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EXAMINING THE CONSUMER FINANCIAL PROTECTION BUREAU'S MASS DATA COLLECTION PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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EXAMINING THE CONSUMER FINANCIAL PROTECTION BUREAU'S MASS DATA COLLECTION PROGRAM

Wednesday, December 16, 2015

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

The subcommittee met, pursuant to notice, at 11:03 a.m., in room 2128, Rayburn House Office Building, Hon. Sean P. Duffy [chairman of the subcommittee] presiding.

Members present: Representatives Duffy, Fitzpatrick, Fincher, Hultgren, Tipton, Poliquin, Hill; Green, Cleaver, Ellison, Beatty, Sinema, and Vargas.

Ex officio present: Representative Waters.

Also present: Representative Love.

Chairman DUFFY. The Oversight and Investigations Subcommittee will come to order.

The title of today's subcommittee hearing is, "Examining the Consumer Financial Protection Bureau's Mass Data Collection Program."

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

The Chair now recognizes himself for 4 minutes to give an opening statement.

The Consumer Financial Protection Bureau (CFPB) is fundamentally tasked with protecting Americans from unfair, deceptive, and abusive financial practices. Ironically, as a result of its massive data collection activities, the CFPB is putting all Americans, all of us, at risk.

From January 2012 to July of 2014, the CFPB carried out 12 large-scale data collections, including the monthly collection of data affecting hundreds of millions of credit card accounts, 173 million mortgages, as well as information on 10.7 million consumer credit reports. Five of these data collections are ongoing.

Not a day goes by that Americans are not made aware of yet another breach of their sensitive information. Whether it is in the public or private sector, vast collections of personal consumer data are prime targets for cyber attackers.

Aside from the fact that the CFPB does not need to be collecting these vast amounts of information to carry out its regulatory mission, it is troubling that it has not taken more appropriate steps

to secure this data. In fact, before this committee last year, CFPB Director Cordray said that he could not rule out the potential for a data breach at the Bureau.

We now know—and the American people don't know—how much personally identifiable information, or PII, the CFPB retains, how that data is protected, and what the Bureau plans to do with all that data.

And while the CFPB claims that it collects very little data that contains PII, collecting non-PII data may also endanger consumers. A recent study published by an MIT-led team of researchers found that knowing just four pieces—four pieces—of information about a person's credit card transactions was enough to re-identify the anonymous credit card data in 90 percent of the cases that they studied.

The Dodd-Frank Act granted the CFPB expansive and intrusive authority with very little accountability or oversight. However, CFPB's data collection programs appear to exceed the mandates included in Dodd-Frank. Under the guise of its supervisory, monitoring, and examination authorities, the CFPB appears to have subordinated consumers' interests with its data collection programs.

What is more concerning is that while the CFPB claims to be an information-driven agency, it seems to cherry-pick data to justify pursuing a politicized rulemaking agenda. From publishing unverified consumer complaints on its website to using unreliable methodologies for estimating race in auto lending ECOA actions, the agency has proven time and time again that it will present only the most convenient of "facts" for its purposes.

Manipulating data to validate a regulatory outcome is not sound public policy. This is junk science. The CFPB should focus on responding to actual allegations of consumer fraud and discrimination rather than collecting data for the purposes of undertaking costly and abusive phishing expeditions.

I welcome our panel of witnesses here today, and I look forward to hearing from them as they present their testimony.

I now yield 5 minutes to the gentleman from Texas, the ranking member of the subcommittee, Mr. Green, for his opening statement.

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

I would like to thank the witnesses for appearing.

And I would like to acknowledge the presence of the Honorable former Speaker of the House. And for our purposes today, because he was the Speaker, I shall refer to him as "Mr. Speaker."

I am, Mr. Chairman, antithetical to most of what you said, and I am also concerned about something that has occurred.

Mr. Speaker, we—or someone owes you an apology. And someone owes you an apology because on the memos that I have received and on the witness list, you are acknowledged as the former Speaker of the House—as indeed, you should be—but there is no acknowledgement of your affiliation with the U.S. Consumer Coalition. And, generally speaking, this is what we do here.

I have a document that I shall ask unanimous consent to be placed in the record.

Chairman DUFFY. Without objection, it is so ordered.

Mr. GREEN. This document is dated July 23, 2015, from the Financial Services majority staff, and it is to the members of the committee, styled, "The Dodd-Frank Act Five Years Later." And it indicates that we are having the Honorable Phil Gramm appear, and the case that he was a senior partner at U.S. Policy Metrics, and that he is a former United States Senator; Honorable R. Bradley Miller, of counsel with Grais & Ellsworth LLP, and former Member of Congress.

So I am going to ask unanimous consent that the record be corrected so that it will be indicated on the memo and the witness list that you are, Mr. Speaker, associated with the U.S. Consumer Coalition.

I ask unanimous consent.

Chairman DUFFY. If that is the case, without objection, it is so ordered.

Mr. GREEN. I would also indicate why I have done this, Mr. Chairman.

I perused quite a few articles concerning this Coalition, this group. It appears to be a corporate-owned and -subsidized synthetic grassroots organization. The activists, consumer organizations, know very little about it. It is a 501(c)(4). There is no way to ascertain who really funds it. And I think it is very important for us to know who is really coming after the CFPB. This organization has a mission statement that coincides with much of what has occurred here in the Congress of the United States of America.

I am going to have to yield some time to the ranking member, but I think it is important for us to go into this. I have several articles that I will be introducing into the record.

And having perused the Speaker's statement for today, I am going to assume that it is just an oversight, because nowhere in the statement does it indicate his affiliation with the U.S. Consumer Coalition.

This oversight has occurred more than once, because it appears that The Wall Street Journal had to issue an amplification as a result. This is something that has been called to our attention by virtue of various sources, one being Media Matters.

So, with this, I will now yield the rest, remainder, and residue of my time to the ranking member of the full Financial Services Committee, Ranking Member Waters.

Ms. WATERS. Thank you very much. I appreciate the time.

As we sit here today to talk about the CFPB's data collection practices, the CFPB uses the data it collects to ensure that potentially harmful products do not permeate the market, to inform the agency's rulemaking efforts, to conduct critical supervisory oversight, and to return money to consumers who have been harmed.

Unfortunately, my colleagues across the aisle are not here today to discuss data collection practices. Instead, this hearing is simply another blatant attempt to mischaracterize the Bureau's data collection activities as harmful to consumers.

How do we know this? Because the chairman of this committee, Mr. Hensarling, previously sponsored the PATH Act, a bill that, if enacted, would have authorized the creation of a national mortgage data repository that would collect the same individualized, person-

alized data that Republicans shame the CFPB for collecting, and which is the subject of this very hearing.

Currently, most of the data that the CFPB collects is public and nonpersonally identifiable. Both the GAO and the CFPB Inspector General have indicated that the CFPB is generally in compliance with data privacy and security laws.

Nevertheless, my Republican colleagues are here today to, again, criticize and undermine an agency that has returned more than $11 billion to 25 million Americans.

I yield back.

Chairman DUFFY. The gentlelady yields back time she does not have.

The Chair now recognizes the vice chairman of the subcommittee, the gentleman from Pennsylvania, Mr. Fitzpatrick, for 1 minute for an opening statement.

Mr. FITZPATRICK. Thank you, Mr. Chairman, for the hearing.

And welcome to the witnesses this morning.

Increasingly, our cyber infrastructure and private records are becoming targets of both state and non-state actors alike. I don't have to remind everyone here about the theft of personal information from the Office of Personnel Management—I suspect we all received that letter—or any of the other significant breaches of consumer data that have occurred.

For these reasons, it is alarming that any organization, especially an agency of the Federal Government of the United States, would collect consumer data and store it in a single location, as the Consumer Financial Protection Bureau does, especially when, according to a GAO study, the CFPB lacks procedures and documentation for these collecting practices or security protocols to store private consumer information in a manner safe from hackers.

What's more, it seems that no type of data is off limits to the CFPB. While Congress has not been provided a complete picture of these actions, we know that one of these mass collections yielded data on 173 million loans.

So we look forward to the hearing, today's witness testimony, and we hope that it allows all of us to develop a better understanding of this practice and if there is a reason or legitimate need for these aggressive Federal practices to continue.

I yield back.

Chairman DUFFY. The gentleman yields back.

I now want to welcome our witnesses.

And because I do want to at one point get to our testimony, I am not going to spend an hour relating all of the things that Speaker Gingrich has done. What I have realized recently, though, is that he is a fiction author; he wrote a great book, which my wife just completed. It is a page-turner. I didn't realize that. But I am going to stick to the basics. He was elected to Congress in 1978 from the Sixth District of Georgia and, as we all know, was the Speaker of the House from 1995 through 1998.

Speaker Gingrich, welcome, and thank you for being here.

I also want to welcome Mr. Wayne Abernathy. He is the executive vice president for financial institutions policy and regulatory affairs at the American Bankers Association. Welcome.

Dr. Calabria, welcome again. Dr. Calabria is the director of financial regulation studies at the Cato Institute.

And finally last, but not least, Mr. Deepak Gupta is the founding principal of Gupta Wessler, an appellate litigation boutique in Washington, D.C.

Welcome, panel.

Each of you are going to be recognized for 5 minutes to give an oral presentation of your testimony.

And without objection, your written statements will be made a part of the record. Once the witnesses have finished presenting their testimony, each member of the subcommittee will have 5 minutes within which to ask the panel questions.

Just as a reminder—many of you know this—on the table you have three lights: green means go; yellow means you have a minute left; and red means your time is up. I would just note that if you get a question while your light is yellow, I will give you the leniency to finish your question as it goes into red, but please don't go on for a minute or two. Otherwise, I will just start tapping my gavel, and we will try to wrap it up.

And with that, Speaker Gingrich, welcome, and you are now recognized for your 5-minute presentation.

STATEMENT OF THE HONORABLE NEWT GINGRICH, FORMER SPEAKER, U.S. HOUSE OF REPRESENTATIVES

Mr. GINGRICH. Good morning, and thank you for allowing me to be here. It is an honor to be with you on this important issue.

I do want to say about Mr. Green's concern that if either he or his staff had read my testimony, they would find that on page 3, I describe my relationship as an adviser to the U.S. Consumer Coalition.

But the subject of today's hearing is important in a narrow sense, in that we have an agency that is collecting more information about Americans' private lives than any bureaucracy deserves, for reasons unrelated to national security.

But it is also important in a broader sense. Today, the Consumer Financial Protection Bureau is so far outside the historic American system of constitutionally limited government and the rule of law that it is the perfect case study of the pathologies that infect our bureaucracies at the Federal level. It is dictatorial. It is unaccountable. It is practically unrestrained and expanding on its already expansive mandate from Congress. And it is contemptuous of the rights, values, and preferences of ordinary Americans.

The CFPB is all of these things, as are many of our large, destructive bureaucracies in this City—a huge problem in its own right. But the CFPB is an especially good symbol of these pathologies because of its unique structure among regulatory agencies.

In the Dodd-Frank Wall Street Reform and Consumer Protection Act that created the Bureau, Congress—very unwisely, in my opinion—gave up two of its core constitutional powers for reining in Executive Branch agencies.

First, the CFPB is not subject to the annual congressional appropriations process and instead is funded out of a fixed portion of the

Federal Reserve's budget. So, in effect, you have a bureaucratic slush fund that is self-defined by the bureaucracies on their behalf.

Second, its Director can be fired only by the President and then only under limited circumstances because Dodd-Frank protects him from being removed by Congress.

For all practical purposes, this means the bureaucracy is free to do whatever it wants within the broadest imaginable interpretation of its authority without fear of losing its funding or its leadership. This is a very dangerous recipe for petty dictatorship and is completely foreign to the American model.

I always remind people of Lord Acton's famous dictum: "Power tends to corrupt. Absolute power corrupts absolutely." Notice he drops the "tends." There is no better example of the corruption of power than this agency, which is totally secret, totally unaccountable, spends a vast amount of money, has huge cost overruns, and is doing whatever it wants to whomever it feels like doing it to.

We know this formula is dangerous because we have watched the Bureau's behavior over the past 4 years. We have seen the contempt with which it treats Congress and the American people.

The CFPB is prohibited from regulating car dealers, but it has done so anyway, using absurdly inaccurate techniques—which, by the way, in the private sector would lead to lawsuits over fraud—to accuse them of racial discrimination and extract fines from car companies and auto finance companies. This says your government is a bully and your government is a blackmailer.

The topic of this hearing is another good example of the CFPB's overreach, one I also discussed in my own article in The Wall Street Journal last summer. The CFPB is prohibited in Section 1022 of Dodd-Frank from collecting personally identifiable information on Americans, but the Bureau is doing so anyway. And it is doing so on a massive scale that rivals the NSA's most controversial collection programs but for much less compelling reasons.

The CFPB has said it aims to monitor at least 95 percent of all credit card transactions in the United States by 2016. Toward that end, the Bureau is already collecting and analyzing data from at least 600 million credit card accounts each month. That is 7 billion records in the last year alone.

And it is not just credit card data. The CFPB is gathering data on 22 million private-label mortgages every month, 5.5 million student loans, 2 million bank accounts with overdraft fees, and on hundreds of thousands of auto sales, credit scores, and deposit advance loans.

These secretive and intrusive data-gathering operations are taking place without consumers' knowledge and without the ability for consumers to opt out. Unless they have been tuned in to occasional congressional oversight hearings like this one, consumers are entirely unaware that government bureaucrats are poring over their credit card transactions every month looking for new products to regulate.

The CFPB is scooping up more information about law-abiding Americans than any government agency should be permitted to collect for reasons unrelated to national security or law enforcement.

In fact, in a recent poll conducted by Zogby for the U.S. Consumer Coalition, which I happen to advise—let me repeat that,

since it is in the record, but I just want to make sure for particularly Mr. Green's staff that they get it—which I happen to advise—so I am not secret about the relationship—just one in five Americans said they believe the CFPB should be allowed to gather credit card statements without consumers' knowledge.

For those of you who are concerned about the intelligence community's direct data collection effort, I don't see how you can be worried about the potential for abuse and about the, in fact, justified lack of transparency in national security agencies and not be concerned about the same dangers in this large and unaccountable bureaucracy armed with similar kinds of information.

Think of the absurdity of being told that Homeland Security will not look at Facebook pages of foreigners out of concern for their privacy while CFPB is gathering up all of this data. Let me just say, certainly, if the NSA and the FBI need a warrant to collect such data on U.S. citizens for the purpose of preventing terrorism, the CFPB should need to get a warrant, too.

In closing, what we have in the CFPB is an agency that is not accountable to Congress or the American people, an agency that is stretching the boundaries of its authority as far as it can, and a bureaucracy which for all practical purposes is out of control. As the American people's elected Representatives in Congress, this should bother you no matter which side of the aisle you are on and whatever you think of the Bureau's preferred regulations.

It is imperative that we move toward abolishing the Consumer Financial Protection Bureau and, at the very least, subject it to an annual budgeting and appropriations process, in addition to restructuring its leadership to make sure it is accountable to Congress.

Thank you, and I look forward to your questions.

[The prepared statement of Speaker Gingrich can be found on page 67 of the appendix.]

Chairman DUFFY. Mr. Abernathy, you are recognized for 5 minutes.

STATEMENT OF WAYNE A. ABERNATHY, EXECUTIVE VICE PRESIDENT FOR FINANCIAL INSTITUTIONS POLICY AND REGULATORY AFFAIRS, AMERICAN BANKERS ASSOCIATION

Mr. ABERNATHY. Thank you, Chairman Duffy and Ranking Member Green, for this opportunity to testify. My name is Wayne Abernathy. I am executive vice president at the American Bankers Association (ABA).

The customers of ABA's thousands of member banks are affected by the actions, policies, and decisions of the CFPB. The Bureau has enormous authority over retail financial products and those who provide them, and, therefore, over the people who use them.

This power comes with little more than nominal oversight and accountability. It would be hard to find a Federal agency where the gap between regulatory power and public accountability is greater.

Bureau officials repeatedly assert that the Bureau is a transparent and data-driven agency. Public exposure and data are to be the checks on the natural tendency for any such agency to stray into arbitrary action.

I emphasize the Bureau is governed by one person. No one in the agency can address him without ultimately bending to that one person's policy judgment, knowing that at some point in the discussion it will end with, "Yes, sir."

We welcome this subcommittee's inquiry into the question of how strong a check on arbitrary behavior are the Bureau's data policies and practices. How much is the Bureau, in fact, data-driven? And by which data? From which sources? And how would we know?

Bureau Director Richard Cordray stated the following: "At the Consumer Bureau, we are a data-driven agency. The best decisions will be those that are best informed."

The Bureau's strategic plan for Fiscal Years 2013 through 2017 includes the following: "We take in data, manage it, store it, share it appropriately, and protect it from unauthorized access."

And then this from the Bureau's website on a page titled, "Open Government": "Transparency is at the core of our agenda, and it is a key part of how we operate."

We support those statements. Bureau practices, however, have not lived up to these standards, and there is little to require that they do so. The Dodd-Frank Act extends to the Bureau impressive authorities for requiring information. The Act's oversight structure is much less impressive.

Problematic Bureau data practices have undermined the effective use of data to serve as a check on arbitrary action and weakened the quality of policymaking, placing at risk the Bureau's mission to protect consumers. In my written statement, I discuss several examples, which I will merely list for you at this point.

The Bureau evades public disclosure laws, such as the Paperwork Reduction Act, while cherry-picking data. In selective data samples, the Bureau skews results, mischaracterizing consumer markets. The Bureau has misrepresented its data gathering on overdrafts. On its website, the Bureau publishes unverified complaint information. In its arbitration study, the Bureau ignores its own data. To promote its policies on indirect auto lending, the Bureau has manufactured data that do no exist.

I will explain briefly one of these as an example, the unverified complaint information.

The Bureau publishes on its official website, at the top of which are the words, "An official website of the United States Government," they publish consumer complaints that are unverified for accuracy or veracity.

The Bureau asserts that, "by adding their voice, consumers help improve the financial marketplace." But how can this be true if the information provided is unreliable and misleading? What does the Bureau offer to protect a consumer from acting on erroneous information published on the Bureau's own website?

ABA offers four recommendations in our written statement. I would emphasize our fourth. The governance of the Bureau should be changed from a sole directorship to governance by a bipartisan commission. With a bipartisan structure, we gain light from a variety of viewpoints, different people posing different questions from different backgrounds, all more likely to poke and prod the data, and all of them likely to be intolerant of information legerdemain.

On behalf of ABA and its member banks of all business models, serving hundreds of millions of people, our customers and your constituents impacted by Bureau decisions by the Consumer Bureau, I want to thank this subcommittee for this very important inquiry. I would be happy to respond to any questions you may have.

[The prepared statement of Mr. Abernathy can be found on page 44 of the appendix.]

Chairman DUFFY. Thank you.

Dr. Calabria, you are recognized for 5 minutes.

STATEMENT OF MARK A. CALABRIA, DIRECTOR, FINANCIAL REGULATION STUDIES, CATO INSTITUTE

Mr. CALABRIA. Chairman Duffy, Ranking Member Green, and distinguished members of the subcommittee, I thank you for the invitation to appear at today's important hearing.

Let me first say that the concerns I will raise are not unique to the CFPB. They apply across the Federal Government.

Let me also note that my colleagues and I at the Cato Institute have consistently raised these concerns regardless of politics or the mission of the agency. We have been vocal, highlighting abuses in law enforcement and national security. I would go so far as to say we have spent considerable resources trying to undo the third-party doctrine, which is the basis of almost all Federal surveillance.

So, again, this is not something new to us. In fact, we have spent more time on the PATRIOT Act and the Bank Secrecy Act than we have on surveillance at the Consumer Financial Protection Bureau. So, again, this is not something new for us.

Let me also say, as I detail in my testimony, the massive data collection at the CFPB is one of choice. There is no explicit mandate or requirement for this level of data collection. As someone who has previously managed one of the offices that have been transferred to the CFPB, I can say that the extent of this data collection is also unnecessary for it to fulfill its responsibilities.

During my tenure enforcing the Real Estate Settlement Procedures Act at HUD, we nearly doubled enforcement, significantly increased enforcement action, and we did so without having to resort to a massive dragnet of consumer data.

Obviously and unfortunately, some of those actions did not prevent the financial crisis, but I would have told you then, as I will tell you today, the problems with RESPA and much of our consumer financial protection are in the underlying statutes—which I greatly encourage Congress to revisit—not from a lack of surveillance.

We have seen this play out in the area of national security, where the public is repeatedly told that if only we had more data, various attacks would have been avoided. Yet, repeatedly, the intelligence failures we witness are not from a lack of data. They are from an inability or unwillingness to connect the dots.

Similarly, the financial crisis was met with demands for more data, as if the overheated housing and mortgage markets were not obvious enough from the aggregate data. They were obvious to me over a decade ago. Unfortunately, our regulators ignored them.

And, of course, more data does not necessarily help you if you continue to ignore it.

The CFPB has not been immune from this false idol of more data. As the GAO has reported, the CFPB has engaged in at least 12 large-scale data collection efforts. At least three of these include information that directly identifies individual consumers. Combining this information with other sources, such as the other nine, could allow the information also to be identified on consumers. In my opinion—granted, as a nonlawyer—I believe these collections do not comply fully with the Right to Financial Privacy Act.

Let me also state, as a former Federal employee and one subject to the recent OPM breach, I don't trust any part of the government with my data, the CFPB or otherwise. In consolidating all of this financial information in one place, the CFPB has left consumers extremely vulnerable to hackers and identity theft.

Those are only threats from outside the Bureau. Unfortunately, the CFPB's data collection, in my opinion, also poses significant threats to our Fourth Amendment protections, which I believe apply to everybody, even financial service providers. As Justice Douglas observed in his dissent to the *California Bankers* case, "A checking account may well record a citizen's activities, opinions, and beliefs as fully as the transcripts of his telephone records." Credit cards are today's checks.

Such concerns are not simply reflections of the Watergate era. As recently as 2012, Justice Sotomayor, in her concurrence to *United States* v. *Antoine Jones,* correctly observed, "Awareness that the government may be watching chills association and expressive freedoms. The government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse." Those are Justice Sotomayor's words, not mine.

Justice Sotomayor offers the example of medications purchased online by online retailers. Such a purchase could theoretically be identified within the CFPB's data card collections.

For a variety of reasons, as I think this hearing has demonstrated across the aisle, the CFPB has become a highly partisan issue. I think that is unfortunate. Were it to use the financial records of its critics as an attempt to silence and intimidate those critics, it would not be the first agency to do so. And as an institute, at the Cato Institute, where we receive our donations via credit card, this is a very real risk and certainly one that we worry about.

I will only quote Justice Thurgood Marshall, who sadly observed, "The technique of examining bank records to investigate political organizations is, unfortunately, not a rare one." And as someone at the Cato Institute who regularly takes a stand that is occasionally unpopular in Washington, I certainly share in this concern.

My suggestion would be that the CFPB end these data collections. I would submit that there is more than enough work to do actually responding to consumer complaints.

I thank the subcommittee for their time, and I look forward to your questions.

[The prepared statement of Dr. Calabria can be found on page 55 of the appendix.]

Chairman DUFFY. Mr. Gupta, you are now recognized for 5 minutes for a summary of your opening statement.

STATEMENT OF DEEPAK GUPTA, FOUNDING PRINCIPAL, GUPTA WESSLER PLLC

Mr. GUPTA. Thank you, Chairman Duffy, and Ranking Member Green.

I will make three points this morning based on my perspective as a former CFPB official and as an advocate for consumers, including in data privacy cases.

First, privacy and the security of consumer data are important issues, and if this subcommittee were really concerned, there are real problems it could be addressing. There have been major data breaches recently in which credit card information was stolen from consumers at Target and Home Depot, for example.

But this subcommittee hasn't held a single hearing on those real-world threats. Instead, we are having a hearing about a set of imagined problems that exist only in the minds of the CFPB's political opponents.

In fact, if you ask the actual consumer privacy groups, they voice support for the CFPB's data collection efforts. And I believe there is a statement that has been entered into the record today, or will be—As one privacy advocate put it, "The reason you don't hear from privacy or consumer groups is that the CFPB is not doing anything that concerns us, nor, for that matter, is it doing much differently than other regulators have always done."

Second, to the extent that it is doing anything different, the Bureau's collection of data is creating the kind of oversight and consumer protection that were missing before the financial crisis.

For example, the compilation of anonymous account-level data—I want to stress that; it is anonymous account-level data—from the CFPB's credit card database has allowed the Bureau to study important topics, such as credit card marketing practices and the widespread use of forced arbitration clauses in consumer contracts, something Congress required the CFPB to study.

Data collection is crucial to the Bureau's ability to identify systemic violations of consumer laws, discrepancies in credit score reporting, and harmful effects of checking account overdraft programs, to name just a few examples.

The CFPB's data collection ensures that the agency's regulation and enforcement are data-driven—that is, based on the best understanding of market trends and empirical reality. That is the whole point of having expert administrative agencies in the first place. So unless your profits come from deceiving consumers, you should welcome the CFPB's data collection.

Third and finally, the very existence of this hearing illustrates one danger that can occur when public officials don't base their actions on data. We have a made-up controversy, unfortunately, based on made-up facts.

The CFPB is not spying on American citizens. It is not the NSA. It is not interested in the details of people's personal activities, nor would the data that the agency is currently collecting enable it to investigate those activities even if it were interested in, say, what

you plan to buy tomorrow with your credit card for a Christmas present for your grandmother.

In fact, the vast majority of the data collected by the CFPB is already public, such as data on mortgages already recorded in local land records or auto sales on record with the DMV. And most of it is aggregate data at the account level, not at the transaction level, designed to give the agency a picture of what financial institutions, not individual consumers, are up to.

The GAO looked into this controversy and, in a detailed review, found that none of the major problems that the CFPB's opponents have alleged exist. Of the 12 major projects analyzed by the GAO, only 3 even potentially involved any personal consumer data, and the GAO found that the CFPB had taken steps to protect and secure the data it collects, and it has a system for anonymizing any material involving identifying information.

And I want to correct one factual inaccuracy that I have heard several times already this morning. None of the ongoing data collections by the CFPB contains personally identifiable information. That is a fact that has been verified by the GAO. Agencies have been collecting this same stuff for years and nobody has complained, GAO also found.

The story with consumer complaint data is similar. The Inspector General did an exhaustive review and uncovered no major problems. Of the 250,000 complaints examined, the IG's audit found an accuracy rate of 99.99 percent, an error rate of 0.01 percent. I wish that most of the work product that emanated from this building, for example, could meet that accuracy standard.

Meanwhile, the financial industry is collecting far more personally identifiable data that could open up real questions about consumer privacy. The JPMorgan Chase Institute, for example, recently released a report that pulled from a data set of 12 billion individual consumer transactions.

So if we are really worried about the collection of this kind of data, we should be far more concerned about the private market that is developing for this data. And with all the real problems in consumer finance, I think it is unfortunate that the subcommittee feels the need to hold a hearing today on this nonissue.

Thank you for inviting me to testify, and I am happy to answer any questions.

[The prepared statement of Mr. Gupta can be found on page 71 of the appendix.]

Chairman DUFFY. Thank you, panel.

The Chair now recognizes the vice chairman of the subcommittee, the gentleman from Pennsylvania, Mr. Fitzpatrick, for 5 minutes for questions.

Mr. FITZPATRICK. Thank you, Chairman Duffy, for calling this hearing. The hearing is critically important, given all the security breaches that we have been hearing about and reading about, not only in the private sector of the economy, from retailers, but, most importantly, in the public sector.

And, in most of those cases, the average American citizen does not know that their information is being collected by the Federal Government or that their security has been breached. They just don't know that.

Speaker Gingrich, you talked about the two Constitutional provisions that the United States Congress essentially walked away from in passing Dodd-Frank and creating the CFPB. And then you testified about all the personally identifiable information that the CFPB is collecting.

I have two questions. First, are you concerned about the CFPB's ability to protect and secure that information from breaches?

And second, when you have an agency of the Federal Government that essentially lacks accountability or oversight from the Congress, what is the interest or the vigilance that the agency would have to actually get down and protect that information? So how is the CFPB different than other agencies?

Mr. GINGRICH. Thank you for the question.

Let me say, first of all, anybody who believes that anyone has the ability to guarantee security of information is totally out of touch with the real world. When you look at the size of the breaches and you look at the number of hackers around the planet and you look at the intensity with which people are trying to figure out how to do this, there is no place where you are going to aggregate information, unless you take it totally offline, that you are going to have real, true security.

These systems are growing very rapidly. They are getting much more sophisticated, and we are going to be in a very different world. It is like the Wild West. This is not like 10 years ago. And it is going to get worse.

Second, I want to point out that in The Wall Street Journal article I cited a Stanford study on how to take metadata from telephones and connect them to get individual identity, and an MIT study for how to do that with credit cards. So when people say to you, oh, we are only gathering impersonal information, the fact is that is a sign they don't understand how big data has evolved and the fact that you can reassess and redefine people if you have enough data points.

So I find it much more frightening to have government bureaucracies that are uncontrolled having that level of information and power. In the private sector, if I don't like a company, I can quit. That isn't how it works if you are a citizen and two bureaucrats show up at your front door.

Mr. FITZPATRICK. Mr. Gupta, if a constituent of mine in Bucks County, Pennsylvania, had her personal information or her financial habits stolen in a data breach of the CFPB, how would you explain to her that it was necessary for the Federal Government to collect and store this information in the first place?

Mr. GUPTA. I would first explain to her that the whole premise of the question is false, because, as I said, none of the ongoing collection efforts by the CFPB involve any personally identifiable information.

And that is verified by the GAO report, and it is pursuant to the statutory authority. The authority that this Congress gave the CFPB to do ongoing market monitoring expressly comes with a limitation which says that data cannot include personally identifiable information. And the CFPB, the GAO found, is complying with that mandate.

So, to the extent there is any personally identifiable information, it is either going to be because she provided it as part of a consumer complaint and that information is not going to be information that would be damaging; it would be information that allows the agency to get in touch with her—or, for example, when there is supervision and enforcement and the agency needs the person's contact information to get in touch with them to reimburse them if they have been defrauded. But those are really small exceptions.

Mr. FITZPATRICK. Dr. Calabria, do you concur that my constituent should have no concern with what the CFPB holds?

Mr. CALABRIA. I do not concur. Maybe I need to reread the GAO report a few times, but my read of it is pretty clear that at least three of those programs do have personally identifiable information.

And there is also a question of, can you take the information in those programs and link to other programs that aren't personally identifiable, and I think that there is a very real risk there.

Again, as I noted in my testimony, I was a victim of the OPM breach. And I am very touched that OPM has now made sure that I get at least a year of credit check free. That is very touching. I would personally like the Chinese to give me my information back and not to use it. It is kind of hard to close that barn door after the horse is out.

So I think we need to be thinking ahead of time. The time to react is not after the breaches; the point to react is to not collect this level of data if you don't need it to begin with.

Mr. FITZPATRICK. I think most of us who also were victims of those same breach would agree with you, Dr. Calabria.

Thank you. I yield back.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the ranking member of the full Financial Services Committee, Ms. Waters, for 5 minutes.

Ms. WATERS. Thank you very much.

Let me welcome all of our panelists here today, and especially Speaker Gingrich. Welcome, welcome, welcome.

Speaker Gingrich, whom are you representing here today?

Mr. GINGRICH. I represent myself.

Ms. WATERS. What is the name of the PR firm that you work for?

Mr. GINGRICH. The U.S. Consumer Coalition is not a PR firm. It is an organization which has been raising questions. I work with them. I have said that publicly. I said it, in fact, in the testimony we submitted here. And I think the questions they raise are very good ones.

But my view—

Ms. WATERS. The Coalition—

Mr. GINGRICH. —is not shaped by that. I am a conservative—

Ms. WATERS. Excuse me. I am not interested in that right now, Mr. Speaker.

Mr. GINGRICH. I apologize.

Ms. WATERS. The Coalition has hired a PR firm that you work for. You work for the PR firm. Is that right?

Mr. GINGRICH. We work with the Coalition.

Ms. WATERS. Do you work for the PR firm that is hired by the Coalition?

Mr. GINGRICH. I would have to check to see whether it is—

Ms. WATERS. Okay.

Mr. GINGRICH. But there is no question we work with the Coalition. We have said—

Mr. GREEN. Would the ranking member yield, if you would?

Ms. WATERS. Yes, the ranking member will yield.

Mr. GREEN. Mr. Speaker, I have your Wall Street Journal article wherein there is an indication at the end that you are a paid adviser to the Wise Public Affairs group. Are you denying this, Mr. Speaker?

Mr. GINGRICH. No, I am not denying—

Mr. GREEN. That was the question that the ranking member was asking.

I will yield back to the ranking member.

Ms. WATERS. Thank you very much.

And the Coalition is funded by what industries?

Mr. GINGRICH. I don't know.

Ms. WATERS. Does the Coalition represent any other consumer groups? Do they advocate for any other consumer groups? Or was it just organized to deal with their concerns about the Consumer Financial Protection Bureau?

Mr. GINGRICH. My impression is that they think that the threat from the CFPB is large enough that that is their primary focus.

Ms. WATERS. I am not interested—

Mr. GINGRICH. And it is the only bureaucracy—

Ms. WATERS. —Mr. Speaker, in your impression. But is that exactly what they do, just—

Mr. GINGRICH. I don't know. You would—

Ms. WATERS. —the Consumer Financial Protection Bureau?

Mr. GINGRICH. —have to call them and ask them. They asked me to advise on one thing.

Ms. WATERS. I know that you are very smart, Mr. Speaker, and you wouldn't work for somebody that you didn't know who they are and what they do. So that is why I ask you.

But let me just move on, because I know you understand how this place works. You talked about the fact that it is the only agency that operates in the way that it does, that it is the only agency that does not have to go before the Appropriations Committee. Do you really know and understand that to be true?

Mr. GINGRICH. That is certainly my impression, but if you find other agencies that have perpetual life by drawing money in manners that has nothing to do with the Congress, I think Congress ought to, frankly, then hold hearings on bringing them within the Constitution.

Ms. WATERS. Are you aware that, for example, the FHFA has one Director, appointed by the President, who can only be removed by the President, and does not go before any Appropriations Committee? Are you aware of that?

Mr. GINGRICH. I wasn't aware of that. But, as I just said, to the degree you would like to give us a list that we could suggest to Congress that they bring under annual appropriations, I would be happy to—

Ms. WATERS. Mr. Speaker, I know that you know how this place runs. You ran it with a strong hand, so I know you understand how it works.

Does the FDIC go before an Appropriations Committee?

Mr. GINGRICH. I believe it is subject to congressional supervision.

Ms. WATERS. That is not what I asked.

Mr. GINGRICH. I believe it answers to congressional inquiries.

Ms. WATERS. That was not my question.

In terms of what the President is able to do in determining whether or not a director continues as director—the OCC, for example, their director can only be fired by the President. Isn't that right? And the same thing with the FHFA. Is that correct?

Mr. GINGRICH. That is correct.

Ms. WATERS. And the Fed, they don't go before an Appropriations Committee. Is that right?

Mr. GINGRICH. That is right. In fact, I have favored auditing the Fed for that very reason.

Ms. WATERS. And the President, for example, can only remove the head of the SEC. Is that right?

Mr. GINGRICH. Yes.

Ms. WATERS. Okay. So I just want us to be clear when we compare the Consumer Financial Protection Bureau with other agencies.

Some of us are very appreciative that Dodd-Frank created the Consumer Financial Protection Bureau, because prior to the meltdown that we had, the recession that we entered into, nobody was protecting the consumers. We had all of our oversight agencies who basically were supposed to be responsible for soundness, et cetera, but they did nothing for consumers.

And so now we have the Consumer Financial Protection Bureau, and we have a whole effort to destroy it. The other side of the aisle have made this the top priority in everything that they do. And just as Mr. Gupta said, while we had this breach with Target and others, never have we had a hearing on any of that.

So I am glad that you are here today, but I want you to share your knowledge with us and tell—

Chairman DUFFY. The gentlelady's time has expired.

Ms. WATERS. —us what you know and what you understand rather than—

Chairman DUFFY. The gentlelady's time has expired.

Ms. WATERS. —some of the other stuff that I am hearing.

I yield back the balance of my time.

Chairman DUFFY. And there is none left.

Mr. GINGRICH. Can I make one brief comment?

Chairman DUFFY. Maybe you can ask—

Mr. GINGRICH. Okay.

Chairman DUFFY. I want to stick with the rules.

The Chair now recognizes the gentleman from Colorado, Mr. Tipton, for 5 minutes. Maybe he will entertain the Speaker's request.

Mr. TIPTON. Thank you, Chairman Duffy.

Mr. Speaker?

Mr. GINGRICH. I just wanted to comment—the gentlelady just pointed out that all of these various bureaucracies that were responsible for oversight prior to 2007 failed, and so the answer is,

let's build another bureaucracy to look after the failed bureaucracies, as opposed to looking at why did all these bureaucracies fail. I think it is a fascinating difference of opinion.

And I appreciate your pointing out that we actually should have a study, which Cato may already have, of all of the agencies that should be under congressional annual appropriation. I thought that was a very useful contribution.

Mr. TIPTON. Thank you, Mr. Speaker.

Mr. Gupta, I would like to start with you, in regards to personal information. You made the comment that no personal information is collected. Is gender an identifier?

Mr. GUPTA. Is gender an identifier? Gender standing alone, with nothing else?

Mr. TIPTON. How about if we included age? Would that be an identifier, those two together? How about ethnicity, if we included those three elements? Are those things that can be used to identify an individual?

Mr. GUPTA. I take your point, and you are right. A constellation of data can certainly be used to identify someone without their name. And the CFPB is very concerned about that. And that is why—

Mr. TIPTON. Interestingly—

Mr. GUPTA. —if you look at the GAO report, you will see that they have a data intake team that carefully, carefully scrubs the data before it even enters the Bureau and is disseminated to ensure that you don't have a constellation of data that can be assembled to actually identify anyone.

Mr. TIPTON. Well, interestingly, Mr. Gupta, under the CFPB, with the NMD, they do require the collection of gender, age, and ethnicity.

Mr. Calabria, would you like to maybe comment on that?

Mr. CALABRIA. Again, I would agree that only a small number of information is needed to identify people.

I do want to emphasize, as I pointed out in my testimony, and as the Federal Reserve Inspector General pointed out, a significant amount of the CFPB data collection is maintained by contractors on cloud computing, which in my opinion—granted, I'm not a tech expert—leaves it particularly vulnerable to hacking.

So I would certainly encourage the CFPB to bring more of that data—here, I am going to say it for a second: Cato Institute, Mark Calabria, encourages less use of contractors and more government employees, in this case.

Mr. TIPTON. Does the GAO report that the CFPB does not have the security protocols in place to be able to secure this data scare you?

Mr. CALABRIA. That is correct. And that is a very big concern of mine, the security of this data.

Mr. TIPTON. If I could follow up again with you, Dr Calabria, for a long time, I have held the belief that with a lot of the regulatory bodies, the heart may be in the right place, but we need to be able to look at outcomes.

And I get a general sense, going back to Speaker Gingrich's point, that we actually have an institution right now, through the

CFPB, that is completely off the books. Congress has no real control to be able to actually control it, to be able to direct it.

Do you have a sense that we have a system in place that is continuing to build, that is designed to be able to find and punish, rather than help and improve?

Mr. CALABRIA. So let me first say, there is a fair amount of work in the psychology literature about, when people feel like they are wrapped up in a cause and self-righteous. And I think that, certainly, the CFPB's attitude is, "We are a crusade. We are here to protect the consumer. We are going to fix the financial crisis." And we saw the same thing in the intelligence community after 9/11. When you get caught up in this mentality, you get blinders, you get tunnel vision. There is a lot of psychology research which I think clearly demonstrates that.

And so what you need—and, again, I would reference one of the citations in my testimony from something by Cass Sunstein, of all people, who really argued that you need to have procedures and checks in place so that dissent is heard.

And this is one of the—the value of a board is that somebody sits there and says—just like this committee can have this dialogue and this back-and-forth—is there needs to be this back-and-forth. And Wayne talked about, at the end of the day, every employee at the CFPB needs to say, "yes, sir" to Mr. Cordray, and I think that is a real problem.

None of us have all the answers, and you lack this institution for this dialogue and this back-and-forth and this give-and-take. You need that. And other places that don't have this don't do well. It was mentioned that a number of other agencies—look at OFHEO, who was the regulator for Fannie Mae and Freddie Mac, and had a single director. We saw how that turned out.

So, again, the attitude that you can't have this sort of give-and-take, I think is critically important.

I will also note, the argument you often hear is we need a single director so it isn't captured by the industry. I am not a mathematician, but the last I checked, I think it would be easier to capture one person than it would to capture, say, five.

Mr. TIPTON. One thing that genuinely concerns me about this is, if we were to apply the same rules to the CFPB that they are trying to apply to everyone else, if we were getting ready to make a mortgage—and, again, go back to the comments in terms of identifiers about gender, age, ethnicity in determining and making a loan, they are collecting this data with no consumer knowledge. How would the CFPB address a private-sector entity in doing that?

Mr. CALABRIA. Let me make two quick points since you are out of time.

First of all, the JPMorgan example, I can choose not to use JPMorgan, and if I do, I can sue them if they distribute my data in a personal way. And, plus, they suffer. Target took a big hit. You don't see any of this with the Federal Government, in terms of these corrections.

But, lastly, I want to say we don't have to wonder how this works. The HMDA is an example of where there is not personally identifiable information but you can link it to courthouse records to figure out the identity. It is not that hard.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

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

And thank all of you for being here. I appreciate it very much.

Mr. Speaker, you may have misspoken. You said that the CFPB was totally secret. And so I am assuming that you weren't—and this is not a catch-you-wrong question. I am just—when you made the comment, I just wrote it down, because I didn't think you were saying that the CFPB was a totally secret agency.

Mr. GINGRICH. My impression is, if you look at various hearings and various interrogatories, that the leader of the CFPB has remarkably little interest in sharing with Congress a whole range of information, including the various cost overruns, including salaries, and so forth. So my impression is that they are a remarkably secretive operation for a non-national-security operation.

Mr. CLEAVER. Okay. I agree with you if you use "remarkably secretive" as opposed to "totally secretive." Because if it was totally secretive, we wouldn't have this hearing.

Mr. GINGRICH. I am happy to be amended to "remarkably."

Mr. CLEAVER. Thank you.

Mr. Abernathy, do you think that it is important that we have evidence-based policies?

Mr. ABERNATHY. Absolutely, Congressman.

In our view, when you have an agency that is led by just one individual, without all of the other checks and balances and oversight that other agencies are subject to, you are left with just one check, and that is the exposure to the public, letting the public see what is the information that you used to make your decisions, and let's have a debate on that to make sure you are not operating in an arbitrary manner.

I can think of no agency where that is more important than it would be at the Bureau to make sure that they avoid getting into arbitrary action. That is why we are so concerned about their data practices.

Mr. CLEAVER. Yes. Here is something that I am interested in: What county do you live in?

Mr. ABERNATHY. I live in Fairfax County, Virginia.

Mr. CLEAVER. I am not familiar with the way that county operates, but do you believe that the county has data on your mortgage?

Mr. ABERNATHY. I don't have a mortgage anymore. But I think, when I had a mortgage, they probably had some information.

But what is interesting about Fairfax County is that they have a series of seven, I believe, elected officials, and these officials all are peers of one another, and they check one another's activities. And that prevents the abuse of data because they will call somebody else on it. They will say, Madam Chairman, or whomever, there is more information that you need to take into account.

There is no one like that at the Bureau. There is no peer at the Bureau for the Director of the Bureau. Everybody reports to him.

Mr. CLEAVER. Most counties, maybe not in Fairfax, but most of the other counties around the country have a lot of data on your

mortgage. They have a lot of data on—well, not on your mortgage, but on people who hold mortgages, a lot of data.

The same thing, I think, holds true when you think about some of the commercial data that is available. The DMV, does it not have a lot of data about individuals who drive and about the machine they drive?

Mr. ABERNATHY. Yes, they certainly do, Congressman. I think what makes the Bureau different is that they can put all these different pieces together.

If you look at the authority that has been given them under Dodd-Frank, there is virtually nothing that a covered firm, a firm subject to its jurisdiction, has in terms of information that the Bureau cannot demand. And, in their recent data collections, they have been gathering in enormous amounts of those data and putting it all in one place.

Mr. CLEAVER. We have probably had more hearings on the CFPB than we have had on anything. So I think it is erroneous to say there is nobody looking at the agency. That is all we do. It has become the political punching bag of this whole Congress.

And maybe the Speaker was right. Look at the OCC, the FDIC, and the Federal Reserve; they are all in the data collection business.

And so, we can create this attitude that this is going to be a Big Brother operation and they are going to give money to the Taliban or whatever, and I think we are taking this stuff too far.

I yield back, Mr. Chairman.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Maine, Mr. Poliquin, for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman. I appreciate it very much.

And thank you, gentlemen, for coming here today. I appreciate it.

I come from the private sector, and for 35 years I have been running small companies. And when you come from a business background, you have to be accountable all the time. You have to be accountable to your employees, to your customers, and to your suppliers. You have to be accountable to your board. If you have a product or a service that is overpriced or performs poorly, you are going to go out of business. Now, it seems to me that we should do the same thing here in government, but, unfortunately, it doesn't happen very often.

When I was State treasurer up in Maine, I was on the board of an independent public housing authority. And shortly after joining the board, I realized that the executive director had a 5-year term, appointed by the Governor, and couldn't be fired. The board had no authority. The executive director didn't report to the board. And it had a funding source that was independent of appropriations.

Now, after a little bit more digging, we found out that we had 6,000 families waiting in Maine to come in from the cold so they could have a safe and warm place to live, and we had a public housing authority that was spending money on theater programs for prison inmates.

As well as the fact that any request from the board to get data on how the operation was performing was just ignored. And then we found out that they were spending twice as much to build one-bedroom apartments than it cost to buy a single-family home on a quarter-acre with a garage, two bathrooms, and three bedrooms.

So we changed the law. We made sure that the executive director reported to the board, we put in financial controls, and we put business people on the board. And, by the time I left, the cost per unit had dropped to about 35 percent, it was still going down, and we helped hundreds more families.

Now, I am looking, Mr. Gingrich, at the CFPB. And we have an independent organization, as you mentioned, that reports to nobody. The Director has a 5-year contract, and can only be replaced by the President. They have a revenue stream that is divorced of appropriations from Congress.

And all I am asking you is, did it make sense when the Director showed up here 6 months ago and tried to convince us that it was a darn good idea to spend $216 million on an office building for their 1,400 employees, to rehab it, they don't own it, with a two-story waterfall in the building and a reflecting pool and a playground on the roof? Now, how can we trust these people to collect the sort of data they are doing here in America for our families?

In our district, we had a major breach of data security with the largest health insurance provider in the State. Thousands of people in my district had their personal data violated.

So I ask you, Mr. Speaker—you have a lot of experience in this area—what can we do to fix this? Do you trust this organization to collect the sort of data that they are? And if not, how in the dickens do you fix it?

Mr. GINGRICH. Thank you. And I have to confess, the entire story about the Maine housing authority is amazing and would almost be a study in its own right.

Let me say first of all, just to set the record straight, both the Department of Justice and the Federal Trade Commission had consumer protection responsibilities prior to 2008. So this notion that magically we are going to create a new super-bureaucracy all on top of the other bureaucracies because this new bureaucracy will be terrific—and you just described the arrogance of power.

Since they are totally uncontrolled, and since they are virtuous and should not be questioned, why shouldn't they have a waterfall in the atrium? Why shouldn't they be able to walk in and look up and think, I am here to protect America on my terms, based on my prejudice, and applying my ideology, and aren't you lucky to have me as the savior of consumer behavior?

That tells you everything about why this agency ought to be abolished, whether you want to break it up and put it back at the FTC and the DOJ, or whatever, One other thing the CFPB will not tell you is all of their various data-gathering techniques, but we are told that there are consumer data companies which sell information to them which includes personal data.

Now, that should be findable, and that is the kind of thing we ought to say, explain to me why you think you are going to keep this anonymous, given modern technology and modern information systems?

Mr. POLIQUIN. For us here today and those listening, Mr. Speaker, can you give us another couple of tangible examples, to the best of your knowledge, of how you connect data protection with accountability in government agencies like this?

Mr. GINGRICH. As I said earlier, I think anytime you start centralizing information into specific banks of data, you have to assume that you are really at high risk.

And I would raise the question—again, we always have the government show up and tell us, "Everything is fine," until the next huge data breach, and then they come back to tell us, "But now, everything is really fine."

We are in a competition in which there is a free market of hackers worldwide, all of whom can operate without red tape, without limitations, without all of our various rules and regulations, and bureaucratic structures that are stunningly slow and incompetent. I find no reason to believe this particular structure is going to be dramatically better than OPM at protecting data.

And I think aggregating the numbers I gave you earlier, billions of data points in one place is really defying everything we have learned about the emergence of a very aggressive hacking culture.

Mr. POLIQUIN. Thank you, Mr. Speaker. I appreciate it very much.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Tennessee, Mr. Fincher, for 5 minutes.

Mr. FINCHER. Thank you, Mr. Chairman.

Mr. Gupta, would you support a five-person governing panel instead of the one director at the agency?

Mr. GUPTA. I would not. I think that, as Ranking Member Waters mentioned, there are lots of agencies that have single directors—

Mr. FINCHER. Okay. That is it.

Would you support having CFPB under the appropriations process?

Mr. GUPTA. No, I would not.

I think the OCC, and lots of other banking regulators, are not subject to the appropriations process, but they have an even worse source of funding, historically. They have gotten their funding from the entities they are regulating.

Instead, what you have here is a stream of money that comes from the Federal Reserve Board, and it prevents agency capture. It prevents the agency from being subject to the thing that makes Washington broken in every respect, which is the influence of financial industry money.

Mr. FINCHER. Okay. And—

Mr. GUPTA. That is why you are having so many hearings, I assume, on—

Mr. FINCHER. What makes Washington broken is too much Washington and too many bureaucrats.

I think the narrative here that we are hearing from my colleagues on the other side of the aisle—and no offense to Ranking Member Waters, she is very passionate about this; she just happens to be wrong—is that the American people aren't smart enough

to make decisions on their own, so bureaucrats and politicians in Washington are going to tell them what to do.

Another one of my colleagues trying to compare data collection at the CFPB to my county in my rural district in Tennessee is a joke. We look back at a lot of the reasoning behind Dodd-Frank and behind the CFPB, because the private sector was out of control, when in a lot of respects it was Fannie and Freddie that were influencing the private sector and telling banks who to loan money to.

So, let's get to the facts. The facts are, for a lot of my friends on the left, they see the private sector as a problem, and everything should be done in Washington and by bureaucrats and politicians. This is a slap in the face to the American people. They are smart enough to figure out what works and what doesn't, and they don't need people in Washington doing it for them.

Mr. Abernathy, if the CFPB were to use this data irresponsibly, are you concerned with a lack of accountability? And how would we rein them in? They are almost untouchable.

Mr. ABERNATHY. That is a serious problem, and that is one of the things that we believe this hearing is bringing out, is the fact that all you have to act as accountability for the Bureau is the public exposure of the data that they claim that they rely upon. And yet, when we look at the decisions that they have made, rather than relying upon the data to drive what they do, they cherry-pick the data through processes that they don't reveal to the public, in order to silence debate rather than to foment debate by basically saying, this is what the data tells us we have to do; therefore, there should be no discussion.

In one case, they have actually demonstrated the value, and that is with regard to their arbitration study, where they did put the data out for people to look at, and the data actually disprove the assumptions they make in their study, but it encourages a broad discussion by the public. And that is what we need.

Mr. FINCHER. Dr. Calabria?

Mr. CALABRIA. I want to make a couple of points, but first, I want to go back to the funding issue.

Let's remind ourselves that the CFPB is funded in the same way that the Federal Reserve itself is funded. And I think it is widely accepted that the Federal Reserve fell down on the job before the crisis despite being outside of the funding process.

And of course, as we know, Mr. Greenspan, Mr. Bernanke, and Mrs. Yellen are not accepting campaign contributions from Wall Street. That is not why they screwed up. They screwed up for a number of reasons. Of course, you could try to say, well, they screwed up because Mr. Greenspan has some crazy ideology and whatever. That is actually an illustration of why you don't want one single powerful person, because how will you know that person is not going to get the check and balance?

And, in fact, the only way we know that there were discussions about subprime lending at the Federal Reserve is because Ned Gramlich, one of the Board Members, forced that conversation. And that was a conversation that was at least had, which would not have been had if it was a single director.

So, again, let me clearly state for the record so that we don't have to go back over this topic, the CFPB is not the only part of the Federal Government or our financial regulatory structure that is broken. I think we can accept that. I don't subscribe to the two-wrongs-makes-a-right theory of policy. So just because something is broken over at agency "A" does not, in my opinion, justify us to leave something broken at agency "B."

Mr. FINCHER. My time is expiring. Let me just say this in closing.

Hopefully, a Republican Administration will take over in 2017, and my friends across the aisle will be singing a very different tune at that time, but let's remember that, to your point, two wrongs don't make a right. We need to call this out for what it is. And if Republicans were doing it, it would be wrong also. But let's fix this.

And, please, my friends on that side of the aisle, give the American people some credit. They are smarter than Washington.

I yield back.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Arkansas, Mr. Hill, for 5 minutes.

Mr. HILL. Thank you, Mr. Chairman. And thanks for calling this hearing.

It is certainly good for me to see my old friend, Wayne Abernathy. We served so long ago on the Senate Banking Committee staff, Mr. Speaker, that there was no TV in the Senate. That is how long ago it was. Many moons have passed.

I feel like Rip Van Winkle when I come back to Washington after 25 years and see this kind of behavior. And this isn't the first time we have talked about a subject like this at a hearing. FINRA proposed a proposal called CARDS, where they would sweep up every brokerage account in the country and every brokerage transaction and organize it in a way that it would not be identifiable so that they could just look at it.

And my whole problem with things like this is just because you can, doesn't mean you should, in these massive data collections, when a simple sample would do just as well in trying to look for a trend analysis.

And, further, our whole regulatory system has been based on looking at institutions and looking at the activities of that institution on a small-scale basis and making determinations about, did the executives of that institution do a good or a bad job with regard to consumer legislation or prudential regulation. That has not been the sweeping 170 million loan records, for example, that are now in the hands of the CFPB.

In my district in Arkansas, this spring has been taken up by working 70 cases of IRS identity theft. And it is all we talk about in my office: identity theft problems with federally-stored data. So I have concerns about that.

Mr. Gupta being here, it reinforces, I think, why I ran for Congress, and why I was glad the people of Arkansas elected me to Congress. Because once again, I feel like you are the chief apologist for an intrusive, Big Brother, Big Government solution.

We have had hearings, sir, in this room on the Target breach. We had retailers and bankers testify about those breaches. And we

have bills moving in the Energy and Commerce Committee in this House and in this committee, Financial Services, to deal with that. So don't make the assumption that we have not had data breach discussions in—

Mr. GUPTA. And I commend you for those efforts. Those are good efforts.

Mr. HILL. Thank you.

And, also, you stated that this committee is making up facts, when, in fact, I think The Wall Street Journal was quite clear, and I commend the staff of this committee. In the made-up-fact arena, it is the CFPB and their auto finance investigation that has gotten the world record for made-up facts in their most recent efforts.

So I would like to get some thoughts, Mr. Speaker, on this issue of why the CFPB claims it needs all this information in order to understand the markets it regulates. In my opening comments, I talked about how individual firms and individual prudential managers deal with markets, and that is how we have traditionally regulated it. And they have collected 87 percent of the credit card market. They have collected 95 percent—it is trying to get 95 percent of all the credit card accounts.

What do you think is any justification for that, when one could just do a survey of credit card vendors for a small sample to meet any analysis, it seems to me, that would have a public policy benefit? Could you comment on that for me, please?

Mr. GINGRICH. Thank you.

Look, Friedrich Hayek, in "The Road to Serfdom," made the argument that, once you start toward centralized planning, you inevitably coerce, and that the centralized planners think of themselves as virtuous and as having a fact-based approach to life, when, in fact, they are like the rest of us. They have ideologies, they have things they like, they have things they don't like.

It is very funny, in a sense. This is a monster which, if Democrats thought about it, they would rush to create a bipartisan board. Imagine you have a President Cruz or a President Trump and they decided to appoint their version of this kind of collection agency, and that person was now in total charge of gathering the data they wanted to gather so that, let's say, instead of being antigun, as the current group is, they decided they were pro-gun, and so they decided that you really ought to have lots of credit if you are a gun dealership and so forth.

You need to understand, when you put total power in one person's hands and they can operate in—not total secrecy but surprising—

Mr. HILL. Remarkable secrecy. Yes.

Mr. GINGRICH. —remarkable secrecy, you are creating a natural pattern that leads to very dangerous behavior, for this reason: The government always, in the end, is about power and the ability of the state to coerce. And when you have people in darkness who are able to exercise the power of the state, they apply their prejudice and their ideology. And that can destroy normal people because the government is so big and so powerful.

Mr. HILL. Thank you, Mr. Speaker.

I have Fourth Amendment concerns about this process, as I did on CARDS. It is not the direction we should be going in regulation in this country.

And I yield back.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty, for 5 minutes.

Mrs. BEATTY. Thank you, Mr. Chairman, and Ranking Member Green.

Let me first say thank you to the panelists for being here and that I am also proud to associate myself with the comments from my ranking member of the Financial Services Committee, Congresswoman Maxine Waters.

Mr. Chairman and to the witnesses today, certainly this is an important topic. When I received my overview with the name of the topic today that we were going to look at, consumer protection and data security, it kind of puzzles me, as we have witnesses here, that we don't have anyone here who is actually from the agency that we are talking about, and that we have certainly discussed—which probably are important, for us to hear our different views from our witnesses—that go far beyond what I think we should be discussing at hand. We are talking about the establishment and how it was established 5 years ago. We are talking about the budget. We are talking about everything but the real issue of what this hearing was scheduled to do, which I think is unfortunate and a disservice to me and to our constituents.

I would also be curious as to your expertise, starting with you, former Mr. Speaker. Can you tell us your expertise as a cybersecurity expert? I know that you are here as yourself, as you commented. I also know that you are a paid public affairs consultant with the Wise Group.

So tell me what your expertise is in this area.

Mr. GINGRICH. I wouldn't classify it as expertise, but I have worked on data issues and on cyber issues for over 25 years. As Speaker of the House, I had a substantial amount of involvement. I have this year spent time out at the National Security Agency looking at their things. I served for 6 years on the Defense Policy Board, and cyber was part of that.

And I can tell you, as a historian, all you have to do is clip out of the newspapers the increasing frequency of cyber activities, the increasing frequency of hacking, and the stunning inability of the American Government to protect itself, and I think that doesn't require any massive level of expertise.

I do think it would be wise for the subcommittee to arrange for a number of people who have cyber capabilities to come in and explain why this is a dangerous thing. And it is dangerous at two levels. Remember, it is about a mass data collection program. So it is dangerous at two levels. We are talking about breaches and hacking. It is also dangerous because the truth is, in the age of metadata, you can identify individuals from supposedly anonymous information. And you may want to have a hearing and bring in people from places like Carnegie Mellon and MIT and go through this.

But I will assure you I have spent time with the Army Cyber Command, I have spent time at NSA. I am not personally a cyber expert, but I think—

Mrs. BEATTY. Okay. Thank you.

Mr. GINGRICH. —I am reasonably knowledgeable.

Mrs. BEATTY. I am going to move on because of my time.

So based on that, and your clipping out articles and reading them, and your past experience, let me ask you this: Some have commented that the CFPB is particularly vulnerable to hackers because of their heavy reliance on cloud-based computing. Can you tell me how you feel about that and why? And what better practices, from your reading and the experience you have said, would be better? Give me something specific.

Mr. GINGRICH. I think if you talk to people at the Pentagon and at the—

Mrs. BEATTY. No, I mean in your opinion, not whom I should talk to about it. You are here today.

Mr. GINGRICH. No, I understand.

Mrs. BEATTY. I want to hear from you, not—

Mr. GINGRICH. Okay.

Mrs. BEATTY. —who I can call or who the Republicans can bring in. You have shared that you have this experience, and you have probably been the most critical. And so I want to be able to discern and be able to separate, is this predisposed from articles I have clipped out on you and what you have said that is clearly coming with some predetermined ideas against the organization and Mr. Cordray.

So let's keep this in the context and give me some specifics that you have. You are sitting here today, not the folks that may call or may come here in the future, so let's hear from you.

Mr. GINGRICH. Okay. And I would say, then, three things.

One, I believe if you aggregate this kind of data, you always have the potential to identify individuals. And I would be glad to provide you technical experts who will explain that.

Two—

Mrs. BEATTY. So, in other words, you don't have any that you can give me. I can call those folks or wait for my colleagues to bring in a real expert who is sitting here taking my time up to hear it. Thank you very much.

Let me go to the second gentleman.

Can you answer that question, please?

Mr. ABERNATHY. Thank you, Congresswoman.

Our testimony is focusing on the policymaking process, and the problem that you have when you have a single director with nobody who can engage that—

Mrs. BEATTY. No, that is not my question, about the single Director.

I'm sorry. My time is—

Mr. ABERNATHY. That is what our focus is—

Mrs. BEATTY. —up. I yield back.

Mr. ABERNATHY. —and our testimony is about.

Mrs. BEATTY. Okay. But that wasn't my question to you. So let's be clear on that.

Mr. ABERNATHY. Right.

Chairman DUFFY. The gentlelady yields back.

The Chair now recognizes the gentleman from Illinois, Mr. Hultgren, for 5 minutes.

Mr. HULTGREN. Thank you all for being here.

Speaker Gingrich, it's good to see you. One of my favorite memories of serving over the last 5 years was being with you and your wife in Tampico and Dixon, Illinois, for Ronald Reagan's 100th birthday. So I appreciate you being here. Certainly, he is a hero of mine, and I appreciate the work you have done talking about him as well.

But I want to get to what I see as a very important subject here. I am troubled by all the stories that we have heard of what happens to consumer financial information when it gets into the wrong hands and how aggressive people are in trying to get this information. Our government should be held to the highest standard when it comes to protecting personal information it holds on the American people.

On October 15th, the CFPB released its final rule to expand data collection under Regulation C, the Home Mortgage Disclosure Act, or HMDA. The final rule requires covered banks and credit unions to collect 48 unique data fields on each mortgage loan they make. This is more than double the number of data fields covered lenders are currently required to collect.

Some of the new fields include applicant or borrower age, credit score, automated underwriting system information, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, nonamortizing loan features, interest rate, and loan originator identifier.

I think we can all agree that this is a lot of information. And while some of this information is not directly related to the borrower or terms of the loan, this data can still be revealing. I understand regulators and the public make use of this data, but I am also concerned that it could pose privacy risks for homeowners.

Speaker Gingrich, if I can direct this first question to you, I think we all remember the Office of Personnel Management data breach, and I think we have heard some testimony today about how the CFPB's data security controls may be inadequate.

In light of the incidents like OPM and others within the government, how can we assure the American people that their personal information is safe?

Mr. GINGRICH. First of all, you can't.

Second, you reminded me that I got one of those letters, among 21 million people, which said my data had been breached, and it said, gee, if you want to do something, call this number. I couldn't imagine anything useful. What were they going to do? Say, we don't know exactly who breached it, we don't know exactly where it is, and we don't know exactly how it will be used? It is just nonsense.

Mr. HULTGREN. Yes.

Mr. GINGRICH. The fact that you can live through this, you can watch this scale of failure, and then have some other bureaucrat sublimely tell you, "Oh, we are safe," they don't—my first point is

they don't know. If you are not offline, you are, by definition, potentially hackable.

And this is a major crisis for the whole government. This is not something that—I have worked with John McCain, the chairman of the Armed Services Committee in the Senate, who is very worried that we are not able to innovate rapidly enough inside our bureaucracies to keep up with the private-sector revolution worldwide. And it is always worldwide. It is Estonians, it is Romanians, it is Russians, it is Israelis. And so, we need to understand the threat.

I think that is a significant thing, and I would encourage the committee to get people from places like Carnegie Mellon and MIT. Let's meet everybody's concern about the level of technical expertise. And I think you will find that they will tell you, "You should be afraid. You should not be reassured."

Mr. HULTGREN. I believe you are right. I just had a briefing this morning with the Department of Energy on cybersecurity—and some real concerns, real threats, real experts who are frightened—having nightmares, they talked about what could happen. And we see this as just as widespread.

I am going to ask a question, just a yes-or-no question, Speaker Gingrich, Dr. Calabria, and Mr. Abernathy, the CFPB's final rule did not explicitly state which of this new data would be made publicly available. It seems to me a study on the privacy risks and the opportunity for public comment would be appropriate, just as Speaker Gingrich was talking about.

Mr. Speaker, I think you have already answered. Would you agree that this is a good position? I think you would say "yes."

Mr. GINGRICH. Yes.

Mr. HULTGREN. Mr. Abernathy?

Mr. ABERNATHY. I agree, Congressman. Thank you.

Mr. HULTGREN. Dr. Calabria?

Mr. CALABRIA. Yes.

Mr. HULTGREN. Let me jump back and focus on Dr. Calabria and Mr. Abernathy. Do you have any thoughts on why the CFPB chose to go well beyond the new reporting requirements in Section 1094 of Dodd-Frank? The CFPB loves to say they are data-driven in their policy, but doesn't the increased reporting of this data raise more privacy issues?

Mr. ABERNATHY. That is one of the serious concerns when you look at the more than two dozen additional data segments that the Bureau asked for. And yet, there really is inadequate discussion as to why they need this data, and what they would do with it. We need that kind of public debate before they do the rule rather than afterwards.

Mr. HULTGREN. I agree.

Dr. Calabria?

Mr. CALABRIA. And I would certainly agree with that.

Let me say, even before this, from what was publicly available for HMDA, you could link to courthouse records and identify individuals with that data even with the preexisting databases.

Mr. HULTGREN. Yes.

I only have a couple of seconds left.

This feels like such an overreach at such a risky time. I think it is absolutely the wrong direction to go, for CFPB to be doing this, and we need to do more to make sure it doesn't happen.

Mr. Chairman, I yield back.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentlelady from Utah, Mrs. Love, for 5 minutes.

Mrs. LOVE. Thank you, Mr. Chairman.

I have to tell you, you have an idea of how dangerously powerful some of these regulatory agencies are before you get here, but I can't tell you how shocked I am, getting here and realizing the casualness, where we talk about collecting people's private information, the casualness in saying, "It's okay. Don't worry about it. We're here to protect you. We know everything. We're bigger minds than you are, and we can handle things for you." It is absolutely shocking to me, the amount of power these regulatory agencies have over the American people.

I have a couple of questions. As I have gotten into learning a little bit more about the CFPB, I have several concerns, but I want to focus, first of all, on some of the data collecting, which raises privacy concerns, and, second of all, what is being done with that data.

These are the questions—by the way, that is not just coming from me. They are coming from my constituency. So I do this work on behalf of them.

We have learned that the way that the CFPB uses data and interprets the data was highly suspect and that the result, the supposed redress that the CFPB imposed on the marketplace, was not correlated with actual harm. There was a lot of guesswork involved, and the guesswork resulted in the CFPB imposing more requirements on the auto lending market, which results in higher costs and less choices for the consumer.

So, now, in addition to the auto sales, the CFPB has also been collecting data, as we have heard today, regarding credit reports, credit cards, mortgages, student loans, payday loans, overdraft fees, and other financial data. Over the past year that I have been here on this committee, I have been investigating some of that activity, specifically in regards to payday loans and overdraft fees.

So my question for the panelists is: What other CFPB actions do you see on the horizon? What other disappearing options, as you would say, for services that consumers, when they are looking at it, need to worry about losing?

Mr. ABERNATHY. If I may, Congresswoman—

Mrs. LOVE. Yes.

Mr. ABERNATHY. —one of the areas we are particularly concerned about is the ability to serve the market for short-term and small-amount loans. Our estimate is that there are 54 million customers each year in the market for small loans, short-term loans—these are loans for less than a year—and the Bureau is on the verge of decreasing significantly the access to those kinds of resources.

They have the payday lending rule that they are about to come out with that, estimates are, will eliminate 80 percent of that market in one decision. We are concerned that they are looking at overdraft, where a number of people who have bank accounts use the

opportunity to overdraw their account a little bit to be able to obtain immediate short-term credit for a variety of needs, from a vacation to a major emergency that takes place at their home.

And yet, we have looked at the way they exposed data on this. One data segment that they put forward indicated that, in their view, the median average overdraft is $24, for which people paid $34. If they actually look at what happens with all of the data for an institution, they would discover that the amount of credit that customers receive versus what they paid for it for overdraft is something like 7 to 8 times the amount of the fee.

But by manipulating the data in ways that no one can really get at and challenge, they end up promoting policies that could choke off the opportunity for overdraft to be a source of credit for millions of people.

Mrs. LOVE. So far, what I have seen is the people that they have vowed to protect are the ones who are being hurt the most.

And I just want to say—because I am not here to necessarily change the minds of my colleagues, because a lot of the minds have been made up, on both sides of the aisle. I am here to make sure that we are transparent and we give a fair warning, a warning to the American people, that if we continue to allow this to happen, the only people who are at risk are them, are the American people.

Let me just say right now, this is a fair warning that if we are not vigilant, if we do not cry out and make our voices heard that this is, first of all, unacceptable, and second of all, we are smart enough to make decisions in our homes and for ourselves—and if we do not do something now, then the only people who are at risk, who have the risk of losing everything, are the American people.

I yield back.

Chairman DUFFY. The gentlelady yields back.

The Chair now recognizes the gentleman from Minnesota, Mr. Ellison, for 5 minutes. Welcome.

Mr. ELLISON. Let me thank the Chair and the ranking member and thank the panel. I really appreciate having time to discuss this issue today.

Mr. Gupta, I would like to ask you a question, if I may. You made the comment, unless your profits come from deceiving consumers, you should welcome the CFPB's data collection. Could you explain what you meant by that?

Mr. GUPTA. Sure. Thanks for the question.

The reason we have the CFPB in the first place is because we had a massive regulatory failure, right? We had a financial crisis that resulted from all sorts of fringe lending that was entirely unchecked. People were asleep at the switch. You didn't have anyone who was looking out for consumer protection. The Federal Reserve Board was looking out for other things, and consumer protection took a backseat.

And so we created a single agency that is the voice of the American consumer. It is actually standing up for American consumers and trying to prevent the kind of practices—those practices didn't just harm people who had subprime mortgages, right? They threatened to harm all of us. They threatened to tank the American economy and the world economy.

So, unless your business model is based on unfair and deceptive practices, the kind of thing that the CFPB pursues in its enforcement actions and its regulations, you should have no concern about transparency and about the CFPB having that data and using it as a tool to do better consumer protection.

Mr. ELLISON. Thank you.

So, honestly, I have to admit something. When I first saw the panel lineup, I thought to myself that my friend, Mr. Gingrich, has a Ph.D. in history and he may know a lot about that, but what does Newt Gingrich know about big data? I was just a little surprised by that choice.

But it turns out that you actually do know a lot about big data, because—let me put it like this. Republicans, in general, claim that they have collected more than 300 terabytes of voter data, including more than 725 billion data points on nearly 200 million American voters. This information is matched to individuals in voter data files, which also contains personally identifiable information—home address, phone number, email.

Not only are Republicans collecting massive amounts of voter data, some Republicans even rent out the data to other campaigns. Well, they rent that data to a list of brokers that lease data to marketing firms and other private entities. For example, the Presidential campaign for Newt Gingrich, Newt 2012, reported getting $17,000 in the most recent FEC reporting cycle, even though that campaign dropped out of the primary more than 3 months before.

A separate company, Gingrich Productions, also uses a list broker to sell personal information via TMA Direct. For the low price of $120 a month, you can get access to nearly 500,000 individuals' personal information who were never before on the market.

So I did have my doubts about whether our panel was qualified to offer opinions on such a complex topic, but, clearly, clearly, Speaker Gingrich, you do know something about making money off big data.

So I guess my question is, if it is okay for you to sell big data with personal information, why can't the CFPB rely on anonymous data to protect consumers?

Mr. GINGRICH. Look, that is a great question. As often with you, it was a brilliant setup.

It is true that we have carefully studied the 2008 and 2012 Obama campaigns. And it is true that, while we are still behind them in gathering metadata and while we don't have quite the ties they have in Silicon Valley and at major intellectual centers, we are doing everything we can on the Republican side to be at least as good as the Obama team at using metadata. So I appreciate your recognizing that, while we are second, we are working hard to catch up.

Second, the big difference—and you put your finger on it: I can't go to somebody and threaten to cut off their bank loans. I can't go to somebody and threaten to put them in jail. People who happen to be on my list voluntarily signed up to get information from Newt Gingrich and can voluntarily get off the list without having a bureaucrat call and threaten them.

If you look at the power of the government—which is always, in the end, coercion—and you imagine random independent bureau-

crats who aggregate to themselves the right to decide what my consumer choices should be, that is real power. We don't have real power. We are just a private company doing private things in a free market. And that is why I am so frightened to see this much power in the government.

Mr. ELLISON. And making a good penny at it in personal data. Thank you, Mr. Gingrich.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the ranking member of the subcommittee, Mr. Green from Texas, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Let me start with a few questions, and I would like for you to raise your hands if these questions apply to you.

If you are in any way, now or ever, connected to the U.S. Consumer Coalition, would you kindly raise your hand?

Let the record reflect that Mr. Gingrich has raised his hand.

If you are now or you have ever been paid by the Wise Group, if you would raise your hand—the Wise Public Affairs group.

Thank you.

And, Mr. Gingrich, since you have raised your hand both times, I would like to know a little bit more about the Wise Public Affairs Group. But before I get there, I want to go back to something that you and I have broached earlier, and it has to do with your statement.

Because, in your statement, you do indicate that you are an advisor, in an advisory capacity. But I was hoping that you would do what was done when The Wall Street Journal had to issue its additional statement, and that is indicate that you were a paid advisor to the Wise Public Affairs Group. Because you well know that the Wise Public Affairs Group owns and operates the U.S. Consumer Coalition.

So I was disappointed that this was not called to our attention. As has been indicated, this is not the first time this has been done. You pride yourself in transparency, but, for some reason, you didn't reveal this money connection. You were willing to reveal that you just happen to advise, but you are making a profit based upon this advice because you work for the Wise Group.

If I have misstated this about your working for the Wise Public Affairs group and also being connected to the U.S. Consumer Coalition, would you kindly raise your hand again? Because I would like to hear from you if you have.

Let the record reflect that what I have said, per Mr. Gingrich, is accurate.

And this is why we bring this up, Mr. Gingrich: Because this U.S. Consumer Coalition is out to emasculate the CFPB. It has published its intent in terms of what it would like to do to the CFPB.

There are many of us who are of the opinion that the CFPB serves a meaningful purpose. And we are of the opinion that in serving this meaningful purpose, the CFPB has done a good thing. The CFPB makes it possible for consumers to receive restitution after they have been harmed. And it is unfortunate, but I think it is fair to say that if the rule that you would have us adhere to were

implemented, then there are many consumers who would not receive the benefits that they have received already.

The personally identifiable information of which we speak is not by law permitted to be used for market monitoring—not by law. It can't be used. But it can be used for enforcement activities, which means if you find out that a consumer has been harmed, you can take that personally identifiable information and you can then contact that consumer and say, "You have been harmed," as was done with the $4.5 billion in relief that was given in debt collection, $50 million of it in civil penalties, I might add; $2 billion to consumers related to credit card enforcement, $140 million for civil penalties; $125 million to consumers for auto finance enforcement, defrauded, taken advantage of, $25 million of it in related civil penalties; $115 million in relief for mortgage lending enforcement, $55 million of that in civil penalties; $20 million in relief to consumers for student lending enforcement, $2 million related to civil monetary penalties; $19 million to consumers for payday enforcement activities, over $10 million in related civil monetary penalties.

So if we decide that we are no longer going to allow the CFPB to aggregate information for enforcement purposes, we now take away these dollars that are going to consumers, because we won't be able to find out who they are and contact them. I suppose there is some nebulous way that someone would conclude that we could do this, but the truth of the matter is that enforcement activities benefit seniors.

The CFPB is in the business of helping people, and this would eviscerate it to the extent that it would be emasculated, if not eviscerated, such that it could not continue its enforcement activities and return moneys to seniors who have been harmed. "Senior citizens" is a more appropriate term—consumers.

I yield back.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes himself for 5 minutes.

Now, taking a page from the ranking member, would the panel—would you raise your hand if you are surprised that former Speaker Newt Gingrich is fighting for limited government and more transparency in government? If you are surprised by that, raise your hand.

Mr. Gupta, you are not surprised by that. It is consistent with everything this man has done.

Mr. GUPTA. No. I am surprised that he is paid by the financial industry—

Chairman DUFFY. No, no, that wasn't my question. You are not surprised that he is fighting for limited government and more transparency.

What I find unique is that my friends across the aisle want to do everything to attack the former Speaker, when this is consistent with his life's work.

We are talking about big data and abuse of power. And I commend the Speaker for coming in and lending his voice to this very important issue.

Now, a question to the panel: Do you all agree that American consumers are at risk of having their data taken from the collection at the CFPB?

Mr. ABERNATHY. Yes, sir.

Chairman DUFFY. Mr. Calabria?

Mr. CALABRIA. Yes.

Chairman DUFFY. Mr. Gingrich?

Mr. GINGRICH. Yes.

Chairman DUFFY. Mr. Gupta, do you agree with that?

Mr. GUPTA. I would say of course there is a risk, but no more than with any other agency—

Chairman DUFFY. Of course, there is—

Mr. GUPTA. —and less so than with the private sector.

Chairman DUFFY. So, Mr. Gupta, is there another agency out there that goes by the "Consumer Financial Protection Bureau?"

Anyone? Yes or no?

Mr. GUPTA. No.

Chairman DUFFY. So the one that is here to protect consumers is also an agency that is putting consumers at risk with the data that they collect, right? Yes or no?

Mr. GUPTA. No. It is a—

Chairman DUFFY. You just told me that they were—

Mr. GUPTA. It is a false construct, because—

Chairman DUFFY. No, it is not a false—listen—

Mr. GUPTA. —the risk in the private sector for this data is far greater—

Chairman DUFFY. That is not—

Mr. GUPTA. —than it is with the CFPB.

Chairman DUFFY. No. I—

Mr. GUPTA. And what the CFPB—

Chairman DUFFY. I am going to reclaim my time.

Mr. GUPTA. —is doing is no different than—

Chairman DUFFY. As the Speaker pointed out, there is a big difference between the private sector and Big Government. If I choose to go get a license at the DMV, it is government, they have my information, I know that. If I shop at Target or Home Depot, they have my information, and I know it.

Does the American consumer actually know that the Consumer Financial Protection Bureau is collecting their information? Do you think they know that?

Dr. Calabria?

Mr. CALABRIA. I don't believe they do.

Chairman DUFFY. Okay.

Mr. Abernathy, by chance, does the Consumer Financial Protection Bureau ask the people whom they claim to protect if they can collect their personal information?

Mr. ABERNATHY. No. They go to the institutions with which people have voluntarily entered into a business relationship and then gather up all of that data and bring it into the Bureau.

Chairman DUFFY. So they don't ask them, do they?

Mr. ABERNATHY. They don't.

Chairman DUFFY. The very people they claim to protect, they don't ask for permission to collect the data. And they put those very people they claim to protect at risk by housing the data.

Dr. Calabria?

Mr. CALABRIA. If I could—I guess I should be careful, as a nonlawyer, but I would remind the committee that the Fourth Amend-

ment does not apply to the private sector. You can choose. What the Fourth Amendment does is constrain the government. And that is what we should not lose sight of here.

Chairman DUFFY. I think that is a very good point.

Another concern that I have, I think, Mr. Gupta, you made the point that this agency is better. It is better because it is not subject to, I think you said, lobbying and outside forces. They can do the goodwill of the people without being subject to the people. Is that basically your point?

Mr. GUPTA. No. I mean that all agencies should be held accountable, and the CFPB is accountable. We have had countless hearings about that.

Chairman DUFFY. No, no—

Mr. GUPTA. We talk about it—

Chairman DUFFY. I Chair the Oversight Subcommittee. We have asked for countless documents specifically on this. And if they don't turn them over to us, do you think that they are accountable?

Mr. GUPTA. I do. They are—

Chairman DUFFY. So if they don't give me all of the documents—

Mr. GUPTA. If there is another agency that has had to come up to the Hill and testify more than the CFPB over the past couple of years, I am not aware of it.

Chairman DUFFY. So, on that point, maybe, Mr. Gingrich, would the model be better, then, if the EPA, the DOJ, the Department of Health and Human Services, the Department of Education all weren't subject to appropriations, if they would just come and give us a few lip-service hearings a couple of times a year? Would democracy be better off if we followed Mr. Gupta's set of ideas?

Mr. GINGRICH. Look, I understand why people who want to coerce and control the American people want to ensure that the Congress can't represent people in an effective way. If you think about the logic of that, it is perfect.

But I want to go back to something that your ranking member said that I am confused by. If, in fact, the CFPB doesn't know about individuals, how did all that money get back out to individuals? And how do we know it got to the right individuals? And isn't it the case that, in fact—I am told that in the auto loan problem, they actually ended up paying white Americans for racial discrimination because, in fact, their algorithms were wrong. So you can't have it both ways.

And the idea of trying to stop 2007 and 2008 makes some limited sense—although the problems weren't bureaucratic; they were judgment. But the idea that we leap from that, which would be a focus on the big banks, to deciding that we are going to look at everything anybody does in America based on the whim of one bureaucrat in a hidden institution which is remarkably secret, to go back to that term—

Chairman DUFFY. And I want to—

Mr. GINGRICH. —I think is just wrong.

Chairman DUFFY. My time is up, but pursuant to clause 4(d) of the committee's rule 3, the Chair recognizes himself for an additional 5 minutes. And I will also then recognize the ranking member after I am done for an additional 5 minutes.

To that point, Speaker Gingrich, I would agree with you. Personally identifiable information is taken by the CFPB, contrary to Mr. Gupta's prior testimony.

You would now agree, Mr. Gupta, that the CFPB does collect personally identifiable information, correct?

Mr. GUPTA. I think a lot of things are being—

Chairman DUFFY. Yes or no?

Mr. GUPTA. —conflated here. You have to be clear.

Chairman DUFFY. Mr. Gupta—

Mr. GUPTA. The ongoing data collection that is being talked about—

Chairman DUFFY. I am going to reclaim my time. These are very specific questions.

Mr. GUPTA. —does not include personally—

Chairman DUFFY. I am going to reclaim my time.

Mr. GUPTA. —identifiable information.

Chairman DUFFY. A very simple question: Does the CFPB collect personally identifiable information?

Mr. GUPTA. Not as part of the—

Chairman DUFFY. Yes or no?

Mr. GUPTA. —ongoing market monitoring. The only extent—

Chairman DUFFY. So I am going to translate that for the American people. The answer is: Yes, they do.

Mr. GUPTA. Only through the Consumer Complaint Database and through the supervision process. Those are the only ways in which any—

Chairman DUFFY. So you are—

Mr. GUPTA. —personally identifiable information comes in.

Chairman DUFFY. I don't care about—

Mr. GUPTA. And it is scrubbed before it is used by the Bureau.

Chairman DUFFY. —the parameters, Mr. Gupta, by which you indicate they collect. They do collect. And GAO in their study said, under arbitration cases, they collect personally identifiable information; deposit advance products, they collect personally identifiable information; and storefront payday loans, they collected personally identifiable information.

So they do collect it, and they do put the American consumer at risk. That is when they have the information, and that is not even talking about how we can reverse-engineer the data points that they do have—

Mr. GUPTA. Mr. Chairman, if I may—

Chairman DUFFY. —to subject the American people to cyber attacks.

Mr. GUPTA. Those three examples are the only ones that they found. The arbitration study was mandated by Congress. There is no other way to do it if you don't get the arbitration cases—

Chairman DUFFY. I am going to reclaim my time. That is very different than what you tried to first say to this committee, which was that it wasn't collected, and to now your clarified statement, it is collected.

Dr. Calabria?

Mr. GUPTA. No, what I said was that—

Chairman DUFFY. I am done with—

Mr. GUPTA. —none of the ongoing market monitoring—

Chairman DUFFY. Thank you, Mr. Gupta.

Mr. GUPTA. —collections include personal information.

Chairman DUFFY. Dr. Calabria?

Mr. CALABRIA. I just wanted to make two quick points.

One was on the notion of oversight. If we said that somehow Jamie Dimon is responsible to JPMorgan because he appeared in front of his board twice a year, we would think that was ridiculous. If we said that he was accountable because he appeared before his regulator twice a year, we would say that is ridiculous. So the notion that hearings are somehow what constitutes accountability, and that is sufficient for an agency, I think is, with all due respect, absurd.

But, more importantly, I want to get to the notion of—we had a financial crisis. It was painful. Everybody agrees with that. Mr. Gupta lists in his testimony a number of things on the first page that the CFPB has done. Not one was the cause of the financial crisis.

In fact, when the CFPB had an opportunity to deal with the cause of the financial crisis in its qualified mortgage rule, it punted. It gave up on checking credit, it gave up on downpayments. Congressman Frank sat before this dais a year-and-a-half ago and said that the most important part of Dodd-Frank, the mortgage rules, were essentially gutted.

So, essentially, if we want this agency to actually do something about the financial crisis, we have to recognize the financial crisis was not caused by payday lending, it was not caused by arbitration clauses; it was caused by shoddy mortgages. And, again, in that instance, the CFPB—

Chairman DUFFY. By chance—

Mr. CALABRIA. —completely punted.

Chairman DUFFY. —from the GSEs?

Mr. CALABRIA. Yes. Again, GSEs are exempt. FHA is exempt. We have basically said, anybody who had anything to do with the crisis, with the exception of mortgage brokers—

Chairman DUFFY. Is exempt.

Mr. CALABRIA. —is exempt from the CFPB. So let's not pretend that this agency has almost even a loose connection to the financial crisis.

Chairman DUFFY. I find it hard to wrap my head around the fact that, if you are accountable to the American people by way of the Congress and through appropriations, if you disclose not just the data that you collect but the purpose for that data—for what are you using it?

The NSA has been very clear on the parameters on which they use the data points that they collected on phone records. Tell me if you disagree that the CFPB has not set out bright guidelines for how this data is going to be used. They have told us a few of the things it will be used for, but, Mr. Abernathy, would you agree that they haven't been clear on how and the limitations in which this data can be used?

Mr. ABERNATHY. That is one of the most significant concerns we have, that they gather in enormous amounts of information, keep the data in house, and then they parse out only the pieces of it that will establish the positions that they have already taken.

It is like being in a court case where the prosecutor says, here is the information I am going to share, which shows that you are guilty, but you don't have access to the other information I have that might tell a different story.

Chairman DUFFY. Thank you.

And I want to go to Mr. Gingrich, Speaker Gingrich, for one quick second before my time expires.

The CFPB, whether you like it or not, has been empowered to make rules. And I want to make sure that the rules that they make are good rules, that they actually help the American consumer and they help the American people.

But, Mr. Gingrich, do you think that they could obtain good data by way of sampling as opposed to bulk data collection? I know that you in campaigns have looked at a lot of polling data that is pretty representative of the country as a whole. Could we have the same impact if we were sampling as opposed to long-term bulk data collection?

Mr. GINGRICH. I think it depends on what you are trying to accomplish. If what they want to know is if there are patterns that should be looked at, you could do all that by polling.

But what you are seeing—if you just think about the logic of what they are now doing, what you are seeing is an effort to assimilate all of the consumer behavior of the United States into one analyzable system for the purpose of a group of bureaucrats making a decision about whether or not it is an acceptable behavior.

Now, that is a very practical thing if you are in their shoes. They would like to have the entire economy at their fingertips so they have control so they can decide which parts of the economy are inappropriate. I think that is really, really dangerous.

Chairman DUFFY. And my time has expired.

I now recognize for an additional 5 minutes the ranking member, Mr. Green.

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

Let's go to you, Mr. Gupta. Now, Mr. Gupta, would you make the distinction between market monitoring and the supervisory activities with reference to enforcement?

Mr. GUPTA. Yes. Would you like me to elaborate on that?

Mr. GREEN. Is the CFPB allowed to collect identifiable information for market monitoring?

Mr. GUPTA. It is not. The Dodd-Frank Act makes that illegal, and the GAO found that the CFPB is obeying the law.

Mr. GREEN. And if someone has information to the contrary, if you have information indicating that the CFPB is collecting identifiable information for the purpose of market monitoring, would you kindly raise your hand?

All right, Mr. Abernathy.

Mr. ABERNATHY. One of our concerns is that we don't know what the Bureau is collecting—

Mr. GREEN. But you don't know—

Mr. ABERNATHY. —and what they are using it for.

Mr. GREEN. But my question to you is—

Mr. ABERNATHY. We don't know.

Mr. GREEN. —do you have any evidence of it actually happening?

Mr. ABERNATHY. No one in America—

Mr. GREEN. You don't have any evidence of—

Mr. ABERNATHY. —knows what the Bureau—

Mr. GREEN. So you will now use conjecture and speculation to in some way skew this issue such that people would be confused.

That is what this hearing is all about: confusing the American people so that they will now want to end the CFPB that happens to be a benefit to them.

And Mr. Gingrich has gone so far as to say in his testimony that it is imperative that we move toward abolishing the Consumer Financial Protection Bureau—abolishing it, which, by the way, is the same desire of some of these entities that he works for.

It is important for the American people to know who is working on their behalf. And you can confuse the American people with enough of this rhetoric that we have heard today, and they will be absolutely opposed to an entity that benefits them, has sent back all of this money to them, some $11 billion in relief to consumers. This would all be evaporated. It would just go away. They wouldn't have an opportunity to get the money back that they overpaid or the money that they suffered a loss with reference to some kind of fraud or scam. They would just be scammed. They would be defrauded.

The personally identifiable information is used so that we can send the money to people.

Mr. Gupta, do you agree with this?

Mr. GUPTA. I agree wholeheartedly.

Mr. GREEN. And, also, we might add that, as we go through this process, it is very interesting that there seems to be a sort of a stealth campaign that is taking place under the radar—entities that can't be properly identified; you don't know who is on the board of directors, if there is a board of directors; massive amounts of money going to a 501(c)(3); an entity indicates that it is going to spend over a million dollars to take out certain Members of Congress. All of these things are happening just to make sure that the CFPB is emasculated and eviscerated if possible.

This is unbelievable. I agree with the ranking member; it is hard for me to get my mind around some of the things that are going on here. The people of this country are absolutely being fed bad information. Yes, they are intelligent; yes, they are smart; yes, they can sift the sand and find pearls of information, but they can't do it if they are getting bad information.

And that is what this is all about, which is why we have put so much emphasis on what has happened with reference to this stealth organization, this mystery organization.

And, to this end, I would like to correct one thing. I said 501(c)(3), and it is a 501(c)(4) organization. And there is so much more to be said, but I do want to add into the record a news article styled, "Gingrich-Connected PR Firm Issues Baffling Response to WSJ Disclosure Failure." And this is where the amplification had to take place.

And I would also want to note that, in this Mother Jones article, there is an indication that the Wise Public Affairs Group set up this Coalition, this Consumer Coalition, so-called Consumer Coalition, and that the members of the staff seem to double as members of the Coalition.

Does anybody know of any board of directors, any member of a board of directors associated with this Coalition? If you know of a board member, raise your hand.

No one seems to. It is a mystery.

I yield back the balance of my time.

Chairman DUFFY. The gentleman yields back.

I want to thank our witnesses for their testimony, and for the rigorous debate that took place today.

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

Without objection, this hearing is now adjourned.

[Whereupon, at 1:00 p.m., the hearing was adjourned.]

A P P E N D I X

December 16, 2015

Testimony of
Wayne A. Abernathy
On Behalf of the
American Bankers Association

Before the
Subcommittee on Oversight and Investigations
Committee on Financial Services
United States House of Representatives

Examining the Consumer Financial Protection Bureau's Mass Data Collection Program

December 16, 2015

Thank you Chairman Duffy and Ranking Member Green for the opportunity to testify on this important topic, relating directly to the accountability of the Bureau of Consumer Financial Protection (Bureau) and the transparency of its work. My name is Wayne Abernathy, Executive Vice President for Financial Institutions Policy and Regulatory Affairs at the American Bankers Association.[1] The customers of all of ABA's member banks, from thousands of community banks in every congressional district in the nation, to the mid-size, regional, and money center banks, that together present a wide variety of business models by which they serve the wide variety of financial services needs of the deepest and most complex economy in the world—the customers of these banks are affected by the actions, policies, and decisions of the Consumer Bureau.

The Dodd-Frank Act gave the Bureau of Consumer Financial Protection enormous authority and power over retail financial products, those who provide them, and therefore over the people who use them. This power comes with little more than nominal oversight and accountability. It would be hard to find a Federal agency where the gap between regulatory power and public accountability is greater. The broad authorities of the Bureau are ultimately wielded by a single individual who has no face-to-face peer among the hundreds of employees of the Bureau.

In their defense, Bureau officials repeatedly assert that the Bureau is a "transparent" and "data-driven" agency, where policy decisions, rules, regulations, and actions are formulated in public view driven by the story told in the enormous amounts of information that the Bureau gathers from businesses and their customers. Public exposure and data are to be the checks on the natural tendency for such a government agency, any such agency, to stray into arbitrary action. I emphasize again, that the Bureau, as it is currently structured, is governed by one person with

[1] The American Bankers Association is the voice of the nation's $15 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits, and extend more than $8 trillion in loans.

no peers, no one in the agency who can address him without ultimately bending to that one person's policy judgment, knowing that at some point the discussion will end with, "Yes sir."

We welcome the Subcommittee's inquiry into the question of just how strong a check on arbitrary behavior are the Bureau's data practices and the public's access to the full information on which the Bureau relies for its decisions. How much is the Bureau, in fact, data-driven, and by which data, from which sources, and how would we know?

Here are some things that we do know:

Bureau officials have devoted significant effort to promote public recognition that the Bureau places a high priority on the role of data in policymaking and the importance of transparency in the use of those data. A few examples:

- Bureau Director Richard Cordray stated the following, on September 11, 2013, in remarks before the American Mortgage Conference: "At the Consumer Bureau, we are a data-driven agency. Before we finalize our rules, we conduct research and solicit input from all stakeholders—consumer advocates, industry members, and public officials. The best decisions will be those that are best informed."[2]

- A year earlier, on May 3, 2012, Richard Cordray said the following at the Simon New York City Conference: "we have dedicated ourselves to being an agency that is evidence-based and data-driven. Field hearings, inquiries, rulemakings, bulletins—we are taking an 'all of the above' approach to guarantee that we are both sharing and receiving up-to-date information that will inform our policymaking. . . . We strive to be as rigorous and analytical as the available market information allows us to be while remaining pragmatic in our judgments and decisions."[3]

- On December 13, 2012, Richard Cordray offered the following on a press call to discuss a white paper on credit reporting: "As a data-driven agency we believe in informational reports like this. We believe in doing deep dives into the markets we regulate, because we think the best and most effective way to oversee an industry or market is to understand it thoroughly."[4]

- The Bureau's Strategic Plan for FY2013-FY2017 includes the following: "We take in data, manage it, store it, share it appropriately, and protect it from unauthorized access. Our

[2] Richard Cordray, Director, Bureau of Consumer Financial Protection, Remarks at the American Mortgage Conference (Sept. 11, 2013), *available at*: director-cordray-remarks-at-the-american-mortgage-conference.
[3] Richard Cordray, Director, Bureau of Consumer Financial Protection, Prepared Remarks Before the 2012 Simon New York City Conference (May 3, 2012), *available at*: http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-before-the-2012-simon-new-york-city-conference/.
[4] Richard Cordray, Director, Bureau of Consumer Financial Protection, Prepared Remarks on a Credit Reporting White Paper Press Call (Dec. 13, 2012), *available at*: http://www.consumerfinance.gov/newsroom/prepared-remarks-by-richard-cordray-on-a-credit-reporting-white-paper-press-call/.

aim is to use data purposefully, to analyze and distill data to enable informed decision-making in all internal and external functions."[5]

- This, from the Bureau's website, on a page titled, "Open Government": "Transparency is at the core of our agenda, and it is a key part of how we operate. You deserve to know what we're doing for the American public and how we are doing it."[6]

It would be difficult for anyone here to object to the goals, objectives, or principles enunciated in those statements. We support them.

Bureau practices, however, have not lived up to these appropriate standards, and there is little to require that they do.

The Dodd-Frank Act extends to the Bureau impressive authorities for requiring information and *gathering* data. Oversight under the Act of the exercise of those authorities is less impressive. The following is a summary of key provisions.

- Section 1022(c): Monitoring Authority. The Bureau—"to support its rulemaking and other functions"—is authorized to exercise broad data gathering powers for the purpose of monitoring "for risks to consumers in the offering or provision of consumer financial products or services, including developments" in these markets. The statute provides illustrations of—but not limits on—what the Bureau should consider in using *its* resources under this provision (there is no consideration mentioned of the use of *financial firms'* resources), including (1) likely risks and costs to consumers; (2) understanding by consumers of risks; (3) applicable legal protections; (4) rates of growth in providing products and services; (5) the extent to which risks may disproportionately affect underserved consumers; or (6) "the types, number, and other pertinent characteristics" of the firms under Bureau jurisdiction that provide financial consumer products and services. The Bureau is required to publish at least annually a report of "significant findings" from this monitoring. To obtain this information, Section 1022 authorizes the Bureau to gather data "regarding the organization, business conduct, markets, and activities" of the firms under Bureau jurisdiction. The Bureau may gather from firms under its jurisdiction information by rule or by order, under oath or otherwise, in such form and reasonable time period "as the Bureau may prescribe". The Bureau may also gather from other parties information "from a variety of sources," including consumers and "available databases". This section also authorizes the Bureau to require that non-banks that are not under its jurisdiction file with the Bureau, "under oath or otherwise," annual or special reports, including answers to specific questions, to

[5] BUREAU OF CONSUMER FINANCIAL PROTECTION, STRATEGIC PLAN FY 2013 – FY 2017, *available at: http://www.consumerfinance.gov/strategic-plan/.*
[6] Open Government, BUREAU OF CONSUMER FINANCIAL PROTECTION (December 10, 2015), http://www.consumerfinance.gov/open/.

help the Bureau assess whether such firms are or are not under the Bureau's jurisdiction.

- Section 1024: Exams and Reports, Large Non-Banks. The Bureau is authorized to require reports from and conduct periodic examinations of larger non-bank participants in financial consumer markets for the purposes of (a) assessing compliance with Federal consumer financial laws; (b) obtaining information about activities subject to such laws, as well as the financial firms' compliance systems and procedures; and (c) "detecting and assessing associated risks to consumers and markets for consumer financial products and services." This third purpose is broad, the limits of which remain untested by the courts or bound by regulations or guidelines. The Dodd-Frank Act extends to the Bureau authority to require these firms to "generate, provide, or retain" records to facilitate these examination and reporting requirements. Bureau authority also extends to service providers to these firms.

- Section 1025: Exams and Reports, Larger Banks. The Bureau has exclusive authority to require reports from and conduct periodic examinations of banks and credit unions—and any of their affiliates—that have more than $10 billion in assets. This authority, under the statute, is to be exercised for the purposes of (a) assessing compliance with Federal consumer financial laws; (b) obtaining information about activities subject to such laws, as well as the financial firms' compliance systems and procedures; and (c) "detecting and assessing associated risks to consumers and markets for consumer financial products and services." This third purpose is broad, the limits of which remain untested by the courts or bound by regulations or guidelines. Bureau authority also extends to service providers to these banks and credit unions.

- Section 1026: Exams and Reports, Smaller Banks. The Bureau is authorized to require reports from banks and credit unions with $10 billion or *less* in assets (a) to support the role of the Bureau in implementing Federal consumer financial laws, (b) to support Bureau examinations of such banks and credit unions, and (c) "to assess and detect risks to consumers and consumer financial markets." Again, this third purpose is a broad catchall authority untested in court or defined by regulations or guidelines. Bureau authority also extends to service providers to these banks and credit unions.

- Section 1013(b)(3): Consumer Complaints. The Bureau is directed by the Act to create an internal unit to establish a toll-free telephone number, a website, and a database for the centralized collection and monitoring of and response to consumer complaints. No authority is mentioned for publication of such complaints. There are requirements for the Bureau to route complaints to appropriate government agencies, including State agencies, and to provide Congress with an annual report on consumer complaints and their resolution.

These authorities are expansive and intrusive. In the case of each extension of authority there are enumerated lines of inquiry followed by broad undefined grants, leaving little in the

affected firms to which the Bureau could not reach in its quest for information. Missing from the statute is effective oversight of the Bureau's exercise of this authority.

Among the noteworthy elements of these provisions are the ways in which power is given to the Bureau to reach for data from firms outside of its jurisdiction, including authority for the Bureau to demand that such firms provide whatever information the Bureau deems appropriate to *show cause* why they should not be under the Bureau's jurisdiction.

The Bureau gathers data through numerous consultative efforts.

- In addition to these statutory authorities—as well as in connection with their exercise—the Bureau takes advantage of a variety of formal and informal activities to gather information, such as meetings and consultations with academics, think tanks, consumer advocacy groups, and financial firms subject to its jurisdiction.

- The Bureau has established and consults with advisory groups, such as the Academic Research Council, the Consumer Advisory Board, the Community Bank Advisory Council, and the Credit Union Advisory Council. These advisory groups meet periodically in person and through conference calls, with some of their deliberations open and some of them closed to the public.

- The Bureau has sought public comment through several formal Requests for Information (RFIs) on topics such as debit overdraft programs, arbitration, student loan servicing, mobile financial services, and consumer complaint "normalization."

Problematic Bureau data practices have undermined the effective use of data to serve as a check on arbitrary action by the Bureau, weakened the contribution of information to the quality of policymaking, and undercut the role of data to prevent regulatory abuses. Taken together, these practices place at risk the Bureau's mission to protect consumers. The following are an illustrative, but not comprehensive, litany.

- Evading PRA Public Exposure Strictures, While Cherry-Picking Data. In 2012 the Bureau gathered data on debit overdraft practices from 9 banks. The number selected was not arbitrary, since the Paperwork Reduction Act (PRA) requires prior exposure to public comment and a submission for review to the Office of Management and Budget (OMB) whenever a Federal agency seeks to collect information from 10 or more parties. Inasmuch as the data collection was applied to *large* banks, it skewed the results, ignoring the variety of overdraft programs exercised throughout the industry by banks of all sizes. The Bureau kept confidential the identities of the 9 banks surveyed, even discouraging the banks from publicly acknowledging their participation. The Bureau published in June 2013 an analysis of the data in a white paper, "CFPB Study of Overdraft Programs: A white paper of initial data findings." Neither the structure of the survey nor the data it gathered were made available for public review and comment other than what was selectively offered in the Bureau's white paper. The validity of the

Bureau's "initial data findings" could not be reviewed—let alone tested—by the public.[7] In July 2014 the Bureau again drew on this still cloistered database in a "Data Point" published on the Bureau's website.[8] The information as offered was misleading both to consumers who might read and act on it and to policymakers who might be tempted to do so, too. For example, the "Data Point" asserted that the *median* debit card overdraft in the survey was $24, causing a *median* overdraft fee of $34 dollars. The *mean* average of both overdrafts and fees in the sample data was and remains publicly unavailable. Why this matters can be shown by a George Mason University Law and Economics Research paper that, drawing upon data from a regional bank, reported that in the one year period under review the bank's customers overdrew their accounts by $437.6 million, for which they paid a total of $58.8 million in overdraft fees, which is to say that overdraft *credit* received by customers was 7.4 times the amount of fees paid.[9] The authors of the GMU Law paper do not claim their study of one bank to be definitive, but they do demonstrate that the Bureau's interpretation of its 9-bank study cannot be taken as definitive, either. Full public disclosure of the data on which the Bureau based its studies would promote public analysis and regulatory policymaking that would benefit rather than threaten to harm consumers.

- Skewed Data Samples. Similarly, in 2014 the Bureau, using its authority under Section 1022, again ordered fewer than 10 banks to provide information on their credit card debt collection and debt sale policies and practices. And, once again, limiting the sample to avoid PRA public review strictures produced data skewed to large banks.[10] Such a sample, limited to data on credit card debt collection practices, can suggest policy actions out of sync with the realities of debt collections by smaller banks where credit card accounts make up a much smaller portion of their business. Policymakers in Congress and in the executive branch agencies are increasingly recognizing the importance of tailored regulation appropriate to the variety of banking business models—and thereby more appropriate to the needs and interests of the variety of bank customers. Skewed regulatory data practices, however, employed in order to avoid statutory public exposure requirements, will ill-serve consumers. The Bureau will fail to be data-driven while such data manipulation practices prevail.

- Avoiding Public Exposure by Abusing PRA Generic Clearance Processes. The PRA was enacted, "to ensure the greatest possible public benefit from and to maximize the utility

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[7] BUREAU OF CONSUMER FINANCIAL PROTECTION, CFPB STUDY OF OVERDRAFT PROGRAMS, A WHITE PAPER OF INITIAL DATA FINDINGS (June 2013), *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.
[8] BUREAU OF CONSUMER FINANCIAL PROTECTION, DATA POINT: CHECKING ACCOUNT OVERDRAFT (July 2014), *available at* http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

[9] G. Michael Flores and Todd J. Zywicki, Commentary: CFPB Study of Overdraft Programs, George Mason University Law & Economics Research Paper No. 13-60 (Nov. 4, 2013) at 7, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2349819.
[10] BUREAU OF CONSUMER FINANCIAL PROTECTION, THE CONSUMER CREDIT CARD MARKET REPORT 237 (December 2015), *available at* http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

of information created, collected, maintained, used, shared and disseminated by or for the Federal Government" and "to improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society."[11] Evading application of the PRA, therefore, evades fulfillment of these important purposes in government policymaking. Besides sidestepping PRA requirements by seeking data from fewer than 10 parties, the Bureau also makes extensive use of the PRA's Generic Clearance process to avoid public scrutiny. Under this simplified procedure (normally used for customer satisfaction surveys, focus group testing, and website usability surveys),[12] agencies can obtain expedited and advance sign off for information requests—with little or no public awareness of what they are doing and therefore little or no opportunity to comment on the effectiveness of the proposed survey research. In November 2011, the Bureau obtained Generic Clearance under PRA for the innocuous and bureaucratic sounding project, "Generic Clearance for Development and/or Testing of Model Forms, Disclosures, Tools, and Other Similar Related Materials". Once the Bureau obtained the rather routine OMB Generic Clearance for the project, the Bureau subsequently used it 13 times for qualitative testing, including projects relating to consumer decision-making on debit card and ATM overdraft options.[13] These 13 information requests were obscured from public review and comment, frustrating the PRA's objectives "to strengthen decision making, accountability, and openness in Government and society," objectives that are consistent with the Bureau's public image as a "data-driven agency".

- Misrepresenting Overdraft Data Gathering. In January 2013, OMB approved the Bureau's request for "Generic Clearance for Qualitative Consumer Education, Engagement, and Experience Information Collections" under the PRA. The Bureau conducted 17 separate information collections under this approval, with little public awareness. One was a survey on checking account debit programs, beginning with an initial sample of 10,000 households, leading to in-depth, one-hour interviews with 100 overdraft users. Astonishingly, the Bureau *certified* that the information collected from this overdraft survey would "not be used for the purpose of substantially informing influential policy decisions,"[14] a statement that may overdraw the Bureau's credibility

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[11] 44 U.S.C. § 3501.

[12] Office of Management and Budget Memorandum, Information Collection under the Paperwork Reduction Act (April 7, 2010) at 5, *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf. *See also* Office of Management and Budget Memorandum, Paperwork Reduction Act – Generic Clearances (May 28, 2010)(""Clearances of generic ICRs provide a significantly streamlined process by which agencies may obtain OMB's approval for particular information clearances – usually voluntary, low burden, and *uncontroversial* collections....including methodological testing, customer satisfaction surveys, focus groups, contests, and website satisfaction surveys."(emphasis added)).

[13] *See* Info. Collection List filed pursuant to Information Collection Request Package, OMB Control No. 3170-0022, *available at* http://www.reginfo.gov/public/do/PRAICList?ref_nbr=201206-3170-002.

[14] Qualitative Research of Consumer Understanding and Decision-making Related to Overdrafts, *Request for Approval Under the "Generic Clearance for Qualitative Consumer Educ., Engagement, & Experience Info.*

account. Consider that elsewhere in the Bureau's description of the overdraft survey it reports that the Bureau is planning "a series of one or two additional white papers" on overdraft, and that the survey "will inform our interpretations of the quantitative data in these white papers."[15] Bureau officials have long announced overdraft programs to be on their list of issues for regulatory policy review. Such hide-the-ball information practices frustrate rather than promote the "all of the above" approach promised by Richard Cordray in 2012 to "guarantee that we are both sharing and receiving up-to-date information that will inform our policymaking".

- Publication of Unverified Complaints. The Bureau continues to publish on its official website, at the top of which are the words, "An official website of the United States Government", consumer complaints that are unverified for accuracy or veracity. As noted above, Section 1013 of the Dodd-Frank Act directs the Bureau to gather consumer complaints and direct them to the appropriate agencies to promote their resolution. Neither the Dodd-Frank Act nor any other provision of Federal law, however, authorizes the Bureau to publish this unverified information. The Bureau asserts that, "By adding their voice, consumers help improve the financial marketplace."[16] But how can this be true if the information provided, with a U.S. Government imprimatur, is unreliable and misleading? What does the Bureau offer to protect a consumer from acting on erroneous information published on the Bureau's website?

- Ignoring its Own Data: the Arbitration Study. Section 1028 of the Dodd-Frank Act requires the Bureau to study arbitration provisions in the agreements that financial firms have with their customers. The Bureau is then to take regulatory action, if appropriate, based upon the findings of that study. In March 2015, the Bureau published its study.[17] In this case, the Bureau gave significant public access to the complement of data on which it based the study's findings. That access revealed that in important aspects the data were inconsistent with those findings. One such finding is that consumers are better protected under class action lawsuits than they are under arbitration. The data in the study tell a different story. For example, they show that arbitration resolves customer disputes up to 12 times faster than do lawsuits. According to the supporting information in the Bureau study, the average time for resolution by arbitration varied from 4 months to 7 months (depending on the form of arbitration used).[18] The same data showed that the average time for resolution by class action lawsuit varied from 1.89 years and 2.07 years (the latter being the average for multi-district litigation).[19] Further, consumers obtained an average of $32.25 via class action

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Collections" p. 6(OMB Control No.: 3170-0036), *available at* http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201404-3170-001&icID.

[15] *Id.* at 1.

[16] Consumer Response Database home page, *available at* http://www.consumerfinance.gov/complaintdatabase/.

[17] BUREAU OF CONSUMER FINANCIAL PROTECTION, ARBITRATION STUDY (MARCH 2015) *available at* *http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf*.

[18] *Id.* §4, p. 72-73.

[19] *Id.* §6, pp. 9, 43.

settlements according to the Bureau data, while arbitration relief to consumers averaged $5,389.[20] Were the Bureau to take regulatory action based upon findings that are contradicted by its own data, it would arguably leave itself vulnerable to legal challenges for acting in an arbitrary and capricious manner. Hopefully, the public exposure of the data behind the Bureau's study, and the public scrutiny that this exposure allows, will result in Bureau action fully consistent with the data and therefore with consumer interests. That is do say, that public disclosure of the data behind policymaking can militate against Bureau action taken contrary to the facts.

- Manufacturing Data that Do Not Exist: Indirect Auto Lending. The work of the full Committee and this Subcommittee has already developed a strong record exposing the problems with the Bureau's data practices relating to indirect auto lending. In mentioning that work I note that it further supports arguments that I have raised in this testimony. I would only add, by way of emphasis, that transparency and accountability also require access to the Bureau's research *methods* and *assumptions*. This is perhaps demonstrated nowhere more clearly than in the Bureau's efforts to manufacture fair lending data where they do not exist. In well publicized enforcement cases, the Bureau asserted illegal discrimination in auto lending where no data are actually collected on race or national origin of customers. In fact, lenders are forbidden by law from collecting such information, specifically in order to avoid it from being a factor in lending decisions. On March 21, 2013, the Bureau published Bulletin 2013-02, "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act," in which it warned that, "there is a significant risk that" indirect auto lending practices "will result in pricing disparities on the basis of race, national origin, and potentially other prohibited bases." The Bulletin disclosed neither data nor the analytical processes substantiating that warning.[21] Following significant controversy, the Bureau published in September 2014 its methodology for developing data to support its concerns.[22] Further disclosures in the media and by the full Committee have shown that when the Bureau methodology was tested against mortgage data (where race and national origin of borrowers *is* known because law requires lenders to record and report it), only about half of the people identified by the Bureau's methodology to be African-American were in fact African-American. Bureau memos leaked to the press suggest that this error rate has long been known to the Bureau. Greater public access to the information on which the Bureau relies in making public policy would improve the quality of policymaking and would be consistent with a truly data-driven agency.

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[20] The Arbitration Study states that cash payments to "at least 34 million consumers" during the period studied were "at least $1.1 billion." This means that the average class member's recovery was a mere $32.35.

[21] BUREAU OF CONSUMER FINANCIAL PROTECTION BULLETIN 2013-02, "INDIRECT AUTO LENDING AND COMPLIANCE WITH THE EQUAL CREDIT OPPORTUNITY ACT" (March 21, 2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.

[22] BUREAU OF CONSUMER FINANCIAL PROTECTION, USING PUBLICALLY AVAILABLE INFORMATION TO PROXY FOR UNIDENTIFIED RACE AND ETHNICITY: A METHODOLOGY AND ASSESSMENT (Summer 2014), *available at* http://files.consumerfinance.gov/f/201409_cfpb_report_proxy-methodology.pdf.

Recommendations

In light of these problems, ABA makes the following recommendations for consideration and action by the Congress.

1. Section 1022 of the Dodd-Frank Act should be amended to place appropriate oversight, accountability, and reasonableness requirements on how the Bureau uses that authority to obligate data submissions. Reform efforts should take up a mandate that the Bureau consider and document (1) the value and importance of information it requests, and (2) whether the data are duplicative of other collections or of otherwise available information. The Section would be improved by including a process whereby a recipient of an order may challenge or seek to limit the breadth of the order. The Bureau's annual report under this section should also include a summary of each use of the authority for the previous year and the cost to the private sector for complying with each request. In addition, Congress should consider a requirement that the Bureau provide the private sector offsetting compensation for the costs of producing and submitting information under Section 1022.

2. The public should be given full and ample access to the de-identified information and data relied upon by the Bureau in its rulemaking, policymaking, and policy-related reports. Access to such data should be a standard part of the public comment process prior to making final decisions, allowing for liberal public review and analysis relating to the complete story that the information may tell.

3. A study should be conducted, such as by the Government Accountability Office, of the use by the Bureau of the Generic Clearance process under the Paperwork Reduction Act (PRA), to identify whether Bureau practices are appropriate and in line with the purposes of that clearance process and the public transparency and accountability objectives of the PRA.

4. The governance of the Bureau should be changed from a sole directorship to governance by a bipartisan commission, similar to the structure of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and other independent agencies. In this way, data practices would be subject to governance and review (and a diversity of perspectives) by Bureau commissioners with comparable stature and authority within the agency, who can ensure that public disclosure of data is provided in full and ample context consistent with public review, oversight, and accountability.

Conclusion

I wish to emphasize our fourth recommendation as the most important of the four. With a commission structure, composed of a bipartisan council of policymakers, there is less room for

abusing data, and less opportunity to do so as well. Under the light of the variety of viewpoints that comes with a council or a commission, you have different people posing different questions from differing backgrounds and insights, all more likely to poke and prod the data, and all of them likely to be intolerant of information legerdemain.

On behalf of ABA and its member banks of all descriptions and business models, serving hundreds of millions of people—our customers and your constituents—impacted by policy decisions made by the consumer Bureau, I want to thank the Subcommittee for this important inquiry. I would be happy to respond to any questions you may have.

Testimony of Mark A. Calabria, Ph.D.

Director, Financial Regulation Studies, Cato Institute

Before the

Subcommittee on Oversight and Investigations

Committee on Financial Services

United States House of Representatives

Hearing entitled "Examining the Consumer Financial Protection Bureau's Mass Data Collection Program"

December 16, 2015

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Chairman Duffy, Ranking Member Green, and distinguished members of the Subcommittee, I thank you for the invitation to appear at today's important hearing. I am Mark Calabria, Director of Financial Regulation Studies at the Cato Institute, a non-profit, non-partisan public policy research institute located here in Washington, D.C. Before I begin my testimony, I would like to make clear that my comments are solely my own and do not represent any official positions of the Cato Institute. In addition, outside of my interest as a citizen, consumer and taxpayer, I have no direct financial interest in the subject matter before the Committee today, nor do I represent any entities that do.

I will also note that my service at HUD included supervising and managing HUD's enforcement of the Real Estate Settlement Procedures Act (RESPA). These responsibilities, along with the relevant HUD staff, were transferred to the CFPB. Accordingly the views I will offer today are not simply those of an analyst but also of one who has attempted to make our financial consumer protection laws more effective.

Is CFPB's Massive Data Collection Required?

I believe it would be unfair to criticize any agency for simply following mandates imposed upon it by Congress. If such mandates are problematic, then the blame rests with Congress. Agencies should, however, be held responsible for their implementation and whatever discretionary policies and actions they pursue beyond Congressional mandates. I submit to the Subcommittee that the manner and extent of CFPB's data collection program goes far beyond what required under the Dodd-Frank Act. The objectives and requirements of Title X of Dodd-Frank can easily be achieved with more narrow and targeted methods.

Let us review the CFPB's data mandates:

Section 1013 establishes the administrative structure of the CFPB. More precisely as it relates to data collection, 1013(b) established specific function areas, including research:

> 1013(b)(1) Research.--The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—
>
> (A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;
>
> (B) access to fair and affordable credit for traditionally underserved communities;
>
> (C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;
>
> (D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services;
>
> (E) consumer behavior with respect to consumer financial products or services, including performance on mortgage loans; and
>
> (F) experiences of traditionally underserved consumers, including un-banked and under-banked consumers.

None of the preceding activities requires micro-level transactional data. Nowhere in the above are the current data collection efforts mandated or even suggested. As an economist I certainly understand the desire for researchers to have extensive transaction level data. Agencies, however, are not constructed for the enjoyment of researchers, but to achieve a

specific public purpose. All of the above areas can be addressed with aggregate level data, most of which is already publicly available.

While 1013(b)(3) establishes collecting and tracking consumer complaints, such is an activity entirely separate from overall market monitoring. And while I believe consumers could be given more disclosure on what is done with the information they submit as part of the complaint process, the fact remains that complaints are submitted voluntarily. Nowhere in 1013(b)(3) is there a requirement for massive non-complaint data collection. Nor will one find such data efforts listed under 1013(c) which establishes CFPB's Office of Fair Lending and Equal Opportunity.

One might wonder if such a mandate is found elsewhere in Title X. The functions of the CFPB do mention under Section 1021(c) the "collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets". While the term "information" is indeed broad, I find it difficult to believe that such could be read to mandate the large scale collection of transactional data. In fact individual transactions tell you almost nothing about the overall functioning of specific markets. 1021(c) is easily fulfilled by collecting aggregate data and information published by private and other government sources.

Nor do the monitoring responsibilities under 1022(c) require the collection of massive amounts of transactional data. In fact the monitoring under 1022(c) can be achieved by any competent regulator with the use of aggregate data. There is zero need for transaction level data to fulfill the purposes and objectives of 1022(c).

I was certainly able, when managing HUD's RESPA activities, to aggressively enforce RESPA and even undertake a major revision of the rules under RESPA, without engaging in the collection of massive amounts of transactional data. It can be done. What difficulties I ran into were almost always a result of the statute, not a lack of data.

To summarize, outside of the consumer complaint database, which has problems of its own[1], the large scale collection of transactions data by the CFPB is not mandated by statute or necessary to carry out its statutory responsibilities.

CFPB – Data protection, privacy and the Fourth Amendment

Passed in the aftermath of the terrorist attacks of 9/11, the Patriot Act vastly expanded the data collection efforts of the U.S. government. The public was told that only if we had had more data, the attacks could have been avoided. Yet the intelligence failures were not from lack of data, but from an inability (or unwillingness) to "connect the dots". Similarly the financial crisis was met with demands for "more data" as if the overheated housing and mortgage markets were not obvious enough from the generally available aggregate data.

Before turning to the CFPB, let me clearly state that the privacy and Fourth Amendment issues raised are not unique to the CFPB. I believe the "third party doctrine" upon which this data collection rests is fundamentally flawed and simply inconsistent with the Forth Amendment. My colleagues at the Cato Institute and I have regularly and consistently expressed concerns as

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[1] See Rachel Witkowski "Errors Abound in CFPB's Complaint Portal" *American Banker* November 17, 2015. http://www.americanbanker.com/news/law-regulation/errors-abound-in-cfpbs-complaint-portal-1077878-1.html

to collection of consumer data by government officials. We have done so regardless of the politics or whether we supported the objectives of the agency in question. The Cato Institute has submitted a number of legal briefs on the issue, most recently in *City of Los Angeles v. Patel*,[2] decided last term before the Supreme Court. I would also point you to our submissions in *Riley v. California*,[3] *Heien v. North Carolina*,[4] and *Nelson v. City of Rochester*.[5]

We have also repeatedly seen the harm from both the regulatory burden and over-collection of data by other financial regulators. I applaud, for instance, Congressman Ellison's efforts on last year's *Money Remittances Improvement Act (H.R. 4386)*. Such reduced data collection burdens in remittance market and did so without sacrificing consumer or national security protections. I believe it can serve as a model for the efforts of the CFPB.

Turning back to the CFPB, the GAO has reported that the CFPB has engaged in at least 12 large scale data collection efforts.[6] At least 3 include information that directly identifies individual consumers. Combining this information with other sources allows most of the remaining data collections to also identify individual consumers.[7]

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[2] See Cato Institute. *City of Los Angeles v. Patel* Legal Brief http://www.cato.org/publications/legal-briefs/city-los-angeles-v-patel

[3] http://www.cato.org/publications/legal-briefs/riley-v-california

[4] http://www.cato.org/publications/legal-briefs/heien-v-north-carolina

[5] http://www.cato.org/publications/legal-briefs/nelson-v-city-rochester

[6] Government Accountability Office. 2014. *Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collection Should Continue Being Enhanced*. Report to Congressional Addresses GAO-14-758

[7] See Yves-Alexandre de Montjoye, Laura Radaelli, Vivek Kumar Singh and Alex Pentland. 2015. "Unique in the Shopping Mall: On the Reidentifiability of Credit Card Metadata," *Science* #6221.

While some of these collections are relatively small, such as the 11,204 arbitration case records, the Bureau's collection of mortgages, credit report and credit card data is quite extensive. Combined with the CFPB's information sharing agreement with the Office of the Comptroller of the Currency, the CFPB has access to almost 90 percent of outstanding credit card balances.

As a former federal employee and one subject to the recent Office of Personnel Management breach, let me clearly say I do **not** trust the CFPB with protecting my personal financial data from hackers. As both GAO and the Federal Reserve Inspector General (OIG)[8] have recognized, the CFPB's data collect poses significant privacy risk to consumers and remains in need of improvement. In consolidating all this financial information in one place, the CFPB has left consumers extremely vulnerable to identity theft and even extortion from hackers.

A particular vulnerability is the heavy reliance of the CFPB on outside contractors or contractor-controlled systems. A noted by the OIG, the CFPB continues to "face challenges in ensuring that contractors implement information security controls that meet agency requirements."[9] These risks are compounded by the CFPB's heavy reliance on "cloud" based computing systems, which are especially vulnerable to hacking. To the extent that the CFPB continues to engage in mass data collection, such should be brought "in-house" and not entrusted to private contractors.

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[8] See Office of the Inspector General, Federal Reserve, *Major Management Challenges for the Consumer Financial Protection Bureau* September 30, 2015. http://oig.federalreserve.gov/reports/cfpb-management-challenges.htm

[9] See Office of the Inspector General, Federal Reserve, *Major Management Challenges for the Consumer Financial Protection Bureau* September 30, 2015.

The risk of hacking is a threat from outside the Bureau. Unfortunately the CFPB's data collection, particularly in the area of credit cards, poses significant threats to our fourth amendment protections. As Justice Douglas observed in his dissent to *California Bankers Assn v. Shultz*, "A checking account…may well record a citizen's activities, opinions, and beliefs as fully as transcripts of his telephone records." Credit cards are today's checks. As GAO noted, the CFPB is not simply collecting account information, which would be bad enough, but also transaction level information. In its brief to *California Bankers Assn*, the American Civil Liberties Union (ACLU) noted that accessing financial records could allow its membership to be identified, eroding the protections recognized in *NAACP v. Alabama.* As an employee of an institute that also receives donations transmitted via checks and credit cards, I too fear that allowing government access to such records poses a significant threat to our political freedoms. As Justice Marshall observed in his dissent to *California Bankers Assn.*, "The technique of examining bank accounts to investigate political organizations is, unfortunately, not rare."

Such concerns are not simply reflections of the Watergate era. As recently as 2012, Justice Sotomayor in her concurrence to *United States, Petitioner v. Antoine Jones*, correctly observed that "Awareness that the Government may be watching chills associational and expressive freedoms. And the Government's unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse." Justice Sotomayor offers the example of medications purchased by online retailers as an example. Such a purchase could potentially be identified within the CFPB's database of credit card accounts.

For a variety of reasons, the CFPB has become a highly partisan issue. Were it to use the financial records of its critics in an attempt to silence or intimidate these critics, it would not be the first agency to do so.

While today's hearing is not about the overall structure of the CFPB, we should recognize that its current structure, that of a single director, leaves it especially vulnerable to the cognitive biases that contribute to civil liberties abuses.[10] A large body of research on group decision-making suggests that a lack of mechanisms for mandated dissent can result in tunnel vision.[11] While of course speculative, I would suggest that the worst abuses of, for instance, J. Edgar Hoover, would have been avoided or minimized had the FBI operated as a board and/or been subject to additional checks and balances.[12] Just as we now know recognize that a single-minded focus on fighting communists, terrorists, the mafia or drug dealers (or whoever the villain of the day is) can result in the abuse of civil liberties, so can a single-minded focus on fighting "financial abuse". Siding with the Constitution is no more siding with "abusive lenders" than it is siding with terrorists or drug dealers.

Unlike many other law enforcement agencies, the CFPB lacks some basic safeguards. For instance no subpoena or warrant has been issued for its massive data collection efforts. As Justice Douglas has explained, a neutral third party, such as magistrate, is needed to balance the pressures of law enforcement with protection of our constitutional freedoms. In *McDonald v. United States*, Justice Douglas expressed this view of the Founders' intent: "The right of privacy was too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own

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[10] See generally, Rachlinski, Jeffrey J. and Farina, Cynthia R., "Cognitive Psychology and Optimal Government Design" *Cornell Law Review*, vol. 87, no. 2 (January 2002).

[11] See Cass R. Sunstein, "Conformity and Dissent" (University of Chicago Public Law & Legal Theory Working Paper No. 34, 2002).

[12] For examples of some of these well-know abuses, see Curt Gentry, *J. Edgar Hoover: The Man and the Secrets*. Norton 2001; or Tim Weiner. *Enemies: A History of the FBI*. Random House 2013.

cannot be trusted." The CFPB has repeatedly characterized itself as a "cop on the beat". It is long past time that it is subjected to the same constraints and oversight as a "cop on the beat". The abuses witnessed in law enforcement should remind us all what happens when government is driven by a single-minded, unrestrained, focus on eliminating legal violations.

While other financial regulators also collect large amounts of data, and we should be concerned about those efforts as well, GAO has observed the efforts of other financial regulators are "less extensive than CFPB's data collections." For instance neither the Securities and Exchange Commission nor the Commodity Futures Trading Commission engages in the collection of massive amounts of individual investor data.

The Federal Trade Commission (FTC) and the Consumer Product Safety Commission (CPSC), to which the CFPB is often compared, also lack the extensive data collection efforts of the CFPB. The FTC and CPSC do build databases of complaints they receive from consumers, as does the CFPB. Such databases are more than sufficient for regulators to identify trends in misconduct. Would the CFPB have us believe that there are so few consumer complaints that it needs to actively monitor consumers and companies where there have not been any problems found?

As Law Professor Daniel Solove has noted, the "Framers included the warrant clause" of the fourth amendment, "because of their experience with general warrants and writs of assistance.[13] One objective of the fourth amendment is to limit the government's ability to engage in "fishing expeditions". Yet such is the very nature of the CFPB's data collection. Is

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[13] Daniel Solove. 2002. "Digital Dossiers and the Dissipation of Fourth Amendment Privacy," *Southern California Law Review* 75:1083.

the CFPB's data collection limited to following up on suspected violations of the law? No, it covers the extensive surveillance of consumers and companies that have neither been convicted of a crime nor suspected of such. The CFPB, unfortunately, is another brick in the foundation of what ProPublica reporter Julia Angwin has called the "Dragnet Nation".[14]

In reflecting on the Bank Secrecy Act of 1970, from which the third party doctrine flows, Justice Douglas expressed in dissenting from *California Bankers Assn* that he was "not yet ready to agree that America is so possessed with evil that we must level all constitutional barriers to give our civil authorities the tools to catch criminals." I am not yet ready to agree that our financial markets are so possessed with evil as to merit the CFPB's broad presumption of guilt on the part of all financial market participants. The manner of CFPB's data collections are the result of a mindset that treats financial services providers not as citizens but as suspects.

Nor is this level of data collection even needed to monitor our financial markets. The CFPB, like the general public, has access to a variety of public reports that detail, in an aggregate manner, trends in consumer finance. Again I would submit that the aggregate trends in housing and mortgage data before the crisis, while incomplete, were more than sufficient to arouse concern. Such trends certainly concerned me at the time. But even if the CFPB continues to believe that micro data is needed, it is collecting amounts far in excess of required sample sizes. As George Mason University Economics Professor Thomas Stratman has noted, the CFPB plans to collect data samples that are 70,000 times the size needed.[15] Such an expansive collection of

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[14] Julia Angwin. 2015. *Dragnet Nation: A Quest for Privacy, Security, and Freedom in a World of Relentless Surveillance*. St. Martin's Griffin.

[15] See http://mercatus.org/sites/default/files/StratmannCFPBStatisticMethods.pdf

data reveals that the CFPB is indeed engaged in "fishing expeditions" rather than simply market monitoring.

Setting aside that I believe both *California Bankers Assn v Shultz* and *United States v. Miller* to be wrongly decided, it should be noted that Miller, in finding no "expectation of privacy", relies upon an analysis that "checks are not confidential communications but negotiable instruments to be used in commercial transactions." True enough. Checks are negotiable and can be widely circulated. Yet what the CFPB collects is not limited to checks. Credit card transactions, for example, are not negotiable. There is no expectation that such will be passed along like currency. Consumers may well prefer credit (and debit) cards due to their relative anonymity. The data collection efforts of the CFPB (under sections 1022, 1024 and 1025 of Dodd-Frank) go far beyond those envisioned or approved in either *California Bankers Assn* or *Miller*.

Conclusions

Chairman Duffy, Ranking Member Green, the Consumer Financial Protection Bureau's data collection activities run afoul of our Fourth Amendment protections. These extensive data collections are in no way necessary for the CFPB to achieve its statutory mission. Such could be accomplished in a manner that does not offend the Fourth Amendment, while also allowing the CFPB to fulfill its consumer protection responsibilities. As Courts have too often been slow to protect our Fourth Amendment rights, it did take almost 30 years for *Olmstead* to be reversed; Congress should move quickly to protect American consumers from harm of CFPB's data collection efforts. I would also remind the Subcommittee that the risks deriving from the CFPB's data collection efforts are also present at other financial regulators as well.

Newt Gingrich Testimony
House Financial Services Committee
December 16, 2015

Good morning, and thank you for having me today. It's an honor to be with you.

The subject of today's hearing is important in a narrow sense--in that we have an agency that is collecting more information about Americans' private lives than any bureaucracy deserves for reasons unrelated to national security -- but it is also important in a broader sense.

Today the Consumer Financial Protection Bureau is so far outside the historic American model of constitutionally limited government and the rule of law, that it is the perfect case study of the pathologies that infect our bureaucracies at the federal level.

It is dictatorial.

It is unaccountable.

It is practically unrestrained in expanding on its already expansive mandate from Congress.

And it is contemptuous of the rights, values, and preferences of ordinary Americans.

The CFPB is all of these things, as are many of our large, destructive bureaucracies in this city -- a huge problem in its own right.

But the CFPB is an especially good symbol of these pathologies because of its unique structure among regulatory agencies. In the Dodd-Frank Wall Street Reform and Consumer Protection Act that created the Bureau, Congress--very unwisely, in my opinion, gave up two of its core Constitutional powers for reining in executive branch agencies.

First, the CFPB is not subject to the annual Congressional appropriations process, and instead is funded out of a fixed portion of the Federal Reserve's budget.

And second, its director can be fired only by the president--and then only under limited circumstances--because Dodd-Frank made him unable to be removed by Congress.

For all practical purposes, this means the Bureau is free to do whatever it wants within the broadest imaginable interpretation of its authority, without fear of losing its funding or its leadership.

This is a very dangerous recipe for petty dictatorship, and is completely foreign to the American model.

We *know* this formula is dangerous because we have watched the Bureau's behavior over the past four years. We have seen the contempt with which it treats Congress and the American people.

The CFPB is prohibited from regulating car dealers, but it has done so anyway, using absurdly inaccurate techniques to accuse them of racial discrimination and extract fines from car companies and auto finance companies.

The topic of this hearing is another good example of the CFPB's overreach—one I also discussed in my own piece in the *Wall Street Journal* last summer.[1]

The CFPB is prohibited in Section 1022 of Dodd-Frank from collecting personally identifiable information on Americans, but the Bureau is doing so anyway. And it is doing so at a massive scale that rivals the NSA's most controversial collection programs, but for much less compelling reasons.

The CFPB has said it aims to monitor at least 95 percent of all credit card transactions in the U.S. by 2016. Toward that end, the Bureau is already collecting

[1] http://www.wsj.com/articles/SB10907564710791284872504581070502004499610

and analyzing data from at least 600 million credit card accounts each month. That's 7 billion records in the last year alone.

And it's not just credit card data. The CFPB is gathering data on 22 million private-label mortgages every month, 5.5 million student loans, 2 million bank accounts with overdraft fees, and on hundreds of thousands of auto sales, credit scores, and deposit advance loans.

These secretive and intrusive data-gathering operations are taking place without consumers' knowledge and without the ability for consumers to opt-out. Unless they have been tuned into occasional Congressional oversight hearings like this one, consumers are entirely unaware that government bureaucrats are pouring over their credit card transactions every month, looking for new products to regulate.

The CFPB is scooping up more information about law-abiding Americans than any government agency should be permitted to collect for reasons unrelated to national security or law enforcement. In fact, in a recent poll conducted by Zogby for the U.S. Consumer Coalition (which I happen to advise), just one in five Americans said they believed the CFPB should be allowed to gather credit card statements without consumers' knowledge.

For those of you who are concerned about the intelligence community's data collection efforts, I don't see how you can be worried about the potential for abuse and about the (in fact justified) lack of transparency in those agencies and not be concerned about the same dangers in this large and unaccountable bureaucracy armed with similar kinds of information.

Certainly, if the NSA and the FBI need a warrant to collect such data on U.S. citizens for the purposes of preventing terrorism, the CFPB should need to get a warrant, too.

In closing, what we have in the CFPB is an agency that is not accountable to Congress or to the American people, an agency that is stretching the bounds of its

authority as far as it can, and a bureaucracy which for all practical purposes is out of control.

As the American people's elected representatives in Congress, this should bother you no matter which side of the aisle you're on, and whatever you think of the Bureau's preferred regulations.

It's imperative that we move toward abolishing the Consumer Financial Protection Bureau, and at the very least subject it to the annual budgeting and appropriations process, in addition to restructuring its leadership, to make sure it is accountable to Congress.

Thank you, and I look forward to your questions.

Testimony of Deepak Gupta
Founding Principal, Gupta Wessler PLLC

Before the Subcommittee on Oversight and Investigations,
Committee on Financial Services, United States House of Representatives

"Examining the Consumer Financial Protection Bureau's
Mass Data Collection Program"

December 16, 2015

Thank you Chairman Duffy and Ranking Member Green for inviting me to testify on the Consumer Financial Protection Bureau's use of data from financial institutions to inform its decisions about how best to protect American consumers. I'll make three points this morning:

First, privacy and data security are important. And there are real issues this Committee could be addressing if it were actually interested in the privacy and security of consumer data.[1] For example, several major data breaches have occurred in which individual, usable credit-card information has been stolen from consumers at TJ Maxx, Target, and Home Depot, among others.

But this Subcommittee hasn't held a single hearing on these real threats that can hurt actual consumers in the real world. Instead, we're having a hearing about a set of imagined problems that exist only in the minds of the CFPB's political opponents. In fact, if you ask the actual privacy groups, they voice *support* for the CFPB's "acquisition and analysis of commercial databases to help it ensure the public is fairly treated by the financial marketplace."[2] As one privacy advocate

[1] *See* Letter from Consumer and Privacy Groups to President Barack Obama (March 2, 2015), http://bit.ly/1TOwYgJ.

[2] Privacy groups including Center for Digital Democracy, Consumer Watchdog, Privacy Rights

put it, "The reason you don't hear from privacy or consumer groups is that the CFPB is not doing anything that concerns us, nor for that matter is it doing much differently than other regulators have always done."[3]

Second, to the extent that it's doing anything different, the Bureau's collection of data is creating the kind of oversight and consumer protection that were missing before the financial crisis. The compilation of anonymous, account-level data from the CFPB's credit-card database has allowed the Bureau to study important topics such as credit-card marketing practices,[4] and the widespread use of forced arbitration clauses in consumer contracts.[5] Data collection is crucial to the Bureau's ability to identify systematic violations of fair-lending laws,[6] discrepancies in credit-score reporting that disadvantage consumers,[7] and harmful effects of checking-account overdraft programs.[8]

In short, the CFPB's data collection ensures that the agency's regulation and enforcement are data-driven—that is, based on the best understanding of market trends and empirical reality. That's the whole point of having expert administrative agencies in the first place. Unless your profits come from deceiving

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Clearinghouse, Privacy Times, and U.S. PIRG have publicly supported the Bureau's data collection programs. *See* Statement of Privacy and Consumer Groups In Support of CFPB's Use of Data, July 9, 2013, http://bit.ly/1Nolxux.

[3] Evan Weinberger, *Data Collection Becomes Latest Front in Banks' War on CFPB*, Law 360, Sept. 4, 2013, http://bit.ly/1mmBJUu.

[4] CFPB, *The Consumer Credit Card Market* (2015), http://1.usa.gov/1O7E3uC.

[5] CFPB, *Arbitration Study: Report to Congress Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* Section 10 (2015), http://1.usa.gov/1EPG8nT.

[6] CFPB, *Fair Lending Report of the Consumer Financial Protection Bureau* (2015), http://1.usa.gov/1MfXFFo.

[7] CFPB, *The Impact of Differences Between Consumer- and Creditor-Purchased Credit Scores: Report to Congress* (2011), http://1.usa.gov/1I7q1Xu.

[8] CFPB, *CFPB Study of Overdraft Programs* (2013), http://1.usa.gov/1QKOgw3.

consumers, you should welcome the CFPB's data collection.[9]

Third, the very existence of this hearing illustrates one danger that can occur when public officials *don't* base their actions on data: We have a made-up controversy, based on made-up facts. Simply put, the CFPB is not spying on American citizens. It is not the NSA. It's not interested in the details of people's personal activities.[10] Nor would the data that the agency is currently collecting enable it to investigate those activities—even if the agency were interested in, say, what Christmas presents you plan to buy with your credit card.[11]

In fact, the vast majority of the data collected by the CFPB is *already public.* For example, the Bureau has used data sets that simply aggregate public records like mortgages, already recorded in local land records, and auto sales, on record with state DMVs.[12] And most of it is *aggregate* data at the account-level, not at the transaction level. The CFPB's data collection programs are designed to give the agency a picture of what *financial institutions* (not individual consumers) are up to—with a focus on practices that harm consumers. Some small amounts of data

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[9] *See* Adam Levitin, *The CFPB's Data Collection Is to Be Applauded*, American Banker, Aug. 18, 2015, http://bit.ly/1LhIjmv.

[10] Transaction-level information is collected rarely—to study, for example, the use of overdraft fees. Accounts in each case have been scrubbed of personally identifiable information. Government Accountability Office, *Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collections Should Continue, Report to Congressional Addressees* 15–17 (2014).

[11] As Steven Antonakes, then the CFPB's acting deputy director, testified at a July 2013 hearing before the Subcommittee on Financial Institutions and Consumer Credit, "The Bureau collects and studies data to protect consumers throughout the United States in accordance with its statutory mandate, not to study any particular individuals." *Examining How the Consumer Financial protection Bureau Collects and Uses Consumer Data: Hearing before the Subcomm. on Financial Institutions and Consumer Credit of the House Committee on Financial Services*, 113th Cong. 9 (2013).

[12] Adam Levitin, *The CFPB's Data Collection Is to Be Applauded*, American Banker, *supra.*

do contain information about consumers, but it is scrubbed of personal identifiers.[13]

The Government Accountability Office, at Congress's request, looked into this controversy—and, in a detailed review, found *none* of the significant problems with data collection that the CFPB's opponents have alleged exist. Of the twelve projects analyzed by the GAO, only three even *potentially* involved any personal consumer data. And, the GAO found, the CFPB has taken steps to "protect and secure" the data it collects, has developed a system for considering statutory limits and privacy implications, and has a system for "anonymizing" any material involving identifying information.[14] GAO's recommendations were relatively minor—to establish and enhance written procedures to help ensure compliance; develop more comprehensive, written privacy plans and training systems; and improve compliance with the Paperwork Reduction Act.[15] As Representative Carolyn Maloney reflected upon the study's release: "The report puts to rest the idea that CFPB has been improperly using consumers' personal financial data."[16]

Take the credit-card space. The CFPB's critics, to the extent they are trying to base their criticisms in reality, appear to be conflating three entirely different activities: (1) general monitoring of the credit-card market, which uses only account-level data on cards tied to ZIP code and geographic coding—no individual information at all; (2) a single study of a small number of accounts for the overdraft report, only 4% of which contained transaction-level data, sorted only

[13] Government Accountability Office Study, *supra*, at 40–42.

[14] Government Accountability Office Study, *supra*.

[15] *Id.*

[16] Benjamin Goad, *GAO: Nothing Unusual in CFPB Data Collection*, The Hill, Sept. 22, 2014, http://bit.ly/1lNzCsO.

by ZIP code—again, no individual information; and (3) supervisory and enforcement data that contains personal information so that, for example, the Bureau can locate defrauded consumers and give them back their money—activities entirely unconnected to the general market monitoring.

Agencies have been collecting this same stuff for years and nobody has complained. The GAO's report concluded: "Other regulators, such as the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, collect similarly large amounts of data."[17] And, as Georgetown law professor Adam Levitin has noted, much of the data the CFPB uses is in fact collected through other regulatory agencies, which share this information through Memoranda of Understanding with the Bureau.[18] Which goes to show: this made-up controversy is really just about trying to fuel a political attack on the CFPB on behalf of those who benefit from less consumer protection.

The story with the consumer complaint data is similar: The Inspector General did an exhaustive independent review and uncovered no major problems in the Bureau's Consumer Complaint Database—a favorite punching bag of agency opponents. Of the 540,000 complaints in the portal, only three errors were spotted by a report in *American Banker*—titled, perhaps disingenuously, "Errors Abound in CFPB's Complaint Portal."[19] The Inspector General independent audit of the database found only a "relatively small" number of inaccuracies in the database. Of

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[17] Government Accountability Study, *supra*, at 21.

[18] Adam Levitin, *The CFPB's Data Collection Is to Be Applauded*, American Banker, *supra*.

[19] Rachel Witkowski, *Errors Abound in CFPB's Complaint Portal*, American Banker, Nov. 17, 2015, http://bit.ly/1NolQ8D.

the more than 250,000 complaints examined, the audit found no more than 30 errors—a more than 99 percent accuracy rate.[20]

Meanwhile, private industry is collecting huge amounts of data on consumers. The CFPB needs access to the data sets that financial institutions use, if it wants to effectively identify best practices and create significant safeguards that protect consumers. Private industry, in fact, is collecting far more personally identifiable data that could open up real questions about consumer privacy. The JPMorgan Chase Institute, for instance, recently released a report on consumer commerce that pulled from a data set of 12 *billion* individual transactions between consumers and businesses across 15 different U.S. metro areas.[21] If we're really worried about the collection and dissemination of this kind of data, we should be far more concerned about the private market that's being created for consumer data.[22] That could be a real regulatory issue.[23] With all the *real* problems in consumer finance, it's unfortunate this Committee feels the need to hold a hearing on this non-issue.

Thank you again for inviting me to testify. I am happy to answer questions.

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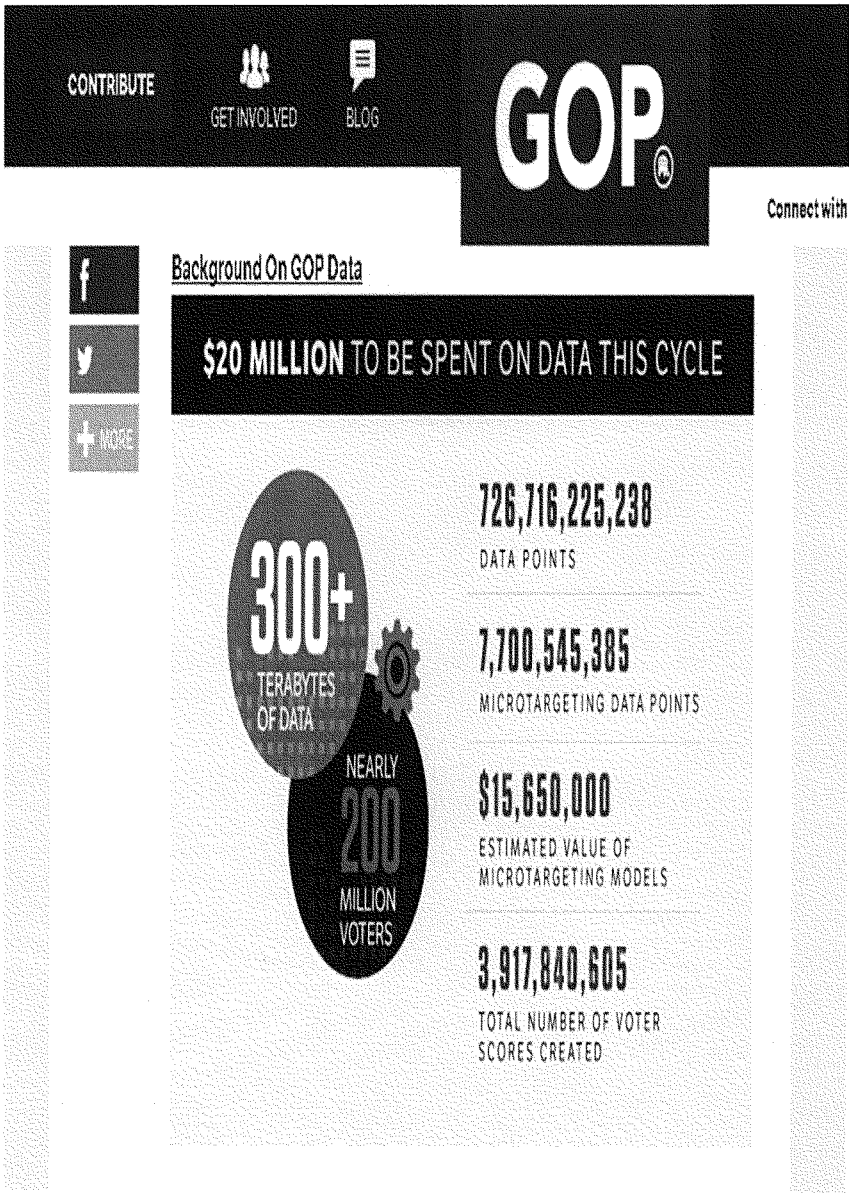
[20] CFPB Office of the Inspector General, *Audit Report: Opportunities Exist to Enhance Controls Over the CFPB's Consumer Complaint Database* 13–14 (2015), http://1.usa.gov/1I7poNG.

[21] See Diana Farrell, *Big Data to Build Sharper Profiles of Consumer Commerce at the City Level*, JPMorgan Chase Institute, Dec. 2015, http://bit.ly/1jN9FYv.

[22] This information is valuable—the data aggregator Yodlee, which complies consumer financial data, was purchased in August for nearly $590 million. Leena Rao, *Why Did Yodlee Sell?*, Fortune, Aug. 12, 2015, http://for.tn/1RniIxQ.

[23] As a coalition of consumer groups pointed out, industry collection of consumer data has allowed financial marketers to target consumers for payday loans and higher interest rate credit cards. *See* Statement of Privacy and Consumer Groups In Support of CFPB's Use of Data, July 9, 2013, http://bit.ly/1QKEudc.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MORE
Background On GOP Data
$20 MILLION TO BE SPENT ON DATA THIS CYCLE
300+
TERABYTES OF DATA
NEARLY
200
MILLION VOTERS
726,716,225,238
DATA POINTS
7,700,545,385
MICROTARGETING DATA POINTS
$15,650,000
ESTIMATED VALUE OF MICROTARGETING MODELS
3,917,840,605
TOTAL NUMBER OF VOTER SCORES CREATED

or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (In Full)
Newt 2012

A. Full Name (Last, First, Middle Initial)
TMA DIRECT

Mailing Address 12120 SUNSET HILLS RD
Suite 450

City: Reston | State: VA | Zip Code: 20190

FEC ID number of contributing federal political committee: C

Name of Employer | Occupation

Receipt For: 2012
[X] Primary [ ] General
[ ] Other (specify) ▼
Primary Debt 2012

Election Cycle-to-Date ▼
$ 574845.88

Transaction ID : R20589333
Date of Receipt
02 / 03 / 2015

List Rental Income

Amount of Each Receipt this Period
$ 11033.06

Primary Debt Retirement;

B. Full Name (Last, First, Middle Initial)
TMA DIRECT

Mailing Address 12120 SUNSET HILLS RD
Suite 450

City: Reston | State: VA | Zip Code: 20190

FEC ID number of contributing federal political committee: C

Name of Employer | Occupation

Receipt For: 2012 | Election Cycle-to-Date

Transaction ID : R20589334
Date of Receipt
02 / 03 / 2015

List Rental Income

Amount of Each Receipt this Period
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Gingrich Productions Master Donor File

The Gingrich Productions Donor File is the culmination of years of Newt's generous work with many different politically conservative organizations. Never before on the market, these are donors who responded to a letter or phone call from a group that Newt felt strongly enough about to lend his name. These are fiscally and socially conservative Americans who have followed Newt's example of taking action for what they believe.

SEGMENTS		PRICE
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DESCRIPTION

The Gingrich Productions Donor File is the culmination of years of Newt's generous work with many different politically conservative organizations. Never before on the market, these are donors who responded to a letter or phone call from a group that Newt felt strongly enough about to lend his name. These are fiscally and socially conservative Americans who have followed Newt's example of taking action for what they believe.

An iconic figure in the conservative movement, Newt Gingrich has dedicated his life to public service. His most obvious contributions include the Contract with America and his accomplishments as Speaker of the House. His less publicized ventures such as author, board member, and fundraiser have also made a huge impact on the conservative movement.

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Last update	01/16/2015
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SELECTS

Gender	5.00/M
State/SCF/Zip	5.00/M
TM Fee	25.00/M

GEOGRAPHY

USA

UNIT OF SALE INFORMATION

Unit of sale information is not available

GENDER PROFILE

Male:	%
Female:	%

MINIMUM ORDER

Quantity:	5,000
Dollar:	$

NET NAME ARRANGEMENTS

Net Name is allowed.

Floor:	0%
Min Qty:	0
Run Charges:	