

S. HRG. 118–558

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

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

JUNE 12, 2024

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# C O N T E N T S

WEDNESDAY, JUNE 12, 2024

	Page
Opening statement of Chair Brown .....	1
Prepared statement .....	32
Opening statements, comments, or prepared statements of:	
Senator Scott .....	3
Prepared statement .....	33

## WITNESS

Rohit Chopra, Director, Consumer Financial Protection Bureau .....	4
Prepared statement .....	34
Responses to written questions of:	
Chair Brown .....	36
Senator Scott .....	38
Senator Warner .....	46
Senator Rounds .....	49
Senator Hagerty .....	53
Senator Britt .....	55

## ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

Semi-Annual Report of the Consumer Financial Protection Bureau—Fall 2023 .....	64
Letter submitted by ACU .....	154
Letter submitted by CBA .....	167



# **THE CONSUMER FINANCIAL PROTECTION BUREAU'S SEMIANNUAL REPORT TO CON- GRESS**

WEDNESDAY, JUNE 12, 2024

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

The Committee met at 9:45 a.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Sherrod Brown, Chair of the Committee, presiding.

## **OPENING STATEMENT OF CHAIR SHERROD BROWN**

Chair BROWN. The Senate Committee on Banking, Housing, and Urban Affairs is called to order. Thank you all for joining us last month. We defeated the latest in a long, long, never-ending, it seems, line of attacks on the CFPB by corporate interests that want the agency off their backs. In the end, the American people won and Wall Street lost. Now that the CFPB is finally done fighting a ridiculous, ridiculous lawsuit, it can focus on what it does best, getting people their money back, not that during the lawsuit they didn't keep fighting to get their money back, of course.

The Supreme Court's ruling upholding the CFPB is a victory for hardworking families in Ohio, for military families managing their finances, for students trying to pay back their loans, for older Americans trying to guard against financial predators. Most people do not have fancy lawyers, do not have high-priced lobbyists to fight for them. CFPB works on behalf of everyone else, fighting for their rights and their hard-earned money.

That includes their latest action this week, eliminating medical debt from credit reports. Thank you for that, Director. This is something many of us have pushed for that will protect the credit scores of millions of Americans. Medical debt is particularly damaging to consumers, as many on this Committee, including Senator Smith, have pointed out. Fifteen million Americans still have medical bills on their credit reports, but people don't choose to get sick or injured, obviously. Medical debt can happen to anyone. It does not matter if you are doing things right in your life. Anyone can get sick; anyone can get in a car accident. It has nothing to do with your ability to pay your bills, which shouldn't have anything to do with your ability to pay your bills. Medical debt doesn't correlate with credit risk, it correlates with illness and injury. It has no place, no place in credit reports.

When this rule is finalized, all Americans will have medical debt removed, wiped off their credit reports for good. No one should be rejected for a car loan because of a sick family member or forced to pay higher mortgage rates because of a medical emergency. Our credit score should reflect our financial health, not our physical health.

The medical debt rule isn't the only thing CFPB is working on to save people money. It's doing important work reducing costs for consumers by targeting junk fees. Junk fees are the surprise, often last minute, charges, just one more add-on that drive up the cost of products. They have no justification or connection to anything other than corporations' thirsts for profits. Junk fees obscure the true cost, preventing consumers from shopping around to find the lowest price.

Earlier this year, CFPB took a major step in reducing junk fees and costs for consumers with its credit card late fee rule. According to one report, one in five adult Americans paid a credit card late fee last year. In 2022, that meant credit card companies charged consumers more than \$14 billion in late fees. When the CFPB ran the numbers, they found that credit card companies were charging consumers more than five times, more than five times the cost associated with late payments, including collections. These are massive, trillion-dollar Wall Street companies. The idea that you are missing your payment due date by a day or two is imposing some huge cost on the credit card company is just patently ridiculous. CFPB is putting an end to this and lowering fees.

Another major source of out-of-control unfair costs in financial services is payday lenders. We have pushed for years to crack down on these shady lenders that target my State's working families, including military servicemembers and veterans, with high-interest predatory loans designed to trap them in a cycle of debt. Many Americans have to renew their payday loans so many times, they end up paying much more in fees than the amount they borrow. We have seen that time and time again. In 2021, we took on the payday lending lobbyists fighting to protect State laws that limit the interest these financial predators can charge, and we won.

The CFPB is doing important work to protect consumers from payday lenders. The agency's payday lender rule will curb some of the worst practices, and it will help consumers avoid abusive debt traps.

Finally, I want to talk about one of the most important things CFPB does: stand up for servicemembers and veterans. When we created the CFPB, we made sure it included the Office of Servicemember Affairs. Every year, tens of thousands of servicemembers seek the CFPB's assistance or report a complaint. I particularly hear about those in Miami Valley around Wright-Patterson Air Force Base. The number of servicemembers getting help has increased for each of the last 3 years. That has a whole lot to do with your work.

CFPB goes to bat for them, works to get their money back or fix the problems threatening their finances, but also threatening their jobs. CFPB has returned more than \$183 million to servicemembers and veterans, money that companies took straight from servicemembers' and veterans' pockets. Overall, in the last

dozen years, CFPB has returned \$21 billion to more than 205 million consumers. These numbers are not hypothetical. They are real checks the land in real people's mailboxes, dollars might mean a little extra breathing room to buy groceries or fill up a tank of gas.

That is why it is so critical we have the Consumer Financial Protection Bureau. Wall Street has lawyers and lobbyists. Working people have the CFPB, something we all should remember. I will always fight for its work because it gets money back into people's bank accounts, it stops bad actors from cheating on its families that stand up for consumers when they may have nowhere else to turn.

Senator Scott.

#### **OPENING STATEMENT OF SENATOR TIM SCOTT**

Senator SCOTT. Thank you, Mr. Chairman. Director Chopra, thank you for being here with us today. I will say that, listening to Chairman Brown's comments, it sounds like we are talking about two completely different agencies, and frankly, I am sure our view is completely different.

The CFPB has not been idle in its pursuits. Based on the pace and scope of announcements I see coming out of your agency, it looks like full steam ahead. I think the celebratory cheers from 17th Street echoed all the way over here after the Supreme Court ruling. However, I want to be clear that their decision on CFPB's funding structure only increases my concerns about the agency's lack of accountability. Time after time, your agency brushes aside congressional concerns, forges ahead with political agendas, and pushes well past the boundaries of its authority.

This ruling is not a green light for your progressive wish list. And when we look at the reaction to your regulation, it is a litany of lawsuits, all of which take time, attention, and resources away from the laws you should be implementing and enforcing, as well as the American consumers you should be protecting.

So, frankly, it makes me wonder what consumers are you protecting. The CFPB is supposed to be an independent agency, but under your leadership, it seems to the Bureau works hand-in-hand with the White House and appears more interested in scoring headlines for the Biden administration than doing its job.

Whether it is standing with President Biden as he unveiled the junk fees campaign or, as we saw yesterday, with the vice president announcing your new proposal to ban medical debt from credit reports, the political coordination is crystal clear. You are not protecting consumers or saving people money. Instead, you are peddling a false narrative that the Biden administration is doing something to reduce the actual costs.

But then reality hits, and we realize this Administration's actions simply shift who saves and who pays. It is well past time we end this junk fees narrative and focus on the junk philosophy behind them. With every action taken, there are tradeoffs, and those tradeoffs have consequences.

In this case, the Administration is trading a punchy headline for claiming they are saving families money today while actually building higher costs down the road. Take, for example, your credit card late fees rule. While the rule may save some folks around \$20 each

time they make a late payment, how much will it cost these same consumers when they no longer qualify for a credit card because they haven't paid their balances on time? How much will it cost them when their credit score drops as a result of these late payments? How much will it cost them when the rate for their car loans and their mortgages go up, not down?

You can't just keep erasing the bad facts to fit your political narrative. The bill always, and unfortunately always, comes due. You have made a choice to try to curry political favor with little regard to the harm it will cause Americans down the road.

You have done this to America's small businesses, as well. Small businesses tell me the same story over and over again, and that story is simply a Washington shakedown designed to be little more than a gotcha exercise, just like the CFPB's Civil Investigative Demands, or CID, process. Under your CID process, the Bureau may issue without any court order a subpoena to a business when you are looking into potential violations of the law. Now, once that subpoena has been issued, the CFPB can demand nearly anything they want, from reams of documents to executive testimony.

So what does that mean for a company that draws the ire of your agency? It means years of costly investigation with little hope of relief or, in other words, a bureaucratic witch hunt.

One small business recently described the process to me, and I thought this was really incredible to see what the Government can do to you, as opposed to for you. For 3 years, the CFPB audited this company, but this audit resulted in no fines, no reprimands, and no additional CFPB action. Then in 2022, 4 years later, the CFPB issued the first CID, which resulted in 12,000 pages of document production and testimony under oath for the CEO. But, again, you took no action.

Then in 2023, the CFPB issued another CID, broadening the scope further and requesting millions of pages of documents. This time, the firm attempted to fight back and appeal; but unfortunately for this small business, the only option for appeal is through the CFPB itself. Not surprisingly, the agency rejected the appeal.

To date, after countless hours of employee time and hundreds of thousands of dollars of outside legal fees, the CFPB has taken no action. And this is just one example of a story which is playing out across the country every day for far too many small businesses.

American consumers and businesses deserve better. They deserve protection by their Government from bad actors and to be left alone when they are simply trying to make a living.

Chair BROWN. Thank you, Senator Scott. The Honorable Rohit Chopra has served as the Director of the Consumer Financial Protection Bureau since October 12th, 2021, when he was confirmed. He has worked at CFPB in his early days, serving as assistant director in student loan ombudsman shortly after the agency opened its doors. He has also been an FTC commissioner. Director Chopra, you are recognized.

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

Mr. CHOPRA. Chairman Brown, Ranking Member Scott, thank you for holding this hearing today. Since its creation, the CFPB

has returned \$20.7 billion to consumers through law enforcement activity and created unquantifiable returns for the over 205 million Americans and honest businesses harmed by the illegal practices we have stopped. We are currently on track to save customers \$20 billion in junk fees every year, and we also expect to process over two million complaints this year. Since my last report, we have advanced a number of key initiatives on financial data, medical debt, and credit cards.

First, we are making major progress when it comes to financial privacy in an increasingly digital marketplace. The U.S. has to lead when it comes to a competitive and innovative market. At the same time, this can't be at the expense of unchecked surveillance, like we see in China and other markets. We are progressing toward finalizing open banking rules to develop data-sharing standards and privacy protections when people transfer their financial data to competing companies. We finalized a key part of this framework last week, which will set the stage for finalizing the rest of the rule required by Congress this fall.

We are also moving forward to propose a rule under the Fair Credit Reporting Act to restrict uses of certain sensitive data by data brokers as part of a broad Government effort to protect our national security and servicemembers from countries of concern that might seek to purchase and exploit sensitive data on Americans.

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

We are eager to work with you to do more to protect against abuse and misuse of data, including by enshrining stronger protections into law. We also believe there is opportunities to advance legislation to accelerate open and decentralized banking in our country.

Second, we proposed a rule to prohibit the inclusion of medical bills in credit reports and credit scores. This will prevent debt collectors from using the credit reporting system to coerce patients into paying erroneous bills. Last, we are continuing to focus on the trillion-dollar credit card market. We have closed a loophole exploited by large credit card companies, lowering most of those fees to \$8. Credit card companies will still be able to penalize their customers, and they will still be able to charge a fee exceeding \$8 if they can show their math.

But we know there is much more to watch here. The CFPB is looking at how to protect people's points and rewards from devaluation and bait-and-switch tactics. We are taking steps to jumpstart more competition so that small banks and credit unions offering credit cards with lower rates can gain share. All of these efforts will lead to billions of dollars in savings every year.

These are just some of the many initiatives the CFPB is pursuing, many of them specifically required by Congress. And there

is also so many areas we are watching to ensure that the financial system is helping American families and businesses get ahead.

I have appeared before this Committee, Mr. Chairman, many, many times, and I have had the chance to meet with so many of you on both sides of the aisle. I do think there is so much more we can do together to tackle the problems that our country faces.

Thank you, and I look forward to your questions.

Chair BROWN. Thank you, Director, for your concise testimony. Medical debt, as we know, as you have said, as many of us on this Committee has said, does not reflect spending habits or help lenders predict risk. Medical debt places patients at risk of downgraded credit, costs them money, and they can fall victim to predatory debt collection practices. We have seen cases, perhaps unbelievably, of companies repossessing people's wheelchairs and, in some cases, even repossessing their prosthetic legs. So I was happy to see CFPB just announced its proposed rule to prohibit medical debt from being included on credit reports, removing medical debt for more than 15 million American's credit reports.

Talk about, if you would, how this rule will affect consumers, and will it eliminate—will eliminating medical debt also help those kinds of abusive debt collection practices?

Mr. CHOPRA. Well, you said it earlier, there's a big difference between taking out a mortgage or a credit card or an auto loan versus a medical bill appearing on your credit report. There has been over a decade of empirical evidence to show the much higher rates of inaccuracy and also the lack of predictive power of medical bills to determine repayment on other loans.

We have seen the credit reporting system turn into a weapon, often to coerce people into paying things they already paid or never owed in the first place. We think this is going to go a long way, this proposal, to alleviate some of those abuses. And, of course, there will still be many ways to collect on those debts, but using the credit report system to coerce people, I think it goes beyond what Congress intended.

Chair BROWN. Thank you. The credit card late fee rule lowers the typical credit card late payment from \$32 to \$8 for larger card issuers. Those who it applied to, they claimed this rule wouldn't cover the cost associated with late payments, as you know. Americans can't afford these high fees, fees far in excess of the cost of service provided. These include credit card late fees. During the CFPB's comment period, companies had time to justify, to attempt to justify their high fees.

Did any large credit card issuer show their math justifying a \$32 late fee?

Mr. CHOPRA. No.

Chair BROWN. They just simply didn't. They can't prove that such a high fee was necessary. Are large card issuers making huge profits from late fees, I assume?

Mr. CHOPRA. Yes. We estimate that this loophole in the rules has led to \$10 billion in extra revenues for those issuers. Congress prohibited disproportionate and unreasonable penalties, but this loophole has been seized upon and abused, and I think it is overdue that we close it.

Chair BROWN. It is pretty obvious to all of us that are fair-minded on this podium that credit card issuers shouldn't be extracting profits from consumers through late fees, first of all because it is just simply, on the face of it and beyond, unfair. Second, because these fees are required to be reasonable and proportional to costs, and I think you've illustrated that both with your actions and with your answer to these questions.

I will ask a question. For the millions of Americans who use apps like Cash App, Zelle, and Venmo, fraud is a growing problem. For servicemembers and their families, fraud on payment apps is particularly concerning. Their steady income, their frequent moves, make them targets for scammers. I have seen that, especially around Wright-Patterson Air Force Base but also YARS in Youngstown and Toledo and Mansfield, where I grew up in Springfield. Their steady income, as I said, and frequent moves, makes them more of a target. CFPB is something Senator Reed has worked on pretty much his whole career. The CFPB identified several risks to military families, including serious financial harm from fraud and from unauthorized access on apps.

You have proposed a rule that would establish the Bureau's authority over some payment companies by defining them as larger participants. Explain this. How will this rule help prevent fraud? How will it protect servicemembers and their money on payment apps?

Mr. CHOPRA. Well, sadly, military-connected families report identity theft at way higher rates than the general population. They are often targeted for their data, for their money, and more.

So we do think we have very large payment apps operating outside of the banking system. The law really asks us to make sure that there is even-handed oversight. Those entities are already subject to enforcement. We think some level of supervision, given the enormous number of people in our country using them, is modest and appropriate and will prevent some of the fraud that you discussed.

Chair BROWN. Thank you. I have 12 seconds. A yes or a no question: does CFPB's research suggest that credit card companies could lower their interest rates and still be profitable?

Mr. CHOPRA. Yes.

Chair BROWN. Thank you. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman. Director Chopra, as I am sure you heard during my opening comments, the CFPB's Civil Investigative Demand, or CID, process is a prime example of your agency's vast attempts at regulatory overreach in an effort to chase obscure objectives and pet interests. A company, a small business, subject to one of your CIDs can spend years and hundreds of thousands, if not millions, of dollars attempting to comply with never-ending CFPB demands.

Adding insult to injury, a company subject to CID compliance can be left hopeless for change since any appeal is ultimately described and determined by you, the judge and the jury. In fact, under your leadership, all CID appeal requests have been denied. And just a few months ago, you eliminated the role of the associate director of the Division of Supervision, giving yourself even greater control over all appeal decisions.

How many CIDs has the CFPB issued under your leadership?

Mr. CHOPRA. So let me say up top that enforcing the law doesn't just protect consumers. It protects honest businesses.

Senator SCOTT. How many CIDs have you—

Mr. CHOPRA. And let me just also correct that it is not true that—

Senator SCOTT. How many have you—

Mr. CHOPRA. I don't have the exact number.

Senator SCOTT. Ten, fifty, five hundred?

Mr. CHOPRA. During my time as director, we have, I think, recovered around \$8 billion—

Senator SCOTT. So how many CIDs have you—

Mr. CHOPRA. —So that has been a lot of enforcement actions.

Senator SCOTT. There is no doubt that you have been busy. No doubt about that.

Mr. CHOPRA. Senator, I would be eager to meet with you. I would like to really discuss this with you. Our enforcement program has shifted away from small actors to large repeat offenders.

Senator SCOTT. Well, frankly, that isn't very—

Mr. CHOPRA. There is certainly the need to use Civil Investigative Demands—

Senator SCOTT. Director Chopra, let me just say this, I would love to see your process work, but it is like having a bully in a school that keeps beating on—

Mr. CHOPRA. This is how every other agency works, as well, so—

Senator SCOTT. Actually, your one agency is the one agency that does not flow through Congress. Your resources do not actually go through the Federal Reserve.

Mr. CHOPRA. That is also not true. Most other financial regulatory agencies do that, so we are going to keep doing our enforcement work—

Senator SCOTT. The bottom line is you have consistently abused your power—

Mr. CHOPRA. That is totally not true, Senator.

Senator SCOTT. I asked you a specific question as it relates to the CIDs, and I get no answer. So let me go onto a different question, because I like the marketing strategy from the Biden administration as it relates to junk fees because, frankly, if you say the word junk fees, you assume that those junk fees are just unnecessary. I am not sure that the average businessperson and/or the consumer would see the late fees, the overdraft fees, and nonsufficient fund fees as junk fees. There is no question that the Biden administration has done a fabulous job of trying to highlight and market to the American people that these fees are unnecessary. Well, you say it is \$10 billion. I will take your word on that.

Bottom line is simply this: as a business functions, if you do not collect those fees from people who are delinquent on their payments, then you find those fees someplace else. So the fee structure may go away, but the revenues must be replaced by something else and they are consistently replaced by either higher interest rates on credit cards or higher fees on accounts or the elimination of those accounts because, if you can't find the revenues to maintain profitability from that sector of your business, what you will essen-

tially do is you eliminate them. Having been in business for 20-plus years, I can tell you that the bottom line is a simple line: that if your lowest-performing consumers aren't incentivized to continue to perform better, you typically stop offering those products and services to those consumers. And when that happens, they don't just stop asking for the resources. They go to a different market where the interest rates are higher and/or where there is no regulation whatsoever.

Why are late fees OK for Government agencies like the IRS, but not OK for businesses?

Mr. CHOPRA. Well, so there is a congressional ban on unreasonable credit card penalties. And when the rules were implemented over a decade ago, there was a loophole which the credit card industry's lawyers have just driven a truck through to the tune of \$10 billion a year. I think junk fees are a huge problem in our economy. I think it is one that is bipartisan in nature in terms of reform. People are really sick and tired of not seeing the full cost upfront but rather being nickel-and-dimed on the back end.

The thing about capitalism that is great, when you can compare the prices clearly, the best offeror will win out. But when you make the pricing so complex and convoluted, that is not good for the honest businesses. And, frankly, our smaller banks and credit unions don't build a business model off of this loophole, and we should be doing more to support them, I think.

Senator SCOTT. I would simply say that speaking with a forked tongue is common in the Biden administration, number one. Number two, I would simply say this, as my time is running out according to the Chairman's red button, I wish we had congressional bans on the IRS charging late fees and interest on balances due. I wish we had a consistent standard applied to the public sector as we do the private sector. We would probably have a better outcome—

Mr. CHOPRA. We should work on that together.

Senator SCOTT. Thank you.

Chair BROWN. Is that an offer, Mr. Scott?

Senator SCOTT. Is it an offer for us to have a conversation about the inability for folks on the left to make common sense with the high oppressive nature of Government? I am happy to have a dialogue—

Chair BROWN. Senator Reed from Rhode Island is recognized.

Senator REED. Thank you very much, Mr. Chairman. And welcome, Director. We are seeing a rise of a new fintech product that provides consumers with cash advances, and these loans are marketed as having no mandatory fees and charging no interest and also but soliciting tips and donations, which is an interesting model. And while these fees are supposedly voluntary, in fact, you will not get the loan unless you ante up. And these are typically short-term loans. When we do the math, in terms of their voluntary tips or donations, the percentage interest rate is astounding, like 511 percent.

Do you believe that these tips and donations should be treated as interest charges, which would trigger consumer protections, particularly military who have been protected by the 36-percent limit.

Mr. CHOPRA. Well, we recently, Senator, we charged a company with violating the law on specifically those grounds. In fact, when

the consumer sought to get the loan, it was impossible to not leave a tip. It was just a fake tip.

So I think we are looking for all the ways in which companies are trying to sidestep these longstanding protections that have been around for 50 years. Some of these companies brand themselves with different types of terms. We are looking at the facts, and, if they are pushing people into a finance charge, Federal law is pretty clear that they need to disclose it clearly with an interest rate so that people can compare. And as Senator Scott was mentioning, we need to be able to look and compare, so the best player wins.

Senator REED. Thank you. I was very pleased to see the CFPB issue an interpretative rule last month clarifying that many of the rules of credit cards also apply to buy now, pay later loans. And now that the CFPB has clarified which rules to apply, the CFPB should bring the biggest BNPL lenders under Federal supervision in order to spot violations. That's my view.

Do you have an update on the progress toward examining these buy now, pay later firms on a compulsory basis?

Mr. CHOPRA. Yes. We do have certain authorities to supervise those types of lenders. Some of them we can work with States who license them. In other cases, we can issue them a notice for which they can reply, and we can determine whether supervision is warranted. But I want to be clear, I take your point very seriously that the CFPB cannot be behind the 8-ball when it comes to buy now, pay later. We have tried to stay ahead of it. It is fast-growing, and it is an important part of our consumer credit market, and we need to make sure it is growing on the merits, not based on regulatory loopholes.

Senator REED. In that sense, do you need any additional authorities to keep ahead of it?

Mr. CHOPRA. Well, certainly, if you would like to make sure that they are subject to Federal supervision, we can work with you. We do have some authorities, but, if you'd like to see more dedicated to that, we are happy to work with you on it.

Senator REED. And with the effect of another aspect of the BNPL market, unlike credit card companies, they do not uniformly report consumer repayments to the major credit reporting bureaus, and this could raise a host of problems. Consumers may not get the benefits of responsibly using credit in terms of improved credit scores, and the industry cannot see a consumer's full debt load.

So what are your tools to incentivize the credit reporting bureaus to include BNPL?

Mr. CHOPRA. Yes. One of the things that is worth noting is the auto lenders and mortgage lenders, they are very concerned that buy now, pay later is not on the credit report because they are saying to me how are we supposed to know if the person is able to afford this if we don't know what all these buy now, pay later loans are? And for buy now, pay later companies themselves, you know, we have asked them how do you know what other loans people have?

So I think we would want to talk to all of you to figure out. Right now, it is not a requirement of Federal law to report, but it is something we have some worries about.

Senator REED. Credit card use is going up dramatically, and people are reaching their limits quickly and, particularly, Gen X—Gen Z rather. Given the situation with credit cards, do you believe there are similar dynamics in the market for buy now, pay later loans, i.e., that they will be overused by the customer?

Mr. CHOPRA. I think, just like credit cards, there are some serious concerns about over-indebtedness and people getting in over their head. It is something that we all need to pay close attention to.

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

Chair BROWN. Thank you. Senator Rounds from South Dakota is recognized.

Senator ROUNDS. Thank you, Mr. Chairman. Good morning, Director Chopra. In questions for the record following an April of 2022 Senate bank hearing, Senator Menendez asked you whether Regulation E of the Electronic Fund Transfer Act required refunds for consumers who are scammed, as opposed to victims of fraud. Your response I viewed as rather vague, and I want to clarify it, because it suggested that certain Regulation E provisions apply to peer-to-peer services but not directly addressing the question.

So to clarify it, does the CFPB believe that consumer-authorized but fraudulently induced transfers are considered unauthorized electronic fund transfers under the EFTA?

Mr. CHOPRA. It is a pretty technical question. We are also happy to take that question again for the record. But the general sense is that, with respect to fraud and scams, the line is a little bit blurry. And it is true that there has been an increase in what has been called push payment fraud. And so one of the places—there is the Regulation E framework, but there is also the network rules that govern, for example, ACH, other things. Typically, those network rules have set some of the parameters for the responsible party with it.

So I think this has been a place where the nature of electronic funds fraud has evolved, but it is hard for me to give you—and I would like to give you a more black-and-white answer—

Senator ROUNDS. And I am going to ask for it for the record, but I just want to make—under Regulation E, it sounds like, and you can clarify this right now, it doesn't sound like it is Regulation E that you would look at this. Perhaps under other areas specifically with regard to ACH activity.

Mr. CHOPRA. Well, there is some places where Regulation E would certainly apply.

Senator ROUNDS. Give me an example.

Mr. CHOPRA. It is something that I don't want to misstate, but I am happy to really answer that for you and meet with you—

Senator ROUNDS. Yes. I mean, this is a pretty big deal—

Mr. CHOPRA. I agree.

Senator ROUNDS. —because it is one thing, the way that it was originally intended was that, if it is the fault of the organization, you know, the system is set up where if somebody actually gets in and is defrauded out of a loss, that is different than if somebody makes a decision and then uses the system to transfer, even though the fraudster on the other side of it is responsible and the individual has decided that they want to transfer it.

Mr. CHOPRA. Yes.

Senator ROUNDS. I don't see how an organization, you know, in the middle of it—

Mr. CHOPRA. So here is the issue: I think sometimes the way in which the money moves, just like when a financial institution's information might be taken, a consumer's credential information may be taken from the financial institution. So there are places where you are able to simulate an outbound transfer that may actually be fraudulent.

Senator ROUNDS. I am going to ask you to put that to the record because this is a really important—

Mr. CHOPRA. No, I appreciate this so much. Electronic frauds are getting more complicated with use of generative AI, so we do have to think about what do we want to make sure we are offering guidance so that it is clear how we deal with these things. But I completely appreciate the sensitivity on this.

Senator ROUNDS. OK. And I am going to ask you a little bit about AI in a minute, but I want to get to one more item first. I have to admit that I was very disappointed yesterday to see the CFPB's proposed rule to eliminate medical debt from credit reports. Just 6 months ago, when you were last before the Committee, I expressed my concerns with simply excluding medical debt from credit reports, as medical professionals may simply switch to cash-only transactions. I asked you if you were looking at how the health care industry would respond, and you assured me that you were. However, after reviewing the rule's analysis, I did not see any stakeholder outreach to the health care provider community.

That said, there is a section in the analysis on the cost to health care providers. My question is how many physicians did the organization actually consult before issuing the proposal and how many members of a health care industry or providers in general did you consult with and was any of their input actually integrated into the rulemaking?

Mr. CHOPRA. Just to be clear, this is a proposed rule, so it is not final. But I think we did do a lot of outreach in terms of understanding the different dynamics between hospitals, between independent providers, between other types of facilities, the integration with the health insurance system.

So I remember your question last time. It is something I, too, have been really wanting to make sure we get right because we don't want to see this be something that is abused, but we also want to understand all the potential effects.

Senator ROUNDS. I think it is critical that you follow and take into account what will happen to these folks that send out a bill and then they have to pay their bills, as well. And I think that has to be taken into account—

Mr. CHOPRA. Oh, absolutely. And as a general matter, we see that not all medical providers do this. There is a lot of differences, and there is some important differences when there is insurance companies involved.

Senator ROUNDS. OK. And I know I am out of time, but I have just one very quick, and I think he can answer this with a yes or a no, Mr. Chairman.

Director Chopra, does a company have to abide by the Fair Credit Reporting Act, the Fair Housing Act, and the Equal Credit Opportunity Act, regardless of what technology they use, AI or otherwise?

Mr. CHOPRA. There is no AI exemption in any of those statutes.

Senator ROUNDS. They all are subject to existing regulation. Thank you.

Chair BROWN. Thanks, Senator Rounds. Senator Smith of Minnesota is recognized.

Senator SMITH. Thank you, Chair Brown. And welcome. It is great to have you here, Director Chopra.

I want to ask a question first about kind of issues around tenant screening. This is something that I have been really concerned about, how landlords can use algorithms and other kinds of black box technology that could be built on bad information. And I have heard from my constituents in Minnesota stories of prospective tenants who have had their rental applications rejected because the application review was based on outdated or erroneous or just incomplete data. For example, one of my constituents was denied an apartment because a tenant screening flagged an incorrect criminal record.

So my question is, I know that the CFPB has been actively engaged on this issue, could you just briefly talk a little bit about what actions that you have taken so far to improve the accuracy of these reports and increase transparency for consumers?

Mr. CHOPRA. Yes. We have taken enforcement actions, including against TransUnion, for violating the Fair Credit Reporting Act in its tenant screening. We have issued a number of guidance documents to really make sure that this business is adhering.

You know, Senator Smith, you, Senator Kennedy, others, people who might have common surnames are particularly victimized by this. They are matched with someone who is not them, and then it is almost impossible sometimes to figure out how to get it fixed.

We are also making clear to landlords and others that, you know, if they are using one of these credit reports, they really need to make sure that they are complying with the Fair Credit Reporting Act, too.

Senator SMITH. Because even, I mean, even though it might be a black box to even the landlord, that doesn't matter, because they are still held accountable, as I understand it, for whether they are making fair decisions or not.

Mr. CHOPRA. Yes. Depending on the circumstance, the AI company, the tenant screener, the landlord, we really worry about how the data and the algorithms are being deployed, especially when it is just matching the wrong person or using outdated information.

Senator SMITH. Right, right. And that has a huge impact when people are already struggling to figure out how to find an affordable place to live and what happens next with that.

I want to move to another topic quickly. The CFPB's most recent report on mortgage activity found that, in 2022, mortgage applications of Black and Hispanic borrowers were denied at higher rates than White and Asian borrowers. And I understand that, even if they were approved, they typically were receiving smaller loans at higher rates with more upfront fees.

Now, of course, the report acknowledges that Black and Latino borrowers may typically have lower credit scores, which could have contributed to this disparity. But a recent study done by the Minneapolis Fed found that, even if you correct for those disparities, even after adjusting for those factors, such as credit scores and incomes and wealth, we are still seeing disparities in what is happening with mortgages.

So, Director Chopra, how can we better identify and capture what factors are driving these disparities and what is the CFPB doing maybe with the Justice Department to enforce fair lending laws in this context?

Mr. CHOPRA. Well, certainly, both the Justice Department and the CFPB have taken a number of actions when it comes to redlining. We took the first action in Delaware, New Jersey, and Pennsylvania related to a nonbank redlining company. But, you know, these are hard to do case by case, so part of the way I think we are trying to work with the industry is figure out where are there barriers when it comes to offering loans fairly to everybody. I think the Community Reinvestment Act plays a certain role. I think some companies and lenders are using other programs. But it is clear we have work to do here.

Senator SMITH. Well, thank you. I think that this is, again, as issues of housing are so crucially important across the country and as people are struggling to find an affordable place to live, to find that you are just not, you know, somehow the door to getting a mortgage for your first home possibly is just closed to you is such a huge limit on the opportunity that people have to build wealth and to have a great place to live.

Mr. CHOPRA. And if you are paying so much more than what you should for your credit risk, that has a big impact on your monthly budget.

Senator SMITH. Exactly. Well, thank you. Thank you very much, Mr. Chair.

Chair BROWN. Thank you, Senator Smith. Senator Kennedy from Louisiana is recognized.

Senator KENNEDY. Thank you, Mr. Chairman. Mr. Director, good to see you. Thanks for coming. I always enjoy your testimony. When I look for a common thread running throughout your testimony and I look at your agency's behavior, one of the common threads I see is, and I am not going to ask you to comment on this, is that, in your judgment, some companies in America are making too much money.

Now, you analyze their financial statements, do you not?

Mr. CHOPRA. Sure.

Senator KENNEDY. Do you distinguish between revenue and earnings when you analyze a financial statement?

Mr. CHOPRA. Well, sure. We look at all things. And I would say that we don't think too much money—

Senator KENNEDY. What is the different between revenue and earnings?

Mr. CHOPRA. Well, these are all used colloquially. Sometimes, those are similar. In GAAP accounting, which is what most U.S. companies use—

Senator KENNEDY. No, don't tell me about GAAP. Just tell me your understanding of the difference between revenue and earnings.

Mr. CHOPRA. Well, I can share with you revenue and net income. So those are the two factors that when you say are on financial statements—

Senator KENNEDY. Well, earnings is another word for net income.

Mr. CHOPRA. Well, earnings can be used for many different things, but, in generally accepted accounting principles, net income is what all of our banks are really using.

Senator KENNEDY. OK. Well, revenue is before expenses and earnings, net income, is after expenses—

Mr. CHOPRA. No. I think, like, when people go to work, they say my earnings were this. I mean, their salary. So I think we tend to look at accounting definitions—

Senator KENNEDY. No, I'm not talking—they may say that, but when you analyze a financial statement, you look at expenses, don't you? You don't just equate revenue with earnings, do you?

Mr. CHOPRA. Well, totally. And I think your suggestion that we think companies are too profitable, we think about competition.

Senator KENNEDY. I understand.

Mr. CHOPRA. What are the options people have in order to—

Senator KENNEDY. Well, here is what is confusing me. We all know, unless you were playing frisbee in the quad during Econ 101 or Accounting 101, there is a difference between revenue and earnings.

I want to ask about the way you are funded. I have looked at Congress' statute. I am looking for it here. It says here is how you are funded, and you just won your lawsuit in the Supreme Court. Each year, beginning on the designated transfer date, in each quarter thereafter, the Board of Governors of the Federal Reserve where you get your money shall transfer to your agency from the combined earnings of the Federal Reserve system the amount determined by the director to be reasonably necessary to carry out the authority of the Bureau. It says the combined earnings, not the revenue.

Now, for the longest time, the Federal Reserve was earning money, but that stopped in what? September of 2022. Now, they are losing money. They don't have any earnings. They are no longer transferring earnings to the general fund. And the Supreme Court based its decision on saying that this funding scheme is constitutional under the appropriations clause by saying that these earnings would go to the general fund from the Federal Reserve, so getting them directly from the general fund is no big deal.

How are you entitled to any money right now? The Federal Reserve doesn't have any earnings.

Mr. CHOPRA. Well, we have heard of this theory. I think it is one of the latest—

Senator KENNEDY. It is not a theory. It is a congressional—

Mr. CHOPRA. Well, I think you raised a difference between revenue and net income. There are other places throughout our laws. I can tell you we have looked at this issue. We do believe wholeheartedly everyone is complying with the statute—

Senator KENNEDY. I know you believe that, but if you look at what—

Mr. CHOPRA. I am aware with what you said. Revenue and net income—

Senator KENNEDY. If you read the—if I could just finish my question.

Mr. CHOPRA. Sure.

Senator KENNEDY. If you read the opinion, and I did, and you read the statute, it says here bigger than Dallas you can only get your money from the Federal Reserve out of earnings. Now, the Federal Reserve has not had any earnings since September of 2022; isn't that correct?

Mr. CHOPRA. No, that is not correct.

Senator KENNEDY. Sure it is correct.

Mr. CHOPRA. From a net income perspective, you are right—

Senator KENNEDY. All you have to do is go—

Mr. CHOPRA. —but they have generated lots of fees and income and—I appreciate what you are saying. I am happy to discuss this with you, but I think we have looked at this—

Senator KENNEDY. But my point is everything, every penny you have gotten under this congressional—

Mr. CHOPRA. I don't think Congress wanted CFPB to be suddenly—

Senator KENNEDY. And if I could finish my thought.

Mr. CHOPRA. Sure.

Senator KENNEDY. I know you don't like to hear this, but the law is the law. You have been operating illegally.

Mr. CHOPRA. No, that is not true, sir.

Senator KENNEDY. Yes, you have. There have been no earnings. Doesn't this put in jeopardy every one of your rules—

Mr. CHOPRA. We have heard this theory—

Senator KENNEDY. —and every one of your—

Mr. CHOPRA. —before and I'm to happy to discuss it.

Senator KENNEDY. Well, you are going to hear it again because it is the law. We didn't say revenue in the statute, we said earnings. How can you possibly argue that the Federal Reserve has had earnings? They are losing money.

Mr. CHOPRA. I am happy to discuss this with you, but we have looked at this theory before.

Senator KENNEDY. I know you have. But I am over. I am sorry. Tell me why you are mad at Chase Bank?

Chair BROWN. You are not that sorry, Senator Kennedy. But go ahead.

Senator KENNEDY. You are made at PayPal and Chase Bank. Can you tell me real quickly before Sherrod cuts me off why you are mad and how—

Mr. CHOPRA. I think the concern is that we have seen an incident at PayPal where there was an attempt to censor people based on their speech. We have also seen that those companies are now going to be offering, reportedly, advertising based on your individual transaction data. I feel some of this is something we all need to figure out together.

Senator KENNEDY. Are you going to punish every company that has censored people's speech?

Mr. CHOPRA. No. I do think—

Senator KENNEDY. I applaud that part. Mr. Chopra. Oh, I think censorship is a big—

Chair BROWN. Senator Kennedy, your time has expired. Senator—

Senator KENNEDY. Do you have to approve the speech first?

Mr. CHOPRA. No. I think we are on the same page.

Senator KENNEDY. I am over. I am sorry. Thanks for your indulgence, Mr. Chairman.

Chair BROWN. You are not sorry, and I wasn't indulging you. But thank you, Senator Kennedy.

Senator KENNEDY. Well, I am sorry as I can be. I will send you—

Chair BROWN. Senator Warner of Virginia.

Senator KENNEDY. —later a fruit basket to make up for it.

Senator WARNER. Thank you, Mr. Chairman. And I was about to say all kinds of nice things about Senator Kennedy. I still am in a moment. I think I have not crossed over yet where I can still claim I spent more time making earnings as a business guy than I have as a politician, although that timeframe may have switched over. And I was with you on the whole direction you were going on revenue/earnings until you brought up the Fed.

Senator KENNEDY. I know you know the difference between earnings and—

Senator WARNER. I do know the difference, but, on this one, Senator—

Senator KENNEDY. —revenue because I have seen your house. It is bigger than a Costco. Have you seen Warner's house? Bigger than a Costco.

Senator WARNER. You know, earned from the sweat of Spectrum and cell phones and VC activity. But I do think the case the Director is making, it would be a fulsome debate to talk about whether the Fed has generated earnings or not because I think, as we all know, the Fed operates on its own set of rules distinct from us, and maybe we ought to—I think we have got Chair Powell coming in, and we ought to have that conversation.

And I do think, you know, I am glad, frankly, that the Supreme Court ruled that funding appropriation, the funding process was appropriate. I would remind you I was here when Dodd-Frank was taking place, and the whole way the CFPB came about was because, candidly, some of my Republican friends didn't want to set up a traditional new agency, so it was kind of put into this unusual framework and unusual funding mechanism. But I think, again, I count on the validity of what the court upheld.

I do want to, though, compliment the fact that Senator Kennedy and I both have been, I think, trying to figure out how we grapple with AI. That is something, Director Chopra, you and I have talked about, as well. We introduced the Financial Artificial Intelligence Risk Reduction, FAIRR Act. And the notion was, you know, if there was ever a case again out of Dodd-Frank, we came up with FSOC. If there was ever a case in an area that was tailor made for FSOC to look at holistically, it is AI. And I guess the good news is maybe just the threat of this legislation has actually pushed them a little bit because I know FSOC recently released a request, an RFI, for

opportunities and risks of financial services. FSOC stood up a staff with a working group. FSOC had a major conference.

I know you have thought about this, as well, Director Chopra. How do we make sure that, you know, as we think through AI, when we think about all the benefits, we also try to build in those consumer protections, which are integral to your entity. And have you, you know—I continue to grapple, and let me be the first to acknowledge I spent a lot, a lot of time on this subject and there is, I mentioned this before in Committee, no linear relationship, at least with me, in terms of more time spent on AI and actually getting smarter. Maybe the only guy that is getting smarter on this is Senator Rounds because he has probably spent more time even than me.

But can you talk about how we make sure consumer protection is built in and those systemic-risk issues get addressed?

Mr. CHOPRA. Well, I am really worried about the use of generative AI when it comes to voice cloning, other ways in which humans can be simulated to create enormous amount of fraud in the financial system and the weaponization of people's personal data.

I would say this: on the systemic issues, Senator Warner, I am really worried about these foundational AI models. I think there will probably be just a handful of them for which most of the industry is built on top of that. And when there are problems with one of those foundational models, we could really see issues that occur throughout sectors of the economy, including the financial system.

There is a big integration, I think, of the big cloud providers. There are really just three of them: Google, Amazon, and Microsoft. We have got to think about their role in all of this and whether they are adequately overseen. Otherwise, one little tremor could cause a huge shock to the financial system.

Senator WARNER. Yes. I'm, frankly, surprised that we have not seen AI tools already lead to market manipulation. I think if there was ever a set of tools that could, I mean, we spent a lot of time on the intel committee looking at outside foreign use of interference in our elections, but AI tools, not just deep fakes but the ability to manipulate images, file fake consumer concerns, I would be amazed if we don't subsequently find out that, maybe not Fortune 100 companies but Fortune 100 to 500 companies, that there is a lot of manipulation going on here.

I have gone through my time, and I will not—

Senator KENNEDY. I will yield you my time.

Senator WARNER. The extra 4 minutes. I do want to have—I will come back and submit for the record, Director Chopra, one of the things I am concerned about are some of the rise of the large firms that are nonbank. We talked about this in the past. And how, you know, same activity on it, maybe have some same level of regulatory structure. And when you think about the nonbank wallets that are going to be in this sector, I don't think we have gotten near enough notional framework. And I am all for financial innovation. I think great, great things will come, but I do think we have got to put some ground rules in place.

And I will not further impugn on the Chair because I know my colleague, Senator Warren, who may have similar type of questions.

Chair BROWN. Thank you, Senator Warner. Senator Warren of Massachusetts, once she is reseated, politely not sitting down when her colleague was talking. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman. So, Director Chopra, the last time you were here, the Supreme Court was considering a lawsuit championed by predatory lenders and their Republican allies challenging the constitutionality of the CFPB funding. Now, fortunately, the Supreme Court followed the law, and the CFPB is here to stay. Now, the Bureau can keep doing its work to deliver on President Biden's agenda: slashing junk fees, policing Wall Street, and, so far, returning over \$20 billion to consumers.

But Republicans just can't seem to quit you, Director Chopra. It is another day that ends in Y, so Republicans are concocting even more absurd legal argument and taking even more extreme steps to try to stop the CFPB from doing its work on behalf of American families.

Let's start with junk fees. For some reason, Republicans just love them. A few months ago, a Republican congressman said, and I quote, "Junk fees don't exist, OK? That is a figment of Rohit Chopra's imagination."

So, Director Chopra, we have you here. I figured I would go straight to the source. Are junk fees a figment of your imagination, you know, like Bigfoot?

Mr. CHOPRA. I don't know who said that, but I think, for everyone who has experienced a junk fee, it is incredibly insulting because they are paying out for things that are providing sometimes no service whatsoever, and I am really proud of the work we have done to wipe out billions of dollars in junk fees.

Senator WARREN. Do you have an estimate on how much Americans are paying in junk fees?

Mr. CHOPRA. I don't have the latest update, but it is tens of billions of dollars. Our work, I think, is already delivering, taking out a huge chunk of that. It is making the economy more competitive and making pricing clearer upfront, rather than scattered on the seventh screen.

Senator WARREN. You know, it is a lot of money that American families are losing to junk fees, but, since Republicans are falling over themselves to defend these junk fees, I wonder if Republicans are hearing something different from the American people that I am just not hearing.

Director Chopra, the CFPB has a hotline for consumer complaints. People actually call you directly. So has anyone ever called the hotline to complain that they are not getting charged enough in junk fees on their credit cards or their bank accounts or their car loans?

Mr. CHOPRA. I have never heard of that ever.

Senator WARREN. Fair enough. You know, my sense is Americans are not clamoring for more junk fees. But Senate Republicans are ready to do the dirty work for their corporate pals. After the CFPB finalized its rule to limit exorbitant credit card late fees, Senate Republicans introduced a resolution to reverse the CFPB's rule and take \$10 billion away from Americans.

Now, fortunately, it doesn't seem to be stopping the CFPB from working on behalf of American families. Just last month, the Bu-

reau launched an investigation into mortgage junk fees, including the closing costs that families pay when they buy a house.

Director Chopra, can you say a little more about why the CFPB is focusing on junk fees in housing right now?

Mr. CHOPRA. Well, those fees can really drain someone's down-payment and really bump up a monthly payment if they are able to get the mortgage, or it could foreclose them from even getting a home. This is something where the mortgage lenders are also upset about because they are being price-gouged and having to pass on some of those costs to consumers.

Senator WARREN. Right. And do you have any sense of whether those junk fees are holding level, going down, or going up?

Mr. CHOPRA. They have been going up. We have been seeing, at least I can say about closing costs, a market increase in closing costs in the past several years.

Senator WARREN. So I saw one source citing that from 2021 to 2023 that closing costs rose by 36 percent. Do you have any explanation for that, other than junk fees?

Mr. CHOPRA. Well, there is certainly some aspects, it is possible there are more individuals doing points, rate buy-downs. But, certainly, there are other places where fees have been inflated that mortgage lenders and consumers are both pretty mad about.

Senator WARREN. So I understand that in 2022 a typical borrower paid nearly \$6,000 in extra fees to close on a home and that, right now, the CFPB is working on trying to put at least a chunk of that money back in the buyer's pocket; is that right?

Mr. CHOPRA. That is right. I think that will help the entire economy.

Senator WARREN. All right. So if you are wondering why Republicans are introducing legislation to protect junk fees and working over time to come up with fantastical legal theories to kill the CFPB, I think the answer is pretty clear. Republicans are in bed with big business to rip off families and to protect corporate bottom lines. Director Chopra and President Biden are cracking down on junk fees so that they can help lower costs for American families, and I thank you for your work. Thank you, Mr. Chairman.

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

Senator BRITT. Thank you so much, Mr. Chairman. And thank you so much for being here, Mr. Director. I wanted to touch on several issues that you and I have discussed and I wanted to see if you could provide some updates.

So, first, I have noted with you both publicly and privately my serious concerns about 1071, concerns on both the privacy front and then the actual cost burden on the smallest community banks. So I wanted to kind of sort—let's just start on privacy first. You mentioned that the CFPB plans to publish the information it collects on this rule. Last time, I kind of sort of asked what your plans were for that. You said you had not gotten there yet. Do you have any update on that?

Mr. CHOPRA. So the data collection that would be reported has been significantly delayed. Some of it will be as late as, I think, maybe late 2026. We are not going to make any determinations

until after we really are able to conduct a first, you know, world-class privacy assessment.

Senator BRITT. OK. Good.

Mr. CHOPRA. So the key is we don't want anyone to have—re-identification risk, we don't want there to be any concerns about that because that will really undermine enormously—

Senator BRITT. Absolutely. Yes. And so you were essentially—will you commit to me that the CFPB will not publish any identifying information?

Mr. CHOPRA. Correct, yes.

Senator BRITT. Wonderful. Thank you so much. OK. Now, with regards to the cost. CFPB estimated that banks will face an upfront cost of around \$45,000 to \$78,000. Do you believe that is still an accurate depiction of the upfront compliance costs that banks should expect?

Mr. CHOPRA. Many of those banks are going to be using third-party vendors in order to be able to implement this, those core service providers. So we are working with them. There is going to be a bit more time. But to the best of my—

Senator BRITT. But do you think that cost is correct? Because—

Mr. CHOPRA. To the best of my knowledge, we use the best data as possible.

Senator BRITT. So that data, so if you look to it, it says these things have to cover things like new computer software to collect and store data, to hire and train new compliance and legal staff, the expenses of possibly third-party audits and legal teams. And so that just seems like there is no way that you could do all of that with just that amount of money.

And then I looked back at to when that estimate was done, and the estimate was done in 2020. And, obviously, since 2020, we have had a change in economic conditions, change in a number of things, whether it is inflation or hiring costs or any of those things.

And so when you kind of take a step back and then, additionally, and you and I have talked about this, you know, Dodd-Frank required 13 data points. It is my opinion that you have now expanded that to 81. I know that you and I can quibble about some of those things, but, no doubt, it is certainly more than 13. And so there is also an additional compliance mechanism that people, in 2020, we weren't accounting for, so economy, additional data, et cetera.

So when you look at that, I think, when you take a step back, there is no way that they are going to be able to do all of that for just \$45,000 to \$78,000. And so my question to you is: will you commit to taking a look and making sure that that is an accurate cost analysis of what it is going to cost these banks?

Mr. CHOPRA. Well, I think we are trying to follow all appropriate provisions of the law when it comes to this. This was not a discretionary rule. We were under a court order to complete it. We followed all the necessary steps to do it.

Senator BRITT. But you did, you did expand it, though. I mean, there is—

Mr. CHOPRA. Well, actually, we didn't—I wouldn't characterize it as expanding it. The statute is pretty clear about what sort of data points had to be in there and where might it better contextualize

the information. In fact, we got input from some industry members to include some data points to make sure that it is appropriately contextualized.

Senator BRITT. Well, but did you even think about things that people are going to have to put in there, denial reasons obviously, a more extensive explanation there; pricing information, including interest rates applied, prepayment penalties, financial cost, et cetera. There is no doubt that, in 2020, prior to you even being, obviously, at the CFPB, that that analysis of how much that was going to cost doesn't take all of these things into consideration. And I would just ask you, you have said that, obviously, it is not your goal to put small community banks out of business and you have said that you understand that they provide an essential service on our Main Street, that they allow people to achieve the American dream. What I am asking you is don't put them out of business. Make sure that you are taking a step back, really looking at how much this is going to cost them in 2024, in 2025, in 2026, that you are giving them that assessment on the front end so that they can plan so that it actually doesn't hinder them in the long run.

So I would great appreciate it if you would do that, make sure that that is accurate, because I think that that is what is ultimately best for everyday Americans, everyday Alabamians, as people work to comply with this. So thank you very much.

Mr. CHOPRA. I appreciate that.

Senator BRITT. Thank you.

Chair BROWN. Thanks, Senator Britt. Senator Van Hollen is recognized.

Senator VAN HOLLEN. Thank you, Mr. Chairman. Director Chopra, it is great to see you. And like the Chairman, I was pleased to see the Supreme Court's decision, 7 to 2, supporting the CFPB structure, and most of us on this Committee support its mission, as well. I was listening a little bit into the hearing. I know people are now looking for other ways to try to dismantle the CFPB, but I am absolutely confident that it will remain intact and its mission for years to come to protect consumers.

And I do want to start with some thank you's, especially the newly announced proposed medical debt rule. This is something many of us, including myself, have been working on for a very long time. There is no reason any American should be punished on their credit rating because they got into a car accident or got sick and incurred medical expenses. So your proposed rule to make sure they are not penalized for unexpected events in their life I think is very important and look forward to monitoring that closely.

Thanks also for your efforts on the overdraft fees. It is a form of predatory lending. I have often made the point that a \$35 late fee on a \$25 purchase that is repaid in 2 days is equivalent to an annual percentage interest rate greater than 2,500 percent so appreciate you moving forward on that.

I want to dig a little bit into your proposed rules on nonbank supervision because, as you know, right now, the nonbank financial institutions have, roughly, \$20.5 trillion in assets. The banking industry, by comparison, \$23.7 trillion, so comparable in terms of the impact on the economy and assets anyway.

A number of years ago, I had a constituent who had a checking account with Chime, a nonbank entity. When she tried to get her money out, she could not. Our office worked with her to file a complaint with the CFPB. Thank you for working to get her money back, and that, of course, happened to lots of other Marylanders and other people around the country, and so I was glad to see the enforcement action that you took against Chime.

But if you could just use that as sort of a kicking off point to describe your proposals to make clear that the CFPB has jurisdiction in these nonbank areas, in fintech areas, and that you intend to assert that jurisdiction to protect consumers and that you, you know, intend to do this carefully and smartly and wisely and are not, you know, trying to use a hammer, but you are trying to protect consumers in accordance with your mission. Could you just talk about that—

Mr. CHOPRA. Yes. That is exactly right. I think one of the things we learned from the 2008 financial crisis was that it was those nonbank companies that were not subject to the same type of oversight that really led to the economy crashing. So one of the things that Congress is very clear with us is that we have to look at the whole financial system, not just banks and credit unions. I think that makes sure that consumer protection is even, and a consumer doesn't need to know the corporate organization form when they are doing business. We want consumers to be able to trust all these entities. I think that is good not just for consumers but for honest businesses, as well.

Senator VAN HOLLEN. I appreciate that. And as you say, consumers sometimes don't know the ins and outs, they don't know what is an insured depository institution, and the whole purpose of the CFPB was to fill this very big gap. And, again, when you look at the asset holdings of the nonbank sector in the finance space, it is virtually equivalent to the banking sector, which we spend a lot of time, understandably, on this Committee focused on depository institutions and the like, but we need to be spending more time, I think, on the other, as well.

Briefly, in the remaining time, I know that CFPB recently filed a lawsuit against student loan servicer PHEAA for illegally pursuing borrowers whose loans have been discharged. A number of us on this Committee have been very focused on the issue of really predatory practices by some of these student loan servicers. Could you talk about other measures you are taking to help students in this space?

Mr. CHOPRA. Well, one we have been monitoring very carefully the return to repayment. We have taken other actions, too: ed financial services, also other types of student loan collections, debt relief. I hate to see that the servicing industry, when it spawns other scams, it just adds insult to injury to so many people who were just trying to get an education to better their own life.

Senator VAN HOLLEN. Yes. Well, thank you for looking out for exactly those people through your efforts. And thank you, Mr. Chairman.

Senator WARNOCK [presiding]. Thank you very much to the Senator from Maryland, Senator Van Hollen. Senator from Wyoming, Senator Lummis.

Senator LUMMIS. Thank you, Mr. Chairman. And Director Chopra, welcome. I have got some questions about some of your policies that you are pushing forward.

It looks to me like just about everything that you are proposing is to label closing costs junk fees, almost every closing cost. And banks need to understand a borrower's ability to repay, so let me give you one example. Are you aware of a CFPB staff working paper that found that rural borrowers report less understanding of the mortgage process at the outset, but the gap is completely closed by the time the purchase is complete? Now, this paper credits this to the extra education that banks in rural areas provide their customers and describes the importance of strong relationships in rural banking. And I can assure you, in these small communities, they want to know, they want to sit across the table from the president of the bank, they want to know who they are borrowing money from.

So is the consumer education a valuable service provided by community banks?

Mr. CHOPRA. Yes, hugely. One of our goals has been to preserve relationship banking in this increasingly digital age, and I worry, Senator Lummis, that has been drifting away.

But on this issue, I don't think there has been any attempt to label all closing costs as junk fees. In fact—

Senator LUMMIS. Well, is this one, is this one being labeled a junk fee, the cost to educate consumers, the cost to educate borrowers?

Mr. CHOPRA. No, not at all. And, in fact, that is actually typically not as a closing cost. I think, when we talk to mortgage lenders, mortgage lenders are not able to, you know, hike the price on those closing costs. They actually have to put forth bona fide costs and educate offer disclosures. What we do see mortgage lenders complaining to us about is they have often been getting ripped off on certain types of things that they have to pass on to consumers, and we are really worried that this may lead them to reduce the number of applications or even the number of individuals they can talk to about it.

Senator LUMMIS. And we are worried about that, too. So it sounds like a disconnect between some of the Wyoming bankers I am hearing from and your agency, so we need to bridge that. We need to bridge that gap.

Mr. CHOPRA. And we have met with them, and I will meet with them again if there is concerns about it because I think one of—

Senator LUMMIS. You know, there is concern about it. I have got a couple more questions.

Mr. CHOPRA. Please.

Senator LUMMIS. OK. The cost of providing financial services has to be borne somewhere, so overdraft fees, like the cost of maintaining safe and secure and convenient consumer banking systems, you know, overdraft fees can help pay that. So consumers now have access to free checking, free online banking, free debit cards, and that is because of overdraft fees and interchange fees bearing that cost, so they can make these free offerings.

What percentage of low-income consumers would no longer be able to afford a bank account if they had to pay for each service, not just overdraft fees? It costs.

Mr. CHOPRA. Well, the main way banks make money is, obviously, off of lending out deposits. But, certainly, I would say this—

Senator LUMMIS. And lending, and that is an area where they can lend out deposits based on what the market will bear.

Mr. CHOPRA. Oh, totally. And what we are saying with respect to overdraft is, one, we have exempted small banks from any proposal we have made. But what we have said is that, if you are going to be offering an overdraft loan, it is impossible to compare that with another type of loan. So we looked at a 1969 regulation implemented by the Fed, which is really designed for a paper check-in-the-mail world. And we are trying to create a framework that really promotes a competitive structure on lending while also limiting some of the abuses. We have seen cases where sometimes the consumer should have gotten one overdraft fee but got four instead, and that is what we are trying to fix.

Senator LUMMIS. OK. I have got one more question that I want to get in. Your recent rule proposal on digital consumer payment applications is of concern to me. Why did the staff not gather the data and information necessary to complete a more thorough analysis? The CFPB estimates the cost of being examined by the CFPB at \$25,000. So let's compare that to what it costs the bank to be examined. And when you make the comparison, the CFPB is charging 50 times more to conduct an exam than it costs for a company to be examined. That sounds like a huge—

Mr. CHOPRA. To be clear, unlike the OCC, we don't charge fees for our examinations. But we have proposed that rule. We want to get a lot of feedback on all of our estimates. And, Senator Lummis, I am very happy to talk it all through with you because I do want to make sure, when it comes to the future of consumer payments, we want to make sure that, whether it is bank or nonbank, that those core Federal laws that consumers have, that it is all on the up-and-up.

Senator LUMMIS. I will look forward to that conversation. Thank you. Thanks, Mr. Chairman.

Senator WARNOCK. Thank you very much, Senator Lummis. I will ask my question but let me start by sharing how glad I am, Director Chopra, that the CFPB's funding structure is still intact. I join my colleagues, was happy to join my colleagues in an amicus brief to the Supreme Court protecting the Bureau, and I am glad that they got that right and that the Supreme Court upheld the structure of the CFPB so that we can continue this very, very vital and important work.

Director Chopra, yesterday, the Consumer Financial Protection Bureau announced a proposed rule that would block medical debt from appearing on most Americans' credit reports. The last time you appeared before this Committee, we discussed this bipartisan report that I released not long ago on insulin-desert counties with both high rates of Americans who are uninsured and high rates of Americans who have diabetes. We see these counties all across the United States, concentrated largely in the South but, by no means,

exclusively in the South. High rates of uninsured people, high rates of diabetes.

Director Chopra, do you know how many of these insulin deserts also have high rates of medical debt?

Mr. CHOPRA. So we do believe that this is disproportionately harming some of those communities, especially in the South. I think it is pretty tragic that we have a system where people can be really punished over and over again for health issues and in a way that can destroy their financial life. Medical debts can contribute to bankruptcy. It can contribute to so much loss of income, and I do think what we have proposed is an important step to just a little bit put a stop to some of this.

Senator WARNOCK. Yes. And my data shows that nearly half, nearly half of these insulin deserts also have high levels of medical debt. So you have got places like, let's say, Georgia that is still digging in its heels refusing to expand Medicaid. You have got the working poor who are burdened by all of this medical debt, uninsured, all of these issues converging upon families at the same time.

In Georgia, 27 percent of rural residents had medical collections on their credit report, 27 percent. That is 6 percentage points higher than the rate among all Georgians and 10 percentage points higher than the national average. So 27 percent of rural residents with medical collection debt.

Director Chopra, how would folks in the South especially benefit from a CFPB-proposed rule banning medical debt from credit reports?

Mr. CHOPRA. We expect that it will materially help their lives. In many cases, if medical debt is their only thing on their credit report, it will also materially increase their credit score. That means really the cost of so many other loans, auto loans, credit cards, would go down for them; and, more importantly, I think they wouldn't be dealing with adding insult to injury when it comes to their own health conditions.

Senator WARNOCK. So this would have a material impact, obviously, on the lives of families. I often say that it is expensive to be poor, and this is an example of that. People burdened by medical debt dragging down their credit scores, and so then the cost of money—

Mr. CHOPRA. Goes up.

Senator WARNOCK. —goes up.

Mr. CHOPRA. This is a cycle that we have to stop.

Senator WARNOCK. Right, right. So thank you so very much. This is something that we have been pushing on this, and so I applaud you for proposing this rule, which would be life-changing for so many people across the country but certainly throughout the South who are drowning, drowning in medical debt and bad credit, often while dealing with health challenges on top of all of this. This is enough to make anybody sick and sicker.

So I will continue to push my bipartisan bill to cap the costs of insulin for everyone. That would prevent people with diabetes from going into medical debt in the first place, and I look forward to continuing to work with you on medical debt issues and addressing challenges and solutions in my subcommittee.

Mr. CHOPRA. And let me thank you for working with me on this. I know we had a number of discussions. I know how much it uniquely affects some of the people you serve, so I appreciate all of your engagement on this.

Senator WARNOCK. Thank you so much. And since it is just two of us here, you are stuck with me. I have got some more questions I am going to ask. There is a saying that if it looks like a duck, walks like a duck, and quacks like a duck, it is probably a duck. The CFPB studied the buy now, pay later market and saw that it had the features of a credit card that consumers should get key credit card protections when they use this option. Director Chopra, thank you for issuing a commonsense interpretative rule that lets consumers dispute BNPL charges, get a refund, and receive periodic billing statements.

I remain concerned about protecting data privacy. What will the CFPB do to make sure BNPL lenders do not harvest and sell consumers' data without permission and make sure that the data is secure?

Mr. CHOPRA. It is a huge concern. I think this is something that is critical that this Committee has to be working on. We are seeing so many companies announce new initiatives about how they are going to monetize their surveillance of us. Right now, Senator Warnock, you basically get a notice telling you here is all the ways we are going to use your data, good luck to you. No one really opts out of that, and people don't even understand how much that data is going to be used. And I am worried we are lurching and lurching more toward a surveillance-oriented system. It is really important that we work together to limit some of the excessive and intrusive surveillance.

Senator WARNOCK. People just check the box and they are moving on. They are focused on—

Mr. CHOPRA. Yes. Sometimes, they may not even be checking the box. They might be just told through the notice that we are planning to use it for all sorts of purposes. And I think, when it comes to this, we are looking at these data brokers, as well, these new companies that are buying and selling our personal data. It is also a real national security concern. President Biden has issued an Executive order that also urges the CFPB to crack down on some of these data brokers who may not be complying with the Fair Credit Reporting Act.

Senator WARNOCK. I think it is so important that people have control over their own data and how companies are using it. I am also concerned that BNPL loans can lead to a debt trap. What can the CFPB do to keep consumers from sinking under the weight of having too many BNPL loans at once?

Mr. CHOPRA. Well, it is a really hard question. Both credit cards and buy now, pay later, people can suffer from or can really get in over their head and suffer some real financial challenges. So there is now lots of BNPL companies. In many cases, people might have loans with all of them, and it is not just for one type of big purchase. It used to be maybe it was for a substantial purchase that people needed to pay over time. Now you can use buy now, pay later loans for really almost anything, including everyday purchases. So that could lead into an over-indebtedness, and I think

we need to make sure we have accurate information about that and that you all are looking about whether there needs to be enhanced protections on credit cards and buy now, pay later loans.

Senator WARNOCK. Absolutely. And the public can provide comments on the interpretative rule of buy now, pay later, generally, until August 1st; is that correct?

Mr. CHOPRA. That is right. And we do think that this buy now, pay later interpretive rule addresses a key pain point that many consumers express, which is, when they return a product, are they going to get the appropriate credit? What if there is an erroneous charge? Under Federal law, there are certain protections that are long and well understood. There is no exemption for buy now, pay later; and, in many cases, they meet the definition for open-end credit or credit cards or whatever it may be that triggers important obligations. We want there to be innovation based on reality, not regulatory arbitrage.

Senator WARNOCK. An important issue and one that I will continue to monitor under my subcommittee on financial institutions and consumer protection. As chair of that subcommittee, I held a hearing on junk fees in July of last year, and I am pleased that, in January, the CFPB issued proposals to restrict fees for overdrafts and nonsufficient funds. Many banks have reduced their fees voluntarily. The CFPB looked at data from 2019 through 2023 and found that consumers have saved more than \$6 billion annually in overdraft and NSF fees. Six billion dollars. However, voluntary fee reductions seem to have hit a plateau. Director Chopra, when do you expect to finalize rules restricting overdraft and NSF fees?

Mr. CHOPRA. Well, we are hoping any rules would take effect in 2025. We think it would create a more competitive market. And I just want to appreciate all the work being done when it comes to tackling just the whole creep of junk fees in the economy. It has been one of the worst innovations in our marketplaces. People need to see the price clearly. They don't need to be charged for mysterious services that they don't even want, and I really want to encourage you, Senator Warnock and others, to think about codifying some of our rules into statute so that, you know, if there is strange legal theories or dragged-out litigation from the junk fee lobby, that it won't stop the important benefits of this work.

Senator WARNOCK. I think that is something we certainly should take a look at, and I look forward to seeing us finalize these rules and, as you suggest, think about which of the rules or portions of the rule we may need to codify into law.

I am pleased that the CFPB finalized a rule to require banks to show their work when they set credit card late fees. Families need to use their hard-earned money for put food on the table and keep a roof over their heads rather than paying junk fees. It adds insult to injury to be charged a late fee when you mail a payment on time but it arrives late. We won't get into the issues around the post office that many of us are addressing. Consumers can't get a break in that regard. I have heard from Georgians who are concerned that bill payments they sent by mail may arrive late due to postal service delays. They may get charged a late fee on their mortgage or credit card account through no fault of their own. Also, those who are in the market for credit may find that payments marked

as late then affect their credit score or cause them to have more to pay, have to pay more for credit.

Is there anything that CFPB can do to protect consumers from being charged a late fee due to mail delays?

Mr. CHOPRA. We got to figure this one out because I am also hearing that there are other clerical errors where people initiate the bill payment and they have a confirmation, but it doesn't actually get received or it is claimed to not be received. I don't know how we solve this, but the Federal law for credit cards does offer some protections on this. I think our work to rein in the abuse of this late-fee loophole will help, but, you are right, I think there is more we can do and we should figure that out.

Senator WARNOCK. Well, thank you so much for your attention. And I will continue, even as I raise these issues, to press the postmaster general and other top leaders of the postal service to immediately implement solutions to fix this unacceptable situation. Certainly, the postal service shouldn't be a drag on the credit scores of ordinary people who are just trying to pay their bills.

And with that, I will turn to Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Thank you to the Chairman. Director Chopra, it is good to see you again. First off, I want to thank you and your staff. Incredible work you are doing on behalf of so many people across the country, including in Nevada. When it comes to fighting for them really to be treated fairly by banks, lenders, and other financial institutions. Thank you.

I do want to talk a little bit about a couple of things. One, I want to put on your radar and maybe have you elaborate a little bit more for purposes of just the general public is the corporate repeat offenders registry. Most often, when law enforcement catches people who violate the law, they are subject to the criminal justice system, right, full force in effect. But when large corporations violate the law, they can often settle without admitting wrongdoing, pay a nominal fee, and sometimes go back to doing business as usual, right, or it is the cost of doing business. We have seen this time and time again that certain companies seem to have a culture that really disregards obeying the law when it comes to their customers.

So how is the Consumer Bureau deterring repeat corporate offenders through this new registry? Will you talk a little bit about that?

Mr. CHOPRA. I think this issue of repeat offenders by large or politically connected companies is a pretty sick part of how the system works. You cannot have one set of rules for some people or a small business gets obliterated, but a large company doing the same thing, you know, essentially just pays a nominal amount.

So what we have done is we have finalized a rule to create a new registry to deter repeat offenses. Recall when you were attorney general, there were places where people would startup and harm consumers and then move across State lines even after they were caught. So this is going to be a way in which all of us, State and Federal, can coordinate where these rings, scammers, corporate repeat offenders are moving and also to put into place some real accountability.

As part of our rule, we will be requiring for certain entities that an individual attest that they are actually complying with the

terms of any law enforcement order. So we think this is an important part of getting a little bit more rule of law and making sure that it is not just paying a little bit of penalties but they are stopped cold before they even try.

Senator CORTEZ MASTO. Is the registry available to the public, to the consumer, so that they can be aware of the activities of some of these corporations?

Mr. CHOPRA. Our rule contemplates making some of this public. Many of those orders are already public, but they are scattered in different places. We do think it is important for law enforcement and the public to really have one place they can go.

Senator CORTEZ MASTO. That is great. And let me just say, because I want to connect this also with our servicemembers, you and I have talked about this, the Bureau does incredible work protecting our active military where there's about 1.3 million active duty servicemembers and 19.5 million veterans and their families. And you and I both know they are always targeted, always targeted for their Federal benefits. That is why, one, I thank you for the work you are doing. Two, I have actually introduced two bills to create new criminal offense for fraud that targets veterans benefits and to strengthen penalties for fraudsters who target veterans.

Given the high level of scams that we see, do you agree that toughening the penalties would help deter these criminals? That's my first question. And then, two, predatory lenders that target members of the military, is there a way that the public can be aware of them, as well, as a deterrent so that we are bringing public attention to more of these challenges? And then how do we get this information to the general consumer so they know?

Mr. CHOPRA. I think that we need to see much more when it comes to criminal liability for this type of fraud. It is pretty disgusting what you see out there, and the fact that they can start something else new is just totally inappropriate. Senator Cortez Masto, we also are working with the States to figure out how they can pull the licenses for some of these outfits rather than just letting them keep going. There has to be a point where it is just too far. And you are right, I think our data base registry will aid in the efforts of making sure that there is greater information for the public so that they can know who to best do business with.

Senator CORTEZ MASTO. Thank you. I have got about 20 seconds left, but you are also on the forefront of using artificial intelligence or you have expressed some actual concerns about artificial intelligence, specifically its ability to aggregate mass amounts of consumer data. But you noted there are, and I quote, "longstanding laws on the books to address potential abuse of AI." What existing laws are applicable, I guess—

Mr. CHOPRA. Yes. Our view, I think the law is clear that there is not an exemption for fancy technology in the Fair Credit Reporting Act, Equal Credit Opportunity Act, Truth in Lending. So we have found places where sometimes people say, well, it is AI, we don't really know how the decision was made or why someone was denied credit, and our response is then you can't use that fancy AI because Federal law requires you to give a notice about why someone was denied credit under multiple laws.

I think this is a place where we have made a lot of progress because now some of these AI tools used by financial institutions are making sure that they follow Federal law because we will hold them accountable if they don't.

Generative AI is another place. That is not a license to lie. When it comes to people's Federal rights and if they assert them, if a generative AI chatbot tells them wrong information or denies them, the company is liable for that, and we need to make sure we don't create a scenario where there's an alternative world where robots don't have to follow the laws made by us, as people.

Senator CORTEZ MASTO. Yes. Thank you. Thank you for the good work again. I appreciate you being here.

Senator WARNOCK. Thank you so very much, Director Chopra, for your work. Thank you for your testimony. And for Senators who wish to submit questions for the hearing record, those questions are due on Tuesday, June 18th. And to the witness, please submit your responses to questions for the record 45 days from the day you receive them. With that, this hearing is adjourned.

[Whereupon, at 11:29 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

Last month, we defeated the latest in a long, long line of attacks on the Consumer Financial Protection Bureau by the corporate interests that want the agency off their backs. In the end, the American people won—and Wall Street lost.

Now that the CFPB is finally done fighting a ridiculous lawsuit, it can focus on what it does best—getting people their money back.

The Supreme Court's ruling upholding the CFPB is a victory for hard-working families in Ohio, for military families managing their finances, for students trying to pay back their loans, and for older Americans trying to guard against financial predators.

Most people don't have fancy lawyers and high-priced lobbyists to fight for them. The CFPB works on behalf of everyone else, fighting for their rights and their hard-earned money.

That includes their latest action this week, eliminating medical debt from credit reports.

This is something many of us have pushed for that will protect the credit scores of millions of Americans.

Medical debt is particularly damaging to consumers.

Fifteen million Americans still have medical bills on their credit reports. But people don't choose to get sick or injured.

Medical debt can happen to anyone. It doesn't matter if you do everything right.

Anyone can get sick. Anyone can get in a car accident. It has nothing to do with your ability to pay your bills—or it shouldn't.

Medical debt does not correlate with credit risk—it correlates with illness. And it has no place on credit reports.

When this rule is finalized, all Americans will have medical debt removed from their credit reports, for good.

No one should be rejected for a car loan because of a sick family member, or forced to pay higher mortgage rates because of a medical emergency. Our credit scores should reflect our financial health—not our physical health.

And the medical debt rule isn't the only thing the CFPB is working on to save people money. The CFPB is also doing important work reducing costs for consumers by targeting junk fees.

Junk fees are the surprise, often last-minute charges that drive up the cost of products. They have no justification or connection to anything other than corporations' thirst for profits.

Junk fees obscure the true cost, preventing consumers from shopping around to find the lowest price.

Earlier this year, the CFPB took a major step in reducing junk fees and costs for consumers with its Credit Card Late Fee rule.

According to one report, 1 in 5 adult Americans paid a credit card late fee last year.

In 2022, that meant credit card companies charged consumers \$14.5 billion in late fees.

When the CFPB ran the numbers, they found that credit card companies were charging consumers more than five times the costs associated with late payments, including collections.

These are massive, trillion dollar Wall Street companies. The idea that you missing your payment due date by a day or two is imposing some huge cost on the credit card company is ridiculous.

The CFPB is putting an end to this, and lowering fees.

Another major source of out-of-control, unfair costs in financial services is payday lenders.

We've pushed for years to crack down on these shady lenders that target Ohio's working families, including military servicemembers and veterans, with high-interest, predatory loans designed to trap them in a cycle of debt.

Many Americans have to renew their payday loans so many times, they end up paying much more in fees than the amount they borrowed.

In 2021, we took on the payday lending lobbyists, fighting to protect State laws that limit the interest these financial predators can charge. And we won.

The CFPB is also doing important work to protect consumers from payday lenders. The agency's payday lender rule will curb some of the worst practices and help consumers avoid abusive debt traps.

Finally, I want to talk about one of the most important things the CFPB does—stand up for servicemembers and veterans.

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

Every year, tens of thousands of servicemembers seek the CFPB's assistance or report a complaint. The number of servicemembers getting help has increased for each of the last three years.

The CFPB goes to bat for them, working to get their money back or fix the problems threatening not only their finances, but also their jobs.

The CFPB has returned more than \$183 million to servicemembers and veterans. That's money that companies took straight from servicemembers' and veterans' pockets.

And overall, since 2011, the CFPB has returned nearly \$21 billion to more than 205 million consumers.

These numbers are not hypothetical. These are real checks that land in people's mailboxes. Dollars that might mean a little extra breathing room to buy groceries or fill up a tank of gas.

This is why it's so critical that we have the Consumer Financial Protection Bureau.

Wall Street has lawyers and lobbyists. Working people have the CFPB.

I will always fight for its work that gets money back into people's bank accounts, that stops bad actors from cheating honest families, and that stands up for consumers when they may have nowhere else to turn.

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#### PREPARED STATEMENT OF SENATOR TIM SCOTT

Thank you, Mr. Chairman Brown. Director Chopra, thank you for being with us here today. I will say that listening to Chairman Brown's comments it sounds like we're talking about two completely different agencies. Frankly, I'm sure our view is completely different.

The CFPB has not been idle in its pursuits.

Based on the pace and scope of announcements I see coming out of your agency, it looks like full steam ahead.

I think the celebratory cheers from 17th Street echoed all the way over here after the Supreme Court ruling.

However, I want to be clear that their decision on the CFPB's funding structure only increases my concerns about the agency's lack of accountability.

Time after time, your agency brushes aside congressional concerns, forges ahead with political agendas, and pushes well past the boundaries of its authority.

This ruling is not a green light for your progressive wish list.

And when we look at the reaction to your regulations, it's a litany of lawsuits. All of which take time, attention, and resources away from the laws you should be implementing and enforcing as well as the American consumers you should be protecting.

So frankly, it makes me wonder—what "consumers" are you protecting?

The CFPB is supposed to be an independent agency, but under your leadership, it seems the Bureau works hand in hand with the White House and appears more interested in scoring headlines for the Biden administration than doing its job.

Whether it's standing with President Biden as he unveiled the junk fees campaign or as we saw yesterday with the Vice President announcing your new proposal to ban medical debt from credit reports.

The political coordination is crystal clear.

You're not protecting consumers or saving people money, instead you're peddling a false narrative that the Biden administration is doing something to reduce the actual costs.

But then, reality hits, and we realize this Administration's actions simply shift who saves and who pays.

It is well past time we end this "junk fees" narrative and focus on the junk philosophy behind them.

With every action taken, there are trade-offs, and those trade-offs have consequences.

In this case, the Administration is trading a punchy headline proclaiming they are saving families money today, while actually building higher costs down the road.

Take, for example, your credit card late fees rule.

While the rule may save some folks around \$20 dollars each time they make a late payment, how much will it cost these same consumers when they no longer qualify for a credit card because they haven't paid their balances on time?

How much will it cost them when their credit score drops as a result of these late payments?

How much will it cost them when the rate for their car loans and their mortgages go up, not down?

You can't just keep erasing the bad facts to fit your political narrative. The bill always, and unfortunately, always, comes due. You have made a choice to try to curry political favor, with little regard to the harm it will cause Americans down the road. You've done this to America's small businesses as well. Small businesses tell me the same story over and over again. And that story is simply a Washington shake-down, designed to be little more than a "gotcha" exercise. Just like the CFPB's civil investigative demands—or CID—process.

Under your CID process, the bureau may issue, without any court order, a subpoena to a business when you are "looking into potential violations of the law."

And once that subpoena has been issued, the CFPB can demand nearly anything they want, from reams of documents to executive testimony.

So, what does that mean for a company that draws the ire of the agency?

It means years of costly investigation, with little hope of relief, or in other words—a bureaucratic witch hunt.

One small business recently described their process to me—and I thought I was really incredible to see what the Government can do to you, as opposed to for you.

For 3 years the CFPB audited this company. But this audit resulted in no fines, no reprimands, and no additional CFPB action.

Then, in 2022, four years later, the CFPB issued the first CID, which resulted in 12,000 pages of document production, and testimony under oath for the CEO. But again, the CFPB took no action.

Then, in 2023, the CFPB issued another CID, broadening their scope further and requesting millions of pages of documents.

This time, the firm attempted to fight back and appeal, but unfortunately for this small business, the only option to appeal is through the CFPB itself—but not surprisingly, the agency rejected the appeal. To date, after countless hours of employee time and hundreds of thousands of dollars in outside legal fees, the CFPB has still taken no action. And this is just one example of a story which is playing out across the country every day, for far too many small businesses.

American consumers and businesses deserve better. They deserve protection by their Government from bad actors, and to be left alone when they are simply trying to make a living.

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

JUNE 12, 2024

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.

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

But our work is far from over. Since my last report to Congress 6 months ago, we have advanced several key initiatives on financial data, medical debt, and credit cards.

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

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

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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.

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

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

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

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

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

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

More broadly, we all need to pay close attention to this market. For the first time ever, last year credit card balances exceeded \$1 trillion. And in the last 2 years we have seen delinquencies rising to levels we have not seen in years—over 10 percent of credit card balances are now more than 90 days delinquent.

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

We have also found that most of this excess is coming from large banks. For all credit tiers, large banks are charging 800 basis points more than smaller banks and credit unions. Late fees are also higher now than they have been since passage of the CARD Act. Late fees reached \$4 billion per quarter at the end of 2022, nearly doubling since 2015.

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

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

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

**RESPONSES TO WRITTEN QUESTIONS OF CHAIR BROWN  
FROM ROHIT CHOPRA**

Committee on Banking, Housing, and Urban Affairs  
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”  
June 12, 2024

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

1. Fraud in the consumer financial space is a growing and alarming problem. In 2023, consumers lost more than \$10 billion due to fraud, up 14 percent from the year before. According to the [Federal Trade Commission](#), consumers lost \$1.8 billion in wire fraud. Director Chopra, are banks required to reimburse consumers for unauthorized wire transfers, specifically when the wire transfer is initiated by a fraudster online?

**Response:**

*The Consumer Financial Protection Bureau (CFPB) is working to ensure that banks and other financial institutions meet their legal obligations, including protecting people from scammers. The Electronic Fund Transfer Act (EFTA) provides important protections when consumers suffer unauthorized withdrawals from their accounts. For instance, so long as a person promptly notifies their bank that access to their account has been stolen, the law limits the person’s losses to \$50. As the name suggests, the EFTA generally applies to transfers initiated electronically, such as through a computer or mobile device. When a bank connects wire transfer capabilities to its online consumer banking platform and a person authorizes (or a scammer purports to authorize) a wire transfer online, the EFTA applies to the transaction except for the bank-to-bank portion of it.*

2. Credit card interest rates have reached levels we’ve never seen before. And that’s not because rates are high in general—CFPB research showed that credit card issuers have been raising their rates even above and beyond increases in the prime rate. Americans are trying to afford groceries and rent while also paying billions in interest to their credit card companies.
  - a. Director Chopra, who are the consumer these higher rates affect the most? How have rate increases been distributed across cards targeted towards different tiers of credit scores?

**Response:**

*I appreciate your question and share your concern. By some measures, credit cards have never been this expensive, as issuers charged more than \$130 billion in interest and fees in 2022 alone. By the end of 2022, interest and fees as an annualized percentage of balances, or the total cost of credit, was almost 18 percent on general purpose cards and over 21 percent on private label accounts.*

*Many cardholders with subprime scores are now paying 30 to 40 cents in interest and fees per dollar borrowed each year. Federal Reserve rate increases triggered upward repricing on most general purpose cards, and issuers continue to price well above the prime rate, with an average annual percentage rate (APR) margin of 15.4 percentage points. Fee volume now exceeds pre-pandemic levels.*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*Cardholders with subprime and deep subprime scores pay two to four times more in interest and fees per dollar of credit extended than those with scores above 720. Consumers with lower scores are charged higher interest rates to revolve a balance on a general purpose card under risk-based pricing. While private label card issuers charge similar APRs to cardholders across credit score tiers, costs for private label revolving accounts also generally increase as credit scores decrease because cardholders with above-prime scores receive more promotional offers and incur fewer fees.*

- b. What role does competition in the credit card market have on the all-time high interest rate profit margins?

**Response:**

*The top 30 credit card companies represent about 95 percent of outstanding credit card balances. The top 10 companies alone represented 83 percent.*

*For cardholders who carry a balance without paying it off in full each month, issuers charge interest that can be generally measured based on APRs. In 2022 alone, major credit card companies charged over \$105 billion in interest, which is the primary cost of credit cards to consumers.*

*While the effects of increases to the target federal funds rate have received considerable attention, the average APR margin (the difference between the average APR and the prime rate) has reached an all-time high. These sharp increases in average APRs are well beyond changes in the prime rate. In 2023, excess APR margin may have cost the average cardholder over \$250, while major credit card companies earned an estimated \$25 billion in additional interest revenue by raising APR margin.*

*Top credit card companies dominate the market, and smaller issuers many times offer credit cards with significantly lower APRs. When a small group of companies dominate the market, it can make it much harder for smaller competitors to break through to consumers, even when they offer far better prices.*

*The CFPB has raised concerns that the credit card industry has become more concentrated in the past several years. A concentrated market makes it easier for the remaining companies to hike rates and fees.*

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCOTT  
FROM ROHIT CHOPRA**

Committee on Banking, Housing, and Urban Affairs  
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”  
June 12, 2024

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

1. In response to my questions during the hearing, you indicated that you do not know how many CIDs have been issued during your tenure at the CFPB. Please provide that figure.

**Response:**

*The issuance of CIDs is an essential tool for fulfilling the Consumer Financial Protection Bureau’s (CFPB) statutory mission of enforcing federal consumer financial laws. The CFPB endeavors from the outset to tailor each CID to the needs of the particular investigation. We recognize that responding to a CID can impose burdens on the recipients, especially small businesses.*

*The CFPB takes care to safeguard information regarding the existence and nature of ongoing supervisory and enforcement action, as disclosure could jeopardize important law enforcement interests, and potentially cause undue harm to an entity subject to such action. All CIDs are issued as part of an authorized enforcement investigation, based on the investigatory needs of the particular matter.*

*If a CID recipient has concerns about compliance that cannot be resolved through discussions with CFPB staff, they are entitled to file an administrative petition to modify or set aside the CID. Since January 1, 2020, the CFPB has resolved a total of fifteen petitions filed by CID recipients to modify or set aside a CID. These petitions and the corresponding orders are publicly available on the CFPB website.<sup>1</sup>*

2. During the hearing in response to Senator Reed inquiring as to how the CFPB is going to “to incentivize the credit reporting bureaus to include BNPL?”, you stated, “One of the things that’s worth noting is the auto lenders and mortgage lenders, they’re very concerned that buy now, pay later is not on the credit report. Because they’re saying to me, how are we supposed to know if the person is able to afford this if we don’t know what all these buy-now, pay-later loans are?”
- a. Can you explain why you believe medical debt should not appear on credit reports, but BNPL debt should?

**Response:**

*Thank you for the opportunity to clarify this important issue. Medical billing is often riddled with errors, including inflated or duplicative charges, fees for services the patient never received, or charges already paid. It is simply not fair that Americans*

<sup>1</sup> <https://www.consumerfinance.gov/enforcement/investigatory-authority/>

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*are burdened with not just the need to address critical health concerns but then unfairly pursued by debt collectors over unsubstantiated or invalid medical bills.*

*Medical debt on a consumer credit report is a very different type of debt than a mortgage, an auto loan, or a credit card. Sometimes, as is the case with a visit to the emergency room, the debt is taken on unexpectedly and in a time of crisis. Medical bills are also frequently subject to coding errors, charity care mistakes, or complexities with insurance.*

*A decade ago, the CFPB found that medical debts were overly penalizing consumer credit scores, and we have consistently found that medical billing data on a credit report is less predictive of future repayment than other debts.*

- b. Do you believe BNPL debt is a more predictive measure of future ability to repay than medical debt?
- i. If yes, what research have you done to support this conclusion?
  - ii. Please provide any and all data you have collected to support this conclusion.

**Response:**

*Most information on a credit report represents debts that a consumer voluntarily signed up for, like a mortgage, an auto loan, or a credit card. Buy Now, Pay Later (BNPL) falls into this category; it is a form of credit that allows a consumer to fully purchase a product, and then pay back the loan over four installments, with the first installment typically being a down payment on the purchase.*

*Medical debt on a consumer credit report is a very different type of debt than a mortgage, an auto loan, a credit card, or BNPL. Sometimes, as is the case with a visit to the emergency room, the debt is taken on unexpectedly and in a time of crisis. Medical bills are also frequently subject to coding errors, charity care mistakes, or complexities with insurance.*

*In recent years, however, medical bills became the most common collection item on credit reports. CFPB research has found broad concerns about the accuracy of medical bills. First of all, billing errors are widespread, unpaid balances are often altered by insurance adjustments or financial assistance but don’t get adjusted in the underlying bills sent to debt collectors. Making matters worse, most debt collectors collecting on unpaid medical bills have no way of comparing the bills they are collecting on with the healthcare providers’ billing records, so they cannot easily verify the underlying accuracy of a bill, even though they are required to ensure the validity of the debt.*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

3. You are one of five Board members of the FDIC. Two months ago, you brought forth your own proposal for consideration by the Board. That proposal was related to the Change in Bank Control Act, having nothing to do with now proven allegations of a toxic workplace at the FDIC. Previously as a Board member, you used every power at your disposal to lead a coup against then FDIC Chairman Jelena McWilliams, going so far as to use the CFPB to post documents that had not been agreed to by the FDIC Board. The allegations against Chairman Gruenberg relating to his conduct at the FDIC came to light last November, and yet you have still said nothing. You have done nothing.
- a. Why should this Committee or the American people believe that you care about the wellbeing of federal employees?

**Response:**

*I believe it is critical to ensure that the FDIC follows the law established by Congress and provides for a safe workplace for all employees that is free of harassment and retaliation. Both are fundamental for a well-functioning agency. In 2021, Chairman Jelena McWilliams voluntarily resigned from the FDIC amidst an investigation by the Department of Justice into her decision to unlawfully obstruct the FDIC Board’s authority.*

*Since the allegations of sexual harassment, retaliation, and other forms of interpersonal misconduct at the FDIC came to light in 2023, I have been directly engaged in efforts to remediate the culture of the agency. I have personally participated in hiring interviews for the Transformation Monitor, Director of the Office of Professional Conduct (OPC), and Director of the Office of Equal Employment Opportunity (OEEO). All three positions were filled in unanimous votes of the Board. The Board has now received extensive briefings from the Transformation Monitor, the Director of OPC, the Director of OEEO, and FDIC staff implementing the Action Plan for a Safe, Fair, and Inclusive Work Environment. I have and will continue to make information requests of staff, probe decisions and draft policies, and seek to hold the agency accountable to its commitment for cultural change.*

*Given the importance of Board oversight of the cultural transformation, I offered a resolution at the September 17th Board meeting that directed the Transformation Monitor to independently assess the Board’s role in overseeing implementation of the Action Plan, and recommend any policies, procedures, or actions the Board should consider to ensure effective and credible execution of the Action Plan. The Board adopted the resolution and the Transformation Monitor is currently conducting the assessment.*

*Ensuring a safe workplace for all employees has been a priority of mine at the CFPB as well. Last year the CFPB implemented a new Anti-Harassment and Anti-Bullying*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*Policy, which we developed in consultation with the U.S. Equal Employment Opportunity Commission and the Office of the Inspector General at the Federal Reserve. With the addition of the prohibition against bullying, the CFPB now has one of the most forward-thinking policies prohibiting harassment across federal government.*

- b. Please describe what actions you have taken to demonstrate that you are concerned with the toxic work environment at the FDIC.

**Response:**

*Since the allegations of sexual harassment, retaliation, and other forms of interpersonal misconduct at the FDIC came to light in 2023, I have been directly engaged in efforts to remediate the culture of the agency. I have personally participated in hiring interviews for the Transformation Monitor, Director of the OPC, and Director of the OEEO. All three positions were filled in unanimous votes of the Board. The Board has now received extensive briefings from the Transformation Monitor, the Director of OPC, the Director of OEEO, and FDIC staff implementing the Action Plan for a Safe, Fair, and Inclusive Work Environment. I have and will continue to make information requests of staff, probe decisions and draft policies, and seek to hold the agency accountable to its commitment for cultural change.*

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*Ensuring a safe workplace for all employees has been a priority of mine at the CFPB as well. Last year the CFPB implemented a new Anti-Harassment and Anti-Bullying Policy, which we developed in consultation with the U.S. Equal Employment Opportunity Commission and the Office of the Inspector General at the Federal Reserve. With the addition of the prohibition against bullying, the CFPB now has one of the most forward-thinking policies prohibiting harassment across federal government.*

- c. Do you believe Chairman Gruenberg should immediately resign? If not, please explain why you have confidence in his ability to lead.

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

**Response:**

*Chairman Gruenberg announced that he would resign upon the Senate’s confirmation of a successor. The President has nominated Christy Goldsmith Romero to lead the FDIC and I think she will be a qualified and capable Chair. I look forward to working with her as soon as she is confirmed.*

4. We have heard from some of companies that they have noticed clearly fraudulent actors being included in the CFPB’s consumer’s complaint portal. This includes examples of individuals using similar names, exact addresses and repetitive narratives, as well as examples of criminals attempting to leverage the negative repetitional impact of the complaints to seek illegitimate refunds on illegally acquired products. Does the CFPB conduct any type of quality assurance (QA) analysis to ensure that suspicious, fraudulent or duplicative complaints are eliminated from the system? If so, please explain the measures you have and are continuing to take. If not, please explain why.

**Response:**

*The CFPB receives complaints directly from consumers or forwarded via Congressional offices from their constituents about consumer financial products and services.*

*The CFPB screens all complaints submitted by consumers and routes screened consumer complaints within the case management system to the appropriate company. To carry out its responsibility for accurately analyzing and routing complaints, the CFPB has implemented several controls to monitor the accuracy of complaint data and detect problematic complaints in the case management system, which includes reviewing complaints, monitoring system queues, responding to system alerts, and completing Quality Assurance Scorecards.*

5. As part of the CFPB’s proposed rule entitled, Defining Larger Participants of a Market for General-Use Digital Consumer Payment, the Bureau estimates that the average cost of compliance is roughly \$25,000, and would require minimal time from one compliance office and one attorney. Specifically, the CFPB estimates that “...each exam requires two weeks of preparation time by staff of providers...”. Please provide the data and supporting analysis that supports these estimates.

**Response:**

*The Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications Proposed Rule (NPRM) provides a detailed analysis of the potential costs and benefits, while noting that limited data were available with which to quantify the potential benefits, costs, and impacts of the proposed rule. With respect to the costs of supporting supervisory activity, the proposal stated that the primary costs an entity would face in connection with an examination would be the cost of employees’ time to collect and provide*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*the necessary information and provided some rough estimates of the magnitude of potential staff costs that entities might incur. The NPRM states that examinations of larger participants in the market for general-use digital consumer payment applications were anticipated to be approximately eight weeks on average, with an additional two weeks of preparation. The NPRM also stated that the CFPB has not suggested that any particular staffing level is required during an examination. The NPRM provides the sources that were used to reach the staffing cost estimates in the proposal, which were derived from the U.S. Bureau of Labor Statistics.*

*The CFPB invited comments on all aspects of the proposal and is closely reviewing those now.*

6. While the CFPB is an independent bureau within the Federal Reserve System, we frequently see you collaborating with the White House on new rulemakings and other CFPB initiatives. Most recently, on June 11, 2024, you rolled out a new proposal on medical debt with Vice President Harris.<sup>2</sup> Given the clear collaboration with the current administration, how do you contend that the CFPB is “independent”?

**Response:**

*Promoting competition in consumer financial markets is among the statutory objectives assigned to the CFPB by Congress. It also aligns with the whole-of-government effort to promote competition in the American economy. The White House has convened agencies from across the government, including financial regulatory agencies like the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the CFPB, to serve on a Competition Council, as part of this whole-of-government effort. The CFPB appreciates the support we have received from across the Executive branch as we work to ensure consumer financial markets are fair, transparent, and competitive.*

- a. How frequently do you meet with representatives of the current administration?

**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 (CFPA) 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*

<sup>2</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/11/fact-sheet-vice-president-harris-announces-proposal-to-prohibit-medical-bills-from-being-included-on-credit-reports-and-calls-on-states-and-localities-to-take-further-actions-to-reduce-medical-debt/>

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*critical to ensuring the efficient and effective discharge of our duties. Accordingly, the CFPB regularly meets with representatives of other administrative agencies across the Executive branch.*

- b. Have any members of the current administration provided any feedback on CFPB proposals or final rules prior to public release? If yes, please list the proposals or initiatives and provide the committee with a copy of any written feedback and a summary of any oral feedback.

**Response:**

*The CFPB 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. Proposed and final rules issued by the CFPB typically describe the interagency consultations that took place during the rulemaking process.*

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

**Response:**

*The CFPB does not take a position on how financial institutions should determine the price of their products. Lenders that choose to engage in risk-based pricing must comply with applicable legal requirements, such as the Fair Credit Reporting Act’s risk-based pricing notice requirements and the Equal Credit Opportunity Act’s prohibition on discrimination based on prohibited characteristics.*

- a. The credit card late fees and overdraft rules will make it much harder for lenders to price loans according to the risk involved. Why is the CFPB writing rules that erode the fundamental principle of risk-based pricing?

**Response:**

*In the final rule, the CFPB determined that permitting risk-based pricing in setting the amount of a late fee is generally inconsistent with the Credit Card Accountability Responsibility and Disclosure Act of 2009 requirement that late fees be reasonable and proportional to the cost of the omission or violation. This type of pricing would enable Larger Card issuers to set late fee amounts based on estimation of risk among groups of consumers, as compared with the statutory requirement that late fees be based on the actual violation, rather than the potential risk of consumers. Moreover, the safe harbor is a discretionary amount that is presumptively reasonable and proportional, and use of risk-based pricing could result in a higher late fee amount than the cost of the omission or violation for many Larger Card Issuers.*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*Community and relationship banking are integral to the American economy. I have consistently affirmed my commitment to supporting this sector by tailoring regulation and enforcement to be mindful of the unique importance small and community banks play in our economy. In particular, we’ve refocused CFPB’s work from going after smaller entities to focusing on large, repeat offenders, and giving the smallest institutions extra time to comply with new regulations, or exempting them altogether.*

8. In April of 2023, the CFPB issued a Policy Statement on Abusive Acts or Practices with the stated goal of, “providing an analytical framework to fellow government enforcers and to the market for how to identify violative acts or practices.”<sup>3</sup> The statement included a number of interpretive assertions of how the CFPB reads the Consumer Financial Protection Act.
- a. Why was the Policy Statement not open for public comment?

**Response:**

*The Policy Statement summarizes prior actions addressing abusive acts or practices and explains how the CFPB analyzes the elements of abusiveness through relevant examples, with the goal of providing an analytical framework to fellow government enforcers and to the market for how to identify violative acts or practices. Like other forms of guidance, the Policy Statement explains what the law has already authorized and does not create any new obligations.*

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<sup>3</sup> <https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/>

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARNER  
FROM ROHIT CHOPRA**

Committee on Banking, Housing, and Urban Affairs  
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”  
June 12, 2024

**Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Mark Warner:**

1. Late last year the CFPB proposed a rule to make sure larger nonbank companies that offer digital wallets and other payment services follow the same rules as more traditional financial providers.
  - a. How do these players shift the model for consumer finance? We’ve traditionally had clear divisions between banking and commerce, so how do you see the consequences here?

**Response:**

*You raise an important question. It’s critical that federal regulators appreciate the dynamic nature of our financial markets. Today’s market for consumer payments is no exception. The Consumer Financial Protection Bureau (CFPB) issued the Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications (NPRM) to conduct supervisory examinations of larger players in the market for general-use digital consumer payments. Some of these firms touch more consumers than the bulk of banks and credit unions currently subject to examination. Our NPRM seeks to provide consistent enforcement of federal consumer financial law for payments made for personal, family, or household purposes.*

- b. Since these companies provide services that look an awful lot like traditional banking, what does your research tell you are the most significant risks for consumers from these platforms?

**Response:**

*The traditional lines we drew within the financial sector have become fuzzy over the past several decades. Big Tech companies are now taking advantage of that blurring as they move into finance, threatening the fundamental separation between banking, money, and payments on one side, and our real economy on the other. They can engage in bank-like activities, either on their own or through complex arrangements with banks.*

*Starting in late 2021, the CFPB began to study these payment platforms, including Big Tech firms. We issued orders to many of the major players operating in the United States. We released our analysis of “tap-to-pay” features.<sup>17</sup> Our research has*

<sup>17</sup> <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-rohit-chopra-at-the-federal-reserve-bank-of-philadelphias-annual-fintech-conference/>

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*also led to issuances on the lack of deposit insurance coverage on certain stored funds, as well as a spotlight on the emergence of so-called “super apps.”*

*We have also spent considerable time evaluating the complex data handling practices and privacy protocols at these firms. Their policies are often long and filled with legalese, and to make things even more confusing, they sometimes refer people to other policies to understand what data is being surveilled, how it is being used, and what if any rights a person may have.*

- c. Are these risks primarily in data privacy and unauthorized use? Or protection of customer funds, such as preventing use for the company’s own investments? Or other areas?

**Response:**

*Thank you for raising this important issue. There are risks in data privacy as well as protection of customer funds. The issue of data privacy also has implications to our military and national security. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance. These firms collect a significant amount of data about the consumers using their payment products. And they use this data for a variety of purposes including to develop, market, and sell payments products and, for a majority of them, other products and services to potential third parties.*

*These entities retain much of the data they collect for extended periods of time. The companies generally require that consumers consent to their data being collected to use the product and that the lack of such consent would restrict their access to many or all product features. Similarly, fulfilling a request to delete data may result in the closure of a consumer’s account or their inability to continue use of the product.*

*Regardless of how these companies use the consumer data they have collected today, their policies do not appear to commit to meaningful limitations on future efforts to monetize the data. Moreover, their policies are not static and evolve over time, and each new version affords these entities opportunity to change their position on what data is collected or how it used, including how they might share this data with other parts of their corporate conglomerates.*

*The CFPB released an issue spotlight on digital payment apps heavily used by consumers and businesses.<sup>18</sup> 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. Use of nonbank payment apps such*

<sup>18</sup> <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-analysis-of-deposit-insurance-coverage-on-funds-stored-through-payment-apps/>

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*as PayPal, Venmo, and Cash App have rapidly grown in the past few years. These apps allow people to quickly pay retailers and others, while providing the option to store funds. Unlike traditional bank and credit union accounts which have deposit insurance, funds stored in these nonbank payment companies may be unprotected.*

- d. Your release for the proposal mentions the impacts of these tech firms on competition. As you look at these firms, what specific kinds of behavior are of concern to you and the Bureau from the standpoint of threats to competition?

**Response:**

*The CFPB issued a Proposed Rule to Define Larger Participants of a Market for General-Use Digital Consumer Payment Applications (NPRM) to conduct supervisory examinations of larger players in the market for general-use digital consumer payments. The CFPB proposed this rule because this market has increasing significance to the everyday lives of consumers, who are growing increasingly reliant on market participants for their financial transactions.*

*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 NPRM 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.*

*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.*

- e. How will you approach coordinating with the financial regulators who do oversee banks for the same activities?

**Response:**

*In accordance with the Consumer Financial Protection Act, the CFPB coordinates regulatory oversight activities with other financial regulators for federal consumer financial laws. In addition, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires the CFPB to coordinate supervisory activities with state bank regulators. No final rule has been issued and the CFPB is carefully considering all comments received in response to the proposal before finalizing the rule.*

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR ROUNDS  
FROM ROHIT CHOPRA**

Committee on Banking, Housing, and Urban Affairs  
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”  
June 12, 2024

**Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Mike Rounds:**

1. In your June 12, 2024 testimony, you were unable to answer whether the CFPB considers consumer-authorized but fraudulently induced electronic fund transfers (“EFTs”) to be “unauthorized electronic fund transfers” under the Electronic Fund Transfer Act (“EFTA”) and Regulation E. Is it the CFPB’s position that such EFTs can constitute “unauthorized” EFTs under the EFTA and Regulation E?

**Response:**

*I appreciate this question. This issue can be complex.*

*Under the Electronic Fund Transfer Act (EFTA), as implemented in Regulation E, an unauthorized Electronic Fund Transfer (EFT) is a transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. Unauthorized EFTs include transfers initiated by a person who obtained a consumer’s access device through fraud or robbery and consumer transfers at an ATM that were induced by force. How Regulation E may apply in any particular situation depends on the specific facts.*

2. What does CFPB view as the distinction between fraud and scams?

**Response:**

*The laws administered by the Consumer Financial Protection Bureau (CFPB) do not define the terms “fraud” or “scam.” The CFPB has not adopted any view on this, as fixed definitions of these terms are not necessary to carry out our work.*

3. Under what circumstances would a consumer-authorized but fraudulently induced electronic funds transfer qualify as an “unauthorized electronic fund transfer”? Please identify any and all such circumstances.

**Response:**

*We have seen a rise in these types of fraudulently-induced transactions on peer-to-peer (P2P) payment apps, which is generally when a scammer induces a consumer to send money under false pretenses. This kind of fraud is especially concerning for certain segments of the population – like older Americans and servicemembers – who tend to be targeted more frequently.*

*Regulation E defines an unauthorized EFT as a transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. When a consumer’s account access information is*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*obtained from a third party through fraudulent means such as computer hacking, and a hacker uses that information to make an EFT from the consumer’s account, the transfer is an unauthorized EFT under Regulation E. How Regulation E may apply in any particular situation depends on the specific facts.*

4. Give an example of where Regulation E would apply to a scam transaction?

**Response:**

*Regulation E defines an unauthorized EFT as a transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. When a consumer’s account access information is obtained from a third party through fraudulent means such as computer hacking, and a hacker uses that information to make an EFT from the consumer’s account, the transfer is an unauthorized EFT under Regulation E. How Regulation E may apply in any particular situation depends on the specific facts.*

5. Give an example of where Regulation E would apply to a fraud transaction?

**Response:**

*Regulation E defines an unauthorized EFT as a transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. When a consumer’s account access information is obtained from a third party through fraudulent means such as computer hacking, and a hacker uses that information to make an EFT from the consumer’s account, the transfer is an unauthorized EFT under Regulation E. How Regulation E may apply in any particular situation depends on the specific facts.*

6. How does the CFPB expect financial institutions to distinguish between consumer-initiated transfers that qualify as “unauthorized” under the EFTA and Regulation E in the CFPB’s perspective from those that do not so qualify? For example, in the case of scams, does the Bureau expect financial institutions to determine when someone purporting to sell a good or service is likely to deliver the promised good or service? How does the Bureau expect financial institutions to manage restricting authorized transfers when a consumer demands the financial institution process a transfer despite multiple warnings of a potential scam?

**Response:**

*There is P2P fraud today that is clearly covered by EFTA, such as situations where a consumer’s account is accessed by an unauthorized person who transfers funds out of the consumer’s account. Bank and nonbank P2P providers have dispute resolution requirements and limitation of liability obligations in such situations.*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*Companies must of course follow existing law and regulations, and payment network rules can address many of the problems we are seeing. Consumer protective changes in payment network rules, shifting liability to recipient institutions, can be done without any changes in the law. Private network rules and contracts decide how payments providers allocate liability.*

*Though our engagements with industry participants, we have heard a lot of support for changes to network rules that would put liability for induced fraud on the receiving institution. These service providers understand that rampant fraud is bad for business – it damages their reputations and causes consumers to lose trust in their products—so these companies are motivated to find solutions.*

7. Networks rules govern ACH and other electronic payment methods of where to assign fraud liability. Give an example where these rules are insufficient and application of Regulation E would be necessary.

**Response:**

*Though our engagements with industry participants, we have heard a lot of support for changes to network rules that would put liability for induced fraud on the receiving institution. These service providers understand that rampant fraud is bad for business – it damages their reputations and causes consumers to lose trust in their products—so these companies are motivated to find solutions.*

8. The CFPB has been focused on fraud and scams on peer-to-peer (“P2P”) platforms. These platforms, which are used by hundreds of millions of American consumers, including small businesses, provide consumers with an efficient way to transfer payments with extremely low instances of fraud.
- a. Please provide the CFPB’s data on fraud rates by payment type.

**Response:**

*The CFPB has received numerous complaints of 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 (FTC) 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 FTC about fraudulent payments on digital apps*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*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 million.*

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

- b. Does the CFPB’s data suggest that P2P platforms are more susceptible to fraudulent and scam activity than other forms of payment, including checks?

**Response:**

*The CFPB has received numerous complaints of P2P payment fraud. For instance, in 2020, 50 percent of complaints to the CFPB regarding P2P were fraud related. In 2022, of all the complaints submitted to the CFPB on payment apps sent to companies, the most common complaints were related to fraud.*

- c. Does the CFPB have a view as to which payment method is inherently riskier – sending money by P2P payment app or sending a check, which has the consumer’s personally identifiable information printed on it, including the bank account number, through the mail?

**Response:**

*No, but the use of P2P platforms has increased dramatically.*

*More than three quarters of adults in the United States have used a payment app sometimes called a P2P app.<sup>15</sup> Widely used nonbank payment apps include PayPal, Venmo, and Cash App. The apps can be used on a computer or mobile device to send money to someone else without writing a check or handing over cash.*

*Young adults use payment apps even more frequently. According to a March 2022 survey by Consumer Reports, 85 percent of consumers aged 18 to 29 have used one of these apps.<sup>16</sup>*

<sup>15</sup> <https://www.consumerfinance.gov/about-us/newsroom/consumer-advisory-your-money-is-at-greater-risk-when-you-hold-it-in-a-payment-app-instead-of-moving-it-to-an-account-with-deposit-insurance/>

<sup>16</sup> *Id.*

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR HAGERTY  
FROM ROHIT CHOPRA**

Committee on Banking, Housing, and Urban Affairs  
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”  
June 12, 2024

**Questions for The Honorable Rohit Chopra, Director, Consumer Financial Protection Bureau, from Senator Bill Hagerty:**

1. In a speech, the CFPB’s General Counsel and Senior Advisor Seth Frotman suggested that the Bureau has jurisdiction over merchants, with only a narrow exception for “mom-and-pop merchants.”<sup>12</sup>
  - a. Please explain how this expansive definition of the CFPB’s authority is consistent with public law stipulating that “the Bureau may not exercise any rulemaking, supervisory, enforcement or other authority... with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service?”<sup>13</sup>

**Response:**

*The quoted statement was about the exception in 12 U.S.C. §5481(15)(A)(vii)(I) to the definition of “payments or other financial data processing products or services” under the Consumer Financial Protection Act (CFPA) for certain sellers of nonfinancial goods or services who engage in financial data processing “solely because” they transmit or store payments data “exclusively” for the purpose of the consumer paying for the goods or services that are sold directly by the seller to consumers. The Consumer Financial Protection Bureau’s (CFPB) authorities under the CFPA are also subject to the separate exclusion in 12 U.S.C. §5517(a) for merchants, retailers, and other sellers of nonfinancial goods or services, in the circumstances specified in that provision.*

2. The CFPB is proposing to collect extensive data from Americans who have financed car purchases.<sup>14</sup> Each year, the Bureau intends to gather over 120 data points from 4,000 auto lenders. These data points include borrowers’ income, credit score, zip code, make and model of the car, purchase price, and interest rate. The Bureau has not clarified whether this data will be made publicly available in a searchable database or if it will remain anonymous.
  - a. Will this consumer data be made public or will it remain anonymous?

**Response:**

*In February 2024, the CFPB published a Federal Register notice regarding an additional information collection on auto finance data. The CFPB has proposed this information collection, but no determinations have been made as whether to go forward with the collection.*

<sup>12</sup> <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-general-counsel-and-senior-advisor-director-seth-frotman-at-innovative-payments-conference/>

<sup>13</sup> 12 U.S. Code § 5517(a).

<sup>14</sup> <https://www.consumerfinance.gov/about-us/blog/our-auto-finance-data-pilot/>

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*The CFPB did not propose to collect information that directly identifies consumers as part of this data collection. Accordingly, even if the collection were to be finalized, no such information would be published.*

*Furthermore, if the data collection is finalized, the CFPB will protect the data in accordance with federal law, including Section 1022(c)(8) of the Dodd-Frank Wall-Street Reform and Consumer Protection Act of 2010, which requires the CFPB to take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under the Freedom of Information Act, Privacy Act of 1974, and any other provision of law, is not made public under the CFPB.*

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR BRITT  
FROM ROHIT CHOPRA**

Committee on Banking, Housing, and Urban Affairs  
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”  
June 12, 2024

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

1. Earlier this year, the CFPB published a notice in the Federal Register seeking approval from the Office of Management and Budget (OMB) for an extensive collection of additional auto finance data pursuant to its authority under the Dodd Frank Act. Specifically, the CFPB is proposing to collect highly detailed loan-level data from lenders annually, including information regarding lending channels and repossessions. The Bureau has provided inadequate justification for this massive data collection, and has been unclear regarding how it intends to use the information, including whether it would be made public or available by a FOIA request.
  - a. During the hearing, you committed to not publishing any identifying information related to the Bureau’s data collection in accordance with Rule 1071, given significant consumer data privacy concerns. Similarly, do you commit to not publishing any identifying information related to the Bureau’s auto finance data collection?

**Response:**

*In February 2023, the Consumer Financial Protection Bureau (CFPB) launched the Auto Finance Data Pilot and issued market monitoring orders to three banks, three finance companies, and three captive lenders to provide information about their auto lending portfolios. This allows the CFPB to examine trends that may create risks for consumers, including a better understanding of loan attributes that may result in increased consumer distress.*

*The auto lending market is the third largest consumer lending market, yet there is little data available. The CFPB has proposed an additional information collection, but no determinations have been made with regard to whether to move forward with the collection. The CFPB did not propose to collect any information that directly identifies consumers as part of this data collection. Accordingly, even if the collection were to be finalized, no such information would be published.*

*Furthermore, if the data collection is finalized, the CFPB will protect the data in accordance with federal law, including Section 1022(c)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the CFPB to take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under the Freedom of Information Act, Privacy Act of 1974, and any other provision of law, is not made public under the Consumer Financial Protection Act.*

2. Section 1022 of the Dodd-Frank Act states that when the CFPB is proposing rules, it shall consider not only the costs and benefits to consumers, but also the “potential reduction of access by consumers to consumer financial products or services” resulting from such rule.”

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

The Bureau is currently in the process of finalizing a new rule, which would make significant changes to the kind of overdraft protection services banks can offer.

In the comments to the proposed rule, several letters raised concerns that the rule as proposed will directly result in a reduction in access to checking accounts for consumers. In fact, in the proposal itself, the Bureau recognizes that, if the Proposal is finalized as-is, banks may underwrite overdraft “more conservatively;” “reduc[e] credit limits” for customers that are a greater credit risk, and “even . . . eliminat[e] access” to overdraft to those customers who currently have access to the product.

- a. Please provide your evaluation of the potential reduction in access to overdraft and credit as is required by statute.

**Response:**

*The CFPB issued the Overdraft Lending: Very Large Financial Institutions proposed rule (NPRM) with respect to overdraft fees on January 17, 2024. The NPRM does indicate that very large financial institutions could respond to the proposed rule’s changes by underwriting non-covered overdraft credit more conservatively, but the NPRM also notes that firms may offer other products instead.*

*Right now, overdraft lending is one of the only types of loans where consumers are not told an APR or given lending disclosures. That’s why the CFPB is proposing a rule that would establish bright lines and ensure consumers know what they are getting when it comes to overdraft loans. If finalized, the rule would close a loophole in the rules implementing the Truth in Lending Act that has allowed banks to lend money to consumers to cover overdrawn accounts without having to worry about the consumer protections that govern other forms of consumer credit. By closing the loophole, we are not shutting banks from profits or consumers from credit.*

*The CFPB has been engaging with financial institutions that have reduced or eliminated overdraft fees in order to understand the effects of those policy changes and will continue to do so.*

*The CFPB continues to review and consider the comments we received on this proposal.*

3. Section 1022 also directs the Bureau to “consult with the appropriate prudential regulators . . . prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.” In the past two years, the Bureau has proposed a rule significantly limiting overdraft fees and has finalized a rule significantly limiting late fees. Concurrently, the Federal Reserve has proposed a rule that would reduce interchange fees that banks rely on to provide checking account and debit services.

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

- a. Did the CFPB consult the Federal Reserve before proposing the overdraft and late fee rules to evaluate the cumulative impact these rules will have on banks’ ability to provide services to consumer bank customers? If so, please provide a date and any supplementary details surrounding the engagement.

**Response:**

*Yes. As the Credit Card Late Fee rule explains, the CFPB consulted with the appropriate prudential regulators, including the Federal Reserve Board, before issuing the proposed and final rules. The final rule also notes that none of the prudential regulators with which the CFPB consulted raised any safety and soundness concerns.*

*Similarly, the proposed rule on Overdraft Lending explains that the CFPB consulted with the appropriate prudential regulators, including the Federal Reserve Board, during the development of the rule, including about the consistency of the proposed rule with any prudential, market, or systematic objectives administered by those agencies.*

4. 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.

- a. What changed? Please provide the basis of the CFPB’s authority to take this action.

**Response:**

*During my time as Director of the CFPB, I have traveled throughout the country to hear first-hand from American consumers. Medical debt is consistently brought up. The Fair Credit Reporting Act (FCRA) restricts creditors’ ability to use medical information in making credit decisions and places limits on the inclusion of medical information on credit reports. In 2003, Congress gave financial regulators authority to create regulatory exemptions to the restriction on creditors’ use of medical information, and in 2005, those regulators created an exception to allow creditors to rely on medical data if it could be characterized as “financial information.” The Dodd-Frank Act transferred authority for those regulatory exemptions to the CFPB. I would be happy to further discuss with you the CFPB’s work in this area and to explore ways we can work together to address this burden. I would also welcome the opportunity to travel to Alabama and meet with constituents and stakeholders to hear their perspectives.*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

5. Do you believe an agency described as “misogynistic,” “abusive,” and “toxic,” with a “good ol’ boys club” mentality instills trust and confidence for the American public?

a. Please answer with just a yes or no.

**Response:**

*No.*

*It is critical that we address the serious, longstanding issues at the FDIC that were brought to light by the independent review. The FDIC is working diligently to implement reforms recommended by the report and ensure all FDIC employees are protected from harassment or discrimination in workplace.*

*I have been directly engaged in efforts to remediate the culture of the agency. I have personally participated in hiring interviews for the Transformation Monitor, Director of the Office of Professional Conduct (OPC), and Director of the Office of Equal Employment Opportunity (OEEO). All three positions were filled in unanimous votes of the Board. The Board has now received extensive briefings from the Transformation Monitor, the Director of OPC, the Director of OEEO, and FDIC staff implementing the Action Plan for a Safe, Fair, and Inclusive Work Environment. I have and will continue to make information requests of staff, probe decisions and draft policies, and seek to hold the agency accountable to its commitment for cultural change.*

*Given the importance of Board oversight of the cultural transformation, I offered a resolution at the September 17th Board meeting that directed the Transformation Monitor to independently assess the Board’s role in overseeing implementation of the Action Plan, and recommend any policies, procedures, or actions the Board should consider to ensure effective and credible execution of the Action Plan. The Board adopted the resolution and the Transformation Monitor is currently conducting the assessment.*

*Ensuring a safe workplace for all employees has been a priority of mine at the CFPB as well. Last year the CFPB implemented a new Anti-Harassment and Anti-Bullying Policy, which we developed in consultation with the U.S. Equal Employment Opportunity Commission and the Office of the Inspector General at the Federal Reserve. With the addition of the prohibition against bullying, the CFPB now has one of the most forward-thinking policies prohibiting harassment across federal government.*

6. On June 11, the CFPB issued a proposal to eliminate medical debt from credit reporting and bank underwriting processes. In the proposal, you state that: “The CFPB estimates that the impact will be minimal but does not have data or information available to estimate the exact extent to which the proposed rule would impact the availability of health care.”

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

- a. How did the CFPB determine that the impact to the availability of health care would be “minimal,” without having any data, as the proposal itself states, to support that claim?

**Response:**

*Several factors contributed to our preliminary analysis. For one, the big three credit reporting companies (TransUnion, Equifax, and Experian) have already announced that they will remove most unpaid medical bills from consumers credit reports. In addition, as noted in the proposal, it is illegal to refuse to provide some health care services in certain emergency contexts, and emergency services represent a significant share of health care spending. Moreover, to the extent medical providers rely on furnishing medical debt information as a collection practice, post-service billed amounts paid out of pocket by patients is a small fraction of overall health care revenue and thus the overall impact on revenue is likely to be limited.*

*The CFPB requested comments on this issue and is carefully reviewing the comments we received.*

7. In your response to my letter on the CFPB's FCRA efforts related to credit header data, you state that the CFPB "does not intend to issue a rule that will prevent financial institutions' from meeting the requirements of the Bank Secrecy Act". As you may know, credit header data is robustly used to ensure identity verification and Know Your Customer (KYC) requirements at consumer account opening.
- a. Have you or your team met with the bank regulators and FinCEN specifically on this issue to understand how credit header data furthers KYC activity?
- i. If so, please provide a meeting date and any information regarding the nature of this discussion.
- ii. If not, will you commit to meeting with both the bank regulators and FinCEN on this specific issue before moving forward with the rulemaking, to ensure alignment with the commitment provided in your letter?

**Response:**

*The CFPB is aware that the sale of credit header data by the big three credit reporting companies enables data brokers to build and sell individual dossiers on nearly every consumer in America. Countries of concern can easily purchase large volumes of sensitive individualized data, which they can leverage to threaten, to blackmail, dox, or otherwise compromise individuals who could be in a position of strategic national importance. For example, information in a credit report about a servicemember's level of indebtedness could easily be exploited by bad actors to*

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

*pressure those who may have classified information in ways that put our national security at risk.*

*The intent of the FCRA rulemaking is to protect consumers from the unauthorized collection and sale of their personal data, including for malicious purposes like identity theft, harassment, and fraud, and use by foreign state and non-state actors.*

*The CFPB takes seriously the need for financial institutions to be able to prevent identity theft, fraud, and money laundering and does not intend to issue a rule that will prevent financial institutions from meeting the requirements of the Bank Secrecy Act. The CFPB is carefully considering this and all other issues and determining how best to proceed.*

*As this rulemaking proceeds, the CFPB will consult with other regulators as appropriate. As you may know, the CFPB is required by law to consult with the appropriate prudential regulators or other federal agencies prior to proposing a rule, and during the comment process, regarding consistency with prudential, market, or systemic objectives administered by such agencies.*

8. I am highly concerned about the impact the CFPB’s medical debt proposal will have on rural hospitals’ ability to keep their doors open. In Alabama, our 51 rural hospitals provide care to about 2 million people each year, and over a dozen are already at risk of closing due to limited revenue streams. If these hospitals ultimately have to close operations, individuals and families in my state would be left without access to health care within hours of their homes.

- a. When will the CFPB’s cost-benefit analysis regarding this proposal be complete?

**Response:**

*Each proposed rule the CFPB issues contains a detailed cost-benefit analysis.*

*The Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V) proposed rule (NPRM) includes an analysis with a request for comments as well as submissions of additional data that could inform consideration of the impacts of the proposed rule. The NPRM contains an analysis of the benefits and costs of the proposed rule for consumers, consumer reporting agencies, creditors, and other entities, such as health care providers and debt collectors.*

*The CFPB is carefully considering all comments received in response to the proposal.*

- b. Will the CFPB’s cost-benefit analysis consider the impact to the 44% of Alabamians who say they depend on rural hospitals for their main source of health care?

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

**Response:**

*We have and will continue to consult with hospitals and healthcare professionals. We are carefully considering all comments we received on the proposed rule, and will consider all relevant factors in our cost-benefit analysis.*

9. In regards to the 1071 small business lending rule, the CFPB estimated that banks will face an upfront cost of \$44,800-\$77,800, plus subsequent annual compliance costs of \$8,349 - \$278,618. These cost estimates are derived from an outdated and incomplete survey, conducted in June 2020 and with responses of only 42 banks and credit unions. In fact, a recent American Bankers Association survey of their member banks shows that banks actually anticipate an upfront cost of between \$112,685 - \$7,474,186 and annual compliance costs of between \$71,944 - \$2,010,125. These estimates are anywhere from double to almost ten times more than the CFPB’s estimate.

While I still believe the 1071 final rule issued in March 2023 should be rescinded and rewritten, in the least the CFPB should provide an updated cost estimate prior to the rule’s implementation dates so that banks can properly prepare and budget.

- a. Will you commit to conducting an updated cost estimate prior to the implementation dates related to this rulemaking?

**Response:**

*In issuing the rule, the CFPB conducted a thorough analysis of the expected benefits and costs of the rule, including the costs for regulated entities. That detailed analysis included a survey of one-time costs to covered financial institutions, an estimate of ongoing costs to covered financial institutions, and a detailed analysis of costs to small businesses, in particular. A district court in Texas recently concluded, in rejecting an attack on the rule, that the CFPB had “considered the various costs [of the rule] in detail, engaged with the various concerns, data, and methodologies, and ultimately based its determinations on plausible justifications.” The CFPB has provided and will continue to provide guidance and other resources to covered financial institutions, vendors, and other entities in order to facilitate compliance with the rule’s requirements when they take effect beginning next year.*

10. In March 2024, you submitted a letter to the California legislature in support of a bill to ban the inclusion of medical debt on credit reports. It is highly unusual, and frankly inappropriate for the head of a federal agency to directly advocate for state legislation, especially when it is in the process of issuing a mirroring proposal.
- a. Has the Bureau ever sent a letter of support directly to a state legislature prior to issuing a similar proposal at the federal level? If so, please provide a detailed description of the date and issue.

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

**Response:**

*The CFPB has an obligation to coordinate with other regulators, including states, to promote consistent regulatory treatment of consumer financial products and services. To that end, the CFPB carefully monitors developments in state law and regulation relating to consumer financial protection. Like other federal regulators, the CFPB occasionally submits comments on state regulatory proposals in order to share our expertise and experience with our state partners. For example:*

*In April 2024, the CFPB sent a comment letter to the Connecticut State Senate in support of a proposal to prohibit health care providers in Connecticut from reporting medical debt to consumer reporting agencies.<sup>4</sup>*

*In November 2023, the CFPB submitted a comment letter to California Department of Financial Protection and Innovation regarding its proposal to regulate income-based advances.<sup>5</sup>*

*In March 2024, the CFPB sent a letter to New York State regarding proposed legislation to bolster consumer protection law.<sup>6</sup>*

11. In the CFPB’s SBREFA panel for the Fair Credit Reporting Act, issued on September 15, 2023, the Bureau states that research denigrates the predictive value of medical debt information. However, this determination is based on just one decade-old CFPB Report, and the CFPB has failed to cite any additional research conducted outside of its own agency to corroborate this claim.

In fact, this 2014 Report covers only a single period between October 2011 through September 2013, and the CFPB itself notes that “Due to data limitations, we are unable to analyze other time periods.” Additionally, the Report does not consider various economic changes over the last ten years, nor does it consider recent modernizations to the credit reporting process, including the rise in alternative data and policy changes made by the three largest credit bureaus to reporting medical debt.

- a. 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?

<sup>4</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-letter-to-connecticut-state-legislature-on-barring-medical-bills-on-credit-reports/>

<sup>5</sup> <https://www.consumerfinance.gov/about-us/blog/state-regulatory-developments-on-income-based-advances/>

<sup>6</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-letter-to-new-york-state-on-the-prohibition-on-abusive-conduct/>

**Committee on Banking, Housing, and Urban Affairs**  
**“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”**  
**June 12, 2024**

**Response:**

*The CFPB has conducted extensive research and outreach on these issues since May 2014, including:*

- *January 2022 CFPB Bulletin: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act, a reminder to debt collectors and credit bureaus of legal obligations under No Surprises Act to protect consumers from certain unexpected medical bills.<sup>7</sup>*
- *February 2022 CFPB Report: Medical Debt Burden in the United States, an initial report investigating the medical billing system in the US.<sup>8</sup>*
- *March 2023 CFPB RFI: RFI Regarding Medical Payment Products, a RFI with HHS and Treasury to investigate high-cost specialty medical payment products.<sup>9</sup>*
- *May 2023 CFPB Report: Medical Credit Cards and Financing Plans, an overview of medical credit cards and loans used for medical treatments.<sup>10</sup>*
- *March 2024 CFPB Report: Recent Changes in Medical Collections on Consumer Credit Records, updated research showing the changes in medical collections on consumer credit records since the March 2022 report.<sup>11</sup>*

<sup>7</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_bulletin-2022-01\\_no-surprises-act\\_2022-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2022-01_no-surprises-act_2022-01.pdf)

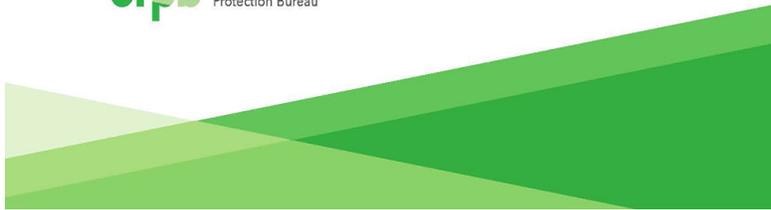
<sup>8</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_medical-debt-burden-in-the-united-states\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf)

<sup>9</sup> <https://www.federalregister.gov/documents/2023/07/12/2023-14726/request-for-information-regarding-medical-payment-products>

<sup>10</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_medical-credit-cards-and-financing-plans\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf)

<sup>11</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_recent-changes-medical-collections-on-consumer-credit-reports\\_2024-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_recent-changes-medical-collections-on-consumer-credit-reports_2024-03.pdf)

# Semi-Annual Report of the Consumer Financial Protection Bureau



# Table of Contents

<b>Table of Contents</b> .....	<b>1</b>
<b>1. Rules and Orders</b> .....	<b>3</b>
1.1 List of significant rules and orders adopted by the CFPB .....	3
1.2 List of significant initiatives conducted by the CFPB.....	7
1.3 Plan of the CFPB for rules, orders, or other initiatives conducted by the CFPB .....	13
<b>2. Complaints</b> .....	<b>24</b>
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 .....	24
<b>3. Supervisory and Enforcement Actions</b> .....	<b>27</b>
3.1 List of public supervisory and enforcement actions .....	27
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 .....	63
<b>4. State Consumer Financial Law</b> .....	<b>65</b>
4.1 Assessment of significant actions by attorneys general and state regulators relating to federal consumer financial law .....	65
<b>5. Fair Lending</b> .....	<b>68</b>
5.1 An analysis of efforts to fulfill the Fair Lending mission of the CFPB..	68
<b>6. Workforce and Contracting Diversity</b> .....	<b>72</b>
6.1 An analysis of CFPB efforts to increase workforce and contracting diversity consistent with procedures established by OMWI .....	72
6.2 Office of Minority and Women Inclusion .....	72

**7. Budget .....77**  
7.1 Justification of the budget request for the previous year ..... 77

**8. Appendix .....79**

# 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.<sup>1</sup>

*Final rules:*

- *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. The changes added a mechanism for the CFPB to make public final decisions and orders in these proceedings.<sup>2</sup>
- *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 implement changes to the Equal Credit Opportunity Act (ECOA), as mandated by section 1071 of the Consumer Financial Protection Act (CFPA).<sup>3</sup> As required by 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.
- *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, which implements the Truth in Lending Act (TILA), to reflect the enactment of the Adjustable Interest Rate (LIBOR) Act (the LIBOR Act) and its implementing regulation promulgated by the Board of Governors of the Federal Reserve

<sup>1</sup> 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/>.

<sup>2</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-risk-determinations-rule_2022-11.pdf).

<sup>3</sup> "Small Business Lending Under the Equal Credit Opportunity Act," Consumer Financial Protection Bureau, Mar. 30, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_1071-final-rule.pdf](https://files.consumerfinance.gov/f/documents/cfpb_1071-final-rule.pdf).

System (Board).<sup>4</sup> This rule further addressed the planned cessation of most U.S. Dollar LIBOR tenors after June 30, 2023, by incorporating the Board-selected benchmark replacement for consumer loans into Regulation Z. This rule also conformed 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 U.S. Dollar 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.

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

- *SBREFA Outline: Small Business Review Panel for 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.<sup>5</sup>
- *Proposed Rule: Registry of Nonbank Covered Persons Subject to Certain Agency and Court Orders.* In December 2022, the CFPB proposed requiring certain nonbank financial firms to register with the CFPB when they become subject to public agency or court orders because of violations of certain local, state, or federal consumer protection laws.<sup>6</sup> The CFPB has further proposed to publish the orders and company information via an online registry. Companies covered by the rule and also subject to the CFPB's supervisory authority would also be required to designate an executive responsible for compliance who would submit an annual written statement describing the steps that executive has taken to oversee compliance with the order, and to attest whether, to the executive's knowledge, the company has identified any instances of noncompliance with the applicable provisions of the order in the preceding calendar year.

<sup>4</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_facilitating-libor-transition-libor-act-regulation-z_2023-04.pdf).

<sup>5</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf).

<sup>6</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_proposed-rule_registry-of-nonbank-covered-persons_2022.pdf).

- *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 that would establish a public registry of supervised nonbanks' terms and conditions in "take it or leave it" form contracts that claim to waive or limit consumer rights and protections.<sup>7</sup> The proposal identified various covered terms and conditions, such as liability caps, waivers of various kinds, and limits on how, when, and where consumers can bring legal actions. Under the proposed rule, most nonbanks subject to the CFPB's supervisory jurisdiction would need to submit information on covered terms and conditions in form contracts they use that seek to waive or limit individuals' rights and other legal protections. Subject to certain exceptions, that information would be posted in a registry that would be open to the public, including to other consumer financial protection enforcers.
- *Proposed Rule: Credit Card Penalty Fees (Regulation Z).* In February 2023, the CFPB proposed to amend Regulation Z, which implements TILA, to ensure that the late fees charged on credit card accounts are "reasonable and proportional" to the late payment, as required under TILA.<sup>8</sup> 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 existing provision that allows 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.
- *Proposed Rule: Residential Property Assessed Clean Energy Financing (Regulation Z).* In May 2023, the CFPB proposed a rule to implement Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which directs the CFPB to prescribe ability-to-repay rules for Property Assessed Clean Energy (PACE) financing and to apply the civil liability provisions of TILA for violations.<sup>9</sup> PACE financing covers the costs of home improvements, resulting in a tax assessment on the real property of the consumer.

<sup>7</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_registry-of-supervised-nonbanks_2023-01.pdf).

<sup>8</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees-nprm_2023-02.pdf).

<sup>9</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_residential-property-assessed-clean-energy-financing-regulation-z_2023-05.pdf).

- *Proposed Rule: Quality Control Standards for Automated Valuation Models.* In June 2023, the Office of the Comptroller of the Currency (OCC), Board, Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), CFPB, and Federal Housing Finance Agency (FHFA) (collectively, the agencies) proposed a rule to implement the quality control standards mandated by the CFPB 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.<sup>10</sup> 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 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.
- *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 under consideration to address a number of consumer reporting topics under the Fair Credit Reporting Act (FCRA).<sup>11</sup> This includes proposals to regulate many activities of data brokers as covered under the FCRA, as well as regulating many activities of companies using business models that rely on newer technologies and novel methods to collect and sell consumer data as covered under the FCRA. The Outline, which summarizes and asks questions about the CFPB's proposals under consideration, formed the basis for discussions with small-entity representatives at two panel outreach meetings that took place on October 18 and 19, 2023.

*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

<sup>10</sup> "Quality Control Standards for Automated Valuation Models," Consumer Financial Protection Bureau, Jun. 1, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_automated-valuation-models\\_proposed-rule-request-for-comment\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf).

<sup>11</sup> "Small Business Advisory Review Panel for Consumer Reporting Rulemaking, Outline of Proposals and Alternatives Under Consideration," Consumer Financial Protection Bureau, Sept. 15, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-rule-sbrefa\\_outline-of-proposals.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf).

public comments, determined that commercial financing disclosure laws in California, New York, Utah, and Virginia are not preempted by TILA.<sup>12</sup>

## 1.2 List of significant initiatives conducted by the CFPB

### 1.2.1 Reports

- *Report: 2022 College Banking and Credit Card Agreements.* In October 2022, the CFPB issued a report on terms and fees associated with banking products marketed in partnership with colleges to students.<sup>13</sup> The report raised questions about whether some marketing deals between colleges and financial institutions comply with Department of Education rules. The report also highlighted a lack of transparency in the arrangements schools have made with financial institutions. In conjunction with the release of the report, the Department of Education issued guidance to schools on requirements for college-sponsored banking arrangements and committed to additional oversight on this issue.
- *Report: Tenant Background Checks Market.* In November 2022, the CFPB published a report on the tenant background check industry, describing how errors in these background checks contribute to higher costs and barriers to quality rental housing.<sup>14</sup> The CFPB's analysis of more than 24,000 complaints highlighted the renter challenges associated with the industry's failures to remove wrong, old, or misleading information and to provide adequate investigations of disputed information.
- *Report: Protecting Those Who Protect Us: Evidence of Activated Guard and Reserve Servicemembers' Usage of Credit Protections Under the Servicemembers Civil Relief Act (SCRA).* In December 2022, CFPB released a report examining use of the SCRA's

<sup>12</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_truth-in-lending-determination-of-effect-on-state-laws_2023-03.pdf).

<sup>13</sup> "2022 College Banking and Credit Card Agreements," Consumer Financial Protection Bureau, Oct. 13, 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_college-banking-report\\_2022.pdf](https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf).

<sup>14</sup> "Tenant Background Checks Market," Consumer Financial Protection Bureau, Nov. 15, 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_tenant-background-checks-market\\_report\\_2022-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_tenant-background-checks-market_report_2022-11.pdf).

financial protections for active-duty servicemembers.<sup>15</sup> The report found that the interest rate reduction is underutilized by servicemembers.

- *Report: Making Ends Meet in 2022; Insights from the CFPB Making Ends Meet Survey.* In December 2022, the CFPB released a *Making Ends Meet* report covering the financial health of American households.<sup>16</sup> Since 2019, the annual Making Ends Meet consumer surveys showed improvement in financial health during the first few years of the COVID-19 pandemic, due in part to a tight labor market, reductions in consumer spending, and access to pandemic-related relief programs. However, data from early 2022 revealed a decline in several key measures, as well as a rapid deterioration in financial health for Hispanic consumers, consumers under the age of 40, and low-income renters. In addition, while unemployment remains low, more than 37 percent of households were unable to cover expenses for longer than one month if they lost their main source of income. The 2022 survey was mailed to a sample of consumers in January, with responses collected between January and March, and the report was compiled utilizing data collected from the survey, as well as from the CFPB's Consumer Credit Panel.
- *Report: Annual Report of Consumer and Credit Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, TransUnion.* In January 2023, the CFPB released this report, pursuant to Section 611(e)(5) of the FCRA, which summarizes information gathered by the CFPB regarding 488,000 consumer complaints the CFPB transmitted to Equifax, Experian, and TransUnion between October 2021 and September 2022.<sup>17</sup> The findings follow the prior year's report that detailed failures by the credit reporting companies in responding to consumer complaints. In particular, the report shows the companies changed how they respond to complaints, including providing more substantive responses tailored to the issues described in the complaints and more relief in response to complaints. This report also included considerations for the nationwide consumer reporting companies to improve compliance with consumer financial protection laws and to serve consumers better.

<sup>15</sup> "Protecting Those Who Protect Us: Evidence of Activated Guard and Reserve Servicemembers' Usage of Credit Protections Under the Servicemembers Civil Relief Act (SCRA)," Consumer Financial Protection Bureau, Dec. 7, 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_servicemembers-usage-of-scra-credit-protections\\_2022.pdf](https://files.consumerfinance.gov/f/documents/cfpb_servicemembers-usage-of-scra-credit-protections_2022.pdf).

<sup>16</sup> "Making Ends Meet in 2022 Insights From the CFPB Making Ends Meet Survey," Consumer Financial Protection Bureau, Dec. 21, 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_making-ends-meet-in-2022\\_report\\_2022-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_making-ends-meet-in-2022_report_2022-12.pdf).

<sup>17</sup> "Annual Report of Consumer Complaints and Credit Reporting Complaints: An Analysis of Complaint Responses by Equifax, Experian, and TransUnion," Consumer Financial Protection Bureau, Jan. 3, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra-611-e\\_report\\_2023-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2023-01.pdf).

- *Request for Information: Public Input on Consumer Credit Card Market.* In January 2023, the CFPB issued a request for information seeking public feedback on how the consumer credit market is functioning.<sup>18</sup> As part of a biennial review of the industry, the CFPB sought updated information on various aspects of the consumer experience with credit cards. Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) to establish fair and transparent practices related to the extension of credit in the credit card market. The CARD Act mandates the CFPB to conduct a review of the credit card industry every two years and report to Congress.
- *Market Snapshot: An Update on Third-Party Debt Collections Tradelines Reporting.* In February 2023, the CFPB released a report examining trends in credit reporting of debt in collections from 2018 to 2022.<sup>19</sup> The report found the total number of collections tradelines on credit reports declined by 33 percent, from 261 million tradelines in 2018 to 175 million tradelines in 2022. The share of consumers with a collection tradeline on their credit report decreased by 20 percent in the same timeframe. The CFPB also released additional analysis examining factors that increase the likelihood of inaccurate medical collections reporting and may contribute to the decline in medical collections tradelines.
- *Issue Spotlight: Public Benefits Delivery & Consumer Protection.* In March 2023, the CFPB issued a spotlight that examines delivery of public benefits payments to low-income families.<sup>20</sup> The spotlight highlights challenges consumers face, including limited customer service and limited means to raise issues of identity theft and fraud, which impacts access to needed financial resources. The spotlight focuses on the challenges of public benefits issued on prepaid cards because of money transfer issues.
- *Report: Consumer Use of Buy Now, Pay Later: Insights from the CFPB Making Ends Meet Survey.* In March 2023, the CFPB published a report analyzing the financial profiles of Buy Now, Pay Later borrowers.<sup>21</sup> While many Buy Now, Pay Later borrowers

<sup>18</sup> "Request for Information Regarding Consumer Credit Card Market," Consumer Financial Protection Bureau, Jan. 24, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_request-for-information-regarding-consumer-credit-card-market\\_2023-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_request-for-information-regarding-consumer-credit-card-market_2023-01.pdf).

<sup>19</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-third-party-debt-collections-tradelines-reporting_2023-02.pdf).

<sup>20</sup> "Issue Spotlight: Public Benefits Delivery & Consumer Protection," Consumer Financial Protection Bureau, Mar. 1, 2023, <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-public-benefits-delivery-consumer-protection/full-report>.

<sup>21</sup> "Consumer Use of Buy Now, Pay Later," Consumer Financial Protection Bureau, Mar. 2, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-use-of-buy-now-pay-later\\_2023-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-use-of-buy-now-pay-later_2023-03.pdf).

use the product without noticeable indications of financial stress, the report finds that Buy Now, Pay Later borrowers are more likely to be active users of other types of credit products like credit cards, personal loans, and student loans. They are also more likely to exhibit measures of financial distress than non-users. For example, Buy Now, Pay Later borrowers are more likely to be highly indebted or have revolving balances or delinquencies on their credit cards compared to consumers who do not use Buy Now, Pay Later products. Buy Now, Pay Later borrowers are also more likely to use high-interest financial services such as payday loans, pawn loans, and bank account overdrafts.

- *Request for Information: Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information.* In March 2023, the CFPB launched an inquiry into companies that track and collect information on people’s personal lives.<sup>22</sup> In issuing the Request for Information, the CFPB sought to understand the full scope and breadth of data brokers and their business practices, their impact on the daily lives of consumers, and whether they are all playing by the same rules.
- *Industry and Markets Report: Medical Credit Cards and Financing Plans.* In May 2023, the CFPB issued a report on high-cost specialty financial products, such as medical credit cards, that are sold to patients as a way to alleviate the growing costs of medical care.<sup>23</sup> Patients may be offered these products in a medical provider’s office even when their insurance may cover the procedure or they qualify for a hospital’s reduced or no-cost financial assistance program. The report finds that these specialty products are typically more expensive for patients than other forms of payment, including conventional credit cards, with interest rates often reaching above 25 percent.
- *Issue Spotlight: Analysis of Deposit Insurance Coverage on Funds Stored Through Payment Apps.* In June 2023, the CFPB issued a spotlight analyzing the extent to which popular payment apps, sometimes described as Peer-to-Peer (P2P) payment platforms, claim to provide federal deposit insurance coverage to users through business arrangements with banks.<sup>24</sup> While the primary purpose of these quickly growing platforms is to allow consumers and businesses to send and receive money, payment app

<sup>22</sup> “Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information,” Consumer Financial Protection Bureau, Mar. 13, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_request-for-information\\_data-brokers\\_2023-3.pdf](https://files.consumerfinance.gov/f/documents/cfpb_request-for-information_data-brokers_2023-3.pdf)

<sup>23</sup> “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](https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf)

<sup>24</sup> “Analysis of Deposit Insurance Coverage on Funds Stored Through Payment Apps,” Consumer Financial Protection Bureau, Jun. 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/>

companies offer an increasing array of services alongside this function, including the ability for consumers to store funds. In the Issue Spotlight, the CFPB notes that stored funds can be at risk of loss in the event of financial distress or failure of the entity operating the payment platform, and often are not placed in an account at a bank or credit union and lack individual deposit insurance coverage.

- *Issue Spotlight: Chatbots in Consumer Finance.* In June 2023, the CFPB issued a spotlight addressing the expansive adoption and use of chatbots by financial institutions.<sup>25</sup> These chatbots are intended to simulate human-like responses using computer programming and help institutions reduce costs of customer service agents. Some chatbots use more complex technologies marketed as “artificial intelligence” to generate responses to customers. The spotlight highlights several risks associated with the use of chatbots by financial institutions, including possible noncompliance with federal consumer financial protection laws, diminished customer service and trust, and other possible consumer harms.
- *Office of Servicemember Affairs Annual Report: January – December 2022.* In June 2023, the CFPB issued its annual report summarizing top concerns of servicemembers and their families.<sup>26</sup> This report includes an examination of consumer complaints the CFPB received from servicemembers, including notable trends. The report focuses on digital payment app usage within the servicemember community and how fraud and scams perpetrated through these digital platforms may uniquely impact servicemembers. The report also includes recommendations to digital payment app providers to reduce the instances of identity theft and fraud by improving digital payment security and responding quickly.
- *Data Spotlight: Banking and Credit Access in the Southern Region of the U.S., and Report: Consumer Finances in Rural Areas of the Southern Region.* In June 2023, the CFPB issued two reports on the financial opportunities and challenges facing Southern communities.<sup>27</sup> The Southern United States is home to diverse populations, including

<sup>25</sup> “Chatbots in Consumer Finance,” Consumer Financial Protection Bureau, Jun. 6, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_chatbot-issue-spotlight\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_chatbot-issue-spotlight_2023-06.pdf).

<sup>26</sup> “Office of Servicemember Affairs Annual Report: January – December 2022,” Consumer Financial Protection Bureau, Jun. 20, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_osa-annual-report\\_2022.pdf](https://files.consumerfinance.gov/f/documents/cfpb_osa-annual-report_2022.pdf).

<sup>27</sup> “Banking and Credit Access in the Southern Region of the U.S.,” Consumer Financial Protection Bureau, Jun. 21, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_scp-data-spotlight\\_banking-and-credit-access\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_scp-data-spotlight_banking-and-credit-access_2023-06.pdf).

“Consumer Finances in Rural Areas of the Southern Region,” Consumer Financial Protection Bureau, Jun. 21, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_or-data-point\\_consumer-finances-in-rural-south\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf).

many rural areas. Many areas of the Southern region are considered “banking deserts” because of the absence of sufficient bank or credit union options for local communities. The first report, *Consumer Finances in Rural Areas of the Southern Region*, compares consumer financial experiences and outcomes in rural communities in Southern states with other regions. A second report, *Banking and Credit Access in the Southern Region of the U.S.*, dives deeper into banking access and credit access, particularly mortgage lending, in both rural and non-rural areas in the region.

- *Issue Spotlight: Consumer Risks Posed by Employer-Driven Debt.* In July 2023, the CFPB released this issue spotlight focusing on employer use of training repayment agreement provisions (TRAPS) and their impact on workers, following the CFPB’s issuance of a request for information in June 2022.<sup>28</sup> This issue spotlight presents experiences highlighted by workers who have dealt with employer-driven debt and also analyzes market-level research about employer-driven debt. The spotlight found that employer-driven debt has a unique impact on workers because they need to obtain the debt in order to maintain employment. This puts them in a weakened position where they may feel obligated to sign and follow the agreements to keep their job or advance in their career. The report also suggests that the value of certain employer-driven debt may be overstated, inhibiting employee mobility and harming workers’ overall financial security.
- *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 issued a spotlight highlighting the impacts of Big Tech companies’ policies and practices that govern tap-to-pay on mobile devices like smartphones and watches.<sup>29</sup> Apple currently forbids banking and payment apps from accessing the tap-to-pay functionality on Apple iOS devices and imposes fees through Apple Pay. Google’s Android operating system does not currently have such a policy. The issue spotlight explains 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 United States.

<sup>28</sup> “Issue Spotlight: Consumer Risks Posed by Employer-Driven Debt,” Jul. 20, 2023, <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-consumer-risks-posed-by-employer-driven-debt/full-report/>.

<sup>29</sup> “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/>.

- *Report: Tuition Payment Plans in Higher Education.* In September 2023, the CFPB issued a report highlighting the risks that students face when entering into agreements with colleges to spread the upfront cost of tuition into several interest-free loan payments.<sup>30</sup> The report looks at tuition payment plans offered by nearly 450 institutions and finds that many plans have inconsistent disclosures and confusing repayment terms, putting students at risk of missing payments, incurring late fees, and accumulating debt. The report further finds that many institutions withhold transcripts from students as a debt collection tool, a practice that can have severe consequences for students and that CFPB examiners have found can be abusive under certain circumstances.

### 1.2.2 Guidance

- *Advisory Opinion: Fair Credit Reporting; Facially False Data.* 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.<sup>31</sup> The CFPB advised companies to take steps to reliably detect and remove inconsistent or impossible information from consumers’ credit profiles.
- *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.<sup>32</sup> 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.
- *Consumer Financial Protection Circular 2022-07: Reasonable investigation of consumer reporting disputes.* In November 2022, the CFPB issued a Circular to affirm that neither consumer reporting companies nor information furnishers can evade dispute investigation requirements.<sup>33</sup> The Circular outlines how federal and state

<sup>30</sup> “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](https://files.consumerfinance.gov/f/documents/cfpb_tuition_payment_plan_report_2023-09.pdf).

<sup>31</sup> “Advisory Opinion: 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](https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-facially-false-data_advisory-opinion_2022-10.pdf).

<sup>32</sup> “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\\_unanticipated-overdraft-fee-assessment-practices\\_circular\\_2022-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf).

<sup>33</sup> “Consumer Financial Protection Circular 2022-07: Reasonable Investigation of Consumer Reporting Disputes,” Consumer Financial Protection Bureau, Nov. 10, 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_reasonable-investigation-of-consumer-reporting-disputes\\_circular-2022-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_reasonable-investigation-of-consumer-reporting-disputes_circular-2022-07.pdf).

consumer protection enforcers, including regulators and attorneys general, can bring claims against companies that fail to investigate and resolve consumer report disputes.

- *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 the prohibition on unfair, deceptive, or abusive acts or practices in the CFPA 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.<sup>34</sup>
- *Advisory Opinion: Real Estate Settlement Procedures Act (Regulation X); Digital Mortgage Comparison-Shopping Platforms and Related Payments to Operators.* In February 2023, the CFPB issued an Advisory Opinion to address the applicability of the Real Estate Settlement Procedures Act (RESPA) section 8 to operators of certain digital technology platforms that enable consumers to comparison shop for mortgages and other real estate settlement services, including platforms that generate potential leads for the platform participants through consumers' interaction with the platform.<sup>35</sup> The CFPB described how an operator of a digital mortgage comparison-shopping platform violates RESPA section 8 if the platform provides enhanced placement or otherwise steers consumers to platform participants based on compensation the platform operator receives from those participants rather than based on neutral criteria.
- *Bulletin 2023-01: Unfair Billing and Collection Practices After Bankruptcy Discharges of Certain Student Loan Debts.* In March 2023, the CFPB issued a Compliance Bulletin and policy guidance to address the treatment of certain private student loans following bankruptcy discharge.<sup>36</sup> CFPB examiners identified servicers that did not determine whether education loans were qualified or not qualified for bankruptcy discharge, and thus improperly returned certain loans to repayment. The CFPB cautioned that it will

<sup>34</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_unlawful-negative-option-marketing-practices-circular_2023-01.pdf).

<sup>35</sup> "Real Estate Settlement Procedures Act (Regulation X); Digital Mortgage Comparison-Shopping Platforms and Related Payments to Operators," Consumer Financial Protection Bureau, Feb. 7, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_respa-advisory-opinion-on-online-mortgage-comparison-shopping-tools\\_2023-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_respa-advisory-opinion-on-online-mortgage-comparison-shopping-tools_2023-02.pdf).

<sup>36</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_unfair-billing-collection-bankruptcy-student-loan-debt_2023-01.pdf).

pay particular attention in its oversight to servicers' practices in connection with student loans that are the subject of bankruptcy discharge orders.

- *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.<sup>37</sup> The methodology statement has been 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 to affirm that the Fair Debt Collection Practices Act (FDCPA) and its implementing Regulation F 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.<sup>38</sup> 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.
- *Consumer Financial Protection Circular 2023-02: Reopening Deposit Accounts That Consumers Previously Closed.* In May 2023, the CFPB released a Circular addressing illegal reopening of deposit accounts by banks after consumers close them.<sup>39</sup> The Circular affirms that a bank may violate federal law if it unilaterally reopens a deposit account to process transactions after a consumer has already closed it.
- *Proposed Interagency Guidance on Reconsiderations of Value of Residential Real Estate.* In June 2023, the CFPB, along with the FDIC, Board, NCUA, and OCC,

<sup>37</sup> "Notice of Availability of Revised Methodology for Determining Average Prime Offer Rates," Consumer Financial Protection Bureau, Apr. 14, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_notice-revised-methodology-determining-average-prime-offer-rates\\_2023-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_notice-revised-methodology-determining-average-prime-offer-rates_2023-04.pdf).

<sup>38</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_regulation-f-time-barred-debt_advisory-opinion_2023-04.pdf).

<sup>39</sup> "Consumer Financial Protection Circular 2023-02: Reopening deposit accounts that consumers previously closed," Consumer Financial Protection Bureau, May 10, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_reopening-deposit-accounts-that-consumers-previously-closed\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_reopening-deposit-accounts-that-consumers-previously-closed_2023-05.pdf).

requested public comment on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions.<sup>40</sup>

- *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 released a Circular regarding lenders' legal requirements to provide adverse action notices under ECOA and Regulation B, including when using artificial intelligence and other complex models.<sup>41</sup> The Circular describes how lenders must provide specific and accurate reasons when taking adverse actions against consumers and cannot simply use CFPB sample adverse action forms and checklists if they do not reflect the actual reason for the denial of credit or a change of credit conditions.

### 1.2.3 Other initiatives

- *Policy Statement: Abusive Acts or Practices.* In April 2023, the CFPB issued a policy statement that explains the legal prohibition on abusive conduct in consumer financial markets and summarizes more than a decade of precedent.<sup>42</sup>
- *Joint statement on Enforcement Efforts Against Discrimination in Automated Systems.* In April 2023, the CFPB, along with the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), and the Federal Trade Commission (FTC), issued a joint statement committing to enforcement efforts against discrimination and bias in automated systems.<sup>43</sup>

<sup>40</sup> "Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations," Consumer Financial Protection Bureau, Jun. 8, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_interagency-guidance-reconsiderations-of-value-of-residential-real-estate\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf)

<sup>41</sup> "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](https://files.consumerfinance.gov/f/documents/cfpb_adverse_action_notice_circular_2023-09.pdf)

<sup>42</sup> "Policy Statement on Abusive Acts or Practices," Consumer Financial Protection Bureau, Apr. 3, 2023, <https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/>.

<sup>43</sup> "Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems," Consumer Financial Protection Bureau, Apr. 25, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_joint-statement-enforcement-against-discrimination-bias-automated-systems\\_2023-04.pdf](https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf)

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

### 1.3.1 Rules and orders

#### Upcoming Period:

- *Proposed Rule: Required Rulemaking on Personal Financial Data Rights.* In October 2023, the CFPB proposed a rule to implement personal financial data rights under the CFPA.<sup>44</sup> The proposed rule would require certain depository and nondepository entities to make available to consumers and authorized third parties certain data about consumers' transactions and accounts; establish obligations for third parties accessing a consumer's data, including important privacy protections for that data; provide basic standards for data access; and promote fair, open, and inclusive industry standards.
- *Proposed Rule: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications.* In November 2023, the CFPB proposed a rule to supervise larger participants in a market for general-use digital consumer payment applications, such as larger nonbank companies that offer services like digital wallets and payment apps.<sup>45</sup> The proposed rule would help ensure that nonbank financial companies, specifically those larger companies handling more than 5 million transactions per year, adhere to the same rules as large banks, credit unions, and other financial institutions already supervised by the CFPB.
- *Proposed Rule: Overdraft Lending: Very Large Financial Institutions.* In January 2024, the CFPB proposed to amend Regulations E and Z to update existing regulatory exceptions for overdraft credit provided by very large financial institutions (insured depository institutions and credit unions with more than \$10 billion in assets), thereby ensuring that extensions of overdraft credit adhere to consumer protections required of similarly situated products, unless the overdraft fee is a small amount that only recovers applicable costs and losses.<sup>46</sup> The proposal would allow consumers to better comparison

<sup>44</sup> "Required Rulemaking on Personal Financial Data Rights," Consumer Financial Protection Bureau, Oct. 19, 2023, [https://files.consumerfinance.gov/f/documents/cfpb-1023-nprm-ft-notice\\_2023-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb-1023-nprm-ft-notice_2023-10.pdf).

<sup>45</sup> "Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications," Consumer Financial Protection Bureau, Nov. 7, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_nprm-digital-payment-apps-lp-rule\\_2023-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_nprm-digital-payment-apps-lp-rule_2023-11.pdf).

<sup>46</sup> "Overdraft Lending: Very Large Financial Institutions," Consumer Financial Protection Bureau, Jan. 17, 2024, [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-credit-very-large-financial-institutions\\_proposed-rule\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-credit-very-large-financial-institutions_proposed-rule_2024-01.pdf).

shop across credit products and provide substantive protections that apply to other consumer credit.

- *Proposed Rule: Fees for Instantaneously Declined Transactions.* In January 2024, the CFPB proposed to prohibit covered financial institutions from charging fees, such as nonsufficient funds fees, when consumers initiate payment transactions that are instantaneously declined.<sup>47</sup> Charging such fees would constitute an abusive practice under the CFPA's prohibition on unfair, deceptive, or abusive acts or practices.
- *Final Rule: Credit Card Penalty Fees (Regulation Z).* In March 2024, the CFPB amended Regulation Z, which implements TILA, to address late fees charged by card issuers that together with their affiliates have one million or more open credit card accounts.<sup>48</sup> This final rule adopted a late fee safe harbor threshold of \$8 for those issuers and provided that the annual adjustments to reflect changes in the Consumer Price Index (CPI) do not apply to this \$8 amount.

### 1.3.2 Other initiatives

#### Upcoming Period:

- *Advisory Opinion: Consumer Information Requests to Large Banks and Credit Unions.* In October 2023, the CFPB issued an Advisory Opinion regarding section 1034(c) of the CFPA, which requires large banks and credit unions to comply in a timely manner with consumer requests for information concerning their accounts.<sup>49</sup> Certain policies—such as charging excessive fees—can unreasonably impede consumers' ability to get basic information they need and that these institutions must provide under section 1034(c). The Advisory Opinion clarifies that pursuant to this provision, large banks and credit unions are generally prohibited from imposing unreasonable obstacles on customers for basic information about their accounts.
- *Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the Equal Credit Opportunity Act.* In October 2023, the CFPB and the DOJ issued a joint statement to assist creditors and borrowers in understanding the potential civil rights implications of a creditor's consideration of an individual's immigration status.

<sup>47</sup> "Fees for Instantaneously Declined Transactions," Consumer Financial Protection Bureau, Jan. 24, 2024, [https://files.consumerfinance.gov/f/documents/cfpb\\_fees-for-instantaneously-declined-transactions-norm\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fees-for-instantaneously-declined-transactions-norm_2024-01.pdf).

<sup>48</sup> "Credit Card Penalty Late Fees (Regulation Z)," Consumer Financial Protection Bureau, Mar. 5, 2024, [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-penalty-fees\\_final-rule\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf).

<sup>49</sup> "Consumer Information Requests to Large Banks and Credit Unions," Consumer Financial Protection Bureau, Oct. 11, 2023, [https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023\\_10.pdf](https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf).

Under ECOA and Regulation B, all credit applicants are protected from unlawful discrimination on the basis of their national origin, race, and other characteristics covered by ECOA, regardless of their immigration status.<sup>50</sup>

- *Report: The Consumer Credit Card Market.* In October 2023, the CFPB released its sixth biennial report to Congress on the consumer credit card market.<sup>51</sup> The report found that in 2022 credit card companies charged consumers more than \$105 billion in interest and more than \$25 billion in fees. Total outstanding credit card debt eclipsed \$1 trillion for the first time since the CFPB began collecting this data. The report highlights areas of concern, including consumers carrying balances month to month, with many falling deeper into debt over time, while credit card company profits remained above pre-pandemic levels.
- *Report: State Community Reinvestment Acts.* In November 2023, the CFPB released a report on state Community Reinvestment Act laws.<sup>52</sup> The report highlights how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities. The report, which examined the laws of seven states and the District of Columbia, finds that many of those states adopted laws similar to the federal Community Reinvestment Act.
- *Report: Fair Debt Collection Practices Act CFPB Annual Report 2023.* In November 2023, the CFPB issued its annual Fair Debt Collection Practices Act report to Congress, which highlighted the challenges American families face when debt collectors pursue allegedly unpaid medical bills.<sup>53</sup> In 2022, 8,500 complaints about medical debt collections were submitted to the CFPB by servicemembers, older adults, and other consumers. The CFPB's annual report describes how the CFPB and states have worked to stop the collections of erroneous or inaccurate medical bills. The report also provides updates on the debt collection market more broadly and summarizes activities by the CFPB and other federal agencies relating to debt collection, including the FTC and its

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<sup>50</sup> "Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers Under the Equal Credit Opportunity Act," Consumer Financial Protection Bureau, Oct. 12, 2023, <https://files.consumerfinance.gov/f/documents/cfpb-joint-statement-on-fair-lending-and-credit-opportunities-for-noncitizen-b-1A2oRDf.pdf>.

<sup>51</sup> "The Consumer Credit Card Market," Consumer Financial Protection Bureau, Oct. 25, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf).

<sup>52</sup> "State Community Reinvestment Acts," Consumer Financial Protection Bureau, Nov. 2, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_state\\_community\\_reinvestment\\_acts\\_2023-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_state_community_reinvestment_acts_2023-11.pdf).

<sup>53</sup> "Fair Debt Collection Practices Act CFPB Annual Report 2023," Consumer Financial Protection Bureau, Nov. 16, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_fdcpa-annual-report\\_2023-11.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fdcpa-annual-report_2023-11.pdf).

actions under the FTC Act to protect small businesses from unfair and deceptive debt collection practices.

- *Report: Overdraft and Nonsufficient Fund Fees.* In December 2023, the CFPB issued a report finding that many consumers are still being hit with unexpected overdraft and nonsufficient fund (NSF) fees, despite recent changes by banks and credit unions to eliminate billions of dollars in such fees charged each year.<sup>54</sup> In a CFPB Making Ends Meet survey, more than a quarter of consumers responded that someone in their household was charged an overdraft fee or NSF fee within the past year, and that only 22 percent of households expected their most recent overdraft. Many consumers charged with overdraft fees also had access to a cheaper payment alternative, such as available credit on a credit card.
- *Report: 2023 College Banking and Credit Card Agreements.* In December 2023, the CFPB released a report presenting new research and data on certain financial products that colleges market to their students in partnership with third-party financial service providers, including deposit accounts, prepaid cards, and credit cards.<sup>55</sup> Policymakers, along with federal auditors, banking regulators, and other agencies, have identified risks associated with marketing practices related to college-sponsored financial products and developed laws and policies to address those risks. However, many colleges continue to offer and market financial products in ways, including through online and email advertisements, that may mislead students under certain circumstances. This report also serves as the fourteenth annual report to Congress on college credit cards pursuant to the CARD Act.
- *Issue Spotlight: Federal Student Loan Return to Repayment.* In January 2024, the CFPB released an Issue Spotlight on federally owned student loans as many borrowers began to make monthly payments again for the first time in over three years.<sup>56</sup> The CFPB supervises student loan servicers, monitors consumer complaints, and collaborates with federal and state partners to ensure that servicers are held accountable when they fail to meet their legal obligations to borrowers. This spotlight features aggregate anonymized observations of the return to repayment because of the extensive risk consumers face

<sup>54</sup> "Overdraft and Nonsufficient Fund Fees," Consumer Financial Protection Bureau, Dec. 19, 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-nsf-report\\_2023-12.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-report_2023-12.pdf).

<sup>55</sup> "Report: 2023 College Banking and Credit Card Agreements," Consumer Financial Protection Bureau, Dec. 19, 2023, <https://www.consumerfinance.gov/data-research/research-reports/2023-college-banking-and-credit-card-agreements/>.

<sup>56</sup> "Issue Spotlight: Federal Student Loan Return to Repayment," Consumer Financial Protection Bureau, Jan. 5, 2024, <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-federal-student-loan-return-to-repayment/>.

during this period as well as significant ongoing issues examiners have identified to-date. The CFPB notes that these issues may have serious implications for borrowers as well as for servicers' compliance with state and federal consumer financial protection law.

- *Advisory Opinion: Fair Credit Reporting; Background Screening.* In January 2024, the CFPB issued an Advisory Opinion to affirm that, when preparing consumer reports, a consumer reporting agency that reports public record information is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the FCRA if it does not have procedures in place that: (1) prevent reporting information that is duplicative or has been expunged, sealed, or otherwise legally restricted from public access; and (2) include any existing disposition information if it reports arrests, criminal charges, eviction proceedings, or other court filings.<sup>57</sup> This Advisory Opinion also highlights that, when consumer reporting agencies include adverse information in consumer reports: (1) the occurrence of the adverse event starts the running of the reporting period for adverse items under FCRA section 605(a)(5); (2) that period is not restarted or reopened by the occurrence of subsequent events; and (3) a non-conviction disposition of a criminal charge cannot be reported beyond the seven-year period that begins to run at the time of the charge. Consumer reporting agencies thus must ensure that they do not report adverse information beyond the reporting period in FCRA section 605(a)(5) and must at all times have reasonable procedures in place to prevent reporting of information that is duplicative or legally restricted from public access and to ensure that any existing disposition information is included if court filings are reported.
- *Advisory Opinion: Fair Credit Reporting; File Disclosure.* In January 2024, the CFPB issued an Advisory Opinion to address certain obligations that consumer reporting agencies have under section 609(a) of FCRA.<sup>58</sup> This Advisory Opinion underscores that, to trigger a consumer reporting agency's file disclosure requirement under FCRA section 609(a), a consumer does not need to use specific language, such as "complete file" or "file." This Advisory Opinion also highlights the requirements regarding the information that must be disclosed to a consumer under FCRA section 609(a). In addition, this Advisory Opinion affirms that consumer reporting agencies must disclose to a consumer both the original source and any intermediary or vendor source (or sources) that provide the item of information to the consumer reporting agency under FCRA section 609(a).

<sup>57</sup> "Fair Credit Reporting, Background Screening," Consumer Financial Protection Bureau, Jan. 11, 2024, [https://files.consumerfinance.gov/f/documents/cfpb\\_fair-credit-reporting-background-screening\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-background-screening_2024-01.pdf).

<sup>58</sup> "Fair Credit Reporting, File Disclosure," Consumer Financial Protection Bureau, Jan. 11, 2024, [https://files.consumerfinance.gov/f/documents/cfpb\\_fair-credit-reporting-file-disclosure\\_2024-01.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fair-credit-reporting-file-disclosure_2024-01.pdf).

- *Report: Credit Card Data: Small Issuers Offer Lower Rates.* In February 2024, the CFPB published a report on the first set of results from the newly updated Terms of Credit Card Plans survey.<sup>59</sup> The survey data reveal that large banks are offering worse credit card terms and interest rates than small banks and credit unions, regardless of credit risk. In fact, the 25 largest credit card issuers charged customers interest rates of 8 to 10 points higher than small- and medium-sized banks and credit unions. This difference can translate to \$400 to \$500 in additional annual interest for the average cardholder. In March 2023, the CFPB launched an improved survey of credit card issuers<sup>60</sup> that can help consumers and families compare interest rates and other features when shopping for a new credit card. Americans pay \$120 billion in credit card interest and fees each year, which contributes to the almost trillion dollars in nationwide household credit card debt.
- *Supervisory Designation of World Acceptance.* In February 2024, the CFPB published an order establishing supervisory authority over installment lender World Acceptance.<sup>61</sup> In 2022, the CFPB announced that it would begin to utilize a previously dormant legal authority to supervise entities posing risks to consumers, and issued a procedural rule to promote transparency about use of this supervisory designation authority. The designation of World Acceptance is the first public supervisory designation order in a contested matter under this authority.
- *Consumer Financial Protection Circular 2024-01: Preferring and Steering Practices by Digital Intermediaries for Consumer Financial Products or Services.* In February 2024, the CFPB released a Circular addressing how companies operating comparison-shopping tools can violate the law by preferring products or services based on financial or other benefits they receive.<sup>62</sup> The Circular affirms that, where consumers reasonably rely on an operator of a digital comparison-shopping tool or lead generator to act in the interests of the consumer, the operator or lead generator can take unreasonable advantage of that reliance by obtaining financial or other benefits for

<sup>59</sup> "Credit Card Data: Small Issuers Offer Lower Rates," Consumer Financial Protection Bureau, Feb. 16, 2024, <https://www.consumerfinance.gov/data-research/research-reports/credit-card-data-small-issuers-offer-lower-rates/>.

<sup>60</sup> "Terms of Credit Card Plans (TCCP) Survey," Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/data-research/credit-card-data/terms-credit-card-plans-survey/>.

<sup>61</sup> "CFPB Orders Federal Supervision for Installment Lender Following Contested Designation," Consumer Financial Protection Bureau, Feb. 23, 2024, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-federal-supervision-for-installment-lender-following-contested-designation/>.

<sup>62</sup> "Consumer Financial Protection Circular 2024-01: Preferring and Steering Practices by Digital Intermediaries for Consumer Financial Products or Services," Consumer Financial Protection Bureau, Feb. 29, 2024, [https://files.consumerfinance.gov/f/documents/cfpb\\_digital-intermediaries\\_circular\\_2024-02.pdf](https://files.consumerfinance.gov/f/documents/cfpb_digital-intermediaries_circular_2024-02.pdf).

giving preferential treatment to their own or other products or services through steering or enhanced product placement.

## 2. Complaints

The CFPB has a statutory obligation to collect and monitor consumer complaints.<sup>63</sup> 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 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 October 1, 2022, through September 30, 2023, the CFPB received approximately 1,550,000 consumer complaints.<sup>64</sup> Consumers submitted approximately 97 percent of these complaints through the CFPB's website and two percent via telephone calls. Referrals from other state and federal agencies accounted for less than one percent of complaints.

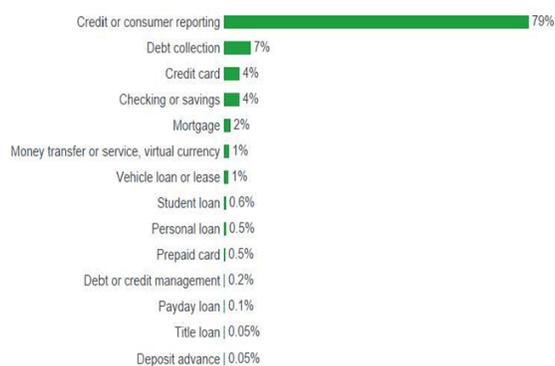
When consumers submit complaints, the CFPB's complaint form prompts them to select the consumer financial product or service with which they have a problem as well as the type of problem they are having with that product or service. The CFPB uses these consumer selections to group the financial products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

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<sup>63</sup> 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).

<sup>64</sup> Complaint data in this report are current as of March 1, 2024. 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 1,217,400 complaints to companies for review and response.<sup>65</sup> Companies responded to approximately 99.6 percent of these complaints during the period. Company responses typically include descriptions of steps taken or that will be taken in response to the consumer's complaint, communications received from the consumer, any follow-up actions or planned follow-up actions, and a categorization of the 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 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'

<sup>65</sup> The CFPB referred 6 percent of the complaints it received to other regulatory agencies and found 16 percent to be not actionable. Complaints that are not actionable include incomplete submissions, withdrawn complaints, and complaints in which 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.

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 including the *Consumer Response Annual Report*,<sup>66</sup> required by Section 1013(b)(3)(C) of the Dodd-Frank Act, as well as complaint analyses in other mandatory and discretionary reports.<sup>67</sup> In addition to public reports, the CFPB makes complaint data available to the public in the Consumer Complaint Database (Database).<sup>68</sup> The Database contains certain de-identified, individual complaint level data, as well as dynamic visualization tools, including geospatial and trend views, to help Database users understand current and recent marketplace conditions. Finally, the CFPB also shares some consumer complaint information with prudential regulators, the Federal Trade Commission (FTC), other federal agencies, and state and local agencies.

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<sup>66</sup> See "Consumer Response Annual Report," Consumer Financial Protection Bureau, Mar. 31, 2022, [https://files.consumerfinance.gov/f/documents/cfpb\\_2021-consumer-response-annual-report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf).

<sup>67</sup> See *supra* notes 14, 17, 26, and 53.

<sup>68</sup> See Consumer Complaint Database, Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

## 3. Supervisory and Enforcement Actions

### 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 October 1, 2022, through September 30, 2023, which are listed in descending chronological order by filing date.

- *In the Matter of Tempoe, LLC (2023-CFPB-0010)* (not a credit union or depository institution). On September 11, 2023, the CFPB issued an order against Tempoe, LLC, a nonbank consumer finance company, with offices in Cincinnati, Ohio, and Manchester, New Hampshire. Tempoe purchased personal property and services from retailers and then leased them to consumers. Typically, consumers were offered Tempoe's product after applying and being rejected for conventional financing through the retailer. Under the terms of Tempoe's agreements, consumers made periodic payments for an initial term of five months. Then, unless the consumer made an active selection to purchase or return the property, Tempoe continued auto-debiting the consumers for the full month-to-month term of the contract, typically 18 to 36 months. Some consumers discovered only at the conclusion of their initial term that they did not own their items and were required to pay more. The CFPB found that Tempoe engaged in unfair acts and practices in violation of the Consumer Financial Protection Act of 2010 (CFPA) by (1) failing to ensure that consumers had access to the terms of the transaction, and (2) prohibiting the return of some goods and services. The CFPB also found that Tempoe violated Regulation M, which implements the Consumer Leasing Act, by failing to provide consumers with required disclosures for leases that extended beyond the initial term by six months or more. The order permanently bans Tempoe from offering or providing consumer leases and requires Tempoe to release all consumers with existing lease agreements from their leases and to allow them to maintain the leased products with no further financial obligation; including approximately 19,300 leases with an aggregate value of approximately \$33 million. The order also requires Tempoe to pay a \$2 million civil money penalty, of which \$1 million will be remitted upon Tempoe's payment of that

amount to the states that filed a parallel multi-state settlement addressing the same conduct.

- *Consumer Financial Protection Bureau v. Heights Finance Holding Co. f/k/a Southern Management Corporation; Covington Credit of Alabama, Inc.; Southern Finance of Tennessee, Inc.; Covington Credit of Georgia, Inc.; Southern Finance of South Carolina, Inc.; Covington Credit of Texas, Inc.; Covington Credit, Inc.; and Quick Credit Corporation* (D.S.C. No. 6:23-cv-04177). On August 22, 2023, the CFPB filed a lawsuit against Heights Finance Holding Co. f/k/a Southern Management Corporation as well as its wholly owned, state-licensed subsidiaries: Covington Credit of Alabama, Inc.; Southern Finance of Tennessee, Inc.; Covington Credit of Georgia, Inc.; Southern Finance of South Carolina, Inc.; Covington Credit of Texas, Inc.; Covington Credit, Inc.; and Quick Credit Corporation (collectively Southern). Southern is a high-cost installment lender that operates over 250 brick-and-mortar storefronts located in the states of Texas, Oklahoma, Alabama, Georgia, Tennessee, and South Carolina under a variety of trade names, including Covington Credit, Southern Finance, Quick Credit, and Heights Finance. The CFPB alleges that Southern employs numerous harmful underwriting, sales, and servicing practices for their refinanced loans that are designed to churn delinquent borrowers into continuous fee-laden debt, which erode the borrowers' available credit and increase their total cost of borrowing with each successive refinance. The CFPB further alleges that Southern has generated hundreds of millions in loan costs and fees and that it derives 40 percent of its net revenue through this process of "churning" borrowers in repeated, fee-laden refinances. The CFPB alleges that Southern's loan-churning practices violate the CFPA because they are unfair; they are abusive because they take unreasonable advantage of borrowers' lack of understanding of the material risks, costs, or conditions of a refinanced Southern loan; and they are abusive because they take unreasonable advantage of payment-stressed borrowers' inability to protect their interests in the selection or use of a refinanced loan. The CFPB seeks redress for consumers, injunctive relief, and a civil money penalty. As of the end of the reporting period, the case remains pending.
- *In the Matter of Realty Connect USA Long Island, Inc. (2023-CFPB-0009)* (not a credit union or depository institution). On August 17, 2023, the CFPB issued an order against Realty Connect USA Long Island, Inc. (Realty Connect), a real estate brokerage firm based in Suffolk County, New York, for accepting things of value—including valuable subscription services, events, and monthly marketing services agreement payments—in exchange for referral of mortgage loans to Freedom Mortgage Corporation in violation of the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X.

The order requires Realty Connect to stop its unlawful activities and pay a \$200,000 civil money penalty.

- *In the Matter of Freedom Mortgage Corporation (2023-CFPB-0008)* (not a credit union or depository institution). On August 17, 2023, the CFPB issued an order against Freedom Mortgage Corporation (Freedom), a residential mortgage loan originator and servicer headquartered in Boca Raton, Florida, for providing things of value—including subscription services, events, and monthly marketing services agreement payments—in exchange for referrals of mortgage loans in violation of RESPA and its implementing Regulation X. The order requires Freedom to stop its unlawful activities and pay a \$1.75 million civil money penalty.
- *Consumer Financial Protection Bureau v. USASF Servicing, LLC* (N.D. Ga. No. 1:23-cv-03433). On August 2, 2023, the CFPB filed a lawsuit against USASF Servicing, LLC, an auto-loan servicer headquartered in Lawrenceville, Georgia. USASF offered both Guaranteed Asset Protection (GAP) and collateral-protection insurance (CPI), which are products that consumers can buy when they buy or lease a car. GAP covers some of a consumers' loan balance if their car is totaled but they still owe money on the loan even with car insurance. CPI is physical-damage insurance that protects the lender if a consumer does not have auto insurance that covers the amount of their car loan. The CFPB alleges that USASF engaged in unfair acts and practices by: (1) wrongfully activating nearly 80,000 times starter-interruption devices, which are devices that warn consumers with beeps or disable their car altogether when they are late with a loan payment; (2) failing to ensure refunds of GAP premiums when consumers were entitled to a refund because they paid off their loan early or their car was repossessed by USASF, totaling millions of dollars for thousands of consumers; (3) erroneously billing 34,000 consumers for CPI by charging them twice each billing cycle, totaling around \$1.9 million; (4) wrongfully applying extra consumer payments first to late fees or CPI instead of accrued interest; and (5) wrongfully repossessing consumers' cars dozens of times due to errors by USASF or its vendor. The CFPB seeks, among other things, restitution and redress to consumers, civil money penalties, and injunctions to prevent future violations. As of the end of the reporting period, the case remains pending.
- *Consumer Financial Protection Bureau v. Snap Finance LLC, Snap RTO LLC, Snap Second Look LLC, Snap U.S. Holdings LLC, Snap Finance Holdings LLC* (D. Utah No. 2:23-cv-00462). On July 19, 2023, the CFPB filed a lawsuit against Snap Finance LLC, Snap RTO LLC, Snap Second Look LLC, Snap U.S. Holdings LLC, and Snap Finance Holdings LLC (collectively, Snap), a group of interrelated companies headquartered in West Valley, Utah. Snap offers and provides "lease-purchase" or "rental-purchase"

financing, through which consumers finance merchandise and services from merchants and, in turn, make payments back to Snap. Since January 2017, Snap has offered and provided more than three million financing agreements to consumers in partnership with over 10,000 merchants in 47 states. The CFPB alleges that, during this period, Snap designed and implemented its financing program in ways that misled consumers through the advertising, servicing, and collections of its agreements, failed to provide consumers with required disclosures, and interfered with consumers' ability to understand the terms and conditions of their agreements. The CFPB alleges that such conduct violated the CFPB's prohibition of deceptive and abusive acts and practices and the Truth in Lending Act (TILA) and its implementing Regulation Z. The CFPB further alleges that Snap violated the Electronic Fund Transfer Act (EFTA) and its implementing Regulation E by unlawfully conditioning the extension of credit on consumers' repayment through preauthorized ACH debits, and the Fair Credit Reporting Act (FCRA) and its implementing Regulation V by failing to establish and implement reasonable written policies and procedures concerning the accuracy and integrity of consumer information that it furnished. The CFPB seeks, among other things, injunctions to prevent future violations, rescission, or reformation of Snap's financing agreements, redress to consumers, and civil money penalties. On September 28, 2023, Snap filed a motion to dismiss. As of the end of the reporting period, the case remains pending.

- *State of Washington; State of Oregon; California Department of Financial Protection and Innovation; State of Delaware; State of Minnesota; State of Illinois; State of South Carolina; State of North Carolina ex rel. Attorney General Joshua H. Stein; Commonwealth of Massachusetts; Commonwealth of Virginia; State of Wisconsin; and Consumer Financial Protection Bureau v. Prehired, LLC, Prehired Recruiting, LLC, and Prehired Accelerator, LLC* (Bankr. Del. No. 22-11007). On July 13, 2023, the CFPB and several state partners filed a complaint in an adversary proceeding against Prehired, LLC, Prehired Recruiting, LLC, and Prehired Accelerator, LLC. Prehired has its principal place of business in Delaware and, prior to filing bankruptcy, operated a private, for-profit vocational training program for software sales representatives. Prehired charged up to \$30,000 for its program and encouraged consumers who could not pay upfront to enter into income share loans. Prehired's income share loans required consumers to make minimum payments equal to between 12.5 percent and 16 percent of their gross income for four to eight years or until they had paid a total of \$30,000, whichever was sooner. Prehired transferred ownership of many of these loans to other entities, including Prehired Recruiting and Prehired Accelerator. The complaint alleged that Prehired deceptively represented that its income share loans were not loans; deceptively represented that consumers would pay nothing until they had a job making at least \$60,000 a year; and failed to disclose key financing terms required by TILA and

Regulation Z. The complaint also alleged that Prehired Recruiting engaged in unfair acts and practices by filing debt collection lawsuits in a distant forum when consumers neither lived in that forum nor were in that forum when they executed the financing agreement. The complaint further alleged that Prehired Recruiting and Prehired Accelerator violated the Fair Debt Collection Practices Act (FDCPA) and the CFPA by deceptively inducing consumers to enter into settlement agreements, and the FDCPA by claiming the consumers owed more than they did. The attorneys general from Washington, Oregon, Delaware, Minnesota, Illinois, Wisconsin, Massachusetts, North Carolina, South Carolina, and Virginia, and California's Department of Financial Protection and Innovation joined the action. The states and CFPB sought to void the income share loans, obtain redress for affected consumers, and obtain a penalty which would be deposited into the CFPB's victims relief fund. As of the end of the reporting period, the case remained pending.<sup>69</sup>

- *In the Matter of Bank of America, N.A.* (2023-CFPB-0007). On July 11, 2023, the CFPB issued an order against Bank of America, N.A., which is a depository institution based in Charlotte, North Carolina, to address the CFPB's findings regarding the bank's opening unauthorized consumer financial accounts and its misleading statements regarding certain credit cards rewards. Specifically, the CFPB found that in certain instances Bank of America opened credit card accounts without consumer consent and in doing so, obtained consumer credit reports without a permissible purpose, in violation of TILA and its implementing regulation, FCRA, and the CFPA. The CFPB further found that Bank of America engaged in deceptive acts or practices by: (a) advertising a sign-up bonus for a rewards card on its website, making it appear it was available to all applicants, but later denying the bonus to consumers who applied over the phone or in person and not online; and (b) offering a sign-up bonus for a rewards card to certain consumers but then failing to provide them the promised bonuses due to employee error. The order requires the Bank to come into compliance, pay redress to consumers and verify previously administered redress, and pay a \$30 million civil money penalty.
- *In the Matter of Bank of America, N.A.* (2023-CFPB-0006). On July 11, 2023, 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. When a consumer writes a check or authorizes an ACH transaction to a merchant or other payee using their deposit account at Bank of America, the merchant or other payee may then present that check or ACH authorization to the bank

<sup>69</sup> 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/prehired-llc-et-al/>.

for payment. Until February 2022, if a consumer did not have sufficient funds in their account to pay for the transaction and the bank decided not to pay it, Bank of America assessed the consumer a \$35 non-sufficient funds fee. Merchants commonly “re-present” these returned transactions—that is, they again try to receive payment—often multiple times. For many years, Bank of America assessed non-sufficient fund fees on ACH and check transactions that it returned unpaid even though it had already assessed a \$35 fee for the same ACH or check transaction that it had previously returned unpaid (i.e., repeat non-sufficient fund fees). Bank of America would assess these repeat non-sufficient fund fees potentially as soon as the next day after the initial transaction. From September 2018 until February 2022, Bank of America generated hundreds of millions of dollars in such fees. The CFPB found that Bank of America’s assessment of repeat non-sufficient fund fees was unfair in violation of the CFPA. The CFPB’s order requires Bank of America to refund all repeat non-sufficient fund fees that it collected since September 2018 and has not yet refunded, totaling approximately \$80.4 million in redress. The bank must also pay a \$60 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 \$60 million.

- *In the Matter of ACI Worldwide Corp. and ACI Payments Inc. (2023-CFPB-0005)* (not a credit union or depository institution). On June 27, 2023, the CFPB issued an order against ACI Worldwide Corp. and ACI Payments Inc. (collectively, ACI), a nationwide payment processor headquartered in Elkhorn, Nebraska. The CFPB found that ACI’s employees improperly accessed and used sensitive consumer financial information for internal testing purposes and without employing appropriate information safety controls. These internal tests created fake payment processing files that were treated as containing legitimate consumer bill payment orders by ACI’s consumer bill payment platform. Due to weaknesses in its information handling practices, ACI caused the erroneous bill payment orders to be sent to consumers’ banks for processing. These actions initiated debits totaling approximately \$2.3 billion in mortgage payments from nearly 500,000 borrower bank accounts without their knowledge or authorization. The CFPB found that ACI’s actions violated EFTA and its implementing rule, Regulation E, as well as the CFPA’s prohibition of unfair acts and practices. The order requires ACI to stop its unlawful activities and adopt and enforce reasonable information security practices. The order also requires ACI to pay a \$25 million civil money penalty.
- *In the Matter of Phoenix Financial Services, LLC (2023-CFPB-0004)* (not a credit union or depository institution). On June 8, 2023, the CFPB issued an order against Phoenix Financial Services, LLC (Phoenix), an Indiana-based debt collector that collects primarily past-due medical debts and furnishes information about consumers to

consumer reporting agencies (CRAs). The CFPB found that Phoenix violated FCRA and its implementing Regulation V by failing to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information it furnishes to CRAs; failing to conduct reasonable investigations of consumer disputes about information Phoenix furnished to CRAs; and failing to report the results of direct dispute investigations to consumers. The CFPB also found that Phoenix violated the FDCPA by sending debt collection letters to consumers before providing the consumer a verification of the debt when Phoenix had received a written dispute from the consumer within 30 days of the consumer's receipt of a debt validation notice; and by misrepresenting to consumers that they owed alleged debts in certain circumstances when Phoenix lacked a reasonable basis to make those representations. The order requires Phoenix to provide redress to affected consumers by refunding all amounts paid to Phoenix on an unverified debt between January 1, 2017, and the date of the order by consumers who received an unlawful debt collection letter from Phoenix after disputing the validity of the alleged debt. The order also requires Phoenix to abide by certain conduct provisions to prevent it from engaging in the violations found by the CFPB and to pay a \$1.675 million civil money penalty.

- *In the Matter of OneMain Financial Holdings, LLC; OneMain Financial Group, LLC; OneMain Financial (HI), Inc.; OneMain Financial, Inc.; OneMain Financial of Minnesota, Inc.* (2023-CFPB-0003) (not a credit union or depository institution). On May 31, 2023, the CFPB issued an order against OneMain Financial Holdings, LLC; OneMain Financial Group, LLC; OneMain Financial (HI), Inc.; OneMain Financial, Inc.; and OneMain Financial of Minnesota, Inc. (collectively referred to as OneMain). OneMain is an Indiana-based personal loan installment lender with more than 1,400 branches across 44 states. In connection with loan originations and renewals, OneMain markets, sells, and finances add-on products, including credit life insurance, credit disability insurance, and identity theft protection. For several years, OneMain misrepresented to tens of thousands of consumers who purchased and then subsequently canceled optional add-on products that they could cancel the products during what it called a "full refund period" and be returned to the financial position they would have been in had the product never been added to their loan. The CFPB found that OneMain engaged in deceptive acts or practices in violation of the CFPB by misleading consumers into believing they must purchase add-on products to receive loans and that they could cancel the add-on products within a prescribed time period without cost. The CFPB also found that OneMain engaged in unfair acts or practices in violation of the CFPB by charging and failing to refund the full premium and interest that accrued on add-on products consumers did not agree to purchase and by charging and failing to refund interest that accrued on add-on product fees during a purported full-refund

period. Finally, the CFPB found that OneMain violated the CFPA by abusively interfering with consumers' ability to understand that add-on products were optional and that OneMain charged non-refundable interest during the purported full-refund period. The order requires OneMain to stop its unlawful activities, adjust its policies to make cancellation of add-on products easier, include interest in refunds after add-on product cancellations, pay at least \$10,000,000 in consumer redress, and pay a \$10,000,000 civil money penalty. OneMain must also take measures to ensure future compliance.

- *Consumer Financial Protection Bureau v. James R. Carnes; Melissa C. Carnes; James R. Carnes, as Co-Trustee of the James R. Carnes Revocable Trust dated February 10, 2010; Melissa C. Carnes, as Co-Trustee of the James R. Carnes Revocable Trust dated February 10, 2010; James R. Carnes, as Co-Trustee of the Melissa C. Carnes Revocable Trust dated February 10, 2010; and Melissa C. Carnes, as Co-Trustee of the Melissa C. Carnes Revocable Trust dated February 10, 2010* (D. Kan. No. 2:23-cv-02151). On April 5, 2023, the CFPB filed a lawsuit against James R. Carnes and his wife, Melissa C. Carnes, both individually and in their roles as co-trustees of two trusts, as a result of James Carnes's efforts to conceal assets and avoid paying a judgment of more than \$43 million to the CFPB. The CFPB obtained the judgment after finding that Carnes and his company, Integrity Advance, LLC, violated multiple laws, including the CFPA, and caused significant harm to consumers. See *In the Matter of Integrity Advance, LLC and James R. Carnes*, 2015-CFPB-0029 (administrative proceeding); *CFPB v. Integrity Advance, LLC and James R. Carnes*, 2:21-mc-206 (D. Kan. July 30, 2021) (judgment). The CFPB's complaint alleges that James Carnes engaged in multiple fraudulent transactions in violation of the Federal Debt Collection Procedures Act to remove assets and conceal them from the CFPB. Specifically, the complaint alleges that soon after Carnes became aware of the CFPB's investigation into his illegal payday lending business, he began transferring significant assets to his wife's trust and that, in total, he transferred more than \$12 million to the trust during the CFPB's investigation and subsequent administrative proceeding. The CFPB seeks a declaration that the transactions were fraudulent and to recover the value of the transferred assets in partial satisfaction of the CFPB's judgment against Carnes. On May 11, 2023, James and Melissa Carnes each filed a motion to dismiss, both of which the court denied on September 20, 2023. As of the end of the reporting period, the case remains pending.
- *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. The court entered the order on April 13, 2023. 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 CFPA and the FDCPA in connection with Portfolio Recovery Associates' debt collection practices. The CFPB alleged that Portfolio Recovery Associates violated the 2015 Order, the CFPA, the FDCPA, and FCRA and its implementing Regulation V. Specifically, the CFPB alleged 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) misrepresenting 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 alleged that several of Portfolio Recovery Associates' practices for resolving disputes about information it furnished to CRAs violated FCRA, Regulation V, and the CFPA. Specifically, the CFPB claimed 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 alleged 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 order requires Portfolio Recovery Associates to pay at least \$12.18 million in redress to harmed consumers and a \$12 million civil money penalty. It also imposes broad injunctive relief designed to prevent Portfolio Recovery Associates from violating the law in the future.

- *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 TILA and its implementing regulation, Regulation Z.

These included advertisements that RMK sent to U.S. 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 that made deceptive representations or contained inadequate or impermissible disclosures in violation of the 2015 Order, as well as the CFPB, Regulation N, and Regulation Z. These included, for example, advertisements that misrepresented that RMK was the VA or the FHA or that RMK was affiliated with the VA or the FHA, advertisements that misrepresented they were sent by the VA or FHA, advertisements that misrepresented that benefits available to those who qualified for VA or FHA loans were time limited, and advertisements that misrepresented the amount of the monthly payments for the advertised loan. Many of these advertisements reflected the same types of deceptive and other unlawful advertising practices that were the subject of the CFPB's findings in the 2015 Order and expressly prohibited by the 2015 Order. This order permanently bans RMK from the mortgage lending business by permanently prohibiting RMK from engaging in any mortgage lending activities, including advertising, marketing, promoting, offering, providing, originating, administering, servicing, or selling mortgage loans, or otherwise participating in or receiving remuneration from mortgage lending, or assisting others in doing so. The order also requires RMK to pay a \$1 million civil money penalty.

- *In the Matter of TMX Finance LLC (2023-CFPB-0001) (not a credit union or depository institution)*. On February 23, 2023, the CFPB issued an order against TitleMax's TMX Finance LLC, which extends consumer loans that are secured by the title to the borrower's car. The Military Lending Act (MLA) contains a number of protections for active-duty servicemembers, their spouses, children, and other dependents, defined as "covered borrowers." Among other protections, the MLA prohibits nonbank creditors from using vehicle titles to secure loans to covered borrowers. The CFPB found that TitleMax violated the MLA by extending thousands of title loans to covered borrowers; extending loans that exceeded the MLA's 36 percent Military Annual Percentage Rate (MAPR) cap; failing to make disclosures required under the MLA; extending loans to covered borrowers with MLA-prohibited arbitration clauses; and extending loans to covered borrowers with onerous notice requirements. The CFPB also found that TitleMax engaged in unfair acts or practices in violation of the CFPB by charging borrowers for an insurance product that provided no coverage on over 15,000 loans. The CFPB further found that in doing so, TitleMax understated the finance charges and annual percentage rates of those loans, violating TILA and the CFPB. The order requires

TitleMax to stop its unlawful activities, pay \$5,050,000 in consumer redress, and pay a \$10,000,000 penalty.

- *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. 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, monetary relief for consumers, and civil money penalties. On March 14, 2023, Credit Acceptance filed a motion to dismiss, which is fully briefed. On August 7, 2023, the court stayed the case pending a decision from the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22-448. As of the end of the reporting period, the motion to dismiss and the case remain 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 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 CFPB. 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 CFPB 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 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 50 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 who had federally backed mortgage loans and 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. 22-448. 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. The CFPB filed a first amended complaint on June 13, 2023. 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; requiring covered borrowers to submit to arbitration or in the case of a dispute, to reject the arbitration provision within 30 days of the date of the contract; demanding that borrowers provide written notice rejecting the arbitration provision within 30 days of the date of the contract as a condition for legal action; 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 first amended complaint seeks redress for consumers, injunctive relief, and a civil money penalty. On July 11, 2023, the defendants moved to dismiss the first amended complaint. As of the end of the reporting period, the case remains pending.

- *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 10 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. 22-448. As of the end of the reporting period, the case remains pending but stayed.
- *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. 22-448. 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](http://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, which was granted on May 23, 2023, and the CFPB filed the First Amended Complaint on May 24, 2023. Defendant Danaher's motion for certification of an interlocutory appeal was denied on May 23, 2023. On February 28, 2023, the defendants filed a motion to stay the case, which was denied on April 13, 2023. 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 the court denied on August 22, 2023. On September 1,

2023, the defendants moved to stay the case pending a decision from the Supreme Court in *CFPB v. Community Financial Services Association of America, Ltd.*, No. 22-448. As of the end of the reporting period, the motion to stay and the case remain 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. 22-448. As of the end of the reporting period, the case remains pending but stayed.

- *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. 22-448. 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. 22-448 (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 CFPB, 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 August 7, 2023, the court denied defendants' motion for reconsideration. Defendants appealed the denial of the motion to dismiss to the Fourth Circuit; that appeal remains pending. 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. On May 1, 2023, the defendants filed a motion for judgment on the pleadings, and on May 11, 2023, the district court found the defendants in civil contempt and entered default against them. The court also denied as moot the defendants' motion for judgment on the pleadings. Defendants appealed the district court's denial of their motion for judgment on the pleadings. As of the end of the reporting period, the appeal and the case remain pending.<sup>70</sup>

- *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,

<sup>70</sup> 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/nexus-services-inc-et-al/>.

St. Lawrence, and Aramburu engaged in unfair and deceptive practices under the CFPB. 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 CFPB 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. 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 CFPB. 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 was held on December 8, 2023. 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 CFPB'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); 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. The court denied both motions on May 1, 2023. On July 28, 2023, the plaintiffs and defendants separately moved for summary judgment on all claims with all related briefing completed on September 1, 2023. Those motions and the case remain pending as of the end of the reporting period.
  
- *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 Truth in Savings Act (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 due to its violations of TILA and Regulation Z. Specifically, the CFPB alleged that Citizens failed to: (1) reasonably investigate and appropriately resolve billing error notices and claims of unauthorized use by automatically denying such claims for failure to return a fraud affidavit; (2) credit consumers' accounts for fees and finance charges when unauthorized use and billing errors occurred; (3) provide consumers with required acknowledgment and denial notices regarding billing error notices; and (4) disclose required credit counseling information to consumers when consumers called the toll-free number designated for such purpose. On May 23, 2023, the CFPB filed a proposed stipulated final judgment and order, which the court entered the same day. The order requires Citizens to pay a \$9 million civil money penalty. It also imposes injunctive relief designed to prevent Citizens from violating the law in the future.
- *Bureau of Consumer Financial Protection v. Monster Loans, et al.* (C.D. Cal. 8:20-cv-00043). On January 9, 2020, the CFPB filed a lawsuit against Monster Loans, Lend Tech Loans, and associated student loan debt-relief companies and individuals. The CFPB alleged 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 alleged 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 imposes an \$18 million redress judgment and a total \$450,001 penalty and bans Monster Loans, Chou, and Cowell from the debt-relief industry. On July 7, 2020, the court entered a stipulated final judgment against Robert Hoose, which imposes a \$7 million redress judgment and \$1 penalty against him and bans him from the debt-relief industry. 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 them. On May 4, 2021, the court entered stipulated final judgments against Lend Tech Loans, Inc. and David Sklar, which among other things requires Lend Tech Loans to dissolve and bans Sklar from the debt-relief

industry. On May 7, 2021, the court entered a default judgment against: Docu Prep Center, Inc., Document Preparation Services, LP; 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; it imposes redress judgments totaling \$19,699,869 and penalties totaling \$11,382,136 and bans them from the debt relief industry. On May 7, 2021, the court also entered a default judgment against Bilal Abdelfattah, which imposes a \$3,262,244 penalty and bans him from the debt-relief industry. On May 11, 2021, the court entered stipulated final judgments against Docs Done Right, Inc., Docs Done Right, LP, Eduardo Martinez, and Frank Anthony Sebreros, which among other things bans them from the debt relief industry. Following a finding of liability, 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 penalty, and injunctive relief including permanent bans from the debt-relief and mortgage industries. Following an appeal, on December 27, 2022, the Ninth Circuit affirmed the district court's ruling.

- *Bureau of Consumer Financial Protection, et al. v. Consumer Advocacy Center Inc., d/b/a Premier Student Loan Center, et al.* (C.D. Cal. 8:19-cv-01998). On October 21, 2019, the CFPB and states of Minnesota, North Carolina, and California filed a complaint against related debt-relief companies Premier, True Count, and Prime, and associated individuals. The CFPB alleges the companies operate as a common enterprise, have engaged in deceptive practices, and charged unlawful advance fees in connection with the marketing and sale of student loan debt relief services. The CFPB also alleges the individuals substantially assisted the student loan debt relief companies. The court granted a temporary restraining order on October 21, 2019 and entered a stipulated preliminary injunction on November 15, 2019. On August 26, 2020, the court entered a stipulated final judgment as to Prime and Horizon, which among other things bans them from telemarketing or offering or providing debt relief services. On August 28, 2020, the court entered a stipulated final judgment as to Tuong Nguyen and relief defendant TN Accounting, which among other things bans Nguyen from telemarketing or offering or providing debt relief services. On December 15, 2020, the court entered a default judgment against First Priority and True Count Staffing, imposing redress judgments of \$55,360,817.14 and \$165,848.05 against True Count and First Priority, respectively, a \$30 million penalty against True Count, of which \$29,850,000 is payable to the CFPB, a \$3.75 million penalty against First Priority, of which \$2,470,000 is payable to the CFPB, and banning them from telemarketing or offering or providing debt relief services. On July 14, 2021, the court entered a stipulated final judgment as to Consumer Advocacy Center, imposing a \$35,105,017.93 redress judgment and permanently restraining them

from participating in any debt-relief service or telemarketing any consumer financial product. On March 22, 2022, the court entered a stipulated final judgment as to TAS 2019 LLC, imposing a \$2,866,314.24 redress judgment and \$1 penalty and permanently banning them from participating in any debt relief service or telemarketing any consumer financial product. On June 10, 2022, the court entered a stipulated final judgment as to Albert Kim, which among other things bans him from participating in any debt relief service or telemarketing any consumer financial product or service. On September 8, 2020, June 15, 2021, July 1, 2021, and May 24, 2022, the court entered stipulated final judgments as to relief defendants Hold the Door, Mice and Men, Judy Dai, 1st Generation Holdings, Infinite Management, and Sarah Kim. On July 7, 2023, the court found Kaine Wen liable, imposing a \$95,057,757 redress judgment, \$148 million civil money penalty, and a permanent, industry-wide ban. On August 3, 2023, Wen filed a notice of appeal. On August 8, 2023, the CFPB voluntarily dismissed its claim against relief defendant Anan Enterprise. The case against Wen remains pending on appeal. As of the end of the reporting period, the case remains pending on appeal.

- *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 CFPB'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., 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 offered and provided 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. On August 28, 2023, the CFPB and all defendants filed a proposed stipulated final judgment and order, which the court entered on August 30, 2023. The order imposes a judgment of \$2,660,926,481 for consumer redress against all defendants, a civil money penalty of \$45,817,452 against Progrexion, and a civil money penalty of \$18,408,726 against Lexington Law. The order also imposes a 10-year ban on defendants' telemarketing credit repair services and requires them to send notices to remaining customers who were enrolled through telemarketing of the lawsuit and their right to cancel their credit repair services, among other injunctive relief.

- *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 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 appeal and the case remain pending.<sup>71</sup>
- *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 alleged 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, FDCA, 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,

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<sup>71</sup> 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/national-collegiate-student-loan-trusts/>.

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. On May 2, 2023, the district court dismissed the case, granting summary judgment to Ocwen.

- *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 CFPB'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 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. 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 CFPB. 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, which the Court denied on June 12, 2023.

- *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. 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*, which the court denied on April 14, 2023.

- *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.
- *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 sued 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 that is not payable to those attempting to collect it. The CFPB alleged that the individuals, acting through a network of corporate entities, used threats and harassment to collect phantom debt. The CFPB alleged the defendants violated the FDCPA and engaged in, or substantially assisted, unfair and deceptive acts

and practices. On April 7, 2015, the CFPB obtained a preliminary injunction against the debt collectors. 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. Five of the seven corporate debt collectors defaulted and the CFPB voluntarily dismissed one individual defendant. On March 21, 2019, the court granted the CFPB's motion for summary judgment against individual debt collectors, Marcus Brown, Mohan Bagga, Sarita Brown, and Tasha Pratcher, and against the non-defaulted corporate debt collector WNY Account Solutions. The court also granted the CFPB's motion as to one of its claims against individual debt collector, Sumant Khan. On August 21, 2019, November 15, 2019, and December 15, 2020, the court entered stipulated final judgments against Sumant Khan, Payment Processing Solutions, Mohan Bagga, and Tasha Pratcher, which among other things, permanently ban them from engaging in debt collection activities. On October 20, 2021, the court entered a final judgment against Marcus Brown, Sarita Brown, and WNY Account Solutions and a default judgment against the five corporate debt collectors—Check & Credit Recovery, Credit Power, Universal Debt & Payment Solutions, Universal Debt Solutions, and WNY Solutions Group—which had previously defaulted. The orders impose a \$5,183,947.71 judgment for monetary relief against them, joint and severally, and require them to pay 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 debt collection scheme. On December 17, 2021, the CFPB appealed the district court's August 25, 2017 sanctions order, which the Eleventh Circuit affirmed on June 12, 2023.

- *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 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 appeal and the case remained pending.<sup>72</sup>

- *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 CFPB's prohibition against unfair, deceptive, and abusive acts and practices by collecting and attempting to collect consumer-installment loans that

<sup>72</sup> 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/the-mortgage-law-group-llp-et-al/>.

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 uncollectible. 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.

The CFPB's Supervisory Highlights publications provide information about the CFPB's supervisory activities at banks and nonbanks without identifying specific companies. The CFPB

published two issues of Supervisory Highlights between April 1, 2023, and September 30, 2023.<sup>73</sup>

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<sup>73</sup> "Supervisory Highlights Junk Fees Special Edition, Issue 29, Winter 2023," Consumer Financial Protection Bureau, Mar. 8 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights-junk-fees-special-edition\\_2023-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights-junk-fees-special-edition_2023-03.pdf), and "Supervisory Highlights, Issue 30, Summer 2023," Consumer Financial Protection Bureau, Jul. 31 2023, [https://files.consumerfinance.gov/f/documents/cfpb\\_supervisory-highlights\\_issue-30\\_2023-07.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-30_2023-07.pdf).

## 4. State Consumer Financial Law

For purposes of the Section 1016(e)(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 has been apprised of the following developments in pending state attorney general and regulatory actions asserting claims under the Dodd-Frank Act during the April 1, 2023, through September 30, 2023, reporting period.

- *State of Washington; State of Oregon; California Department of Financial Protection and Innovation; State of Delaware; State of Minnesota; State of Illinois; State of South Carolina; State of North Carolina ex rel. Attorney General Joshua H. Stein; Commonwealth of Massachusetts; Commonwealth of Virginia; State of Wisconsin; and Consumer Financial Protection Bureau v. Prehired, LLC, Prehired Recruiting, LLC, and Prehired Accelerator, LLC* (Bankr. Del. No. 22-11007). On July 13, 2023, the CFPB and several state partners filed a complaint in an adversary proceeding against Prehired, LLC, Prehired Recruiting, LLC, and Prehired Accelerator, LLC. *See supra* Section 3.1.1 for a full description.
- *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 Consumer Financial Protection Act (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 the Truth in Lending Act (TILA)'s disclosure and rescission requirements. 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. 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., nonbank remittance transfer providers. *See supra* Section 3.1.1 for a full description.
- *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. *See supra* Section 3.1.1 for a full description.
- *In the Matter of Solo Funds, Inc. (NMLS # 1909701)*. On May 4, 2022, the Connecticut Banking Commissioner issued a Temporary Order to Cease and Desist against SoLo Funds, Inc., a platform facilitating small-dollar loans, for allegedly offering, brokering, and collecting on loans without holding required state licenses. The Commissioner also alleged that SoLo provided false and misleading information concerning the costs and terms of the loans in violation of state law and the CFPA's prohibition against deceptive practices. 12 U.S.C. § 5536(a)(1)(B). On May 16, 2023, the Commissioner issued a consent order resolving the action. The consent order bars SoLo Funds from making small dollar loans to Connecticut residents and from collecting on small dollar loans in Connecticut without appropriate licenses. The consent order also imposes a \$100,000 civil penalty on SoLo Funds.

- *Commonwealth of Pennsylvania, by Attorney General Josh Shapiro; District of Columbia, through the Office of the Attorney General; Matthew J. Platkin, Acting Attorney General of the State of New Jersey; State of Oregon, ex rel. Ellen F. Rosenblum, in her official capacity as Attorney General; State of Utah, by Attorney General Sean D. Reyes; and State of Washington v. Mariner Finance, LLC* (E.D. Pa. No. 2:22-cv-3253). On August 16, 2022, the attorneys general of Pennsylvania, the District of Columbia, New Jersey, Oregon, Utah, and Washington filed a lawsuit against Mariner Finance, LLC, a subprime installment lender. The attorneys general alleged that: (1) Mariner engages in unfair and deceptive acts and practices in violation of the CFPA by charging consumers for add-on products without obtaining their consent and by loan flipping; (2) the design and implementation of Mariner's loan closing process is abusive in violation of the CFPA; (3) Mariner engages in abusive acts and practices that take unreasonable advantage of a lack of consumers' understanding of the material risks, 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 20 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 (HMDA).

For supervisory communications issued by the Office of Supervision during the reporting period, the most frequently identified issues were related to the CFPB's review of mortgage lenders' redlining in violation of ECOA as well as the submission of incorrect information under HMDA.

During this reporting period, the CFPB examiners issued matters requiring attention (MRAs) or memoranda of understanding (MOUs), which 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 redlining risks, to enhance compliance management systems for HMDA compliance, to enhance policies and procedures regarding identifying adverse action reasons under ECOA, and to implement policies and procedures requiring review of the institution's credit scoring models, including assessing whether there are less discriminatory alternatives that meet the institutions' documented business needs.

#### 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 (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.<sup>74</sup> During this reporting period, the CFPB referred

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<sup>74</sup> See 15 U.S.C. § 1691e(g).

nine matters regarding a pattern or practice of lending discrimination to the DOJ pursuant to Section 706(g) of ECOA.

### Fair lending-related rulemaking and guidance

During the reporting period, the CFPB issued—along with its interagency partners—a proposed rule establishing certain quality control standards for Automated Valuation Models (AVMs) used in valuing real estate collateral securing mortgage loans. Additionally, the CFPB issued guidance pertaining to creditor's legal requirements to provide adverse action notices under ECOA and Regulation B. For more information on these initiatives, *see supra* Sections 1.1 and 1.2.2, respectively.

### 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 Federal Trade Commission (FTC), U.S. Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Reserve System (Board), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), DOJ, and Federal Housing Finance Agency (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 DOJ, HUD, and FTC—that meets regularly to discuss issues relating to fair lending enforcement. At these meetings, the agencies also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

Further, through the Federal Financial Institutions Examination Council (FFIEC), the CFPB has robust engagements with other partner agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has continued to chair the HMDA/Community Reinvestment Act Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by this Task Force.

**SPECIAL PURPOSE CREDIT PROGRAM (SPCP) ROUNDTABLE**

On September 12, 2023, the CFPB, along with HUD, OCC, and FHFA hosted a roundtable discussion on SPCPs.<sup>75</sup> In addition to remarks by the respective leaders of the participating agencies, the event included a roundtable discussion with representatives from community groups and trade organizations that are focused on the opportunities and benefits of SPCPs. The event was open to the public via livestream.

**APPRAISAL BIAS**

The 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. On May 19, 2023, the ASC held its second public hearing focusing on the topic of appraisal bias. The hearing explored the appraisal regulatory system and focused on appraisal standards, appraiser qualification criteria and barriers to entry into the profession, appraisal practice, and state regulation.

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 robust outreach with external stakeholders, including consumer advocates, civil rights organizations, industry, academia, sovereign governments, 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; Compliance Bulletins and CFPB Circulars; policy statements; requests for information; press releases, blog posts, podcasts, videos, brochures, social media posts, 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

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<sup>75</sup> "Agencies to Host Roundtable on Special Purpose Credit Programs," Consumer Financial Protection Bureau, Aug. 24, 2023, <https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/>.

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.<sup>76</sup>

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<sup>76</sup> 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 the CFPB relating to diversity in management, employment, and business activities.

### 6.1 An analysis of CFPB efforts to increase workforce and contracting diversity consistent with procedures established by OMWI

During the reporting period, the CFPB continued its work to advance diversity and inclusion under the mandates of Section 342 of the Dodd-Frank Act. The CFPB's efforts in promoting diversity, equity, inclusion, and accessibility (DEIA) 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.

### 6.2 Office of Minority and Women Inclusion

#### 6.2.1 Significant Initiatives

Current period:

In August 2023, the CFPB completed and submitted its first Rehabilitation Act Section 508 assessment report to the Department of Justice (DOJ) and General Services Administration (GSA). The report provided a benchmark for the strength of the CFPB's program, allowing the Disability and Accessibility Program Section (DAPS) Section Chief and the 508 Program Manager to begin the development of a 508 program workplan. The workplan provides the CFPB's overall assessment score card and outlines metrics and milestones to create CFPB-wide program policies and procedures designed to improve the accessibility of technology for individuals with disabilities.

During the reporting period OMWI, the Office of Human Capital (OHC), and the Office of Civil Rights (OCR) revised manager performance standards to increase focus on the behaviors related to supporting a diverse, equitable, inclusive, and accessible workforce. The new standards include more comprehensive behaviors and actions that the leaders need to demonstrate their support of diversity and inclusion. The new performance standards were introduced to leaders in FY 2023 along with supplemental resources encompassing DEIA topics and best practices for inclusive leadership.

During the reporting period, OMWI partnered with the Treasury Executive Institute (TEI) to bring leadership development and coaching opportunities to our most senior employees. TEI provides leadership and executive development programs that encourage diverse perspectives, innovation, and critical thinking, while offering practical techniques for broadening employees' leadership skills and expanding their mindsets.

OMWI also hosted mandatory trainings during this reporting period. These trainings were tailored to CFPB's diversity, equity, inclusion, and accessibility goals. The training is aligned with the mandates of the Dodd-Frank Act, Section 342 and facilitates the CFPB's performance standards that require CFPB employees to have competencies that cultivate a diverse and inclusive workplace.

#### Upcoming period:

The CFPB continued its efforts to address barriers impacting the workforce, including Black and Hispanic/Latino employees and applicants throughout FY 2023. Representatives from OMWI, OCR, and OHC continued to help monitor progress on CFPB-wide people-related plans and initiatives. Barrier analysis action items will continue into FY 2024.

### 6.2.2 An analysis of CFPB efforts to increase workforce diversity consistent with procedures established by OMWI

As of September 2023, an analysis of the CFPB's current workforce reveals the following key points:

- Fifty-one percent of CFPB executives identified as a minority (Hispanic, Black, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, and employees of two or more races), representing an increase of five percent from the previous reporting period.
- Representation of female employees increased to 50.4 percent of the CFPB workforce.
- Minority employees represented 43 percent of the CFPB workforce in 2023.

- Fifteen-point-six 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. The CFPB continues to exceed the 12 percent workforce goals for employees with disabilities and 2 percent workforce goals for employees with targeted disabilities in both salary categories as required in the U.S. Equal Employment Opportunity Commission's (EEOC) Section 501 regulation 4.
- Twenty-two percent of the CFPB workforce participated in at least one employee resource group (ERG) during the reporting period.

The CFPB engages in the following activities to increase workforce diversity:

- Staffing:
  - The CFPB had 58 new hires, which included 30 (52 percent) women and 21 (36 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:
    - OHC continued to leverage technology to deploy recruitment efforts that reach well-qualified and diverse applicants, focusing on outreach to diverse communities to create applicant pools from all segments of society.
    - The CFPB uses broad spectrum outreach events as well as social media to widely promote vacancies. In addition, the CFPB has been using social media to promote direct outreach to diversity organizations.
    - The CFPB continues to encourage individuals with disabilities to apply under the Schedule A hiring authority to open positions, which are posted on USAJobs and the CFPB's Career page at [www.consumerfinance.gov/jobs](http://www.consumerfinance.gov/jobs). The CFPB's OHC team and the DAPS Section Chief encourage hiring managers to utilize programs such as the Workplace Recruitment Program (WRP) to identify, interview, and hire people with disabilities and people with targeted disabilities non-competitively without vacancy announcements when possible. A Selective Placement Program Coordinator in OHC assists with Schedule A hiring efforts, including the monitoring of conversions.

- The CFPB regularly analyzes whether any job qualifications may inadvertently disadvantage individuals who are members of underserved communities.
  - The CFPB also utilized other professional development programs and recruitment efforts to reach veterans to assist in the CFPB's workforce needs.
  - The CFPB's DAPS provides employees and applicants with disabilities access to accommodations and other accessibility services required to perform the essential functions of their jobs and obtain fair and equitable access to apply and interview for CFPB positions. These efforts support the CFPB's overall efforts to recruit, hire, promote, and retain individuals with disabilities as required by the EEOC's Section 501 regulation.
- Workforce engagement: The CFPB continues to utilize an integrated approach of education, training, and engagement programs that ensures diversity, equity, inclusion, accessibility, and nondiscrimination concepts are part of the learning curriculum and work environment. Employee resource groups, cultural education programs, heritage observance engagements, employee dialogue sessions, a mentor program, and mandatory DEIA 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). During this reporting period, the CFPB's OMWI and Procurement offices collectively worked to increase procurement opportunities for participation by MWOBs.

### 6.2.4 Outreach to contractors

The CFPB's OMWI promoted opportunities for the participation of small and large MWOBs by:

- Actively engaging the CFPB's business units with MWOB contractors throughout the acquisition cycle. OMWI provided MWOB briefings to the CFPB divisions highlighting the business case for supplier diversity and sharing office-specific MWOB statistics and inclusion best practices. In response to a need identified by a program office, OMWI offered training specifically designed for the CFPB's Contracting Officer Representatives. Briefings to senior-level Strategic Planning Stakeholders were also available upon request.

- Continuing to add 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.

As a result of these efforts, 35.6 percent of \$68 million in contracts that the CFPB awarded or obligated during the reporting period went to MWOBs. Forty-two percent of \$92.4 million spent during the reporting period went to MWOBs. The following table represents the total amount of dollars spent and obligated to MWOBs.

### 6.2.5 Diversity within the CFPB contractors’ workforces

The CFPB requires its contractors and subcontractors 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 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 continued to maximize technical assistance to CFPB contractors throughout this process.

### 6.2.6 Assessing diversity of regulated entities

As required by 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. During the reporting period, the CFPB received numerous inquiries in response to the Diversity and Inclusion within Financial Services report published in January 2022. These inquiries created opportunities for OMWI to provide technical assistance to regulated entities on their diversity and inclusion efforts.

During the Fall, the OMWI Acting Director and staff met with eight institutions within the mortgage servicing and originations industry to learn more about their diversity programming. The CFPB will continue its outreach to other industry groups to increase awareness and encourage voluntary submission of the Diversity and Inclusion self-assessment. To increase cybersecurity at the CFPB, multi-factor authentication was instituted on the Inclusivity Portal that entities use to submit their 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.<sup>77</sup> 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 through the end of the second quarter of the FY

As of September 30, 2023—the end of the fourth quarter of FY 2023—the CFPB had spent approximately \$696.6 million in FY 2023<sup>78</sup> funds to carry out the authorities of the CFPB under federal consumer financial law. There were 1,677 CFPB employees on board at the end of the fourth quarter.<sup>79</sup>

##### FY 2023 spending by expense category:

Expense Category	Fiscal Year 2023
Personnel Compensation	\$303,811,000
Personnel Benefits	\$124,238,000
Benefits for Former Personnel	\$0
Travel	\$5,978,000
Transportation of Things	\$105,000
Rents, Communications, Utilities, & Misc.	\$10,925,000
Printing and Reproduction	\$1,478,000
Other Contractual Services	\$210,937,000
Supplies & Materials	\$7,683,000

<sup>77</sup> "Budget and Performance," Consumer Financial Protection Bureau, <https://www.consumerfinance.gov/about-us/budget-strategy/budget-and-performance/>.

<sup>78</sup> This amount includes new obligations and upward adjustments to previous year obligations. An obligation is a transaction or agreement that creates a legal liability and obligates the government to pay for goods and services ordered or received.

<sup>79</sup> This figure reflects the employees on board during the final complete pay-period of the quarter (PP19, ending September 23, 2023).

Equipment	\$31,233,000
Land & Structures	\$201,000
<b>Total</b>	<b>\$696,589,000</b>

### 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.<sup>80</sup> As of September 30, 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
April 10, 2023	\$59.8M
July 17, 2023	\$59.7M
<b>Total</b>	<b>\$721.2M</b>

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 <https://www.consumerfinance.gov/about-us/budget-strategy/financial-reports/>.

Copies of the CFPB's quarterly funds transfer requests are available online at <https://www.consumerfinance.gov/about-us/budget-strategy/funds-transfer-requests/>.

<sup>80</sup> The 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

### Annual report on the Truth in Lending Act, the Electronic Fund Transfer Act, and the Credit Card Accountability Responsibility and Disclosure Act

The Truth in Lending Act (TILA)<sup>81</sup> and the Electronic Fund Transfer Act (EFTA)<sup>82</sup> require the Consumer Financial Protection Bureau (CFPB) to make an annual report to Congress that includes a description of the administration of functions under TILA and EFTA, and an assessment of the extent to which compliance with TILA and EFTA has been achieved. In addition, the Credit Card Accountability Responsibility and Disclosure Act (CARD Act)<sup>83</sup> requires reporting on supervisory and enforcement activities with respect to compliance by credit card issuers with applicable federal consumer protection statutes and regulations.<sup>84</sup>

This Report provides the information required by TILA, EFTA, and the CARD Act for the period January 1, 2022–December 31, 2022.<sup>85</sup> This Report describes the CFPB's and other agencies' enforcement efforts and required reimbursements to consumers by supervised institutions as they relate to TILA, EFTA, the CARD Act, and their respective implementing regulations, Regulation Z (for TILA and the CARD Act),<sup>86</sup> and Regulation E (for EFTA). It also provides an

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<sup>81</sup> 15 U.S.C. § 1613.

<sup>82</sup> 15 U.S.C. § 1693p.

<sup>83</sup> 15 U.S.C. § 1616(e).

<sup>84</sup> In 2012, the Federal Reserve Board (Board) and the CFPB agreed that responsibility for the reporting period required by the CARD Act passed to the CFPB under the terms of the Consumer Financial Protection Act of 2010.

<sup>85</sup> In order to facilitate reporting on an interagency basis, this TILA, EFTA, and CARD Act Report is based on the full calendar year of 2022. The TILA, EFTA, and CARD Act Report containing 2021 calendar year information can be found in the CFPB's 2022 Fall Semi-Annual Report to Congress, available at [https://files.consumerfinance.gov/f/documents/cfpb\\_fall-2022-semi-annual-report\\_2023-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fall-2022-semi-annual-report_2023-06.pdf).

<sup>86</sup> The Federal Trade Commission's (FTC) enforcement action summaries in this Report also include references to violations of the Consumer Leasing Act (CLA) and Regulation M. The CLA is an amendment to TILA. See 15 U.S.C. §1667-1667f.

assessment of the extent of compliance with the provisions of TILA, EFTA, and their implementing regulations.

### Public enforcement actions and reimbursements – TILA, EFTA, CARD Act

#### TILA: Public enforcement actions and reimbursements

The purposes of TILA include: (1) to assure meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, and (2) to protect the consumer against inaccurate and unfair credit billing and credit card practices.<sup>87</sup>

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under TILA are discussed in this section.

The agencies charged with enforcement of TILA under 15 U.S.C. § 1607 include the:

- CFPB,
- Federal Deposit Insurance Corporation (FDIC),
- Federal Reserve Board (Board),
- National Credit Union Administration (NCUA),
- Office of the Comptroller of the Currency (OCC),
- Federal Trade Commission (FTC),
- Department of Transportation (DOT)
- Farm Credit Administration (FCA), and
- Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA).<sup>88</sup>

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<sup>87</sup> 15 U.S.C. 1601(a).

<sup>88</sup> The Grain Inspection, Packers, and Stockyards Administration (GIPSA) was eliminated as a standalone agency within the USDA in 2017. The functions previously performed by GIPSA have been incorporated into the AMS, and TILA and EFTA reporting now comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

During the reporting period of January 1, 2022, through December 31, 2022, the following agencies reported public enforcement actions under TILA, including:

**TABLE 1:** 2022 PUBLIC ENFORCEMENT ACTIONS RELATED TO TILA

Agency	Summary
CFPB	Issued an order against a bank for issuing credit cards and lines of credit and opening deposit accounts for certain consumers without their knowledge and consent and without required applications and disclosures in violation of TILA.
DOT	Entered into orders with several airlines for their failure to provide prompt refunds to passengers of flights that were cancelled or significantly changed by the carrier, in violation of Regulation Z.
OCC	Assessed a civil money penalty against a bank for, among other things, violating TILA and Regulation Z.
FTC	<p>Settled charges with a multistate auto dealer for, among other things, failing to clearly and conspicuously disclose required information in advertisements, in violation of TILA and Regulation Z. The settlement includes a prohibition against violations of TILA and Regulation Z.</p> <p>Settled charges with a national jewelry retailer for, among other things, failing to clearly and conspicuously disclose certain required written disclosures in their retail installment contracts and advertisements in violation of TILA and Regulation Z. Obtained a stipulated order requiring compliance with these laws.</p>

No other agencies with TILA enforcement authority reported taking any public enforcement actions related to TILA during the January 1, 2022, through December 31, 2022, time period.

For TILA and Regulation Z violations found during the same time period, the CFPB, FDIC, and NCUA required 28 institutions to reimburse an estimated 962,365<sup>89</sup> consumers approximately \$67.8 million. This amount includes reimbursements required by the enforcement actions noted in Table 1, as well as non-public supervisory or enforcement actions, and includes violations for other federal consumer financial laws.

#### EFTA: Public enforcement actions and reimbursements

The purpose of EFTA is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of EFTA is the provision of individual consumer rights.<sup>90</sup>

The enforcement efforts made, and reimbursements required, by all the agencies assigned enforcement authority under EFTA are discussed in this section.

As required by EFTA, the CFPB monitors what effects the act has on compliance costs for financial institutions, as well as the benefits of the act to consumers.

Consumers use electronic payments more than any other type of payment. Consumer reliance upon electronic payments relative to that of non-electronic payments has increased over the last decade.

Overall adoption of electronic payment methods has grown throughout 2022. According to the 2022 Survey and Diary of Consumer Payment Choice, for the average consumer, 62.5 percent of payments use a debit, credit, or prepaid card; 21.4 percent use cash, paper checks, or some other paper payment instrument; and 16.1 percent use some other form.<sup>91</sup> The share of payments made by consumers using credit cards exceeded the share of cash payments made by consumers, 31.3 percent of payments in October of 2022 versus 17.4 percent. Continuing the trend started during the COVID-19 pandemic, credit card

<sup>89</sup> CFPB orders often require the respondents to develop compliance plans that include identifying and, in some cases, remediating affected consumers. Accordingly, this figure does not reflect the total number of consumers remediated through those actions. In addition, the CFPB obtains civil money penalties to deter future violations. Funds in the CFPB's civil money penalty (CMP) Fund are available to provide redress to consumers whose injuries are not able to be remediated in other actions.

<sup>90</sup> 15 U.S.C. § 1693(b).

<sup>91</sup> Other forms of payment include electronic payments, mobile payment apps, account to account transfers, as well as multiple payment methods, unreported payment methods, or other responses that couldn't be recategorized. See "The 2022 Survey and Diary of Consumer Payment Choice: Summary Results: 2022 SDCPC Tables," Federal Reserve Banks of Atlanta and San Francisco, [https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-diary-consumer-payment-choice/2022/tables\\_dopcc2022.pdf](https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-diary-consumer-payment-choice/2022/tables_dopcc2022.pdf), pp. T-6.

payments have generally increased relative to debit card, check, and cash use.<sup>92</sup>

Much of the growth in electronic payment transaction volume and value has been driven by increased credit card use, though online payments have also increased. According to the 2022 Survey and Diary of Consumer Payment Choice, consumer use of debit cards and cash remained consistent with 2020 levels throughout 2022. A study of debit card issuers showed a slight 1 percent increase in consumer debit transactions year-over-year (YOY) in 2022 and a 3 percent increase in dollar volume for consumers over the same time frame, which is primarily attributed to inflation rather than altered spending habits.

Although consumers tend to conduct fewer Automated Clearing House (ACH) transactions relative to card transactions, the consumer dollar volume over ACH is higher. ACH volume totaled approximately 30 billion transactions and \$72.62 trillion in 2022.<sup>93</sup> These totals increased approximately 3 percent and 5.6 percent, respectively, from 2021.<sup>94</sup> The CFPB estimates consumer account debits represent more than half of all ACH transaction volume and more than a third of ACH dollar volume.<sup>95</sup>

Consumer adoption of digital payment forms appears to have stabilized in 2022. According to the 2022 Survey and Diary of Consumer Payment Choice, 63.1 percent of consumers made use of a mobile payment, regardless of the underlying electronic method.<sup>96</sup> This is a decrease from 2021, when 68.4 percent of consumers reported using a mobile payment.<sup>97</sup>

One digital payment form, electronic person-to-person payments (P2P), represents an emerging and fast-growing category of electronic fund transfer (EFT). The market for P2P EFT is challenging to size for several reasons. First, a number of firms facilitate P2P EFTs over a variety of proprietary platforms. In addition, many P2P services utilize legacy EFT platforms to transmit payment messages and settle transactions. As a result, P2P transaction volume is often conflated with that of the legacy payment systems upon which

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<sup>92</sup> *Id.*

<sup>93</sup> Nacha, <https://www.nacha.org/content/ach-network-volume-and-value-statistics>.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* For reference, in 2022, consumer ACH debit volume totaled approximately 17.1 billion transactions (57 percent of total transaction volume) at \$26.5 trillion (35 percent of total transaction value).

<sup>96</sup> "The 2022 Survey and Diary of Consumer Payment Choice: Summary Results: 2022 SDPC Tables", Federal Reserve Banks of Atlanta and San Francisco, [https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-diary-consumer-payment-choice/2022/tables\\_dpc2022.pdf](https://www.atlantafed.org/-/media/documents/banking/consumer-payments/survey-diary-consumer-payment-choice/2022/tables_dpc2022.pdf) pp. T-3.

<sup>97</sup> *Id.*

the P2P services rely. An industry analyst reported, based on survey results and estimates, at least 66 percent of U.S. consumers made a P2P payment in 2022.

The incremental costs associated with the EFTA are difficult to quantify because it is hard to determine how industry practices would have evolved in the absence of statutory requirements. The benefits of the EFTA are also difficult to measure, as they cannot be isolated from consumer protections that would have been provided in the absence of regulation. The CFPB will continue to consider the potential benefits and costs to consumers and financial institutions in evaluating new rules under EFTA. The CFPB will also continue to monitor the market and evaluate the adequacy of consumer protection under EFTA.

The agencies charged with enforcement of EFTA under 15 U.S.C. § 1693 include the:

- CFPB,
- FDIC,
- Board,
- NCUA,
- OCC,
- FTC,
- DOT, and
- Securities and Exchange Commission (SEC).

During the reporting period of January 1, 2022, through December 31, 2022, the following agencies reported public enforcement actions under EFTA, including:

**TABLE 2:** 2022 PUBLIC ENFORCEMENT ACTIONS RELATED TO EFTA

Agency	Summary
CFPB	<p>Filed a lawsuit against a payment processor for, among other things, allegedly increasing 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, in violation of EFTA and Regulation E.</p> <p>Issued an order against a bank for, among other things, failing to conduct reasonable investigations of prepaid debit cardholders' notices of error and failing to timely investigate and resolve prepaid debit cardholders' error claims, in violation of EFTA and Regulation E.</p> <p>Issued an order against a nonbank remittance transfer provider for failing to comply with a wide range of disclosure requirements set out in EFTA and Regulation E's Remittance Transfer Rule.</p> <p>Filed a lawsuit against nonbank remittance transfer providers for violating EFTA and Regulation E by allegedly failing to disclose accurate fund availability dates, failing to investigate error notices promptly or timely determine whether an error occurred, 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.</p> <p>Issued an order against a nonbank remittance transfer provider for wide-ranging violations of EFTA and Regulation E.</p>
FTC	<p>Obtained an order finding, among other things, that defendants—who used illegal robocalls to deceptively market weight-loss and other products and enrolled consumers in continuity plans without their consent—violated EFTA and Regulation E, by debiting consumers' bank accounts without obtaining written authorizations signed or similarly authenticated by the consumers for preauthorized transfers from their accounts, or providing the consumers with copies of the signed written authorizations. The court, in its default judgment against seven corporate defendants that acted as a common enterprise, also</p>

imposed the same conduct provisions that it imposed in its order against the other defendants, including as to EFTA and Regulation E.

Settled charges with a national jewelry retailer for, among other things, using authorization forms with terms that were not clear and readily understandable, for preauthorized transfers from consumers' accounts, in violation of EFTA and Regulation E. Under the stipulated order, defendants must obtain a written authorization signed or similarly authenticated from the consumer for preauthorized electronic fund transfers from the consumer's account, which must be readily identifiable as such, and the terms of the preauthorization—including the amount of each transfer and the dates on which each transfer will be made—must be clear and readily understandable. Defendants must also provide the consumer with a copy of the signed written authorization, and comply with EFTA and Regulation E.

No other agencies with EFTA enforcement authority reported taking any public enforcement actions related to EFTA during the January 1, 2022, through December 31, 2022, time period.

For EFTA and Regulation E violations found during the same time period, the CFPB and NCUA required six institutions to reimburse an estimated 6,822 consumers approximately \$627,369.<sup>98</sup> These amounts include reimbursements required by the enforcement actions noted in Table 2 as well as non-public supervisory or enforcement actions and includes violations for other federal consumer financial laws.

#### CARD Act: Public enforcement actions and reimbursements

The CARD Act amended TILA to establish fair and transparent practices for the extension of credit under an open-end consumer credit plan. Section 502(e) of the CARD Act requires reporting on supervision and enforcement activities undertaken by the federal banking agencies (the Board, FDIC, and OCC) and the FTC with respect to compliance by credit card issuers with applicable federal consumer protection statutes and regulations, including the CARD Act and Section 5 of the FTC Act.

During the reporting period of January 1, 2022, through December 31, 2022, the following

<sup>98</sup> Several of the CFPB's orders require the respondents to develop compliance plans that include identifying and, in some cases, remediating affected consumers. Accordingly, this figure does not reflect the total number of consumers remediated through those actions. In addition, the CFPB obtained civil money penalties in several matters to deter future violations. Funds in the CFPB's CMP Fund are available to provide redress to consumers whose injuries are not able to be remediated in other actions.

agencies reported public enforcement actions under the applicable federal consumer financial protection laws:

**TABLE 3:** 2022 PUBLIC ENFORCEMENT ACTIONS RELATED TO THE CARD ACT OR SECTION 5 OF THE FTC ACT

Agency	Summary
FDIC	Issued orders to pay civil money penalties against two institutions related to violations of Section 5 of the FTC Act.

No other agencies reported public enforcement actions related to the CARD Act or other applicable federal consumer financial protection laws during the January 1, 2022, through December 31, 2022 time period.

### Assessment of compliance and common violations – TILA and EFTA

The agencies that are members of the Federal Financial Institutions Examination Council (FFIEC) reported overall compliance by supervised entities with TILA, EFTA, and their respective implementing regulations.<sup>99</sup> The agencies did report, however, that more institutions were cited for violations of Regulation Z than Regulation E over the 2022 reporting period. Based on the information reported by the FFIEC agencies, this section outlines the most frequently cited violations of Regulation Z and Regulation E across the FFIEC agencies for the reporting period.<sup>100</sup>

For the reporting period of January 1, 2022, through December 31, 2022, the most frequently cited violations of Regulation Z across the FFIEC agencies were:

<sup>99</sup> Other agencies either did not conduct compliance examinations for TILA, EFTA, and their respective implementing regulations, or reported general compliance for the laws under their jurisdiction.

<sup>100</sup> Because the FFIEC agencies use different methods to compile data, the information presented here supports only general conclusions.

- 12 C.F.R. § 1026.18(d) – On closed-end credit, failure to disclose—or accurately disclose—the finance charge, using that term, and a brief description such as “the dollar amount the credit will cost you.”
- 12 C.F.R. § 1026.19(e) – On closed-end credit, failure to disclose good faith estimates of the disclosures.
- 12 C.F.R. § 1026.22 – Failure to accurately determine or disclose the annual percentage rate.
- 12 C.F.R. 1026.37 – Failure to provide consumers with content of disclosures for certain mortgage transactions (Loan Estimate).
- 12 C.F.R. § 1026.38 – Failure to provide consumers with content of disclosures for certain mortgage transactions (Closing Disclosure).

For the reporting period of January 1, 2022, through December 31, 2022, the most frequently cited violations of Regulation E across the FFIEC agencies were:

- 12 C.F.R. § 1005.11(c) – Failure to comply with the investigation and timeframe requirements for resolving errors in electronic fund transfers.
- 12 C.F.R. § 1005.11(d) – Failure to follow the required procedures when an investigation determines no error, or a different error occurred.

## Outreach related to TILA and EFTA

The FFIEC agencies conducted training and issued guidance and examination procedures to assist supervised institutions in complying with the requirements of TILA, EFTA, and their respective implementing regulations. The agencies also provided guidance to consumers on these topics through various means, such as Federal Register Notices, workshops, blogs, and other outreach events.

In 2022, the FTC continued its efforts to educate consumers about issues related to consumer credit and lease transactions covered by, or closely related to, Regulation Z and Regulation M.

For example, in 2022, the FTC issued a report showing how companies increasingly use sophisticated design practices known as “dark patterns” that, among other things, can trick or manipulate consumers into buying products or services. The FTC also issued guidance for consumers related to automobile sales and financing, including tips to avoid being targets of fraudulent car dealers and points on which to focus when buying cars and trucks.

On mortgages, the FTC updated a publication providing an overview of significant information to understand about mortgages, such as what to consider in searching for a mortgage and understanding how mortgage brokers work. On credit cards, the FTC released articles to assist consumers with issues regarding the use of credit (and other payment) cards, including best approaches for use, billing error rights, lost or stolen cards, and more.

The FTC also engaged in research and policy work that addressed EFTA-related issues. For example, the FTC worked with outside stakeholders, including the Department of Defense, on EFTA-related matters. The FTC also released articles that included information about ATM and debit cards. And the FTC provided guidance to consumers about its enforcement actions, including those involving EFTA issues.



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June 12, 2024

The Honorable Sherrod Brown  
 Chairman  
 Committee on Banking, Housing,  
 and Urban Affairs  
 United States Senate  
 Washington, DC 20510

The Honorable Tim Scott  
 Ranking Member  
 Committee on Banking, Housing,  
 and Urban Affairs  
 United States Senate  
 Washington, DC 20510

**Re: Today's Hearing: "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress"**

Dear Chairman Brown and Ranking Member Scott:

On behalf of America's Credit Unions, I am writing regarding the Committee's hearing entitled, "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress." America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 142 million members nationwide.

Credit unions are the original consumer financial protectors. Because of the not-for-profit, member-owned cooperative structure, credit unions are not subject to the same profit-first motives that have become characteristic of other financial services providers. This distinction, combined with a track-record of providing consumer-friendly financial services, is a key reason that rules and regulations should be tailored so they are not overly burdensome on credit unions.

Both of our legacy associations have long held the position that, given the broad authority and awesome responsibility vested in the Consumer Financial Protection Bureau (CFPB or Bureau), a five-person commission has distinct consumer benefits over a single director. Regardless of how qualified one person may be, including the current director of the agency, a commission would allow multiple perspectives and robust discussion and debate of consumer protection issues throughout the decision-making process. Additionally, a commission helps ensure some continuity of expertise and rulemaking. The current single director structure can lead to uncertainty during the transition from one Presidential administration to another. The U.S. Supreme Court's decision in *Seila Law v. the Consumer Financial Protection Bureau* further amplified this reality when it held that the single director, removal only for "just cause" structure of the CFPB to be unconstitutional. It is with this in mind that we urge Congressional action on legislation to transform the structure of the CFPB from a single director to a bipartisan commission.

Unfortunately, under the current structure, the CFPB has missed many opportunities to leverage credit unions' mission and history to the benefit of consumers and finalized regulations that ultimately hampered credit unions and their members. Consumers lose when one-size-fits-all

June 12, 2024  
Page 2 of 13

rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of entities engaged in the very activities the CFPB's rules were designed to curtail. Under Director Rohit Chopra's leadership, the Bureau has yet again missed numerous opportunities to recalibrate its approach to regulation in a manner that fulfills its consumer protection mission without impeding consumers' access to credit and safe and affordable financial products and services.

We would like to take this opportunity to highlight for Congress several key principles we believe should guide any CFPB action. These principles were developed in consultation with our member credit unions.

**Use the Bureau's authority in a manner consistent with the spirit of the Dodd-Frank Act and continue to monitor and expand oversight of unsupervised entities**

Congress created the CFPB specifically to address the irresponsible lending and banking practices of large too-big-to-fail banks and unregulated sectors of the consumer financial services marketplace. Additionally, in recent years, the rise of unsupervised fintech companies has changed the competitive landscape for consumer financial services. These entities are where the Bureau should dedicate most of its time and resources. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders already subject to federal prudential regulation, then it would have more bandwidth to focus on the businesses actively engaged in objectionable practices that exploit consumers. We believe this balance can be accomplished without sacrificing important consumer protections. Although there remains much more to be done, the Bureau has recently taken a first step toward responding to credit unions and achieving this balance by focusing on the activities of Big Tech and fintech companies in the payments space as well as buy-now-pay-later (BNPL) providers offering short-term credit to consumers for online purchases. We appreciate the Bureau's recognition of the risks posed to consumers by these large players and urge Director Chopra to continue to utilize its authority to prioritize oversight of unsupervised and under-supervised entities in the market for consumer financial products and services.

Credit unions remain one of the most heavily regulated entities in the country, even though they did not engage in the anti-consumer practices that caused the financial crisis. Despite our pro-consumer history, credit unions have repeatedly been lumped in with others through the promulgation of overly broad rulemakings, increasing compliance costs without a material benefit for consumers. In fact, the increasing cost and complexity of regulatory compliance remains a contributing factor in the significant consolidation taking place among community-based financial institutions. Ultimately, consumers lose when fewer choices are available in the marketplace, resulting in a higher cost of financial services and reduced access to local community-based providers focused on relationship banking.

June 12, 2024  
Page 3 of 13

### **Appropriately tailor regulations to reduce disruption for community-based financial institutions**

In the wake of the financial crisis, Congress contemplated the need for exemptions to certain rules and crafted the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd–Frank Act) to authorize the Bureau to tailor its rules to avoid adverse outcomes for consumers and regulated entities. Congress deliberately provided this express authority in Section 1022 of the Dodd–Frank Act:

*The Bureau, by rule, may conditionally or unconditionally exempt **any class of covered persons**, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title (Emphasis added).*

These words are unambiguous, and Congress clearly granted the Bureau broad authority to tailor regulations in a manner consistent with the best interest of consumers. We appreciate that the Bureau has used its Section 1022 authority in some rulemakings to create exemptions based on asset size, loan volume, the merits of a specific product, or other factors. However, we believe the Bureau should use its exemption authority more consistently and to greater effect.

Credit unions and credit union service organizations (CUSOs) should be considered for and receive appropriate exemptions from some of the Bureau’s regulatory requirements. It is critically important for the Bureau to understand that credit unions are not asking to be exempt from all of its rules; instead, we are asking the Bureau to carefully consider the downstream impact of its rules and how those rules—without appropriate tailoring—could negatively affect the ability of consumers to access financial products and services from reputable, community-based financial institutions.

### **Be consistent and transparent during the development and implementation of rulemakings and supervision and enforcement policies**

The current CFPB structure vests substantial authority with the Director. It is critical for the CFPB Director to avoid disrupting the efficient functioning of markets due to unnecessary secrecy, surprise regulation, “gotcha” enforcement, or the pursuit of political goals. Often, it is consumers themselves that are negatively affected by opaque, abrupt, or extreme changes in policy from one administration to the next.

We believe the CFPB should emphasize regular and open communication with financial services providers and be transparent during the policymaking process. An open communication posture would generate goodwill with industry and further both consumer protections and proper due process. To that end, we are ready and willing to assist in communicating and amplifying any critical information from the Bureau to credit unions and their members. We are also at the Bureau’s disposal to solicit feedback from our members, as stakeholder input is critical to an efficient and effective regulatory environment.

June 12, 2024  
Page 4 of 13

Relatedly, we encourage the Bureau to regularly conduct reviews of its regulations in the interest of streamlining and eliminating outdated or superfluous requirements, increasing the efficiency of rules, or to provide exemptions where appropriate. However, it is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce complexity—always comes with a cost. For most Bureau rulemakings, the Dodd- Frank Act and the Regulatory Flexibility Act provide specified review processes intended to assist in identifying necessary or appropriate regulatory changes after the rule has been “in the field” for a reasonable time period. Therefore, the Bureau should reserve the adoption of substantial changes to rules or policies for cases where there are compelling data-based reasons for doing so or an imminent need that addresses a specified consumer impact.

**Consult with the NCUA during the policymaking process and avoid implementing duplicative or contradictory policies**

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when policy decisions affecting them are made by a regulatory agency that has significant familiarity with the characteristics that differentiate them from other financial services providers. The National Credit Union Administration (NCUA or agency), due to its half-century of experience regulating credit unions, has a special understanding of the credit union model as well as the environmental and operational challenges credit unions face daily. For that reason, the CFPB should work more closely with the NCUA throughout the policymaking process and avoid implementing policies that conflict with or are duplicative of those issued by the agency, especially regarding examinations.

**Provide certainty to regulated entities by adopting clear “rules of the road” and abiding by statutorily mandated feedback processes**

For the last decade and a half, we have seen a massive increase in new consumer financial services regulations. This environment is particularly burdensome for credit unions which, unlike big banks, do not have scores of legal experts in-house to assist with compliance questions. Given the heightened nature of the regulatory landscape, it is important that the Bureau provide certainty to regulated entities through the adoption of clear “rules of the road,” internal consistency from the Director’s office down to the field examiners, and robust guidance and implementation support.

In that spirit, we encourage the Bureau to provide helpful compliance resources, especially interactive webinars on final rules and Small Entity Compliance Guides, that help stakeholders understand regulatory expectations. We also encourage the Bureau to be proactive and continue providing additional compliance resources after rules are finalized as questions in need of clarification are identified. For example, the Bureau’s recent implementation of an Advisory Opinion program is a positive development and should be maintained.

June 12, 2024  
Page 5 of 13

Regarding clarity, we oppose the Bureau adopting a “regulation by enforcement” approach to policymaking. Moreover, the Bureau’s recent reliance on blog posts, guidance, and even amicus brief filings to issue proclamations regarding the application of consumer financial protection laws is inappropriate and denies stakeholders the opportunity to participate in the statutorily mandated notice and comment process. If the Bureau wants to make actionable policy, then it should consider proposing clear regulations pursuant to the Administrative Procedure Act (APA) process instead of using its enforcement authority against financial institutions expecting the subsequent consent order to serve as a means for others to determine what practices are in violation of the law. We also caution against an unproductive and inflammatory “regulation by press release” approach to governance characterized by clearly politicized press releases intended to serve as a bully pulpit.

#### **Conduct thorough research prior to the adoption of a new rule or policy and base policy decisions on relevant data**

The Bureau prides itself on being a modern, data-driven regulator. Former Director Cordray often referred to the data beneath consumer complaints as the Bureau’s “compass,” playing a key role in identifying and prioritizing the Bureau’s actions, including in the realm of rulemakings. However, data for data’s sake is insufficient, and it is critical that the Bureau’s policy and regulatory decisions be wholly supported by relevant, timely, and representative data that captures the entire industry and not just the largest banks. Unfortunately, it has been common for a CFPB rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking. The Bureau has also refused, in certain instances, to publicly share the data upon which it relies to justify a rulemaking—in direct contravention to its obligations under the APA. We challenge the CFPB to set a new standard for evidence-based rulemaking decisions and processes.

It is critical that the Bureau base its decisions on data specific to the entities it intends to regulate through an action. For example, relying on bank data to justify a rulemaking that also covers credit unions without evaluating credit union-specific data is misguided. Almost equally critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally-identifiable information—the Bureau relies on as a foundation of its rulemakings.

#### **Ensure continued access to credit from reputable providers**

Credit unions often provide the safest and most affordable loan options for consumers in need of credit. When developing rulemakings overseeing lending, the Bureau should carefully evaluate and consider the impact a policy decision may have on the availability of credit for consumers, especially when the action is likely to impact the cost of credit. For example, we have asked the Bureau to more closely evaluate the inevitably negative impact that its recent proposed rule on overdraft is going to have on smaller institutions below the \$10 billion asset threshold for compliance as well as the consumers and communities they serve. It is important that the CFPB strike an appropriate balance between its consumer protection mission and the availability

June 12, 2024  
Page 6 of 13

of products and services. This balance is critical whether the product is a mortgage, credit card, or emergency loan. Many consumers rely on access to credit to manage their everyday finances and the Bureau should ensure reputable providers, especially community-based providers, are able to meet those needs.

### **Encourage and support innovation in the consumer financial services marketplace**

Innovation, through technology and other creative solutions, has the potential to enhance the delivery and quality of financial products and services to consumers. In recent years, credit unions have been at the vanguard of innovation as a byproduct of their cooperative nature, member-driven focus, and relatively small size. Consumers benefit when financial institutions are provided with more opportunities, under the careful oversight of regulators, to pursue fresh answers to traditional questions. For this reason, America's Credit Unions supports the CFPB revitalizing its approach to innovation by revisiting decommissioned programs like the revised Trial Disclosure Program, the No-Action Letter Policy, and the regulatory "sandbox" policy. We were disappointed by the CFPB's announcement to eliminate these functions of its former Office of Innovation; however, we appreciate the Bureau's new focus on better understanding how big players are squeezing out smaller players. The Bureau should not approach innovation in a manner that places traditional depository institutions at a disadvantage compared to other business models, so we encourage the Bureau to continue evaluating means of leveling the playing field.

### **Additional Issues of Concern for Credit Unions**

#### *Mislabeled Junk Fees*

The cooperative structure of credit unions ensures earnings—including fee income—are returned to members in the form of lower interest rates on loans, higher interest on deposits, and lower fees. In fact, credit unions exist only to serve their members, and the relationship between credit unions and their members is fundamentally stronger than the relationship other financial service providers have with their customers.

The CFPB and the Administration have repeatedly classified a broad range of ordinary fees in the consumer financial services market as so-called "junk fees" obscuring the true cost of financial services.<sup>1</sup> In the press release for the credit card late fees proposal, Director Chopra went so far as to say "[o]ver a decade ago, Congress banned excessive credit card late fees, but

<sup>1</sup> See Consumer Financial Protection Bureau, *Junk Fees Landing Page*, available at <https://www.consumerfinance.gov/rules-policy/junk-fees/>. See also Consumer Financial Protection Bureau, *Blog Post, "The hidden cost of junk fees"* (Feb. 2, 2022), available at <https://www.consumerfinance.gov/about-us/blog/hidden-cost-junk-fees/>. See also Consumer Financial Protection Bureau, *Blog Post, "As outstanding credit card debt hits new high, the CFPB is focusing on ways to increase competition and reduce costs"* (Apr. 17, 2023), available at <https://www.consumerfinance.gov/about-us/blog/credit-card-debt-hits-new-high-cfpb-is-focusing-on-ways-to-increase-competition-and-reduce-costs/>. See White House (@whitehouse), Instagram, "The Biden-Harris Administration is taking action to get lots of these fees under control." (The picture shows "Credit Card Late Fee \$31.00 in a list of other "junk fees" Mar. 3, 2023.)

June 12, 2024  
Page 7 of 13

companies have exploited a regulatory loophole that has allowed them to escape scrutiny for charging an otherwise illegal junk fee.”<sup>2</sup> A legally established safe harbor is not a “regulatory loophole” and this government-wide effort to characterize all fees as “junk fees” appears to be little more than a convenient public relations tactic intended to divert the public’s attention away from the ever-increasing cost of everyday goods and services arising out of an environment of high inflation and other economic pressures. We strongly object to the government’s inflammatory messaging as it is intentionally misleading and clearly wrong-headed. To be clear, credit unions do not assess “junk fees.”

In multiple press releases, the CFPB has attempted to lump together fees levied in truly opaque markets outside of the Bureau’s jurisdiction with the clearly disclosed, heavily regulated financial institution fees that are incurred in direct response to specific actions (*i.e.*, a late payment). For example, in launching its junk fee initiative the Bureau highlighted that “hotels and concert venues advertise rates, only to add ‘resort fees’ and ‘service fees’ after the fact.”<sup>3</sup> While that may be a true assessment of fees in the entertainment and leisure industries, in the consumer financial services market fees are clearly governed by robust disclosure requirements that prevent “surprise” fees after the fact.

It is especially perplexing that the Bureau would choose to characterize nearly all fees as “hidden” when most of the rules governing bank and credit union fees are either promulgated or administered by the CFPB itself. In particular, Regulation Z specifically requires disclosures, at application or solicitation, outlining the amount of and circumstances resulting in fees for a consumer’s credit card account. Similarly, Regulation E requires disclosures, before account opening, of all fees associated with other consumer accounts. These regulations are actively administered by the Bureau, including the precise scope and timing of the disclosures. These two examples, while not nearly comprehensive, reveal the extensive network of legal protections created precisely to prevent these fees from being “hidden” from consumers, as the Bureau alleges.

America’s credit unions stand as the epitome of consumer protection in practice. As part of our member-owned structure, credit union members can rely on fair and equitable treatment by their credit union because they have a voice and a vote in its operation. This fairness extends to the level of fees charged in exchange for services or as a penalty.

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<sup>2</sup> Press Release, Consumer Financial Protection Bureau, “CFPB Proposes Rule to Rein in Excessive Credit Card Late Fees” (Feb. 1, 2023), available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-rein-in-excessive-credit-card-late-fees/>.

<sup>3</sup> Press Release, Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees” (Jan. 26, 2022), available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-initiative-to-save-americans-billions-in-junk-fees/>.

June 12, 2024  
Page 8 of 13

#### *Overdraft Rule*

One of the most recent attacks on well-disclosed, regulated fees is the CFPB's proposed rule to amend Regulations E and Z, specifically as it relates to updating regulatory exceptions for overdraft credit provided by financial institutions with more than \$10 billion in assets. Credit unions offer services tailored to assist their members in managing their finances effectively. They provide various options to cover instances where members unintentionally or intentionally overdraft their accounts, including checks, automatic payments, and debit card transactions. The proposed rule's requirement to treat overdraft services as extensions of credit subject to Regulations E and Z, unless fees are nominal and only cover applicable costs and losses, although not directly applicable to smaller institutions, may force many smaller credit unions to significantly alter or eliminate these services. As regulatory mandates reduce or remove the prevalence of overdraft services for the largest financial institutions, market pressures will necessitate that smaller credit unions alter their overdraft programs in response. Without the ability to benefit from the same economies of scale that might allow larger institutions to weather a reduction in fee revenue, these changes could make it unsustainable for smaller institutions to offer overdraft protection, disproportionately affecting those who rely on it the most.

All 4,700 credit unions across the country are unique and serve their fields of membership in the best way they see fit for the benefit of their communities. We believe that financial institutions should retain the flexibility to set fees for services like overdraft protection. This flexibility allows them to tailor our services to the needs of our diverse membership, balancing the need to cover costs and manage risk with the commitment to keeping our products and services affordable. A blanket approach in which above breakeven overdraft is deemed open-ended credit does not account for the downstream impacts to smaller institutions and the unique circumstances of our credit union and varied needs of their members.

Instead of imposing restrictive fee structures, we advocate for a greater emphasis on financial literacy and education efforts. Many consumers benefit from overdraft services because they rely on these financial lifelines to pay for purchases during moments of sudden need or between paychecks. Although a small subset of these consumers may become overly reliant on overdraft services, the solution should not be to regulate it out of existence, but rather to help equip consumers with the resources to take control of their financial futures. Several institutions report that some members knowingly want to use this service regularly and have indicated that they are willing to change institutions if it is not available. We believe the focus should be on investing in comprehensive financial education programs that can empower consumers to make informed decisions about their money, reduce reliance on overdraft services, understand other options available, and improve their overall financial health.

America's Credit Unions believes that the proposed rule on overdraft credit may have unintended consequences that could hinder credit unions' ability to serve their members effectively. We urge the CFPB to consider the unique role of smaller financial institutions in promoting financial inclusion and to rescind the rule and support a paradigm that balances

June 12, 2024  
Page 9 of 13

consumer protection with the need for flexibility and innovation in financial services. Instead of imposing a rule on overdraft fees with industry-wide implications, we encourage the CFPB to support efforts to enhance financial literacy and empower consumers to make informed financial decisions. By working together, we can ensure that all consumers have access to affordable, responsible financial services that meet their needs and support their long-term financial health.

#### *Credit Card Late Fees*

We object to the CFPB's final rule to amend Regulation Z to slash credit card late fees from the current limits to \$8 for large issuers with over one million open accounts. The rule aims to ensure these late fees are "reasonable and proportional" to assist low- and moderate-income (LMI) borrowers in better managing their debt. However, the rule will instead result in reduced competition in the credit card market, further consolidation among community-based financial institutions, and reduced access to credit for vulnerable and underserved communities. The current regulatory structure and safe harbor limits for credit card late fees have resulted in clear disclosures to consumers, providing ample opportunity for comparison shopping, and a deterrence effect that encourages consumers to make timely payments on their accounts. An \$8 late fee does nothing to encourage responsible consumer behavior. It may even encourage greater delinquencies on unsecured credit card portfolios, leading to potential safety and soundness concerns. We would note that various governmental entities, including the federal government, set late fees well above that \$8 level for a wide range of payments.

This drastically reduced safe harbor limit is not only arbitrary but is also unlikely to reduce consumer indebtedness. In fact, this rule would have a disproportionate impact on LMI borrowers and those with thin credit files by limiting the availability of safe and affordable products and services. Although the majority of credit unions are not immediately impacted, similar to the CFPB's overdraft proposed rule, there will be a downstream effect on smaller institutions over time due to market pressures and changing consumer expectations. As a result, credit unions and other institutions will be forced to make difficult decisions about their offerings. Some smaller credit unions may be forced to reevaluate or eliminate their credit card programs altogether because the economics no longer work. Credit unions are also unique in that they are subject to an interest rate ceiling established under the Federal Credit Union Act (FCU Act). This statutory limitation further constrains credit unions' revenue options with respect to credit cards, whereas other institutions will likely increase their interest rates to compensate for reduced late fee revenue. We have already seen this trend toward increasing interest rates among larger issuers despite the pending legal challenge against the final rule. If credit unions are forced to tighten their credit criteria or exit the credit card market because of this rule, the impact on underserved communities will be immeasurable.

We encourage you to exercise your oversight over this final rule as the CFPB's data and analysis were cursory at best and the Bureau did not seek the input of small financial institutions as required under the law.

June 12, 2024  
Page 10 of 13

*NSF Rule/UDAAP*

The uncertainty surrounding the abusiveness prong of unfair, deceptive, or abusive acts and practices (UDAAP) has been a source of concern for credit unions for many years. The recent proposed rule prohibiting nonsufficient funds (NSF) fees on instantaneously declined transactions puts the logic of the Bureau's 2023 Policy Statement on Abusive Acts or Practices into action, and we are troubled by the Bureau's interpretation regarding the test for abusive conduct. Specifically, that conduct is abusive if it takes unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service. But in the Bureau's interpretation, there is no requirement that the consumer's lack of understanding be reasonable, and the Bureau unreasonably concludes that the fact that a consumer decides to take a risk must necessarily mean that the consumer did not understand the risk.

If a consumer chose to initiate a transaction even though they were uncertain if they had sufficient funds, it does not necessarily mean that they lacked understanding of the risk. It could just as easily mean the consumer understood the risks and chose to initiate the transaction anyway, hoping that their account had sufficient funds. Through this interpretation, the Bureau has removed all responsibility from the consumer and shifted the burden entirely to financial institutions. Furthermore, it has created a situation in which any product or service could be deemed too complex for a consumer to understand, and if a financial institution charges a fee in relation to that product or service, it could be subject to an allegation that it violated the abusiveness prong of UDAAP.

This interpretation will chill innovation and place credit unions in a position where they will be extremely hesitant to offer new products or services to their members, for fear that they might be considered abusive. Smaller credit unions that cannot afford to take the risk of UDAAP enforcements will be incentivized to only offer the most basic services, further reducing their ability to compete.

We urge the Bureau to issue a rulemaking to further define the abusiveness standard and work to ensure an equitable framework that recognizes the role of financial responsibility for consumers as much as it does the responsibility of their financial institution. While any guidance or additional clarity is crucial to providing credit unions with the rules of the road when it comes to UDAAP, a single policy statement with overly broad prohibitions is insufficient. A rulemaking to further define abusiveness through the notice and comment rulemaking process would give financial institutions confidence in the knowledge that an act or practice is or is not abusive and would allow the entities that are governed by UDAAP to better understand their obligations under those prohibitions.

June 12, 2024  
Page 11 of 13

#### *Regulating New and Emerging Service Providers*

Credit unions are concerned that under-regulated and unsupervised nonbank providers are increasingly engaged in financial activities by offering consumer products that cannot be easily examined by regulators on a periodic basis. Some nonbank providers structure their products to limit the applicability of certain consumer protection laws and regulations that have long applied to credit unions and banks. We encourage the Bureau to continue exercising its market monitoring authority to further explore these products and the companies that offer them as they are serving a growing segment of consumers' financed purchases. The Bureau has statutory authority to supervise nonbank covered persons that are "larger participants" in a market for financial products or services and should continue to exercise that authority to ensure that American consumers are protected from under-supervised entities.<sup>4</sup> The Bureau also has the ability to place nonbank covered persons under its supervisory authority on a case-by-case basis pursuant to Section 1024(a)(1)(C) of the Dodd-Frank Act. Disaggregation of payments, lending, and deposit-taking activities without a corresponding update to the Bureau's supervisory posture towards fintech companies could expose consumers to greater risk by making it more difficult to prevent violations of consumer financial law before they occur. Accordingly, we support efforts to establish supervisory expectations for nonbanks that match the rigorous standards applied to credit unions and banks.

While credit unions welcome innovation in the market, we are concerned the exponential growth of alternative financial services products has outpaced prudent regulatory oversight and could ultimately result in consumer harm. In addition, the absence of effective oversight creates an uneven playing field to the material disadvantage of traditional lenders. Credit unions and other well-established financial service providers are heavily regulated for safety and soundness and consumer protection regulatory compliance. Congress and the CFPB should ensure consumer protections always run with a product or service, not with the entity providing the products or service.

#### *Implementation of Section 1033 of the Dodd-Frank Act*

Credit unions support consumers' rights to access and control their personal financial data but have a responsibility to ensure credit union members' data remains safe, secure, and private. The CFPB's proposal to implement Section 1033 of the Dodd-Frank Act goes far beyond any reasonable interpretation of the statutory text and imposes substantial costs on credit unions in their capacity as data providers. Numerous technical requirements for API interfaces along with a directive that credit union data providers subsidize third party access to member data will result in an uneven playing field that penalizes credit unions. To date, the CFPB has not indicated a willingness to meaningfully address concerns related to these features of its proposed open banking framework. Instead, the CFPB has forged ahead with its own, arbitrary vision for open banking, disregarding the concerns raised by the small financial institutions during the agency's

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<sup>4</sup> See 12 U.S.C. 5514(a)(1)(b).

June 12, 2024  
Page 12 of 13

Small Business Regulatory Enforcement Fairness Act (SBREFA) process, as well as those raised by the Small Business Administration's (SBA) Office of Advocacy.

While the Dodd-Frank Act calls upon the CFPB to promote fair and competitive markets, the plain language of Section 1033 does not reflect an intention to reengineer data sharing mechanisms to alter financial sector competition. Furthermore, the commoditization of financial data driven by the CFPB's idealistic vision for open banking could result in the opposite of its intended effect: rewarding the largest, most technologically sophisticated companies at the expense of credit unions and other community institutions focused on relationship banking.

#### *Credit Reporting*

Before issuing a proposed rule to amend Regulation V, which implements the Fair Credit Reporting Act (FCRA), the Bureau should solicit a wide range of stakeholder input and be careful not to substitute its own intent for that of Congress when it originally passed the FCRA. The Bureau's recent efforts to overhaul credit reporting requirements would grossly expand the scope of the FCRA without sufficient detail regarding the specific proposals the Bureau plans to evaluate, which did not provide small entity representatives participating in the SBREFA panel with an opportunity to provide fulsome feedback, including cost estimates regarding the impact of the proposed changes.<sup>5</sup> We have asked the Bureau to issue another outline of proposals, reconvene a SBREFA panel, and issue an advance notice of proposed rulemaking to provide more opportunity for stakeholders to review and comment on the ideas proposed. In the interest of promoting transparency and collecting comprehensive stakeholder feedback to inform rulemaking initiatives, the Bureau should always follow a consistent, data-driven information gathering and rulemaking process.

Credit unions strongly believe that an accurate credit reporting system benefits borrowers and lenders alike. Lenders rely on an accurate and complete record of a borrower's credit situation to make underwriting decisions. Legislative or regulatory actions intended to remove or modify certain types of debt from the credit reporting system will do long-term damage to lending and the ability of borrowers to get the loans they need to buy a home, start a small business, or achieve higher education.

Blanket restrictions on the reporting or consideration of certain debt will prevent lenders from seeing borrowers' complete debt circumstances and cloud lenders' ability to fairly assess borrowers' creditworthiness. An incomplete view of borrowers' credit history reduces lender confidence in credit reports and scores, impacting pricing decisions and credit availability. The borrowers most impacted by the consequences of inaccurate credit reports will be LMI borrowers whose financial well-being could benefit the most from access to affordable credit from a credit union.

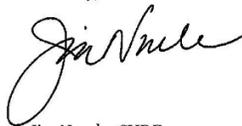
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<sup>5</sup> Consumer Financial Protection Bureau, Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals and Alternatives Under Consideration (Sept. 15, 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-reporting-rule-sbrefa\\_outline-of-proposals.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf).

June 12, 2024  
Page 13 of 13

In conclusion, we look forward to working with the Committee on the issues outlined here as you exercise your oversight capacity. On behalf of America's Credit Unions and our nation's over 142 million credit union members, thank you for holding this important hearing and considering our views on the subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large initial "J" and "N".

Jim Nussle, CUDE  
President & CEO

cc: Members of the Committee on Banking, Housing, and Urban Affairs



June 6, 2024

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.

Due to the highly political nature of the current CFPB, strong oversight by elected Members of Congress is needed to shine a bright light into the thought process of regulatory decisions and the inner workings of the Director's office. Regulators' interpretations of the laws enacted by Congress through the issuance of rules and guidance should be grounded in comprehensive and informed analysis of data and stakeholder input. This helps ensure regulators are informed of how these policies will affect consumer access to financial products before acting. Unfortunately, the CFPB's recent policies increasingly reflect political expediency, the ideological views of the political party that controls the White House, and not those of an independent and impartial regulator that guides the industry with a steady hand.

The CFPB frequently proposes new policies to use as campaign talking points and short-term political gain, circumventing the Administrative Procedure Act (APA) and evidence-based process required for new rulemakings all while ignoring input from stakeholders. A perfect example of the hyper-politicalization of the Bureau is the CFPB's so-called "junk fees" campaign that appears to be driven more by polling data, not economic or accurate market data. **This was confirmed by the former Deputy Director of the National Economic Council, who divulged that "Junk fees, out of 180 things they polled, was in the top three most popular actions. And that one sentence we wanted in the State of the Union ended up being four paragraphs."**<sup>1</sup> To make matters worse, the current CFPB Director regularly makes misleading public claims against banks that play well on the front page of newspapers, but contribute to the erosion of consumer confidence in the banking system and undermines efforts to bring more consumers into highly regulated and time-tested

<sup>1</sup> <https://www.politico.com/newsletters/west-wing-playbook/2024/04/24/hidens-growing-junk-fee-movement-00154186>. Similarly, in a recent [interview](#), the New York Times' White House correspondent explained how the White House's "Junk Fee" campaign has become a re-election priority for an administration desperate to show progress in the fight against inflation.



depository institutions.<sup>2 3</sup>

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:

- **Credit Card Late Fees Final Rule:** The CFPB’s credit card late fees final rule will increase the cost of credit, reduce credit availability, and increase the negative outcomes for consumers when paying late. In particular, the rule’s focus on short-term political polling runs the risk of causing significant long-term harm to consumers. In particular, the CFPB’s rule may cause greater numbers of Americans to fall into what the CFPB has described as “persistent debt.” Congress should pass a Congressional Review Act resolution to reject the rule.
- **Overdraft Proposed Rule:** The CFPB’s proposed rule regarding overdraft services would make it increasingly difficult for banks to offer overdraft services, ultimately making free checking services less available to low-deposit customers. The CFPB should withdraw its overdraft proposed rule.
- **Forthcoming Fair Credit Reporting Act (FCRA) Proposed Rule:** The CFPB should exempt fraud detection and identity verification processes, along with their associated data inputs like credit header data, from the forthcoming FCRA rulemaking.
- **Dodd-Frank Act Section 1033 Proposed Rule:** The Bureau’s Dodd Frank-Act Section 1033 rule should broaden the coverage of data providers, address liability more robustly, and meaningfully sunset the practice of screen scraping.
- **Dodd-Frank Act Section 1034(c) Advisory Opinion:** The Bureau should withdraw its advisory opinion and propose it as a formal rulemaking pursuant to the Administrative Procedure Act.
- **Structural CFPB Reforms:** Congress should enact structural reforms to the CFPB to create more transparency and establish proper checks and balances for an agency with such a broad scope and influence over the financial services marketplace.

#### Credit Card Late Fees

On March 5, 2024, the CFPB finalized its proposed rule that would cut the Federal Reserve Board’s longstanding safe harbor for credit card late fees from \$30 (\$41 for subsequent late payments) to \$8, without an inflation adjustment.<sup>4</sup> The CFPB’s rule relied upon incomplete data that allowed it to be heralded by the Biden Administration as one of its biggest achievements in its overarching campaign on “junk fees.”

First and foremost, credit card late fees are not “junk fees.” In contrast to so-called “junk fees,” which are often defined as mandatory, hidden, or surprise fees, credit card late fees **have been required by law for many years to be disclosed to the consumer at several points, including in advertisements, when the card account is opened, and on monthly and periodic statements.** These disclosures are routinely presented in clear and digestible disclosures that are well understood

<sup>2</sup> <https://consumerbankers.com/press-release/fcymi-former-cfpb-director-calls-on-agency-to-stop-manipulating-data-for-political-gain/>

<sup>3</sup> <https://consumerbankers.com/press-release/facts-matter-cfpbs-credit-card-rewards-report-misses-the-forest-for-the-trees/>

<sup>4</sup> <https://www.consumerfinance.gov/rules-policy/final-rules/credit-card-penalty-fees-final-rule/>



by consumers. For example, one such disclosure is the “Schumer Box” and is a standard and clear listing of important fees and charges, included in at the beginning of all credit card agreements.

Furthermore, unlike fees in other industries outside of banking, such as the increasingly common “restaurant fees” which can be unavoidable to the consumer, credit card late fees are not charged to the consumer if the contractual obligations of possessing a credit card are met. Consumers choose their credit cards from nearly 4,000 issuers— and CFPB research shows that issuers offer a wide range of different late fee policies— including zero late fees.<sup>5</sup> Of course, consumers can avoid paying late fees by making timely payments of at least the required minimum payment. And credit card issuers utilize extensive innovative techniques to help consumers monitor their credit usage and pay their bills on time.

*The CFPB’s Late Fee rulemaking will likely cause additional consumers to tip into “persistent debt”*

In addition to being clearly disclosed, as required by statute, credit card penalty late fees serve an important, pro-consumer purpose recognized by the Truth in Lending Act: the informed use of credit. Having such disclosure about the fee associated with not paying their credit card on time deters consumers from paying late, which helps consumers ultimately avoid much longer-term impacts on consumers’ financial health.

While the CFPB and White House are telling voters that cutting late fees could save late-paying customers fee costs, they aren’t accounting for the long-term impacts of an increased number of consumers paying late. In fact, The CFPB expressly admits this in the final rule that lowering the late payment fee below any meaningful deterrence threshold will cause more consumers to pay late.<sup>6</sup> This means that the CFPB’s rule will likely cause consumers to carry higher balances and pay more interest. And, perhaps most importantly, the CFPB’s rule will likely hurt consumers’ credit scores, making it harder for consumers to grow their financial lives in ensuing years.

The CFPB’s most recent CARD Act Report includes a new section focused on a regulatory framework that the CFPB imports from the United Kingdom’s Financial Conduct Authority: “persistent debt.”<sup>7</sup> In that regard, English regulators have created a new disclosure and forbearance framework where, if a consumer pays more in interest and fees over an 18-month period than their balances, regulators require the bank to provide specific disclosures to the consumer and, eventually, suspend the consumer’s credit card.<sup>8</sup>

Despite the CFPB’s avowed concerns about rising rates of consumers in “persistent debt,”<sup>9</sup> the CFPB either fails to recognize or acknowledge that its late fees rulemaking will almost certainly tip

<sup>5</sup> <https://www.consumerfinance.gov/data-research/research-reports/credit-card-late-fees/>

<sup>6</sup> 89 Fed. Reg., 19,128, 19,197 (March 15, 2024).

<sup>7</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_consumer-credit-card-market-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf) pp. 5, 48 n.97,

<sup>8</sup> <https://www.fca.org.uk/publications/policy-statements/ps18-04-credit-card-market-study>; see, e.g., <https://www.ukfinance.org.uk/our-expertise/cards/financial-conduct-authority-fca-rules-persistent-credit-card-debt-36-months-actions-frequently>. The CFPB relies on a 12-month study period, rather than the UK’s 18-month study period, for its analysis of “persistent debt” in the CARD Act Report.

<sup>9</sup> <https://consumerbankers.com/press-release/facts-matter-card-act-report-highlights-banks-positive-impact-on-consumers-financial-resilience/> Overall rates of “persistent debt” remain lower than every pre-pandemic year.



additional consumers into “persistent debt.” The CFPB’s late fees rulemaking is specifically designed to reduce the short-term financial consequences of missing credit card payments (i.e., lowering the late fee from \$30 to \$8). Indeed, the CFPB may be saving a consumer \$22 in the short term. But by reducing the deterrent impact of the late fees, the CFPB also exposes consumers to increased risks that they will incur costs that may be less salient, because they occur over time, but are ultimately significantly more damaging than a \$30 late fee.

By paying late:

- The consumer will carry a higher balance on their credit card the next month;
  - The higher balance will cause the consumer to pay higher interest that month;
  - The next month, a smaller proportion of the consumer’s payment will be applied to their principal, as opposed to interest (which may then, in turn, cause the consumer to incur additional interest in subsequent months and so forth);
  - Consumers who pay late may be required to pay higher “penalty” interest rates on their balances; and
  - Perhaps most importantly, the consumer’s credit score may fall, making it more difficult and expensive for the consumer to obtain other types of credit for years to come (e.g., credit cards, auto loans, and mortgage loans).

**While the consumer may save a little money in the short term, these long-term costs will be so much greater. The CFPB does not even attempt to consider these long-term consumer harms in its proposed or final rule, despite them being raised directly by industry during the notice and comment process.<sup>10</sup>**

*The CFPB’s late fees rulemaking runs contrary to core principles of risk-based pricing*

The CFPB’s rule departs from traditional risk-based pricing practices required by prudential regulators, resulting in higher cost of credit and reduced credit access for consumers who pay their bills on time. Beyond the important deterrent effect, another core purpose of credit card late fees is for card issuers to appropriately price loans commensurate with the risk associated with the borrower. Banks are required by their prudential regulators to manage and offset credit risk. By severely limiting the ability of credit card issuers to discourage late payments and limit losses, the CFPB’s late fees rule will reduce access to credit for consumers with subprime credit profiles and force issuers to raise prices across the board. The CFPB’s proposed rule estimates that the CFPB’s rule could cause credit card APRs to rise as much as 2 percent.<sup>11</sup>

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 percent of subprime issuers pay their bills on time.<sup>12</sup> The Bureau claims that this rule could help some credit card customers, in particular those who frequently pay late, but 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— will not benefit from the reduced fees and could

<sup>10</sup> [https://consumerbankers.com/wp-content/uploads/2024/03/CBA20Comment20on20Docket20No20CFPB-2023-001020RIN203170-AB15\\_0.pdf#page=4](https://consumerbankers.com/wp-content/uploads/2024/03/CBA20Comment20on20Docket20No20CFPB-2023-001020RIN203170-AB15_0.pdf#page=4)

<sup>11</sup> [https://files.consumerfinance.gov/documents/cfpb\\_credit-card-penalty-fees-nprm\\_2023-02.pdf#page=113](https://files.consumerfinance.gov/documents/cfpb_credit-card-penalty-fees-nprm_2023-02.pdf#page=113)

<sup>12</sup> <https://consumerbankers.com/press-release/facts-matter-cba-uses-cfpb-data-to-set-record-straight-on-card-act-report/>



experience “...higher maintenance fees, lower rewards, or higher interest on interest-paying accounts,” and increased costs could completely negate any benefits.<sup>13</sup>

CBA urges Congress to pass the Congressional Review Act resolutions led by Sen. Tim Scott (S.J.Res. 70) and Rep. Andy Barr (H.J.Res. 122) to reject the CFPB’s credit card late fees final rule.

### Overdraft

Overdraft fees are not hidden or surprise fees. The Electronic Fund Transfer Act provides consumers with a choice, when a depository account is opened, to opt into their bank’s overdraft program and be charged a fee for overdrafts for debit card transactions at ATMs or points of sale at merchants.<sup>14</sup> Overdraft fees are also disclosed by banks when an account is opened as required by law.<sup>15</sup> If an overdraft fee is assessed, a bank is required to clearly disclose the fee on the customer’s monthly statement along with notices of their ability to opt out of the service. Additionally, many banks have gone above and beyond what is required by law and have adopted a simple, easy to read and comprehend disclosure that informs consumers of all fees associated with any checking account, how those fees are assessed, and how they can be avoided.<sup>16</sup>

Consumers who utilize overdraft do so by choice in order to ensure they can access the liquidity needed to cover essential expenses. Recent survey data reaffirms how critical it is for consumers to be able to access overdraft services. Consumers who overdraft report that they primarily use the service for essential expenses, with the top purchases being food, utilities, auto loan payments and other transportation costs, credit card bills, mortgage, rent, and medical expenses. Importantly, many of these expenses would incur their own late fee or other penalty if they are not paid on time. As a result, only six to ten percent of consumers who overdrafted would be willing to forgo the transaction instead of using overdraft. Additionally, two-thirds of consumers who overdraft frequently said they lacked alternative sources of credit.<sup>17</sup>

On January 17, 2024, the CFPB proposed an overdraft rule that would fundamentally restructure and restrict consumer overdraft services offered by banks that exceed \$10 billion of assets. Stated more directly, the proposed rule creates a banking product that operates under a separate and more restrictive regulatory framework for institutions above \$10 billion in assets, reducing access to customers at these banks. The proposal would deem overdrafts to be extensions of credit subject to Regulation Z, including the rules applicable to credit cards, unless the bank restricts its overdraft fees to proposed benchmark thresholds (\$3, \$6, \$7, \$14) or calculates its “breakeven” costs.<sup>18</sup>

For more than a decade, and particularly over the last several years, banks— particularly the largest banks— have innovated and competed to create a range of highly tailored, consumer-friendly products that aim to support each bank’s consumers best. The CFPB’s market analysis produces

<sup>13</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_credit-card-penalty-fees\\_final-rule\\_2024-01.pdf#page=227](https://files.consumerfinance.gov/f/documents/cfpb_credit-card-penalty-fees_final-rule_2024-01.pdf#page=227)

<sup>14</sup> <https://www.fdic.gov/resources/consumers/consumer-news/2021-12.html>

<sup>15</sup> <https://www.federalreserve.gov/boarddocs/caletters/2009/0914/09-14-attachment.pdf>

<sup>16</sup> [https://www.pewtrusts.org/-/media/assets/2014/08/pews\\_updated-model\\_disclosure\\_box.pdf](https://www.pewtrusts.org/-/media/assets/2014/08/pews_updated-model_disclosure_box.pdf)

<sup>17</sup> <https://consumerbankers.com/press-release/cba-releases-national-empirical-survey-results-showing-consumer-value-and-need-for-bank-overdraft-products/>

<sup>18</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-close-bank-overdraft-loop-hole-that-costs-americans-billions-each-year-in-junk-fees/>



tables comparing overdraft services offered by the top 20 banks, with nine different dimensions of product options for consumers ranging from no overdraft fees for any transactions, to daily limits on the number of overdraft transactions, to extended grace periods, to cushions before overdraft fees are charged— up to \$50.<sup>19</sup> Further, banks have innovated and may compete by offering additional features not captured by the CFPB’s reports, such as: real-time payment updates; payment control, so that consumers can choose to pay or return certain individual checks and payments when their balances are negative; and low balance alerts.<sup>20</sup> Alarming, the CFPB’s proposed rule ignores these trends and cites data that is more than a decade old in its evaluation of the overdraft market.<sup>21</sup> The CFPB’s reliance on this decade-old data means that its proposed rule fails to account for major shifts in market practices and innovations and relies on inaccurate data to justify its rulemaking.<sup>22</sup>

Overdraft fees are projected to have declined by 82 percent since 2008, or \$167 of annual savings per U.S. adult.<sup>23</sup> While these innovations have been taking place for more than a decade, the CFPB’s own data shows that **there has been a \$5 billion reduction of overdraft fees from 2019 to 2022 because of these bank-led— not government-led— innovations**; a nearly 50 percent drop since before the pandemic. 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.

Yet, as part of the administration’s push for policy messaging regarding so-called “junk fees,” the CFPB has proposed a rule to fundamentally change overdraft. Unfortunately, the CFPB’s proposed rule has not taken any of these changes into account, and instead uses outdated and incomplete data and does not account for the true impact to consumers— many of whom could lose access to these important products should the rule be finalized as is.<sup>24</sup> The Bureau’s overdraft proposal has the potential to undo the years of progress banks have made by instead forcing all banks to offer their overdraft products at certain government-imposed prices. As a result, this proposal’s one-size-fits-all approach would hinder innovation, limit competition, and hamper banks’ ability to provide this essential product to the millions of consumers who rely on it.

Before the CFPB takes further action, we urge the Bureau to withdraw the proposal and to collect the relevant data to assess consumer impact and conduct a comprehensive study of consumers’

<sup>19</sup> [https://files.consumerfinance.gov/f/documents/cfpb\\_overdraft-table\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_overdraft-table_2023-05.pdf)

<sup>20</sup> <https://www.consumerfinance.gov/about-us/blog/banks-overdraft-nsf-fee-revenues-evolve-along-with-their-policies>

<sup>21</sup> [https://files.consumerfinance.gov/f/documents/201708\\_cfpb\\_data-point\\_frequent-overdrafters.pdf](https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf)

<sup>22</sup> For example, when the proposed rule states that a majority of overdraft fees are paid by frequent overdraft users (ten or more overdrafts a year), who constitute approximately nine percent of all checking accounts, it importantly does not reflect the current state of the market. It fails to account for the significant consumer-friendly innovations introduced into the market by the largest institutions or how those changes have improved consumers’ financial health. More recent [surveys](#) of consumers from the Financial Health Network estimate that frequent overdrafters comprise nine percent of all overdrafters (as opposed to overall checking accounts, per the Proposal).<sup>22</sup> CBA’s survey found that only three percent of respondents who reported overdrafting in the last 12 months did so ten or more times (or less than two percent of all consumers in the study).

<sup>23</sup> <https://eurinos.com/our-insights/update-competition-drives-overdraft-disruption>

<sup>24</sup> The Proposal cites a [2017 CFPB report](#) analyzing data that is more than a decade old and importantly does not reflect the current state of the market, including the *significant* consumer-friendly innovations introduced into the market by the largest institutions, or consumer financial health. For instance, more recent analyses from third parties, including CBA and the Financial Health Network, have both found varying levels of overdraft use since the CFPB’s analysis in 2017. Additionally, the CFPB’s more recent data on overdraft use from its [Making Ends Meet survey](#) does not reflect the use of overdraft by consumers without credit as it pulls from a sample of the CFPB’s Credit Card Panel which only includes consumers with a credit record.



preferences regarding overdraft services. In particular, CBA recommends that the CFPB collect, analyze, and update data on the use of overdraft services, with particular attention paid to frequent users of overdraft services and those who struggle to access other alternative forms of credit such as credit cards.

#### Fair Credit Reporting Act

On September 21, 2023, the CFPB released its outline of proposals for a FCRA rulemaking in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).<sup>25</sup> These proposals mark the first proposed discretionary amendments to Regulation V, which implements the FCRA, since the Dodd-Frank Act transferred this authority to the CFPB in 2010. CBA submitted a comment letter regarding our concerns with the SBREFA outline to the CFPB on November 6, 2023.<sup>26</sup> A proposed rule is expected to be issued in the coming weeks.

As part of the forthcoming rule related to the FCRA and Regulation V, the Bureau intends to (1) prohibit firms that monetize certain data from selling it for purposes other than those authorized under the FCRA, (2) broaden the scope of a consumer reporting agency to include a data broker or other company in the surveillance industry, and (3) clarify the extent to which “credit header data” constitutes a consumer report and prevent the sale of this type of data for a reason other than a “permissible purpose.”

CBA shares the CFPB’s goal of protecting consumer privacy, and we understand the CFPB is concerned about the ways in which consumers’ data is used outside of the banking context. However, several of the proposals under consideration may have unintended consequences, particularly for banks and their customers.

CBA’s primary concern with the CFPB’s plans for the FCRA is that such dramatic changes to the FCRA’s implementing regulations will complicate the use of credit header data. Based on the SBREFA outline, we believe the CFPB’s forthcoming proposal could subject identity verification and fraud detection processes—and the data used therein, credit header data—to the regulatory framework of the FCRA. Subjecting these routine and statutorily required consumer identity verification practices to the FCRA would increase banks’ compliance obligations, introduce consumer confusion, and add additional friction to the account opening process. Limiting the use of credit header data would significantly derail critically important and consumer-protective bank activities, such as identity verification and fraud prevention services, which require banks to use credit header data. Such a move, in our view, would not only create conflicts with existing financial regulatory obligations beyond the scope of the FCRA, but also expose consumers to greater risks of identity theft. As such, we strongly urge the CFPB to exempt fraud detection and identity verification processes, along with their associated data inputs, including credit header data, from the forthcoming rulemaking pertaining to data brokers and FCRA.

The CFPB’s plans to broaden the coverage of the FCRA to data brokers and companies strain the statutory text of the FCRA. By equating “credit report” with “data that could be included in a credit

<sup>25</sup> <https://www.consumerfinance.gov/rules-policy/small-business-review-panels/small-business-review-panel-for-consumer-reporting-rulemaking/>

<sup>26</sup> <https://www.consumerbankers.com/cba-issues/comment-letters/joint-trades-comment-cfpb-fera-sbrefa-outline>



report,” the CFPB broadly expands its regulatory, supervisory, and enforcement authorities, arguably entering into entirely new areas of policymaking. Congress has not sufficiently expressed and should undergo a more in-depth hearing process to determine if the CFPB’s authority to create policy around areas of such vast economic and political significance.

#### Dodd-Frank Section 1033 Implementation

This fall, we expect the CFPB to finalize its notice of proposed rulemaking (“NPRM”) to implement Section 1033 of the Dodd-Frank Act, which addresses consumers’ personal financial data rights. CBA and our members support consumer access to their financial data. Many of our members have invested heavily in developing open application programming interfaces (APIs) for their systems, enabling outside parties to build consumer products that draw from their consumers’ financial data. But these shifts are complex. The technology investments and compliance costs are expensive and often are underestimated. For example, the CFPB’s proposed rule estimated that bank industry APIs receive as many as 100 billion requests per year, “figures that vastly exceed the comparable public figures from some other jurisdictions’ open banking systems, even on a per-capita basis.”<sup>27</sup> The risks to bank safety and soundness are serious. And most importantly, the focus should be solely on the consumer’s access to their data, as outlined in statute, as opposed the creation and support of a broad “developer” economy.

Notwithstanding our members’ broader support of a market-driven approach to more open banking, the Bureau’s approach to the rulemaking raises serious questions about the Bureau exceeding its authority. The plain statutory language is fundamentally centered on a consumer’s right to access and use their own information; in fact, the title of Section 1033 is “[c]onsumer rights to access information.”<sup>28</sup> Under Section 1033, covered persons are required to “make [data] available *to a consumer*” . . . “in an electronic form usable *by consumers*.”<sup>29</sup> Yet, the CFPB has written a rulemaking focused solely around “developer interfaces” that are fully distinct from separately defined “consumer interfaces.”

At best, Section 1033 envisions a technological predecessor to the shift to open APIs we see today: allowing consumers to download digital copies of their financial records. Yet, the CFPB has read that slim statutory language as authority to overhaul and change the very structure of the consumer financial marketplace, by modeling many of these changes on jurisdictions with a far less competitive financial services market than exists in the United States. The statute also makes no reference to a prohibition on recovering costs for building out and maintaining these vast technological changes, standard setting organizations, application programming interfaces, or other dramatic market changes introduced by the NPRM. Notwithstanding its willingness to overreach in breadth and specificity in these areas, the CFPB has simultaneously left enormous open questions about how this new world would operate— particularly what the CFPB’s own responsibilities would be. If Congress wanted to enable changes of such vast economic and political significance, it surely would have stated that expressly.

<sup>27</sup> [https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice\\_2023-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice_2023-10.pdf).

<sup>28</sup> 12 U.S.C. § 5533

<sup>29</sup> 12 U.S.C. § 5533(a)



As with the CFPB's misrepresentations justifying its credit card late fee rulemaking, the CFPB justifies its Dodd Frank Act Section 1033 by misrepresenting the state of competition— but this time for the broader marketplace of financial products and services. In the Section 1033 rulemaking context, the proposed rule itself asserts that “commercial actors are able to use their market power and incumbency to privilege their concerns and interests above fair competition that could benefit consumers.”<sup>30</sup> Over objections from market participants like CBA, the only creditors that would be subject to the proposed rule's data sharing and competitor subsidization framework would be depository institutions and credit card issuers. The CFPB's own CARD Act Report shows that the credit card marketplace is highly competitive.

The CFPB's Section 1033 proposal requires a number of changes before finalization to ensure that the CFPB and other parties take appropriate responsibility and meaningfully protect consumers. Beyond concerns regarding the CFPB's statutory authority, a number of specific provisions in the NPRM need to be revised to ensure a durable, efficient, and practicable final rule. Specific revisions include: (1) providing liability protections for financial institutions, (2) permitting the recoupment of costs for development and maintenance of developer interfaces, (3) broadening the coverage of data providers, and (4) meaningfully sunseting the practice of screen scraping.<sup>31</sup>

#### 1034(c) Advisory Opinion

On October 11, 2023, the Bureau issued an Advisory Opinion on Section 1034(c) of the Dodd-Frank Act that creates new regulatory requirements and entirely new categories of enforcement liability.<sup>32</sup>

To the extent that the CFPB has authority to introduce any such new regulatory expectations, the Bureau should have done so via a formal rulemaking under APA processes. The Advisory Opinion contains specific new obligations and establishes new legal penalties, thereby introducing new regulatory expectations more than a decade after the statute was enacted. In contrast, an Advisory Opinion would only have been appropriate if the CFPB was simply articulating its interpretation of already-existing statutory or regulatory requirements. By outlining these requirements through an Advisory Opinion rather than a rulemaking, the CFPB failed to consider input from impacted parties as to the possible effects of the substantive new requirements presented by the Advisory Opinion. This means that the Bureau has bypassed its obligations to perform a meaningful cost-benefit analysis of the impact these new requirements would have on industry and consumers.

To be clear, the Advisory Opinion creates large, amorphous costs for financial institutions. In the Advisory Opinion, the Bureau grants itself authority to regulate and restrict fees that simply does not exist in the statute.

First, the Bureau creates a new requirement and regulatory obligation that does not exist in the statutory text: that a financial institution may not impose conditions for consumers' information

<sup>30</sup> [https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice\\_2023-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb-1033-nprm-fr-notice_2023-10.pdf)

<sup>31</sup> These, and a more fulsome list of concerns, are outlined in detail in CBA's 1033 comment letter on the NPRM. <https://www.consumerbankers.com/cba-issues/comment-letters/cba-comment-letter-cfpb-notice-proposed-rulemaking-personal-financial>

<sup>32</sup> [https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023\\_10.pdf](https://files.consumerfinance.gov/f/documents/cfpb-1034c-advisory-opinion-2023_10.pdf)



requests that may “unreasonably impede” the customer’s ability to request and obtain account information.

Second, the Bureau further scaffolds on this framework by reasoning that fees or other charges to request information would “unreasonably impede consumers’ information requests.” This would presumably even prohibit the recovery of reasonable and proportionate costs. The Bureau’s reasoning on “unreasonable impediments” similarly has no natural limit. Nothing prevents the Bureau from applying this reasoning in every other context under its presumptive authority. Cost recovery may be particularly important because the Advisory Opinion provides remarkably little specification about its scope or broader compliance expectations. The CFPB sets no upper bound, tiering, or qualitative constraints on the types of information requests that covered persons must presumably fulfill at no cost.<sup>33</sup>

Third, the Bureau provided less than four months for banks to comply with these significant new requirements and resisted industry requests to meet to discuss them. The Bureau was even asked a set of technical questions about the Advisory Opinion by stakeholders and would not respond to them. The CFPB must withdraw its Advisory Opinion and instead promulgate these requirements through a formal rulemaking process.

#### Structural CFPB Reforms

CBA appreciates the House Financial Services Committee taking action on meaningful reforms to the CFPB. In April 2023, the committee passed H.R. 2798, the *CFPB Transparency and Accountability Reform Act*, which includes four bills that CBA supports: (1) changing the Bureau’s leadership structure from a single Director to a bipartisan commission, (2) placing the Bureau under the annual Congressional appropriations process, (3) requiring robust cost-benefit analysis with rulemakings, and (4) establishing an independent CFPB Inspector General. In May 2024, the committee passed H.R. 8338, the *Clarity in Lending Act*, which includes three bills that CBA supports: (1) fostering a robust small dollar consumer lending marketplace, (2) reforming the Bureau’s unfair, deceptive, and abusive acts and practices (UDAAP) authority, and (3) obtaining stakeholder input on the Section 1071 balancing test.

These reforms will bring greater accountability and transparency to the Bureau and will ensure proper checks and balances are applied to a regulator with such a broad scope and influence over the financial services marketplace. CBA urges Congress to enact these bills without delay.

#### Conclusion

The political shifts at the CFPB have been significant from administration to administration, and Bureau policy inevitably reflects these differences in political philosophies. However, the Bureau’s

<sup>33</sup> The Advisory Opinion has generated significant uncertainty for industry in evaluating compliance. For instance, the CFPB creates a “timely manner” requirement— but it’s not clear whether and how that requirement contradicts “timely manner” requirements that financial institutions must comply with currently under state law. The Advisory Opinion creates “completeness” requirements that may or may not contradict other regulatory record retention requirements, for example under Regulations E and Z. Particularly given rampant levels of digital identity theft and fraud, it’s not clear the extent to which financial institutions may require identity verification and other information for security protections, in light of the Advisory Opinion’s broad expectations.



recent actions have raised important questions about whether it is prioritizing politics over people. Banking agencies must stop writing regulations for short-term political wins and renew their commitment to principled policies that are truly for the people. We call on Congress to recognize the benefits of credit cards, overdraft services, and other services provided by highly regulated retail banks and reject the administration's misleading "junk fees" narrative. Further, CBA stands ready to work with Congress and the CFPB to implement legislative and regulatory improvements to the Bureau, and we appreciate the opportunity to submit this statement for the record.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Johnson", written in a cursive style.

Lindsey D. Johnson  
President and CEO  
Consumer Bankers Association