administered training regarding supplier diversity to contracting representatives and operations personnel throughout the CFPB. This training provides information regarding the CFPB's small business goals and the opportunities to utilize the purchase card to support small businesses and minority and women-owned businesses.

The mandatory diversity and inclusion training was accessed 75 percent of the CFPB's workforce. OMWI will launch an online version of the mandatory training in the new fiscal year and continue to offer in-person and virtual training on various topics to expand the knowledge base of the CFPB workforce. The training is aligned with the mandates of the Dodd-Frank Act, Section 342, barrier analysis action items from the persons with a disability study and facilitates the CFPB's annual performance standards that require CFPB employees to have competencies that cultivate a diverse and inclusive workplace.

6.2.2 An analysis of CFPB efforts to increase workforce diversity consistent with procedures established by OMWI

As of March 2023, an analysis of the CFPB's current workforce shows the following:

- Forty-six percent of CFPB Executives are women and 46 percent of Executives identify as minorities.
- Women represent 50 percent of the CFPB's workforce in 2023, which is the same representation as the previous year.
- Minorities (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, and employees of two or more races) represent 43 percent of the CFPB workforce in 2023 unchanged from 2022.
- As of March 31, 2023, 15.2 percent of CFPB employees on permanent appointments identified as individuals with a disability. Of the permanent workforce, 2.7 percent of employees identified as individuals with a targeted disability, as defined by the Equal Opportunity Employment Commission.
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The CFPB engages in the following activities to increase workforce diversity:

- Staffing: The CFPB had 62 new hires which included 30 (48 percent) women and 21 (34 percent) minorities.
  - The CFPB continues to enhance diversity by recruiting, hiring, and retaining highly qualified individuals from diverse backgrounds to fill positions at the CFPB:
    - The CFPB continues to use social media platforms to broadly promote vacancies.
    - The CFPB takes steps to ensure fairness in the hiring process, such as by removing applicant names from resumes and other application documents before submitting certain best-qualified candidates lists to selection officials.
    - The CFPB's OMWI and Office of Human Capital collaborate with hiring managers on strategic diversity and inclusion recruitment options.
  - To assist in achieving the CFPB's workforce needs, the CFPB also utilized other professional development programs and recruitment efforts designed to reach veterans and applicants with disabilities.
  - The CFPB's Disability and Accessibility Program Section (DAPS) provides employees and applicants with disabilities access to reasonable accommodations and other accessibility services, which are required to meet the essential functions of their jobs or to obtain fair and equitable access when applying and interviewing for CFPB positions. These efforts support the CFPB's overall efforts to recruit, hire, promote and retain individuals with disabilities as required by the Equal Employment Opportunity Commission's (EEOC) Section 501 regulation.
- Workforce engagement:
  - To promote an inclusive work environment, the CFPB continues to engage with employees and utilize an integrated approach of education, training, and engagement programs that ensures diversity, equity, inclusion, and non-discrimination concepts are part of the learning curriculum and work environment. Employee resource groups, cultural education programs, employee dialogue sessions, a mentor program, and mandatory DEI training are key components of this effort.

6.2.3 Increasing Contracting Diversity

In addition to the mandates in Section 342(b)(2)(B) of the Dodd-Frank Act, Goal 4 of the CFPB's DEIA Strategic Plan describes the efforts the CFPB takes to increase contracting opportunities for diverse businesses including Minority- and Women-owned Businesses (MWOBs). OMWI focuses as much on the active inclusion of its business unit stakeholders to advance supplier diversity as it does MWOB vendors. Accordingly, we make available instructor-led training, eLearning and strategic planning assistance to our internal stakeholders.

Additionally, OMWI representatives travel throughout the country conducting outreach to underserved populations. Likewise, we offer technical assistance sessions at the CFPB's headquarters and virtually for interested vendors nation-wide. Through these efforts, the CFPB maintains a list of over one thousand (1,000) qualified MWOB vendors to be used by program offices before they begin their market research.

As a result of these efforts, 43 percent of the $125 million in contracts that the CFPB awarded or obligated during the reporting period went to MWOBs. The following table represents the total amount of dollars spent and disbursed to MWOBs as a result of contract billing.

TABLE 1: DOLLARS SPENT TOWARD MINORITY-OWNED AND WOMEN-OWNED BUSINESSES

Dollars Spent	%of Total	MWOB Category
$18,351,636	20.4%	Women Owned
$4,238,811	4.7%	Black/African American
$2,067,788	2.3%	American Indian/Alaskan Native
$21,089,363	23.5%	Asian/Pacific Islander American
$223,253	0.2%	Hispanic American

6.2.4 Outreach to Contractors

The CFPB promotes opportunities for the participation of small and large MWOBs by actively engaging CFPB business units with MWOB contractors throughout the acquisition cycle. OMWI provided MWOB briefings to the CFPB divisions highlighting the business case for supplier diversity, sharing office specific MWOB statistics, and inclusion best practices. As a result of a need identified by a program office, OMWI developed its first Micro-Purchase/Purchase Card training in MWOBs utilization.

OMWI added more than 500 new vendors to its repository and actively engaged with vendors with new and updated content added to the How to Do Business with Us and MWOB landing pages.

6.2.5 Diversity within the CFPB Contractors' Workforces

The CFPB requires its contractors and sub-contractors to report their diversity and inclusion data through the Good Faith Effort (GFE) contract requirement. During the reporting period, the CFPB collected GFE compliance data from more than 50 Contractors, providing an opportunity for Contractors to demonstrate their efforts to address the six evaluation criteria: (1) Diversity Strategy; (2) Diversity Policies; (3) Recruitment; (4) Succession Planning; (5) Outreach; and (6) Supplier – Subcontractor Diversity. OMWI continues to maximize technical assistance to CFPB contractors throughout this process.

6.2.6 Assessing Diversity of Regulated Entities

Per Section 342 (b) (2) (c) of the Dodd-Frank Act and Goal 5 of the CFPB's DEIA Strategic Plan, the CFPB continues to collect voluntarily submitted diversity and inclusion assessments from regulated entities. The CFPB Director has encouraged OMWI to focus attention to the largest non-bank financial institutions. During the reporting period, the Acting OMWI Director sent letters to the top 20 non-bank mortgage servicers and the top 20 non-bank mortgage originators requesting a meeting to discuss their diversity and inclusion programming. The OMWI begins meetings with these entities in October and will continue to host meetings to encourage submission of a diversity and inclusion self-assessment from these entities.

The OMWI continues to welcome institutions to meet to discuss their diversity and inclusion initiatives including opportunities and challenges. The CFPB will continue to follow industry developments related to these initiatives and commitments. The CFPB will also continue its outreach to increase awareness and to encourage voluntary submission of the Diversity and Inclusion self-assessment.

7. Budget

7.1 Justification of the budget request for the previous year

The CFPB's Annual Performance Plan and Report and Budget Overview includes estimates of the resources needed for the CFPB to carry out its mission.[73] The document also describes the CFPB's performance goals and accomplishments, supporting the CFPB's long-term strategic plan.

7.1.1 Fiscal Year (FY) 2023 spending though the end of the second quarter of the FY

As of March 31, 2023, the end of the second quarter of FY 2023, the CFPB had spent approximately $453.5 million[74] in FY 2023 funds to carry out the authorities of the CFPB under Federal consumer financial law. There were 1,645 CFPB employees on board at the end of the second quarter.[75]

FY 2023 spending by expense category:

Expense Category	Fiscal Year 2023
Personnel Compensation	$143,811,000
Personnel Benefits	$81,398,000
Benefits for Former Personnel	$0
Travel	$2,684,000
Transportation of Things	$100,000
Rents, Communications, Utilities & Misc.	$8,619,000
Printing and Reproduction	$1,168,000
Other Contractual Services	$182,416,000
Supplies & Materials	$6,967,000
Equipment	$26,376,000
Land & Structures	$0

[73] "Budget and Performance," Consumer Financial Protection Bureau, https://www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/.

[74] This amount includes commitments and obligations. A commitment is a reservation of funds related to an authorized procurement action; an obligation is a transaction or agreement that creates a legal liability and obligates the government to pay for goods and services ordered or received.

[75] This figure reflects the employees on board during the final complete pay-period of the quarter (PP06, ending March 25, 2023).

Expense Category	Fiscal Year 2023
Total (as of March 31, 2023)	**$453,539,000**

7.1.2 FY 2023 fund transfers received from the Federal Reserve System

The CFPB is funded principally by transfers from the Federal Reserve System, up to the limits set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act.[76] As of March 31, 2023, the CFPB had received the following transfers for FY 2023. The amounts and dates of the transfers are shown below.

Date	Funds Transferred
October 19, 2022	$315.7M
January 4, 2023	$286.0M
Total	**$601.7M**

Additional information about the CFPB's finances, including information about the CFPB's Civil Penalty Fund and CFPB-Administered Redress programs, is available in the annual financial reports and the Chief Financial Officer (CFO) quarterly updates published online at www.consumerfinance.gov/about-us/budget-strategy/financial-reports/.

Copies of the CFPB's quarterly funds transfer requests are available online at www.consumerfinance.gov/about-us/budget-strategy/funds-transfer-requests/.

[76] CFPB's operations are funded principally by transfers made by the Board of Governors of the Federal Reserve System (Board) from the combined earnings of the Federal Reserve System, up to the limits set forth in the Dodd-Frank Act. The CFPB Director requests transfers from the Board in amounts that they have determined are reasonably necessary to carry out the CFPB's mission within the limits set forth in the Dodd-Frank Act. Transfers from the Board are capped at $750.9 million in FY 2023. Funds transferred from the Board are deposited into the Consumer Financial Protection Bureau Fund (Bureau Fund), which is maintained at the Federal Reserve Bank of New York.

8. Appendix

2022 Annual Report to Congress on the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) mandates a nationwide licensing system and registry for residential mortgage loan originators. It requires that State licensing and registration and federal registration of residential mortgage loan originators be accomplished through the same online system, known as the Nationwide Mortgage Licensing System and Registry (NMLS&R). The NMLS&R is operated by the State Regulatory Registry LLC (SRR), a wholly owned subsidiary of the Conference of State Bank Supervisors (CSBS). The statutory purposes of the SAFE Act generally include increasing uniformity, reducing regulatory burden, enhancing consumer protection, and reducing fraud.

In July 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred to the CFPB rulemaking authority, and other authorities of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Secretary of the Department of Housing and Urban Development for the SAFE Act. With this transfer, the CFPB assumed: (1) responsibility for developing and maintaining the federal registration system; (2) supervisory and enforcement authority for SAFE Act compliance for applicable entities under the CFPB's jurisdiction; (3) back-up and related authority relating to SAFE Act standards for mortgage loan originator licensing systems at the state level; and (4) certain rulemaking authority. It also transferred to the CFPB the requirement to submit an annual report to Congress on the effectiveness of the SAFE Act's provisions. This section of the CFPB's Spring Semi-Annual Report constitutes the annual SAFE Act report for 2022.

While administering the SAFE Act during 2022, the CFPB worked closely with SRR/CSBS to facilitate sharing mortgage loan originator information between state and federal regulators through the NMLS&R. Officials from the CFPB and SRR/CSBS met regularly to discuss issues related to the operation of the NMLS&R, resolve issues, and discuss requirements and policies related to the administration and functions of the NMLS&R. The CFPB reviewed, and approved as applicable, NMLS&R record adjustment requests to correct inaccurate information on federal registrant accounts. It also responded to Freedom of Information Act (FOIA) requests that pertained to federally registered mortgage loan originators. As of December 31, 2022, there were approximately 387,294 active federally registered mortgage loan originators in the NMLS&R.

In February 2022, CFPB staff virtually attended the 2022 annual NMLS User Conference and Training that provided information and training on the NMLS&R's state licensing and federal registry system related processes. The event was open to regulatory and industry system users, education providers, consultants, and others interested in attending, so it also provided an opportunity for CFPB staff to meet the other participants, build relationships, and share contact information.

The CFPB continues to answer SAFE Act-related questions through its regulations guidance function and provides different forms of guidance and compliance resources on its website. In 2022, the CFPB received approximately 10 inquiries concerning the SAFE Act through its "Regulations inquiries" feature accessible on the CFPB's website. Most of the inquiries sought information about mortgage loan originator licensing and registration requirements. The CFPB also maintains a SAFE Act Inquiries e-mail box to manage operational questions about the SAFE Act. The CFPB received approximately 127 emails in 2022, many of which pertained to the registration of mortgage loan originators and the use of the NMLS&R. The CFPB also continues to work with SRR/CSBS officials with inquiries associated to the use of the system.

While the CFPB has not conducted a formal assessment of the SAFE Act, our interactions with SRR/CSBS and the public indicate that the system is meeting expectations and provides a comprehensive licensing and supervisory database as contemplated by the SAFE Act. During 2022, all of the required states, territories, and D.C. regulators (state regulators) continued to use the NMLS&R for licensing their mortgage loan originators, as is mandated by the SAFE Act, as implemented in Regulation H. The NMLS&R continues to collect and maintain the information required by the SAFE Act, as implemented in Regulation G and H. Additionally, an online consumer portal is available at no charge to consumers to provide employment and publicly adjudicated disciplinary and enforcement history for mortgage loan originators consistent with the statutory objectives of the SAFE Act.

The CFPB is litigating an enforcement action that alleges that Connecticut mortgage company, 1st Alliance Lending, LLC, violated Regulation Z by using unlicensed employees to engage in mortgage-origination activities that required them to be licensed under the SAFE Act, its implementing regulations, and State SAFE Act implementing law. On March 31, 2022, the United States District Court for the District of Connecticut denied 1st Alliance's motion to dismiss this claim finding that the requirement, for loan originator organizations to ensure that their loan originators are licensed as required by state and federal law, is clearly authorized by TILA.

All bank and non-bank mortgage origination exams conducted by the CFPB in 2022 included a review for compliance with the SAFE Act. Examiners tested for accurate licensing and registration as well as related policies and procedures.

During 2022, SRR/CSBS continued to engage the CFPB on issues regarding the NMLS&R and the modernization of the NMLS&R. The desired outcome of the NMLS&R modernization effort is to improve its operations, enhance the user experience, and strengthen supervision. The CFPB continues to provide its feedback and position on current and proposed functions relating to the federal registration process for mortgage loan originators in the NMLS&R to SRR/CSBS.

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November 27, 2023

The Honorable Sherrod Brown
Chairman
Senate Committee on Banking, Housing, and
Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tim Scott
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Brown and Ranking Member Scott:

The Consumer Bankers Association (CBA) submits the following comments for the hearing entitled "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." We appreciate the committee's continued oversight of the Consumer Financial Protection Bureau (CFPB or Bureau) and its activities. CBA is the voice of the retail banking industry whose products and services provide access to credit to millions of consumers and small businesses. Our members operate in all 50 states, serve more than 150 million Americans, and collectively hold two-thirds of the country's total depository assets.

Under the current leadership, the Bureau seeks minimal input from the industry it is responsible for overseeing. This is in contrast to the open dialogue that the banking industry experienced with multiple previous CFPB Directors, regardless of party affiliation. Furthermore, the current Director's nearly constant and public attacks on banks erode consumer confidence in the banking system and undermine efforts to bring more consumers into highly regulated and time-tested depository intuitions. The Bureau frequently establishes new requirements for regulated depository institutions outside of the rulemaking process required by the Administrative Procedure Act (APA) though advisory opinions and press statements that do not have the same weight or clarity as a rule and leave banks seeking clarity to ensure they remain compliant to avoid negative repercussions, such as costly enforcement actions.

In this letter, we offer legislative and regulatory suggestions to lawmakers and the Bureau for the purpose of ensuring consumers continue to have access to highly regulated financial products that enable them to achieve their financial goals. Topics discussed include:

- ***Credit Card Late Fees Rule:*** The CFPB should be required to conduct a rigorous cost-benefit analysis of this proposed rule and how it would affect (1) the cost and availability of credit, particularly with respect to non-prime borrowers, (2) the safety and soundness of credit card issuers, and (3) the use of risk-based pricing.
- ***Section 1033 Rulemaking:*** The Bureau's final Section 1033 rule should broaden the coverage of data providers, address liability more robustly, and meaningfully sunset the practice of screen scraping.
- ***Overdraft:*** The CFPB should hold off on an overdraft rule that would substantively change how banks offer overdraft services to their customers until other rules have been finalized and banks can assess the effects those changes will have on their ability to provide free checking.
- ***Section 1034(c) Advisory Opinion:*** The Bureau should withdraw its advisory opinion and propose it as a formal rulemaking pursuant to the APA.

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- ***Section 1071 Implementation:*** The CFPB should provide at least 36 months for small business lenders to comply with the final rule.

Credit Card Late Fees

On February 1, 2023, the CFPB issued a notice of proposed rulemaking (NPRM) on credit card late fees that would drastically alter the rules on late fees charged by credit card issuers. Comments were due on May 3, 2023, and a final rule is expected to be issued in the coming months. This NPRM is part of the Biden Administration's overarching campaign regarding "junk fees," which seeks to reduce fees charged to consumers by several industries, including but not limited to hotel and lodging, transportation, and entertainment. Of note, the "war on fees" campaign received national recognition in the President's 2023 State of the Union Address– signaling unprecedented coordination between the CFPB and the White House. This degree of coordination between the CFPB and the White House– when viewed in light of the fact that the CFPB has refused to give industry sufficient time to provide data on credit card late fees and late payments in its responses to the proposed rulemaking, as well as the CFPB's decision not to utilize its market monitoring authority to engage in requests for information on this topic– suggest that the CFPB is not truly seeking meaningful responses or data, and instead has prejudged the outcome of the rulemaking and the amount of "consumer savings." This is further evidenced by the White House incorporating a presumed $9 billion of consumer savings into its communications strategy.

Under current Federal Reserve regulations, (1) the credit card late fee safe harbor is $30 for the first late payment and $41 for a subsequent late payment, (2) these safe harbor amounts are adjusted annually for inflation, and (3) late fees cannot be more than 100% of the required minimum payment. The NPRM proposes to (1) reduce the safe harbor amount to $8, (2) eliminate the annual inflation adjustment, and (3) cap late fees at 25% of the required minimum payment.

The long-term costs and impacts of this rulemaking on consumers are unclear. However, initial analysis from industry and even the CFPB suggests a majority of consumers could see their costs increase because of this proposal. As discussed below, the rule departs from traditional risk-based pricing practices required by prudential regulators, resulting in high cost of credit and reduced credit access for consumers who pay their bills on time. Banks are required by their prudential regulators to manage and offset credit risk, and severely limiting the ability for credit card issuers to discourage late payments and limit losses would reduce access to credit for consumers with subprime credit profiles.

While the CFPB and Biden Administration may frame this as "the rich subsidizing lower-income consumers" or "prime credit consumers subsidizing subprime consumers," the CFPB's own research shows that nearly 50% of subprime issuers pay their bills on time. The Bureau claims that this rule could help some credit card customers, but the proposal itself confirms that the Bureau lacks data analysis that is needed to truly understand its consumer impact. **The Bureau acknowledged that cardholders who never pay late– which the CFPB's own data indicates is 74 percent of all Americans with credit cards–[1] will not benefit from the reduced fees and could experience "…higher maintenance fees, lower rewards, or higher interest on interest-paying accounts," and increased costs could completely negate any benefits.**

[1] https://files.consumerfinance.gov/f/documents/cfpb_credit-card-late-fees_report_2022-03.pdf

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Additionally, **the proposed rule would reduce competition in the credit card marketplace by forcing some card issuers to exit the market entirely because they will be unable to cover the costs associated with funding card operations. Dramatically reducing the safe harbor would also provide a weak or nonexistent deterrent effect**, likely resulting in a greater share of late-paying and delinquent accounts, which may ultimately cause more consumers who have delinquent accounts to have negative information reported to credit bureaus, leading to lower credit scores.

Furthermore, the CFPB did not conduct a thorough analysis of the available economic research on the effects of late fees, and the little analysis that the CFPB did perform was not done in a transparent and consistent manner. Finally, a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel is required when a proposed rule will have a significant economic impact on a substantial number of small entities. CBA and other associations stated in their joint trades response to the ANPR on credit card late fees that a SBREFA panel should be required because "[o]f the approximately 824 credit card-issuing banks, more than half (452) have assets less than $750 million, and of the 3,172 credit card-issuing credit unions, nearly 85 percent (2,682) have assets less than $750 million."[2] Even the Small Business Administration's Office of Advocacy has raised concerns about the CFPB's disregard for statutorily required economic impact analyses.[3] Despite this, the Bureau has failed to hold a SBREFA panel.

In light of all of these concerns, the CFPB should be required to conduct a rigorous cost-benefit analysis of this proposed rule and how it would affect (1) the cost and availability of credit, particularly with respect to non-prime borrowers, (2) the safety and soundness of credit card issuers, and (3) the use of risk-based pricing.

Dodd-Frank Section 1033 Implementation

On October 19, 2023, the CFPB released its notice of proposed rulemaking (NPRM) to implement Section 1033 of the Dodd-Frank Act, which addresses consumers' personal financial data rights.[4] Comments are due on December 29, 2023, and the CFPB expects to finalize the rule in fall 2024. CBA has several fundamental concerns with the rule as proposed, and, accordingly, CBA urges the Bureau in the final rule to: (1) broaden the coverage of data providers, (2) address liability more robustly, and (3) meaningfully sunset the practice of screen scraping.

First, the scope of data providers covered by the rule remains too narrow. The proposed rule only covers insured depository institutions and credit card issuers, as well as "other payment facilitation providers." CBA has urged the CFPB to adopt a broad scope of coverage not only for asset accounts, but also for credit products beyond credit cards, like captive auto loan accounts and non-bank credit alternatives, such as buy now pay later products. The CFPB has stated it will cover other consumer financial products and services through a supplemental rulemaking, though no time frame has been provided for such supplemental rulemaking and there will be little time after the finalization of the current rule for this CFPB to initiate a follow-on rulemaking.

[2] https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-comment-letter-late-fees-anpr
[3] U.S. Small Business Administration Office of Advocacy, Letter to Rohit Chopra (May 3, 2023), https://advocacy.sba.gov/wp-content/uploads/2023/05/Comment-Letter-CFPB-Credit-Card-Penalty-Fees-508c.pdf.
[4] https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/open-notices/required-rulemaking-on-personal-financial-data-rights/

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The rule as proposed would massively increase the flow of consumer data without any real attempt to address liability for breaches. Under the Electronic Fund Transfer Act and Regulation E, banks would generally be held liable in most cases even if a third party accessing the consumer's data or third-party data aggregator suffered the breach, but consumers could also be liable for fraudulent or erroneous transactions in some instances. The CFPB's failure to engage in a more fulsome discussion of liability is surprising because the proposal already requires third parties to make certifications relating to a wide range of issues, so the CFPB could have required third parties accessing consumer data to certify that they will be liable for fraudulent and erroneous transactions resulting from a data breach of their systems or their vendors' and clients' systems.

The NPRM does not expressly prohibit screen scraping, and as drafted, it appears to permit third parties to bypass their obligations under the NPRM if they engage in screen scraping rather than accessing covered data through a developer interface. The CFPB has left it to data providers to detect and block screen scraping by third parties. The CFPB could have declared that it would be a violation of the rule if a third party screen scrapes information that could instead be accessed via a developer interface, yet the CFPB placed the onus on data providers to police third parties.

Moreover, industry has expressed significant concerns about the length of the comment period for the NPRM. The Bureau has provided only 70 days for industry to comment, yet offered at least 90 days for notice and comment at previous points in the Section 1033 rulemaking process. To ensure that a final Section 1033 rule is properly crafted and durable, the Bureau must provide a reasonable period of time for stakeholders to submit comments.

Beyond these concerns, there are serious questions about whether the Bureau has exceeded its authority under the Dodd-Frank Act. Section 1033 is half of a page of statute that discusses making data available to consumers in a usable electronic format, yet the CFPB has used this language to propose a rule requiring the banking industry to subsidize an open banking marketplace.

Potential Damaging Changes to Overdraft Policies

In its most recent rulemaking agenda,[5] the Bureau listed a pre-rule item pertaining to overdraft services provided by financial institutions. Currently, little is known about the specifics of what such a proposal would entail, but the Bureau indicated it is considering treating overdraft fees as finance charges under the Truth in Lending Act (TILA) and Regulation Z.

Treating overdraft fees as finance charges would make it impractical, if not impossible, for depository institutions to offer overdraft services to their customers. Each overdraft would be considered an extension of credit, forcing financial institutions to provide consumers with a TILA disclosure regarding the specific transaction. The consumer would have to agree to the terms and the financial institution would have to approve the overdraft, all before a consumer could make an everyday purchase. When the Federal Reserve constructed Regulation Z almost 50 years ago, it intentionally excluded overdraft because it was clear that applying TILA and Regulation Z to overdraft would be impractical. At the time, overdraft was used mainly in the context of paper checks, as debit cards were not yet prevalent. Now, consumers use overdraft with debit purchases every day, making these near-constant disclosures wholly unworkable.

[5] https://www.consumerfinance.gov/rules-policy/regulatory-agenda/

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Making matters worse with this proposal is the fact that millions of consumers have significant short term financing needs, and eliminating overdraft as an option would direct them to sources of credit which are far more costly and less regulated than the banking industry. Research by Curinos[6] has found consumers make highly informed choices about when to use overdraft services. Consumers, especially overdraft users, continue to demonstrate a deep understanding of overdraft and available alternatives. More than 60% of overdrafts come from consumers who intend to use the service, and more than 80% of overdraft transactions come from consumers who opted into debit card overdraft programs with the clear intention of using it to cover their payments.

Beyond that, according to the CFPB's own data, banks have made significant progress reducing overdraft fees by 48% since the beginning of the pandemic.[7] Banks have proactively implemented new overdraft polices such as elimination of overdraft fees, elimination of account transfer fees to cover overages, de minimis exceptions to cover small overages, grace periods for customers to make accounts whole before overdraft fees are assessed, access to small dollar loans, elimination of extended overdraft fees, elimination of returned items fees, and more.
Banks have accomplished this progress by competing with one another and innovating, resulting in highly tailored programs that are specific to the needs of their customers. A CFPB rule that would apply Regulation Z to overdraft services would likely undo all of the progress made by banks by forcing the banking industry into a one size fits all commodity product that will likely fall short of meeting consumers' liquidity needs. It would require significant retooling of the bank programs already in place, reduce competition and innovation, and ultimately harm consumers.

More recently announced changes to overdraft programs are projected to save consumers $18.3 billion from 2021 to 2025, more than $3.5 billion per year. Overdraft fees are projected to have declined by 82% since 2008, or $167 of annual savings per U.S. adult.[8] These developments demonstrate that additional heavy-handed overdraft restrictions are not necessary.

CBA also believes the CFPB should hold off on a rule for overdraft services until other issues such as changes to Regulation II's allowable debit interchange amounts have been finalized and banks can properly assess the effect such changes will have on their ability to provide free checking. Similarly, under the Basel III Endgame proposal, banks may have to hold capital against credit created under Regulation Z for overdraft services, applying even more pressure on their ability to offer cost-effective checking accounts. It would be helpful to give banks the ability to understand what those costs may be, which at this time is unknown, before undertaking what will certainly reduce banks' ability to provide quality checking products to their customers.

We also urge the CFPB to conduct a cost-benefit analysis that evaluates harm to consumers when they have to use non-bank services (or cannot access credit at all) when they are unable to access bank-offered overdraft services. These may include the cost of not making rent, missing a utility payment, or missing other important obligations.

6 https://curinos.com/our-insights/competition-drives-overdraft-disruption/
7 https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/
8 https://curinos.com/our-insights/update-competition-drives-overdraft-disruption/

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The Bureau's Advisory Opinion on Dodd-Frank Section 1034(c)

The Bureau has recently adopted the practice of issuing advisory opinions that, in some instances, effectively change bank practices and procedures without engaging in an APA rulemaking process. On October 11, 2023, the Bureau issued an advisory opinion on Section 1034(c) of the Dodd-Frank Act.[9] The CFPB Director has confirmed on many occasions that guidance does not establish new regulatory requirements and does not have the force of law, but this advisory opinion establishes new obligations on covered entities and offers inadequate guidance for how to comply with those requirements. As such, this guidance should have been promulgated as a formal rulemaking pursuant to the APA. By outlining these requirements through an advisory opinion rather than a rulemaking, the CFPB has also bypassed performing a meaningful cost-benefit analysis of the impact these new requirements would have on industry and consumers. The murky, insufficiently detailed scope of what is covered by these requirements has generated significant uncertainty for industry in evaluating their compliance costs. To address both these deficiencies, it is necessary for the CFPB to withdraw its advisory opinion and instead promulgate these requirements through a formal rulemaking.

In the advisory opinion, the Bureau asserts authority to regulate and restrict fees, which the Bureau believes are "excessive," that financial institutions may charge for the provision of certain customer information. However, the statute does not require regulated entities to provide this information to customers for free, or state anything about fees– just that customers must be provided with the information upon request. Additionally, the guidance provides that a financial institution may not impose conditions for consumers' information requests that "unreasonably impede" the customer's ability to request and obtain account information– but this term does not appear anywhere in the statute. The Bureau instead reasons that imposing conditions that "unreasonably impede consumers' information requests" would be a violation of the obligation to "comply" with the consumer's request, and that requiring a consumer to pay a fee or charge to request this information is one type of action that would "unreasonably impede consumers' information requests." Beyond that, this troublesome advisory opinion addresses many other issues aside from fees, and the Bureau could attempt to apply it in a variety of other contexts. This is yet another example of the Bureau attempting to assert broad authority that Congress has not provided to it, and it warrants Congressional scrutiny.

Dodd-Frank Section 1071 Implementation

On March 30, 2023, the CFPB released its long-awaited final rule implementing Section 1071 of the Dodd-Frank Act.[10] Section 1071 requires small business lenders to compile, maintain, and report information regarding loan applications made by woman- and minority-owned small businesses, with the goal of expanding access to credit in underserved communities. Implementation of these requirements is an enormous undertaking, so much so that some institutions may choose to terminate their small business lending programs altogether because of the compliance costs.

The most fundamental change that needs to be made to the final rule is an extension of the

[9] https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf
[10] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/

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implementation deadline. The final rule requires larger lenders, defined as originating at least 2,500 small business loans a year, to collect 1071 data starting October 1, 2024, just 18 months after the final rule was issued. Two federal district courts have issued injunctions blocking implementation of the rule until the Supreme Court issues a ruling on whether the Bureau's funding mechanism is constitutional. These injunctions are expected to provide several months of additional time for lenders to comply with the rule, but **the current implementation period is not sufficient and the CFPB should extend the deadline to 36 months to ensure that small business lenders are not forced to pause their small business lending programs to come into compliance with the rule.**

Conclusion

The CFPB was established in 2011 by the Dodd-Frank Act, and there have been no significant changes to its structure or its rulemaking procedures since its inception. The Bureau has been a politically charged agency from the beginning, instead of a steady and consistent voice for consumer protection expected from a world class regulator. The consumer financial services marketplace thrives when the regulators overseeing the institutions that provide products and services to consumers and small businesses issue policies that are developed through a transparent and consistent regulatory process. Further, consumers are best protected when financial products and services are subject to consistent consumer protections, not frequent changes to regulation due to one particular ideological view. CBA stands ready to work with Congress and the CFPB to implement legislative and regulatory improvements to the Bureau to achieve these goals, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

Lindsey D. Johnson
President and CEO
Consumer Bankers Association

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