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ALLEGATIONS OF DISCRIMINATION AND RETALIATION WITHIN THE CONSUMER FINANCIAL PROTECTION BUREAU, PART TWO

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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CONTENTS

	Page
Hearing held on:	
May 21, 2014	1
Appendix:	
May 21, 2014	53

WITNESSES

WEDNESDAY, MAY 21, 2014

Konop, Benjamin, Executive Vice President, the National Treasury Employees Union (NTEU), Chapter 335	9
Strong, Liza A., Lead of Labor and Employee Relations, the Consumer Financial Protection Bureau (CFPB)	6

APPENDIX

Prepared statements:	
Konop, Benjamin	54
Strong, Liza A.	57

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Green, Hon. Al:	
The CFPB's Fiscal Year 2013 Performance Management Analysis: Snapshot of Findings, dated May 2014	61

ALLEGATIONS OF DISCRIMINATION AND RETALIATION WITHIN THE CONSUMER FINANCIAL PROTECTION BUREAU, PART TWO

Wednesday, May 21, 2014

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room 2128, Rayburn House Office Building, Hon. Patrick T. McHenry [chairman of the subcommittee] presiding.

Members present: Representatives McHenry, Fitzpatrick, Duffy, Fincher, Hultgren, Wagner, Barr, Rothfus; Green, Cleaver, Ellison, Maloney, Beatty, Heck, Kildee, and Horsford.

Ex officio present: Representatives Hensarling and Waters.

Chairman MCHENRY. The Subcommittee on Oversight and Investigations will come to order. Witnesses will take their seats. The title of today's subcommittee hearing is, "Allegations of Discrimination and Retaliation Within the Consumer Financial Protection Bureau, Part Two."

The Chair will now recognize himself for 5 minutes for an opening statement. On March 6th of this year, the American Banker published an article titled, "CFPB Staff Evaluations Show Sharp Racial Disparities." The article exposed serious personnel problems at the Consumer Financial Protection Bureau, including evidence that, "the CFPB's own managers have shown distinctly different patterns in how they rate employees of different races."

It is now apparent that the CFPB was aware of the racial disparities in key metrics well before the March 6th American Banker article. A study on diversity and inclusion commissioned by the Bureau and conducted by Deloitte Consulting was provided to the Bureau in September of 2013. That study noted sharp racial disparities in performance ratings, pay, hiring, and other areas.

In addition to racial disparities in the CFPB's performance reviews, the American Banker also reported that, "the management has been accused in several cases of favoring Caucasian men and of creating a hostile work environment."

The article noted that the CFPB's employees had filed 115 official grievances with the National Treasury Employees Union, their union at the CFPB, and over 85 informal complaints, most of which pertain to allegations of unequal pay and raise questions about the recent performance reviews. These findings are particularly trou-

bling as the Bureau, in its role as policeman of the consumer credit markets, has embraced a disparate impact theory, under which lenders can be held liable if their practices have a disparate impact on members of protected classes, even in the absence of direct evidence of racial discrimination.

If the CFPB were a private company, the mere existence of disparities in key metrics relating to its treatment of employees would be ample grounds for enhanced supervision and costly enforcement actions. Now, at the Bureau, we have both examples of disparate impact and actual real cases of discrimination and retaliation.

On April 2nd of this year, the subcommittee held a hearing which addressed these allegations of discrimination and retaliation at the Bureau and featured the testimony of Ms. Angela Martin, a current CFPB employee and whistleblower, and Misty Raucci, an investigator hired by the Bureau to examine Ms. Martin's claims of retaliation.

Also invited to the hearing that day were three individuals with key roles in the union grievance and workplace complaint process. Unfortunately, the Bureau and the union refused to make these witnesses available. Only under force of subpoena are two of the three witnesses here today. I would note for the witnesses, it was a bipartisan, unanimous vote of this subcommittee to issue these subpoenas.

Liza Strong serves in the Bureau as a lead employee relations manager. All formal and informal workplace complaints are processed through Ms. Strong's office. In addition, Ms. Strong negotiates on behalf of the Bureau with the union on changes to workplace conditions as part of the collective bargaining process.

Ben Konop serves as the executive vice president of the union and is the highest ranking union official who actually works within the Bureau headquarters here in Washington. Mr. Konop has represented the union in negotiations with Ms. Strong on workplace conditions as well as disputes regarding the Bureau's troubled performance management review systems.

The fact is that discrimination on the basis of race, sex or other prohibitive factors is destructive, morally repugnant, and against the law. All government agencies, including the Consumer Financial Protection Bureau, must continue to combat discrimination in employment and punish those responsible for discrimination. And yet, during my time in Congress, I have never witnessed this much of an outpouring from any one agency or actually any agency added up across the government in terms of the number of employee complaints we have seen and calls that we have had to talk about these conditions.

Nevertheless, I join my colleagues in announcing to all employees of agencies under the jurisdiction of this committee who are experiencing discrimination or fear of retaliation at the hands of their supervisors to reach out to this committee. It should be recognized that in the past few days, the Bureau has announced changes to their employee performance system that revealed "broad-based" statistical disparities in the employment ratings system.

In fact, Director Cordray reached out to me personally, and called to inform me of the changes and acknowledged the role that the public attention and congressional oversight played in the Bu-

reau's decision to make adjustments to the performance management system, however inadequate they are.

While the CFPB's funding and structure afford Congress an extremely limited ability to influence the Bureau's operations and policies, the allegations of discrimination and retaliation at the Bureau further underscore the significant need for real congressional oversight of this Bureau. It is my hope that through today's testimony, we will gain a better understanding of the issues of discrimination laid out in the American Banker article and the Deloitte report as well as the day-to-day handling of employee grievance and complaints.

And with that, I will now yield 6 minutes to the ranking member of the full Financial Services Committee, Ms. Waters.

The ranking member has just informed me they would like additional time, so I yield 5 minutes to the ranking member of the full committee.

Ms. WATERS. Thank you very much, Mr. Chairman.

Today, we will hear the testimony of two subpoenaed witnesses regarding allegations of discrimination and retaliation at the Consumer Financial Protection Bureau.

Mr. Chairman, I again want to thank you for your interest in addressing discrimination issues at the CFPB. And I want to reiterate my sincere hope that you will commit to addressing similar issues that may be occurring in the private sector and at all Federal financial regulators with the same due diligence as you have at the CFPB.

As you know, subcommittee Democrats have called on the Inspectors General at all of the financial regulators under our committee's jurisdiction to assess whether any personnel practices and policies within these agencies have created an unfair or discriminatory workplace for minorities and women. Since our last hearing, my staff has had productive conversations with staff from the offices of the Inspectors General discussing the scope of this review and the use of uniform criteria to ensure their investigations are conducted in a thorough, meaningful, and consistent manner.

Mr. Chairman, once they have been completed, I certainly hope you will join us in using the full weight of this committee to take a close look at the findings of, and any recommendations from, the Inspectors General.

However, I remain disappointed that pay disparities among a wide range of classifications occurred at the Bureau as was outlined in a report that the CFPB released on Monday.

It is good that the CFPB is taking steps to try to achieve a fair, inclusive workplace, by among other things, ensuring a more direct, ongoing interaction between the CFPB's Office of Minority and Women Inclusion (OMWI) and the Director's office. I am so pleased that CFPB is engaging in negotiations with the National Treasury Employees Union to develop a new employee evaluation system that will address these pay disparities and compensate employees.

I am hoping that today's witnesses will shed additional light on the inner operations of the CFPB, but as I and Ranking Member Green wrote to you over a month and a half ago, I remain interested in hearing from the Bureau's top leadership. The CFPB has

offered both Director Richard Cordray and the head of its OMWI, Stuart Ishimaru, to testify before the committee, as has the national president of the NTEU.

To date, they have not been invited to discuss this issue before the committee. Despite the fact that the Bureau's senior leadership is not here with us today, I hope that in today's hearing we can still learn more about what steps the Bureau is taking to identify the root causes of the pay disparities as well as additional details about the Bureau's plans to evaluate and adopt new policies and procedures to ensure these types of problems do not happen again.

Mr. Chairman and Members, I had an opportunity to talk with Mr. Cordray to better understand what steps he has taken, and we are going to hear more about that today. But I must share with you that, based on what I have learned, I am impressed that Mr. Cordray has taken this problem head on, that he has identified where the weaknesses are and he has moved in a very direct and concrete way to do something about it.

So in addition to having learned more about whether disparities were taking place or had occurred at the CFPB, the way that he has addressed it and the remedies that he has put in place already are extremely impressive. And I am impressed with the way that, despite the fact that he is such a good public policymaker and a great Director who has moved the CFPB forward, that he took on this issue, stopped everything that he was doing, and took on this issue. And I joked with him a bit and told him he became his own human resources manager, and he has done a fantastic job.

And I would just like to put that up front because I have had the opportunity to review what he has done. And so, Mr. Chairman, as we look at all of these other agencies, where we now have people who are coming forward telling us stories about discrimination, that you will tackle this in the same way and hopefully we can get these kind of results from all of the other agencies where many of these discrepancies and discrimination have been going on for years.

I am so pleased about the direction that you are taking and the progress I already see, and I yield back the balance of my time.

Chairman MCHENRY. I will now recognize the ranking member of the subcommittee, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

I thank you for your comments about your desire to deal with discrimination in all agencies.

I would also like to thank the ranking member of the full committee. I would like to associate myself with your comments, Madam Ranking Member, and I would also like to thank you for the leadership that you have shown in insisting that we have the IGs look into these matters. I think it is exceedingly important that they do so, and I welcome the results of their investigations.

I would also like to thank the witnesses for being here today. I read your statements, and I assure you that I want to get to the bottom of what is going on. I think it is exceedingly important that we not only deal with accusations but that we also get the solutions.

We have to get to the bottom of this. I want you to understand that I view this the way I view a police department that is being

investigated. At the end of the day, with the police department, if there are bad actors, if there are bad circumstances, they are dealt with. But you don't eliminate a police department. The police department still functions. You still have your police department. The CFPB is our police department. It is the cop on the beat.

At the end of the day, after all is said and done, after Mr. Cordray has had his opportunity to appear, we still will have a CFPB. And I want to make it very clear to all of my colleagues that attempts, if they should manifest themselves, to let this metamorphose into, "let's do away with the CFPB" will be resisted, they will be fought, and they are going to be dealt with, because America deserves a Consumer Financial Protection Bureau. We must fight to keep it. We must also fight discrimination wherever it exists.

And this is a great opportunity for us to set the paradigm, to make it very clear that on this side we, too, are going to fight to make sure that we get rid of discrimination. The ranking member and I are committed to it. She has a history of fighting invidious discrimination. And I am going to support and work with her every inch of the way as well as with all of my other colleagues.

There are times when it is important to be on the right side of politics, and there are times when it is important to be on the right side of history. But this is one of those times when it is important to be on the right side of right. We want to be on the right side of what should be happening, of what should take place, of remedies that ought to be proposed.

This is our opportunity to make sure that we treat this agency and all agencies the same way. So when we move on, Mr. Chairman, and we find that there are some complaints at some other agency, we will have the same desire to investigate that we have with the CFPB.

I supported the subpoenas, and I want you to know that I am ready to do whatever is necessary to make sure that we get to the bottom of it, not just to the top but to the bottom. And I want you to know that if you think we need more subpoenas, you and I need to discuss this first, if you would be so kind as to discuss it. But let's talk about it. Let's see where we need to go.

I will quote a great and noble American, one known to some of you, Marvin Gaye. Some of you are smiling. You know who Marvin Gaye is. I want to quote Marvin Gaye. His words were, "Let's get it on." So Mr. Chairman, let's get it on. Let's get to the bottom of it, and let's not let this be the last time that this committee embraces the notion that we are going to deal with invidious discrimination, whether it is in the CFPB or the FDIC, we should treat it all the same as we move forward from this point.

I thank you for appearing today, witnesses, and I look forward to your testimony.

Chairman MCHENRY. I trust that the ranking member's context for that song is significantly different this morning than this hearing.

Mr. GREEN. It absolutely is, Mr. Chairman.

Chairman MCHENRY. I appreciate it.

Mr. GREEN. I thank you for inviting me to respond, and I will let you know that it clearly is different in that this is all about people in a different kind of way.

Chairman MCHENRY. With that, we will now recognize the witnesses for their opening statement. Ms. Liza Strong has been the Lead of Labor and Employee Relations at the CFPB since July 2011. Previously, she held human resources positions at the Office of Thrift Supervision and the Federal Aviation Administration. Ms. Strong is a graduate of Oklahoma City University School of Law and the University of Texas at El Paso.

Mr. Ben Konop is an enforcement attorney within the CFPB's Office of Supervision Enforcement and Fair Lending. He is also the Executive Vice President of the National Treasury Employees Union chapter that represents the CFPB employees. Before joining the CFPB, Mr. Konop taught law and was an associate attorney at a large law firm. He served as a county commissioner in Lucas County, Ohio. Mr. Konop is a graduate of the University of Michigan Law School and Emery University.

Finally, Ms. Stacey Bach, the Assistant Director of the Office of Equal Employment Opportunity at the CFPB, was subpoenaed by the subcommittee to appear at this hearing. However, through her legal counsel, Ms. Bach requested that her testimony be postponed due to a medical condition. Accordingly, Ms. Bach's testimony has been postponed.

The witnesses will now be recognized for 5 minutes for their oral presentation of their written testimony. You will see the lights in front of you: green means go; yellow means hurry up; and red means stop. Once you are finished with your presentation, Members will then have 5 minutes to ask questions.

And without objection, the witnesses' written statements will be made a part of the record.

The final note is that these microphones are directionally sensitive and, let's just say, less than good. So if you will bring them close to you, that will be very helpful. And with that, we will now recognize Ms. Strong.

STATEMENT OF LIZA A. STRONG, LEAD OF LABOR AND EMPLOYEE RELATIONS, THE CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Ms. STRONG. Thank you. Good morning, Chairman McHenry, Ranking Member Green, and members of the subcommittee. My name is Liza Strong, and I am the Lead of Labor and Employee Relations at the Consumer Financial Protection Bureau. I have held that position since July of 2011.

Prior to joining the Bureau, I worked in the Office of Thrift Supervision and, prior to that, at the Federal Aviation Administration. I have significant experience in Federal Government personnel matters. I am appearing today to make this brief statement and to answer your questions pursuant to the subcommittee's subpoena dated May 8, 2014.

It has been and continues to be my pleasure to work as a public servant. In particular, I am proud of the work that the Bureau is doing to protect American consumers. I believe the Bureau's mission to make markets for consumer financial products and services functional and safe is very important. That is why I am deeply troubled by allegations about discrimination at the Bureau.

On March 6, 2014, the American Banker published an article alleging racial disparities in the Bureau's performance evaluations. Additionally, on April 2nd, this subcommittee heard testimony from Ms. Angela Martin, a Bureau employee, and Ms. Misty Raucci, a contractor, alleging discrimination. Those allegations are not consistent with what I have observed during my time at the Bureau.

The performance review information reported by the American Banker was compiled by the Bureau at the request of the National Treasury Employees Union, the union that represents the Bureau employees. It is part of my job to facilitate responses to NTEU's request for information, which I did in this case.

It is not part of my job to actually collect the information or evaluate or assess the data requested. Instead, my office serves as a conduit for the request. Although I have not been involved in the Bureau's assessment of the data, I am aware that the Bureau was analyzing the performance review information for signs of disparate impact even before the American Banker published its story.

I do not have a role in addressing any performance review process issues that may have occurred in the past. My role in revising the performance review process is limited to helping negotiate the Bureau's collective bargaining agreement with the NTEU going forward. In that context, Director Richard Cordray asked me to facilitate an open dialogue with the NTEU about its vision for performance management, which I have done.

During recent contract negotiations, the NTEU presented its own plan for the performance review process, which the Bureau has now accepted. Our cooperative efforts with the NTEU will continue through our working group focused on ensuring that the performance review process at the Bureau is fair and effective.

In addition to working with the NTEU, I also manage investigations of individual employee grievances. Employee grievances are separate from EEO complaints, which are handled by a different office. My office is currently handling numerous employee grievances. The grievances involve a variety of issues with a relatively small number alleging any sort of discrimination. We take all grievances very seriously and fully investigate each one.

Angela Martin's grievance was no different. When Ms. Martin first alleged mistreatment by one of her peers, my office undertook a thorough investigation that included numerous interviews and the collection of signed statements. We did not find evidence to corroborate Ms. Martin's allegations, but still took a number of proactive steps to address Ms. Martin's concerns.

These included providing a coach for Ms. Martin's coworker, which he readily accepted, recommending roles and responsibilities be clarified, and encouraging Ms. Martin and her coworker to engage in mediation. While Ms. Martin's coworker was willing to engage in mediation, it is my understanding that Ms. Martin declined that opportunity.

Meanwhile, two of Ms. Martin's direct reports raised serious concerns about Ms. Martin's management style. They complained of abuse that justified their temporary reassignment to another supervisor. When Ms. Martin alleged retaliation by her manager, in

part because two of her reports were temporarily reassigned, we took that complaint equally seriously.

I engaged with what I thought at the time was a competent, independent third party to investigate Ms. Martin's retaliation claims, the Defense Investigators Group (DIG). What I received in return from DIG, and Ms. Raucci specifically, was an incomplete work product that did not meet the goals set forth in DIG's own statement of work.

Ms. Raucci's investigation did not meet even minimal standards. For example, she failed to obtain signed statements from the people she interviewed, did not provide Ms. Martin's supervisor a full opportunity to respond to the allegations made against him, and did not provide sufficient documentation to support her conclusions.

The president of DIG, Misty Raucci's supervisor, conceded that Ms. Raucci's work was unacceptable and in many ways did not address the allegations she was supposed to investigate. After giving Ms. Raucci a second chance to correct the issues, I received a second investigative report that was no better than the first one. Ms. Raucci and DIG failed to address any of the problems with the previous report.

The Bureau is working to fill in the gaps left by the DIG report. Throughout this time, the Bureau worked very hard to accommodate Ms. Martin's demands. In addition to paying Ms. Martin a monetary settlement on at least two occasions, the Bureau essentially created positions for her in two different divisions at the same pay and grade. We put significant effort into designing each position according to Ms. Martin's specifications. She declined one of them outright and is now dissatisfied with the other.

I feel that the Bureau went to great lengths to help Ms. Martin get to a place where she could be happy and productive. For nearly a year and a half, I kept an open-door policy with respect to Ms. Martin and always made myself available to assist her in any way I could. I have never witnessed management be anything but professional and accommodating to her.

I was surprised when during the April 2nd hearing, it was alleged that I attempted to influence DIG's conclusions. I have never done that. And in fact, this allegation does not make sense. Had I wanted to predetermine the outcome of the investigation, I would not have outsourced it. Although these allegations against me are not true, in order to maintain the integrity of the investigation into Ms. Martin's claims, I recused myself after the April 2 hearing and turned over my investigation file to a coworker. I am no longer involved, but it is my understanding that the investigation remains ongoing.

As a woman and as a minority, I am sensitive to issues that have been raised about discrimination at the Bureau, but I honestly believe that the Bureau cares about treating its employees fairly. I know I do. My team and I work very hard to give each grievance the attention it requires to achieve a good and just outcome for everyone involved.

I also know that the Bureau is taking these allegations very seriously. The Bureau is focused on correcting any problems that may have occurred in the past and is dedicated to preventing any discrimination, either intentional or unintentional, in the future.

In addition to the previous submission and supporting documentation I provided to the subcommittee, I look forward to the opportunity today to deliver a more complete picture of the issues. I am happy to answer any questions you may have. Thank you.

[The prepared statement of Ms. Strong can be found on page 57 of the appendix.]

Chairman MCHENRY. Mr. Konop, you are now recognized for 5 minutes.

STATEMENT OF BENJAMIN KONOP, EXECUTIVE VICE PRESIDENT, THE NATIONAL TREASURY EMPLOYEES UNION (NTEU), CHAPTER 335

Mr. KONOP. Thank you. First, I would like to thank the committee for taking the time to examine the important issues of race and gender discrimination, as well as other issues of equality, which are a problem not only at the CFPB but throughout our society. For the last 3 years at the CFPB, I have served as an enforcement attorney in the Office of Supervision, Enforcement, and Fair Lending. I am honored to enforce our Nation's laws with a group of talented, hardworking, and passionate colleagues who dedicate their professional lives to fighting for fairness in the financial marketplace.

In late 2012, I also helped organize a chapter of the National Treasury Employees Union at the CFPB. In May of 2013, workers voted overwhelmingly for the union, with 80 percent of those casting ballots voting in favor of organizing. Shortly after the election, I was asked by NTEU's national representative to serve as the interim Executive Vice President of the chapter and was eventually elected by our members to that position for a 2-year term.

As the Executive Vice President, I represented the chapter in negotiations for our 2013 pay and advocated for dozens of employees in grievances and EEO proceedings, and I currently serve on the bargaining committee charged with negotiating the first collective bargaining agreement in the Bureau's history.

During my time at the Bureau, I have witnessed great accomplishments by our unionized workforce. For example, members in Enforcement have led cases that resulted in $3.5 billion being returned to American consumers. Union members and supervision have traveled thousands of miles every week to ensure that banks and other financial institutions are following the law.

Members in Consumer Response have overcome significant obstacles to staff a robust complaint system that helps give the American consumer a fair shake. And union members in Fair Lending have made sure that financial institutions throughout our Nation are held accountable if they discriminate on impermissible factors like race and gender.

Unfortunately, I have also witnessed Bureau management struggle at times to live up to the mission, ideals, and achievements of the CFPB as a whole, notably in regards to performance management review (PMR). PMR ratings are vitally important for our workers, as they determine pay raises and bonuses and make up the permanent employee record that is relied upon by the Bureau to award promotions and other benefits. These ratings can also be

accessed by potential future employers when former Bureau members apply for a job outside the agency.

In August and early September of 2013, just weeks after the union was recognized, the chapter asked for and was given the 2012 PMR ratings distribution between labor and management. The 2012 data that we requested revealed managers were far more likely to receive the highest ratings and less likely to receive the lowest ratings than bargaining unit employees.

To me, this seemed like managers were, in essence, receiving coach-of-the-year awards while their employees had only a mediocre winning percentage. I, along with other members of the bargaining team, repeatedly raised these fairness concerns during September of 2013 and were assured by management that these inequities would be remedied. Sadly, this was not the case.

In November 2013, employees were given their new PMR rating for the proceeding year, after which our fledgling chapter was overwhelmed with members seeking to file grievances over their ratings. Several chapter stewards and board members observed that the bulk of potential grievances were being reported by minority and female employees.

In addition, it appeared that employees over 40 years of age were also adversely impacted by the rating system. In response to our members' concerns, the chapter filed a comprehensive information request on November 22, 2013, seeking from management a detailed PMR breakdown by categories such as race, gender, age, and bargaining unit status. It was this request, and the agency's response to it nearly 2 months later in mid-January, that I believe led to this hearing today.

The 2013 ratings showed marked disparities for minority employees. For example, a White employee was twice as likely to receive the highest rating at the Bureau as compared to a Black or Hispanic employee. The odds were similarly stacked against workers over 40. And ratings continued to be badly skewed in favor of management when compared with the ratings of the bargaining unit, who do the bulk of the work at the Bureau.

Immediately upon receiving this data on January 15, 2014, our chapter's leadership made our members aware of these troubling disparities and called on management to make wholesale changes in PMR going forward while compensating those who were adversely affected in the past. In response, management was largely silent.

We then entered into collective bargaining negotiations in late January. Throughout the first several months of bargaining, the union raised these issues with management representatives sitting across the table and called on them to discard the current system. And once again, surprisingly, management refused to acknowledge the documented unfairness in the system and instead defended PMR.

In fact, at one point during negotiations, a management representative asked me unironically whether by advocating for a new rating system, "I did not believe in meritocracy." While the chapter was raising PMR issues through grievances and bargaining, we also pursued approximately 15 pay equity grievances. In these filings, we alleged that women and minority employees were being

underpaid when compared to similarly situated White male colleagues.

To date, the Bureau has denied each of these grievances at all stages often using inconsistent reasoning, despite what I feel is convincing evidence of low pay for numerous women and minority workers.

In the last several weeks, however, there does appear to be recognition by management that we ought to be doing better as a Bureau. For example, we recently reached a tentative agreement on a new PMR system that in large part accepts the union's proposal and scraps the system that yielded the disparities. In addition, just days before this hearing, Director Cordray issued an important directive for the first time acknowledging that, "there were broad-based disparities in the way performance ratings were assigned across our employee base in both 2012 and 2013."

He confirmed the union's belief that, "these differences indicate a systemic disadvantage to various categories of employees that persisted across divisions, offices, and other employee characteristics." In particular, Director Cordray agreed with the union findings that there was "broad-based, statistically significant disparity in many areas, including race, ethnicity, age, and bargaining unit membership eligibility."

As a result of this directive, which retroactively compensates the majority of employees harmed by the PMR system, it appears that the Bureau has made a solid first step in the process of holding itself accountable. This is what the Bureau is in the business of doing in the financial marketplace, and that is all the union has asked of Bureau management since our chapter's inception.

I look forward to a productive discussion on these and other important issues at the CFPB. Thank you.

[The prepared statement of Mr. Konop can be found on page 54 of the appendix.]

Chairman MCHENRY. I now recognize myself for 5 minutes.

Mr. Konop, on Monday, Director Cordray outlined some remedial measures to address alleged discrimination against women and minorities in the Bureau. Are you familiar with that?

Mr. KONOP. Yes.

Chairman MCHENRY. As you said in your statement.

Mr. KONOP. Yes.

Chairman MCHENRY. What is the union's position on these remedial measures that the Director is taking?

Mr. KONOP. I think it is a productive first step. We were pleased to see acknowledgment of the positions that we had been advocating for close to a year at this point in some cases. We think there is more work to be done certainly, and we look forward to continuing to engage the Director and all interested parties in making sure the entire—

Chairman MCHENRY. Is your union planning to file grievances?

Mr. KONOP. I believe actually a mass grievance was filed. It came out of the national office, so I am less familiar with it, but it did allege that there were certain other steps to remediate the problem that needed to be taken care of, in essence, scrubbing people's records of the previous grievance.

Chairman MCHENRY. So the union requested a report on the CFPB's 2013 performance reviews. When did you do that?

Mr. KONOP. We did that on November 22nd.

Chairman MCHENRY. Okay. So when did the union receive the report?

Mr. KONOP. It would probably have been on January 14th.

Chairman MCHENRY. Okay. And why was the report requested?

Mr. KONOP. We felt that it appeared anecdotally that a large amount of people coming to us with questions and concerns and serious issues with their ratings were minorities or those over 40 and women, as well.

Chairman MCHENRY. So when you received this report, when the union received this report in January, until March 5th, the day before the American Banker published these reports of alleged discrimination and retaliation within the Bureau, what happened with the union's negotiations about this matter?

Mr. KONOP. We engaged in a good 2 months of pretty hard-nosed negotiations and there was a lot of resistance to changing—

Chairman MCHENRY. Did that resistance change after the American Banker article?

Mr. KONOP. I believe it certainly softened at that point, yes.

Chairman MCHENRY. Okay. So let me ask you another question. The CFPB received a report from Deloitte Consulting in September of last year which documented sharp racial disparities and gender disparities as well, not only in performance reviews but also with pay, hiring, promotions, and in a number of other areas. Are you familiar with this report, which is right before you?

Mr. KONOP. Yes. I became familiar with it yesterday after it was reported in the media.

Chairman MCHENRY. Yesterday?

Mr. KONOP. Yes.

Chairman MCHENRY. Ms. Strong, about this report, in September of last year Deloitte provided this report at the Bureau's behest and found that, "Asians and Whites are being deemed most qualified at higher ratings per applicant than other remaining minority groups, and Asians and Whites are being hired at more than double the rate of other ethnic categories." So why did the CFPB continue to defend its performance ratings system when they had such a damning report from a revered consulting firm?

Ms. STRONG. First of all, I have not read this report. I vaguely remember being interviewed for it about a year and a half ago.

Chairman MCHENRY. Were you provided the report?

Ms. STRONG. No, so I wouldn't be able to speak to the content of that report. I wouldn't be the appropriate person. I do not oversee our hiring process. There is another lead who is responsible for that.

Chairman MCHENRY. But you are the lead negotiator with the union about the contents of this report.

Mr. Konop, would it have been helpful for the union to have this Deloitte report, considering you asked for a report, an investigation 2 months after the Bureau received this report? Would that have been helpful in this process?

Mr. KONOP. This report would have certainly informed our negotiations in 2013 over pay. It would have informed our negotiations

this year over pay and the PMR system, and also, obviously would have informed our grievance postures and positions, yes.

Chairman MCHENRY. So not only the Deloitte report, but also the internal CFPB report that the union requested, outlines what managers did within the performance review process. And so, with those performance ratings, Ms. Strong, they were made by Bureau managers. Isn't that correct?

Ms. STRONG. Yes, the managers rate the employees and issue a rating at the end of the performance year.

Chairman MCHENRY. So it stands to reason that any systemic discrimination observed in compiling the individual ratings can be traced back to those managers. Is that correct?

Ms. STRONG. I really wouldn't be able to answer that question because I do not oversee—

Chairman MCHENRY. You answered the first question that those managers did do the performance reviews.

Ms. STRONG. Yes, sir, but I do not oversee the—

Chairman MCHENRY. Not only do Deloitte and the Bureau find that they are discriminatory, therefore, those managers who did that, it was either the system that was the performance review or the people involved or both.

Ms. STRONG. Yes. So my understanding, again, I do not oversee the Bureau's performance management program, but—

Chairman MCHENRY. But you negotiate with the union on that issue.

Ms. STRONG. Yes. We negotiated with the union on a performance management program for the future. So, I don't have a role in assessing the past system. I did not analyze the data.

Chairman MCHENRY. I would encourage you to review the past system so the future system will not be so negative to your employees.

With that, we will now recognize Mr. Ellison for 5 minutes.

Mr. ELLISON. Let me thank the chairman and the ranking member. I think it is important just to start my questioning by putting on the table that on March 6th of this year, the American Banker did an article and basically the reason for the article was, I will just read from the article: "Since the Consumer Financial Protection Bureau burst onto the financial stage a few years ago, it has made a steady stream of controversial moves. None are more despised by bankers than the agency's use of statistical differences in the loan terms offered to different ethnic groups to sue creditors for its unintentional racial bias. In an ironic twist, it turns out that the CFPB's own managers have shown distinctly different patterns on how they rate employees of different races.

So that is what started this, okay. We are not here because this committee has come to the conclusion that racial bias is a problem in Federal agencies. We are here to vindicate American Banker and the financial services industry in their attempt to make the CFPB look hypocritical. That is the purpose of this hearing. That is what we are doing.

It so happens that the CFPB does need to clean up its act, as every other Federal agency does, proving that even a stopped clock can be right twice a day. But my point is that out of something that I think is a bad motive, an improper motive, something good

can happen, which is that we can try to bring some real issues of fairness to the forefront.

So my question is basically this, and I will ask Mr. Konop the question: Do you think the CFPB management has responded to the concerns that bias exists within the rating system?

Mr. KONOP. I think Director Cordray's actions a couple of days ago were a substantial response. I think, after the American Banker article, within negotiations there did seem to be a response and we did reach tentative agreement on these systems. So I think, yes, in the last month or two there has been movement and especially with Director Cordray's actions on Monday.

Mr. ELLISON. So do you think that management is now taking these concerns seriously and has a plan to address it?

Mr. KONOP. I think they are taking these concerns seriously. I don't think even they would acknowledge that they have a full plan to address them. I think that is part of what our working group has hoped to achieve, and certainly, this is on ongoing issue that needs constant supervision, monitoring, training, and holding people accountable, holding bad manners accountable, and that is really an issue that has been at the forefront of the union since its inception.

Mr. ELLISON. Now, Ms. Strong, I just want to express my view that I think it is unfortunate that we are sort of trying this case here. I don't want to talk about the specifics of the case. I would like to leave that for a factfinder who can do the right kind of close work that needs to be done. Because I used to be a plaintiff's civil rights attorney, I am sympathetic to most plaintiffs. Of course, I am not immune to the facts, but I am just expressing my bias upfront.

But I will say this, do you agree that there is real work the CFPB and every Federal agency has to do to make sure workers are treated fairly?

Ms. STRONG. Absolutely.

Mr. ELLISON. And my question is, do you believe the CFPB is prepared to do that work to make sure that every worker can feel that their contributions are being respected, without regard to their race, their gender, their color, or their age?

Ms. STRONG. I do. I believe the Director is committed to that, and I believe that we are trying very hard.

Mr. ELLISON. Do you take the complaints seriously—

Ms. STRONG. Absolutely.

Mr. ELLISON. —and if so, what is the evidence of that?

Ms. STRONG. Absolutely. In all the grievances—now, I don't oversee EEO complaints. I oversee the grievance process, and we take each and every grievance very seriously.

Mr. ELLISON. What is out there to show that you take this very seriously?

Ms. STRONG. We negotiated with NTEU. We have a multilevel grievance process that includes an informal stage, a step one and step two, that gives two levels of supervisors the ability to review the grievance. And then, ultimately, if the parties are not able to agree, the matter goes to an outside independent arbitrator who renders a binding decision on that matter.

Mr. ELLISON. Thank you, Ms. Strong.

Let me just go back to Mr. Konop.

Mr. Konop, I just want to get your opinion on this quickly, would you agree with me that the mission and the goal of the CFPB is to make sure that the financial services industry treats consumers fairly, including treating them fairly on the basis of their race, is, it should not be undermine by the fact that the CFPB itself has now had to deal with issues of bias and inclusion?

Mr. KONOP. I agree completely.

Mr. ELLISON. Thank you.

Chairman MCHENRY. I will now recognize the vice chairman of the subcommittee, Mr. Fitzpatrick, for 5 minutes.

Mr. FITZPATRICK. I thank the chairman.

And I thank the two witnesses for your testimony here this morning.

Mr. Konop, the American Banker came out with this publication on March 6th, a little more than 2 months ago. And the report is as follows. I want to quote this article: "CFPB managers show a pattern of ranking White employees distinctly better than minorities in performance reviews used to grant raises and bonuses. Overall, Whites were twice as likely in 2013 to receive the agency's top grade than were African-American or Hispanic employees, the data shows."

So my question to you is, did the data which the CFPB union received from the Bureau support this conclusion?

Mr. KONOP. It was the exact data that was cited in the Banker article.

Mr. FITZPATRICK. So what was your reaction when you were informed by the CFPB that Whites were ranked higher than African-Americans?

Mr. KONOP. Certainly, the board as a whole was disappointed, kind of almost bordering on shock, I would say, at first. But, we had problems with PMR the previous year, in 2012, so it was not completely out of left field that there were systemic issues with PMR which needed to be addressed.

Mr. FITZPATRICK. And when you had data from the previous year, what did the union do with that?

Mr. KONOP. We used it in negotiations to try and level out the pay disparities that were going to be a result of the skewed ratings for management as opposed to the labor force, and certainly challenged management directly on using the system going forward in the manner in which it was going to be used to influence people's careers.

Mr. FITZPATRICK. Following up on Mr. Ellison's questions, is it surprising to you that an agency which prides itself on egalitarian values treats minorities in this way?

Mr. KONOP. As I reference in my statement, this is a problem that obviously affects society as a whole. Every part and every organization probably has this. It certainly is something that we need to focus on to correct especially strongly, I think, because of our mandate in the marketplace.

Mr. FITZPATRICK. What do you think it says as an officer of the Treasury Union? What does it say to the public that is watching?

Mr. KONOP. It says that this problem is, I think, endemic in society and that even in a place like the CFPB, which certainly has

a noble mission and lofty goals and does really good work, these problems seep in. And so I hope the CFPB, with the help of the union, can be an example for other institutions and societies of how to remedy this when it is addressed and how to make things right.

Mr. FITZPATRICK. Mr. Konop, in your experience, did you find performance reviews subjective and arbitrary?

Mr. KONOP. There was a great amount of subjectivity, yes, and arbitrariness, yes.

Mr. FITZPATRICK. A great amount?

Mr. KONOP. Yes.

Mr. FITZPATRICK. Can you expand on that?

Mr. KONOP. Yes. When you are a lawyer—and there are a number of lawyers, I think, on the panel—it is hard to judge your year's work. If you are working on three large cases, let's say, and your day-to-day dealing with opposing counsel and filing motions and doing research and then to be able to try and sum that up in a 20-minute performance review for the entire year and give you a rating which will impact your future career significantly is just, by nature, problematic.

And subjectivity, there is no way for subjectivity not to creep in. We are not baseball players. When we have a batting average, it is easy to evaluate them. But with workers in the CFPB, it is very difficult to come up with a numerical rating.

Mr. FITZPATRICK. Do you believe other employees had similar experiences?

Mr. KONOP. I would say the majority of employees have similar experiences.

Mr. FITZPATRICK. Between 2012, when you had the first set of data, and 2013, was that number going up?

Mr. KONOP. The union wasn't in existence for 2012 so we didn't have a mechanism for taking grievances and taking complaints.

Mr. FITZPATRICK. But you did have data.

Mr. KONOP. We had data. The system was flawed, certainly, but at the time the ratings were handed out, we weren't there to administer.

And I also might add, this is a problem, many managers have expressed to me this, that PMR system is flawed, and they would have liked to have done away with it sooner than we did. So I think there is, on sort of both sides of the table here, agreement that the PMR system is flawed.

Mr. FITZPATRICK. Ms. Strong, you indicated in your testimony this morning that you were interviewed for this Deloitte report. Who attended that interview?

Ms. STRONG. It has been a while. I believe I was interviewed by someone from Deloitte. I don't recall the—

Mr. FITZPATRICK. So just you and the interviewer? Just the two of you?

Ms. STRONG. I believe so.

Mr. FITZPATRICK. Did you have any curiosity as to why Deloitte was asking about diversity and inclusiveness?

Ms. STRONG. No, I didn't. I was told that the Office of Minority and Women Inclusion had asked them to conduct a review, and if I remember correctly, they only asked me a couple of questions, such as, what does diversity mean to you?

Mr. FITZPATRICK. That didn't prick your curiosity at all?

Ms. STRONG. No. No. I think because that is the role of OMWI, it seemed reasonable that they would be conducting a review.

Mr. FITZPATRICK. And your testimony is, you read this report for the first time when?

Ms. STRONG. I have not read this report.

Mr. FITZPATRICK. You haven't?

Ms. STRONG. No.

Mr. FITZPATRICK. Nothing further.

Chairman MCHENRY. I will now recognize Mr. Cleaver for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

I associate myself with the comments earlier of the gentleman from Minnesota, Mr. Ellison. I have been on this committee for almost 10 years. I was mayor for 8 and on the City Council for 12 years before that. This is the first time in my political career I have been involved in a hearing about an individual.

And while I don't have any objections to that, I, again, as I did at a previous hearing, issue a friendly caution that we can become consumed in doing this.

Mr. Konop, I believe you said something earlier that would support what I am just saying. I am not sure you said you were shocked to find some of the complaints. Did I quote you close to being accurate?

Mr. KONOP. I think we were shocked when we saw the racial disparities.

Mr. CLEAVER. Okay. I tend to probably side with you on 99 percent of everything you said, but I am shocked that anybody would be shocked—

Mr. KONOP. Fair point.

Mr. CLEAVER. —that there is some kind of inequality. And you would agree with me, I think—

Mr. KONOP. Yes.

Mr. CLEAVER. —that there is probably structural discrimination in every single Federal agency that exists. Am I—

Mr. KONOP. I would say at this point in our Nation's history, there is probably structural discrimination in almost every entity that exists, regardless of whether it is in the Federal Government or not.

Mr. CLEAVER. Yes. When I was mayor, in a city where minorities are really in a minority, the overwhelming majority of the Kansas City, Missouri, population would be nonminority, and so we did a, it was called a disparity study, which was very expensive, incidentally, to look at scientifically, what barriers were there and the structural barriers, not with intentionality.

A lot of things happen without intentionality. People, they grow up in a certain way, and they are not even aware of some of the things they do. It is my understanding that an RFP has already been developed and maybe already issued to do something like a disparity study for the agency. Are you aware of that?

Mr. KONOP. I am not aware of it. I think Director Cordray's memorandum that he circulated on Monday seemed to be the Bureau's attempt at doing that disparity study, and it did find the disparity. Yes.

Mr. CLEAVER. I think it is already out. The RFP is already out.

Mr. KONOP. Okay. It could be.

Mr. CLEAVER. I saw something Monday that the disparity study is out. And I don't know what kind of money they intend to pay, but I can tell you, experientially, they are very, very costly, but they are worth it. Because hopefully, the Department of Agriculture, which has had a long history of problems, much more than this agency, of course, it is new, did the disparity study. And I think that if you spoke with Secretary Vilsack, he will say that is one of the best dollars they ever spent, because now they are trying to deal with those problems.

Do you believe—and I want to ask Ms. Strong a question, but one final question—that there is any Federal agency functioning at the 24-carat level in terms of equality?

Mr. KONOP. First of all—

Mr. CLEAVER. I know you don't know, but I am just asking your opinion.

Mr. KONOP. Right. It has been my experience in life that we all have a long way to go when it comes to equality, and I am sure that would apply to all the Federal agencies, as well.

Mr. CLEAVER. Okay. Thank you.

Ms. Strong, in your role managing investigations of individual employee grievances, how would you characterize the majority of these grievances? In the past, have they been focussed on the PMR system?

Ms. STRONG. We have, I believe, about 136 grievances to date. Approximately 57 or so were based on grievances coming out of the performance management program, but we also have grievances on other issues, as well.

Mr. CLEAVER. All right. My time has expired, and I thank you very kindly.

Chairman MCHENRY. I now recognize Mr. Fincher for a few minutes.

Mr. FINCHER. Thank you, Mr. Chairman.

And let me just make a statement. One of my other colleagues on the other side of the aisle referenced a few minutes ago that this hearing was about an American Banker article or something. We need to be careful, all of us, in generalizing, making statements. A lot of us are trying to get to the bottom of what is happening here. And to some of us, this is not political; we just want to make sure it doesn't happen going forward. So I would urge some of my colleagues not to make general statements.

If the same disparity occurred in a private company, how would the CFPB react? Would they take an aggressive and retaliatory approach to force immediate corrective action, do you think?

Mr. KONOP. I don't practice in the Fair Lending sector of the Bureau. But certainly, the chapter's general argument is, yes, if they saw these type of behaviors going on in the private marketplace in an area we regulated, it would draw attention, and it has drawn attention in other contexts at the CFPB, yes.

Mr. FINCHER. If racial disparities occur in the performance reviews of a private company, would the CFPB take an aggressive regulatory approach to force immediate corrective action?

Mr. KONOP. Again, that is not specifically my area of practice. But I would say the CFPB would take a look at that issue if it occurred in the issuance of loans, certainly. I am not certain that we would have jurisdiction over employee ratings. But certainly, in the context of, like, an auto loan, yes.

Mr. FINCHER. Have you or other union leaders talked to the CFPB about this in your negotiations and encouraged the Bureau to abandon or change this performance review system?

Mr. KONOP. Oh, yes. We have made it very clear that we did not support the previous system, and we engaged in many hours of relatively heated negotiation on that issue.

Mr. FINCHER. When did you start talking about this issue?

Mr. KONOP. We started probably in the 2013 pay associations. That would have been in September of 2013. At that time, we only had a limited amount of data. We didn't, unfortunately, have the Deloitte study. We were just going off of one data set which was a differential between management and labor. And that looked, to us, incredibly unfair. So we, at that point, raised serious concerns about the system.

Mr. FINCHER. Ms. Strong, in February 2013, CFPB's Legal Division requested that your office engage an investigator to determine if Scott Pluta, the Assistant Director of Consumer Response, was discouraging employees from using the EEO process. Is that correct?

Ms. STRONG. That is correct.

Mr. FINCHER. Was this request unique?

Ms. STRONG. It was the first time the Legal Division had requested that I conduct such an investigation.

Mr. FINCHER. So no requests had been made before.

Ms. STRONG. No.

Mr. FINCHER. Was this the first?

Ms. STRONG. It was not the first investigation I had conducted, but it was the first one that was requested by the Legal Division.

Mr. FINCHER. Why do you recommend that employees use the EEO process for workplace discrimination complaints when you have managers openly discouraging its use?

Ms. STRONG. First of all, that was an allegation that was made. Based on my investigation, that allegation was not substantiated. However, as I said in my opening statement, that investigation remains ongoing.

Mr. FINCHER. Can you point to any concrete measures the CFPB management took before March 6, 2014, to address racial disparities in performance ratings for employees at the CFPB which were disclosed to the union on January 14, 2014, and which the CFPB was aware of as early as September 30, 2013, when the Deloitte report was released?

Ms. STRONG. I can speak generally. None of these actions came out of my office. But I know that the EEO office delivered a lot of training to managers. I know our performance management team has delivered a training to managers on how to properly assess performance and deliver ratings.

Mr. FINCHER. But no specific concrete measures, just general?

Ms. STRONG. Yes. I guess maybe—if you could ask your question again? Maybe I missed what you are asking.

Mr. FINCHER. Are there any concrete measures that CFPB management took before March 6th to address racial disparities and performance ratings for employees?

Ms. STRONG. I would say that the Director invited NTEU to propose a new performance management system. And we, through negotiations, have now agreed on a plan that will carry us over for the remainder of this year and next and allow us an opportunity to engage in a work group to design together collaboratively a new performance management system.

Mr. FINCHER. Okay.

With that, I yield back, Mr. Chairman.

Chairman MCHENRY. We will now recognize Mr. Heck for 5 minutes.

The gentleman passes. Okay.

Mr. Kildee?

Mr. KILDEE. Thank you. Thank you for passing.

I would like to thank the witnesses, of course, for your participation in today's hearing, and I appreciate your thoughts.

The CFPB protects consumers in the financial markets and its charge is to ensure that they are treated fairly. Clearly, that duty to protect extends not just to consumers but to its own employees. So I do appreciate the CFPB's willingness to examine the issue that it found in its performance management program and its stated intent to ensure that hiring and promotion evaluations in that process puts merit first and foremost.

The report that was released of the analysis of its performance management program, which evaluates its employees, is a pretty candid look at the biases of the Bureau in terms of race, age, union membership, and gender. So there is obviously a lot of work that needs to be done in this area.

I would, though, like to point out that although this committee and Congress are quite rightfully concerned with these reports of discrimination at this one Federal agency, it is unequivocal to many of us that nationwide, it is clear that we have a big problem here—and this was referenced in some of your comments—when women make 77 cents on the dollar as compared to men in the workplace.

So while we are discussing discrimination, and rightfully so, I think it is important to point out that this Congress has failed to pass the Paycheck Fairness Act to address gender pay disparity in the private sector and ensure that women earn what they rightfully deserve.

As has been pointed out, what we are seeing here is evidence of something that is not particular to a particular agency or entity or organization, but it is a societal problem that we have to address. And in this case, clearly we have to address it.

But I do want to make sure that those in Congress, those of us here who wax so eloquently on this subject are willing to extend that same resolve with the other legislative prerogatives that this Congress has to deal with what is clearly a substantial problem.

So while it is concerning to me that CFPB found disparity of treatment between union and nonunion members in its performance, that obviously crosses lines of race, gender, and ethnicity.

Considering the findings by the CFPB in its evaluation, I look forward to working with the NTEU to ensure uniform treatment.

Finally, I understand that the request for proposal (RFP) has been issued for an outside group to undertake an independent analysis of the performance evaluation program, along with hiring promotion and evaluation process by the Bureau. And I look forward to this analysis. I look forward to further conversations with the CFPB.

Ultimately, I would just like to hear from both of you, along with the issues that I have raised, what you think the priorities ought to be as CFPB moves forward with this analysis.

I would appreciate hearing your thoughts on that. And I may have an additional question. If you could just tell me what you think the priorities ought to be as the CFPB moves forward?

Ms. STRONG. I think the priority for my team now is going to be to engage in the working group with NTEU in designing the new performance management system. So, I would see that as one of my team's top priorities.

Mr. KONOP. I think initially, obviously, we have to remedy the past wrongs. And that will mean, in some cases, financial remedies. I think Director Cordray's memorandum takes a good step forward on that matter.

But we still have pay equity issues that have not been addressed which affect dozens of women and minorities at the Bureau. We have grievances pending on those, but we think that would be a strong remedial step.

And then I think the union would like to ensure that there is accountability for managers who make mistakes. We have always acknowledged that certainly, union members make mistakes, and we get held accountable. We just want that same amount of accountability applied to managers going forward. And I think that really has to start at the top for the Bureau to make sure that happens.

Mr. KILDEE. I thank you both for your participation in this hearing.

Mr. Chairman, I yield back.

Chairman MCHENRY. I will now recognize Mrs. Wagner for 5 minutes.

Mrs. WAGNER. Thank you, Mr. Chairman.

And I thank the witnesses for being here today.

I want to make sure I have the timeline correct here. This Deloitte report came out on September 30, 2013. That is 8 months ago. Is that right?

Mr. KONOP. I believe that is correct.

Mrs. WAGNER. Ms. Strong, is that correct?

Ms. STRONG. I don't know. I'm sorry.

Mrs. WAGNER. You say you were interviewed for this report?

Ms. STRONG. I was. It was about a 15-minute interview over a year ago.

Mrs. WAGNER. It was delivered to the CFPB—

Ms. STRONG. Right.

Mrs. WAGNER. —on September 30, 2013. Did you read the report?

Ms. STRONG. I did not.

Mrs. WAGNER. When were you made aware of the report?

Ms. STRONG. Just now.

Mrs. WAGNER. You were just—say again to me, please, you were just made aware—you did not tell anybody prior to this, this committee, that you were made aware of this report prior to this very moment?

Ms. STRONG. I have not seen this report before.

Mrs. WAGNER. When were you made aware of this report?

Ms. STRONG. I am telling you, I have not seen this report before. So this is the first time I am actually—

Mrs. WAGNER. This is the first time that you have been made aware of this report after 8 months?

Ms. STRONG. Yes. Yes, ma'am.

Mrs. WAGNER. Okay. Wow. I am wondering who read the report, then, that the CFPB authored and sent over 8 months ago about these disparities, discrimination, retaliation, the system being broken. Who read the report?

Ms. STRONG. It was conducted, my understanding is, by the OMWI office. So I am sure they read it. I just—I don't know. I can't answer that question.

Mrs. WAGNER. The CFPB spokesperson says that the Bureau sought to protectively engage its labor union partners to address the issue in the report.

Were you engaged, Mr. Konop?

Mr. KONOP. The first time I saw the report was yesterday.

Mrs. WAGNER. The first time you saw the report was yesterday.

Yet, CFPB spokesperson Jen Howard said in an email to the Bureau, analyzed the information and presented to the Bureau and sought to proactively engage it.

Who was proactively engaged, Ms. Strong, in both analyzing this with the CFPB and proactively engaging the labor union?

Ms. STRONG. I'm sorry, I can't answer that question. I think Stuart Ishimaru would be the appropriate person to ask that question because he conducted—

Mrs. WAGNER. So a report is out there for 8 months about these issues. And nothing is even done until an American Banker's article goes public some 5 months later talking about this issue.

What is your title, again, Ms. Strong? Are you, in fact, the lead employee for employee relations? What is your title, ma'am?

Ms. STRONG. I am the Lead of Labor and Employee Relations.

Mrs. WAGNER. And your spokesperson says that you all took this report and proactively engaged the labor union after full analysis and information had been presented. And you are not aware of this.

Ms. STRONG. I am not. And maybe what she is referring to is the Director asked Stuart Ishimaru, who is the head of the OMWI office, to conduct listening sessions. So maybe that is what she is referring to as her ongoing—

Mrs. WAGNER. Mr. Konop, let me ask you this question. I think you have already testified that you thought that there were distinctly different patterns in how employees were rated based on race. Is that correct? Is that an accurate interpretation, sir?

Mr. KONOP. Yes. The numbers certainly support that.

Mrs. WAGNER. The numbers. Do you have any reason to believe that rating an employee on a scale of 1 to 5 is somehow too complicated or too sophisticated for CFPB managers to understand?

Mr. KONOP. I think we have a lot of smart managers who could probably theoretically understand how to apply a number rating, yes.

Mrs. WAGNER. This is not an automated system. Is that right?

Mr. KONOP. No, far from it.

Mrs. WAGNER. It is not an automated system.

The statistics the CFPB used in its analysis are based on the ratings that actual managers assigned to their employees. Is that correct?

Mr. KONOP. Yes.

Mrs. WAGNER. This isn't a systematic thing. This is subjective, arbitrary. Is that how you would characterize it?

Mr. KONOP. In most positions at the Bureau, I think it is fair to say this rating has to be subjective by the nature of the people's work that is being rated.

Mrs. WAGNER. So it is not systematic.

Ultimately, if it comes from the decision made by the CFPB manager, it stands to reason that any systematic discrimination observed in compiling the individual ratings can be tracked back to the managers. Is that correct?

Mr. KONOP. Managers were certainly the ones who made the ratings—

Mrs. WAGNER. They actually made the ratings.

Mr. KONOP. —fall on them.

Mrs. WAGNER. Does it strike you as odd that Director Cordray would blame the system for this, then?

Mr. KONOP. I think there is more than enough blame to go around, but I certainly think managers deserve their fair share as well.

Mrs. WAGNER. Thank you. I appreciate that.

Ms. Strong, in your experience, is it true that the CFPB managers have shown distinctly different patterns in how they rate employees of different races?

Ms. STRONG. Not based on my observations.

Mrs. WAGNER. Not based on your observation. Really. Just based on the reporting, I suppose.

Which CFPB managers gave CFPB employees ratings of 1s and 2s using the discriminatory performance rating system?

Ms. Strong?

Ms. STRONG. Which managers?

Mrs. WAGNER. Which ones? Names, please.

Ms. STRONG. I couldn't give you the names. There were a handful of employees whose performance was determined to be unacceptable or minimally acceptable. But I couldn't give you the names right now.

Mrs. WAGNER. Perhaps you can provide those to the committee.

Chairman MCHENRY. The gentlelady's time has expired.

Ms. Strong, to clarify for the record, when did you have knowledge that the Deloitte report had been completed?

Ms. STRONG. When? Honestly, this is the first time I have seen this report.

Chairman MCHENRY. Have you heard that the report was complete?

Ms. STRONG. Not that I can recall.

Chairman MCHENRY. Have you been asked about the report?

Ms. STRONG. No.

Chairman MCHENRY. Okay. All right.

Now, we will go to Mrs. Beatty for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman.

And thank you, Ranking Member Green.

And to our witnesses, thank you for being here.

We know that this is a difficult time for all parties involved. But one of the things I want to focus on a little more is the information from the American Banker article, which is in part why we are here today. In that article, which cited primarily findings from an internal Bureau analysis, as I am sure you have discussed, it was alleged that the reviews were being given in a manner such that it was more likely to award higher ratings to White males than to their minority or female counterparts. And much of that was based on performance ratings that were directly linked to each employee's ability to receive raises or bonuses and/or promotions, as we have heard.

Therefore, a performance review system which is skewed in favor of one group clearly has a disparate impact on the nonfavored groups. In fact, in the final analysis, the Bureau found that the distribution of high rating marks was impacted not only by race and gender but also by age and location as well.

So as a result of these obvious disparate impact performance reviews, the Bureau has, as I understand it, recently undertaken to compensate aggrieved personnel and to reform the system by which performance reviews are conducted.

My question to you would be, can you discuss or explain to us the system of performance review that was in place up until last week? How were these employees evaluated and what were the criteria used?

Ms. STRONG. Again, I am not the lead over the performance management program. But I can speak generally to it. It was a five-level system. And employees were rated on individual objectives that were created in collaboration between the manager and the employee and then also on a set of competencies which applied—they were the same competencies applied to employees at the same grade level and then also the same set of competencies that applied to managers.

Mrs. BEATTY. So by using the term the same for managers, are you of the opinion that there was a clear and uniform method by which the evaluations could be made on an equal basis?

Ms. STRONG. I would say that the performance management system that we had in place prior to our negotiations with the union is not very different than the performance management programs that are in place in other agencies. So it is pretty common or standard that employees have individual objectives and then are also assessed on competencies.

Mrs. BEATTY. So if, in fact, the reviews were that, do you have any helpful information for us that explains how do we have the standard reviews that result in disparate treatment if it is equal?

If it is more rigorous for me being female and African-American than for maybe my White counterparts, what makes the disparity?

Ms. STRONG. Unfortunately, I wouldn't be able to help you there. I don't think I am the right person. I was not part of the group who assessed that data. I know that the Director would be happy to come and talk to you about that assessment. I just was not part of it.

Mrs. BEATTY. But you are comfortable that someone made an assessment which may have been a little more subjective than objective if the standards were the same?

You are nodding, Mr. Konop, so you can feel free to respond.

Mr. KONOP. Yes. The system is subjective from the very start because in most areas of the Bureau, the first step in the review is actually the person being reviewed has to, in essence, brag about how well they did that last year.

So if someone is really good at talking themselves up, they might get a better rating. If someone is more humble or has a different way of communicating, that actually will hurt them going forward. Because what is evaluated in large part is the personal statement. That sort of starts the process.

To me, the process is flawed from the beginning. It is extremely convoluted. You would probably need another hearing just to try and figure out exactly what was going on. Managers spent a good month away from their substantive work trying to do this. And it still turned out rather flawed. So it is a bad system.

Mrs. BEATTY. Thank you very much. I yield back.

Chairman MCHENRY. We will now go to Mr. Rothfus.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Mr. Konop, the American Banker article from March 6, 2014, stated that, "Employees have filed 115 official grievances with the National Treasury Employees Union since last August."

If unofficial complaints that haven't yet worked their way through this system are included, that number exceeds 200, according to information obtained by the American Banker. Are those statements correct?

Mr. KONOP. I think those are certainly within the ball park. I would have to go back and check, but it sounds about right.

Mr. ROTHFUS. Are you surprised by the number of official and unofficial grievances?

Mr. KONOP. I think it is an extremely large volume for a relatively small agency, yes.

Mr. ROTHFUS. So you would agree that the volume of complaints is unusual?

Mr. KONOP. Very unusual.

Mr. ROTHFUS. Now, you testified, I think, in your written testimony and also orally that the vote to organize was 80 percent?

Mr. KONOP. Yes.

Mr. ROTHFUS. Was the margin by which CFPB employees voted to have a union represent their interests unusual?

Mr. KONOP. I was told by folks at NTEU National that it was one of the higher margins they had ever seen.

Mr. ROTHFUS. Ms. Strong, do you dispute the figures cited in the March 6, 2014, American Banker article that over 200 complaints

had been filed by CFPB's employee union from the period of August 2013 through March?

Ms. STRONG. According to my count, we have had 137 grievances to date filed by NTEU.

Mr. ROTHFUS. 137.

Ms. STRONG. Correct.

Mr. ROTHFUS. Does that include unofficial complaints?

Ms. STRONG. The union sometimes asks us to do inquiries, and I think they are not technically an informal grievance. So there may be more than that. But officially filed grievances, there have been 137.

Mr. ROTHFUS. So is there—again the American Banker article talked about official grievances, but then it also talked about unofficial complaints. Do you have a process set up for unofficial complaints?

Ms. STRONG. I guess I would call them like requests.

Mr. ROTHFUS. How many requests would you have received in that time period?

Ms. STRONG. I am not sure.

Mr. ROTHFUS. Has your office resolved all 137 complaints? Are there still outstanding complaints?

Ms. STRONG. We have pending settlement or settlement or have actually settled 50 of the 137, and most of them are still in process.

Mr. ROTHFUS. How long will it take to resolve those outstanding complaints?

Ms. STRONG. The entire process takes about 110 days.

Mr. ROTHFUS. Some of those complaints were filed over 10 months ago.

Ms. STRONG. Some of them what? I'm sorry.

Mr. ROTHFUS. Some of those complaints were filed over 10 months ago.

Ms. STRONG. It could be. Because of the large number, the volume of grievances that we have received, we have passed our deadlines. But I will also say that the union has requested extensions during different phases of the grievance procedure. And we have granted those as well.

Mr. ROTHFUS. Do you expect that all these complaints will be resolved 110 days from now?

Ms. STRONG. There are different times in the process. But our goal is always to resolve them within the timeframes that we agreed upon with NTEU.

Mr. ROTHFUS. But that has not been happening. Is that correct?

Ms. STRONG. A very small percentage of them have exceeded the deadlines.

Mr. ROTHFUS. Are any of the outstanding complaints active since last August that you are aware of?

Ms. STRONG. Are you asking me?

Mr. ROTHFUS. Yes.

Ms. STRONG. Outstanding since last August?

Mr. ROTHFUS. Yes.

Ms. STRONG. There is a set of grievances that are getting ready to go to arbitration.

Mr. ROTHFUS. And how old are they? What is the oldest one?

Ms. STRONG. I don't know what the oldest one is.

Mr. ROTHFUS. Could it be as old as last August?

Ms. STRONG. It could be.

Mr. ROTHFUS. How do you respond to employees who have now waited since last August, nearly a year, for their grievance related to the discriminatory pay and performance ratings to be resolved?

Ms. STRONG. I would just say that we take each and every grievance very seriously and thoroughly investigate it and work through the process. We did receive a larger amount of grievances than we expected. We have recently been allowed to fill initial slots within my team. So we are working as quickly as we can.

Mr. ROTHFUS. Are all persons of authority, Ms. Strong, within the CFPB held to the same standard of accountability?

Ms. STRONG. I'm sorry. I am having a hard time hearing you.

Mr. ROTHFUS. Have you reviewed the 2012 PMR data which shows that managers consistently rated themselves more highly than nonmanagers?

Ms. STRONG. No.

Mr. ROTHFUS. So the CFB has not responded when it discovered in 2013 that managers were rating themselves more highly than their own staff, or has the CFPB responded to that?

Ms. STRONG. I believe the CFPB has responded to that, yes.

Mr. ROTHFUS. What has the CFPB done?

Ms. STRONG. It is my understanding that the Director has decided to compensate all employees as though they were rated at the highest rating.

Mr. ROTHFUS. Thank you.

Chairman MCHENRY. We will now recognize Mr. Horsford for 5 minutes.

Mr. HORSFORD. Thank you, Mr. Chairman.

And I thank the ranking member. I want to thank our witnesses for being here today, as well.

And like many of my colleagues, I take the issue of discrimination in the workplace very seriously, whether it may be happening at the CFPB or any other Federal agency or entity outside of the Federal Government. An unfair discriminatory workplace, whether it be for minorities, women, or based on someone's sexual orientation should not be tolerated.

I am interested in learning more about the severity of the issue and how it is being handled internally. I had hoped for senior management to be here representing the CFPB. But I want to thank Ms. Strong for appearing today.

Ms. Strong, your testimony stated that you are responsible for managing the investigations of individual employee grievances.

Ms. STRONG. That is correct.

Mr. HORSFORD. Can you discuss the process that you go through in conducting the investigations to substantiate the validity of discrimination or retaliation that come to your attention?

Ms. STRONG. Absolutely. So in the—if a grievance alleges discrimination, then we interview the manager and determine if there was an independent legitimate business reason for the decision they made.

For example, in a performance grievance, if the manager is able to articulate and document the reason that they issued the per-

formance rating, then we find evidence that there is no discrimination.

Mr. HORSFORD. And in the case of Ms. Martin, which I don't want to harp on, only because it is one individual and it is an entire agency, but I do want to get an understanding of the process. After you made the determination, was Ms. Martin permitted the opportunity to appeal your office's decision? And, if so, what was that process?

Ms. STRONG. So if I am understanding you correctly, you are maybe talking about an allegation that Ms. Martin made against her peer. We in my office investigated that, and we did not substantiate that a hostile work environment existed. But Ms. Martin then filed an EEO complaint, which is in a different office, and went through that process and ultimately—go ahead.

Mr. HORSFORD. I understand the EEOC process is an alternative.

Ms. STRONG. Right.

Mr. HORSFORD. Does she have the right to appeal your decision that there was not a substantiated grievance?

Ms. STRONG. The purpose of my investigation is different than the purpose of an EEO investigation. My investigation is to determine if any misconduct took place.

So if the person that she was making the allegation against did engage in some inappropriate behavior, my office would make recommendations on the appropriate action to take. So my office isn't in charge like the EEO office of determining or finding of discrimination.

Mr. HORSFORD. Okay. So I want to turn to the other witness and understand again the fact that the Bureau and the National Treasury Employees Union reached this collective bargaining tentative agreement that involved the Bureau discontinuing the use of its previous performance management team.

So does the agreement going forward address how the Bureau will handle employees who have been part of this problem previously based on where you are going forward with the new performance review model?

Mr. KONOP. I think Director Cordray's memorandum on Monday addresses past wrongs to some extent, but not completely. The agreement we reached going forward changes the system to hopefully rid it of some of its discriminatory impact. But it is going to take constant supervision, constant leadership from the top of the Bureau on down and constant monitoring from the union to make sure that happens. Because it is a very difficult process to keep fair.

Mr. HORSFORD. And I just want to end with your last statement. Because you had said earlier in your testimony that there were systematic and structural factors that contributed to the disparity in pay, hiring, and in evaluation of promotion.

So I know some of my colleagues on the other side were very argumentative in asking, why is this systematic? It is systematic because the data substantiates the fact that women and minorities were treated in disparate ways, and that was done in a systematic and structural way. And that has to be addressed in a systematic and structural way.

So I am looking forward to seeing the results of this new performance management system. I know that the ranking member and the other members of this committee will continue to pursue this, not just for the CFPB but for any other Federal agency. And I look forward to working with my colleagues on both sides of the aisle—

Chairman MCHENRY. The gentleman's time has expired.

Mr. HORSFORD. —so we can end racial discrimination wherever it exists.

Chairman MCHENRY. Mr. Barr is recognized for 5 minute.

Mr. BARR. Mr. Konop, you said that you had not reviewed the Deloitte report until yesterday. Is that correct?

Mr. KONOP. Yes.

Mr. BARR. And you, on behalf of the union, requested information related to performance review disparities. And when, on the timeline here, did you request that on behalf of the union?

Mr. KONOP. I think we made two separate requests. One would have been in early September of 2013, that was in the context of the 2013 pay negotiations. And then we made another request on November 22, 2013, following that year's PMR ratings. And that is the request that yielded the data cited in the American Banker article.

Mr. BARR. Just to be clear, you represent the union with respect to negotiations. You were aware of pay equities disparities. And you became aware of those pay equity disparities eventually when?

Mr. KONOP. We were aware that there was a disparity between the bargaining unit and the managers in December of 2013. We were aware that it extended to race and age in January of 2014.

Mr. BARR. Okay. And you became aware of race and age disparities in January 2014, correct?

Mr. KONOP. And the continued disparity between bargaining unit and nonbargaining unit.

Mr. BARR. Right. But you had requested the information relating to race and gender discrimination in September, then again in November. Is that correct?

Mr. KONOP. In November, we requested specifically the race data. In September, all we requested was the bargaining unit, nonbargaining unit data.

Mr. BARR. Okay. Then finally when the CFPB did provide you with a report on the information substantiating the race and gender discrimination, again, that was in January of 2014. Correct?

Mr. KONOP. The January report substantiated race, age, and bargaining unit, nonbargaining unit. I do not believe it found in the PMR context a gender discrimination. We have had gender discrimination issues in the pay equity grievance context, which is separate.

Mr. BARR. Right. You have now been made aware that CFPB was in possession of a Deloitte report in September of 2013 that found sharp racial disparities in performance ratings, pay, hiring, and other measures; that the Bureau had that in its possession; that report revealed disparities in performance rating, in employee pay, and in hiring; that you requested information relating that in September, but certainly in November. You were provided a report from the CFPB in January. And in that report, the Deloitte infor-

mation, the Deloitte conclusions were not disclosed to the union. Is that correct?

Mr. KONOP. The first time I heard of the Deloitte conclusion was yesterday.

Mr. BARR. And so are you surprised that the Bureau after multiple requests of information failed to disclose to you the Deloitte information that the Bureau had in its possession that you had requested on multiple occasions and that they apparently deliberately withheld in January of 2014?

Mr. KONOP. I think sort of a duty of good-faith bargaining and if we really wanted to have a collaborative relationship with management, they ought to have disclosed this to us. I think, though, our actual information requests may not have covered the Deloitte study because we didn't know it was there, so we didn't know to ask for it. Underlying data.

Mr. BARR. You asked for information relating to disparities?

Mr. KONOP. Certainly.

Mr. BARR. The Deloitte report contained information relating to disparities, and the Bureau did not disclose information that you had requested.

Mr. KONOP. That is true. It is disappointing and it actually substantively hurts because we have could have used the Deloitte report in our negotiations and also in defending people—or representing people in grievances who were harmed.

Mr. BARR. Let me just quickly move to Ms. Strong.

Ms. Strong, you testified in your opening statement that you were aware that the Bureau was analyzing the performance review information for signs of disparate impact even before the American Banker published its story.

Ms. STRONG. That is correct, for 2013 performance.

Mr. BARR. For 2013, but you were unaware, you did not review the Deloitte consulting report and you still haven't. Is that right?

Ms. STRONG. I believe this covers the prior performance year, not 2013, which is the year in question here.

Mr. BARR. But you were interviewed for that report?

Ms. STRONG. I was interviewed for that report, yes.

Mr. BARR. So you had knowledge that it was happening and that it existed.

Ms. STRONG. I didn't—

Mr. BARR. Although you haven't reviewed it, you did know about it.

Ms. STRONG. I didn't know what the purpose of it—the report was. I was just asked two questions.

Mr. BARR. Again, finally, Ms. Strong, your title is the Lead of Employee Relations?

Ms. STRONG. The Lead of Labor and Employee Relations.

Mr. BARR. Labor—of employee relations. And you did not look—you were not interested in finding out what the Deloitte report might have said in September? You didn't look. And the union is requesting information related to that report, and you deliberately didn't—you weren't curious that this Deloitte information was out there? As the Lead of Employee Relations?

Ms. STRONG. I didn't know it was out there. It was conducted by an office that is completely outside of mine.

Mr. BARR. And so you were just totally uninterested what the Deloitte report might have—

Ms. STRONG. If I knew it was there, I would have been interested. But I didn't know it existed.

Mr. BARR. I yield back.

Chairman MCHENRY. The ranking member of the subcommittee, Mr. Green, is recognized.

Mr. GREEN. In his absence, I would like to compliment our newest member of our subcommittee, Mr. Horsford. I believe this was his first opportunity to participate in questioning.

Let me start with the basic premise that there are many reasons for having this hearing. My concern is whether or not there are some people who will use or attempt to use information acquired at this hearing to weaken, emasculate, or possibly eviscerate the CFPB.

So let me start with our union representative. Would you have anything that you have said today be utilized to weaken or eviscerate in some way or emasculate the CFPB?

Mr. KONOP. I actually hope this hearing will strengthen the CFPB by remedying these problems and making us a better, more compassionate place.

Mr. GREEN. How large is your union? You mentioned another aspect of it. How large is your union?

Mr. KONOP. The bargaining unit is, give or take, 1,000, 1,100 probably right now.

Mr. GREEN. How many agencies do you find yourself—

Mr. KONOP. Oh, I was just talking about the chapter. I think the NTEU as a whole is about 70,000.

Mr. GREEN. At how many agencies are you located?

Mr. KONOP. Our chapter is just the CFPB, but the NTEU has dozens and dozens of agencies, yes.

Mr. GREEN. Any other agencies that might come under the purview of this committee? For example—

Mr. KONOP. Yes.

Mr. GREEN. Thank you. With those agencies that come under the purview of this committee, will your union provide similar information concerning your issues to my office?

Mr. KONOP. I would just say, in this case, the vast amount of sort of momentum for this inquiry was undertaken by the chapter and not the national. And I represent the chapter. So I would hope the national would take this and sort of move the ball forward in other areas. But what you are talking about today was largely driven by the local.

Mr. GREEN. I understand.

You have indicated that you believe that some of these problems are endemic in society. You have indicated that you believe that they are associated with other agencies. Would you have similar circumstances be treated similarly? Meaning, if there is something happening in another agency that an OMWI has some authority to look into, would you have similar circumstances be treated similarly? Would you want other agencies to receive the same scrutiny that the CFPB is receiving?

Mr. KONOP. Of course.

Mr. GREEN. And sometimes, where you are is important. It is always important. But equally as important can be the direction that you are moving in.

I have looked at your comments, your statement. And on the very last page, you indicate that there is some compensation that is taking place and you indicate that is a solid first step.

Am I to assume from this comment that you believe this is a good remedy?

Mr. KONOP. It is a partial remedy, a first step.

Mr. GREEN. A partial remedy. But as to this part of the partial remedy, do you believe that it is a good remedy?

Mr. KONOP. There needs to be a couple of additional aspects of it to protect people who got the lowest ratings. They don't come under this and to also, as the national filed a mass grievance, to erase the numbers from people's ratings. So I think those two prongs, in addition to what the Director issued on Monday, would certainly—

Mr. GREEN. Let me ask you another way. Would you have this part of it eliminated from the process? Is this something we should keep, what you have indicated here, as a good first step? We don't want to eliminate a good first step.

Mr. KONOP. No, not at all. We are very happy.

Mr. GREEN. You agree that this is a good thing.

Mr. KONOP. Of course, yes.

Mr. GREEN. You also indicate that there is a tentative agreement on a new PMR system that you had an opportunity to work with.

Is this moving in the right direction?

Mr. KONOP. It is definitely moving in the right direction, yes.

Mr. GREEN. You have indicated that some changes have taken place as of late. And that you seem to see these as positive changes.

Is it your opinion now that we are starting to move in the right direction to remedy some of the things that you have called to our attention?

Mr. KONOP. We have taken a very solid first step, as I have said in any testimony.

Mr. GREEN. I understand the solid first step. But I am concerned about the direction.

Mr. KONOP. Yes.

Mr. GREEN. Are we moving in the right direction?

Mr. KONOP. Yes.

Mr. GREEN. I know where we are, I know what we have done. And I know that Mr. Cordray has indicated a desire to remedy certain aspects of what has happened. In fact, he has indicated a desire to me to take affirmative action to remedy all of the negativism. But I want to make sure that you are of the opinion that we are starting to move in the right direction.

Mr. KONOP. We are starting to, yes.

Mr. GREEN. Okay. Now, I have from Mr. Cordray a letter, and Mr. Chairman, I believe you received a copy of the letter. And as well there is a Performance Management Analysis for fiscal 2013. I would like to introduce these things into the record, with unanimous consent.

Chairman MCHENRY. Without objection, they will be entered into the record.

Mr. GREEN. Mr. Chairman, you have been very liberal with your time, and I would ask one additional indulgence.

I would just like to give Ms. Strong an opportunity to explain why it is she did not have an opportunity to peruse this report. She has been quizzed on it, but she has never had an opportunity to just state it. Would you give her an additional few seconds to do so, please?

Chairman MCHENRY. Sure. If you would address—there are two reports in question. The internal report the union was provided, and then the earlier Deloitte report. You may address both.

Mr. GREEN. Thank you, Mr. Chairman.

Ms. STRONG. I can't speak to the report that was prepared for the OMWI office. But the request for information from the union that revealed the performance distribution data was requested through my office and we provided that information to the union. And I believe that was in January.

Chairman MCHENRY. Was the OMWI—if the gentleman—was the OMWI office aware that you put together that report, or that the report for the union was routed through you?

Ms. STRONG. I am not sure. It was a routine information request. We get information requests from the union all the time. My office acts as a conduit for those requests so that we turn them over to our systems people, they pull the information from the system, give it back to us, and we turn it over to the union.

Chairman MCHENRY. The OMWI office was not involved with the data you provided to the union?

Ms. STRONG. Not initially. But after we offered the union an invitation to enter into a working group with the EEO office, OMWI, and Human Capital in reviewing that documentation.

Mr. GREEN. Mr. Chairman, if I may?

The OMWI report, will you give your representation as to why you were not privy to the report, please?

Ms. STRONG. I can't answer that question. I just have never seen it until today. It may have been circulated to my supervisor or someone higher than me in my organization. But I just haven't seen it.

Mr. GREEN. Thank you, Mr. Chairman.

I will yield back.

Chairman MCHENRY. I think it shows there is a problem when the lead union negotiator doesn't have that very important data provided by Deloitte.

Mr. Konop, if you would like to respond?

Mr. KONOP. I think, obviously, yes, it would have been helpful. And in the spirit of good-faith bargaining, I think we should have seen it at a much earlier date.

Chairman MCHENRY. Okay. Thank you.

We will now recognize the gentleman from Wisconsin, whom I should congratulate on the birth of his youngest daughter, number seven.

Mr. DUFFY. Number seven.

Chairman MCHENRY. That is right. Congratulations.

Mr. DUFFY. Thank you. We like Marvin Gaye in Wisconsin, I guess.

Mr. GREEN. Mr. Chairman, I think that invites a comment from the ranking member. Let me compliment you as well; you have met your mandate to be fruitful and multiply.

Mr. DUFFY. Thank you.

Ms. Strong, obviously, as the labor and employee relations lead for the CFPB, you heard complaints from different employees of the CFPB about racism and sexism and maybe some agism, right? You heard those complaints some time ago. Yes?

Ms. STRONG. So we—out of the 137 grievances that we have received, there is around, I think, 17, that have alleged some sort of discrimination.

Mr. DUFFY. But they come through you. You are aware of complaints that came in. Yes?

Ms. STRONG. Yes.

Mr. DUFFY. As you said in your opening statement, you are a woman and a minority. When you hear about these allegations of sexism and racism, obviously, you must take this very seriously. Right?

Ms. STRONG. Absolutely.

Mr. DUFFY. And so not only did you have the complaints from employees, you also, in September of last year, had the DIG report, which I heard in your testimony that you don't agree with that report. But there was also an outside investigation that told you that there were some issues as well with regard to racism as well in the CFPB. Correct?

Ms. STRONG. Those were conclusions of that report.

Mr. DUFFY. That you disagree with. Right?

Ms. STRONG. I just do not think it was a complete report.

Mr. DUFFY. Fair enough.

You are also aware that Deloitte was doing an investigation on this very issue that you care about because they asked you a few questions about it. Right?

Ms. STRONG. It wasn't my understanding that it was an investigation. It was more of a—like the question that was posed to me was, "What does diversity mean to you?" So I thought it was more of a study.

Mr. DUFFY. Fair enough. When did you learn that there was a Deloitte report that had been completed?

Ms. STRONG. This is the first time that I have seen this report.

Mr. DUFFY. No. Ms. Strong, we all get the joke when you don't answer my question. I didn't ask you when you saw the report, which you told me you saw that today. My question for you is, when did you know the report existed?

Ms. STRONG. I'm sorry, I can't answer that question. I do not know.

Mr. DUFFY. So you knew before today. Right?

Ms. STRONG. I have never seen the report. I knew that there was some type of study. I am not trying to not be truthful in answering your question. It is just that I haven't seen the report. I did know that Deloitte was doing the study.

Mr. DUFFY. I know you didn't see it. Did you know that it existed a week ago?

Ms. STRONG. No.

Mr. DUFFY. So, then, 2 weeks ago, you didn't know it existed?

Ms. STRONG. I don't believe so. No. I haven't—

Mr. DUFFY. You don't recall.

Ms. STRONG. —so if I had an opportunity to review it, maybe that would trigger my memory.

Mr. DUFFY. Did you have a meeting with the staff of the committee?

Ms. STRONG. Yes.

Mr. DUFFY. Before this hearing.

Ms. STRONG. Yes.

Mr. DUFFY. Didn't they tell you a report existed in that meeting? They told you that it existed 2 weeks ago? Yes?

Ms. STRONG. Okay. Maybe, yes. I just don't recall that.

Mr. DUFFY. So, 2 weeks ago, you knew the report existed. You knew that you were going to come into this hearing and you were going to get questions about the report. And when we ask you those questions, you tell us that you haven't read the report.

Ms. STRONG. My attorney—

Mr. DUFFY. And you mislead us and say, well, I didn't see the report.

Ms. STRONG. I'm sorry, I am not trying to be misleading.

Mr. DUFFY. You are.

Ms. STRONG. My attorney just said that they did not inform us of the report in that closed briefing.

Mr. DUFFY. You knew it existed. You didn't read the report. So you won't answer questions today about it.

Let me ask you this: Mr. Konop, the union, has requested the report. They asked for it months ago.

Ms. STRONG. They have never asked for this report. I'm sorry.

Mr. DUFFY. For information in regard to this issue. Right?

Ms. STRONG. They asked for information.

Mr. DUFFY. That is contained in the report.

When did the CFPB provide the report to Mr. Konop or the union?

Mr. KONOP. When did the CFPB provide this? They haven't.

Mr. DUFFY. They never did. Right. The committee gave it to you. Correct?

Mr. KONOP. That's—

Mr. DUFFY. The CFPB has never given you the report that contains the information that you have asked for.

And the CFPB comes in today and says, listen, we are on the front line trying to get rid of racism and sexism. But then you come in, Ms. Strong, and won't answer our questions. You won't even give the union the report. We have to give it to them. And you want us to believe as a lead negotiator that you want to root out racism and sexism. If you want to accomplish that goal, you have to cooperate.

Did you prepare for this hearing with leadership of the CFPB?

Ms. STRONG. Yes.

Mr. DUFFY. Did they talk to you about how you should testify?

Ms. STRONG. No.

Mr. DUFFY. So what was the conversation with the CFPB and how you should testify in preparation for this hearing?

Ms. STRONG. They asked me practice questions to get me ready.

Mr. DUFFY. So they prepared you. They didn't say, Ms. Strong, go off the best of your recollection and tell the truth. Tell them what you know.

Instead, you come in here and say, I saw the report today, but I never read it, even though I knew it existed weeks ago. So we can't ask you questions about it and you don't give it to Mr. Konop.

And then you want us to believe that you care about this issue and you want to help on a bipartisan effort for us to resolve it. I'm sorry. I don't believe it. And when you start to be more credible and more forthcoming, I will buy in.

I yield back.

Ms. STRONG. That is not true. I'm sorry.

Chairman MCHENRY. We will now recognize Mr. Heck for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman. At this time, I would like to yield my time to the ranking member.

Mr. GREEN. Thank you, Mr. Heck.

Let's, Ms. Strong, continue with the report. And we are talking about the OMWI report.

You indicated that you saw the report for the first time today, I believe. Is that correct?

Ms. STRONG. That is correct.

Mr. GREEN. And that you did not have knowledge of this specific report. You knew that questions were being asked and a report was being compiled. Is this correct?

Ms. STRONG. I knew that Deloitte—that the OMWI office had contracted with Deloitte to do a study on diversity. And I was interviewed.

Mr. GREEN. And you did not receive a copy of the report.

Ms. STRONG. Not that I am aware of, no.

Mr. GREEN. And not having a copy of the report and having not read it, you are not in a position to testify as to the content.

Ms. STRONG. I am not. I think Stuart Ishimaru actually offered to come and speak with you. So he would be the appropriate person to talk about that report.

Mr. GREEN. Would it be unusual for there to be other reports that you would not be privy to?

Ms. STRONG. I don't think it would be unusual. I am sure there are a lot of reports at the Bureau that I am not privy to. I am not a senior manager. I am not an executive. I am a first-level supervisor.

Mr. GREEN. And would any indication that there was some intentionality with reference to your not giving information today, would that be incorrect because of your lack of knowledge about the report?

Ms. STRONG. Yes. I did not have knowledge of the report.

Mr. GREEN. I am doing this because I am trying to give you an opportunity to make it clear as to your lack of knowledge and, as a result of your lack of knowledge, your inability to give comments, as opposed to your knowing about this and your refusal to in some way impart information to others or to give testimony today.

Ms. STRONG. That is correct. I am just not the appropriate person to speak about this report because I didn't have anything to do

with the report. But there is someone at the Bureau who would be happy to come and talk to you about it.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Chairman, I will yield back.

Chairman MCHENRY. Thank you. And we will now go to Mr. Hultgren of Illinois.

Mr. HECK. Mr. Chairman? Reclaiming my time.

Chairman MCHENRY. I'm sorry. How much time did the gentleman have remaining?

Mr. HECK. Two minutes and 55 seconds, to be specific.

Chairman MCHENRY. We will put it back on the board at 3 minutes because we are being kind.

Mr. HECK. You are very kind, Mr. Chairman.

Ms. Strong?

Ms. STRONG. Yes.

Mr. HECK. It is my understanding that committee procedures require you to attest to the veracity, at least, of your written testimony here today.

Do you affirm now and again that everything that you have submitted to this committee, you do so to the best of your knowledge, and it represents the truth as best as you can recollect it?

Ms. STRONG. Yes.

Mr. HECK. Thank you. And thank you for your presence here today.

Ms. STRONG. Thank you.

Chairman MCHENRY. The gentleman yields back.

We will now go to Mr. Hultgren of Illinois.

Mr. HULTGREN. Thank you, Mr. Chairman. Thank you both for being here today.

Ms. Strong, I want to follow up a little bit on—talk about preparation here, meeting with leaders at CFPB to prepare to go over questions, to go over answers.

I wondered if Director Cordray would have been part of that, if you would have talked to him in that preparation?

Ms. STRONG. Repeat the question, please?

Mr. HULTGREN. I wondered if Director Cordray was part of your preparation for your—

Ms. STRONG. No.

Mr. HULTGREN. He wasn't in those meetings at all? You never discussed your testimony today with Director Cordray?

Ms. STRONG. No, sir.

Mr. HULTGREN. For both of you, do you think that the removal of Dennis Slagter from his role as of Director of Human Capital was a positive step in correcting the problem of pay inequity and discriminatory performance ratings detailed in the March 6, 2014, American Banker article?

Ms. STRONG. It is my understanding that Mr. Slagter was offered another position and he accepted it. I don't think it had anything to do with the performance management rating distribution.

Mr. HULTGREN. Do you think the fact that he is no longer there does help the fact of the pay inequity and discriminatory performance ratings?

Ms. STRONG. I don't think it has any impact on that.

Mr. HULTGREN. Mr. Konop, what are your thoughts?

Mr. KONOP. I think, as my testimony referenced, management needs to hold itself accountable. From my dealings with Mr. Slagter, there seemed to be a lack of sensitivity to these issues. And in several meetings I had with him, I think also a lack of urgency in addressing them.

So, I think he was reassigned. Perhaps, that is a better fit for his skill set. Because I do think there was an endemic problem in the Human Capital Division that has led to a number of problems that we are talking about today.

Mr. HULTGREN. So would you suggest that his removal and reassignment likely had something do with the problems with the pay inequity and discriminatory performance ratings?

Mr. KONOP. I can't testify as to exactly what happened. But certainly the timing of it, several weeks after the American Banker article and the hearings he conducted, indicates that it potentially could be linked.

Mr. HULTGREN. Ms. Strong, do you think Dennis Slagter should be commended for a job well done at Human Capital?

Ms. STRONG. Dennis Slagter was my supervisor for the majority of the time that I have been at the Bureau. I found him to be a very caring person who worked very hard to stand up the CFPB from a Human Capital perspective.

Mr. HULTGREN. So would you support the idea of commending him for a job well done at Human Capital?

Ms. STRONG. I believe he did a good job.

Mr. HULTGREN. How about you, Mr. Konop? Would you think that would be idea to commend him for a job well done at Human Capital?

Mr. KONOP. I would not offer that proclamation, no.

Mr. HULTGREN. Would you agree that there are serious problems with the Office of Human Capital? It sounds like you have already stated that, Mr. Konop.

Mr. KONOP. Yes, I would.

Mr. HULTGREN. Ms. Strong, would you agree that there are serious problems with the Office of Human Capital?

Ms. STRONG. No, I would not agree to that.

Mr. HULTGREN. But would you say that pay inequity and discriminatory performance ratings are serious?

Ms. STRONG. We take all grievances and complaints very seriously. But there is—

Mr. HULTGREN. So discriminatory practice and pay inequity would be something that you take seriously and would lead—you would say that would be a serious problem.

Ms. STRONG. Of course. We take all allegations of those types very seriously.

Mr. HULTGREN. My time is running out. Let me get to a couple of other things quickly and focus these to Mr. Konop.

After providing the union with a report on 2013 performance reviews which indicated sharp racial disparities in January 2014, I wonder, did CFPB take immediate action to revise its performance management review process?

Mr. KONOP. No, it did not.

Mr. HULTGREN. What discernable action did the CFPB take in January 2014 after the Bureau released data showing sharp racial disparities in performance ratings?

Mr. KONOP. I believe there was a very general message sent by the Director noting that this is a problem, but certainly, we did not see a change in the posture of the Bureau in grievances nor in the collective bargaining process.

Mr. HULTGREN. Is CFPB's union satisfied with CFPB's approach to resolving the outstanding issues with discrimination at the Bureau?

Mr. KONOP. We are not completely satisfied by any means at this point. A large part of that would have to do with the pay equity issues.

Mr. HULTGREN. What could CFPB do to resolve the union's concerns about sharp racial disparities and performance ratings?

Mr. KONOP. I think we have discussed a lot of the remedies. I think Director Cordray's step was positive on Monday. But we need a new system. We are going to have that. We need more accountability. We really need from the Director on down to make sure the managers are doing this fairly and hold those who don't accountable. And that is really all the union has been advocating for in general throughout the process.

Mr. HULTGREN. But you haven't seen that yet?

Mr. KONOP. Not yet.

Mr. HULTGREN. My time has expired. I yield back.

Mr. Chairman, thank you.

Chairman MCHENRY. We will now enter into the next round, and recognize Mrs. Wagner.

Mrs. WAGNER. Thank you, Mr. Chairman.

Just to get a few things straight here, according to the March 6, 2014, American Banker article, the sharpest disparities in the performance ratings were seen amongst the staffers who had received the top rating of 5. The discrepancies were even greater at the ratings ranges extremes, and at the top one-fifth of White employees or some 20.7 percent received a 5 and were dubbed role models compared with 10.5 percent of African-Americans and 9.1 percent of Hispanics.

Why do you believe that the CFPB, Mr. Konop, designated 20 percent of its White staff as role models and conferred this designation to only 10 percent of African-American and Hispanic staff?

Mr. KONOP. I think what those numbers proved to the union was that there was a disparate impact. And much like the Bureau would do in a fair lending case, it is almost the strict liability situation, where once you view those numbers, the inquiry ends, and the remedy section begins. So we focused on remediating the problem through grievances and through back pay and things like that, but the numbers, I think, speak for themselves.

Mrs. WAGNER. Gosh, speaking of the numbers, is there any empirical data that CFPB had been able to produce to the union that would account for the ratings' disparities?

Mr. KONOP. No.

Mrs. WAGNER. None. Is there any explanation that CFPB had been able to provide to the union to explain any of these disparities at all?

Mr. KONOP. No.

Mrs. WAGNER. So there was no empirical data to base these numbers on? There was no explanation? Did CFPB management and Liza Strong state that CFPB's apparently discriminatory performance rating system exemplified meritocracy?

Mr. KONOP. I raised the issue probably sometime in February during our collective bargaining process. I raised it numerous times fairly aggressively and throughout was met with strong resistance to changing the system, including a question back to me whether I didn't believe in meritocracy, so, in essence, saying that the current system was a meritocracy, which I found sadly—

Mrs. WAGNER. Stunning.

Mr. KONOP. —humorous in a sad way.

Mrs. WAGNER. Ms. Strong, did you or anyone else representing CFPB management refer to CFPB's discriminatory performance review system as a form of meritocracy?

Ms. STRONG. No, I did not.

Mrs. WAGNER. Maybe you two weren't in the same meeting.

Given the data disclosed in the March 6th American Banker article and this one that apparently is 8-months-old and just everybody is coming to light on here, the Deloitte report of September 30th, that actually, let me be very specific, it identified diversity problems across the agency including overrepresentation of minority and women employees in the lower pay scale groups. That is what this 8-month-old Deloitte study, as it is called, did.

Ms. Strong, can you explain why CFPB employees should trust you and your office to look out for their interests and protect them from abuses of CFPB management?

Ms. STRONG. First of all, I don't think or I have not been privy to any abuses by CFPB management. I look into the grievances that are brought to me.

Mrs. WAGNER. I'm sorry. Would you state that again? You have not, go ahead, seen—

Ms. STRONG. In the cases that I have worked on and in the investigations I have conducted, I have not found any evidence of discrimination.

Mrs. WAGNER. And one more time, you would like to stand by that answer?

Ms. STRONG. Yes, ma'am.

Mrs. WAGNER. Okay. Mr. Konop, do you believe CFPB's Human Capital Office generally, and Ms. Strong in particular, are doing everything in their power to address and resolve specific workplace complaints as well as the underlying issues driving those complaints, sir?

Mr. KONOP. No.

Mrs. WAGNER. I would agree.

Are you aware of a culture of retaliation and intimidation that discourages employees from submitting valid complaints or exposing wrongdoing at the CFPB?

Mr. KONOP. We have seen instances of retaliation for a variety of reasons against union members, yes.

Mrs. WAGNER. Do you share information about an employee's complaints with the very same manager they are complaining about?

Mr. KONOP. I am not sure I quite understand that question.

Mrs. WAGNER. It is going directly to that manager?

Mr. KONOP. Unfortunately, in the current system, yes, that would be the way it works.

Mrs. WAGNER. So you have to share that directly with the current manager, who has rated in the disparate directly against the employee? I want to make sure I get this for the record.

Mr. KONOP. That is one thing we seek to change in the collective bargaining agreement going forward. I think you have identified a key problem in the structure of the grievance process, yes.

Mrs. WAGNER. I think we have. Do you understand how disclosing that information can very easily lead to retaliation, sir?

Mr. KONOP. Sure. It is human nature, I would say.

Mrs. WAGNER. Mr. Chairman, I yield back.

Chairman MCHENRY. The ranking member passes, and we will go to Mr. Barr of Kentucky for 5 minutes.

Mr. BARR. Mr. Konop, just to follow up on something that we were exploring earlier. Obviously, the Bureau at some point in time disclosed to the union that managers were rating themselves higher, more highly than their own staff. And the union became aware of that when exactly?

Mr. KONOP. The union became aware of that in September of 2013.

Mr. BARR. Okay. How did, as you represent the union, the Bureau respond to that?

Mr. KONOP. Obviously, we voiced our displeasure with that. It kind of goes against most things the union stands for. And generally, it appeared to me there was some sort of unified front of just not discussing it, just not acknowledging it and negotiating it almost as if it didn't happen.

Mr. BARR. To date, have they adequately addressed that issue in the eyes of the union?

Mr. KONOP. I think really Director Cordray's statement on Monday certainly addressed it, and I think that was the first time it has really been addressed head on.

Mr. BARR. So, for the first time since September after this committee began to look the into this issue, the Bureau is finally acknowledging this as of today?

Mr. KONOP. As far as I know, yes, that is the first straight-on admission of fault.

Mr. BARR. Ms. Strong, you refer to Stuart Ishimaru. You have a professional relationship with Mr. Ishimaru at the Bureau, correct?

Ms. STRONG. Correct.

Mr. BARR. And is he still the Head of the Office of Minority and Women Inclusion?

Ms. STRONG. Yes, he is.

Mr. BARR. And he has been in that position for how long?

Ms. STRONG. I don't know exactly. A couple of years.

Mr. BARR. Okay. So as long as you have been there?

Ms. STRONG. I have been there longer than him.

Mr. BARR. Okay. How many meetings do you have typically with Mr. Ishimaru at work?

Ms. STRONG. We don't meet on a routine or regular basis. I would say I have met with him maybe 4 or 5 times. He has also been in meetings that other people have been in, as well.

Mr. BARR. Your office is the Office of Human Capital, right?

Ms. STRONG. That is correct.

Mr. BARR. And Mr. Ishimaru's office is the Office of Minority and Women Inclusion?

Ms. STRONG. That is correct.

Mr. BARR. And both of those offices are within the Operations Division?

Ms. STRONG. They were until recently, and the OMWI office was elevated to report directly to the Director.

Mr. BARR. When did that happen?

Ms. STRONG. I would say within the past 3 months.

Mr. BARR. Okay. Is Mr. Sartaj Alag still head of the division?

Ms. STRONG. He is the COO.

Mr. BARR. So does he organize meetings where there is communication among the various offices within the division?

Ms. STRONG. I am sure he does; I just don't attend those meetings.

Mr. BARR. You are not part of those?

Ms. STRONG. That is correct.

Mr. BARR. In the four or five occasions—you are telling me that you have only spoken with Mr. Ishimaru four or five times in your entire—

Ms. STRONG. That is a guess.

Mr. BARR. That is about right?

Ms. STRONG. Right.

Mr. BARR. And in those four or five conversations, not once in the last 8 months was the Deloitte report ever brought to your attention?

Ms. STRONG. No, sir.

Mr. BARR. You are aware of the Deloitte report being in Mr. Ishimaru's office? You knew that?

Ms. STRONG. Yes. I was interviewed.

Mr. BARR. But there was never a discussion between you and Mr. Ishimaru related to that?

Ms. STRONG. I was never briefed on this report.

Mr. BARR. In your management of investigation of employee grievances, have you ever come across allegations that employees within the Office of Consumer Response referred to a division as "the plantation?"

Ms. STRONG. I had not heard that before the April 2nd hearing.

Mr. BARR. That was the very first time you had ever heard that?

Ms. STRONG. That was the very first time.

Mr. BARR. So did you not hear about that in Ms. Raucci's report?

Ms. STRONG. No, that was not in her report.

Mr. BARR. Okay. And did you ever hear of any other kinds of, in your investigations of employee grievances, any other allegations of gender or racial discrimination?

Ms. STRONG. I have received some grievances that have alleged, for example, that an individual's performance rating was lower based on their race.

Mr. BARR. Okay.

Chairman MCHENRY. Will the gentleman yield?

Mr. BARR. Yes.

Chairman MCHENRY. Mr. Konop, regarding Angela Martin, Ms. Strong testified and said some very direct things about her case. Do you believe Ms. Martin to be truthful in her allegations?

Mr. KONOP. Every allegation I have heard Ms. Martin make, I have no reason to believe it is untruthful.

Chairman MCHENRY. Do you believe that she suffered retaliation?

Mr. KONOP. Yes, I do.

Chairman MCHENRY. Have you actually been retaliated upon?

Mr. KONOP. Me, personally?

Chairman MCHENRY. Yes.

Mr. KONOP. I didn't file a grievance or anything on it, so it certainly is not a formal complaint, but I think generally the CFPB was a little slow to embrace the idea that we were a union and we were going to act like a union and represent employees vigorously. And I think there was some blowback from managers who had no experience in working in that type of environment that certainly I felt.

Chairman MCHENRY. All right. The gentleman's time has expired.

Mr. GREEN. Thank you, Mr. Chairman. I will accept my 5 minutes.

Mr. Konop, you just made comments about a certain case and I have tried to stay away from specific cases, but your comments invite my concerns. Did you investigate this case yourself? Do you have some empirical evidence to support your claim?

Mr. KONOP. I read the report, obviously. I—

Mr. GREEN. My question was, did you investigate?

Mr. KONOP. Of course, I did not do an investigation.

Mr. GREEN. I assumed as much, but I wanted the record to reflect what the facts are. And understanding that you did not investigate them, am I to understand that you did not talk to people on both sides of the issue, that you did not talk to persons who can give you intelligence about both sides without bringing names into it? Is that a fair statement?

Mr. KONOP. No.

Mr. GREEN. Did you talk to people on both sides?

Mr. KONOP. I talked to the person sitting next to me.

Mr. GREEN. No, no, no, no.

Mr. KONOP. She was representing—

Mr. GREEN. People associated with the specific case that was mentioned. I have tried to refrain from mentioning names, but people associated with that case. Did you talk to people on both sides of it?

Mr. KONOP. I have had discussions with people on both sides of that, yes.

Mr. GREEN. About that specific case?

Mr. KONOP. I believe so, yes.

Mr. GREEN. So you have investigated, then?

Mr. KONOP. I wouldn't call it an investigation. It would be more of trying to reach a resolution.

Mr. GREEN. Did you talk to people who disagreed with the contentions of the complainant?

Mr. KONOP. Sure.

Mr. GREEN. Did you have reason to disbelieve them?

Mr. KONOP. I thought the report was fairly convincing, and I have reviewed certainly many aspects of Angela Martin's case personally because I represented her on a grievance.

Mr. GREEN. My question was, did you have reason to disbelieve the persons who gave you information that was antithetical to the testimony that we received here? Did you talk to people who gave you another opinion?

Mr. KONOP. Yes, I actually think I did have reason to disbelieve them, yes.

Mr. GREEN. What was the reason?

Mr. KONOP. The report, for one.

Mr. GREEN. Not the report. I am asking you about what you did and what you found out yourself. You see, we have the report.

Mr. KONOP. Okay.

Mr. GREEN. And you have given your opinion.

Mr. KONOP. Yes.

Mr. GREEN. And your opinion, I want to find out if it is based on something associated with empirical evidence. Is it associated with empirical evidence, or are these just your thoughts based upon things that you have picked up along life's way, as it were?

Mr. KONOP. I don't think Angela Martin's case really dealt with necessarily empirical evidence, so no, my beliefs on her case would not necessarily be empirically-based.

Mr. GREEN. Thank you.

Now, let's go to disparate impact. That is a theory that has been accepted and embraced by many courts; in fact, the Supreme Court of the United States of America has embraced the theory, and it has been embraced apparently by this committee. My hope is that in future testimony, we will find that this theory finds the same degree of validity that it has found today and has found on previous occasions.

Now, I am a person who believes that you have to be consistent to the extent that you can. We all have inconsistencies in our lives. But to the extent that you can be consistent, you should. And if you are going to embrace disparate impact as it relates to this agency, my hope is that your union would believe that it would be appropriate for other agencies, as well. Is that a fair statement?

Mr. KONOP. I think we believe in the principle of disparate impact, yes.

Mr. GREEN. And would you agree that if you have some evidence that is based upon disparate impact, that this would be something that you should call to my attention?

Mr. KONOP. Yes, I do.

Mr. GREEN. Are you indicating today that you are free to do this? Can you call these things to my attention?

Mr. KONOP. I would be honored to, yes.

Mr. GREEN. And I would be honored to receive any intelligence that you have, connoting or indicating disparate impact so that we may give all persons the same opportunity to be heard that we have accorded some people in this circumstance.

Now, finally this: You have indicated that there is a remedy that is being imposed that deals with the pay circumstance. You have indicated that you are working now on a remedy that deals with the way these evaluations will take place in the future. Is that correct?

Mr. KONOP. Yes.

Mr. GREEN. And you have indicated that you seem to be moving in the right direction. You are not where you want to be. But is this the way unions work? Do you start at one point and do you try to graduate to a final point that is acceptable to the union and other parties, as well? Is this a fair statement?

Mr. KONOP. Yes.

Mr. GREEN. So you are now working with the agency. Are you working directly with Mr. Cordray?

Mr. KONOP. We have quarterly meetings with the Director, yes.

Mr. GREEN. And as such, you are moving in the right direction, not where you want to be but moving in the right direction?

Mr. KONOP. I think that is right.

Mr. GREEN. Thank you.

Chairman MCHENRY. I will now recognize Mr. Duffy for 5 minutes.

Mr. DUFFY. Thank you, Mr. Chairman.

We have had quite a few hearings on the discrimination at the CFPB, and during one of those hearings, it was brought to our attention that a unit at the CFPB that predominantly had African-American employees was oftentimes referred to as "the plantation" or "the cesspool."

Ms. Strong, were you aware that this unit or agency was referred to by those terms?

Ms. STRONG. No, sir.

Mr. DUFFY. Okay. Is this the first time you have heard that those terms have been used for a unit within the CFPB?

Ms. STRONG. No. I heard that in the April 2nd hearing. That was the first time I had heard it.

Mr. DUFFY. But before that, you didn't know?

Ms. STRONG. No, I did not.

Mr. DUFFY. Mr. Konop, have you heard these terms being used for a specific unit within the CFPB?

Mr. KONOP. I certainly have heard for basically a year since the union has been in existence extremely unhappy employees in Consumer Response who seem to have justified complaints and they did seem to revolve, in many cases, around race. The first time I believe I heard that actual term was with Ms. Martin's testimony.

Mr. DUFFY. Okay. And, again, Ms. Strong, you are at the tip of the spear in regard to employee relations between employees and management, right? You are the labor and employee relations person?

Ms. STRONG. Yes, I am the Lead of Labor and Employee Relations.

Mr. DUFFY. And did not know that this was taking place?

Ms. STRONG. No, that was never reported to me.

Mr. DUFFY. And, again, in your statement, you told us that you care about women and you care about minorities because you are both yourself. And I don't want to beat a dead horse, but you knew

that the Deloitte report had come out. And as a person who cares about women and minorities, are you telling us today that you cared so much about women and minorities that you had no interest in reading the investigation that was provided by Deloitte, and even today as you sit here you had no interest in reading it?

Ms. STRONG. No. It is just that I wasn't provided a copy of it, so I did not have the opportunity to review it, and I didn't know that it existed. I knew that a study was being done, but I didn't know there was a product that came out of it.

Mr. DUFFY. Your testimony, in my prior round, you said you did know about it 2 weeks ago and that you didn't have a copy. Does that mean that you couldn't have received a copy?

Ms. STRONG. No, actually, I'm sorry, I said that was not true.

Mr. DUFFY. After you consulted with your lawyer, but first, you told me that you did see it.

Ms. STRONG. No. You said that it was brought up in that meeting, and I said, I am not sure, but it was clarified that it was not.

Mr. DUFFY. I was very clear that you indicated you have no independent recollection of whether you knew it existed or not until today and you haven't seen it.

Mr. Konop, you have heard Ms. Strong's comments today about her lack of review of a report that is pretty damning to the agency, so she can't answer questions today at this hearing. Do you think there is concern within the employee body of the CFPB in regard to the trust of Ms. Strong as the Lead of Employee Relations with management?

Mr. KONOP. I think currently, because of these problems that we are discussing here today and others, there is a lot of distrust between various aspects of management and labor. I think Human Capital certainly played a role in that.

Mr. DUFFY. Do you think now, after this hearing, as the spokesperson for labor at the CFPB, do you think they would probably feel a lot better about Ms. Strong and the position that she holds, a lot more confident in her?

Mr. KONOP. I think our continued position will be there is a lot of work to be done and management needs to hold itself accountable.

Mr. DUFFY. Do they feel better about her today after this?

Mr. KONOP. Do I? I actually like Liza Strong. We have worked together on a lot of things. We see issues, though, differently in many cases, and I have felt that workers have not been getting a fair shake from Human Capital, so—

Mr. DUFFY. So is it fair to say that they haven't been getting a fair shake from Ms. Strong?

Mr. KONOP. She is the second sort of rung supervisor of Human Capital, so, of course, that would indicate my displeasure with that, with her, as well.

Ms. STRONG. Yes, so just to clarify my role. My role is to assist managers in responding to grievances. Ultimately, it is the manager's decision on how to respond to a grievance. We give them recommendations and guidance, but it is not my role to make or render decisions on grievances.

Mr. DUFFY. And I want to do one quick question. You do see cases come in on grievances from the union, right, Ms. Strong?

Ms. STRONG. Yes.

Mr. DUFFY. And in those grievances, roughly how many have there been?

Ms. STRONG. There have been about 137.

Mr. DUFFY. And in how many of those grievances have you sided with the union as opposed to management?

Ms. STRONG. I don't know the exact numbers, but I believe we are pending resolution or have resolved 50, but there are still some that are still in the process.

Mr. DUFFY. So 50-plus have been sided in favor of the union?

Ms. STRONG. Correct.

Mr. DUFFY. Mr. Konop, would you agree with that?

Mr. KONOP. I don't think siding in favor of the union would be the—I think there was settlement reached, but for a long time, I think the denial rate was hovering around 90 percent, so there has been quite a bit of change in that in the last several weeks.

Mr. DUFFY. I yield back.

Chairman MCHENRY. The gentleman's time has expired.

I will take my 5 minutes for this round. Ms. Strong, have any supervisors received counseling for making racially insensitive remarks or using racial epithets?

Ms. STRONG. Yes.

Chairman MCHENRY. Okay. What remarks or racial epithets are you aware of?

Ms. STRONG. I don't feel very comfortable talking about specifics.

Chairman MCHENRY. Actually, I am not comfortable with you saying it, but you are aware of what they said?

Ms. STRONG. Yes.

Chairman MCHENRY. And in order to resolve the grievance, you had to be aware of what they said, right, the circumstances?

Ms. STRONG. It wasn't a grievance.

Chairman MCHENRY. It wasn't? Okay.

Ms. STRONG. Maybe it was first raised as a grievance. I'm sorry.

Chairman MCHENRY. So what disciplinary action has been taken against those supervisors who made racially insensitive remarks or used racial epithets?

Ms. STRONG. There was a manager who made a comment to an employee in a performance discussion that the manager did not feel or intend to have it come out that way. That manager was counseled.

Chairman MCHENRY. How many managers have made racially insensitive remarks or used racial epithets?

Ms. STRONG. That is the only one that I recall.

Chairman MCHENRY. That is one circumstance or two?

Ms. STRONG. That is one.

Chairman MCHENRY. That is one, okay. And what was the remediation? What was the punishment?

Ms. STRONG. They were counseled.

Chairman MCHENRY. They were counseled, okay. Okay. And they are still in their same position today?

Ms. STRONG. Correct.

Chairman MCHENRY. Do you know in the performance review process if they got high marks?

Ms. STRONG. I do not know.

Chairman MCHENRY. Okay. And under the provisions that Director Cordray outlines, if he did not receive high marks, he will be compensated as if he did get high marks. Is that correct?

Ms. STRONG. My understanding is that all employees will be compensated as though they received a 5 level rating.

Chairman MCHENRY. A what rating?

Ms. STRONG. A 5 level rating.

Chairman MCHENRY. Out of how many?

Ms. STRONG. Out of 5 levels.

Chairman MCHENRY. So everyone is now superior under the conclusion of this.

Is that right, Mr. Konop? Is that how you see it?

Mr. KONOP. I believe that is correct, yes.

Chairman MCHENRY. Okay. And is the union's position that that is satisfactory, that it resolves the issue with performance reviews?

Mr. KONOP. It certainly doesn't resolve the whole issue, but it is certainly the first acknowledgment there were problems, and we think that is a good building block for going forward.

Chairman MCHENRY. Mr. Konop, I want to ask this because I was here during the creation of the CFPB on this committee. Are you surprised, or how has the approach been between the union and management? Because as far as I saw it, the unions were key and instrumental in the creation of the CFPB. You could quibble with that, if you wish. But has the welcome been warm?

Mr. KONOP. First, I think but for labor unions, we wouldn't have a CFPB. I think the CFPB was very welcoming to us in the organizing efforts. But when we actually organized, I think they might have been a little surprised that a union was actually acting like a union, and—

Chairman MCHENRY. Have they been heavy-handed in their response to you?

Mr. KONOP. I think there were instances of heavy-handedness, and it has been an adjustment change. I think as the ranking member put it, Rome wasn't built in a day. We understand that. However, that being said, I do think the CFPB could have been certainly more collaborative and put the union on equal footing, and we didn't see that for a long time.

Chairman MCHENRY. Sure. So let me ask you, back to the series of questions I had for you, Ms. Strong, will you provide in writing who the supervisor was and the circumstances under which they used the racially insensitive or racial epithet?

Ms. STRONG. What is the question?

Chairman MCHENRY. Will you provide in writing who the supervisor was?

Ms. STRONG. Can I provide it in writing?

Chairman MCHENRY. Will you provide—not can—will you provide to this committee in writing who that was and the circumstances under which—

Ms. STRONG. Sure, I would be happy to kind of brief on specifics of that.

Chairman MCHENRY. Thank you. You have legal counsel. As you are entitled as a CFPB employee, your legal counsel is being paid for by yourself or the agency?

Ms. STRONG. I have requested reimbursement through our indemnification policy.

Chairman MCHENRY. And have you been granted that?

Ms. STRONG. Yes.

Chairman MCHENRY. Mr. Konop, likewise, did you request repayment of legal counsel?

Mr. KONOP. I did not even get to that point. I was told pretty clearly—

Chairman MCHENRY. Why?

Mr. KONOP. I was told pretty clearly that I would not be indemnified so I did not retain an attorney.

Chairman MCHENRY. Do you believe that is some level of retaliation?

Mr. KONOP. It certainly didn't strike me as a fair approach, as we are both Bureau employees and both privy to the same information.

Chairman MCHENRY. Okay. It seems as if this committee and what we have aired today—we know a lot more about employee relations than you do, Ms. Strong, and so it is surprising to me that you were not provided this Deloitte report. Do you believe that is problematic?

Ms. STRONG. I don't know. I see on here that it was—

Chairman MCHENRY. Will you respond in writing as to whether or not you believe it is problematic after reviewing the report that is before you?

Ms. STRONG. I will tell you that I definitely will read it now.

Chairman MCHENRY. I would certainly appreciate it. Before you engage in negotiations, you should look at this data. It is damning.

My time has expired. I recognize the ranking member.

Mr. GREEN. Yes. Thank you, Mr. Chairman. I would like to have just a couple of comments and questions, if I may, please.

Chairman MCHENRY. We are going into a third round, so we will give you 5 minutes. The gentleman strikes the last word.

Mr. GREEN. I don't think I will need 5 minutes, Mr. Chairman.

But I do want to have you indicate where the managers are a part of this remedy that is being imposed. The question was phrased such that you included all persons at the CFPB receiving the bonuses based upon a 5, and my question to you is, did this include managers, as well?

Ms. STRONG. I do not believe it includes senior-level managers, at the Assistant Director level or above, is my understanding.

Mr. GREEN. And do you agree with this, Mr. Konop?

Mr. KONOP. Yes, I agree with her statement.

Mr. GREEN. Thank you.

Mr. Konop, a question was posed to you about your feelings, as it were, as they relate to Ms. Strong, and you indicated that where she is in the chain of command, as it were. Let me ask you now, are you indicating that you think that the employees at the CFPB have some animus as it relates to Ms. Strong?

Mr. KONOP. I think certain employees certainly do.

Mr. GREEN. Certain employees?

Mr. KONOP. Yes.

Mr. GREEN. All right. Is that to include, for my purposes, all employees, which would mean that I would assume you would say no?

Mr. KONOP. No, not all employees.

Mr. GREEN. And let me ask you this, just for clarity: There are certain employees who probably don't think highly of you. Is that a fair statement?

Mr. KONOP. I am sure there are.

Mr. GREEN. But that wouldn't mean that all of them?

Mr. KONOP. No.

Mr. GREEN. And finally, for Ms. Strong, you are not here to represent the CFPB today, are you? Are you the spokesperson for CFPB today, or did you come here to represent your station and what you have done there? Which?

Ms. STRONG. The latter. The latter, sir.

Mr. GREEN. So you are not here to represent the agency?

Ms. STRONG. No, sir. The Director offered to come himself. I know that Stuart Ishimaru offered many times to come, and both of those offers were declined.

Mr. GREEN. Mr. Chairman, I want to give back more than 3 minutes of time.

Chairman MCHENRY. Certainly. I want to just recognize myself for 5 minutes, and then we will end this thing. And I appreciate the witnesses being here today, even under the circumstances of being compelled. I appreciate your willingness to answer questions from both sides of the aisle.

What we found today is interesting. Ms. Strong, you have been less than forthcoming in terms of how you have answered questions today, and that, I believe, is problematic.

But I do want to ask you, this Deloitte report, which was done by the Office of Minority and Women Inclusion, it is "Diversity and Inclusion Assessment" dated from September of last year. Do you think that information could have been helpful to you in doing your job?

Ms. STRONG. I don't know. I haven't reviewed it, so I can't answer that.

Chairman MCHENRY. Would you respond in writing to that after you review it?

Ms. STRONG. No.

Chairman MCHENRY. You will not respond in writing as to whether or not you believe it would be helpful to have this information?

Ms. STRONG. Excuse me for one moment.

Chairman MCHENRY. Your lawyer is nodding—

Ms. STRONG. On my attorney's advice, no, I would not.

Chairman MCHENRY. Okay. Well, I certainly appreciate your assertion of your rights to not respond to that.

So would you find it problematic to know that on page 13 of this report, at—the conclusion is, "further examination reveals that the minority population is overrepresented in the lower pay bands and underrepresented in the higher pay bands, which is masked in the Bureau-level data." Would that information have been helpful to you in doing your job?

Ms. STRONG. I haven't had a chance to read the report, so I wouldn't be able to comment on that.

Chairman MCHENRY. Specifically, minority composition in pay bands 60s, 70s, 80s, and 90s are approximately 10 percent below

the Bureau-level minority composition, as well. Do you think that is helpful data, useful data in your negotiations with the union about the issue of minorities being discriminated against and paid disparities within the Bureau?

Ms. STRONG. I would have the same answer. I wouldn't be able to respond without thoroughly reviewing the report.

Chairman MCHENRY. Okay. Again, less than forthcoming in your answers and unwilling to engage here.

Mr. Konop—

Ms. STRONG. That is certainly not my intent.

Chairman MCHENRY. But it is the result of your actions. It may not be your intent, but it is certainly the result of your actions.

Mr. Konop, in terms of negotiating, who do you negotiate with, with the Bureau? As head of union for the chapter, for the—

Mr. KONOP. Certainly, Liza is involved in the actual collective bargaining agreement negotiations. Several other attorneys—

Chairman MCHENRY. Okay. Do you believe that what you have heard today means that she is a fully-informed party with whom to negotiate?

Mr. KONOP. I do not believe she is fully informed, no.

Chairman MCHENRY. Okay. And the withholding of this important report from the person you are negotiating with, that to me would not give you greater assurances. Do you believe that it gives you greater assurance or less assurance that the Bureau is being forthright in producing data so that you can negotiate with them in good faith?

Mr. KONOP. It certainly would not give us greater assurance, yes, I agree.

Chairman MCHENRY. Okay. Well, this hearing is problematic, the origin of it. We have both data and individual examples of discrimination and retaliation, and so I think it is important that we follow up with this. We are going to have additional questions for both of you. And I would like to thank the witnesses for their testimony today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, the hearing is adjourned.

[Whereupon, at 12:37 p.m., the hearing was adjourned.]

A P P E N D I X

May 21, 2014

Statement of Ben Konop

Before the Committee on Financial Services

Oversight and Investigations Subcommittee

U.S. House of Representative

May 21, 2014

First, I would like to thank the committee for taking the time to examine the important issues of race and gender discrimination as well as other issues of equality which are a problem not only at the CFPB, but throughout our society.

For the last three years at the CFPB I have served as an Enforcement Attorney in the Office of Supervision, Enforcement, and Fair Lending. I am honored to enforce our nation's laws with a group of talented, hard-working and passionate colleagues who dedicate their professional lives to fighting for fairness in the financial marketplace.

In late 2012, I also helped organize a chapter of the National Treasury Employees Union (NTEU) at the CFPB. In May of 2013, workers voted overwhelmingly for the Union, with 80 percent of those casting ballots voting in favor of organizing.

Shortly after the election, I was asked by NTEU's national representative to serve as the Interim Executive Vice President of the Chapter and was eventually elected by our members to that position for a two-year term. As the Executive Vice President, I represented the Chapter in negotiations for our 2013 pay, advocated for dozens of employees in grievances and EEO proceedings, and currently serve on the bargaining committee charged with negotiating the first collective bargaining agreement in the Bureau's brief history.

During my time at the Bureau, I've witnessed great accomplishments by our unionized workers. For example, members in Enforcement have led cases that resulted in 3.5 billion dollars being returned to American consumers. Union members in Supervision have traveled thousands of miles every week to ensure that banks and other financial institutions are following the law. Members in Consumer Response have overcome significant obstacles to staff a robust complaint system that helps give the American consumer a fair shake. And union members in Fair Lending have made sure that financial institutions throughout our nation are held accountable if they discriminate on impermissible factors like race and gender.

Unfortunately, I've also witnessed Bureau management struggle, at times, to live up to the mission, ideals, and achievements of the CFPB, notably in regards to Performance Management Review (PMR). PMR ratings are vitally important for our workers as they determine pay raises, bonuses, and make up the permanent employee record that is relied upon by the bureau to award

promotions and other benefits. These ratings can also be accessed by potential future employers when former Bureau members apply for a job outside the agency.

In August and early September of 2013, just weeks after the union was recognized, the chapter asked for and was given the 2012 PMR ratings distribution between labor and management. The 2012 data that we requested revealed managers were far more likely to receive the highest ratings, and less likely to receive the lowest ratings than bargaining unit employees. To me this seemed like managers were, in essence, receiving "Coach of the Year" awards while their employees had only a mediocre winning percentage. I, along with other members of the bargaining team, repeatedly raised these fairness concerns during September of 2013 and were assured by management that these inequities would be remedied. Sadly, this was not the case.

In November 2013, employees were given their new PMR rating for the preceding year, after which our fledgling chapter was overwhelmed with members seeking to file grievances over their ratings. Several chapter stewards and board members observed that the bulk of potential grievances were being reported by minority and female employees. In addition, it appeared that employees over forty years of age were also adversely impacted by the rating system. In response to our members' concerns, the chapter filed a comprehensive information request on November 22nd, 2013 seeking from management a detailed PMR breakdown by categories such as race, gender, age, and bargaining unit status. It was this request, and the agencies response to it nearly two months later in mid-January, that I believe has led to this hearing today.

The 2013 ratings showed marked disparities for minority employees. For example, a white employee was twice as likely to receive the highest rating at the bureau as compared to a black or Hispanic employee. The odds were similarly stacked against workers over 40. And ratings continued to be badly skewed in favor of management when compared with the ratings of the bargaining unit, who do the bulk of the work at the bureau.

Immediately upon receiving this data, on January 15th, 2014, our chapter's leadership made the members aware of these troubling disparities and called on management to make wholesale changes in PMR going forward while compensating those who were adversely affected in the past. In response, management was largely silent. We then entered into collective bargaining negotiations in late January. Throughout the first several months of bargaining, the union raised these issues with management representatives sitting across the table and called on them to discard the current system. And once again, surprisingly, management refused to acknowledge the documented unfairness in the system and, instead, defended PMR. In fact, at one point during negotiations, a management representative asked me unironically whether, by advocating for a new rating system, I "did not believe in a meritocracy?"

While the chapter was raising PMR issues through grievances and bargaining, we also pursued approximately fifteen pay equity grievances. In these filings, we alleged that women and minority employees were being underpaid when compared to similarly situated white male

colleagues. To date, the Bureau has denied each of these grievances at all stages, often using inconsistent reasoning, despite what I feel is convincing evidence of low pay for numerous women and minority workers.

In the last several weeks, however, there does appear to be recognition by management that we ought to be doing better as a Bureau. For example, we recently reached a tentative agreement on a new PMR system that, in large part, accepts the union's proposal and scraps the system that yielded the disparities.

In addition, just days before this hearing, Director Cordray issued an important directive, for the first time acknowledging that "there were broad-based disparities in the way performance ratings were assigned across our employee base in both 2012 and 2013." He confirmed the union's belief that "these differences indicate a systemic disadvantage to various categories of employees that persisted across divisions, offices, and other employee characteristics." In particular, Director Cordray agreed with the union's findings that there was a "broad-based, statistically significant disparit[y] in many areas, including race/ethnicity, age, [and] bargaining unit membership eligibility…"

As a result of this directive, which retroactively compensates the majority of employees harmed by the PMR system, it appears that the Bureau has made a solid first step in the process of holding itself accountable. This is what the Bureau is in the business of doing in the financial marketplace, and that is all the Union has asked of Bureau management since our chapter's inception.

I look forward to a productive discussion on these and other important issues at the CFPB. Thank you.

STATEMENT OF LIZA A. STRONG
Before the Committee on Financial Services
Oversight and Investigations Subcommittee
U.S. House of Representatives

May 21, 2014

Good morning Chairman McHenry, Ranking Member Green, and members of the Subcommittee.

My name is Liza Strong, and I am the Lead of Labor and Employee Relations at the Consumer Financial Protection Bureau. I have held that position since July 2011. Prior to joining the Bureau, I worked in the Office of Thrift Supervision, and prior to that, at the Federal Aviation Administration. I have significant experience in federal government personnel matters. I am appearing today to make this brief statement and answer your questions pursuant to the Subcommittee's subpoena, dated May 8, 2014.

It has been, and continues to be, my pleasure to work as a public servant. In particular, I am proud to be part of the work the Bureau is doing to protect American consumers. I believe the Bureau's mission—to make markets for consumer financial products and services functional and safe—is very important.

That is why I am deeply troubled by allegations about discrimination at the Bureau. On March 6, 2014, American Banker published an article alleging racial disparities in the Bureau's performance evaluations. Additionally, on April 2, 2014, this Subcommittee heard testimony from Ms. Angela Martin, a Bureau employee, and Ms. Misty Raucci, a contractor, alleging discrimination. Those allegations are not consistent with what I have observed during my time at the Bureau.

The performance review information reported by American Banker was compiled by the Bureau at the request of the National Treasury Employees Union, the union that represents Bureau employees. It is part of my job to facilitate responses to NTEU requests for information, which I did in this case. It is not part of my job to actually collect the information or evaluate or assess the data requested. Instead, my office serves as a conduit for the requests. Although I have not been involved in the Bureau's assessment of the data, I am aware that the Bureau was analyzing

the performance review information for signs of disparate impact even before American Banker published its story.

I do not have a role in addressing any performance review process issues that may have occurred in the past. My role in revising the performance review process is limited to helping negotiate the Bureau's collective bargaining agreement with the NTEU going forward. In that context, Director Richard Cordray asked me to facilitate an open dialogue with the NTEU about its vision for performance management, which I have done. During recent contract negotiations, the NTEU presented its own plan for the performance review process, which the Bureau has now accepted. Our cooperative efforts with the NTEU will continue through a working group focused on ensuring that the performance review process at the Bureau is fair and effective.

In addition to working with the NTEU, I also manage investigations of individual employee grievances. Employee grievances are separate from EEO complaints, which are handled by a different office. My office is currently handling numerous employee grievances. The grievances involve a variety of issues, with a relatively small number alleging any sort of discrimination. We take all grievances very seriously, and fully investigate each one.

Angela Martin's grievance was no different. When Ms. Martin first alleged mistreatment by one of her peers, my office undertook a thorough investigation that included numerous interviews and the collection of signed statements. We did not find evidence to corroborate Ms. Martin's allegations, but still took a number of proactive steps to address Ms. Martin's concerns. These included providing a coach for Ms. Martin's co-worker, which he readily accepted, recommending that roles and responsibilities be clarified, and encouraging Ms. Martin and her co-worker to engage in mediation. While Ms. Martin's co-worker was willing to engage in mediation, Ms. Martin declined that opportunity. Meanwhile, two of Ms. Martin's direct reports raised serious concerns about Ms. Martin's management style. They complained of abuse that justified their temporary re-assignment to another supervisor.

When Ms. Martin alleged retaliation by her manager, in part because two of her reports were temporarily reassigned, we took that complaint equally seriously. I engaged what I thought at the time was a competent, independent third-party to investigate Ms. Martin's retaliation claim—Defense Investigators Group. What I received in return from DIG, and Ms. Raucci specifically, was an incomplete work product that did not meet the goals set forth in DIG's own statement of work. Ms.

Raucci's investigation did not meet even minimal standards. For example, she failed to obtain signed statements from the people she interviewed, did not provide Ms. Martin's supervisor a full opportunity to respond to the allegations against him, and did not provide sufficient documentation to support her conclusions. The President of DIG conceded that Ms. Raucci's work was unacceptable, and, in many respects, did not address the allegations she was supposed to investigate. After giving Ms. Raucci a chance to correct the issues, I received a second investigation report that was no better than the first one. Ms. Raucci and DIG failed to address any of the problems with the previous report. The Bureau is working to fill the gaps left by the DIG report.

Throughout this time, the Bureau worked very hard to accommodate Ms. Martin's demands. In addition to paying Ms. Martin a monetary settlement, on at least two occasions the Bureau essentially created positions for her, in two different divisions, at the same pay and grade. We put significant effort into designing each position according to Ms. Martin's specifications. She declined one of them outright, and is now dissatisfied with the other. I feel that the Bureau went to great lengths to help Ms. Martin get to a place where she could be happy and productive.

For nearly a year and a half, I kept an open-door policy with respect to Ms. Martin, and always made myself available to assist her however I could. I have never witnessed management be anything but professional and accommodating to her. I was surprised when, during the April 2 hearing, it was alleged that I attempted to influence DIG's conclusions. I have never done that, and in fact, the allegation does not make sense. Had I wanted to pre-determine the outcome of the investigation, I would not have outsourced it. Although these allegations against me are not true, in order to maintain the integrity of the investigation into Ms. Martin's claims, I recused myself after the April 2 hearing and turned over my investigation file to a co-worker. I am no longer involved, but it is my understanding that the investigation is ongoing.

As a woman and a minority, I am sensitive to the issues that have been raised about discrimination at the Bureau. But I honestly believe that the Bureau cares about treating its employees fairly. I know I do. My team and I work hard to give each grievance the attention it requires to achieve a good and just outcome for everyone involved. I also know that the Bureau is taking these allegations very seriously. The Bureau is focused on correcting any problems that may have occurred in the past, and is dedicated to preventing any discrimination, either intentional or unintentional, in the future.

In addition to the previous submission and supporting documentation I provided to the Subcommittee, I look forward to the opportunity today to deliver a more complete picture of these issues. I am happy to answer any questions you may have.

1700 G Street, N.W., Washington, DC 20552

May 19, 2014

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
U.S. House of Representatives
2334 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Al Green
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Financial Services
U.S. House of Representatives
2201 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Hensarling and McHenry, and Ranking Members Waters and Green,

This letter and the attached report respond to your May 14, 2014 request regarding the Consumer Financial Protection Bureau's (CFPB) internal analyses of racial, age, and gender disparities relating to CFPB's 2013 performance management reviews.

In addition to providing a statistical analysis of our performance management ratings, the attached report provides greater detail about our efforts made to date and going forward to create an organization that consciously embraces diversity and ensures that all employees can perform at their best and fulfill our mission to protect consumers.

As part of our retrospective analysis of the fiscal year 2013 performance ratings, the CFPB conducted a series of analyses, including statistical analyses, to evaluate the effect of a wide variety of factors on performance management outcomes. These analyses revealed statistically significant disparities in many categories across the Bureau, including race/ethnicity, age, bargaining unit membership, location in the field or at headquarters, job pay band, and tenure as a CFPB employee.

These internal analyses raised concerns about the various factors that appeared to affect the results of the CFPB's performance management program. We are still in the process of examining the root causes of these disparities, but based on our initial analysis it is clear that there was no single factor that caused these problems. It also seemed clear to me that we should take the initiative to remedy the disparities that our performance management system created.

As a result of our analysis, we are taking the following steps, which we believe to be the most reasonable path forward: (1) in collaboration with the National Treasury Employees Union (NTEU), we have successfully negotiated the framework to develop a new and improved performance management system for future use; and (2) we are making appropriate adjustments to past compensation to ensure that we erase the remnants of any statistical disparities that were caused by our previous performance management system.

Having concluded that many categories of employees were subject to statistical disparities by the Bureau's performance management program, and given the widespread disparities observed across multiple employee characteristics, the Bureau has agreed to compensate employees who received a rating of 3 or 4 under the previous performance management program as though they had received a rating of 5. This remediation will not extend to Assistant Directors, Deputy Associate Directors, Associate Directors, the Chief of Staff, Deputy Director, and the Director.

By self-identifying and self-correcting these issues, we are holding ourselves accountable to the same standards of fairness that we expect of our regulated entities. This remediation plan is the only way we can reasonably ensure that all statistical disparities caused by the previous performance management system are erased. Accordingly, we strongly believe that this decision is the soundest and most prudent action we can take to remediate these issues and better foster the culture of diversity and inclusion we aspire to and that our employees want and deserve.

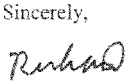
Additionally, I wish to alert you to two recent developments related to the CFPB's response to these findings.

On May 15, the CFPB released a Request for Proposals for a comprehensive third-party review and validation of its internally conducted performance management analysis, and a broad-based evaluation of major human capital processes including hiring, promotion, and compensation. The goal is to ensure the defensibility of CFPB programs and access to fair treatment and equal opportunity for all CFPB employees.

Also on May 15, the CFPB and NTEU reached tentative agreement on a Collective Bargaining Agreement. As part of that agreement, the CFPB will discontinue use of its previous performance management system and move to a new, two-level performance management system for two fiscal years. The CFPB and NTEU have also agreed to continue partnering on these issues through a joint labor-management working group, as well as a separate working group focused on diversity and inclusion. The CFPB and NTEU will work jointly to develop a new performance management system for future use.

We are taking specific steps to respond to these findings, and we will be working toward a more comprehensive set of recommendations in the coming months. We will continue to keep you advised of our progress and any developments. If you have any questions, please contact me or have your staff contact Catherine Galicia or Tim Sheehan of the CFPB's Office of Legislative Affairs. Mrs. Galicia can be reached at (202) 435-9711 and Mr. Sheehan can be reached at (202) 435-7004.

Sincerely,



Richard Cordray
Director

cc: Mr. Mark Bialek, Inspector General, Board of Governors of the Federal Reserve System and Consumer Financial Protection Bureau.

Attachments: Fiscal Year 2013 Performance Management Analysis

Fiscal Year 2013 Performance Management Analysis: Snapshot of Findings

Consumer Financial Protection Bureau

May 2014

Table of contents

Table of contents 2

1. **Executive Summary** 3
   - 1.1 Timeline of key events 4
   - 1.2 Introduction to the fiscal year 2013 performance management program 6

2. **Report of Findings** 10
   - 2.1 Race/Ethnicity 11
   - 2.2 Age 16
   - 2.3 Gender 18
   - 2.4 Bargaining Unit Membership 19
   - 2.5 Business Unit 19
   - 2.6 Headquarters/Field 20
   - 2.7 Job Pay Bands 21
   - 2.8 CFPB Tenure 22
   - 2.9 Transferee Status 23

3. **CFPB's Response** 24

1. Executive Summary

Like other federal agencies, the Consumer Financial Protection Bureau (CFPB) has evaluated employee performance through a formal performance management program. As part of its retrospective analysis of the fiscal year 2013 performance ratings, the CFPB conducted a series of analyses, including statistical analyses, to evaluate the effect of a wide variety of factors on performance management outcomes. These internal analyses were sobering, and raised concerns about the various factors that appeared to affect the results of the CFPB's performance management program. Shortly after these matters were made public, we made a commitment to everyone at the CFPB that we would conduct additional analyses and communicate our findings, along with any necessary corrective action. This report is intended to provide an update on what we found and what changes to expect in the coming weeks and months.

In January, before any of this information was made public, we initiated additional research to better understand statistical differences that we had observed at the summary level. These recently completed analyses, conducted by the Office of Fair Lending and Equal Opportunity, the Office of Research, the Legal Division, and the Office of Human Capital, in consultation with the Office of Minority and Women Inclusion and the Office of Equal Employment Opportunity, revealed broad-based, statistically significant disparities for employees based on a wide range of characteristics. Specifically, the analyses revealed statistically significant disparities in the areas of race/ethnicity, age, bargaining unit membership, location in the field or at headquarters, job pay band, tenure as a CFPB employee, and for some employees status as a Dodd-Frank transferee.

We are still in the process of examining the root causes of the disparities. But based on our initial analysis, it is clear that there was no single factor that caused these problems. It also seems clear that we should take the initiative to remedy the disparities that our performance management system created.

As a result of our analysis, we are taking the following steps, which we believe to be the most reasonable path forward: (1) in collaboration with the National Treasury Employees Union (NTEU), we are creating the framework to develop a new and improved performance management system for future use; and (2) we are making appropriate adjustments to past compensation to ensure that we erase the remnants of any statistical disparities that were caused by our previous performance management system.

Summary of findings

The initial findings demonstrated statistically significant differences in the performance ratings between:

- Black and Hispanic employees as compared with non-Hispanic white employees;
- Employees under age 40 and those 40 or more years of age;
- Employees in the bargaining unit and those employees not in the bargaining unit;
- Employees located in the field and those located in our Washington, D.C. headquarters;
- Employees at lower and higher job pay bands at the CFPB;
- Employees with less than one year of experience at the CFPB and employees with more than one year of experience at the Bureau; and
- Employees who joined the Bureau as Dodd-Frank transferees from other agencies and employees who were hired through other channels.

This report provides more detail about the CFPB performance management system, the findings associated with the fiscal year 2013 ratings, and our plan for responsive actions.

1.1 Timeline of key events

The CFPB's performance management program was designed and launched in the fall of 2011. A timeline of key events in the life-cycle of that program goes as follows:

- October 17, 2011: CFPB establishes "Performance Management Program Interim Policy #23" to govern CFPB's performance management program

- April 30, 2012: Stuart Ishimaru selected as Director of the Office of Minority and Women Inclusion
- August 17, 2012: CFPB requests U.S. Office of Personnel Management (OPM) approval for the performance management system
- September 25, 2012: OPM grants approval for CFPB performance management system
- February 11, 2013: M. Stacey Bach named Acting Director, Office of Equal Employment Opportunity. She received a permanent appointment on December 29, 2013
- June 24, 2013: CFPB and NTEU memorandum of understanding (MOU) implementing new negotiated grievance procedure for performance rating appeals from bargaining unit employees
- November 26, 2013: Fiscal year 2013 performance ratings finalized
- December 13, 2013: Office of Human Capital conducts study of fiscal year 2013 performance management ratings; identifies differences across employee demographics
- January 6, 2014: Preliminary summary ratings results presented to the Director at a regularly scheduled Inclusion Strategy meeting
- January 2014: CFPB leadership shares with NTEU its findings of identified differences
- January 31, 2014: CFPB initiates additional analysis to understand identified differences
- January 31, 2014: Director instructs CFPB negotiating team to work with NTEU in the collective bargaining process to design a new performance management system
- March 10, 2014: CFPB announces publicly that it will be moving away from its performance management system
- May 19, 2014: CFPB announces concrete next steps for addressing the problems of the old performance management system, including:
    - New framework for an improved performance management system, developed in collaboration with the NTEU; and
    - Appropriate adjustments to compensation to ensure that the remnants of any disparities caused by the performance management system are eliminated.

1.2 Introduction to the fiscal year 2013 performance management program

The performance management program at CFPB, among other things, served as the basis for determining "pay-for-performance" amounts provided to employees. These increases take two forms: *merit increases*, which affect employees' base salary and growth over time, and *supplemental lump sum payments*, which are one-time, discrete performance awards. Both annual compensation programs were directly tied to and dependent upon an employee's performance rating, meaning that the higher the rating the higher the increase in compensation.

Employees were evaluated against a combination of Bureau-wide core competencies and individual performance objectives. CFPB's core competencies differed based on whether an employee was a non-supervisor, supervisor, or executive (see chart below).

TABLE 1: CFPB'S CORE COMPETENCIES

Non-Supervisory Employees	Non-Executive Supervisors	Executives
Core Competencies	**Core Competencies**	**Executive Competencies**
Collaboration	Collaboration	Leading change
Communication	Communication	Leading people
Problem Solving	Problem Solving	Results-driven
Adaptability	Adaptability	Business acumen
		Building coalitions
Job-Specific Competency	**Supervisory Competencies**	
Subject matter expertise	Strategic thinking	
	Leading, managing, and developing others	
	Managing resources	

Employees were evaluated against a five-level rating scale on each of the core competencies and performance objectives. Competencies and performance objectives carried equal weight in the system. The ratings for competencies and objectives were averaged separately and then the competencies average and the objectives average were again averaged to create a summary rating score. That score was calculated to two decimal points. The summary rating score was then rounded to a single whole digit to form the end-of-year rating of record.

TABLE 2: CFPB'S 5 LEVEL RATING SCALE (COMPETENCIES AND PERFORMANCE OBJECTIVES)

Rating Level	Assigned Point Value
Unacceptable	1
Marginal Performer	2
Solid Performer	3
High Performer	4
Role Model	5

During the CFPB's early years of development, management aspired to design and implement a rigorous performance management program. As such, the system's overall or summary rating of a 3 (designated as "solid performance") was intended to reflect an employee's successful performance. Ratings of 4 for "high performance" and 5 for "role model performance" were intended to be reserved for the highest-performing employees. By incorporating organization-wide competencies into a rigorous 5-level rating system, the Bureau drew heavily upon best practices from across the public, private, and nonprofit sectors. Yet we have found through our internal review that the Bureau's execution against these objectives was not satisfactory.

1.2.1 Accountability mechanisms

The fiscal year 2013 performance program included a series of checks and balances to hold individual managers accountable:

- *Multi-level ratings review process*: Individual performance ratings required submission by the employee's rating official, and subsequent review and approval by the reviewing

official. The Office of Human Capital provided associate directors with summary information on the distribution of the ratings in their division. Associate directors reviewed that information and then provided approval for their reviewing officials to proceed with finalization of the ratings. Reviewing officials then directed rating officials to make any final modifications if needed. Reviewing officials were able to access and view the performance ratings and narratives for all employees whom they supervised and for the employees supervised by their direct reports. Employees were able to access their performance evaluation electronically and were asked to acknowledge their ratings electronically as well.

- *Formal multi-level grievance procedure*: Employees who believed that their ratings were inaccurate could request reconsideration of their rating, or initiate an informal grievance (if the employee was in the bargaining unit). If an employee remained dissatisfied after this first step, then s/he could request an appeal, or initiate a formal grievance (if the employee was in the bargaining unit).
- *Formal process for reporting discrimination*: Employees who believed that they had been discriminated against could file a grievance through the Equal Employment Opportunity process.
- *Limited impact per manager*: Most managers were responsible for rating 7 or fewer employees.

1.2.2 Challenges with the performance management system

The concerns we identified with the system must be evaluated in context. The performance management system implemented by the CFPB was based on best practices and, on paper, it had considerable merit. However, in light of these findings, it is clear that the system was too sophisticated for a new agency like the CFPB, which was experiencing a high level of rapid growth and organizational pressures as it worked to build itself out starting from scratch. In fiscal year 2012, the CFPB grew from 663 employees to 970 employees. Similarly, in fiscal year 2013, the CFPB grew from 970 employees to 1302 employees. Throughout this time, our managers were tasked with building their offices, meeting tight timelines required for substantial statutory obligations, and delivering tangible results for American consumers. In retrospect, applying such a complicated performance management system and tying compensation to that system at such an early stage in our history was overly ambitious, even if well intentioned.

In that context, it is not surprising that, although the fiscal year 2013 performance management system included mechanisms to ensure fair and equal treatment of individual employees, it lacked policies and procedures for addressing more systemic problems in real time. Some initial observations of system-wide challenges include:

- *Rating standards*: The competency elements of the performance management program were initially designed in fiscal year 2011, when the CFPB's work was just being defined. These elements are being re-examined as the CFPB's work, workforce, and performance requirements have changed substantially since that time. Those improved standards must be clearly defined, with policies and procedures in place to ensure that they are applied uniformly.

- *Training of managers/Application of rating standards*: CFPB managers came from a wide diversity of backgrounds, with varying levels of experience using a ratings system, and with different ratings systems. For many managers, the fall of 2013 was the first time they had used a system like the CFPB's performance management system. The CFPB will make training on the performance management competencies mandatory and will improve the timelines and mechanisms for building a shared understanding of the competency definitions, performance objectives, and rating standards.

- *Compliance management*: Although there was a process in place to review summary ratings before they were finalized, it did not include a demographic analysis that would have aided the Bureau in observing and addressing potential ratings differences across categories. The analytical review processes aimed at addressing rating differences on the basis of business unit, field/headquarters assignment, and job pay band were not consistently applied and ultimately did not result in changes that might have redressed those issues during the ratings process. Moving forward, the CFPB will ensure that any ratings system it implements includes rigorous internal controls to safeguard against future statistical disparities.

- We will continue to do further analysis into these issues to ensure appropriate accountability and we will work with the NTEU so that this analysis informs the design of our future performance management system.

2. Report of Findings

The analyses that the CFPB undertook to perform on its performance management system revealed broad-based disparities in performance ratings across many categories of employees. CFPB leadership found the differences that it initially observed to be troubling. The analyses in this report conducted between January and April of 2014 revealed statistically significant differences and some patterns of results that raised concerns along a broad array of characteristics.

In order to ensure a rigorous analysis, the Bureau applied two distinct analytical methods[1] to the ratings in the fiscal year 2013 performance period in January of 2014. Both analyses, separately conducted, led to the same conclusions. Under the CFPB's fiscal year 2013 performance management program, disparities in performance ratings between employees across a broad spectrum of characteristics were statistically significant and not isolated to any specific areas within the CFPB. Among the categories of analysis were Race/Ethnicity and Age, though a variety of other categories yielded findings of disparities as well. Controlling for other possible explanations, our analysis indicated that employees were subject to statistical disparities in outcomes on these bases.

Our analysis revealed differences across a large number of employees and managers and does not support a conclusion that the issues were limited to certain discrete areas of the Bureau or that the actions of one or a small number of managers drove the overall disparities. **Instead, our analysis demonstrates disparities in outcomes across CFPB divisions, with black and Hispanic employees, employees 40 or more years of age, employees in the bargaining unit, employees located in the field, employees at lower job pay**

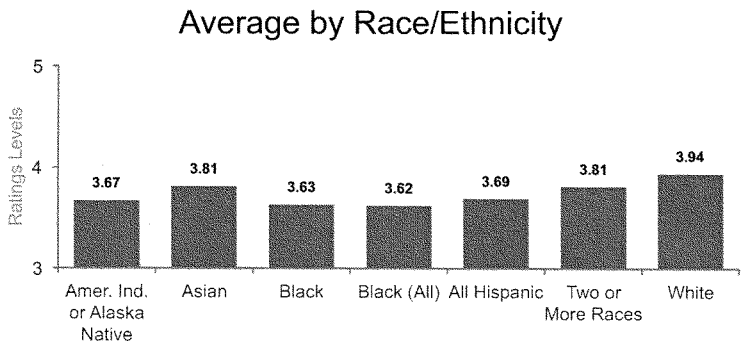
[1] The CFPB conducted two separate, distinct, and comprehensive analyses: one consistent with best practices in human resource analyses, and one consistent with the statistical analysis performed in support of fair lending work.

bands, employees with less than 1 year of experience at the Bureau, and employees who joined the Bureau as Dodd-Frank transferees all receiving systematically lower ratings.

2.1 Race/Ethnicity

When the CFPB first examined fiscal year 2013 performance ratings in December of 2013, the preliminary analysis revealed that black and Hispanic employees were more likely than white employees to receive a rating of 3, while white employees were more likely than black and Hispanic employees to receive a rating of 5. Further analysis demonstrated the strength of those effects more clearly: the average ratings for black and Hispanic employees were lower than the average ratings for white and Asian employees. The difference was statistically significant in both instances.

FIGURE 1: AVERAGE RATING BY RACE/ETHNICITY, FY2013 PERFORMANCE PERIOD

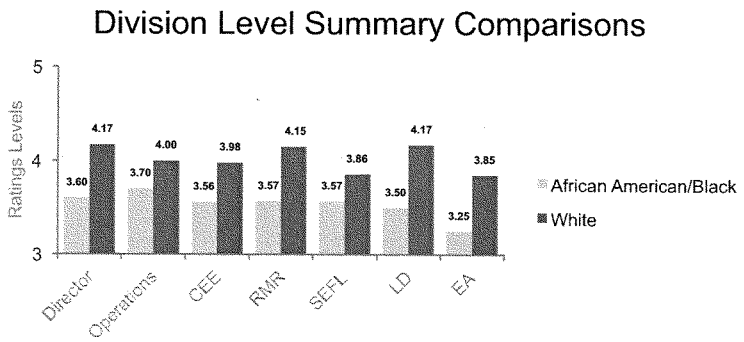


[2]

[2] Black indicates employees who self-identified as only black; black (All) includes those employees as well as employees who self-identified as both black and another race

These differences in the average rating for employees of different races and ethnicities were persistent across divisions:

FIGURE 2: AVERAGE RATINGS FOR BLACK AND WHITE EMPLOYEES BY DIVISION, FY2013 PERFORMANCE PERIOD



2.1.1 Differing manifestations of disparities

This analysis also revealed that these differences were driven by two key dynamics affecting the performance ratings:

- **Differing distributions**: Everything being equal, overall distributions of ratings across the ratings scale for minority and white employees should appear similar. *However the distributions between minority employees and white employees do not appear similar; ratings for white employees are more concentrated around the 4 and 5 rating levels than black and Hispanic employees, and ratings for black and Hispanic employees are concentrated in the 3 rating level:*

FIGURE 3: DISTRIBUTION OF SUMMARY RATINGS FOR ALL EMPLOYEES, FY2013 PERFORMANCE PERIOD

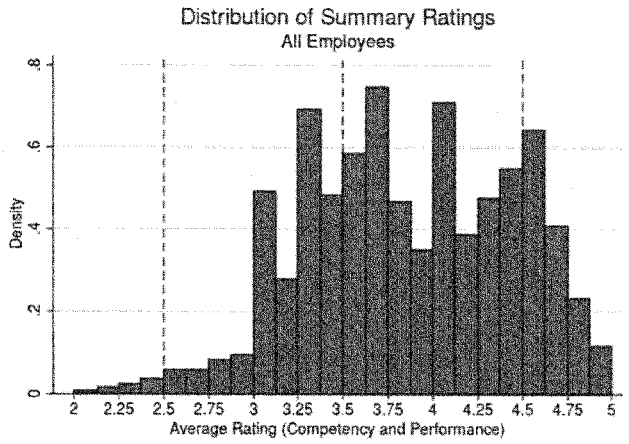
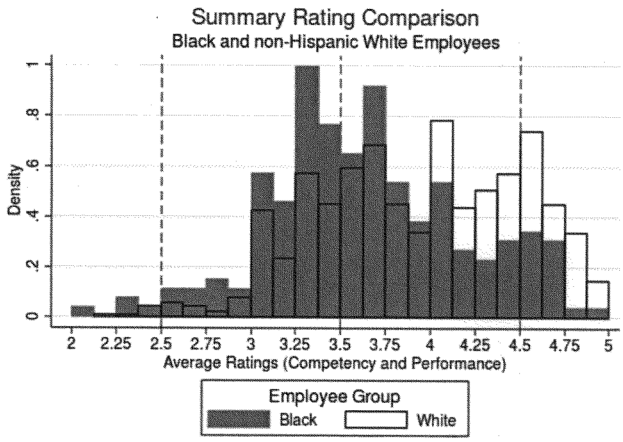


FIGURE 4: SUMMARY RATINGS COMPARISON: BLACK AND NON-HISPANIC WHITE EMPLOYEES[3], FY2013 PERFORMANCE PERIOD



- **Additionally, there are differences around rounding cutoff points for summary ratings**. With key cutoffs at 3.5 and 4.5 (the difference between a 3 rating and a 4 rating and a 4 rating and a 5 rating respectively), small changes in the summary ratings mattered more at certain points in the distribution with direct implications for some employees' compensation. For example, the difference between a summary rating of 3.09 and 3.12 made no difference in an employee's compensation because both of those summary ratings resulted in the same overall rating of 3. Conversely, the difference between a 3.49 and a 3.51 had direct implications for an employee's compensation since a summary rating of 3.49 resulted in an overall rating of 3, while a summary rating of 3.51 resulted in an overall rating of 4. Whereas we would expect the proportions of ratings just above and just below these cutoffs to be similar for each group, what we observe is systemically dissimilar; across the CFPB, black employees experienced

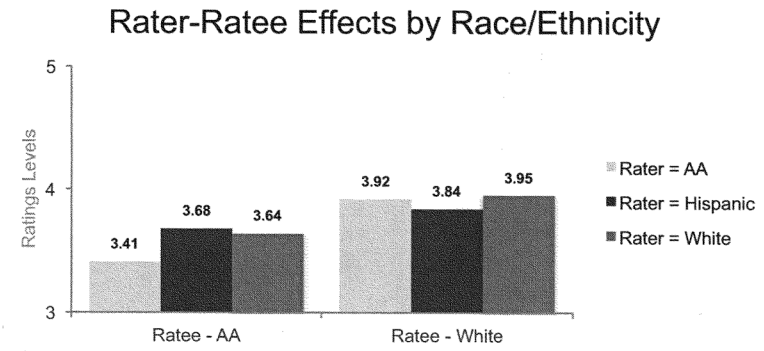
[3] Note: the graph for Hispanic vs. non-Hispanic White looks qualitatively similar to this, but with a higher "spike" to the right of the 3.5 cutoff.

negative disparities relative to their non-Hispanic white counterparts in their results around key cutoffs between overall ratings and white employees did not.[4]

2.1.2 Rater–Ratee effects by Race/Ethnicity

This analysis demonstrated the overall interaction effect between rating official's race on the average rating of their reporting employees. Employees of the same race as their rating official received lower average ratings than employees evaluated by rating officials of a different race or ethnicity. In the case of black raters rating black employees, those differences were statistically significant.

FIGURE 5: RATER/RATEE EFFECT COMPARISON: AVERAGE RATINGS OF BLACK, HISPANIC, AND NON-HISPANIC WHITE EMPLOYEES BY RATER RACE/ETHNICITY, FY2013 PERFORMANCE PERIOD

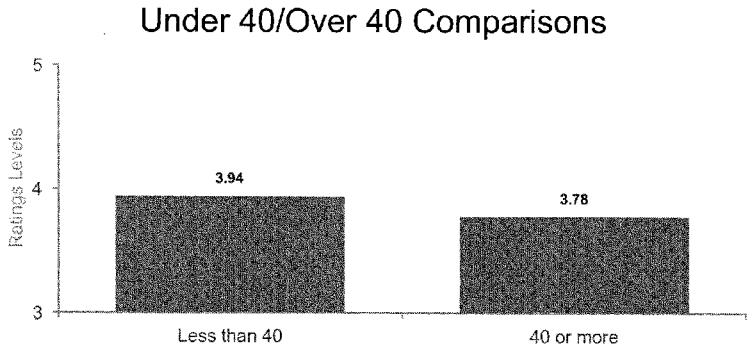


[4] This analysis was not possible for Hispanic employees due to small sample sizes.

2.2 Age

This analysis revealed disparities in the average performance ratings of employees 40 or more years in age. These employees received lower average ratings than employees under 40 years in age and those differences were statistically significant:

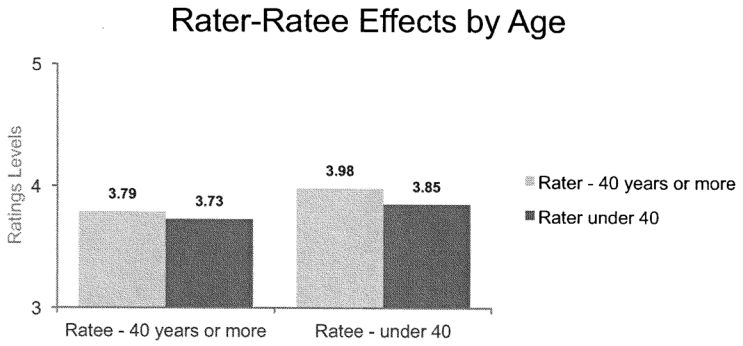
FIGURE 6: AVERAGE RATING FOR EMPLOYEES UNDER AND OVER AGE 40, FY2013 PERFORMANCE PERIOD



2.2.1 Rater-Ratee Effects by Age

This analysis demonstrated the interaction between rating official's age on the average rating of their reporting employee. Disparities in the average performance ratings for employees 40 years or more in age and employees under 40 years in age as they were rated by officials under or over 40 years in age were not statistically significant:

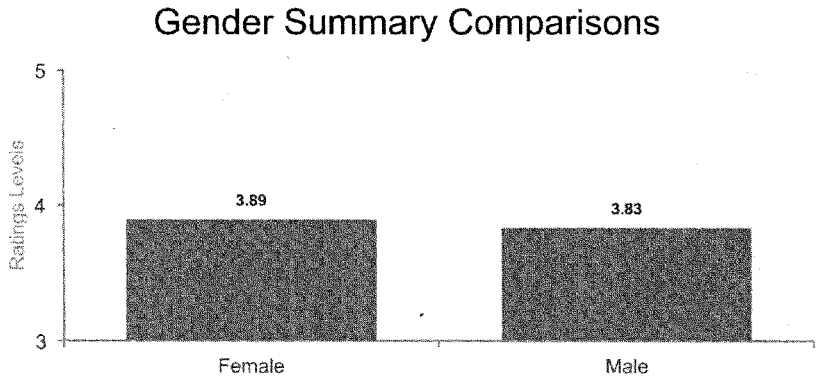
FIGURE 7: RATER/RATEE EFFECT COMPARISON: AVERAGE RATINGS OF EMPLOYEES 40 YEARS OR MORE IN AGE AND EMPLOYEES UNDER 40 YEARS IN AGE BY RATER AGE, FY2013 PERFORMANCE PERIOD



2.3 Gender

Disparities in the average performance ratings for male and female employees were not statistically significant:

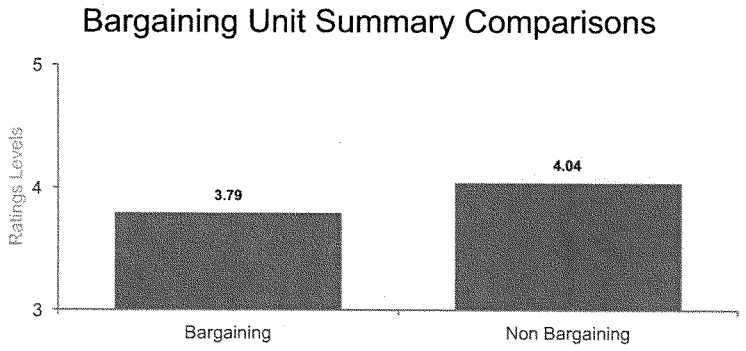
FIGURE 8: AVERAGE RATING FOR EMPLOYEES BY GENDER, FY2013 PERFORMANCE PERIOD



2.4 Bargaining Unit Membership

This analysis revealed disparities in the average performance ratings of employees in the bargaining unit. These employees received lower average ratings than employees not in the bargaining unit and those differences were statistically significant. In the analysis, this effect is difficult to separate from job pay band because job pay band and bargaining unit status are so closely correlated:

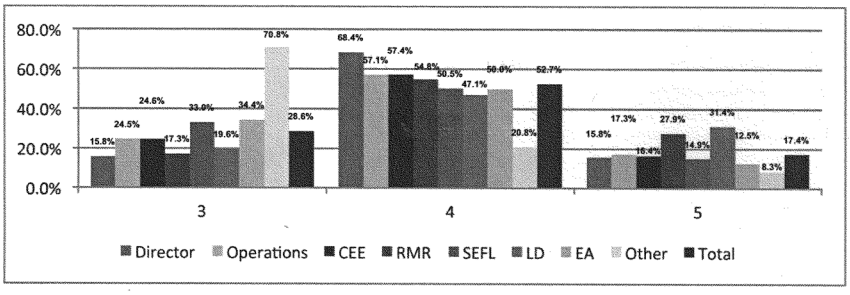
FIGURE 9: AVERAGE RATING FOR EMPLOYEES IN THE BARGAINING UNIT AND EMPLOYEES NOT IN THE BARGAINING UNIT, FY2013 PERFORMANCE PERIOD



2.5 Business Unit

This analysis demonstrated differences in performance ratings across divisions. Employees in the Supervision, Enforcement, and Fair Lending division and the Operations division were more likely than employees in other divisions to receive a rating of 3, while employees in the Legal division and the Research, Markets, and Regulations division were more likely than employees in other divisions to receive a rating of 5. It is worth noting that these findings do not necessarily reflect upon the particular categories of employees discussed above, but instead may reflect differences in how divisions calibrated scores and/or the interaction of other division-specific factors:

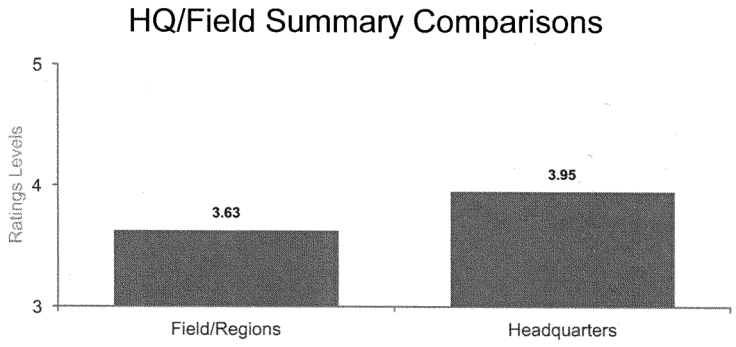
FIGURE 10: DISTRIBUTION OF RATINGS FOR EMPLOYEES RATED 3, 4, AND 5 BY DIVISION, FY2013 PERFORMANCE PERIOD



2.6 Headquarters/Field

This analysis revealed disparities in the average performance ratings of employees located in the CFPB field offices. These employees received lower average ratings than employees located at the CFPB headquarters offices and those differences were statistically significant:

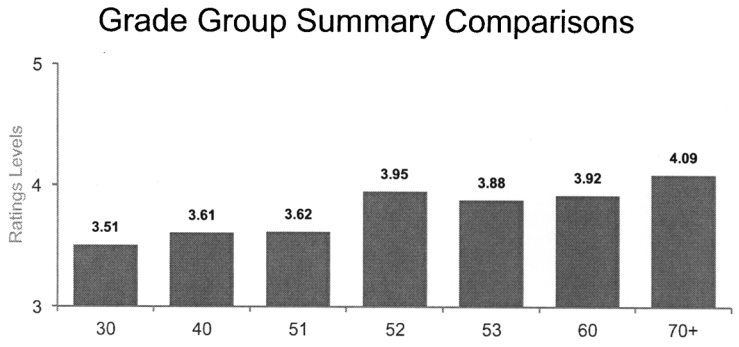
FIGURE 11: AVERAGE RATING BY HEADQUARTERS/FIELD STATUS, FY2013 PERFORMANCE PERIOD



2.7 Job Pay Bands

This analysis revealed disparities in the average performance ratings of employees in different job pay bands. These analyses demonstrated that employees at higher pay bands received higher average ratings than employees at lower pay bands. Those differences were statistically significant:

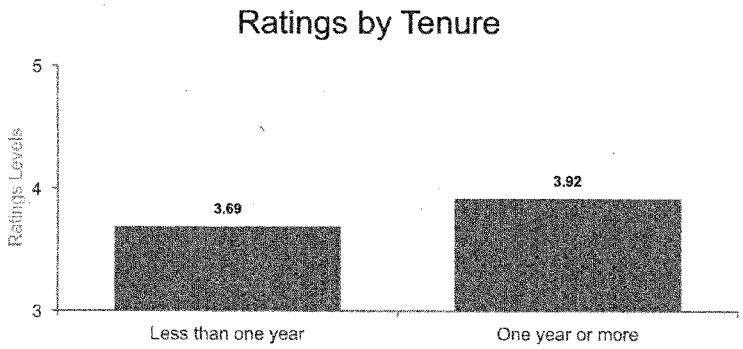
FIGURE 12: AVERAGE RATING BY PAY GRADE, FY2013 PERFORMANCE PERIOD



2.8 CFPB Tenure

This analysis revealed disparities in the average performance ratings of employees with shorter tenures at the Bureau. Employees with less than one year of tenure at the Bureau received lower average ratings than employees with more than one year of tenure at the Bureau and those differences were statistically significant:

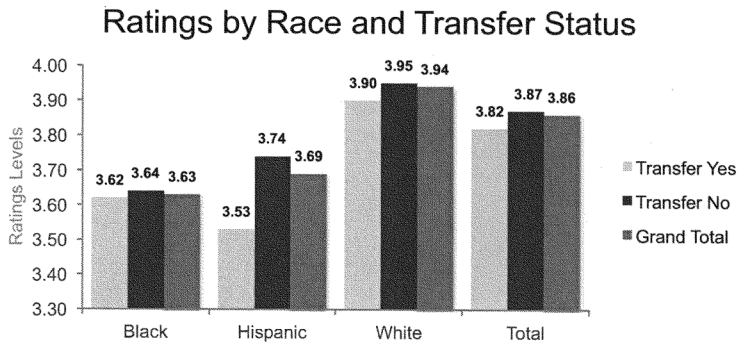
FIGURE 13: AVERAGE RATING FOR EMPLOYEES BY TENURE LESS THAN/GREATER THAN 1 YEAR, FY2013 PERFORMANCE PERIOD



2.9 Transferee Status

This analysis revealed disparities in the average performance ratings of employees who joined the Bureau as Dodd-Frank transferees. This dynamic interacted with race/ethnicity, as Hispanic Dodd-Frank transferees were affected more negatively than non-Hispanic employees. The overall differences were not statistically significant:

FIGURE 14: AVERAGE RATING FOR BLACK, HISPANIC, AND WHITE EMPLOYEES BY TRANSFER STATUS, FY2013 PERFORMANCE PERIOD



In sum, our performance ratings system did not meet our own objectives and expectations. The analyses we undertook found statistically significant disparities indicating that employees were more likely to receive higher or lower overall performance ratings based on their race, age, pay grade, bargaining unit membership eligibility, tenure, or where they work within the agency, and for these reasons we have decided to revisit our approach to our performance management program.

3. CFPB's Response

The analyses conducted in late 2013 and early 2014 about the CFPB's fiscal year 2013 performance management system suggest many avenues for improvement, correction, and remediation, both in terms of direct changes to the performance management system, and further work to be done to promote fairness and inclusion within the CFPB workplace environment.

We are taking specific steps to respond to these findings, and we will be working toward a more comprehensive set of recommendations in the coming months that will bring us closer to our shared ideals. We are committed to creating an organization that consciously embraces diversity – not only to ensure that there are no obvious disparities in how employees are treated, but also to recognize and address potential blind spots so that we can cultivate all of our employees, both to allow them to perform at their best and to fulfill our mission to protect consumers.

This section provides an overview of what we have done already and what we expect to do over the coming weeks and months:

1. In late 2013, even before these disparities were made public, CFPB's senior leadership started a discussion about the need to change its performance management system based on dissatisfaction with the system from both managers and employees.
2. Upon review of the initial performance ratings analysis in early January 2014, CFPB leadership shared these findings with the NTEU and initiated additional internal analysis to understand the summary disparities that were perceived.
3. In January, CFPB and NTEU agreed to negotiate over how to move away from the fiscal year 2013 performance management system. In addition, upon recognition of the summary disparities in outcomes experienced by CFPB employees, the CFPB committed to the NTEU that it would work with the NTEU to understand the root causes for those disparities and remediate any problems identified.

4. Following those conversations, CFPB leveraged its internal expertise in fair lending, statistical disparity, and discrimination analysis to conduct a thorough self-assessment with the same, if not greater, analytic rigor that we would apply in analogous circumstances to fair lending issues at supervised institutions.

5. On January 31, the Director instructed the team negotiating with the NTEU to use the collective bargaining process to develop a new system focused primarily on employee growth and development, with less emphasis on numerical ratings.

6. Director Cordray elevated the Office of Minority and Women Inclusion (OMWI) to the Office of the Director. At that time, he charged OMWI Director Stuart Ishimaru with conducting a series of Bureau-wide listening sessions to hear directly from employees about their experience with equality and fairness. The Director also asked for a report within 90 days, discussing the diversity and equality concerns of our employees and making specific recommendations for addressing those concerns. OMWI conducted its first Bureau wide listening session with the Office of Consumer Response on April 23, 2014, and has completed 11 such sessions to date.

7. Earlier this month, Director Cordray, in consultation with the EEO office, decided to make EEO training mandatory for all managers and supervisors. These mandatory trainings will be rolled out this summer and will be the first step in a more focused and comprehensive training effort for managers and supervisors on issues about diversity and equality. This training is in addition to the mandatory EEO training that all employees must complete annually.

8. On May 15, the CFPB released a Request for Proposals for a comprehensive third-party review and validation of its internally-conducted performance management analysis, and a broad-based evaluation of major human capital processes including hiring, promotion, and compensation, with the goal of ensuring the defensibility of Bureau programs and access to fair treatment and equal opportunity for all CFPB employees.

9. On May 15, the CFPB and NTEU reached tentative agreement on a Collective Bargaining Agreement. As part of that agreement, the CFPB will discontinue use of its previous performance management system and move to a new, two-level performance management system for two fiscal years. The CFPB and NTEU have also agreed to continue partnering on these issues through a joint labor management working group, as well as a separate working

group focused on diversity and inclusion. The CFPB and NTEU will work jointly to develop a new performance management system for future use.

10. The CFPB has notified the NTEU that it will comprehensively remediate for performance rating disparities for fiscal year 2012[5] and fiscal year 2013. Having concluded that many categories of employees were subject to statistical disparities by the Bureau's performance management program, and given the widespread disparities observed across multiple employee characteristics, the Bureau has agreed to compensate employees who received a rating of 3 or 4 under the previous performance management program as though they had received a rating of 5. This remediation will not extend to Assistant Directors, Deputy Associate Directors, Associate Directors, the Chief of Staff, Deputy Director, and the Director. This remediation plan is the only way we can reasonably ensure that all statistical disparities caused by the previous performance management system are erased. Accordingly, we strongly believe that this decision is the soundest and most prudent action we can take to remediate these issues and better foster the culture of diversity and inclusion we aspire to and that our employees want and deserve.

11. Based on the findings of the OMWI Director's report and the findings of the third-party review, additional actions will be taken to address issues that may surface about equity, equal opportunity, fairness, and inclusion. The OMWI Director's report may also identify gaps and opportunities to strengthen CFPB's management programs.

    Potential categories of recommendations may include:

    - Fairness: Greater measures to ensure access to fair and equal opportunities for all of our diverse employees;
    - Communication and feedback practices: Additional measures to strengthen day-to-day direction and guidance to all employees; additional training and tools to build leadership and management capacity; stronger tools and oversight to maximize the value of mid-year and annual performance feedback and reviews; improved practices for creating effective teams and managing conflict and additional resources to further bolster official grievance processes;

[5] A preliminary review of FY2012 data revealed similar statistical disparities across many different characteristics.

- Focused steps to strengthen organizational culture: Proactive measures to evaluate and solidify common organizational values, behaviors, and norms between managers and staff; improved management practices for building strong relationships and trust with employees; appropriate situational leadership coaching for optimal employee performance and individual development planning; and Bureau-wide efforts to promote greater knowledge and expertise in the areas of diversity and inclusion.

12. The CFPB also remains committed to continuing to review all individual allegations of discrimination through the EEO and administrative grievance processes. The CFPB will address such matters on their merits and take whatever steps are necessary to achieve equitable outcomes both in individual matters and in ensuring appropriate management of the agency.