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

HEARING

BEFORE THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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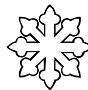

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THE SEMI-ANNUAL REPORT OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Tuesday, September 29, 2015

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

The committee met, pursuant to notice, at 10:07 a.m., in room 2128, Rayburn House Office Building, Hon. Jeb Hensarling [chairman of the committee] presiding.

Members present: Representatives Hensarling, Royce, Lucas, Garrett, Neugebauer, Pearce, Posey, Fitzpatrick, Luetkemeyer, Huizenga, Duffy, Hurt, Fincher, Stutzman, Mulvaney, Hultgren, Ross, Pittenger, Wagner, Barr, Rothfus, Messer, Schweikert, Guinta, Tipton, Williams, Poliquin, Love, Hill, Emmer; Waters, Maloney, Velazquez, Sherman, Meeks, Capuano, Hinojosa, Clay, Scott, Green, Cleaver, Ellison, Perlmutter, Himes, Carney, Sewell, Foster, Kildee, Delaney, Sinema, Beatty, Heck, and Vargas.

Chairman HENSARLING. The Committee on Financial Services will come to order.

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

Today's hearing is entitled, "The Semi-Annual Report of the Bureau of Consumer Financial Protection."

I now recognize myself for 3 minutes to give an opening statement.

Today, the committee holds a hearing again on the semi-annual report of the Consumer Financial Protection Bureau (CFPB), a creation of the Dodd-Frank Act. The committee recently concluded a series of hearings to examine the impact of the Dodd-Frank Act in the 5 years since it became law. The hearings clearly reveal how the law in numerous ways has indeed harmed consumers and low-income Americans.

Dodd-Frank and the CFPB are the prime reason that the big banks are now bigger and the small banks are now fewer. This has eliminated competition, stifled innovation, and given consumers fewer choices.

Dodd-Frank and the CFPB help raise prices; eliminate free checking for millions; and are cutting off access to mortgages, bank accounts, and credit cards. This tragically makes it harder for low-income Americans living paycheck to paycheck to improve their lives and achieve financial independence.

Regrettably, still more harmful consequences appear just over the horizon. Soon Director Cordray, one man neither elected nor accountable to either the President or Congress, will presume to decide for all low-income Americans whether he will allow them to take out short-term small-dollar loans. These are the very loans many need to keep their utilities from being cut off suddenly or to keep their car on the road so they can in turn keep their jobs. One man will decide whether he will permit Americans to resolve contract disputes more efficiently outside the courts or allow the regulatory capture of his Bureau by wealthy and litigious trial attorneys. And the Director, one man, violating the express provisions of the Dodd-Frank Act and using junk science, will continue forcing many consumers to pay more when they finance the purchase of an automobile.

Why have so many zealous defenders of the Dodd-Frank Act suddenly turned silent?

Now, my problem is not with this one man, but with the insidious belief among Washington elites that low-income Americans cannot be trusted with freedom, cannot be trusted to make good decisions for themselves, so Washington must do it for them. It is insulting. It is degrading and an affront to social justice. Every American, regardless of which side of the tracks they grew up on, regardless of who their parents are, regardless of how humble their circumstances may be, has the right to shape their own financial destiny. But today they find themselves at the mercy of an arrogant, overgrown, distant, and unaccountable Washington bureaucracy. Instead of the equal protection offered by the impartial rule of law, they are today dictated to by the arbitrary rule of regulators. And exhibit No. 1 is the CFPB Director.

I was struck at our last hearing by the Democrat witness' description of the CFPB as the Dodd-Frank Act's crown jewel. Herein lies the problem: In America, we don't want crowns, because we don't want kings, including a king of consumer financial products. Freedom, opportunity, and choice allow consumers to pursue their dreams and achieve financial independence. If Congress is to protect the fundamental rights and opportunities of all Americans, including low-income Americans, then one essential step we must take is to reform the CFPB.

I now yield 4 minutes to the ranking member for an opening statement.

Ms. WATERS. Thank you, Mr. Chairman.

And I am pleased to welcome you back to the committee, Director Cordray. We gather to discuss the Consumer Financial Protection Bureau's semi-annual report, which reflects your diligent work to protect American consumers and establish clear rules of the road to improve our financial marketplace.

Director Cordray, first and foremost, I want to take the time to commend your efforts to return hard-earned money to the families who rightly earned it, specifically with the $11 billion of ill-gotten gains you have returned to 25 million Americans. This is no small feat, and I applaud you for it. Likewise, I want to commend your agency's work to end the sorts of unfair, deceptive, and abusive practices that nearly brought our economy to its knees 7 years ago and that continue to strip wealth from American families. This in-

cludes your work to implement payday rules free of debt traps; to establish debt-collection guidelines that promote honest settlements and block bad actors; and to ensure that borrowers have access to fair, responsible, and sustainable mortgage credit.

I also want to commend you on your recent enforcement action against a bank for redlining. I know many people think these types of ugly policies are a thing of the past. But this recent enforcement action demonstrates how badly your agency is needed.

As you state in your report, the CFPB has also taken steps to empower the American public, launching consumer resources specifically tailored for college students, older Americans, and people preparing for home ownership, not to mention the nearly half a million consumer complaints you have processed through your own online portal.

It is unfortunate, however, that rather than working to encourage good behavior in our markets and support American consumers, opponents on this committee continue to promote measures to eliminate or weaken the Bureau. They have perpetuated false narratives of an agency that is unaccountable and lacks transparency, despite the record number of times you yourself have made yourself available to Congress, and the many checks and balances on the Bureau contained in Dodd-Frank. And they continue to support and amplify industry challenges to the CFPB's constitutionality in court with little or no success.

So what we are seeing now that the CFPB has celebrated its fourth birthday is that the dire predictions of the Republicans on this committee have not come true. For example, we have actually seen an increase in the share of mortgages made to African-American and Hispanic borrowers since your qualified mortgage rule was put in place in 2014.

After several years of decline, data shows that access to consumer credit cards is expanding even for low FICO score borrowers. At the same time, the defaults on credit are declining. And one analyst has noted that for all the talk about the death of free checking, nothing could be further from the truth. These are all important facts that bear repeating.

Finally, just last week we had the Holy Father Pope Francis come to a joint session of Congress and deliver an historic address. In his remarks, he encouraged us lawmakers to "keep in mind all of those people who are trapped in a cycle of poverty."

Director Cordray, I believe your work and the work of the Bureau lives up to the promise of a better economy, one that serves working people and fulfills the American promise of opportunity. I look forward to hearing your testimony today.

And I will yield back the balance of my time.

Chairman HENSARLING. The gentlelady yields back.

The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, chairman of our Financial Institutions Subcommittee, for 2 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. Since its creation 5 years ago, the CFPB has aggressively pursued a rulemaking and enforcement agenda which has really dramatically changed the consumer marketplace. While prudential banking regulators were widely criticized for falling down on the job in the runup of the fi-

nancial crisis, the CFPB has not only consolidated consumer protection laws into one agency but has dramatically expanded their scope. As a result, it is not only necessary but healthy to have serious policy discussions about the proper balance and calibration of these new and pending regulations.

Today, I look forward to hearing from Director Cordray about two forthcoming rulemakings. First, the CFPB has announced plans to move forward with rulemaking that will completely alter an offering of short-term small-dollar products. The rule will entirely disrupt the robust State-based regulatory framework of this marketplace. In doing so, the Bureau has paid little attention to the existing authority and past legislative actions by States across the country. Additionally, the Bureau has failed to identify alternative products for the segment of customers or consumers who will lose access to credit. This is particularly disappointing given the demonstrated high demand and usage for these products.

Second, it is widely expected that the Bureau will move forward to prohibit predispute mandatory arbitration clauses. These clauses are a form of alternative dispute resolution that produce a faster and more cost-effective legal avenue as compared to class action suits for many consumers. I am concerned that the Bureau will fail to give weight to the pro-consumer features of arbitration agreements which were outlined in the Bureau's own study. For example, the study demonstrates consumer recovery under arbitration is 166 times greater than under class actions. I look forward to learning more about how the Bureau plans to balance the identifiable benefits of these clauses with the theoretical costs associated with their use.

While I know my colleagues and I disagree on certain policy positions and actions of the Bureau, I hope that today we can foster a forward-looking dialogue that truly examines how this agency balances consumer protection and access and cost.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Connecticut, Mr. Himes, for 1 minute.

Mr. HIMES. Thank you, Mr. Chairman.

And I thank you, Director, for joining us today.

I find myself on either side of the regulatory debate from time to time because I believe that regulation should be there but that it should be finely and carefully balanced. I find myself puzzled by the incessant attacks on you and on your agency. Look, derivatives, securitization, margin rules, these things are complicated and difficult to fully understand. But the kinds of predatory and inappropriate behavior that the CFPB has countered over the years are not difficult to understand and not difficult to see. I thank you for the fact that the CFPB has returned $11 billion to 25 million consumers.

Director, I thank you for making the obvious point, if you have studied any economics, that there is no such thing as free checking, that there are products that look free but that get paid for through less transparent and less visible mechanisms. And I thank you, frankly, for the work that your agency is doing in my district. In leafy Fairfield County, a bank of $35 billion in assets stands accused of redlining, something that I would have hoped we would

have seen the end of long, long ago. So know that you have supporters and friends here in the Congress, and I hope that your mission continues in keeping the American people safe.

I yield back the balance of my time.

Chairman HENSARLING. The time of the gentleman has expired.

Today, we welcome the testimony of the Honorable Richard Cordray, Director of the CFPB. Director Cordray has previously testified before this committee, so I believe he needs no further introduction.

Director Cordray, without objection, your full written statement will be made a part of the record. You are now recognized for 5 minutes to give an oral presentation of your testimony. Thank you.

Chairman HENSARLING. Your microphone—

Mr. CORDRAY. Yes. It has been a little while since I have been in this room, but I should have remembered that.

Chairman HENSARLING. We can arrange more appearances.

STATEMENT OF THE HONORABLE RICHARD CORDRAY, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CORDRAY. Thank you, Chairman Hensarling, Ranking Member Waters, and members of the committee. Thank you for the opportunity to testify today about the Consumer Financial Protection Bureau's latest semi-annual report to Congress. To frame it as you did, Mr. Chairman, I am one person who will not be silent about the work and importance of what I believe the Consumer Bureau to be doing on behalf of the American public in promoting and improving the choices in life for American consumers.

This July marks 5 years since the passage of the financial reform law. As you know, Congress created the Bureau in response to the financial crisis with the purpose and sole focus of protecting consumers in the financial marketplace. Through fair rules, consistent oversight, appropriate enforcement of the law, and broad-based consumer engagement, the Consumer Bureau is working to restore people's trust and confidence in the markets they use for everyday financial products and services.

As we continue our work, consumer financial markets are showing increasing signs of health. This is very important because, Mr. Chairman, you in your introduction and other speeches, and others have said that the Bureau is cutting off access to credit for the American public. The facts do not bear that out. For example, the latest HMDA data released by Federal agencies last week showed increasing numbers of consumers are taking out home purchase mortgages. In 2014, the first year of our new mortgage rules, mortgage originations for owner-occupied home purchases increased between 4 and 5 percent. The upward trend appears to have accelerated over the first half of this year. After adjusting for merger activity, the number of lenders that reported having originated mortgages showed an increase in 2014, including for community banks and credit unions. Those are the facts.

Other consumer credit markets also show encouraging signs of expanding access to credit. In the first half of this year, over 14 million consumers obtained new auto loans, up 8 percent over the prior year. For auto loans, this marks a 45-percent increase since 2011, and a 9-year high since the Dodd-Frank Act took effect. Simi-

larly, 54 million new consumer credit card accounts were opened in the first half of 2015, which is 12 percent more than in the same period last year and 48 percent higher than the same period of 2011, just after Dodd-Frank took effect.

At the same time, the percent of loan balances that are seriously delinquent dropped below 4 percent last quarter for the first time since 2007 and down from 7 percent 4 years ago, just after Dodd-Frank took effect.

Equally heartening is the strength being exhibited by community banks and credit unions. Last quarter, lending by community banks grew by 8.8 percent compared to the prior year, growing at almost twice the rate of noncommunity larger banks.

Credit union lending grew at an even faster pace, and credit union membership over the past year grew at the fastest rate in over 20 years.

These are all positive trends for the consumer financial marketplace, which are very much aligned with the Bureau's mission. I hope, based on the facts, we can decide it is time that we could all be friends in this particular space.

The Bureau helps consumer financial markets work by making rules more effective, by consistently enforcing those rules, and by empowering consumers to take more control over their economic lives.

To date, our enforcement activity has resulted in more than $11 billion in relief for over 25 million consumers who have been wronged by violations of the law.

We have handled over 700,000 complaints from consumers addressing all manner of financial products and services. Many of these consumers are constituents from each of your States.

As with the letters you receive from your constituents, the customer complaints submitted to the Bureau raise issues of serious concern. Along with our enforcement, supervisory rulemaking, and market monitoring activity, these complaints and the voices of consumers are important to the Bureau. Our work is focused on ensuring that the markets for all consumer financial products and services are marked by responsible practices that help rather than harm consumers.

In the most recent semi-annual report, we describe our efforts to achieve our vital mission. We describe various enforcement actions taken by the Bureau. We worked with the Department of Education to obtain $480 million in debt relief to student loan borrowers who were wronged by Corinthian Colleges. We also issued a final rule to reduce burdens on industry by promoting more effective privacy disclosures from financial institutions to their customers. We issued a Notice of Proposed Rulemaking to provide strong new Federal consumer protections for prepaid accounts, which currently have none, and a proposal to clarify various provisions of our mortgage servicing rules.

We are in the process of developing new rules governing payday, vehicle title, and certain installment loans, and we recently finalized changes to some of our mortgage rules to facilities even broader mortgage lending by small creditors, including community banks and credit unions, particularly in rural or underserved areas.

As a data-driven institution, we published several reports through the reporting period that highlight important topics in consumer finance such as medical debt, arbitration agreements, reverse mortgages, and consumer perspectives on credit scores and credit reports.

In the year to come, we look forward to continuing to fulfill Congress' vision of an agency that is dedicated to cultivating a consumer financial marketplace based on transparency, responsible practice, sound innovation, and excellent customer service, where consumers can be both more prosperous and more free to make choices that improve life for themselves and their families.

Thank you for the opportunity to testify today. I look forward to your questions.

[The prepared statement of Director Cordray can be found on page 74 of the appendix.]

Chairman HENSARLING. The Chair now recognizes himself for 5 minutes for questioning.

Director Cordray, recently there has been an expose by the American Banker, 3 articles dealing with indirect auto lending over the last 2 weeks. Are you familiar with these articles, and have you reviewed them?

Mr. CORDRAY. I am, yes. I have had a chance to read them at least—

Chairman HENSARLING. The American Banker claims it has multiple internal CFPB documents showing that your disparate impact analysis overstates disparities, and in fact the title of their first article is, "CFPB Overestimates Potential Discrimination, Documents Show." Do such internal documents exist, which indicate that the CFPB may be overestimating such racial disparities?

Mr. CORDRAY. I don't believe that is an accurate account of what the discussion and careful analysis of this issue has been.

Chairman HENSARLING. Specifically, is there a document from Patrice Ficklin, Assistant Director of the Office of Fair Lending, dated April 2013, where she says, "There may be some risk of overestimating disparities?" Are you familiar with such a memo?

Mr. CORDRAY. I will try to be persistent in answering your questions. I started to answer the last one and you cut me off, so I didn't get a chance to finish. Shall I finish?

Chairman HENSARLING. I don't think you were actually—you answered the question. You do not agree with that assessment. So now I have moved on to a different question. Are you—

Mr. CORDRAY. No, no, that is not what I said, and that is not my answer. So I will try to answer your questions, but if you are going to cut me off in the middle, it is difficult. What I will say is, there have been robust discussions within the Bureau as to how to approach these methodologies. There have also been robust discussions from outside the Bureau, including from this committee, in terms of checking—

Chairman HENSARLING. Director Cordray, I have a limited amount of time here, so I am asking a different question now. Are you familiar with the memo that I just referenced from Patrice Ficklin?

Mr. CORDRAY. I believe that I am roughly familiar with various memos that I have seen. Yes.

Chairman HENSARLING. Okay. Are there any memos that you are aware of at the CFPB which indicate that you are overestimating such racial disparities?

Mr. CORDRAY. What I will say again is there have been various efforts and discussions to try to make sure that the estimation is as correct and accurate as possible.

Chairman HENSARLING. Let's be—

Mr. CORDRAY. There are various methodologies that might cause it to be overestimated, and some that might cause it to be underestimated.

Chairman HENSARLING. Director Cordray, I get to control the time here.

So you employ a proxy known as BISG, correct?

Mr. CORDRAY. I believe that is correct, sir.

Chairman HENSARLING. Are you aware of any other proxy methods for estimating racial disparities that are more accurate than BISG?

Mr. CORDRAY. I don't believe that we are trying to find anything other than the most accurate method we can. There have been different approaches to this over the years—

Chairman HENSARLING. So you are unaware of other more accurate proxies?

Mr. CORDRAY. "Accurate" is in the eye of the beholder. We are trying to get it right. We are trying to understand what "accurate" means. But if some people—

Chairman HENSARLING. Okay. So in your opinion—

Mr. CORDRAY. They would say it is more—

Chairman HENSARLING. —the CFPB is using the most accurate proxy method available?

Mr. CORDRAY. We are certainly trying hard to do that, and I believe we are trying to do that, yes.

Chairman HENSARLING. Has the Bureau ever evaluated how your proxy method estimates race by comparing it to data where race is actually known? For example, HMDA data, have you ever performed such an analysis? Are you aware of any such analysis?

Mr. CORDRAY. That is something that has been a bone of contention from the beginning, both in our discussions and with external parties. There is a desire to compare auto lending to mortgage lending and say they are the same thing, but the pool of borrowers is quite different—

Chairman HENSARLING. I understand that, but are you aware of any such analysis that has actual racial characteristics as opposed to purported?

Mr. CORDRAY. Again, HMDA data can pinpoint all of these characteristics too.

Chairman HENSARLING. I am just asking, Mr. Director, are you aware of such an analysis, yes or no?

Mr. CORDRAY. I believe there have been multiple analyses by many different people of that comparison.

Chairman HENSARLING. You consider it an invalid analysis, but isn't it true that the CFPB has an analysis showing that its own proxy method has overestimated African Americans by almost 100 percent?

Mr. CORDRAY. You are mixing apples and oranges. Mortgage borrowers are one set of the population. Auto borrowers are a very different set of—

Chairman HENSARLING. They are either a member of a racial minority or they are not a member. We are comparing actual data to your purported data.

Mr. CORDRAY. You are also comparing two distinct markets with different universes.

Chairman HENSARLING. I know, but Mr. Director, you did the same thing when you compared auto lending to the general population, did you not?

Mr. CORDRAY. That is correct. Both of us try to make that comparison and try to get it right. We may disagree about whether we are getting it right, but we are trying hard to do that.

Chairman HENSARLING. Has the Bureau at least—

Mr. CORDRAY. You hit the nub of the issue, though—

Chairman HENSARLING. Has the Bureau at least controlled for other factors like creditworthiness? Do you control for credit scores?

Mr. CORDRAY. We attempt to control for all of the variables that have nothing to do with prohibited characteristics, such as race—

Chairman HENSARLING. Including credit scores.

Mr. CORDRAY. Again, it depends on the analysis, and there are different approaches to this, and some people would say certain ones are more accurate than others. We have done our best to try to understand—

Chairman HENSARLING. Isn't it true that credit scores could account for some, if not all, of the disparities that you have observed under current law as deigned by the Supreme Court? Don't we have to look at causation?

Mr. CORDRAY. I don't think that it is fair to say—again, I am not the biggest expert on this at the Bureau or in the social science field—I don't think it is fair to say that credit scores can explain the disparities.

However, that is a relevant point. Creditworthiness in other measures is a relevant point. But, again, the nub of the issue, which you have hit upon, Mr. Chairman, is whether it is fair to simply compare mortgage borrowers to auto borrowers and say that they are comparable. We think they are not. That has been a basic difference between us and the Charles River report, for example.

Chairman HENSARLING. My time has expired.

The Chair now recognizes the ranking member of the committee.

Ms. WATERS. Thank you very much. Mr. Cordray, I want to thank you and commend you for the settlement that was announced with Hudson City Bank for structuring its businesses so as to avoid majority Black and Hispanic neighborhoods. This is a well-known practice to those of us who pay attention to minority access to credit.

And I was very surprised, as Mr. Himes said, at the attempt to go back to redlining. This was a very important settlement that you were able to enforce. And, unfortunately, it appears that Hudson City didn't consider any of these majority minority neighborhoods to be a part of their CRA assessment area. And I suppose we are going to have to be on the lookout for other institutions that are going to attempt to do this.

But really today should be a time of celebration. You have done some extraordinary things with this Bureau. And as I look at just a few of them—and you mentioned that you stopped an illegal kickback scheme for marketing services which resulted in $11.1 million in redress for wronged consumers. You also worked with the Department of Education to obtain $480 million in debt relief to student loan borrowers who were wronged by Corinthian Colleges, a for-profit chain of colleges that violated the law and has since declared bankruptcy. I want to give you an opportunity to just discuss some of this. Prior to the creation of the Consumer Financial Protection Bureau, consumers literally had little or no protection in this government. And you have moved in ways that have benefited our consumers in such a grand way. Tell us about this 11.1 or Corinthian or what you have done with student loans. Expand on that for us.

Mr. CORDRAY. Okay. Thank you, Ranking Member Waters.

On the Corinthian matter, I will say that I was impressed, surprised, and pleased at the work done by our team, which was some of the most diligent and creative work I have seen during my time at the Consumer Bureau, where they were pressing to get debt relief for students. We had sued Corinthian, and we were in court with them. They had sold a lot of debt out from under the lawsuit so it couldn't necessarily be reached by the lawsuit itself, and it was a tremendous amount of work by our folks, who were ultimately able to secure $480 million in relief for current and former students. That was one of the most impressive things I have seen during my time at the Bureau.

On the marketing service agreements that you mentioned, that matter, which was the $11 million matter, we have found over our experience over the last several years that marketing service agreements carry a great deal of legal risk for the participants that may not have been fully recognized by people in the industry. It is very difficult to have such agreements and have them be effectuated and monitor them carefully so that they are compliant with the law. That has been a source of concern for us. That was an enforcement action, a major enforcement action. We continue to look carefully at that problem, and it is something that really needs to be cleaned up. It is something we will continue to attend to.

On the redlining matter that you just mentioned, I was surprised as well. There is such good and detailed Home Mortgage Disclosure Act (HMDA) data out there now that every bank and every lender should know that if they are redlining, it is going to be apparent from the data. And I would have thought that we would have stamped that out a long time ago. We apparently haven't. The Justice Department, which works with us on these matters, has indicated that they have more matters open on the issue. So we will see where that goes. Obviously, nobody here, nobody on either side of the aisle, nobody in this room believes that people should be deprived of access to mortgages and other credit simply because they live in areas that have a high concentration of minority residents. That is un-American. It is not right. And we will continue, wherever we see that, to work that problem very hard. I know everybody in this room agrees on that.

Ms. WATERS. I want to thank you so much for that. I was in the State legislature when redlining was absolutely something that was being done all over this country. And I thought we had worked in ways that would wipe that out, but to see it coming back means that not only are we going to have to catch those who are doing it, what can we do to try and prevent it from happening? What can we do as public policymakers?

Mr. CORDRAY. I think the deterrent effect of an action like this is very important. I like to think and hope it will prove to be an aberration, but the data is very good on this issue. And it is something we can monitor carefully, and we are very attentive to the problem, maybe more so than might have been true in the past, for all I know.

Ms. WATERS. I want to thank you.

And on Corinthian, we have been working to try and get rid of Corinthian for years. They have been ripping off our students, who were looking for just an opportunity to learn and to get a job. And we finally got them, and there are a lot more out there like them. And I thank you for your work.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, chairman of our Financial Institutions Subcommittee.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Director Cordray, Section 1028 of Dodd-Frank grants the CFPB authority to conduct a study of predispute arbitration. Depending on your findings of the study, the Bureau may prohibit or limit the use of arbitration's rulemaking, or it may choose not to act. I think, in March, the Bureau finalized its study, and in testimony before the Senate Banking Committee in July, I think you stated the Bureau would move forward with the rulemaking process. I would like to get into kind of the nitty-gritty of this issue with you a little bit.

The statute says that the findings of the report must lead to a conclusion that it would be in the public interest or protect consumers to move forward with a rule. But your report found that customers who prevailed in arbitration recovered an average of $5,300 compared to $32.35 obtained by the average class action member in class action settlements. Can you walk me through how prohibiting arbitration is better when you look at those kinds of numbers?

Mr. CORDRAY. Yes. And I like to try to make eye contact when we are talking back and forth.

On the arbitration issue, it is, as you said it, in our statute. What is notable is, first of all, in the Military Lending Act of 2007, Congress enacted a statute to protect servicemembers, which said that there should be no enforced predispute arbitration in any financial service contracts to military servicemembers, Active Duty. That was the first sort of walk-back in this area.

In the Dodd-Frank Act itself, Congress outlawed predispute enforced arbitration agreements in mortgages. They further mandated, as you correctly and accurately framed it, that on all other consumer financial products and services, the Bureau would conduct a study, which we tried to do in a very careful, thorough way. It took us several years to gather the data, put it together, and its analysis that even its critics have said it is the most comprehensive

treatment of this issue they have ever seen and very complimentary about the approach to it, even though they may disagree with some of the conclusions. And I take it perhaps you do as well. Once we had finished the study, we were to report that to Congress, which we did earlier this year, and then we were to try to make judgments from that report about whether we should adopt regulations affecting those clauses in any way. That is something we are now moving forward with.

Mr. NEUGEBAUER. But in Section 1028, there was not a mandate that you do that. It was Congress who gave you the authority to study and to come up with your own determination.

Mr. CORDRAY. It was a mandate for us to diagnosis the problem and an authorization for us to act on that diagnosis. That is fair.

Mr. NEUGEBAUER. Now, your study looked at 562 class action cases. In 92 percent of those class actions, arbitration was not even a factor, and this presented no barrier to moving into a class action suit. So can you explain how your study supports the position that arbitration is a barrier to class action suits?

Mr. CORDRAY. I hate to try to boil down the conclusions of a pretty exhaustive study into just a couple of sentences. Essentially what we found was that the arbitrations were rarely pursued by individual consumers because the nature of consumer financial issues and concerns is that there is often very little money at stake for the individual, although in the aggregate for the financial institution there may be a great deal of profit to be had from a particular practice. We did a close comparison of class action suits such as exist in the area—many of which have been cut off because of these arbitration agreements, but some of them still exist—and arbitrations. And we found that in terms of preventing and cleaning up violations of law and getting redress to consumers, you could compare for yourself the numbers. You could draw your own conclusions. We are now trying to move forward and figure out what is the appropriate rulemaking answer to that. That is a process which will unfold.

Mr. NEUGEBAUER. One of the things that the Bureau has committed to is a pretty aggressive educational process of educating consumers on the choices that they have. What kind of resources has the Bureau dedicated to educating consumers about arbitration and the pros and cons of arbitration? Have you done any education in that direction?

Mr. CORDRAY. I would actually say that the first question is, what kind of education has industry done who have enforced these clauses over the years to encourage people to pursue individual arbitrations? I don't know that there has been any educational effort by industry over decades. As to what we have done over the last several years, first of all, we wouldn't have engaged in some aggressive education program during a period in which we were studying the problem and trying to diagnosis it. We obviously needed to try to understand it first. And, again, we took several years to gather data, put it together. Even the critics of the study have recognized this is the most comprehensive, fullest treatment they have seen, and it breaks new ground.

Now having accomplished that, we will go through a rulemaking process where it will be open, notice and comment, lots of people

will have points of view. I am clear on that. We will have a chance to process all of that. That is how we will try to proceed.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Director Cordray, I would like to thank you for your response to our letter regarding implementation of Section 1071 of the Dodd-Frank Act. As you know, 1071 requires banks and lenders to collect and report credit application data on small businesses as well as minority- and women-owned businesses. Can you please elaborate on some of the groundwork you have done to prepare for the rulemaking on Section 1071?

Mr. CORDRAY. Yes, I can. And I have appreciated—I have gotten quite a bit of input on this issue in particular over the last number of months from Members of Congress and also from community groups around the country.

What we have always said here is this is an undertaking that under the Dodd-Frank Act was placed with the Consumer Bureau. It is a somewhat unusual undertaking because it involves small-business lending, not consumer lending. And we don't—we otherwise have very little authority over small-business lending. We do have an amount of—a little window of authority under the Equal Credit Opportunity Act, and we have indicated we are going to begin some examinations of institutions on their small-business lending within the next year.

We also said we had another job that Congress gave us to do, a mandatory job, which is to first, overhaul the Home Mortgage Disclosure Act rules, and second, to take on another job of bringing over from the Federal Reserve the operational, technological aspects of gathering that data, collecting it, and being able to make it accessible to people, which will allow us to update the technology and make that information better, cleaner, and easier for everyone to use so that when the ranking member asked me about the redlining case, everyone will be able to see the data and diagnosis it for themselves. That is good transparency that will help make sure that we can enforce and monitor these types of things. As we are completing that rulemaking, which I expect to be completed before the end of the calendar year, we have then always said that we can move forward with 1071—that is a section of the Dodd-Frank Act—small-business lending project, which is intended—it requires us now—to adopt a rule and then figure out all the technical and operational details of gathering data on small-business lending akin to how we have done it for mortgage lending.

Having done as much work as we have done on the HMDA project, both operationally and then rulemaking, we can now turn to the small-business lending and work on the rule. I think it will take some time. We have to—we are going to be reaching out to the Small Business Administration, people at the State level, any of you who are interested in trying to understand how we would do a new data collection for small-business lending, how to try to minimize the burdens of that and how to accomplish the benefits of it.

Ms. VELAZQUEZ. Thank you. As a follow up to my last question, we have heard critics of Section 1071 saying that the costs will outweigh any benefit the data collected will provide. In light of the recent enforcement action against Hudson City Bank for discriminatory redlining practices against Black and Hispanic neighborhoods, I would agree the benefits of Section 1071 to minority small-business borrowers will justify any monetary cost to a financial sector. Would you agree with that?

Mr. CORDRAY. It is obviously something very hard to judge at the outside of a project, but I will say that I have heard from a number of groups who have spoken powerfully and eloquently to this issue. What they have said to me is for the average middle class and working class family—people trying to rise, and it is true of many communities of color—their wealth building happens to occur through home ownership, which was devastated by the financial crisis and through small-business creation. That is often a big engine of growth and economic development for new families in this country and for communities of color, who are otherwise maybe shut out of other traditional networks. For those reasons, the small business lending seems to me to go hand in hand with the mortgage lending data collection. And it seems to me to be a very powerful way for us to try to understand how we can create more economic opportunity in communities of color and for minorities around this country. That makes a great deal of sense to me.

Ms. VELAZQUEZ. Thank you. And last I would like to mention to you or, yes, to make a comment regarding the fact that American citizens of Puerto Rico who invest in mutual funds are not covered by the Investment Company Act of 1940. This leaves them without the safeguards that those on the mainland have. Do you think this is fair?

Mr. CORDRAY. I don't know that I know enough to answer that question. I'm sorry. I would be glad to go back and have our folks look at it—

Ms. VELAZQUEZ. I introduced legislation to close this loophole, H.R. 3670, and I would like for you to take a look into this issue that is really disrupting the lives of Puerto Ricans, American citizens. Thank you.

Mr. CORDRAY. Okay.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from New Jersey, Mr. Garrett, chairman of our Capital Markets Subcommittee.

Mr. GARRETT. I thank the chairman. And I thank the Director for being here.

I might just take a little different tack on this. You talk about the mandate you had on the mortgages in that area. Okay. Good. You know, my dad always said to give credit where credit is due. You have talked a lot already here about what you are doing in the auto industry in the lending area. Those are the initial questions and some of your focus—and you are nodding your head. Some of the focus of what you are doing in some of the cases that are out there as far as what you have been able to recover for the claimed discrimination and that sort of thing that went on there.

Why that is puzzling, though, to me is I was on the Dodd-Frank conference committee, and I was one who carried the amendment

that said that there would be an exclusion for activity within the jurisdiction of the CFPB dealing with the auto industry. And this is one that Chairman Frank accepted, and it was passed in a bipartisan manner, and it passed out of the House and the Senate and was signed into law to exclude that area of authority for you to do. Yet, you are nodding your head that you are proud of all the work you have done in that area. And that puzzles me. So, one of my questions is, it has been reported in that same article that the CFPB has been considering how to eliminate dealer reserves. So the first question along that line, is that something that you are doing, despite the fact that we have carved that exception there? Is that something you are doing? Yes or no?

Mr. CORDRAY. I don't really speak in terms of having pride in this or that.

Mr. GARRETT. Okay. But I only have 3½ minutes. Is that something you have done? Is that something you are doing, trying to eliminate dealer reserves?

Mr. CORDRAY. I would start with what you said that the exception—

Mr. GARRETT. Is that something that you are doing? Here is—

Mr. CORDRAY. That is not the way it is worded.

Mr. GARRETT. Director, I only have 3 minutes left. Let's run down the questions. The question is: Are you working to eliminate dealer reserves? Yes or no?

Mr. CORDRAY. We have been working to try to address a practice that we believe is discriminatory—

Mr. GARRETT. So that is a yes. Is that a yes, please? Just answer the questions yes or no.

Mr. CORDRAY. Not necessarily eliminate. We had an enforcement action yesterday in which it would limit dealer reserve but not eliminate it, and we think that may be a fair way to try to address the—

Mr. GARRETT. So the answer is yes, you are doing that. And there was a memo back in May of 2013 which said the purpose of a meeting you had is to continue our discussion about a market-tipping settlement that would resolve discriminatory disparities caused by auto dealers by markup by eliminating markup at major auto lenders. Is that something you are working on as well?

Mr. CORDRAY. What we found is that it is a somewhat more complex problem than maybe we thought at first. It is, live and learn—

Mr. GARRETT. So the answer to that question is "yes?"

Mr. CORDRAY. No. The answer is, we started out thinking that the right answer to that concern—

Mr. GARRETT. Is that in a general area that you are looking into? Is that a general area that you are looking into? That answer seems to be yes.

Mr. CORDRAY. Yes. And I was trying to be more specific.

Mr. GARRETT. I don't have time for more specific. I am just—are you looking into it?

Mr. CORDRAY. Yes. We are.

Mr. GARRETT. What is the authority for you to do so?

Mr. CORDRAY. We have authority in the statute. It doesn't exempt the auto industry. It exempts auto dealers. It does not ex-

empt auto lenders. We have a responsibility to address auto lenders—

Mr. GARRETT. Whoa, whoa, whoa. What did you just say? It exempts the auto industry?

Mr. CORDRAY. It does not. That is what you said in your opening.

Mr. GARRETT. So it exempts the auto dealers?

Mr. CORDRAY. It exempts auto dealers, but it gives us—

Mr. GARRETT. So who are the ones—

Mr. CORDRAY. —responsibility over auto lenders.

Mr. GARRETT. —who are on the front line, who are actually making these loans? Isn't it the auto dealers?

Mr. CORDRAY. Look, Congress drew the statute. I didn't draw it. I have to live with it. It exempts auto dealers but gives us responsibility over auto lenders. I am not sure that makes a lot of sense, but we are trying our best to observe the lines that Congress drew.

Mr. GARRETT. But when you make these decisions, you are directly affecting the auto dealers. It is the auto dealer that I just went to in order to buy a car or not buy a car, right? And it is the auto dealer that people will be paying the interest rates that are affected by your actions, right?

Mr. CORDRAY. The loan is made by an auto lender, and an auto lender controls their auto lending program. They decide whether they are going to deal through dealers or on their own or whatever they do. We have a responsibility over auto lenders. It is a funny provision in the statute. I am not sure it is very logical, but it is what we—

Mr. GARRETT. Let's see what the practical consequence are. And the studies have shown this to be true. By your actions, the interest rates that somebody who goes to an auto dealer, because that is where I go to buy a car, is an auto dealer, are actually going up because of the actions you are taking. Isn't that correct? Isn't that what some of the reports have shown?

Mr. CORDRAY. Let's make an analogy to the mortgage industry.

Mr. GARRETT. No, no, no. We are on auto here. We are not talking about mortgage. The results of your actions are raising the cost of buying cars. It is making the interest rates go up. That is what the studies have shown. Correct?

Mr. CORDRAY. What I would say is this, as we do our work, and we have a responsibility—

Mr. GARRETT. I understand that. But is the result—

Mr. CORDRAY. —to auto lenders. It does affect auto dealers. I would agree with you on that. That is why the logical provision is not—

Mr. GARRETT. Sir, is the result of your action that it is costing more for people to buy cars now? Is that what the CFPB's bottom line is? Because the results of one study—

Mr. CORDRAY. There is disagreement about that. But if you are engaged in potential discrimination in a market and you cure that discrimination, and that discrimination has been cross-subsidized by the—

Mr. GARRETT. At the end of the day, are the people who are most hurt by this the very same people that you claim to help, the people of that—the poor, and the middle class are the people who are actually paying the higher rate. Isn't that true, sir?

Mr. CORDRAY. No. That is not true.

Mr. GARRETT. That is what the studies seem to show. But I yield back.

Mr. CORDRAY. No, that is not what it seems to show.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from California, Mr. Sherman.

Mr. SHERMAN. Mr. Cordray, there is a lot of discussion as to whether your successor should be an individual or a commission. And, obviously, an individual is more efficient, makes decisions quicker, but when we have that efficiency, that means that your successor will be appointed by whomever the next President is, and then the next successor will be whomever, and we could swing very efficiently and extremely from the forces of light to the forces of darkness, and then back to the forces of light, which of course will make it pretty complex to transact business.

Let's imagine, God forbid, that your successor is your evil twin, just as capable as you but determined to undo every good thing that you have done or are about to do. How efficiently could that person, one person running your agency, replace all of the regulations that you will have in force by January of 2017 with new regulations that would be touted as good consumer protection but would in fact eliminate the lion's share of the good that you plan to do in this your first term? How efficient could your evil twin be in undoing everything you have done or will do between now and January 2017?

Mr. CORDRAY. It is theoretically possible, but it is not so easy to do. Once you have passed rules and regulations through a notice and comment process and they are protective of consumers and those start to become the lay of the land and institutions adjust to them, even though you might decide, I am going to undo all of those, it is a whole process to go through. You have to fight the opposition on that. You have to fight whatever evidence there is—

Mr. SHERMAN. I would point out the opposition that you face is the industry. In this case the industry would be on the—that somebody moving the other direction would face less opposition than you have faced.

Mr. CORDRAY. No, they might well face considerable opposition from the American public—

Mr. SHERMAN. They might if the American public understood the details. As I said, I am positing that these replacement regulations would be billed as a major increase in consumer protection. But, obviously, it would be more efficient for your evil twin to do this if it was one person rather than a commission made up of both Democrats and Republicans, some of whom agreed with you, some of whom who didn't.

I want to move on to another—

Mr. CORDRAY. Could I respond briefly to that?

Mr. SHERMAN. No. Because I have to move on to the next question.

Mr. CORDRAY. Okay. Fine.

Mr. SHERMAN. You can respond for the record.

TILA-RESPA, TRID, if you are building a new ship, you want some extra time to get the ship done, but no matter how long you

spend at the dock, you are really not done until you take it on a shakedown cruise. October 3rd begins the shakedown cruise, the chance to actually try out these regulations and see how they work. And it is going to be difficult. Now, you have given additional time for the ship to be built, but it still hasn't been on a shakedown cruise, and in fact you have to—you can't use the new regulations for September transactions, but we are closing in on October 3rd. Are you willing to announce a formal temporary 3-month hold harmless period for those who are making a good faith effort to comply with the 1,800 pages of regulations and are acting in good faith knowing that they have never used them before, although they have had enough time—they have had plenty of time at the dry dock?

Mr. CORDRAY. Actually, all of this area was changed and overhauled in 2010 by the Department of Housing and Urban Development (HUD). Congress then legislated it be changed again by us. I am not sure that is the way you would have drawn it up if you had started from scratch, but they got through it in 2010. There is obviously lots of angst around it, and people are trying hard to make their systems work. We did give them more time, as you have said. You and I have had a chance to have back and forth on this a number of times. I have never quite fully understood your phrase "shakedown cruise," but I think I have—

Mr. SHERMAN. Well, a shakedown cruise is when you go out and you try to sail the ship the best you can, but you don't get sued if the facilities don't work.

Mr. CORDRAY. So the nub of this, which I think is your biggest concern is, we have said and we are working now to provide written guidance on this, and we are working with the other agencies so that we all provide the same written guidance on this, that for a period—for some period of months, we are not going to be very specific about it. It might be longer. Right? There will be a diagnostic approach to this that is not—nobody believes that the market participants here are going to be trying to abuse consumers here. They are just going to be trying to change their systems and get it right. So it would be diagnostic and corrective, not punitive, and there will be time for them to work to get it right and not have to be perfect on the first day.

Mr. SHERMAN. Will you be announcing something by October 3rd?

Mr. CORDRAY. I am pushing hard the see to it that it is out before October 3rd. I was hoping it was going to be out before today, but it is going to happen, and it is going to be along the lines of what you have asked for. I think it will be satisfactory.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Luetkemeyer, chairman of our Housing and Insurance Subcommittee.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. And I want to just follow up on the gentleman from California's remarks there.

Mr. Cordray, you and I have had some discussions with regards to TRID and my concerns about it. And I committed to you that I was going to send a letter to all the associations representing people or industry folks who made mortgages and to let us know

whenever there were some sort of punitive actions that were out of line that was taken by your agency. And I want to let you know that letter goes out Thursday. So just to put you on notice that we are going to be watching.

Mr. CORDRAY. That is great. I am actually glad to have you monitor this because it is my intention—this is how we handled the first set of mortgage rules, and I haven't heard of any problems, and we are now 21 months in, but I am glad to have you monitor it because I want what you want, to make sure this is what actually happens. So I appreciate that.

Mr. LUETKEMEYER. If you live up to your end of the bargain, this will all go away and we will all live happily ever after.

Mr. CORDRAY. Okay. Fair enough.

Mr. LUETKEMEYER. Thank you.

With regards to—I want to follow up just for a second with regards to the gentleman from New Jersey's remarks with regards to the relationship between the auto dealer and the lender. I think you just mentioned a minute ago that you came out these last few days with a recommendation to have a 1.5-percent spread between what the lender and the dealer have in their relationship. Is that correct?

Mr. CORDRAY. There is a consent order that was entered yesterday that would have a one and a quarter differential for certain loans, and 1 percent differential for other loans depending on timeframe.

Mr. LUETKEMEYER. It is very concerning to me. Number one, where is the authority to do that? And number two, why are you getting in the middle of the general competitiveness of the marketplace?

Mr. CORDRAY. Why am I getting in the middle of what?

Mr. LUETKEMEYER. It looks like you are price fixing to me. Why are you getting in the middle of a discussion between two entities that determine the risk of the loan between the two? Interest rates should be reflective of risk. They always have been. I am old enough to remember when we had usury rates. And a few years ago, we took them off. And now with this action it looks like we are putting them back in place because you are limiting the amount that people can make based—and you are taking all the other risk factors out, which that is the definition of interest.

Mr. CORDRAY. This is not just a general philosophical thing that we are deciding to do because we have some ideology on this. This is a result of an enforcement action, an investigation by us and the Justice Department. We are not solo on this. We are working with the Justice Department. They have much more lengthy experience in these matters than us on investigation of potential discrimination. There was a back and forth with that entity and various other entities—there has been a number of them—in which it was determined that this was a reasonable result to address the problem and yet to allow the entity to move forward and continue to lend aggressively to customers.

And as I said in my outset, auto lending is at some of its highest levels ever right now. This is not interfering with that.

Mr. LUETKEMEYER. Director, that is because the economy has come back and people can finally afford to have an automobile in their garage.

Let me move on. It seems to me along that same line here, a while ago you said that you are a data-driven institution.

Mr. CORDRAY. We try to do that, yes.

Mr. LUETKEMEYER. I know in talking with one of my bankers last night, I called him and said: Listen, tell me what is going on with you and this disparate impact situation. And he is very concerned because whenever he was examined, basically the examiners looked at three things: loan to value; debt to income; and FICO score. And he was cited by the examiner for inappropriate loans. He had an outside accounting firm come in, and they came up with two reasons that he had this problem: Number one, he loaned to people outside the State; and number two, he loaned to very small auto dealers. If you take those two things out, he would have been in perfect compliance.

Yet if that happens, now we are going to restrict the amount of dollars that are available, and you are going to lessen the competition. And in talking with him—you made the comment a while ago that there is plenty of access to credit out there. I can tell you that there are a number of banks that have already quit doing this and are looking to quit doing this. And when that happens, there will be less bidding going on for those dealer loans. And that means the rates will go up.

Mr. CORDRAY. Could you help me a little bit? Is that a big bank or a small bank?

Mr. LUETKEMEYER. It is a mid-sized bank.

Mr. CORDRAY. Over $10 billion in assets?

Mr. LUETKEMEYER. Yes.

Mr. CORDRAY. I would love to hear more. I would like to know more.

Mr. LUETKEMEYER. I would be glad to fill you in. I have 46 seconds. It is concerning to me, and I think that you need to be willing to look at other factors when you are modeling this and take those into account because I don't think that is happening, and I think that is where a lot of problems begin.

Just one more quick comment. I also had an entity who was a debt buyer come into my office recently, and they were fined for a word in their settlement agreement that you are proposing a rule in the future for. That made no sense to me.

Mr. CORDRAY. I have heard that, and it doesn't make sense to me either. I don't really understand how we fine somebody for a word. I would love to hear more and understand that problem. When we investigate it—again, I am not sure which one it is. We have taken several actions against debt buyers who have engaged in some pretty predatory practices. And when we get into the details of it, you wouldn't find them very appetizing either.

Mr. LUETKEMEYER. They were fined for a word that was going to be noncompliant in the future with one of your rulings, and as a result—

Mr. CORDRAY. Give us a chance to talk with your staff and understand that problem and see if we can clear that up. I would love to do that.

Mr. LUETKEMEYER. I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from New York, Mr. Meeks.

Mr. MEEKS. First, I want to thank you, Mr. Cordray, for your leadership at the CFPB because, clearly, over the last 4 years, recovering approximately $11 billion in relief for over 25 million American consumers, that is tremendous, and the CFPB clearly is changing some of the most egregious behaviors from bad actors in our financial markets and helping consumers every day. And your leadership has been to that very same effort.

And I think that you have a difficult job. The job is difficult because at the same time you are helping consumers, you are trying to figure out that balance to make sure people still have access to credit and they are not left out.

And so there has been this conversation that we have had going on for a long time, and I come from my experience, especially when you deal with the short-term loans or payday loans or whatever, how do you balance that? How do you make sure that people have access to credit but are not being ripped off? For example, I think you came out with a report that said we have to get rid of these rollovers for folks who can't afford them. But at the same time, from my background, knowing what I have seen, I want to put the loan sharks out of business. In the neighborhood that I grew up in, when banks turned folks down, there was harm done to folks because they didn't have any other choice but to go to some of these loan sharks.

So the question of harm and how do you—because I don't think that—to get rid of the bad individuals—I don't want to throw the baby out with the bath water—but I want to make sure that we can keep—because I have found some to be good business folks but others to be bad. You indicated that you were going to be looking at some of the State regulations and how they handled it to get rid of the good and the bad, et cetera. I was wondering if you could give us the benefit of your knowledge and whether or not you think you have gotten enough information from looking at some of the States as to how to properly maybe we can regulate this, because I am for regulating this industry, not necessarily getting rid of it but having some firm regulation because folks are going to try to find a way to get some money.

Mr. CORDRAY. I appreciate that what you have just done is to put yourself in our shoes and recognized in a very eloquent way, better than I would have done, what the two sides of the problem are. You want to have access to responsible credit for people that doesn't get them into more trouble and sink them in these debt traps, but you also don't want people to be in credit that is going to destroy their lives. And there are some really ugly kinds of credit out there that we have seen that are quite predatory. How you balance that is not easy.

Now, you are from the State of New York. The State of New York bans payday lending because the usury cap is on in New York, and it doesn't really exist. And yet, I take it your constituents are managing somehow or other, and that is true of 13 States across the country.

States handle this issue in very different ways. We have been very carefully going to school on what the States do and the different approaches and what seems to be working in some respects or not working in other respects, and we want to be respectful of that. At the same time, we have done two pretty comprehensive White Papers showing that in this industry, a significant number of consumers end up in a debt trap where they get a loan at a very high cost and they can't repay it and they have to roll it and roll it and roll it. A large number of consumers end up in cycles of 8, 10, 12 loans. That is very destructive to their economic well-being. Now, can we find some reasonable restrictions here that would allow access to credit and maybe a number of repeat loans but without people getting so far into it—I have an example from a court opinion in Missouri. The person took out a $100 loan. By the end of the whole thing, they had repaid several thousand dollars and they owed several thousand more. It was all being garnished from their paycheck. That is not helping their economic situation at all, for a $100 loan.

These are some of the things that we are grappling with and trying to understand, but it is not an easy problem. The way you framed it is exactly right. We are trying to balance two things here, and it is not easy to strike the balance. We are working hard at it, and we are trying to get there. Not everybody will agree, I am sure.

Mr. MEEKS. Thank you. And I would love to continue to work it as you look at some of the States, et cetera. For example, what happened in New York and I am finding some, there is a black market.

Mr. CORDRAY. And the Internet too.

Mr. MEEKS. They are getting money in that regard, and I would rather have something that was strongly regulated that they could go to. Then I would have more confidence that no one ends up with the broken arms or the black eyes that I see some folks ended up with. So I would appreciate your continuing to work on that. I thought I had more time. I didn't realize, but I am going to give you the chance to be more specific about the auto loans that you didn't have the opportunity to earlier.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Michigan, Mr. Huizenga, chairman of our Monetary Policy and Trade Subcommittee.

Mr. HUIZENGA. Thank you, Mr. Chairman. I am going to try to be quick. The dealer reserves, I just want to revisit that a little bit and make sure to give you an opportunity to clarify briefly on this. So my colleague from New Jersey brought up his amendment, and it is my understanding that neither one of us were here when Dodd-Frank was created, but we are living with the echo effect of it here.

Mr. CORDRAY. We are both blameless.

Mr. HUIZENGA. The intent of the exemption was the entire transaction, is my understanding. Is that your understanding as well?

Mr. CORDRAY. I don't have that understanding. I don't know one way or the other about that. What I know is, as I read the statute,

we have jurisdiction over auto lenders. We have a responsibility there. We don't have jurisdiction over auto dealers.

Mr. HUIZENGA. Got it. Will you support then expanding or clarifying the exemption to both dealers and lenders?

Mr. CORDRAY. If you ask me what direction it would go—I try to be very careful of not stepping into the shoes of legislators. You have to make those judgments. I don't have that authority.

Mr. HUIZENGA. You suggest a lot of other things.

Mr. CORDRAY. It has been suggested that you go in that direction. It has been suggested that you go the opposite direction. And there is a suggestion to leave it alone.

Mr. HUIZENGA. Have you issued guidance on appropriate levels then of what a dealer reserve should be?

Mr. CORDRAY. Guidance?

Mr. HUIZENGA. Have you told people, here is what we think is the acceptable level?

Mr. CORDRAY. We have had several enforcement actions.

Mr. HUIZENGA. That is different than outlining. I know, I saw what happened with Ally. You have $80 million that you haven't been able to distribute so far. Right?

Mr. CORDRAY. That is one action, but we have had several enforcement actions involving other auto lenders as well where this has come into better focus, and it is gravitating toward what I said about yesterday's action limiting caps.

Mr. HUIZENGA. Why not get specific then on what that level is?

Mr. CORDRAY. I think our enforcement—our consent orders now are quite specific, and they have signalled to the industry a possible way for us to resolve this on a global basis, and I think that would be a good thing.

Mr. HUIZENGA. I want to quickly move on to another thing, marketing services agreements (MSAs). You and I had this conversation the last time you were here, and I will ask the same question: Have you issued specific guidance on MSAs?

Mr. CORDRAY. We have gotten increasing input asking us to do that.

Mr. HUIZENGA. Why have you not done it?

Mr. CORDRAY. We are working on it.

Mr. HUIZENGA. Why not just ban them or outlaw them?

Mr. CORDRAY. What I have said is that what we have seen—and we have had several enforcement actions—there is huge risk involved in those agreements, and people don't seem to have realized it. We are going to try to signal based on our experience what we have seen. And I think people will get the message.

Mr. HUIZENGA. Let me ask a question just quickly going back on this Ally situation. You have $80 million. You have asked people to self-identify as to whether they are a minority and may even qualify. Will you give Ally a refund of the money that is not claimed? Because there are a lot of people who believe that you overextended. You are getting $18 million already in general, and this $80 million is supposed to be distributed. What happens to that money if it is not distributed?

Mr. CORDRAY. I understand. We are in the process in this, but we are quite confident from what we have seen so far from the response rate that all of the money will be distributed. If it isn't, it

will not go back to Ally. That would reward them for not getting money out. It would be disgorged to the Treasury.

Mr. HUIZENGA. It is actually you not proving that there was discrimination or DOJ not proving that.

Mr. CORDRAY. Not necessarily.

Mr. HUIZENGA. On both—on dealer reserves and the MSAs and a number of other things, it seems to me that you are not willing to issue that guidance because you quite possibly don't have the authority to do that.

Mr. CORDRAY. No, no. We are working on it. I believe we will issue guidance shortly. People have asked us very much for that.

Mr. HUIZENGA. The American Banker, in this story on September 24th—well, I am going to read this opening paragraph: The consumer, the CFPB, the Bureau, has struggled internally on how to end potential discrimination auto lending—I would add MSAs and other things—including debating whether it should cite a large lender in the hope of effectively ending the ability of partnering dealers to mark up loans to all lenders.

And what I am afraid of, Director, is—and the last time you were here, March 3rd, we were talking about the press release situation. And you had said that the ombudsman for the Bureau is looking into whether there have been differences in the language on the consent orders and the press releases on the actions given. And it seems to me that is still the case, and I am afraid that it seems your goal is to intimidate businesses big and small into actions or inaction that you think it needs to have because you don't have the legal authority to execute those.

Mr. CORDRAY. I understand you may think that. I don't think that is true. That is certainly not how I intend to operate. The ombudsman did look at the issue of the press releases and consent decrees and found that there really weren't any significant problems there, and on the MSA—

Mr. HUIZENGA. Could you share that report with us? Could you share that report with me specifically because I would like to see that?

Mr. CORDRAY. I am sure we can. It may even be posted on our website for all I know. The ombudsman has a fair amount of independence from me but did look at that.

On both auto and MSAs, we have consent decrees in place that do give very specific guidance based on specific facts and situations. On MSAs, you and others have really pushed us to give more guidance on that. We are going to be doing that. We are working on it.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Massachusetts, Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman.

Thank you, Mr. Cordray. I have been reading through your report. I don't know. It doesn't seem like you have been too busy to me. It strikes me as though you are not doing much. From what I see, you have done one proposed policy statement; one final policy statement; 4 requests for information; 13 proposed rules; 11 final rules; 5 bulletins; 2 guidances; 20 orders; 5 assessments of State attorney general actions, which of course is not yours, you are just

looking over what the State attorney general does. You have appeared before Congress 5 times yourself; your staff 2 more times. I know that is very easy. It takes no preparation, no time. I get that. You have done 37 public speeches in front of different groups that are interested in everything you do. Your staff has done four more speeches. You have had 14 executive actions taken against different companies, and you have issued 63 reports and financial reports during the last calendar year. It doesn't strike me as though you have been too busy. It strikes me as you are probably just sitting around not protecting consumers and everything else. At least that is what it sounds like today. But then again this is the bulk of what you do is only part of it. Apparently, as I read this, you are allowed to spend up to $619 million, but you only spent $302 million. You only spent 48 percent of what you are allowed to spend. I don't think there will be another agency in the entire Federal Government or any State government or any city government for that matter that would do that and have the results that you have had. And on top of that, you have collected $47 million in fines against companies that have bilked consumers, and you distributed $113 million to different victims across this country. Sounds to me like maybe you are actually doing something to fulfill the title of the agency, Consumer Financial Protection.

Mr. Cordray, I am here to say thank you. I am here to congratulate you and your team for doing a great job. It doesn't mean I don't want to nitpick certain things. Of course, we do. I know you do that internally. And to be perfectly honest, I think you have been pretty receptive to our comments and to our suggestions along the way on different rules and regulations. You have worked with us. It doesn't mean I agree with everything you have done. It just means I think this country is a lot better off with the CFPB than without you, and I wanted to say thank you for that.

I do want to ask you, do you think you have any ability or any regulatory authority to maybe take a look at the effect on consumers of different Federal agencies, most notably the FHA and maybe Fannie Mae and Freddie Mac? Do you think that might be within your purview or outside of your purview?

Mr. CORDRAY. I don't think it is within our purview to, for example, try to enforce the law against other agencies. I do think it is within our purview—and really would be irresponsible if we didn't, to collaborate and coordinate and cooperate with the other agencies and try to work toward common policies, which we do try to do with each of the ones you mentioned and many more, so that is something that takes a fair amount of time and effort; and these agencies are pretty receptive. We try to be pretty receptive because the worst thing that could happen to an institution is to have different agencies coming at them with contradictory positions because then the institution, how do you treat that institution fairly?

Mr. CAPUANO. Let me encourage you to work as cooperatively and forcefully as you can with both of them because both of them, in my opinion, are participating in what I consider to be the slow and steady destruction of various neighborhoods around this country by selling these bulk mortgages to companies that then make a profit—not just a profit, a massive profit. The largest one is the Lone Star Funds run by a gentleman who voluntarily gave up his

United States citizenship. I will repeat that. We have made a billionaire out of a person who voluntarily gave up his United States citizenship. This Congress spends an awful lot of time debating how we can allow more people to come to this country. I don't know anybody who wants to leave, except for the person who is currently in charge of the largest fund slowly destroying various neighborhoods across this country because Fannie and Freddie and the FHA refuse to allow local communities to have a say on what to do with houses that have been lost because people couldn't afford to keep them. And I would dare say—talk about consumer protection—what they have done, not directly but indirectly, by allowing these companies to do this, I think certainly should fall into your purview, and if not directly in your purview based on the job you have done to protect consumers, I would strongly suggest you get on the phone and talk to them, educate them, enlighten them as to how we help individuals, as opposed to the people who are not even United States citizens out of their own volition.

With that, I yield back the rest of my time, because I don't really have any questions; I just wanted to say thank you again.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from New Mexico, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman.

Thanks for being here, Mr. Cordray. The question that came from Mr. Huizenga about the money going back, and I understand not a penny has been given back to the people who are discriminated against?

Mr. CORDRAY. Are we talking about the Ally matter specifically because we have had many discrimination matters, and there is a lot of money—

Mr. PEARCE. The Ally. The money has not gone back or has gone back? It is a simple question.

Mr. CORDRAY. There have been many matters where consumers have received money back. The Ally is a somewhat complicated process, but it is being worked through.

Mr. PEARCE. But nobody has received money?

Mr. CORDRAY. That is correct at the moment, but they will. They will receive all of it, I believe.

Mr. PEARCE. Patrice Ficklin wrote on your website that—in December of 2013—we are starting to pay back some of those things already, and it just doesn't seem very believable. And by the way, if you are not giving the money back, is that racist on your part that these consumers have been defrauded and you have the money and you have had it in your hand? Is your action not racist?

Mr. CORDRAY. We are giving the money back. It is somewhat complicated, but it will get there.

Mr. PEARCE. It is very complicated. It is not complicated to cheat them upfront, but it is complicated for you.

Mr. CORDRAY. I could just throw money out there, but nobody would be happy about that. We are going through a careful process, and it will get there.

Mr. PEARCE. And just to put this in perspective, the assertion in The Wall Street Journal is that consumers are being defrauded of

about $200 to $300 over the life of the loan. Is that more or less correct?

Mr. CORDRAY. I'm sorry. What are we talking about?

Mr. PEARCE. The Wall Street Journal says that the differences in interest could amount to $200 or $300 over the life of the loan.

Mr. CORDRAY. Is it the Ally matter or generally or—

Mr. PEARCE. Generally, in auto finance, you might have that.

Mr. CORDRAY. That, depending on the facts, could be about right.

Mr. PEARCE. Which ends up at 60 months, which Mr. Williams told me that is what the general financing is for is $5 a month, 16 cents a day at the high end; at the low end is $3 a month. Now consider that compared to—and in my 11 years, I have never had one person come up and say: We are being cheated, discriminated against in auto loans. But I have had multitudes of people come up and say: In our student loans, they are charging us exorbitant interest rates—8.7 percent is the one that came up to our office most recently; $60,000, 8.5, 8.7 percent interest, which is a huge amount more, but you all, according to the memos, the internal memos, are redirecting your enforcement away from these high-priced educational problems into the auto industry. That was an internal memo that is circulated.

Another memo says that we are not sure that we have the legal authority for doing what we are doing at all and that the rule could be perceived as an attempt to circumvent the law and our lack of authority. Now, you had told Mr. Garrett that you didn't really agree with the law. Is that something that I heard or maybe I didn't hear?

Mr. CORDRAY. I didn't agree with the law?

Mr. PEARCE. The law that said you can't go after the auto dealers, but you can go after the financial part of it. So you do agree with the law?

Mr. CORDRAY. My job is to enforce the law, whether I agree or disagree with it. What I disagreed with was the characterization that the auto industry had been exempted from Dodd-Frank. That is not what the statute says, and that is not my understanding of the authority we are supposed to exercise.

Mr. PEARCE. So auto dealers are not exempt or the auto industry, which?

Mr. CORDRAY. Auto dealers are exempt under the statute. The auto industry is not exempt, and auto lenders in particular are within our responsibility, and we have a responsibility to them.

Mr. PEARCE. So you are attempting to go after the dealer markup. Is that right? You are trying to assess that. That is the whole 1 percent, 1 and a quarter percent; you are trying to determine that.

Mr. CORDRAY. What I would say is we are assessing lender programs where they authorize discretionary dealer markup with financial incentives to mark up the rate, none of which is known to the consumer, which is part of the reason they don't complain about it. Consumers don't realize that the buy rate was 4 percent and they are being offered 5.5 percent.

Mr. PEARCE. Consumers who do realize they have a problem in the student loan industry who complain a lot, they are okay.

Mr. CORDRAY. We are working hard on student loans. The whole Corinthian matter—

Mr. PEARCE. You are saying the memo is incorrect, that you are not redirecting resources?

Mr. CORDRAY. We are allocate resources all the time, but the notion that we are not addressing student loan harms—

Mr. PEARCE. Seems like a complicated concept of billiards to avoid the law. We are going to hit this ball over here, and it is going to hit that bank, and it is going to come over here, and it is going to tap the auto dealers. And that is who we are really after.

Mr. CORDRAY. We have been very careful to observe that line. As I said, it is not a particularly logical line, but we have been very careful. We didn't even talk to dealers for 2 years until they started to want to talk to us.

Mr. PEARCE. Maybe that is the reason some on our side have disagreements.

I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Chairman Hensarling and Ranking Member Waters, for holding this important hearing; and thank you, Director Cordray, for your appearance here today and for your steadfast leadership at the Consumer Financial Protection Bureau.

I am going to go directly to questions and skip the other points that I wanted to make. Our Nation faces a severe student loan crisis. Student loan debt now stands at $1.2 trillion and tops out credit card debt, auto loan debt, and home equity debt. Moreover, default rates on student loans keep rising every year. Can you tell us more about efforts at the CFPB to provide student loan relief?

Mr. CORDRAY. Yes. And there have been a lot of different efforts. This is an area where we don't really act alone. We try to work with others, including States, State attorneys general and others, the U.S. Department of Education. We have worked with the U.S. Department of the Treasury on these issues. There is a whole variety of things that we have tried to do.

First, we have tried to make it clearer and easier for consumers themselves to make their own judgments about what is the right answer for them in a particular set of circumstances. That is our paying for college tool. This is one of the ways in which, as the chairman would put it, we are trying to help consumers become more free. If they can make more informed choices, they can make choices that are the best ones in their view for themselves and not have regrets later. We hear plenty of regrets from people who didn't have that kind of transparency around student loans in the past.

Second, student loan servicers, the people who are actually handling the debt that is already owed, and there is $1.2 trillion owed in this country, so it is a very significant concern for many Americans, millions of Americans. We feel that there are various practices in that industry that are subpar, very much like mortgage servicing practices have been very subpar for a long time. We are looking at figuring out how we can work to sort of clean that up

and bring that up to a standard so that people who already owe a fair amount of money to get an education—that is burden enough—aren't further burdened with misappropriation of payments or payments that go to the lower interest and keep the higher interest and various ways in which this industry is not serving their interests well.

Third, we have worked with the Department of Education, and the Department of the Treasury, to press for more refinancing options, particularly for people with private student loans, which have largely been unavailable to them in the past. There is a lot of movement on that, and there is progress on that.

Fourth, one of the things we are trying to call attention to is a lot of this is a matter of public policy, and it is at either the Federal or State level or both, is that the amount of student loan debt in this country is itself becoming a negative drag on our economy. Younger people are forming households later. They are forming small businesses at lesser rates than in the past. They are making different choices because of the amount of debt that they have. Student loan debt is affecting the broader economy. We need to rethink public policy in this country. It goes well beyond my limited mandate, but it is something that we think needs to be aired and needs to be discussed and policymakers need to think more about it, so we are trying to be active on all fronts.

Another issue is a lot of these student loan issues affect servicemembers who are trying to figure out what to do with their GI benefits and/or other student loans that are available to them and make sure that they don't go to waste and that they benefit by them. And with Holly Petraeus, who heads the Servicemember Affairs Office, we have been working with the Department of Education and also the Departments of Defense and Veterans Affairs to make sure that servicemembers can really maximize their benefits in ways that will improve their lives as they come back into the civilian population. There are a lot of different fronts for us, very big problem, very big concern. It should be a big concern for anybody making policy in this country.

Mr. HINOJOSA. I want to thank you for all those things that you are doing. I want to jump to another point that I want the record to show. A year ago, the Bureau announced an action against a former for-profit college chain, Corinthian Colleges, Inc., in response to a scheme that lured thousands of students into expensive loans and conducted abusive collection tactics that preyed on students. Moving forward, do you expect that the Corinthian experience will inform the Bureau's work with respect to institutional student loan programs at those for-profit colleges?

Mr. CORDRAY. Yes, and thank you. I meant to wind up with that work, which has been very aggressive on our part. We have been working with State attorneys general and other partners, Department of Education, Department of Justice, and others. We did bring the action against Corinthian. We thought that they had misled students in significant ways and engaged in various predatory practices. Obviously, others have felt the same, and they are now in a bankruptcy proceeding. We have sued ITT, which we think have engaged in many of the same practices. We continue to mon-

itor that market. It has been a source of a lot of harm to people, and it needs to be thought about more carefully.

Mr. HINOJOSA. Thank you for your good hard work on this issue.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Florida, Mr. Posey.

Mr. POSEY. Thank you very much, Mr. Chairman.

It's good to see you again, Mr. Cordray.

Mr. CORDRAY. Thank you.

Mr. POSEY. I want to go back to something that one of my colleagues across the aisle, Mr. Meeks, mentioned just a little while ago. And that is a concern my colleagues in Florida have about our earlier experience in Florida with short-term lending. The legislature in Florida worked hard to balance the needs of the citizens of Florida for short-term credit with consumer protections. The Florida experience has been a positive for Floridians and shows the value of State legislatures who desire to meet the needs of their local communities. As the CFPB considers regulations of short-term lending, you have said that your rule will be just a "floor" over which the States can regulate. However, I have been told the proposal that the CFPB has released is, in fact, a floor that no existing State law meets, period. So it is effectively a preemption. And that is why I think you have seen so much concern within the Florida delegation and others, New York now. Do you intend to follow through with your rule that effectively throws out the hard work of the Florida legislature, and that of 31 other States for that matter, that have acted to regulate a responsible payday and other short-term lending?

Mr. CORDRAY. One of the things I have found is there is a lot of people saying to us on payday lending, vehicle title, certain installment loans, they are saying to us, oh, you really shouldn't do anything. You should just leave alone what the States are doing, and it is all fine. We did two extensive White Papers, the largest research that has ever been done on this issue, which showed that a large number of consumers under these existing regimes end up trapped in debt, getting 8, 10, 12 loans in a cycle, paying more in fees than they ever borrowed in the first place. Some of the stories are quite gross, and I can't in good conscience just leave that alone. If we can make reasonable interventions to improve this market so that consumers are not victims of predatory lending, I think we have an obligation to do that. As to Florida in particular, you and I and your colleagues have had a number of discussions about it. One view of Florida is it is really fine. It is a model for the Nation. Another view that consumer groups in Florida have put forward—Consumers for Responsible Lending did a report, and other groups have written to the delegation more recently—they said it is actually still problematic in various ways. A lot of people end up rolling into these long sequences, and the percentage of people who re-borrow is just as high really in Florida as in the rest of the country. That is what our analysis has shown as well. Again, I was referring earlier to an example from Missouri. This is a judicial opinion. The judge was so offended they went to the evidence record there and indicated, for example, class member DW took out a $100 loan from this company—this is in the record. A judgment was entered

against them for $705.18. There was a garnishment of his wages. So far, $3,174.81 has been collected on a $100 loan, and a balance of $4,105.77 remains. That is the kind of thing we are seeing around this country. We can all talk about access to credit and all credit should be allowed, but some of this is quite predatory. It is quite problematic, and this is something that we need to address. And I feel strongly about it, and I don't feel in good conscience I can just give it a pass and move on to other things.

Mr. POSEY. I don't know what they do in Missouri. I heard somebody from our Financial Services Office, in a meeting—you were in the meeting.

Mr. CORDRAY. Yes.

Mr. POSEY. I think you heard him say he had two complaints out of how many hundreds of thousands. That kind of shocked me, which indicated to me that Florida maybe and some States got some things right. But it seems if you come out with your floor, a standard that no State can meet, your effort to protect some people is going to have the unintended consequence of hurting people.

I don't think anybody chooses to go to a payday lender. I heard somebody from your agency say we would like to get these people more involved in going to credit unions and conventional banks. Yes, except they will not make the loans a payday lender makes. When somebody goes to a payday lender, they are usually pretty doggone desperate. And the next step is—I don't even want to mention it. There are three ways people get through life if they are not independently wealthy: they work; they steal; or they are on welfare. So if you don't have jobs for people, you really can't complain when you have the bad two scenarios. It is a similar thought with payday lending. When you don't have some conduit for these people to survive, you are asking for trouble.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Clay, the ranking member of our Financial Institutions Subcommittee.

Mr. CLAY. Thank you, Mr. Chairman.

And thank you, Director Cordray, for being here today. We have heard a lot this morning about auto loans and credit related to auto loans. A February 2015 settlement announcement from the Department of Justice against two North Carolina-based buy-here-pay-here auto dealers for violations of the Equal Credit Opportunity Act alleged reverse redlining, finding that the dealerships intentionally targeted African-American customers in extending high-cost auto loans when the borrowers otherwise qualified for more reasonable interest rates.

Mr. Cordray, how concerned are you that the recent growth in subprime auto lending may also include the kind of reverse redlining that the Department of Justice uncovered just in February 2015?

Mr. CORDRAY. By the way, buy-here-pay-here auto dealers are a different part of the market. Again, when you say the CFPB isn't sure of its legal authority—one of the things we try to do is be very careful about our legal authority. We discuss it a lot. We try to analyze it carefully. We try very hard to be on the right side of that rather than the wrong side. If we are on the wrong side, courts will

smack us down, and they may do that from time to time. We are trying to be careful about it.

We have investigated buy-here-pay-here auto dealers because they pose a somewhat different and special risk, I think. What was your question?

Mr. CLAY. How are you addressing it, the reverse redlining, elaborate on the buy-here-pay-here business model? And are there unique risks associated with the buy-here-pay-here business model?

Mr. CORDRAY. Reverse redlining is not unique to auto. It is also in mortgage. We took an action against National City that got back to consumers $25 million in compensation because of reverse redlining in the mortgage market.

In the auto market, the same types of concerns. Although I will say, I don't think the right answer is to cut off auto lending to people who have less than perfect credit. People need to have transportation in most parts of the country, certainly my part of the country, in order to get to work and make something better for themselves. So I don't think it is just because it is subprime that it is wrong or bad.

It is the case that when you go into the subprime market, prices tend to be somewhat higher. Some of that is inevitable. It also creates risks because maybe you will try to exploit those consumers in ways that are not appropriate. That is something for us all to monitor very carefully.

The Justice Department has indicated it is monitoring that carefully. We are trying to monitor it carefully. I don't think the right answer is that people whose credit is under, say, a FICO score of 680 should not be able to get auto loans. They need them. It is actually helpful to their situations. But if people are using that market as a means of engaging in predatory conduct—and we saw it in the mortgage market, so it is certainly a risk—that is something we should be very careful about.

Mr. CLAY. So, in other words, my colleagues should not be naive about the fact that some in this industry are steering people for no other reason than because of the color of their skin into high-cost loans?

Mr. CORDRAY. If somebody qualifies for a prime loan and they are being steered into subprime, that is the kind of abuse that we would want to take action against. If someone just has less good credit and, therefore, they are a subprime customer, the notion they shouldn't get a loan for that reason is not a right answer, I don't think, either.

Mr. CLAY. Thank you for that response.

Let's shift over to diversity and inclusion. What role has the Office of Minority and Women Inclusion played in helping the CFPB recruit a diverse and qualified workforce?

Mr. CORDRAY. They have been very instrumental for us. I have had a number of discussions with some of you and particularly with the ranking member on the importance of the Office of Minority and Women Inclusion, which was of course created in Dodd-Frank and applies to all of the financial agencies. I, in response to work that we have done and some issues that we have worked to address, elevated that role within the Bureau. The Office of Minor-

ity and Women Inclusion is at the highest levels. That office has been incredibly helpful to us both in understanding our own workforce, understanding our recruiting and hiring, understanding our retention, and also thinking about our contracting and trying to work as aggressively as we can with the other regulators in the industry to see the practices changed there as well. I would say it is one of the successes of the Dodd-Frank legislation.

Mr. CLAY. Thank you, Mr. Director.

Mr. Chairman, I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Virginia, Mr. Hurt.

Mr. HURT. Director Cordray, thank you for appearing before our committee. I represent a rural district in southside, central Virginia. During August, we had the opportunity to travel across the district and met with a lot of folks who live on Main Street and are served by our local Main Street financial institutions. We heard a lot of concerns as we travelled across the district about the CFPB and the impact that it is having on these institutions' ability to deliver access to capital. But the question that I wanted to focus on today relates to the truth in lending RESPA, integrated disclosure rules that are going into effect.

I will recount for you one conversation that we had with one of those representatives from the compliance office with one of those institutions, and they said they were glad that there was an announced effort to try to streamline those complicated and complex rules that have to be undertaken when closing real estate transactions, but they were also concerned about the end product, and concerned about the process. So I guess I was wondering if you could talk a little bit about your analysis in terms of the actual costs to consumers. What will the costs be ultimately? Will this result in higher costs? And how much extra time will be required or if you could just talk about that briefly?

Mr. CORDRAY. Sure. Again, it was Congress' decision that these forms really needed to be streamlined. They have been out there for 40 years, 2 different statutes, 2 different—

Mr. HURT. You all looked at the cost directly?

Mr. CORDRAY. Yes, although it was a mandatory rule. We didn't have discretion to say, we are not going to do this. We did our best to try to mitigate costs and make it feasible for industry. We spent a fair amount of time on it. The statute was enacted in 2010, and this rule isn't taking effect until now, almost 5 years later. At the same time, we have been working with the industry extensively to try to help them comply, trying to provide a lot of guidance, trying to provide webinars.

Mr. HURT. Are you able to talk specifically about the cost and the analysis that you all have done, about the specific costs that will be passed on to consumers or the time?

Mr. CORDRAY. I am not convinced that there are going to be any significant costs passed on to consumers. It really is a change of forms. There is a lot of angst around the transition because they made a transition 5 years ago when HUD changed the form. It probably happened too fast in light of that, but Congress mandated it all. Industry did it 5 years ago. They will do it now. It will be

a better, cleaner process. Consumers will understand these forms better. That is what our testing has shown. The industry will benefit because consumers will be both clearer and happier about what they are doing, with less angst around the closing, and less surprises; unhappy surprises at the closing table are a big source of dissatisfaction. I think it will be better, but it is a matter of getting through it.

Mr. HURT. And as you point out, the timeline has proven to be a burden to a lot of these institutions, especially smaller ones that have a hard time. There are lot of partners in these transactions, and trying to make sure everybody is on the same page is very important. So I guess my question to you is, I understand that the CFPB has rejected the request by industry to grant a grace period for the implementation of this for the next 6 months, let's say, until February. It is my understanding that has been rejected.

Mr. CORDRAY. That is not right.

Mr. HURT. My question to you is, will the CFPB pledge not to bring enforcement actions against those institutions that are acting in good faith? Obviously, we don't want people abusing that grace period, but will you pledge that you will do that?

Mr. CORDRAY. It is wrong that we have rejected that. In fact, I saw just the other day an article that may not be legislation—

Mr. HURT. So my question—

Mr. CORDRAY. But CFPB has granted most of what industry wanted. We have done that.

Mr. HURT. But you haven't offered a blanket grace period for those who are acting in good faith in terms of not bringing an enforcement action. I would like to get you on the record as saying if that is your position.

Mr. CORDRAY. What we have done is actually better for the industry. We have worked with the other agencies. And as I said, this is going to be in writing. I have said it verbally. I have made my commitment, but it is going to be in writing by all the agencies, that during the early period, and this may be less or more than 6 months, we will be diagnostic and corrective, not punitive. That means we are not going to hammer people if they happen to get the forms somewhat wrong. We know industry is trying to get it right. We know there is no advantage to them in undermining consumers by changing the forms in some way. They are just trying to get it right, and I believe that. And so that is the way we are going to handle it, and that is the way I have talked to the other agencies about it. They agree. You are a former prosecutor. I know you know law enforcement and you have to sometimes be a little nuanced about it. We are trying to do that.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Over here, Mr. Cordray, in the corner. I served in the Georgia legislature. I was the chairman of the Senate Rules Committee, and there we passed and enacted into law a fairly restrictive State short-term lending law. But even so, online companies like Elevate offer a 59-percent rate product in Georgia that complies with our State law, and certainly gives our constituents there more access

to good short-term credit. But under the proposed small-dollar lending rule, Elevate wouldn't be able to offer this 59 percent product in our State of Georgia.

So my question to you is, how will my constituents who use the credit as intended and needed be better served by a rule that is overly prescriptive and does not complement our existing State law and that our State legislatures have concluded is in the best interests of our constituents in Georgia?

Mr. CORDRAY. I will say this is something we are trying to listen very carefully to you and others who are bringing these different scenarios to us. I am very sympathetic and the point has been made on both sides of the aisle today that alternative means of satisfying small-dollar credit for people are very important, whether it is credit unions or maybe community banks, or as you say, companies that are now innovating around trying to find more consumer-friendly methods of supplying that credit that people need. I am sympathetic to that. We are trying to work with the rules we are trying to develop such that there will be room for that. If we are not getting that right, we will be interested in hearing from people about how they think we might adjust the proposals somewhat here or there, and the product you described seems to me much more user-friendly than some of the products I have seen out there.

Mr. SCOTT. It is. It helps my constituency. I am going to be working on that, and I am glad to hear you say you will work with us so that my folks in Georgia will be happy.

Now to another matter, Mr. Cordray. This business with the auto dealers. First of all, let me say that the CFPB have done some good things, but this business with the auto dealers is a bad thing. It is a bad deal. Now let me tell you why. There is racism everywhere. We know that. But in the ruling and the guidance that you put out, it was done unfairly. You offered a rule. You charged the dealers with the basis of it that they were racially discriminating. You based that on a report that was shamefully flawed. It was inaccurate. And to tell you the truth, it was downright insulting to African Americans because you just assumed their last name was Johnson or Williams or Robinson or maybe even Scott. But let me tell you, there are a lot of white people with the same names. How can you be accurate?

And even you yourself, you as the CFPB, said that even this is about 25 percent inaccurate. But yet still you directed an extraordinary and deceitful approach that harmed some of the very people that you are trying to help. You have hundreds of auto dealers who are African Americans, but when you put this blanket indictment, you hurt them. And then, you went to the lenders. You pressured them to cut out their ability to discount their loans, the one little measure they have in there with which they can make a profit. Now, you did this without congressional approval. We said right here in Dodd-Frank and wrote—there has been some discussion about the law. Here is what we wrote. We said—and I wrote this with Barney Frank and many members on this committee. Section 1029, says these words: "The Consumer Financial Protection Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority including any authority to order assess-

ments over a motor vehicle dealer that is predominantly engaged in the sale, the servicing of motor vehicles, the leasing and servicing of motor vehicles and both.

Mr. CORDRAY. I strongly disagree with much of what you just said, but I—

Mr. SCOTT. You can disagree. I read it from the law.

Mr. CORDRAY. No, no. I don't disagree with the reading of the law. Auto dealers are one thing. Auto lenders are another. I disagree with quite a bit of what you said about characterizing our efforts here—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Illinois, Mr. Hultgren.

Mr. HULTGREN. Thank you, Mr. Chairman.

Director Cordray, thank you for being here today. Your testimony is an important opportunity certainly for us to hear about the Bureau's policymaking, formal and informal, and for Congress to use the limited oversight provided to us by the Dodd-Frank Act.

First of all, I was drawn to the part of your testimony that I think awkwardly tries to make the case that community banks and credit unions are faring well in the current regulatory and economic environment. I assume you read the American Banker, but just in case you don't, I wanted to flag some stats from a story that was published on Friday. It said: "Today, there are 1,524 fewer banks with assets under $1 billion than there were when Dodd-Frank was signed into law." It also said: "The number of banks with under $1 billion in assets fell by 5.6 percent in the second quarter." This is the second largest percentage reduction since 1984. The annual shrinkage rate in the number of banks under $1 billion has accelerated every quarter but one since the third quarter of 2012. As I have observed the Bureau over the last few years, I have become increasingly concerned it is more interested in expanding its influence than in protecting consumers' access to financial products and services. The revised QM rules for small creditors and those operating in a rural or underserved area was released by the Bureau last week.

I appreciate many of the considerations you made for these lenders. However, the entire Illinois delegation—House, Senate, Republicans, Democrats—made a recommendation to the CFPB that economically challenged areas be included in the definition of underserved areas. Why did the CFPB avoid an opportunity to make this commonsense change that would have eased compliance for community lenders and improved access to credit?

Mr. CORDRAY. There are two parts to your question. The first part is on community banks. I think you are just wrong on the facts.

Mr. HULTGREN. My question was specific to this. You can comment on my statement, but my question is economically challenged—again this was Republicans, Democrats, House, Senate, all said: "This is important; please do this." You just ignored it, and I wonder why you did and why you wouldn't put the commonsense change in there, first question.

Mr. CORDRAY. We have done two or three rounds of rulemaking now on the meaning of "rural" and "underserved." We have heard

a lot of comments on those, and we have done our best to digest those comments and reach conclusions. We have in all these cases expanded the coverage of that and so as to benefit community banks and credit unions and have considerably done so.

Mr. HULTGREN. We are not feeling it, and the American Banker article clearly says so. I want to get to my second question quickly. Again, this is bipartisan, Republicans, Democrats, House, Senate, asking: Please, commonsense. This makes sense. Please do it. Please take another look.

Second question, I want to talk a little bit about how your agency chooses to engage the media and the public. I have noticed your press office is much more aggressive and inflammatory than any other financial regulators. First of all, your agency is well-known for its use of midnight embargoes to create one-sided stories. Additionally, these press releases frequently use language that misrepresent the facts. In the Bureau's semi-annual report, you cite 45 public enforcement actions in the preceding calendar year ending March 31, 2015, and many of these standalone enforcement actions most commonly resulting in consent orders, the report and press releases describe the Bureau as finding or ordering companies to conform to a judgment determined by the Bureau. Do any of those standalone consent orders admit any facts or guilt?

Mr. CORDRAY. Ordering is certainly accurate. When we say finding—we tend to be careful about this language—but usually this is the result of a prolonged investigation by us, sometimes in conjunction with other agencies, including the Justice Department at times or other financial agencies or States, who are all joining the investigation and reaching the same conclusion. So the notion that we are somehow off on our own doing crazy things when we are typically working with partners who are themselves law enforcement partners and reaching the same conclusions, I think speaks for itself.

Mr. HULTGREN. But even with your statement, since liability has not been proven in a court of law, why does the Bureau issue over-the-top press releases that state facts that are not proven? Why does the Bureau try to insist a company has violated the law if it has not proven it did so?

Mr. CORDRAY. I don't think that is a fair characterization.

Mr. HULTGREN. They did. If you look at the press releases—

Mr. CORDRAY. I don't think they are over-the-top press releases. We are calling attention to practices that usually are the result of a prolonged investigation. The facts are usually clear enough that the institution wants to resolve without further proceeding because they recognize the problems, and they are going to clean up the problems.

Mr. HULTGREN. We can hear it. We have several regulatory agencies that come and report to us. We see the difference. It is such a glaring difference to us what the CFPB is doing. I am just asking you: Look at what the other Departments are doing. Your press releases are so far over the top. Who writes the press releases—

Mr. CORDRAY. Often, we issue press releases in matters where State Attorneys General issue press releases as well. I don't think there—

Mr. HULTGREN. Who writes the press releases?

Mr. CORDRAY. I don't think the Justice Department—

Mr. HULTGREN. My time is almost up. Who writes your press releases?

Mr. CORDRAY. Many people at the Bureau are involved in writing accurate, fair accounts of our matters.

Mr. HULTGREN. It doesn't look that way. My time has expired. I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Mrs. Maloney, ranking member of our Capital Markets Subcommittee.

Mrs. MALONEY. Thank you, Mr. Chairman.

I want to thank you for calling this hearing, as well as Ranking Member Waters, and I welcome you, Director Cordray. As you know, I am a big supporter of CFPB, under your leadership I might add, and I think you have done a fantastic job. I believe this report is absolutely excellent that you are issuing, and your statements, your press releases, and your actions have all been data-driven and factual, and I want to congratulate you. And the numbers speak for themselves. The Bureau has returned over $11 billion—$11 billion—to 25 million consumers who have been harmed by illegal consumer practices. The Bureau has also gone out of its way to help our men and women in the military through the Office of Servicemember Affairs, led by Holly Petraeus. And you have shown great flexibility and reacted to letters and inquiries from members of this panel and the public as well.

And I want to give one example. The Bureau helped stay-at-home spouses by clarifying that the credit card bill of rights, the CARD Act, did not prevent stay-at-home spouses from taking out credit in their own names. And this was a bipartisan request for clarification, and we want to thank you for that.

Now, I would like to ask you about co-ops. As you know, co-ops are a big part of New York City, and many thousands of our residents, hundreds of thousands of our residents, literally live vertically not horizontally. And, unfortunately, there is a great deal of uncertainty about whether co-ops are included or excluded in the Bureau's new integrated disclosure rule for mortgages. Co-ops have always been treated as real estate under both TILA and RESPA, and so lenders to co-ops have always provided the same disclosures as everyone. They have always had the same.

But under the Bureau's new integrated disclosure rule, the Bureau did not specify whether co-ops were still included, as they always have been under Federal law. Different lenders have come to different conclusions about whether co-ops are included in the rule. Some say they are included; some say they are excluded. Now this is a big problem because if you are not allowed to voluntarily comply, you are not allowed to voluntarily comply with the integrated disclosure rule, without violating the law. And this is a rare situation where the co-op industry thinks that you and your Bureau has done such a good job on the integrated disclosure rule that they actually want to be included in the rule. So I would like to ask you for the record, can you take this opportunity to clarify that co-ops are, in fact, intended to be covered by the new integrated disclosure rule?

Mr. CORDRAY. Thank you for the question. I don't know that I can today on the spot at this moment. I know that our staff has been talking back and forth to your staff, as you brought this issue to our attention, and as we have been looking at it and trying to understand it, it feels that the issue can vary in different parts of the country depending on State law. Now, whether that is the right answer or whether that is just a current answer, whether we should be more specific somehow here is something I believe we have taken under consideration, and we are considering and will continue to talk back and forth both with your staff and any other Members who are interested in this issue. Maybe others from your State would be interested in it as well.

I would like to get it right. I would like it to be satisfactory. As you say, I would like to—if people like our forms and want to be covered by them, I would like that to be the answer, but I can't tell you today exactly how the legal issue comes out here as we are trying to work on it as we speak, I believe.

Mrs. MALONEY. Okay. I would also like to ask you about overdraft fees. As you know, I have been focused on overdraft fees, which can be outrageously high and can eat into consumers' hard-earned savings. In fact, I will be reintroducing Mr. Ellison's and my Overdraft Protection Act next week, and my bill would ensure that overdraft fees are reasonable and proportional to the amount of the overdraft, which would end the $35 cup of coffee. But I want to know, are you still working on this? When are you going to come out with it? And are you going to be looking at mainly disclosure on overdrafts, or are you considering some more substantive limitations on oversight fees?

Mr. CORDRAY. Yes. We are well aware of your interest in this, and you have been proposing legislation on it. We are working on it right now. I think there may be some misunderstanding because we recently put out to start some customer testing around disclosure, but that does not signal that that is the only thing we are thinking about in this regard. I agree with you that there is a broad set of issues here—some substantive, some maybe handled by disclosure—for us to try to figure out. It is not a suggestion that we are narrowing our scope of our inquiry here.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman.

Director Cordray, it is a pleasure to see you again. You and I have had multiple conversations with regard to the payday lending industry. I have explained in the past that I was active in the Florida legislature in initiating legislation that corrected a very bad market, a very terrible market for consumers in the payday lending industry. As a result, I think we have probably the best State-run payday lending institution anywhere. We protect our consumers. We limit what they can do, but we also make sure that the bad players are not in there.

Now, the fact that we are here talking about payday lending doesn't mean that I am here talking on behalf of payday lenders. No, I am here on behalf of payday consumers. The fact that they have a paycheck means that they have a job which means they are working hard to meet the needs of their family to better their life.

And yet when they have a need for capital, when they need a short-term loan, according to Commissioner Breakspear in Florida, your proposed regulations will absolutely eliminate this source. It will absolutely delete any opportunity for these hard-working taxpayers to have access to capital in a market where nobody else will fill that void. Have you had a chance to talk to any of these payday consumers?

Mr. CORDRAY. Yes, I have. And I have also had a chance to talk, as you know, to talk extensively with Commissioner Breakspear and with folks about the Florida structure, both Members of Congress who are very interested in it I have seen, and people from Florida, providers and consumer groups. There are different points of view on that regime. Not everybody thinks it is the greatest thing since—

Mr. ROSS. Eliminating the supply will not eliminate the demand, and these poor consumers who are trying to make ends meet will now be subjected to usurious lenders, mostly offshore. Maybe Cousin Guido or somebody who has interest rates that they can't afford. We are not doing any benefit for the consumer, and yet that is your mission.

Now, when you promulgate your regulations, I would assume it is done based on objective evidence. You would look at data that you may collect, and I would assume that you would look at how bad the industry is in terms of how many complaints have been registered in the payday lending industry. And according to the CFPB's complaint database, since its inception by product only 3,030 complaints have been filed against payday loan companies. That is less than one-tenth of 1 percent. At what point do we say that is egregious?

Mr. CORDRAY. First of all, we staged products over time. Payday was one of the later products to come online. That is one piece. Another piece, what we find is that consumers may be characterizing a complaint in one way where it is actually another. A lot of our debt collection complaints actually turn out to be joint debt collection payday complaints—

Mr. ROSS. Still. Only 3,000. Less than—

Mr. CORDRAY. No, no, no. That is—which suggests that is not the right number. But it is a fair point. Again, for us, one of the things we are trying to figure out is we want there to be access to credit. We understand the needs people have, and we have heard a lot about it in the individual situations. But if it is credit that is going to roll them into sequences of 8, 10, 12 loans—

Mr. ROSS. I agree with you, and that is what we have to—

Mr. CORDRAY. And it still happens under Florida law.

Mr. ROSS. But if I might point out under the Florida law, over the last year, there were nearly 8 million, 8 million, payday transactions. And according to the Florida Office of Financial Regulations, there were only 117 complaints. It sounds like something is working. And I think we need to take a look at that. I think if we are going to look at—

Mr. CORDRAY. It is a relevant datum.

Mr. ROSS. Relevant? It is compelling because where—

Mr. CORDRAY. I don't know that it is.

Mr. ROSS. —are these people going to go? Where are these people going to go when they can't make ends meet, when it is 11 o'clock at night and they need to be able to get lunch money for their children, when they need to be able to pay the rent. Are they going to go to a bank that is not open? Are they going to go a non-bank lending institution that doesn't want to touch these long-term loans?

Mr. CORDRAY. This is why we are looking at the different regimes in all 50 States. There are 13 States where no payday lending is allowed. That doesn't mean that is the answer we are going to come to. But in 13 States, it is not allowed. What do the people do in those States? They do something.

Mr. ROSS. And I am here to tell you that there is a good guidance to follow, and that is the State of Florida.

Now, I know that in a conversation you had some time ago, you indicated that Florida has—that consumers are charged up to almost 300 percent per year. I take issue with that, and I just wanted to know where you might have gotten that—

Mr. CORDRAY. I'm sorry. What is this?

Mr. ROSS. That they pay up to 300 percent per year APR on their payday loans.

Mr. CORDRAY. In Florida?

Mr. ROSS. Yes.

Mr. CORDRAY. That is my understanding. And—

Mr. ROSS. And I take issue with that—

Mr. CORDRAY. And consumer groups—again, consumer groups don't agree with you on that.

Mr. ROSS. The one thing I would just please ask you to do: These are hard-working taxpayer dollars. They have a job, as evidenced by the fact that they have a paycheck. My concern is not for the payday lenders. My concern is for the payday consumers, and I ask and I plead with you to make sure that we keep this industry alive, and protect our consumers.

And I yield back.

Mr. CORDRAY. Okay. Thank you.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Texas, Mr. Green, ranking member of our Oversight and Investigations Subcommittee.

Mr. GREEN. Thank you, Mr. Chairman.

And I thank the ranking member as well. I thank the President of the United States of America, the Honorable Barack Obama, for appointing you, Mr. Cordray, to this position as the Director of the CFPB. And I thank him for doing so because he appointed someone with courage, someone with intestinal fortitude, someone who is willing to stand up for consumers. It is just not easy to do. You have been through the fire and the storms. Just getting positioned required an inordinate amount of effort, and I am grateful that you are in the position that you are in.

Now, let me just say one more thing. This is not really a part of what I am called upon to talk about today. But I am proud to serve under the leadership of the Honorable Barack Obama. I am saying it because too often so much is said about him on the negative side, such that people assume that everybody in the room

thinks negatively of the President. I do not. He has been elected twice. It was no fluke. And I just don't want the record to show that there were some of us who acquiesced when statements were made that we should have objected to. I am proud.

Now, Mr. Cordray, you are not saying that all auto dealers engage in invidious discrimination, are you? I assume your answer is no, you are not. Is that correct?

Mr. CORDRAY. That is correct.

Mr. GREEN. And you are not saying that all—by the way, this is not under the purview of your bailiwick, but all investment advisers are engaging in invidious discrimination or all mortgage lenders, but—

Mr. CORDRAY. I don't think all anybody in any industry.

Mr. GREEN. Absolutely, but those that do are the ones that we have to stop.

Mr. CORDRAY. Yes.

Mr. GREEN. Do you agree?

Mr. CORDRAY. I very much agree. It is a law enforcement obligation and duty that we have.

Mr. GREEN. I saw you anxiously desiring to respond to some commentary that was made earlier, and you did not get the opportunity because time was limited, but as it relates to the auto lenders. So would you take a moment please and give your response before I continue with my concerns?

Mr. CORDRAY. We are not trying to make up problems to address, but when we see problems and they are brought to our attention, and again, in the auto lending, it is not unique to us. The Justice Department feels just as strongly and feels the same way as we do about the concerns here. And they have been at this a lot longer than we have. We feel that when people go to get an auto loan and lending programs have been established by lenders, even though they may be executed by dealers, that allow or—and that bless high risks of discrimination, based on race or national origin or other prohibited characteristics, that is an issue we need to investigate and we need to try to address. If we can find a way to address it that mitigates and roots out the risks of that but at the same time allows the industry to do what it does best, which is sell cars to people and give them the opportunity to have transportation to get to work, which is so important for people's economic well-being, that is what we are trying to accomplish. And it is a balance, and it is—people can look at it and say we are getting the balance wrong, or they can say I disagree with this or I disagree with that, or the methodology here seems complicated and I think you don't have it right. We always try to listen to that. And if we can adjust and take account of their concerns, we try to do it. The fact that we do have those discussions frequently—

Mr. GREEN. With less than 50 seconds left, Mr. Cordray, let me go to something quickly. Let me do this quickly. People—there has been much said about how powerful you are. But isn't it true that the Financial Stability Oversight Council (FSOC) has within its purview the authority to override decisions that you make in terms of rulemaking?

Mr. CORDRAY. They do.

Mr. GREEN. And—

Mr. CORDRAY. No other agency is subject to that.

Mr. GREEN. Only agency subject to this. And isn't it also true that your rules are subject to judicial review?

Mr. CORDRAY. Absolutely.

Mr. GREEN. And isn't it true that while you are confirmed by the Senate, you have to be—that you can be removed by the President should the President find that you have not behaved properly while in office?

Mr. CORDRAY. For cause, that is my understanding.

Mr. GREEN. And isn't it true that you are also subject to audits by the GAO?

Mr. CORDRAY. Yes. Every year, in fact, more so than I think many agencies are.

Mr. GREEN. So while you do have some authority to help consumers, you are still regulated yourself. Is this not true?

Mr. CORDRAY. I think extensively, including coming here at least twice a year and to the Senate at least twice a year and hearing your oversight, which I take very seriously. I don't feel that I can sit here, listen to concerns you raise, and then not pay attention to them.

Mr. GREEN. Our time is up. But I want to close with, Mr. Chairman, there was some mention about African-American auto dealers. If an African-American auto dealer engages in invidious discrimination, that person ought to be stopped too. Doesn't matter about your color. You ought not discriminate against people regardless of who they are.

Mr. HUIZENGA [presiding]. The gentlemen's time has expired.

With that, the gentleman from North Carolina is recognized for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

Mr. Cordray, I have in my hand the annual employee survey, dated December of 2014, of your employees. And question 57 says: "How satisfied are you with the policies and practices of your senior leadership?"

Mr. Cordray, less than half of the people questioned were satisfied with the policies of your leadership. This must be very disturbing to you as you consider that these individuals have worked with you for the last 4 years and followed these policies. How do you account for this? What is happening within your Bureau, and why do you believe that you have been given such a vote of no confidence by your own employees?

Mr. CORDRAY. First of all, I think I would agree with some of the employees at that point in time. I thought that there were reasons that I wasn't satisfied—

Mr. PITTENGER. Excuse me, sir. This is December 2014.

Mr. CORDRAY. I understand. And what I am saying is—

Mr. PITTENGER. This is just a few months ago.

Mr. CORDRAY. What I am saying is, I wasn't satisfied with our senior leadership, including myself, at that time either. We had had significant problems with our performance management system. That needed to be changed and fixed. We were in the process of doing that and that was a source of a lot of dissatisfaction for our employees, and—

Mr. PITTENGER. You had tremendous autonomy and authority to write rules and regulations. They apparently don't like your policies.

Mr. CORDRAY. No, no. No, no. Different things here.

Mr. PITTENGER. Well, no, that is a real thing.

Mr. CORDRAY. These are operational issues, but I will say we have just had the new Annual Employee Survey this year. There is a significant positive increase, which I have been pleased to see—

Mr. PITTENGER. Let's go on to my next question because this—I am sure you were disturbed by that. Let's look at this. Your employees have come forward and said that they have been subjected to discrimination, retaliation, and other kinds of maltreatment. How do you account for the fact that not one single manager has been held accountable for what has been done?

Mr. CORDRAY. Again, a lot of this stemmed from the performance management system, which was unsatisfactory. We have scrapped that system, and we are working with our union to overhaul it. But I just want to say, since you are raising the AES, the annual employee survey, the most recent numbers indicate that the diversity inclusion index from our own employee base is higher than it was last year, and higher than it is government-wide.

Mr. PITTENGER. That is not necessarily a good correlation—

Mr. CORDRAY. And I take each one seriously. The overall tenor at this CFPB is very positive.

Mr. PITTENGER. Given what we have seen in the various departments and agencies of government, I don't believe I would use that as a reference.

Now, according to the Bureau, only 3.8 percent of all consumer complaints in the last 12 months have received any actual monetary relief. Does this mean that most of these complaints are without merit, or does it mean that you are remarkably deficient in obtaining financial relief for these consumers?

Mr. CORDRAY. First of all, I would say that the consumer complaint system that we have set up is revolutionary among Federal agencies in the Federal Government. We are getting more relief for people—

Mr. PITTENGER. Excuse me, sir. Excuse me, sir, 3.8 percent of all consumer complaints, only that number received in the last 12 months any monetary relief.

Mr. CORDRAY. A lot of them are—on a debt collection complaint, the issue may be stopping the harassing phone calls. On a credit reporting complaint, the issue might be cleaning up—

Mr. PITTENGER. Answer the question. Does it mean that most of these complaints are without merit?

Mr. CORDRAY. No. As I am saying, just listen for a moment. On a debt collection complaint, different kinds of relief that are not monetary are very important to people, and the same with credit reporting. There are a whole bunch of complaints where monetary relief is not the immediate issue, although it has monetary consequences. If I get my credit report cleaned up, now I can get a loan. That has a lot of consequences, but it wasn't that money came to my pocket immediately.

Mr. PITTENGER. Let me ask you this, sir. The CFPB has promulgated rules that have impacted credit unions and community banks, enforced by the FDIC, the Fed, the OCC—

Mr. CORDRAY. NCUA. Yes.

Mr. PITTENGER. Do you see any relief that you have given to reduce the regulatory burden for these entities? I work with these entities on a constant basis. I was on a community bank board for a decade.

Mr. CORDRAY. I know you were.

Mr. PITTENGER. And yet I see here time and again how they are faced with such a burden in compliance that they are hiring more compliance officers than loan officers and development officers. How do you account for that?

Mr. CORDRAY. Take our mortgage rules, for example. We had special provisions that we created in the rules to create special coverage for community banks and credit unions; 98.5 percent of the credit unions are covered by those special provisions. The credit unions' share of the mortgage market is up since our rules. How do you explain that? This is positive in many respects for some of these smaller entities.

Mr. PITTENGER. The housing market has come back. I wouldn't credit that with—

Mr. HUIZENGA. The gentleman's time has expired.

Mr. PITTENGER. And community banks have come out of—have left that business as well.

Mr. HUIZENGA. The gentleman's time has expired.

Mr. CORDRAY. That is a myth that is not necessarily being borne out—

Mr. HUIZENGA. The gentleman's time has expired.

With that, the Chair recognizes the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman.

Thank you for being here, Mr. Cordray.

Mr. Cordray, my first question—first, let me associate myself with the comments of my colleague, Mr. Green from Texas. I thought he spoke quite eloquently for many people in this country.

My first question is, Director Cordray, can you tell me what the approval rating of Congress is?

Mr. CORDRAY. I don't know.

Mr. CLEAVER. I do. It is 14 percent.

Mr. CORDRAY. Fourteen percent?

Mr. CLEAVER. Fourteen percent.

Mr. CORDRAY. Okay.

Mr. CLEAVER. Fourteen percent. It is up from 9 percent.

Mr. CORDRAY. That is a 50 percent increase.

Mr. CLEAVER. My point is, 50 percent of your employees say that they are dissatisfied, and 90 percent of the people say they are dissatisfied with us.

Mr. CORDRAY. And my point about that is if 50 percent are satisfied and 50 percent want us to do better, I want us to do better too, and we are working to do better. That is the only appropriate way for us to address these issues, and that is exactly what we are trying to do.

Mr. CLEAVER. I agree and I appreciate what the agency is doing, and also your flexibility. I said many times, I was in here, as were a few of us, when Treasury Secretary Hank Paulson came in, he was sent over from the White House, and Fed Chair Ben Bernanke and others came in this very room, and told us what was happening and that we only had a short time to respond, and we did what we thought was in the best interest of the country.

I listened to Ben Bernanke this past Sunday on one of the shows, and he said he thought that the Great Recession was worse than the Depression because of the whiplash that is still being felt. And one of the things we did—we did a lot of things trying to bring the country out. Obviously, some of those things worked because we are a much healthier Nation economically now. We tried and failed, I will admit, to reduce the big banks. Too-big-to-fail was something we all were interested in but what happened was the red tape has become so costly that we have unintentionally pushed more and more consolidations and concentrations of the financial services world. We didn't intend to do it. Now, that is not your fault. It is not the agency's fault.

I went into one of my banks in Marshall, Missouri. Well, there is only one bank there. And they put the regulations on a desk so I could see how high they were, and it was quite impressive. That is—the agency didn't do that. Congress did that. We did that, albeit unintentionally. I looked at—one of my favorite Chairs of this committee was Mr. Oxley, a Republican on the other side. He was a fair and good and decent guy. I speak at one of his forums once a year. I think he is just—he is great. The Sarbanes-Oxley Act—I think it was in the early 2000s; I can't remember today—but they had I think 16 rulemakings. And I guess your agency had hundreds and hundreds of rulemakings to do.

Mr. CORDRAY. My agency?

Mr. CLEAVER. Yes.

Mr. CORDRAY. I don't think it has been hundreds, no.

Mr. CLEAVER. But you had more than 16.

Mr. CORDRAY. Probably, including a lot of little ones, yes. Possibly.

Mr. CLEAVER. So what has happened is that community banks, which no one intended to hurt—not Republicans, not Democrats, not anybody. I don't think there is anybody in this room who intended for community banks to be in the condition that they are in, in terms of many of them struggling just to maintain their assets. And what I am hoping to finish my sentence, if everybody disagrees, it would seem to me that it is logical if we had men and women of good will sit down here and figure out a way to bring some legislation forth to provide relief to the community banks.

Mr. HUIZENGA. The gentleman's time has expired.

With that, the Chair recognizes Mr. Rothfus of Pennsylvania for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Director Cordray, welcome.

In September 2014, the GAO published a report requested after industry participants and Members of Congress raised questions about the nature and scope of the Bureau's data collection activities. The report found that the Bureau has undertaken 14 data col-

lection projects, including the monthly collection of data concerning up to 600 million credit card accounts and 127 million mortgages, as well as consumer credit reports. This can only be characterized as an unprecedented Big Government grab of individual financial records. In fact, George Mason University economist Thomas Stratmann has estimated that the number of credit card accounts for which the Bureau wants to collect consumer information is some 70,000 times greater than is necessary for the agency to execute its regulatory mission.

Leaving aside the fact that Americans have a fundamental interest in not having their purchases tracked by the Federal Government, there is also the risk of data security breaches and the compromising of personal information. When testifying before the committee before, even you admitted that the Bureau's data collection is not secure and could be hacked.

Since then, of course, we have witnessed the Office of Personnel Management (OPM), another Federal Government agency, admit that it allowed more than 22 million Americans to have their personal information stolen. So why should Americans trust the Bureau with their personal information anymore than OPM?

Mr. CORDRAY. First of all, I am always eager to hear from you on this issue because I know you have background and expertise in information management. What I would say is, first of all, we try hard and virtually all of our data collections are done on a sampling basis because we have heard and agree with the concern raised about why get more information than you really need to monitor the market, which is all we are trying to do.

Second, I would be the last to say that any database is immune from being hacked: OPM, Target, Home Depot, big banks. Everybody is under fire these days. But I do think that we have are making sure that we comply with every reasonable standard that is in place across the Federal Government, which, again, is not the be-all-and-end-all because OPM got hacked. But our data is less interesting to the hackers because it is anonymized. They can't get credit card numbers. They can't get names. They can't get personal information.

Mr. ROTHFUS. Are you familiar with the recent article in Science Magazine where they used only 3 months of anonymous credit card data and they were able to re-identify 90 percent of the individuals with some reverse engineering?

Mr. CORDRAY. This was from what database?

Mr. ROTHFUS. A recent Science article—

Mr. CORDRAY. But what database were they talking about?

Mr. ROTHFUS. I don't have that—

Mr. CORDRAY. They weren't talking about the CFPB's database, I don't think.

Mr. ROTHFUS. Going back to the CFPB database, you just mentioned data sampling. Collecting 600 million credit card accounts, that is data sampling?

Mr. CORDRAY. No. The only place we haven't done sampling is on the credit card data because we are simply getting the same data that other agencies have already gotten. The industry has told us it is more efficient for them to just give it rather than them having to create a representative sample. It is a cost issue for them. Now,

if you are telling me that regardless of the cost, we should do something different, but we are doing exactly what other agencies have done. It is the very same data. It is swimming around out there in the private sector all over the place, that is for sure, but in our case, it is anonymized. And, therefore, it is really not of that much interest to hackers I would think because—

Mr. ROTHFUS. Except to the extent it can be reverse-engineered, but Director Cordray—I only have a minute-and-a-half left.

The Bureau's consumer complaint database has come under heavy criticism since its July 2015 rollout for publishing complaints and allegations of wrongdoing without the Bureau actually verifying that all of the underlying information is both accurate and complete. There have also been reports that the Bureau has failed to scrub personally identifying information from some of the CCD complaints that have been already been published, thereby putting individuals' financial information at risk. And recent reports from the Office of the Inspector General have identified noticeable inaccuracies and other shortcomings related to the management and maintenance of the database. What does it say about the Bureau and the database that there have been so many problems associated with this database?

Mr. CORDRAY. I think our data collection has been scrubbed pretty hard by the GAO, which did a yearlong review of this at the suggestion of Senator Crapo and others. GAO made a number of recommendations which we have implemented, and with which we agree. The Inspector General has looked at it and had further suggestions.

Mr. ROTHFUS. What kind of processes have you put in place to identify complaints that are materially inaccurate or identifying complaints that were not submitted in good faith?

Mr. CORDRAY. In terms of consumer complaints in particular, the process is that the complaints are submitted to the company. The company has an ability to decide whether that is actually a customer relationship or not. There are various screens on this process. But I want to go back. You know probably better than anyone in this room, better than I do, that in the issue of data collection and data integrity, it is an ongoing process, and it is a constant evolution where you think you have met the standards and then something new arises and you are kind of chasing the goal all the time. We are trying to do that. We are trying do it very carefully. We are trying to keep up with all of the latest standards and we have been meeting them. But it is a challenge. I would agree with you, it is—

Mr. ROTHFUS. Going back to an earlier question on—

Mr. HUIZENGA. The gentleman's time has expired.

Mr. ROTHFUS. —credit card accounts.

Mr. CORDRAY. Yes, the credit card—

Mr. HUIZENGA. The gentleman's time has expired.

Mr. CORDRAY. —for cost reasons. I would be happy to talk further with your staff.

Mr. HUIZENGA. You can do that on the other time. But thank you. The gentleman's time has expired.

With that, the Chair recognizes Mr. Ellison for 5 minutes.

Mr. ELLISON. Allow me to thank the Chair and Ranking Member Waters.

Mr. Cordray, thank you for all the great work you do. I don't want to go into it. Other people have done it. It is somewhat surprising to me that you have to put up with all of this when you have done so much good for American consumers, but the reality is that American consumers are at work. They don't have lobbyists. They don't have people to pressure them to pressure you.

So, anyway, I want to applaud your work on considering a rule to end payday lending traps. I hear from constituents, both borrowers and pastors and other leaders in the community, about the damage these short-term high-cost loans do. In fact, I had a meeting with a group called Isaiah on these—on payday lending and the work you are doing. And on the screen is a map of payday loan laws, which shows great gaps in consumer protections. And I want to urge you to move forward with a proposed rule, and I have discussed the agency's March statement with my constituents at this meeting with a group called Isaiah in Minneapolis, and at this time, my constituents seem to be leaning toward option B, which is loans could require a borrower repay no more than 5 percent of the consumer's gross monthly income. Could you give me an update on your payday lending rulemaking, and what are you considering doing moving forward?

Mr. CORDRAY. The payday rulemaking is an ongoing rulemaking. And it is a difficult rulemaking. It is a surprisingly complicated rulemaking that we are trying to work through carefully. What I will say is we have put out a framework that is out there that people have been shooting at—and some people like it, and some people have suggestions about it—that we think it is very important to establish a principle that the lenders on these loans verify and assess the ability to repay of the borrower. If there are going to be exceptions to that principle, because maybe people think that is too onerous to do, although it is pretty normal in a lending-borrower relationship, that maybe we allow certain kinds of alternatives where they don't even have to do that loan. But as long as lenders can't catch consumers in debt traps and roll them over and over and over again.

One of the things I will say that has been notable to me over the past year is we have had a lot of faith groups come to see us on this issue. They have been Protestant. They have been Catholic. They have been Jewish. They have been Muslim. They have been fundamentalists. They have been progressive. And they feel very strongly about this issue. They feel very strongly that reasonable steps need to be taken to address some of the harms they see in their congregations, in their synagogues, in their mosques, and that has had a powerful effect on me. I think that this is an issue that people in the communities who care about others and who see the problems coming to them—maybe they are not complaining to the financial banking regulator because they don't realize that is who it should be—but they are complaining to their pastor or their minister or whomever it may be. We are seeing and hearing this, and it is a powerful dynamic, and I think that it matters in terms of thinking about how we try to address this problem.

Mr. ELLISON. I just want to say, I talked to one lady who had gotten in deep on some payday loans, and I asked her if she had made any complaints. She said no because she feels so stupid that she let herself get into this situation. But when I talked to her, she wasn't stupid at all. She was just trying to make a dollar out of 95 cents. It was just a tough situation. And she was being taken advantage of. And much of the money she had to re-borrow to pay back the money she borrowed in the first place was really high in terms of fees.

I wonder if you would take my last minute to explain why it is that the alternative to good regulation in payday lending is not illegal loan sharking? You hear people say that all the time.

Mr. CORDRAY. Yes, I do.

Mr. ELLISON. Could you rebut that, if you please?

Mr. CORDRAY. Yes. The notion that you are going to drive people to further illegal conduct, that is not where most families are going to go. There hasn't been some uptick in loan sharking in the 13 States that have effectively banned payday lending. It is an interesting experience to see what the real experience has been in those States over many years now. But I do think we are trying to make sure that there is room for responsible lending, room for community banks and credit unions in particular, but other installment lenders who are traditional and have responsible products. It is a tough balance. That is why it has been a difficult rulemaking. We have been at it quite some time, and we are still hard at it. But we are trying to—again, the voices in the room from the faith community have altered the dynamic in powerful ways. We encourage those voices. We want to hear more from them on this issue.

Mr. ELLISON. Well, be quick to do that.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Arizona, Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman.

Mr. Director, you had a bit of a discussion about data. What are the data sets? Because the news stories have been that they are pretty stunning in size and complication. Have you blinded them so you have removed the personal identifiers and made that data public so if I am a researcher, if I am a left-wing researcher, a right-wing, or just some—an academic, someone doing their post-grad, I have access to this publicly financed collection of data to understand trend lines. What is available to the public?

Mr. CORDRAY. We typically have worked to anonymize or de-identify data before it comes to us because we don't need—I don't need to know that it is you or it is me.

Mr. SCHWEIKERT. —directives from the White House how to do it—

Mr. CORDRAY. —marketing against us all the time, but that is now what we are doing. We are trying to monitor the market, not the individuals. So that is important.

But the second point to your question was what again?

Mr. SCHWEIKERT. My great interest is, as you are creating public policy, ultimately what you are doing, and we are having these sorts of discussions, it would be neat to have a fact-based database discussion because you said something very early on—and I don't

think you meant to—that sometimes the data is in the eye of the beholder. It is not. The data is the data is the data. It is—

Mr. CORDRAY. Assessment of the data is what I mean. So, yes, good point.

Mr. SCHWEIKERT. And I am sure that is not what you meant because you have gone out of your way to say you are a data-centric agency. Then we all deserve to touch the data and model it and stress it and match it against other data sets to see if it is saying the same things that you are saying.

Mr. CORDRAY. Good. So wherever we can, it is our principle that if we can make the data more publicly available to everybody so they can see for themselves and judge for themselves and maybe they see things that we didn't think of and maybe they see things that refute things that we thought we thought of—

Mr. SCHWEIKERT. Or other paths for better policy. Sometimes, it is not a "gotcha." Sometimes, it is: Hey, when we matched it against this, did you see this, this noise?

Mr. CORDRAY. Yes, first of all, that reinforces, as you make the point, the importance of the data. And where we can make it public, for example, the Home Mortgage Disclosure Act (HMDA) data is public. We worked on better tools to make that more accessible.

Mr. SCHWEIKERT. But you have some massive trendline data and regional data, and even some, my understanding, it is broken out demographically with ethnic tags. Please make that as—

Mr. CORDRAY. Where we can. Some of it is proprietary data that we purchased. We don't have the authority to make it public. Some of it is supervisory or enforcement data that is confidential. But wherever we can, our principle is to try to make it public so that everybody can make their own judgments about it.

Mr. SCHWEIKERT. Just as one policymaker, I have great concerns about proprietary data making public policy because when the rest of us cannot sort of stress it and see it and match it and test it, there is something almost unseemly of: Well, we bought this data but we have a nondisclosure on it, but we are going to make rules that affect your lives. Just understand I think that is a bad direction.

And this may be a future conversation. Your faith groups. Quick anecdote. It was 20-some years ago. We had a check-cashing issue—and I have already pitched you on this once before—where the fees were outrageous in my community. And guess what happened? A couple of my faith-based groups actually set up little windows at their church and this, and they were cashing checks for a minimal fee. And then some of our local regulators said: Hey, why don't we give check-cashing charters to anyone that wants it, the Circle K, the 7-Eleven, the church? And the fees crashed. If your faith-based groups care about this issue, how do you promote them to also step up and participate in those low-dollar short-term loans?

And that is the next step back to the data sets. Do you have data sets that say, hey, here is an incredibly competitive market where lots and lots of players of different groups are participating in these low-dollar, short-term loans? Look at their cost structure compared to areas where we have set up so many regulatory barriers that only a handful get to participate.

Mr. CORDRAY. Yes. I have a lot of the same instincts you do. Maybe it comes from having both been in public office as treasurers at the local level. I have always been puzzled as to why other lenders don't compete down the high costs of these payday loans, the 390-percent interest rates and the like. It doesn't seem to happen, and that is a puzzle to me because it feels like that is at odds with the natural workings of the marketplace.

Mr. SCHWEIKERT. Because we heard our member from New York allude to saying, hey—and you actually said the online, some of the dodgier access to these short-term, isn't the ultimate solution here actually the market itself allowing many, many actors and players to participate in that line of business?

Mr. CORDRAY. I might have thought so, but it has been 20 years, and it hasn't been happening.

Mr. SCHWEIKERT. Well, maybe it is time that you come up and promote a simplified charter.

Mr. CORDRAY. I would be glad to.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman.

And thank you, Director Cordray, for being here today.

Let me first say that I am proud to associate myself and my comments along with what Congressman Al Green stated about President Obama and his appointment of you. Today, I join my colleagues in congratulating you on many of the successes. As we talk about students and those entering college, I thank you for the actions against the Corinthian College chain. Also, I think it is worth repeating that $11 billion was recovered for some 20 million American consumers and, more recently, the actions that your office took against an Ohio bank for discriminating against African Americans with credit cards.

But let me say this. I have asked every Director who sat in that chair a question about Section 342 of the Dodd-Frank Act, OMWI, the Office of Minority and Women Inclusion, and I do that for several reasons. For more than 2 decades, I traveled across the United States as a diversity consultant with private corporations and with government. But also, I think it is important for people who look like me to have someone who is standing there advocating for them. And my role is to protect the institutional consumer and the individual consumer, just as your role is.

So the question that I have asked everybody is to address what attention and actions that they have taken as it relates to OMWI, and I think that is very important with you because we have heard about the data, the surveys. We have all read the American Bankers Report of 2014 and 2015. And you kind of have a mark against the culture of your operation as it relates to fairness in pay for women and African Americans. And then so I want you to answer what you have done. I noticed most recently you have appointed a Director to report directly to you.

Mr. CORDRAY. Yes.

Mrs. BEATTY. That is good news from where I sit, and I am going to thank you in advance for that.

And the second thing I want you to answer is most recently, in the joint ruling where you can report your diversity either on a vol-

untary basis or it could be mandatory, talk to me about the differences and if you think that people will fairly report and accurately report and what you think about it being available to the public? Because, clearly, we are gathered here in this hearing because we all have a concern. Those concerns might be a little different depending on what side of the aisle you sit on. But if you could address that for me?

Mr. CORDRAY. Yes. And I have always valued, as you know, Representative, your insight into this because you have spent years as an expert in the field dealing with lots of different workplace settings and having a sense of how they—I remember when we worked together in financial education at the State level, you brought a perspective of how that affects different communities in a way that was very valuable for us. For us, in terms of the issues within the Bureau itself that have been very real for me and of great concern, there is both procedure, and there is substance. The procedure, in terms of things like elevating our OMWI, et cetera, and showing our concern, that is one thing. We have been doing that. And that is important.

The other thing is substance. The performance management system was the root of a lot of this. We have thrown it out. We are working with the union to overhaul that in a way—and the number of complaints people have had have diminished significantly accordingly because they are not having that problem that many of them were reacting to.

In terms of pay, there have been pay equity issues at the new Bureau, partly because we were in a hurry to start up and things didn't always—you couldn't always put them on a grid, and we found later that some of it maybe was not as it should have been. We have adjusted a lot of pay equity grievances and complaints as well. I don't know that they correlated by race or gender. I don't believe they did. But we have been working to correct those wherever they lie. And in terms of the OMWI in terms of the standards in the other agencies, we are trying to work hard with the agencies to bring the spirit of OMWI, which Ranking Member Waters has really impressed upon me, into our agency and to the other agencies. Also, to push on, and this is where, again, you have perspective, how can we push on the financial services industry to itself become more diverse and to recognize there is a huge opportunity here with their broad consumer base, which itself is becoming more diverse? If you don't keep up with it, you are going to fall behind the times in terms of your business success.

Mrs. BEATTY. I am going to stop you because my time is up, and I want to end with saying, thank you. One, we have hit you with some hard questions.

Mr. CORDRAY. It is always fair.

Mrs. BEATTY. But I want to say to you that I like your words that you said, "I want to do better." And so, we will help you do better.

Mr. CORDRAY. Thank you.

Mrs. BEATTY. Thank you.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Wisconsin, Mr. Duffy, chairman of our Oversight and Investigations Subcommittee.

Mr. DUFFY. Thank you, Mr. Chairman.

And welcome, Director Cordray. Obviously, you are a very smart man, and you are working, I think diligently, on what you would argue is the protection of consumers. We might disagree on how far you have gone or what you have done, but I do think you are trying to do the best that you can.

I have a couple of questions for you, and I know we are getting late in the day, and I would just ask you for—I think they are pretty simple questions, and they are yes-or-no questions. Or if you don't know, you can tell me that too.

Mr. CORDRAY. We will try it. It doesn't always lend itself to that, but I will try.

Mr. DUFFY. But I think this will. And hopefully, with our limited amount of time, you will just give me yes or noes. So, with that, have you ever been advised by senior CFPB staff or attorneys that eliminating dealer reserve either is or should be a goal of the CFPB?

Mr. CORDRAY. I think that early on we thought that might be one of the solutions to the problem. We never said the only solution. I think we have moved in the direction of thinking that—

Mr. DUFFY. My question really is—

Mr. CORDRAY. —limiting the reserve might be a satisfactory solution.

Mr. DUFFY. So you were advised by senior staff that you should look at eliminating dealer reserve? The answer to that is yes?

Mr. CORDRAY. What I would say is, on an issue like that, we debate lots of different alternatives.

Mr. DUFFY. So the answer is yes.

Mr. CORDRAY. So I would say yes, at some point in that discussion, some people advocated that. Others advocated—

Mr. DUFFY. So right.

Mr. CORDRAY. —the policy of the Bureau.

Mr. DUFFY. That wasn't my question if there was a policy. You were advised in discussions about eliminating dealer reserve. So the answer is yes, you were.

Mr. CORDRAY. Some people thought that was the right answer; others didn't—

Mr. DUFFY. Let's not do this. I am not asking you whether some people thought it was good or bad—

Mr. CORDRAY. I think I have answered your question.

Mr. DUFFY. Okay. I think you have too.

Have you ever met with senior CFPB staff or attorneys to discuss eliminating auto dealer reserve? The answer to that is yes, right?

Mr. CORDRAY. That was one of the possible solutions to the problem, not the only solution.

Mr. DUFFY. So the answer is yes.

Mr. CORDRAY. Yes, there were discussions of that.

Mr. DUFFY. Okay. Great. Have you ever discussed with senior CFPB staff or attorneys any strategy for eliminating dealer reserve? Have you talked about the strategy on how you would do that?

Mr. CORDRAY. I think that follows from your earlier questions. I believe that is so.

Mr. DUFFY. You talked about the strategy. Okay.

Have you ever discussed with senior CFPB staff or attorneys ways to encourage indirect auto lenders to eliminate dealer reserve?

Mr. CORDRAY. Auto lenders, yes. I would say yes.

Mr. DUFFY. Have CFPB staff or attorneys ever advised you that they were considering rulemaking as a way of potentially banning dealer reserve?

Mr. CORDRAY. That was one of the alternatives, yes.

Mr. DUFFY. Okay. And, obviously, you did not go for that alternative, correct?

Mr. CORDRAY. I beg your pardon?

Mr. DUFFY. You didn't go with the rulemaking; you went for enforcement, right?

Mr. CORDRAY. I would say we haven't ruled it out, but we haven't done that yet, obviously.

Mr. DUFFY. Okay.

Have you ever have met with senior CFPB staff or attorneys to discuss the impact that a market tipping settlement or settlements would have on auto lenders?

Mr. CORDRAY. I think we have considered that from time to time, yes.

Mr. DUFFY. Have you ever met with senior CFPB—

Mr. CORDRAY. —say we still think about that, yes. Quite a bit.

Mr. DUFFY. Yes. Have you ever met with senior CFPB staff or attorneys to discuss the risks and benefits of publicizing the proxy methodology that the CFPB is using?

Mr. CORDRAY. I have always been in favor of being as public as we can about our approaches to these issues. Again, our approaches are similar to those of other agencies and the Justice Department—

Mr. DUFFY. Now, let's try my question. Did you guys, you and the senior CFPB staff or attorneys, discuss the risks and benefits of publicizing the proxy methodology?

Mr. CORDRAY. We did publicize the methodology, and therefore we would have assessed the risks before doing so.

Mr. DUFFY. Okay. You approved the CFPB's settlement with Ally Financial, correct?

Mr. CORDRAY. I did.

Mr. DUFFY. And isn't it true that in the Ally matter, the statistical model used by the CFPB to determine whether there was appropriate—there was—I'm sorry about that. In the statistical model that you used to determine whether there was a disparate impact, you excluded creditworthiness as a variable. Correct?

Mr. CORDRAY. I don't recall exactly what the components of that were. That may be correct; that may not be correct. As I sit here, I don't have a specific—

Mr. DUFFY. So is it your testimony that it is possible that in the Ally settlement that you reviewed, that you did consider creditworthiness?

Mr. CORDRAY. I think we have always tried to include the components that relate to creditworthiness in the—

Mr. DUFFY. Director Cordray, so I am talking about—it is my time. In regard to the Ally settlement, did you consider creditworthiness?

Mr. CORDRAY. We typically have regarded that. What we tried to weed out is the prohibited characteristics and factors that would be—

Mr. DUFFY. Mr. Cordray, we didn't talk about what you do typically. I am asking you specifically with regard to the Ally settlement which you approved, did you consider creditworthiness as a variable?

Mr. CORDRAY. I believe that our methodology attempts to take account of creditworthiness and other nondiscriminatory factors in order to then weed out the discriminatory factors.

Mr. DUFFY. Mr. Chairman, I would note my time has expired, but I would ask to be recognized for an extended question period as permitted by the committee rules.

Chairman HENSARLING. Pursuant to clause (d)(4) of Committee Rule III, the Chair recognizes the gentleman from Wisconsin for an additional 5 minutes.

Mr. DUFFY. Thank you.

I want to be clear. You did consider creditworthiness in the Ally settlement?

Mr. CORDRAY. I don't recall now a couple of years ago exactly what we were doing at the very moment at which we would have reached the resolution there, but our models typically are trying to take account of creditworthy types of issues for the customers and weed out—

Mr. DUFFY. Is it your testimony that you don't recall whether you—when you—

Mr. CORDRAY. I would be happy to work with your staff to give you very—

Mr. DUFFY. So you have no independent recollection right now whether that was taken—

Mr. CORDRAY. I don't have any specific recollection of—I am not sure when you say "creditworthiness" whether you mean there is something specific or whether there are a number of factors that bear on that, which is how I would regard it.

Mr. DUFFY. Specific or broadly. We can go either way.

Mr. CORDRAY. Yes. I am happy to follow up with you on that.

Mr. DUFFY. Did you ever discuss with or receive inquiry from the CFPB staff or attorneys regarding the possibility of accepting any controls proposed by Ally, such as creditworthiness of borrowers, in your disparate impact analysis in an effort to settle the case?

Mr. CORDRAY. I am sure that there were discussions of that back and forth. I don't tend to myself be involved in the details of the settlement discussions. I leave it to the team that is negotiating that. But I am sure that would have been raised on both sides, and there would have been discussion of that.

Mr. DUFFY. But in your internal discussions about the Ally case, isn't it true that the CFPB staff advised you that there was a correlation between an applicant's trustworthiness and his or her dealer reserve? You were advised of that. Weren't you?

Mr. CORDRAY. Say that again.

Mr. DUFFY. You were advised by the CFPB staff that there was a correlation between an applicant's creditworthiness and his or her dealer reserve.

Mr. CORDRAY. A moment ago you asked the question, you said "trustworthiness." I wasn't sure what that—

Mr. DUFFY. I'm sorry. Creditworthiness.

Mr. CORDRAY. Creditworthiness and dealer reserve. There probably were a lot of discussions, and that may have been something that was raised. I can't remember a specific conversation, but—

Mr. DUFFY. Okay. So you are not aware of whether you were advised about the correlation between creditworthiness and dealer reserve.

Mr. CORDRAY. Again, when this gets into negotiating some of the details of a resolution, the team will work with the institution on that and with the Justice Department who is a three-cornered party in those discussions.

Mr. DUFFY. This goes to Mr. Scott's point, though, doesn't it? That you have a factor like creditworthiness which factors into disparate impact and the dealer reserve, and you are not considering it?

Mr. CORDRAY. No, no. That is not what I have said.

Mr. DUFFY. So I want to be clear on this point.

Mr. CORDRAY. What I said is, when you say "creditworthiness," you may think that that is like—that is like my size, which is 6, 2, and it is a firm clear fact. I think it is a set of characteristics and a set of criteria that may vary depending on—Ally might have had a view of what goes into creditworthiness. We might have had a view—

Mr. DUFFY. So for the CFPB's analysis, did you look at creditworthiness? Do you have your own, not mine, no one else's, but Director Cordray has a view of what creditworthiness is and you applied that to the Ally settlement?

Mr. CORDRAY. Look, I think, generally, creditworthiness is a fair consideration when people are making a loan. I believe that we try to find ways to take appropriate account of that in our approach to these issues.

Mr. DUFFY. And it can account for the differential in the dealer reserve, which your staff told you. Right?

Mr. CORDRAY. That would be one of the points of contention that people would have.

Mr. DUFFY. Did your staff not advise you of that?

Mr. CORDRAY. No, no. Again, it wouldn't be whether creditworthiness itself is on or off the table so much as what kind of factors bear on that and which ones are relevant and which ones are not. And, again, somebody like Ally and us and DOJ may have different views of that, and we try to work them through and talk them through. It is just not quite as easy as a simple on/off switch on creditworthiness. I don't know how to—I would love to just do yes or no with you on this, but it is fairly complicated.

Mr. DUFFY. I would love that too, but—and just my last 50 seconds. I think that it is important when your government makes rules, whether it is in this institution or in the CFPB, they are very clear. And so when you are advised that you can actually do a rulemaking in regard to this issue and you choose not to, but you try to make rules by way of enforcement, people don't know what the rules are. So the heavy hand of the CFPB comes bearing down on an institution making claims of racism, and if you think this is

so important, why wouldn't you do a rule? Why wouldn't you let people offer comments? Why wouldn't you give guidance?

Mr. CORDRAY. It is a fair question. The tool-making choice for us is a difficult choice. Where we think a matter is going to involve more in terms of specific facts and circumstances, it is harder for us to—

Mr. DUFFY. My time is up.

Mr. CORDRAY. —write a rule at the outset. We want to get more experience with that. That is what we have done here. You may think, in retrospect, it wasn't the right answer. Maybe years from now, I will look back and think it wasn't the right answer, but that is how we have tried to proceed.

Chairman HENSARLING. The time of the gentleman has expired.

I ask unanimous consent that the gentleman from Texas, Mr. Green, be recognized for 5 minutes.

Without objection, the gentleman is recognized.

Mr. GREEN. Thank you, Mr. Chairman.

Mr. Cordray, are you a lawyer?

Mr. CORDRAY. Am I a lawyer?

Mr. GREEN. Yes.

Mr. CORDRAY. I am. I haven't really been active in practice for a while.

Mr. GREEN. And so, as a lawyer, do you understand that a settlement is an agreement?

Mr. CORDRAY. Yes, it is.

Mr. GREEN. And an agreement by definition means that parties have reached a conclusion that they find themselves amenable to; they can go forward with that conclusion. Is that a fair statement?

Mr. CORDRAY. I think that is fair. It doesn't mean they all agree with each other on all the subparts, but, yes, I think that is fair.

Mr. GREEN. And is it true that in the Ally case, there was an agreement, a settlement, which means that the offending party—this is my terminology—agreed to certain penalties and certain payments such that this could be resolved and such that persons who had been harmed could be justly compensated?

Mr. CORDRAY. And notably also certain changes in their practices going forward, which may be more valuable in the long run than the payments made.

Mr. GREEN. But the gravamen of my contention and the gravamen of this discussion is agreement. This is not something that the party, who has now found itself in a position to make these payments, it is not something that the party refused to do, refused to sign, said: I won't deal with you. Take me to court. I don't want to cooperate with you.

There was a certain amount of cooperation in this. Is this correct?

Mr. CORDRAY. They could have done that, but they didn't.

Mr. GREEN. They did not. And here is what I find from my review of some intelligence, the CFPB and the DOJ determined that more than 235,000 minority borrowers paid higher interest rates for their auto loans between a certain period of time, April 2011 and December 2013, because of Ally's discriminatory pricing system. Now, this is not something that Ally had to acquiesce to. This is something Ally chose to do for whatever reasons it chose to do

this. And by the way, Ally is not without a battery of lawyers. Is that a fair statement?

Mr. CORDRAY. That is a fair statement.

Mr. GREEN. And their lawyers, I assume, are capable, competent, and qualified persons who could easily decide that this is better suited for litigation than for some sort of settlement resolution. Fair statement?

Mr. CORDRAY. I think so.

Mr. GREEN. So I see in this, the largest ever settlement in an auto loan discrimination case, an opportunity for us to send a message to others that if you discriminate, we are going to come after you. This is lawful. It is ethical. It is righteous. People who discriminate ought not be allowed to do so with impunity, and others ought to get the message that you if you do it, you too will have to pay a price. I find very little to complain about with this decision because the party paying agreed to make the payments, agreed to the settlement, which by the way is large. But when you do a great amount of harm, you should pay a great amount in penalties. I am showing here that $18 million in civil penalties were agreed to.

So, Mr. Cordray, if you have a conversation about your options, is that in some way unethical if you talk about options in rulemaking? My assumption is that you will look at the entire range of options when discussing rulemaking. Is this true?

Mr. CORDRAY. I don't think we could act responsibly if we didn't discuss all the options and then try to make our best decisions, which may or may not be the right decision. Somebody else might disagree, but, yes, we talked through the options. I don't think there is anything wrong with that, and I think it is the right way to proceed.

Mr. GREEN. And in talking through options, do you sometimes talk about options that the industry might not find favorable?

Mr. CORDRAY. Sure.

Mr. GREEN. Do you also sometimes discuss options that consumers might not find favorable?

Mr. CORDRAY. I am sure that is the case.

Mr. GREEN. But that is your duty.

I yield back the balance of my time.

Chairman HENSARLING. The Chair now recognizes the gentleman from South Carolina, Mr. Mulvaney.

Mr. MULVANEY. Very quickly just to follow up, Mr. Cordray, you all had a little bit of leverage over Ally, though, didn't you? It wasn't exactly a typical negotiation. They needed Federal Reserve approval, didn't they? They needed approval from the Fed that your deal would settle with them? That was leverage you had over them you wouldn't have over other folks?

Mr. CORDRAY. I don't put it that way. What I would say is this. We pursued an auto discrimination matter—

Mr. MULVANEY. That is not my line of questioning. I just want to follow up. They needed to have a deal with you in order to get Federal approval. In fact, they got their Fed approval 4 days after their deal with you. Right? Do you think that factored at all into the negotiations?

Mr. CORDRAY. Here is what I would say. That is what they wanted. We had an open discrimination matter against them that they

were resistant to resolving, and then suddenly they decided they wanted to resolve it. That is their choice. That is not me. I didn't create the leverage. I didn't set that up.

Mr. MULVANEY. You mentioned something before with Mr. Duffy about creditworthiness, that you have your measure and that DOJ has theirs, and Ally might even have theirs.

Mr. CORDRAY. Yes.

Mr. MULVANEY. I buy that. You all didn't use anybody's creditworthiness in your statistical model on Ally, did you?

Mr. CORDRAY. I don't believe that is the case. Again, it is not so easy to say creditworthiness like it is a specific packaged fact.

Mr. MULVANEY. You all have a measure of creditworthiness. Right. Let's use credit scores. Did you use credit scores in your statistical analysis of the Ally case?

Mr. CORDRAY. I don't believe we did.

Mr. MULVANEY. Why not?

Mr. CORDRAY. There are a lot of things we could do.

Mr. MULVANEY. I recognize the fact that creditworthiness may have a lot of different pieces and parts to it, but it would strike me that everybody would agree that credit scores would be part of creditworthiness. Right?

Mr. CORDRAY. There are a lot of financial institutions we have seen that don't use credit scores as the bright indicator of creditworthiness.

Mr. MULVANEY. Do you use it in your analysis?

Mr. CORDRAY. No, I am saying, for example, the FICO score is the most well-known credit score. A lot of banks have moved away from that. They think it is too crude, and they have more nuanced approaches to creditworthiness that they think are more refined and better from their standpoint. So again, creditworthiness is a more elusive concept, and just to say credit scores equals it is not—

Mr. MULVANEY. Using whatever definition of creditworthiness that you want to use, did you use a creditworthiness analysis as part of your statistical model in the Ally case?

Mr. CORDRAY. I think we try to use criteria that we think will—

Mr. MULVANEY. I didn't ask you about that. I am asking what you actually did.

Mr. CORDRAY. I am saying that is what we tried to do.

Mr. MULVANEY. Mr. Cordray, listen, we can do this all day because I will get 5 minutes. I am not asking what you tried to do. I am simply asking you a straight question. Did you use creditworthiness, however you want to define that, in your statistical analysis of the Ally case?

Mr. CORDRAY. I think we used factors that tried to reflect that aspect of the transaction, yes. Ally might disagree. You might disagree.

Mr. MULVANEY. Listen, I am sure there are a lot of things we disagree on, but I am actually trying to find what we agree on. Did senior staff or your attorneys ever tell you that your disparate impact methodology will at times overstate disparate impact?

Mr. CORDRAY. I think there is always a risk that any methodology might either overstate or understate.

Mr. MULVANEY. I didn't ask you that question. I asked you if your people told you that.

Mr. CORDRAY. One of the things you are trying to do is to get it as right as possible, and depending if you compare it to the mortgage universe, it might seem to overstate.

Mr. MULVANEY. Wonderful. Does your methodology at times overestimate disparities?

Mr. CORDRAY. We don't intentionally overestimate anything. We try to get it right.

Mr. MULVANEY. Okay. You try to get it right. Do you ever get it wrong?

Mr. CORDRAY. I think we may. Sometimes over, sometimes under; I am not sure that it is systematic either way.

Mr. MULVANEY. Did the senior staff or your attorneys ever advise you that the Bureau had evaluated an alternative methodology for estimating racial disparities, the disparate impact analysis, and that this alternative methodology reduced the disparities for several racial groups, including African Americans and Hispanics?

Mr. CORDRAY. I think we have seen different methodologies that can lead to different results.

Mr. MULVANEY. I will take that one as a yes.

Mr. CORDRAY. So I will just say, some of them we think are illegitimate. Some of them we have decided there may be different reasonable approaches to this that may differ from one another.

Mr. MULVANEY. Did your attorneys or staff ever tell you they thought you had serious litigation risk in the Ally case?

Mr. CORDRAY. Say that again?

Mr. MULVANEY. Did your senior staff or attorneys ever tell you they thought you had serious litigation risk in the Ally case and that they wanted you to seek prelitigation settlement?

Mr. CORDRAY. I think we have litigation risks every time we pursue a matter.

Mr. MULVANEY. Got you. I didn't ask you that question either.

Mr. CORDRAY. I would say we had that risk in Ally. We have it in every matter, and it is something that we have to take account of and think about. So does the institution, by the way.

Mr. MULVANEY. In my last 30 seconds, I want to follow up with something Mr. Ellison said. Your own database, your complaint database, shows that payday loans are one of the least complained-about financial products. It is the only product, I understand, which has an actual year-over-year decrease in the number of complaints from 2014 to 2015. So if people aren't complaining, and you haven't brought to us any peer-reviewed studies saying that it is actually a problem, why are you considering rules that will dramatically reduce short-term small-dollar credit to people who need it?

Mr. CORDRAY. What I will tell you is in the last year, the voices of the faith community, who hear these complaints from their congregation members, have gotten louder, and I would love to have them come and visit you and tell you what they see and hear among their congregations and their parishes and in their synagogues and in their mosques because they are very concerned about this problem, and I have found their voices to be powerful. I would like you to hear those voices as you are assessing—

Mr. MULVANEY. I will do that just as soon as the lady down the street, down the hallway today on Planned Parenthood will listen

to the faith community about funding Planned Parenthood and abortion. How about that? Is that a deal?

Mr. CORDRAY. I don't have anything to do with Planned Parenthood.

Mr. MULVANEY. I can't believe you just told us you are making decisions based upon meetings with a faith-based community on a selective basis, but we will leave that for another day.

Mr. CORDRAY. Wait a minute.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Kentucky, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

Director Cordray, welcome back to the committee. And I would first just like to take a little issue with your testimony about the relative health of the mortgage market and the recovery that you cited, and you cited Federal agency data and in particular Home Mortgage Disclosure Act data.

Mr. CORDRAY. Yes, everybody agrees that is the best data around.

Mr. BARR. I understand, but the data is at least mixed because the National Association of REALTORS® reported that in the first quarter of 2015, which appears to be a pretty recent data, only 1.2 percent of originated mortgages did not fit the definition of qualified mortgages, so there is at least a fear of liability in terms of originating non-QM mortgages which I hope the Bureau would recognize—

Mr. CORDRAY. Can I make a point on that?

Mr. BARR. I will let you. I want to just finish my point quickly, and I will be happy to let you respond. The other part of that data is that a third of the National Association of REALTORS® survey respondents reported being unable to close mortgages due to a requirement of the Qualified Mortgage rule, and what I would specifically like for you to respond to is maybe the explanation for the health in the data that you are citing is because of the GSE exemption.

The problem with the financial crisis was the originate-to-distribute model. As you know, I am promoting a portfolio lending model which would encourage risk retention, which was a core policy of the Dodd-Frank Act. The GSE exemption, which is the reason for the relative health in the data that you are citing, is exactly why we got into the mortgage financial crisis to begin with, originate to distribute to Fannie and Freddie. That is why your data conflicts with the National Association of REALTORS®' data. You can respond.

Mr. CORDRAY. I don't think it conflicts at all. What in fact, you are seeing is that mortgage lending is up for home purchase mortgages. What varies in the market, of course, are refinancings. Those go up and down with the interest rate, so you can't really say much from that. In terms of the legal risk being so prominent from the Qualified Mortgage rule, I met with the Mortgage Bankers Association recently, the top CEOs of mortgage units, top 40 companies, and I asked them specifically: "Have any of you had a single lawsuit on the Qualified Mortgage rule?" It has been 21 months now—21 months—and not a single lawsuit. Not one. All

this foaming at the mouth about legal liability really did not pan out. It was an overreaction.

Mr. BARR. I understand if you are in safe harbor, you are not at risk. The point is that access to mortgage credit is not available if you are going to portfolio a loan right now, but there is a safe harbor if you sell it to Fannie and Freddie, which is how we got into the problem in the first place. So the policy is counterproductive in my opinion, not only in terms of constraining access to responsible mortgage credit that is retained by the institution, but you are actually incenting with the GSE exemption, the kind of risky practices that caused the financial crisis. I do want to—

Mr. CORDRAY. I see the point, but two things. First, while they are in conservatorship, which is a constraint, very significant. Second, we have just expanded the ability of smaller institutions, community banks and credit unions, to do more portfolio lending, which I agree with you; I think it is very positive, and I think they think it is very positive.

Mr. BARR. But it doesn't do what my bill would do, which would be to allow a petition process. Let me get to TRID quickly. As you may recall, Congresswoman Maloney and I and 252 of our colleagues sent you a letter on May 22nd requesting a grace period. We met. We asked if closing attorneys and REALTORS® and title insurers could count on a grace period. You said they would be happy, but what happened the next day was that you would engage in a policy of sensitive enforcement, which gave unfortunately no clarity or—and I am just telling you what my constituents were telling me. I am not opining. I am telling you—

Mr. CORDRAY. I would like to clarify it today then.

Mr. BARR. I am telling you what the closing attorneys are telling me back home in Kentucky. They are saying we are going to have to do two closings—one with a HUD settlement statement; and one that is TRID-compliant—which doesn't decrease the amount of disclosures that are going to be required for the homeowners and home buyers to actually review. It is not a simplification. We are still trying to get this right. All we want from the Bureau is not just a promise of sensitive enforcement but a grace period, a transition period. And the question for you is, are the closing attorneys, the REALTORS®, the title carriers, can they count on you to not bring an enforcement action for a period of, say, 6 months while they are trying to sort through the complexity and trying to get up to speed?

Mr. CORDRAY. Look, I don't think it is appropriate for me to say I won't enforce the law when my job is to enforce the law, but I think what I have said says to them that we are going to be diagnostic and corrective, not punitive, in that early period. I think if they read between the lines, they will understand that we are trying to allow them to have the latitude that they have asked for. And I think people should be able to take "yes" for an answer.

Mr. BARR. With my remaining time, on short-dollar loans, one of my constituents testified, a small-business owner, that she was going out of business as a result of your proposed rulemaking here.

Mr. CORDRAY. What kind of person?

Mr. BARR. A small-dollar lender, a payday lender. The attorney general of Kentucky, the Democratic attorney general, the Demo-

cratic Governor, his financial institutions department and the Democratic General Assembly in Kentucky all reformed our payday lending and usury laws. Why don't you trust the Kentucky Democrats who have put these rules into place? What do you know that they don't know?

Mr. CORDRAY. To me, this isn't a Democrat or Republican issue. That is not the way I look at things.

Mr. BARR. I understand.

Mr. CORDRAY. There are different States that have different approaches, but if you look at it on a national basis, there are a ton of rollovers. There are a lot of consumers in a lot of trouble. By the way, the last time I was here, you asked me about Bath County in Kentucky.

Mr. BARR. Thank you.

Mr. CORDRAY. Under our new provision, it is all rural.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Colorado, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. Director Cordray, according to Treasury's website, over 5 million recipients have enrolled in the Direct Express Program, which is used by Federal and State Governments to disburse supplemental security income and Social Security benefits to those enrolled. According to the U.S. Treasury, it costs $1.03 to issue a paper check, and only 10.5 cents to be able to use electronic payments like Direct Express. Yet, the CFPB has proposed a prepaid account rule that would fundamentally change how government cards, including a statement at the top to require disclosure to all recipients that the recipient does not have to accept a government benefit card. I guess my question is, this has been popular. It seems to have worked. Is this new policy going to create some disharmony and actually disincentivize people from being in the program?

Mr. CORDRAY. I have the same reaction you do. I think the fact that government programs at the Federal, State, and local level, county, city, have moved towards benefits on cards as opposed to issuing paper checks is beneficial to consumers in many ways. I don't think our prepaid card rule is affecting those government programs, but if it is, I would be glad to have our folks follow up with your staff and make sure that we can give you assurances in that regard. If it is a problem, then we still have that rulemaking pending, and we could take account of that as we finalize it. I would be happy to have that discussion.

Mr. TIPTON. Good. I would appreciate that. I think there is a 95-percent approval rating with those government cards that is going out.

Mr. CORDRAY. It is more secure, better for the consumers. They don't have to deal with cash or check cashing and other things. I agree with that.

Mr. TIPTON. Yes. And, Director, the proposed rule for prepaid accounts has raised some serious concerns over the treatment of credit futures for prepaid products. Consumers are using these products obviously to be able to meet their everyday needs. In my own district in Colorado, we have Delores from Pueblo who wrote that the prepaid card will help her to put food on the table for her fam-

ily or to be able to pay a utility bill. I am concerned that the lack of understanding of how this product is used by folks back home will lead to its elimination. What is the CFPB's plan to be able to make sure that consumers, like Doris in Pueblo, continue to have access to overdraft protection?

Mr. CORDRAY. So in terms of prepaid cards, the rulemaking that we have under way—and it is still pending, so it is not final—is intended to create consumer protections for those cards that have never existed. I think people reach into their wallet, and they get out a debit card or prepaid card or credit card, and they assume they have the same protections. They don't. Prepaid cards have nothing. If you have errors, you can't get them corrected. If you have disputes, you can't get them resolved. You have no rights in that regard. So that has been the focus of our rulemaking.

In terms of overdraft on the prepaid cards, what we proposed in our initial proposal that we are still working through and thinking about, was that those cards should be treated similar to credit cards in terms of whether they are credit or not if they involve overdraft. That was the proposal. We have gotten a lot of comment on that both ways, and we are working through that.

Mr. TIPTON. And just making sure that is available, and I hope that you are taking into consideration the concern this creates in terms of the industry almost unanimously noted that they will stop offering overdraft features with some of the—

Mr. CORDRAY. By the way, very few in the industry offer overdraft now. Almost unanimously they do not offer overdraft, so it is a very small portion of the industry that this would affect. But the proposal at least was to offer such people credit-card-like protections like in the CARD Act. We have seen both criticism and endorsement of that, and we will have to size that up.

Mr. TIPTON. Director, I would like to go back a little bit to the conversation you were having with Mr. Rothfus and Mr. Schweikert in regards to some of the data that is coming out. The government has suffered obviously some very embarrassing security and privacy breaches recently and lost sensitive data for millions of Federal employees. And CFPB is about to issue a new Home Mortgage Disclosure Act rule, which will require lenders to be able to submit detailed private information on their customers. With that in mind, can you specify what steps that the Bureau is taking to be able to protect homeowners from data breaches?

Mr. CORDRAY. Yes, that information for our National Mortgage Database, if that is what you are referring to, will be de-identified and anonymized before it comes to the Bureau. And that is exactly how we are trying to handle it. Therefore, I think it is of little interest to hackers because they would have to, as the Congressman was mentioning earlier, go through an arduous re-identification process, if they even could do it, as opposed to other databases that companies have where if they can hack into those, they can get right into personal information and the like.

That is how we are trying to handle that. It has been looked at by the GAO and the Inspector General. I think it is a responsible approach. If people have further suggestions on it, I am glad to hear them.

Mr. TIPTON. Yes. The U.S. Chamber of Commerce put out a statement that the Bureau is putting consumer personal information at risk by collecting enormous volumes of identifiable information yet failing to be transparent or instill confidence that it has recognized and addressed cybersecurity risks posed by such a vast amount of data.

Mr. CORDRAY. Yes. I don't think that is really accurate to the details of what we are doing. I understand the statement for rhetorical purposes. I would be happy to talk to the Chamber about it.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And thank you, Director Cordray. I am a small business owner, have been for 44 years, and I am a car dealer. And like my colleague, Congressman Green, I stand up for customers every single day. You are not the only one who stands up for customers. I want to go back to Section 1029. We talked about it a little bit today, but let me read what it says: The Bureau may not exercise any rulemaking, supervisory enforcement or any authority, including any authority to order assessment over a motor vehicle dealer—that is me—and this predominantly engages in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles or both. I am kind of new to this committee, but I am not new to the automobile industry. My family has been selling cars for over 70 years, and we have done a great job, and we have taken care of a lot of people.

But I think you and just about everyone here knows that. Now, I know we talked about this issue a lot, so there is certainly a lot to talk about when it comes to this topic. We can talk about the flawed data we have talked about today used to claim disparate impact or the fact that we have established the auto dealers are exempt, they are exempt from the CFPB supervision, or the way in which you released your auto finance guidance in 2013, or even how your agency has paid out claims to discriminated customers with little oversight.

But I wanted to take this time today instead to educate you a little bit on what it means to be in the retail industry, what it means to be a small-business owner in America today, what it means to be an auto dealer, and, quite frankly, what it means to be a small-business owner on Main Street in America. My family business employs about 150 people. Just like any retail business in America, the cost of owning a business is not cheap. We have to worry about paying our employees, our utility bills, our credit, our debt, and making sure we have plenty of inventory for our customers to choose from.

Now if I sold every car at your price, at the wholesale price, which is what I think the Bureau would like me to sell it at, I would be out of business in no time.

Mr. CORDRAY. I wouldn't like that, by the way.

Mr. WILLIAMS. You are not giving that opinion. But you know what, I have to make a living. Frankly, I have to be profitable. I have to provide for my family. I have to take care of my employees. No business in America should be told by the Federal Government

to sell their product at a given price. I think you know this. I think you really believe this.

But the financing part of buying a car is just one piece of the equation. Other factors include what the borrower pays for the vehicle or what trade-in value they receive. Every deal is different. No two are the same. But because of the jurisdiction of the CFPB, you have focused this on the financing aspect of purchasing a car, and I think it is obvious why. I think what your agency is trying to get at is forcing auto lenders to offer a flat fee to dealers. Is that what you are trying to do?

Mr. CORDRAY. We have said that is one alternative, but it is not the only one.

Mr. WILLIAMS. Essentially, when you do that, you eliminate the dealer reserve.

Mr. CORDRAY. No, I understand that. We are not saying that is the only alternative.

Mr. WILLIAMS. If you do that, you eliminate the dealer reserve and ultimately telling me what I can sell my product for. So what we have seen with Ally Financial, Honda Financial, and just yesterday, Fifth Third Bank, is to force them to change their pricing and compensation models and in turn avoid stricter fines, but ultimately you will put these dealers at a competitive disadvantage by capping the rates and putting them out of business. In fact, some lenders have even told me personally that they are discontinuing indirect auto lending because of the CFPB's campaign and increased compliance risk. They are scared to death. In other scenarios, some lenders, as is the case of Honda Financial, have responded by overhauling their loan pricing in ways that will likely mean higher costs for some borrowers.

So, Director Cordray, who does this hurt? You think about it. It hurts the consumer. The very people you are trying to protect, you are turning back and hurting them. Really quickly, yes or no, we have covered a lot of questions—are you really trying to eliminate dealer reserve?

Mr. CORDRAY. When we first came to this problem, when we said this, that is one alternative, but it is not the only one, as we have come to understand the problem better. So to say that we are simply trying to eliminate dealer reserve, that would be—no, that would not be accurate. That is one alternative, but limiting it would be an alternative.

Mr. WILLIAMS. Do you have an idea what to replace it with, with the dealers?

Mr. CORDRAY. What I would say is this, if you set up a lending program where you are going to allow people to mark up rates and be financially incentivized to do so, and the consumer is none the wiser, we believe it creates great risk of discrimination. All right? We want to try to minimize that and limit as much as possible.

Having said that, if the preexisting regime allowed for a certain amount of discrimination, where some borrowers are charged more than others, and you eliminate that, some of the others may now be charged a little bit more—

Mr. WILLIAMS. Do you talk to dealers like me on how to have a better idea? Nobody has talked to me.

Mr. CORDRAY. We were very careful about not going out and doing a lot of talking to dealers because we want to respect the line that Congress drew. Again, it is not a very logical line—

Chairman HENSARLING. The time of the gentleman has expired. The Chair wishes to advise all Members that there are votes pending on the Floor. Regrettably, we anticipate clearing only two more Members before adjourning: Mr. Poliquin and Mrs. Love.

Mr. Poliquin is now recognized for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman.

Mr. Cordray, thank you very much for being here. I appreciate it. Your organization was created about 5 years ago by Dodd-Frank. You have about 1,400 employees, and in that short period of time, sir, you are one of the most powerful regulators in America. You regulate companies that provide automobile loans and home mortgages, credit cards, student loans, and you reach into almost every family in America. Now, we all know that these departments and agencies throughout Washington have their inspectors general. Now these are important functions to make sure at every organization there is no fraud or abuse or wasting of taxpayer dollars.

I have a list right here, Mr. Cordray, of 76 departments and agencies in the Federal Government. Each one of them has their own inspector general, except the CFPB. You don't. You share one with the Federal Reserve. The Federal Reserve, as we all know, is involved with monetary policy and regulating banks as institutions. Your agency, on the other hand, is involved in regulating financial products that are sold to consumers. So can't we agree right now that your functions are so different that you deserve your own inspector general, sir?

Mr. CORDRAY. So if I heard you right, you said 76 departments and agencies have their own inspector general, and we are the only one that doesn't?

Mr. POLIQUIN. That is correct.

Mr. CORDRAY. I don't believe that is correct.

Mr. POLIQUIN. Here is the list right here, Mr. Cordray.

Mr. CORDRAY. I don't think that is correct. Many, many agencies share an inspector general—

Mr. POLIQUIN. —that is your testimony. Okay. Well, fine. I will let you look it up just the way I did, and you will find you are the only one. My question to you is the following.

Mr. CORDRAY. We will get back to you on that. I don't think that is correct.

Mr. POLIQUIN. Don't you think it makes sense for you to have your own inspector general to look over your shoulder? So that the taxpayers know they are being fairly treated and that you are held accountable?

Mr. CORDRAY. I haven't dealt with inspectors general until I came to the Federal Government. In the State government, as you and I were, we had the State auditor who would look at us every year, and that was appropriate and helpful.

Mr. POLIQUIN. It is my time not yours, sir. Amtrak, the Postal Service, the EPA, even the Peace Corps has their own Inspector General. You don't.

Mr. CORDRAY. That may be. That is up to Congress. Congress decides that.

Mr. POLIQUIN. Let's talk about transparency. Let's talk about transparency, sir. In your own semi-annual report on page 132, you make it very clear that it is important to be transparent in your operations, and I happen to agree with that. You told us 6 months ago when you came here that you were going to make sure you posted on your website all your vendor contracts. We went to your website, and guess what? We didn't find contracts. If I am not mistaken, you have contracted about $60 million for the next 3 years on management consulting contracts with a number of different firms. Where are those contracts?

Mr. CORDRAY. I believe that all of our contracts are posted on USA.gov, which is I believe what Federal law requires, except for contracts with other parts of the Federal Government. And in the start-up phase with Treasury, we had a lot of contracts with Treasury itself.

Mr. POLIQUIN. Here is what I would like to do. We are going to get in touch with your office. I would like to see those contracts.

Mr. CORDRAY. If there are any contracts that you think are not posted as they should be, I will be glad to try to take account of that—

Mr. POLIQUIN. Let's shift gears here. You sit on an organization, on a board called the Financial Stability Oversight Council (FSOC). You sit on there with Treasury Secretary Lew, the Chair of the Federal Reserve, and also the Chair of the SEC, along with other organizations.

Mr. CORDRAY. That is what the law requires.

Mr. POLIQUIN. Now, FSOC is responsible for determining which non-bank financial institutions are too-big-to-fail, meaning if they get in trouble, then the taxpayers are on the hook to bail them out. We have about $24 trillion in this country that is managed by pension fund managers and mutual fund companies, and asset managers. And you know if one of those mutual fund companies isn't performing well, an investor can call up on an 800 number, replace that account with another asset manager, so there is no risk to the market if one of those asset managers gets in trouble. Now, here is what I worry about. I am sure you know a fellow by the name of Douglas Holtz-Eakin. He is the former Director of the CBO, which is a nonpartisan organization. And you have seen the study I am sure, from 2014, which says if asset managers that handle the retirement savings, $24 trillion of retirement savings in this country, if those asset managers, that pose no risk to the economy if they get in trouble, if they come under the guise of the Dodd-Frank regulations because you folks designate them as SIFIs, then the rate of return long term of those retirement savings will go down about 25 percent.

Now, where is the compassion? We are supposed to help small investors. You know what I worry about, Mr. Cordray? I worry about a nurse in Gardiner, Maine, or I worry about an auto mechanic in Ellsworth, Maine. They are putting aside $100 a month to try to save for their retirement, and all of a sudden, you folks have an opportunity to ding them by 25 percent of their long-term rate of return in their nest egg. So I want to see if you and I can

agree on something today, sir. Can we agree that it is a bad idea for FSOC to designate pension fund managers, mutual funds, and other asset manage as SIFIs?

Mr. CORDRAY. First of all, FSOC acts as a body. I think they have indicated that they are—

Mr. POLIQUIN. Do you think it is a good idea or a bad idea to so designate them?

Mr. CORDRAY. I don't know enough to jump the gun on any decision-making—

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Utah, Mrs. Love.

Mrs. LOVE. Thank you, Mr. Cordray. Thank you for being here.

Mr. CORDRAY. My pleasure.

Mrs. LOVE. I just have a quick couple of questions that are concerning to me and to constituents in my district. In the CFPB's most recent annual report, it stated, on page 131, that a critical part of making financial markets work is ensuring transparency in those markets. The CFPB believes that it should hold itself to that same standard and strive to be a leader by being transparent with respect to its own activities. So my question for you is, what has the Bureau done to make sure that the consumers know that you are tracking their credit card data?

Mr. CORDRAY. We are trying hard to meet that aspiration of being a very transparent institution.

Mrs. LOVE. So what have you done to make sure that the customers know that you are extracting credit card data?

Mr. CORDRAY. First of all, I am not tracking your data or my data or anyone's data. What we are doing is we are getting data that is anonymized and de-identified so that we can evaluate the market. How can I possibly fulfill my responsibility to Congress to give you a report on how—

Mrs. LOVE. Wait a minute. We are going to get there. Do you think most Americans know that you are actually doing this, collecting data?

Mr. CORDRAY. Doing what?

Mrs. LOVE. Collecting credit card information. So when they are going and they are actually making those credit card—you are actually collecting data from their credit cards.

Mr. CORDRAY. I am not collecting it the way a bank would be collecting it, where they are actually trying to assess what Congresswoman Love ate for dinner last night and where you are shopping and trying to market to you. I am just looking at the overall patterns in the market that have nothing to do with you or me or anyone else in particular.

Mrs. LOVE. You are saying you actually do not collect data from individuals who are using their credit cards? You are not collecting that information? Is that what you are saying?

Mr. CORDRAY. It is all de-identified. That is really important.

Mrs. LOVE. Do you believe that consumers have the right to know you are actually collecting the data? It is really simple. I am not trying to have a fight with you here. I just want to know what is happening.

Mr. CORDRAY. I don't know if this is the answer to your question, but it wouldn't have your name on it. It wouldn't have your credit card number.

Mrs. LOVE. It doesn't matter. Don't you think that my information belongs to me? Don't you think that consumers have a right to opt out at least?

Mr. CORDRAY. Many other Federal agencies have had this for years. What is special about us? Why do you come after us?

Mrs. LOVE. Okay. Do you think it gives the American people comfort to know that just because other agencies are collecting data, that it is okay for you to additionally collect data? I think it is actually quite absurd to hear that other agencies are collecting as much data also.

Mr. CORDRAY. Answer me this. We are supposed to do a report to Congress every year on the credit card market and how it is faring. How would we do that if we didn't have data?

Mrs. LOVE. Let me ask you a question. Let me ask these questions. I am glad that you led us down this path. Can the Bureau receive complaints about credit card companies?

Mr. CORDRAY. I beg your pardon?

Mrs. LOVE. If there is a company that is out there that is a terrible actor in the market, can you receive complaints about credit card companies if they are taking advantage of consumers?

Mr. CORDRAY. Can we the CFPB receive complaints about credit card companies?

Mrs. LOVE. Yes.

Mr. CORDRAY. We do. We do every day.

Mrs. LOVE. Does the Bureau have the power to conduct direct examination of financial institutions?

Mr. CORDRAY. We do.

Mrs. LOVE. Does the Bureau have a whistleblower program for employees to blow whistles on misconduct of their companies?

Mr. CORDRAY. We have a hotline where whistleblowers can give us information if they see fit.

Mrs. LOVE. So you are still telling me that the powers that you have aren't sufficient for you to uncover and investigate actual problems in the marketplace? Even with all of those tools, you still have to go in and not allow people to know you are collecting their data in order to make these assessments?

Mr. CORDRAY. You are saying we could collect it through examinations and supervision. Instead, we have collected it in the same way other agencies have. How is that different?

Mrs. LOVE. What I am saying is one way is somebody complaining to you that something is happening, and the other way is you actually extracting data without the consumer knowing that you are extracting data. What I asked at the beginning is what provisions that you have put in place to let Americans know when their data is actually being extracted, when it is being mined?

Mr. CORDRAY. We are having a public hearing here that is wide open to the entire American people—

Mrs. LOVE. Thank goodness for Congress that is looking out for the American people, not the CFPB.

First of all, I want you to know that the CFPB—I have been very, very fair in looking at what you actually do. Let me say you

are always under the guise that you are protecting those who can't protect themselves. You are always under the guise—you are trying to let people know that you are the compassionate institution. Let me just say that you can't be a compassionate institution because everything you do is through force. And that is through jail time and fines. If people do not comply with you, it is through jail time and fines. And I want you to know that these businesses that you go after are the ones that gave my father a job when he came to this country with just $10 in his pocket.

Mr. CORDRAY. How does that make us different from the Utah attorney general? How does that makes us different from the U.S. Attorney General?

Mrs. LOVE. You are saying because everybody else does it, that we are going to do it also?

Mr. CORDRAY. No, no. It is law enforcement. Do you not want the law to be enforced? Of course, you want the law to be enforced.

Mrs. LOVE. This is why Washington is a problem. This is why you are the problem, sir.

Mr. CORDRAY. Do you want people to not abide by the law?

Chairman HENSARLING. The time of the gentlelady has expired.

I would like to thank the witness for his testimony today.

The Chair notes that some Members may have additional questions for this witness, 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 this witness and to place his 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.

This hearing stands adjourned.

[Whereupon, at 1:38 p.m., the hearing was adjourned.]

A P P E N D I X

September 29, 2015

Testimony of Richard Cordray
Director, Consumer Financial Protection Bureau
Before the House Committee on Financial Services
September 29, 2015

Chairman Hensarling, Ranking Member Waters, and Members of the Committee – thank you for the opportunity to testify today about the Consumer Financial Protection Bureau's latest Semi-Annual Report to Congress. We appreciate your continued oversight and leadership as we work together to strengthen our financial system and ensure that it serves consumers, responsible businesses, and the long-term foundations of the American economy.

This July marked five years since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act and four years since the Consumer Bureau opened its doors. As you know, Congress created the Bureau in response to the financial crisis with the purpose and sole focus of protecting consumers in the financial marketplace. We understand our responsibility to stand on the side of consumers and ensure they are treated fairly. Through fair rules, consistent oversight, appropriate enforcement of the law, and broad-based consumer engagement, the Consumer Bureau is working to restore people's trust and confidence in the markets they use for everyday financial products and services.

As we continue our work, consumer financial markets are showing increasing signs of health. For example, the latest Home Mortgage Disclosure Act (HMDA) data, released by federal agencies last week, shows increasing numbers of consumers are taking out mortgages. In 2014, the first year of our new mortgage rules, mortgage originations for owner-occupied home purchases increased between four and five percent. The upward trend appears to have accelerated over the first half of this year. And while we saw some continuing consolidation in parts of the mortgage market, there is no evidence of the decline some predicted. In fact, after taking merger activity into account, the number of lenders that reported having originated mortgages showed an increase in 2014. And in particular, after adjusting for consolidations, the number of community banks and credit unions that originated home-purchase mortgages last year was up from the year before.

Other consumer credit markets also show encouraging signs. For example, in the first half of this year, over 14 million consumers obtained new auto loans, up eight percent over the prior year. For auto loans this marks a 45 percent increase since 2011 and a nine-year high.[1] Similarly, 54 million new consumer credit card accounts were opened in the first half of 2015, which is 12 percent more than in the same period last year and 48 percent higher than in the

[1] Experian-Oliver Wyman, Market Intelligence Report: Auto Loans and Leases (Second Quarter 2015).

same period of 2011.[2] At the same time, the percentage of loan balances that are seriously delinquent dropped below four percent last quarter for the first time since 2007 and down from seven percent four years ago.[3]

Equally heartening is the strength being exhibited by community banks and credit unions. Last quarter, lending by community banks grew by 8.8 percent compared to the prior year, growing at almost twice the rate of non-community banks.[4] Credit union lending grew at an even faster pace, and credit union membership over the past year grew at the fastest rate in over twenty years.[5]

As consumers gain more confidence, lenders are responding and credit standards are becoming less tight across all these markets. Consumers appear to be carrying their debt burdens more effectively, which has contributed to the fact that the delinquency rate in each of these markets is at or near record lows. These are all positive trends for the consumer financial marketplace and very much aligned with the Bureau's mission.

The Bureau helps consumer finance markets work by making rules more effective, by consistently enforcing those rules, and by empowering consumers to take more control over their economic lives. To date, the Bureau's enforcement activity has resulted in more than $11 billion in relief for over 25 million consumers. Our supervisory actions have resulted in financial institutions providing more than $248 million in redress to nearly 2 million consumers. And as of this month, we have handled over 700,000 complaints from consumers addressing all manner of financial products and services. Many of these consumers are constituents from each of your states, and they are pleased at the help they are receiving from the Bureau to resolve their problems and concerns.

As with the letters you receive from your constituents, the consumer complaints submitted to the Bureau raise issues of serious concern. Along with our enforcement, supervisory, rulemaking, and market monitoring activity, these complaints and the voices of consumers are important to the Bureau. Our work is focused on ensuring that the markets for all such consumer financial products and services are marked by responsible practices that help rather than harm consumers.

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[2] Experian-Oliver Wyman, Market Intelligence Report: Bank Cards Report and Retail Lines Report (Second Quarter 2015).
[3] Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit, August 2015, *available at* http://www.newyorkfed.org/householdcredit/2015-q2/data/pdf/HHDC_2015Q2.pdf.
[4] Federal Deposit Insurance Corporation, Quarterly Banking Profile, Q2 2015, *available at* https://www5.fdic.gov/qbp/2015jun/qbp.pdf.
[5] Credit Union National Association, U.S. Credit Union Profile Report, Mid Year 2015, *available at* http://www.cuna.org/Research-And-Strategy/Credit-Union-Data-And-Statistics/.

In our most recent Semi-Annual Report to Congress and the President, we describe the Bureau's efforts to achieve our vital mission on behalf of consumers, including those in your home states and mine. For example, we took action against a company for illegal debt collection practices resulting in $2.5 million in relief for servicemembers. We also stopped an illegal kickback scheme for marketing services, which resulted in $11.1 million in redress for wronged consumers. We also worked with the Department of Education to obtain $480 million in debt relief to student loan borrowers who were wronged by Corinthian Colleges, a for-profit chain of colleges that violated the law and has since declared bankruptcy.

During the reporting period, the Bureau also issued a number of proposed and final rules. In October 2014, we issued a final rule to reduce burdens on industry by promoting more effective privacy disclosures from financial institutions to their customers. In November 2014, the Bureau issued a Notice of Proposed Rulemaking to provide strong new federal consumer protections for prepaid accounts. In December 2014, the Bureau issued a proposal to clarify various provisions of our mortgage servicing rules. The Bureau is in the process of developing new rules governing payday, vehicle title, and certain installment loans. Earlier this month, the Bureau finalized further changes to some of our mortgage rules to facilitate mortgage lending by small creditors, particularly in rural or underserved areas. These changes will increase the number of financial institutions able to offer certain types of mortgages in rural or underserved areas, and help small creditors adjust their business practices to comply with the new rules.

As a data-driven institution, the Consumer Bureau published several reports during this reporting period that highlight important topics in consumer finance such as medical debt, arbitration agreements, reverse mortgages, and consumer perspectives on credit scores and credit reports. We also released a new "Know Before You Owe" mortgage toolkit that will help encourage consumers to shop for mortgages and better understand how to go about buying a home.

In the years to come, we look forward to continuing to fulfill Congress's vision of an agency that is dedicated to cultivating a consumer financial marketplace based on transparency, responsible practices, sound innovation, and excellent customer service.

Thank you for the opportunity to testify today. I look forward to your questions.

THE PEW CHARITABLE TRUSTS **INTERACTIVE**

State Payday Loan Regulation and Usage Rates

As federal policy makers work toward a national payday lending policy, here is a summary of state payday lending laws, including loan usage rates. Note that these summaries should be used for general informational purposes only.

Embed

Permissive States 27

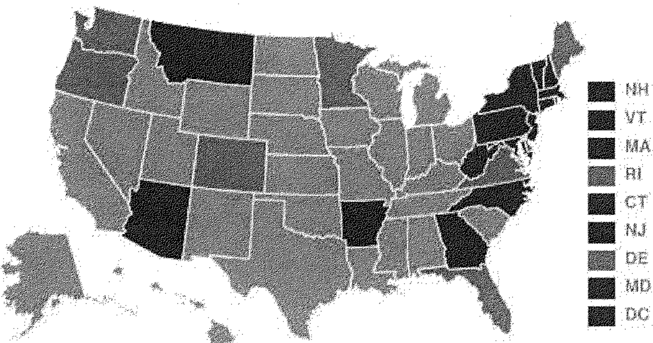
Allow single-repayment loans with APRs of 391 percent or higher.

Hybrid States 9

Have payday loan storefronts, but maintain more exacting requirements, such as lower limits on fees or loan usage, or longer repayment periods.

Restrictive States 15

Have no payday loan storefronts.



Georgia

RESTRICTIVE

Payday loan usage rate
3%

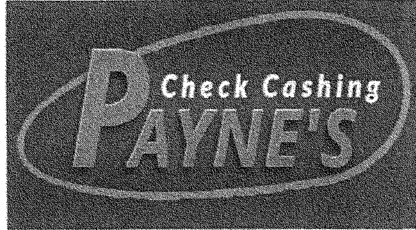
Pew Classification
Restrictive

Statutory Citation
16-17-1 *et seq.*

Maximum Loan Amount
N/A. There are no payday lenders operating under this state's law.^

All data on state laws compiled by the National Conference of State Legislatures (NCSL) as of 1/14/2014, unless marked with a caret (^). An asterisk (*) indicates results are not reported because fewer than 300 interviews were conducted in this state. Payday loan usage rate is based on 33,576 survey interviews conducted by Pew and includes storefront, online, and other payday borrowing. Some Restrictive states have additional laws governing payday lending, which are not included because lenders are not operating there under state law.

Sources: Pew Safe Small-Dollar Loans Research Project, 2012; National Conference of State Legislatures, Sept. 12, 2013.



Luxton Corp
DBA Payne's Check Cashing
727 North Main Street
Culpeper, VA 22701

September 28, 2015

The Honorable Robert Hurt
Representative for the 5th District of Virginia
U.S. House of Representatives
Washington, DC 20515

Congressman Hurt,

I manage a small, family owned business that is based in Culpeper, Virginia, and has several stores in your District where our business Payne's Check Cashing offers payday loans, title loans, check cashing, money orders, and bill payments services. In addition to running a small business, many of our customers are small businesse that use our vehicle title loans as a source of capital. I compliment the House Financial Services Committee for holding a hearing this week on the operations of the Consumer Financial Protection Bureau (CFPB).

I am writing to you so that I can tell you the story of my interaction with the CFPB. Through my story, I am hopeful that the Financial Services Committee will help ensure that the CFPB is responsive to small business concerns.

The Dodd-Frank Act requires the CFPB to consider the views of small businesses like ours prior to moving forward with regulation. Last spring the CFPB began considering regulations to regulate our business, and I became involved with the small business stakeholder process that is run by CFPB and is governed by the Smal Business Regulatory Enforcement Fairness Act (SBREFA). While the "Report of the Small Business Review Panel" was completed in July 2015, the CFPB keeps the report secret until the bureau issues a proposed rule. Since the report is already finalized, I believe it is entirely appropriate for me to share my experience and to forward you the comments I provided the CFPB (see attached).

From the start of the SBREFA process, my fellow small business owners who served on the Small Business Review Panel and I tried to impress upon the CFPB that each of our businesses are regulated by the states in which we operate. We were

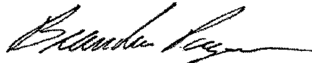
frustrated that the Bureau apparently lacked an understanding of how state regulatory authorities, like the Virginia Bureau of Financial Institutions, work with us to protect consumers. It was even more frustrating that CFPB officials could not identify failings in the state regulatory framework that would prompt a federal overlay of new regulatory obligations.

I was also frustrated by the lack of appreciation the CFPB seemed to have for our customers and the relationship we have with them, which is the foundation for our business. When customers come to us in Culpeper, Madison, and Charlottesville, it is often because there is no other place for them to go. Many of our customers come to us after banks and credit unions have turned them down. The CFPB, in its proposal released in March, incorrectly assumes that if our stores close, our customers would simply go somewhere else for credit. That is not the case. I worry that the CFPB does not understand, and if they move forward with their rulemaking, our customers will fall victim to unregulated and unlicensed lenders and inferior forms of credit.

I spent a great deal of time trying to help people at the CFPB understand how we run our business and the novelty of relationship-based lending. In my education effort, I tried to make sure the CFPB had a greater appreciation of our customers and their financial needs. While I was honored to be part of the SBREFA process, the effort will only be worth it if the CFPB truly listened to small businesses, and if the CFPB incorporates our suggestions into its proposed regulations.

I appreciate your attention to these issues. I recently shared my experience with your colleague, Congressman Brat, who serves on the Small Business Committee and I ask that your Committees work together and make sure the CFPB proceeds in a way that bolsters my ability to provide needed short-term loans for my customers.

Sincerely,



Brandon Payne

Attachment (1)
Written Comments of Small Entity Representative Brandon Payne

Luxton Corp
DBA Payne's Check Cashing
727 North Main Street
Culpeper, VA 22701

May 12, 2015

Via email: cfpb_payday_sbrefa@cfpb.gov

Small Business Advisory Review Panel Memb :rs
On Potential Rulemakings for Payday, Vehicle Title,
And Similar Loans
c/o Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552-0003

Re: Written Comments of Small Entity Representative Brandon Payne

Dear Members of the Small Business Advisory Review Panel:

I am Manager of Payne's Check Cashing in Culpeper, Virginia. After attending Virginia Tech and serving six years in the Navy, I returned to Culpeper to work for my Dad. He is an entrepreneur who has created multiple companies in his adult life and started Payne's Check Cashing 15 years ago. I run day-to-day operations for our three storefront locations in Virginia, one in Culpeper and two in Charlottesville. We offer payday loans, title loans, check cashing, money orders and bill payment services. We have 13 employees covered by a group health care plan in which our company pays 50% of the premium cost. Two of our senior managers started out as clerks. We value our employees and endeavor to provide them with quality training and opportunities for growth. All of us know our customers well and we are part of the communities we serve. We are regulated by the Virginia Bureau of Financial Institutions. We have separate licenses for payday lending and title lending and each license type is examined every 12 to 18 months.

My Overall Comments on the CFPB Proposals and SBREFA Panel Proceedings

I was both surprised and pleased to receive the call from CFPB, interviewing me as a candidate to serve as a Small Entity Representative for our industry's SBREFA Panel. I very much appreciated the opportunity that was extended to me—to help represent the voice of small businesses in this extremely important rulemaking process.

I did not know what to expect in the Panel proceeding. As an operator of only three stores in one state, I did not have the resources of outside counsel to interpret for me the complexities of the

CFPB's Outline of Proposals. Although I studied them often and intently during the short period of time between their release and the Panel meeting, I was not—and still am not—equipped to understand them completely or to calculate their cumulative financial impact on my business.

During the Panel discussions, I learned that I was not alone. In fact, most of the SERs felt as I do, that the CFPB did not provide us with data that specifically measures the proposal's impact on small businesses. Operating in the state of Virginia, which has one of the most complicated state regulatory frameworks for payday lending in the country, I also think the Bureau had a duty to analyze the negative impact of state laws that have imposed severe restrictions to address borrower use and frequency. Even though these state laws are generally less restrictive than the Bureau's proposals appear to be, I would think that a careful analysis comparing the state models to the CFPB proposals would provide a valuable tool for determining the impact of the proposals. Additionally, I neither saw in the CFPB proposals, nor heard in the Panel meeting, any evidence to show that the Bureau had examined whether or not the state laws and CFPB proposals could work together. Finally, I was struck by the absence of information in two areas that I thought the Dodd-Frank Act specifically required the CFPB to consider: (1) consideration of the adverse impacts of the proposals on consumers in rural and underserved communities; and (2) negative impacts to the cost and availability of credit to small businesses.

I came away from the Panel meeting with more questions than answers. As a result, I strongly recommend that the CFPB provide me and the other small businesses with the information we need to adequately understand the complexities and costs of the proposals so that we can provide informed feedback. I urge the Bureau to seriously consider the concerns raised by the SERs in the Panel meeting and provide a more data-driven analysis and proposal for us to review and provide comments.

<u>Specific Concerns with the CFPB Proposal</u>

Complexity and Costs

The complexities of this proposal are far beyond what I've experienced in my state—and Virginia has one of the most, if not the most, complex regulations in the country. Implementation of the current Virginia law took effect in 2009 and hit our family-owned business hard. At the time, we had 5 storefront locations in rural areas and had plans to expand into more rural locations. That did not happen after the law was passed.

While there may have been good intentions behind the law, many of the changes had adverse effects on both lenders and borrowers. Most small lenders went out of business. Our company was forced to close two stores, which were located in rural areas where customers have few options for the loans they need. In fact, since we closed our stores, not one loan company has moved into either community to fill the credit void.

The financial impact was harsh, the human toll was painful. We had to lay off employees who had good benefits and a number of them were women who were sole providers for their families. The happy customers we were in business to serve were no longer happy. The credit product they knew in the past became almost impossible to use. Customers were upset and our managers were in tears because the changes were as hard to explain as they were to understand. In my reading of the CFPB proposals, I find that they are so difficult for ME to understand that I cannot

imagine how we would explain them to our customers. Based on what I can understand of the restrictions the CFPB is proposing, the impact on our company and our customers will be that there will be no options left in our communities for short-term credit.

In the absence of adequate small business impact data provided by the Bureau, I cannot begin to quantify the total cost of what the CFPB measures would be. I can provide cost examples from our Virginia experience. However, based on my reading of the CFPB proposal and my knowledge of the Virginia law, the costs of complying with the CFPB proposal would be at least as severe as the changes to our state law.

One such example is software costs. Based on my experience in Virginia, the CFPB's estimates of software conversion costs to implement its proposals grossly understate the true costs. When the new Virginia law was implemented in 2009, our company went through 5 different software companies over the span of 4 years before finding one that could comply with the new regulations. The attached chart (Attachment I) details our software conversion cost. However, this cost does not include our having to run multiple software platforms simultaneously at times, just to handle the number of regulatory changes. Nor does it include computer hardware costs, the costs of increased payroll and training, customer wait time and various related cost factors. And based on our experience, we will not know what the real costs will be until we get into the process of making the changes and sourcing the vendors.

Another example is training costs, which are directly proportional to the complexity of the transaction. Attachment II shows actual training costs for a new hire in our company for the period before implementation of the complex Virginia law in 2009 and the period following implementation to present. Additionally, we have made a good faith estimate of what those same costs might be under the CFPB proposals—as we understand them. As you can see, the cost for our company to train a newly hired employee increased 163.4% when the 2009 state law became effective. Our estimated cost for the same level of training under the CFPB proposals represents a 108% increase over current costs. With these estimated figures for the CFPB proposals, our training cost for one new employee would be more than five times higher than it was in 2008. And these costs do not even include the re-training of existing employees.

These are but two examples of how costly the CFPB regulatory requirements would be on small businesses, based on our experience in Virginia. It is important to note that these are fixed expenses that do not vary with loan volume. Since the cost of a loan in Virginia is a fixed fee, there is no way for a small business to recover any of the increase in fixed expenses. The only lenders that seem to be surviving in Virginia are the largest lenders who can make up these fixed costs with loan volume. Small lenders like my business were clearly hit the hardest.

In addition to these hard costs, the complexity of the transaction under the CFPB's proposal would lengthen customer wait times and increase their frustration with the product. Our employees and customers would relive the Virginia experience all over again—but at an exponentially higher level.

Financially, we would not be able to remain in business, once all remaining costs of the CFPB proposals are considered.

Finally, I cannot see how the complexities of our Virginia state law and those in the CFPB proposal could possibly work together. Here's just one example. Virginia's law mandates that the borrower's minimum loan term is determined by pay frequency: minimum 14 day loans for consumers who are paid weekly; 28 days for bi-weekly; 31 days for semi-monthly; and 62 days for monthly. Under the CFPB proposal, weekly, bi-weekly and semi-monthly paid customers in Virginia would fall under the short-term covered loan rules. Monthly paid customers fall under long-term covered rules—but because they have a balloon payment (single pay loan), they would fall back under short-term covered loan rules if you use the ability to repay (ATR) method. If I'd like to use the alternative method, I'd have to go back to the long-term covered loan alternatives. But the NCUA method will clearly not be profitable, due to the 28% APR cap. The 5% PTI would not be profitable either, as the 5% is far too low. This means the only option a monthly paid customer in Virginia would have is the ATR method. If you, the Panel members, are confused by reading this, imagine how confused I am—and how utterly confusing it would be to explain all this to my customers. I am concerned and bewildered by the fact that CFPB has not taken the time or the trouble to look at these kinds of conflicts with state laws.

Impact on Rural and Underserved Communities
We live in a small town and are often stopped by our customers in public places and thanked for being here to help them out. The large majority of our customers are extremely pleased with our products and service. We know our customers by face and name and have a great working relationship with them.

Our family business always has been, and will continue to be, a proud sponsor of local businesses and charities in our communities. We've been a five-year sponsor of the Scott M. Fisher Foundation Fund for suicide prevention, as well as an on-going supporter of the local Volunteer Fire Department, and The Free Clinic of Culpeper, to name a few.

We have the support of our communities and I am greatly concerned that the CFPB proposals will have a severe ripple effect throughout our small towns—negatively impacting our company, our customers and our communities. Not only will our customers be left without suitable credit options, our employees will lose good-paying jobs with benefits in communities where there are few employment opportunities. And the towns' businesses, which depend on the purchase of goods and services by our company, employees and customers, will greatly suffer.

Impact of the Cost and Availability of Credit to Small Businesses
With no data on which to support its hypothesis, the Bureau believes there are very few small businesses that depend on short-term loans to fund their business. That is simply not true—and the negative consequences to these local businesses will be dire.

We have a number of small business customers who use our vehicle title loans as a source of funds for their businesses.

I've got a homebuilder, for example, who says he does not have time to jump through the hoops and fill out all the documentation to get a bank loan—even if he could qualify. He uses our loans as a cash flow tool. He understands the cost of our loans, only borrows the amount he needs (versus a larger bank loan) and knows exactly when he can pay us back.

Another customer owns a janitorial service and has taken out title loans to cover employee payroll while he waits to be paid for completed jobs.

These are just two illustrations of the importance of our service to these vital service-providers in our communities.

Closing Thoughts
Again, I am most appreciative of being able to participate in this process. My overall concern, however, is that we SERs did not have the benefit of appropriate information from the CFPB upon which we could have given more substantive feedback. My earnest request is that the CFPB conduct the research required in order to answer our questions, address our issues and produce an alternative set of proposals that take that information into account.

Sincerely,

Brandon Payne

Attachments

Attachment I

Software Costs

Software	Initial Purchase Cost	Maintenance fee/Year (#of Stores)	Years Used	Total Costs
BEST Inc	Purchased prior to 2009	$1000/Store (5 for 1yr) $1000/Store (3 for 3yrs)	4	$14,000.00
BetaCom	$7,000.00	None	1	$7,000.00
MasterTechSoft (assisted with Development)	$5,000.00	None	2	$5,000.00
Ksoft	$15,000.00	$300/Store (3)	3	$17,700.00
Cashwise	$17,000.00	$3140.00/Store (3)	2	$26,420.00

Attachment II

New Hire Training Hours and Costs

Short Term and Long Term Loans with Balloon Payments

Original Virginia Payday Loan Laws (2002-2008)		Post Virginia Law Change (2009-Present)		Estimates With CFPB Proposal	
Training Topic	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**
Underwriting Documents	4 hours 2 hours/Trainer 2 hours/ Trainee	Underwriting Documents	8 hours 4 hours/Trainer 4 hours/ Trainee	Underwriting Documents	16 hours 8 hours/Trainer 8 hours/ Trainee
• Documents required for loan application		• Documents required for loan application		• Documents required for loan application	
Training Topic	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**
Underwriting Loan	20 hours 10 hours/Trainer 10 hours/ Trainee	Underwriting Loan	42 hours 21 hours/Trainer 21 hours/ Trainee	Underwriting Loan	84 hours 42 hours/Trainer 42 hours/ Trainee
• Qualifying for loan • Understanding documents provided		• Qualifying for loan • Understanding documents provided		• Qualifying for loan • Understanding documents provided	
Training Topic	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**
Software and Reporting Systems	60 hours 30 hours/Trainer 30 hours/ Trainee	Software and Reporting Systems	120 hours 60 hours/Trainer 60 hours/ Trainee	Software and Reporting Systems	180 hours 90 hours/Trainer 90 hours/ Trainee
• Company Software • 3rd Party Reporting Systems		• Company Software • State Mandated Reporting System		• Company Software • State Mandated Reporting System • Bureau Mandated Reporting System	
Training Topic	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**	**Training Topic**	**Hours/Trainer & Trainee**
Compliance & Regulatory Training	32 hours 16 hours/Trainer 16 hours/ Trainee	Compliance & Regulatory Training	80 hours 40 hours/Trainer 40 hours/ Trainee	Compliance & Regulatory Training	160 hours 80 hours/Trainer 80 hours/ Trainee
• Loan Terms and conditions		• Loan Terms and conditions		• Loan Terms and conditions	
Total Hours: 58 hours (8 Days)		**Total Hours: 125 hours (16 Days)**		**Total Hours: 220 hours (28 days)**	
Total Training Costs: $1044.00 Trainer: $10.00/hour X 58 hours = $580.00 Trainee: $8.00/hour X 58 hours= $464.00		**Total Training Costs: $2750.00** Trainer: $12.00/hour X 125 hours = $1500.00 Trainee: $10.00/hour X 125 hours= $1250.00		**Total Training Costs: $5720.00**** Trainer: $15.00/hour X 220 hours = $3300.00 Trainee: $11.00/hour X 220 hours= $2420.00	

**** Also with the new CFPB proposal all current employees would need training on the new regulations. We estimate that it would take 91 hours (12 days). With an average salary of $15.00/employee and 12 employees, this would cost $16,380.00 ($1365.00/employee), not including the cost of the person conducting training. ****

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Scott Garrett:

Question 1:

In a recent National Mortgage News article, it was revealed that "CFPB officials repeatedly acknowledge its methodology could over-count the potential discrimination by firms, but say they prefer that to the alternative where bias is underestimated."[1]

The CFPB's jurisprudence seems to acknowledge and accept the certainty that innocent people will be wrongly accused and fined. Members of this committee on both sides of the aisle are concerned about the CFPB's methodology. Why are we learning about the CFPB's acknowledgment of the flaws of its proxy methodology through the *American Banker* and not directly from you, the Director of the CFPB?

Response

The Consumer Financial Protection Bureau has been transparent about the details of the proxy methodology used in its fair lending analysis, including the risks and limitations. On September 17, 2014, over a year before the publication of the article you reference, the Bureau published a white paper, *Using Publicly Available Information to Proxy for Unidentified Race and Ethnicity*,[1] that details the Bayesian Improved Surname Geocoding (BISG) methodology the Bureau uses to calculate the probability that an individual is of a specific race and ethnicity based on his or her last name and place of residence. The Bureau's study reported the potential for overestimation and explained its likely cause: the racial and ethnic makeup of mortgage applicants is not particularly representative of the general population. When the proxy is applied to data where the applicants are more representative of the general population, such as data on auto loan borrowers, this perceived overestimation may disappear or decrease significantly. Moreover, in choosing its methodology, as part of a robust deliberative process, the Bureau did careful analysis of other available methods based on publicly available data, and determined that this proxy methodology was the method best suited to accurately estimate the full scope of consumer harm. To foster further dialogue and transparency with regulated entities, in connection with the release of the report, the Bureau made available the statistical software code and provided links to the publicly available census data used to build the proxy to enable lenders

[1] Rachel Witkowski, *"CFPB Overestimates Potential Discrimination, Documents Show"*, National Mortgage News, September 23, 2015.
http://www.nationalmortgagenews.com/news/regulation/cfpb-overestimates-potential-discrimination-documents-show-1062005-1.html?zkPrintable=1&nopagination=1

[1] http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

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to replicate the analysis performed by the Bureau. A discussion of BISG proxy methodology is also included in the Bureau's 2015 Fair Lending Report.[2]

The goal of the Bureau's fair lending supervisory and enforcement activity is to identify and redress illegal and discriminatory pricing practices. The Bureau uses the BISG method proxy where self-reported data are unavailable because the BISG proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. The BISG proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity.

This approach is designed to arrive at the best estimate based on publicly available data of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. These alternative methods do not typically suggest an absence of discrimination or consumer harm, but rather a lower level than the Bureau's original estimates. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios. In other instances, the Bureau has retained its original estimates, for example, where we have concluded that the proffered alternatives would underestimate the level of discrimination and harm.

As stated in our white paper, the Bureau is committed to continuing our dialogue with other federal agencies, lenders, advocates, and researchers regarding the Bureau's methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. The Bureau expects the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance.

Question 2:

Joe Rodriguez, a former CFPB fair lending attorney, recently said this to the press:[2]

"It's an inherent issue with the use of a proxy and there really isn't a good answer for it, which I suspect is why you don't see much detail on the remuneration of borrowers in the two settlements that have been made public to date" by the CFPB, said Joe Rodriguez, who formerly worked in

[2] http://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf.

[2] Rachel Witkowski, *"CFPB Overestimates Potential Discrimination, Documents Show"*, National Mortgage News, September 23, 2015.
http://www.nationalmortgagenews.com/news/regulation/cfpb-overestimates-potential-discrimination-documents-show-1062005-1.html?zkPrintable=1&nopagination=1

the CFPB's fair-lending group. "In other words, the way the bureau applies the proxy for determining the overall damage calculation vis-á-vis a lender's portfolio doesn't really work when applied to individual consumers for remuneration because it would result in remuneration being distributed to large numbers of people who in all likelihood aren't [minority or other protected class] borrowers, or even disadvantaged by the dealer markup policy."

Do you agree with Mr. Rodriguez's, a former CFPB employee, assessment? And, if you disagree with Mr. Rodriguez, please explain why.

What is an acceptable error rate for misclassifying the background of consumer credit applicants? A study conducted by Charles River Associates found the CFPB's error rate to be as high as 41 percent. How does the CFPB rebut the Charles River study?

What is an acceptable error rate for overstating pricing disparities between different groups of consumers?

Response

The Bureau and the Charles River study you cite both agree that there are racial and ethnic disparities in pricing resulting from discretionary dealer markup and compensation policies, and that a proxy can be used to estimate both pricing disparities and the number of consumers potentially harmed. The disagreement is regarding how many borrowers were harmed and by how much.

As previously noted, the Bureau's approach is designed to arrive at the best estimate based on publicly available data of the total number of harmed consumers and to accurately identify the full scope of harm. The Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to identify the number of harmed borrowers and the amount of harm. These alternative methods do not typically suggest an absence of discrimination or consumer harm, but rather a lower level than the Bureau's original estimates. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios. In other instances, the Bureau has retained its original estimates, for example, where we have concluded that the proffered alternatives would underestimate the level of discrimination and harm.

Mr. Rodriguez's assessment assumes only one way to determine redress. The individual identities of consumers who receive redress may be determined in various ways, and is typically the result of negotiations with each lender. For example, redress may go to all consumers with a high likelihood of being in one of the affected groups who also paid a markup higher than the non-Hispanic white average markup. Alternatively, consumers may be asked to self-identify or otherwise affirm that they are members of one of the affected groups. When necessary, a settlement administrator may be involved to contact consumers, distribute the funds, or ensure

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that impacted borrowers receive compensation, as appropriate. In general, the Bureau may assist such a settlement administrator in identifying victims by reviewing loan data.

With regard to the Bureau's proxy methodology, as previously stated, in 2014, the Bureau published a white paper detailing its methodology. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other available methods using publicly available data. In choosing its methodology, as part of a robust deliberative process, the Bureau did careful analysis of other available methods based on publicly available data, and determined that this proxy methodology was the method best suited to accurately estimate the full scope of consumer harm.

Question 3:

The September 24th article in the *American Banker* quoted an internal CFPB memo to you from May 20, 2013 which commented upon a "market-tipping settlement" that would "eliminate dealer markup."

The article states: "Such a plan of attack lends support to what the industry has long feared: that the CPFB's efforts to cite auto lenders for unintentional discrimination were really a means to control competitive prices negotiations between lender and dealers."

In general, should enforcement actions, in which the defendant might be under great pressure to settle for reasons perhaps unrelated to the merits of your allegations, be used as a tool to change a compensation mechanism that applies to an entire industry?

An April 24, 2013 internal CFPB memo reportedly stated that the "legal authority for… potential rulemakings" to force dealers to non-discountable flat frees was "unclear". Some have alleged that the CFPB sought to change policy via enforcement actions. How do you respond to this allegation?

Response

The Bureau's mission is to protect American consumers in the financial marketplace and ensure they are treated fairly. Accordingly, the Bureau continues to work toward the elimination of illegal and discriminatory pricing in the auto finance marketplace. The Bureau has many tools for overseeing and enforcing our nation's fair lending laws. These tools include the examination of institutions subject to our supervisory authority, and where appropriate, undertaking enforcement actions.

The Bureau's supervisory and enforcement resolutions have not required lenders to eliminate dealer markup. The Bureau is concerned that failure to properly or consistently monitor discretionary policies and practices for compliance with anti-discrimination laws has been a contributing factor in discrimination in auto lending. Our March 2013 bulletin, *Indirect Auto*

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Lending and Compliance with the Equal Credit Opportunity Act,[3] was issued to provide clarity and guidance for institutions regarding the application of the Equal Credit Opportunity Act and Regulation B, and our attendant supervisory and enforcement approach in this area. The bulletin also indicated that lenders may choose to adopt non-discretionary pricing policies as an alternative method of mitigating fair lending risks, but did not require this result.

Question 4:

A letter sent by thirteen Democratic Members of the House Financial Services Committee in May 2013[3] asked you to name the studies the CFPB relied upon to justify its policy of eliminating the ability of a customer to get a discount in the showroom. According to an *American Banker* article, you apparently relied on a study by the Center for Responsible Lending (CRL). The CRL's studies have been thoroughly discredited, including by the Washington Post's Fact Checker.

Did the agency review the contrary studies refuting the CRL's study which you relied upon?

Please provide me a list of all the studies that you relied upon in formulating your indirect auto finance policy.

Response

The Bureau aims to eliminate illegal and discriminatory pricing practices, and ensure that consumers are able to obtain fair and appropriate vehicle financing. As a data-driven agency, we are always interested in analyses that relate to our work. Historically, the failure to properly or consistently monitor discretionary policies and practices for compliance with anti-discrimination laws has been a contributing factor in discrimination in auto lending and in other product markets, like mortgages. This historical experience has been documented by scholars,[4] and is reflected in relevant case law,[5] and previous Department of Justice enforcement actions;[6] we

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[3] *See* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

[3] Congresswoman Terri Sewell et al, House Financial Services Committee Democrats Letter to CFPB Director Richard Cordray on Alleged Disparate Impact in Auto Lending (May 28, 2013), available at https://www.nada.org/WorkArea/DownloadAsset.aspx?id=21474838504

[4] For example, *see* Cohen, Mark A. (2012). "Imperfect Competition in Auto Lending: Subjective Markups, Racial Disparity, and Class Action Litigation." Review of Law and Economics vol. 8, no. I (21-58). Working Paper *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=951827

[5] *See*, Coleman v. Gen. Motors Acceptance Corp., 196 F.R.D. 315 (M.D. Tenn. 2000), *vacated and remanded on unrelated grounds*, 296 F.3d 443 (6th Cir. 2002); Jones v. Ford Motor Credit Co., 2002 WL 88431 (S.D.N.Y. Jan. 22, 2002); Smith v. Chrysler Fin. Co., 2003 WL 3287 I 9 (D.N.J. Jan. I 5, 2003); Osborne v. Bank of America Nat' l Ass' n, 234 F.Supp.2d 804 (M.D. Tenn. 2002); Wise v. Union Acceptance Corp., 2002 WL 31730920 (S.D. Ind. Nov. 19, 2002).

[6] *See, e.g.* , United States v. Springfield Ford, Inc., No. 2:07-cv-03469-PBT (E.D. Pa. Aug. 21, 2007); United States v. Pacifico Ford, Inc., No. 2:07-cv-03470-PBT (E.D. Pa. Aug. 18, 2007); United States v. NARA Bank, et al., No.

remain concerned about indirect lending programs built around discretionary compensation policies and financial incentives that create fair lending risks.

Question 5:

If pricing differentials between groups are based on a legitimate business rationale, there is no disparate impact discrimination. This was recently addressed by the Supreme Court in the *Inclusive Communities* case.

The CFPB appears to cherry pick what it believes to be a legitimate business rationale as to why a dealer may cut into its own retail margin to give a customer a discount. At first, the CFPB contended that there were no such legitimate business rationales. Under the Honda and Fifth Third settlements, you now acknowledge that credit can be discounted to beat a competing offer. However, in two 2007 consent orders with dealers, the Department of Justice identified six other legitimate business rationales for discounting credit for consumers.

Do you agree with the Department of Justice that a dealer giving a customer a discount on credit because the customer has a monthly payment constraint is a legitimate business rationale that is valid under the Equal Credit Opportunity Act?

Response

The Bureau remains concerned about indirect lending programs built around discretionary compensation policies and financial incentives that create fair lending risks. Because of this concern, lenders should be careful about assuming that individual dealer-level actions, such as the one you suggest from a Department of Justice consent order, will fully address their own fair lending risks. Dealers are not subject to the Bureau's jurisdiction.

The question of whether controls, or explanatory factors, should be incorporated into the Bureau's and Department of Justice's analyses of racial or ethnic disparities in an indirect auto lender's discretionary compensation policies is determined based on each institution's particular policies, practices, products, and channels that occur in its lending program. Because the Bureau takes a data-driven approach to its work that is tailored to specific lenders' policies, it would not be appropriate simply to adopt certain controls as a wholesale matter and apply them to loan data without particularizing them for context. As noted in the Bureau's 2015 Fair Lending Report:

2:09-cv-07124-RGK-JC (C.D. Cal. Nov. 18, 2009); see also United States v. Countrywide Fin. Corp. No.2:11-cv-10540-PCG-AJW (C.D. Cal. Dec. 28, 2011); United States v. AIG Fed. Sav. Bank, No. 1:99-mc-0999 (D. Del. Mar. 4, 2010).

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> [T]he Bureau's examination and investigation process provides ample opportunity for a lender to provide feedback on the fair lending analysis we tailor for that institution. When, during an examination or investigation, we identify potential disparities, we share our initial findings with the institution, and solicit the institution's response. As part of this process, we have considered, on a case-by-case basis, many of the controls and recommendations offered by institutions and, where supported by the facts of a particular case, have incorporated them into our analysis. This process represents an ongoing dialogue between specific institutions and the Bureau that is iterative and where we remain open to making further improvements in our analysis of fair lending issues based on the facts and the data that are presented.[7]

The Bureau's and Department of Justice's resolutions in Honda and Fifth Third does not represent a shift in the Bureau's policy in overseeing and enforcing compliance with the Equal Credit Opportunity Act in indirect auto lending.

As a general matter, lenders will likely consider a variety of factors in designing a discretionary compensation system, including the extent to which the fair lending risk presented by discretionary compensation is mitigated, whether the system would create new risks of discrimination or other consumer harm, and the economic sustainability of the system. This approach is consistent with the Bureau's March 2013 bulletin,[8] which notes that lenders should take steps to ensure that they are operating in compliance with the ECOA and Regulation B, which may include, but are not limited to, imposing controls on dealer markup and compensation policies, or otherwise revising dealer markup and compensation policies, and also monitoring and addressing the effects of those policies, so as to address unexplained pricing disparities on prohibited bases; or eliminating dealer discretion to mark up buy rates and fairly compensating dealers using another mechanism, such as a flat fee per transaction, that does not result in discrimination. The substantial limitation of discretionary markup required under the Honda and Fifth Third settlements reflect a significant control on that discretion, as contemplated by the bulletin.

Question 6:

Recent internal CFPB documents obtained by *American Banker* revealed the CFPB method for detecting discrimination by indirect auto lenders can overestimate potential bias, resulting in higher payments for lenders cited by the agency.[4] In these documents, CFPB officials

[7]Fair Lending Report of the Consumer Financial Protection Bureau, *available at* http://files.consumerfinance.gov/f/201504_cfpb_fair_lending_report.pdf.
[8] http://files.consumerfinance.gov/f/201303...march_-Auto-Finance-Bulletin.pdf.
[4] Rachel Witkowski, *"CFPB Overestimates Potential Discrimination, Documents Show"*, National Mortgage News, September 23, 2015.

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repeatedly acknowledge its methodology could over-count the potential discrimination by firms, but say they prefer that to the alternative where bias is underestimated.

What is the CFPB doing to correct issues with its methodology to ensure that its data has a higher accuracy rate?

Is it ethical to publicly accuse and prosecute a finance source for discrimination based on evidence that your own staff views as inaccurate and flawed?

Response

The Bureau, the Department of Justice, and other federal agencies have confidence in the use of proxies in fair lending supervisory and enforcement empirical methodologies. The Bureau's approach is designed to arrive at the best estimate based on publicly available data of the total number of harmed borrowers and to accurately identify the full scope of harm. The Bureau's analysis demonstrates that its proxy is more accurate at approximating the overall reported distribution of race and ethnicity than other methods using publicly available data. The Bureau's proxy assigns an individual probability of inclusion in a prohibited-basis group based on both geography and surname, whereas other proxies use geography or surname alone in predicting individual applicants' reported race and ethnicity. Consistent with the practices of other agencies, the Bureau makes final determinations regarding discriminatory outcomes and their scope in dialogue with individual lenders, and carefully considers every argument lenders make about alternative ways to estimate the number of harmed borrowers and the amount of harm. These alternative methods do not typically suggest an absence of discrimination or consumer harm, but rather a lower level than the Bureau's original estimates. In some instances, the Bureau has adopted changes and reduced our estimates in response to specific alternatives offered by individual lenders with regard to their specific loan portfolios. In other instances, the Bureau has retained its original estimates, for example, where we have concluded that the proffered alternatives would underestimate the level of discrimination and harm.

As previously noted, fair lending methodologies do evolve as enhancements are developed. The Bureau is committed to continuing our dialogue with other federal agencies, lenders, advocates, and researchers regarding our methodology, the importance of fair lending compliance, and the use of proxies when self-reported race and ethnicity is unavailable. We expect the methodology will continue to evolve as enhancements are identified that further increase accuracy and performance.

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http://www.nationalmortgagenews.com/news/regulation/cfpb-overestimates-potential-discrimination-documents-show-1062005-1.html?zkPrintable=1&nopagination=1

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Question 7:

It was reported that Rick Bagy, President of Central Bank of St. Louis, was exiting the indirect auto loan business due to the CFPB's actions in this area. The president of the bank told the press: "The regulators told me that if I wasn't happy with the costs in the past, they would be going up dramatically."

An entity that has not been accused of any wrongdoing felt compelled to exit the auto loan market because of the CFPB's enforcement actions and threat of greater regulatory costs. Has the CFPB given any thought to the potential consequences of less competition, which could ultimately mean higher prices for consumers?

What has the CFPB done to assess consumer impact before initiating enforcement actions?

Response

The Bureau is working to ensure that lending practices are fair and equitable and that credit markets function competitively and efficiently for all consumers and businesses. We take a data-driven approach to our work and would be interested in any analyses of the impact of greater lender adoption of non-discretionary compensation programs, lower caps, or more stringent compliance management systems.

The Bureau has seen no indication that our work in indirect auto lending has resulted in credit being restricted or made more costly for consumers. To the contrary, the number of new auto loans originated in the first half of 2015 was up eight percent over the prior year; for auto loans, this marks a 45 percent increase since 2011 and a nine-year high.[9]

Further, a November 2015 press release from the National Automobile Dealers Association predicts that sales of new cars and light trucks will continue their post-recession climb, reaching an all-time high of 17.71 million vehicles in 2016.[10]

Question 8:

According to internal memos obtained by the *American Banker*, CFPB "acknowledged that eliminating dealers' discretion could have unintended consequences." Eliminating a dealer's ability to discount credit in the showroom would mean higher prices for those customers who

[9] *See* Financial Report of the Consumer Financial Protection Bureau for Fiscal year 2015, *available at* http://files.consumerfinance.gov/f/201511_cfpb_report_fiscal-year-2015.pdf

[10] National Automobile Dealers Association. (2015). NADA forecasts 17.71 million new vehicle sales in 2016, citing, in part, because of low interest rates on auto loans [Press release]. Retrieved from: https://www.nada.org/CustomTemplates/DetailPressRelease.aspx?id=21474842879

might have gotten a better rate from the dealer, and on a macro level, this diminution of competition would likely result in higher credit prices for all.

This committee favorably reported H.R. 1737, a bill that would require the CFPB at least study the impact of eliminating dealer discounts by a vote of 47-10. Do you object to that provision?

Response

At this time, there is no need to speculate as to what guidance, if any, the Bureau will proffer in the future regarding indirect auto financing or the studies that could be conducted in preparation of such future guidance. The Bureau will continue to engage with all market participants to allow the entire consumer financial marketplace to benefit from an open and ongoing dialogue.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Ruben E. Hinojosa:

Question 1:

Our nation faces a severe student loan crisis. Student Loan debt now stands at about $1.2 Trillion and tops out credit card debt, Auto Loan Debt, and Home Equity Debt. Moreover, default rates on Student Loans keep rising ever year. The Wall Street Journal reported today that new rules by the CFPB may require student loan servicers to help lower monthly payments in order to lessen chances of default, and also address debt-collection practices for student loans.

a. Can you tell us more about efforts at the CFPB to provide student loan relief?

Response

The Consumer Financial Protection Bureau has been working on a number of fronts to assist borrowers managing student loan debt. Since 2014, the Bureau has been examining student loan servicers for compliance with consumer financial law. In the Bureau's student loan servicing examinations, examiners have identified a number of violations, including unfair and deceptive acts or practices, and directed the servicers to correct their conduct. Several editions of the Bureau's *Supervisory Highlights* provide more information on our supervisory efforts.[11]

In May, the Bureau partnered with the Department of Education and the Department of the Treasury to launch a public inquiry into student loan servicing practices.[12] We called on members of the public, including student loan borrowers, market participants, policy experts and organizations representing students and consumers, to provide feedback related to servicing practices and recommendations to mitigate defaults and improve borrower outcomes. In response, the Bureau received more than 30,000 comments, identifying a broad range of student loan servicing practices that may cause problems for consumers. In September, the Bureau published *Student Loan Servicing*,[13] a report documenting widespread problems as identified in these public comments and offering recommendations for reform. This report highlighted the role servicers play when advising borrowers about available options to lower monthly loan payments. The Bureau also joined with the Departments of Education and Treasury to publish a

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[11] *See* Fall 2014 *Supervisory Highlights*, at 14, *available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf; Summer 2015 *Supervisory Highlights*, at 9, *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf; Fall 2015 *Supervisory Highlights*, at 21, *available at* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.

[12] *See* http://www.consumerfinance.gov/newsroom/cfpb-launches-public-inquiry-into-student-loan-servicing-practices/.

[13] http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

Joint Statement of Principles on Student Loan Servicing,[14] a shared framework to strengthen the delivery of service to student loan borrowers, improve outcomes and reduce delinquencies. We will continue to monitor the market for trends and developments and evaluate possible policy responses, including potentially proposing rules.[15] Possible topics for consideration might include specific acts or practices and consumer disclosures.

b. Just this summer, Moodys indicated that $40 Billion worth of AAA student loan debt is at risk of being marked junk. This is largely due to federal loan forgiveness and delayed repayment plans that have made investors nervous about when exactly they will get paid on the loans. Are you worried that the new CFPB efforts in this area could have similar un-intended consequences?

Response

The vast majority of federal student loan borrowers are entitled to access income-driven repayment plans and other consumer protections under federal law. The Bureau continues to focus on barriers to success for student loan borrowers and the root causes of the current, elevated levels of student loan delinquencies and defaults. In addition, the Bureau has made it a priority to take action against companies that are engaging in unlawful servicing practices.[16]

Private lenders now fund fewer than 10 percent of all new student loans (private student loans), which do not generally feature the sort of consumer protections identified by Moody's that are available to borrowers with federal student loans. As noted in the Bureau's October 2015 Annual Report of the CFPB Student Loan Ombudsman,[17] the loans that back the securities discussed by Moody's were made under the Federal Family Education Loan Program (FFELP), a bank-based student loan program under which no new loans have been originated since 2010. Since Congress enacted the Student Aid and Fiscal Responsibility Act (SAFRA) in 2010, ending FFELP, all new loans that feature these consumer protections are made directly by the Department of Education and held by the federal government. To the extent that securitization of federal loans is still a feature in the marketplace, it is driven entirely by legacy loans made under FFELP, a segment of the market that is in runoff. As a result of this change in federal law, new federal loans are no longer securitized and sold to investors, ensuring that the tension between private investors' and borrowers' interests that you describe is not an enduring feature of the federal student loan programs. We continue to have concerns about the level of service provided to borrowers with these legacy FFELP loans and are closely monitoring this segment of the student loan marketplace.

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[14] http://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf.
[15] *See* http://www.consumerfinance.gov/blog/fall-2015-rulemaking-agenda/.
[16] *See* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.
[17] http://files.consumerfinance.gov/f/201510_cfpb_annual-report-of-the-cfpb-student-loan-ombudsman.pdf.

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Question 2:

A year ago, the Bureau announced an action against the former for-profit college chain Corinthian Colleges, Inc. in response to its scheme that lured thousands of students into expensive loans and conducted abusive collection tactics that preyed on students – often while they were still in school. A few weeks ago, the CFPB announced $480 million in debt forgiveness for students that were victimized by Corinthian Colleges.

- Moving forward, how do you expect that the Corinthian experience will inform the Bureau's work with respect to institutional student loan programs at "for-profit colleges"?

Response

The Bureau remains deeply concerned about risks facing student borrowers in the for-profit space and will continue to be vigilant in rooting out harmful practices. As a result, we have taken a number of actions to protect consumers in this area. The Bureau initially filed a lawsuit against Corinthian Colleges, Inc. in September 2014 to address its illegal lending and collections practices. As you note, the Bureau secured $480 million in debt relief to current and former Corinthian students in February 2015.[18] At that time, the Bureau worked with the Department of Education to ensure the purchaser of the Corinthian schools agreed to certain terms to ensure that the schools are operated in a fair and transparent manner. These protections included not offering private student loan programs, halting lawsuit threats and improper debt collection activities, removing negative information from student borrowers' credit reports, implementing a number of specific measures regarding withdrawal policies, and providing clear information on job prospects. Subsequently, on October 27, 2015, the Bureau resolved its lawsuit against Corinthian Colleges, Inc. with a default judgment for $530 million and a prohibition against the company from engaging in future misconduct.[19] In particular, the judgment prohibited Corinthian from misrepresenting career prospects and career services and engaging in improper debt collection tactics. The Bureau's work will continue to be informed by these experiences and by our data-driven analysis of how best to protect consumers in this market.

Question 3:

The CFPB recently finalized several important changes to its mortgage rules in order to facilitate lending in rural and underserved areas, such as my district.

[18] *See* http://www.consumerfinance.gov/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/.
[19] *See* http://www.consumerfinance.gov/newsroom/cfpb-wins-default-judgment-against-corinthian-colleges-for-engaging-in-a-predatory-lending-scheme/.

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- Can you elaborate on these changes and how they will expand access to responsible mortgages in rural and underserved areas?

Response

The Bureau's final rule, which was issued in September 2015[20] and published in the *Federal Register* in October, expands the Bureau's regulatory definitions of small creditor and "rural area" to allow more small creditors, and small creditors who operate predominantly in rural or underserved areas, to originate mortgage loans with the benefit of special provisions related to, and exemptions from, certain regulatory requirements implemented under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[21] These requirements include those under the Bureau's ability-to-repay/qualified mortgage, high-cost mortgage, and higher-priced mortgage loan escrow rules. The Bureau estimates that the final rule changes will increase the number of small creditors by 700, and the number of small creditors who operate predominantly in rural or underserved areas by 1,700. Among the changes made by the final rule intended to facilitate access to credit in rural and underserved areas are the following:

- **Raises the loan origination limit for determining eligibility for small creditor status from 500 first-lien covered transactions to 2,000 first-lien covered transactions.** If a creditor and its affiliates together extended no more than 2,000 first-lien covered transactions during the preceding calendar year, the creditor may qualify as a small creditor in the current calendar year.

- **Excludes loans that the creditor or its affiliate originates and keeps in its portfolio from the loan origination limit.** When determining whether a creditor and its affiliates extended more than 2,000 first-lien covered transactions, loans held in portfolio are not counted toward the 2,000 loan origination limit.

- **Expands the definition of "rural area" that a creditor uses to determine if it is operating predominantly in rural or underserved areas.** The final rule expands the definition of "rural area" to include either: (a) a county that meets the current definition of a rural county; or (b) a census block that is not in an urban area as defined by the U.S. Census Bureau.

- **Adds two new safe harbors for creditors determining whether a property is located in a rural area.** A creditor will be able to rely on a new automated tool that will be provided on the Bureau's website and an automated address search tool available on the

[20] http://files.consumerfinance.gov/f/201509_cfpb_amendments-relating-to-small-creditors-and-rural-or-underserved-areas-under-the-truth-in-lending-act-regulation-z.pdf.
[21] Amendments Relating to Small Creditors and Rural or Underserved Areas Under the Truth in Lending Act (Regulation Z), 80 FR 59944 (Oct. 2, 2015).

Census Bureau's website. This tool is in addition to the current safe harbor county lists available on the Bureau's website.

- **Provides grace periods for small creditor, and rural or underserved, status.** The final rule allows a creditor that does not meet one or more of the requirements for a small creditor or a creditor that operates predominantly in rural or underserved areas in the preceding calendar year to operate, in some circumstances, as a small creditor or small creditor that operates predominantly in rural or underserved areas with respect to transactions with applications received before April 1 of the current year.

- **Extends the end of the temporary transition period for making balloon loans from January 10, 2016 to April 1, 2016.** The final rule extends the current temporary two-year transition period that allows certain small creditors to make balloon-payment qualified mortgages and balloon-payment high-cost mortgages, regardless of whether they operate predominantly in rural or underserved areas, to certain covered transactions for which the application was received before April 1, 2016.

The final rule went into effect January 1, 2016. The final rule was issued prior to the enactment of the Helping Expand Lending Practices in Rural Communities Act of 2015 on December 4, 2015.[22] That Act, among other provisions, modified the statutory requirements for rural status and is the subject of a Bureau rulemakings.

Question 4:

Many have argued that the CFPB's Qualified Mortgage Rule (QM) is proving to be too costly for independent community banks in South Texas and is limiting the availability of mortgages for consumers.

- Do you believe the QM rule has imposed too many costs disproportionately on community banks, and if so, what should Congress or the CFPB do to remedy this?

Response

The Bureau does not believe that the rule has imposed too many costs disproportionately on community banks. In fact, the Bureau has taken a number of steps to provide relief to small financial entities, including community banks, in its rulemakings, not only with respect to the ability-to-repay/qualified mortgage rule, but for other rules as well. Specifically, the Bureau has:

[22] Title LXXXIX of Pub.L. No. 114-94 (2015).

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- **Expanded the QM safe harbor for small creditors.** A small creditor has a broader safe harbor for its Qualified Mortgage (QM) loans.
  - Provided a safe harbor for QMs with APR spreads over APOR up to 350 basis points, whereas non-small creditors have a safe harbor for spreads up to 150 basis points.
  - Allowed a small creditor to make QMs with debt-to-income ratios (DTIs) that exceed the otherwise applicable 43 percent cap. (Small creditors must hold these loans in portfolio for three years).

- **Exempted small creditors in rural and underserved areas.** Small creditors who operate predominantly in rural or underserved areas are exempt from requirements to establish escrow accounts for higher priced mortgage loans and may offer QMs and HOEPA loans ("high-cost" mortgages as defined in the *Home Ownership and Equity Protection Act*) that have balloon payment features. QMs and HOEPA loans generally cannot have balloon payments.

- **Implemented a two-year pause for small creditors.** The Bureau placed a two-year pause (originally until January 2016) on the requirement that small creditors operate predominantly in rural or underserved areas, allowing small creditors to make balloon-payment QMs and balloon-payment high-cost mortgages regardless of whether they operate predominantly in rural or underserved areas, while the Bureau revisited and reconsidered the definition of "rural" for this purpose. With the Bureau's October 2015 revisions to the definition of "rural," it has also extended the pause from January 2016 to April 1, 2016.

- **Increased the number of entities that are small creditors and that lend in rural areas.** As noted in the previous response, in September 2015, the Bureau significantly expanded the definition of creditors that are "small creditors" and of "rural," thereby increasing the number of entities that qualify for relief provisions. The Bureau estimates the expanded definitions increase the number of small creditors from approximately 9,700 to approximately 10,400 (an increase of 700) and the number of rural, small creditors from about 2,400 to about 4,100 (an increase of 1,700). In addition, the Bureau is providing an automated tool to help creditors identify if their loans are made in rural or underserved areas.

As discussed in the previous response, the Bureau's final rule making the changes discussed above was issued prior to the enactment of the Helping Expand Lending Practices in Rural Communities Act of 2015 on December 4, 2015. That Act modified the statutory requirements for rural status and is the subject of a Bureau rulemakings.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Steve Stivers:

Question 1:

During your testimony in March 2015, we discussed the Bureau's proposed rules on general purpose reloadable (GPR) prepaid cards. As part of that discussion and during the most recent you said *"prepaid cards right now have no consumer protection whatsoever."* However, it is my understanding that the overwhelming majority of prepaid cards already carry important Regulation E protections. In addition, consumer deposits are held at a bank that provides FDIC-insurance on a pass through basis. Can you clarify what protections most providers are currently offering consumers?

Response

Some prepaid products—namely, payroll cards and certain types of government benefit cards—are explicitly covered by Regulation E. However, many other types of prepaid products, including general purpose reloadable (GPR) cards, are not directly subject to Regulation E, currently. The Consumer Financial Protection Bureau's proposed rule, if finalized, would create comprehensive consumer protections for prepaid financial products, including GPR cards, by bringing them within the ambit of Regulation E as prepaid accounts and create new provisions specific to these accounts.

Pursuant to a Department of Treasury rule, the issuer of any prepaid card that accepts federal payments is required, among other things, to comply with all of the requirements, and provide the cardholder with all of the consumer protections that apply to a payroll card under Regulation E. The Treasury rule also requires the account to be set up to meet the requirements for pass-through deposit or share insurance such that card funds are insured for the benefit of the recipient by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF). Based on the Bureau's outreach and research, we believe that many prepaid providers currently voluntarily comply with the Treasury rule in order for their cards to be eligible to receive Federal payments. Regulation E protections are neither universally nor consistently applied by GPR card issuers. For example, the Bureau found in our Study of Prepaid Account Agreements[23] that only 68 percent of GPR card account agreements reviewed indicated that the consumer would receive full Regulation E error resolution protections in the event of an unauthorized transaction.

Both the FDIC and the National Credit Union Administration have special rules regarding how prepaid accounts may qualify for pass-through insurance. In our Study of Prepaid Account Agreements, we found that only 61 percent of GPR card account agreements stated that

[23] http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.

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cardholder funds were protected by FDIC deposit (or NCUSIF share) insurance, and over 12 percent of GPR card agreements reviewed explicitly stated that funds were not insured.

Question 2:

I remain concerned that the Bureau's proposed prepaid card regulations would eliminate access to opt-in overdraft protection. Thousands of consumers that use this feature commented on the rule and told the CFPB about how overdraft has helped them purchase medication, utility bills, and make other essential purchases. We all agree that financial products and features should carry consumer protections. However, we must also be sure not to eliminate consumer access when implementing new rules. What options is the CFPB considering to make sure consumers who currently have or want access to overdraft protection do not lose access? One option being discussed is applying credit card protections only to higher overdraft limits. This is a position many Members of the Committee support. Is that an option you are exploring?

Response

The Bureau evaluated a range of potential approaches to overdraft services and credit features in connection with this rulemaking. The Bureau believes its proposed approach appropriately balances the need and desire of some consumers to access credit in connection with a prepaid card and the need for guard rails to make sure such credit is offered in accordance with provisions similar to other card-based credit (*i.e.*, credit cards). Nonetheless, the Bureau is continuing to study the feasibility of its proposed approach to overdraft, and is considering possible modifications to its proposal, including the various modifications suggested in the public comments. Commenters have suggested modifications including, for example, the adoption of a possible dollar-amount threshold. The Bureau will give these various approaches due consideration, in accordance with its obligations for notice-and-comment rulemaking pursuant to the Administrative Procedures Act.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Patrick E. Murphy:

Florida model

Question 1:

Director Cordray, I appreciate your efforts to protect consumers from abusive payday lenders and fundamentally unfair terms of credit. You have indicated on numerous occasions that the mission to protect consumers should not come at the expense of restricting access to emergency credit and shifting this demand from the regulated space into the dark. You and I have had numerous conversations about the "Florida model" of protecting consumers and preserving access to emergency credit for borrowers in need. I understand you are particularly concerned, as am I, about the problem of "rollovers", or people re-borrowing into a sequence of loans when they are not able to repay their initial loan when due. The Florida model, as you know, attempts to address this problem by strictly regulating both the lender and the borrower, and with compliance monitored through a loan database. Florida's law prevents rollovers and requires a 24-hour cooling off period between loans. In this regulatory environment, Florida has developed a payday lending industry that is relatively small compared to other states and has seen an 82% decrease in multiple outstanding loans since the database came online. If protecting consumers and preserving access to credit are indeed the two goals, Florida is a case study.

a. Why shouldn't Florida and other states that have implemented successful solutions to payday lending abuses continue their work without pre-emption by the Bureau?

b. Do you believe that the Bureau's objectives can be achieved through a framework in which states like Florida can be left to their own successes instead of a prescriptive rule in which they would be ignored?

c. If you believe Florida's 24-hour cooling off period is not sufficient, please explain why not and what would be an appropriate cooling off period to protect consumers while preserving access to needed emergency credit?

d. In the interest of exploring alternative ways to provide access to emergency credit in a regulated environment, please detail the work that the Bureau has done with prudential banking and credit union regulatory agencies to address safety and soundness concerns associated with making low-dollar, short-term, uncollateralized loans to borrowers with troubled credit histories?

Response

The Consumer Financial Protection Bureau recognizes that states have taken a variety of different approaches to regulation of the market for payday loans and we are looking carefully at

this work. If the Bureau adopts new federal rules in this market, such regulation would establish a federal floor for consumer protection in the affected markets. The federal floor would coexist with stricter consumer protection laws and regulations at the state and local level.

In considering appropriate federal regulation for this market, we are considering the lessons that can be drawn from state regulatory experience. In addition to regular communication with state regulators, the Bureau has examined the effect of certain components of state law on reborrowing patterns. Our March 2014 Data Point on payday loans showed that rates of reborrowing within a 14-day period of paying off a payday loan in states with waiting periods of at least one day, including Florida, were nearly identical to rates in states that permitted rollovers or same day reborrowing.[24] We continue to evaluate the effects of these state law restrictions on preventing consumer harm.

The Bureau also works closely with other regulators at the federal level. As part of the rulemaking process pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau consults with prudential regulators and other appropriate federal agencies about the consistency of our proposals with prudential, market, and other systemic objectives. We have undertaken this consultation on the proposals we are considering for regulation of payday, vehicle title, and similar loans. These consultations began prior to the release of our outline of proposals under consideration in March 2015 and are ongoing. Additionally, the Bureau engages in regular interagency communication and also coordinates activities through the Federal Financial Institutions Examination Council.

<u>Student loan servicing</u>

Question 2:

Student loans are one of the most pressing concerns for the millions of Americans who owe money or are in default. Private student loan servicers in particular have been the subject of numerous complaints for failing to work with borrowers in distress or default, and the Bureau's Student Loan Ombudsman recently identified concerns with respect to private student loan servicing.

- What can the Bureau do to meaningfully address concerns that private student loan providers are not working with distressed borrowers? What steps have been taken to date?

Response

[24] *See* http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf.

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The Bureau remains deeply concerned about student loan servicing issues, including loan servicing for both private and federal student loans, as identified by borrowers through complaints and other channels. That concern has led to a number of Bureau actions, including a public enforcement action against a bank for misstatements on billing statements, misrepresenting tax information, and engaging in illegal debt collection activities.[25] Additionally, during our examinations of student loan servicers, the Bureau has directed servicers to cease unlawful conduct like unfair practices relating to payment allocation, charging improper late fees, problems related to payment systems, misrepresentations about bankruptcy, and deficiencies in credit reporting policies and procedures.[26]

In May, the Bureau partnered with the Department of Education and the Department of the Treasury to launch a Request for Information into student loan servicing practices.[27] The public, including student loan borrowers, market participants, policy experts and organizations representing students and consumers, was asked to provide feedback related to servicing practices and recommendations to mitigate defaults and improve borrower outcomes. In response, the Bureau received more than 30,000 comments, identifying a broad range of student loan servicing practices that may cause problems for consumers.

In September 2015, the Bureau published *Student Loan Servicing*, a report documenting widespread problems as identified in these public comments and offering recommendations for reform.[28] This report highlights the role servicers play when advising borrowers, including private student loan borrowers, about available options to lower monthly loan payments. The Bureau has made it a priority to take appropriate action against companies that are engaging in illegal servicing practices, and that ongoing work includes addressing many of the problems outlined in this report.[29] The Bureau also joined with the Department of Education and Treasury to publish a *Joint Statement of Principles on Student Loan Servicing*, releasing a shared framework to strengthen the delivery of service to student loan borrowers, improve outcomes and reduce delinquencies.[30] The Bureau has also taken actions to ensure that students who are struggling to repay their loans are not further harmed by debt relief scams.[31]

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[25] *See* http://www.consumerfinance.gov/newsroom/cfpb-orders-discover-bank-to-pay-18-5-million-for-illegal-student-loan-servicing-practices/.
[26] *See* Fall 2014 *Supervisory Highlights*, at 14, *available at* http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf; Summer 2015 *Supervisory Highlights*, at 9, *available at* http://files.consumerfinance.gov/f/201506_cfpb_supervisory-highlights.pdf; Fall 2015 *Supervisory Highlights*, at 21, *available at* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.
[27] *See* http://www.consumerfinance.gov/newsroom/cfpb-launches-public-inquiry-into-student-loan-servicing-practices/.
[28] http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.
[29] *See* http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.
[30] http://files.consumerfinance.gov/f/201509_cfpb_treasury_education-joint-statement-of-principles-on-student-loan-servicing.pdf.
[31] *See* http://www.consumerfinance.gov/newsroom/cfpb-takes-action-to-end-student-debt-relief-scams/.

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Questions for the Honorable Richard Cordray, Director, Consumer Financial Protection Bureau, from Congressman Roger Williams:

Question 1:

As you know, Members of this Committee have questioned the Bureau's efforts to regulate auto dealer practices through vehicle financing. I'm also concerned that the CFPB is moving to oversee products that have traditionally been regulated by state insurance commissioners. I think we can all agree that duplicative regulation is a bad thing. What assurances can you provide that the Bureau will not add a new burdensome layer of regulation and oversight of products that are already well-regulated at the state level?

Response

When considering whether and how to use any of its regulatory tools, the Consumer Financial Protection Bureau (Bureau) adheres to its mission as outlined by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the authority granted to the Bureau by Congress. The Bureau has taken steps to ensure that its use of any regulatory tools impose as little burden as possible. As required under Section 1022 of the Dodd-Frank Act, when the Bureau prescribes a rule under the Federal consumer financial laws, it considers the potential benefits and costs of the regulation to consumers and to persons engaged in offering or providing consumer financial products or services, including the potential reduction of access by consumers to such products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets, and the impact on consumers in rural areas. The Bureau also takes into account the adequacy of regulation by states (and other federal agencies) to determine if consumers need protection and whether the particular market can function more fairly and efficiently to provide access to credit.

The Bureau recognizes and carefully respects the jurisdictional lines drawn in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Automobile dealers that predominantly engage in the sale and servicing of vehicles, or in the leasing and servicing of vehicles, or both, are generally excluded from the Bureau's purview,[32] although there are some exceptions. The Bureau also generally cannot regulate the business of insurance.[33] The Bureau has jurisdiction over auto lenders and larger nonbank auto finance companies and the Bureau's efforts in auto finance have focused on these entities, including enforcing the prohibitions against discrimination found in the Equal Credit Opportunity Act (ECOA).

[32] 12 U.S.C § 5519.
[33] 12 U.S.C. § 5481, 5517.

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Question 2:

The Bureau said is response to a question for the record stemming from the March 2015 hearing that 35,000 comments were received on the Bureau's prepaid card notice of proposed rulemaking. However, the docket indicates 6,413 comments received. Can you address the variation?

Response

The Bureau received many thousands of form letter comments on the prepaid accounts notice of proposed rulemaking. While we have reviewed and have a record of each one of those letters, we typically do not post identical comments to the electronic public docket on Regulations.gov. Rather, we generally post a single example of the form letter to the docket.[34] Form letter comments that contain some customization from the sender are all posted to the docket, but in some instances are posted in batches rather than as individual entries.[35] In addition, the docket contains some other materials, including submissions related to the rulemaking that the Bureau received after the comment period closed. Thus, the number of docket entries does not always correspond to the number of comments the Bureau has received on a proposal.

[34] See http://www.regulations.gov/#!documentDetail;D=CFPB-2014-0031-0288.
[35] See, e.g., http://www.regulations.gov/#!documentDetail;D=CFPB-2014-0031-6386.